



advice and support for older age

**Independent
Age**

Guide

Guide 53

Care home fees: third party top-ups in Scotland

Living in a care home can be expensive. Some people are able to pay their own care home fees, but others may need financial support from their local council to meet the cost of their care.

This guide explains the system of funding for people who need to live in a care home in Scotland.

Our free advice service offers expert independent advice on social care, welfare benefits, and befriending schemes. Call **0800 319 6789** to arrange an appointment to speak to one of our advisers or email advice@independentage.org All our free guides and factsheets can be ordered by phone or email (as above) or downloaded from www.independentage.org



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1 Moving into a care home

If you are struggling to live at home, even with the support of care workers, you may want to consider moving into a care home.

To start the process, you can contact your local council social work department and request an assessment of your care needs, particular if you need support to pay the care fees, including the free personal and nursing care payments. The assessment is known as a 'needs assessment'. If you request a face-to-face assessment to be carried out in your own home, you can have a family member, a friend or an independent advocate with you at the assessment if you wish.

If the social work department's assessment agrees that you need to move into a care home because you have eligible care needs, they will assess your personal finances. This is known as a 'financial assessment'. However, you should not be asked about your finances until your needs assessment has been carried out. For more information about the needs assessment, see our guide, *Assessment and services from your local council in Scotland* (Guide 50).

Every local council's social work department must follow the guidance published by the Scottish Government to work out how much you will need to pay towards your care home fees.

Your financial assessment for a care home placement - which is different to the financial assessment for care at home - should not include the financial details of your partner or any other family members, although there may

be a slight crossover if you and a partner/spouse have joint income. For example, if you claim Pension Guarantee Credit as a couple, the financial assessment will need to ensure the partner or spouse at home is left with enough weekly income as described in the guidance.

In Scotland, if you are over 65 and have care needs that have been assessed and meet the definition of 'personal care' which should be met in a care home, your local council will pay £169 a week as a 'personal care payment' towards your care home fees.

If your care needs are assessed at a 'nursing care' level, which means you need a nursing care home placement, your local council will pay an additional £77 a week towards your care home fees. This means the council's total contribution towards your care home fees will be £246 a week.

However, if you are eligible for and decide to accept, the personal care payment from the council, you will no longer be eligible to receive Attendance Allowance or the care component of Disability Living Allowance after being in a care home for more than 28 days. (The mobility component of Disability Living Allowance will not be affected. Likewise, the mobility component of the Personal Independence Payment - which has replaced DLA for new claimants under 65 - will also not be affected.)

You must inform the Department for Work and Pensions (DWP) (08457 123 456, [dwp.gov.uk](https://www.dwp.gov.uk)) of your change in circumstances (for example, moving to a care home) as

soon as possible. It is best not to assume that the local council will do this, although they may.

Any care home fees not covered by a nursing care payment or personal care payment from the council are known as the 'hotel/accommodation costs'. You may be eligible for help with the hotel/accommodation costs from the council, depending on your income and capital.

However, you will be expected to pay the full hotel/accommodation costs of your care home fees if you have capital over the upper capital threshold (currently £26,000). In this situation, you will be known as a 'self-funder' (see chapter 7).

If you have savings or property below £26,000, your local council is responsible for the cost of your care home fees if you have eligible care needs, but they will assess how much you are able to pay towards your care home fees each week. As a general rule, most of your weekly income will be taken as a contribution towards your care home fees, although you will be allowed to keep a Personal Expenses Allowance (PEA) of £24.55 per week. If you are receiving Pension Guarantee Credit, you may also be eligible for a 'Pension

Savings Disregard' which will ignore up to £5.95 a week for a single person or £8.95 a week for a couple, of your income. Eligibility for this is dependent upon the level of pre-Pension Guarantee Credit income you have each week.

You will be considered to have an additional 'tariff income' of £1 per week for every £250 you have in savings between £16,000 (the lower capital threshold) and £26,000 (the

upper capital threshold). Any tariff income will be added to the amount of actual weekly income you contribute towards your care home fees.

Once your savings reduce to the lower capital threshold (£16,000), your savings will be ignored in the financial assessment but you will continue to pay the assessed amount from your weekly income.

The system for paying care home fees is explained in more detail in our guide, *Care Home Fees: paying them in Scotland* (Guide 52).

2 Choosing a care home

Your needs assessment should recommend what type of care home will be able to meet your needs, such as a nursing home, residential home or a care home for people with mental health needs (sometimes known as an EMI home). You can obtain a list of local care homes of the type you require from your local council's social work department. The Care Inspectorate (0845 600 9527, careinspectorate.com) and FirstStop Care Advice (0800 377 7070, housingcare.org) can provide you with details of suitable care homes across Scotland.

If you are paying for all of the hotel/accommodation costs of your care home fees yourself, you can move to any care home provided it has a place available and the council can agree a contract with the care home for any personal and nursing care payments, if you are eligible for them.

If the hotel/accommodation costs of your care home fees are part funded by the council, you should ask your local council for the amount of their 'standard rate' (also known as the 'usual cost'). The council's standard rate is the amount they will usually pay for a care home place for someone with your level of assessed care needs. Once you know the council's standard rate you will be able to identify which care homes your council is likely to agree to fund, assuming there is availability in those care homes.

It is important not to presume that all the homes advertised on the council's list or website will be able to offer a placement at the council standard rate. The council should be able to tell you which homes have already agreed

contracts with the council and are charging a rate agreeable to the council. However, if you find a care home that has not contracted with the council you should still be able to move there provided that it meets the following four conditions (which are interpretations of the conditions contained in section 5 of the 'Choice of Accommodation Directions' in Scotland):

1. 'It is suitable for your individual assessed needs.'

This means your local council will not pay for a care home that does not offer the type of care that you need.

2. 'The preferred accommodation is available.'

This means the council cannot arrange a place for you in your chosen care home if a room is not available, but they should be willing to consider making temporary arrangements in another care home while you wait for a vacancy.

3. 'The home will provide accommodation that satisfies the council's usual terms and conditions.'

This means that the care home will agree to the local councils' contractual conditions, which may include payment arrangements, review and monitoring of how the service meets the care standards, record keeping, information sharing, insurance, sub-contracting etc.

4. 'The home does not cost more than the local council would expect to pay for someone with your individual assessed needs.' See chapters 3 and 4 of this guide for more details.

3 How much should the local council pay?

If you are assessed as having capital below £26,000, you will be eligible for financial help from the local council towards the hotel/accommodation costs of your care home fees. Local councils are allowed to set the following standard rates for how much they are prepared to pay towards the hotel/accommodation costs of care homes:

- one standard rate for residential care homes
- another (higher) standard rate for nursing care homes.

This is a nationally agreed amount negotiated between the Convention of Scottish Local Authorities (COSLA), the Scottish Government and representatives of the Scottish care home sector.

Local councils should not set an arbitrary or random standard rate or limit on the amount they will pay towards your care home fees. They should pay a realistic amount which could actually provide you with a suitable placement to meet your individual assessed needs, based on your needs assessment/care plan, and based on the availability of care home places that meet your care needs at that time.

4 When should the council increase its standard rate?

You should be able to move to any care home in the UK as long as it meets the four conditions outlined earlier (see chapter 2).

If the care home you have chosen is more expensive than the rate the council would normally pay, given your individual assessed needs, you may still be able to move there if someone is able to pay the difference (see chapter 6).

The first step, however, is to look at whether asking someone to pay the difference is actually 'legitimate', and whether in fact the council should increase its rate to pay for your care. The council should increase the rate it is prepared to pay if your assessed needs mean that:

- You need to move to a more expensive part of the country (see chapter 5)
- It costs more for your care because of your particular care needs. For example, if your first language is not English, it may be reasonable for your local council to pay more for you to stay in a care home where your first language is spoken if this is available
- You need to live in a care home that can meet your cultural, spiritual or religious needs. For example, the council may pay more for you to stay in a care home which is near to your usual place of worship
- You have specific needs, such as a hearing or visual impairment, and the care home is specifically designed to meet those needs
- You have special dietary requirements or need specialist care, which can only be provided in specific homes.

This means that it is very important that your additional or specific care needs are identified, and recorded, during your needs assessment and are stated explicitly in your care plan.

Your needs assessment should include not only your physical care needs, but also your psychological, emotional, social, religious and cultural needs as well. This can include your need to maintain family relationships and links with friends.

For example, you have lived in a small country village all your life but care homes in your village are more expensive than those in the county town. If a move would isolate you from friends and family, it may be unreasonable for a council to limit its funding to only pay for a care home in the county town. Instead it may be appropriate for your local council to fund you in a care home in your village, as long as the care home can meet all your other assessed care needs and has a place available.

If any needs have not been included as an essential part of your needs assessment and recorded in your care plan, you may want to request a review of your assessment to ensure they are included.

If you do not feel your local council is funding up to a rate which allows you to choose a care home which meets your assessed needs, you should consider making a complaint (see chapter 8).

5 Moving to a different area

You may wish to move to a care home in a different council area to the council area you currently live in. This may be to move nearer to your family or to move back to the area where you were brought up, for example.

Council funding

If your local council has agreed to fund you in a care home, you are free to choose a care home anywhere in Scotland and you can also move to England or Wales, but a move to England and Wales can be more complicated due to the difference in the funding system for care home placements.

Moves from Scotland to England and Wales are referred to as 'cross-border placements'. If you need to move cross-border, discuss this with your local council social work department as part of the needs assessment process. You may also want to contact Independent Age on 0800 319 6789 to discuss the process and guidance covering this issue.

Moving to another country in the UK is complex financially because personal and nursing care payments are unique to Scotland. There are similar payments to nursing care available in other parts of the UK; however the amount of the payments and the eligibility criteria is different. This is because assessment guidance and processes differ across the UK. For example, in England people can receive a 'registered nursing care contribution' (RNCC) from the NHS towards their care home fees. However, there is no equivalent payment to 'personal care payments' in the rest of the UK.

If you already receive funding from your council, but you move to a different country in the UK, any personal and nursing care payments, as well as any contribution from the council to the 'hotel costs' you receive, will still be paid by your former council when you move. This is because your care home fees (or just the free personal and nursing care element if you are self-funding) will continue to be the responsibility of the council that originally carried out your needs assessment.

Similarly, your council in Scotland will also retain a responsibility to fund you, as long as they have assessed you as needing a care home before you move to another country of the UK, even if you had not entered a care home in Scotland. However, it is important that your reasons for moving to another area are included in your needs assessment. If they are not included, you should ask your local council for a review of your needs assessment to ensure they are considered and included.

If you need to move to a more expensive area, it is reasonable to expect the council to consider increasing its standard rate to enable you to move to a care home in that area, if that is required.

According to guidance, councils involved in cross-border disputes should co-operate with each other to resolve the funding issue between themselves, for example, an English or Welsh council should be refunded by the Scottish council. Any reimbursement made by the council should cover the cost of the care provided, minus the contribution made by the care home resident.

Self-funding

If you are self-funding and you think that you will not require council funding, you can choose any care home that meets your care needs and that can offer you a place.

However, where you have organised your own move, are paying for your own care and have not been assessed as eligible for free personal and nursing care, you will need to apply to the council in the new area if you need help with care home funding. There are different capital limits in England and Wales – for more information, see our guides, Care Home Fees: paying them in England (Guide 16) and Care Home Fees: paying them in Wales (Guide 72).

What payments you may be eligible for will depend on what is available in the country you have moved to. It is important to find out the cost of care homes in the area you are moving to, especially if you will need council assistance with the care fees now, or in the near future. For the same reason, you may wish to find out how much the local council in the new area usually pays (the 'standard rate') for care home places which it funds.

Sometimes a care home, if you are part-funded by the council, will negotiate with your local council and accept you at a lower rate. Often care homes will charge a different rate if a person is being funded by the council, compared to a person who is paying their own fees. Therefore, when you are looking for a care home place, if you are part-funded by the council, it is important to let the care home know.

You can obtain details of care homes across the UK from FirstStop Care Advice (0800 377 7070, [housingcare.org](https://www.housingcare.org)). You can get details (including inspection reports) of care homes in Scotland from the Care Inspectorate (0845 600 9527, [careinspectorate.com](https://www.careinspectorate.com)), details (including inspection reports) of care homes in England from the Care Quality Commission (03000 616161, [cqc.org.uk](https://www.cqc.org.uk)) and details (including inspection reports) of care homes in Wales from the Care and Social Services Inspectorate for Wales (0300 062 8800, [cssiw.org.uk](https://www.cssiw.org.uk)). You may also wish to contact an advice service such as Independent Age (0800 319 6789, [independentage.org](https://www.independentage.org)) if you need any further information.

6 Third Party top-up agreements

If your care home fees are part-funded by the council, and you prefer a more expensive care home to the care home that the council has offered you, you should still be able to move there as long as the home meets your care needs, and someone will agree to pay the difference. This agreement to pay the difference is called a 'third party top-up'.

A 'third party top-up' can be made by a friend, a relative or possibly a charitable organisation. It can also be funded by the care home resident in specific circumstances – see below.

Your local council should not set their standard rate so low that it routinely means someone has to contribute a third party top-up. Your local council should only ask for a third party top-up if the care home you would prefer to go to genuinely costs more than the one they have offered, which should be equally suitable and also able to meet your assessed needs.

If the council say the care home you want to go to will cost too much, they must be able to show they can meet all of your care needs in a cheaper home, and that a place is currently available in this home.

For example, your local council has a standard rate of £405 a week. There are two care homes, both of which have a place available and are equally able to meet your individual assessed needs. The first care home, however, is quite basic as far as the decor is concerned but the second home is more 'luxurious' looking. The first care home costs £405

a week but the second home costs £475 a week. If you choose the second, more 'luxurious' looking home, your local council would be within their rights to ask for a third party top-up fee to cover the additional £70 a week, unless you can show why the less expensive care home does not meet your care needs.

If you are a third party paying the top-up

If you are a relative or friend of a resident, who has a shortfall between what the council is prepared to pay and the fees that the care home charge, you should not be pressured into paying a top-up fee. If you are thinking about paying a top-up for a friend or family member, it is important to make sure beforehand that the local council is paying a reasonable rate to purchase the care required.

You may not want to sign a contract to pay a top-up unless you are comfortable doing so. You should think about whether you can afford to pay the top-up now, and also whether you will be able to continue paying the top-up fee in the future.

The council has a responsibility to check that it will be sustainable for you to be able to keep up the payments for as long as the resident is in the care home, so they may ask for details of your finances. This is because it may be important for the council to know what will happen to the third party contribution when the fees go up (usually on an annual basis), as any increase may not be shared with the council. This may mean that your contribution as the third party will also go up whenever the fees increase. You should also be aware that if you are unable to keep up the

payments, the resident may have to move to a cheaper care home if there is one, assuming it will not be a risk to move the resident.

If you have agreed to pay a third party top-up towards care home fees, you will be asked either by the care home, or by the local council, to enter into a third party contract with them. You should be made aware that the contract will be between yourself and the care home or the local council, not between the older person in the home and the care home or council.

The guidance in Scotland allows councils to use their discretion to either ask you to contract directly with the care home, or for you to pay your top-up to the council and not the care home directly. The second option means that the council should then meet the full cost of the care home fees and invoice the resident for their contribution, invoicing you for any top-up separately. This arrangement gives you slightly more protection should you become unable to continue to pay the top-up, as the council remains responsible to pay the full cost of the fees, although there would still be a top-up to pay.

However, even if you arrange to pay your top-up directly to the care home, according to guidance the council will continue to be liable to pay for the full cost of the care home fees, and should step in if either you, or the resident, fail to pay the required amount. Although there would still be a top-up left to pay.

When can I pay my own third party top-up?

Section 8 of the Charging for Residential Accommodation Guide (CRAG) is clear that you cannot pay your own third party top up from your disregarded capital (ie any capital you have under £16,000) except:

- during a 12-week property disregard
- if you have a deferred payment agreement with the council.

If you are in receipt of either of these, you can top up to a total of up to £16,000, which is the lower capital limit and the part of your capital that is totally disregarded.

For more information about deferred payment agreements, or the 12- week property disregard, see our guide, Care Home Fees: paying them in Scotland (Guide 52).

There is another circumstance where you can pay your own top-up from your own capital or disregarded income, which is if you are paying less than you would have done towards the hotel/accommodation costs of the care home fees because you are eligible for the personal and nursing care payments from the council.

You may want to seek independent advice from an advice service, such as Independent Age (0800 319 6789, independentage.org) or Care Information Scotland (08456 001001, careinfoscotland.co.uk) to see if the third party top-up request is appropriate and whether the council should be paying more.

7 Paying your own care home fees (self-funders)

If you are assessed as having capital above £26,000, you will have to pay the full cost of the hotel/accommodation part of your care home fees. This is known as being a 'self-funder'.

Even if you are self-funding your hotel/accommodation costs, you may still be eligible to receive a nursing care payment (worth £77 a week) and/or a personal care payment (worth £169 a week) towards the cost of your care home fees. The council makes the payment directly to the care home on your behalf. To be eligible, you must have been assessed as having eligible care needs by the local council social work department, and the council must agree a contract for these payments with the care home at the time, since the payments are not backdated.

When your savings are within two-three months of reaching the upper capital threshold (currently £26,000) you should inform your local council of your situation as you will be eligible to apply for financial help from your local council towards the 'hotel' costs. The council should then carry out a needs assessment, or re-assessment, and make the necessary arrangements, without undue delay, to contribute towards the hotel/accommodation costs of your care home fees. If the council fails to do this, it may be liable to give you a refund if you are forced to use any of your capital under £26,000 to pay for your care home fees.

When you become part-funded by the council for the hotel/accommodation costs of your care home fees, you may no longer feel the financial benefit of any personal and

nursing care payments (of up to £246 a week) that you were receiving. This is because your contribution towards your hotel costs from your weekly income, while receiving free personal and nursing care payments, will be the same as it would have been without a personal care/nursing care payment.

8 Challenging decisions made by the council

You may wish to complain if your placement is part-funded by the council (for hotel costs), and the council refuses to increase its standard rate even though the care home you have identified will meet your needs. Or you may feel that the council is unreasonably asking you to move to a cheaper care home (ie it is too far away from family, or does not meet other care needs you have within your care plan). In these situations, you may want to consider challenging the council's decision using the council's complaints procedure.

Your first step is to try to resolve the matter informally. Explain why you need to move to, or remain in, a particular care home and why you feel this particular care home is the only one that can meet your needs. Make sure that this information is included in your needs assessment and care plan and explain why you feel your local council should increase the standard rate in this individual case.

You may also wish to contact an advice service, such as Independent Age (0800 319 6789, advice@independentage.org) to discuss your options.

If you are unhappy with the council's response, you may want to consider making a formal complaint. All councils have a formal complaints procedure based on the Model Complaints Handling Principles introduced by the Scottish Public Services Ombudsman (SPSO). You can obtain a copy by telephoning the council directly and requesting a copy, or it may be available on the council's website. For more information about your rights to make a complaint, see our

guide, Complaints about community care and NHS services in Scotland (Guide 54).

You may find it useful to seek the assistance of an independent advocate if you find the prospect of making a complaint daunting. An independent advocate is independent of statutory services, such as the council, and is there to support you to get the outcome you want, or have a right to. They will be able to help you to voice your complaint and represent your views to the professionals involved to ensure that your rights are protected. This service should be free of charge. To find an independent advocate in Scotland, contact the Scottish Independent Advocacy Alliance (0131 260 5380, siaa.org.uk).

For more information about advocacy and making a complaint, see our guides, Complaints about community care and NHS services in Scotland (Guide 54) and Independent advocacy (Guide 25).

This guide is not a full explanation of the law and is aimed at people aged over 60.

If you need any of this information in another format (such as large-print or Braille), please contact our Information Manager on 020 7605 4294 or email comms@independentage.org

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Independent Age
6 Avonmore Road
London
W14 8RL

T 020 7605 4200
E charity@independentage.org
www.independentage.org
Advice line 0800 319 6789

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