

# Factsheet

## Paying care home top-up fees

This factsheet explains when you or someone else – such as a relative, friend or charity – might have to contribute some money to top up the amount the council is paying towards your care home fees.

This factsheet applies to people whose place in a care home will be paid for partly or fully by their local council. If you will be paying all your own fees, see our guide **Paying for your care**.



Call free on 0800 319 6789

Visit [www.independentage.org](http://www.independentage.org)

## About Independent Age

Whatever happens as we get older, we all want to remain independent and live life on our own terms. That's why, as well as offering regular friendly contact and a strong campaigning voice, Independent Age can provide you and your family with clear, free and impartial advice on the issues that matter: care and support, money and benefits, health and mobility.

A charity founded over 150 years ago, we're independent so you can be.

The information in this factsheet applies to England only.

**If you're in Wales, contact Age Cymru  
(0800 022 3444, [ageuk.org.uk/cymru](https://ageuk.org.uk/cymru))  
for information and advice.**

**In Scotland, contact Age Scotland  
(0800 12 44 222, [ageuk.org.uk/scotland](https://ageuk.org.uk/scotland)).**

**In Northern Ireland, contact Age NI  
(0808 808 7575, [ageuk.org.uk/northern-ireland](https://ageuk.org.uk/northern-ireland)).**

In this factsheet, you'll find reference to our other free publications. You can order them by calling **0800 319 6789** or by visiting [www.independentage.org/publications](https://www.independentage.org/publications)

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## 1. What are top-up fees?

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If your council assesses you as needing to move into a care home, they must ensure this need is met. If they're going to pay for some or all of your care home fees, they must work out what this will cost. The total amount the council allocates to meet your care needs is called your personal budget. This must be high enough to meet the level and type of support the council has assessed you as needing. For more information about the assessment, read our factsheet **First steps in getting help with your care needs**.

The council won't necessarily pay all of your personal budget – you may have to make a contribution towards the fees from your income and capital. How much you have to pay will be worked out in a financial assessment. For more information, read our factsheet **Paying care home fees**.

The council must give you the details of at least one care home that meets your care needs, does not cost more than your personal budget, and has a place available. If there aren't any places within your personal budget, the council must increase its contribution until it's high enough to pay for an available placement that meets your needs. However, this may be a temporary arrangement until a suitable cheaper alternative becomes available.

The council may give you details of a number of care homes that accept the amount of money in your personal budget. You can then check them yourself to find out which ones have a place available and which one you would prefer.

It may be that you prefer a more expensive home even though a cheaper home that can meet your care needs is available. You will be allowed to move there if someone other than yourself pays the difference between the fees and your personal budget. This is a third party top-up fee.

You usually can't pay your own top-up fee, but it is possible in some specific circumstances (see chapter 2).



### **Good to know**

If you're getting NHS Continuing Healthcare or section 117 aftercare services, different processes will apply. Call our Helpline on **0800 319 6789** to arrange to speak to an adviser.

## 2. Who can pay top-up fees?

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Generally, it must be a third party – not you or the council – that pays the top-up fees. This could be a friend, a relative or a charity. You can't pay your own top-up fees unless one of the following applies:

- you are in the first 12 weeks after your permanent move to a care home. During this time, the council can't take the value of your home into account when calculating how much you should pay towards your fees and you can pay your own top-up fees
- you have a deferred payment agreement with the council. This is where the council pays your care home fees as a loan and claims the money back once your property has been sold at a later date
- your accommodation is being provided under section 117 of the Mental Health Act 1983 as aftercare. This is help you may receive after leaving hospital if you have been kept in hospital under certain sections of the Mental Health Act.

For more information about the 12-week property disregard and deferred payments, see our factsheet **Paying care home fees**.

You can only insist on your choice of a more expensive care home if the council is satisfied that you or the third party can afford to make the top-up payment for as long as you will need it.

You will need to sign a written agreement with the council, but that doesn't mean you or the third party will have to keep paying if, for example, their circumstances change and they can no longer afford the top-up. The council may then look at whether your needs can be met in a cheaper care home within your personal budget. See chapter 5 for more information about the written agreement.

If there's anything in the agreement you're unclear about or disagree with, don't sign the written agreement straight away. Instead, call our Helpline on **0800 319 6789** for advice.

## 3. When could you be asked for a top-up fee?

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A top-up fee can only be charged if you choose a care home that is more expensive than your personal budget. This is the total amount of money the council has calculated that is needed to meet your care needs.

### Choosing a care home

The council should be able to tell you which homes advertised on their list or website are within your personal budget.

However, if you find a care home that isn't on the council's list, you can still move there as long as it meets the following four conditions:

- it's suitable for the type of care you need. It must meet the needs recorded in your care and support plan, which is the document that sets out how your care needs will be met, following your needs assessment. Read our factsheet **First steps in getting help with your care needs** for more information about the care and support plan
- there is a room available. However, you could move temporarily to another care home while you wait for a vacancy
- the home will agree to the council's contractual conditions. This may include payment arrangements, review and monitoring of how the service meets certain standards, record keeping, information sharing, and insurance
- the home doesn't cost more than your personal budget. However, if you or a third party are paying a top-up fee, you can still insist on moving to your chosen care home.

You can choose a care home anywhere in England. If you choose a care home in a more expensive area, the local council should take this

into account when fixing your personal budget. However, this doesn't mean they will increase it.

It's a different matter if you have to move to a more expensive area to meet the needs set out in your care and support plan. For example, it may be that none of the local care homes are able to meet your assessed needs, so you have to look further afield. The council must then increase your personal budget to fund a care home in the more expensive area.



### **Good to know**

For tips on choosing a care home, see our guide [How to find the right care home](#).

## **If your chosen home costs more than your personal budget**

This is when you may need to arrange top-up fees. However, before asking for a top-up, the council must be able to show that:

- there is another care home that can meet your needs for the amount in your personal budget, and
- a place is currently available in the home they have found.

Only after this can they say you have chosen a more expensive home and will need to arrange a top-up to be able to move there.

### **An example**

The council has calculated that it'll cost £600 a week to meet your needs in a care home. There are two care homes in the area that have places available and are equally able to meet your assessed care needs. The first care home has fairly small rooms, and the second home has larger rooms. The first care home costs £600 a week, but the second home costs £650 a week.



If you choose the second home with larger rooms, your local council will be able to ask for a top-up fee to cover the additional £50 a week. The only way to challenge this would be if you could show that the first care home at £600 didn't meet your assessed care needs or that your care needs assessment had not properly assessed your needs.

If the only care home available to meet your needs was the second care home, then the council would have to increase your personal budget to £650. They would not be able to ask for a top-up fee. However, if a place became available in a cheaper care home that could meet your needs, the council could ask you to move there if it wasn't harmful to your health and wellbeing.



### Good to know

If the council doesn't agree to your choice of care home, they must give you written reasons for this. If you disagree with their reasons, you may want to consider making a complaint or seeking legal advice (see chapter 6).

## If you were paying all your care home fees, but your money is running out

If you're already living in a care home and paying your own fees, and your capital falls below £23,250, you'll usually qualify for some help from your council to pay the fees. It's a good idea to ask the council for a care needs assessment before this point.

However, it may be that your care home charges more than your personal budget – the amount the council thinks is required to meet your care needs.

If this is the case, and there are other suitable care homes available which are less expensive, the council may ask you to move to a cheaper home, or to pay a top-up fee so you can stay in your chosen care home.

Before asking for a top-up, the council must ensure the cheaper care home could meet your needs. For example, you may have made new friends in your current care home, and losing those friendships might have a significant impact on your wellbeing. The assessment must consider the impact on your health and all aspects of your wellbeing. This may require a referral for a health assessment from a GP or other health professional.

If there isn't another home that can meet your needs, the council will have to increase their contribution to your personal budget at least until a cheaper suitable home can be found. It can't ask for a top-up fee.

## **Is your personal budget realistic?**

Your council must not set your personal budget so low that a top-up fee would be needed to cover your assessed care needs in any care home. Councils must pay a realistic amount to provide you with a suitable placement.

### **An example**

Lucie pays some money towards her care home fees and the council also makes a contribution. Six months after she moved to the care home, the care home fees increase by £52 a week. The council tells Lucie that she will have to ask a relative to pay this extra amount as a top-up fee.

Lucie asks the council if there is another care home in the area that can meet her needs for the cost of her personal budget. The council tells her that there isn't. This is the cheapest care home in the area that can meet Lucie's needs.

In this case, the council must increase their contribution to Lucie's personal budget to cover the cost of the fee increase, at least until a suitable cheaper care home place becomes available. It cannot ask for a top-up fee.

## 4. When the council should consider increasing your personal budget

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The council will carry out a care needs assessment and prepare a personal budget which ensures that you get the care you need.

Your care needs assessment should include not only your physical care needs, but also other kinds of needs: for example, whether you are able to maintain relationships with family and friends. It should look at your overall wellbeing. See our factsheet **First steps in getting help with your care needs** to find out more.

During your assessment, all of your needs must be identified. If they meet the eligibility criteria, they must be recorded as 'eligible needs', not just personal preferences. This is important to ensure your personal budget can be calculated accurately. For example, the council must increase the amount it is prepared to pay if it agrees that:

- you need to move to a more expensive part of the country to be nearer to family
- the cost of your care is higher because of your particular care needs. For instance, if your first language isn't English, your council may need to pay more for a care home where they can talk to you in your first language
- your eligible needs can only be met in a specialist care home, such as one that caters for the needs of someone who is deafblind or that can meet your special dietary needs.

The council may also choose to meet needs that are not counted as eligible needs. If so, they must also include these needs in your care and support plan and in your personal budget. Tell the council if you have any particular needs you want them to take into account. Read our factsheet **First steps in getting help with your care needs** for more information.

### An example

If you have lived in a small country village all your life, but local care homes are more expensive than those in the county town some distance away, it may not be possible for the council to meet your needs if they limit their funding to only pay for a care home in the town. It would mean moving away from family and friends who are important to your wellbeing. The council may have to fund your place in a care home in your village.

If any of your needs haven't been included as an essential part of your care needs assessment, you may want to request a new assessment. See our factsheet **First steps in getting help with your care needs** for more information.

If you think your council funding isn't enough to pay for a care home that meets your assessed needs, you could consider getting legal advice and/or making a complaint (see chapter 6).

## 5. Advice for people paying a top-up fee

This section is for people who will be responsible for paying a top-up fee. You might be paying your own top-up fee in specific circumstances (see chapter 2) or a relative or friend may have asked you to pay a top-up fee for them.

You shouldn't be pressured into paying top-up fees. Before paying top-ups fees, it's important to make sure the council has allocated a personal budget that is high enough to pay for an available and suitable care home place. In other words, that the top-up is only necessary because the person needing care has chosen a more expensive care home.

If you've agreed to pay a top-up towards someone else's care home fees, you'll be asked to sign a written agreement with the council. The agreement won't involve the person moving to the care home.



### Good to know

The council is responsible to the care home for meeting the full cost of the care home fees. It will invoice the resident for their assessed contribution, and invoice you for any top-up fee separately.

You can arrange with the council and care home to pay top-up fees directly to the care home, but the council remains legally responsible for the full fee. For example, if you stopped paying for any reason, the council would have to pay the full fee until arrangements were made to move the resident to a cheaper care home.

If you're paying your own top-up fee (see chapter 2), this can be added to the amount that you have to pay towards your fees as worked out during your financial assessment.

## What the council must do

The council must make sure you have enough information to make an informed decision about paying a top-up fee, such as understanding the consequences if you don't keep up with top-up payments. The council must be satisfied that you're willing and able to pay the top-up fee for as long as it is needed. The written agreement must explain important issues, including:

- how much the top-up payments will be
- who you'll have to pay, and how often
- how often the council will review them
- how (or if) the council will share the costs with you if the care home puts up its fees in the future
- what might happen if you can no longer afford the top-up (see below).



### Good to know

Anyone paying a top-up fee can ask for a review of the top-up arrangement at any time, and the council should always review the arrangement once a year.

## What happens if I can no longer afford to pay a top-up fee?

If you're no longer able to pay a top-up fee, the council will have to carry out a new care needs assessment before deciding what to do.

It won't be able simply to move you (or your relative or friend) to a cheaper care home. First, it must consider whether the new care home can meet all your care needs and the impact the move might have on your health and wellbeing. In the meantime, the council would be responsible for covering the fees.

## 6. Challenging a request for a top-up fee

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If the council is refusing to increase your personal budget, or you feel it's unreasonably asking you to move to a cheaper care home, you may wish to challenge the decision.

If there's time, start by trying to resolve the matter informally. Bear in mind that there are time limits for using the formal dispute resolution procedures – see below.

If you haven't been offered a care home that has a vacancy and is within your personal budget, raise this with the council. A top-up fee is only needed if you have chosen to move into a more expensive care home than the one on offer.

If you have been offered an alternative care home, check whether it meets your needs set out in your care and support plan. If it doesn't, point this out. If the alternative appears to meet your care needs but you think the care needs assessment didn't cover everything or got things wrong, ask for a reassessment.

### **Formal procedures for resolving disagreements**

There are two main ways of trying to resolve disagreements:

- making a complaint
- using a solicitor to pursue a legal case.



### Remember

There is a time limit for using each of these procedures. It's important not to miss these deadlines. It may be best to consider making a complaint or taking legal action at the same time as trying to sort things out with your social worker, so you don't miss the deadlines.

You must make your complaint within 12 months of the problem occurring or of when you first became aware of it, although it's usually better to start the complaint as soon as possible.

If you decide to pursue a legal case, the time limit is much shorter. If it becomes necessary to start court proceedings, you're likely to need a judicial review. Judicial review proceedings must be started within three months of the date when there were first grounds for a legal challenge.

It's sometimes possible to pursue a late complaint or a late legal challenge.

See our factsheet **Complaints about care and health services** for more information.



### To do

If you need support to make a complaint or communicate your views to staff, you may be entitled to help from an independent advocate. Read our factsheet **Independent advocacy** to find out more.

If you want specialist legal advice, you'll need to find a solicitor who specialises in community care law. Civil Legal Advice can give you the details of organisations or solicitors specialising in community care law (**0345 345 4345**, [gov.uk/civil-legal-advice](https://www.gov.uk/civil-legal-advice)). They can also tell you if you qualify for legal aid, as getting specialist legal advice can be expensive. You could also visit [find-legal-advice.justice.gov.uk](https://www.find-legal-advice.justice.gov.uk) to find a solicitor.



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## Thank you

Independent Age would like to thank those who shared their experiences as this information was being developed, and those who reviewed the information for us.

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