The policies and procedure database holds the most recent and approved version of this policy or guidance. Staff must ensure they are using the most recent guidance.

RELATED REFERENCE DOCUMENTATION:

Care act 2014  s.39; Schedule 1
Care and Support Statutory Guidance 2014
Care and Support (Ordinary Residence) (Specified Accommodation) Regulations 2014
The Care and Support (Disputes between local authorities) Regulations 2014
The Care and Support(Cross-Border Placements & Business Failure: Temporary Duty) (Dispute Resolution) Regulations 2014
Change Record

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Summary of changes made to last approved version:

**Equality, Diversity and**

The **Equality Act 2010** seeks equal opportunities in the workplace and in wider society; and prohibits discrimination on the grounds of any of the following protected characteristics in relation to goods, services and employee protection;

- Age
- Disability
- Gender Reassignment
- Race
- Pregnancy/maternity
- Marriage/civil partnership
- Religion and Belief
- Sexual orientation
- Gender

The Equality Act aims, and in particular its General Duties, applies across the Council and to any organisation delivering services on a contractual, commissioned or voluntary basis on behalf of the Council. Although our legal duties relate to equality, our approach in Luton extends to the promotion of community cohesion and social inclusion. Our commitment to social justice goes beyond anti-discrimination to include fairness of treatment, dignity and respect.

**Feedback:**

Our customers expect first class service and we aim to provide it. We therefore welcome feedback about our policies and procedures. If you have any comments about this document please e-mail: **RPRComplaints@luton.gov.uk**
Contents

1. Introduction & Context
   - Scope
   - Definitions
   - Relevant related guidance

2. Principles of Cross Border Placements

3. Step One – Care & Support Planning

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5. Step Three – Arrangements for ongoing placement management

6. Step Four – Confirmation of placement

7. Issues that may arise

8. Moves to Luton

9. Disputes

10. Provider failure

11. Safeguarding Adults

Appendix 1 Wellbeing Principle
1 Introduction & Context
1.1 It is recognised that sometimes a customers’ health and wellbeing\(^1\) is likely to be improved if they are able to live close to friends and family, and that this may sometimes involve a residential or nursing placement outside of the borough. On occasion, this may involve staff supporting a customer to move to another country within the United Kingdom. i.e. Wales, Scotland or Northern Ireland.

1.2 Cross Border placement is dealt with in Section 39 and schedule 1 to the Care Act 2014 and in Chapter 21 of the Care and Support Statutory Guidance 2014.

Scope
1.3 This procedure covers those whose care is paid for by the Local Authority and those who pay for their own care where that care is arranged by the Council.

1.4 This procedure does not apply to individuals who arrange their own care. Those who arrange and pay for their own care will normally become the ordinary resident of the authority they are moving to.

Definitions
1.5 First Authority – the local authority (or Health and Social Care (HSC) Trust in Northern Ireland) which places the customer in a cross-Border residential placement

1.6 Second Authority – the local authority (or HSC Trust) into whose area the customer is placed or is to be placed.

Relevant Related Guidance
1.7 Also refer to the following:

- Assessment & Eligibility: Sections 9-13 and corresponding Regulations and Guidance. Note in particular any issues relating to mental capacity; timely instruction of an independent advocate (or IMCA/IMHA), if the customer has substantial difficulty engaging with the care system and has no other means of accessing appropriate support through friends or relatives to facilitate involvement. N.B. exceptions when Independent Advocates must be appointed.

\(^1\) Section 1 of the Care Act 2014 sets out the Wellbeing Principle which is embedded throughout the act. Appendix 1 provides an overview of the general duties, principles and definitions.
• Care and Support Planning: Sections 24 and 25 and corresponding Guidance
• Ordinary Residence Policy
• Safeguarding Policy

2. Principles cross border placements:

2.1 There are two guiding principles underpinning the close co-operation between the four administrations of the UK set out in Schedule 1 to the Care Act. These are:

• The process must be person centred and improve the wellbeing of the customer; having regard to the views, wishes, feelings and beliefs of the customer.

• Reciprocity and cooperation – All authorities are expected to co-operate and communicate properly.

2.2 In general the duties specified in the Care Act and Statutory Guidance applies to cross-Border placements in the same way that they apply to placements within Luton, and for any duration.

3. Step One: Care & Support Planning:

3.1 The need for a residential care home placement and the location of that placement should be identified via the standard assessment process and recorded in the care and support plan. Note: the Council must be satisfied that an adult’s needs can only be met in a “specified type of accommodation”, which includes care homes, before incorporating that with a care and support plan.

3.2 In most cases the customers or their carers will request a placement that involves a move to another part of the UK, but in cases where the professional identifies a potential placement involving a move out of the Borough, this should be shared with the customer or their carer at the earliest possible date.

3.3 Should a customer or their carer raise the possibility of a move involving a cross border placement, the following should be considered:
• Would any resulting support network improve the customer’s wellbeing?

• What would the effects of such a move be on the customer and will they be able to adapt to their new environment?

• If the customer has particular care or health needs, will these be available in the new area?

• If the customer lacks mental capacity to engage in a decision to move, who will be [is] their representative? Once identified, the person concerned should be involved and invited to have input into the needs assessment process.

3.4 With the permission of the customer (or their representative), the views of the friends and/or family in the proposed new area and the current area should be sought on the perceived benefits of the placement and any concerns they may have including the opportunity to express any doubts over the benefits of the move.

3.5 If, after considering the above, a cross border placement appears to be in the interests of the customer, a referral must be sent to brokerage in order to identify potential providers.

3.6 The customer should be kept informed and involved throughout the process and their view sought regarding the provision of potential providers before any final decisions are made. If the customer has nominated an individual to act on their behalf or lacks capacity, the appropriate person identified to act in the customer’s best interests should be involved and informed.

3.7 Where it becomes apparent that the move will proceed, the customer should be informed that information about them will need to be shared with the Local Authority where the provider is located. Consent for the sharing of this information must be in place.

4. Step Two: Liaison between Authorities

4.1 Once it has been agreed in principle with the customer that the placement will go ahead, contact should be made with the second authority and information shared regarding the proposed care provider and moving date. The second authority’s views on the suitability of the residential accommodation should be sought. Confirmation of the proposed accommodation should ultimately be done in writing and a copy of the letter retained on the customer’s Liquid Logic account. If there are any
subsequent changes to plans, the second authority should be advised accordingly.

4.2 The second authority has no power to block a move. However, in the event of an objection the first authority should take all reasonable steps to resolve the issue before making a placement.

4.3 The provider should be informed of the timetable with care taken to ensure they are aware that it is a cross border placement and that Luton Borough Council retains Ordinary Residence / funding responsibility.

4.4 The first authority should make all of the necessary arrangements that it would normally make when organising residential care placement in its own area, including contacting the customer and/or their representative to confirm that the placement will be going ahead.

5. **Step Three: Arrangements for ongoing placement management**

5.1 The first authority will retain responsibility for the customer and the management and review of the placement, the second authority will be responsible for regulation of the service. It is recognised that given some of the potential distances involved this may not always be practical and the first authority may wish to make arrangements with the second authority to assist with day-to-day and emergency placement management functions e.g. urgent customer face to face meeting or regular case reviews.

5.2 It is key that the first authority and the second authority consider those particular arrangements together. Any such arrangements should be detailed in writing, being clear as to what role the second authority is to play and for how long; the regularity of any reporting and any payment for services provided by the second authority.

5.3 It is important to recognise that in cases where Luton Borough Council supports a customer to move into residential care anywhere in the UK, the Authority ultimately retains Ordinary Residence responsibility.

5.3 Customers who **arrange and pay** for their own move will become the responsibility of the second authority i.e. lose Ordinary Residence status in Luton.
6. Step Four: Confirmation of Placement

6.1 Once a move date has been agreed, a letter should be sent to the second authority confirming details and if applicable, any additional agreement made for support agreed by the second authority.

6.2 The second authority should acknowledge receipt of this information and give agreement to the arrangements in writing.

6.3 Staff should ensure the customer and/or their carer/ representative is supplied with appropriate contact numbers for both Luton Borough Council and the second authority in the event of an emergency.

6.4 If help is needed to organise the move, it is the first authorities responsibility to assist

7. Issues that may arise

7.1 NHS:

- Ordinary Residence will not be effected by a move into any NHS accommodation e.g. hospital (and as defined by the Act)
- Luton Borough Council (if the first authority) continues to retain Ordinary Residence responsibility if Continuing Health Care is awarded. If CHC is subsequently withdrawn, funding responsibility returns to Luton Borough Council (if the first authority).
- In cases where funding for a placement is agreed by CHC, responsibility to engage with Health in the review continues to remain with Luton Borough Council (if the first authority)
- Where the customer requires NHS funded nursing care, this should be sorted out prior to any move by a discussion between Luton Borough Council (if the first authority), the NHS body delivering the care, the NHS body funding the care and the proposed care provider.
- In cases where nursing care is identified after the placement, funding depends on where the provider is located:
- In cases where a placement has been made in either Scotland or Northern Ireland, responsibility for funding any nursing care remains with Luton CCG. Staff should then formally approach the CCG, normally via the Panel process for agreement to fund.
In cases where the placement has been made in Wales, it is the responsibility of the CCG which covers the provider to pay for nursing care.

7.2 Complaints regarding the first authority should be dealt with by the first authority and complaints about the second authority should be dealt with by the second authority.

7.3 Complaints about the provider should be referred to them and dealt with under their process and the applicable legislation relevant territory in the UK where the second authority is located.

7.4 If the complaints relates to NHS care, it should be dealt with according to the legislation governing such complaints in the relevant territory of the UK.

7.5 If referral to the health ombudsman is necessary this should be made to the ombudsmen whose investigation the provider or authority in question is subject to, in accordance with the governing legislation.

8. Moves into Luton

8.1 It is recognised that on occasion, people will move into the Borough for reasons stated in the introduction.

8.2 The process for recording and acknowledging these moves is simply the reverse of the situation already discussed, with Luton Borough Council acting in the role of the second authority.

8.3 Once the placing (1st) authority has agreed in principle with the customer that the placement will go ahead, contact should be made with Luton Council Adult Social Care (2nd authority) and information shared regarding the proposed care provider and moving date. This should ultimately be done in writing and a copy of the letter retained on a newly created Liquid Logic account. If there are any subsequent changes to plans, then the 1st authority should advise Luton accordingly.

8.4 It is vital that if there is any doubt, early clarity should be sought as to the purpose of the 1st authority’s notification letter.

8.5 If the 1st Authority attempts to place a customer in Luton, and there is an indication/expectation that there will some funding implication, then the case must be allocated to the appropriate team without delay to facilitate an assessment and if appropriate, secure funding via Panel as needed. A failure to complete such an assessment may result in Luton needing to take
over the funding of a package in line with that already being provided by the 1st authority but with no local input or advice.

8.6 If, as should be the norm for this process, the 1st authority are simply writing to advise of a funded placement into the Borough, the case can be opened and logged on Liquid Logic for information only. This may be needed at a later date e.g. in the event of an emergency request for assistance or a safeguarding incident.

9. Disputes

9.1 In the event of a dispute between local authorities, all reasonable steps must be taken to resolve the matter between themselves. Luton Council must therefore ensure we co-operate with the other authority concerned to ensure the discharge of duties.

9.2 Regulations under schedule 1 state that “a dispute must not be allowed to prevent, interrupt, delay or otherwise directly affect the meeting of the individual’s care and support needs”

9.3 If having attempted to resolve a dispute, no progress is made, the matter can be referred via Luton’s legal team to the Minister of Health for a final determination in accordance with the Care and Support (Cross-border Placements and Business Failure: Temporary Duty) (Dispute Resolution) Regulations 2014 and The Care and Support (Disputes Between Local Authorities) Regulations 2014.

10. Provider Failure

10.1 The Act imposes a clear legal responsibility on Luton Borough Council where a care provider fails.

10.2 The Act makes it clear that Luton has a temporary duty to ensure that the needs of people continue to be met if their care provider becomes unable to carry on proving care because of business failure, no matter what type of care they are receiving.

10.3 Luton Council has a responsibility towards all people receiving care, regardless of whether they pay for their care themselves.

10.4 In these circumstances, Luton must take steps to ensure that the person does not experience a gap in the care they need as a result of the provider failing. For some people, that may only require providing information and advice on the alternative services available locally, to help them make a choice about a new provider. For others, it may require actively arranging the care with a different provider for a period of time, to ensure that there is
continuity. The steps will depend both on the circumstances of the provider failure, and what nature of support the person wants from the authority.

10.5 This duty applies temporarily until the local authority is satisfied that the person’s needs will be met by the new provider. At that point, the person may again become responsible for arranging their own care. Please see the council’s Provider Failure Policy.

11. Cross Border Placements and Safeguarding Adults

11.1 There can be an increased vulnerability for adults at risk whose care arrangements are complicated by cross-boundary considerations. These may arise, for instance, where the funding/commissioning responsibility lies with one local authority and concerns about potential abuse and/or exploitation subsequently arise in another local authority area.

11.2 Where a LBC commissions services outside the borough, or conversely a funding authority outside Luton has commissioned a service in the borough you should refer to the ADASS Draft Guidance on Out of Area Safeguarding Adults of June 2012 and the Luton Multi Agency Safeguarding Adults Policy and Practice Guidance 2015.

11.3 The funding/placing authority should source and commission advocates or IMCAs for those individuals who do not have someone to advocate for them in relation to safeguarding proceedings.

11.4 During the safeguarding process, the funding/placing authority should inform the host authority of any changes in the individual’s needs or provision.

11.5 It is the funding/placing authority’s ongoing responsibility to ensure that during a safeguarding investigation the placement is appropriate to meet the person’s needs. It may become necessary to commission a new service provider if someone’s changing needs fall outside the current placement’s capacity to meet those needs and/or registration requirements.
APPENDIX 1

Wellbeing Principle
The Council has a duty to promote the wellbeing of the individual particularly when carrying out any care and support functions and making decisions in relation to them. The wellbeing principle underpins the whole of the Care Act and its associated regulations and guidance. It applies to adults, carers and, in some circumstances, to children in transition, their carers and to young carers. The wellbeing principle applies equally to people who do not have eligible needs if they come into contact with the care system. Commissioners of new services will also need to incorporate/reflect the wellbeing principle in new services which are developed and commissioned.

Definition
The Care Act recognises that ‘Wellbeing’ is a broad concept and describes it as relating to the following nine areas in particular:

- Personal dignity (including treatment of the individual with respect);
- Physical and mental health and emotional wellbeing;
- Protection from abuse and neglect;
- Control by the individual over day to day life (including over care and/or support provided and the way it is provided);
- Participation in work, education, training or recreation;
- Social and economic wellbeing;
- Domestic, family and personal relationships;
- Suitability of living accommodation;
- The individual’s contribution to society.

Promoting wellbeing
Promoting wellbeing means actively seeking improvement in the aspects of wellbeing described above when carrying out a care and support function in relation to an individual. This applies at any stage of the process. It is not always about the Council directly meeting needs, but includes a focus on providing information and advice to delay and prevent needs from developing and support people to live as independently as possible for as long as possible. There is no set approach. Promoting wellbeing will depend on the individual’s needs, goals and wishes. The Council should consider each person’s case on its own merits, based upon what the person wants to achieve and how the Council’s actions will affect their wellbeing. All the nine aspects of wellbeing are of equal importance. However it is likely that some aspects will be more relevant to one person than another. The Council should adopt a flexible person centred approach that focuses on those aspects that matter most to the person concerned.
In addition to the wellbeing principle, the Care Act sets out a number of other key principles which local authorities must have regard to when carrying out the same activities or functions.

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<th>Key Principle</th>
<th>Interpretation from the Care Act Guidance</th>
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<td>The importance of beginning with the assumption that the individual is best placed to judge the individual’s wellbeing;</td>
<td>Building on the principles of the Mental Capacity Act, the local authority should assume that the person themselves knows best their own outcomes, goals and wellbeing and assumptions should not be made.</td>
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<td>The individual’s views, wishes, feelings and beliefs;</td>
<td>Considering the person’s views and wishes is critical to a person-centred system. Where particular views, feelings or beliefs (including religious beliefs) impact on the choices that a person may wish to make about their care, these should be taken into account. This is especially important where a person has expressed views in the past, but no longer has capacity to make decisions themselves.</td>
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<td>The importance of preventing or delaying the development of needs for care and support and the importance of reducing needs that already exist</td>
<td>At every interaction with a person, the Council should consider whether or how the person’s needs could be reduced or other needs could be delayed from arising. Effective interventions at the right time can stop needs from escalating, and help people maintain their independence for longer.</td>
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<td>The need to ensure that decisions are made having regard to all the individual’s circumstances</td>
<td>Decisions should not be based only on their age, appearance, any condition they have or aspects of behaviour which might lead to unjustified assumptions. Local authorities should not make judgments based on preconceptions about the person’s circumstances, but should in every case work to understand their individual needs and goals.</td>
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<td>The importance of the individual participating as fully as possible</td>
<td>By being provided with the information and support necessary to enable the individual to participate. Care and support should be personal, and local authorities should not make decisions.</td>
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<td>The importance of achieving a balance between the individual’s wellbeing and that of any friends or relatives who are involved in caring for the individual</td>
<td>People should be considered in the context of their families and support networks, not just as isolated individuals with needs. Local authorities should take into account the impact of an individual’s need on those who support them, and take steps to help others access information or support</td>
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<td>The need to protect people from abuse and neglect</td>
<td>In any activity which a local authority undertakes, it should consider how to ensure that the person is and remains protected from abuse or neglect. This is not confined only to safeguarding issues, but should be a general principle applied in every case</td>
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<td>The need to ensure that any restriction on the individual’s rights or freedom of action that is involved in the exercise of the function is kept to the minimum necessary for achieving the purpose for which the function is being exercised</td>
<td>Where the local authority has to take actions which restrict rights or freedoms, they should ensure that the course followed is the least restrictive necessary</td>
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Neither these principles nor the requirement to promote wellbeing require the Council to make a specific decision or undertake a particular action. The steps the Council should take will depend entirely on the circumstances of each case, having regard to these principles, for the purpose of setting common expectations for how the Council should approach and engage with people.