

Briefing Note for members of Devon Care Homes Collaborative

RWK Goodman: 14 February 2025

RWK Goodman has been asked to provide two template letters for members of Devon Care Homes Collaborative as part of a strategic response to the Provider Engagement Document "Proposal for New Fee Model for Older Persons Placements (Care Homes) and Care Home Fee Uplift 2025/26" issued by Devon County Council on 10 February 2025.

Delivery of Letters

In order to be valid, these letters need to be served correctly under the Devon County Council Residential and Nursing Home Pre-Placement Agreement (version 0.2 18 April 2018) ("**Pre-Placement Agreement**"). This requires all letters to be sent in writing or by email to:

Email: procurementpeople-mailbox@devon.gov.uk

Address: Procurement- People
County Hall
The Annex
Topsham Road

Our advice would be to send an email, cc'd to yourself with a delivery and read receipt. A copy of the letter should be sent to the resident, their representatives and anyone with power of attorney.

Template Letter 1: Request for review

This letter is a formal request under clause D8.3 of the Pre-Placement Agreement for the local authority to carry out a review of the resident's care and support plan. It should be used where you can provide evidence that the needs of the resident have changed and cannot be met within the hours funded by the local authority. Evidence forming the basis of your request should be included. We would recommend that a consultation is carried out with the resident and/or their representatives ahead of sending the letter.

The letter requests the review to be carried out within 28 days of the date of the letter. Under the Care Act 2014 Statutory Guidance, the local authority has a duty to conduct a review if requested and to "*act promptly*". The duty on the local authority under paragraph 13.3 of the Statutory Guidance is to ensure that a review occurs, and if needed a revision to the care plan

follows. It states that others, including the provider, can be authorised to conduct a review with the local authority adopting an assurance and sign-off approach.

Paragraph 13.23 of the Statutory Guidance states that it is *“the expectation that a review should be performed unless the authority is reasonably satisfied that the plan remains sufficient or the request is frivolous or is made on the basis of inaccurate information, or is a complaint”*.

Where a decision is made not to conduct a review following a request, the local authority should set out the reasons for not accepting the request in a format accessible to the person, along with details of how to pursue the matter if the person remains unsatisfied.

Paragraph 13.3.4 states that *“the review should be performed as quickly as is reasonably practicable. As with care and support planning, it is expected that in most cases the revision of the plan should be completed in a timely manner proportionate to the needs to be met. Where there is an urgent need to intervene, local authorities should consider implementing interim packages to urgently meet needs while the plan is revised.”*

Template Letter 2: Notice to terminate Individual Contract

This letter is formal notice under clause D9.2 of the Pre-Placement Agreement to terminate the Individual Contract on four weeks’ written notice.

We would recommend that the resident and/or their representatives are consulted with before service of the notice to confirm that a third party top up cannot be put in place to bridge the gap between the funding and the cost of the placement. Whilst we recognise that is not the answer to the problem of under-funding, we think the letter will have more gravitas if this has been confirmed.

It is important to state in the letter that the Individual Contract will end on the expiry of the four weeks’ notice, whether or not the resident has moved out of the home. This is to avoid the resident remaining at the home on the existing terms. We have included a statement confirming that on the expiry of the notice, the home’s standard terms will apply and the current private weekly fee rate will be charged. A copy of the home’s private residents contract should be included with the letter. If the local authority refuses to accept your terms and states that the terms of the Pre-Placement Agreement continue to apply, you should respond in writing to confirm that these are rejected. If neither the Pre-Placement Agreement nor your terms are accepted then there is no contract in place. If the local authority did not pay for the placement, you would be reliant upon the common law remedy of “restitution” by which the court would need to step in to dictate what terms would apply.