
Preparing Contracts and Agreements and Termination of Service in Domiciliary Care (England) Policy

Policy Statement

This document sets out the care service's policy on how it develops its contractual relationships with the people to whom it provides services, and how they could end. The care service recognises that it is legally required to be open in its charging and pricing policies and in terms of what services it can and cannot offer to any individual.

The policy is, therefore, to make its contracts with the people who use the services and their representatives as fair, transparent, detailed and informative as possible so that everyone involved always knows their contractual position and obligations.

In setting out its policy on contracts, the care service seeks to comply with the requirements of Regulation 19: Fees of the Care Quality Commission (Registration) Regulations 2009, and the relevant consumer protection regulations and guidance for the Consumer Rights Act 2015, particularly those sections that address unfair contracts.

The policy applies to all people receiving our services, but it recognises that there are some differences in the contractual relationships formed between people who:

- pay their own fees and charges or whose funding arrangements are totally private
- have part or all their fees and charges paid by the local authority in line with its eligibility for service and charging policies and whose care is commissioned by the local authority
- have part or all their fees and charges paid under the NHS Funded Continuing Care and NHS Funded Nursing Care arrangements, which might in some circumstances involve the care service
- are responsible for arranging their care as personal budget holders or because they receive direct payments to arrange their care.

Every person receiving care is issued with their own individual statement representing the agreement or contract reached with them by the care service.

Procedures

Once the person has bought in or agreed to the service provision, the care service will draw up a contract or written agreement, which it issues to the person receiving care and is agreed and signed by them or their lawful representative (if the person lacks capacity). The

service will always provide the prospective person using services with an estimate of the costs and how payments can be made.

The contract is prepared in a standard agency format and once signed copies are made to all relevant parties.

The care service is signatory to the agreement. Where applicable, it will also ask a representative of a service commissioner to endorse and sign the agreement reached with the person receiving care to provide services on their behalf.

The contract/agreement will be referred to in the event of any problems arising and will be subject to periodic review. It might be necessary to revise individual contracts, or in exceptional circumstances end the service, if there are any significant changes to the situation that require terms and conditions and fees to be revised, eg if the person's funding status changes or their needs change, which puts them outside the scope of the care service's capacity to care for them adequately.

The date on which the contract comes into effect will usually represent the date on which cancellation rights under the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 also begins (14 days). People should not incur any financial penalties for exercising their rights to cancel during the "cooling off" period, though they could be legitimately charged for any services already provided during this period.

Each contract/agreement, however, will be based on individual needs and circumstances. Legal advice is sought whenever needed.

Contents of Contracts/Terms and Conditions

The individual's contract/agreement will nearly always include the following areas:

- the date of the agreement
- the date the service starts
- the name of the provider
- how and when the service will be provided
- all agreed services to be provided
- any service that might be needed, but which for whatever reason, we cannot provide (but might procure by other means)
- the fees payable, including how the agency reviews its charges
- procedures in the event of any difficulties or default in the payment of fees
- procedures in the event of any difficulties or default in the provision of the agreed service and adjustments to be made

- who is responsible for paying the fees
- a copy of the agreed personal plan
- arrangements for reviewing needs and progress, and updating the personal plan
- how the service will be monitored, particularly regarding safeguarding and quality assurance issues, and how the person can make complaints
- any additional services that are paid for over and above those included in the basic fees, eg additional equipment, aids and appliances
- the rights and obligations of the person receiving care
- the rights and obligations of the care provider
- relevant health and safety matters
- holidays and sickness cover and any continuity/disruption of service matters
- security and arrangements for entering and leaving the premises
- what should happen if there is a breach of the contract
- period of notice for ending the service on either side
- relevant insurance cover.

Obtaining the Agreement

The manager/designated person will arrange for the individual/representatives to read, study and understand and sign the agreement. We routinely arrange this in association with other information which we provide about the start of the service.

The care service is signatory to the agreement. Where applicable, it will also ask a representative of a service commissioner to endorse and sign the agreement reached with the individual to provide services on their behalf.

The individual/representative will receive a copy of the signed agreement and of any revisions. The signed copy of the contract held by the care provider will be filed with the individual's care records. Additional copies might need to be made available to other parties on a "need to know" basis in line with data protection requirements.

Implementing the Contract/Terms and Conditions

The contract/agreement will be referred to in the event of any problems arising and will be subject to periodic review. It might be necessary to revise individual contracts, or in exceptional circumstances end the service, if there are any significant changes to the situation that require terms and conditions to be revised, eg if the person's funding status

changes or their needs change, which puts them outside the scope of the care service's capacity to care for them adequately.

Each contract/agreement, however, will be based on individual needs and circumstances. Legal advice is sought whenever needed.

Variations to the Contract

If it is decided at any time that there is a need for any significant change to the service outlined in the contract or if the individual makes such a request, the manager will initiate a review of the terms of the contract. This requires a discussion with the person receiving care, and if appropriate their representative, to confirm that the proposed change is acceptable.

In the case of people whose fees are paid by a local authority, the manager should contact the social services care manager and ask for their agreement to the change. If all of this is satisfactory, the manager should take the steps to prepare, issue and process a new or revised contract.

Termination of Service

This section outlines the circumstances in which either the person receiving care or the care service might wish to end the service with reference to the period of notice that is included on the contract/agreement, eg four weeks.

Self-funders

1. If a self-funding person receiving care gives notice for the service to end, which could be for a variety of reasons such as:
 - a. dissatisfaction with the service
 - b. wanting to make alternative arrangements
 - c. change of circumstances

the provider will expect to work out the agreed period of notice or to receive payment for the period of notice if the person abruptly ends the service.

2. Alternatively, if the care service decides that it can no longer continue to provide the service, which again could be for a variety of reasons, such as unreasonable expectations of the person on the service, unreasonable conduct that does not comply with the mutual rights and responsibilities that have been agreed, or the service lacks the resources to provide the service as agreed, it can give notice to the person that it will be ending its service, and they will need to find alternative provision. The service will always give a reasonable amount of time for the person to make alternative arrangements, taking the individual circumstances into account, and support them where necessary.

Contracts with service commissioners

The circumstances under which either a service commissioner or the care provider decides to end the service will usually be written into the respective service agreements. The service might give notice to the commissioning organisation if it can no longer provide the service or services as agreed and to the required standards, for example, because of financial difficulties, inadequate staffing levels, insufficiently trained and competent staff to meet the assessed needs, etc.

The commissioning organisation might also decide that the care provider is not meeting its responsibilities under the service agreement, and give notice to that effect. In most cases, the agreed period of notice will be worked out, but early or immediate termination is possible in some instances. In these cases, the service will work closely with the commissioning organisation to ensure the safety and welfare of the affected person or persons, and to facilitate any transfer of care provision.

Training

New staff are made aware during their induction training of the service's contractual relationships and duty of care.

Staff who are responsible for producing contracts or for dealing with prospective or new person receiving care receive specific training to help them formulate each individual contract/agreement.

All staff training is regularly reviewed to make sure that it is up to date with any changes in legislation or good practice relating to contracts with individuals.

Review

Signed: _____

Date: _____

Policy review date: _____
