

Factsheet 60 ● August 2015

Choice of accommodation - care homes

About this factsheet

This factsheet explains what rights care home residents have to choose which home they will live in and its location when the local authority assists with the funding and arrangement of the placement. It is also relevant to residents who arrange and fund their own residential care to start with but need local authority funding assistance later on.

This factsheet should be read in conjunction with Age UK's other factsheets on care home funding and local authority service provision. These include Age UK's Factsheet 10, *Paying for permanent residential care* and Age UK's Factsheet 41, *Social care assessment, eligibility and care planning*.

The information in this factsheet is correct for the period April 2015 – March 2016. Rules and figures sometimes change during the year.

This factsheet describes the situation in England. There are differences in the rules for funding care in a care home in Northern Ireland, Scotland and Wales. Readers in these nations should contact their respective national offices for information specific to where they live – see section 18 for details.

For details of how to order our other factsheets and information materials mentioned inside go to section 18.

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1 Recent developments

The **Care Act 2014** came into force on 1st April 2015 along with a range of new supporting regulations and a single set of new statutory guidance, which, taken together, describe how the Act should be applied in practice. The aim of the change is to simplify and modernise the system, which had become untenably complex.

This means that the existing system of adult social care of laws, regulations and guidance, developed over a period of 65 years, has generally been superseded and is now **no longer applicable**; except in a few cases, for example the complaints regulations. Examples of this general repeal and revocation action are: the *Charging for residential accommodation guide*, (known as CRAG) and the *Guidance on National Assistance Act 1948 (Choice of Accommodation) Directions 1992 and National Assistance (Residential Accommodation) (Additional Payments) Regulations 2001 (LAC (2004)20)*. These are the sources on which this factsheet was previously based.

The Care Act 2014 was actually intended to come into force in two stages, in April 2015 and April 2016. However, in July 2015, the government decided to delay the implementation of the second part, to do with funding, until April 2020.

Some of the key changes introduced for local authorities in April 2015 are:

- The promotion of individual **wellbeing** as an overarching principle within all activities including: assessment, eligibility, prevention, means testing and care and support planning.
- New national **eligibility** criterion for the adult requesting services and their carer(s) leading to rights to services for both. The previous four, locally set, eligibility levels have now become one, set at roughly the previous 'substantial' level. Carers now have an absolute right to have their eligible support needs met for the first time. Further information about this can be found in Age UK's Factsheet 41, *Social care assessment, eligibility and care planning*.
- The whole system is now administered via **personal budgets**.
- A 'universal' **information and advice** provision duty.

- New '**market shaping**' duties to ensure appropriate local service provision.

There are many other changes from April 2015, which are described within our range of updated factsheets on adult social care.

The now delayed April 2016 changes sit under various sections of the *Care Act 2014* relate to the introduction of new rules on paying for care based on the **Dilnot** care funding recommendations made in 2013 and the subsequent government response. These include:

- A **lifetime care cost cap** (was intended to be £72,000 in 2016) above which the State meets the cost of eligible social care needs. Those under 25 in April 2020 will not be charged for social care. This will be excluding a new **daily living cost charge** (was intended to be £230 per week in 2016) for residential care. **Figures may differ when introduced in 2020.**
- An increased **upper capital limit** from £23,250 to £27,000 in non-residential care or where the value of the resident's home is disregarded, or £118,000 where the value of the resident's home is not disregarded. **Figures may differ when introduced in 2020.**
- The introduction of **care accounts** which will track personal expenditure towards meeting eligible care needs, towards the new care cost cap. Each account will be adjusted annually in line with the rise in average earning.
- The introduction of **independent personal budgets**, where contribution to the care account is monitored without the need for a means test.
- An **increased tariff income/lower capital limit** figure from £14,250 to £17,000. Tariff income is explained in our other factsheets on residential care charging. **Figures may differ when introduced in 2020.**
- A new **appeals** system under which social care funding decisions made by a local authority can be challenged and independently reviewed.
- Some amendments to the charging and the choice of accommodation regulations.

Note: Draft regulations have been created to support the planned funding-related changes in April 2020, following a government consultation.

The transitional system and eligibility

In this factsheet we will describe the transitional system that will be in existence between April 2015 and April 2020 and summarise the changes planned beyond that date. Government advice on how local authorities should manage the transition is set down in section 23 of the statutory guidance. Here, it states that the new national eligibility criteria being introduced in April 2015 is intended to allow for **the same level of access** to care and support to be maintained in adult social care in the vast majority of circumstances and cases.

2 Your right to choose a care home

Section 8.36 of the statutory guidance confirms that where the care planning process has determined that a person's needs are best met in a care home, the local authority must provide for their **preferred choice** of accommodation, subject to certain **conditions**. Within certain parameters, you have a right to be placed in a care home of your choice anywhere in your locality or within the wider United Kingdom when a local authority is involved in arranging your placement. The procedure is discussed in this factsheet.

This principle reflects how we live today, for example the fact that people often live a long way from close family and friends, and may wish to move nearer when they experience problems requiring services such as residential care.

It also reflects the local authority's duty to maximise individual **wellbeing** as defined in the new *Care Act 2014*; and the requirement to try to meet the individual **outcomes** a person wishes to achieve in their day-to-day life in the care and support planning process – person-centred care planning.

Detailed guidance on this subject is set out in **Annex A** of the statutory guidance, which is entitled 'Choice of accommodation and additional payments'. The local authority must have regard to this and must also follow the *Care and Support and Aftercare (Choice of Accommodation) Regulations 2014* (**the choice of accommodation regulations** in this text).

Note: In public law terms, ‘have regard to’ means that a local authority must generally be aware of and follow the wording of the statutory guidance except for in exceptional circumstances and with good reason; regulations exist in a narrower interpretative realm where their wording must simply be adhered to and followed.

These also link with statutory guidance and regulations on cross-border placements and continuity of care, which are discussed in section 8. All of these are intended to support the laws and principles set down in the *Care Act 2014*. This factsheet is based on these sources. Web links to all the sources used in this factsheet can be found the Appendix at section 16.

2.1 Genuine choice

In your locality

With regard to the minimum choice of care homes that a person should be provided with by the local authority to meet an assessed eligible need, the statutory guidance, at section 8, states that:

The local authority must ensure that the person has a **genuine choice** and must ensure that at least one option is available and affordable within a person’s personal budget and should ensure that there is more than one. However, a person must also be able to choose **alternative options**, including a more expensive setting, where *a third party or in certain circumstances the resident is willing and able to pay the additional cost (‘top-up’)*. However, an additional payment must always be **optional** and never as a result of commissioning failures leading to a lack of choice.

Nationally

Following an **assessment**, the local authority may make a **recommendation** for the provision of care home accommodation to meet your **eligible needs**. This should be after all other options have been considered to allow you to remain in your own home.

If you meet the eligibility criteria, the local authority has a **duty to arrange** suitable care and support for you if you are unable to arrange it yourself. If the local authority arranges residential care for you, a **means test** will be carried out to assess whether you will need to contribute to your **personal budget**. Within certain limitations, you have national choice of accommodation rights. The choice right mentioned above is also covered in Annex A of the statutory guidance:

A person's ability to make an informed choice is a key element of the care and support system. This must extend to where the care and support planning process has determined that a person needs to live in a specific type of accommodation to meet their care and support needs.

Section 30 of the *Care Act 2014* states that regulations will explain what is required where the local authority is going to be meeting a person's needs under sections 18 to 20 of the Act by providing or arranging for the provision of accommodation of a **specified type**. These regulations are the choice of accommodation regulations cited in the above section. It also states that where the person expresses a preference for particular accommodation of that type, and specified **conditions are met**, the local authority **must** provide or arrange for the provision of the preferred accommodation. It confirms that the regulations will require the person or a person of a specified description to pay for some or all of the **additional cost** in certain cases or circumstances. 'Additional cost' means the cost of providing or arranging for the provision of the preferred accommodation less the amount specified in the person's **personal budget** for meeting their care and support needs in residential accommodation.

In these circumstances the local authority **must provide or arrange** for the provision of the preferred accommodation in accordance with the regulations. It states that the **specified types of accommodation** are:

- care home accommodation;
- shared lives scheme accommodation;
- supported living accommodation.

Regulation 3 of the choice of accommodation regulations and Annex A of the statutory guidance state that where a local authority is responsible for meeting your care and support needs and you have been assessed as requiring a particular type of accommodation you have a **right to choose** between different providers **of that type** of accommodation **provided that**:

- the accommodation is suitable in relation to your assessed needs;
- to do so would not cost the local authority more than the amount specified in your personal budget for accommodation of that type;
- the accommodation is available; and
- the provider of the accommodation is willing to enter into a contract with the local authority to provide the care at the rate identified in your person's personal budget on the local authority's terms and conditions.

This choice **must not be limited** to those settings or individual providers with which the local authority already contracts with or operates, or those that are within that local authority's geographical boundary.

If you choose to be placed in a setting that is **outside the local authority's area**, the local authority must still arrange for your preferred accommodation. In doing so, the local authority should have regard to the cost of care in that area when setting your personal budget. Local authorities should also act in accordance with the statutory guidance and regulations on **ordinary residence and cross-border placements**.

Note: In Annex A of the statutory guidance local authorities are reminded that they must be mindful of section 1 of the *Care Act 2014* regarding the duty to promote individual wellbeing when administering the choice of accommodation process.

These rights **do not apply** to residents whose care is fully funded by the **NHS** as a continuing NHS health care service. NHS staff should discuss with patients and their families where care might be provided and take these views into account when making arrangements. For further information see Age UK's Factsheet 20, *NHS continuing healthcare and NHS-funded nursing care*.

2.2 Written reasons for refusal

If the local authority refuses to arrange a place in your preferred accommodation it must have a clear, justifiable reason for doing so and should set it out in writing. Annex A, paragraphs 17-18 of the statutory guidance cover instances where the local authority may be unable to meet the choice requirements

3 Local authority limits on funding

As noted above, one of the basic conditions attached to the provision of preferred accommodation is that it would not cost the local authority more than the amount specified in your personal budget for accommodation of that type. **You must be provided with a personal budget** as part of your care and support plan, which sets out the cost to the local authority of meeting your assessed eligible needs.

3.1 Personal budgets and the 'usual cost'

Until April 2015 each local authority set maximum amounts that it would be prepared to pay for particular types of care. These were referred to as the local authority's '**usual costs**' and should always have been set at a level sufficient to allow the authority to meet assessed care needs. Setting a 'usual cost' is no longer required although in practice there will still be typical amounts that will usually meet the costs of different types of accommodation and care in a care home and thus will be specified in personal budgets.

Under the new system, the 'usual cost' figure has been superseded by the '**amount specified in the adult's personal budget**', a 'person's personal budget' or the 'amount identified for the provision of the accommodation in the personal budget' (phrases from the *Care Act 2014* and its supporting regulations and statutory guidance). The amount specified in the personal budget should be **enough** to ensure adequate supply of services to meet assessed eligible needs.

Independent personal budget

Section 28 of the *Care Act 2014* introduces independent personal budgets for those who are funding the costs of their care and accommodation themselves. **Due to a decision made by the government in July 2015, this will now not take place until April 2020.** This is a statement which specifies what the cost would be to the local authority concerned of meeting the adult's eligible needs for care and support, minus the daily living costs, if it were required to do so. From April 2020, the weekly personal budget will be metered on a care account towards the care cost cap, registering the amount that you have paid. This is described in section 29 of the Act. The local authority must monitor the arrangement and review on request. It can also revise it in future.

3.2 'Market shaping' and adequate local supply

The principle of an adequate personal budget links with other new *Care Act 2014* duties such as that of 'market shaping' in Section 5 of the Act. Here, a local authority must promote diversity and quality in the provision of efficient, effective, sustainable, services. There must be a variety of high quality providers. This also requires new local authority (and Care Quality Commission) oversight duties set out elsewhere in the Act aimed at preventing provider failure. This would appear to require realistic annual cost calculations and projections by local authority commissioners to ensure appropriate ongoing supply similar to the previous 'usual cost'-type approach. Annex A of the statutory guidance states that:

In all cases the local authority must have regard to **the actual cost of good quality care** in deciding the personal budget to ensure that the amount is one that reflects local market conditions. This should also reflect other factors such as the person's circumstances and the availability of provision. In addition, the local authority should not set arbitrary amounts or ceilings for particular types of accommodation that do not reflect a fair cost of care.

Note: In a recent High Court case, Torbay Council's 'usual rate' was ruled unlawful because it had been calculated on the basis of what the care home would need assuming it was subsidised by third-party top-ups and higher self-funder rates. There were also other criticisms of the calculation, which were found to be unsatisfactory. At paragraph 17, the judge states that:

Ms Mason can, however, provide only limited help as to how the mathematical model was engineered by Mr Thomas (deceased). She can help as to top-up and other fees which were admittedly taken into consideration. Top-up and income derived from private fees and other publicly funded residents were, she says entirely properly, considered as part of the income which a care home can expect. She says they are therefore relevant when quantifying the further income which a care home needs to earn from local authority-funded residents in order to provide a reasonable and sustainable return on capital for a care home provider.

The council wrongly required top-ups on the basis that the fee is higher than the 'usual rate' but calculated the 'usual rate' on the assumption there is a top-up.

See the following link to this case:

<http://www.bailii.org/ew/cases/EWHC/Admin/2014/4321.html>

4 'Top-up' payments for more expensive accommodation

If you would prefer to live in a care home that costs more than the local authority's usual cost, the local authority must arrange this provided that another person is willing to meet the difference between the amount specified in your personal budget and the actual level of the home's cost, and certain other requirements are met.

This is usually known as a top-up or third-party payment. You should not be asked to find a third party to make a top-up payment if you have moved into a more expensive home out of necessity rather than personal preference (see section 5 below) – **it must always be your choice.**

Annex A, paragraph 26, of the statutory guidance confirms that **the amount of the top-up** should be the difference between the actual costs of the preferred provider and the amount that the local authority would have set in a personal budget or local mental health after-care (*Mental Health Act*-related) limit to meet the person's eligible needs by arranging or providing accommodation of the same type. Section 10.27 of the statutory guidance advises that when considering the cost of care in its area the local authority is likely to identify a range of costs which apply to different circumstances and settings. For the purposes of agreeing a 'top-up' fee the local authority must consider what personal budget it would have set at the time care and support is needed. The guidance states that it **should not automatically default to the cheapest rate** or to any other arbitrary figure. However, it can consider what the best value is.

The choice of accommodation regulations set out an '**additional cost condition**' (**top-up**), at regulation 5. This is met if the local authority is satisfied that another person (the payer), other than the adult, is able and willing to pay the **additional cost of the preferred accommodation** for the period during which the local authority expects to meet the adult's needs by providing or arranging for the provision of that accommodation. It goes on to state that the payer must enter a **written agreement** with the local authority in which they agree to pay the additional cost. The local authority must provide the payer with access to sufficient **information and advice** to enable them to understand the terms of the proposed written agreement before entering into it. The written agreement must include:

- the additional cost;
- the amount specified in the adult's personal budget in relation to the provision of accommodation;
- the frequency of payments;
- details of the person to whom the payments are to be made;
- provision for review of the agreement;
- the consequences of ceasing to make payments;
- the effect of increases in charges made by the provider of the preferred accommodation; and

- the effect of changes in the payer's financial circumstances.

Annex A of the statutory guidance provides detailed further guidance on choice of accommodation and additional payments.

Note: The local authority retains responsibility for the full amount of the care home's fees when it arranges the placement.

For further information see Age UK's Factsheet 10, *Paying for permanent residential care* and Age UK's Factsheet 38, *Treatment of property in the means test for permanent care home provision*.

4.1 Subsequent price increases

Any subsequent increases in the care home's fees are **not necessarily apportioned equally** between the local authority and the third party. The statutory guidance therefore requires the local authority to set out its approach to unforeseeable price increases in writing at the outset. This should include details of how agreement will be reached on the sharing of any price increases and should also state that there is no guarantee that these increased costs will automatically be shared evenly should the provider's costs rise more quickly than the amount the local authority would have increased the personal budget or local mental health after-care limit and there is an alternative option that would be affordable within that budget.

4.2 Changes in circumstances

Arrangements need to be **reviewed from time to time** by the local authority, for example in response to any changes in circumstances of the cared for person, the person making the 'top-up' payments (if this is different from the cared for person), local authority commissioning arrangements or a change in provider costs. However, these changes may not occur together. The person making the top-up payment could see an unexpected change in their financial circumstances that will impact their ability to continue to pay the 'top-up' fee. Where a person is unable to continue making 'top-up' payments, the local authority may seek to recover any outstanding debt and has the power to make alternative arrangements to meet a person's needs, subject to a needs assessment. The statutory guidance states that the local authority **must set out in writing** how it will respond to such a change and what the responsibilities of the person making the 'top-up' payment are in terms of informing the local authority of the change in circumstances.

The local authority should also make it clear that where the person has a change in circumstances that requires a new financial assessment and this results in a change in the level of contribution the person themselves makes, this may not reduce the need for a 'top-up' payment.

Note: Care homes should only ask for top-up payments where this has been agreed as part of the local authority's contract with the home. If the home asks for a payment not specified in the contract, it is not appropriate and you should raise this with the local authority.

4.3 Top-ups distinguished from other care home charges

Top-up payments should be distinguished from charges made for extra items not covered by the home's basic fees, which are permitted. If you are unsure about any request for payment you receive, check the contract for your care, which should set out what the home's basic fees cover.

4.4 Consequences of ceasing to make payments

As stated above, the local authority must make clear in writing the consequences should there be a breakdown in the arrangement to meet the cost of the top-up. This should include that you may have to move to **alternative accommodation** where this would be suitable to meet your needs and affordable within the personal budget or local mental health after-care limit. As with any change of circumstance, a local authority must undertake a new assessment before considering this course of action, including consideration of a requirement for an assessment of health needs, and have regard to the your wellbeing. You should ask that the authority include within the assessment the potential risks to your physical and psychological well-being that a move might present. They must take these elements into account when considering moving you.

4.5 Review requirements

Annex A of the statutory guidance requires that a top-up arrangement should be reviewed on a **regular basis** and clear explanations provided for any proposed contribution increases. A local authority must set out in writing details of how the arrangements will be reviewed, what may trigger a review, and circumstances when any party can request a review.

Local authorities should also consider how often it may be appropriate to review the arrangements. In doing so it should bear in mind how often it reviews other financial arrangements, such as deferred payment agreements. These should take place at least annually and in line with wider reviews of the financial assessment.

4.6 First party top-up

Residents are not allowed to make their own top-up payments (first party top-up) except during the first 12 weeks of permanent care when a property is being disregarded, where there is a deferred payment agreement in place or where they are receiving accommodation under section *117 of the Mental Health Act 1983*, in certain circumstances. There are plans to expand the first party top-up right in April 2016, at which time there should be amended statutory guidance to explain how the change will interact with other rules such as those related to deliberate deprivation of assets.

5 When should a local authority pay more than usual?

The care home resident or a third party can only be asked for a top-up when the resident has expressed a preference for more expensive accommodation than a local authority would usually expect to pay.

The local authority should not request a top-up payment **unless you choose** to enter a more expensive home when care suitable to meet your assessed needs is available within the amount set by the local authority in your personal budget. If there are no suitable places available at that price at any given time, the local authority should arrange a placement in a more expensive home and increase your personal budget to meet the extra cost.

The personal budget is the cost to the local authority of meeting your needs which the local authority chooses or is required to meet. Annex A, paragraph 11, of the statutory guidance describes circumstances where the cost to the local authority may need to be 'adjusted' because of the particular nature of your needs. Examples might include higher levels of needs or a special diet that can only be met in a specific setting; and extra facilities required for cultural or medical reasons. If so, the local authority should meet the extra expense, even if there are places available at the usual cost in other homes that cannot meet those needs.

In all cases the local authority must have regard to the actual cost of good quality care (see section 3.2 above) in deciding the personal budget to ensure that the amount is one that reflects local market conditions. This should also reflect other factors such as the person's circumstances and the availability of provision.

In addition, the local authority should not set arbitrary amounts or ceilings for particular types of accommodation that do not reflect a fair cost of care. Local authorities must also have regard to the guidance on personal budgets in Chapter 11 of the statutory guidance, particularly, paragraph 11.23 on calculating the personal budget. This also links to local authority duties on 'market shaping' and commissioning set out in the *Care Act 2014* and chapter 4 of the statutory guidance (see section 3 above).

6 Availability of accommodation

Paragraphs 13-16 of Annex covers availability within the choice of accommodation rules. It confirms that **you should not have to wait** for your assessed needs to be met. Your preferred care home may not have any current vacancies. If it doesn't, the local authority should place you on the waiting list for your preferred home and make any necessary arrangements to meet your needs in the **interim period**. Any interim arrangements should be in a setting suitable to meet your assessed needs, such as another care home or in your own home with an enhanced care package. If you are a hospital in-patient, remaining in hospital may not be considered a suitable setting once you have been assessed as being ready for discharge.

The local authority should explain how the waiting list works and inform you of any progress. If the interim arrangement continues beyond 'a reasonable time period' (12 weeks is given as an example), the local authority should reassess you to ensure that your interim and preferred accommodation are still suitable to meet your needs. You should also be asked whether you still wish to wait for your preferred accommodation or would now prefer to remain in the interim accommodation.

While you are staying in interim accommodation, and if you subsequently choose to remain there on a long-term basis, the rules on top-up payments are the same as those set out above: the local authority can only seek a top-up payment if you have chosen to move into a home costing more than the amount specified in your personal budget.

7 Ordinary residence

Rights to adult social care services in a local authority area are generally based on your ordinary residence in that locality. This means the place where you are **permanently living**, out of your own choice, at the time of your needs assessment by the local authority. If someone lacks mental capacity to make this choice, then a different approach is required based on the 'best interest' principles contained in the *Mental Capacity Act 2005* and its Code of Practice.

Local authorities sometimes have disputes over who is responsible for a service user when they move from one area to another. The law on ordinary residence is set down in the *Care Act 2014*, its supporting regulations and the statutory guidance. These set out the following key principles if an issue arises:

- Where two or more local authorities fall into dispute over a person's ordinary residence: the key priority of local authorities should be the well-being of the service user.
- The provision of accommodation and/or services must not be delayed or otherwise adversely affected because of uncertainty over which local authority is responsible.
- One local authority must accept responsibility for the provision of social care services until the dispute is resolved.

There is further information on ordinary residence in Age UK's Factsheet 41, *Social care assessment, eligibility and care planning*.

8 Continuity of care and cross-border placements

The *Care Act 2014* at section 37-41, the *Care and Support (Continuity of Care) Regulations 2014* and section 20 of the statutory guidance set out new rules for the **portability** of existing care packages based on the introduction of a new, single, national eligibility criterion for adult social care in April 2014, which has removed what was often previously called the 'postcode lottery'.

The new rules mean that if someone moves between local authorities an existing care package must be maintained until it is reassessed in the receiving authority. The receiving authority must '**have regard**' to existing care and support plan. It must give **written reasons** for any subsequent service changes following its assessment, for example because the person is now close to people able to provide care and support, thus reducing needs. This whole process should be planned in advance to minimise disruption.

8.1 Cross-border placement within the 4-nations

Schedule 1 of the *Care Act 2014* and section 21 of the statutory guidance set out **new rules** to allow cross-border placements within the 4 nations based on agreements between all parties. This is also set out in various new regulations. It includes guidance on establishing where a person lives, rights to health and social care services in the new location, confirmation that **the placing authority retains responsibility** (including funding) and on procedures for dispute resolution. The above regulation factsheet focusses on England.

9 Self-funders' right to request assistance

The *Care Act 2014* enables a person who can afford to pay for their own care and support in full to ask the local authority to arrange their care on their behalf for a fee. Where the person requires care in a care home to meet their needs, the local authority may choose to respond to the person's request by meeting their needs – **it has discretion** (also known as a power). Where the person requires some other type of care, including other types of accommodation to which the right to a choice applies, the local authority must meet those needs – **an absolute duty**. In such circumstances, whether because the authority chooses to meet needs in a care home, or is required to meet needs in some other type of accommodation, the same rules on choice of accommodation apply as are described above. This is confirmed in sections 41-43 of the statutory guidance. Section 8.58 of the statutory guidance confirms that:

Where a local authority chooses to meet the needs of a person with resources above the financial limit who requires a care home placement, it must not charge an arrangement fee. This is because it would support that person under its power (rather than its duty) to meet needs, and the ability to charge the arrangement fee applies only to circumstances when the authority is required to meet needs.

In supporting self-funders to arrange care, the local authority may choose to enter into a contract with the preferred provider, or may broker the contract on behalf of the person. Where the local authority is arranging and managing the contract with the provider, it should ensure that there are clear arrangements in place as to how the costs will be met, including any top-up element.

Ultimately, the local authority should assure itself that **robust contractual arrangements** are in place in such circumstances that clearly set out where responsibilities for costs lie and ensure that the person understands those arrangements. Self-funders will have to pay for the costs of their care and support including, in cases where they choose a setting that is more expensive than the amount identified in their personal budget, the top-up element of the costs of that setting.

Note: Under section 18 of the *Care Act 2014*, a local authority has a duty to meet eligible needs in all circumstances where someone lacks the mental capacity to meet their own needs and has no one available to assist them.

10 Shared lives, supported living and extra care housing settings

Chapter 8.36 of the statutory guidance confirms that where the care planning process has determined that a person's needs are best met in a care home, the local authority must provide for their preferred choice of accommodation, subject to certain conditions. This right also **extends to** shared lives, supported living and extra care housing settings. Determining the appropriate type of accommodation should be made with the prospective resident as part of the care and support planning process, therefore this choice right only applies between providers of the same type of accommodation. So the first question is what sort of setting they need and then the choice is between providers of that sort of setting.

A **shared lives scheme** is accommodation which is provided for an adult by a shared lives carer. The choice of accommodation regulations describe what these types of service provision are. A 'shared lives carer' means an individual who, under the terms of a shared lives agreement, provides, or intends to provide, personal care for adults together with, where necessary, accommodation in the their own home. A 'shared lives agreement' needs to be entered into between a person providing the service and the individual receiving it for the provision of personal care and the accommodation in the carer's home. This could be directly provided by a local authority or externally provided.

Supported living accommodation is accommodation in premises which are specifically designed or adapted for occupation by adults with needs for care and support to enable them to live as independently as possible and accommodation which is provided:

- in premises which are intended for occupation by adults with needs for care and support (whether or not the premises are specifically designed or adapted for that purpose); and
- in circumstances in which personal care is available if required.

This does not include adapted premises where the adult had occupied those premises as their home before the adaptations were made.

Extra care housing is a form of supported living

11 **Mental health after-care and choice of accommodation**

The *Care and Support and Aftercare (Choice of Accommodation) Regulations 2014* **extend the choice right** into the provision of ongoing mental health after-care services under section 117 of the *Mental Health Act 1983* when someone has left hospital, which might include the provision of residential care. This is confirmed in the statutory guidance.

Local authorities are required to provide or arrange the provision of the preferred accommodation if the conditions in the regulations are met.

The regulations give people who receive mental health after-care broadly the same rights to choice of accommodation as someone who receives care and support under the *Care Act 2014*. But some differences arise because after-care is provided **free of charge** and, as the legislative requirement for a care and support plan under the *Care Act 2014* does not apply to section 117 after-care, the care plan should instead be drawn up under guidance on the **Care Programme Approach (CPA)**. This is the name given to care planning in a specifically mental health context. Care planning under the CPA should, if accommodation is an issue, include identifying the type of accommodation which is suitable for the person's needs and affording them the right to choice of accommodation set out in the regulations made under section 117A of the *Mental Health Act 1983*. The person should be fully involved in the care planning process.

See Age UK's Factsheet 10, *Paying for permanent residential care*, for more information about this subject.

12 Information, advice and advocacy duties

Section 4 of the *Care Act 2014* states that each local authority **must establish and maintain** a service for providing people in its area with information and advice relating to care and support for adults and support for carers. The service must provide information and advice on the following areas:

- the local care and support system and how it operates;
- the choice of types of care and support, and the choice of providers available to those who are in the authority's area;
- how to access the care and support that is available;
- how to access independent financial advice on matters relevant to the meeting of needs for care and support; and
- how to raise concerns about the safety or well-being of an adult who has needs for care and support.

With regard to this duty, the Act advises local authorities to identify local people who would benefit from the service to ensure that its provision enables them:

- to identify matters that are or might be relevant to their personal financial position in this context;
- to make plans for meeting needs for care and support that might arise; and
- to understand the different ways in which they may access ‘independent financial advice’ on matters relevant to the meeting of needs for care and support.

The information and advice provided or arranged by the local authority must be accessible and appropriate.

“Independent financial advice” means financial advice provided by a person who is independent of the local authority in question.

This duty overlaps with other *Care Act 2014* duties, for example relating to prevention of needs for care and support.

Your right to independent advocacy

Someone you know may need to enter a care home, but may have difficulty expressing their views or making decisions for themselves. It is important to try to represent the person’s point of view as well as possible. Sometimes this might involve friends or family speaking on behalf of the resident. Under section of the *Care Act 2014*, there must be access to local independent advocacy, if needed. Local authorities must form a judgment about whether a person has “substantial difficulty in being involved” with the care and support processes and if it is thought that they do, and that “there is no appropriate individual to support and represent them for the purpose of facilitating their involvement, then the local authority must arrange for an independent advocate to support and represent the person” (Chapter 7.8 of the statutory guidance).

This links with the local authority’s duty to maximise your involvement in the assessment and care planning process, and the means test procedure. The duty is triggered where a person would experience substantial difficulty:

- understanding the relevant information;
- retaining that information;
- using or weighing that information as part of the process of being involved;

- communicating their views, wishes or feelings (whether by talking, using sign language or any other means).

This is similar to the duties triggered under the *Mental Capacity Act 2005* to provide an Independent Mental Capacity Advocate but it is not just confined to that definition.

An appropriate person must be provided by the local authority to fulfil this role.

13 Where someone lacks mental capacity

There will be cases where a person lacks mental capacity to express a choice for themselves. Local authorities should therefore act on the choices expressed by the person's advocate, carer or legal guardian in the same way they would on the person's own wishes, unless in the local authority's opinion it would be against the best interests of the person, as defined by the *Mental Capacity Act 2005* and its Code of Practice. Often a spouse, close relative or friend will have a Lasting Power of Attorney, which gives them powers to advocate on the person's behalf. Also, as noted in the previous section, in certain circumstances a person has a right to an Independent Mental Capacity Advocate if they have no one to assist them with major decisions. See Age UK's Factsheet 22, *Arranging for someone to make decisions about your finance and welfare*, for further information.

14 Care Act changes from April 2020

Care Act 2014 changes relating to the implementation of new rules on paying for care were previously planned to take taking place in 2016, including:

- a lifetime care cost cap (£72,000 in 2016) above which the State meets the cost of eligible care, excluding daily living costs (£230 per week in 2016);
- an increased upper capital limit from £23,250 to £27,000 (for non-residential care and support or residential care where the value of the resident's home is disregarded) or £118,000 (for residential care where the value of the resident's home is not disregarded) in April 2016;

- introduction of care accounts which will track personal expenditure towards meeting eligible needs; some local authorities may start to introduce this in ahead of April 2016.

In July 2015, the government decided to delay these changes until April 2020 at which time the 2016 figures quoted above may be different.

The care cost cap relates to money that a person pays towards meeting their assessed, eligible needs. However, only the amount the local authority deems appropriate in the personal budget will be registered. If someone pays more than this for whatever reason, this won't count towards the cap. Care and support costs above the 'cap' will be provided free of charge – minus the daily living cost charge (see below).

Tariff income is calculated as the difference between the lower and upper capital thresholds, presently £14,250-£23,250. **As can be seen above, this figure will change radically in April 2020.** £1 is added to the income part of the means test for every £250 in capital owned above the lower capital threshold, up to the upper capital threshold, which was likely to be between £27,000-£118,000 (see above) in April 2016. **Writing in July 2015, it is not possible to know what the figures will be in 2020 following the recent decision to delay the implementation of this policy.**

Further details of the proposed funding-related changes are contained in the government consultation in draft regulations and guidance.

From April 2020, you will have to also pay the weekly daily living cost fee, which was set at £230 per week in 2016 (but may be different in 2020), whilst in local authority supported residential care. This is a new charge within the means test system requiring those in residential care to meet the estimated cost elements such as rent, food and utilities, which they would have had to pay if they remained at home.

15 Making a complaint

If you feel that you are not being allowed a reasonable choice of care home, or that the local authority is seeking an inappropriate top-up payment, raise the issue with the local authority. Each local authority is required to operate a complaints procedure that complies with directions issued by the Government.

Most issues can be resolved through informal discussion, for example with the manager in the department dealing with your case. If informal discussions do not produce an acceptable outcome, ask the authority for details of how to make a formal complaint.

From April 2016 a new appeals system is due to be implemented which will enable decisions taken by a local authority under Part 1 of the *Care Act 2014* to be challenged and reviewed.

There is detailed information about making a complaint in Age UK's Factsheet 59, *How to resolve problems and make a complaint about social services*.

16 Appendix

There are four sources of new primary legislation, secondary legislation and statutory guidance on which this factsheet is based:

1/ The Care Act 2014, Part 1

<http://www.legislation.gov.uk/ukpga/2014/23/contents/enacted>

Part 1 of the new Act is the main source for this factsheet as it replaces over 60 years of adult social care legislation. The *Care Act 2014* has 4 Parts.

2/ Care and Support Statutory Guidance, issued under the Care Act 2014:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/366104/43380_23902777_Care_Act_Book.pdf

This large document supports the *Care Act 2014* and the regulations listed below. A local authority must have regard to its relevant sections when administering the charging system.

There is significant overlap in this document with some of the regulations below, for example regarding section 8 'Charging and financial assessment' and the Annexes at the end of the document, particularly B and C on the treatment of capital and income.

3/ The final negative regulations under Part 1 of the Care Act 2014:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/376204/2903119_Care_Act_Negative_Regulations_Master.pdf

This document contains many new regulations including: *The Care and Support (Charging and Assessment of Resources) Regulations 2014*; *The Care and Support (Ordinary Residence) (Specified Accommodation) Regulations 2014*; and *The Care and Support (Cross-border Placements and Business Failure: Temporary Duty) (Dispute Resolution) Regulations 2014*.

4/ The final affirmative regulations under Part 1 of the Care Act 2014:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/366048/43738_2902999_Regs_Affirmative_Accessible.pdf

An important regulation within this document is the *Care and Support (Eligibility Criteria) Regulations 2014*.

Note: The terms 'negative' and 'affirmative' refer to the regulations' status prior to finally coming into force in April 2015.

17 Useful organisations

Care Quality Commission (The)

The independent regulator of adult health and social care services in England, whether provided by the NHS, local authorities, private companies or voluntary organisations. Also protects the rights of people detained under the Mental Health Act.

Tel: 03000 616 161

Email: enquiries@cqc.org.uk

Website: www.cqc.org.uk

Carers UK

National charity providing information and advice about caring alongside practical and emotional support for carers. Also campaigns to make life better for carers and influences policy makers, employers and service providers, to help them improve carers' lives.

20 Great Dover Street, London, SE1 4LX

Tel: 0808 808 7777 (free call)

Email: info@carersuk.org

Website: www.carersuk.org

Carers Trust

Website: www.carers.org/scotland

Carers Wales can be contacted at:

Tel: 029 20 811370

Website: www.carerswales.org

Citizens Advice

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

In Wales there is a national phone advice service on 0344 477 2020. It is available in some parts of England on 0344 411 1444. In Scotland, there is a national phone advice service on 0808 800 9060.

To find details of your nearest CAB check your phone book, or in:

England or Wales, go to www.citizensadvice.org.uk

Northern Ireland, go to www.citizensadvice.co.uk

Scotland, go to www.cas.org.uk

Visit www.adviceguide.org.uk for online information

Department of Health

Government department with overall responsibility for social care including residential care homes.

Tel: 020 7210 4850

Website: www.gov.uk/government/organisations/department-of-health

Elderly Accommodation Counsel

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

EAC FirstStop Advice, 3rd Floor, 89 Albert Embankment, London, SE1 7TP

Tel: 020 7820 1343

Email: infor@firststopadvice.org.uk

Website: www.housingcare.org

Independent Age

A charity that provides free and impartial advice on home care, care homes, NHS services, housing and other issues advice for older people, their families and professionals on community care.

6 Avonmore Road, London, W14 8RL

Tel: 0800 319 6789

Email: charity@independentage.org

Website: www.independentage.org

Local Government Ombudsman (LGO)

Adults who fund their own residential or non-residential social care have access to an independent complaints review service provided by the Local Government Ombudsman. For advice on making a complaint, or to make a complaint call the advice line on 0300 061 0614 or 0845 602 1983, write to The Local Government Ombudsman, PO Box 4771, Coventry CV4 0EH or fill in the form on the LGO.

The Local Government Ombudsman, PO Box 4771, Coventry, CV4 0EH

Tel: 0300 061 0614

Fax: 024 7682 0001

Website: www.lgo.org.uk

Relatives & Residents Association (The)

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

1 The Ivories, 6-18 Northampton Street, London, N1 2HY

Tel: 020 7359 8148

Email: info@relres.org

Website: www.relres.org

Veterans UK

Website bringing together services for veterans including advice on pensions, compensation and welfare services.

Tel: 0808 1914 2 18

Email: veterans-uk@mod.uk

Website: www.gov.uk/government/organisations/veterans-uk

18 Further information from Age UK

Age UK Information Materials

Age UK publishes a large number of free Information Guides and Factsheets on a range of subjects including money and benefits, health, social care, consumer issues, end of life, legal, employment and equality issues.

Whether you need information for yourself, a relative or a client our information guides will help you find the answers you are looking for and useful organisations who may be able to help. You can order as many copies of guides as you need and organisations can place bulk orders.

Our factsheets provide detailed information if you are an adviser or you have a specific problem.

Age UK Advice

Visit the Age UK website, www.ageuk.org.uk, or call Age UK Advice free on 0800 169 65 65 if you would like:

- further information about our full range of information products
- to order copies of any of our information materials
- to request information in large print and audio
- expert advice if you cannot find the information you need in this factsheet
- contact details for your nearest local Age UK

Age UK

Age UK is the new force combining Age Concern and Help the Aged. We provide advice and information for people in later life through our publications, online or by calling Age UK Advice.

Age UK Advice: 0800 169 65 65

Website: www.ageuk.org.uk

In Wales, contact:

Age Cymru: 0800 022 3444

Website: www.agecymru.org.uk

In Scotland, contact Age Scotland

by calling Silver Line Scotland: 0800 470 8090

(This line is provided jointly by Silver Line Scotland and Age Scotland.)

Website: www.agescotland.org.uk

In Northern Ireland, contact:

Age NI: 0808 808 7575

Website: www.ageni.org.uk

Support our work

Age UK is the largest provider of services to older people in the UK after the NHS. We make a difference to the lives of thousands of older people through local resources such as our befriending schemes, day centres and lunch clubs; by distributing free information materials; and taking calls at Age UK Advice on 0800 169 65 65.

If you would like to support our work by making a donation please call Supporter Services on 0800 169 87 87 (8.30 am–5.30 pm) or visit www.ageuk.org.uk/donate

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