

## TOP UPS AND ADDITIONAL PAYMENTS IN CARE HOMES (WITH AND WITHOUT NURSING)

### 1. Background

In Birmingham the personal budget is usually determined by the cost of the placement identified through the Council's Flexible Contracting Arrangement. For older adult placements made in Birmingham, this will usually be the contract rate. For older adult placements made outside of the city, the personal budget will usually be determined by the host local authority rate.

The Council has a duty to ensure that the person has been offered a placement through the Flexible Contracting Arrangement without a top up.

Under the Care Act 2014, a person may choose a care home that is more expensive than the amount identified in the personal budget and may also choose to pay for additional services that are not part of their care needs.

Except in limited circumstances, top ups can only legally be made by a Third Party – usually a friend or relative. This is because the service user's income will already have been accounted for as part of their Financial Assessment under the Care Act.

Where a more expensive care home is chosen and a Third Party opts to pay a top-up, the Council should ensure that the person understands the full implications of their decision. The Local Authority 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.

The Council's aim is not to prevent top ups from being put in place, but rather to ensure we have discharged our statutory duties and that where additional payments are agreed, that all parties are clear on the agreement being reached and the service that will be provided.

### 2. What do we mean by a top up payment?

The term 'top up' is widely used to describe a number of different situations, some of which are covered by statutory guidance and some of which are not. The most common situations can be summarised as follows:

- An additional cost of providing preferred accommodation, over and above the amount in a person's personal budget, the payment of which allows a person to choose a provider whose fees cost more than the rate the Council expects to have to pay for meeting their care needs. This situation is covered by the Care Act Statutory Guidance and this is known as a **Third Party Top Up**.
- An additional charge for something that is not part of meeting the person's care and support needs as set out in the support plan. There is no defined list of these additional charges, however they include upgrades in accommodation or additional services and are widely referred to as 'wants' and not 'needs' and some examples are given below. This situation is not covered by the Care Act Statutory Guidance but the Council calls this a **Third Party Additional Payment**.

- A number of other top ups and payments are outlined in **Appendix 1** for completeness; however, these are only applicable in a very small number of cases.

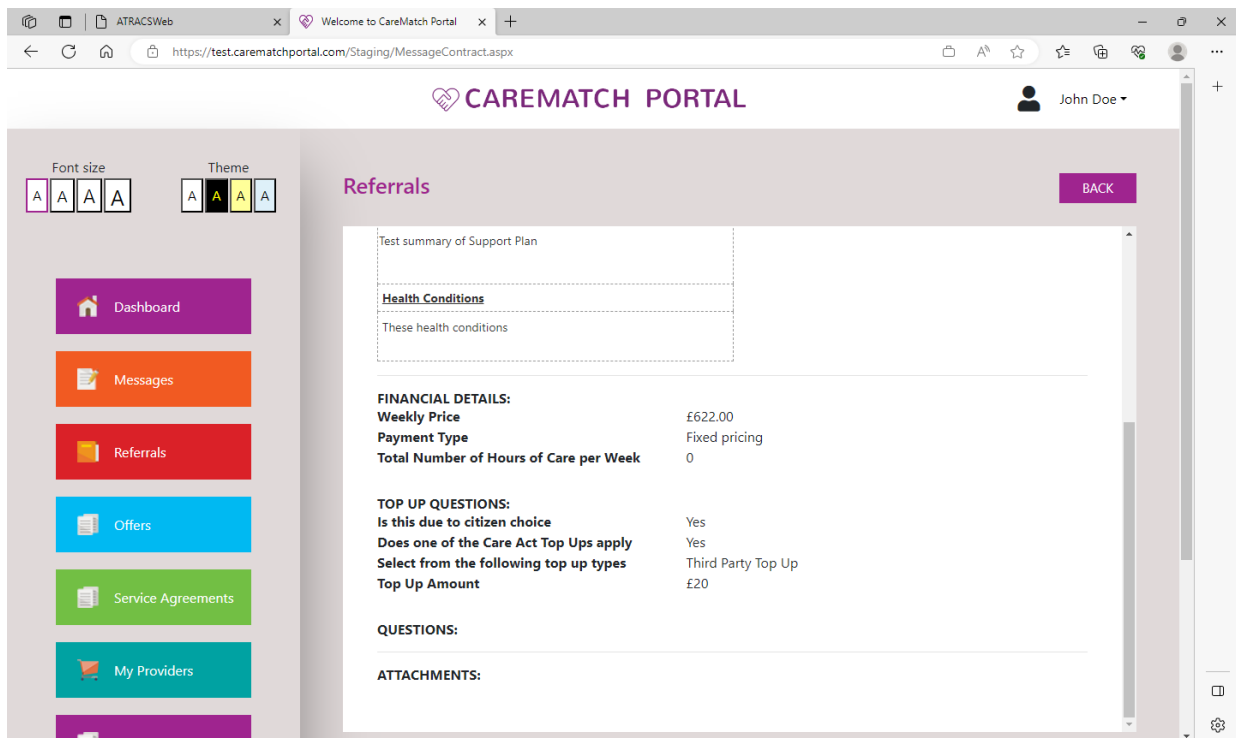
### 3. Third Party Top Ups

Where the service user chooses an alternative provider which is more expensive – a Third Party Top Up - the City Council **may** agree a placement under its Flexible Contracting Arrangement, which is subject to a Third Party Top up being entered into by a family member or representative of the service user. In this case, the Third Party will be responsible for paying the difference between the City Council’s identified fee and the fee for the accommodation selected by the service user and/or their representatives.

It is Birmingham City Council’s policy that top-ups should usually be paid directly to the provider, with the Council paying the remainder of the agreed fee. On occasion it may be necessary for the Council to take responsibility for paying the Third Party Top Up to the provider, in line with our statutory duties.

Where a care provider has made an offer through the CareMatch Portal (**that is not a direct allocation as a result of the citizens right to choose more expensive accommodation**), there should not be any Third Party Top Ups put in place. This is because by agreeing to the terms of the Council’s Flexible Contracting Arrangement you are agreeing to provide the care and support detailed in the support plan at the contract rate. For care providers outside of Birmingham, the contract rate will generally be at the host Local Authority rate. However, Third Party Additional Payments may be considered as set out below.

**Where a referral is being processed via the CareMatch Portal as a direct allocation due to citizen/family choice – a Third Party Top Up may be agreed.** Providers will be made aware of this on the CareMatch Portal referral - where this is known at the time the referral is created.



Provider who have made an offer relating to choice, will then see the Third Party Top Up on the CareMatch Portal Service Agreement as follows:

The screenshot shows the CareMatch Portal interface. The header includes the portal name and the user 'John Doe'. The left sidebar contains navigation options: Dashboard, Messages, Referrals, Offers, Service Agreements, My Providers, and Registrations. The main content area displays 'Service Agreement Details' with the following information:

- REFERRAL REFERENCE: REF-134219
- OFFER REFERENCE: RER-376530
- CONTRACT REFERENCE: FBN0602
- PROVIDER: Test Location (PRO-101595) PROVIDER EMAIL: hero@gmail.com
- PROVIDER TELEPHONE NUMBER: 456789123 OWNER: Test Provider (OWN-101734)
- OWNER CONTACT: 123456789 CITIZEN NUMBER: 11111
- CONTRACT: Care Homes 2023 SERVICE TYPE: RESIDENT L/T CLIENT
- SERVICE ELEMENT: STATUS: Complete
- FROM: Sue Webb DATE APPROVED: 10 July 2023
- DATE POSTED: 16:02 10 July 2023 START DATE: 14 July 2023
- END DATE: OFFER SUBMITTED: 15:32 10 July 2023
- SUPPLIER CONTACT: John Doe WEEKLY PRICE: £622.00
- RATE TYPE: Weekly PAYMENT TYPE: Fixed pricing
- SCORE: 90
- TOP UP QUESTIONS:
  - Is this due to citizen choice Yes Does one of the Care Act Top Ups apply Yes
  - Select from the following top up types Third Top Up Amount £20
  - Party Top Up

#### 4. Third Party Additional Payment

Third Party Additional Payments are for those services which the service user would like to receive in addition to the social care arranged by the Council. Services which a service user might want and which can be included within a Third Party Additional Payment (as long as they are not part of the service users care needs as set out in their Support Plan) **may** include the following:

- additional trips/transport away from the normal care home
- fitness facilities
- payment for a room with a private garden area or enhanced outside space – where a standard room is also available to the service user without an Additional Payment
- payment for a larger than standard room – where a standard room is also available to the service user without an Additional Payment
- payment for a room with balcony - – where a standard room is also available to the service user without an Additional Payment
- a private kitchen area
- beauty treatments and hairdressing services
- additional therapy treatments over and above that which the NHS normally provides to meet clinically defined needs free of charge
- Additional entertainment services and equipment that are not part of the care needs including cable TV, internet, etc
- Enhanced furnishings
- Telephone services within rooms (not related to call alarms or alert systems)
- Ensuite room - where a non ensuite room is also available to the service user without an Additional Payment
- Newspapers or other magazines or periodicals

For clarity the following cannot be deemed Third Party Additional Payments:

- Charges related to the overall quality rating of the service – the Council expects all providers will strive to deliver Gold or Silver rated care as a matter of course.

- Provision of enhanced staff ratios/more qualified staff – it is a requirement of both the CQC registration and the Council’s contract, that care providers ensure enough staff with the right skills are available.
- Food quality – the Council’s contract requires care providers to meet individual nutrition and hydration needs and meet Food Standards Agency food hygiene standards.
- Activities – it is a key requirement of both CQC and the Council’s contract, that meaningful activities are provided to residents in care homes.
- Rehab/Reablement services and associated equipment – where these are part of the Support Plan or available from the NHS, these cannot be charged for.

It is recognised that these are not exhaustive lists but are designed to guide providers when considering their own policies in line with good practice and the Council’s contract.

Care providers may be required to validate any Third Party Additional Payments and demonstrate that these are not being used to meet the costs of a service user’s eligible care and support needs.

### **5. What will the City Council pay for within the contract rate?**

It is not possible to define in generalised terms what elements or particular care/support/services the Council will fund and which it will not. The Council has set out a detailed Service Specification within its Flexible Contracting Arrangement which sets out a range of requirements that must be met within the contract fee. These are then personalised through the Support Plan which will identify the care and support needs of the individual. By its very nature, care and support delivered in care homes needs to be flexible and person-centred to meet changing needs - these will be different for each individual service user. Each service user’s case will require careful consideration by professional social workers regarding what is required to meet care and support needs. The estimated costs of meeting these care and support needs will be included in the service user’s Personal Budget.

### **6. What are care providers expected to do?**

The City Council is required to ensure that all service users are charged fairly for the care and support they receive. In order to comply with this requirement, providers need to operate all charges openly and transparently as follows:

- Wherever possible, an estimate of any costs shall be provided to the Third Party by the care provider, before any commitment to the additional service/cost is made.
- Care providers must have discussed, and if agreed, have a written and signed agreement that details services to meet any personal lifestyle choices (Third Party Additional Payments). These should be available for social workers and commissioners on request.
- Any proposed increase to a Third Party Additional Payment or Third Party Top Up should be reviewed between the care provider and the Third Party with a view to establishing whether the proposed increase is affordable to the contributor(s). The provider should, during the review, outline the associated costs which requires them to request an increase. For Third Party Top Ups, all parties to the Third Party Top Up Funding Agreement must be consulted.

- The care provider must ensure that they have a policy in place that clearly states how a Third Party Additional Payment arrangement will meet best practice guidance from the outset.
- Third Party Top Ups cannot be introduced part way through a placement that is funded by the Council, however Third Party Additional Payments may be agreed at any time, as long as the principles of openness and transparency above are met.

#### Paying for a top up

- The service user shall not be charged for any service that can be provided free of charge by the NHS or for anything else expressly stated in the Council's Flexible Contracting Arrangement.
- The Third Party shall normally be responsible for any agreed Third Party Top Up or Third Party Additional Payment, except as required by the Care Act Statutory Guidance.
- Third Party Top Ups / Third Party Additional Payments cannot be charged for Supported Living.
- Top ups will only be charged to the Third Party for the service user's actual period of residence in the care home. In situations where the Council is required to pay a notice period, the Council will pay its standard fee as set out in the Flexible Contracting Arrangement and no Third Party Additional Payments or Third Party Top Ups should be charged.
- If a Third Party funder defaults on a payment agreement for more than four weeks with the provider, the provider must immediately notify the Council. In such cases, the Provider and Council will use their best efforts to reach agreement as to the pursuit of the debt and/or other actions to take.

Where a citizen has chosen a more expensive accommodation, the Council will still require these care providers to join the Flexible Contracting Arrangement. This ensures a contract is in place, against which the Council can manage the service provided. However, where a Third Party Top Up is required to cover this more expensive accommodation, the the same principles of openness and transparency (set out above), should be applied in discussing and agreeing the Third Party Top Up. In these circumstances, the Council will process a referral to the provider as a direct allocation. In these circumstances, the Council, the care provider and the Third Party will be expected to enter into the Third Party Top Up Funding Agreement.

#### **7. What will the Council do?**

The Council will:

- review top up arrangements; whenever the resident's social care needs are reviewed; if the care provider is seeking an increase in the top up amount; and/or if there is a change in circumstances of the person paying the top up.
- provide citizens and their families or representatives, social workers, commissioners and care providers with clear and consistent guidance about top ups and how these operate in Birmingham.
- ensure that a Third Party Top Up Funding Agreement is signed (where appropriate) by all parties.
- ensure the person undertaking to pay a Third Party Top Up has signed a top up letter and that they are clear about their responsibilities.

## **8. Further guidance**

- The Competition and Market's Authority (CMA) has published advice relating to charges for service users in care homes. The advice sets out what the CMA considers care homes should do to comply with consumer law, including:
- Upfront information – what information you should provide to prospective residents and their representatives, and when and how you should do so.
- Treating residents fairly – what you should do to ensure that your contract terms and the way you treat residents and their representatives are fair under consumer law.
- Quality of service – how to comply with your obligation to perform your services to residents with reasonable care and skill.
- Complaints handling – what you should do to ensure that your complaints handling procedure is easy to find, easy to use and fair.

The advice may be helpful in developing your own policies and is available at:

[Care homes guidance \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/guidance/external-consultation/open-consultation/2023/07/17/care-homes-guidance)

**Last reviewed: 17/07/23**

## Appendix 1

There are a number of financial arrangements that may be referred to as top-ups or additional payments. The ones where the statutory guidance applies are described below.

- **Third Party Top Up.** This is where a person/s that are not the citizen in receipt of care and support, have agreed to pay an additional amount for care and support as described in the support plan.
- **First Party Top Up.** This is where the citizen is paying an additional amount for their chosen accommodation. This is only relevant where the citizen has entered into a 12-week property disregard period or the citizen's accommodation is being provided under section 117 of the Mental Health Act 1983 as aftercare.
- **Deferred Payment Amount.** This is where the citizen has a property and the Council puts a charge against the property for the cost of their care. The citizen may choose a more expensive service and in which case, the Council will pay this to the care provider on the citizen's behalf, until such time as there is no further equity. However, this is still subject to consideration of the sustainability of this additional amount.

Additional payments **not** covered by the Care Act guidance.

- **Third Party Additional Payment.** This is where a person/s that are not the citizen in receipt of care and support, have agreed to pay an additional amount for extra services that are not part of the support plan.