Adult social care top up policy

Top up policy forms and agreement

14/01/2020

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# 1. Purpose

This policy sets out the approach to top-ups in Tower Hamlets adult social care. The focus of the policy is on top-ups to personal budgets used for accommodation-based support.

# 2. Scope

2.1 This policy will be applied by all staff providing support under the provisions of the Care Act 2014 on behalf of the London Borough of Tower Hamlets. This includes staff working in the Community Learning Disability Service and Community Mental Health Teams (jointly managed by the local authority and East London NHS Foundation Trust).

2.2 This policy applies to all forms of support that are included in a care package following a Care Act 2014 social care assessment. However, the focus of this this policy is accommodation-based support that includes:

- Residential and nursing care home placements

- Supported housing

- Section 117 aftercare accommodation

- Shared lives scheme accommodation**1** .

2.3 We would expect a top-up to a personal budget for other community-based support to apply to direct payments.

# 3. What is a top up?

3.1 A ‘top-up’ in adult social care is an additional cost incurred because an individual service user wishes to use a care and support service that costs more than the local authority would pay for such a type of care**2**.

3.2 The background to this is as follows:

* Following a social care assessment, a service user will be allocated a ‘personal budget**3**’ which sets out the cost we (i.e. the local authority) will pay for the care. The ‘Personal Budget and Direct Payment Policy’ and practice guidance in relation to usual cost sets out how this amount is calculated.
* Some or all the personal budget amount will be subject to a means-tested charge. This is explained in the ‘Charging and Deferred Payments Policy’.
* If a service user wishes to use a care and support service that costs more than their personal budget, the additional amount is called a ‘top-up’. This policy explains how top-ups are agreed, paid, changed and ended in Tower Hamlets.

## Case study

Mr B has a social care assessment, where it is determined that he has needs that the local authority must ensure are met. It is agreed that Mr B needs residential care. The cost of meeting these needs is calculated as £600 per week: This is Mr B’s personal budget. This amount is then subject to a means-tested charge.

Mr B is offered residential care home placements within his personal budget amount. Mr B prefers a care home that costs £700 per week. The difference – i.e. the additional £100 per week – is the ‘top-up’ amount.

More information on shared lives is available to view [here](https://www.towerhamlets.gov.uk/lgnl/health__social_care/Shared_Lives/Shared_Lives.aspx).

2 The definition of a top-up in 2014 Care Act statutory guidance is ‘*costs due to a local authority under Section 30 of the Care Act or costs for the provision of the type of care referred to in Section 34(3)(a) of the Care Act*’.

3 For the purposes of this policy, the term ‘personal budget’ includes the assessed cost of mental health after-care for people under Section 117

# 4. Agreeing a top up

4.1 We will provide information and advice on top-ups during social care assessments and during support planning**4** to enable people to make informed choices. This includes signposting service users and others to independent financial information and advice prior to entering into a top-up agreement.

4.2 A top-up will only be arranged when a service user has actively chosen a more expensive option than the option offered through the personal budget amount (or if this option has been identified as being in the service user’s best interests by the relevant third party – e.g. a family member or advocate).

4.3 Agreement from the local authority to setting up a top-up is subject to the conditions set out in this policy being met.

# 5. Paying a top up

5.1 Typically, we will pay the top-up amount to the service provider**5** and recoup this from an agreed third party or the service user. This is because when entering a contract to provide care in a setting that is more expensive than the amount identified in the personal budget, we are responsible for the total cost of that placement.

5.2 However, where all parties are agreed and there is a clear rationale for doing so, the service user or third party can pay the provider directly for the ‘top-up’. In these cases, we will still require an assurance that the top-up is affordable and review arrangements in line with section (6) of this policy.

5.3 Top-up paid by service users (also known as ‘first party top-ups’)

5.3.1 Care Act 2014 statutory guidance (Annex A, Section 39) states that:

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**6**
* Where they have a deferred payment agreement in place with the local authority.
* Where they are receiving accommodation provided under S117 for mental health aftercare7

5.3.1 Agreement based on the above criteria is dependent on the local authority being satisfied that any other liabilities can still be met and a safe standard of living can be maintained. A request for a top-up in addition to or as part of a deferred payment will be considered after due consideration of affordability, sustainability and available equity. Sections 9.53 of Care Act statutory guidance provides more detail on this.

5.3.2 The Top-Up Agreement will set out how top-ups will be paid by the service user. The two main methods of payment to the local authority are:

- For the cost of the top-up to be deferred as part of a deferred payment agreement (please see the Adult Social Care Charging Policy for more details on this).

- For the top-up charge to be paid to the local authority. If the service user is paying an assessed contribution towards the cost of their care in accordance with the Adult Social Care Charging policy, this amount will be added to the invoice.

5.3.3 Providing these conditions are met, the service user or a third party with appropriate authority (e.g. relevant Power of Attorney or Court of Protection) must sign the Top-Up agreement to confirm they are willing and able to meet the difference in cost and will continue to do so whilst the care agreed in the support plan is provided.

5.3.4 A signed Top-Up Agreement is a prerequisite to charging a top-up. Payments are administered and managed by the Financial Assessment service.

5.4 Top-up paid by a third party

5.4.1 Top-ups are more typically paid by a third party, such as a service user’s family member. These payments can made directly from the third party to the local authority, or they can be paid by the service user on their behalf (or they can be paid directly to the provider in certain circumstances – please see Section 5.2).

5.4.2 Prior to signing the agreement, the person paying the top-up will have to satisfy the local authority that they can afford the weekly top up amount. To do this, a financial circumstances form will need to be completed to provide details of assets and liabilities, as well as income and expenditure. If the person paying the top-up cannot satisfy the local authority that they will be able to afford the top up for the likely duration of the care package or are unwilling to disclose financial information, the local authority will not agree to the top-up and will work with the service user and their representative or family members on alternative care arrangements.

5.4.3 Third parties must sign the Top-Up agreement to confirm they are willing and able to meet the difference in cost and will continue to do so whilst the care agreed in the support plan is provided.

5.4.4 A signed Top-Up Agreement is a prerequisite to charging a top-up. Payments are administered and managed by the Financial Assessment service.

5.5 Agreements with service providers

5.5.1 The person paying the top-up should be aware that the top-up amount may vary as providers review their fee levels. Where possible, we will seek to negotiate any future price rises with the provider at the time of entering a contract. This can help provide clarity for everyone involved and help ensure that the top up remains affordable.

4 Support planning is the process following a social care assessment, whereby the services and support the person wishes to put into place to meet their needs is discussed and agreed.

5 2014 Care Act statutory guidance states: ‘*Local authorities should…maintain an overview of all ‘top-up’ agreements and should deter arrangements for ‘top-up’ payments to be paid directly to a provider*’.

6 The ’12 week disregard’ is as follows: Where a person has been assessed as having eligible needs for residential or nursing care and owns a property, during the first 12 weeks stay in residential care, the capital value of the property (i.e. the value of the house) is disregarded. This will allow time for the service user to decide whether they will choose to sell, rent or enter into a Deferred Payment Agreement with the local authority. Please see the Charging and Deferred Payments policy for more detail.  
7 Social care provided through S117 aftercare is exempt from charging. Please see the Charging Policy for more details.

# 6. Reviewing and changing top-ups

6.1 The top-up agreement will be reviewed annually, usually as part of the standard annual financial review carried out by the Financial Assessment team.

6.2 Reviews can also be arranged as a result of a change in circumstances. Service users and third parties will be advised to inform the local authority as soon as possible of any change in circumstances or any likely changes in the near future. Reviews will be carried out in a timely manner following a request for a review.

6.3 Personal budget amounts are reviewed regularly as part of annual social care reviews and may change to ensure the amount is still sufficient to meet eligible needs. This may or may not impact on the top-up amount.

6.4 Any price rises will also be considered by the local authority as part the annual care fees uplift process. We cannot guarantee that the service provider will increase its costs at the same rate and this may affect the level of the top up payment.

6.5 If a review results in an assessment that the top-up is no longer affordable, the local authority will work with the service user and their representative or family members to agree the next steps. This could result in the Top-Up Agreement being discontinued.

# 7. Missed payments

7.1 If top-up payments are not made in line with the Top-Up Agreement, the first stage will be for the Financial Assessment or Social Care teams to contact the service user and/or third party to understand the reasons behind this. A social care review or reassessment and/or a financial reassessment will be offered if there has been a change in circumstances. Information and support to access financial advice services will be offered where appropriate.

7.2 For services where we are paying the top-up to the service provider, we are liable for any missing top-up payments until the amount has been recovered or until alternative arrangements have been made.

7.3 If payment issues are not resolved, we will carry out a review and if necessary, we will make alternative support arrangements that can meet assessed needs within the personal budget amount.

7.4 We will take all appropriate and necessary steps to recover non-payments, in line with our Debt Recovery policies and procedures.

# 8. Ending a top-up

8.1 The top-up arrangement can be discontinued by the local authority if the terms of the Top-Up Agreement are not met or at the request of the service user or third party.

8.2 The likely implication of ending a top-up arrangement is that alternative support arrangements will need to be put in place within the personal budget amount, therefore the decision will be carefully talked through with the service user and third party before the top-up is ended.

8.3 In the event of the failure by the person making the top up to pay the agreed amount in full at any time, we can issue four weeks’ notice to withdraw the service user from their support provider / accommodation and place them in alternative provision that is affordable within the amount identified in the cared for person’s personal budget.

# 9. Top ups not agreed with the local authority

9.1 These are not permitted. The Council will not become liable for any fees that have not been agreed with us. All fees care and support fees must be included in the contract agreed between the Council and the care provider (where on exists).

9.2 If a service user or third party is asked to pay any other fee directly to a service provider, this will be investigated by the adult social care brokerage service.

**TOP UP AGREEMENT (ADULT SOCIAL CARE)**

THIS AGREEMENT is made on the**[enter Date]** between the **London Borough of Tower Hamlets, 5 Clove Crescent, London, E14 2BG** of the first part

And of       (Name and address of Provider)

(herein after referred to as “the Contractor”) of the second part

And       (Name of person making the top up contribution)

of                               (Address of the person making the top up contribution)

***WHEREAS***

1. (Name of Resident)

of the London Borough of Tower Hamlets, **5 Clove Crescent, London, E14 2BG**

(herein after called “The Resident”) wishes to reside at a care home, supported living, shared lives; community based care; or any other setting called            (herein after called “*The Care*”) which is a Care being provided by the Contractor.

The Contractor is willing to provide the Resident with careunder and in accordance with the terms and conditions of the Contract (as herein after defined)

1. The Resident/a Third Party has agreed to pay the Council the top up contribution (as herein after defined)
2. In the light of the agreement of [the Resident/a Third Party] herein contained the Council is willing to nominate the Resident for occupation of the Care and Provision by the Contractor of Care under and in accordance with the terms of the Council's Care contract.

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

1. ***Definitions***

In this agreement the expression already defined shall have the meanings assigned thereto and the following expression shall unless the subject or context otherwise require have the following meanings.

***“The Contract”*** The Council's Care Contract signed by the Service Provider.

***“Third-Party”*** A persons or persons who have entered into an agreement to pay the top up contribution.

***“Resident”*** The person living in the accommodation [and who has entered into an agreement for the top up contribution.

***“Top Up Contribution”***. The difference between the Service Provider’s rate and the person’s personal budget

***“Service provider rate”***. The amount the provider charges.

***“Personal budget”***. The cost to the local authority of meeting the needs identified in the care plan.

**Agreement**

The person making the top up contribution agrees to pay the Sum of           being the difference between the Service Provider's rate (which at the date hereof is       per week) and the person’s personal budget. (which at the date hereof is      per week). This should be paid on a monthly basis unless alternative arrangements are agreed in writing.

The Council is responsible for notifying the person making the top up contribution of any changes to the charges outlined in this agreement.

***Terms otherwise used in this Agreement shall have the same meaning as in the Contract.***

1. The person making the top up hereby agrees to pay the Top Up Contribution to the Council in line with the Local authority’s payment schedule.
2. For the avoidance of doubt, it is hereby declared and agreed between the parties hereto as follows:
3. Arrangements will be reviewed in line with arrangements for reviewing the cared for person’s financial assessment and personal budget. These are reviewed following a change in circumstances or on an annual basis.
4. The person making the top up shall notify the Local Authority immediately of any changes in their circumstances which could affect their ability to make Top-Up Contributions. This may trigger a review of arrangements.
5. If there is an increase in the difference between the Service Provider's weekly rate and the Declared Price a review will take place to discuss how the increase will be shared (i.e. if both parties will pay the same percentage increase in their contributions).
6. The person making the top up shall forthwith make arrangements to pay the Top-Up Contribution by direct debit or such other arrangements as the Council may reasonably require.
7. In the event of the failure by the person making the top up to pay the Top Up Contributions in full at any time the council will have the right in 4-weeks’ notice to withdraw the Resident from occupation of the accommodation and place them in alternative accommodation that is affordable within the amount identified in the cared for person’s personal budget.
8. ***Without prejudice to its right under clause 3 (b) herein the Council agrees with the Contractor that it will use all reasonable endeavours to keep the Contractor advised of any substantial delay in or change in the pattern of payment of the top up payment by the person making the top up.***

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

|  |  |
| --- | --- |
| *Signed:* | *(Signature of Budget Holder)* |
| *………………………………………………..*  *On behalf of Local Authority* |  |
| *Signed:* | *(Signature of Contractor)* |
| *………………………………………………..*  *On behalf of:*  *…………………………………………* | *(name of provider )* |
| *Signed:*  *………………………………………………..* | *(Signature of person making the top up payment)* |

|  |
| --- |
| **Financial Circumstances Form**  **Top-Up Payments in Adult Social Care**  Please Return to:  ***London Borough of Tower Hamlets***  ***Financial Assessment Team***  ***Mulberry Place***  ***Clove Crescent***  ***London***  ***E14 2BG***  **Instructions For Completion**   1. Please complete this questionnaire in full 2. Please write legibly (print if necessary) 3. Please declare ALL income and expenditure 4. Please ensure all supporting documents is provided |

**Personal Details**

Title: Mr / Mrs / Ms / Miss First Name(s) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Surname\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date of Birth: \_\_\_\_/\_\_\_\_/\_\_\_\_\_\_\_\_ National Insurance No: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Full Home Address & Postcode: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Marital Status (please circle) Married / Single / Widowed / Divorced

**Dependants (children under the age of 18)**

Age Date of Birth Address

\_\_\_ \_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_ \_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_ \_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Employment**

Are you employed? Yes/No

What is your occupation? \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name of your Employer? \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Address of Employer? \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Income (net) from Employment?**1** £\_\_\_\_\_\_\_\_per \_\_\_\_\_\_\_\_Hourly/Weekly/Monthly (please circle)

If presently unemployed, please state the date you became unemployed.

\_\_ \_\_ / \_\_ \_\_ /\_\_ \_\_

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Your Income** | **How Often?**  **(Please Circle)** | **Company & Reference/ Account Number** | **Amount?** | **Documents seen by Officer** |
| State Retirement Pension\* | Week/ Fortnight/ Four Weeks |  | £ |  |
|  | Week/ Fortnight/ Four Weeks |  | £ |  |
|  | Week/ Fortnight/ Four Weeks |  | £ |  |
|  | Week/ Fortnight/ Four Weeks |  | £ |  |
|  | Week/ Fortnight/ Four Weeks |  | £ |  |

\*With all benefit payments, please enclose either the ‘**Letter of Award**’,(which will be returned) or a copy of a bank statement indicating the benefits received.

**Evidence of all expenses must be provided to & verified by the Officer conducting the**

**interview**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| ***Your Spending*** | ***How Often?***  ***(Please Circle)*** | ***Amount?*** | ***Company & Reference/ Account Number*** | ***Documents seen by Officer*** |
| *Rent & Ground Rent****1*** *(****less Housing Benefit****)* | *Week/Month* | *£* |  |  |
| *Council Tax* ***2***  *(****less CT Benefit****)* | *Week/Month* | *£* |  |  |
| *Mortgage repayment* | *Week/Month* | *£* |  |  |
| *Insurances* | *Week/Month* | *£* |  |  |
| *Food* | *Week/Month* | *£* |  |  |
| *Maintenance payments* | *Week/Month* | *£* |  |  |
| *Other* | *Week/Month* | *£* |  |  |

|  |  |  |  |
| --- | --- | --- | --- |
| **Your Debts** | **Company & Reference/ account number** | **Amount?** | **Documents seen by Officer** |
| Rent or Mortgage |  | £ |  |
| Council Tax |  | £ |  |
| Utility Bills |  | £ |  |
| Bank Loans |  | £ |  |
| Credit Cards/ Store Cards |  | £ |  |
| Other (Specify) ……………………. |  | £ |  |

Please provide proof of monies owing.

**Final Demands/ Court Orders**

Order details/instalments \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

|  |  |  |  |
| --- | --- | --- | --- |
| **Your Capital & Savings** | **Company & Reference/ account number** | **Amount?** | **Documents seen by Officer** |
| Savings Accounts |  | £ |  |
| Stocks/ Shares | Number held: | £ |  |
| Other (Specify) |  | £ |  |

Do you own property? YES / NO If Yes, please provide details of all the properties you own

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Your Property** | **Address & Post Code** | **Mortgage Balance** | **EstimatedMarket Value** | **Documents seen by Officer** |
| UK |  | £ | £ |  |
| UK |  | £ | £ |  |
| Overseas |  | £ | £ |  |

## DECLARATION

* As far as I know the information that I have given on this form is true and complete.
* If my financial circumstances change I must notify the Council immediately, e.g.: If I become unemployed or change jobs.
* I am willing to make payment of the top up to [***local authority name]*** for the length of stay in the accommodation. It is likely that there will be an increase in the top up each financial year but these will need to be reviewed and are not automatically to be taken on by one party. This will be discussed with the local authority following a review of the personal budget.
* I understand that if I default on the top-up payment the local authority may take debt recovery action against me. This may also result in the accommodation being terminated and alternative accommodation arranged.
* The top-up payment must not be derived from the person’s savings or capital unless it is a property that is subject to the 12-week disregard or the costs of care are being met through a deferred payment agreement.
* A top-up payment must be paid in addition to the assessed contribution.

**Print name**…………………………………………………

**Signed**…………………………………………………. **Dated**\_\_\_\_\_\_/\_\_\_\_\_\_/\_\_\_\_\_\_