

Adult Social Care Policies and Procedures

CHOICE OF ACCOMMODATION

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CHOICE OF ACCOMMODATION

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POLICY VERSION CONTROL

POLICY NAME	Choice of Accommodation		
Document Description	This document sets out the county council's duties under Section 30 of the Care Act and the Care and Support and After-care (Choice of Accommodation) Regulations 2014 in supporting an individual to make an informed choice where the care and support planning process has determined that an individual requires a specific type of accommodation to meet their needs.		
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1. POLICY STATEMENT

An individual's ability to make an informed choice is a key element of the care and support system. This includes instances where [care and support planning](#) determines that a person's eligible needs are best met in a specific type of accommodation. In such cases, the county council **must** provide for the person's preferred choice of setting within that type, subject to certain conditions.

The care and support planning process will identify the person's needs and preferences and determines what type of accommodation will best suit their needs. This could be, for example, a care home, shared lives, supported living or extra care housing.

In other cases, a person's assessed needs could be best met in their existing setting through other services such as occupational therapy, reablement (or other forms of intermediate care), homecare, or through the provision of information and advice.

At all times, county council staff must be aware of the need to support people to live as independently as possible in their own home, or close to home, with safe and appropriate care and support if needed.

If accommodation is required to meet needs, the county council **must** ensure that the person has a genuine choice of accommodation, subject to certain conditions. At a minimum, this means that at least one type of accommodation is available and affordable within the person's personal budget and that there is more than one setting available.

The county council is committed to providing a genuine choice wherever practical. This means that people will have a say about where they wish to live, which will be responded to as far as reasonably possible within the context of the supply of suitable housing, affordability and their housing rights.

How we define 'choice'

Choice extends to the following types of accommodation: Care homes (whether residential, nursing or both, depending on the person's assessment) Shared Lives, care and support in shared housing and Extra Care housing settings.

What this means in practice is that the county council must offer a choice between available accommodation providers. Where possible it will focus on options within Lancashire (or in neighboring authorities, which may actually be nearer to the person's current residence than other parts of Lancashire) within the same type of accommodation (e.g. more than one care home provider). **It does not mean** that the county council must offer an extended choice of different providers across different types of accommodation (i.e., a choice of more than one care home and more than one Shared Lives setting, etc.). "Choice" in this context only applies between providers of the same type of accommodation.

Remember, care and support planning will determine the most appropriate *type* of accommodation and will then give the person an opportunity to express a preference about the *setting* in which their needs are to be met.

There are a few conditions governing the right to choose a specific setting. The person must have the right to choose between different providers of the same type of accommodation provided that:

- The accommodation is suitable in relation to the person's assessed needs;
- To do so would not cost the county council more than the amount specified in the adult's final 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 county council to provide the care at the rate identified in the person's personal budget on the county council's terms and conditions.

Staff in the county council's Care Navigation team will enter a case note onto LAS to confirm that a genuine choice of accommodation has been offered.

Remember that the regulations and guidance on choice of accommodation and additional costs apply equally to those entering care for the first time, those who have already been placed by the county council, and those who have been self-funders, but because of diminishing resources are on the verge of needing the county council's support.

'Top ups'

A person must also be able to choose more expensive accommodation if someone else – known as a "third party" (or in certain circumstances the resident themselves, known as the "first party") is willing and able to pay the additional cost.

This additional cost is known as a 'top-up'.

Any additional payment must always be optional and never as a result of inadequacies in the local market or commissioning failures leading to a lack of choice. Detailed information on 'top-up' fees is available in the First and Third Top Ups PPG [LINK].

Arrangements to pay these 'top-up' fees are subject to a full, legally-binding written agreement between the county council and the relevant party.

Only when a person has chosen a more expensive accommodation can a 'top-up' payment be sought. If no suitable accommodation is available at the amount identified in a personal budget, the county council must arrange care in a more expensive setting and adjust the budget accordingly to ensure that needs are met. In such circumstances, the county council **must not** ask for the payment of a 'top-up' fee. When a top-up arrangement has been agreed, the placement cannot commence without the return of the Written Agreement to the county council. See the First and Third Party Top Ups PPG for more information.

Therefore to fulfil its duty under Section 30 of the Care Act 2014 and under the Care and Support and After-care (Choice of Accommodation) Regulations 2014 the county council will, working with its statutory, voluntary and private sector partners, comply with the national threshold relating to care and support in a manner that is relevant, coherent, timely and sufficient.

The county council will make all reasonable adjustments to ensure that all disabled people have equal access to participate in the eligibility decision in line with the Equality Act 2010.

The geography and population of Lancashire is diverse and our policies and practice will aim to deliver services and support that are representative of the communities in which we work.

The county council will follow relevant legislation, policies and guidance to ensure our practice is of high quality and legally compliant. Where our customers or those we come into contact with wish to challenge or raise concerns in regard to our decisions regarding eligibility [the county council's complaints procedures will be made available](#).

Ordinary Residence

If a person is assessed as requiring specified accommodation and they choose to be placed in a setting that is outside the county council area, the county council must still arrange for their preferred care. In doing so, the county council should have regard to the cost of care in that area when setting a person's personal budget.

More information on Ordinary Residence is available in the Ordinary Residence PPG [LINK].

2. KEY DEFINITIONS AND PRINCIPLES

2.1 Being clear and transparent

Staff should be aware of the need for:

- Good communication of clear information and advice to ensure that well informed decisions can be taken.
- Clear and transparent arrangements for choice and any 'top-up' arrangements
- Clear understanding of the potential consequences should 'top-up' arrangements fail. The First and Third Party Top-Ups PPG has more information on the implications of these types of arrangements.

Staff should be aware that "choice" in this context only applies between providers of the same type of accommodation.

2.2 Conditions on the choice of accommodation

Where the county council is responsible for meeting a person's care and support needs and identified outcomes, and their needs have been assessed as requiring a

particular type of accommodation in order to ensure that those needs are met, the person must have the right to choose between different providers of that type of accommodation provided that:

- the accommodation would meet the person's assessed needs
- to do so would not cost the county council 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 county council to provide the care at the rate identified in the person's personal budget on the county council's terms and conditions. These conditions are further explained in the sections below.

2.3 The suitability of accommodation

The [care and support planning process](#) gives people an opportunity to express a preference about the setting in which their needs are met. **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.

2.4 The cost of accommodation

The [care and support planning process](#) will identify how best to meet a person's needs. As part of that, the county council 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.

The personal budget is defined as the cost to the county council of meeting the person's needs which the council is required to meet. However, the county council should take into consideration cases or circumstances where this 'cost to the local authority' 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. In all cases the county council 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 county council should not set arbitrary amounts or ceilings for particular types of accommodation that do not reflect a fair cost of care.

The county council therefore **must** 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.

If no suitable accommodation is available at the amount identified in a personal budget, the county council must arrange care in a more expensive setting and adjust

the budget accordingly to ensure that needs are met. In such circumstances, the county council 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.

2.5 The availability of the accommodation

The county council has a specific duty to shape and facilitate the market of care and support services locally, including ensuring that there is a sufficient supply. The county council is committed to ensuring people will have a say about where they wish to live, which will be responded to as far as reasonably possible within the context of the supply of suitable housing, affordability and their housing rights.

As a result, a person should not have to 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 sometimes involve putting temporary arrangements in place – after taking into account the person's preferences and securing their agreement – and placing the person on the waiting list of their preferred choice of provider. It should be remembered, however, that such arrangements can be unsettling for the person and should be avoided wherever possible.

2.6 Temporary arrangements

In such cases, the county council must ensure that adequate alternative services are provided in the interim and be clear on how long the interim arrangement may last for.

In establishing any temporary arrangements, the county council 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 accommodation and any other information that may be relevant.

If any interim arrangement exceeds 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.

2.7 If the person prefers to remain in the interim setting

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. Because people who contribute to the cost of their care (following a financial assessment) **must not** be asked to pay more than their assessment shows they can afford, the county council must make clear

the consequences of this choice to remain, including any financial implications, before making the interim arrangements permanent.

2.8 When choices cannot be met

While the county council should do everything it can to meet a person's choice, there will inevitably be cases where choice cannot be met (for example if the relevant provider does not have capacity to accommodate the person). In these cases, the county council must set out in writing why it has not been able to meet that choice and should offer suitable alternatives (some elements of hospital discharge, such as the Avoiding Long Stays in Hospital Policy, may be exempt from this). The [county council's statutory complaints procedure](#) should be made available as well as how the decision may be reviewed.

2.9 When the person refuses the setting

The county council must do everything it can to take into account a person's circumstances and preferences when arranging care. However, in all but a very small number of cases (such as where a person is being placed under guardianship under Section 7 of the Mental Health Act 1983), a person has a right to refuse to enter a setting whether that is on an interim or permanent basis.

Where a person unreasonably refuses the arrangements, the county council 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 any risks posed by such an approach, for both the person concerned and the county council, should be considered. Should the person contact the county council again at a later date, the council should reassess the needs as necessary and re-open the care and support planning process.

2.10 Contractual terms and conditions

In supporting a person's choice of setting, the county council may need to enter into a contract with a provider that they do not currently have an arrangement with. In doing so, they 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. Guidance can be sought from the county council's Contracts team before any agreements are entered into.

3. PROCEDURES

For more information and assistance in sourcing and arranging accommodation contact the county council's Care Navigation service.

Lancashire County Council's Care Navigation Service

carenavigation@lancashire.gov.uk 01772 538450

4. RELATED DOCUMENTS

POLICY, PROCEDURE AND GUIDANCE (PPG) DOCUMENTS	Adult services policies, procedures and guidance (PPG) intranet site.
LEGISLATION AND REGULATIONS	<ul style="list-style-type: none"> • Care and Support and After-care (Choice of Accommodation) Regulations 2014 • Annex A of the Care Act 2014 Statutory Guidance • National Assistance Act 1948 (Choice of Accommodation) Directions 1992 • National Assistance (Residential Accommodation) (Additional Payments and Assessment of Resources) (Amendment) (England) Regulations 2001

5. EQUALITY IMPACT ASSESSMENT

The Equality Act 2010 requires the county council to have "due regard" to the needs of groups with protected characteristics when carrying out all its functions, as a service provider and an employer. The protected characteristics are: age, disability, sex/gender identity/gender reassignment, gender, race/ethnicity/nationality, religion or belief, pregnancy or maternity, sexual orientation and marriage or civil partnership status.

The main aims of the Public Sector Equality Duty are:

- To eliminate discrimination, harassment or victimisation of a person because of protected characteristics;
- To advance equality of opportunity between groups who share protected characteristics and those who do not share them. This includes encouraging participation in public life of those with protected characteristics and taking steps to ensure that disabled people in particular can participate in activities/processes;
- Fostering good relations between groups who share protected characteristics and those who do not share them/community cohesion.

It is anticipated that the guidance on **Choice of Accommodation** in this document will support the county council in meeting the above aims when applied in a person-centred, objective and fair way which includes, where appropriate, ensuring that relevant factors relating to a person's protected characteristics are included as part of the process.

More information can be found on [the Equality and Cohesion intranet site](#).