

Choice and council funded care home placements

About this factsheet and who it is for

Because local authorities have limited resources, the choice of care home places offered to older people whom they fund is often restricted by the price they are prepared to pay. This factsheet explains the guidance that local authorities must follow when determining their contribution.

The artwork on the front of this factsheet was done by an older artist for EAC's over 60s Art Awards.



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Introduction

If you are entitled to financial assistance towards the cost of your care in a care home from your local authority, then it is likely that you will be informed of your 'personal budget'. This is the figure which the council is likely to agree to pay up to with any additional costs for more expensive accommodation having to be met through top-up payments made by family or friends.

However, there are some situations in which the local authority must agree to pay a higher rate, or allow a care home resident to use their own assets to pay for care. This factsheet aims to explain the various rules and guidance that covers these scenarios.

National guidance

Government guidance states that:

“Councils should not set arbitrary ceilings on the amount they expect to pay for an individual’s residential care. Individuals and third parties should not routinely be required to make up the difference between what the council will pay and the actual fees of a home. Councils have a statutory duty to provide people with the level of service they could expect if the

possibility of individual and third party contributions did not exist.”

If, following an assessment, the local authority determines that you need to move into a care home and you express a preference to live in a particular care home, under The Care Act 2014, the council must arrange for care in that accommodation subject to certain criteria.

This is called “preferred accommodation” and can be in a local authority, private or voluntary sector owned home provided that:

- The accommodation is suitable in relation to your assessed needs;
- To do so would not cost the council more than what it would usually expect to pay for accommodation for someone with the individual’s assessed needs;
- The accommodation is available; and
- The provider of the accommodation is willing to provide accommodation subject to the council’s usual terms and conditions for such accommodation

Restrictions on care home location

The location of your preferred accommodation need not be limited by the geographical boundaries of your council; however they are likely to keep to the personal budget that reflects the cost in their district, even when making placements in another area. An exception to this, when they should meet the additional cost, is if in order to meet your assessed needs it is necessary to place you in another area at a higher rate than they would usually pay.

If a care home is not available within your 'personal budget'

Where you have not expressed a preference for more expensive accommodation, but there are not, for whatever reason, any places available at a given time within your set personal budget, then the council should make a placement in more expensive accommodation. In these circumstances, neither you nor a third party should be asked to contribute more than someone would normally be expected to contribute if a place was available within the budget. The council should make up the cost difference between your assessed contribution and the accommodation's

fees. Only when you have expressed a preference for more expensive accommodation can you or a third party be asked for a top up.

Similarly, if in order to meet your assessed needs it is necessary for the council to place you in accommodation that costs more than they would usually pay they should be prepared to meet these higher costs.

When setting its personal budgets, a council should be able to demonstrate that the amount they are prepared to pay is sufficient to allow it to meet your assessed care needs. This amount should cover any reasonable care services without it being necessary for you or third party to top-up any difference in price.

More expensive accommodation

If you request it, the council must also arrange for care in accommodation more expensive than it would usually fund provided it meets your assessed needs and a third party or, in certain circumstances, you, are willing and able to pay the difference between the cost the council would usually expect to pay and the actual cost of the accommodation. These are the only circumstances where either a third party

or you can be asked to top up.

Availability and waiting lists

If your choice of care home meets the requirements of the council but there are currently no places available, you may have to join a waiting list. In these circumstances the council should ensure that your assessed needs are being adequately met in the interim in a suitable setting. For example, a temporary place in an alternative care home or an enhanced package of care at home could be appropriate. An acute hospital bed would not.

Councils should give you an indication of the likely duration of the interim arrangement and aim to move you into your preferred accommodation as soon as possible. If the waiting period is prolonged and exceeds a reasonable time e.g. 12 weeks, you must be reassessed to ensure your choice of preferred accommodation is still appropriate.

If temporary accommodation provided by the council costs more than your personal budget, you should not be asked to pay more than the assessed financial contribution towards the cost unless the additional cost has been incurred because you have expressed a preference for more expensive accommodation. In this

case, a third party, or you (in certain circumstances), could be asked to top up.

If the cost of the interim care home is higher than your personal budget, the council would expect to pay for your assessed needs and if you choose to remain in that home rather than moving to less expensive accommodation when it becomes available, a third party or you (in certain circumstances) could be approached for a top-up. This should be clearly explained to you before you commit to remaining in the home.

More expensive accommodation and top-ups

You should only be asked to pay top-ups where you have explicitly chosen preferred accommodation which is more expensive than your personal budget.

The only circumstances where you can top-up yourself is if you are going to be self-funding your care and you are subject to the 12 week property disregard or have in place a deferred payments agreement with the council. In all other circumstances the top-up must come from a third party, for example a relative, friend, or any other source.

Councils should not seek top-ups in cases where they have decided to offer you a place in more expensive accommodation

in order to meet your assessed needs or for other reasons.

Where there are no care home places available within your personal budget, you should not be left to make your own arrangements if the council have determined that you need to enter residential accommodation and do not have suitable care and attention otherwise available to you. In these instances, councils should make suitable alternative arrangements and seek no contribution from you other than that assessed during the means test. Councils must never encourage or otherwise imply that care home providers can or should seek further contributions from individuals in order to meet the assessed needs.

Responsibility for costs of accommodation

Where top-ups are required from you or a third party the council needs to be satisfied that it is affordable to you or the third party. You will be asked to demonstrate that either you or the third party is able and willing to pay the difference between the council's budget for you and the higher cost.

Under a deferred payments agreement, where there is a charge against the value

of your home, your top-up contribution could be added to the loan from the council and repaid when your home is eventually sold.

Alternatively, by agreement between all parties, the top-up can be paid separately and directly to the care home. However, it should be noted that even where there is such an agreement for you to make payments direct to the accommodation, the council continues to be liable to pay the full costs should either you or the third party fail to pay the required amount.

Price increases

Any arrangements between the council, you and a third party will need to be reviewed from time to time to take account of changes to the accommodation's fees and changes to the council's personal budget for you. However, fees and personal budgets may not change at the same rate and you and third parties should be told that there cannot be a guarantee that any increases in the accommodation's fees will automatically be shared evenly between the council and/or you or your third party. It is quite possible that the care home's fees could rise at a greater rate than the council are prepared to pay.

Failure to keep up top-up payments may result in you having to move to cheaper accommodation unless, after an assessment of need, it is shown that your needs can only be met in the current accommodation. In these circumstances, councils should make up the cost difference between your assessed contribution and the accommodation's fees.

Where your top-ups are being made against the value of property subject to a deferred payment agreement, the council should have assured itself at the outset that top-up payments are viable and recoverable when your home is sold.

If you are already living in a care home

If you are already in a care home as a self-funder but, because your money is running out, you are on the verge of needing council support, you have the same rights as those who have yet to be placed by the council. However, if your care home is more expensive than the council would normally pay, you may have to move to less expensive accommodation that they would fund or find a third party to top-up the fees. The council would only fund it if, after an assessment of your needs, it is shown

that these can only be met in the current accommodation.

Other points to consider

If you are unable to make your own decisions

If you lack the mental capacity to express a preference for yourself, it would be reasonable to expect the council to act on the preferences expressed by your advocate, carer or attorney, unless the council considers these preferences to not be in your best interests.

Council contracts

The council may recommend a care home which is council run or from a list of preferred care home providers with whom they may have block contracts or other form of contract. However, you should not be limited to choosing from such a list. The only limiting factor is that the care home of your preference meets the suitability criteria above.

Complaints

Where, for any reason, a council decides not to arrange a place for you in your preferred accommodation, it must have a clear and reasonable justification for that decision. Consequently, you should not be refused your preferred accommodation without a full

explanation from the council, in writing, of their reasons for doing so. For example, you may feel that part of your assessed needs should be an emotional need to be close to friends and relatives or that the care home you have chosen does fit the required criteria but is not one that the council usually takes contracts with. If you do not feel the decision was justified and wish to lodge a formal complaint, the council should inform you of their statutory complaints procedure.

Your assessed contribution

Although the Local Authority will enter into a contract with the care home for your care home fees they will assess what you can contribute to them from your income and sometimes your capital. It is likely that you will have to contribute the majority of your income; you are allowed to keep a small amount for personal expenses, this is currently £24.90 (increased to a maximum of £144 if you are in a deferred payments agreement). If you receive an occupational pension, personal pension or payment from a retirement annuity contract, 50% of this income can be disregarded providing it is paid to your spouse. You may also need to contribute to your care home fees from your capital at a rate of £1 per week for each £250 of capital you have

between the lower and higher capital thresholds, currently £14,250 and £23,250.

About FirstStop Advice

FirstStop is a free information and advice service designed to help older people decide how best to meet their needs for support, care and suitable housing. It is provided jointly by a growing number of national and local organisations and it is led by the charity, Elderly Accommodation Counsel (EAC).

Contact us

- Visit us online: www.housingcare.org
- Use our self-help tool at hoop.eac.org.uk

The information contained in this factsheet is intended to be, and should be regarded as, a brief summary and is based on our understanding of present legislation, regulations and guidance. No responsibility can be accepted for action based on this information.

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