

Care homes fees – who pays?

Under the Care Act 2014

If you need residential care in a care home your local authority may ask you to pay towards the cost. This factsheet looks at local authority rules on charging for residential accommodation. This factsheet is an overview because the rules are complicated. This factsheet is for people with mental illnesses and their carers.



KEY POINTS

- Your local authority should charge you for residential care services if you can afford to pay.
- Your local authority will do a financial assessment to work out if you have to pay towards the care home cost.
- They shouldn't charge you for residential care services if you get free aftercare under section 117 of the Mental Health Act 1983.
- If you aren't happy about how much your local authority is charging you can take action.

This factsheet covers:

1. [What is residential care?](#)
2. [Will I have to pay for residential care?](#)
3. [What are the Mental Health Act and section 117 aftercare services?](#)
4. [What if I cannot afford the charges?](#)

You may hear your local authority being called the 'local council' or 'council'. We will use the words 'local authority' in this factsheet.

1. What is residential care?

If you have a mental illness you may find it hard to live in your own home even with help or support. You may need to stay in residential care accommodation. This type of accommodation might be called a 'care home'.

You can get care all day and night if you are in a care home.

There are different types of care homes to support different needs. The care home you live in may depend on things such as your age or your need.

Supported housing

The rules in this factsheet are not for supported housing. How you pay for supported housing is different.

You can find more information about ‘**Supported Housing**’ at www.rethink.org. Or call our General Enquiries team on 0121 522 7007 and ask them to send you a copy of our factsheet.

[Top](#)

2. Will I have to pay for residential care?

This section covers:

- [What is capital and how will the local authority assess this?](#)
- [What is income and how will the local authority assess this?](#)
- [What is the most I will have to pay?](#)
- [What are top-up fees?](#)
- [What are Deferred Payment Arrangements \(DPA\)](#)

If you need residential care the local authority might be able to charge you for this.¹

The local authority will do the following.

- Complete a financial assessment. This is also known as a means-test assessment.
- Look at your income and capital. Capital can include land property, premium bonds, shares and savings that you own
- Work out how much you will have to pay towards the cost of the care home.
- Assess you as an individual.

You will need to give the local authority information about your income and capital.

The local authority will work out how much it will cost to meet your needs. This is known as your ‘personal budget’.

The local authority may use different rules if you go into the accommodation for a short time.²

What is capital and how will the local authority assess this?

Capital can include land property, premium bonds, shares and savings that you own.³

Your home

Your length of stay in a care home will decide whether your main home counts as capital or not.⁴

If you have a temporary stay in a care home your main home will not count as capital. But only if you plan to move back there.

In most cases if you have a permanent stay in a care home the value of your former home will be considered as capital. And taken into consideration for part of the financial assessment.

Someone from the list below might permanently live in your home before you move into the care home. If they do it will not count as capital.⁵

- Your partner.
- Your ex-partner - if you were a couple when you moved into the care home.
- Your ex-partner if they are a lone parent.
- A family member aged 60 or over.
- Your child who is aged under 18.
- A family member who is incapacitated.

Capital you own with others

You might own capital with another person that is not land or property.

The local authority will treat you as owning half of any jointly owned capital. Unless there is evidence to show otherwise.⁶

Disregarded capital

The rules on what counts as capital and what doesn't can be complicated. If you own capital but it is not counted as capital this is known as being 'disregarded'. Some capital can always be disregarded⁷ or disregarded for periods of time depending on the circumstances.⁸

You can see the full list of what capital is disregarded by reading 'The Care and Support Statutory Guidance'. You need to look at Annex B 'Treatment of Capital', paragraph 33 'Capital disregarded. You can access the Guidance at:

[https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance;](https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance)

How does my capital affect how much I have to pay?

The local authority will work out the value of your capital. How much you must pay towards your care home depends on your capital. The list below shows the rules for the different capital amounts.⁹

- **£23,250 or more** - you will have to pay for all your residential care accommodation.
- **Between £14,250 and £23,250** - The local authority will include your capital in their financial assessment. They will pay for some of your care and you will contribute to the rest.
- **Below £14,250** – your capital will not be included in your financial assessment. Depending on your income you may not have to make any payment towards your care home costs.

You might have capital which is slightly above the £23,250 upper limit. The local authority should:¹⁰

- think about how long your capital may last, and
- plan when your assets will fall below £23,250 when working out your charges.

For every £250 you have over £14,250 the local authority will assess you as being able to pay £1 a week towards the cost of your care home. This is called 'tariff income'.¹¹

What does 'notional capital' mean?

Notional capital is capital that may be included in the financial assessment even though you don't have it.¹²

Notional capital may be the following.¹³

- Capital that you could have if you applied for it, such as a pension.
- Capital that is paid to someone else instead of you.
- Capital that you have got rid of yourself to reduce how much you have to pay for the care home. This is called 'deprivation of capital'.

Examples of deprivation of capital can include the following.¹⁴

- Giving money away as a gift.
- Transferring your property into the name of another person.
- Going on expensive holidays.
- Living an extravagant lifestyle, if you did this to deliberately take advantage of the system.

What is income and how will the local authority assess this?

The local authority will assess you as an individual. They will not include your partner's income.

Your income can include most benefits and personal pensions.

Income that is not taken into account

The local authority won't take the following types of income into account when doing your financial assessment.^{15,16,17}

- Your partner's income.
- Any income you get from being employed or self-employed.
- Some other types of income, such as child maintenance.
- Some benefits such as:
 - mobility component of disability living allowance,
 - mobility component of personal independence payment, (PIP),
 - child benefit, and
 - child tax credit.

These are just some of the common benefits that are not included in the financial assessment. It is not a complete list.

The local authority might be allowed to treat your disability-related benefits as income. If they can they should also consider if you have extra costs because of your disability.¹⁸ For example, they may leave you with extra money to pay for a carer that you have arranged for yourself.

Notional income

Notional income is income the local authority treats you as having, even if you do not have it.¹⁹

For example, you might have a pension that you could be receiving but have chosen not to claim it. The local authority can treat you as if you are receiving it.

What is the most I will have to pay?

If you have to pay towards the cost of your residential accommodation, your income should not fall below the 'personal expenses allowance' (PEA).²⁰

The PEA is currently £24.90 a week.²¹

Sometimes, you may be left with more than the PEA. For example, if you:²²

- have children to care for, or
- pay for the upkeep of a property that has been disregarded.

Sue's story

Sue lives in accommodation which costs the local authority £400 a week. She has £204.90 a week in income and £19,000 savings.

Because she has more than £14,250 in savings the local authority says she has £20 tariff income.

This makes her total income £224.90 per week.

The local authority has to leave Sue with at least £24.90 to live on. So she will have to pay £200 a week towards the cost of her residential care.

The local authority will pay the other £200.

This will leave Sue with £24.40 to spend on personal items every week. Although she would be in effect using her savings to pay her care home fees.

What are top-up fees?

The local authority must give you a care home that meet your needs no matter how much it costs.

But you or your family can pay a bit more for your care home if you want somewhere more expensive. These are called top-up fees.

Top-up fees are the difference between:²³

- the amount of money the local authority has worked out it will cost to meet your needs, and
- the actual cost of the care home.

For example:

- the local authority might have worked out it will cost £200 per week to meet your needs,
- the actual cost of the care home you want to go in is £300 a week, so
- the top-up fee you must pay will be £100 a week.

The local authority might put you in a home that costs more than your personal budget. If this is the local authority's decision and not yours you don't have to pay top-up fees.²⁴

If you pay top-up fees you must sign a contract with the local authority. The contract will show:²⁵

- the amount of the top-up fees,
- how often you pay them, and
- who they are paid to.

If you don't make your top-up payments you may have to move to a different place that is within your personal budget.²⁶

The local authority will review the agreement from time to time. This will make sure they know of any increases in charges and how they will divide this.²⁷

What are Deferred Payment Agreements (DPA)?

If you are moving into a care home it may become your lifelong home.

You might own a property that is classed as 'capital'. If you do the local authority will ask you to pay towards the cost of your care home.

This might mean you have to sell your property to pay for your care. A DPA lets you delay selling your home to pay for your care.²⁸

If you are eligible for a DPA the council will help to pay your care home bills on your behalf and you will owe them the money.

You can delay repaying the council until:²⁹

- you choose to sell your home, or
- until after your death.

The local authority will take the money they are owed out of the sale proceedings of your property. To give them the right to do this they will take a legal charge over your property.³⁰ This is similar to a mortgage.

You can be charged interest on the DPA. So the amount that you owe the local authority can increase as time goes on.³¹

Before agreeing to a DPA you can get advice from:

- an independent financial advisor, or
- a solicitor.

If you want to know how to find an independent financial adviser you can contact the government's Money Advice Service:

The Money Advice Service

Free and impartial advice about money issues.

Address: 120 Holborn, London EC1N 2TD

Phone: 0800 138 7777

Email: enquiries@moneyadviceservice.org.uk

Website: www.moneyadviceservice.org.uk/en

If you want to know how to find a solicitor you can find more information in our '**Legal advice – how to get help from a solicitor**' at www.rethink.org. Or call our General Enquiries team on 0121 522 7007 and ask them to send you a copy of our factsheet.

Can I get a Deferred Payment Agreement?

You must meet three criteria to have a DPA. You must: ³²

- have care needs that can only be met in a care home,
- have no assets worth £23,250 or more other than your home, and
- not be eligible for a capital disregard.

There are times where you could still be refused a DPA. For example, if the value of your home is low.

If you don't meet the criteria for a DPA you can still ask for one. But the local authority does not have to give you a DPA if you don't meet the criteria.

[Top](#)

3. What are The Mental Health Act and section 117 aftercare?

When you are discharged from certain sections of the Mental Health Act 1983 (MHA) you can get free after-care in the community.³³ This is known as 'section 117 after-care.'

Residential care might be included as part of section 117 after-care.³⁴ But the legal position about getting free residential care and section 117 after-care is complicated.

The costs of the home should definitely be paid by the NHS and the local authority if:³⁵

- the need for the residential care is linked to the reason why you were detained under the MHA, and
- you 'lack capacity' to decide about where you live.

'Lacking capacity' means you are unable to make decisions.

You might have capacity to make decisions about where you live. If the NHS and the local authority try to charge you for residential care you can:

- complain, or
- get legal advice.

Returning to residential care

You might have lived in residential care to meet your mental health needs before you went into hospital.

If you return to residential care after being in hospital it might be free of charge under section 117 after-care. Even if you paid for the residential care before you went into hospital.³⁶

If you are in a home under Deprivation of Liberty Safeguards (DOLS)

You might have to go into a home under a DOLS order if you lack capacity.

If you are entitled to section 117 after-care the home should be free of charge.

Top-up fees

You might want to go into a home that is different to the ones that the local authority has chosen for you. But it might be more expensive.

The local authority will assess your needs and decide how much it will cost to meet them. If the home you have chosen is more expensive than that amount then you will need to pay top-up fees. This is to cover the difference.³⁷

Nursing care

You might receive nursing care in the home. If you are entitled to section 117 after-care this will be free and paid for by the NHS.³⁸

Depending on your circumstances your nursing care might be paid for by the NHS under either:³⁹

- section 117 after-care, or
- NHS Continuing Healthcare.

But either way the nursing care should be paid for by the NHS. So it will be free of charge.

You can read more about NHS Continuing Healthcare at www.nhs.uk/Conditions/social-care-and-support-guide/Pages/nhs-continuing-care.aspx;

You can find more information about:

- **Complaints**
- **Legal advice: how to get help from a solicitor**
- **Section 117 after-care**
- **Mental capacity and mental illness**

at www.rethink.org. Or you can call our General Enquiries team on 0121 522 7007 and ask them to send you a copy of our factsheets.

[Top](#)

4. What if I cannot afford the charges?

If you can't afford the amount that the local authority is charging you can:

- contact the local authority,
- talk to the person who did your assessment, and
- ask for a review of your situation.

If you don't pay the local authority money they are expecting they will contact you. They will ask you to pay the money you owe.

It is important to explain your situation to them so that you can discuss options for repayment.

You can get more information about how to manage your finances in our **'Debt and money management'** factsheet at www.rethink.org. Or call 0121 522 7007 and ask them to send you a copy of our factsheet.

[Top](#)

5. How can I deal with problems about charges?

You may have problems around the local authority charging you. You can deal with problems informally or formally. They should make sure you know how to appeal their decisions or complain if you want to.

Informal options

It is best to try and deal with the problem informally first. You can talk about your concerns with:

- the professional who is in charge of your care plan, or
- if you don't have a care plan the person who did the assessment.

You can ask them to explain their decision or discuss your concerns.

If you speak to someone keep a note of:

- who you spoke to,
- when you spoke to them, and
- what you discussed.

If you are under the Care Programme Approach (CPA), discuss any problems with your care coordinator or key worker.

Formal options

Complaints

If you want to complain you must use the local authority's complaints procedure. You can ask them about this or look on their website.

You can find more information about ‘**Complaints**’ at www.rethink.org. Or call our General Enquiries team on 0121 522 7007 and ask them to send you a copy of our factsheet.

Legal action

You should be able to deal with most problems informally or through the complaints procedure.

But if you feel that the local authority is not following the law you can get legal advice.

You may be entitled to legal aid depending on your situation.

You can find more information about ‘**Legal Advice**’ and legal aid at www.rethink.org. Or call 0121 522 7007 and ask for the information to be sent to you.

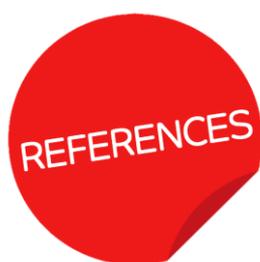
The information in this factsheet is correct at the time of writing.

You can find more information in the most recent version of the ‘Care and Support Statutory Guidance’ by clicking here:

<https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance>

Local Authorities also have a duty to provide information and advice to you.

[Top](#)



¹ s14(1), Care Act 2014 c23.

² Department of Health & Social Care. *Care and Support Statutory Guidance*. February 2018. Para 8.34 <https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance>; [Accessed 19.03.18]

³ As note 2, Annex B, para 6.

⁴ As note 2, Annex B, para 34.

⁵ As note 2, Annex B, para 34.

⁶ As note 2, Annex B, para 12.

⁷ As note 2, Annex B, para 33.

⁸ As note 2, Annex B, para 45.

⁹ As note 2, Para 8.12.

¹⁰ As note 2, Annex B, para 25.

¹¹ As note 2, Annex B, para 27.

¹² As note 2, Annex B, para 28.

¹³ As note 2, Annex B, para 29.

¹⁴ As note 2, Annex E, para 9.

¹⁵ As note 2, Para 8.8.

¹⁶ Reg 14(1), *The Care and Support (Charging and Assessment of Resources) Regulations 2014*. SI 2014/2672. London: TSO; 2014.

¹⁷ As note 2, Annex C para 29.

¹⁸ As note 2, Annex C para 14.

¹⁹ As note 2, Annex C, para 34.

²⁰ As note 2, Annex C para 43

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- ²¹ As note 16 (SI 2014/2672), Reg 6.
- ²² As note 2, Annex C, para 46.
- ²³ As note 1 (CA 2014), s30.
- ²⁴ As note 2, Annex A para 12.
- ²⁵ As note 2, Annex A para 23
- ²⁶ As note 2, Annex A para 33
- ²⁷ As note 2, Annex A para 31
- ²⁸ As note 2, para 9.3.
- ²⁹ As note 2, para 9.6
- ³⁰ As note 2, Annex A, para 9.63
- ³¹ As note 2, para 9.70
- ³² As note 2, para 9.7
- ³³ s117, The Mental Health Act 1983 c20.
- ³⁴ Manchester City Council Vs Stennett and others [2002] UKHL 34
- ³⁵ Afework v London Borough of Camden [2013] EWHC 1637 (Admin) MHLO 51 as referred to in Richard Jones. *The Mental Health Act Manual* 17th edition. London: Sweet & Maxwell; 2014. Para 1-1119, page 503
- ³⁶ Richard Jones. *The Mental Health Act Manual* 17th edition. London: Sweet & Maxwell; 2014. Section, 1-1119 page 504
- ³⁷ As note 33 (MHA 1983), s117A (2).
- ³⁸ The Department of Health (2012) *National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care*
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/213137/National-Framework-for-NHS-CHC-NHS-FNC-Nov-2012.pdf; Part 2 section 66.1. [Accessed 19.03.18]
- ³⁹ As note 38.

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This factsheet is available
in large print.

Rethink Mental Illness Advice Service

Phone 0300 5000 927
Monday to Friday, 9:30am to 4pm
(excluding bank holidays)

Email advice@rethink.org

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