

SCHEDULE 10 – NON TAKE UP OF THE SERVICE, ABSENCE OF THE SERVICE USER, NOTICE PERIODS AND TERMINATION AND RELATED PAYMENTS [2023]

1. NON TAKE UP OF A SUPPORT PACKAGE

- 1.1 When Services have been arranged and set up via an Individual Service Agreement by the Council on behalf of a Service User, but the Service is subsequently not taken up by the Service User, the provisions of this **Schedule 10** will apply.

2. ABSENCE OF THE SERVICE USER [HOME SUPPORT AND CARE AND SUPPORT (SUPPORTED LIVING)]

- 2.1 Any absences of the Service User shall be notified by the Provider to the relevant Council social work team and as detailed in **paragraph 8** of **Schedule 9** (Finance, Invoicing and Payments) shall apply to payments to the Provider during any period of absence.

3. ABSENCE OF THE SERVICE USER (CARE HOME)

- 3.1 Any absences of the Service User shall be notified by the Provider to the relevant Council social work team and as detailed in **paragraph 6** of **Schedule 9** (Finance, Invoicing and Payments) shall apply to payments to the Provider during any period of absence.

4. TERMINATION OF THE INDIVIDUAL SERVICE AGREEMENT [HOME SUPPORT]

- 4.1 The Council may give notice of termination of an Individual Service Agreement, wherever possible with the agreement of the Service User, when in the opinion of the Council the needs of the Service User can best be served by transferring to another Provider as follows:

4.1.1 The Council shall give the Provider a **minimum** of two (2) Working Days' notice of termination of an Individual Service Agreement and the Provider shall ensure continuity of care until the package of care has been transferred to a new Provider.

4.1.2 In the case of Inappropriate Placement, the period of notice will be seven (7) days and the fee will only be paid for the actual period of care and support delivered to the citizen.

4.1.3 In all other cases (i.e. other than a Trial Period, Temporary Placement, and closure of the Provider or an Inappropriate Placement) any of the parties may give ten (10) days' notice to terminate the Individual Service Agreement in respect of any individual Service User. Where the Council or the Service User gives such notice, the Council will pay the fee for ten (10) days. Where the Provider gives such notice the fee will only be paid for the actual period of care and support/residence of the Service User.

4.1.4 However, in certain cases, e.g. the Provider's breach of contract, unsatisfactory Service provisions or a serious complaint against the Provider, action by the Care Quality Commission, the Council may give immediate notice of the termination of an Individual Service Agreement.

- 4.2 The Service User may request the termination of the Individual Service Agreement on six (6) hours' notice but must inform her/his Social Worker before taking action. If such action is taken and is not for reasons in the paragraph below, the Council shall pay for the Service that would have been provided during the first two (2) days.

- 4.3 The Provider must give at least ten (10) Working Days' notice of termination of an Individual Service Agreement. If the above notice period is not given the Council may deduct costs incurred in arranging for the Service to be carried out by an alternative Provider/or its own staff together with the administrative costs of making such arrangements. The Authorised Officer's certification of such copy shall be final and binding and the amount so certified shall be deducted from any payment to the Provider under the Agreement or recovered as a debt. Upon the Provider giving notice of termination of an Individual Service Agreement the Council will work with the Provider to ensure a smooth transition of the packages of care.

5. TERMINATION OF THE INDIVIDUAL SERVICE AGREEMENT [CARE AND SUPPORT (SUPPORTED LIVING)]

- 5.1 The Council may give notice of termination of an Individual Service Agreement, wherever possible with the agreement of the Service User, when in the opinion of the Council the needs of the Service User can best be served by transferring to another Provider as follows:
- 5.1.1 Any of the Parties may terminate an Individual Service Agreement during a Trial Period on seven (7) days' notice (all Notices should be in writing). Where the Council or the citizen gives such notice, the Council will pay the fee for the actual period of care and support delivered.
- 5.1.2 In the case of Inappropriate Placement, the period of notice will be seven (7) days and the fee will only be paid for the actual period of care and support delivered to the citizen.
- 5.1.3 In all other cases (i.e. other than a Trial Period, Temporary Placement, and closure of the accommodation or an Inappropriate Placement) any of the parties may give fourteen (14) days' notice to terminate the Individual Service Agreement in respect of any individual Service User. Where the Council or the Service User gives such notice, the Council will pay the fee for fourteen (14) days. Where the Provider gives such notice the fee will only be paid for the actual period of care and support/residence of the Service User.
- 5.1.4 However, in certain cases, e.g. the Provider's breach of contract, unsatisfactory Service provisions or a serious complaint against the Provider, action by the Care Quality Commission, the Council may give immediate notice of the termination of an Individual Service Agreement.
- 5.2 The Service User may request the termination of the Individual Service Agreement on six (6) hours' notice but must inform her/his Social Worker before taking action. If such action is taken and is not for reasons in the paragraph below, the Council shall pay for the Service that would have been provided during the first two (2) days.
- 5.3 The Provider must give at least fourteen (14) Working Days' notice of termination for an Individual Service Agreement. If the above notice periods are not given the Council may deduct costs incurred in arranging for the Service to be carried out by an alternative Provider/or its own staff together with the administrative costs of making such arrangements. The Authorised Officer's certification of such copy shall be final and binding and the amount so certified shall be deducted from any payment to the Provider under the Agreement or recovered as a debt. Upon the Provider giving notice of termination of an Individual Service Agreement the Council will work with the Provider to ensure a smooth transition of the packages of care.

6. TERMINATION OF AN INDIVIDUAL SERVICE AGREEMENT [HOME SUPPORT AND CARE AND SUPPORT (SUPPORTED LIVING)] UNDER HEALTH & SAFETY

- 6.1 The Provider may terminate an Individual Service Agreement where the Service User or a third party associated with the Service User becomes violent or unduly disruptive to such an extent that the Care and Support Worker is prevented from delivering the Service for reasons of health and safety (as provided in health and safety legislation) or is put at risk of serious physical danger.
- 6.2 In such a situation, the Provider must notify the Council immediately of the situation and confirm the position in writing within one working day of the cessation of the Service.

7. TERMINATION OF AN INDIVIDUAL SERVICE AGREEMENT (CARE HOMES)

- 7.1 Any of the Parties may terminate an Individual Service Agreement during a Trial Period on seven (7) days' notice (all Notices should be in writing). Where the Council or the Service User gives such notice; the Council will pay the fees for the full seven-day period. Where the Provider gives such notice the fee for the actual period of residence will be paid.
- 7.2 In the case of an Inappropriate Placement, the period of notice will be seven (7) days and the fee will only be paid for the actual period of residence by the Service User.
- 7.3 In all other cases (i.e. other than a Trial Period, Temporary Placement, and closure of the Care Home or an Inappropriate Placement) any of the parties may give fourteen (14) days' notice to terminate the Individual Service Agreement in respect of any individual Service User. Where the Council or the Service User gives such notice, the Council will pay the fee for fourteen (14) days. Where the Provider gives such notice the fee will only be paid for the actual period of residence of the Service User. The Provider cannot serve notice on more than one Individual Service Agreement at the same time unless agreed by the Commissioner; where notice is served on two or more Individual Service Agreement it will be deemed that notice has been served against the whole of the Care Home.
- 7.4 In the case of the Service User discharging himself or herself, the first day that the discharge occurs will be deemed to be the first day of the period of notice applicable to that Individual Service Agreement.
- 7.5 A notice of termination of an Individual Service Agreement may only be given in the following circumstances:
- 7.5.1 The Service User may give notice of termination for any reason;
- 7.5.2 The Provider may give notice of termination only for a good reason, including and without limitation, if it is unable to provide the care required to meet the Council Service User's needs following a Support Plan Review of such needs but excluding any reason related to cost and/or the fee.
- 7.5.3 Notice of termination by the Council should wherever reasonably practicable be given with the agreement of the Service User.
- 7.5.4 When in the opinion of the Council the needs of the Service User have changed in such a way that the well-being of the Service User can best be served by relocation to a place better able to meet his/her current needs, the Council reserves the right to give notice of such relocation to the Service User and the Provider.

- 7.5.5 The Council may give notice of termination where an Inappropriate Placement has been made.

8. CLOSURE OF A CARE HOME

- 8.1 When a Care Home Without Nursing closes, the Provider shall give three (3) months' notice for each Service User residing at the Care Home Without Nursing and the Provider shall be paid the fee in relation to each Service User for the actual period of residence of that Service user or for three (3) months, whichever is shorter.
- 8.2 When a Care Home With Nursing closes, the Provider shall give six (6) months' notice for each Service User residing at the Care Home With Nursing and the Provider shall be paid the fee in relation to each Service User for the actual period of residence of that Service user or for six (6) months, whichever is shorter.

9. TERMINATION OF THE FLEXIBLE CONTRACTING ARRANGEMENTS AND THE FRAMEWORK AGREEMENT (ALL CARE SERVICE TYPES)

- 9.1 The Flexible Contracting Arrangement and/or Framework Agreement shall terminate upon the expiry of the Contract Period or upon either Party giving not less than three (3) months' Notice (or six (6) months' notice in the case of Care Homes With Nursing) in writing to the other Party, whichever is the earlier. Where there is no Birmingham City Council funded service users supported by the Provider, the Commissioner can accept 'immediate' notice from the Provider.
- 9.2 During any period of notice of termination or within the period of three (3) months' prior to the end of the Contract Period the Parties undertake to co-operate to ensure that the interests of the Service User will be met under whatever new arrangements may be proposed.
- 9.3 The Council may terminate this Flexible Contracting Arrangement and/or Framework Agreement immediately and upon service of a written Notice in the following circumstances;
- 9.3.1(a) subject to **Schedule 11**, where the Provider has committed a material breach of the terms of this Flexible Contracting Arrangement and/or Framework Agreement, provided that where such breach is capable of remedy the Council shall give Notice to the Provider requiring it to remedy the breach within a reasonable time period. If the Provider fails to remedy the breach within the time period specified the Council may terminate this Flexible Contracting Arrangement and/or Framework Agreement with immediate effect;
- 9.3.1(b) in cases where the Council in its professional judgement, considers that a material breach has such an immediate and significant impact on the health and wellbeing of the Service User, it reserves the right to relocate Service Users (or in the case of Home Support; arrange an alternative Care Provider) without Notice. In such instances, the Council will cease payment to the Provider as from the day that the Service User(s) is no longer in receipt of Services from the Provider;
- 9.3.1 (c) If the Provider:
- 9.3.1.1 becomes bankrupt, or makes a composition or arrangements with its creditors, or has a proposal in respect of its company or association or organisation for voluntary composition of debts, or scheme or arrangements approved in accordance with the Insolvency Act 1986.

- 9.3.1.2 has made an application under the Insolvency Act 1986 to the court for the appointment of an administrator.
 - 9.3.1.3 has a winding-up order made (except for the purposes of amalgamation or reconstruction), or a resolution for voluntary winding-up passed.
 - 9.3.1.4 has a provisional liquidator, receiver or manager as defined in the Insolvency Act 1986 appointed.
 - 9.3.1.5 has an administrative receiver, as defined in the Insolvency Act 1986 appointed.
 - 9.3.1.6 has possession taken by or on behalf of the holder of any debentures secured by a floating charge, of any property subject to the floating charge;
- 9.3.1 (d) Where the Provider ceases to carry on the Care Home under the Care Standards 2000 Act or voluntarily closes the Care Home or ceases to be registered with the Care Quality Commission;
 - 9.3.1 (e) Where the Council is reasonably satisfied that abuse has resulted in serious harm or death of a Service User or other resident for which the Provider was responsible;
 - 9.3.1 (f) The Provider has assigned this Agreement without the written permission of the Council;
 - 9.3.1 (g) If the Provider takes unreasonable financial advantage of its relationship with the Service User or if the Authorised Officer believes that unreasonable financial advantage, has been taken;
 - 9.3.1 (h) Where the Provider or any of its Care Workers engaged in providing the Service is convicted of an offence under the Care Standards Act 2000 or any other relevant Legislation;
 - 9.3.1 (i) Where the Provider ceases to carry on the Service due to voluntary cessation of its business; or
 - 9.3.1 (j) Where the Council determines in its sole discretion that continuation of the Contract would cause risk to life, health or well-being of any service user.
- 9.4 During the period of notice both Parties shall co-operate to ensure that the interests of the Service User will be met under whatever new arrangements may be proposed. Failure to give adequate Notice on the part of the Provider will result in the costs of making alternative care arrangements being deducted from any outstanding payments.
 - 9.5 The termination of all Individual Agreements by a Provider shall not be accepted as a method of terminating the Flexible Contracting Arrangement and/or Framework Agreement.
 - 9.6 The Council may terminate the Flexible Contracting Arrangement and/or Framework Agreement immediately, without Notice, where there is proven serious abuse or where through the action or inaction of the Provider and their Employees or Sub-Contractors a Service User or other resident for whom the Provider was responsible, has suffered serious harm or death.

9.7 The Council shall be entitled to cancel the Flexible Contracting Arrangement and/or Framework Agreement and to recover from the Provider the amount of any loss resulting from such cancellation:-

9.7.1 If the Provider shall have:-

9.7.1.1 offered, promised or given a financial or other advantage to another person; and either

9.7.1.2 the Provider intends the advantage to induce a person to perform improperly a relevant function or activity in relation to the obtaining or execution of the Flexible Contracting Arrangement and/or Framework Agreement or any other contract with the Council; or

9.7.1.3 the Provider knows or believes that the acceptance of the advantage would itself constitute the improper performance of the relevant function or activity in relation to the obtaining or execution of the Flexible Contracting Arrangement and/or Framework Agreement or any other contract with the Council; or

9.7.2 If the like act or acts shall have been done by any person employed by the Provider or associated with the Provider (whether with or without the knowledge of the Provider); or

9.7.3 If in relation to any contract with the Council the Provider or any person employed by the Provider or associated with the Provider shall have:-

9.7.3.1 committed an offence or offences under the Bribery Act 2010; or

9.7.3.2 given any fee or reward to an officer of the Council the acceptance of which is an offence under Section 117(2) Local Government Act 1972.

9.8 Where the Provider gives Notice to terminate the Flexible Contracting Arrangements or the Framework Agreement the Provider will be responsible for the arrangements and transport and relocation costs for the Service User (or the costs of such arrangements will be deducted from any payment owed to the Provider).

10. TERMINATION OF A RESPITE OR TEMPORARY PLACEMENT (ALL CARE SERVICE TYPES)

10.1 The period of Notice will be 7 days or the remaining period of the Temporary Placement whichever is shorter.

10.2 Where the Council or the Service User who is temporarily placed give such Notice, the Council will pay the fee for the full seven day period. Where the Provider gives such Notice the fee will only be paid for the actual period of residence.

11. WHERE TO SERVE NOTICE (ALL CARE SERVICE TYPES)

11.1 To the relevant Council social work team or via email to:
CSAdultSocialCare@birmingham.gov.uk