



City of
Stoke-on-Trent

Residential Care Charging Policy

POLICY INFORMATION SHEET	
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Responsible officer(s)	Lee Calvert, Senior Manager

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1.0 Policy

1.1 Scope: This policy is intended to assist officers of Stoke-on-Trent City Council involved in carrying out social care need assessments and financial assessments. It also includes officers carrying out reassessments, reviews, support planning, or who are otherwise involved in the arrangement and administration of services for clients with assessed eligible care needs. It provides a clear framework to the Council's position on Care Top Up payments.

The City Council reserves the right to depart from the policy in exceptional circumstances. This discretion is limited to the Director of Adult Social Services

1.2 Background: Under the Care Act 2014, Local authorities (Stoke-on-Trent City Council, referred to as the 'Council' throughout this document) have a duty to arrange care and support for those with eligible needs and a power to meet both eligible and non-eligible needs. Where it decides to charge it must follow the Care and Support (Charging and Assessment of Resources) regulations and have regard to the guidance. The aim of the City Council is to make all decisions under the Care Act 2014 in a manner that complies with the additional duties and responsibilities arising under the Equality Act 2010 and the European Convention on Human Rights.

The City Council must not charge more than the cost it incurs meeting the assessed needs of the client. In addition, it cannot recover any administration fee related to arranging that care and support, with the exception of a client who is self-funding their own care whose assets are above the upper capital limit.

Prior to charging the client, the City Council must first carry out a financial assessment of what the client can afford to pay. It must explain how the assessment is carried out, what the charge will be and how often it will be made. It

must be communicated to the client in a way that can easily be understood, in line with the Council's duty to provide Information and Advice under the Care Act 2014. If after the financial assessment a client has to make a contribution to the cost of their care, they must not be asked to pay more than the assessment says they can afford to pay.

A Fact sheet is available to all potential clients which explains how any top up may work.

Where a local authority is meeting needs by commissioning a care home, it is responsible for contracting with the provider.

1.3 Choice of Accommodation:

If the City Council has determined that the client's needs are best met in a care home, it must provide for the client's preferred choice of accommodation, subject to certain conditions including a financial assessment of what the client can afford. Determining the appropriate type of accommodation will be made with the client as part of the care and support planning process.

The City Council must ensure that the client has a genuine choice and must also ensure that at least one of the available options is affordable and within the client's personal budget. Provided choice of accommodation is:

- Suitable and available;
- Will not cost more than the amount specified in the client's personal budget for accommodation of that type; and
- The provider is willing to enter into a contract with the City Council to provide the care at the rate specified in the personal budget on the Council's terms and conditions.

However, a client must also be able to choose alternative options, including a more expensive setting where a third party or in certain circumstances the resident is willing and able to pay the additional cost. This is known as a Top-Up. This additional payment must always be optional and never as the result of market inadequacies or commissioning failures leading to a lack of choice.

The City Council must take steps to ensure the client understands the full implications of this choice, by providing sufficient information and advice around the terms and conditions. For example, it must be clearly established that suitable funding can be arranged by the client their family or friends and that this additional amount will be available long-term to fund Top- Up payments over a number of years (see sections 6 - 8).

A written agreement is to be entered into where there is agreement that the third party will meet the cost, as a minimum the agreement must include the following:

- The additional amount to be paid;
- Specific detail of the cost of the care;
- Frequency of payments;
- To whom the payments are to be made;
- Provisions for reviewing the agreement;

- A statement on the consequences of ceasing to make payments;
- A statement on the effect of any increases in charges the provider may make;
- A statement on the effect of any changes in the financial circumstances of the client or third party paying the top up.

If no preference has been expressed and no suitable accommodation is available at the amount specified in the personal budget, then the City Council must arrange care in a more expensive setting and adjust the budget accordingly to ensure needs are met. This however, would be treated as a temporary arrangement only, subject to review that would seek to secure care and support at the agreed City Council rates. Such temporary arrangements would be contracted at the best affordable price, closest to the Council's current rate. In such circumstances, the City Council cannot ask for the payment of a Top-Up fee. Equally the City Council cannot impose a top up fee when they have concluded that it is in an individual's Best Interests to remain in a specific placement following a Best Interests meeting. Please refer to the guidance of the Principal Social Worker.

1.4 Choice that Cannot be Met and Refusal or Arrangements

Inevitably there will be occasions when a client's choice cannot be met, for example if the provider hasn't the capacity to accommodate the client. In such situations the City Council must set out in writing why it cannot meet the client's choice and offer similar alternatives. It should present details of the Council's complaints procedure and if and when the decision may be reviewed. These details should be contained in the 'offer letter'.

Where a client unreasonably refuses the arrangements the City Council is entitled to consider that it has fulfilled its statutory duty to meet needs and may then inform the client in writing that they need to make their own arrangements.

This should be a step of last resort and the risks posed by such a step would need to be considered for both the authority and the client concerned.

Should the client contact the City Council again at a later date, then the City Council should reassess the client's needs and re- open the care and support planning process.

2.0 Charging for Care and Support in a Care Home

The City Council will charge for residential care in line with the Care and Support Statutory Guidance and undertake a financial assessment to determine an individual's contribution. As a consequence of the financial assessment, the City Council must assure itself that even if the adult remains responsible for paying for their own care, they must have sufficient assets for the arrangements that are put in place to be both affordable and sustainable.

Where the adult is receiving more expensive care and support solely because the City Council has been unable to make arrangements at the City Council's cost, the personal budget must be adjusted to reflect this additional cost.

In the case of a self-funder who approaches the City Council for an assessment and asks the City Council to arrange their care home placement. If the City Council decides to help the self-funder choose a care home, then they will not charge the

self-funder for the administrative costs for doing so.

The City Council has a duty to shape and facilitate the local market of care and support services to ensure there is sufficient supply. As a result the client should not have a prolonged delay before their needs are met. However, in some circumstances a short wait may be unavoidable, especially when the individual has chosen a particular setting that is not immediately available. Putting in place a temporary arrangement may be necessary. This can be unsettling for the individual and should be avoided where possible.

In establishing temporary arrangements, the City Council must supply the individual with clear information in writing as part of their care and support plan. A person may decide to remain in their interim setting, even if this original preferred choice becomes available. If the setting of their temporary accommodation is able to facilitate a stay on a permanent basis, then this should be considered and the client removed from their preferred setting waiting list. However before doing so the City Council must make clear the consequences of their choice, especially the long-term financial implications to ensure the long term setting remains cost effective. If the individual decides to stay in their interim setting, they can, but any additional cost over the agreed banding must be met by the individual or a third party.

3.0 Additional Costs or Top-Ups

If a client chooses a setting that is more expensive than the amount identified for the provision of accommodation in their personal budget then an arrangement has to be made to meet the additional cost (Top-Up).

In such cases the City Council must arrange for the client to be placed there, provided a 'third party' or in certain circumstances, the person in need of 'care and support,' (first party) is willing and able to meet the additional cost.

First Party Top-Ups

A client can pay their own top-up fee if:

- They have entered into either a 12 week Property Disregard;
- They have a Deferred Payment Agreement in place;
- They are receiving accommodation that is provided under Section 117 for mental health aftercare.

If the City Council has placed the client in the more expensive setting because it has not been possible to make arrangements at the anticipated cost, the personal budget must reflect this and the City Council would not be able to ask the client to reimburse the Top-Up element.

A Top-Up Example:

If the City Council had a standard rate of £450 a week and there are two care homes available, both of which have a place and are equally able to meet the person's assessed needs. The first is quite basic as far as décor is concerned and costs £450 a week. The second is more luxurious and costs £490 a week. If, as is the case, both are equivalent in terms of meeting needs, then the City Council will only fund the standard rate. If the client chooses the second more expensive option, then the City Council would ask for a Top-Up to cover the additional £40 a week.

However, if the only available care home to meet all of the client's needs was the second one, then the City Council would have to increase its standard rate to £490. This would be because the more expensive care home was supporting some additional needs. In this case the City Council could not ask for a Top-Up.

Such additional needs could be as follows:

- The client has to locate to a more expensive part of the country to be nearer family;
- The client's first language is not English and it may be reasonable for the City Council to pay more for a care home where there are staff and other residents who can speak the client's language;
- The client may have additional cultural or spiritual needs which can only be met in a specific type of care home which can cater for these or which is closer to the individual's pace of worship;
- The client requires special dietary requirements or requires specialist care, which can only be met in a home designed to meet such requirements;
- The client has very specific needs such as a hearing visual or physical impairment and the care home is specifically designed to meet such needs.

This list is not exhaustive.

4.0 Third Party Top-Ups

Any individual (self-funding or otherwise) who has decided to choose more expensive care and support can make use of a third party to help pay for the services which are more expensive than the City Council would normally pay to meet their assessed eligible needs. This is called a third party Top-Up.

The third party is usually a family member or a friend, but it can be anyone. This option allows people to choose the care and support they wish.

Only one person can be named as the third party. However, this does not prevent other family members getting together and agreeing the payment between them. It does mean that only one individual (member of the family) is responsible for making the payments and can be liable for any default, if payments are not made.

The third party must be both willing and able to continue making the Top-Up payments from their own account, for the duration of the client's stay at the care home. They cannot use the cared for client's assets or their income to cover the Top-Up payments. The third party must be able to satisfy the City Council of their ability to pay third party top ups for the length of time a service user may be in care. This must be sustainable for at least 2 years.

For a client who lacks mental capacity (i.e. who has failed a capacity test), then any choice made on their behalf with the assistance of an advocate or other person (often a close family member or friend), would have to be shown to be in the client's best interests through an examination of the benefits and burdens of each of the options available to meet the client's needs. Where agreement cannot be reached

cases may be referred to the Court of Protection.

5.0 Agreeing a Top-Up Fee

Having chosen a more expensive setting it is important that the client is made aware of the full implications of this choice, while keeping in mind that this can lead to future crisis if payments can no longer be made. If the additional cost cannot be met then it is important to explain that the client may/will have to be moved to an alternative setting. This explanation should be made both verbally and in writing.

According to the Care Act, best practice suggests that a written agreement between the person paying the Top-Up (third party), the provider and the City Council should be drawn up (Appendix 1 is a draft agreement). The third party will agree the amount and will pay this themselves from their own financial resources either directly to the provider, or to Stoke-on-Trent City Council for the duration of the person's stay at the care home. If the person paying the Top-Up chooses to pay via the Council, the City Council will pass on the agreed amount each period to the care home.

Prior to entering into the agreement, the City Council must provide the third party with sufficient information and advice to ensure that they fully understand the terms and conditions, including actively considering the provision of independent financial information and advice.

6.0 Failure to Continue to pay Top-Up Payments

For a variety of reasons the Top-Up arrangement may fail with the result that Top-Up payments are no longer made and a Top-Up debt accumulates. The agreement between the Provider, the City Council and Third Party must make it clear where liability falls for any arrears owed in relation to the top up element, which the resident or third party is liable for and has subsequently failed to pay. The City Council will attempt to recover any top up payment that has not been paid from the third party. The City Council will also seek to negotiate a reduction in fees whenever the third party is in arrears to the value of at least 3 months payments. If it is not possible to negotiate a reduction, the City Council may then accommodate the resident in another home without a top up payment, providing that a change of environment would not be significantly detrimental to an individual's wellbeing. The terms of the Payment of a notice period to the care home is specified in the Care Home Contract.

The City Council must therefore maintain an overview of all Top- Up payments.

Providers must share information regarding any Top-Up agreements with the City Council before the placement commences. This is to ensure the arrangement is in line with government guidance and the Care Act.

Top-Ups will only be applied for costs and services over and above the standard assessed care needs of the client which will have been reflected in the personal budget of the client.

Such arrangements can be agreed both with new residents and those who were previously self-funding in the home, but can no longer continue with the self-funding arrangement and have been assessed by the City Council as requiring residential care.

On commencement of the placement (or its continuation if the resident was self-funding), the City Council and providers must satisfy themselves and record that the client and / or their representative, can afford to pay the third/First party contribution. Any increase resulting in a Top-Up must be appropriate and proportionate. The intention to apply an increase must be communicated to both the person and the City Council at least 30 days before the date on which the increase commences. The client and / or the third party are liable for any top up payment.

If the third party fails to maintain Top-Up payments then a full assessment will be conducted to see if the current service is the only one that can meet the person's current assessed needs.

The provider must inform the City Council if the third party informs them they are no longer able to pay top ups or if their circumstances change.

The Provider must also advise the LA, client and/ or their representatives of all financial aspects of the 'Third-Party' Arrangement. Typically this would include:

Thresholds, processes, current legislation and guidance for Top-Ups.

- How much the charges are
- Who is responsible for them
- What services do they cover

7.0 The amount paid and the frequency of payments

The amount of the Top-Up will be the difference between the actual costs of the preferred provider and the amount that has been set in the client's personal budget or local Mental Health after-care amount, as a means of meeting eligible needs through the provision of accommodation of the same type.

Typically a range of costs will be identified, offering choice and which apply to different circumstances and settings. In agreeing to any Top-Up arrangement, it must be clearly set- out and explained how often such payments are to be made (whether weekly or monthly). If a third party chooses to make their payments via the council, these payments will be monthly.

8.0 Responsibility for Costs and to Whom Payments are Made

The City Council can enter into a contract to provide care that is more expensive than the amount identified in its usual contracted rate. For example, a more expensive setting may be required because other more appropriate settings that matched the client's needs were unavailable at the time. This would be reflected in an increased personal budget.

Also, a more expensive option may be required because of the complex nature of the client's needs. Hence, if there is a breakdown in the Top-Up arrangement (the third party making the Top-Up ceases to make their agreed payments), then the City Council would be liable for the Top-Up element alone. This would remain the case until it managed to recover the additional costs incurred or made alternative arrangements to meet the client's needs.

9.0 Reviewing the Third/First Party Agreement and Price Increases

The Act states that local authorities should review Top-Ups 'from time to time' and the Guidance has clarified this to mean at least an annual review. The reason being that it is important to check that the Top-Up payments are still affordable and that people remain willing to pay them.

The review would necessarily look at changes in circumstances of the client, the third party making the Top-Up payments (if different from the client), the Council's commissioning arrangements or a change in provider costs. Such changes are unlikely to occur together and the City Council must set out in writing how they will be dealt with.

The third/first party agreement will include details of how agreement will be reached on the sharing of any price increases. This should also point out that there is no guarantee such increases will be shared evenly. As a general rule, a client's personal budget will not be exceeded and any increase in fees made by the provider will lie with the client.

When entering into a tri-partite agreement, all parties should consider a contract that allows for a client to remain with a provider for a minimum period of two years. Inflationary increases in top-up arrangements can be built into any agreement.

Where no agreement can be reached the City Council would look to the third party to commit to pay any Top-Up costs. Otherwise, the client would have to move to a care home which accepted the council's contract rate with a lower top -Up or no Top-Up at all.

10.0 Consequences of Changes in Circumstances

An unexpected change in a client's or third party's financial circumstances can have a significant impact on their ability to pay the Top-Up. The City Council has the power to make alternative arrangements to meet a client's needs subject to a needs assessment and can seek to recover any outstanding debt.

The City Council must set out in writing (as part of the contract) how it will respond to such a change and what the responsibilities of the third party making the Top-Up payment are, in terms of what the third party change in circumstances are.

11.0 Self-Funders who Ask Stoke-on-Trent City Council to Arrange Their Care

Under the Care Act 2014, a client who can afford to pay for their own care and support in full can ask their local authority to arrange care on their behalf.

If the individual already has a contract with a provider then it must be made clear to them that although they are entitled under the Care Act to ask the City Council assess and commission their care with the same or a new provider, they must first see out the terms of their contract with their current provider. Usually they will have to give notice of termination to their provider in advance. In addition, they would have to meet all of their financial commitments to their provider prior

to ending their contract. The person may also decide, having ended the contract and brought all payments up-to date, to move to another Care Home.

In supporting self-funders to arrange care, the City Council can choose to enter into a contract with the provider, or may broker a contract on behalf of the self-funder. Where the City Council is arranging and managing the contract with the provider, it should ensure there are clear arrangements in place around how costs will be met, including any Top-Up element. These contractual arrangements must clearly set-out where the responsibilities for all costs lie and that the self-funder understands those arrangements.

Self-funders will have to pay for the costs of their care and support in its entirety. Self-funders can make a payment direct to the provider of care or via the Local Authority.

12.0 People Who are Unable to Make Their Own Choice

If a client lacks capacity to express a choice for themselves then the City Council will act on choices made by the client's advocate, carer or legal guardian in the same way they would on the client's own wishes.

13.0 Choice of Accommodation and Mental Health After-care

Under Section 117A of the Mental Health Act 1983 those who qualify for after-care may express a preference for particular accommodation, provided such accommodation is specified in the regulations as part of that after-care.

For such client's, the City Council is required to either provide or arrange their preferred accommodation, if the conditions in the regulations are met. These regulations give those who receive Mental Health Aftercare broadly the same rights to choose as someone receiving care under the Care Act. However, after-care is provided free of charge and the legislative requirement for a care and support plan under the Care Act does not apply to S117 after-care.

Instead the care plan under S117 should be drawn up under guidance of the Care Plan Approach (CPA). If accommodation is an issue then the CPA would identify what is suitable for the client's needs giving them the right to choice of accommodation set out in the regulations. The client must be fully involved in the planning process and has the right to choose provided:

- Preferred accommodation is of the same type that the City Council has decided to provide or arrange;
- It is suitable for the client's needs;
- It is available (see Guidance 12,13,15; for mental health after-care purposes "assessed needs" means needs that are identified in the CPA care plan);
- Where the accommodation is not provided by the Council, the actual provider agrees to provide accommodation to the person on the Council's terms (see Care Act Guidance page 398, para18).

Where the cost of the client's preferred accommodation is more than the City Council would provide, either in a personal budget or local mental health after-care to meet the client's needs, then the City Council must arrange for them to be placed there – provided either the person or a third party is willing and able to meet the extra cost.

For the purposes of S117 after-care, references to a third party should be read as 'the adult receiving the after-care.' This is because people receiving 117 aftercare may also meet the additional cost (top up) from their own funds

The client or third party can pay the Top-Up amount directly to the provider or via the Council.

14.0 Risk If Third Party Defaults on Payments

Where the agreement has been solely between the third party and the provider then should payments fail to be made, it is quite possible that the provider depending upon their accounting system may not notice the default for some weeks or months. This could be a sizeable accumulated amount and demonstrates the potential financial risk the provider and the City Council could be faced with in the absence of a tri-partite agreement.

A tri-partite agreement which clearly states where liability will lie in the event of failure to maintain payments would protect the provider and the Council. It is in the providers' interests to enter into an agreement to ensure any risk lies with the third party. This would also enable the City Council to take action to retrieve payment and if necessary use the legal system to force the 3rd party to pay.

15.0 Agreeing Top-Ups and what happens next

The amount of the Top-Up must be agreed before the person starts receiving care and support / enters the care home, or following an agreement by the City Council to pick up funding following a self-funders capital dropping. The care provider can review the Top-Up as long as they give suitable notice to the third party and it is agreed between all three parties. The Care provider must notify the City Council of any intention they may have to alter the agreement.

Once the City Council has received a signed (by all party's) copy of the Top-Up agreement and satisfactory financial assessment results, it will complete discussions with the provider and inform the care manager to arrange a moving date for the person.

APPENDIX 1

THIS AGREEMENT is made on the

Between

- (1) Stoke-On-Trent City Council of PO Box 631 Civic Centre Stoke-on-Trent ST4 1HH ("the Council"); and
- (2) [insert the name of the person making the top up contribution] of [insert address] ("the Third Party")

Each a "Party" together the "Parties"

WHEREAS

1. [Name of Resident] (“the Resident”) of [address] wishes to reside at [insert the name of the provider] of [insert address] (“the Provider”) (hereinafter called “*The Home*”) which is a Home operated by the Provider.

The Provider has entered into an Individual Placement Agreement with the Council to provide the Resident with care.

2. The Third Party has agreed to pay the Top Up Contribution to:

- **The Provider**

- **Stoke on Trent City Council**

3. In the light of the agreement of the Third Party herein contained the Council is willing to nominate the Resident for occupation of the Home and provision by the Provider of Residential and / or Nursing Care under and in accordance with the terms of the Council's Individual Placement Agreement.

NOW IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES HERETO as

follows:

4. **Definitions**

In this Agreement unless the context otherwise requires the following words and expressions shall have the meaning given to them below:

“**Agreement**” means this agreement between the Council and the Third Party

“**Due Date**” means within 28 days of the date of an invoice

“**Individual Placement Agreement**” The Council’s Individual Placement Agreement with the Provider, the Resident and any applicable third party in respect of each individual Resident that is placed in the Home

“**Provider Rate**” [insert £figure] being the total amount the Provider charges per week

“**Resident**” The person living in the Home

“**Third-Party**” A persons or persons who have entered into this Agreement to pay the top up contribution

“Top Up Contribution” [insert *£figure*] being the difference between the Provider's Rate and the Council's Usual Cost for Care

“Usual Cost for Care” means the standard cost for care for a Resident's placement based on the individual's needs and calculated in accordance with the Council's agreement with the Provider for the provision of care in care homes for older people and younger adults

Terms otherwise used in this Agreement shall have the same meaning as in the Individual Placement Agreement.

5. Agreement

The Third Party agrees to pay to the Provider/City Council (as per point 2 above) the Top Up Contribution. This should be paid on a [monthly] basis unless alternative arrangements are agreed in writing.

6. Arrangements will be reviewed in line with arrangements for reviewing the Resident's financial assessment and care fees as set out in the Individual Placement Agreement. These are reviewed following a change in circumstances or on an annual basis.
7. The Third Party shall notify the Council immediately of any changes in their circumstances which could affect their ability to make Top Up Contributions. This may trigger a review of arrangements.
8. Any proposed increase in the Provider's Rate will be subject to the price review provisions in the Individual Placement Agreement. If there is an increase in the Provider's Rate a review will take place to discuss whether the Home is still suitable and if so, how the increase will be shared, for example, it may be agreed that the contributions made by the Council and the Third Party will be increased by the same percentage.
9. The Council is responsible for notifying the Third Party of any changes to the charges outlined in this Agreement.
10. In the event that the Third Party fails to pay the Top Up Contributions in full by the Due Date for payment the Council and / or the Provider will have the right to recover the overdue amount from the Third Party.

11. The Council will have the right on giving one month's written notice to withdraw the Resident from occupation of the Home and place them in alternative accommodation that is affordable within the amount identified in the Resident's Personal Budget in respect of the care home placement.
12. This Agreement shall not be varied except by instrument in writing signed by the authorised representatives of the Parties.

AS WITNESS the hand of the person making the top up payment and the hand of the duly advised representatives of the Council the day and year first before written.