

Residential Care Top-Up Policy

Care Act 2014

Status: Approved

Team/Dept responsible for Policy: Department: Health and Adult Social Care, Adult Social Care Financial Support Service.

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Version control

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1.0	Appendix 2 Bury Third Party Top-Up Agreement	HM	31/10/18
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Glossary

To help you read this plan, an explanation of the special words and phrases that you will find used in the plan is set out below:

Key word	What does it mean?
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
Adult Operations Teams	The Council team of staff comprising of care professionals, e.g. social workers, occupational therapists, etc.
Care Needs Assessment	Will identify care needs and outcomes required to achieve an individual's wellbeing in their day to day life. This will consider the person's eligibility for care and support services.
Care and Support	A mixture of practical, financial, emotional and social care support for adults who need extra help to manage their lives and be independent. This may include assessments of needs, provision of services and the allocation of funds to enable a person to purchase their own care and support.
Deferred Payments Scheme	A Scheme that the Council will offer to individuals to defer the payment of care home fees pending the sale of their property.

Disregard	Elements of income, capital and/or of property assets ignored from the Financial Assessment calculations.
First party top up	Where the cared for person has agreed to pay their own top up to enable them to receive care services which cost more than their personal budget
Financial Assessment	This looks at and takes into account the individual's financial circumstances of income, capital, assets and expenditure to work out the ability to afford to contribute towards the package of care and support services.
Personal Budget	The value of the cost to the Council of the package of care to meet an individual's care needs. It also includes the amount of the customer financially assessed contribution.
Provider	The organisation which is providing the care and support
Self Funding	Those customers who have sufficient income and assets to pay for their care support services without financial assistance from the Council and will therefore be making their own arrangements.
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 care home at a rate which is higher than the Council Personal Budget rates.

1 Introduction

1.1 Well Being Principle

1.1.1. The Council has a duty to promote the wellbeing of the individual, particularly when carrying out any care and support functions and making decisions in relation to them. The wellbeing principle underpins the whole of the Care Act and its associated regulations and guidance. It applies to adults, carers and, in some circumstances, to children in transition, their carers and to young carers. The wellbeing principle applies equally to people who do not have eligible needs if they come into contact with the care system. Commissioners of new services will also need to incorporate/reflect the wellbeing principle in new services which are developed and commissioned.

1.2 Definition of Well Being

- 1.2.1 The Care Act recognises that 'Wellbeing' is a broad concept and describes it as relating to the following nine areas in particular:
- 1.2.2 Personal dignity (including treatment of the individual with respect);
 - 1.2.3 Physical and mental health and emotional wellbeing;
 - 1.2.4 Protection from abuse and neglect;
 - 1.2.5 Control by the individual over day to day life (including over care and/or support provided and the way it is provided);

- 1.2.6 Participation in work, education, training or recreation;
- 1.2.7 Social and economic wellbeing;
- 1.2.8 Domestic, family and personal relationships;
- 1.2.9 Suitability of living accommodation;
- 1.2.10 The individual's contribution to society.

1.3 Promoting Well Being

- 1.3.1 Promoting wellbeing means actively seeking improvement in the aspects of wellbeing described above when carrying out a care and support function in relation to an individual. This applies at any stage of the process. It is not always about the Council directly meeting needs, but includes a focus on providing information and advice to delay and prevent needs from developing and support people to live as independently as possible for as long as possible.
- 1.3.2 There is no set approach. Promoting wellbeing will depend on the individual's needs, goals and wishes. The Council should consider each person's case on its own merits, based upon what the person wants to achieve and how the Council's actions will affect their wellbeing.
- 1.3.3 All the nine aspects of wellbeing are of equal importance. However it is likely that some aspects will be more relevant to one person than another. The Council should adopt a flexible person centred approach that focuses on those aspects that matter most to the person concerned.

1.4 Other Key Principles

- 1.4.1 In addition to the wellbeing principle, the Care Act sets out a number of other key principles which local authorities must have regard to when carrying out the same activities or functions

1.4.2

Key Principle	Interpretation from the Care Act Guidance
The importance of beginning with the assumption that the individual is best placed to judge the individual's wellbeing;	Building on the principles of the Mental Capacity Act, the local authority should assume that the person themselves knows best their own outcomes, goals and wellbeing and assumptions should not be made.
The individual's views, wishes, feelings and beliefs;	Considering the person's views and wishes is critical to a person-centred system. Where particular views, feelings or beliefs (including religious beliefs) impact on the choices that a person may wish to make about their care, these should be taken into account. This is especially important where a person has expressed views

	in the past, but no longer has capacity to make decisions themselves
The importance of preventing or delaying the development of needs for care and support and the importance of reducing needs that already exist	At every interaction with a person, the Council should consider whether or how the person's needs could be reduced or other needs could be delayed from arising. Effective interventions at the right time can stop needs from escalating, and help people maintain their independence for longer
The need to ensure that decisions are made having regard to all the individual's circumstances	Decisions should not be based only on their age, appearance, any condition they have or aspects of behaviour which might lead to unjustified assumptions. Local authorities should not make judgments based on preconceptions about the person's circumstances, but should in every case work to understand their individual needs and goals
The importance of the individual participating as fully as possible	By being provided with the information and support necessary to enable the individual to participate. Care and support should be personal, and local authorities should not make decisions from which the person is excluded. If required we will arrange Independent Advocacy for you.
The importance of achieving a balance between the individual's wellbeing and that of any friends or relatives who are involved in caring for the individual	People should be considered in the context of their families and support networks, not just as isolated individuals with needs. Local authorities should take into account the impact of an individual's need on those who support them, and take steps to help others access information or support
The need to protect people from abuse and neglect	In any activity which a local authority undertakes, it should consider how to ensure that the person is and remains protected from abuse or neglect. This is not confined only to safeguarding issues, but should be a general principle applied in every case
The need to ensure that any restriction on the individual's rights or freedom of action that is involved in the exercise of the function is kept to the minimum necessary for	Where the local authority has to take actions which restrict rights or freedoms, they should ensure that the course followed is the least restrictive necessary. If required we will arrange Independent Advocacy for you.

- 1.4.3 Neither these principles nor the requirement to promote wellbeing require the Council to make a specific decision or undertake a particular action. The steps the Council should take will depend entirely on the circumstances of each case, having regard to these principles, for the purpose of setting common expectations for how the Council should approach and engage with people

1.5 Equality and Diversity

- 1.5.1 The **Equality Act 2010** seeks equal opportunities in the workplace and in wider society; and prohibits discrimination on the grounds of any of the following protected characteristics in relation to goods, services and employee protection;

1.5.2 Age

1.5.3 Disability

1.5.4 Gender Reassignment

1.5.5 Race

1.5.6 Pregnancy/maternity

1.5.7 Marriage/civil partnership

1.5.8 Religion and Belief

1.5.9 Sexual orientation

1.5.10 Gender

- 1.5.11 The Equality Act aims, and in particular its General Duties, applies across the council and to any organisation delivering services on a contractual, commissioned or voluntary basis on behalf of the Council. Although our legal duties relate to equality, our approach in Bury extends to the promotion of community cohesion and social inclusion. Our commitment to social justice goes beyond anti-discrimination to include fairness of treatment, dignity and respect.

2.0 Scope

- 2.1 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 or a specific type of accommodation such as extra care housing.
- 2.2 This policy does not include Care at Home services or the services arranged using a Direct Payment Personal budget.

3.0 Background

- 3.1 When a person is entering residential accommodation the Council will carry out a care needs assessment which will allocate a personal budget. The person will also receive a financial assessment to take account of their ability to contribute towards the cost of their services based on their income, savings and any other capital. This is usually known as the Client Contribution. Reference should be made to the Bury Council Charging and Financial Assessment Policy document for further information and guidance.
- 3.2 When a person chooses care and support in residential accommodation 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 top up or additional payment.
- 3.3 The Care Act 2014, Care and Support Statutory Guidance at Annex A, Choice of Accommodation and Additional Payments provides the legal framework in relation to the top up charges and additional payments.
- 3.4 The Council must also have regard to Chapter 4 of the Care and Support Statutory Guidance - Market Shaping and Commissioning of Adult Care and Support and Chapter 11 -Personal Budgets.

4.0 Purpose

- 4.2 The purpose of the Residential Care Top-up Policy is to explain the boundaries and process applied to agree a top up or additional payment when an individual chooses care and support which is more expensive than their personal budget.

5.0 Customer choice and Additional Payments

- 5.1 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.
- 5.2 The Council should ensure that at least one option is available that is affordable within a person's personal budget and meets their needs. 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 and the person would then contribute towards this personal budget according to the financial assessment.

- 5.3 A person may choose a care home setting to provide their care and support that is located out of the Bury Council area. In these circumstances Bury Council will calculate the personal budget to meet their needs at the Local Council rate of the area they will be moving to.
- 5.4 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.
- 5.5 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.
- 5.6 Where more expensive care has been arranged the Council will need to ensure that a Third Party is able and willing to meet the additional costs, and that they can maintain these additional costs for the required duration of the stay. See section 7 of this Policy for further information on this.
- 5.7 The person in need of care and support is known as the First Party and they are only able to meet the additional cost in certain circumstances as detailed in section 6 of this Policy.
- 5.8 Where the person in need of care and support is asked to contribute towards the cost of their care following a financial assessment calculation, they must not be asked to pay more than their assessed contribution shows they can afford. At no point can the Third Party use the cared for person's assets or income to fund top up payments.
- 5.9 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 to ensure that they understand the terms and conditions, including considering independent financial information and advice. This should include for example that a Third Party, or in certain circumstances the person needing care and support (First Party), will need to meet the additional cost of the care home for the full duration of the stay and should the additional cost not be met they may be required to move to an alternative care home.
- 5.10 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 stay, 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;

- Where the payments are to be made; This will correspond to how the person pays their own contribution, ie either to the Council or direct to the provider.
- 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.

5.11 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.

6.0 First Party Top ups

6.1 The person whose needs are to be met by the residential accommodation may choose to make a top-up payment themselves but this is only allowed in the following circumstances:

- Where they own a property and the value has been disregarded from the Financial Assessment for an initial 12 week period.
- From week 13 – only where they have a Deferred Payment Agreement in place with the Council. They can apply for the top up to be included in the deferred payment, providing there is sufficient equity within the property value to cover the following;
 - The deferred payment loan for the difference between the current financial assessment and the personal budget for three years,
 - The top up payment for three years,
 - The upper capital pre-set limit of £23,250 (2025/26 rate)
 - Estimated 10% selling costs.
- From savings below the lower capital pre-set limit of £14,250 (2025/26 rate) that has been disregarded from the Financial Assessment.
- From any other income that has been disregarded from the Financial Assessment.
- When they are receiving residential accommodation funded under the Mental Health Act, Section 117 Aftercare Services.

6.2 The person may not choose to make a top-up payment themselves in the following circumstances;

- From the statutory weekly personal allowance.
- From any savings between the upper and lower capital pre-set limits.

7.0 Third Party Top Ups

- 7.1 A person who has decided to choose more expensive care and support can use a third party to pay the additional costs which are more than the price the Council would normally pay. This is called a third party top up.
- 7.2 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.
- 7.3 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 and can be liable for any default on payment.
- 7.4 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.
- 7.5 The Third Party must be in a position to maintain the top up payments for the duration of the stay and cannot use the cared for persons savings or income to fund the top up payments.
- 7.6 The third party will be required to provide personal financial information in order for the Council to be satisfied that the Third Party can meet the terms of the Agreement.
- 7.7 Where the top up required is more than £50.00 per week, the third party will need to provide information/evidence that they have savings to the value of at least three years' worth of the required top up amount, **or** be able to demonstrate that they have weekly income that exceeds their weekly expenditure by the required top up amount.

8.0 Agreeing top up payments

- 8.1 The Council cannot confirm any Top-up Agreement until the following has been completed:
- It has been confirmed that the person is not self-funding subject to the full financial assessment taking place.
 - An assessment of the Third Party's financial circumstances to check that they are willing and able to maintain the top up for at least three years.
 - Where a First Party top up is required to be added to a Deferred Payment Agreement, a financial assessment based on available equity in the property value to check the ability to pay the top up for at least three years.
 - A Top-up Agreement signed by the Third or First Party, The Council and the Care Provider.
- 8.2 Where the Council is not able to agree to the requested top up payment, the provider should be approached to see if they are able to agree a reduction in the top up to a lower affordable level.

- 8.3 If it is not possible to reach an agreement the Council will not agree to arrange the care and support in the preferred accommodation. The Council will advise why it has not been able to meet the choice and will attempt to offer alternative accommodation.

9.0 Reviewing Agreements

- 9.1 Agreements will 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.
- 9.2 A change in the cared for persons financial circumstances resulting in a new financial assessment contribution will not result in an adjustment to the top up payment.
- 9.3 Where the person making the top up payment has a change in their circumstances which reduces the ability to maintain the top up, the Council should be alerted as soon as possible of such changes. An attempt should be made to negotiate with the residential accommodation a reduction in the top up to an affordable rate. Where this is not possible alternative accommodation will be sought after a new care needs assessment.
- 9.4 Where top up payments cease or become unaffordable the Council will seek to recover outstanding debts and has the power to make alternative arrangements subject to a care needs assessment. It may be necessary to move to alternative residential accommodation unless the home has any vacancies at the standard Council rate.

10: Declaration of Information.

- 10.1 When asked to provide financial information the customer or their representative must give full and accurate information. It is an offence to give false information or to withhold information with the intention of avoiding or reducing a liability to pay for services that he/she would otherwise have to pay for. Bury Council will prosecute any person found to have withheld information or who has given false information. Those who hold a Power of Attorney or complete the form on behalf of a relative may also be prosecuted in such circumstances.

11: National Fraud Initiative.

- 11.1 Bury Council is under a duty to protect the public funds it administers and may use the customer personal information received for the prevention and detection of fraud. Key personal identifiers may be shared with other organisations responsible for auditing and administering public funds.

12: General Data Protection Regulation (GDPR).

- 12.1 Bury Council is committed to ensuring that we are transparent about the ways in which we use personal information and that we have the right controls in place to ensure it is used responsibly and is kept from inappropriate access, theft or misuse.

For further information please see

<https://www.bury.gov.uk/index.aspx?articleid=14237>

13: Useful Links.

The following link can be used to access the Department of Health Care Act, Care and Support Statutory Guidance.

<https://www.gov.uk/government/publications/care-act-statutory-guidance>

14.0 Equality Analysis



Equality Analysis
Residential Care Top

15.0 Appendix 1 – Calculation Examples

The rates quoted are for illustration purposes only and do not reflect the actual amounts due.

15.1 Third Party Top-up.

This example shows how the payments due to the Care Home Provider might be arranged between the Council, the cared for person and the identified Third Party.

Client Contribution financial assessment to be paid by the cared for person from income and savings.	£200.00 per week
Bury Council share of the residential accommodation costs.	£400.00.00 per week
Sub total (ie. the usual weekly cost of the residential accommodation)	£600.00 per week
The Care Home requires a top-up of the weekly cost to be paid by a Third Party.	£60.00 per week
Total	£660.00 per week

In this example;

- the Third Party will pay a top-up fee of £60.00 per week,
- which is £3120.00 per year,
- and is £9360.00 for the minimum 3 year period.

15.2 First Part Top-up.

This example shows how the payments due to the Care Home Provider might be arranged between the Council and the cared for person when they meet the criteria for the Deferred Payments Scheme (DPS) and it has been agreed that they can be the First Party to pay the Top-up amount.

Client Contribution financial assessment to be paid by the cared for person from income and savings.	£200.00 per week
Bury Council Deferred Payments Scheme loan of the residential accommodation costs to be repaid.	£400.00 per week
The Care Home requires a top-up of the weekly cost. To be paid by the First Party (the cared for person).	£100.00 per week
Total	£700.00 per week

In this example;

- the First Party (cared for person) will pay a Top-up charge of £100.00 per week in addition to their Client Contribution.
- The Council will pay the DPS loan amount of £400.00 per week + the Top-up of £100.00 per week. A total of £500.00 per week.
- The DPS loan amount to be repaid would be £20,800.00 per year,
- which is £62,400.00 for the minimum 3 year period.
- The top-up element is £5,200.00 per year and is £15,600.00 for the minimum 3 year period.

16.0 Appendix 2 – Bury Third Party Top-up Agreement and Third Party Top-Up Application Form.



Blank Bury Third
Party Top-Up Agreeer



Blank Bury Third
Party Top-Up Applic

Contact us

For further information about the Residential Care Top-up Policy please contact:



Log on to:

www.theburydirectory.co.uk



Email us at:

Rescarepaymentsandqueries@bury.gov.uk



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