



Counting the cost of care: the council's role in informing public choices about care homes

Focus report: learning lessons from complaints

September 2015

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Introduction

The decision to place a loved one in a care home can be one of the hardest any family has to make, but all too often families are paying too much for their care because they are not getting the correct, timely information.

The need to find a permanent care home often arises when a family member has been in hospital and is unable to return to their home, and the decision is frequently made at short notice.

Getting the choice right

The financial cost is one of the major factors families must weigh up when deciding on a care home; councils may provide funding, but if someone chooses a home which costs more than the council will fund, there needs to be an arrangement for a 'top-up' fee to cover the difference.

This report identifies the common mistakes the Local Government Ombudsman (LGO) has found when investigating complaints about care home top-up fees.

For people to make the most informed choice, it is crucial that they get the right information at the right time. But we see cases where councils provide either confusing or incorrect information; do not offer potential residents and their families a genuine choice of

affordable care home; or do not have an affordable option at all.

We are not alone with our findings – other sections of the health and social care sector say that a lack of information is a problem. In a recent report from Healthwatch England, the national consumer champion in health and care said that insufficient information, poor communication and a lack of involvement in decision making can be major problems when people are discharged from hospital.

In writing

Councils need to provide information in writing at the earliest opportunity so people can make informed decisions about:

- > The choice of care home, including the costs, how to meet them and whether to pay a top-up;
- > Whether to sell the individual's home to pay the care home fees or ask the council for a deferred payment agreement so they do not have to sell their home during their lifetime.

While councils are under increasing pressure both financially and in terms of their growing populations in need of care – according to the Institute

of Fiscal Studies, councils' net spending on social care per capita was cut by 16.7 per cent between 2009-10 and 2014-15 – they still need to make sure this information is provided, and meets current government guidance.

We hope that by identifying these common faults we will help councils and care providers avoid them in future. The information should also help those going into residential care, their relatives, or those already in care, to understand their rights.

Legal context

Who pays?

Whether or not a council will contribute towards the cost of someone's residential care placement depends on the outcome of an assessment of their care needs and an assessment of their finances. Councils must carry out these assessments in accordance with the Care Act 2014.

If assessed as needing a placement in a care home, and the person says they cannot afford the full cost, the council must undertake a financial assessment to establish what the person will have to pay towards the cost. This is known as the 'financial contribution'.

The financial assessment will take into account someone's regular income, such as welfare benefits and pensions. It will also look at the person's assets, which will include any savings and possibly the value of their home.

The financial contribution

Most people will have to pay something towards the cost of a care home.

Usually a person is expected to pay all of their regular income towards their placement, after deducting an agreed amount for personal spending (their Personal Expenses Allowance). Whether they pay costs towards their

placement from their savings and assets depends on their assessed value:

- > if a person's assets are valued at less than £14,250 they will not have to make a contribution from those assets
- > if a person's assets are valued between £14,250 and £23,250 they are expected to pay £1 for every £250, or part thereof, towards their placement
- > if a person's assets are valued at more than £23,250, they are usually expected to pay the full costs of the placement themselves – a 'self-funder' – until their assets go down to £23,250.

The council will disregard the value of the person's home as a contribution towards their assets for the first 12 weeks of their placement, which provides time to decide what to do with the home (e.g. sell it or rent it out). There is no expectation that people will sell it in 12 weeks. If, however, someone has assets worth more than £23,250 excluding the value of the home, they will have to pay the full costs from the start of the placement.

The Care Act 2014 states that after 12 weeks councils must provide a Deferred Payment Agreement providing the criteria

are met – not everyone is eligible – so the care home resident's property does not have to be sold during their lifetime.

The 'personal budget'

The amount of money required to pay for the care a person has been assessed as needing is called their personal budget. If the council is contributing towards someone's care home fees, it should tell the person how much it will pay for the level of care they require. Placements which cost no more than the personal budget (the money provided by the council and any financial contribution from the person) are referred to as 'affordable'.

Since the introduction of the Care Act in April 2015, councils must offer at least one choice which is affordable within the personal budget of the person concerned. This is to ensure people have a genuine choice over their placement.

The 'top up'

People have a right to a choice of care home, so if a person chooses a more expensive placement than the council will pay, someone must be willing and able to pay the difference between the amount the council will pay (which includes the resident's financial contribution) and the full cost

Legal context

of the placement for as long as necessary. This is called a 'top-up'.

Normally a third party (for example relatives) will pay the top-up.

The Act also places a duty on councils to provide an assessment of social care needs for anybody who asks for one. It does not, however, put an obligation on councils to arrange a placement for a self-funder in a care home if they can arrange it for themselves or someone else is willing and able to do this for them, although many councils will arrange a placement for a self-funder if nobody is willing or able to do so.

Written agreement

Councils must have a written agreement with the person paying the top-up fee. As a minimum, this must include:

- > The additional amount to be paid;
- > The amount specified for the residential care in the person's personal budget;
- > The frequency of the payments;
- > To whom the payments should be made (ie the council, the resident or the care provider);

- > Provisions for reviewing the agreement;
- > A statement on the consequences of stopping payments;
- > A statement on the effect of any increase 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.

When there is a top-up agreement in place, the council remains responsible for the full cost of the placement to the provider. This is to ensure that if the person stops paying the top-up, the placement is not at risk. If this happens, the council will cover the full cost until it either recovers any outstanding top-up fees, or it finds an alternative placement which is affordable within the resident's personal budget.

The council must carry out a risk assessment for the resident before an alternative placement can be arranged. This assessment must take account of the need to promote the resident's wellbeing when considering, for instance, the location of the placement and how close it is to family, or indeed whether any move would be detrimental to their health and wellbeing.

How are top-ups paid?

Top-ups can be paid in three different ways:

- > By the third party to the resident so they can pay the full weekly charge;
- > Directly to the care provider, so long as all the parties agree to this. However, this is not recommended and even to be discouraged; or
- > To the council which will then pay the care provider.

To date, most of the complaints we have dealt with are about events which took place before the introduction of the Care Act in April 2015 and although the legal context was different prior to this, many of the principles remain the same. All the cases we have included in this report highlight issues which are still relevant under the Care Act.

Key changes in the Act include the introduction of national eligibility criteria, a right to independent advocacy and helping people to access independent financial advice and, from 2020, a cap on care costs faced by self-funders.

Common issues

Lack of information - wrong information

Too often we find councils do not give people the information they need to make an informed decision about a care home.

Sometimes councils give people wrong or misleading information which means they choose a home they might not otherwise have selected.

Sometimes people have to rely on information provided by the council over the telephone or in meetings; but people cannot be expected to remember everything they are told at what is often a very stressful time.

Councils should give people written information about choosing a care home before they start looking for one, explaining the financial implications of moving to a care home and including information about top-ups and deferred payment agreements.

Beryl's story

When the council told Beryl it would pay 'the full amount' for her mother's care over the telephone, she was left with a great deal of confusion.

Beryl found a care home for her mother that charged more than the council had identified as being 'affordable'. When she pointed out to the council that her mother was eligible for a 12 week property disregard, officers told Beryl over the telephone the council would fund its usual 'full amount' towards the weekly costs, leaving an amount to be covered by a third party top-up.

With nothing in writing, Beryl assumed her mother's contribution from her pension would pay a large part of the top-up, and she would be left to pay the small balance. However, in reality she was left having to pay a significant amount extra because the council had already factored her mother's contribution from her pension into the assessment of how much it would fund at its standard rate.

Beryl complained about the way the council dealt with her mother's charges, and so officers offered a deferred payment agreement to her mother and to move her to an affordable care home. Beryl did not take up these offers.

As a result of our investigation the council agreed to apologise for failing to provide full information about funding and what the decision to fund 'the full amount' meant for Beryl and her mother.

Providing a written guide at the start and asking Beryl to sign a top-up agreement would have avoided the problems she experienced. We asked the council to provide information about its procedures for giving information to people about choosing and paying for care homes.

The council also agreed to pay £250 to Beryl to reflect the confusion caused and the time and trouble the council had put her to.

Common issues

Lack of choice

People often complain about a lack of choice, or that the only choices available to them are ones which cost more than the funding provided by the council.

When there is an assessed need the council has a duty to provide an affordable placement within the person's personal budget. This should always be communicated to the person affected alongside any other options which require a top up so they have a proper choice. If there are no affordable placements available the council has a duty to offer the person affected a place without requiring a top-up.

Under the Care Act councils must have affordable placements available. If they do not, and someone has to pay a top-up, we may ask the council to refund the top-up.

Bert and Rita's story

Bert complained to us because the only care home offered by the council for his wife Rita was not affordable.

The council referred Bert to a care home which had two rooms available, but the only room the couple could afford was unsuitable because it was on the first floor and Rita was afraid of lifts and could not use stairs.

The council then referred Bert to a second care home. At this home the only room available involved a top-up. Bert reluctantly agreed to the room, but a few months later he told the council he could no longer afford to pay the top-up fee.

He said the cost of petrol visiting his wife meant he was left with very little money to live on. The council suggested other care homes, but these were either further away, unsuitable, or involved a larger top-up.

The couple asked the council to find somewhere closer to Bert. Five months later the council said it would pay the top-up for the second care home from that time onwards.

Bert complained to us saying the council should refund the top-up from when Rita moved into the first home.

We agreed because the council should not have asked him to pay the top-up as it had not offered an affordable placement which was suitable for Rita, given her fear of lifts.

The council agreed to refund the top-up.

Una and Fred's story

When Una needed to move to a care home everyone agreed her husband of 60 years, Fred should go with her.

The council found a care home for them, but it was not where they wanted to live. Una's daughter asked the council if there was anywhere in their home town, but the council said it was the only home available which could take both Una and Fred.

The council told the daughter the family would have to pay a top-up, as the care home charged more than the funding provided by the council. The family agreed to this, as they were keen for the couple to move as soon as possible.

We said the council was wrong to ask the family to pay a top-up as there was no alternative affordable care home.

The council agreed to refund the top-up fees paid by Una and Fred's family and to pay the future top-up fees.

Common issues

Councils abdicating responsibility for top-ups

Some councils fail to contract with care homes to pay the full chargeable rate, leaving the home to collect the resident's contribution and the top-up payments. This leaves the placements vulnerable if either payment is not made.

Some councils routinely leave care homes to enter into top-up agreements with residents or third parties. This is wrong.

Top-up agreements must be made between the council and the person paying the top-up fee. Leaving care providers to deal with the top-up agreement can result in avoidable disputes over what has been agreed with the council.

Pauline's story

When Pauline's mother moved into a care home the council discussed the need for a top-up payment with Pauline, but it did not put this agreement in writing.

The council left the care home to deal directly with Pauline. She said the first she knew about the top-up was when she received a bill from the care home.

Pauline eventually paid the top-up to the care home, but in doing so, she deducted the cost of the top up from the amount her mother paid in financial contribution to the council. This left an amount of money owed to the council.

When her mother moved to a smaller room, the care home reduced the fees so the family did not have to pay a top-up.

Given the confusion caused by the council's handling of the placement the council agreed with us to waive half of the top-up from the outstanding financial contribution owed.

Common issues

Care providers charging top-ups 'behind the council's back'

Complaints show that some care providers will charge a top-up, despite having agreed with the council to accept a placement at an affordable rate.

When the council is responsible for funding a residential placement, the contract for funding is between the council and the care provider. There should be no need for the provider to raise any additional fees (ie top-ups), with the resident.

We hold councils responsible for such failings because the care provider is acting as an agent of the council when it enters into an agreement to care for someone.

In such cases, we will ask the council to refund the top-up. Councils will then have to seek their own redress from the care provider.

Ayo and Yewande's story

Ayo's mum, Yewande needed to move to a nursing home, so the council provided Yewande with a list of affordable homes which would not need a top-up.

When Ayo found a home they both liked the council arranged a placement at an affordable level.

The council assessed Yewande's finances. It initially decided that, after the first 12 weeks of disregarding a property jointly owned with Ayo, she would have to pay the costs in full.

However, after taking legal advice the council decided to disregard the property permanently because the house was jointly owned. This meant Yewande would not have to pay the full cost of her care.

Despite agreeing that the family had accepted the placement at an affordable rate, 12 weeks after her mother moved in, the nursing home started invoicing Ayo for a top-up, which was the difference between what the council had identified as affordable and the nursing home's rate for private clients.

Ayo had concerns about the charge and the council advised her to pay the bill, but she should not have been paying any top-up to the home.

Nearly a year later the council agreed a new contract with the nursing home on the same terms as the original contract. Ayo stopped paying the top-up at this point.

As a result of our investigation, the council refunded all the top-ups paid by the family and also reminded its care providers they cannot charge additional fees for services provided on behalf of the council.

Common issues

Introducing top-ups

In some of the cases that we see, care homes have increased their charges without the council increasing what it will pay the home.

In other cases councils have reduced what they will pay a care home even though the care home has not reduced its charges.

In both situations this results in someone having to pay a top-up fee to cover the difference without there being an agreement to do so.

Councils cannot ask someone to pay a top-up unless an assessment of need shows the resident can be moved and an affordable alternative placement has been offered.

Paul and Barbara's story

Paul's mother, Barbara, was in hospital and the council agreed she would need to move to a care home when she was discharged.

Paul told the council he could not afford to pay a top-up so the council offered Barbara a place in one of its care homes that did not need a top-up.

The council was in the process of selling the care home to a private care provider, but it assured Paul his mother's charges would not increase when the sale went through.

Based on this advice, Barbara's family decided to rent out her home, rather than sell it. However, the council's advice was wrong, and the agreement did not take into account that Barbara should have paid the full costs of her care placement as she owned her home.

A month after Barbara moved to the care home the council wrote to Paul saying the weekly charge would increase after the initial 12 weeks. The son complained to the council but it did not address his concerns properly until six months later. It then explained its error and offered to move Barbara to a care home which charged significantly less.

Paul complained to us and we found the council had failed to give Barbara and her family the information they needed to make an informed decision about her care home. It is clear they would have chosen a care home that would have been affordable in the long-term and which did not need a top-up. If the council had told them that the care home was likely to increase its costs after it was sold, they would have chosen a different placement.

Following our investigation, the council agreed to charge Barbara a reduced rate for her care until it could assess her needs and decide whether it was in her interests to move to another, affordable, care home.

After assessing her needs the council decided it would not be in her interests to move to another care home and so continued to charge the rate for her care which did not involve a top-up.

Miriam's story

More than two years after placing Miriam in a care home which did not need a top-up, the council reviewed the rates it paid for care homes.

It introduced a quality framework and decided to lower the rate it paid to care homes which were not included in its quality framework, which it was entitled to do. This included Miriam's care home.

The home continued to charge the same amount it had from the start of the placement, which meant Miriam needed to start paying a top-up, this carried on until she died. The council did not check whether Miriam was willing or able to pay this. Nor did it assess her needs before deciding to reduce the fees it paid to the home.

The decision to move someone can only be made after assessing their needs.

We said that the council had not properly considered the impact of the change on those residents already living at the home. If it were the case that, following assessment, residents could not be moved to another placement then the council should have continued to pay the rate agreed for the original placements.

We asked the council to refund the top-ups paid by Miriam to her estate and consider other people in the same situation. We also asked it to apologise to her son and pay him £250 for the trouble it put him to in pursuing his complaint.

Common issues

Assessing finances before assessing needs

Sometimes councils calculate a person's personal budget before they have assessed their social care needs. This is wrong. In the following case, had the council assessed the woman's needs it would have seen that she could not be moved; any move would have been detrimental to her health and she could not afford to fund the level of care she needed.

Magda's story

When Magda moved to a care home her assets were more than the threshold limit of £23,250 and so she had to pay for her own care.

Her care home charged £800 a week. Her daughter Julia alerted the council when her capital fell below £23,250 – the level at which she might be entitled to council funding

However, the council said Magda was still a self-funder as her weekly income of £550 a week was enough to cover the cost of a placement at an affordable rate of £525 a week, but this did not take account of the fact the care home was charging Magda £800 a week. Julia asked whether her mother could be moved to another care home.

Magda's medical consultant advised against moving her, but it was another four months before the council assessed her needs and accepted she could not be moved and agreed to pay the additional costs of the placement (minus Magda's contribution) and backdated this for four months to when Julia first told the council of her change in circumstances.

We agreed with the council's remedy and asked the council to apologise to Julia and pay her £200 to acknowledge the trouble to which it had put her.











Getting things right first time - questions for local councillors

Councils and all other bodies providing local public services, including adult care services, should be accountable to local people. The Local Government Ombudsman was established by Parliament to support this process. We want to share learning from complaints with locally elected councillors who have the democratic mandate to scrutinise the way local authorities carry out their functions and hold service providers to account.

We believe that complaints raised by the public can be an important source of information to help councillors identify issues that are affecting local people. Complaints can therefore play a key part in supporting the scrutiny of public services.

Our experiences of the types of complaints that are typically raised about local authorities' provision of advice about care homes have highlighted a number of key questions that elected members could ask their councils when scrutinising services.





Does your council:

-  ensure there is sufficient variety of residential care providers to give people the best choice?
-  aim to develop a market that delivers a wide range of sustainable high-quality care and support services available to your communities?
-  have internal policies and procedures that reflect the requirements of the Care Act 2014?
-  give people written information about charging for residential placements before they start looking for placements and record when this has been done?
-  document offers of affordable placements?
-  document its response when the suitability of such offers is questioned?
-  put its funding decisions in writing?
-  assess people's needs before making decisions which affect their finances?
-  have the right plans in place to provide advocacy, information and advice?
-  have systems in place to signpost people to financial advice where needed?

A range of resources have been developed by the joint programme management office for the Care Act implementation. For more information visit <http://www.local.gov.uk/care-support-reform>

Getting things right first time - questions for providers

Do you ensure that:

-  a proper contract with the council is in place before offering a placement?
-  communications about changes to contracts are made directly with the council and not through the resident (or their family) only?
-  proper consideration is given to individual's circumstances before any changes are made to care arrangements?
-  residents (and their families) are fully aware of how to complain about fees and charging?

The role of the Ombudsman

For 40 years the Ombudsman has independently and impartially investigated complaints about councils and other bodies within our jurisdiction. Our services are free of charge.

The LGO is also the social care ombudsman, and since 2010 we have had the authority to investigate all complaints about adult care services, regardless of whether that care is provided by a council or privately.

If we find something wrong, we can ask the council or care provider to take action to put it right. What we ask them to do will depend on the particular complaint, how serious the fault was and how the complainant was affected.

We have no legal power to force councils or care providers to follow our recommendations, but they almost always do.

Some of the things we might ask them to do are:

- > Apologise for their mistakes;
- > Amend their procedures to make sure they comply with the Care Act 2014, the Guidance issued under the Care Act and best practice, to prevent problems recurring and affecting other people similarly;
- > Refund top-ups which should not have been charged;
- > Review a resident's health and social care needs to see if they can be moved to another care home;
- > Provide financial redress for the time and trouble involved in pursuing a complaint if this has been significant.

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