

OFFICER DECISION RECORD

For staff restructures, please also complete an RA1 form to update the HR Portal. This is attached at Annex 2.

Decision Ref. No:
AHWB/014/2018 Care Home Third Party Top-Up fees

Box 1

DIRECTORATE:

Contact Name: Rosemary Leek

DATE: 11th April 2018

Tel. No.: 735485

Subject Matter: Revision of the Council's practice in the administration of Care Home Third Party Top-Up fees to comply with the Care Act 2014

Box 2

DECISION TAKEN: To approve the revision of the Council's practice in the administration of Care Home Third Party Top-Up fees to comply with the Care Act 2014.

Box 3

REASON FOR THE DECISION:

1. An article in Community Care on 12th January 2018 by Gordon Carson highlighted an Ombudsman investigation where Lincolnshire Council had 'ignored' Care Act guidance on Care Home top-up fees. Lincolnshire Council had ignored three aspects of the Care Act guidance: that Councils "*deter arrangements for top-ups payments to be paid directly to a provider*"; that any arrangement to make payments directly to the Care Home will only be by agreement with the person; and that Councils should consider the individual circumstances of each case.
2. The Ombudsman's recommendation was that Lincolnshire Council should review its procedures to ensure that people are offered the option to pay any top-up fee directly to the Council; review its top-up fee contract to reflect the option to pay the top-up fee directly to the council; and review existing top-up agreements to bring them in line with Care Act guidance.
3. The Section 8.37 Care Act guidance states that the local authority:

"must ensure the person has a genuine choice of accommodation. It must ensure that at least one accommodation option is available and affordable within the person's personal budget and it should ensure that there is more than one of those options. However a person must also be able to choose alternative options, including a more expensive setting, where a third party or in certain circumstances the resident is willing and able to pay the additional cost ('top-up'). However, an additional payment must always be optional and never as a

result of commissioning failures leading to a lack of choice”

Annexe A, Section 28 says that whatever the Care Home option chosen the council is responsible for the total cost of that placement. If there is a break down in the arrangement to pay the top-up, the council is liable for the fees until it has either recovered the costs or made other arrangements to meet the person's needs.

4. This prompted the Council to look at our current practice and it was found that this was very similar to that of Lincolnshire Council's in that where a Care Home asks for a top-up payment we expect the 'third party' to pay the fee directly to the Care Home. Our current practice does not reflect the spirit of the Care Act guidance.
5. The Home Care Project Board has included this work stream within its overarching Project Plan to ensure that the necessary work is completed in a timely manner. A separate Project Group has been formed to: revise the current practice and to ensure that our systems and processes can accommodate the changes; to look at the information and advice offered by Social Workers and on our website; and to update the Care Home contract.
6. With regard to having a sufficiency of options within the Doncaster Care Home market that are affordable there are 15 Care Homes that charge a top-up fee which equates to approximately a third of the market. There is a good choice and range of Care Homes due to vacancies levels of 18%.
7. In most of the 15 Care Homes that charge a top-up fee this is not a blanket policy and only applies to specific rooms. Care Homes should only charge a top-up where they are offering something extra, usually for a larger rooms or having a door to the enclosed garden etc. Therefore we are confident that Doncaster can offer a genuine choice of accommodation to people who require a Care Home placement.
8. A Care Home Directory is available and given out by Social Care Workers to people who are looking at a Care Home placement. The Project Group will also look at the content of this to ensure that it is up to date.

Box 4**OPTIONS CONSIDERED & REASONS FOR RECOMMENDED OPTION:**

If other options were considered, please specify and give reasons for recommended option

Option 1: To approve the revision of the Council's practice in the administration of Care Home Third Party Top-Up fees to comply with the Care Act 2014.

Option 2: Do nothing knowing that the Council's practice does not comply with the Care Act 2014 guidance.

Box 5**LEGAL IMPLICATIONS:**

The Care Act 2014 sets out the legal powers and duties of local authority adult social services. Local authorities have a legal duty under the Act to arrange, or provide support or services for individuals with eligible needs. This includes the provision of residential care and consideration that the person receiving services may wish to top up their provision to receive extra services or premium services over and above the services which they are likely to need.

Guidance about putting this law into practice is found in CSSG. Annex A of CSSG (choice of Accommodation and Additional Payments) sets out how the choice of residential accommodation should be offered by the local authority and how such additional payments for preferred accommodation should be made.

In the absence of a very good reason, CSSG should be followed by local authorities. Therefore the revision of the Council's practice in order to comply with CSSG is supported.

Name: Paula Coleman (Senior Legal Officer) **Signature:** sent via email

Date: 02/5/18

Signature of Assistant Director of Legal and Democratic Services (or representative)

Box 6**FINANCIAL IMPLICATIONS:**

As detailed in the body of the report, in order to fully comply with the Care Act, the Council must offer the option to pay Top Up fees directly to the care provider on behalf of the client. This would be an additional cost to the Council that we would seek to recover through an additional client contribution income collection process, thereby making this cost neutral.

Processes have been put in place so that the additional costs incurred are recorded and reconciled to income collection from clients, ensuring that all costs are recovered.

As with all client debt, there is a risk that not all income will be collected. This will be monitored within existing debt collection procedures, whilst ensuring that the Care Act is complied with.

Name: C.Cowan **Signature:** FM/AH&W (by email) **Date:** 03/05/18
Signature of Chief Financial Officer & Assistant Director of Finance
(or representative)

Box 7
HUMAN RESOURCE IMPLICATIONS:

There are no apparent HR implications as far as this particular ODR is concerned.

Name: Bill Thompson (Senior HR & OD Officer) **Signature:** sent via email
Date: 02/5/18
Signature of Assistant Director of Human Resources and Communications (or representative)

Box 8
PROCUREMENT IMPLICATIONS:

There are no direct procurement implications associated with this report It is important to note that any variations to contracts should be formalised

Name: Glyn Sparrow **Signature:** sent via email **Date:** 24/4/18
Signature of Assistant Director of Finance & Performance
(or representative)

Box 9
ICT IMPLICATIONS:

As stated in the body of the report, a separate project group has been formed to revise the current practice and to ensure that systems and processes can accommodate the changes. It is understood that this group includes Anthony Patterson from PBS and Rob Drake from ICT. The proposals will require changes to the system setup of CareFirst so that workers can record Top Up Fee agreements on the system, in such a way that the suppliers can be paid via CareFirst.

Name: Peter Ward (Governance & Support Manager) **Signature:** ^[redaction]
Date: 02/05/18
Signature of Assistant Director of Customer Services and ICT
(or representative)

Box 10**ASSET IMPLICATIONS:**

There are no implications arising from the recommendations of this report that impact on the use of DMBC assets.

Name: Gillian Fairbrother (Principal Property Surveyor) **Signature:** sent via email

Date: 25/04/18

**Signature of Assistant Director of Trading Services and Assets
(or representative)**

Box 11**RISK IMPLICATIONS:****To be completed by the report author**

The main risk is ignoring the Care Act guidance and subjecting the Council's to complaints of maladministration. Other risks are:

- The Council will incur additional financial costs and there is the risk of managing/accruing Third Party debt
- reputational damage to the Council
- not offering choice to people of how to pay a 'top-up' causing unnecessary distress to families
- not giving individuals/families accurate information so they are making uninformed decisions
- increase in complaints to the Council

(Explain the impact of not taking this decision and in the case of capital schemes, any risks associated with the delivery of the project)

Box 12**EQUALITY IMPLICATIONS:****To be completed by the report author**

The change in practice will offer a range of options to individuals/families when they are in the position of looking for a Care Home placement. In each case the Social Worker will consider the individual circumstances to ensure their practice is person centred.

[redaction]

Name: Rosemary Leek **Signature:**
(Report author)

Date: 11th April 2018

**Box 13
CONSULTATION**

Officers

(In addition to Finance, Legal and Human Resource implications and Procurement implications where necessary, please list below any other teams consulted on this decision, together with their comments)

Ailsa Benn,
Sarah Walton,
Anthony Patterson
Vicky Whittingham
Julie Blakely
Griff Jones
Karen Reilly
Charlene Welsby

Members

Under the Scheme of delegation, officers are responsible for day to day operational matters as well as implementing decisions that have been taken by Council, Cabinet, Committee or individual Cabinet members. Further consultation with Members is not ordinarily required. However, where an ODR relates to a matter which has significant policy, service or operational implications or is known to be politically sensitive, the officer shall first consult with the appropriate Cabinet Member before exercising the delegated powers. In appropriate cases, officers will also need to consult with the Chair of Council, Committee Chairs or the Chair of an Overview and Scrutiny Panel as required. Officers shall also ensure that local Members are kept informed of matters affecting their Wards.

Please list any comments from Members below:

**Box 14
INFORMATION NOT FOR PUBLICATION:**

In accordance with the Freedom of Information Act 2000, it is in the Public's interests for this decision to be published in full, redacting only the signatures.

**Name: Gillian Parker Signature: by email Date: 14/05/2018
Signature of FOI Lead Officer for service area where ODR originates**

Box 15

Signed: _____ [redaction] _____ **Date:** 20th June 2018
Denise Bann Assistant Director

Signed: _____ **Date:** _____
Additional Signature of Chief Financial Officer or nominated representative for Capital decisions.

Signed: _____ **Date:** _____
Signature of Mayor or relevant Cabinet Member consulted on the above decision (if required).

- **This decision can be implemented immediately unless it relates to a Capital Scheme that requires the approval of Cabinet. All Cabinet decisions are subject to call in.**
- **A record of this decision should be kept by the relevant Director's PA for accountability and published on the Council's website.**
- **A copy of this decision should be sent to the originating Directorate's FOI Lead Officer to consider 'information not for publication' prior to being published on the Council's website.**
- **A PDF copy of the signed decision record should be e-mailed to the LA Democratic Services mailbox**