

REPORT TO: Health Policy & Performance Board

DATE: 12th January 2016

REPORTING OFFICER: Director of Adult Social Services

PORTFOLIO: Health & Wellbeing

SUBJECT: Additional Payments (for accommodation) –
Top ups

WARD(S) Borough-wide

1.0 PURPOSE OF THE REPORT

1.1 To outline the circumstances around 'Additional Payments' (sometimes known as Top-Ups) made by people who choose to pay extra for an enhancement to their home accommodation. Such additional payments can be made by individuals whose care home costs are partially or totally supported by the council, or who are self-funders with Halton arranging their social care.

2.0 RECOMMENDATION

2.1 RECOMMENDED: That the Board:

- i) Agree the contents of the report.

3.0 SUPPORTING INFORMATION

3.1 Under the Care Act 2014 an individual can choose care home accommodation best suited to their needs. This may be more expensive than the 'going rate' for the type of accommodation that Halton has negotiated with the provider for a person with such needs. In such cases, a 3rd party, usually a nominated family member, will agree to pay the additional amount the provider is asking. Dealing with these 'additional payments', monitoring them and agreeing liability when the 3rd party can no longer continue to make such payments is what the policy sets out.

3.2 Prior to the Care Act, those who had the financial resources to pay for their own social care (self-funders) typically communicated entirely with their provider of choice. If they opted for an improvement on their current accommodation which was more expensive than initially arranged, then a 3rd party would agree to pay any additional amount required. This would be a private agreement between the 3rd person and the provider, Halton was not involved.

3.3 For those who were part-funded or wholly funded by Halton, the person or

their family would choose an appropriate care home from a number of affordable options. The provider would enter into a contract with Halton to provide care at the rate specified and on Halton's terms and conditions.

- 3.4 However, if the person or their family selected a provider that was more expensive than their funding entitlement from HBC allowed, or perhaps selected an upgrade to a slightly bigger room, then they would arrange to pay the extra separately to the provider as an additional payment. This would be a separate agreement between the 3rd party who was paying the extra amount and the provider. Halton was not involved, as this was viewed as part of the person's independence and freedom to choose his/her own living accommodation.
- 3.5 Because responsibility for top-ups has historically been between the 3rd party and the provider, Halton has never previously required an Additional Payments policy. However, in the light of the changes stemming from the Care Act and advice from Halton's legal department, this approach is no longer regarded as best practice. It could result in a greater risk of litigation in situations where the 3rd party is no longer able to maintain payments. The Act recommends that each LA should have a level of oversight of the Top-Up payments between 3rd party and provider.
- 3.6 The most appropriate way to achieve this is to have a policy and a tripartite agreement which clearly states that liability lies with the 3rd party if Top-Up payments can no longer be met. Failure to do so could result in prolonged and expensive legal cases involving not only the provider, but also the 3rd party or the person in need of care.
- 3.7 In addition, clearly identifying the 3rd party as being solely liable for any additional payments will indemnify the Council against unnecessary legal costs.
- 3.8 Advantages:
 - If the agreement was between the 3rd party and the provider and the 3rd party failed to maintain payments for whatever reason, then depending upon the provider's accounting system it could be weeks before the deficit was noticed. In the absence of a contract clearly stating that liability lies with the 3rd party, the provider could make a claim for the shortfall off the council and this could have accumulated to a considerable sum. Having a tri-partite agreement (HBC, 3rd party and Provider) which clearly states that the 3rd party is liable for all Additional payments would be a better approach;
 - Further, if the 3rd party notify the council at an early stage that they are experiencing difficulty making the extra payment then HBC could then take appropriate steps to investigate the problem and offer financial advice. Adopting this approach gives Halton a level of oversight that would enable any 3rd party financial difficulties to be spotted early and acted upon;

- The Care Act Guidance recommends that although not a duty, it is nonetheless best practice for a Local Authority to monitor and assist where possible by offering such financial information and advice;

3.9 According to estimates, of the number of self-funders in Halton 207 receive care and support at home and 300 are in residential or nursing homes. It is possible there could be a significant increase in the number of individuals choosing accommodation where an additional payment is required. Research carried out by Age UK in 2013 found that around 30% of care home residents in England were expected to supplement the cost of their stay by making additional payments (often as much as an extra £140 per week) through a 3rd party.

3.10 This policy recommends that as best practice, a 3-way agreement be drawn between the 3rd party, the provider and HBC. This agreement stresses that liability for payment of the additional amount lies with the 3rd party. The council will be responsible for paying agreed standard fee that it has negotiated with the provider and the 3rd party is responsible for making extra payments direct to the Provider. In the event of the 3rd party having financial difficulty making such payments, they must inform HBC as soon as possible, so that advice and assistance can be provided.

4.0 POLICY IMPLICATIONS

This is a new policy

5.0 FINANCIAL/ RESOURCE IMPLICATIONS

5.1 None identified as the responsibility for payment will be on the third party.

6.0 IMPLICATIONS FOR THE COUNCIL'S PRIORITIES

6.1 Children and Young People in Halton

There are no implications for this priority.

6.2 Employment, Learning & Skills in Halton

There are no implications for this priority.

6.3 A Healthy Halton

There are no implications for this priority.

6.4 A Safer Halton

There are no implications for this priority.

6.5 Halton's Urban Renewal

There are no implications for this priority.

7.0 RISK ANALYSIS

7.1 Where the agreement has been solely between the 3rd party and the provider then should payments fail to be made, it is quite possible that the provider depending upon their accounting system may not notice the default for some weeks or months. In the absence of a tripartite agreement they could make claim off the LA under the assumption the LA was liable for payments. This could be a sizeable accumulated amount and demonstrates the potential financial risk the LA could be faced with in the absence of an agreement.

7.2 Conversely, an agreement which clearly states that liability will lie with the 3rd party in the event of failure to maintain payments would significantly reduce the likelihood of legal action against the LA by other signatories to the contract. This would also enable the LA to take action to retrieve payment and if necessary use the legal system to force the 3rd party to pay.

8.0 EQUALITY AND DIVERSITY ISSUES

8.1 There are no Equality and Diversity implications arising as a result of the proposed action.

9.0 LIST OF BACKGROUND PAPERS UNDER SECTION 100D OF THE LOCAL GOVERNMENT ACT 1972

The Care Act – Additional Payments for Accommodation, Policy, Procedure and Practice, HBC, April 2015.