

Adult Social Care

Making a Difference in the Right Way, Every Day


Top-Up Policy



Solihull

METROPOLITAN
BOROUGH COUNCIL

Version	Date	Author Name	Rationale
1.0	25.09.19	Roger Catley - ACS Governance Lead	Initial policy creation
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1. PURPOSE	3
2. BACKGROUND	3
3. PRINCIPLES	4
4. THIRD PARTY TOP- UPS	4
5. FIRST PARTY TOP-UPS	6
6. NON-APPROVAL	7
7. REVIEWING ARRANGEMENTS	7

1. PURPOSE

- 1.1. The purpose of the Adult Care & Support Top-up Policy is to set out:
 - When a top-up would apply
 - How a top-up it is calculated
 - The process for agreeing a top-up
- 1.2. This policy applies to adults that have been assessed by the Council and have been found to have eligible needs for care and support under the Care Act 2014. This policy is followed by staff when a person chooses more expensive care and support than is allocated to them in their personal budget to meet the needs the Council is required or chooses to meet; the additional payment for such care is commonly referred to as a 'top-up.
- 1.3. There are two types of top-ups:
 - first-party top-up, where the person provides their own money - at present, there are only limited circumstances in which first-party top-ups may be made.
 - third-party top-up, where the top-up is funded by someone else, e.g., a relative.
- 1.4. This policy should be read in conjunction with the Council's policies on:
 - Adult Social Care Charging Policy - Adult Social Care Non Residential Care and Support Services
 - Adult Social Care Deferred Payment Policy
 - Adult Social Care Direct Payments Policy

2. BACKGROUND

- 2.1. Where the Council identifies that a person has eligible needs following a Care Act Assessment, they will prepare a personal budget setting out the cost to the Council of meeting the person's needs which the Council is required to meet or decides to meet under its discretion to do so.
- 2.2. The person will also receive a financial assessment to take account of their ability to contribute towards the cost of meeting their needs based on their income, savings and any other capital. This is usually known as the Client Contribution. Reference should be made to the [Care Act](#) and the Council's [Charging Policy - Adult Social Care Non Residential Care and Support Services](#) for further information and guidance.

3. PRINCIPLES

- 3.1. A top-up agreement will only be agreed where the agreement is in line with the conditions set out in sections 4 and 5 of this policy and:
- The Council is satisfied that the person agreeing to make the top-up payment is in a position to maintain the payments.
 - A top-up agreement has been signed by the contributor (the person agreeing to pay the top-up);
 - A signed direct debit mandate has been received.
- 3.2. In most cases, a top-up payment will not be relevant for a person who has capital or income which makes them responsible for fully funding their care. People who are fully funding their care are typically able to make arrangements for their care as they wish, even if these arrangements are more expensive than those which the Council would have put in place. In such cases the Council would strongly advise consideration of the ability to sustain the affordability of such arrangements and seek independent advice.
- 3.3. In the less common event that a person who fully funds their care is having accommodation in a care home, nursing home, supported living or shared lives scheme arranged on their behalf by the Council, the Council will consider how the Choice of Accommodation Regulations apply in the person's case, though it is noted that the Care Act Statutory Guidance states that *'Self-funders will have to pay for the costs of their care and support including, in cases where they choose a setting that is more expensive than the amount identified in their personal budget, the top-up element of the costs of that setting.'*

4. THIRD PARTY TOP- UPS

- 4.1. People who receive local authority financial support and whose care and support needs are going to be met by the provision of accommodation in a care home, nursing home, supported living accommodation or shared lives scheme may choose more expensive accommodation than is provided for by the amount set in their personal budget if certain conditions are met:
- The person's preferred accommodation is the same type of accommodation as what is specified in the person's support plan,
 - The person's preferred accommodation is suitable to meeting the person's needs,
 - The preferred accommodation is available.

- The preferred accommodation agrees to the Council's terms; and
 - If the preferred accommodation is more expensive than the amount set in the personal budget, the 'cost condition' must be met.
- 4.2. In relation to the 'cost condition', when a person chooses to receive care and support that is more expensive than the amount identified in their personal budget an arrangement will need to be made as to how the difference will be met. This is known as the additional cost or top-up payment. For example:
- Care Home 1 (The Council's Offer) has a weekly cost of £650 (This meets the person's need but is refused by the individual)
 - Care Home 2 has a weekly cost of £700 (This meets the person's needs and is person's preferred choice)
 - Care Home 2 cost (£700 per week) – Care Home 1 cost (£650 per week) = Top-Up Fee (£50 per week)
- 4.3. The Top-Up must be made by a third party (someone other than the person receiving care) except for the circumstances outlined in [section 5](#) of this policy.
- 4.4. A third party is usually a family member or a friend, but it can be anyone who is able and agrees to meet the additional costs of the person's care.
- 4.5. Only one person can be named as being the third-party contributor, but this does not mean that family members cannot agree to make the payment between them. It does mean that one member of the family is responsible for making the payment and will be liable for any default on payment.
- 4.6. The Third Party will be required to sign a direct debit mandate for the payment of the agreed payment.
- 4.7. The Third Party must be in a position to maintain the top-up payments themselves. The Third Party cannot use the cared-for person's savings or income to fund the top-up payments.
- 4.8. The Third Party will need to provide evidence that paying the top-up is sustainable for the period over which the person will want to use the top-up. Typically, where the top-up amount is more than £25.00 per week, the Third Party will need to provide evidence that they have savings to the value of at least three years' worth of the required top-up amount or complete a budget sheet to demonstrate that they have weekly income that exceeds their weekly expenditure by the required top-up amount.
- 4.9. The Choice of Accommodation Regulations providing for top-up payments to choose preferred residential settings for care relate to situations in which a person is receiving care in certain types of accommodation outside of the home. Where a person is receiving care in their home or in the community,

they are not barred from purchasing additional care to what is provided by the Council if they wish to do so and are able to pay for it. Similarly, a third party is not barred from purchasing additional care for another person.

However, where care is being provided by the Council in the community, there is presently no legal framework which exists for the Council to assess of a 'top-up' payment to be combined with Council contributions and the person's care charges to pay for an alternative care package.

5. FIRST PARTY TOP-UPS

5.1. First-party top-ups are only allowed where a person's needs are being met through residential accommodation in the following circumstances:

- Where they own a property, and the value of the property is being disregarded in the Financial Assessment for an initial 12-week period; or
- Where they have a Deferred Payment Agreement in place with the Council or are in the process of arranging one. This will be from week 13 if a 12-week property disregard period is applicable, or from when the Deferred Payment Agreement is entered into if the person still owns their home and has been paying the full cost of their care home from other resources.
- They can apply for the top-up to be included in the deferred payment, providing the top-up is sustainable for the likely period over which the person would want to use the Deferred Payment Agreement. As a starting point, the Council would likely consider whether there is sufficient equity within the property value to cover the following.
 - The deferred payment loan value for the difference between the current financial assessment and the personal budget for three years,
 - The top-up payment for three years,
- The equity in a property deferred which may be under a Deferred Payment Agreement does not extend to the full value of the property. The 'equity limit' which can be deferred is the value of the property, less any encumbrances on it (such as a mortgage), less 10% of its value to account for fluctuations in price or selling costs, and less the lower capital limit.

5.2. Where the person is receiving accommodation provided under S117 for mental health aftercare, subject to other conditions in relation to the preferred accommodation being met.

- 5.3. After the end of a 12-week property disregard, a person cannot make a top-up payment themselves in the following circumstances.
- From their statutory weekly personal allowance.
 - From any savings below the upper capital limit.

6. NON-APPROVAL

- 6.1. Where a request for a top-up agreement has been declined the decision will be confirmed in writing to the person receiving care and support and in the case of third-party top-ups, the identified third-party.
- 6.2. If the third-party believes that the Council has not applied the top-up policy correctly, they can ask the Council to reconsider their decision. All requests for reconsideration must be received in writing setting out the reasons for the request for reconsideration. All requests will be considered by the Council's Adult Care & Support Head of Service to check that the policy had been applied correctly.

7. REVIEWING ARRANGEMENTS

- 7.1. Agreements will be reviewed at least annually to ensure that the agreed top-up payments are being maintained.
- 7.2. Agreements will also be reviewed in the following circumstances:
- Price increases - usually no more than annually in the absence of any other changes in circumstances. It is not guaranteed that price increases will be shared evenly if the provider costs rise more quickly than the amount the personal budget would be increased by.
 - Changes to the person's needs resulting in a change in the personal budget amount.
- 7.3. Any change in the cared-for persons financial circumstances resulting in a new financial assessment contribution will not necessarily result in an adjustment to the top-up payment; if the person becomes responsible for the full cost of his or her care, the top-up agreement will typically end as the Council will no longer be contributing to the cost of the person's care.
- 7.4. Where the person making the top-up payment has a change in their circumstances which reduces the ability to maintain the top-up they must

contact the Council within 10 working days either by telephone on 0121 704 8007 or email ccadults@solihull.gov.uk.

- 7.5. If the person making the top-up is at risk of not being able to pay, attempts would be made to negotiate with the provider a reduction in the top-up to an affordable rate. Where this is not possible an alternative provider may need to be sought after a new care needs assessment. It may be necessary for the person receiving care to move to alternative residential accommodation.
- 7.6. Where top-up payments cease, the Council will seek to recover outstanding debts and has the power to make alternative arrangements subject to a care needs assessment.

