

# Top Up Policy - Overview (Feb 2024)



## Introduction

When a person is entering a care home 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.

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”.

## Definitions

**Additional Cost** – This is when a person 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 amount specified in the personal budget.

**Authority Supplement** - This is when the Authority agrees to pay a top-up at a rate which is higher than the amount specified in the personal budget.

**First Party Top up** - In certain circumstances the Service User may choose to make a top-up payment themselves – this is usually in relation to owning a property and the deferred payments scheme. (explained more in the full policy)

## What is a Third Party Top Up?

A person who has decided to choose more expensive care and support than their personal budget allowance can use a third party to pay the additional costs which are more than the price the Council would ordinarily pay (detailed on the council website [here](#)). This is called a third party top up. A third party is usually a family member or a friend, but it can be anyone who agrees to meet the additional costs and meets the financial criteria. (Link when guidance written)

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 fund the top up between themselves. It does however mean that only one member of the family is responsible for making the top up payment, this person will be the one who will hold the liability for any default on payment.

A third party top up can only be used when the cost of care is more expensive than the agreed rate that the Local Authority would ordinarily pay for that particular care provider.

The Third Party must be able to maintain the top up payments for the duration of the Service User's stay in care and cannot use the cared for person's savings or income to fund the top up payments.

The third party will be required to provide personal financial information for the Council to be satisfied that the Third Party can meet the terms of the Agreement. Please refer to section 7 for further information.

Where the top up required is more than £50 per week, the third party will need to provide information/evidence that they have savings or disposable income 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.

### **Customer Choice and Additional Payments**

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

- 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, unless arrangements are in place for a top up agreement (see section 3);
- 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.

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 agreed 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. This would be subject to a review of the Care Act Assessment and a Best Interests assessment as required.

A person may choose a care home setting to provide their care and support that is located out of the Bolton Council area. In these circumstances Bolton Council will calculate the personal budget to meet their needs at the local council rate of the area they will be moving to. 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 is more expensive 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' and is the difference between the amount specified in the personal budget and the actual cost.

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 3 of this Policy for further information on this.

The Service User is known as the First Party and they are only able to meet the additional cost in certain circumstances as detailed in section 4 of this Policy.

Where the Service User 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.

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. For example, if additional costs cannot be met for the full duration of the stay, the Service User may be required to move to an alternative room within their chosen care home or alternative care home.

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: (please refer to section 3 for more information)

- 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, i.e. 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.

The top-up should be the difference between the actual costs of the chosen 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.

### **Top Up Agreement**

The Third or First Party Top Up Agreement is a contract between the Council and the First or Third Party. The First or Third Party agrees to pay the difference between the cost of the home and the Personal Budget.

Council's must have a signed agreement with the Third or First Party before the top up can be agreed. The Council must provide the person paying the 'top-up' with sufficient information and advice to ensure that they understand their options and choices, including considering the provision of independent financial information and advice.

The Third or First Party must agree to the conditions set out in the agreement before the Council can confirm the placement. The agreement makes it clear who is responsible for making the

payments to the home. This provides a safeguard for the Service User and provides the Council with reassurance that the Third or First Party has sufficient means to sustain the top up both now and in the future.

If a Third or First Party top-up is agreed, it may be possible for the fees to be paid directly to the care home, but the council remains legally responsible for the full costs.

### **Top Up Agreement Amount**

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.

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 an affordable level.

If it is not possible to reach an agreement the Council may 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.

### **What happens if the care home increases their fees?**

If a care home decides to increase its fees, it must first contact the Council to revise its contract which includes any Third Party Top Up agreements established by the council.

Any increase in fees may result in a need to review the Third Party Top Up.

Once a Third Party Top Up amount is agreed it may only increase by agreement between the Council, the Third Party and the Provider.

Care Homes can increase their fees each year. There are no guarantees that the Council will increase their weekly rate for residential care in line with fees charged by care homes. It is important for the person who is signing a Third or First Party Agreement to understand that the Council may not agree to increase the Service User's personal budget in line with the additional care home fees. As a result, the amount of the top up payment may increase.

A new Third party top up form will need completing and signing following an increase, at the statutory annual review. In addition affordability checks will take place to ensure the payee is able to sustain payment of the new amount .

### **What happens if the Third Party stops paying the Top Up?**

It is important that the Third or First Party contact the Council as soon as possible if they are having difficulty maintaining the arrangement. If payments cannot be maintained this may result in the resident having to be moved to an affordable accommodation within their personal budget cost. It may be necessary to move to alternative residential accommodation if the home does not have any vacancies at the rate that the Local Authority would ordinarily pay. This would be subject to a review of the Care Act Assessment and a Best Interests assessment as required.

The Council will try to negotiate on behalf of the resident to see if the provider will accept an amount within the personal budget to meet the care and support needs prior to any move taking place.

If the care home is unwilling to reduce the cost the Council will undertake a review of the person's care and support needs before considering moving the individual to an alternative care home. This will include consideration of whether such a move would be detrimental to the Service User's health or well-being. In such cases, the Council will consider the use of its discretion, on the specific facts of the individual resident concerned. A best interest decision in relation to any move would be needed if the service user is deemed to lack capacity.

The Council will carry out a reassessment of the resident's care and support needs at the earliest opportunity following notification, to ensure that the Personal Budget costs is sufficient to meet these needs. Until that review is undertaken it is the responsibility of the Third or First Party to continue to meet the payments.

When a Third or First Party fails to pay their top-up payment, the Council will pursue enforcement options to collect the amount owing in line with the Debt Collection policy.

The Council will be sensitive to any changes in a payee's circumstances which create any difficulty in continuing to make the agreed payments. The Council will demonstrate flexibility in its responses to any such changes in circumstances.