

Factsheet 29w ● January 2021

## Finding care home accommodation in Wales



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## Contents

1	Information about this factsheet	4
	1.1 Definitions and terminology – local authority social services departments and care homes	5
2	Legislation covering the social care system in Wales	10
	2.1 The Social Services and Well-being (Wales) Act 2014 and accompanying Code of Practice guidance – relevance to the social care system in Wales	10
	2.2 Emergency legislation due to the coronavirus (COVID-19) which may affect the Social Services and Well-being (Wales) Act 2014 – the Coronavirus Act 2020	11
3	Making a decision about going into a care home	12
	3.1 Introduction	12
	3.2 Social services assessments and possible financial assistance towards the care home costs	13
	3.3 Local authority duties in regard to information & advice and advocacy for people with care needs	16
	3.4 If someone is in hospital and may need to move into a care home	17
	3.5 Possible alternative options to moving into a care home – are there other ways in which care needs can be met?	18
	3.6 What happens if you do not wish to move into a care home?	19
	3.7 Care homes and the NHS	20
4	How to find a care home	23
5	Issues to consider and questions to ask when choosing a home	24
	5.1 Maintaining your identity, exercising autonomy and sharing decision making in a care home	25
	5.2 Community and culture in the care home	27
	5.3 Managing the transition of entering a care home	28
	5.4 Improving health and healthcare	28
	5.5 Staff at the care home	29
	5.6 Contracts and finances	30

	5.7 End of life issues	32
6	Financial considerations when choosing a care home	33
	6.1 Introduction	33
	6.2 The 'capital limit' in Wales – used in the care home charging means test	34
	6.3 If you will be paying for your care yourself (i.e. fully self funding as assets above the capital limit)	35
	6.4 Moving from being fully self-funding to receiving local authority help with the fees	36
	6.5 If you are eligible for local authority assistance towards your care fees from the outset	37
	6.6 Third party 'top-up' payments for more expensive accommodation	39
	6.7 When the NHS makes the arrangement – i.e. for people who qualify for NHS continuing healthcare	41
	6.8 Rehabilitation – intermediate care and reablement	41
7	When care needs change – you may be able to stay in your existing care home, or a move may be required	42
8	Regulatory bodies and service standards	44
	8.1 The Care Inspectorate Wales (CIW)	44
	8.2 Healthcare Inspectorate Wales (HIW)	44
9	Problems and complaints	45
	9.1 Using relevant complaints procedures	45
	9.2 Elder abuse / neglect and safeguarding	45
	9.3 Care homes and consumer law	46
	9.4 Competition and Markets Authority (CMA) investigations into care home fees following a resident's death	49
10	Care home closures – finding suitable alternative accommodation	51
	10.1 Advocacy for residents when a closure is threatened	51
	10.2 Is it possible to challenge a care home closure?	52
	10.3 Welsh Government guidance on the management of care home closures	55
	10.4 Care home closures where the NHS has responsibility	57
11	Useful organisations	58
12	Further information about Age Cymru	61

# 1 Information about this factsheet

This factsheet considers a number of issues related to finding suitable care home accommodation, including:

- Making a decision about moving into a care home.
- Types of homes.
- How to identify the right home for you.
- Funding and financial considerations which may be relevant in choosing a home, whether this be in regard to:
  - cases where the local authority social services department will assist towards the cost, with you contributing a set amount from your day to day income (based on a financial means test); **or**
  - cases where someone will be fully self funding.
- A detailed section listing a range of issues to consider and questions to ask when choosing a home.
- Information on care home closures and related issues around finding alternative accommodation.

**Age Cymru produce a number of other factsheets on adult social care that may, depending on your circumstances, be useful to read in conjunction with this one, including:**

- 41w – *Social care assessments for older people with care needs in Wales;*
- 37w – *Hospital discharge arrangements for older people in Wales;*
- 10w – *Paying for a permanent care home placement in Wales;*
- 38w – *Treatment of property in the means test for permanent care home provision in Wales;*
- 39w – *Paying for care in a care home in Wales if you have a partner;*
- 60w – *Care homes in Wales: choice of accommodation when the local authority is assisting with funding;*
- 40w – *Deprivation of assets in the means test for care home provision in Wales;*

- 58w – *Paying for temporary care in a care home in Wales;*
- 20w – *NHS continuing healthcare and NHS-funded nursing care in Wales;*  
and
- 59w – *How to resolve problems and make a complaint about social care in Wales.*

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**Note:** The information given in this factsheet is applicable in Wales. Different rules may apply in England, Northern Ireland and Scotland. Contact Age UK, Age NI and Age Scotland respectively for further information – see section 12 for their contact details.

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## 1.1 Definitions and terminology – local authority social services departments and care homes

### Local authority social services departments

In this factsheet references to the ‘**local authority**’ or ‘**council**’ will refer to the *adult social services department* of the local authority. The relevant social services department may be referred to as the following, or similar variations:

- social care department;
- adult social services;
- older persons’ department;
- older persons’ team.

Adult social services teams are responsible, among other duties, for assessing people’s need for ‘care and support’ or ‘social care’ services and deciding whether those needs meet the eligibility criteria.

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## Note: Finding contact details for your social services department

If you have internet access, you can search for your local authority using your postcode on the Welsh Government's website:

[www.gov.wales/find-your-local-authority](http://www.gov.wales/find-your-local-authority)

Alternatively, contact details for your authority should be available in your local telephone directory, or our Age Cymru Advice line can provide them – see section 11 for contact details.

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## 'Care homes'

The term 'care home' covers any establishment providing accommodation with either:

- just personal care; *or*
- personal care together with nursing care.

**Often the terms 'residential care home' and 'nursing care home' might be used to differentiate between the two types of home**, though within each of these brackets there can be variation in the types of care needs that the home may be able to handle – *see the table on the following pages*.

All care homes must be registered as 'service providers' with the regulator, the Care Inspectorate Wales (CIW), who are responsible for the inspection and registration of homes – see section 8.1 below for further information on the CIW.

Both residential care homes and nursing care homes can provide various specialisms/services (e.g. dementia care). However, a home must not provide nursing care if it is not registered for that purpose. Some homes may have some beds registered as providing accommodation and personal care only, and other beds registered for nursing care as well.

In a 2017 study by the Welsh Local Government Association (WLGA)<sup>1</sup>, a table featuring the following information sought to provide further details on the roles of different types of care homes:

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<sup>1</sup> Draft Findings for Discussion – Wales Market Analysis of Care Homes for Older people, 4 May 2017, Welsh Local Government Association (WLGA): [www.wlga.wales/introduction-to-market-analysis-of-care-homes-in-wales](http://www.wlga.wales/introduction-to-market-analysis-of-care-homes-in-wales)

<b>Residential care homes</b>	
<b><i>Standard residential care home</i></b>	<p>People living there require help and assistance with issues such as:</p> <ul style="list-style-type: none"> <li>● Getting in and/or out of bed;</li> <li>● washing and/or dressing;</li> <li>● toileting (such as use of continence pads, or “normal catheter care”);</li> <li>● “having food cut up / specially prepared / prompting”;</li> <li>● administration of medication, or use of a mask for oxygen or a nebuliser;</li> <li>● “mild confusion [and/or] memory loss”<sup>2</sup>.</li> </ul>
<b><i>Residential care home for “very dependent elderly”</i></b>	<p>In addition to the standard help and assistance in a residential home outlined above, the person may require:</p> <ul style="list-style-type: none"> <li>● “Assistance of two staff for walking / mobilising / toileting”;</li> <li>● “use of hoist for transfers”</li> <li>● “staff to help feed them;</li> <li>● “continued supervision by staff because of wandering / interference with others / or their personal possessions”<sup>3</sup>.</li> </ul>
<b><i>“Elderly Mentally Infirm (EMI)” residential home</i></b>	<p>A person requiring this accommodation will generally have “an organic mental illness e.g. Alzheimer’s or dementia or a functional illness such as depression”. They may be:</p> <ul style="list-style-type: none"> <li>● “Very forgetful of recent events”;</li> </ul>

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<sup>2</sup> Ibid

<sup>3</sup> Ibid

	<ul style="list-style-type: none"> <li>● “confused / disoriented [or get] easily lost”;</li> <li>● “neglectful of hygiene / eating”;</li> <li>● “unable to communicate appropriately / hold meaningful conversations”<sup>4</sup>.</li> </ul>
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<b>Nursing care homes</b>	
<b><i>Nursing home</i></b>	<p>A person requiring nursing care may need:</p> <ul style="list-style-type: none"> <li>● Significant interventions in order to move, as – for example – they may be “unable to stand or weight bear”;</li> <li>● extensive assistance with continence;</li> <li>● “continuous monitoring / adjustment of medication requiring a trained nurse’s judgement”;</li> <li>● “complicated regimes for communication / medication”;</li> <li>● “skilled intervention to manage needs”; however “their physical needs outweigh the confusion / behavioural problems and [therefore they do] not require psychiatric nursing skills”<sup>5</sup>.</li> </ul>
<b><i>EMI nursing home</i></b>	<p>A person requiring this care may exhibit:</p> <ul style="list-style-type: none"> <li>● “Restless behaviour / constant wandering”;</li> <li>● “little recognition of family / friends / everyday objects”;</li> </ul>

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<sup>4</sup> Ibid

<sup>5</sup> Ibid



	<ul style="list-style-type: none"> <li>● angry behaviour and may become “upset very quickly [and] not [be] easily diverted” from this. They may become aggressive towards staff and/or other residents, requiring a “skilful intervention for prevention”;</li> <li>● “resistive to personal care”;</li> <li>● “hallucinations / delusions / hearing voices they respond to”<sup>6</sup>.</li> </ul>
<p><b><i>Nursing home providing NHS continuing healthcare (NHS CHC)</i></b></p> <p>NHS CHC is a highly complex area and is different in regard to how the costs are met to other care home placements. This issue is touched upon briefly in this Factsheet (section 3.7 below); however, for more detailed information, see Age Cymru’s Factsheet 20w <i>NHS continuing healthcare and NHS-funded nursing care in Wales</i>.</p>	<p>Nursing homes providing NHS CHC will need to be able to deal with particularly high level needs, such as:</p> <ul style="list-style-type: none"> <li>● “Challenging behaviour of a severity <i>and/or</i> frequency <i>and/or</i> unpredictability that presents an immediate and serious risk to self and others. The risks are so serious that they require intervention from and access to an immediate specialist response at all times for safe care”;</li> <li>● someone being completely immobile and their clinical condition is such that “on movement or transfer there is a high risk of serious physical harm and where the positioning is critical”;</li> <li>● inability to take food and drink by mouth – i.e. “all nutritional requirements taken by artificial means requiring ongoing skilled professional intervention or monitoring over a 24 hour period”;</li> <li>● someone unable to breath independently and who “requires invasive mechanical intervention”;</li> <li>● “drug regime[s] that require daily monitoring by a registered nurse to ensure effective symptom and pain management associated with a rapidly changing and or deteriorating condition”;</li> </ul>

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<sup>6</sup> Ibid

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|--|--|
|  | <ul style="list-style-type: none"><li>● “unremitting and overwhelming pain despite all efforts to control pain effectively”<sup>7</sup>.</li></ul> |
|--|--|

### Ownership of care homes

- There are private sector care homes which are run for profit by private organisations or individual proprietors.
- Voluntary sector homes are non-profit making and run by registered charities, religious organisations and housing associations, sometimes for particular groups of people.
- Some care homes are still run directly by the local authority.

## 2 Legislation covering the social care system in Wales

### 2.1 The Social Services and Well-being (Wales) Act 2014 and accompanying Code of Practice guidance – relevance to the social care system in Wales

This Act was fully implemented in April 2016 and is the main legislation that covers the social care system in Wales, including:

- the social care assessment process;
- related rules in regard to arranging and paying for residential care homes or nursing care homes<sup>8</sup>;
- the guidance documents that local authorities must use when assessing needs; and
- the guidance documents that local authorities must use when means testing people who may need to pay towards their services.

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<sup>7</sup> Ibid

<sup>8</sup> The Act also affects the rules in regard to arranging and paying for care at home/non-residential services, though that issue is not covered in this particular factsheet.

Many of the sections in this factsheet (and other Age Cymru factsheets on social care topics) will use this Act – and the Welsh Government guidance for local authorities which accompanies it – as a main source of information. References will be provided in the text where relevant.

### Welsh Government Code of Practice guidance

The following are of particular relevance to this factsheet:

- *Code of Practice on the exercise of social services functions in relation to **Part 3 (Assessing the needs of individuals)** of the Social Services and Well-being (Wales) Act 2014;*
- *Code of Practice on the exercise of social services functions in relation to **part 4 (Meeting needs)** of the Social Services and Well-being (Wales) Act 2014;*
- *Code of Practice on the exercise of social services functions in relation to **Part 4 (direct payments and choice of accommodation)** and **Part 5 (charging and financial assessment)** of the Social Services and Well-being (Wales) Act 2014 (version 5 – April 2020).*

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**Note:** The Social Care Wales website has links to all of the CoP guidance documents at:

<https://socialcare.wales/hub/codes-of-practice>

At the time of writing (January 2021) the part 4 and Part 5 guidance on the Social Care Wales site is still the version 4 copy. However, version 5 (April 2020) can be found on the Welsh Government website at:

[www.gov.wales/code-practice-charging-social-care-services](http://www.gov.wales/code-practice-charging-social-care-services)

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## 2.2 Emergency legislation due to the coronavirus (COVID-19) which may affect the Social Services and Well-being (Wales) Act 2014 – the Coronavirus Act 2020

On 30 April 2020, the Welsh Government published the following statutory guidance on how local authorities can use temporary modifications to some elements of the *Social Services and Well-being (Wales) Act 2014* due to powers created under the *Coronavirus Act 2020*:

## ***Adult social services during the COVID-19 pandemic: guidance – How local authorities support adults and adult carers during COVID-19***

A copy of the guidance can be accessed on the Welsh Government website at:

[www.gov.wales/adult-social-services-during-covid-19-pandemic.html](http://www.gov.wales/adult-social-services-during-covid-19-pandemic.html)

The Welsh Government is clear that local authorities should not be abandoning the usual duties placed upon them by the *Social Services and Well-being (Wales) Act 2014* – in favour of the *Coronavirus Act 2020* measures outlined above – unless it is absolutely necessary:

**“The modifications should only be exercised as a last resort where this is essential in order to maintain the highest possible level of services”.**

**“Local authorities should comply with the unmodified 2014 Act requirements and related Codes of Practice for as long and as far as possible”** – i.e. to follow the normal rules as outlined in the rest of this factsheet.

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**Note:** For more detailed information on this topic, see the beginning of Age Cymru’s Factsheet 10w *Paying for a permanent care home placement in Wales*.

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## **3 Making a decision about going into a care home**

### **3.1 Introduction**

As we get older, our needs and circumstances may change and for many this could mean that a care home is the best place for their needs to be met. However, depending on individual circumstances, there can be a variety of other ways that may meet someone’s care needs. As such, you might wish to establish whether any of these options could work equally well before making a decision about moving into a care home.

**Section 3.5 below contains some brief information on these possible alternative options.**

If you do decide that a care home is your best option, it can be a daunting prospect, particularly as care homes are often seen by the media and others as a negative option for older people. However, there are also many examples of excellent practice within particular care homes, where residents, relatives and staff are at the centre of care home life.

**Section 5 below has a list of questions to ask, or things to consider, when choosing a care home. These questions can help you reach an informed opinion about particular homes and thus aid you with your decision.**

## 3.2 Social services assessments and possible financial assistance towards the care home costs

### Care needs assessments

Under the *Social Services and Well-being (Wales) Act 2014* a local authority has a **legal duty** to carry out an assessment of anyone living in its area who *may* need community care services, once it becomes aware of this need.

The assessment must take into account *all* aspects of your needs.

**Someone's right to have their needs assessment is *not* affected by the level of their financial resources or other circumstances.** However, subsequent services provided as a result of the assessment are likely to be charged for. How much you pay will be determined via a financial means test.

Through the care needs assessment, the authority will establish whether you are eligible for services from them and, if so, whether a care home placement appears to be the most appropriate service in light of the type and/or level of needs that you have.

**The authority will only agree to assist you with the cost of a care home placement if this is seen as the best way to meet your needs.**

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**Note:** The authority must use national eligibility criteria when assessing someone's care needs. This is contained in the following Welsh Government guidance document:

***Social Services and Well-being (Wales) Act 2014: Part 3 Code of Practice (assessing the needs of individuals)***

A copy can be accessed via the link to the Social Care Wales website given in section 2 above.

Also see Age Cymru's Factsheet 41w *Social care assessments for older people with care needs in Wales* for further discussion of the eligibility criteria.

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**Eligibility for help towards care home fees**

Once it is satisfied that the care home placement is needed, the local authority will carry out a **financial means test** to determine whether you are eligible for financial assistance from them towards your care fees.

Both your income and savings/capital will be taken into account in the means test – see section 6 below for further information on this, including the '**capital limit**' which is applied in Wales.

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**Note:** The Welsh Government has produced national statutory guidance for local authorities in regard to processing the means test and charging rules. These are contained in the following Welsh Government Code of Practice guidance document:

***Social Services and Well-being (Wales) Act 2014: Part 4 and 5 Code of Practice (Charging and Financial Assessment) (version 5 – April 2020)***

A copy can be accessed via the link to the Welsh Government website given in section 2 above.

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**If you will be fully self funding your care**

It is advisable to request an assessment of your needs *even* if you know from the outset that you will probably be fully self funding your care home placement (for example, because you are already aware of the capital limit and your resources are significantly above this).

The rationale behind this is that it can help identify what type of care home will be suitable for you. It might also be useful to have an indication of how the local authority may view your needs if you will need financial assistance from it later (for example, this might happen if following a certain period of living in a care home your funds have been reduced to the extent that you are approaching the capital limit).

If you wish, you can also ask the local authority to arrange the care home placement for you. This right for self funders was introduced in April 2016 and is confirmed in the Welsh Government guidance as follows:

The *Social Services and Well-being (Wales) Act* “enables a person who can afford to pay, in full, for their own care and support [in a care home] to ask the local authority to arrange this on their behalf”<sup>9</sup>.

It goes on to state that: “The rate at which the local authority commissions the placement is a matter for local authority determination”<sup>10</sup>.

### Further information on the issues covered in this section

- See below in section 6 of this factsheet for further details on financial considerations when choosing a care home.
- Age Cymru’s Factsheet 41w *Social care assessments for older people with care needs in Wales* has in-depth information on care needs assessments.
- Age Cymru’s Factsheet 10w *Paying for a permanent care home placement in Wales* has further information on the financial means test.

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<sup>9</sup> Social Services and Well-being (Wales) Act 2014 – Part 4 and 5 Code of Practice (Charging and Financial Assessment), January 2016, Welsh Government (version 5 – April 2020)

<sup>10</sup> Social Services and Well-being (Wales) Act 2014: Part 4 Code of Practice (Meeting Needs), Welsh Government

### 3.3 Local authority duties in regard to information & advice and advocacy for people with care needs

#### Information and advice

The *Social Services and Well-being (Wales) Act 2014* places a duty on local authorities to provide “information, advice and assistance...relating to care and support”, including – as a minimum – “publication of information...on how the care and support system operates in the local authority area...the types of care and support available [and] how to access [this]”<sup>11</sup>. **This, of course, would include information and advice on care home provision.**

#### Advocacy

The Act also contains duties for local authorities in regard to advocacy services. If you have difficulty in expressing your views and needs and feel that this would be excessively difficult within the assessment process, then an advocacy service may be of help to you.

In many instances, the requirement on the local authority is to make people aware of the availability of advocacy support, should they wish to utilise this; in others the authority has a *specific duty* to “arrange an independent professional advocate”<sup>12</sup>:

#### ● General advocacy duty

The Welsh Government has produced a Code of Practice specifically on the subject of advocacy in the context of the *Social Services and Well-being (Wales) Act* which states that, in all cases:

“To have voice and control, an individual must be able to feel that they are a genuinely equal partner in their interactions with professionals. It is, therefore open to any individual to exercise choice and to **invite any advocate** to support them in expressing their views, wishes and feelings”<sup>13</sup> (emphasis added).

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<sup>11</sup> Social Services and Well-being (Wales) Act 2014: Part 2 Code of Practice (General Functions), Welsh Government

<sup>12</sup> Social Services and Well-being (Wales) Act 2014: Part 10 Code of Practice (Advocacy), Welsh Government

<sup>13</sup> Ibid



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**Note:** In this context, you could ask a family member or friend to act as an informal advocate for you, or you could contact an organisation that might operate an advocacy service, such as a local Age Cymru organisation – see section 11 below for contact details.

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- **The appointment of an ‘independent professional advocate’**

Local authorities are advised in the guidance that they “**must** arrange for the provision of an independent professional advocate when a person can only overcome the barrier(s) to ***participate fully in the assessment [and] care and support planning***...with assistance from an appropriate individual, but there is no appropriate individual available”<sup>14</sup>.

In other words, this would be where an individual is finding it difficult to express their views in the assessment process, but there are no immediate, or suitable, family or friends to help them, nor is the individual able to independently access, for example, an advocacy service provided by a voluntary organisation.

### 3.4 **If someone is in hospital and may need to move into a care home**

If you are a hospital in-patient and it appears that you may well have ongoing care and support needs (even though you are well enough to leave hospital), then prior to being discharged, you should be assessed by the NHS and/or social services to establish whether either of them ought to arrange this ongoing care once you leave hospital. Amongst other options that would need to be considered, a care home placement might be recommended as the best way to meet your needs.

People have the right to refuse to be discharged to a care home if they don't want to be (except in some circumstances where there may be insufficient mental capacity to make an informed decision – see section 3.6 below). If you do decline a care home placement, the health and social care agencies should consider whether your needs can be met in another way. **However, you do not have the right to remain in hospital indefinitely.**

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<sup>14</sup> Ibid

If you are being placed in a home by the local authority and your preferred home has no vacancy and is unlikely to have one in the near future, you may have to be discharged to another home until a place becomes available. Any interim arrangement should still meet your assessed needs.

For further information, also see Age Cymru's Factsheet 37w *Hospital discharge arrangements for older people in Wales*.

### 3.5 Possible alternative options to moving into a care home – are there other ways in which care needs can be met?

The following options could be considered as possible ways to meet your care needs instead of – or before – moving into a care home on a permanent basis.

#### Homecare services

Only a minority of people need to enter long-term residential care. You may be able to remain at home with care and support services, such as:

- personal care (for example, help with dressing, eating or bathing);
- domestic assistance;
- 'meals on wheels'; or
- the provision of disability equipment or adaptations to the home.

As with making a decision about moving into a care home, having a care needs assessment from the local authority social services department can help to clarify your options and find out what assistance is available for people who live in their own homes. The following Age Cymru factsheets can provide further information on all of these topics:

- Factsheet 6w *Finding help at home in Wales*.
- Factsheet 42w *Obtaining disability equipment and home adaptations in Wales*.
- Factsheet 46w *Paying for care and support at home in Wales*.

#### Sheltered housing

If you are not able to remain in your own home, sheltered (warden assisted) housing may offer an alternative to entering a care home.

This can take a number of forms including ‘extra care’ sheltered housing. Sheltered housing may sometimes be available through the local authority, but is more often privately arranged. Traditionally, a person would need to be relatively physically able, thus not requiring the level of support with personal care and other needs which may necessitate a care home move, though in some respects these divisions are not always so clear cut (particularly in the case of ‘extra care’ sheltered accommodation, for example).

The key benefit of sheltered housing is independence in your own property, with assistance on-site when required. This could also be combined with a package of personal care from a home care agency or personal assistant (either via the social services department, or arranged privately).

For further information see Age UK’s Factsheet 64 *Specialist housing for older people*.

### Trial periods in care homes

If you are a prospective care home resident, you can visit various homes to see if you like them. You may also be able to arrange to move in on a trial basis before you or your representatives make a final decision about whether to stay there. The local authority may arrange a trial period for you if it appears likely that they would need to assist you in the future were permanent care to be required. A trial period gives you the chance to see whether moving to a care home is the right choice for you.

## 3.6 What happens if you do not wish to move into a care home?

**Choosing to go into a care home should be your decision. However, your needs may be such that it is no longer feasible to remain in your own home, even with a substantial package of care and support services<sup>15</sup>.**

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<sup>15</sup> In some circumstances it may be possible for someone to negotiate with the local authority social services department about the care it will provide or arrange – for example, an arrangement whereby someone receives a maximum home care package from the authority and/or receive only the services which are deemed to be the most essential. They would then need to make their own additional care provision for the remaining needs – Age Cymru’s Factsheet 41w *Social care assessments for older people with care needs in Wales* has some further information on this topic.

If a large amount of care is required to enable someone to remain living in their own home or in sheltered housing, it might be cheaper for the person to move into a care home. In regard to this issue, it should be borne in mind that legally the local authority is under a duty to meet a person's assessed eligible needs; however, in doing so it is able to opt for the most cost-effective way.

Whilst this means the authority cannot choose a care package for you for the *sole* reason that it is cheaper than the alternatives – for example, you shouldn't be asked to move to a care home just because it is cheaper than the home care you would need (or vice versa) – if there were two options that would meet your needs *equally well*, the local authority can legitimately choose the option that is cheapest for it to provide or arrange. However, having said this, the authority would have to ensure that the cheaper option met **all** assessed and agreed needs.

### **Mental capacity issues and care home placements**

If there are issues to do with mental capacity regarding the arrangement of a care home placement by a local authority, it is necessary for all those supporting or working with an individual to adhere to the 'best interest' standards set out in the *Mental Capacity Act 2005* and within the *Deprivation of Liberty Safeguards*.

This issue is not covered in any further detail in this particular factsheet, but for more in-depth information on this topic, see:

- Age Cymru's Factsheet 41w *Social care assessments for older people with care needs in Wales*;
- Age Cymru's Factsheet 10w *Paying for a permanent care home placement in Wales*; and
- Age UK's Factsheet 62 *Deprivation of Liberty Safeguards*.

## **3.7 Care homes and the NHS**

Generally, it can be said that care home provision falls within the field of social care, rather than healthcare. However, in certain circumstances the NHS will either have a duty to fully fund someone's care home placement (via NHS continuing healthcare), or contribute a set amount towards the fees of other residents who are otherwise paying for their own care, or receiving local authority assistance towards the fees.

## NHS continuing healthcare

The NHS is responsible for meeting the **full cost** of care in a care home for residents whose **primary** need for being in care is health-based (rather than, say, a need for care that is primarily due to social care needs). This is called NHS continuing healthcare (NHS CHC) and is often described as ‘fully funded care’.

It usually relates to people who have complex, severe and/or unpredictable medical conditions requiring highly skilled, health-based care beyond that which local authority social services departments have a duty to provide (i.e. local authorities provide *social care* services, rather than *healthcare* services, which are the responsibility of the NHS)<sup>16</sup>.

There is a **National Framework** for Wales for the assessment of eligibility for NHS CHC – ‘*Continuing NHS Healthcare: The National Framework for Implementation in Wales, June 2014*’.

This is a policy document produced by the Welsh Government which provides rules and guidance that professionals involved in your care must follow to inform and support their decision making.

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<sup>16</sup> When you have long-term care needs the type of help you need may be the responsibility of the NHS or of your local authority social services department. Sometimes it will be obvious which of the two will have responsibility – however, if you have complex needs, the boundaries between health and social care may not always be clear. For a number of years NHS CHC has been a controversial subject, in part because of uncertainties and debate in regard to where the divide between healthcare and social care rests. Certain services are beyond the powers of local authority (LA) social services departments to provide. However, Welsh Government guidance on NHS CHC states that “the fact that someone has health needs which are beyond [those LA powers], does not, of itself, mean that the individual is eligible for [NHS] CHC”. For example, a person in this scenario may require (and be entitled) to services from both the NHS (those that are above what LA can provide) and their local authority social services department at the same time, but would have been judged to not have a sufficient *level* of health needs to qualify for NHS CHC. The Welsh Government also previously published ‘Practice Guidance’ on NHS CHC which sought to define the general difference between a healthcare and a social care need, as follows: “Whilst there is not a legal definition of a healthcare need (in the context of continuing NHS healthcare), in general terms it can be said that such a need is one related to the treatment, control or prevention of a disease, illness, injury or disability, and the care or aftercare of a person with these needs (whether or not the tasks involved have to be carried out by a health professional)”. Whilst, “in general terms (not a legal definition) it can be said that a social care need is one that is focused on providing assistance with activities of daily living, maintaining independence, social interaction...and (in some circumstances) [finding and] accessing a care home or other supported accommodation. Social care needs are directly related to the type of welfare services that [local authorities] have a duty or power to provide. These include, but are not limited to...practical assistance in the home; assistance with equipment and home adaptations; visiting and sitting services; provision of meals...and assistance in finding accommodation (e.g. a care home)”.

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**Note:** Between May and August 2019, the Welsh Government ran a consultation on a proposal for a revised version of the National Framework mentioned above. At the time of writing – January 2021 – there is not currently a specific implementation date for any revised Framework following the closure of the consultation.

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**It is very important to ensure that you have been properly assessed for NHS CHC if it appears that the sorts of needs you have may mean that you are eligible.**

Possible eligibility for NHS CHC should be considered before the local authority carries out an assessment for means-tested social care assistance. For further details, see Age Cymru's Factsheet 20w *NHS continuing healthcare and NHS-funded nursing care in Wales*.

### **Weekly NHS-funded nursing care payments**

NHS-funded nursing care is funding paid by the Local Health Board (LHB) directly to a nursing home for care provided to residents by registered nurses employed by the home.

**People whose level of needs does not entitle them to fully funded NHS care (see above), may qualify for this weekly contribution instead.**

The NHS-funded nursing care contribution is only for the registered nursing part of someone's care and, as such, does not include time spent by any other staff who are involved in your personal care. Therefore, the NHS funded nursing care contribution will only meet *part* of the overall care home fees (all other aspects of the care package will either be entirely paid for by the person themselves, or with help from the local authority – depending upon the care user's financial means).

Local authority-funded and self-funding residents who need to move into care homes that provide nursing care should have a comprehensive assessment to identify any nursing needs. It is not appropriate for staff carrying out an assessment to consider your need for NHS-funded nursing care until it has **first** been determined that you are not eligible for NHS continuing healthcare. Again, for further information see Age Cymru's Factsheet 20w.

## The 2020-2021 NHS funded nursing care contribution rate

The NHS funded nursing care contribution for 2020-21 is **£186.40 per week** towards the nursing home fees.

The figure is the same for the whole of Wales.

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**Note:** The £186.40 is made up of two components – £12.02 for continence products that may be necessary and £174.38 for the registered nurse services.

The figure may change for the new financial year in April 2021. If you are reading this factsheet after that date, you may wish to check Age Cymru's Factsheet 10w *Paying for a permanent care home placement in Wales* for information on the latest rate, or contact our Age Cymru Advice service – see section 11 below for contact details.

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## 4 How to find a care home

You may already know which home you would like to enter, perhaps through personal experience or a recommendation from a friend. However, if you do not already have a home in mind and are not sure of how to find one, the following suggestions may help:

- The Care Inspectorate Wales (CIW) provides details of registered care homes in Wales. Copies of their inspection reports should be available on the CIW website – see section 11 for contact details.
- Social workers at your local authority social services department may also be able to provide a list of homes. You can raise any questions you have about going into a home with them.
- Some charities and placement agencies help people to find homes, especially people who wish to find a place quickly, or who live some distance away.
- The Elderly Accommodation Counsel has a database of care homes in the UK – see section 11 for their contact details.
- Independent websites that help to find care homes – you may find a number of sites that offer databases of homes; however, always check their 'About us' section to see who they may be tied to or owned by.



- If someone has a particular long-term illness or condition, they could contact organisations that specialise in it – for example, Parkinson’s UK or the Alzheimer’s Society. They may be able to advise on homes that specialise in helping people with that condition.

**Wherever possible, once you have identified potential homes, it is advisable to visit them in advance** – see section 5 below for more information.

## 5 Issues to consider and questions to ask when choosing a home

Choosing the right care home is important. It will, after all, become your home, so you will want to ensure that it offers everything you need and is a place you will be happy to live in.

Moving into a care home can be difficult and any disruption will be increased if you subsequently have to move on to another home. It can be tempting to accept the first vacancy that arises, particularly if there is a shortage of care home places in your area. However, it is worth taking time to find the right home, as you probably would when choosing anywhere else to live – for example, if possible, consider and compare a number of different homes.

**Try to visit and have a look around and talk to residents, relatives, staff and the person in charge. Some homes may invite you to spend the day at the home, or perhaps to visit to share a meal – ask if this is possible.**

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**Action:** If you have difficulties travelling to visit homes, contact your local Age Cymru or Citizens Advice Bureau to see if they have details of any community transport schemes in your area – see section 11 for contact details.

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Aim to collect the fullest possible information on a prospective home and then make a decision. Everyone will have different views about what makes a 'good' home and each person's needs will differ. Sections 5.1 to 5.7 below contain some questions to consider. Some may be more important to you than others. The questions have been split into the following categories:

- *Maintaining your identity, exercising autonomy and sharing decision making in a care home;*
- *Community and culture in the care home;*
- *Managing the transition of entering a care home;*
- *Improving health and healthcare;*
- *Staff at the care home;*
- *Contracts and finances;*
- *End of life issues.*

## 5.1 **Maintaining your identity, exercising autonomy and sharing decision making in a care home**

- What arrangements are there for handling personal money?
- How does the home ensure valuable items are kept secure?
- Can residents use a telephone in privacy, for incoming and outgoing calls?
- Can you access the internet, either in your own room or on a shared computer?
- Are there books and/or newspapers available for residents? Can residents visit the library or does a mobile library call round?
- What provisions does the home make for taking residents out – on outings, to the shops, to the theatre, place of worship or entertainment?

- Does the home encourage residents to do as much as possible themselves and to make choices about as many aspects of their everyday lives or daily routine as they can – for example:
  - Will you be able to get up and go to bed when you want?
  - Can you choose which clothes to wear each day?
- Will you be able to advise staff members on matters that are important to you? For example, how you like to spend your time; how you like to be supported etc.
- Are there any restrictions on visiting times or numbers of visitors? Are there facilities for visitors to stay overnight at the home, if they have travelled long distances?
- Are you allowed to bring your pet/s with you to the home? You may wish to look at the details for an organisation called the *Cinnamon Trust* in section 11.
- Is the home able to cater for your cultural and/or religious needs?
- Can the home meet your communication needs – for example, through Welsh or another language other than English, non-verbal method such as sign language or large print?
- Can the home meet your dietary needs? How are special diets catered for?
- Do residents choose what and when they will eat? Can residents eat privately with guests from time to time? Can residents prepare any food and drinks for themselves? Do existing residents enjoy the food and can you try it during your visit?
- Are any of the rooms shared? Welsh Government statutory guidance says that care homes “must ensure that all adults are accommodated in single rooms [unless someone specifically] agrees to sharing”. In this instance, sharing a room must be consistent with the well-being of both of the resident’s concerned. “In circumstances where sharing a room is under consideration, the discussion with the individuals concerned...and the decision made [must] be documented by the service provider”<sup>17</sup>.

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<sup>17</sup> Statutory Guidance: For service providers and responsible individuals on meeting service standard regulations for – Care home services; Domiciliary support services; Secure accommodation services; and Residential family centre services (Version 2), Welsh Government, April 2019

- Are external doors kept locked? If so, why?
- Is there a residents' committee?
- Can you have access to advocacy services?
- Does the home have bathing/showering facilities that meet your needs/choices? Can you choose how often you have a bath or shower? If you need help with bathing, does the home have suitable facilities?

## 5.2 Community and culture in the care home

- Where is the care home; will visitors be able to get there easily?
- Does the care home feel homely and inviting and is there a relaxed and friendly atmosphere?
- Can residents help in ordinary activities at the home (e.g. cooking, gardening etc)?
- Are there any unpleasant smells during your initial visit to the home? If so, had this been dealt with before you left?
- Will you feel comfortable chatting and socialising in the home's public areas? Are the seating arrangements in the lounge(s) conducive for having conversations?
- Is there more than one living room, so that there is a quiet room as well as one with a television?
- Are young children welcome to visit?
- Are there other residents who share similar interests or background to you?
- Are you encouraged to give feedback on what you think about the home? Does the home encourage residents to say how they feel about living there, and provide written information to residents and/or their families about how to discuss a problem or make a complaint?
- Do the other residents seem to have a similar level of need to you?
- During your visit, are you able to observe the interactions between staff and residents and visitors?

- Talk to the residents when you visit and see what they are doing. How do they feel about living in the home – do they feel that they are involved in activities and the running of the home? Are they listened to and their views taken notice of by staff members?
- Try and also speak to visitors to the home – do they feel that staff members listen to any concerns they have and act on them? How do visitors feel in general about spending time in the home?

### 5.3 Managing the transition of entering a care home

- Are you able to make short introductory visits to the home before you move in?
- Are there transport links nearby? Are facilities such as shops, pubs, parks and places of worship within easy reach?
- Can you bring personal possessions – pictures, plants, furniture, books?
- Is there an area where family and visitors can speak with you privately if needed?

### 5.4 Improving health and healthcare

- How accessible is the home for those with mobility needs? Can wheelchairs go everywhere within the home, and easily in and out? Is there a lift/stairlift to all floors in the home?
- Are there any physical activities for residents, such as exercise groups or gardening?
- Are you encouraged to stay active and do as much as you can for yourself? For example, continue pursuing hobbies and interests, make a cup of tea.
- Can you go outside for fresh air when you want to?
- Using your care assessment if possible, identify all the personal, practical or nursing assistance that will be needed, together with any important equipment that is essential to help you – is the home able to provide this level of care?

- What happens if and when your needs change and you require more care? Will the current home be able to support you, or might you have to leave?
- Are toilets available in all parts of the home, fully equipped with handrails and other helpful equipment? Can you be supported to the toilet when you need to go, if necessary?
- Do you have your own GP and access to other health services such as opticians, dentists, or podiatrist?
- Who decides when a health/medical check-up is needed?
- How will the home let relatives or friends know if you are taken ill?

## 5.5 Staff at the care home

- Do staff seem interested and caring?
- During your visit, you may wish to speak to staff. How do they feel about working in the home? Do they feel valued in their roles?
- Do the staff at the home receive training in areas that might be important to you – for example, stroke, Parkinson's etc.
- Is there a manager/deputy manager on duty at all times?

## 5.6 Contracts and finances

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### Notes:

**When the care home placement is a private arrangement** – Residents who are purchasing their care privately should be provided with a contract. This should be clear and comprehensive and you should ask to see a copy in advance of signing any agreement. As touched upon above, in addition to standard clauses, it should set out what care will be provided to meet your particular needs. It may well be advisable to seek professional legal advice before signing a contract.

According to the Competition and Markets Authority (CMA), the terms and conditions in the contract “must be written simply and clearly, avoiding jargon, so that you can easily understand your rights and responsibilities”<sup>18</sup>. Also see sections 9.3 and 9.4 below, which have further information on work the CMA has undertaken relating to care homes and consumer law (including in relation to contracts).

**When the local authority is assisting you** – The contract for your care will be between the local authority and the home. The most recent Welsh Government guidance, however, suggests that you should still be provided with a copy of the contract:

“Where individuals are paying for their own care” – “**in full or partially**” – they or their representatives are [to be] provided with a written contract”<sup>19</sup>.

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- Is a deposit required? Is this returnable? What is it for?
- What is the care home’s weekly fee and what does it cover? How are fees collected?
- Is it clear how the fees are structured and calculated? Are ‘extra’ items not covered by the basic fees clearly identified and accounted for?

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<sup>18</sup> ‘Guidance : Care homes: consumer rights for residents and their families’, Published 16 November 2018, Competition and Markets Authority (CMA) website: [www.gov.uk/government/publications/care-homes-short-guide-to-consumer-rights-for-residents/care-homes-consumer-rights-for-residents-and-their-families](http://www.gov.uk/government/publications/care-homes-short-guide-to-consumer-rights-for-residents/care-homes-consumer-rights-for-residents-and-their-families) (last accessed 18 January 2021).

<sup>19</sup> Statutory Guidance: For service providers and responsible individuals on meeting service standard regulations for – Care home services; Domiciliary support services; Secure accommodation services; and Residential family centre services (Version 2), Welsh Government, April 2019

- What sort of services are being charged for as ‘extras’ – how much do they cost? Should the NHS provide any of these<sup>20</sup>?
- Where applicable, how are NHS nursing care payments<sup>21</sup> accounted for in the fee structure?
- Is a top-up payment required for local authority assisted residents? (section 6.6 below has further information about top-up payments).
- How much notice will the home give if it has to raise the fees?
- What fees do you have to pay if you are away for a short time, say on holiday, or in hospital?
- How much notice do you need to give the home in order to move? How much notice would you be entitled to if the home closed?
- Who is required to sign the contract (if relatives are asked to sign, they should seek legal advice about what they are committing themselves to)?
- Ask to see the care home’s written guide to their service. Welsh Government statutory guidance states that the care home’s guide must:
  - be “reviewed at least annually”;
  - be “given to all individuals who are receiving care and support”;
  - be “made available to others on request, unless this is not appropriate or would be inconsistent with the well-being” of the resident;
  - include information “about how to raise a concern or make a complaint”;
  - include information on “how to access the most recent inspection report” of the care home (carried out by the regulator, Care Inspectorate Wales – see section 8);
  - include details of key staff who will be supporting the resident;

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<sup>20</sup> The NHS should provide continence products for all residents meeting its criteria for needing them. Services such as chiropody and physiotherapy may also be arranged by the NHS if you meet the local criteria. If you need specialist care from a chiropodist, ensure it is included in your care plan. You will be expected to pay for your own personal items, such as toiletries, clothing etc.

<sup>21</sup> See section 3.7 above for information on weekly NHS nursing care payments.

- include “contact details and role of the Public Service Ombudsman for Wales [and the] Older Person’s Commissioner”;
- include information on accessing agencies or services, such as primary healthcare (for example, GP, dentist, optometrist and hospital visits) and “the availability of advocacy services”;
- information on fees – “range, any additional fees or costs payable by the individual, method of payment, notice [given] of increase[s];
- include a “policy on accommodating personal preferences”, such as “pets [or] furniture etc”;
- information on “activities, including support to access community services and activities”<sup>22</sup>.

## 5.7 End of life issues

- Can you openly discuss your wishes about your funeral plans?
- Will you be able to stay at the home right up until the end of your life, if possible?
- Will your family/friends be able to stay with you when you need them to at that time? How will your family/friends be informed of your death? Will they be able to spend time in your room afterwards?
- Are any fees payable after your death; will the home continue to charge for a short period afterwards and/or until the room is cleared? How quickly does the room need to be cleared out?

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**Note:** Also see section 9.4 below for information on Competition and Markets Authority (CMA) investigations in regard to whether some care homes have breached consumer law by charging unjust fees after a resident’s death.

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<sup>22</sup> Statutory Guidance: For service providers and responsible individuals on meeting service standard regulations for – Care home services; Domiciliary support services; Secure accommodation services; and Residential family centre services (Version 2), Welsh Government, April 2019



## 6 Financial considerations when choosing a care home

### 6.1 Introduction

Most people living in care homes pay something towards the cost of their care. This is either:

- in full, from income or capital – i.e. they will be a self funder; or
- they will make a contribution towards the overall costs, with the local authority meeting the rest of the fees (in these circumstances, the authority will be responsible for paying the whole fee to the care home and the resident will then pay to them their ‘assessed contribution’. The assessed contribution is determined according to nationally set means test rules (section 3.2 above has further details about the guidance the Welsh Government have produced outlining these national rules).

#### Other Age Cymru factsheets on care homes

The following Age Cymru factsheets focus on particular elements of the means test rules for determining if someone is eligible for help towards the care home costs:

- 10w – *Paying for a permanent care home placement in Wales;*
- 38w – *Treatment of property in the means test for permanent care home provision in Wales;*
- 39w – *Paying for a care home in Wales if you have a partner;*
- 40w – *Deprivation of assets in the means test for care home provision in Wales;*
- 58w – *Paying for a temporary stay in a care home in Wales;*
- 60w – *Care homes in Wales: choice of accommodation when the local authority is assisting with funding.*

## 6.2 The ‘capital limit’ in Wales – used in the care home charging means test

The current capital limit in Wales for the care home charging means test is **£50,000**<sup>23</sup>.

- If you have capital assets and/or savings of £50,000 *or more* you will be expected to meet the **full** cost of your residential care (unless any of your particular assets fall under a ‘disregard’ in the means test, whereby the local authority cannot take account of them. See the list of factsheets above, which will contain further information on what can and cannot be disregarded, dependent on your circumstances).
- If your capital is worth *less* than £50,000 in total, it will be fully disregarded in the local authority means test for care home provision. As such, you should be able to get assistance towards your care home fees from your local authority.

### Property and the capital limit

Property is one of the capital assets that can potentially be taken into account in the means test. Whether or not it will be, can depend on who – if anyone – will remain living there once you have moved into a care home (for example, the value of the property will be disregarded in the means test if it will continue to be occupied by your **partner**, though there are also other potential disregards, be they *mandatory* ones that the local authority has to offer, or *discretionary* disregards).

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### Note: The 12 week property disregard

This is a disregard which the local authority must apply to the value of a care home resident’s former home for the first 12 weeks of a permanent stay in a care home “where the value of any of their other capital is below the capital limit”<sup>24</sup>.

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<sup>23</sup> It’s possible that this figure could change in April 2021. If you are reading this factsheet after April 2021, you may wish to contact Age Cymru Advice for any updates on the capital limit figure – see section 11 below for contact details.

<sup>24</sup> Social Services and Well-being (Wales) Act 2014: Part 4 and 5 Code of Practice (Charging and Financial Assessment), Welsh Government (version 5 – April 2020)

See Age Cymru's Factsheet 38w *Treatment of property in the means test for permanent care home provision in Wales* for further information.

### 6.3 If you will be paying for your care yourself (i.e. fully self funding as assets above the capital limit)

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**Note:** As mentioned in section 3.2 above, self funders can still ask the local authority to arrange their care home placement on their behalf, even if the authority won't be making any financial contribution towards the costs.

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#### Choice of care home

As a self funder you can choose any home you like to move into, so long as the home is willing and able to offer you a place.

**You may need to bear in mind, though, that if you subsequently require local authority financial assistance with care home fees – for example, because you have been self funding using savings/capital and these resources have now reduced to the capital limit – but your current chosen accommodation costs more than the local authority is usually willing to pay for the type of care you need, a third party might have to make up the shortfall. This is known as a 'top-up' or 'third-party payment' – see section 6.6 below.**

#### Attendance Allowance (AA), Disability Living Allowance (DLA) or Personal Independence Payment (PIP)

If you are paying for your own care you should be able to continue receiving AA, DLA (care component) or PIP (daily living component). Age Cymru's Factsheet 10w *Paying for a permanent care home placement in Wales* contains further information about this.

#### Care home contract terms

**Make sure the contract clearly states what the fees include** – see section 5.6 above for some questions you might ask about fees.

In the case of care homes that provide nursing, the information about fees should relate to the total fees payable before account is taken of any nursing contribution paid by the Local Health Board.

## 6.4 Moving from being fully self-funding to receiving local authority help with the fees

**Once your capital reduces to the capital limit of £50,000, you should become eligible for local authority financial support towards the cost of your care home.**

In order to access this support, you will need to contact the local authority social services department. As discussed above, the authority must first assess someone's care needs and agree that they need care in a care home before it will consider helping financially.

**There may be a delay between you asking for a care assessment and this being carried out. Check with the authority if there are any delays in your area. If so, it is advisable to approach the authority a few months before your capital reduces to the capital limit.**

Local authorities should undertake an assessment as soon as is reasonably practicable and, if necessary, take over the arrangements to ensure that you are not forced to use up capital below the limit.

For further information on getting a care assessment, see Age Cymru's Factsheet 41w *Social care assessments for older people with care needs in Wales*.

Age Cymru's Factsheet 10w *Paying for a permanent care home placement in Wales* explains how the local authority will calculate the amount you should contribute towards the cost of your care.

### **If you moved to a different area when you first entered a care home**

If you have been self funding and your care home is located in a different local authority area to where you used to live, prior to requiring care home accommodation, then the local authority which covers the area where you *currently* live will usually be responsible for assisting you (i.e. the local authority that covers the area where your care home is situated).

However, if you are paying the full fees, but the local authority where you previously lived arranged the home for you – and still has a contract with the home – then it is still responsible for meeting your needs.

You should be able to remain in your current care home provided that it is suitable to meet your assessed needs (though in certain circumstances a third party top up may be required – see below). The local authority will enter into a contract with the home.

### The local authority's 'usual cost'

As mentioned in section 6.3 above, if the care home where you live costs more than the local authority usually pays for the sort of care you need, then a 'third party' – such as a relative, friend or charitable organisation – may have to meet the difference (often known as a 'top-up') in order that you can stay in the home – see section 6.6 below for further information.

## 6.5 If you are eligible for local authority assistance towards your care fees from the outset

As indicated at the beginning of section 6, you will not have to make any contribution towards your care home fees from any savings/capital below £50,000 – the current capital limit.

**However, you will still be expected to contribute from your day to day income – for example, your State Pension, or occupational/private pension – with the local authority meeting the rest of the cost of the placement** (except in instances where a third party top up is needed as well).

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**Note:** The level of the contribution which you will make is determined using a means test which is the same across Wales. Age Cymru's Factsheet 10w *Paying for a permanent care home placement in Wales* provides further information on the means test rules.

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When a local authority enters into a contract for your care with the care home, it will be responsible for paying the fees and collecting your contribution. Alternatively, you and your local authority can each pay your respective contributions directly to the home if you, your authority and the home all agree to this arrangement.

You have a right to choose the particular provider or location of the care home (your 'preferred accommodation'<sup>25</sup>), subject to certain conditions. The authority must make the arrangement, provided that all of the following four points are met:

- It appears to the authority that the home you have chosen will be suitable for your assessed needs (for example, some care homes are not necessarily able to care for people with particular types or levels of need).
- It is available (i.e. the home has a vacancy).
- The cost to the local authority is not **more** than it would normally expect to pay for someone with *your assessed needs* (i.e. the cost that the authority would reasonably expect to pay for accommodation will not be a uniform figure – it should vary, depending on the different elements of care that people may require to meet higher, or lower levels of need, or more complex types of care packages etc).
- The provider of the accommodation is willing to enter into a contract with the local authority, subject to the authority's usual terms and conditions for such care<sup>26</sup>.

### Where accommodation does cost more than the local authority's 'usual cost'

If your preferred accommodation costs more than the authority would usually pay, it must still arrange a place there if you can find someone else (a 'third party') to pay the difference.

**In particular situations the need for a top-up can be challenged even if the accommodation is more than the usual cost** – see section 6.6 below.

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<sup>25</sup> The local authority should give you information about suitable care homes in your area (for example, it may have a 'preferred list' of providers), though your choice should not be limited to those settings or individual providers with which the local authority already contracts or operates.

<sup>26</sup> The Code of Practice guidance (Part 4 and 5, version 5 – April 2020) advises that, "in placing a person in a care home of their choice, a local authority must not stipulate strict or unreasonable conditions in contractual arrangements with the care home as a means to avoid or deter the arrangement and avoid meeting the person's choice of accommodation. This includes where the local authority may need to enter into a contract with a provider that it does not currently have an arrangement with. Where this occurs, it should ensure that the contractual conditions are broadly the same as those it would negotiate with any other provider whilst taking account of the individual circumstances".

## If you receive Attendance Allowance (AA), Disability Living Allowance (DLA) or Personal Independence Payment (PIP)

Payment of each of the benefits will normally stop after four weeks (sooner if it is linked with a stay in hospital or an earlier period of state-funded care), if you are receiving financial help from the local authority towards your care home fees.

## Finding and choosing a care home in a different local authority area in Wales; or a different part of the United Kingdom

Welsh Government guidance confirms that if someone “chooses to be placed in a care home that is outside [their] local authority’s area, the local authority **must** still arrange for their preferred accommodation” provided that the four conditions outlined above are met<sup>27</sup>.

Meanwhile, the *Social Services and Well-being (Wales) Act 2014* confirms that someone’s choice of accommodation extends to “the provision of care home accommodation in [any part of] the United Kingdom”<sup>28</sup>.

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**Note:** If you were looking for care homes in another part of the UK, you could contact the body that inspects and regulates for that nation – i.e. in England this would be the Care Quality Commission (CQC), rather than the Care Inspectorate Wales (CIW).

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## 6.6 Third party ‘top-up’ payments for more expensive accommodation

As touched upon in a number of sections above, if your ‘preferred accommodation’ will cost more than the local authority would normally pay for someone with your assessed needs, it must still make the arrangements for you in that home **as long as someone else can make up the difference between that figure and the home’s fee by making a third party contribution.**

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<sup>27</sup> Social Services and Well-being (Wales) Act 2014: Part 4 and 5 Code of Practice (Charging and Financial Assessment), Welsh Government (version 5 – April 2020)

<sup>28</sup> Welsh Statutory Instruments 2015 no. 1840 (w. 268) – Social Care, Wales: The Care and Support (Choice of Accommodation) (Wales) Regulations 2015 – Explanatory Note

The third party will need to show that they can reasonably expect to be able to contribute for **as long as the arrangement lasts** – i.e. for the length of time the resident is in the home.

If, for whatever reason, the third party payments cannot be continued, the resident may have to move to another care home, though the local authority should carry out an assessment of the risks involved before taking this course of action.

### Situations where the local authority may not be justified in asking for a top-up

**The authority must be able to demonstrate that care and support suitable to meet your assessed eligible needs can actually be arranged at its usual cost** (also referred to as ‘standard amount’, ‘usual amount’, ‘usual rate’ or ‘usual limit’), prior to requesting that a third party contribution will need to be made.

In other words, top-ups should always be *optional* only (where the care home resident makes an active choice that they would prefer to live in a more expensive care home even though there are other options available that can adequately meet their needs at lower cost).

### Where someone has no choice but to enter a more expensive care home

If you have entered a more expensive home out of *necessity*, the local authority should agree to meet the extra cost. For example, a more expensive home might be necessary if:

- You have **particular needs** which cannot be met in the accommodation offered (for example, the need to be near relatives such as your spouse, or religious or dietary needs).
- **Market pressures** mean that there are no homes in the area accepting residents at the local authority’s usual rate (meaning that you have no other option but to choose a place in a home costing more).



- The local authority has **failed to offer sufficient options at its usual cost** (the Welsh Government’s guidance advises that to ensure someone has a genuine choice over accommodation “a local authority **must** have more than one option available for a person to choose from within its standard amount for residential care”<sup>29</sup>).

The Welsh Government’s guidance is clear that “where no suitable accommodation is available at its standard amount to meet a person’s assessed needs in full, the local authority **must arrange a placement in a suitable more expensive setting** and adjust its funding accordingly to ensure that needs are met. In such circumstances, the local authority must **not** ask the person being placed or a third party to pay the additional cost”<sup>30</sup> (emphasis added).

Age Cymru’s Factsheet 60w *Care homes in Wales: choice of accommodation when the local authority is assisting with funding* has further information on the issues in this section.

## 6.7 When the NHS makes the arrangement – i.e. for people who qualify for NHS continuing healthcare

**Your Local Health Board should arrange a place for you in a care home if your assessed needs meet the eligibility criteria for NHS continuing healthcare (NHS CHC).**

See Age Cymru’s Factsheet 20w *NHS continuing healthcare and NHS-funded nursing care in Wales* for further information on this topic.

## 6.8 Rehabilitation – intermediate care and reablement

If your place in a care home has been arranged as part of a package of rehabilitation – often called **intermediate care** – where you are having short-term therapy or treatment, either following some time in hospital or to avoid having to go into hospital, it should be provided **free of charge for up to six weeks**.

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<sup>29</sup> Social Services and Well-being (Wales) Act 2014: Part 4 and 5 Code of Practice (Charging and Financial Assessment), Welsh Government (version 5 – April 2020)

<sup>30</sup> Ibid

Additionally, social care rehabilitation services – known as ‘**reablement**’ – are also provided free of charge for the first six weeks – either in your own home, or a temporary stay in a specialist residential unit or residential care home.

For more information see Age Cymru’s Factsheet 76w *Intermediate care and reablement in Wales*.

Rehabilitation does not normally last longer than six weeks, but may occasionally be extended. At the end of this period, if you are not sufficiently recovered and still have care and support needs, you may:

- qualify for fully funded NHS continuing healthcare – see Age Cymru’s Factsheet 20w *NHS continuing healthcare and NHS-funded nursing care in Wales*;
- require local authority social care services provided in your own home, for which you may be charged via a means test – see Age Cymru’s Factsheet 46w *Paying for care and support at home in Wales*;
- require local authority social care services provided in a care home, as outlined in this factsheet.

## **7 When care needs change – you may be able to stay in your existing care home, or a move may be required**

Many people are able to remain living in one care home for a long time. However, sometimes care needs can change and the home in which someone has been living may no longer be able to provide appropriate care. You may feel yourself that different care is needed; or alternatively, a care needs assessment by social services, a relative, your GP, or the manager of the home may suggest that you need to move to a more suitable home.

If your local authority has arranged the care home placement for you, then they should carry out regular reviews of your care plan that should identify a need for a different home – see below.

On occasion, the suggestion may come from the Care Inspectorate Wales (CIW), particularly if you live in a care home that is not registered to provide nursing care, but you are reaching the point of needing that type of care.

The home may risk breaking the conditions of its registration if it tries to provide you with the higher level of care (in these situations, some homes have in the past been willing to explore with the registration authorities the possibility of registering one place in a care home for nursing care; this would involve the home being able and willing to meet the registration requirements for homes providing nursing care for that one place. If you are in this situation, you might want to ask the home if this is a possibility, but do bear in mind that, eventually, you may still need to move if your care needs increase in the future).

In other cases, moving to a different, perhaps more specialised home, will mean you receive more appropriate care.

Ask the current home if it will agree that you can remain there in the meantime. It is important to check the contract to see whether the home requires any period of notice before a move takes place.

### Reviews of assessments / re-assessments of care needs

Local authorities “**must** keep care and support plans under review to understand whether the provision of that care and support is meeting the identified needs of the individual, and to consider if their needs have changed and if a re-assessment is required”. The agreed date for the review should have been set out in the original care plan<sup>31</sup>.

Generally this will be *within 12 months* of services being put in place; however, sometimes on-going reviews will need to be more frequent:

Authorities “**must** have in place arrangements to review or re-assess more promptly whenever it may appear that the current plan is not meeting [the individual’s] needs”. In these circumstances they must then “undertake a review irrespective of the [original] agreed review date”<sup>32</sup>.

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<sup>31</sup> Social Services and Well-being (Wales) Act 2014: Part 4 Code of Practice (Meeting Needs), Welsh Government

<sup>32</sup> Ibid

**A review can also be requested at any time by the service user themselves** (or their advocate, carer or family member on their behalf).

## 8 Regulatory bodies and service standards

### 8.1 The Care Inspectorate Wales (CIW)

The CIW is the body responsible for inspecting, regulating and maintaining standards in **social care** services in Wales.

This includes care homes and domiciliary support services (services that provide care in your own home). They also “inspect and drive improvement of...local authority social services” and “respond to concerns raised about social care...services”<sup>33</sup>.

CIW’s work is carried out under the following legislation:

- The *Social Services and Well-being (Wales) Act 2014* – this “gives powers to review the way in which local authorities discharge their social services functions”<sup>34</sup>; and
- The *Regulation and Inspection of Social Care (Wales) Act 2016*.

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**Note:** Further information on how the CIW carry out their inspections can be found on their website at:

**[www.careinspectorate.wales/how-we-inspect-adult-care-services](http://www.careinspectorate.wales/how-we-inspect-adult-care-services)**

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### 8.2 Healthcare Inspectorate Wales (HIW)

The HIW is the independent inspector and regulator of all health care in Wales. This includes both NHS healthcare and independent healthcare organisations.

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<sup>33</sup> ‘What we do’, Care Inspectorate Wales website: [www.careinspectorate.wales/about-us/what-we-do](http://www.careinspectorate.wales/about-us/what-we-do) (last accessed 19 January 2021)

<sup>34</sup> Ibid

HIW, rather than CIW, will be responsible for regulating NHS services that you may receive in a care home and NHS continuing healthcare where all the care is arranged and funded solely by the NHS.

HIW also protects the interests of people whose rights are restricted under the *Mental Health Act 1983* (Welsh Ministers have responsibility under the Act to monitor its use – HIW undertakes this on their behalf).

See section 11 below for HIW's contact details.

## 9 Problems and complaints

### 9.1 Using relevant complaints procedures

After someone has entered a care home, it is important to know what to do if any problems arise. The home should provide information in writing to all residents about how to make a complaint. If possible, any problems should be discussed informally with the staff of the home in the first instance. You should not be penalised for raising any concerns that you have. Some homes have a residents' committee, or a 'suggestion box' through which concerns can be raised.

Depending on circumstances you may also be able to utilise the following procedures:

- **The local authority social services complaints procedure.**
- **Escalate a case to the Public Services Ombudsman for Wales.**
- **Inform the Care Inspectorate Wales about concerns (or the Healthcare Inspectorate Wales if your care is being funded by the NHS).**

See Age Cymru's Factsheet 59w *How to resolve problems and make a complaint about social care in Wales* for detailed information on all of the above.

### 9.2 Elder abuse / neglect and safeguarding

**If you feel you are being mistreated or abused in a care home, you can raise this with the local authority social services department. You can ask to speak directly to their safeguarding team.**

Alternatively, if you are a relative or friend who has concerns, then you can also take this action.

For further information on this issue, see Age Cymru's Factsheet 78w *Safeguarding older people in Wales from abuse and neglect*.

### 9.3 Care homes and consumer law

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**Note:** "Consumer law sits alongside sector-specific obligations that apply to care homes, such as the regulations and standards enforced and expected by the...Care Inspectorate Wales"<sup>35</sup>.

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In November 2018, the Competition and Markets Authority (CMA) published the following guidance:

***'UK care home providers for older people – advice on consumer law: Helping care homes comply with their consumer law obligations'***.

A copy is available at:

[www.gov.uk/government/publications/care-homes-consumer-law-advice-for-providers](http://www.gov.uk/government/publications/care-homes-consumer-law-advice-for-providers)

The CMA states the advice "applies specifically to care homes for people over 65 and covers the whole of the UK. It is relevant for all care homes, irrespective of whether residents pay their own fees or are State-funded".

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**Note:** The CMA is an independent, UK-wide, non-ministerial department. Their role includes, conducting investigations in markets where there may be competition problems and protecting consumers from unfair trading practices.

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In addition to the main guidance mentioned above, the CMA also has the following related documents:

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<sup>35</sup> UK care home providers for older people – advice on consumer law: Helping care homes comply with their consumer law obligations, Competition and Markets Authority (CMA), November 2018.

- **Care homes and consumer law: short guide for businesses** (the main guidance is 149 pages, whereas this briefer guide is 24)
- **Care homes: consumer rights for residents and their families** – this appears to be available as online guidance only and can be accessed at: [www.gov.uk/government/publications/care-homes-short-guide-to-consumer-rights-for-residents](http://www.gov.uk/government/publications/care-homes-short-guide-to-consumer-rights-for-residents)

The CMA's three guidance documents above, include the following information:

### Contracts

“Terms must be written and agreed with you in a fair and open way. If a term in a contract is unfair, it will not be valid and the care home cannot hold you to it. Unfair terms include those which put you, or the person who signs the contract on your behalf, at an unfair disadvantage (for example, because they give the care home more rights than you)”, such as:

- “‘hidden’ terms that you have not had the chance to read and understand”;
- terms that “do not hold the care home responsible if things go wrong and it is their fault”;
- terms that “require fees to continue to be paid for extended periods after a resident has died” (also see section 9.4 below)<sup>36</sup>;
- terms that “require residents to pay full fees for periods when they are temporarily absent from the home, when [the care home is saving] money by not having them there”<sup>37</sup>;
- terms that “allow the care home to make unexpected changes to your fees” and/or allow “the care home to make lots of changes to benefit itself”.

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<sup>36</sup> ‘Guidance : Care homes: consumer rights for residents and their families’, Published 16 November 2018, Competition and Markets Authority (CMA) website: [www.gov.uk/government/publications/care-homes-short-guide-to-consumer-rights-for-residents/care-homes-consumer-rights-for-residents-and-their-families](http://www.gov.uk/government/publications/care-homes-short-guide-to-consumer-rights-for-residents/care-homes-consumer-rights-for-residents-and-their-families) (last accessed 19 January 2021)

<sup>37</sup> Care homes and consumer law: short guide for businesses, Competition and Markets Authority (CMA), November 2018

“The terms of your contract should also clearly explain the circumstances in which your fees may change and how the changes will be calculated. This includes where there is an annual review of the fees or where your care needs change significantly”<sup>38</sup>.

### Third party ‘top up’ payments

The CMA’s guidance also includes advice about the responsibilities of care homes in relation to top up payments – see Age Cymru’s 60w *Choice of care home if the local authority is contributing towards your care fees* for further information on this.

### Fee increases for self funding residents

A care home’s terms “must set out clearly the circumstances in which fees for self-funded residents...may change during their stay and the method of calculating the change. If [their] contract simply says that any increase will be ‘cost reflective’, or ‘reasonable’ or limited to ‘unexpected changes’, this is unlikely to be fair, since residents will be unable to foresee the changes”<sup>39</sup>.

### Failure to comply with consumer law

The CMA state that if care homes “fail to comply with consumer law, the CMA and other bodies, such as local authority Trading Standards Services, can bring court proceedings to stop infringements, seek compensation on behalf of residents and, in certain cases, bring criminal prosecutions”<sup>40</sup>.

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<sup>38</sup> ‘Guidance : Care homes: consumer rights for residents and their families’, Published 16 November 2018, Competition and Markets Authority (CMA) website: [www.gov.uk/government/publications/care-homes-short-guide-to-consumer-rights-for-residents/care-homes-consumer-rights-for-residents-and-their-families](http://www.gov.uk/government/publications/care-homes-short-guide-to-consumer-rights-for-residents/care-homes-consumer-rights-for-residents-and-their-families) (last accessed 19 January 2021)

<sup>39</sup> Care homes and consumer law: short guide for businesses, Competition and Markets Authority (CMA), November 2018

<sup>40</sup> UK care home providers for older people – advice on consumer law: Helping care homes comply with their consumer law obligations, Competition and Markets Authority (CMA), November 2018.



## 9.4 Competition and Markets Authority (CMA) investigations into care home fees following a resident's death

In 2017 the CMA investigated whether some care homes have breached consumer law, with a particular focus “**on self-funding residents and the [issue] of large...fees charged after a resident's death**”<sup>41</sup>.

In May 2018 they published:

*‘UK care home providers for the elderly – consumer law advice on the charging of fees after death: Helping care home providers comply with their consumer law obligations’.*

The CMA advises that the purpose of the guidance is “to help care homes understand and comply with their responsibilities under consumer law following the death of a resident. It will also be of interest to care home residents and their representatives [and] enforcers of consumer law such as local authority Trading Standards Services, relevant Ombudsmen [in Wales, the Public Services Ombudsman for Wales], and sector regulators”.

In their report, the CMA has stated that at the time a contract is entered into, “it is likely that [care home] residents would have a reasonable expectation that their representatives will continue to have access to their room for a short period following their death [so they can] remove the resident's possessions”. As such, “in principle, it is reasonable for care homes to continue to charge fees during this brief period”; however, “contract terms which have the effect of requiring residents or their representatives to continue to pay fees beyond the point at which possessions are cleared from the room are in principle likely to be unfair”.

“This is because, once residents' representatives have cleared residents' rooms, the contract is likely to be of no benefit at all to them. It is the CMA's view that a payment period of up to three days (beginning from the day following the resident's death) should normally strike the right balance between the legitimate needs of the care home and the resident”.

The CMA's guidance also goes onto address other related issues, such as:

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<sup>41</sup> ‘Care homes: consumer protection case’: ‘Advice for care homes on the charging of fees after death’, 31 May 2018, GOV.UK website: [www.gov.uk/cma-cases/care-homes-consumer-protection-case#advice-for-care-homes-on-the-charging-of-fees-after-death](http://www.gov.uk/cma-cases/care-homes-consumer-protection-case#advice-for-care-homes-on-the-charging-of-fees-after-death) (last accessed 19 January 2021)

- **Fees payable by a third party after the death of a resident part-funded by the local authority (where the authority has previously agreed that the third party will pay the care home directly for the top-up rather than via the local authority):**

“Consumer law concerns will arise if [the care home] require a third party to continue making top-up payments for a payment period that is longer than the period of local authority payment following a resident’s death [as] the effect of such a provision is to penalise the third party for making payments directly to [the home] rather than via the local authority” – see section 6.6 for more information on third party top ups.

- **“Fees payable to cover ‘shortfalls’ in any contributions which are no longer paid by the State upon (or shortly after) the death of the resident” (be this NHS contributions or the local authority’s contribution):**
  - *weekly NHS-funded nursing care (FNC) contributions, which come to an end on, or shortly after, the death of a resident* – “given that it is the intention that payment for specified nursing care by a registered nurse is the NHS’s liability rather than the resident’s, the CMA can see no legitimate grounds for contract terms that require payments for FNC to continue for a period after the death of a resident. It is the CMA’s view that terms which have the effect of transferring this liability from the NHS onto the resident, or their representative, are unfair” – see section 3.7 for more information on weekly NHS funded nursing care contributions.
  - Also, the CMA goes on to state, “just as terms of an agreement between [the home] and a third party which require the third party to continue to pay a top-up fee after the local authority’s contribution has ceased following the death of a resident are likely to be unfair [see the first bullet point above]...**so too are terms which require the third party to meet the shortfall in the local authority’s contribution**” – i.e. the full “amount [that] the local authority was paying” (emphasis added).

“The effect of such a provision, in an agreement between the care home and the third party, is to require the third party to take on responsibility for residential fee payments which far exceed the top-up fee they agreed to pay whilst the resident was alive. It takes advantage of the third party’s unfamiliarity with the subject matter, and is contrary to what a well advised third party, acting on equal bargaining terms, would agree to”<sup>42</sup>.

A copy of the CMA’s guidance, referred to above, can be accessed on the GOV.UK website at:

[www.gov.uk/cma-cases/care-homes-consumer-protection-case#advice-for-care-homes-on-the-charging-of-fees-after-death](http://www.gov.uk/cma-cases/care-homes-consumer-protection-case#advice-for-care-homes-on-the-charging-of-fees-after-death)

## 10 Care home closures – finding suitable alternative accommodation

The closure of a care home may not necessarily be a problem, particularly if the home cannot meet the needs of its residents. In other cases the proposed closure of a care home may be unwelcome and its residents and their relatives may wish to try to take action over this. The purpose of any action should be considered. It may not be possible to prevent a home from closing, but residents and relatives can try and ensure that the process of closure is handled in such a way as to minimise disruption to the residents and provide them with the most satisfactory outcome possible.

### 10.1 Advocacy for residents when a closure is threatened

It may be helpful for an **independent advocate** to represent the interests of residents, so as to ensure that their wishes and priorities are taken into account.

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<sup>42</sup> UK care home providers for the elderly – consumer law advice on the charging of fees after death: Helping care home providers comply with their consumer law obligations, The Competition and Markets Authority (CMA), 31 May 2018

As discussed in section 3.3 above, local authorities have certain duties in regard to the provision of advocacy (under the *Social Services and Well-being (Wales) Act 2014*). The accompanying Welsh Government Code of Practice for local authorities specifically mentions care home closures as a situation where they “must consider the role of advocacy”:

“There are particular circumstances and periods of change or transition which will be significant to the individual and when their needs for advocacy may be heightened [including where] external factors impact on their care and support arrangements, for example, **provider failure; care home closure; changes of management or ownership arrangements in care homes**”<sup>43</sup> (emphasis added).

Section 3.3 above has further information on how advocacy services may be arranged.

## 10.2 Is it possible to challenge a care home closure?

- Residents in local authority homes are generally in a stronger position with regard to the proposed closure of their home than those in independent care homes. Local authority homes often take longer to close – partly for the reasons discussed below – plus a local authority may be more susceptible to a publicity campaign or political pressure than an independent operator.
- Residents in independent sector homes will generally have less protection than those in local authority homes should the owners decide to close it. The care home should, however, observe any contractual requirements for notice to leave contained in the contract which has been made with the resident or the local authority.

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<sup>43</sup> Social Services and Well-being (Wales) Act 2014: Part 10 Code of Practice (Advocacy), Welsh Government

## Case law regarding care home closures, including the relevance of human rights legislation

- **Local authority owned homes** – Case law has established that, before closing a care home, the local authority should consult with the residents living there. In the case *R v Durham County Council ex parte Curtis and others (1995)*, the Court of Appeal identified a number of requirements for consulting with permanent residents prior to any decision to close a home (including that consultation must take place when proposals are still at a formative stage and that the authority must give sufficient reasons for their proposals<sup>44</sup>).

Closure proposals have also been challenged using the *Human Rights Act 1998*; the suggestion being that by closing a home an authority could be contravening one or more articles of the *European Convention on Human Rights*. For example, in regard to *Article 2* – which protects the right to life – “the relocation of institutionalised older people to a new residence may have a dramatic effect on their mental health and life expectancy”<sup>45</sup>.

In the case *R (on the application of Cowl and others) v Plymouth City Council (2001)*, *Article 8* – the right to have one’s private and family life and home respected – was cited by residents where the authority were seeking to close their residential home for financial reasons. The residents “argued that they had a reasonable expectation that the home would be their home for life. The panel deciding their case agreed and the home was not closed. The panel said that people’s age should not be used as a justification for restricting their rights”<sup>46</sup>. However, it should also be noted that in the case of *Article 8*, the right is a qualified one<sup>47</sup>.

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<sup>44</sup> The judgement did not require residents to be consulted on a one-to-one basis – a larger meeting with residents or representations from a residents’ support group may suffice.

<sup>45</sup> Clements, Luke (2017). *Community Care and the Law* (Sixth edition), Legal Action Group.

<sup>46</sup> *Older People and Human Rights: A reference guide for professionals working with older people*, Age UK and the British Institute of Human Rights (BIHR), March 2011

<sup>47</sup> This means that a public authority can, in certain circumstances, act in a manner detrimental to the individual’s enjoyment of that right – for example, where it is “necessary to protect...public safety or the economic wellbeing of the country...or to protect the rights and freedoms of others” (see: *Human Rights Review 2012 – Article 8, Equality and Human Rights Commission*, 2012). Similarly, a local authority can go back on an apparent promise of a home for life if there is an ‘overriding public interest’ in doing so. In order to be proportionate, an authority’s actions should be no more than is necessary. If the same aim can be achieved by an alternative and less intrusive action, then the alternative option should be utilised.

A proposed closure can be challenged through the local authority complaints procedure or, in some situations, by applying to the courts for a judicial review<sup>48</sup>.

- **Independent sector homes** – The cases highlighted above “involve challenges to the closure of local authority homes and the termination of local authority services. It is harder to imagine a challenge to the closure of a private sector home succeeding, not least because, in most cases, such closures are dictated by insolvency or enforcement activity triggered by grossly inadequate care. However, in principle, such a case could be brought, either on contractual grounds or, more likely, on the basis of section 73 of the Care Act 2014”:

Section 73 of the Act – ‘*Human Rights Act 1998: provision of regulated care or support etc a public function*’ – “legislates that a private or social sector provider is exercising a function of a public nature if, **on the basis of payments or arrangements made by a local authority**, it provides care and support to an [older person]”<sup>49</sup> (emphasis added).

In other words, although the *Human Rights Act 1998* generally applies to ‘public authorities’ only (e.g. government departments, local authorities or the NHS), it can also apply to private organisations if they are “performing public functions”<sup>50</sup>. For example, this would be the case where a private organisation is commissioned by the public authority to carry out duties on its behalf; therefore, care home residents in a privately run care home should be covered by the Act when their local authority has arranged the placement for them and is assisting the resident with the funding of the care fees<sup>51</sup>.

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<sup>48</sup> A Judicial review can be a very expensive process and may not be appropriate unless assistance with legal costs can be obtained. Judicial review “is a type of court proceeding in which a judge reviews the lawfulness of a decision or action made by a public body”. It should be noted that “judicial reviews are a challenge to the way in which a decision has been made, rather than the rights and wrongs of the conclusion reached. It is not really concerned with the conclusions of that process and whether those were ‘right’, as long as the right procedures have been followed. The court will not substitute what it thinks is the ‘correct’ decision. This may mean that the public body will be able to make the same decision again, so long as it does so in a lawful way” – ‘Judicial review’, Courts and Tribunals Judiciary website: [www.judiciary.gov.uk/you-and-the-judiciary/judicial-review](http://www.judiciary.gov.uk/you-and-the-judiciary/judicial-review) (last accessed 19 January 2021)

<sup>49</sup> Knafler QC, Stephen (2016). *Adult Social Care Law*, Legal Action Group.

<sup>50</sup> ‘Who does the Human Rights Act apply to?’, Equality and Human Rights Commission website: [www.equalityhumanrights.com/en/advice-and-guidance/who-does-human-rights-act-apply](http://www.equalityhumanrights.com/en/advice-and-guidance/who-does-human-rights-act-apply) (last accessed 19 January 2021)

<sup>51</sup> Another comparable scenario where the Human Rights Act would cover someone could be where they are receiving services from a private healthcare company, but where the service was commissioned by the NHS.

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**Note:** Although, in the main, the *Care Act* is legislation which affects England only (the *Social Services and Well-being (Wales) Act* being the equivalent for Wales), section 73 of the Act, discussed above, **also applies in Wales**.

This is confirmed in explanatory notes for the Care Act: “Section 73 makes explicit that registered care providers, when providing adults with either personal care in their home or accommodation with nursing or personal care, which has been arranged or funded by a public authority...are exercising a function of a public nature for the purposes of the Human Rights Act 1998. It extends to the whole of the UK”<sup>52</sup>.

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### 10.3 **Welsh Government guidance on the management of care home closures**

#### **Relevance of this guidance to local authority funded and self funding residents (including assistance to find new accommodation)**

In 2009, The Welsh Government issued guidance to all local authorities (LAs) and Local Health Boards (LHBs) in Wales – ‘*Statutory Guidance on Escalating Concerns with, and Closures of, Care Homes Providing Services for Adults*’.

The guidance reminds LAs and LHBs of various statutory duties and requires them:

- to set up a Home Operations Support Group (HOSG) to co-ordinate and manage the transfer of service users from [a] registered care home;
- draw up “individual relocation plans”; and
- stresses “the importance of comprehensive needs assessments of all residents (including self-funders)” when a move to a different care home will be necessary<sup>53</sup>.

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<sup>52</sup> Care Act 2014 Explanatory Notes, Legislation.gov.uk website: [www.legislation.gov.uk/ukpga/2014/23/notes/division/5/1/18/1](http://www.legislation.gov.uk/ukpga/2014/23/notes/division/5/1/18/1) (last accessed 19 January 2021)

<sup>53</sup> Clements, Luke (2017). *Community Care and the Law* (Sixth edition), Legal Action Group.

## Individual relocation planning

The guidance states that the following should occur as part of individual relocation planning where a care home closure is taking place:

- Every **local authority funded service** user *must* be allocated to a professional care co-ordinator – e.g. a social worker, care manager or nurse assessor.
- **Self-funders** should be *offered* the support of a care manager (“the self funding service user is free to decline the support of a care manager but this facility must still be offered”<sup>54</sup>).

Meanwhile, the following should be offered to both local authority funded and self funding residents (unless stated otherwise):

- Assistance with transport to a new home;
- support in moving or the transfer of personal possessions;
- relevant support to family members of the resident;
- information on care home vacancies in the area;
- contact details for local advocacy services (“it is expected that the registered [service] provider must support and enable approved advocacy services to meet with service users to identify their wishes and offer appropriate support”<sup>55</sup>);
- support to contract with an alternative provider (for self funders).
- The service user should be asked to what extent they would like particular family members or friends to be involved in “identifying an alternate home or in preparing/facilitating the...transfer to alternate accommodation”. Also, there is a need to “explore with service users and their family [various] options, choices and [the] need to ensure continued access to the individual by friends and family”<sup>56</sup>.

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<sup>54</sup> Statutory Guidance on Escalating Concerns with, and Closures of, Care Homes Providing Services for Adults, Welsh Government, May 2009

<sup>55</sup> Ibid

<sup>56</sup> Ibid



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**Note:** As touched upon above, a care needs assessment/re-assessment for all service users should be obtained (“including with their agreement people who are self-funding”<sup>57</sup>).

Confirming the residents’ current needs is a major part of establishing which other homes might be suitable for that person to move on to (further information on local authority assessments can be found in Age Cymru’s Factsheet 41w *Social care assessments for older people with care needs in Wales*) – also see below for further information.

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### Care needs assessments in the context of care home closures

The assessment should consider:

- issues of mental capacity and any risk factors that may arise as a result of physically moving the person from the home”;
- equipment or aids currently used by the resident;
- details of medication used and any pending hospital treatment or appointments;
- preferred care routine of the resident;
- details of “significant relationships” within the current home of a resident<sup>58</sup>. For example, it is not just the residents’ physical health which may be affected by the closure of a home; their relationships and emotional well-being may also suffer.

## 10.4 Care home closures where the NHS has responsibility

Some care home residents are fully funded by the NHS under its responsibility to provide continuing health care services. If a home arranged by the NHS decides to close then the NHS will be responsible for making alternative arrangements for any residents that it is funding there<sup>59</sup>.

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<sup>57</sup> Ibid

<sup>58</sup> Ibid

<sup>59</sup> As stated above, the ‘*Statutory Guidance on Escalating Concerns with, and Closures of, Care Homes Providing Services for Adults*’ also applies to Local Health Boards (these are the bodies which are responsible for delivering all NHS healthcare services within a certain geographical area which they cover).

## 11 Useful organisations

### Age Cymru Advice

Free and confidential information and advice on matters affecting the over 50s in Wales.

**Tel: 0300 303 44 98**

**E-mail: [advice@agecymru.org.uk](mailto:advice@agecymru.org.uk)**

**Website: [www.agecymru.org.uk/advice](http://www.agecymru.org.uk/advice)**

### Age Cymru organisations (local)

Your local Age Cymru may be able to provide advice and support on a range of issues. **Age Cymru Advice** can provide details of your local Age Cymru (see above), or visit the Age Cymru website at:

[www.agecymru.org.uk/local](http://www.agecymru.org.uk/local)

### Care Inspectorate Wales (CIW)

CIW inspects and regulates care and social services in Wales.

Tel: 0300 7900 126

E-mail: [ciw@gov.wales](mailto:ciw@gov.wales)

Website: [www.careinspectorate.wales](http://www.careinspectorate.wales)

### Carers UK

A national charity providing information and advice for carers.

Advice Line: 0808 808 7777

Website: [www.carerswales.org](http://www.carerswales.org)

## **Cinnamon Trust (The)**

A charity that helps older and terminally ill people with their pet's care (for example, assistance with dog-walking or short-term fostering of pets if someone is in hospital). To help people going into a care home, the Trust also maintains a register of homes (the *Pet Friendly Homes Register*) throughout the UK that accept residents with pets. If advance notice is given, the Trust may be able to accept animals on their owner's death and provide lifelong care.

Tel: 01736 757900

Website: [www.cinnamon.org.uk](http://www.cinnamon.org.uk)

## **Citizens Advice Bureaus (CABs)**

National network of free advice centres offering confidential and independent advice, face to face or by telephone.

Tel: 0800 702 2020

Details of your nearest CAB can be found at:

[www.citizensadvice.org.uk/wales](http://www.citizensadvice.org.uk/wales)

## **Dewis Cymru**

This is a website owned and funded by local authorities across Wales. The site was set up by the Welsh Government to assist in the delivery of certain provisions in the Social Services and Well-being (Wales) Act. The Dewis Cymru site contains an extensive database of a wide variety of services that can help people with their well-being.

[www.dewis.wales](http://www.dewis.wales)

## **Elderly Accommodation Counsel (EAC)**

Provides information on all forms of accommodation, support and care for older people.

EAC FirstStop Advice: 0800 377 7070

E-mail: [info@firststopcareadvice.org](mailto:info@firststopcareadvice.org)

Website: [www.eac.org.uk](http://www.eac.org.uk)

## **Equality Advisory & Support Service**

A helpline that can advise people on equality and human rights issues.

Tel: 0808 800 0082

Website: [www.equalityadvisoryservice.com](http://www.equalityadvisoryservice.com)

## **Healthcare Inspectorate Wales (HIW)**

The HIW is the independent inspector and regulator of NHS healthcare and independent healthcare organisations in Wales.

Tel: 0300 062 8163

E-mail: [hiw@gov.wales](mailto:hiw@gov.wales)

Website: [www.hiw.org.uk](http://www.hiw.org.uk)

## **Older People's Commissioner for Wales**

Independent champion for older people across Wales.

Tel: 03442 640 670

E-mail: [ask@olderpeoplewales.com](mailto:ask@olderpeoplewales.com)

Website: [www.olderpeoplewales.com](http://www.olderpeoplewales.com)

## **Public Services Ombudsman for Wales**

The Ombudsman looks to see whether people have been treated unfairly or have received a bad service from a public body, such as the local authority social services department, or the NHS.

Tel: 0300 790 0203

E-mail: [ask@ombudsman.wales](mailto:ask@ombudsman.wales)

Website: [www.ombudsman.wales](http://www.ombudsman.wales)

## **Relatives & Residents Association (The)**

The Relatives & Residents Association gives advice and support to older people in care homes, their relatives and friends.

Tel: 020 7359 8136

Website: [www.relres.org](http://www.relres.org)

## Welsh Government

The devolved government for Wales.

Tel: 0300 060 4400

E-mail: [customerhelp@gov.wales](mailto:customerhelp@gov.wales)

Website: [www.gov.wales](http://www.gov.wales)

## Welsh Local Government Association (WLGA)

The WLGA represents all the local authorities in Wales. It aims to promote better local government and “support authorities in the development of policies and priorities which will improve public services”<sup>60</sup>.

Tel: 029 2046 8600

E-mail: [enquiry@wlga.gov.uk](mailto:enquiry@wlga.gov.uk)

Website: [www.wlga.wales](http://www.wlga.wales)

## 12 Further information about Age Cymru

Age Cymru is the national charity for older people in Wales.

We campaign, we research and we fundraise to make sure we build a better life for all older people. We ensure older people’s voices are heard, we challenge and change attitudes and we fight discrimination wherever we find it.

We provide a range of national and local services and programmes directly to older people in the community and we ensure the highest standards so you can be assured of consistency and quality wherever you see the Age Cymru name and logo.

Our family includes local Age Cymru partners and national partners, Age NI, Age Scotland and Age UK.

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<sup>60</sup> ‘About Us’, Welsh Local Government Association (WLGA) website: [www.wlga.wales/about-us](http://www.wlga.wales/about-us) (last accessed 20 January 2021)

## Our information materials

Age Cymru and Age UK publish a large number of free Information Guides and Factsheets on a range of subjects, including money and benefits, health, social care and housing. Some resources, such as this factsheet, are produced 'in-house' by Age Cymru, whilst others are branded Age UK and – depending on the subject matter – contain either information which is applicable in England and Wales, or for the whole of the UK.

## Contact details

### Age Cymru Advice

**Tel: 0300 303 44 98** (9am to 4pm, Monday – Friday)<sup>61</sup>

**E-mail: [advice@agecymru.org.uk](mailto:advice@agecymru.org.uk)**

**Website: [www.agecymru.org.uk/advice](http://www.agecymru.org.uk/advice)**



[www.facebook.com/agecymru](http://www.facebook.com/agecymru)



[www.twitter.com/agecymru](http://www.twitter.com/agecymru)



[www.youtube.com/agecymru](http://www.youtube.com/agecymru)

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<sup>61</sup> 0300 numbers are reserved exclusively for charities and not-for-profits. Calls made to an 0300 number are charged the same as a call to a standard 01 or 02 number. They are also automatically included in any landline or mobile inclusive minutes package.

Contact us if you would like:

- To order copies of any factsheets or information guides.
- Further advice if you cannot find the information you need in this factsheet.
- Details of your nearest local Age Cymru organisation.

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