

Behind the headlines: 'stuck in the middle' – self-funders in care homes

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Introduction

As State funded care and support fail to keep pace with rising demand, growing numbers of older people who can no longer live at home and who need to move into a care home are having to pay their own way. It is well established that these so-called 'self-funders' pay more than a local authority would if it was funding an identical care home placement: one report estimates that self-funders on average pay between £603 and £827 a week depending on the area, compared to councils paying between £421 and £624 a week¹. The reason, of course, is that in many areas councils can use their buying power as block purchasers to drive down the prices they pay. The outcome, however, is that self-funders are effectively subsidising the State.

Many would consider this to be unfair and unfortunately, calls to Age UK's information and advice line suggest that as care home providers are increasingly financially squeezed, the position of self-funders and their families is becoming more and more difficult.

This short report explains what this means in practice for older people and their loved ones. It contains a sample, with names anonymised, from the 150+ calls Age UK's information and advice line received in the year to April 2016, about extra charges and other contract terms relating to care homes the callers or their relatives and friends live in and pay for themselves. The case studies are organised around some broad themes.

1. Payments in advance

Alan has moved into a residential care home following a hospital stay and after an assessment by social services. He is responsible for paying his own care fees. A refundable deposit of £900 is required in advance, as well as an initial payment of £2,090 to cover an assessment and preparation of a care plan. Alan's daughter Annette has been asked to sign the contract since Alan does not have mental capacity to do so. Annette wanted to know if this requirement for an up-front payment is normal.

Age UK is particularly concerned that demands for up-front payments, combined with requirements to pay for a notice period which can sometimes extend to several months, can make it extremely expensive for someone to move out if they feel their initial choice of care home was a mistake or if circumstances change. This could result in people remaining in an inappropriate or poor quality placement for a significant time.

Other similar cases include;

- A care home seeking a deposit of £4,000 in advance.
- A care home asking for an advance payment of £2,000 to cover a number of expenses, including maintaining the grounds.
- A care home requiring an initial payment of £3,000 with 50 per cent to be returned when the contract ends. This payment is supposed to cover administration expenses.

2. Unexpected or arbitrary fee increases

Lisa's grandmother is 92 and pays for her own residential care home place. Lisa and her brother hold joint Lasting Power of Attorney for their grandmother's finances and health and personal welfare. In April the care home increased fees by 5%. The care home has now contacted Lisa and told her there is a further increase of £40.00 a week. Lisa has challenged this because it has been less than 3 months since the previous increase. Lisa has been told that the second increase is because the home has reviewed residents who have high dependency needs. Lisa does not think that her grandmother is high dependency.

Gwen's mother is 89 and has been in a nursing home since 2011. Each year there has been an increase in fees, usually around 5%, but this year the rise is 21%. Her condition has not deteriorated in the time she has been there, and she does not have any additional nursing needs. However Gwen has been told that costs have been increased following a review of her mother's needs and as a result of an increase in statutory costs.

Maurice is a self-funder in a care home. The care home has recently tried to put the fees up by almost 50%. Maurice has complained to the care home as many of these fees involve things which he doesn't need, and they've agreed to lower it to 30%. Maurice asks is there any other body he can complain to.

It is not unreasonable that care homes should increase fees to keep pace with inflation or as a result of rising costs. However, in some cases the price rises older people and their families are asked for seem to them to be arbitrary or excessive.

3. Paying for 'extras'

Elizabeth is a self-funder in residential care. She has Alzheimer's disease. Her daughter deals with her care home bills. Elizabeth has been billed for an entertainer. Her daughter doesn't think that Elizabeth actually wanted or received this service. It is not covered in the contract. When concerns were raised, the care home said that this was a one off, but Elizabeth has been recently billed again for an entertainer.

Nadia's mother is in a care home and is a self-funder paying £825 per week. Nadia has received a letter from the care home saying that from 1st November they will start charging £15 per hour for the cost of someone to escort her mother to hospital or doctor's appointments (her mother needs to use a wheelchair). The care home says this payment accounts for the cost of replacing the care worker who accompanies Nadia's mother for the hours the worker is away from care home. Nadia is concerned – especially as she cannot monitor how long each appointment takes.

Josef's wife is in self-funded residential care. His wife's dentures have gone missing. The home is trying to find them. Josef is concerned about paying for a replacement - they cost £700. Josef says that the home has told him he should have obtained insurance for personal possessions, as their insurance doesn't cover this. He was not made aware of this before.

Care home contracts are often very sketchy about what is included in the cost of the contract and what counts as an 'extra'. At the very least services needed in order to provide care as set out in an older person's care plan and to ensure that the home is complying with regulations should be included in the fee. If there are extras the contract

should make this clear and people should know what is and is not included in the price before they move in.

4. Relatives being asked to guarantee care home fees

Yvonne's mother is 89 and now lives in a residential care home. However Yvonne is not happy with the contract, which says that both her mother and the so called, "notifiable person" (which is stated as being Yvonne) accept "joint and several liability" to pay all fees and charges claimed by the care home, "on demand". The contract also states that the care home's ability to do this will not be affected by the failure of the client to sign the agreement.

Dennis is arranging for his mother to move into a care home as she has dementia. He has lasting power of attorney so will be managing her finances. The care home has provided him with a contract in preparation for the move in the next few days. However, it states the fees will be paid by him rather than his mother or by him as holder of lasting power of attorney from his mother's estate. Dennis is concerned that he will be liable if his mother's money runs out.

We have received a number of similar enquiries. People are sometimes being asked to guarantee that they will pay fees when their relative's money runs out. The care home resident should become entitled to local authority funding before they reach this stage but the care home may be worried that the local authority will only pay fees at a much lower weekly rate, explaining why they would like the relative to agree to 'top up' the council fee. This might be reasonable if the resident or their relative had chosen a luxury home, but in reality someone paying for their own care almost always has to pay fees at well above the local authority rate.

5. Relatives asked to agree not to approach the local authority when older people become eligible for local authority funding

Anne pays for her own place in a residential care home. She has just had to move to a new home as the previous one closed. The new care home contract asks residents to guarantee that they will fund their own care for 2 years and will not approach the local authority in that time. Anne's daughter is questioning this as her mother's savings will soon fall to £23,250.

Ibrahim has had dementia for the last 2 years, and his wife has been providing care for him. However Ibrahim recently had a stroke and will now need to go into residential care. Ibrahim lacks mental capacity and his wife has a Court of Protection Deputyship. Ibrahim has over £23,250 in assets. His family have found a suitable care home but the care home has asked the family to guarantee that he will remain a self-funder for one year, even though he is likely to qualify for local authority funding before this.

The issue in these cases is the same one referred to above: the care homes in question are probably concerned that if the resident becomes entitled to funding from the local authority the fee that the home receives will be lower. However, the effect of this is that families are being asked to sign away their relative's right to local authority support. This will potentially result in financial loss for them and it also means that residents lose out on the protection of having their care arranged and overseen by the local authority.

6. Giving notice

Jacqui's late mother-in-law moved into a care home following deterioration in her health and some time in hospital. Her condition continued to fluctuate with no improvement. Her doctor suggested that palliative care was required and that her mother-in-law was approaching the end of her life. Jacqui's mother-in-law moved into the care home and died 6 days later. The family have now received a bill from the home for £4,100. Jacqui understands that this may cover the 6 days care and a 30 day notice period. However she feels that it is unfair that as a self-funder her mother-in-law paid out a great deal for her care when she was alive and is still required to do so after death.

Eileen moved into a care home as a self-funder. However, she was very unhappy with the quality of care being provided and moved out again after 3 days. The care home is demanding payment for 4 weeks care - several thousand pounds. Eileen's son has asked the care home whether they would consider reducing the price but they just referred him to the contract and say they cannot negotiate.

In both of the above cases the cost of paying for the notice period seems disproportionate and excessive. In the second case the care was also felt to be of poor quality. When combined with the demands for large deposits that people are being asked to pay before moving into a care home this means that anyone who quickly realises they have made a mistake and wants to change their mind faces a big financial penalty for doing so.

7. Hospital stays

Bob's mother-in-law, 93, was a self-funding care home resident. She was hospitalised after a fall. As the care home would not accept her mother-in-law back she is now still in hospital. Bob wanted to stop the payments to the care home but social services said no, as his mother-in-law would then be homeless and, they said, it is illegal to make someone homeless. Bob said that he and his wife would take their mother-in-law to their home, but social services said no, because no nursing would be available there. Bob has continued to pay, but he's wondering if the £2,000 paid for that period should be repaid by social services.

Carole's mother has dementia and has been living in a care home. She pays for her own care. Last Wednesday Carole was phoned by her mother's GP to say that her mother was dehydrated and was being admitted to hospital. Within 48 hours of being in hospital, Carole's mother was assessed and the care home said that as a result of her condition, which included increased mobility problems, they would not accept her back at the home. She will be remaining in hospital for some time and will then go to intermediate care and reablement for 3 weeks. At the beginning of September Carole had paid her mother's care home fees for the whole month. It was just a couple of days after this that the care home said that they would not accept mother back. However, the care home has said that the fees still have to be paid until Carole's mother is formally discharged from hospital, even though they have stated they will not accept her back when she is discharged. Carole disputes this and is prepared to clear her mother's room immediately.

Transitions between care homes and hospital are often fraught with problems. Older people can face delays in being discharged from hospital because suitable care services are not available or because they cannot return to their former

accommodation. In these two cases there is the additional issue of care homes and social services saying that residents must continue to pay a care home's fees, even though they will not be returning there.

Conclusion

Age UK has had longstanding concerns about the fairness of some care home contracts and the case studies reported here demonstrate how vulnerable older people in need of a care home placement are to unfair contract terms. This is partly because the decision to enter a care home is usually taken in a rush, following a health emergency such as a fall and a spell in hospital, after which it becomes clear that they are no longer able to live at home. At such an emotional time, scrutinising the fine print in a care home contract is probably the last thing on anyone's mind. Yet few legal documents will have a greater impact on an older person's quality of life, or involve larger sums of money.

The other reason why older people and their families are at such risk of being treated unfairly if they fund their own care is because care home residents have very few legal rights. A hale and hearty person of working age who rents a flat enjoys far stronger legal protection than an eighty year old with dementia and diabetes in a care home: self-funding care home residents have no security of tenure and can be evicted at will. As long as this is the case many residents and their families will understandably be reluctant to complain or to challenge apparently unfair actions by care homes, for fear of jeopardising their accommodation at a time when good, affordable care home placements are hard to find.

In 2003 the Office of Fair Trading (OFT) produced guidance on unfair terms in care home contracts; there is an urgent need for this to be updated – an important job for the Competition and Markets Authority (CMA) to be undertaking now the OFT no longer exists.

There may also now be a case for the Care Quality Commission to take on a new responsibility for reviewing the fairness of care home contracts and charging policies as part of their role as the regulator for care homes.

Care home residents who pay for their own care should be able to benefit from the protection and potential rights of redress made available by the Human Rights Act. At present we have the absurd situation in which an older person whose residential care is funded by their council is covered by the Human Rights Act, while their self-funding neighbour living in the room next door is not. This is unfair and it removes another layer of protection from older people who pay for their own care, a fast growing group who Age UK firmly believes deserve far greater recognition and support.

To a degree, the last Government accepted this and it responded by including several measures in the Care Act 2014 with the aim of helping 'self-funders' and their families. One was a duty on councils to provide them with information and advice; however, because of the sharp decline in funding to councils since then there are questions as to how well many are able to properly implement this new duty. The second provision allows self-funders to ask their council to arrange their care for them, for a fee. This would potentially be of huge benefit to older people who pay for their own care, since it would allow them to take advantage of the lower care home fees that councils can obtain and would also bring them within the ambit of the Human Rights Act. However,

the Government is yet to allow this provision to come into force. It has been suggested that this is because of fears of further undermining the viability of the creaking care home sector, which is so reliant on the cross-subsidy from older people who pay their own way.

This concern is unfortunately well founded and the broader context is that care home providers are being increasingly financially squeezed. But, as these case studies suggest, older people who pay for their own care are vulnerable to being required to fill the growing funding gap as providers – perhaps small scale operators especially - struggle to keep their businesses going.

In April 2016 the Government introduced the National Living Wage, raising staffing costs across the care industry, where pay is usually pretty poor. While no reasonable person would begrudge hard working care staff a pay rise the increased cost for providers came in addition to growing strains in the finances of the care sector, caused above all by reductions in central Government grants to councils and the knock on consequences for care homes. Age UK called on the Government to fund the introduction of the National Living Wage into the care sector in full but unfortunately this did not happen. Alarming major new research from the King's Fund and the Nuffield Trust illustrates clearly just how fragile care homes are and have concluded that 'a large-scale provider failure is no longer a question of 'if' but 'when'².

Yet this is just part of a bigger story. The numbers of older people in our population are steadily rising, with the fastest growing group of all comprising the over-85s. These over-85s are the group in our society which is most likely to need some help with daily living – either in their own home or in a care home. Furthermore, medical advances and healthier lifestyles mean that many people are living for longer than before with multiple long term conditions and disabilities. Combined with a welcome drive to support people to remain as independent as possible in their own homes for as long as possible, this has led to care homes today caring for people with much more complex needs than in the past.

So you would expect the State funding for care and support to be rising to keep pace with these growing numbers and rising levels of complexity - but that's not what is happening at all. In fact we are seeing the reverse: over the last few years the amount of money the Government invests in the care and support of vulnerable older people has been falling, creating an ever larger gap between the demand for help among rising numbers of older people, and its supply. Increasingly only those in the greatest need qualify for State assistance any more in what is becoming an increasingly rationed and residual system. Meanwhile care homes are being asked to care for people with much higher levels of need, without seeing the rates they are paid increase at anywhere near the same pace.

Older people who fund their own care are therefore 'caught in the middle' and, increasingly it seems, they are being asked to 'pay over the odds' to help make up the shortfall in public funding. It comes as a shock to many to find that if they need care they are likely to be expected to pay for it, even if they have quite modest means. Public funding is restricted to only those on low incomes with very limited savings or assets; as a result a large and growing number of older people are expected to bear the full cost themselves.

So above all, these case studies highlight once again the pressing need for Government to recognise the extent of the crisis in the care and support of older people and work with others to address it. The capacity of self-funders to go on cross-subsidising State funded care is not unlimited, nor is it fair to them or their families to expect them to do so at ever higher rates.

¹ *Stabilising the care home sector and preparing for implementation of part 2 of the Care Act in 2020*, LaingBuisson (2015) -

https://www.laingbuisson.co.uk/Portals/1/MarketReports/Documents/LaingBuisson_WhitePaper_Stabilising_the_care_home_sector.pdf?ver=2015-12-14-150354-417

² *Social care for older people: home truths*, Kings Fund and The Nuffield Trust, (2016) –

http://www.kingsfund.org.uk/sites/files/kf/field/field_publication_file/Social_care_older_people_Kings_Fund_Sep_2016.pdf