



Top-Ups for Adult Social Care Services

Version Control

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Purpose

- 1.1. The purpose of this policy is to make clear when, and how, top-up payments can be made towards residential and nursing care placements.
- 1.2. Top-up payments facilitate and support individuals to have a greater freedom of choice when selecting a care home in which they wish to live.
- 1.3. All relevant staff in Adult Social Care should understand the principles behind top-up payments.

Legislative framework

- 1.4. This policy has been produced in accordance with the legal framework as set out in the following statutory documents:
 - The Care Act 2014
 - The Care and Support and Aftercare (Choice of Accommodation) Regulations 2014
 - The Care and Support Statutory Guidance, Annex A: Choice of accommodation and additional payments
 - The Human Rights Act 2008

Introduction

- 1.5. The amount identified in an individual's personal budget must be sufficient to meet their needs. The Council **must** ensure that at least one care home option is available that is affordable within that personal budget, and **should**, where possible, ensure that there is more than one.
- 1.6. However, an individual can choose to live somewhere that costs more than the amount identified in their personal budget if they so wish. Where this choice is made, an arrangement will need to be made as to how the difference will be met. This is known as a 'top-up' payment and is the difference between the amount specified in the personal budget and the actual cost.

- 1.7. In such cases, the Council must arrange for the individual to be placed in the home of their choice provided a third party, or in certain circumstances the individual in need of care and support, is willing and able to meet the additional cost.
- 1.8. The Council will need to ensure that the chosen accommodation is suitable to meet the individual's assessed needs and identified outcomes established as part of the care planning process.
- 1.9. The individual should be made aware of the financial implications of choosing a particular home.
- 1.10. Where someone is placed in a more expensive setting solely because the Council has been unable to make arrangements at the anticipated cost, the personal budget will be amended to reflect the actual cost. The person would then contribute towards this enhanced personal budget according to the financial assessment.

Agreeing a 'top-up' fee

- 1.11. Having chosen a setting that is more expensive, and having received, or been directed to, sufficient information and advice, the Council should ensure that the individual understands the full implications of their choice. This should include that the top-up payer is responsible for meeting the additional cost of the placement for the full duration of the stay and, should the additional cost not be met, it may be necessary to move the individual receiving care and support to an alternative setting following a needs assessment.
- 1.12. The Council will ensure that the person paying the top-up is willing and able to meet the additional cost for the likely duration of the arrangement. This will be completed by way of a financial assessment to determine that the top-up payer has the resources to meet the additional cost for a minimum period of two years.

1.13. The Council will ensure that the person paying the top-up enters into a written agreement with the Council, agreeing to meet the additional cost. The agreement will, as a minimum, include:

- The additional amount to be paid
- The amount specified for the accommodation in the individual's personal budget
- The frequency of payments
- To whom the payments are to be made
- Provisions for reviewing the agreement
- The consequences of ceasing to make payments
- The effect of any increases in charges the provider may make
- The effect of any changes in the financial circumstances of the person paying the top-up

1.14. Before entering into an agreement, the Council will provide the person paying the top-up sufficient information and advice to ensure that they understand the terms and conditions of the agreement. The Council will also suggest that the person paying the top-up seeks independent financial information and advice.

1.15. If arrangements to pay the top-up were to fail for any reason the Council will either meet the full cost of the accommodation (less any personal contribution) or make alternative care arrangements, subject to a needs assessment.

The amount to be paid

1.16. The amount of the top-up will be the difference between the actual cost of the preferred provider and the amount the Council would have set as a personal budget to meet the individual's eligible needs by arranging accommodation of the same type. The Council will be able to evidence that accommodation meeting the individual's assessed eligible needs was available at the time of setting the personal budget rate.

Frequency of payments

- 1.17. As part of the top-up agreement, the Council will clearly indicate the frequency of payments required.

Responsibility for costs and to whom payments are made

- 1.18. The Council will be responsible for the total cost of the placement. If there is a breakdown in any arrangement for a top-up the Council will be liable for the full fee until it has either recovered the additional costs it incurs or made alternative arrangements to meet the individual's needs.
- 1.19. The Council will have three options as to how the top-up payment will be made. These are:
- Treat the top-up as part of the individual's income and recover the costs through the individual's financial assessment (on the assumption that the top-up payer makes the payment to the individual receiving care).
 - Agree with the individual, the top-up payer and the provider that the payment can be made directly to the provider with the Council paying the remainder.
 - The person responsible for the top-up pays the top-up amount to the Council. The Council will thereby pay the full amount to the provider.

The option selected will depend on individual circumstances and will be defined in the top-up agreement.

Reviewing the agreement

- 1.20. The Council will review the top-up arrangement on 1st April annually. In addition to this any change of circumstances to the individual receiving care or the person responsible for the top-up can trigger a review.
- 1.21. A review of top-up arrangements can be requested at any time.

Consequences of ceasing to make payments

- 1.22. Any failure to meet the cost of a top-up arrangement will trigger a review of the arrangement and the individual's personal budget.
- 1.23. The individual receiving care may be moved to an alternative accommodation where this would be suitable to meet their needs and is affordable within the revised personal budget.
- 1.24. The Council will undertake a new assessment of need before considering moving the individual to an alternative setting, including consideration of a requirement for an assessment of health needs, and will have regard for the individual's wellbeing.

Price Increases

- 1.25. Prices are usually reviewed on 1st April annually. At this point the amount of the increase in price to be shared between the Council and the top-up payment will be calculated.
- 1.26. The Council cannot guarantee that any increased cost will be equally shared between the Council and the top-up payment. This is particularly relevant where a provider's rate increases more quickly than the Council's personal budget rate.
- 1.27. Any revision to the personal contribution of the individual receiving care may not reduce the need for a top-up payment.

Changes in circumstances of the top-up payer

- 1.28. Any change to the financial circumstances of the person responsible for the top-up that will impact their ability to continue to pay the top-up fee should be communicated to the Council at the earliest opportunity, and in any event within 28 days.
- 1.29. The Council will review the circumstances and make a decision on how the future care needs of the individual will be met. This may involve making alternative arrangements to meet the individual's care needs within the

revised personal budget of the individual. A new assessment of need will be completed if this option is considered.

- 1.30. The Council may seek to recover any outstanding debt from the top-up payer.

First party top-ups

- 1.31. The individual whose needs are being met may make a top-up payment themselves in the following circumstances only:

- Where they are subject to a 12-week property disregard and have sufficient resources, other than property, to meet the top-up fee for the full 12 week period. There are specific Department of Health guidelines around this and the Council will work to these guidelines in determining whether a first party top-up would be appropriate.
- Where they have a deferred payment agreement in place with the Council.
- Where they are receiving accommodation provided under S117 for mental health aftercare.

Individuals who are unable to make their own choice

- 1.32. Where an individual lacks capacity to express a choice for themselves the Council will act on the choices expressed by the individual's advocate, carer or legal guardian in the same way they would on the individual's own wishes, unless in the Council's opinion it would be against the best interests of the individual.

Choice of accommodation and mental health after care

- 1.33. Regulations made under section 117A of the Mental Health Act 1983 enable persons who qualify for after-care under section 117 to express a preference for particular accommodation if accommodation of the types specified in the regulations is to be provided as part of the after-care. The

Council will provide, or arrange the provision of, the preferred accommodation if the conditions in the regulations are met.

- 1.34. The regulations give people who receive mental health after-care broadly the same rights to choice of accommodation as someone who receives care and support under the Care Act 2014. However, some differences arise because after-care is provided free of charge and, as the legislative requirement for a care and support plan under the Care Act 2014 does not apply to section 117 after-care, the care plan should instead be drawn up under guidance on the Care Programme Approach (CPA). Care planning under the CPA will, if accommodation is an issue, include identifying the type of accommodation which is suitable for the person's needs and affording them the right to choice of accommodation set out in the regulations made under section 117A. The person should be fully involved in the care planning process.
- 1.35. An adult has the right to choose accommodation provided that:
- The preferred accommodation is of the same type that the Council has decided to provide or arrange
 - It is suitable for the person's needs
 - It is available for mental-health after-care purposes
 - Where the accommodation is not provided by the Council, the provider of the accommodation agrees to provide the accommodation to the person on the Council's terms.
- 1.36. Where the cost of the person's preferred accommodation is more than the Council would provide in a personal budget to meet the person's needs, the Council will arrange for them to be placed there provided that either the person or a third party is willing and able to meet the additional cost.
- 1.37. The guidance detailed in this policy document applies where the adult has chosen more expensive accommodation. For the purposes of section 117 after-care, references to a third party should be read as including the adult receiving the after-care (because an adult can also meet the additional cost

when the Council is providing or arranging for the provision of accommodation in discharge of the after-care duty).

- 1.38. In securing the funds needed to meet the additional cost, one of the following will apply:
- The Council may agree with the person and the provider, and in cases where a third party is paying the top-up, agree with that third party, that payment for the additional cost can be made directly to the provider with the Council paying the remainder.
 - The person or the third party pays the top-up amount to the Council. The Council then pays the full amount to the provider.

Information and advice

- 1.39. For people to be able to exercise genuine choice regarding their accommodation they need information about the options open to them. The Council will provide clear and balanced information to individuals, explaining their rights under the Care Act. Individuals will be explicitly advised that they may allow the Council to make a decision about accommodation on their behalf or, if they wish, they are free to choose any accommodation subject to the constraints set out in the regulations.
- 1.40. Under Section 4 of the Care Act 2014 the Council must establish and maintain a service for providing people with information and advice in relation to care and support. This must include information and advice about the different care providers available in the local area to enable choice, as well as information and advice to help people to understand care charges, different ways to pay and money management. The Council should also facilitate access to financial information and advice provided independently of the Council to support people in making informed financial decisions. This may be particularly appropriate when a person is considering paying a top-up to help them understand what they would be paying the top-up for and come to a judgement as to whether it would represent good value for money.

- 1.41. Where a top-up arrangement is being entered in to, all parties should fully understand their responsibilities, liabilities and the consequences of the arrangements. The Council must provide the third party with sufficient information and advice to support them to understand the terms of the proposed written agreement before entering into it.

Complaints

- 1.42. Complaints about how any top-up requirement is exercised by the Council fall within the scope of the Council's usual complaints procedure.