

The background of the page is a photograph of a woman with dark hair, wearing a white button-down shirt, leaning over an elderly man with white hair wearing a brown sweater. Both are smiling warmly at each other. The background is a soft-focus green outdoor setting. A large blue diagonal shape covers the bottom left and bottom center of the page, containing the text.

Your guide to Local Authority support for Adult Social Care

Practical information and tips for getting a fair outcome when seeking support from your local authority to help meet social care needs

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An Overview – 4 key facts you need to know before getting into the detail

1. Your local authority (or Health and Social Care Trust if you live in Northern Ireland) is responsible for social care. The NHS is only responsible for health care. The difference between the two is important (see Section titled 'Understanding Social Care')
2. Your local authority has a legal obligation to meet your care needs if those needs are significant enough to be deemed 'eligible needs'. Whilst each local authority has its own assessment procedures, they are still required to use nationally agreed criteria when deciding who has eligible needs that require care and support. This process of deciding if someone's needs are eligible for local authority support is called a '**needs assessment**'.
3. If a needs assessment results in your care needs being deemed 'eligible', then who pays to meet those needs is decided by a '**financial assessment**' or '**means test**' conducted by your local authority. This assessment will look at your capital and income to decide if you have the means to pay. There are three possible outcomes of the financial assessment:
 - a. You have to pay 100% of the cost
 - b. Your local authority/Council will pay 100% of the cost, or
 - c. You have to pay something towards the cost and your local authority/ council will pay the rest.
4. Apart from points 2 and 3 above, slightly different rules apply to those who live in England, Northern Ireland, Scotland and Wales, as social care is a politically devolved matter across each of the four home nations of the UK. For example:
 - In Northern Ireland, care at home is free for those over age 75.
 - In Scotland, Local Authorities will make a flat rate contribution towards any 'personal care' based purely on your care needs and regardless of your financial position.
 - In Wales, whilst care at home is means tested, the maximum that you can be charged is currently capped at £100 per week.

Unless otherwise indicated, detail within this guide defaults to how the social care system works for those living in England.

At My Care Consultant we continue to see examples where the correct procedures to determine eligibility for local authority funded social care haven't been properly followed or implemented, so we hope this guide is a useful starting point for those in need of care, their loved ones or legal representatives, helping them understand what *should* happen and what to do if it doesn't.

Understanding Adult Social Care



Understanding Adult Social Care

Adult social care covers a wide range of services to help older people and those living with a disability or physical or mental illness, to live independently and safely. It can include personal care as well as wider support to help people stay active and engaged in their communities.

Social care includes support in people's own homes (known as home care or 'domiciliary care'); support in day centres; care provided by care homes and nursing homes (known as 'residential care'); 'reablement' services to help people regain independence; provision of aids and adaptations for people's homes; provision of information, guidance and advice; and providing respite support for family carers.

Social Care v Health Care

Confusion often arises upon first contact with the care system over the difference between health care and social care.

If the person in need of care has what is referred to as a 'primary health need' then they may be eligible for NHS funded care which is free at the point of need. Otherwise, if their needs relate to the ability to carry out day-to-day activities such as washing, dressing, mobility, maintaining continence, personal hygiene or eating, it is classed as 'social care' and is usually paid for by the person being cared for, if they have the means. If they don't have sufficient means to be able to pay for their own care, it may be funded in full or in part by their local authority.

Short-term and long-term social care

Social care itself can be broken down into two broad categories of 'short-term care' and 'long-term care'. Short-term care refers to a care package that is expected to last for a limited time, with the intention of maximising the independence of the individual using the care service and ideally eliminating their need for ongoing support. Long-term care services are provided on an ongoing, open-ended basis and range from high-intensity services like nursing care to lower-intensity community support such as help preparing meals. Both long and short-term care are the responsibility of the local authority and are sometimes described as 'formal' care.

How much might it cost?

The cost of social care, whether at home or in a residential care home, is dependent upon a number of factors, such as the amount of care needed, the nature of that care and where that care is delivered (for example, most types of care are more expensive in London, the Southeast and the Southwest of England than elsewhere in the UK).

As a result, the lifetime costs of adult social care for older people varies considerably from person to person. In 2010 the Dilnot Commission estimated 50 per cent of people aged 65 and over will spend up to £20,000 on care costs in their lifetime and that 10 per cent would face costs of more than £100,000. However, it is very difficult to foresee which individuals will have the greatest needs for the longest period (for example, those who are unfortunate enough to develop dementia) so costs are very hard to predict.

The local authority needs assessment.

If you think you, or someone you know, needs help to cope with day-to-day living, the first step is to get a needs assessment from your local authority. Contact your GP or social services department at your local council and ask for a **needs assessment**. You can call them or in some areas apply online through your local authority's website. If you're not able to do this yourself, a friend or relative can do it on your behalf.

You can use the Gov.uk website to find your local council and social services:

<https://www.gov.uk/find-local-council>

Your rights

Anyone can request a needs assessment regardless of their income and savings, or whatever their needs are. There is no charge for it. People who are caring for someone with needs are also entitled to their own **carer's assessment**.

Every local authority has a legal duty to carry out an assessment to find out what or how much help is needed. This also gives the person being assessed the opportunity to explain what care and support they feel they need to make their life easier and to enable them to live as independently as possible.

If you have an urgent need for help, the local authority has the power to put services in place immediately, without waiting to do an assessment. But the assessment must be carried out as soon possible afterwards.

You are entitled to refuse a needs assessment, but the local authority must assess you if you later change your mind. There are two situations where a local authority must carry out an assessment, even if you refuse. These are if you:

- lack capacity to refuse and the local authority thinks an assessment is in your 'best interests', or
- are experiencing, or are at risk of, abuse or neglect.

What's involved?

There are no designated timescales in respect of how quickly an assessment should take place, but it should be carried out in an appropriate and reasonable timeframe, considering all relevant details and the urgency of any needs. Most local authorities set their own standards which are published on their websites, and this generally leads to assessments being arranged within 28 days of a request and agreed services being in place within a further 28 days.

Unfortunately, at the time of writing, the Covid-19 pandemic has resulted in a significant backlog of people awaiting assessments so you may experience much longer delays than was previously the case.

The needs assessment can happen face-to-face (usually in your home) or over the phone and sometimes involves completion of a self-assessment questionnaire. Either way, they

The Local Authority Financial Assessment (or “means test”)





TOP TIP

Make sure you are aware of your entitlement to both means-tested and non means-tested benefits and claim anything you are entitled to. You can check this online via this link: <https://www.gov.uk/benefits-calculators>

Giving away assets to avoid paying for care

Some people are tempted to give away their property, savings or investments before taking the means test, in order to 'hide' their wealth from the assessor. However, this is called 'deprivation of assets' which is not permitted and Local Authorities clamp down hard on this. If they believe you have deliberately given away your income and/or assets with the aim of avoiding care fees, they will assess you as if you still had everything. This could leave you in a very difficult position – where you must fully fund your own care but have given your assets to someone else, who has no obligation to meet the cost of your care needs.

For a flow chart depicting how a financial assessment works in England, go to Appendix C of this guide

In practice, how do local authorities pay for and arrange care?

The local authority has broad discretion as to how to best meet your eligible needs once it has identified them. Care services can be provided by a local authority, a private company, a charity, or any combination of these. Once provided, it must be checked or reviewed annually. This should confirm it is appropriate and safe, that there are no changes in your needs, and that funding remains adequate.

What is a Personal Budget?

If the local authority has assessed you as having “eligible needs” they will calculate a personal budget for you. This will be based on what it should cost to meet your eligible needs. The financial assessment will work out how much you’re expected to contribute towards this, and how much the local authority will pay. You can be put in charge of this budget either by telling the local authority how you would like it spent, or by the local authority giving you the money so you can pay directly for your own care (known as a **direct payment**). If you prefer, your budget can be given to a separate organisation (such as a user-controlled trust) to spend on your care as they see fit.

There are three different ways that you can receive the local authority’s contribution towards your Personal Budget:

- a **direct payment** into your bank account each month for you to pay for your care. The council will usually ask for receipts to ensure you're spending the money on care. This option is usually only for home care services, or short-term care in a care home.
- **the council arranges and pays** for your care for you.
- a **mixed personal budget** – the council arranges some of your care directly and you arrange and pay for the rest.

If the local authority concludes that you must pay for all of your own care, they can expect you to arrange your own care and support, as long as you have mental capacity to do so or have someone to help you. However, you can ask the authority to make the arrangements under the ‘**right to request**’. Once the request has been made, the authority has a legal duty to meet your eligible needs, though you will not be entitled to any financial assistance. It does have the power to charge an arrangement fee for doing this.

Your rights

If the local authority is arranging and paying for your care, you still have some rights over how your personal budget is spent.

Care Homes - If you need to live in a care home the council must give you at least one affordable choice. Some councils have a list of homes they recommend. If you choose a care home that's more expensive than your personal budget, a relative or friend can pay the difference (this is called a **top up fee**). They will have to sign an agreement with the council and care home which sets out the costs, how often they have to be paid, and what will happen if they can no longer make the payment.

Care at home - If you're not happy with the type of paid home help the council suggests, you can look for services the council provides and ask them to change it if they can.

Your wellbeing needs, such as your social and emotional needs, may not be considered unless you point them out and are clear about how important they are to you.

Tell the assessor if there are things you want to do. For example:

- To be more active
- To stay living at home as long as possible
- To engage more with the community by attending social groups and events
- To have some help with shopping, going for walks or swimming.

Make sure you are supported at the assessment.

It can help to have someone else who is familiar with your situation present at the assessment, e.g. a relative, friend or carer. They can help communicate your needs and get across all the necessary points. It's particularly advisable to have someone else present if you have difficulty expressing yourself or don't feel confident about explaining your situation. What is said in the needs assessment forms the basis of the care plan that follows.

If there isn't someone suitable who can support you, you have the right to ask for an **independent advocate** to be appointed. The local council must provide you with someone to support you if you can't speak up for yourself or have difficulty understanding others. An advocate will help to ensure that the relevant circumstances of your situation are taken into account and your views and preferences are listened to. Local Authorities have a responsibility to ensure individuals have access to independent advocacy services if this would help them participate fully in the assessment process.



TOP TIP

You can approach a third party such as the charities Age UK or POhWER (who work with local authorities across England) to see if they have advocates in your area

Ask for a copy of the assessment

Check all of your needs have been recorded, including the impact on your wellbeing. If you feel the assessment does not reflect the true picture of your needs, ask the local authority for a reassessment and make a complaint if necessary.

Preparing for a financial assessment

Preparation is key.

To make the assessment as smooth as possible and to ensure that you receive the amount of support you are entitled to, make sure you have all the information at hand when the financial assessor visits:

- Details of savings in bank accounts, building societies, premium bonds and individual savings accounts (ISAs)

Appendices

Appendix A – GLOSSARY OF USEFUL TERMS

Appendix B – Flow chart depicting a Local Authority needs assessment (England)

Appendix C – Flow chart depicting a Local Authority financial assessment or means test (England)

Appendix B – Flow chart depicting a Local Authority needs assessment (England)

