

LOCAL AUTHORITY CIRCULAR

LAC(2004)20

To: The Chief Executive
County Councils)
Metropolitan District Councils) England
Shire Unitary Councils)
London Borough Councils
Common Council of the City of London
Council of the Isles of Scilly

Chief Executive - Care Trusts
Chief Executive - Strategic Health Authorities

The Director of Social Services

14 October 2004

TITLE: GUIDANCE ON:

**NATIONAL ASSISTANCE ACT 1948 (CHOICE OF ACCOMMODATION)
DIRECTIONS 1992**

**NATIONAL ASSISTANCE (RESIDENTIAL ACCOMMODATION) (ADDITIONAL
PAYMENTS AND ASSESSMENT OF RESOURCES) (AMENDMENT) (ENGLAND)
REGULATIONS 2001**

1. SUMMARY

This guidance replaces the guidance that accompanied the Choice of Accommodation Directions 1992 (“the Directions”), and the further guidance included in LAC(2001)29 to take account of the National Assistance Act 1948 (Choice of Accommodation) (Amendment) (England) Directions 2001 and the National Assistance (Additional Payments and Assessment of Resources) (Amendment) (England) Regulations 2001 (“the Regulations”).

The Directions are intended to ensure that when councils with social services responsibilities (“councils”) make placements in care homes or care homes providing nursing care, that, within reason, individuals are able to exercise genuine choice over where they live.

The Regulations give individuals the right to enter into more expensive accommodation than they would otherwise have been offered in certain circumstances, these are outlined in paragraph 3 of this guidance.

This guidance sets out what individuals should be able to expect from the council that is responsible for funding their care, subject to the individual’s means, when arranging a care

home place for them. This guidance is intended to describe the minimum of choice that councils should offer individuals. Even when not required to act in a certain way by the Directions or the Regulations, councils should make all reasonable efforts to maximise choice as far as possible within available resources.

This guidance is issued under Section 7(1) of the Local Authority Social Services Act 1970

2. ACTION

Authorities are asked to take the following action: from October 14 2004 councils should use this guidance where the decision to provide residential accommodation under section 21 of the National Assistance Act 1948 either permanently or temporarily (intermediate care or short-term break or any interim care arrangement) has been made.

3. CANCELLATION OF CIRCULARS

The following Circulars should now be cancelled:

LAC(92)27.

LAC(2001)29.

4. ENQUIRIES

Enquiries about this Circular [and its enclosures] should be made to:

Department of Health
Older People and Disability Division
Care Services Directorate
Area 233
Wellington House
133-155 Waterloo Road
London SE1 8UG
Tel: 020 7972 4715
Email: OPDEnquiries@doh.gsi.gov.uk

From: Older People and Disability Division, Care Services Directorate, Area 233, Wellington House, 133-155 Waterloo Road, London SE1 8UG.

Further copies of this Circular may be obtained from Department of Health, PO Box 777, London SE1 6XH, Tel. 0870 155 5455 or Fax 01623 724 524. Please quote the code and serial number appearing on the top right-hand corner. Current circulars are now listed on the Department of Health web site on the Internet at: <http://www.dh.gov.uk/PublicationsAndStatistics/letters/fs/en> Full text of recent circulars is also accessible at this site.© Crown copyright 2004. This Circular may be freely reproduced by all to whom it is addressed.

GUIDANCE ON:

NATIONAL ASSISTANCE ACT 1948 (CHOICE OF ACCOMMODATION) DIRECTIONS 1992

NATIONAL ASSISTANCE (RESIDENTIAL ACCOMMODATION) (ADDITIONAL PAYMENTS AND ASSESSMENT OF RESOURCES) (AMENDMENT) (ENGLAND) REGULATIONS 2001

1. Summary

- 1.1 If, after an assessment of need, made in accordance with the General Principles of Assessment in LAC(2002)13 *Fair Access to Care Services*¹ and, where applicable, in accordance with a specific assessment framework² and discussion with the individual and their carers, a council decides to provide residential accommodation under section 21 of the National Assistance Act 1948 either permanently or temporarily (intermediate care or short term break or any interim care arrangement), it will make a placement on behalf of the individual in suitable accommodation. Nearly all placements under section 21 of the National Assistance Act 1948 are made in registered care homes. However, some adults are placed under section 21 of the National Assistance Act 1948 in unregistered settings where they need neither nursing care or personal care. While the detail of this guidance applies to registered care homes, the principles apply to adults placed in unregistered settings.
- 1.2 When the term “residential care” is used in this guidance, it covers placements made on both a long-term and a temporary (which includes short-term care) basis to care homes, whether they provide nursing care or not.
- 1.3 If the individual concerned expresses a preference for particular accommodation (“preferred accommodation”) within England and Wales, the council must arrange for care in that accommodation, provided:
 - The accommodation is suitable in relation to the individual’s assessed needs (see paragraphs 2.5.1 to 2.5.3)
 - To do so would not cost the council more than what it would usually expect to pay for accommodation for someone with the individual’s assessed needs see paragraphs 2.5.4 to 2.5.8). This is referred to throughout this guidance as the usual cost.
 - The accommodation is available (see paragraphs 2.5.9 and 2.5.15)
 - The provider of the accommodation is willing to provide accommodation subject to the council’s usual terms and conditions for such accommodation (see paragraphs 2.5.16 to 2.5.17)
- 1.4 If an individual requests it, the council must also arrange for care in accommodation more expensive than it would usually fund provided a third party or, in certain circumstances, the resident, is willing and able to pay the difference between the cost the council would usually expect to pay and the actual cost of the accommodation (to ‘top

¹<http://www.dh.gov.uk/PublicationsAndStatistics/LettersAndCirculars/fs/en>

²such as in HSC(2002)001 and LAC(2002)1 *Single Assessment Process for Older People* at

http://www.dh.gov.uk/PublicationsAndStatistics/LettersAndCirculars/LocalAuthorityCirculars/CircularsLast12Months/LocalAuthorityCircularsArticle/fs/en?CONTENT_ID=4003997&chk=IrtVRa

up'). These are the only circumstances where either a third party or the resident may be asked to top up (see paragraph 3).

2. Preferred Accommodation

- 2.1 As with all aspects of service provision, there should be a general presumption in favour of individuals being able to exercise reasonable choice over the service they receive. The limitations on councils' obligation to provide preferred accommodation set out in the Directions and the Regulations are not intended to deny individuals reasonable freedom of choice but to ensure that councils are able to fulfil their obligations for the quality of service provided and for value for money. The terms of the Directions and the Regulations are explained more fully below. Where, for any reason, a council decides not to arrange a place for someone in their preferred accommodation it must have a clear and reasonable justification for that decision which relates to the criteria of the Directions and is not in breach of the Regulations.
- 2.2 Arrangements under section 26(3A) of the National Assistance Act 1948 require the agreement of all parties. Individuals should not be refused their preferred accommodation without a full explanation from councils, in writing, of their reasons for doing so
- 2.3 The location of the preferred accommodation need not be limited by the boundaries of the funding council. Councils are obliged to cater for placements falling within the Directions or the Regulations in any permitted care home within England or Wales. Any extension to this beyond England and Wales is subject to any future regulations governing cross-border placements (but see LAC(93)18 in respect of placements involving Scotland and the Department of Health/Welsh Assembly protocol on NHS funded nursing care for cross border placements³).
- 2.4 Funding councils may refer to their own usual costs when making placements in another council's area. However, because costs vary from area to area, if in order to meet a resident's assessed need it is necessary to place an individual in another area at a higher rate than the funding council's usual costs, the placing council should meet the additional cost itself.
- 2.5 The Directions state that a council must arrange for care in an individual's preferred accommodation subject to four considerations:

(a) Suitability of accommodation

- 2.5.1 Suitability will depend on the council's assessment of individual need. Each case must be considered on its merits.

³<http://www.dh.gov.uk/PolicyAndGuidance/OrganisationPolicy/TertiaryCare/NHSFundedNursingCare/fs/en>

- 2.5.2 Accommodation provided in a care home will not necessarily be suitable for the individual's needs simply because it satisfies registration standards. On the other hand, accommodation will not necessarily be unsuitable simply because it fails to conform to the council's preferred model of provision, or to meet to the letter a standard service specification laid down by the council.
- 2.5.3 The Directions and Regulations do not affect Section 26(1A) of the National Assistance Act 1948 as amended by the Care Standards Act 2000. Arrangements should not be made for the provision of accommodation together with nursing or personal care in a care home unless the accommodation to be provided is managed by an organisation or person who is registered under Part II of the Care Standards Act 2000. Similarly, the Directions and the Regulations do not require a council to contract with any accommodation where for any other reason it is prevented by law from doing so.

(b) Cost

- 2.5.4 One of the conditions associated with the provision of preferred accommodation is that such accommodation should not require the council to pay more than they would usually expect to pay, having regard to assessed needs (the 'usual cost'). This cost should be set by councils at the start of a financial or other planning period, or in response to significant changes in the cost of providing care, to be sufficient to meet the assessed care needs of supported residents in residential accommodation. A council should set more than one usual cost where the cost of providing residential accommodation to specific groups is different. In setting and reviewing their usual costs, councils should have due regard to the actual costs of providing care and other local factors. Councils should also have due regard to Best Value requirements under the Local Government Act 1999.
- 2.5.5 Individual residents should not be asked to pay more towards their accommodation because of market inadequacies or commissioning failures. Where an individual has not expressed a preference for more expensive accommodation, but there are not, for whatever reason, sufficient places available at a given time at the council's usual costs to meet the assessed care needs of supported residents, the council should make a placement in more expensive accommodation. In these circumstances, neither the resident nor a third party should be asked to contribute more than the resident would normally be expected to contribute and councils should make up the cost difference between the resident's assessed contribution and the accommodation's fees. Only when an individual has expressed a preference for more expensive accommodation than a council would usually expect to pay, can a third party or the resident be asked for a top up (see paragraph 3.1). Costs of accommodation should be compared on the basis of gross costs before income from charging. Given the different amounts that councils will recover from individuals by ways of charges, it would not be appropriate for a council to determine a usual net cost that it would expect to pay.
- 2.5.6 For the cost of placements in other councils' areas see paragraph 2.3

- 2.5.7 Councils should not set arbitrary ceilings on the amount they expect to pay for an individual's residential care. Residents and third parties should not routinely be required to make up the difference between what the council will pay and the actual fees of a home. Councils have a statutory duty to provide residents with the level of service they could expect if the possibility of resident and third party contributions did not exist
- 2.5.8 Costs can vary according to the type of care provided. For example, the cost a council might usually expect to pay for short-term care might be different from its usual cost for long-term care. There are also a number of situations where there may be higher costs incurred in providing residential care, be it long or short-term. Examples include specialist care for specific user groups with high levels of need or where necessary to prepare special diets and provide additional facilities for medical or cultural reasons. Councils should be prepared to meet these higher costs in order to ensure an individual's needs are appropriately met.

(c) Availability

- 2.5.9 Generally, good commissioning⁴ by councils should ensure there is sufficient capacity so individuals should not have to wait for their assessed (that is, eligible) needs to be met. However, waiting is occasionally inevitable, particularly when individuals have expressed a preference towards a particular care home where there are no current vacancies. Where individuals may need to wait at home or elsewhere, their access to the most appropriate (and possibly, preferred) service should be based solely on their assessed need, and councils should ensure that in the interim adequate alternative services are provided. Waiting for the preferred care home should not mean that the person's care needs are not met in the interim or that they wait in a setting unsuitable for their assessed needs, and this includes an acute hospital bed, until the most suitable or preferred accommodation becomes available. In view of the Community Care (Delayed Discharges etc.) Act 2003⁵, councils should have contingency arrangements in place, that address the likelihood that an individual's preferred accommodation will not always be readily available. These arrangements should meet the needs of the individual and sustain or improve their level of independence. For some, the appropriate interim arrangement could be an enhanced care package at home.
- 2.5.10 Councils should give individuals an indication of the likely duration of the interim arrangement. Councils should place the individual on the waiting list of the preferred accommodation and aim to move them into that accommodation as soon as possible. Information about how the waiting list is handled should be clear and the individual should be kept informed of progress. If the duration of the interim arrangement exceeds a reasonable time period e.g. 12 weeks, the individual should be reassessed to ensure that the interim and preferred accommodation, are still able to meet the individual's assessed needs and to

⁴in accordance with the principles set out in Building Capacity and Partnership in Care – An Agreement between the statutory and independent social care, health care and housing sectors at www.dh.gov.uk/PublicationsAndStatistics/Publications/PublicationsPolicyAndGuidance/PublicationsPolicyAndGuidanceArticle/fs/en?CONTENT_ID=4006241&chk=BPcEi1

⁵ www.legislation.hmsso.gov.uk/acts/acts2003/20030005.htm

prevent any unnecessary moves between care homes that are unable to meet the individual's assessed needs. As part of this reassessment, individuals should also be asked if their preference is now to remain in the interim accommodation or whether they wish to continue waiting for their original preferred accommodation (see paragraph 2.5.14 for guidance on individuals who choose to remain in the interim accommodation).

- 2.5.11 Councils should ensure that while waiting in temporary residential accommodation, if an individual has to contribute towards their care costs it is in accordance with the National Assistance (Assessment of Resources) Regulations 1992. Individuals who are waiting in these circumstances should not be asked to pay more than their assessed financial contribution to meet the costs of these residential care services which have been arranged by the council to temporarily meet their assessed needs and councils should make up the cost difference between the resident's assessed contribution and the accommodation's fees. Only when an individual has expressed a preference for more expensive accommodation than a council would usually expect to pay, can a third party or the resident be asked for a top up (see paragraph 3.1).
- 2.5.12 Councils should take all reasonable steps to gain an individual's agreement to an interim care home or care package. Councils should make reasonable efforts to take account of the individual's desires and preferences. In doing this, councils should ascertain all relevant facts and take into account all the circumstances relevant to the person, and ensure that the individual (and their family or carers) understands the consequences of failing to come to an agreement. Where patients have been assessed as no longer requiring NHS continuing inpatient care, they do not have the right to occupy indefinitely an NHS bed. If an individual continues to unreasonably refuse the interim care home or care package, the council is entitled to consider that it has fulfilled its statutory duty to assess and offer services, and may then inform the individual, in writing, they will need to make their own arrangements. This position also applies to the unreasonable refusal of a permanent care home, not just the interim care home or care package. If at a later date further contact is made with social services regarding the individual, the council should re-open the care planning process, if it is satisfied that the individual's needs remain such to justify the provision of services and there is no longer reason to think that the individual will persist in refusing such services unreasonably. Councils should refer to Annex A of LAC(2003)21 – The Community Care (Delayed Discharges etc) Act 2003 Guidance for Implementation⁶. Councils may wish to take their own legal advice in such circumstances.
- 2.5.13 In all but a very small number of cases where an individual is being placed under Part II of the Mental Health Act 1983, individuals have the right to refuse to enter a care home. This includes patients who are awaiting discharge from hospital. In such cases the social services department should work with the person, his or her family and carers, and NHS partners, (and potentially housing partners), to explore alternative options, including a package of health and social care in the person's own home or suitable alternative accommodation.

⁶www.dh.gov.uk/PolicyAndGuidance/OrganisationPolicy/TertiaryCare/DelayedDischarge/DelayedDischargeArticle/fs/en?CONTENT_ID=4067273&chk=x2raIF

- 2.5.14 In some cases, individuals who move into a care home for an interim period may choose to remain there, even if a place in their original preferred accommodation becomes available. If the care home is able to accept the individual on a long-term basis, they should be taken off the waiting list of their original preferred accommodation. If the cost of the interim care home is higher than the usual cost the council would expect to pay for their assessed need, upon making the choice to remain in that home, a third party or the resident could be approached for the total difference between the two rates. This should be clearly explained to individuals before they enter the home. See paragraph 3.2 for fuller details.
- 2.5.15 The Directions only apply to individuals whose care is being arranged by a council under Part 3 of the National Assistance Act 1948. For example, where hospital patients need to move to a different type of care, and social services are not involved, this is a matter for the NHS and the individual patient and the Directions do not apply. For good practice on handling these situations, see the Hospital Discharge Workbook⁷

(d) Terms and conditions

- 2.5.16 In order to ensure that they are able to exercise proper control over the use of their funds, councils need to be able to impose certain contractual conditions, for example, in relation to payment regimes, review, access, monitoring, audit, record keeping, information sharing, insurance, sub-contracting, etc.
- 2.5.17 The contractual conditions required of preferred accommodation should be broadly the same as those councils would impose on any other similar operation. Stricter conditions should never be used as a way of avoiding or deterring a placement. As with suitability, account should be taken of the nature and location of the accommodation. There may be occasions where it would be unreasonable for a council not to adapt its standard conditions and others where it would be unreasonable to expect it to do so. For example, councils should take into account the fact that care homes in other areas, or those that take residents from many areas, may have geared themselves to the normal requirements of other councils. Councils should be flexible in such circumstances and avoid adding to the administrative burden of care homes.

3. More expensive accommodation

- 3.1 The guidance set out in paragraphs 3.2 to 3.5.11, applies only where a resident explicitly chooses to enter accommodation other than that which the council offers them, and where that preferred accommodation is more expensive than the council would usually expect to pay.
- 3.2 In certain circumstances, councils can make placements in more expensive accommodation than they would usually expect to pay for, provided a resident or a third party is able and willing to make up the difference (to 'top up'). Residents that are

⁷ at www.publications.doh.gov.uk/hospitaldischarge/index.htm

subject to the 12 week property disregard or have agreed a deferred payments agreement with the council may make top-ups from specified resources on their own behalf. These are the only situations where the resident may top up. The most common arrangement is that a third party is providing the top-up. A third party in this case might be a relative, a friend, or any other source. For liable relatives see paragraph 3.5.10.

- 3.3 When setting its usual cost(s) a council should be able to demonstrate that this cost is sufficient to allow it to meet assessed care needs and to provide residents with the level of care services that they could reasonably expect to receive if the possibility of resident and third party contributions did not exist.
- 3.4 Councils should not seek resident or third party contributions in cases where the council itself decides to offer someone a place in more expensive accommodation in order to meet assessed needs, or for other reasons. Where there are no placements at the council's usual rate, councils should not leave individuals to make their own arrangements having determined that they need to enter residential accommodation and do not have care and attention otherwise available to them. In these instances, councils should make suitable alternative arrangements and seek no contribution from the individual other than their contribution as assessed under the National Assistance (Assessment of Resources) Regulations 1992. Councils must never encourage or otherwise imply that care home providers can or should seek further contributions from individuals in order to meet assessed needs.
- 3.5 This paragraph deals with considerations that apply where either residents or third parties are making further contributions to costs over and above the resident's assessed contribution under the National Assistance (Assessment of Resources) Regulations 1992.

(a) Responsibility for costs of accommodation

- 3.5.1 When making arrangements for residential care for an individual under the National Assistance Act 1948, a council is responsible for the full cost of that accommodation. Therefore, where a council places someone in more expensive accommodation, it must contract to pay the accommodation's fees in full. The resident's or the third party's contribution will be treated as part of the resident's income for charging purposes and the council will be able to recover it in that way. However, under a deferred payments agreement, where the resident is topping up against the value of their home, their top-up contribution is added to their deferred contribution.
- 3.5.2 Councils will be aware that under section 26(3A) of the National Assistance Act 1948 (as inserted by the NHS and Community Care Act 1990), it is open to them to agree with both the resident and the person in charge of their accommodation that, instead of paying a contribution to the council, the resident may pay the same amount direct to the accommodation, with the council paying the difference. In such a case, the third party would also pay the accommodation direct on behalf of the resident. However, it should be noted that even where there is such an agreement for the resident to make payments direct to the accommodation, the council continues to be liable to pay the full costs of the accommodation should either the resident or relative fail to pay the required amount

- 3.5.3 Where top-ups are required from a resident or third party, the resident will therefore need to demonstrate that either they or the third party is able and willing to pay the difference between the council's usual rate and the accommodation's actual fees.
- 3.5.4 In order to safeguard both residents and councils from entering into top-up arrangements that are likely to fail, the resident or the third party must reasonably be expected to be able to continue to make top-up payments for the duration of the arrangements. Councils should, therefore, assure themselves that residents or third parties will have the resources to continue to make the required top-up payments. Councils should seek similar assurances when residents top-up against the value of their home when the home is subject to a deferred payments agreement. When the home is eventually sold, it should be possible for the resident or their estate to pay back the deferred contribution including the resident top-ups.

(b) The amount of the resident or third party top-up

- 3.5.5 The amount of resident or third party top-up payments should be the difference between the actual fee for the accommodation and the amount that otherwise the council would usually have expected to pay for someone with the individual's assessed needs. In determining the precise amounts in individual cases, the council will take account of the guidance given in paragraphs 2.5.4 to 2.5.8 above.
- 3.5.6 The amount of the resident or third party top-up should be calculated on gross costs; that is, the difference between the preferred accommodation's fees and the fees that a council would usually expect to pay. The fact that a resident might not have been able to meet the full cost of the accommodation that the council would otherwise have arranged does not affect their ability to benefit from the additional top-up payments.

(c) Price increases

- 3.5.7 Arrangements between the council, resident and third party will need to be reviewed from time to time to take account of changes to accommodation fees. There will also be changes to the council's usual cost, which should be reasonable and set in accordance with paragraphs 2.5.4 to 2.5.8. However, fees and usual costs may not change at the same rate, and residents and third parties should be told that there cannot be a guarantee that any increases in the accommodation's fees will automatically be shared evenly between the council and/or the resident or third party, should the particular accommodation's fees rise more quickly than the costs the council would usually expect to pay for similar individuals. A council may find it useful to agree with the resident (or third party) that the resident's (or third party's) contribution will be reviewed on a regular basis on the understanding that clear explanations for proposed increases are given. It is also important that individuals know when, and in what circumstances, the fees for their accommodation will be reviewed.

(d) Responsibilities of residents and third parties

3.5.8 Councils should make clear to residents and third parties, in writing, the basis on which arrangements are to be made when they seek to exercise their right to more expensive preferred accommodation. It should be clear from the outset to the resident, third party and person providing the accommodation that:

- failure to keep up top-up payments may result in the resident having to move to other accommodation unless, after an assessment of need, it is shown that assessed needs can only be met in the current accommodation. In these circumstances, councils should make up the cost difference between the resident's assessed contribution and the accommodation's fees. Where a resident's top-ups are being made against the value of property subject to a deferred payments agreement, a council will have assured itself from the outset that top-up payments are viable and recoverable when the home is sold;
- an increase in the resident's income will not necessarily lessen the need for a top-up contribution, since the resident's own income will be subject to means testing by the council in the normal way;
- a rise in the accommodation's fees will not automatically be shared equally between council, resident (if making a top-up), and third party.

(e) Suitability and Conditions

3.5.9 With reference to paragraphs 2.5.1 to 2.5.3 and 2.5.16 to 2.5.17 above, the criteria of suitability and willingness to provide on the basis of normal conditions should be applied in the same way as for other preferred accommodation. An exception to this is that it would be reasonable to expect providers entering this kind of arrangement to agree to do so on the basis that the council has the right, subject to notice, to terminate the contract should the resident's or third party's top-up payments cease to be adequate.

(f) Liable relatives

3.5.10 Liable relatives who are making maintenance contributions cannot act as third parties for the care of the relative to whose care they are already contributing under section 42 of the National Assistance Act 1948. This limitation does not apply to top-up arrangements agreed prior to 1 October 2001 with liable relatives. Neither does the limitation apply to liable relatives who are not making contributions under section 42 of the 1948 Act.

4. Individuals already resident in residential care

4.1 Individuals already placed by a council in residential accommodation, and those already in residential accommodation as self-funders but who, because of diminishing resources, are on the verge of needing council support, have the same rights under these Directions as those who have yet to be placed by the council. Any such individual who wishes to move to different or more expensive accommodation may seek to do so on the same

basis as anyone about to enter residential care for the first time. Should a self-funder who is resident in a care home that is more expensive than a council would usually expect to pay later become the responsibility of the council due to diminishing funds, this may result in the resident having to move to other accommodation, unless, after an assessment of need, it is shown that assessed needs can only be met in the current accommodation. In these circumstances, neither the resident nor a third party should be asked for a top-up payment and councils should make up the cost difference between the resident's assessed contribution and the accommodation's fees.

5. Individuals who are unable to make their own choices

- 5.1 There will be cases in which prospective residents lack capacity to express a preference for themselves. It would be reasonable to expect councils to act on the preferences expressed by their advocate, carer or legal guardian in the same way that they would on the resident's own wishes, unless that would in the council's opinion be against the best interests of the resident.

6. Effect on contracting

- 6.1 Any block contract or other form of contract that a council may have with a provider should not serve to limit choice. An individual should not be limited to care homes that hold such contracts with the funding council, or care homes that are run by councils. It would not be reasonable for a council to use as a test for the suitability of accommodation, its presence or absence from a previously compiled list of preferred suppliers. The Directions and Regulations do not, however, prevent an authority having a list of preferred providers with which it will contract where a potential resident expresses no preference for particular accommodation, nor from recommending such providers to prospective residents.

7. Information

- 7.1 Individuals, and/or those who represent them, need information on the options open to them if they are to be able to exercise genuine choice. They should be given fair and balanced information with which to make the best choice of accommodation for them. Councils should explain to individuals their rights under the Directions and the Regulations. Councils should also consider providing material in a range of forms including written leaflets in local community languages, Braille, on audio tape and in accessible language e.g. easy words, short sentences, large print and pictures (for those with learning disabilities). Councils should supply copies of the Directions and this guidance if requested in appropriate forms. They should work with local Primary Care Trusts (PCTs) and local hospitals to provide clear information to hospital patients as early as possible in their stay about what the council will be able to provide should they require short or long-term residential care at the end of their hospital stay. Individuals should be told explicitly that:

- they are free to choose any accommodation that is likely to meet their needs subject to the constraints set out in the Directions and the Regulations.
- they may allow the council to make a placement decision on their behalf; and
- they may choose from a preferred list (if the authority operates such a system).

7.2 Councils should ensure that individuals are informed that they have a choice of accommodation irrespective of whether they express a preference for particular accommodation. Individuals should also be told what will happen if the preferred accommodation is not available. Councils may also wish to cover the matters described in paragraph 2.5.12. Wherever possible, the individual should be encouraged to have a relative, carer or advocate present during the conversation. A written record of the conversation should be kept, in particular, recording any decisions taken or preferences expressed by the individual. This record should be shared with the individual.

8. Complaints

8.1 Complaints about the application of the Directions and the Regulations and decisions taken in individual cases will fall within the scope of councils' statutory complaints procedure. As in all aspects of their activity, councils should ensure that prospective residents are aware of and understand the existence of the complaints procedure and their rights under it.