

<b>PROCEDURE TITLE</b>	<b>Care Top Up Policy (Appendix D)</b>
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<b>PURPOSE</b>	The purpose of the Care Top up Policy is to explain the parameters and process applied when an individual chooses care and support which is more expensive than the Council's agreed rates.
<b>SCOPE</b>	This policy is followed by staff when a customer chooses more expensive care and support than is allocated to them in their personal budget to meet their eligible need. The policy covers short and long term permanent residential or nursing care in a care home and care services provided in the customers own home.
<b>POLICY SUPPORTED</b>	Charging for Social Care, Personal Budget and Direct Payment Policy, Deferred Payment Policy
<b>RESPONSIBILITIES</b>	Care Manager Financial Coordinator Care Arrangers Care Providers
<b>ENQUIRY POINT</b>	tba
<b>KEYWORDS</b>	Top up, Sustainability, Third Party, Self Funders

<b>PROCEDURE APPROVAL</b>			
<b>APPROVED BY</b>		<b>POSITION</b>	
<b>SIGNATURE</b>	Version2/13.02.2015/amc	<b>DATE APPROVED</b>	

## COMMUNICATING WITH CUSTOMERS OR CARERS

When following this policy, if you need to communicate with customers or carers, it is essential that the communication is made in a way that is understandable to them. For example, where people may be from a different ethnic origin, it is essential to find out whether or not their first language is English. If it is not, it will be appropriate and essential to enquire whether written or spoken communications need to be, or would best be, in their first language.

If the customer has a learning disability, you will need to make sure that any written communication is in an appropriate form, for example 'easy read', and consider whether it would be advisable to have an Advocate available for any discussions.

Our Communication and Information Strategy requires that we should make information accessible to all. We have, therefore, contracted with a number of organisations to provide translation and interpretation services, and to transfer information into alternative formats such as large print or Braille. If you are unsure about the conventions which are acceptable to people from other cultures or religions, guidance is available from Communications: [communications@cheshireeast.gov.uk](mailto:communications@cheshireeast.gov.uk).

# Social Care Top Up Policy

**Document Summary:** This document applies to any care and support package supported by the Council to meet eligible unmet needs.

## 1. Glossary of terms

Best Interests Assessment	An assessment to determine and evidence what would be in a person's best interest, in relation to a specific decision, where the person has been determined, using a mental capacity assessment, as lacking the capacity to make that decision themselves.
Third Party Top Up	A third party is someone who agrees to pay a top-up to enable a relative or friend to go into a home or receive care at a rate which is higher than adult social care services can support.
Top up	A top-up is an additional payment usually made by a third party to the care provider which is in addition to the amount that the service-user is asked to pay from his or her own income and savings towards the care.
Cheshire East Council/the Council	The organisation that arranges care and Support.
Social Care Services	Social Care covers a wide range of services provided by Cheshire East Council, Partners and the independent sector to eligible people either in their own homes or in a care home.

## 1 Policy document

1.1 This is a policy document, and may be amended or changed in accordance with Democratic procedures. Nothing in this policy is intended to fetter the discretion of the Council.

## 2 Scope

2.1 This policy is intended to assist officers of Cheshire East Council involved in carrying out social care need assessments and financial assessment, reassessments, reviews, support planning, direct payment audit or who are otherwise involved in the arrangement and administration of services for people with assessed eligible care needs and provides a clear framework to the Councils position on Care Top Up payments.

2.2 The care and support planning process will determine the individual's eligible need and how best these needs can be met.

### **3 Charging for Care and Support in a Care Home**

3.1 Where the Council has decided to charge and undertaken the financial assessment, it will support the person to identify options of how best to pay any charge. This may include offering the person a deferred payment agreement.

3.2 Where the Council is meeting needs by arranging care and support for an individual, it is legally responsible for contracting with the care provider. Where all parties are agreed it may choose to allow the person or their nominated Third Party to pay the provider directly for the 'top-up' where this is permitted.

### **4. Customer Choice and Additional Payments**

4.1 In some cases, a person may actively choose a setting that is more expensive than the amount identified for the provision of the care and support in the personal budget. Where the person has chosen care and support that costs more than the personal budget, an arrangement will need to be made as to how the difference will be met. This is known as an additional cost or 'top-up' payment and is the difference between the amount specified in the personal budget and the actual cost. In such cases, the Council will arrange for the care, provided a third party, or in certain circumstances the person in need of care and support, is willing and able to meet the additional cost and this is sustainable.

4.2 The person has the right to choose the care provider that they wish to deliver their care and support, subject to certain conditions, provided that:

- the care and support is suitable in relation to the person's assessed needs;
- to do so would not cost the Council more than the amount specified in the adult's personal budget for care and support of that type;
- the care and support is available; and
- the provider of the care and support is willing to enter into a contract with the council to provide the care at the rate identified in the person's personal budget on the council's terms and conditions.

4.3 The Council should ensure that at least one option is available that is affordable within a person's personal budget. If no preference has been expressed and no suitable care and support is available at the amount identified in the personal budget, in exceptional circumstances the Council may arrange care at a more expensive rate and adjust the budget accordingly to ensure that needs are met. This would be treated as a temporary care arrangement and subject to review to secure care and support at the Council's agreed rates. Such temporary arrangements would be made at the best

affordable price, closest to the Council's current rate. In such circumstances, the Council cannot ask for the payment of a 'top-up' fee.

4.4 Where a person contributes to the cost of their care following a financial assessment they must not be asked to pay more than their assessment shows they can afford.

4.5 Where a person has chosen care and support that is more expensive, the Council will take steps to ensure that the person understands the full implications of this choice, by providing sufficient information and advice to ensure that they understand the terms and conditions. This should include for example that a third party, or in certain circumstances the person needing care and support, will need to meet the additional cost of that setting for the full duration of their stay and that should the additional cost not be met they may be moved to an alternative care provider.

4.6 The Council must ensure that the person paying the 'top-up' is willing and able to meet the additional cost for the likely duration of the arrangement, recognising that this may be for some time into the future. Therefore it must ensure that the person paying the 'top up' enters into a written agreement with the Council, agreeing to meet that cost. The agreement will include the following:

- the additional amount to be paid;
- the amount specified for the accommodation/care in the person's personal budget;
- the frequency of the 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 that a provider may make;
- a statement on the effect of any changes in the financial circumstances of the person paying the 'top-up'.

4.7 Where a person is receiving more expensive care and support solely because the Council has been unable to make arrangements at the personal budget cost, the personal budget must be adjusted to reflect this additional cost. The person would then contribute towards this personal budget according to the financial assessment. The additional cost provisions must not apply in such circumstances and the person cannot be asked to pay a top up fee where there is no other available care and support to meet that individuals needs.

4.8 The amount of the 'top-up' should be the difference between the actual costs of the preferred provider and the amount that the Council would have set in a personal budget to meet the person's eligible needs by arranging or providing accommodation of the same type.

4.9 Where an individual requests a care needs assessment from the Council, the Council will undertake a welfare benefit check and sustainability check of the care to be met in a care home, through assessment of the customers own assets and those of the nominated third party.

## **5. First party 'top ups'**

5.1 The person whose needs are to be met by the accommodation may themselves choose to make a 'top-up' payment only in the following circumstances:

- where they are subject to a 12-week property disregard;
- where they have a deferred payment agreement in place with the Council. Where this is the case, the terms of the agreement should reflect this arrangement; or
- where they are receiving accommodation provided under S117 for mental health aftercare.

5.2 There will be cases where a person lacks capacity to express a choice for themselves. The Council would then act on the choices expressed by the person's advocate, carer or legal guardian in the same way they would on the person's own wishes, unless in the Council's opinion it would be against the best interests of the person.

## **6. Third Party Top ups**

6.1 A person who has decided to choose more expensive care and support can use a third party to help pay for the services which are more expensive than the price the Council would normally pay. This is called a third party top up.

6.2 A third party is usually a family member or a friend, but it can be anyone. In some limited instances it can be the person receiving care themselves. By using this system, it allows the Council to help people to secure care and support of their choice.

6.3 Only one person can be named as being the third party contributor but this does not mean that family members cannot get together and agree to make the payment between them. It does however mean that only one member of the family is responsible for making the payment to the home and can be liable for any default on payment.

6.4 A third party top up can only be used when the cost of care is more expensive than the agreed contract rate set by the Council for that particular care provider.

6.5 The Third Party must be in a position to sustain the top up payments for the duration of the stay and cannot use the cared for persons assets or income to cover the top up payments.

## **7. Customers with savings below the threshold**

7.1 Service users who have savings under £23,250 will be eligible for an assessment of means and, where necessary, financial assistance from the Council will be offered to meet the fees up to an agreed level.

7.2 Once assessed as needing care and support, a person may choose their preferred care provider. Where this is more expensive than the personal budget determined by the Council, as long as there is a Third Party willing to pay the extra cost – the care can be agreed.

7.3 The Council must be sure that this arrangement is sustainable for the duration of the anticipated care needs and if not the person may have to move care provider to one which does not require a top up or where the top up is affordable to the third party.

## **8. What is needed for a third party top up?**

8.1 The Council cannot confirm a placement with a care provider where there is a top up requirement, until the following has been completed:

- a financial assessment, outlining the Customers finances (and where necessary the Third Party's finances to check sustainability of the top up). This will allow the Council to calculate the amount the customer will need to pay towards care on a weekly basis. A financial assessment of the customer is a requirement for all placements supported by the Council and is not just part of the third party top up system.
- a Top-up Agreement signed by the third party and the care provider Manager/authorised officer. The third party will agree to make the payment to the home for the agreed amount and will pay this themselves from their own resources directly to the home for the duration of the person's stay at the home. A copy of the Third Party Top Up Agreement must be held by the Care Manager on the individuals case records.
- The agreement must show:
  - the home address of the third party making the top up contribution
  - the signature of the third party making the top up contribution
  - the name of the person requiring care and support
  - the name of the care provider and signature of the care provider

## **9. Treatment of Private Placements**

9.1 Self-funding/privately placed people are able to choose their own care from the care market. If arrangements are not sustainable then identifying a person who can assist with top up payments for the duration of the persons needs, is strongly encouraged at the point of choosing the appropriate care provision.

9.2 People with capital or savings above £23,250 would not normally qualify for funding support from the Council. However, individuals may request an assessment of need under the Care Act 2014.

9.3 Care providers are likely to undertake a sustainability check when accepting private customers or self-funders and should make the individual aware of their right to a care needs assessment under the guidance.

9.4 The Council would expect a private placement to be sustainable for at least 3 years paid from the individual's own capital, assets or savings and if this is not achievable would look to the customers nominated third party to commit to pay the care home top up costs (the difference between the contract rate agreed with the Council and the fee charged by the care home), once the customer's assets have reduced below £23,250. Otherwise the customer would have to move to a care home which accepted the Council's contract rate with a lower third party top up or no top up required.

## **10. Self-funders who ask the local authority to arrange their care**

10.1 The Care Act 2014 enables a person who can afford to pay for their own care and support in full to ask the Council to arrange their care on their behalf. In supporting self-funders to arrange care, the Council may choose to enter into a contract with the preferred provider, or may broker the contract on behalf of the person. Where the Council is arranging and managing the contract with the care provider, it will need to ensure that there are clear arrangements in place as to how the costs will be met, including any 'top-up' element. The Council will need to ensure that the person understands those arrangements. Self-funders will have to pay for the costs of their care and support along with any administrative fee charged by the Council.

10.2 The Council can, in some circumstances agree to defer top up costs where the individual has property assets valued at greater than the total cost of care over a three year period – taking account of conveyance and deferred administrative fees. Please see the Council's Deferred Charge Policy for further information of Deferring charges.

## **11. Choice of accommodation and mental health after-care**

11.1 Regulations made under section 117A of the Mental Health Act 1983 give people who receive mental health after-care broadly the same rights to choice of care and support as someone who receives care and support under the Care Act 2014. Where the cost of the person's preferred care and support is more than the Council would provide in a personal budget or local mental health after-care limit to meet the person's needs, then the Council will arrange for the care needs to be met, provided that either the person or a third party is willing and able to meet the additional cost.

11.2 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.

11.3 In securing the funds needed to meet the additional cost, the Council will agree with the person (or their third party) and the care provider, that payment for the additional cost will be made directly to the care provider with the Council paying the remainder.

## **12 Financial arrangements**

12.1 Following financial assessment the customer will be able to retain some money for personal use. The amount of this personal expense allowance is determined annually by the Government.

12.2 Everyone in permanent long term care is obliged to use their income and capital to maintain their care needs within the financial assessment of means. Where a customer has gifted property or assets or placed such assets out of the reach of charging, the council will treat the action as deliberate deprivation of assets and will generally treat that asset as notional capital which remains available to the customer to support their care. A husband has the duty to maintain his wife, and a wife her husband. There is no legal duty on sons or daughters towards their parents or parents to their sons or daughters, even when they are adults.

12.3 Where a customer owns a property/land or has an interest in such, this will be taken into account when determining how much the customer will have to contribute towards the cost of commissioned accommodation. However, advice and information can be provided should the customer wish to rent their empty property via the Housing Options Team. Any rental income will be taken into account by the Council in the customer's financial assessment.

## **13. Agreeing Top up payments**

13.1 The amount of the top-up must be agreed at the time the person starts receiving care and support or when they go into a care home, but can be reviewed by care provider as long as they give notice to the third party and it is agreed between all parties. The care provider must notify the Council.

## **14. What happens next?**

14.1 Once the Council has received a copy of the top up agreement from the third party and the financial assessment results, the Council will complete discussions with the care home and inform the Care Manager to arrange a moving date for the customer.

14.2 This will only happen after the Council is satisfied that the third party has the funds to make the payments agreed

### Third Party Top up Agreement

(including where 12 week disregard applies)

I hereby agree to pay the top up fee in respect of

.....

Resident at.....

.....

The cost of the “top up” fee is .....per

Week at (Date) .....

The Top up is agreed at the rate at the time of the customer requiring care and support.

I (the signatory) agree to make the payments from the date of admission and I understand that this is an ongoing commitment for which I am liable until the service ends.

I understand that this “top up” cannot be paid from any monies that I hold, manage or receive for the resident other than as laid down in accordance with the provisions of the Care Act 2014, accompanying statutory guidance and the Care and Support and After-care (Choice of Accommodation) Regulations 2014.

I understand that should I fail to pay the “top up fee” for a period of more than 8 weeks, Cheshire East Council has the right to arrange for alternative residential accommodation to be provided, subject to assessment.

The third party top up is the difference between the agreed contract rate paid by Cheshire East Council and the charge made by the care provider. The “top up” payment excludes the service user’s personal allowance and the assessed contribution that the service user is required to make towards the cost of the Home and excludes any NHS Nursing fees.

Name.....

Address.....

.....

Signature.....

Date.....

Cheshire East Council suggests that you may wish to seek independent legal advice as to your commitment and obligation under this agreement.

This arrangement is agreed by the Care Provider .....  
(name of care provider)

For (type of care) .....

Signed by Care Provider authorised officer .....

Date .....

**IMPORTANT NOTE:** Failure to pay the care provider the agreed top up could risk debt recovery action being taken and the need for the customer to move to an alternative care provider.

This agreement can be reviewed and changes must be communicated to The Council.

If the third party has a change in circumstances which puts the third party payments at risk, they must notify the Council as soon as possible.