



advice and support for older age

**Independent
Age**

Caring about the Care Act: A Freedom of Information Research Briefing

November 2017



About Independent Age

Whatever happens as we get older, we all want to remain independent and live life on our own terms. That's why, as well as offering regular friendly contact and a strong campaigning voice, Independent Age can provide you and your family with clear, free and impartial advice on the issues that matter: care and support, money and benefits, health and mobility. A charity founded over 150 years ago, we're independent so you can be.

Website

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Call our team of experts on 0800 319 6789, Monday to Friday, 8am-8pm, and Saturday to Sunday, 9am-5pm, or email your query to advice@independentage.org

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Executive Summary

The Care Act 2014 represented the most significant set of changes to social care law in England for sixty years. It was hoped it would simplify the law. Another key objective included delivering a more consistent approach to how care and support gets arranged across different parts of the country. When the Care Act was introduced the vision was that it would enable a more person-centred system, with individual wellbeing at its core.

Independent Age believes the Care Act remains an important piece of legislation, but local authorities need sustainable funding to ensure it works in practice and all the original objectives of the Act can be fulfilled.

We have undertaken research in the past to see whether it is bringing about the necessary improvements in how older people experience care and support¹. We first did this with our 2016 reports, which like this one, were based on Freedom of Information requests to top tier authorities with social services responsibilities.

We have also previously looked at social services directors' levels of confidence about the future direction of care and support in a joint survey with MJ², the local government magazine

At the 2017 General Election the government restated its aspiration that no one should have to sell their home in their lifetime to pay for care and committed to extending the current ability to defer payments for residential care to those receiving care at home.

Since the election, the care and support system in England has come under significant scrutiny with the Care Quality Commission highlighting that in many parts of the country, care services are now at full stretch and in a precarious position. This raises serious questions about the degree to which the Care Act could really be said to have created more consistency, and the extent to which local authorities are now genuinely able to promote more person-centred care.

This new policy briefing examines key aspects of the Care Act 2014 and local authorities' performance, policies and practice in three key areas:

- **Market shaping** – delivering a sustainable care market, with quality and diverse options for local residents with care needs.
- **Deferred payments** – delivering on the government's commitment that no one should have to sell their home to pay for their care.
- **Care home top-up fees** – delivering stronger protections to avoid residents and their relatives paying higher than necessary care home fees, but also facilitating choice of accommodation.

¹ Independent Age (2016) [Year one of the Care Act](#) and Qa Research for Independent Age (2016) [Information and advice since the Care Act – how are councils performing?](#)

² Independent Age & MJ (January 2017) [Survey reveals leading council figures' concerns about health and social care.](#)

1. Market shaping duties do not always appear to be executed in the interests of people who need care

Local authorities are not routinely taking Care Quality Commission (CQC) inspections and ratings into account when arranging residents' care home placements. Even most of those that do, do not keep a record of how many people they place in 'inadequate' or 'requires improvement' rated care homes. Local authorities also appear to have very varied approaches to managing their local market and fulfilling their Care Act duties to help shape a diverse market.

Of the 119 authorities we received responses from:

- 20 local authorities do not take into account a care home's CQC rating before placing state-funded residents with a care provider;
- Of the 86 local authorities who do take CQC ratings into account, in 2017 68 of these did not monitor, or cannot tell us, how many individuals were placed in care homes rated either 'inadequate' or 'requires improvement', suggesting they may have taken a CQC rating into account but still had to make placements in care homes that were struggling or of poor quality.

The CQC rating is given by the Care Quality Commission to care homes (and other registered care providers) so the public knows what care they can expect to receive. Local authorities are not required to take a CQC rating into account when offering care home placements but authorities are duty bound to ensure they shape their local market so there is a sustainable and diverse supply of good quality services in their area and procurement is one avenue they have to facilitate this.

2. Deferred payment agreements do not appear to be universal

Government policy is that no one should 'have to pay for care in their lifetime' by selling their own home. However, many still do. Since April 2015 local authorities have been required to offer deferred payment agreements to any adult with eligible care needs who fulfils set criteria. The policy is meant to ensure that no older person is forced to sell their home in their lifetime to pay for care. Government has described it as a 'universal' system to ensure that all older people are presented with the same opportunities and access criteria. However, as it stands the data suggests individuals in certain parts of England may have less chance of securing a deferred payment agreement, simply depending on where they live.

Of the 119 local authorities we received responses from:

- **5 local authorities do not have any** deferred payment agreements in place;
- The most deferred payment agreements any local authority had was 70;
- **8 authorities accepted less than a quarter of the applications** they received;

- **29 authorities accepted all deferred payment applications** they received, suggesting great variation in how many requests from residents local authorities actually act on.

The government's pledge that no one should have to sell their home to meet their care costs was a key feature of its 2017 General Election Manifesto, but the evidence we present in this report suggests regional variation remains and the 'universal' deferred payment scheme being delivered remains far from universal.

3. Care home top-up fees remain a problem in some local authorities

Under the choice of accommodation regulations, residents entitled to state-funded residential or nursing care may choose to pay for a more expensive home than a local authority can (or is willing) to pay for. This means residents - subject to securing a third party 'top-up' fee - can then choose to move into accommodation of their choice. **Since the Care Act was implemented, Independent Age evidence has shown provisions to protect care home residents and their families from unwittingly paying unnecessary or unfair top-ups have not always been enacted as well as they could.**

Of the 119 local authorities we received responses from:

- **24 local authorities** do not keep any information relating to third party top-ups, raising questions about their oversight of top-ups;
- **11 local authorities** are not involved in all the third party top-up agreements set up with state-funded care home residents in their area, contrary to Care Act guidance;
- **This means 35 councils (around 1 in 4 of the councils we received responses from) cannot fully or routinely demonstrate they are meeting all their Care Act duties on managing third party top-ups.**

This represents a worrying breach of the Care Act. The law is clear that local authorities must be involved in, or at least have ultimate oversight of, all third party top-ups involving state-funded care home residents in their area.

Even where local authorities permit older people and their family members (the 'third party' paying the 'top-up') to arrange the 'top-up' direct with the care home, they should nevertheless be party to the funding agreement and monitor how third parties are managing their payment. This means that if for whatever reason a third party cannot continue paying a 'top-up', then the third party top-up agreement is managed a stable way with the local authority then having to take on responsibility for the resident's continued care provision.

Introduction

The following report details the findings of a 2017 Freedom of Information request Independent Age submitted to all 152 local authorities across England. The request sought data across a range of measures, centred on the Care Act 2014.

We wanted to understand the extent to which local authorities are complying - or are failing to comply - with legislation around third party top-ups. We also asked how local authorities provide information and advice on top-up payments so their residents are protected against paying top-ups when it is not in their best interests to do so. We also asked about how many applications for deferred payments local authorities receive, and how many of these then end up resulting in a firm agreement, which protects residents from having to sell their home to pay for care. Finally, we asked what market shaping authorities are taking responsibility for in order to influence the diversity and quality of the care market within their local area.

Our Freedom of Information Request was designed to provide a more up-to-date, comprehensive assessment of how authorities around the country are approaching these issues. Ultimately, we were guided by the principles underpinning the Care Act, which nearly three years on from its introduction, are still not fully understood.

The report is split into different themes referring to the different subjects that local authorities were questioned on. These consist of:

Theme 1: Market shaping

Theme 2: Care home placements

Theme 3: Deferred payments

Theme 4: Third party top-ups

For each area, we sought to understand the extent to which local authorities are taking a consistent approach. To a certain degree variation is to be expected, so local authorities can tailor what they do in response to the care needs of their local population. However, in this report we document what appear to be unwarranted, and in some cases stark variation in the way that local authorities fulfil some of their most important duties under the Care Act.

The government set out an ambition in its Queen's Speech that it would look to tackle 'variation in practice' across different local authorities³. We are clear that older people with care needs, and their carers' and families, shouldn't experience completely varied outcomes, purely based on where they live. The Care Act 2014 was intended to introduce a level of national consistency to how the care and support system works in England. The intentions behind the Care Act appear not to be translating into more consistent care.

We have to care more about properly implementing the Care Act.

³ Queen's Speech delivered 21 June 2017, available at: www.gov.uk/government/speeches/queens-speech-2017.

Methodology

The Freedom of Information Request (FOIR) consisted of nine questions, some of which were replicated from a previous FOIR Independent Age conducted in 2015⁴. An initial pilot request was conducted with 10 local authorities to assess the quality of the questions proposed. Based on these responses a couple of questions were changed or refined.

Of the **152** local authorities contacted, the following statistics on responses were recorded:

We received a response from **134** local authorities.

These can be broken down as:

- **119** responded fully or partially to the FOI (78% response rate);
- **11** submitted a response more than 23 days after the deadline and were too late to be included within the report analysis. These responses have been included in the table in the appendix;
- **4** responded but refused to answer any questions citing that gathering the information would take too long.

This means that at the time of publication, **18** local authorities have not responded.

⁴ Independent Age (January 2016) [Care home 'top up' fees: Freedom of Information request summary](#).

Theme 1: Market shaping

- **Nearly all local authorities who responded appear to be able to provide some example of how they attempt to shape the care market in their local area.**
- **Some appear to make more of an effort than others with the better local authorities detailing much stronger approaches to supporting a diverse, quality market.**

Definition: Market shaping describes a general duty for local authorities to promote diversity and quality in the market of care and support providers for people in their local area.

Council requirements: The Care Act requires local authorities to help develop a market that delivers a wide range of sustainable high-quality care and support services that will be available to their communities.

How councils responded:

	Raw Number	Proportion of LA's who responded to FOIR (119)
LA's who provided information about their approaches to market shaping	107	90%

Results

All local authorities were asked to explain how they shape their local care market with a request for evidence on how they do this.

Local authorities demonstrated a certain degree of variation in their approaches to market shaping. No local authority who responded to this question indicated that this was not within their remit, indicating that local authorities are aware of their Care Act requirements. However, the degree to which a local authority does engage with this and the effort made to proactively shape their local market does vary.

Almost all outlined their annual assessment of care homes within the area as a key way in which they actively engaged with the market and ensured it continued to develop.

Standard response

All local authorities who outlined their approach to market shaping identified their regular monitoring of local care homes as a key way of engaging with the market. For some this was the only procedure they mentioned as their engagement with the care home market.

"We strive to ensure that wherever possible a prospective resident is offered a choice of up to 3 homes in their chosen location." **Southend**

"We carry out annual quality monitoring of the homes." **Dudley**

"All care homes are subject to an annual quality review." **Middlesbrough**

Good practice

The councils who demonstrated better practice were able to go beyond annual checks of care homes and highlight multiple ways in which they actively address the care homes market in their area. This is often in the form of regular assessments of care home homes, but also active engagement with care homes to build a dialogue on their costs of care and other pressures they are facing. This is often achieved through provider forums and market engagement events.

"We regularly engage with the local market and operate a provider forum for residential and nursing homes. Representatives are also part of the Health & Wellbeing Board provider forum. We are due to publish our market position statement." **Swindon**

"At Wokingham we work closely with our Providers, across of range of different markets and services in order to ensure that our customers have a choice over who will meet their needs. We do this in a variety of ways; through market engagement events, Provider Forums and contract management and monitoring. We recognise the importance of engaging with Providers in order to ensure that services can be shaped and developed to meet our customer needs. The work we undertake with Providers helps us to develop service specifications, identify emerging trends and gaps in our existing service provision and enable us to shape and develop the markets so that our customers have choice."

Wokingham

Some councils had introduced new teams and job roles precisely to engage with their local care home market and drive up standards. In these cases responses were far more detailed, with councils clearly demonstrating a range of ways in which they are actively trying to increase the quality of care homes in their area.

"Bury Council has set up a Provider Relationship Team from 1st April 2016 who's function is to engage with the managers of local care home providers to drive up the quality of care provided. This is achieved by quarterly visits to homes to monitor and review the standard of care being provided and to promote improvements by discussing how the home is managed to reflect the demand and need in the area. The capacity of the market and the type and number of beds is monitored weekly. A fee consultation process is undertaken on an annual basis to achieve a standard fee structure to reflect the cost of care. All contracted care homes are contained within the Bury Directory to offer choice to people." **Bury**

"Telford and Wrekin Council works to ensure people with assessed care needs have a variety of high quality care services to choose from, in a variety of ways: we publish a market position statement each year that sets out the strategic

direction of the local authority as to how it will meet the needs of the local population, as well as highlighting issues and gaps in provision. This is to enable providers to identify areas for development within care services. We hold regular engagement events with local care providers on a wide range of subjects including sufficiency and quality of care, developments, meeting the challenges of the local population demographics. We actively work with providers and CQC, the CCG and our safeguarding teams to support high quality provision. This may include requiring providers to undertake improvement work. In supporting our strategic direction to enable people to live within the community, we work with community support providers to increase the range of care and support options. This includes the development of care networks around a community, providing responsive and local care solutions. We have also secured a post and support for a community innovator post aimed at supporting local people to set up as personal assistants. This work includes housing and housing developments - linking in with our strategic housing development colleagues. We meet with developers of both care homes and accommodation." **Telford and Wrekin**

"The Council operates contractual arrangements with the care homes in the area which specifies the required quality according to the ADASS Quality Framework. Care homes are monitored against the Quality Framework and, where appropriate, supported to improve. The quality rating for the care homes is available to people selecting a care home. Where a care home is not meeting a required quality level then people assessed as needing a state funded care home placement would not be placed into this care home until the necessary improvements have been made." **Central Bedfordshire**

Theme 2: Care Home Placements

- **Most local authorities do not keep a record of how many individuals are placed in different Care Quality Commission-rated care homes.**
- **Only 18 local authorities were able to provide numerical information for how many individuals were placed in 'inadequate' or 'requires improvement' care homes. 101 local authorities were not able to do this.**

Definition: All care homes are rated by the Care Quality Commission (CQC) and are presented with one of four possible ratings:

- Outstanding
- Good
- Requires improvement
- Inadequate

Council requirements: Local authorities are under a legal duty to offer an individual assessed as eligible for state-funded residential care with at least one

care home option that can be provided within the cost of their personal budget. They have a general duty to ensure their local care market consists of high quality and diverse care options, but they are not under a duty to ensure local authority-funded residents are offered a choice of care provider rated by the Care Quality Commission as 'good' or 'outstanding'. Neither are they under a duty to protect an individual assessed as eligible for state-funded residential care from being offered only one care home option rated by the Care Quality Commission as 'inadequate' or 'requires improvement'.

How councils responded:

	Number	Proportion of local authorities which responded
Local authorities who responded to the question of whether they take into account the CQC rating of a care home when offering a placement	106	89% response rate
Of those which responded, how many do consider the home's rating when offering a care home placement?	86	81%
Of those which responded, how many do not consider the CQC rating when offering a care home placement?	20	19%
Local authorities which do not record the number of individuals placed in care homes rated as 'inadequate' or 'requires improvement'	68	64%
Local authorities which indicated how many individuals were placed in 'inadequate' or 'requires improvement care homes (any year)	18	15%

Results

Each local authority was asked whether they take into account the Care Quality Commission ratings of care homes when offering an individual a care home place. The majority (86) of authorities did, however 20 said they did not take notice of a care home's rating. Several who said they did not take into account care home ratings did this on a basis that they believed it was not their place to, and this ultimately lay with the individual and their family.

"No. While we work closely with colleagues in the Care Quality Commissioning to ensure the quality of our residential care market, the choice of care home ultimately lies with the person themselves. In line with the Care Act 2014,

people have the right to choose the residential care home they prefer.”

Newcastle

“The choice on where an individual is placed for a long term care package is made by the family or the individual. The LA recommends that families and individuals check the CQC status of the home.” **Wirral**

However there was evidence of local authorities not taking into account the CQC rating, but still taking proactive steps to engage with the care homes in the area and making sure individuals are not placed in an ‘inadequate’ home.

“No - Cornwall Council doesn’t currently use inspection ratings in determining a specific care home placement – though service users and their families are encouraged to seek these out from the CQC in making their choices – but the Authority does work closely with the CQC in terms of reviewing and improving the quality of the Care Home services it commissions from and will also cease making new placements in services where a warning notice has been issued, or has been rated as ‘Inadequate’.” **Cornwall**

After this, authorities were asked to indicate what proportion of individuals were placed in a care home rated ‘inadequate’ or ‘requires improvement’ in 2016/2017 as well as 2015/2016. This generated a high proportion of refusals to provide information mainly due to local authorities not recording this information and therefore to produce the information would require a manual search of every individual’s file. This was the case for 68 authorities in 2017 and 43 in 2016 although a further 11 simply refused to respond to the question for 2016.

Only 18 local authorities of the 119 that replied to the FOIR were able to provide a numerical value for this suggesting this is not an area most authorities deem necessary to record easy to access data.

Of those 18 who were able to provide numerical data, the proportions of individuals placed in either ‘inadequate’ or ‘requires improvement’ care homes varied greatly. While some councils such as **City of London, Southwark and Islington** were able to say that **nobody had been placed in a sub-standard care home, in some areas more than half of residents had been placed in a care home that was rated either ‘inadequate’ or ‘requires improvement’**. Specifically, **in Hammersmith and Fulham the proportions of placements in sub-standard homes were 54%, in Westminster 51% and Kensington & Chelsea 52%**.

A complete breakdown of these responses can be found below:

Number of individuals placed in care homes rated ‘inadequate’ or ‘requires’ improvement 2016/2017

Local authority	Number	Proportion of individuals placed in care homes
Bedford	40	-
Birmingham	1093	49%
Camden	40	-

Cheshire East	523	35%
City of London	0	0%
Greenwich	234	43%
Hammersmith and Fulham	44	54%
Herefordshire	67	12%
Kensington and Chelsea	38	52%
Leicester City	208	21%
Liverpool	95	15%
Northumberland	52	10%
Reading	22	4%
Southwark	0	0%
Stockport	407	49%
Suffolk	4	-
Westminster	54	51%
Wolverhampton	138	-

A number of authorities clarified that no individual was placed in an inadequate home and that any individuals who did enter an inadequate care home during this time period did so because they specifically requested to live there.

"If the home is rated as inadequate we would not place NEW placements to that home. However we do place residents in homes that are rated as Requires Improvement following appropriate risk assessment and where in discussion with the person/their family/advocate that placement is their choice." **Isle of Wight**

"Customers will only be placed in a care home rated as 'inadequate' or 'requires improvement' on the customers' or customers' family decision. When placed in such a setting the situation would be monitored." **Suffolk**

Theme 3: Deferred payments

- **There is stark variation in the proportion of deferred payment agreement applications local authorities accept, ranging from 0% -100%.**
- **8 local authorities accepted a quarter or less of the applications they received for deferred payment agreements in 2016-2017.**
- **29 local authorities accepted 100% of the applications they received for deferred payment agreements in 2016-2017.**

Definition: A deferred payment (effectively a loan) agreement is an arrangement with the local authority that allows eligible people to use the value of their home to postpone paying their residential care costs. The local authority covers the cost of their care and this is repaid, along with administrative fees,

upon the sale of the home, or once the person has died. It thereby enables people to avoid selling their home in their lifetime to pay for care.

Council requirements: Since April 2015 all English local authorities have been required to offer a deferred payment agreement (DPA) to people who have local authority-arranged care and support, and also to people who arrange and pay for their own care, provided their eligible needs are to be met within a care home. The person must have less than (or equal to) the upper capital limit, £23,250 for 2015/16 in assets, (excluding the value of their home), and their home must not be disregarded from the means test, i.e. not occupied by a spouse or dependent relative.

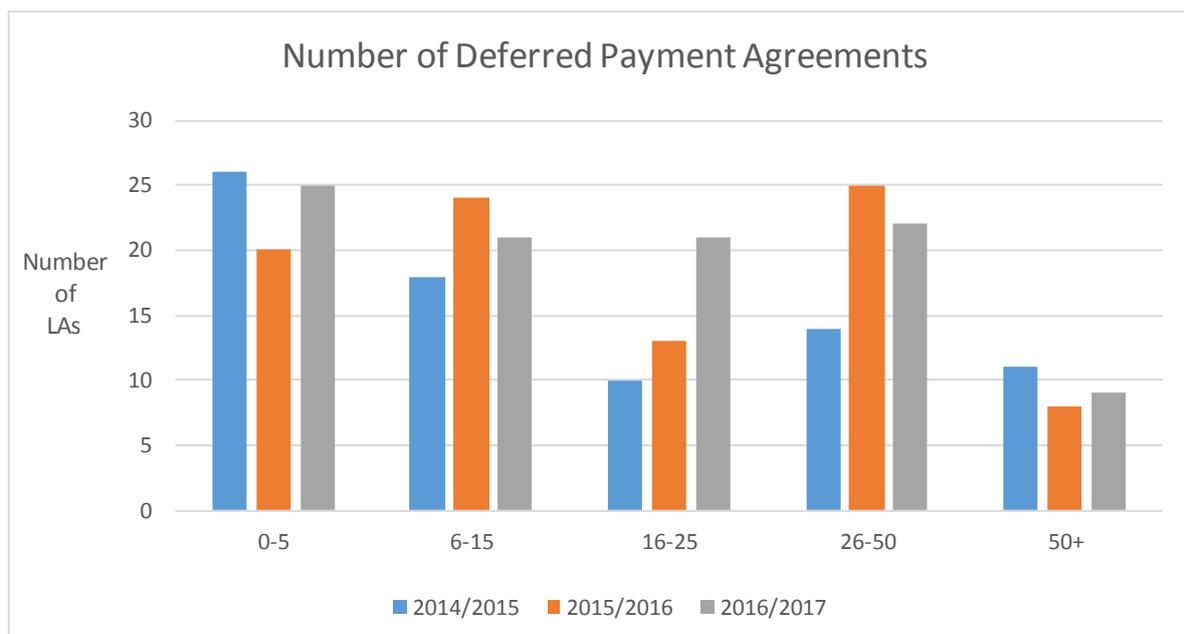
How councils responded:

	Number	Proportion of local authorities who responded to FOIR (119)
Local authorities who were able to provide information on how many deferred payments they had in place (any year)	105	88%

Results

Local authorities were asked to provide various statistics relating to the deferred payment scheme in three time periods – 2016/17, 2015/16 and 2014/15. The statistics requested were the amount of applications a local authority received and the amount that were then accepted. Some local authorities (16) explained that they do not keep a log of applications making it impossible to calculate the exact proportions that were accepted.

The findings show that there is extreme variation in the amount of deferred payments in place. Even factoring in the geographical element where larger authority areas could be expected to have more deferred payments in operation, the variation is stark. The chart below outlines the amount of deferred payments that were in effect in the most recent year (2016/2017).



As can be seen, the numbers are extremely varied with some local authorities having no deferred payment agreements in place and one having as many as 70. As mentioned earlier, this variation is not necessarily linked to geographical factors as one of the areas with fewer care home placements, Derby (with 928 care home places), had 70 deferred payments in place in 2016-2017 while Leeds which has a significantly higher amount of care home placements (2,437, including self-funders) had 19 deferred payment agreements in place.

The five local authorities with the highest number of deferred payments (2016/2017) were:

1. Derby (70)
2. Hampshire (65)
3. Worcestershire (63)
- =4. North East Lincolnshire (62)
- =4. Bradford (62)

Conversely, there were five local authorities without any deferred payments schemes in place:

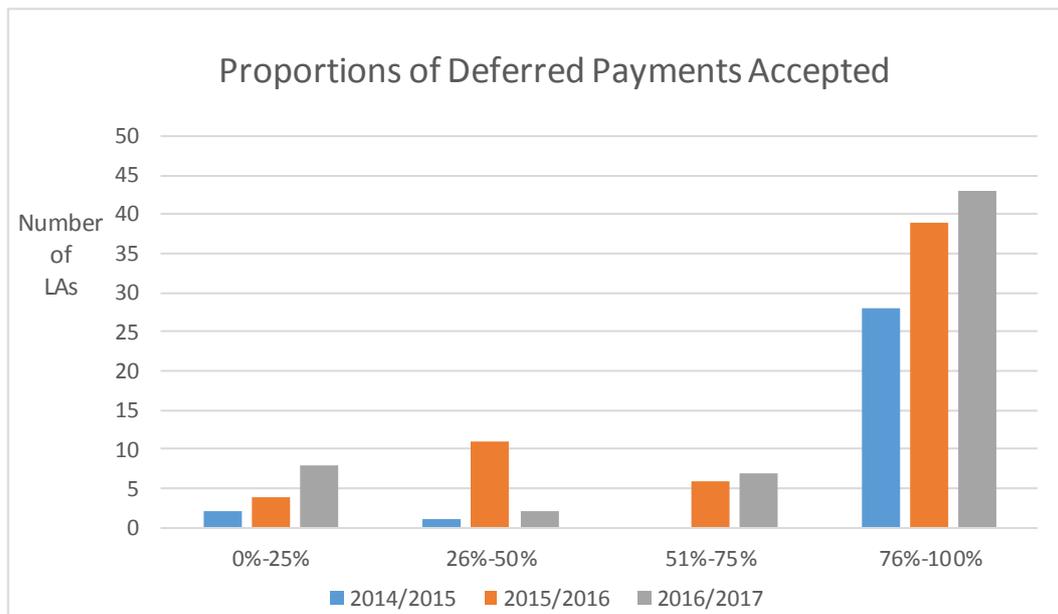
- Camden
- Lambeth
- Tower Hamlets
- Trafford
- Wandsworth

Authorities without any deferred payments in place are based in highly populated city centres – predominantly in London, although some parts of Manchester, too. However it is also notable that these are boroughs, while those local authorities with the most deferred payments are mainly larger counties. This is perhaps to be expected since it is the larger local authorities who are responsible for the care of more individuals, with perhaps a greater pool of

individuals for whom a deferred payment may be appropriate/beneficial given the value of their home and other assets.

Therefore while raw numbers of deferred payments may vary according to the size of a local authority, the proportions of deferred payments in place perhaps provide a more detailed understanding of the variation in local authorities' approaches.

The chart below compares the number of local authorities against the proportion of deferred payment applications they approved during 2014/15, 2015/16 and 2016/17.



As can be seen, the majority of local authorities who provided both application and acceptance information approved over three-quarters of the applications they received for a deferred payment agreement.

In recent years, a notable number of councils – albeit a minority - still only approved less than half of applications from residents for a deferred payment agreement, however the large majority are now accepting more than three-quarters of applications. This suggests there is still variation in local authority approaches to applications.

Those authorities who had accepted every application they had received in 2016/2017 included those with high numbers of applications and those with low numbers of applications. A few such examples include:

- Bury (63)
- East Riding of Yorkshire (45)
- Manchester (44)
- Stockton (41)
- Buckinghamshire (38)
- Calderdale (5)
- Doncaster (7)
- Kensington and Chelsea (2)

- Central Bedfordshire (10)

The local authorities who were in the opposite position, whereby they accepted less than a quarter of the applications they had received, included:

- Trafford (0 - 0%)
- North Yorkshire (31 - 2%)
- Suffolk (5 - 11%)
- South Devon (13 - 22%)

These findings suggest that different authorities are more, or less, engaged with the process of deferred payments and may have quite different interpretations of the Care Act. Or something else may explain why some areas are processing so few applications, which goes beyond the scope of what the data tells us.

However, the variation does not appear to be geographically based, with East Riding of Yorkshire approving 100% of applications contrasting heavily with its neighbouring council, North Yorkshire which approved just 2% of applications.

Some authorities may promote and explain deferred payments more to residents and may be more likely to highlight them as an option while it could be that some authorities are more rigorous than others when applying the guidelines to any deferred payment application. More research would be needed to assess what is driving this variation.

It should be noted that NHS Digital have published national figures for the number of deferred payments agreements, including those still active within the October 2017 Adult Social Care Activity and Finance Report. This reports that there were 6,440 deferred payment agreements as at 31st March 2017 which had a value of £176 million⁵.

Theme 4: Third party top-ups

- **24 local authorities (out of 83 responses) do not record information on third party top-ups in their area, raising questions about their oversight of top-ups for people they place in care homes.**
- **11 local authorities (out of 83 responses) are not involved with all third party top-ups in their area, again posing questions about local authorities' management of top-ups.**
- **Most local authorities have a written agreement in place before a top-up commences.**
- **7 local authorities have more than 30% of their care home placements utilising third party top-ups.**

⁵ NHS Digital (October 2017) *Adult Social Care Activity and Finance Report, England, 2016-2017*.

Definition:

If a local authority is funding someone's care home placement, they will tell the individual how much they are willing to pay for their needs to be met. The total amount the authority thinks someone's care should cost - including their contribution and the individual's - is called a personal budget. The local authority will need to show that at least one care home place is available which meets that person's care needs for that amount of money. If the individual would prefer a different, more expensive home, they may still be able to move there if someone else pays the difference. This is a third party top-up fee. Third party top-ups are (most often) paid by a relative – in fact they usually cannot be paid for by the individual themselves because they qualify for state-funded care. This enables the individual with care needs to move into a more expensive care home than the one the local authority is prepared to finance. This is intended to facilitate greater choice, a key provision under the Care Act.

Council requirements:

In addition to the requirement that they offer individuals one care home within their personal budget, local authorities are required to process and oversee top-ups in clear and consistent ways. Each individual undertaking a third party top-up must be presented with a written agreement to sign at the outset. This ensures they are fully aware of the terms of a third party top-up prior to an individual moving in and becoming settled. Local authorities are also required to monitor all third party top-ups and ensure they have an understanding of all agreements: no agreement should be made without the involvement of the local authority as they are financially liable should a third party prove unable to continue to paying their top-up. Local authorities are also required to offer information and advice to residents at all stages of the care process ensuring third parties paying a top-up commit to do so with a full understanding of what is involved.

How councils responded:

	Number	Proportion of LA's who responded to FOIR (119)
Local authorities who provided details about the number of third party top-ups in their area (any year)	83	70% of respondents
Local authorities who <u>do not</u> record the number of third party top-ups in their area	24	20%

*11 local authorities chose not to respond to this question, and one has begun recording third party top-up numbers but is too early in the process to publish numbers.

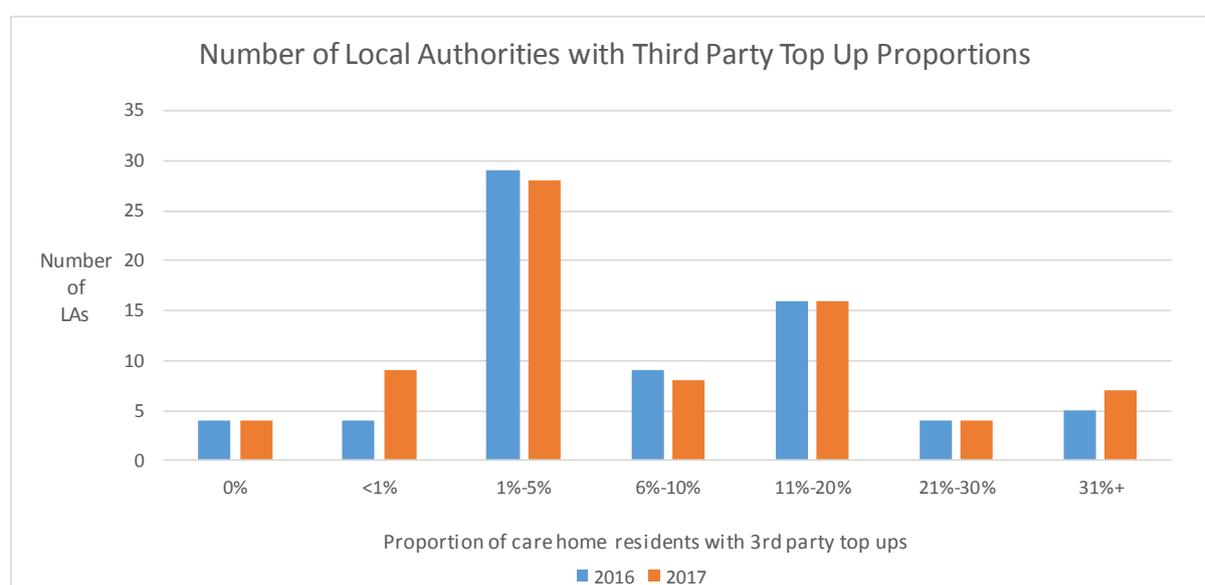
Results

Proportions of third party top-ups

We asked local authorities several questions about third party top-up fees. These included questions on the total numbers and proportions of local authority-funded care home placements that include a third party top-up, the amount of top-ups that are handled by the local authority, the amount of top-ups which include an up-front written agreement and how regularly the authority reviews top-ups.

The majority of councils demonstrated that only a small proportion of their care home residents are using a third party top-up.

The chart below illustrates the number of local authorities with different proportions of third party top ups. Data is recorded for 2017 and 2016, each on March 31st.



As can be seen, the most common figure for third party top-ups was between 1% and 5% of all local authority-funded care home residents, showing that fairly small proportions of care home residents, on average, are in actual fact utilising a third party agreement.

LaingBuisson estimates that approximately 48,000 care home residents across the UK were in receipt of a third party top-up in 2016, representing 26% of all council supported residents⁶. The frequency of top-ups has changed very little in recent years, sitting at just below 30% of local authority supported residents since 2008.

Seven councils were able to demonstrate they had more than 30% of care home residents utilising a third party top-up, for either of the two dates given in 2016 or 2017.

- Bournemouth

⁶ LaingBuisson (May 2017) *Care of older people UK market report*, 28th edition, p. 218.

- Calderdale
- Derby
- Leicestershire
- Sandwell
- St Helens
- Stoke
- Trafford
- Warwickshire

By contrast, three councils (Bury, Ealing and City of London) stated that they did not have anyone using a third party top-up in their area. These are quite diverse socio-economic areas, as are those seven with the highest proportions of third party top-ups, suggesting there are no obvious correlations to be found between the socio-economic demographics of an area and rate of top-ups that are agreed.

Worryingly, there were 24 councils who revealed that they did not keep any information relating to third party top-ups for either 2016 or 2017 – which poses fundamental questions about their management of choice of accommodation, and third party top-ups, under the Care Act.

These councils include:

- Bath and North East Somerset
- Bedford
- Birmingham
- Blackburn
- Bracknell Forest
- Central Bedfordshire
- Cheshire East
- Doncaster
- Dudley
- Hillingdon
- Kensington and Chelsea
- Kingston Upon Thames
- Liverpool
- Milton Keynes
- Merton
- Middlesbrough
- Newcastle
- Sefton
- South Tyneside
- Stockton
- Telford and Wrekin
- Walsall
- Westminster
- Wigan

The majority of these local authorities did not explain why they did not record numbers of third party top-ups. This suggests some councils are not aware of

their Care Act duties in this area. As with other issues, which we go on to discuss later in this report, there are no obvious links between these authorities – they represent various sizes of authority and are located across England, including a range of socio-economic areas.

This is a concerning situation for these local authorities to be in. According to the Care Act 2014 councils are responsible for resolving situations where individuals can no longer pay the third party top-up. Without constant monitoring of how third party top-ups are progressing, councils will in all likelihood prove unable to assess a third party’s financial situation and the sustainability of a top-up payment. This could leave both the individual paying the top-up, but also the person receiving residential care, and indeed the council, vulnerable. Third party top-ups need to be properly accounted for and monitored to ensure all parties to the top-up arrangement can keep the arrangement going.

Council Involvement

	Number	Proportion of LA’s who gave a response as to who agrees third party top-ups (83)
LAs who actively agreed 100% of third party top-ups themselves	54	65%
LAs who <u>did not</u> actively agree 100% of third party top-ups themselves	11	13%

*A further 17 local authorities replied but their answers were not clear enough to categorise them into either of the responses above, therefore the total of 66 does not match the number of 83 who responded.

In 2017, of the 83 local authorities that were able to identify how third party top-ups were agreed, 65% (54) fulfilled their statutory guidance whereby all agreements were made in conjunction with the local authority. This is an increase in the number of councils doing this since 2015, when 46 (40% of 2015 respondents) involved the local authority in 100% of all top-ups⁷.

It should however be noted that the 2017 data includes some local authorities who suggested that their third party top-ups were agreed by the local authority and the third party, but *not* the provider. This was not something that occurred in 2015 for any local authority we heard from in our FOIR two years ago.

"The Top up agreements Camden enters into are solely between the council and third party." **Camden**

"Third party top ups are between third party and local authority." **Salford**

In terms of the local authorities not involved in top-ups in their areas, there were 11 (13% of the local authorities who responded to the question), although there were variations to the extent to which are not involved.

⁷ Independent Age (January 2016) [Care home ‘top up’ fees: Freedom of Information request summary](#).

Out of the 11:

Kensington and Chelsea stated that it was not within their remit to do this and that it is a private arrangement between third party and provider.

Four (Haringey, St Helens, Wokingham and East Riding of Yorkshire) didn't explicitly say this wasn't their policy but 100% of top-ups were handled just between the provider and third parties.

Six (Worcestershire, Greenwich, Calderdale, Northumberland, Kirklees and Durham) showed they have a complete mix of approaches – some top-ups are arranged with the local authority, some without.

Some local authorities did not provide any explanation as to why they are not involved with third party top-up agreements, indicating there is some misunderstanding of authorities' legal requirements on this issue.

"We do not arrange third party top-ups with providers. If a third party makes a private arrangement with a provider we would not be aware of this." **Kent**

As mentioned earlier this is problematic and some local authorities are showing that they do not have a complete understanding of third party top-ups in operation within their area. There appears to be a lack of knowledge surrounding their own liabilities for meeting these costs if top-up arrangements come to an end, which has both legal and financial implications for the local authority. This is evidenced by various court cases in which local ombudsman rulings have been required to settle disputes on this issue⁸.

Written Agreements

Most councils were able to demonstrate good practice when it came to presenting individuals with a written agreement prior to starting payment for a third party top-up.

	Number	Proportion of local authorities who commented on written agreements (83)
Local authorities which presented written agreements to all individuals before payment	48	58%
Local authorities who said it was council policy to present individuals with a	15	18%

⁸ For an example see Carter, R. (4 April 2016) 'Council gave 'no good reason' not to comply with top-up fee recommendations', available at: www.communitycare.co.uk/2016/04/04/council-gave-good-reason-comply-ombudsmans-top-fee-recommendations/.

written agreement before payment		
Local authorities who did not present written agreements to 100% of individuals before payment	5	6%
LAs who refused question because it took too long to produce an accurate answer	15	18%

In 2017, 48 of the 83 local authorities who commented on this issue were able to categorically say that 100% of individuals had been presented with a written agreement before payment, while a further 15 councils indicated that it was council policy or this procedure 'should' be followed but there is no way to check this is the case. These figures taken together total 63 which is one more council than in 2015 who said that written agreements were in place, suggesting that approaches to this have more or less stayed the same in the last two years.

"The Council's procedure is that all persons paying a Top Up must enter into a written agreement with the Council, agreeing to meet that cost. This agreement must be completed and signed before the top up can proceed." **Milton Keynes**

For the remaining 20 local authorities who responded, the most common issue was that this question was refused because it would take too long to produce an accurate answer. Only five local authorities gave a numerical value that was less than 100% in either 2017 or 2016 suggesting that overall, authorities have a good understanding of their requirements in relation to written agreements for top-ups.

Review of third party top-ups

Local authorities are required to review an individual's third party top-up to ensure that they are able to continue paying. This is to stop individuals from amounting large debt they are unable to pay to keep their relative in the same care home.

	Number	Proportion of local authorities who annually review third party top-ups (72)
Local authorities which review third party top-ups as part of annual review	52	72%

Local authorities which set up separate annual review	11	15%
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*A further nine responded to the question but do not fall into one of these categories.

Over half (72) of the councils who responded to the FOI (119) were able to say that they complied with the legislation as they undertake a review of an individual's third party top-up at least annually. For 52 of those local authorities this was part of the service user's annual review with 11 other local authorities setting up a separate annual meeting to review a third party top-up.

This represents a slight improvement on the figures collected in 2015 from another Freedom of Information Request Independent Age submitted⁹. In the last two years the number of local authorities reviewing third party top-ups annually has increased from 58 (which was 50% of all 2015 respondents) to 71 (60% of all 2017 respondents). It is encouraging to see that over the last two years, more local authorities are undertaking an annual review and thereby complying with the relevant provisions in the Care Act.

Another strategy for councils was to review a third party top-up whenever an individual's circumstances changed/care home fees increased/decreased. For nine local authorities this was their approach instead of an annual review while for six local authorities this was in addition to a minimum annual review.

"Third party top-ups should be considered as part of the review of an individual's care. The legal agreement with the third party stipulates that the third party must inform the council if their circumstances change or if the provider requests an increase in the top up payment, for example." **Hampshire**

Information and advice

Local authorities were asked about what information and advice they offer to individuals when choosing a care home and/or considering a top-up. Authorities were also asked to provide any evidence of this where possible.

Most local authorities were able to demonstrate multiple sources of information they offer residents who are choosing care. This included internally produced information on their website and directories as well as signposting to third parties who might be able to help – such as Age UK, Citizen's Advice Bureaux and local financial advisors.

"General advice is given by the social worker during the assessment, planning and reviewing stages. In addition the Council has supported The Care Advice Line project which links a referral system to advisors specialised in later life financial planning including funding long term care. The link for this is www.thecareadvice.org. There is also information provided on the www.theburydirectory.co.uk." **Bury**

⁹ Independent Age (January 2016) [Care home 'top up' fees: Freedom of Information request summary](#).

However there was evidence of some local authorities providing a minimum amount of support claiming that the information and advice that was offered was just in written agreements.

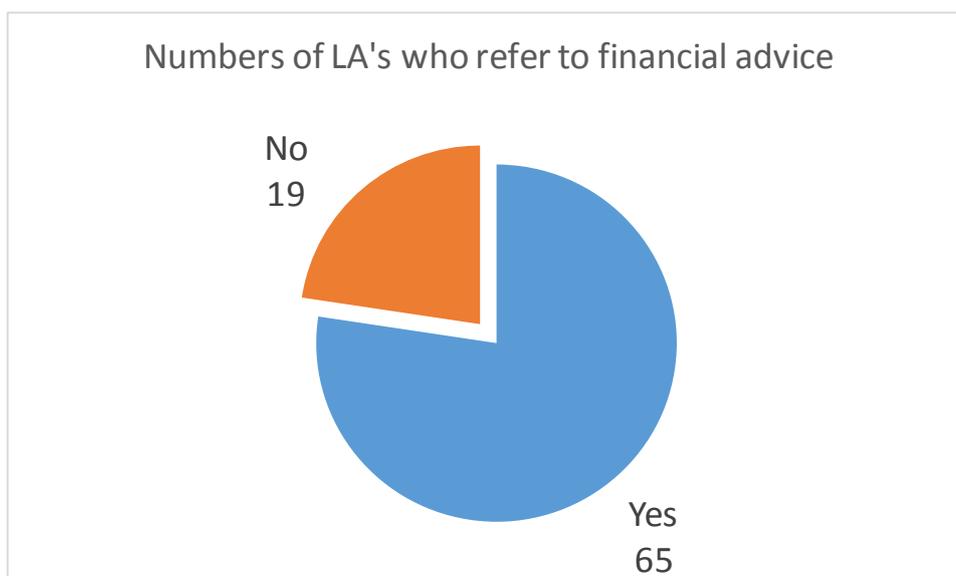
"Detailed information is contained in the written agreement." **Norfolk**

"Information is provided by worker when arranging top-up." **East Sussex**

When asked whether local authorities refer to financial advice regarding top ups 84 councils gave a response.

	Number	Proportion of local authorities who stated whether they gave financial advice (out of 84)
Local authorities which do refer to financial advice regarding third party top-ups	65	77%
Local authorities which <u>do not</u> refer to financial advice regarding third party top-ups	19	23%

Financial advice regarding top-ups was something offered to individuals by most of the local authorities (65) who responded but not all. Nineteen local authorities categorically stated that financial advice was not something they offered.



Policy Recommendations

- Local authorities are responsible for third party top-ups and for monitoring these to ensure individuals do not pay or continue to pay a third party top-up when it is either not necessary or sustainable. Despite this, a number of local authorities do not appear to be fulfilling all their responsibilities for third party top-ups in their area. The government must ensure that local authorities are fulfilling their statutory duties regarding top-ups, including making sure that individuals paying a third party top-up are entering into the agreement fully aware of their legal rights and obligations.
- It is vital that all individuals are afforded the same opportunities when it comes to deferred payments. It is therefore extremely important the government ensures local authorities adopt a universal, standardised approach to deferred payments and the promotion of deferred payments, thereby ensuring that every individual is given the same opportunities to access a payment, based on objective eligibility criteria.
- While many local authorities do consider the Care Quality Commission ratings of care homes, many individuals are placed in accommodation that has been rated either 'requires improvement' or 'inadequate'. Local authorities must work to provide a diverse range of high quality care options in their local care market. They must take an active role in developing the care market and ensuring all local authority-funded residents can realistically access care homes rated as 'good' or 'outstanding', so they have a genuine choice of good care options.
- Choosing a care home can be one of the most stressful decisions an individual or family can make. Local authorities must provide extensive information and advice to residents, irrespective of their eligibility for local authority-funded care. Whether this is a directory of care homes, one-to-one advice from a social worker or a signpost to independent financial advice; it is vital local authorities provide multiple ways of promoting and setting up information and advice for people choosing care.

Appendix 1 – Compliance with Care Act by Local Authority

Local Authority	Number of Care Home Placements (31 st March 2017)	Number of third Party top-ups (31 st March 2017)	All individuals given written agreement before moving in	Authority involved with all third party top-ups	Take CQC rating into account	Number of deferred payments agreed 2016/2017	Proportion of deferred payment applications agreed 2016/2017	Proportion of individuals placed in inadequate/require improvement care homes (2016/2017)
Barking & Dagenham*	357	Information not recorded	Yes	Information not recorded	No Response	No Response	No Response	No Response
Barnet	2017 data not available	11	Yes	Information not recorded	Yes	Information not recorded	-	Question Refused
Barnsley	No response received before analysis							
Bath & North East Somerset	559	Information not recorded	Information not recorded	Information not recorded	Yes	3	100%	Question Refused
Bedford	649	Information not recorded	Information not recorded	Information not recorded	Yes	1	-	No Response
Bexley	No response received before analysis							
Birmingham	2852 (12/7/2017)	Information not recorded	Information not recorded	Information not recorded	Yes	55	30%	49%
Blackburn with Darwen	700	Information not recorded	Information not recorded	Information not recorded	Yes	1	-	Information not recorded
Blackpool*	810	136	Yes	No	No	7	21%	N/A
Bolton	FOIR Refused							
Bournemouth	716	519	No Response	Yes	No Response	No Response	-	No Response

Local Authority	Number of Care Home Placements (31 st March 2017)	Number of third Party top-ups (31 st March 2017)	All individuals given written agreement before moving in	Authority involved with all third party top-ups	Take CQC rating into account	Number of deferred payments agreed 2016/2017	Proportion of deferred payment applications agreed 2016/2017	Proportion of individuals placed in inadequate/require improvement care homes (2016/2017)
Bracknell Forest	230	Information not recorded	Information not recorded	Information not recorded	Yes	9	100%	No Relevant Response
Bradford	1464	167	Yes	Yes	Yes	62	-	Question Refused
Brent	2017 data not available	57	No relevant response	Information not recorded (Recently started)	No Response	Question Refused	-	No Response
Brighton & Hove	839	37	Yes	Yes	Yes	7	-	Information not recorded
Bristol	No response received before analysis							
Bromley*	469	44	Information not recorded	Yes	Yes	4	100%	Information not recorded
Buckinghamshire	1182	27	Question Refused	Yes	Yes	38	100%	Information not recorded
Bury	595	0	N/A	N/A	Yes	32	100%	Information not recorded
Calderdale	531	191	Information not recorded	No	Yes	5	100%	Information not recorded
Cambridgeshire	2484	40	Yes	Yes	Yes	11	25%	No Response
Camden	298	4	Yes	Yes	Yes	0	-	No Response

Local Authority	Number of Care Home Placements (31 st March 2017)	Number of third Party top-ups (31 st March 2017)	All individuals given written agreement before moving in	Authority involved with all third party top-ups	Take CQC rating into account	Number of deferred payments agreed 2016/2017	Proportion of deferred payment applications agreed 2016/2017	Proportion of individuals placed in inadequate/require improvement care homes (2016/2017)
Central Bedfordshire	997	Information not recorded	No Response	Information not recorded	Yes	10	100%	Information not recorded
Cheshire East	965	Information not recorded	Information not recorded	Information not recorded	Yes	16	100%	35%
Cheshire West & Chester	50	No response	No Response	No Response	No Response	No Response	-	No Response
City of London	23	0	N/A	N/A	Yes	0	-	0%
Cornwall	1449	Question Refused	No	Question Refused	No	37	93%	N/A
Coventry	No response received before analysis							
Croydon	948	<5	Question Refused	Question Refused	Yes	10	-	Question Refused
Cumbria	2075	42	Yes	Yes	Yes	13	-	Information not recorded
Darlington	No response received before analysis							
Derby	732	233	Yes	Yes	Yes	11	100%	Information not recorded
Derbyshire	No response received before analysis							
Devon*	2631	672	Question Refused	Yes	Yes	105	-	17.4%

Local Authority	Number of Care Home Placements (31 st March 2017)	Number of third Party top-ups (31 st March 2017)	All individuals given written agreement before moving in	Authority involved with all third party top-ups	Take CQC rating into account	Number of deferred payments agreed 2016/2017	Proportion of deferred payment applications agreed 2016/2017	Proportion of individuals placed in inadequate/require improvement care homes (2016/2017)
Doncaster	1249	Information not recorded	Information not recorded	Information not recorded	No	7	100%	N/A
Dorset	2499	94	No Response	Information not recorded	No Response	50	86%	No Response
Dudley	1103	Information not recorded	Yes	Yes	Yes	44	100%	Information not recorded
Durham	2581	104	Yes	No	Yes	18	-	Information not recorded
Ealing	607	0	No Response	N/A	No Response	No Response	-	No Response
East Riding of Yorkshire	2007	331	Yes	No	Yes	45	100%	Question Refused
East Sussex	1770	62	Yes	Yes	Yes	34	-	No Response
Enfield	No response received before analysis							
Essex	1356	Question Refused	Question Refused	Question Refused	Yes	Question Refused	-	Question Refused
Gateshead	984	9	Question Refused	Question Refused	No	2	100%	N/A
Gloucestershire*	11395	Question Refused	Question Refused	Question Refused	Yes	29	22%	No Response
Greenwich	710	12	Yes	No	Yes	7	100%	43%
Hackney	No response received before analysis							
Halton	681	1	Yes	Yes	Yes	3	75%	Information not recorded

Local Authority	Number of Care Home Placements (31 st March 2017)	Number of third Party top-ups (31 st March 2017)	All individuals given written agreement before moving in	Authority involved with all third party top-ups	Take CQC rating into account	Number of deferred payments agreed 2016/2017	Proportion of deferred payment applications agreed 2016/2017	Proportion of individuals placed in inadequate/require improvement care homes (2016/2017)
Hammersmith & Fulham	No Response	Information not recorded	No Response	No	Yes	3	-	54%
Hampshire	4658	235	Yes	Yes	Yes	65	-	Information not recorded
Haringey	802	3	Yes	No	Yes	No Relevant Response	-	Question Refused
Harrow	414	14	No	Yes	Yes	3	33%	Question Refused
Hartlepool	No response received before analysis							
Havering	557	Question Refused	Question Refused	Question Refused	Yes	37	-	Question Refused
Herefordshire	627	122	Yes	Yes	Yes	30	94%	12%
Hertfordshire	FOIR Refused							
Hillingdon	457	Information not recorded	Yes	No	Yes	11	-	Information not recorded
Hounslow*	277	5	Yes	No	Yes	1	100%	Information not recorded
Isle of Wight	1081	1	Yes	Yes	Yes	11	85%	Information not recorded
Isles of Scilly	<10	<10	No Response	No Response	No Response	No Response Given	-	No Response
Islington	640	5	Yes	Yes	Yes	4	100%	0%
Kensington & Chelsea	Information not recorded	Information not recorded	Information not recorded	No	Yes	2	100%	52%

Local Authority	Number of Care Home Placements (31 st March 2017)	Number of third Party top-ups (31 st March 2017)	All individuals given written agreement before moving in	Authority involved with all third party top-ups	Take CQC rating into account	Number of deferred payments agreed 2016/2017	Proportion of deferred payment applications agreed 2016/2017	Proportion of individuals placed in inadequate/require improvement care homes (2016/2017)
Kent	2133	405	Yes	No	Yes	57	50%	Question Refused
Kingston upon Hull	No response received before analysis							
Kingston upon Thames	282	Information not recorded	Information not recorded	Information not recorded	Yes	7	-	No Relevant Response
Kirklees	1225	66	Yes	No	Yes	45	-	Question Refused
Knowsley	No response received before analysis							
Lambeth	743	5	Yes	Yes	Yes	0	-	Question Refused
Lancashire	4940	977	Question Refused	Question Refused	No	104	49%	Question Refused
Leeds	2437	Question Refused	Yes	Question Refused	Yes	18	78%	Information not recorded
Leicester City	938	39	Yes	Question Refused	Yes	No Relevant Response	-	21%
Leicestershire	1850	572	Yes	Yes	No Response	59	76%	No Response
Lewisham	No response received before analysis							
Lincolnshire	2910	364	Yes	Yes	Yes	51	-	32%
Liverpool	1823	Information not recorded	Information not recorded	Information not recorded	Yes	Information not recorded	-	15%
Luton	No response received before analysis							

Local Authority	Number of Care Home Placements (31 st March 2017)	Number of third Party top-ups (31 st March 2017)	All individuals given written agreement before moving in	Authority involved with all third party top-ups	Take CQC rating into account	Number of deferred payments agreed 2016/2017	Proportion of deferred payment applications agreed 2016/2017	Proportion of individuals placed in inadequate/require improvement care homes (2016/2017)
Manchester	1274	195	Yes	Yes	Yes	44	100%	Information not recorded
Medway	No response received before analysis							
Merton	161	Information not recorded	Information not recorded	Information not recorded	Yes	5	-	Information not recorded
Middlesbrough	709	Information not recorded	Information not recorded	Information not recorded	No	3	-	Information not recorded
Milton Keynes	507	Information not recorded	Yes	Question Refused	Yes	2	-	Information not recorded
Newcastle upon Tyne	974	Information not recorded	No	Question Refused	No	13	42%	N/A
Newham	Question Refused	Question Refused	Question Refused	Question Refused	Yes	2	100%	Question Refused
Norfolk	3872	419	Yes	Yes	Yes	32	41%	Question Refused
North East Lincolnshire	419	Question Refused	Question Refused	Question Refused	No	62	100%	N/A
North Lincolnshire*	687	18	Information not recorded	No	Yes	3	12%	21%
North Somerset	846	92	Yes	Yes	Yes	22	32%	Information not recorded
North Tyneside	762	11	Yes	Information Not Recorded	No	2	66%	No Response

Local Authority	Number of Care Home Placements (31 st March 2017)	Number of third Party top-ups (31 st March 2017)	All individuals given written agreement before moving in	Authority involved with all third party top-ups	Take CQC rating into account	Number of deferred payments agreed 2016/2017	Proportion of deferred payment applications agreed 2016/2017	Proportion of individuals placed in inadequate/require improvement care homes (2016/2017)
North Yorkshire	1850	220	Yes	Yes	Yes	31	2%	Question Refused
Northamptonshire	1791	269	Yes	Yes	Yes	26	32%	Information not recorded
Northumberland	1395	38	Yes	No	Yes	28	82%	10%
Nottingham City	1081	143	Yes	Yes	No	4	80%	Information not recorded
Nottinghamshire	2962	319	No	Yes	No	45	23%	Information not recorded
Oldham	896	Information not recorded	Yes	Yes	No	No Response	-	Question Refused
Oxfordshire	1545	84	Information not recorded	Yes	Yes	34	-	Information not recorded
Peterborough	306	23	Yes	Yes	Yes	4	36%	Question Refused
Plymouth	794	52	Yes	Yes	N/A	17	68%	Information not recorded
Poole	343	45	Question Refused	Yes	Yes	19	95%	Question Refused
Portsmouth	437	Question Refused	Question Refused	Question Refused	Yes	18	-	Question Refused
Reading	288	5	Yes	Yes	Yes	3	100%	4%
Redbridge	813	19	Yes	Yes	Yes	Information not recorded	-	Information not recorded

Local Authority	Number of Care Home Placements (31 st March 2017)	Number of third Party top-ups (31 st March 2017)	All individuals given written agreement before moving in	Authority involved with all third party top-ups	Take CQC rating into account	Number of deferred payments agreed 2016/2017	Proportion of deferred payment applications agreed 2016/2017	Proportion of individuals placed in inadequate/require improvement care homes (2016/2017)
Redcar & Cleveland	FOIR Refused							
Richmond Upon Thames*	384	15	Information not recorded	Yes	Yes	7	100%	Information not recorded
Rochdale	762	56	No	Yes	No	25	89%	N/A
Rotherham	1111	54	Yes	Yes	N/A	19	100%	Information not recorded
Rutland	100	5	Yes	No Response	Yes	6	100%	Information not recorded
Salford	797	109	Yes	Yes	Yes	19	100%	Question Refused
Sandwell	1050	435	Information not recorded	Yes	Yes	19	-	Information not recorded
Sefton	539	Information not recorded	Information not recorded	Information not recorded	Yes	17	23%	Question Refused
Sheffield	2017 data not available	2017 data not available	No Response	Yes	No Response	No Response	-	No Response
Shropshire	1152	83	Information not recorded	Yes	No Response	No Response	-	No Response
Slough	200	4	Yes	Information not recorded	Yes	No Response	-	Information not recorded

Local Authority	Number of Care Home Placements (31 st March 2017)	Number of third Party top-ups (31 st March 2017)	All individuals given written agreement before moving in	Authority involved with all third party top-ups	Take CQC rating into account	Number of deferred payments agreed 2016/2017	Proportion of deferred payment applications agreed 2016/2017	Proportion of individuals placed in inadequate/require improvement care homes (2016/2017)
Solihull	FOIR Refused							
Somerset*	1866	157	No	No	Yes	34	-	Information not recorded
South Devon	574	80	Yes	Yes	Yes	13	22%	Information not recorded
South Gloucestershire	No response received before analysis							
South Tyneside**	249	Information not recorded	Information not recorded	No	Yes	41	100%	No Response
Southampton	686	1	Information not recorded	Yes	No	21	-	N/A
Southend on Sea	518	32	Yes	Yes	No	38	76%	N/A
Southwark	438	24	Yes	Yes	Yes	Question Refused	-	0%
St Helens	695	195	Yes	No	No	24	100%	No Response
Staffordshire	No response received before analysis							
Stockport	849	141	No	Yes	Yes	10	100%	49%
Stockton on Tees	846	Information not recorded	Information not recorded	Information not recorded	No	41	100%	N/A

Local Authority	Number of Care Home Placements (31 st March 2017)	Number of third Party top-ups (31 st March 2017)	All individuals given written agreement before moving in	Authority involved with all third party top-ups	Take CQC rating into account	Number of deferred payments agreed 2016/2017	Proportion of deferred payment applications agreed 2016/2017	Proportion of individuals placed in inadequate/require improvement care homes (2016/2017)
Stoke	1083	382	Information not recorded	Yes	No	32	-	Information not recorded
Suffolk	2393	132	Information not recorded	Yes	Yes	5	11%	Information not recorded
Sunderland	1022	53	Yes	Information not recorded	No	33	100%	N/A
Surrey	1846	Question Refused	Yes	Question Refused	Yes	23	82%	Question Refused
Sutton	234	10	Yes	Yes	Yes	1	100%	Question Refused
Swindon	489	3	Information not recorded	Information not recorded	Yes	20	95%	Question Refused
Tameside*	692	Information not recorded	Information not recorded	Information not recorded	N/A	2	10%	Question Refused
Telford & Wrekin	361	Information not recorded	Information not recorded	Information not recorded	Yes	7	64%	Information not recorded
Thurrock	FOIR Refused							
Tower Hamlets	389	0	N/A	N/A	Yes	0	-	Information not recorded
Trafford	711	288	Yes	Yes	Yes	0	0%	Information not recorded

Local Authority	Number of Care Home Placements (31 st March 2017)	Number of third Party top-ups (31 st March 2017)	All individuals given written agreement before moving in	Authority involved with all third party top-ups	Take CQC rating into account	Number of deferred payments agreed 2016/2017	Proportion of deferred payment applications agreed 2016/2017	Proportion of individuals placed in inadequate/require improvement care homes (2016/2017)
Wakefield	923	80	Yes	Yes	Yes	18	55%	Information not recorded
Walsall	771	Information not recorded	Question Refused	Information not recorded	No	Question Refused	-	N/A
Waltham Forest	Information not recorded	Question refused	Information not recorded	Question Refused	Yes	9	-	No Response
Wandsworth	460	9	Information not recorded	Yes	Yes	0	-	Information not recorded
Warrington	No response received before analysis							
Warwickshire	903	254	Yes	Yes	Yes	17	63%	Information not recorded
West Berkshire	448	3	Yes	Yes	Yes	16	-	Information not recorded
West Sussex	3126	216	Question Refused	Yes	Yes	49	29%	Question Refused
Westminster	479	Information not recorded	Information not recorded	Information not recorded	Yes	0	-	51%
Wigan	1094	Information not recorded	No Response	No Response	No	20	80%	No Response
Wiltshire	1404	74	Yes	Yes	Yes	21	55%	Information not recorded

Local Authority	Number of Care Home Placements (31 st March 2017)	Number of third Party top-ups (31 st March 2017)	All individuals given written agreement before moving in	Authority involved with all third party top-ups	Take CQC rating into account	Number of deferred payments agreed 2016/2017	Proportion of deferred payment applications agreed 2016/2017	Proportion of individuals placed in inadequate/require improvement care homes (2016/2017)
Windsor & Maidenhead	289	13	Yes	Yes	Information not recorded	7	100%	Information not recorded
Wirral	1158	1	Yes	Yes	No	11	-	No Response
Wokingham	393	14	Yes	No	Yes	7	100%	Information not recorded
Wolverhampton	928	198	Question Refused	Yes	Yes	70 (Since 2015)	100%	No Response
Worcestershire	1303	290	Information not recorded	No	Yes	63	24%	No Response
York	494	39	Yes	Yes	Yes	No Response	-	Information not recorded

*These local authorities submitted data after responses were analysed, therefore have not been included in the written report.

** South Tyneside produced information to Question 1 within the required timescales and so result are included within the report analysis. Q2-9 were answered after Independent Age wrote the report and so do not feature within the analysis.

Appendix 2 – Questions submitted in FOIR

Dear Sir/Madam,

I am writing to request the following information under the Freedom of Information Act for your local authority.

In all data and questions please include all types of care homes including with nursing and without as well as dementia specialist homes within any reference to 'care homes'.

Our Freedom of Information request centres around the issue of care home third party top ups- that is, the process whereby a relative or friend may pay an extra amount of money so that an older person may go to a care home that costs more than the council is offering to pay someone as their personal budget.

Third Party Top-Ups

1. (a) What is the total number of care home placements for individuals aged 65+ organised by the local authority?

Please provide data for the following dates.

31 March 2017
31 March 2016

- (b) What is the total number of care home placements that include a third party top-up for someone aged 65 and over organised by the local authority?

Please provide data for the following dates.

31 March 2017
31 March 2016

- (c) Of the total number of care home placements for someone aged 65 and over that include a third party top-up, how many of these agreements are between:

- i) the third party, the provider, and the local authority
- ii) just the third party and the provider

Please provide data for the following date.

31 March 2017

2. What percentage of those individuals aged 65+ who have entered a third party top-up arrangement with the local authority were presented with a written agreement before starting the payment, as outlined in the Care Act 2014?

Please provide data for the following financial years.

1 April 2016 – 31 March 2017

1 April 2015 – 31 March 2016

3. How often does the local authority review third party top-up agreements for care homes in your area with the individual who pays this top up? (Please specify whether this review takes place as part of the service user's annual review and also how the third party is included.)

Please tick appropriate answer.

More than once a year

Once a year (As part of service user's annual review)

Once a year (Not as part of service user's annual review)

Less frequently than once per year

Other (Please specify)

4. What information and advice services are provided by your local authority to ensure people receive 'sufficient' information and advice prior to entering a third party top-up agreement? Please specify both online and offline sources. (Please attach any information materials made available if possible.)

Does this include a referral to independent financial information and advice? (Please attach any information materials made available if possible. We would be particularly interested to know if a directory is provided.)

5. How does the council satisfy itself that each person assessed as needing state funded care has been offered at least one care home place that can be met within their personal budget?

Please include any guidance procedure or policy documents describing the steps that should be taken to ensure that an option not requiring a third party top up has been offered.

Deferred Payments

6. For each of the financial years below, how many applications did the council receive for deferred payments with regards to care homes and how many of these were accepted?

Please provide data for the following financial years.

1 April 2016 – 31 March 2017

1 April 2015 – 31 March 2016

1 April 2014 – 31 March 2015

Market Shaping

7. How does the Local Authority satisfy itself that it has met its need to ensure a person with assessed care needs has a variety of high quality (care) services to choose from (as outlined in the Care Act 2014)?
8. Does the local authority take into account the Care Quality Commission ratings of care homes when choosing which care home placements to offer individuals who have been assessed as needing state funded care?
Yes
No
9. a.) If yes, of all of those people who have been assessed as needing a state funded care home placement, what number and percentage were placed in a care home rated by the Care Quality Commission as either 'inadequate' or 'requires improvement'?

Please provide data for the following financial years.

1 April 2016 – 31 March 2017

1 April 2015 – 31 March 2016

b.) Please provide statistics for the number of people who are residents in 'inadequate' and 'requires improvement' care homes on the following dates.

31 March 2017

31 March 2016

Should answering this request exceed the 'appropriate limit' under the FOI Act please prioritise what can be done within the timeframe.