

# Summary of Individual Executive Member Decisions taken on 25 August 2020

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## Part I

### **Amended Residential and Nursing Care Placements for Older People Policy (Item 1.)**

Councillor Graham Bridgman

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If you have any queries regarding this/these decision(s) or you wish to view the signed copy of the decision sheet(s), please contact:  
**Moir Fraser, Democratic Services Manager**  
Tel: (01635) 519045 or e-mail: [mfraser@westberks.gov.uk](mailto:mfraser@westberks.gov.uk)

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## West Berkshire District Council Individual Executive Member Decision Record Sheet



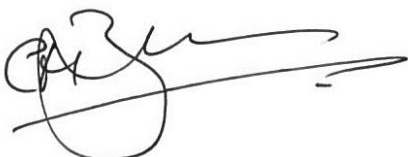

<b>Forward Plan Reference</b>	<b>Service Grouping</b>
ID3948	People
<b>Title:</b>	<b>Amended Residential and Nursing Care Placements for Older People Policy</b>
<b>Recommendation by Officer:</b>	That the clarification regarding funding decisions for residential and nursing placements and the additional flowchart is accepted.
<b>Purpose of Recommendation:</b>	To agree the updates to West Berkshire's Residential and Nursing Placement Policy.
<b>Decision Taken:</b>	<p>As 'Recommendation by Officer' above, subject to the inclusion of the following amendments:</p> <ol style="list-style-type: none"> <li>1. Paragraph 1.1 insert the word 'principally' after 'nursing home placements';</li> <li>2. Paragraph 1.3 insert the word 'principally' before the word 'relates'.</li> <li>3. Paragraph 2.8 insert the following at the start of the sentence 'Subject to the provisions of Paragraph 2.6, a person....';</li> <li>4. After the words 'options method noted above' in Paragraph 5.2 add in (see Paragraph 4.4);</li> <li>5. At the end of Paragraph 5.3 insert (see Section 6 below).;</li> <li>6. In the heading relating to Section 6 add the words (Top-Ups) at the end of the heading</li> <li>7. In the flowchart insert the words (Placement, Value of Personal Budget, etc) after the word decision in the final box.</li> </ol>
<b>Reason for Decision Taken:</b>	Additional amendments to take into consideration comments made during the consultation from Members and a resident.
<b>Options Considered:</b>	<p>Not making the clarification to policy.</p> <p>Not to address the comments received.</p>
<b>Those Consulted and a Summary of Comments Received:</b>	<p><b>Members:</b></p> <p><b>Leader of Council:</b></p>

	<p>Councillor Lynne Doherty – no comments received.</p> <p><b>Overview &amp; Scrutiny Management Commission Chairman:</b></p> <p>Councillor Alan Law – no comments received</p> <p><b>Ward Members:</b></p> <p>All Members – none received.</p> <p><b>Opposition Spokesperson:</b></p> <p>Councillor Alan Macro raised the following matters:</p> <p>“The stated aim of this paper is to “ensure that staff are clear regarding the process of requesting funding for residential and nursing placements. Our complaints team suggested that our process for funding requests is made more easily understandable...” However. I find the proposals difficult to understand. In particular:</p> <ul style="list-style-type: none"> <li>• In section 2.8 it says that “a person can also choose to be placed in a setting which is outside of the LA’s area and the LA must still arrange for this” whereas in section 3.3 it says “WBC will prioritise use of its own in-house services (residential and nursing) in order to manage resources effectively”. Without any qualification, these two statements seem potentially contradictory. (<i>see amendment 3</i>)</li> <li>• In section 5.2 it says “in cases where a placement or care provision is more than the cost that WBC would usually pay for residential or nursing care then the options method noted above needs to be in place prior to a case being presented to GPF”. It is not clear which options are being referred to. (<i>see amendment 4</i>)</li> <li>• Section 5.3 would be clearer if it referred specifically to section 6. (<i>see amendment 5</i>)</li> <li>• Section 6 should refer to the policy on third party top ups (<i>see amendment 6</i>)</li> </ul> <p>The flowchart in appendix 1 would be more useful if it included the decisions that have to be made.” (<i>see amendment 7</i>)</p> <p><b>Local Stakeholders:</b></p> <p>A local resident Paula Saunderson (a member of an Independent group of At Home Dementia Carers ) who raised the following queries:</p> <ol style="list-style-type: none"> <li>1. In October 2020 the State Pension Age for Men &amp; Women raises to 66 so looking at provision for the over 65s would seem to need changing to over 66, especially with Income discussions being a key part of the ASC Service. It would be much simpler for us as end users if your policies were aligned with new</li> </ol>
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	<p>SPA. Is this something you would consider please? (see amendments 1 and 2)</p> <p>2. It is difficult to establish where and how the policy is changing or being clarified, and whether this means terms and conditions are less or more advantageous than previous policy? The accompanying form (the usual one) in the Agenda Pack just states there were complaints about confusion and not which areas were confusing. Would you be able either highlight the changes in the new document or provide a summary of the clarifications, please? <i>(Copies of the original and revised documents provided to Ms Saunderson)</i></p> <p><b>Officers Consulted:</b> Any comments that are received will be reported when the ID is signed. None received</p> <p><b>Trade Union:</b> Any comments that are received will be reported when the ID is signed. None received</p>
<b>Background Papers:</b>	None
<b>Exempt Information:</b>	n/a
<b>Declarations of Interest:</b>	None

I confirm that I have been fully advised and have taken account of all the relevant facts in making this decision.

Is the Decision subject to Call In		Date Decision Made	Date Decision will be Implemented (5 clear days)
Yes: <input checked="" type="checkbox"/>	No: <input type="checkbox"/>	25 August 2020	03 September 2020

<b>Portfolio Member:</b>	 Signed:	Print Name: Councillor Graham Bridgman
<b>Director or representative:</b>	Signed:	Print Name: Mike Harling
<b>Witnessed by:</b>	 on behalf of Service Director: Strategy and Governance	Print Name: Moira Fraser

<b>Date:</b>	25 August 2020
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# Residential and Nursing Care Placements for Older People Policy

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## **1 Purpose and Scope**

- 1.1 The purpose of this document is to set out the policy of West Berkshire Council ("WBC") for any new residential and nursing home placements, principally for Older People (65+), where such a placement is required to meet a person's assessed care and support needs.
- 1.2 The development of this Policy is driven by an increased demand for residential/nursing services and recognition that West Berkshire does not have enough affordable supply to meet demand. The ability to have services available from a wider geographical market means WBC will be better able to manage demand within existing resources.
- 1.3 This Policy principally relates to those Older People assessed as requiring a residential/nursing home placement to be provided by WBC.
- 1.4 This Policy relates to externally purchased residential and nursing home placements only.
- 1.5 This Policy should be read in conjunction with:
  - The Care Act 2014 (CA) and associated [Care and Support Statutory Guidance](#)
  - [WBC Adult Social Care Charging Policy](#)
  - [WBC Deferred Payment Agreement Policy](#)

## **2 Policy Context - Legal Framework**

- 2.1 Each Local Authority with a Social Services responsibility ("LA") is legally required to (a) assess the care needs of any person who appears to be in need of care and support, and (b) decide, having regard to the results of that assessment, whether services should be provided to that person.<sup>1</sup>
- 2.2 At the assessment stage, all of the adult's presenting needs must be recorded. Once the individual's presenting needs have been established, it is then necessary to consider which needs are 'eligible unmet needs' as defined by the national eligibility criteria set out by the CA and associated guidance and therefore are needs which the LA is obliged to meet.
- 2.3 LAs are under a specific duty to consider the promotion of the adult's wellbeing and to consider ways in which to prevent, reduce or delay needs when undertaking an assessment (see ss.1 & 2, CA and chapters 1 and 2 of the statutory guidance).
- 2.4 Where an individual will have substantial difficulty in engaging with Adult Social Care and there is no-one else to assist, an LA has a duty to appoint an Independent Advocate to support the adult.<sup>2</sup>
- 2.5 Once the LA has decided it is necessary to provide services to meet an adult's eligible unmet needs, it is under a duty to provide those services, irrespective of whether it has sufficient resources to do so.<sup>3</sup>
- 2.6 However, in determining how to meet such needs the LA, in this case WBC, may also take reasonable consideration of its own finances and budgetary position (see paragraph 10.27 of the Statutory Care and Support Guidance). All decisions must also be in line with WBC's Constitution (see in particular, Part 10: Financial Rules of Procedure and Part 11: Contract Rules of Procedure).

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<sup>1</sup> s9 Care Act 2014

<sup>2</sup> The Care and Support (Independent Advocacy) Regulations 2014

<sup>3</sup> R v Sefton ex=parte Help the Aged (1997) 1CCLR 57; R v Kensington & Chelsea ex=parte Kujtim (1999) 1CCLR 340  
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- 2.7 The Mental Capacity Act 2005 ("MCA") along with the related Code of Practice provide a framework to empower and protect people who may lack capacity to make some decisions for themselves. When WBC is working with someone who may lack capacity due regard must be taken to ensure that the principles and processes of the MCA are applied.
- 2.8 Subject to the provisions of Paragraph 2.6, a person can also choose to be placed in a setting which is outside of the LA's area and the LA must still arrange for this.

### **3 Provision of Residential/Nursing Care Placements by WBC**

- 3.1 It is WBC Policy to ensure that:
- where possible, the service user is supported to remain in their own home when they wish to and it is safe to do so - all affordable community based options to meet identified need (eg support from family/friends) will be considered prior to a placement in a residential/nursing care setting;
  - all residential/nursing placements which meet identified need are considered - this may or may not be within WBC's geographical area ("the District");
  - the service user's personal and family circumstances in relation to visiting needs are considered.
- 3.2 Where there are two real and objective alternatives, WBC can take account of its resources where one placement would involve greater expenditure.
- 3.3 WBC will prioritise use of its own in-house services (residential and nursing) in order to manage resources effectively.
- 3.4 In taking account of its finances and ensuring value for money, WBC will consider - on a case by case basis - the total costs of different potential options for meeting needs and include the cost as a relevant factor in deciding between suitable alternative options for meeting needs. This may mean that an individual's first choice of care provider is considered to be too expensive when a suitable alternative which also meets need can be offered at a more affordable level. WBC will seek to reach agreement on placements but, where this is not possible, WBC may consider that it has discharged its legal duty by making an appropriate option available.

### **4 Good Practice Forum**

- 4.1 The WBC Good Practice Forum ("GPF") considers requests for funding for residential and nursing care placements.
- 4.2 The GPF is the place where line managers and service managers discuss cases in order to finalise funding decisions on care and support packages and care placements:
- the GPF will have seen a full Care Act Assessment of the client's needs and the impact of those needs on their wellbeing;
  - an Indicative Budget ("IB") will have been generated by this assessment to help guide their discussions - the IB is a figurative amount calculated immediately following the assessment, estimating based on the information available how much it may cost to meet the eligible needs identified during assessment;
  - each presentation of a service user will be unique and needs to be considered on its own merits;

- a service user's Personal Budget ("PB") will be confirmed through refinement of the IB during the care and support planning process - in West Berkshire the PB is agreed at the GPF.
- 4.3 As noted for residential and nursing placements, the care manager will have sent the needs assessment to the commissioning team. As part of its work WBC must ensure that at least one option is available that is affordable and should ensure that there is more than one whenever possible. If there is no placement which meets need available within the IB, the IB will need to be increased.
  - 4.4 On receipt of the assessment, the commissioning team will identify up to three placements that are currently available at the time of the GPF - these placements will meet the assessed needs and represent best value for WBC at the same time as the placement is required. Discussions at GPF will need to be informed by preceding conversations with the service user and/or relevant others alongside advice from Commissioning. Options agreed at GPF will be discussed with the service user and their support network. For those who lack mental capacity, these options will be considered as part of the [Best Interests](#) process. The possibility of a top-up payment (see below) can also be discussed at this point if this is an option.
  - 4.5 Having options enables WBC to benchmark in order to help consider the current best value. The GPF, acting on WBC's behalf, may take WBC's resources into account when deciding which placement to make. If the placement that is the lowest in cost of the options that are provided meets the service users' needs then it will be reasonable and appropriate to determine the PB at that amount.
  - 4.6 The GPF decision will be taken alongside a knowledge of the service user's preference and family arrangements. This does not mean choosing the cheapest option but the one that delivers the desired outcome for the Best Value. **The Service Manager who is completing the GPF referral form needs to confirm why they have made the particular choice.**
  - 4.7 The PB will be determined by the GPF. The service user (and where applicable their family) will be made aware of the PB once it has been agreed.
  - 4.8 The service user can be offered a PB at the same rate that WBC can meet their needs if they request to make their own arrangements. WBC will need to be satisfied that an individual's care and support needs are appropriately met in these circumstances.
  - 4.9 Emergency Placement Requests – if a placement is required before the next GPF meeting such a request may be made to a Service Manager via an Emergency Provision Request Form. The case will then come to the next GPF for any further consideration and to ensure consistency of decision making.
  - 4.10 In cases where a preference is made for accommodation which is higher than the IB, there is an option to put in place a third party top-up for a particular placement (see below).

## 5 Self-Funders and Depletion of Assets

- 5.1 The GPF is also required to make decisions on depleted self-funders. A depleted self-funder is usually someone who individually or with the support of others has made their own arrangements to place themselves in a residential or nursing provider prior to approaching WBC for support. It can however also relate to care provided at home, such as with a live-in carer. The circumstances in these cases can vary considerably in terms of length of time a placement has been funded for and the implications on the individual of moving or changing their care relationships.

- 5.2 In cases where a placement or care provision is more than the cost that WBC would usually pay for residential or nursing care the options method noted above (see Paragraph 4.4) needs to be in place prior to a case being presented to GPF.
- 5.3 The option of a third party top-up for a placement may also be considered as below (see Section 6 below).
- 5.4 It should be noted that prior to the presentation of a case to GPF, [Mental Capacity](#) and if required [Best Interests](#), should be considered where appropriate. Presentations to GPF should evidence that alternative options to meet a service user's needs have considered the wellbeing principle and involved discussion with the service user about how their needs will be met. **Court judgments since the CA came into force have highlighted how clear recording and evidence of the consideration of wellbeing within the context of best value have helped to support assessors evidencing good practice and clear communication of the whole process.**
- 5.5 Care Managers looking to arrange a new placement will make a request to the Care Placement Team for the completion of 'Up to Three Options' (see Appendix 1).

## 6 Financial Contributions from Service Users and Third Parties (Top-Ups)

- 6.1 Financial assessments for an individual's contribution will be completed in line with the WBC [Adult Social Care Charging Policy](#) (2018), which is aligned to the CA and associated statutory guidance.
- 6.2 Individuals or their relatives/friends may wish to choose an alternative residential/nursing care placement to the one offered. If the chosen placement costs more than the amount identified in the PB, a payment (a 'third party top-up') will need to be made by the relatives/friends (or sometimes by a charitable organisation) to pay the difference between the cost of the placement and the PB – this will be subject to agreement by WBC that the payment is affordable and sustainable for the likely duration of the arrangement.
- 6.3 A top-up payment by the individual themselves is only permissible in very limited circumstances (please refer to the WBC [Deferred Payment Agreement Policy](#) for a full explanation) - the payment must be from the individual's income or savings that are disregarded for the purposes of the financial assessment AND:
- the individual must own a property AND
    - ◆ have entered into a 12-week property disregard (see the [Policy](#) for explanation),
    - OR
    - ◆ have entered into a Deferred Payment Agreement (whereby WBC will place a legal charge on the property to cover the cost of the care home fee and the top-up payment);
  - OR
  - the accommodation must be provided for mental health aftercare under [s.117 Mental Health Act 1983](#).

## 7 Assuring Quality of Care provided

- 7.1 WBC is committed to ensure that people are safeguarded from harm and work within the framework set out in the [Berkshire Safeguarding Adult procedures](#).
- 7.2 Locally, WBC has a Care Quality Framework to evaluate and monitor the quality of care service provision, and a commitment to ensure that all providers have an acceptable level

of quality - any concerns about service quality would be addressed through the Framework.

7.3 Where individuals are placed outside the District there are reciprocal arrangements for host authorities to respond to any safeguarding concerns.

7.4 Whilst WBC respects that the host authority takes the lead in responding to any safeguarding concerns, WBC will actively work to build its own links and engage with providers outside the District and make any decisions regarding future commissioning through its Care Quality Framework.

## **8 Implementation, Roles and Responsibilities**

8.1 This Policy is supported by [Charging for Residential and Nursing Care Homes](#). This publication provides information and guidance on the options and support available when considering residential/nursing care.

8.2 This Policy is for new residential and nursing placements only and does not apply to existing placements.

8.3 The overall responsibility for this Policy within WBC rests with the Head of Adult Social Care. There is interdependency with the work of the Commissioning Service.

8.4 All managers within Adult Social Care and Commissioning are directly responsible for implementing this Policy, any sub-policies and procedures within their service areas, and for the adherence of their staff and others.

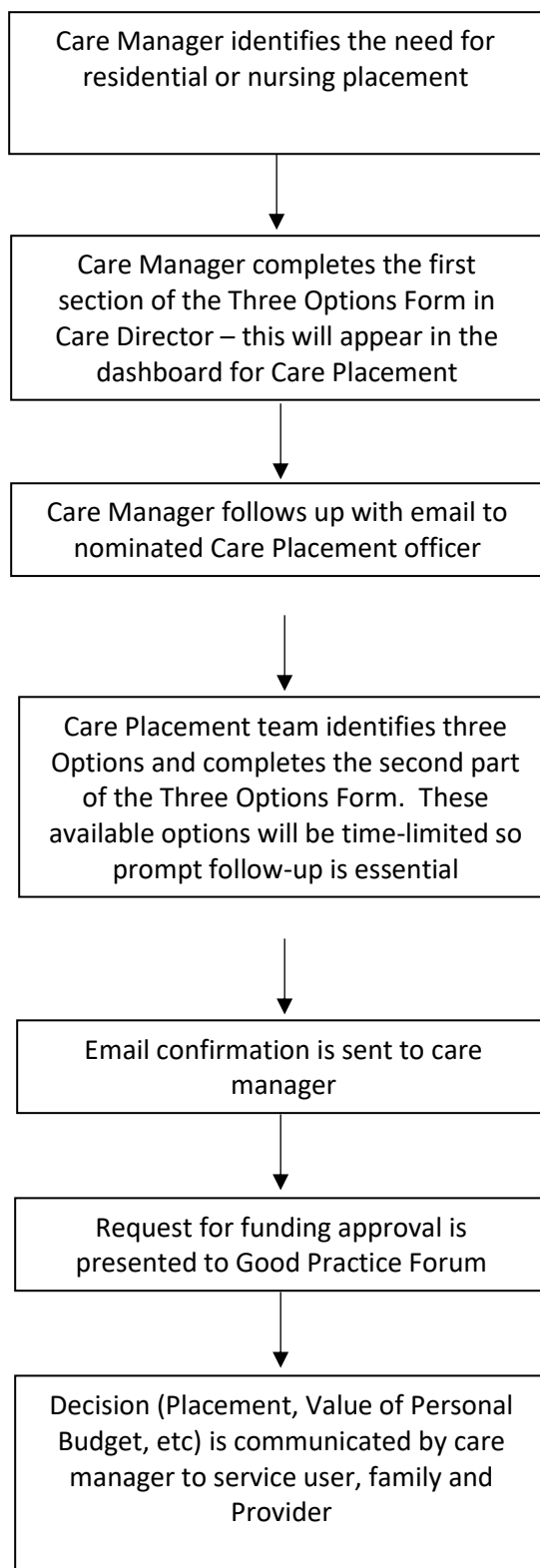
## **9 Complaints**

Any dissatisfaction or disquiet about the actions or decisions in relation to this Policy will be subject to WBC Complaints procedure.

## **10 Review**

This Policy will be reviewed to respond to any changes and kept under regular review.

## Appendix 1 – Flowchart for requesting Three Options



## Document Control

<a href="#">Berkshire Safeguarding Adults Policy and Procedures   Safeguarding Adults Board</a>		<b>Date Created:</b>	31 May 2012
<b>Version:</b>	1.2	<b>Date Modified:</b>	January 2020
<b>Revision due</b>			
<b>Author:</b>	Tandra Forster – Head of Adult Social Care  Barbara Billett – Quality Assurance Manager  Paul Coe - Service Director, Adult Social Care	<b>Sign &amp; Date:</b>	29 <sup>th</sup> November 2012  Updated January 2016  Updated January 2020
<b>Owning Service</b>	Adult Social Care		
<b>Equality Impact Assessment: (EIA)</b>	<b>Date undertaken:</b>	October 2012	
		The policy were agreed on 29 <sup>th</sup> November Executive. All the papers are on the Council's website:- <a href="http://decisionmaking.westberks.gov.uk/ieListDocuments.aspx?CId=117&amp;MId=1829&amp;Ver=4">http://decisionmaking.westberks.gov.uk/ieListDocuments.aspx?CId=117&amp;MId=1829&amp;Ver=4</a>	

<b>Chief Executive</b>	29 <sup>th</sup> November 2012	Nick Carter
<b>Corporate Director (Communities)</b>	29 <sup>th</sup> Nov2012	Margaret Goldie
		Approved at Executive 29 <sup>th</sup> November 2012

## Change History

Version	Date	Description	Change ID
1.1	Sept – October	Updated following consultation on the policy	
1.2	January 2016	Amended to take into account changes to eligibility criteria and statutory requirements as a result of the Care Act 2014. – Section 2 & 3. An additional reference to our duty to appoint an Independent Advocate where required Section 4.1 which describes the policy in West Berkshire to placing an adult in a Residential / Nursing home has not been changed 4.2 & 4.3 updated to remove reference to Local Authority Circular LAC2004)20 that no longer exists 4.5 & 4.6 Additional detail re Deferred Payment and Top ups have been provided	
1.3	August 2018	Updated references to linked documents. Added reference to the Three Options process. Moved responsibility to ASC following SMR4 (organisational changes)	

1.4	January 2020	Clarified linked documents are updated regularly Clarification of Policy re Good Practice forum following service wide training	
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***This Policy was approved via Council Executive 29<sup>th</sup> November 2012***

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