

Report Title:	Implementing the Care Act – people in residential accommodation
Contains Confidential or Exempt Information?	No - Part I
Member reporting:	Councillor Carroll, Lead Member for Adult Social Care, Children’s Services, Health and Mental Health
Meeting and Date:	Council – 17 December 2019
Responsible Officer(s):	Hilary Hall, Director of Adults, Health and Commissioning
Wards affected:	All

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REPORT SUMMARY

1. The Royal Borough has a statutory duty, under the Care Act 2014, to meet the eligible support needs of adults in the borough. This includes becoming responsible for funding people who have moved into a registered care home in the borough and who subsequently run out of money, and people who have been assessed as no longer eligible for NHS Continuing Health Care.
2. In the majority of instances, the costs that individuals or the NHS pay for care costs is more than the Royal Borough would usually pay for similar support needs. Whilst the council will always try to negotiate with the current care home to reduce the costs, in the majority of cases, the council exercises its discretion and allows the person to stay in the care home, paying a higher rate than it would for people who have care originally commissioned by the council.
3. The proposed approach, consistent with practice in other local authorities, is to set a personal budget equal to the cost of the council meeting the person’s needs in a care home with a suitable place available. The council would then negotiate with the current provider based on the amount of the personal budget with a view to only funding the person in a care home at that level, or lower.
4. In all cases, the “wellbeing” principle of the Care Act will apply, eg if there is sufficient medical evidence to suggest that moving a person would be significantly detrimental to their wellbeing, then the council will allow the person to stay in their current care home and pay a higher rate.
5. The approach is in line with the Care Act 2014 and will ensure that all people are treated equitably and there is sufficient funding available to meet assessed social care needs for all eligible residents.

1. DETAILS OF RECOMMENDATION(S)

RECOMMENDATION: That Council notes the report and:

- i) **Approves the policy to apply the provisions of the Care Act around costs where the Royal Borough becomes responsible for funding people in care homes who have previously funded their own care costs or had them paid by the NHS.**

2. REASON(S) FOR RECOMMENDATION(S) AND OPTIONS CONSIDERED

Options

Table 1: Options arising from this report

Option	Comments
Approve the policy to apply the Care Act where the council becomes responsible for funding people in care homes who have previously funded their own support. This is the recommended option	This is in line with the provisions of the Care Act 2014 and will provide equity for all residents.
Continue to allow people to stay in the care home of their choice regardless of cost.	This does not provide equity for all residents.

Background

- 2.1 The Royal Borough has a statutory duty, under the Care Act 2014, to meet the eligible support needs of adults in the borough. This includes becoming responsible for funding people who have moved into a registered care home in the borough who subsequently run out of money and people who have been assessed as no longer eligible for NHS Continuing Health Care. This applies to people who were funding their own care regardless of whether they lived in the Royal Borough before they moved into the care home or not.
- 2.2 In the majority of instances, the costs that individuals or the NHS pay for care costs is more than the council would usually pay for similar support needs. In the case of people who were funding their own support, this is either because the individual does not have the same buying power as the council or because they have chosen a care home with rates higher than the council would usually commission. In the case of people who were funded by the NHS, it is generally because the person had very high support needs when they moved into the home.
- 2.3 It should be noted that the Royal Borough has a large number of care homes with 1,329 care home beds available for older people. This compares to 391 beds in Slough and 448 in Bracknell Forest whilst serving relatively similar populations. This has the effect of people who are self-funding moving into the borough from other areas due to the supply of beds locally who then become the responsibility of the Royal Borough when they no longer have the funds to pay for their own care.

Current approach

- 2.4 The approach currently taken by the council is to assess the person to determine the support that will meet their needs. If the current care home cannot meet their needs, then the person is moved to a home that is suitable. If the current care home can meet their needs then the council will negotiate a revised rate with the home where possible. The results of negotiations are mixed with some providers reducing their rates and others refusing to negotiate. In the majority of cases, the council exercises its discretion and allows the person to stay in the care home, paying a higher rate than it would for people who have care originally commissioned by the council.

- 2.5 Where the council has taken responsibility for people who were previously funded by their own means or the NHS, the costs are higher than placements that are commissioned by the council from the outset. For example, the average weekly nursing care rates currently paid for people who previously funded their own support is £1,064. The current average weekly nursing care rates for council commissioned placements is £965. Between April and November 2019, the council became responsible for paying for an additional 15 people who previously funded their own support at a cost to the council of £500,000.
- 2.6 According to the Care Act, where a local authority is responsible for meeting a person's care and support needs and their needs have been assessed as requiring a particular type of accommodation in order to ensure that 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 the local authority more than the amount specified in the adult's personal budget for accommodation of that type.
 - The accommodation is available.
 - 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 the person's personal budget on the local authority's terms and conditions.

Proposed approach

- 2.7 The proposed approach, consistent with practice in other local authorities, is to:
- Assess the person to determine the support to meet their needs.
 - Set a personal budget (an amount of money) equal to the cost of the Royal Borough meeting the person's needs in a care home with a suitable place available.
 - Negotiate with the current provider of the care home based on the amount of the personal budget set.
 - If the provider is not willing to meet a rate equal to the personal budget then a third party top up will be sought e.g. from a family member.
 - If a third party top up cannot be agreed then the council will only fund the person in a care home that is equal or lower than the personal budget.
 - In all decisions the "wellbeing" principle of the Care Act will apply e.g. if there is sufficient medical evidence to suggest that moving a person would be significantly detrimental to a person's wellbeing then the council must allow the person to stay in their current care home and pay a higher rate.
- 2.8 The above approach is in line with the Care Act 2014 and removes the discretion to pay higher amounts for people who previously funded their own support. This is to ensure that all people are treated equitably and there is sufficient funding available to meet assessed social care needs.

3. KEY IMPLICATIONS

- 3.1 The key implications are set out in table 2.

Table 2: Key Implications

Outcome	Unmet	Met	Exceeded	Significantly Exceeded	Date of delivery
Reduction in the number of spot placements exceeding the council's commissioned rates	More than 2	0-2	0	N/A	31 March 2021

4. FINANCIAL DETAILS / VALUE FOR MONEY

- 4.1 There are no direct financial implications arising from the recommendations in this report. Overall, it should result in a decrease in the number of spot placements made which cost more than the council's commissioned rates which will have a positive impact on the adult social care budget. In addition, it will ensure that all people are treated equitably and there is sufficient funding available to meet assessed social care needs.

5. LEGAL IMPLICATIONS

- 5.1 The Royal Borough has the power to implement this policy which is fully in line with the provisions of the Care Act 2014.

6. RISK MANAGEMENT

- 6.1 The risks and mitigations of implementing the recommendation of this report are set out in table 3.

Table 3: Impact of risk and mitigation

Risks	Uncontrolled risk	Controls	Controlled risk
Lack of understanding of the new approach	MEDIUM	Robust communications strategy. Development of clear letters and FAQs to support residents and their families.	LOW

7. POTENTIAL IMPACTS

- 7.1 Equalities. An Equality Impact Assessment has been completed and is available on the website.
- 7.2 Climate change/sustainability. There are no impacts of the recommendations in relation to climate change / sustainability.
- 7.3 Data Protection/GDPR. There are no data protection/GDPR implications arising from the recommendations of this report.

8. CONSULTATION

- 8.1 Consultation has taken place with the Lead Member for Adult Social Care, Children's Services, Health and Mental Health.

9. TIMETABLE FOR IMPLEMENTATION

- 9.1 The full implementation stages are set out in table 4.

Table 4: Implementation timetable

Date	Details
January 2020 onwards	Communication with residents and partners on the new approach. Development of letters and FAQs to support residents and families.

10. APPENDICES

- 10.1 There are no appendices:

11. BACKGROUND DOCUMENTS

- 11.1 This report is supported by one background document:
- Equality Impact Assessment

12. CONSULTATION (MANDATORY)

Name of consultee	Post held	Date sent	Date returned
Cllr Carroll	Lead Member for Adult Social Care, Children Services, Health and Mental Health	04/12/19	09/12/19
Duncan Sharkey	Managing Director	04/12/19	05/12/19
Russell O'Keefe	Executive Director	04/12/19	
Ruth Watkins	Deputy S151 Officer	04/12/19	05/12/19
Elaine Browne	Head of Law	04/12/19	
Mary Severin	Monitoring Officer	04/12/19	05/12/19
Nikki Craig	Head of HR, Corporate Projects and ICT	04/12/19	
Louisa Dean	Communications	04/12/19	
Kevin McDaniel	Director of Children's Services	04/12/19	
Hilary Hall	Director Adults, Commissioning and Health	04/12/19	04/12/19
Karen Shepherd	Head of Governance	04/12/19	05/12/19

REPORT HISTORY

Decision type:	Urgency item?	To Follow item?
Council decision	No	No

