

# Adult Social Care Policies and Procedures

## CROSS BORDER PLACEMENTS

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## CROSS BORDER PLACEMENTS

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## POLICY VERSION CONTROL

<b>POLICY NAME</b>	<b>Cross Border Placements</b>		
<b>Document Description</b>	This document sets out the county council's response to obligations placed on it by Section 39 of the Care Act 2014 in relation to individuals moving between different territories of the United Kingdom.		
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## 1. POLICY STATEMENT

***This policy should be read in conjunction with the county council's policy on Ordinary Residence and [Continuity of Care](#).***

People's health and wellbeing are likely to be improved when they live close to a support network of friends and family. In a small number of cases, a person's friends and family may be located in a different country of the UK from that in which they currently live.

In developing a care and support plan, the county council and the person concerned may conclude that the person's wellbeing is best achieved by a residential care placement in a different country of the UK.

The four administrations of the UK (England, Scotland, Wales and Northern Ireland) have worked together to set out guidance on these "cross-border" residential care placements. This document is based on that guidance.

As a rule, responsibility for individuals who are placed in cross-border residential care remains with the "first authority" – i.e. the council area where the person currently lives. This document sets out how councils in different UK countries should work together when arranging cross-border accommodation placements.

This document covers:

- responsibilities of local authorities or Health and Social Care (HSC) Trusts in Northern Ireland, when placing people in care homes in different territories of the UK
- What to consider when planning and carrying out a cross-border placement
- The process for resolving disputes that may arise in relation to a cross-border placement.

This policy applies to cross-border placements of any duration.

This policy also applies to a placement into England that consists of Shared Lives scheme accommodation or supported living accommodation (for example, where the second authority is also in England). It does not cover Shared Lives and supported-living arrangements made by a first authority in England for a placement into a second authority in Scotland, Wales or Northern Ireland.

Therefore, to fulfil its duty under Section 39 and Schedule 1 of the Care Act 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 Adult Social Care Policies and practice will aim to deliver services and supports that are representative of the communities in which we work.

## Advocacy

Care and support should always be centred on the person. Under the Care Act, the county council must arrange for an independent advocate to facilitate the involvement of the person with care and support needs in their assessment, care and support plan and any reviews of their care plan, as well as in safeguarding enquiries and Safeguarding Adult Reviews, if two conditions are met:

- The person has **substantial difficulty** in being involved in these processes
- There is not an **appropriate individual** willing to support them

Further information is available in the [Care Act Advocacy PPG](#). Please be aware that further duties to arrange an advocate also apply under the Mental Health Act and Mental Capacity Act.

## Complaints

The county council will follow the Care Act and other 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 about our decisions regarding eligibility [the county council's complaints procedures will be made available](#). More information on complaints regarding cross border placements is available at Section 3.9 (page 10).

## Safeguarding

The county council will follow its obligation under the Care Act to [safeguard adults with care and support needs](#) (whether or not the council is meeting any of those needs) and ensure that its obligations are carried out in partnership with all agencies and organisations who may come into contact with those people.

## General Principles

The Care Act allows the county council to consider our financial resources and how we spend public funds to meet people's needs.

The county council wants staff to apply their professional judgment and will support them to do so.

As a professional you should determine the most appropriate intervention for the person's needs and desired outcomes. Staff should always consider what would help the person to gain, retain or regain their independence.

## 2. KEY DEFINITIONS AND PRINCIPLES

### 2.1 First authority

The first local authority (or Health and Social Care (HSC) Trust in Northern Ireland, which provide integrated health and social care services across Northern Ireland) is the authority which places the individual in a cross-border residential placement.

In arranging a cross-border placement the first authority should make all those arrangements that it would normally make in organising a residential care placement in its own area.

### 2.2 Second authority

The second authority is the local authority (or HSC Trust) into whose area the individual is placed or will be placed.

**Lancashire County Council may be the first or second authority, depending on circumstances.**

### 2.3 Principles

The following principles should be observed in applying this policy:

**The individual should be kept informed and involved throughout the process.**

This policy is designed to improve the wellbeing of people who may benefit from a cross-border placement. If such a placement is identified as a potential support during the care and planning process, staff should discuss this with the person (or their representative or advocate). In making any subsequent arrangements, the county council must always have regard to the person's views, wishes, feeling and beliefs.

For more on promoting a person's wellbeing please see the [Wellbeing Principle PPG](#).

**Reciprocity and cooperation.** The smooth functioning of cross-border arrangements is in the interests of all parties – and most importantly the interests of people in need of a placement. All councils are expected to co-operate fully and communicate properly. Where people may need care and support from the second authority (for example, in the event of unforeseen and urgent circumstances such as provider failure) the second authority may have a duty to meet such needs and there should be no delay in the discharge of such a duty. Arrangements to recoup costs can always be made subsequently.

### 2.4 Advocacy

The benefits of advocacy in supporting the individual to express their wishes should be considered throughout the process, especially when the person does not have anyone appropriate to support them. For more information, please see the [Care Act Independent Advocacy PPG](#).

## 2.5 Information Sharing

In general the duties specified in the Care Act, and related statutory guidance, apply to cross-border placements as they apply to placements within the county council's own area. Where, for example, this would involve the sharing of information or the gathering of information by the second authority on behalf of the first, (see next section) the person involved should be informed of this at the outset and their consent sought.

There are a number of other occasions when communication with the person concerned, their friends and family, and/or their representatives/advocate will be vital. These occasions are spelled out in the Procedures section, below.

## 2.6 Self-arranged placements

This policy **does not apply** in relation to individuals who arrange their own care. Individuals who arrange and pay for their own care will normally be ordinarily resident in and/or the responsibility of the area to which the person moves. This policy **does apply** to individuals who pay for their own care where that care is arranged by an authority.

# 3. PROCEDURES

## 3.1 Step 1: Care and Support Planning

Any need for a cross-border residential care placement will be determined through the overall [care and support plan](#) prepared with the person.

In planning to meet care and support needs, county council staff should establish what (if any) support networks (for example, friends and family) are in place where the person currently lives and enquire whether a support network exists elsewhere. Alternatively, the individual (or their family or friends) may themselves raise the potential of a move to an area with a greater support network or to move to an area for other reasons.

If residential care in a different territory of the UK appears to be appropriate for meeting the person's needs, the county council should inform the individual concerned (and/or their family representative or advocate) of the potential availability of a cross-border placement and its suitability in meeting the person's needs and wishes.

If the person wishes to pursue a cross-border placement, the county council should carefully weigh the pros and cons of such a move. This includes considering:

- Would the support network in the area of the proposed new placement improve (or at least maintain) the person's wellbeing?
- What effect might the change of location have on the person's wellbeing? How well are they likely to adapt to their new surroundings?

- Is the individual in receipt of any specialist health care? Will the locality of the proposed new placement allow for the satisfactory continuation of this treatment?
- Where the person lacks the mental capacity to decide where to live, who is the individual's representative? The representative should be consulted and in certain cases there will be a duty to involve them.

For more information, please see the PPGs on [Wellbeing](#) and [Care Act Independent Advocacy](#).

With the permission of the person concerned (or their representative/advocate), the county council should approach the friends and/or family of the individual concerned who are resident in the area of the proposed new placement (and any friends and/or family in the area of their current residence) to seek their views on the perceived benefits of the placement and any concerns they may have.

If a cross-border placement still appears to be in the interests of the individual's wellbeing the county council should research the availability of providers in the proposed new placement area which are likely to meet the person's needs. The county council should conduct all necessary checks and exercise due diligence as it would with any other residential placement. The first authority may wish to make preliminary contact with the second authority to research the availability and quality of any potential providers.

The person's views on suitable providers and their agreement should be sought before any final decision is made. The county council should strive to offer people a choice of placements. For more information on offering a choice of a type of accommodation, please see the [Choice of Accommodation PPG](#).

Staff should also inform the person that the first authority will contact the second authority and ask for help with managing the placement or with discharging any other functions (e.g. care reviews).

Where this would involve the sharing of information or the gathering of information by the second authority on behalf of the first, (see next section) the person should always be informed and their consent sought.

### **3.2 Step 2. Initial liaison between the “first” and “second” authorities**

Once the placement has been agreed in principle (with the person concerned and/or their representative) and the relevant council has identified a potential provider, the "first authority" should immediately contact the authority in whose area the placement will be made (the "second authority").

The first authority should:

- Notify the second authority of its intent to make a cross-border residential care placement.



- Provide a provisional date on which it intends for the individual to begin their placement.
- Provide the second authority with details of the proposed provider.
- Seek that authority's views on the suitability of the residential accommodation.

The initial contact can be made by telephone, but should be confirmed in writing.

The second authority has no power to 'block' a residential care placement into its area as the first authority contracts directly with the provider. In the event of the second authority objecting to the proposed placement, all reasonable steps should be taken by the first authority to resolve the issues concerned before making the placement.

Following the initial contact and any subsequent discussions (and provided that no obstacles to the placement have been identified) the first authority should:

- Write to the second authority confirming the conclusions of the discussions, setting out a timetable of milestones up to the start of the placement.
- Inform the provider that the placement is proposed – just as with any residential placement.
- Ensure that the provider is aware that this will be a cross-border placement.
- Contact the individual concerned and/or their representative to confirm that the placement can go ahead and to seek their final agreement.
- Notify any family/friends that the person has given permission and/ or requested to be kept informed.
- Make all those arrangements that it would normally make in organising a residential care placement in its own area.

### 3.3 Step 3: Arrangements for managing the placement

The first authority will retain responsibility for the individual and the management and review of their placement: the first authority's responsibilities to the individual are **no different** than they would be if the individual were placed with a provider in the authority's own area.

However, the practicalities of day-to-day management of a placement potentially hundreds of miles away may create some difficulties.

The first authority may wish to make arrangements for the second authority to assist with any day-to-day functions (e.g. by helping to gather information necessary for a regular care review and passing this information to the first authority to make a decision) or authorise the exercise of functions on their behalf

Any such arrangement should be detailed in writing and clearly state what role the second authority is to play and for how long. Clarity should also be provided on the regularity of any reporting to the first authority and any payment involved for services provided by the second authority.

### 3.4 Step 4: Confirmation of the placement

Once the placement has been confirmed, the first authority should notify the second authority and detail in writing all of the arrangements made with the second authority for assistance with on-going placement management. The first authority should also confirm the date at which the placement will begin.

The second authority should acknowledge receipt of these documents and information and give its agreement to the arrangements in writing.

The first authority should provide the person concerned and/or their representative with contact details (including whom to contact during an emergency) for both the first and second authority. If required, it is expected that the first authority will be responsible for organising suitable transport, and for the costs of it, to take the individual and their belongings to their new placement.

The first authority will normally be responsible for closing off previous placements or making other necessary arrangements regarding the person's prior residence.

### 3.5 Timeliness

Steps 1 to 4 should be conducted in a timely manner; the time taken should be proportionate to the circumstances.

### 3.6 Where the individual requires a stay in NHS accommodation

Should the individual placed "across a border" need to go into NHS accommodation for any period then this will not change the situation regarding who is responsible for their care.

If, while the individual is in NHS accommodation, a 'retention' fee is payable to the care provider to ensure the individual's place is secured, this will be the responsibility of the first authority.

### 3.7 Where the individual requires NHS-funded nursing care

Should the person being placed require NHS-funded nursing care, the arrangements for delivering this should be discussed between the first authority, the NHS body delivering the care, the NHS body funding the care and the care provider prior to the placement commencing.

**In the event of cross-border placements between England and Scotland or between England and Northern Ireland (in either direction)** the health service of the country of the first authority will be responsible for nursing costs. (In England therefore, the individual's responsible Clinical Commissioning Group will pay the costs.) The NHS standing rules have been amended to facilitate this. The first authority should inform the relevant CCG of the arrangements being made and seek the CCG's

formal consent sought. It is not expected that the CCG would withhold consent – any change in costs associated with the care would be likely to be negligible.

**In the event of a cross-border placement between England and Wales (in either direction),** the second authority's health service will be responsible for the costs of NHS nursing care.

### 3.8 Where the individual's care needs change during the placement

In the event that a person's care and support needs change during the course of the placement, these changes should be picked up in the course of a care review and the [care and support plan](#) amended as needed.

Responsibility to review and amend the person's care and support plan remains with the first authority, although it may have agreed with the second authority that the latter will assist it in certain ways. In this case, clarity and communication will be important as to each authority's role.

### 3.9 Complaints

**If the complaint relates to the care provider,** it should first be made to the provider and dealt with according to the complaints process of the provider as governed by the applicable legislation (this will normally be the legislation of the country into which the individual has been placed).

**If the complaint relates to NHS care,** it should be dealt with according to the legislation governing such complaints in the relevant territory of the UK.

**Complaints regarding the county council** – whether it is acting as the first or second authority – should be dealt with by recourse to the [council's complaints procedure](#). It is important to remember that the council acting as the first authority retains responsibility for the person's care and support plan throughout the period of the placement. As such, complaints about the [care and support plan](#) should be handled by the first authority.

If referral to the Health Ombudsmen is necessary, this should be made to the ombudsmen whose investigation the provider or authority in question is subject to.

### 3.10 Reporting arrangements

The county council should record the number of placements made into its area from other territories of the UK and vice versa.

### 3.11 Disputes between authorities

A spirit of cooperation and reciprocity backed up by good communication between authorities should avoid the need for dispute resolution. A dispute is most likely to occur because of lack of communication or following a communication breakdown/misunderstanding between first and second authority during the process of arranging the placement.

The Regulations under Schedule 1 state:

- a dispute must not be allowed to prevent, interrupt, delay or otherwise adversely affect the meeting of an individual's care and support needs
- the authority in whose area the individual is living at the date the dispute arises is the lead authority for the purposes of duties relating to coordination and management of the dispute

Before a dispute is referred to central government, the lead authority must:

- co-ordinate the discharge of duties by the authorities in dispute
- take steps to obtain relevant information from those authorities
- disclose relevant information to those authorities

Authorities in dispute must:

- take all reasonable steps to resolve the dispute between themselves
- co-operate with each other in the discharge of their duties

Each authority in dispute must:

- engage in constructive dialogue with other authorities to bring about a speedy resolution
- comply with any reasonable request made by the lead authority to supply information

#### Referring a dispute

When a dispute is referred, the following must be provided:

- a letter signed by the lead authority stating that the dispute is being referred and identifying the provision of the Act which the dispute is about
- a statement of the facts
- copies of related correspondence

The statement of facts must include:

- details of the needs of the individual to whom the dispute relates
- which authority, if any, has met those needs, how they have been met and the relevant statutory provision
- any relevant steps taken in relation to the person
- an explanation of the nature of the dispute
- details of the person's place of residence and any former relevant residence
- chronology of events leading up to the referral

- details of steps authorities have taken to resolve dispute
- where the individual's mental capacity is relevant, relevant supporting information

The authorities in dispute may make legal submissions and if they do, they must send a copy to the other authorities in dispute, and provide evidence that they have done so.

For more information and advice, please email the county council's Legal Services team on [adlegaladvice@lancashire.gov.uk](mailto:adlegaladvice@lancashire.gov.uk)

### 3.12 Provider failure

In the event that a [provider fails](#) and the county council had made cross-border arrangements for a person with that provider, the second authority has duties to ensure those needs continue to be met for so long as that authority considers it necessary.

In such cases, close communication and cooperation between the first and second authority throughout will be important. In the event of provider failure in Scotland and Wales, the authority hosting the placement can recover costs from the authority that made or funded the arrangements.

## 4. CASE STUDY

Frances is a 78-year-old woman with severe arthritis who lives alone in south London.

Frances slips while walking down her stairs and breaks a wrist and leg. Frances is admitted to a local general hospital. At the hospital, Francis is visited by Ray, a local authority social services member, who conducts a needs assessment. During the assessment, Ray asks Frances about her support network – does she have any friends and/or family nearby? Frances says her best friend passed away last year. She has one son but he lives outside Edinburgh with his young family.

When Ray re-visits Frances, he informs her that she is eligible for care and support. He also says, that while a number of options exist, it is Ray's opinion that Frances's severe arthritis now means she is unable to live independently and that a care home may be the best way forward. Frances agrees. She expresses relief that she will not have to return home alone but is anxious about moving to an unfamiliar setting.

Ray asks Frances whether she has considered moving to be nearer her son. Frances says yes, but has previously dismissed the idea because she did not want to get in the way. Ray asks whether a move to a care home near her son might be attractive. The local authority would take care of the arrangements and her son and his family could visit more easily. Frances is keen to take this further. Ray asks Frances's permission to contact her son. Frances agrees.

Ray contacts Frances's son, Ian. Ian says he wishes he could visit Frances more often but with two young children and a busy job it is hard to do so. Ian phones every few days and says he knows Frances has been feeling down since her friend passed away. Ian's house is too small to accommodate Frances and is empty all day so no one would be available to support Frances. Ray explains the possibility of a cross-border placement for Frances into a care home close to Ian. Ian says he would find this very attractive. Frances has always enjoyed her visits to Scotland before, especially seeing her grandchildren. Ian agrees to talk to Frances about the possibility.

Ray hears from Frances the next day – she and her son would like to go forward with a cross-border placement. Ray researches possible care homes close to Ian, taking Frances's preferences into account and selects three possibilities that Frances, in conference with Ian, pick from. The preferred home is in a suburban area similar to that in which Frances currently lives and close to a church – Frances is a regular churchgoer. Ray contacts the care home provider, confirms availability and fees, and informs the provider that this would be a cross-border placement.

Ray phones his opposite number, Rhian, in the Edinburgh local authority where the care home is based. Ray informs Rhian that it appears likely a cross-border placement will take place. Rhian says she knows the care home in question and the standard of care is good based on inspectorate findings. Ray thanks her and follows up in writing with the provisional date when the placement will occur and details of the care provider identified. Over the next week, arrangements for the placement are firmed up. Ray draws up an agreement as to how Frances's care will be managed on a day-to-day basis with assistance from Rhian's authority. Rhian has agreed that her local authority will take on several roles including providing assistance and information so that the local authority can fulfil its responsibilities. Rhian's team agree to help to carry out regular care reviews by gathering and reporting information back to Ray's local authority as ultimate decision-maker. Rhian also agrees that her local authority will provide support in an emergency.

## 5. RELATED DOCUMENTS

<b>POLICY, PROCEDURE AND GUIDANCE (PPG) DOCUMENTS</b>	<a href="#">Policy, Procedures and Guidance intranet site</a>
<b>LEGISLATION AND REGULATIONS</b>	<p>Section 39 of and Schedule 1 to the Care Act 2014</p> <p>The Care and Support (Cross-border Placements and Business Failure: Temporary Duty) (Dispute Resolution) Regulations 2014</p> <p>Chapter 21 of the Care and Support Statutory Guidance</p>

## 6. 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, 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 **Cross Border Placements** 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](#).