

Choice of Accommodation

The Care and Support After-Care (Choice of Accommodation) Regulations 2014

Care and Support Statutory Guidance issued under the Care Act 2014 Department of Health

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1. Introduction

- 1.1. The policy of Worcestershire County Council (WCC) is to enable people to continue to live safely and independently in their own homes for as long as possible. However, it is recognised that for some people their needs can best be met by moving into care accommodation for example a residential or nursing care home.
- 1.2. Moving into care accommodation is a major decision in anyone's life, and it is important both for the individuals involved and their families that they receive appropriate support with decision making, and adjusting to significant life change.
- 1.3. The purpose of this document is to provide guidance on supporting people with choice of accommodation, and contains essential information on the legislation, related to WCC's responsibilities for people entering specified types of care accommodation
- 1.4. The document is for managers and operational staff working in WCC Directorate of Adult Services and for all staff working in Worcestershire Health and Care Trust Integrated Teams
- 1.5. The document has taken account of existing legal advice, and draws upon relevant legislation and case law

2. Principles and standards

- 2.1 WCC's aim is to enable people to continue to live safely and independently in their own homes for as long as possible.
- 2.2 The person and their family will be fully involved in decisions about where they will live.
- 2.3 Decision making about admission to care accommodation will be fair, consistent and transparent, and will take into account WCC's need to allocate its financial resources in the most cost effective way.
- 2.4 No decision will be taken about admission to care accommodation until we are sure that independence and potential abilities have been fully maximised.
- 2.5 People moving into care accommodation can expect a comprehensive assessment of their needs carried out in full consultation with themselves and involving all relevant agencies, carers and families where appropriate.
- 2.6 The assessment will look at a person's circumstances and balance the desire for independence with the need for a safe environment.
- 2.7 Individuals and their carers/families will be given adequate information to allow them to make informed choices about where they wish to live.

3. Policy Context

- 3.1 WCC's position is determined by the Care and Support After-care (Choice of Accommodation) Regulations 2014, and Care and Support Statutory Guidance issued under the Care Act 2014.
- 3.2 The Regulations and Statutory Guidance are intended to ensure that when local authorities with social services responsibilities make placements in specified types of

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accommodation, that, within reason, people are able to exercise genuine choice over where they live. The specified types of accommodation covered by the Regulations are:

- care home accommodation (see regulation 6);
 - shared lives scheme accommodation (see regulation 7); or
 - supported living accommodation (see regulation 8).
- 3.3 Hereafter, the term 'accommodation' should be taken to refer to the specified accommodation listed above
- 3.4 The guidance applies to both long-term and a temporary accommodation
- 3.5 The guidance describes the minimum of choice that local authorities should offer people and states that local authorities should make all reasonable efforts to maximise choice as far as possible.

4. The decision to arrange accommodation

- 4.1. If after an assessment of need, made in accordance with the General Principles of The Care Act 2014, and discussion with the person and their carer(s), WCC decides to provide accommodation of a specified type either permanently or temporarily, WCC will make a placement on behalf of the person in suitable accommodation.

5. Preferred accommodation

- 5.1 As with all aspects of service provision, there should be a general presumption in favour of people being able to exercise reasonable choice over the service they receive.
- 5.2 Where WCC is responsible for meeting a person's care and support needs and their needs have been assessed as requiring any of the specified types of accommodation in order to ensure they are met, the person must have the right to choose between different providers of that type of accommodation provided that:
- The accommodation is suitable in relation to the person's assessed needs
 - To do so would not cost WCC more than the amount specified in the person's 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 WCC to provide the care at the rate identified in the person's personal budget on WCC's terms and conditions.
- 5.3 The limitations on WCC's obligation to provide preferred accommodation as set out in the Regulations are not intended to deny people reasonable freedom of choice, but to ensure that WCC is able to fulfil its obligations for the quality of service provided and value for money.
- 5.4 This choice must not be limited to those settings or individual providers with which WCC already contracts with or operates, or those that are within WCC's geographical boundary. It must be a genuine choice across the appropriate provision.

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- 5.5 If a person chooses to be placed in a setting that is outside WCC's area, WCC must still arrange for their preferred care. In doing so, WCC should have regard to the cost of care in that area when setting the person's personal budget.

6. Suitability of accommodation

- 6.1 In exercising a choice, WCC must ensure that the accommodation is suitable to meet a person's assessed needs and identified outcomes established as part of the care and support planning process.
- 6.2 People are able to express a preference about the setting in which their needs are met through the care and support planning process. This process considers both the person's needs and preferences. Once this is agreed, the choice is between different settings, not different types. For example, a person cannot exercise the right to a choice of accommodation to choose a shared lives scheme when the care and support planning process, which involves the person, has assessed their needs as needing to be met in a care home.

7. Cost

- 7.1 The care and support planning process will identify how best to meet a person's needs. As part of that, WCC must provide the person with a personal budget, except in cases or circumstances set out in the Care Act (Personal Budget) Regulations. The Personal Budget is an important tool that provides clear information on the cost of meeting the person's needs.
- 7.2 The personal budget is defined as the cost of meeting the person's needs which WCC chooses or is required to meet. However, WCC should take into consideration cases or circumstances where this 'cost may need to be adjusted to ensure that needs are met. For example, a person may have specific dietary requirements that can only be met in specific settings.
- 7.3 In all cases WCC 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, WCC should not set arbitrary amounts or ceilings for particular types of accommodation that do not reflect a fair cost of care.
- 7.4 A person must not be asked to pay an additional amount or 'top-up' towards the cost of their accommodation because of market inadequacies or commissioning failures, and there must be a genuine choice. WCC must therefore ensure that at least one option is available that is affordable within a person's personal budget and should ensure that there is more than one.
- 7.5 If no preference has been expressed and no suitable accommodation is available at the amount identified in a personal budget, WCC must arrange care in a more expensive setting and adjust the budget accordingly to ensure that needs are met. In such circumstances, WCC must not ask for the payment of a 'top-up' fee. Only when a person has chosen a more expensive accommodation can a 'top-up' payment be sought. Section 11 sets out guidance on Additional Costs.

8. Availability

- 8.1 WCC has specific duties to shape and facilitate the market of care and support services locally, including ensuring sufficient supply. As a result, a person should not have to

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wait for their assessed needs to be met. However, in some cases, a short wait may be unavoidable, particularly when a person has chosen a particular setting that is not immediately available. This may include putting in place temporary arrangements – taking in to account the person’s preferences and securing their agreement – and placing the person on the waiting list of their preferred choice of provider for example. It should be remembered however that such arrangements can be unsettling for the person and should be avoided wherever possible. In such cases, WCC must ensure that in the interim adequate alternative services are provided and set out how long the interim arrangement may last for.

- 8.2 In establishing any temporary arrangements, WCC must provide the person with clear information in writing on the detail of the arrangements as part of their care and support plan. As a minimum this should include the likely duration of the arrangement, information on the operation of the waiting list for their preferred setting alongside any other information that may be relevant. If any interim arrangements exceed 12 weeks, the person may be reassessed to ensure that both the interim and the preferred option are still able to meet the person’s needs and that remains their choice
- 8.3 Where a person contributes to the cost of their care following a financial assessment they must not be asked to pay more than their assessment shows they can afford.
- 8.4 In some cases a person may decide that they wish to remain in the interim setting, even if their preferred setting subsequently becomes available. If the setting where they are temporarily resident is able to accommodate the arrangement on a permanent basis this should be arranged and they should be removed from the waiting list of their original preferred setting. Before doing so, WCC must make clear any consequences of that choice, including any financial implications.

9. Choice that cannot be met and refusal of arrangements

- 9.1 Whilst WCC should do everything it can to meet a person's choice, inevitably there will be some instances where a choice cannot be met, for example if the provider does not have capacity to accommodate the person. In such cases WCC must set out in writing why it has not been able to meet that choice and should offer suitable alternatives.
- 9.2 WCC must do everything it can to take account of a person's circumstances and preferences when arranging care. However, in all but a very small number of cases such as where an individual is being placed under guardianship under Section 7 of the Mental Health Act 1983, an individual has a right to refuse to enter a setting whether that is on an interim or permanent basis.
- 9.3 Where a person unreasonably refuses the arrangements, WCC is entitled to consider that it has fulfilled its statutory duty to meet needs and may then inform the person in writing that as a result they need to make their own arrangements. This should be a step of last resort and WCC should consider the risks posed by such an approach, for both the authority itself and the person concerned. Should the person contact WCC again at a later date, WCC should reassess the needs as necessary and re-open the care and support planning process

10. Contractual terms and conditions

- 10.1 In supporting a person’s choice of setting, WCC may need to enter into a contract with a provider that they do not currently have an arrangement with. In doing so, WCC should ensure that the contractual conditions are broadly the same as those they would negotiate with any other provider whilst taking account of the individual circumstances.

Strict or unreasonable conditions should not be used as a means to avoid or deter the arrangement.

11. Additional costs or top-up payments

- 11.1 In some cases, a person may actively choose a setting that is more expensive than the amount identified for the provision of the accommodation in their personal budget. Where they have chosen a setting that costs more than this, an arrangement will need to be made as to how the difference will be met. This is known as an additional cost or 'top-up' payment and is the difference between the amount specified in the personal budget and the actual cost of the accommodation. In such cases, WCC must arrange for them to be placed there, provided a third party, or in certain circumstances the person in need of care and support, is willing and able to meet the additional cost.
- 11.2 The following sections of guidance only apply where the person has chosen a more expensive setting. Where someone is placed in a more expensive setting solely because WCC has been unable to make arrangements at the anticipated cost, the personal budget must reflect this amount. The person would then contribute towards this personal budget according to the financial assessment. The additional cost provisions must not apply in such circumstances.

Agreeing a 'top-up' fee

- 11.3 Having chosen a setting that is more expensive, based on good information and advice, WCC should ensure that the person understands the full implications of this choice, remembering that this is often a point of crisis. This should include for example that a third party, or in certain circumstances the person needing care and support, will need to meet the additional cost of that accommodation for the full duration of their stay and that should the additional cost not be met they may be moved to an alternative setting.
- 11.4 WCC must ensure that the person paying the 'top-up' is willing and able to meet the additional cost for the likely duration of the arrangement, recognising that this may be for some time into the future. Therefore the person paying the 'top up' must enter into a written agreement with WCC, agreeing to meet that cost. The agreement must, as a minimum, include the following:
- the additional amount to be paid;
 - the amount specified for the accommodation in the person's personal budget;
 - the frequency of the payments;
 - to whom the payments are to be made;
 - provisions for reviewing the agreement;
 - a statement on the consequences of ceasing to make payments;
 - a statement on the effect of any increases in charges that a provider may make;
 - a statement on the effect of any changes in the financial circumstances of the person paying the 'top-up'.
- 11.5 Before entering into the agreement, WCC must provide the person paying the 'top-up' with sufficient information and advice to ensure that they understand the terms and conditions, including actively considering the provision of independent financial information and advice.

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- 11.6 Ultimately, if the arrangements for a 'top-up' were to fail for any reason, WCC would need to meet the cost or make alternative arrangements, subject to a needs assessment. Further details are set out below in the consequences of ceasing to make payments.
- 11.7 WCC should therefore maintain an overview of all 'top-up' agreements and should deter arrangements for 'top-up' payments to be paid directly to a provider.

The amount to be paid

- 11.8 The amount of the 'top-up' should be the difference between the actual costs of the preferred provider and the amount that WCC would have set in a personal budget or local mental health after-care limit to meet the person's eligible needs by arranging or providing accommodation of the same type.

Frequency of payments

- 11.9 In agreeing any 'top-up' arrangement, WCC must clearly set out how often such payments need to be made, e.g. on a weekly or monthly basis.

Responsibility for costs and to whom the payments are made

- 11.10 When entering into a contract to provide care in a setting that is more expensive than the amount identified in the personal budget, WCC is responsible for the total cost of that placement. This means that if there is a break down in the arrangement of a 'top-up', for instance if the person making the 'top-up' ceases to make the agreed payments, then WCC will be liable for the fees until it has either recovered the additional costs it incurs or made alternative arrangements to meet the cared for person's needs.
- 11.11 In terms of securing the funds needed to meet the total cost of the care (including the 'top-up' element) WCC has three options, except where it is being funded by a deferred payment agreement, in which case it is added to the amount owed. In choosing which option to take WCC will consider the individual circumstances of the case, and ensure the security of the arrangements and that there is no undue pressure on the person making the 'top-up' payment to increase the level of payment.

The options are:

- treat the 'top-up' payment as part of the person's income and therefore recover the costs from the person concerned through the financial assessment (where the 'top-up' payments are being made by a third party rather than the cared for person, this is on the assumption that the third party makes the payment to the person with care needs); or
- agree with the person, the third party paying the 'top-up' (if this is not the cared for person) and the provider that payment for the 'top-up' element can be made directly to the provider with the local authority paying the remainder. **However, as stated earlier, this is not recommended;** or
- the person making the 'top-up' payments pays the 'top-up' amount to the local authority. The local authority then pays the full amount to the provider.

- 11.12 In the case of people with eligible needs who pay in full for their own care and support who ask the local authority to arrange their care, refer to section 15

Provisions for reviewing the agreement

- 11.13 WCC 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.

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11.14 Arrangements must be reviewed at least annually and in line with wider reviews of the financial assessment.

Consequences of ceasing to make payments

11.15 WCC must make clear in writing the consequences should there be a break down in the arrangement to meet the cost of the 'top-up'. This should include that the person may be moved to an alternative accommodation where this would be suitable to meet their needs and affordable within the personal budget or local mental health after-care limit. WCC 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 person's wellbeing.

Price increases

11.16 Arrangements will need to be reviewed from time to time, 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), WCC's commissioning arrangements or a change in provider costs. However, these changes may not occur together and WCC must set out in writing how these changes will be dealt with.

11.17 WCC must clearly set out in writing to the person or persons concerned its approach to how any increased costs may be shared. This should also include details of how agreement will be reached on the sharing of any price increases. This 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 WCC 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.

11.18 WCC may wish to negotiate any future prices rises with the provider at the time of entering into a contract. This can help provide clarity for adults and providers and help ensure that the top up remains affordable.

11.19 WCC should also make 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 them self makes, this may not reduce the need for a 'top-up' payment.

Consequences of changes in circumstances of the person making the 'top-up' payment

11.20 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, WCC 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. WCC 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.

12. First party 'top ups'

12.1 The person whose needs are to be met by the accommodation may themselves choose to make a 'top-up' payment only in the following circumstances:

- where they are subject to a 12-week property disregard
- where they have a deferred payment agreement in place with the local authority. Where this is the case, the terms of the agreement should reflect this arrangement. Or:

- where they are receiving accommodation provided under S117 for mental health aftercare.

13. Individuals already in accommodation

- 13.1 Persons already placed by WCC in accommodation, and those already in accommodation as self-funders but who, because of diminishing resources, are on the verge of needing WCC's support, or those no longer eligible for CHC funding, have the same rights under the Regulations as those who have yet to be placed by WCC. Any such individual who wishes to move to different or more expensive accommodation may seek to do so on the same basis as anyone about to enter accommodation for the first time.
- 13.2 Should a previous self-funder who now requires support from WCC, or an person no longer eligible for continuing healthcare who is resident in accommodation that is more expensive than the amount specified in the person's personal budget following assessment, they should not be asked for a top-up or be expected to move to alternative accommodation within the cost of their personal budget, unless after a risk assessment, they are deemed able to move to alternative accommodation.
- 13.3 For persons no longer eligible for NHS continuing Healthcare, the CCG is required to give 28 days' notice to cease funding in writing to the Council. Following that date, the Council is responsible for funding unless the decision to cease is disputed, in which case the original funding body has to keep it in place until the dispute has been resolved.
- 13.4 *Please refer to WCC's protocol for the transfer of individuals to alternative accommodation*

14. People who are unable to make their own choice

- 14.1 There will be cases where a person lacks capacity to express a choice for themselves. WCC 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 WCC's opinion it would be against the best interests of the person.

15. Self-funders who ask the local authority to arrange their care

- 15.1 The Care Act 2014 enables a person who can afford to pay for their own care and support in full to ask local authorities to arrange their care on their behalf. Where the person requires care in a care home to meet their needs, WCC may choose to respond to the person's request by meeting their needs. Where the person requires some other type of care, including other types of accommodation to which the right to a choice applies, WCC must meet those needs. 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 must apply.

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- 15.2 In supporting self-funders to arrange care, WCC may choose to enter into a contract with the preferred provider, or may broker the contract on behalf of the person. Where WCC 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.
- 15.3 Ultimately, WCC 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.

16. Choice of accommodation and mental health after-care

- 16.1 Regulations made under section 117A of the Mental Health Act 1983 enable persons who qualify for after-care under section 117 to express a preference for particular accommodation. If accommodation of the types specified in the regulations is to be provided as part of that after-care WCC is required to provide or arrange the provision of the preferred accommodation if the conditions in the regulations are met.
- 16.2 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). 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. The person should be fully involved in the care planning process.
- 16.3 An adult has the right to choose accommodation provided that:
- the preferred accommodation is of the same type that the local authority has decided to provide or arrange;
 - it is suitable for the person's needs;
 - it is available; and
 - where the accommodation is not provided by the local authority, the provider of the accommodation agrees to provide the accommodation to the person on the local authority's terms
- 16.4 The principles in sections, 5 and 14 apply equally where a local authority is providing, or arranging the provision of, accommodation in discharge of its after-care duty. The guidance in section 9 applies when the preferred choice cannot be met.
- 16.5 Where the cost of the person's preferred accommodation is more than WCC would provide in a personal budget or local mental health after-care limit to meet the person's needs, then WCC must arrange for them to be placed there, provided that either the person or a third party is willing and able to meet the additional cost.
- 16.6 The guidance in section 11 applies where the adult has chosen more expensive accommodation. For the purposes of section 117 after-care, however, references to a third party should be read as including the adult receiving the after-care (because an

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adult can also meet the additional cost when a local authority is providing, or arranging for the provision of accommodation in discharge of the after-care duty).

16.7 In securing the funds needed to meet the additional cost, WCC may:

- Agree with the person and the provider, and in cases where a third party is paying the 'top-up', agree with that third party, that payment for the additional cost can be made directly to the provider with WCC paying the remainder; or
- The person or the third party pays the 'top-up' amount to WCC. WCC then pays the full amount to the provider.

17. Information and advice

17.1 Under Section 4 of the Care Act 2014 WCC must establish and maintain a service for providing people in its area with information and advice in relation to care and support. This must include information and advice about the different care providers available in the local area to enable choice as well as information and advice to help people to understand care charges, different ways to pay and money management.

17.2 WCC should also have a role in facilitating access to financial information and advice provided independently of the local authority, including regulated information and advice where appropriate; to support people in making informed financial decisions. This may be particularly appropriate when a person is considering paying a top-up to help them to understand what they would be paying the top-up for and come to a judgment about whether it would represent good value for money.

17.3 Where a 'top-up' arrangement is being entered in to, all parties should fully understand their responsibilities, liabilities and the consequences of the arrangements. WCC must provide the third party with sufficient information and advice to support them to understand the terms of the proposed written agreement before entering in to it.

17.4 WCC's financial information pack should be provided as soon as possible to people considering entering accommodation regardless of whether it is believed they will be self-funders or not.

The financial information pack includes:

- Your financial assessment explained leaflet
- Financial assessment form
- Paying for care services
- Property information pack including 12 week property disregard
- Deferred payment information and agreement
- Third party top up information and agreement

18. Practice guidance for arranging care home placements

18.1 When a decision has been made for the person to move to a care home, a suitable period of planning for transition must be available, and the allocated Social Worker will develop a transition plan that will take account of the circumstances and needs of the person and their family.

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- 18.2 Visits to alternative care settings for the person and their family will be facilitated by the Social Worker as part of the transition plan with appropriate transport provided where required
- 18.3 Staff from the receiving care home will be assisted to become familiar with the person and their care plan prior to the date of the planned move.
- 18.4 The Social Worker will visit the chosen care home and take responsibility for ensuring the home can meet the person's assessed needs, and that all the person's personal documentation including assessment, risk assessment, support plan are up to date, accurate, and are provided to the new care home prior to the move. The Social Worker must also provide the care home with the following:
- Key contacts – include family, health professionals, mental health services, advocates etc
 - Any other assessments relevant i.e. Falls, Behaviour management plans
 - Area Team contact details
- 18.5 The Social Worker will consult with the management of the care home, and the person and their family regarding the best way to organise the move.
- 18.6 The Social Worker will contact the care home in the 24 hours before the date of the planned transfer as a final check to ensure they are fully prepared to accept the person the following day.
- 18.7 The Social Worker will ensure that appropriate transport arrangements are made ensuring that the vehicle is suitably equipped to accommodate the needs of the person who will be accompanied by a carer/family member who knows them and can offer support during the journey.
- 18.8 The Social Worker will maintain weekly contact with the care home after the move, and will conduct a review after 4-6 weeks to which family, care staff, relevant professionals will be invited to attend.
- 18.9 If required a further review will be scheduled for 6 weeks after the first review
- 18.10 Following that, the usual 12 monthly (annual) review will apply, unless there is a request for a re assessment.

19. Emergency short term placements

- 19.1 There may be circumstances where emergency placements may be required into short term care home accommodation i.e. crisis replacement care due to the breakdown of the person's care arrangements. In such circumstances the Social Worker must take all reasonable steps to ensure that the person's choice of accommodation is maximised as far as possible in line with the Regulations

20. Complaints

- 20.1 Complaints about the application of the Regulations and decisions taken in individual cases will fall within the scope of the council's statutory complaints procedure. The Social Worker must ensure that all individuals are aware of and understand the existence of the complaints procedure and their rights under it.