

## Adult Social Care

# Top Up Policy (1<sup>st</sup> and 3<sup>rd</sup> Party) Residential and Nursing Homes

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## Legislative Framework

This policy has been produced in accordance with the legal framework as set out in the following statutory documents:

- The Care Act 2014
- The Care and Support and Aftercare (Choice of Accommodation) Regulations 2014
- The Care and Support Statutory Guidance, Annex A: Choice of accommodation and additional payments
- The Human Rights Act 2008

## Definitions

**Personal Budget** – Is an agreed amount of money that is allocated to an individual by the council following an assessment of their care and support needs.

**Top Up Contribution** – This is the difference between the personal budget and the chosen service providers' rate.

**3<sup>rd</sup> Party** – A person or persons that have entered into an agreement to pay the 'top up contribution'.

**1<sup>st</sup> Party** – The individual who is placed in a care home may in specific circumstances make a 'top up' payment themselves, this is additional to their assessed contribution.

**Service Provider** - This is the Care Home providing the care and support required.

**Service Provider Rate** – The amount that the provider charges for the placement in their home. The service providers are able to set their own cost of the placement in their care home.

**Placement** – Residential or Nursing care home.

**Assessed Contribution** – This is the amount a person is asked to pay from income they receive such as state pension.

**NHS Funded Nursing Care (FNC) contribution** – This is the amount the NHS pays for the nursing care component of nursing home fees.

**S117** – Some people who have been detained under the Mental Health Act 1983 can get aftercare when they leave hospital. This is called section 117 aftercare.

## 1 Purpose of the 3<sup>rd</sup> Party Top Up policy

- 1.1 The purpose of this policy is to explain and make clear when, and how, Top Up payments can be made towards residential and nursing care placements.
- 1.2 To explain how Top Up payments can give a person freedom of choice when selecting a care home in which they wish to live.

## 2 When can a Top Up be made

- 2.1 Top Up payments can be made for a person receiving care and support in a residential or nursing care home. They should not be confused with the assessed contribution or with the NHS Funded Nursing Care (FNC) contribution.

## 3 What is a Top Up

- 3.1 A Top Up payment is the additional money needed to be paid by a 3<sup>rd</sup> party to meet the difference between the amount that the council will pay and the money the service provider requires for the placement.
- 3.2 The council must also ensure that at least one care home option is available that is affordable within the personal budget which will be determined following the Care Act assessment of the individual's care and support needs.
- 3.3 If a person wishes to choose a placement that costs more than the amount that has been specified in their personal budget for the provision of accommodation to meet their care and support needs, then the council will seek a Top Up payment.
- 3.4 In such cases, the council must arrange for the individual to be placed in the home of their choice provided a third party is willing and able to meet the additional costs.
- 3.5 In certain circumstances the person receiving the care and support may make the Top Up otherwise known as '1st party' Top Up (see section 8).
- 3.6 The council will need to ensure that the chosen accommodation is suitable to meet the persons assessed needs as identified in the care and support plan.

## 4 Who can make a Top Up

4.1 A Top Up can be made by a 3<sup>rd</sup> party, this may be a friend, a relative or family member, or any other person, such as a charitable organisation.

## 5 Conditions of the 3<sup>rd</sup> Party Top Up

5.1 The 3<sup>rd</sup> Party must be aware that they are committing to the payment of the Top Up for the full duration of the person's stay in a care home. At no point can the 3<sup>rd</sup> Party use the cared for person's assets or income including their personal expense allowance to cover the top up payments.

5.2 The council may refuse to enter into a 3<sup>rd</sup> party agreement if it is not satisfied that the 3<sup>rd</sup> party can meet the additional cost.

5.3 The council is unable to confirm a placement until the 3<sup>rd</sup> party has agreed to the terms and conditions of the 3<sup>rd</sup> party Top Up agreement by completing and signing the form.

5.4 It is the council's preference that the Top Up is paid to the care home directly.

5.5 If the 3<sup>rd</sup> Party can no longer continue to make the top up, the council must be informed of this as soon as possible, within at least 28 days.

5.6 The person paying the Top Up should be aware that the top-up amount may vary as service providers' review their fee and this may affect the level of the top up payment.

## 6 What happens if the 3<sup>rd</sup> party stops paying the Top Up

6.1 If a 3<sup>rd</sup> party Top Up is not paid, this is likely to result in the resident being moved to alternative accommodation within the resident's personal budget.

6.2 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

6.3 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.

- 6.4 The council will take action to recover any unpaid monies from the person that signed the 3rd third party agreement.
- 6.5 The provider must notify the council within 28 days of not being able to collect the Top Up and demonstrate that they have made a reasonable effort to collect from the 3rd party.
- 6.6 If the 3rd party is no longer able to pay the Top Up they can terminate the agreement by giving the council 4 weeks' notice. They should be aware that by doing this the council will undertake a review of the person's care and support needs and they are likely to be moved to an alternative care home.

## 7 What happens if the care home increases their fees

- 7.1 If a care home decides to increase its fees, it must first contact the council to revise its contract which includes any 3<sup>rd</sup> Party Top Up agreements established by the council.
- 7.2 Any increase in fees may result in a need to review the 3<sup>rd</sup> Party Top Up. There is no guarantee that an increase in the provider fees will automatically be shared evenly between the council and 3rd party, should the provider's costs rise more quickly than the amount the council would have increased the individual's personal budget.
- 7.3 The 3rd Party Top Up amount may only increase by agreement between the council and the 3rd party.

## 8 What is a 1<sup>st</sup> Party Top Up

A 1st Party Top Up is made by the person themselves, they can only do this in specific circumstances.

- 8.1 It may be an option where the person owns their own property and is subject to a 12-week property disregard (See [Deferred Payment Policy](#)).
- 8.1.1 This is designed to give breathing space to prepare the property for sale or decide whether the person wants to sell the property or enter into a deferred payment agreement ([See Deferred Payment Policy](#)).
- 8.2 The Top Up may be paid from the person's disregarded income or savings (savings below the lower capital limit) during this period.

- 8.2.1 The 1st Party Top Up would be in addition to the person's assessed contribution for the 12 weeks and a top up agreement would need to be signed.

### Deferred Payment Scheme

- 8.3 If the person has not sold their property or chosen not to sell after the 12-week property disregard period they may be eligible to join the council's Deferred Payment Scheme. [Deferred payment scheme – Paying for residential and nursing home care – Newham Council](#)
- 8.4 If accepted onto the scheme, the person may use the equity in their property to accrue the top up amount as well as the capital element of their contribution.
- 8.5 Once accepted onto the Deferred Payment Scheme, the council will pay the top-up payments directly to the provider, and will be added to the accrued debt, until the property is sold.
- 8.6 The council will recover the total amount loaned to the individual to cover their capital element and top-up charges (See [Deferred Payment Policy](#)).
- 8.7 Where they are under S117 for mental health after care and have been placed in a residential care home they can also fund any top up payment.

## 9 Complaints

If individuals are unhappy with the process, their assessment or care and support plan, we would like to hear about it as soon as possible. We recommend they speak to an Adult Social Care member of staff in the first instance to try and resolve any concerns.

If you feel that the concerns have not been addressed then a complaint can be made by way of the council's usual complaint process which can be found at the link below.

<https://www.newham.gov.uk/contact-information/complaints-process>

### Independent Advice

The council recommends that you take independent legal advice before entering into any binding agreements. Some independent financial advisors provide advice on general areas of financial management including for example, savings and pensions. Others may specialise in aspects of financial management that relate to the meeting of your needs for care and support including paying for care. These are sometimes

called 'specialist care fees advisers'. When choosing an adviser, you will want to be sure:

- They are qualified and experienced in the type of advice you need
- How the advice is paid for (e.g. you might pay the adviser, they might receive commission, or a mix of the two)
- What the cost is and what's included in the cost (many advisers offer the first session for free)
- That you fully understand the terms of any agreement with the adviser.

The Money Advice Service and Money Saving Expert provide helpful advice on things like:

- Choosing a financial adviser
- Questions to ask a financial adviser
- How much a financial adviser costs



# 10 Flow chart - When might a 3<sup>rd</sup> Party Top might apply

