Position Statement

SEPTEMBER 2024

Scottish Care
Social care that works for Scotland

BARRIERS TO THE PROVISION OF RESIDENTIAL ACCOMMODATION

About Scottish Care

A voice for providers, their workforce and people who access care and support

Scottish Care is a membership body, thinktank and social care futures designer. We are an organisation driven by social values. We aim to ensure that social care in Scotland is not only sustainable but also exemplary, reflecting the high standards and compassionate care that our communities deserve.

We represent over 350 private, not for profit and charitable provider organisations, totalling almost 900 individual services that deliver residential care, nursing care, day care, care at home and housing support services. Our members deliver a wide range of registered services for older people and those with long term conditions, learning disabilities, physical disabilities, dementia or mental health problems.

Background

Scottish Care routinely consults with its membership regarding the issues impacting independent care providers across the country.

In this capacity, Scottish Care has been made aware of various issues impacting the sustainable provision of residential accommodation to those requiring care and support in their communities. These issues are:

- Evidencing additional charges out with the terms of the National Care Home Contract (NCHC) (March 2024).
- Rejecting the use of Route 4 - Assessed Contribution Supported Person – with Top Up ('Top-Ups').
- Conducting untimely financial assessment and impeding the use and payment of the 12-week-disregard.

This position statement has been produced to support Scottish Care membership when encountering such impediments to the sustainable provision of residential accommodation. It outlines an up-to-date and thorough analysis of the Scottish Government's Charging for Residential Accommodation Guidance (March 2024)(CRAG) and the NCHC (March 2024), supported by

stakeholders within Scotland Excel and the CRAG Working Group. Such a position is designed to support sector-wide understanding of the necessity of, and eligibility for, key provisions within both documents.

Additional Service Charges

What are Additional Service Charges?

The latest iteration of the NCHC (March 2024) states that:

> "The Council shall pay an Additional Care Charge in exceptional circumstances where the Resident has been assessed as requiring Additional Care and the Council has not sourced an alternative provider to deliver the Additional Care. The duration, associated payment and review arrangements relating to the Additional Care Charge shall be recorded on the Individual Placement Agreement." (C.3.1)

Eligibility for an Additional Service Charge requires evidencing to the council's satisfaction "that the facilities, goods and services to which the Charge relate are significantly and demonstrably higher than those expected by the Health and Social Care Standards or other Clauses of this Contract" (C3.2). Following agreement on an Additional Service Charge, it shall be paid by either or both the residents or a third party/parties (C3.4), and the service provider shall be responsible for collecting the Additional Service Charge from the party that has agreed to pay it, in keeping with arrangements detailed in an Individual Placement Agreement (C.3.5).

This is unless, the council has placed a "resident in a care home of its [the council's] choice and not because the resident or his representative have requested it" (3.6), where the council assumes responsibility for paying the additional service charge.

What is the barrier?

Scottish Care has been informed by its membership of evidence requests going above the information contained in the national cost model. Disclosing such information presents significant risk to the residential accommodation provider; in relation to both the Data Protection Act 2018 and to the providers' standing within ongoing and future competitive procurement processes.

Scottish Care position

Given ongoing funding pressures across the independent residential care sector (detailed in Scottish Care's Myth-Busting: First Steps of the Care Revolution Briefing Report - May 2024) and the

insufficiency of the funding model within the National Care Home Contract, additional charges are a key resource for service providers to receive the necessary funds to maintain sustainable care provision. This is key to the delivery of human-rights, person led care, including but not limited to necessary infection control, technological infrastructure and specialist care types.

As per the terms of the NCHC (March 2024) (Section 3 – Additional Charges), residential accommodation providers have the statutory option of applying for an Additional Service Charge. That legal right should be acknowledged and adhered to by the relevant council, with consideration of the current fiscal challenges across the independent residential care sector and the necessity of such Additional Service Charges to maintain sustainable service provision. If the council is paying the Additional Service Charge (C3.6), the availability of such funds should be budgeted by council's to support access to these legally entitled provisions (when evidenced).

Noting, per the terms of the NCHC, residential care providers must evidence "that the facilities, goods and services to which the Charge relate are significantly and demonstrably higher than those expected by the Health and Social Care Standards or other Clauses of this Contract" (C3.2), it is of the upmost importance that such data collection requests adhere to the relevant information contained in the national cost model.

When evidencing such services, Scottish Care notes Section A.10.7 of the NCHC, that "the provider hereby consents to a description of its fees, charges, services provided, occupancy levels, Care Inspectorate grades and any other relevant management information as agreed with the Council". Requests for further information over and above the information contained in the national cost model should consider:

- The risk of disclosing such information, in relation to both the Data Protection Act 2018 and to the providers' standing within ongoing and future competitive procurement processes.
- The effort involved in blanket requests for data, and whether they be commensurate to the intended improvement of commissioning and procurement practice by the respective commissioning body.

It is Scottish Care's position that such assurances may be sought by the provider, prior to the release of potentially sensitive information.

Route 4 - Assessed Contribution Supported Person – with Top Up ('Top-Ups')

What are top-ups?

Given the current funding shortfalls across the independent residential care sector, detailed in Scottish Care's Myth-Busting: First Steps of the Care Revolution Briefing Report (May 2024), top-ups

are another essential provision to maintain sustainable service provision. CRAG (Paragraph 01033) outlines:

> "There may be occasions when the care home does not accept the National Care Home Contract rate, or the rate the local authority [council] is able to pay for the placement, and the supported person does not have the income or capital to fulfil the shortfall of the costs. On these occasions a Top Up is required which should be paid for by a third party, for example, a family member, charity or organisation"

Top-ups support the delivery of human-rights, person led care through supporting the individual's choice and control of their residential accommodation. If the chosen provider is not able to admit further residents under the NCHC rate, the use of top-ups are an essential feature to maintain the business sustainability of the provider. This is essential when considering the insufficiency of the funding model under the NCHC.

What is the barrier?

Scottish Care has been made aware of increasing cases of commissioning bodies rejecting the use of top-ups, citing erroneously that the use of top-ups conflicts with the terms of the NCHC.

Lack of access to top-ups prevents the admission of service users to a range of services offered by independent providers. This conflicts with a human-rights, person led approach to care provision by negating the individual's choice and control of residential accommodation.

Scottish Care position

When a willing and applicable third party is in place to pay a top-up fee, it is the view of Scottish Care that, in keeping with the CRAG guidance, maintaining the individuals desired care provider and services through Route 4 should be supported.

It is Scottish Care's understanding that the application of top-ups is not in breach of the National Care Home Contract (NCHC). Eligibility to top-ups is out with the terms of the NCHC and should be assessed based on the terms of the CRAG Guidance. This is detailed in the NCHC (Section C1.6), stating that "where the Resident and/or their Representative wish to contract for Additional Services, the Council shall assess their ability to do so in accordance with Scottish Executive guidance on Topping Up of Care Home Fees". Being out with the terms of the NCHC also means that evidencing "demonstrably better service provision" (as for Additional Service Charges) to the council is not a statutory requirement of the residential accommodation provider.

Given the insufficiency of the NCHC funding model, Scottish Care also reiterates the necessity of top-ups for independent services, in certain, evidenced circumstances, to maintain service provision and the sustainability of the delivering service provider.

Delays in Financial Assessment and the 12-Week Disregard

What is the 12-week disregard?

The 12-week disregard was introduced, as detailed by CRAG (Section 7 - Paragraph 07005), to provide "limited state financial support to people who enter residential accommodation and offers residents a breathing space between entering a care home on a permanent basis and deciding how best to fund the move, or whether to return to their own homes". Such provisions are vital to supporting an individual's choice and control over their desired residential accommodation.

Eligibility for the 12-week disregard is detailed in CRAG (Section 7 – Paragraph 07006):

> "a) If a person is firstly considered temporary, the property is disregarded. Once the stay has been confirmed as permanent then the property will be disregarded under the new provisions for a further 12 weeks.
>
> b) The disregard is for 12 weeks from the moment that permanent admission to residential accommodation commences. This may follow a temporary stay.
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> c) The local authority will determine if a person is eligible for the disregard. People will be eligible if:
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> • they entered or commenced permanent accommodation on or after 9 April 2001; and
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> • after assessment the local authority confirms that an applicant is in need of permanent residential accommodation and takes over the arrangements for it.
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> d) A resident is entitled to the 12-week disregard irrespective of the amount of their remaining assets after the value of their property has been disregarded from the financial assessment. However, a resident may still be required to contribute towards their care home fees from their remaining capital if it exceeds the lower capital limit £21,500. The contribution made by the resident towards these costs will be calculated according to the residential care charging financial assessment.
>
> f) If people sell their homes within 12 weeks, the disregard ceases to have effect from the date of the sale.
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> g) Where a person leaves residential care (where they have been living on a permanent basis), before the end of the 12 weeks and then re-enters on a permanent basis within 52 weeks they will be entitled to the remaining balance of the 12-week disregard. If a resident leaves

permanent care and then re-enters more than 52 weeks later, they will qualify for the disregard again. Only one dwelling can be disregarded in these circumstances.

h) A resident may be required to contribute towards their care costs in the first 12 weeks of permanent stay in a care home if they're remaining capital exceeds the lower capital limit of £21,500."

What is the barrier?

Scottish Care has been made aware, through its membership, of significant delays to financial assessment, passing the 12-week disregard period with no penalty in place for the relevant council (or other applicable statutory responsibility). Untimely financial assessment has also resulted, in provided cases, of:

- Incorrect admission of the individual receiving residential accommodation as socially funded (pending the delayed assessment), despite available funds for privately funded accommodation.
- Delays in receiving contractual assurance of the individual's applicable rate.
- Delays in progressing the sale of relevant assets (notably the resident's housing).

Such incidences delay the legally entitled receipt of the necessary funds to provide residential accommodation, and severely impact the sustainability of care services. Further procedural confusion places significant stress on the individual service user and their families. Moreover, Scottish Care notes these problems have been exacerbated in cases where the individual has chosen residential accommodation within the jurisdiction of another local authority area.

Scottish Care position

It is the position of Scottish Care that thorough adherence to the CRAG guidance is critical to ensuring the sustainable provision of residential accommodation.

As paragraph 07006 (section E) states, noting that the 12-week disregard be claimed from the council up to 12 weeks following admission to permanent residential care, "local authorities should make their assessment of applications without undue delay". Providers are entitled to expect a timely assessment and have grounds to query such delays as and when they arise.

It is also noted, again in paragraph 07006 (section E), delays on the part of the council that go beyond 12 weeks following permanent admission do not affect a resident's entitlement to the disregard. If the application is successful, the 12-week disregard applies from the date of permanent admission, not the date of the claim. Efforts must be made by the council to deliver the assessment within 12-weeks, as the service provider is entitled to.

A timely assessment is critical to the proper provision of the 12-week disregard, allowing (as intended through its creation) to provide the individual receiving care of true choice and control over their living arrangements. Such provisions are vital to supporting an individual's choice and control over their desired residential accommodation.

Efforts to deliver timely assessment must be commensurate with the significant impact on business sustainability that such a delay has on the entitled service provider and should also be conducted with an awareness of potential sensitivities regarding the health and wellbeing of the service user. As such, local authorities should be aware of CRAG (Paragraph 07003), which outlines the necessity of "effective and open communications between local authorities, service providers and service users at all times". Services providing residential accommodation are entitled to transparent and timely communication from the commissioning body, essential to the wellbeing of service users and their families. To further such good practice regarding open communication and to avoid undue delay in conducting financial assessment, Scottish Care highlights CRAG (Paragraph 07007), that local authorities should:

> "a) Make detailed information about the disregard available to people who are considering, entering or commencing permanent stays in residential accommodation.
>
> b) Take account of the 12-week property disregard when making assessments and financial assessments for permanent residential accommodation. If eligible, apply Charging for Residential Accommodation Guidance to residents' income and other assets.
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> c) Consider 12-week contracts with care homes to cover the 12-week property disregard. The local authority should consider contractual terms which enables contracts for the 12-week property disregard to be terminated before the end of the 12 weeks on the earlier sale of the resident's property. At the end of the 12 weeks, local authorities will need to consider whether the value of residents' assets (including property) mean they no longer need local authority support other than their assessed entitlement to free personal and or nursing care. (Local authorities will continue to support and maintain contracts for those residents who, although they pay the full costs of their care, lack the capacity to make their own arrangements).
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> d) Ensure that admissions to residential accommodation are deemed temporary or permanent depending solely on the needs and circumstances of individual service users. As such neither local authority nor residents' resources should play a part in the decision.
>
> e) Bear in mind that if people are admitted to residential accommodation on the basis that they will return home or where there is uncertainty over the permanence of their admission, they should be deemed "temporary" (in which case the value of their property is automatically disregarded from the financial assessment)."

Such adherence to the CRAG guidance is critical to the effective implementation of the disregard and ensuring the sustainable provision of residential accommodation.

Ongoing Support

Scottish Care reiterates its ongoing support to membership on the above matters. As a proud member of the Scottish Government's Charging for Residential Accommodation Working Group, Scottish Care has routine access to key stakeholders in assessing the continued efficacy and implementation of CRAG. Should Scottish Care members encounter similar barriers to their provision of residential accommodation, please contact Scottish Care to raise such issues at this invaluable platform.

Acknowledgements

Scottish Care wishes to thank both Scotland Excel and the Charging for Residential Accommodation Guidance Working Group for their collaboration with Scottish Care regarding the above barriers to the provision of residential accommodation. Such ongoing collaboration was critical to the development of the above position statement.

Get in contact

If you have any questions relating to this position statement, please contact info@scottishcare.org.