



**The Care Act**  
**Additional Payments for Accommodation**  
**In Residential Care**  
**(Top-Up Fees)**

**Policy, Procedure and Practice**

**2015 - 2017**

## **CONTENTS**

<b>Contents</b>	<b>Page</b>	<b>Paragraph</b>
<b>POLICY</b>	<b>4</b>	
Background	4	1
Choice of Accommodation	4	2
Choice that Cannot be Met and Refusal of Arrangements	5	3
<b>PROCEDURE</b>	<b>6</b>	
Charging for Care and Support in a Care Home	6	4
Availability	6	5
Additional Costs or 'Top-Ups'	7	6
Third Party Top-Ups	8	7
Agreeing to a Top-Up Fee	8	8
Failure to Continue Top-Up Payments	9	9
The Amount to be Paid and Frequency of Payments	10	10
Responsibility for Costs and to whom Payments are Made	10	11
Reviewing the Agreement and Price Increases	11	12
Consequences of Changes in Circumstances	11	13
Self-Funders who ask Halton to arrange their care	11	14
People Who are Unable to Make Their Own Choice	12	15
Choice of Accommodation and Mental Health After-care - S117	12	16
Risk if 3 <sup>rd</sup> Party Defaults on Payments	13	17
Agreeing Top-Ups	14	18
<b>Appendices:</b>	<b>Number</b>	
Third Party Top-Up Agreement for Residential Care	1	
Choice of Residential Accommodation and 3 <sup>rd</sup> Party Top-Ups (information)	2	
Sources of Independent Financial; Advice	3	

## INFORMATION SHEET

<b>Service area</b>	Financial Assessment and Social Care Commissioning
<b>Date effective from</b>	June 2015
<b>Responsible officer(s)</b>	Area Manager Revenues & Benefits Quality Assurance Manager Complex Care and Commissioning Policy Officer (Communities)
<b>Date of review(s)</b>	May 2017
<b>Status:</b> <ul style="list-style-type: none"> <li>• <b>Mandatory (all named staff must adhere to guidance)</b></li> <li>• <b>Optional (procedures and practice can vary between teams)</b></li> <li>• </li> </ul>	Mandatory
<b>Target audience</b>	Financial assessment and commissioning teams
<b>Date of SMT decision</b>	02/06/15
<b>Related document(s)</b>	Guardianship, November 2013 Nearest relative, November 2013 Section 135, November 2013 AMHP Management Responsibilities, November 2013 Mental Health Act, Section 117 Policy, HBC 2015
<b>Superseded document(s)</b>	None
<b>File reference</b>	GGCTUPJUNE15

	<b>POLICY</b>	<b>Practice</b>
	<p><b>Scope</b></p> <p>This policy is intended to assist officers of Halton Borough Council involved in carrying out social care need assessments and financial assessments. It also includes officers carrying out reassessments, reviews, support planning, direct payment audits or who are otherwise involved in the arrangement and administration of services for people with assessed eligible care needs. It provides a clear framework to the Council's position on Care Top Up payments.</p> <p><b>1 Background</b></p> <p>1.1 Under the Care Act 2014, Local authorities (LAs) have a duty to arrange care and support for those with eligible needs and a power to meet both eligible and non-eligible needs. Where it decides to charge it <b>must</b> follow the Care and Support (Charging and Assessment of Resources) regulations and have regard to the guidance.</p> <p>1.2 The LA <b>must</b> not charge more than the cost it incurs meeting the assessed needs of the person. In addition, it cannot recover any administration fee related to arranging that care and support, with the exception of an individual who is self-funding their own care whose assets are above the upper capital limit.</p> <p>1.3 Prior to charging the individual, the LA must first carry out a financial assessment of what the person can afford to pay. It must explain how the assessment is carried out, what the charge will be and how often it will be made. It must be communicated to the person in a way that can easily be understood, in line with the LA's duty to provide Information and Advice under the Care Act 2014. If after the financial assessment a person has to make a contribution to the cost of their care, they must not be asked to pay more than the assessment says they can afford to pay.</p> <p>1.4 Where a local authority is meeting needs by commissioning a care home, it is responsible for contracting with the provider.</p>	<p>Because of the postponement of Phase 2 of the Care Act, LAs no longer have a duty to arrange care for self-funders. It may do so however as 'good practice,' if the number of self-funders is small.</p>
<p><b>2</b></p> <p>2.1</p>	<p><b>Choice of Accommodation</b></p> <p>If the LA has determined that the person's needs are best met in a care home, it must provide for the person's preferred choice of accommodation, subject to certain conditions. Determining the appropriate type of accommodation will be made with the adult as part of the care and support planning process.</p>	<p>This being the case choice applies only between providers of the same type: nursing, residential...etc.</p>

<p>2.2</p> <p>2.3</p> <p>2.4</p> <p>2.5</p>	<p>The LA <b>must</b> ensure that the person has a genuine choice and <b>must</b> also ensure that at least one option is affordable and within the person's personal budget. Provided choice of accommodation is:</p> <ul style="list-style-type: none"> <li>• Suitable and available;</li> <li>• Will not cost more than the amount specified in the adult's personal budget for accommodation of that type; and</li> <li>• The provider is willing to enter into a contract with the LA to provide the care at the rate specified in the personal budget <b>on the LA's terms and conditions</b>.</li> </ul> <p>However, a person must also be able to choose alternative options, including a more expensive setting where a third party or in certain circumstances the resident is willing and able to pay the additional cost. This is known as a Top-Up. This additional payment <b>must</b> always be optional and never as the result of market inadequacies or commissioning failures leading to a lack of choice.</p> <p>The LA must take steps to ensure the person understands the full implications of this choice, by providing sufficient information and advice around the terms and conditions. For example, it must be clearly established that suitable funding can be arranged by the person their family or friends and that this additional amount will be available long-term to fund Top-Up payments over a number of years (see sections 6 - 8).</p> <p>If no preference has been expressed and no suitable accommodation is available at the amount specified in the personal budget, then the LA must arrange care in a more expensive setting and adjust the budget accordingly to ensure needs are met. This however, would be treated as a temporary arrangement only, subject to review that would seek to secure care and support at the agreed council rates. Such temporary arrangements would be contracted at the best affordable price, closest to the Council's current rate. In such circumstances, the council cannot ask for the payment of a Top-Up fee.</p>	<p>It <b>should</b> also ensure than one such option is always available.</p> <p>Choice is not limited to providers or settings with which Halton already contracts with or operates, or even those within Halton. It must be a genuine choice that can be outside the Halton area. (but see Care Act Guidance on Ordinary Residence).</p> <p>Halton <b>must not</b> ask for the payment of a Top-Up fee. Such a payment can only be sought <b>when the person has chosen</b> a more expensive accommodation.</p> <p>This is a crucial part of the financial assessment and it is important that it is communicated to the person along with the consequences of failure to maintain Top-Up payments.</p> <p>The social worker who has completed the assessment, makes it clear that this would be a temporary arrangement only, until more suitable accommodation that meets needs, is found.</p>
<p><b>3</b></p> <p>3.1</p> <p>3.2</p>	<p><b>Choice that Cannot be Met and Refusal of Arrangements</b></p> <p>Inevitably there will be occasions when a person's choice cannot be met, for example if the provider hasn't the capacity to accommodate the person. In such situations the LA must set out in writing why it cannot meet the individual's choice and offer similar alternatives. It should present details of the LA's complaints procedure and if and when the decision may be reviewed.</p> <p>Where a person unreasonably refuses the arrangements the LA is entitled to consider that it has fulfilled its statutory duty to meet needs and may then inform the person in writing that</p>	

	they need to make their own arrangements.	
3.3	However, this should be a step of last resort and the risks posed by such a step would need to be considered for both the authority and the person concerned.	
3.4	Should the person contact the LA again at a later date, then the LA should reassess the person's needs and re-open the care and support planning process.	
	<b>PROCEDURE</b>	
<b>4</b>	<b>Charging for Care and Support in a Care Home</b>	
4.1	As a consequence of the financial assessment, the LA must assure itself that even if the person remains responsible for paying for their own care, they must have sufficient assets for the arrangements that are put in place to be both affordable and sustainable.	Where a person contributes to the cost of their care following a financial assessment, they must not be asked to pay more than their assessment shows they can afford.
4.2	Where a person is receiving more expensive care and support solely because the LA has been unable to make arrangements at the LA budget cost, the personal budget must be adjusted to reflect this additional cost.	
4.3	In the case of a self-funder who approaches Halton for an assessment and asks the LA to arrange their care home placement. If Halton decides to help the person chose a care home, then the LA will charge the self-funder for the administrative costs in doing so.	
<b>5</b>	<b>Availability</b>	
5.1	The LA has a duty to shape and facilitate the local market of care and support services to ensure there is sufficient supply. As a result the person should not have a prolonged delay before their needs are met. However, in some cases a short wait may be unavoidable, especially when the person has chosen a particular setting that is not immediately available. Putting in place a temporary arrangement may be necessary, however as such arrangements can be unsettling for the person, they should be avoided where possible.	It is important to keep in touch with the person during the temporary arrangement. To do so the person's needs would ordinarily be reassessed after 6 weeks. This would ensure that any interim and assessed options still meet their needs and that their choice is unchanged.
5.2	In establishing temporary arrangements the LA must provide the person with clear information in writing as part of their care and support plan.	
5.3	A person may decide to remain in their interim setting, even if their original preferred choice becomes available. If the setting of their temporary residence is able to accommodate the arrangement on a permanent basis, then this should be arranged and the person removed from their preferred waiting list. However before doing so, Halton must make clear the	

	consequences of their choice, especially the long-term financial implications.	
<b>6</b>	<b>Additional Payments or Top-Up Fees</b>	
6.1	If a <b>person chooses</b> a setting that is more expensive than the amount identified for the provision of accommodation in their personal budget then an arrangement has to be made to meet the additional cost (Top-Up).	
6.2	In such cases the LA must arrange for the person to be placed there, provided a 'third party' or in certain circumstances, the person in need of 'care and support,' (first party) is willing and able to meet the additional cost.  <i>First Party Top-Ups</i>	
6.3	A person can pay their own top-up fee if: <ul style="list-style-type: none"> <li>• they have entered into either a 12 week Property Disregard;</li> <li>• They have a Deferred Payment Agreement in place;</li> <li>• They are receiving accommodation that is provided under Section 117 for mental health aftercare.</li> </ul>	
6.4	If however, the LA has placed the person in the more expensive setting because it has not been possible to make arrangements at the anticipated cost, the personal budget must reflect this and the LA would not be able to ask the person to reimburse the Top-Up element.  <u>A Top-Up Example:</u>	
6.5	If the LA had a standard rate of £450 a week and there are two care homes available, both of which have a place and are equally able to meet the person's assessed needs. The first is quite basic as far as décor is concerned and costs £450 a week. The second is more luxurious and costs £490 a week. If as is the case both are equivalent in terms of meeting needs, then the LA will only fund the standard rate. If the person chooses the second more expensive option, then the LA would ask for a Top-Up to cover the additional £40 a week.	The more expensive option is not a necessity. If the person chooses it, they must pay the extra amount.
6.6	If however, the only available care home to <b>meet all of the person's needs</b> was the second one, then the council would have to increase its standard rate to £490. This would be because the more expensive care home was supporting some additional needs. In this case the LA could not ask for a Top-Up.	The person has no choice in this case. So neither they nor a third person would have to pay the extra.
6.7	Such additional needs could be as follows: <ul style="list-style-type: none"> <li>➤ The person has to locate to a more expensive part of England to be nearer family;</li> </ul>	

	<ul style="list-style-type: none"> <li>➤ The person's first language is not English and it may be reasonable for the LA to pay more for a care home where there are staff and other residents who can speak the person's language;</li> <li>➤ The person may have additional cultural or spiritual needs which can only be met in a specific type of care home which can cater for these or which is closer to the individual's pace of worship;</li> <li>➤ The person requires special dietary requirements or requires specialist care, which can only be met in a home designed to meet such requirements;</li> <li>➤ The person has very specific needs such as a hearing visual or physical impairment and the care home is specifically designed to meet such needs.</li> </ul>	
<b>7</b>	<b>Third party Top-Ups</b>	
7.1	Any individual (self-funding or otherwise) who has decided to choose more expensive care and support can make use of a third party to help pay for the services which are more expensive than the LA would normally pay to meet their assessed eligible needs. This is called a third party Top-Up.	<p>Any fees charged by the provider are likely to increase in line with inflation. Once a 3<sup>rd</sup> Party Top-Up agreement has been signed, the Provider would not be able to increase fees for a year.</p> <p>It is important that both the provider and the person are made fully aware of the consequences (legal and financial) of the contract they have signed (see 8.3).</p> <p>See Mental Capacity Act 2005, Policy Procedure and Guidance, HBC, December 2013.</p>
7.2	The third party is usually a family member or a friend, but it can be anyone. This option allows people to choose the care and support they wish.	
7.3	Only one person can be named as the third party. However, this does not prevent other family members getting together and agreeing the payment between them. It does mean that only one individual (member of the family) is responsible for making the payments and can be liable for any default, if payments are not made.	
7.4	The third party must be both willing and able to continue making the Top-Up payments from their own account, for the duration of the person's stay at the care home. They cannot use the cared for person's assets or their income to cover the Top-Up payments.	
7.5	For an individual who lacks mental capacity (i.e. who has failed a capacity test), then any choice made on their behalf with the assistance of an advocate or other person (often a close family member or friend), would have to be shown to be in the person's 'best interests.'	
<b>8</b>	<b>Agreeing to a Top-Up Fee</b>	
8.1	Having chosen a more expensive setting it is important that the social worker responsible for conducting the care assessment makes the person aware of the full implications of this choice. This involves making the person more aware of the consequences of their choice which can lead to future crisis if payments can no longer be made. If the additional cost cannot be met then it is	This would be explained during the discussions that are an important part of support planning and financial assessment.

	<p>important to explain that the care provided may have to be moved to an alternative setting.</p> <p>8.2 According to the Care Act best practice suggests that a written agreement between the person paying the Top-Up (third party), the provider and the LA must be drawn up (Appendix 1 is a draft agreement). The third party will agree the amount and will pay this themselves from their own financial resources directly to the Provider for the duration of the person's stay at the care home.</p> <p>8.3 Prior to entering into the agreement, the Council must provide the person paying the Top-Up with sufficient information and advice to ensure that they fully understand the terms and conditions, including actively considering the provision of independent financial information and advice (see appendix 2 and the list of independent financial advice services available on the Council website (Appendix 3).</p> <p>8.4 The CareFirst 6 process for recording Top-Ups is as follows: <ul style="list-style-type: none"> <li>• Social care and Financial care assessments carried out as closely to each other as possible, given time constraints;</li> <li>• Care Manager identifies Top-Up agreements on the person's Support Plan Summary (SPS);</li> <li>• Review date arranged;</li> <li>• A trigger is sent from the SPS to the Care Arranger for the standard agreed amount payable to the Provider (not the Top-Up);</li> <li>• Care Arranger records a service agreement for the amount in CF6 using the current Residential Service types.</li> </ul> </p>	<p>This 3-way agreement ensures that Top-Ups are a matter of choice and not a necessity.</p> <p>Guidance suggests relatives, residents, the Council and the provider to develop the third party Top-Up agreement together.</p>
<p><b>9</b></p> <p>9.1</p> <p>9.2</p> <p>9.3</p> <p>9.4</p> <p>9.5</p>	<p><b>Failure to Continue To-Up Payments</b></p> <p>For a variety of reasons the Top-Up arrangement may fail with the result that Top-Up payments are no longer made and a Top-Up debt accumulates. The tripartite agreement between the LA, the 3<sup>rd</sup> Party and the Provider must make it clear that the LA will not under any circumstances accept liability for any arrears owed in relation to the top up element, which the service user or third party is liable for and has subsequently failed to pay.</p> <p>The 3<sup>rd</sup> party must inform HBC as soon as possible if they are having financial difficulty in meeting the Top-Up payment. This gives the council a level of overview and an opportunity to offer financial advice and guidance where necessary. Ultimately however, the legal responsibility for making the additional payment to the Provider lies with the 3<sup>rd</sup> party and not HBC. This will have been explained in the signed agreement between the 3<sup>rd</sup> party, the provider and HBC.</p> <p>Providers must share information regarding any Top-Up agreements with HBC before the placement commences. This is to ensure the arrangement is in line with government guidance.</p> <p>Top-Ups will only be applied for costs and services over and above the standard assessed care needs of the person</p> <p>Such arrangements can be agreed both with new residents and those who were previously self-funding in the home, but can no</p>	<p>The SW must be confident that the consequences of failure to pay are thoroughly explained to the person and / or the 3rd Party and fully understood by them and the provider. Only when this has been established can the agreement be signed.</p> <p>This is in keeping with best practice under the Care Act 2014.</p> <p>This should be communicated to the <b>Revenues and Benefits Team.</b></p> <p>Halton may move the person to another provider if such needs</p>

<p>9.6</p> <p>9.7</p> <p>9.8</p> <p>9.9</p>	<p>longer continue with the self-funding arrangement and have been assessed by Halton as requiring residential care.</p> <p>On commencement of the placement (or its continuation if the resident was self-funding), providers must satisfy themselves and record that the person and / or their representative, can afford to pay the third party contribution. Any increase resulting in a Top-Up must be appropriate and proportionate. The intention to apply an increase must be communicated to both the person and Halton at least 30 days before the date on which the increase commences.</p> <p>If the person fails to maintain Top-Up payments then a full assessment will be conducted to see if the current service is the only one that can meet the person's current assessed needs.</p> <p>The provider must inform the Quality Assurance Team if the person fails to maintain their Top-Ups or if their circumstances change and they can no longer pay.</p> <p>The Provider must also advise Halton, service users and/ or their representatives of all financial aspects of the "Third-Party Arrangement. Typically this would include:</p> <ul style="list-style-type: none"> <li>• Thresholds, processes, current legislation and guidance for Top-Ups.</li> <li>• How much the charges are</li> <li>• Who is responsible for them</li> <li>• What services do they cover</li> </ul>	<p>are not being met.</p> <p>Such changes must be communicated to the LA in a timely manner.</p>
<p><b>10</b></p> <p>10.1</p> <p>10.2</p>	<p><b>The Amount to be Paid and Frequency of Payments</b></p> <p>The amount of the Top-Up will be the difference between the actual costs of the preferred provider and the amount that has been set in the individual's personal budget or local Mental Health after-care amount, as a means of meeting eligible needs through the provision of accommodation of the same type.</p> <p>Typically a range of costs will be identified, offering choice and which apply to different circumstances and settings. In agreeing to any Top-Up arrangement, it must be clearly set-out and explained how often such payments are to be made (whether weekly or monthly).</p>	<p>It is important that the financial assessor considers the personal budget set at the time care and support is needed, rather than defaulting to a cheaper rate or to any other arbitrary figure.</p>
<p><b>11</b></p> <p>11.1</p> <p>11.2</p>	<p><b>Responsibility for Costs and to Whom Payments are Made</b></p> <p>The LA can enter into a contract to provide care that is more expensive than the amount identified in the personal budget. For example, a more expensive setting may be required because other more appropriate settings that matched the person's needs were unavailable at the time.</p> <p>Also, a more expensive option may be required because of the complex nature of the person's needs. Hence, if there is a breakdown in the Top-Up arrangement (the person making the Top-Up ceases to make their agreed payments), then the</p>	<p>This is quite a different situation to one where the person receiving care chooses a more expensive option. In the case of 11.1 and 11.2 no choice is involved as there are no other options available which match the person's eligible</p>

11.3	<p>LA would not be liable for the Top-Up element alone. The authority could however agree to meet cost of the top-up to the provider until it managed to recover the additional costs incurred from the 3<sup>rd</sup> party or made alternative arrangements to meet the cared for person's needs.</p> <p>This is the Care Act's and Halton's preferred approach and requires a tri-partite contract signed by the 3<sup>rd</sup> person, the LA and the Provider. This approach requires greater transparency between all parties to the agreement. This makes it clear from the outset that liability is with the 3<sup>rd</sup> party and the process that must be adopted in the event of failure to make payments. This process will necessarily require a further assessment and it may be necessary as a last resort, to move the cared for person to another provider.</p>	<p>needs.</p> <p>The only exception is where funding is by a deferred payment agreement, when it would be added to the amount owed.</p>
<p><b>12</b></p> <p>12.1</p> <p>12.2</p> <p>12.3</p> <p>12.4</p> <p>12.5</p>	<p><b>Reviewing the Agreement and Price Increases</b></p> <p>The Act states that local; authorities should review Top-Ups 'from time to time' and the Guidance has clarified this to mean at least an annual review. The reason being that it is important to check that the Top-Up payments are still affordable and the 3<sup>rd</sup> party remains able and willing to pay.</p> <p>The review would necessarily look at changes in circumstances of the cared for person, the person making the Top-Up payments (if different from the cared for person), the LA's commissioning arrangements or a change in provider costs. Such changes are unlikely to occur together and the LA must set out in writing how they will be dealt with.</p> <p>The contract will include details of how agreement will be reached on the sharing of any price increases. This should also point out that there is no guarantee such increases will be shared evenly, should the provider's costs rise more quickly than the amount the LA would have increased the personal budget or local mental health after-care.</p> <p>One way of assuring the Top-Up remains affordable is to negotiate in advance any future price rises with the provider at the time of entering into the contract.</p> <p>The LA would expect a care home placement to be sustainable for at least 3 years, paid from the individual's own capital, assets or savings. Where this is not possible, the council would look to the nominated third party to commit to pay any Top-Up costs. Otherwise, the person would have to move to a care home which accepted the LA's contract rate with a lower Top-Up or no Top-Up at all.</p>	<p>This review would nominally be annual. However if a payment was missed a review would be triggered. Also, if the person's circumstances change, this would require a support plan review.</p> <p>This detail around such changes should be included in the contract.</p>
13.1	<p><b>Consequences of Changes in Circumstances</b></p> <p>An unexpected change in a person's financial circumstances can</p>	

13.2	<p>have a significant impact on their ability to pay the Top-Up. Halton has the power to make alternative arrangements to meet a person's needs subject to a needs assessment and can seek to recover any outstanding debt.</p> <p>The LA must set out in writing (as part of the contract) how it will respond to such a change and what the responsibilities of the person making the Top-Up payment are, in terms of informing Halton what their change in circumstances are.</p>	Appendix 1.
<p><b>14</b></p> <p>14.1</p> <p>14.2</p> <p>14.3</p> <p>14.4</p> <p>14.5</p>	<p><b>Self-Funders who Ask Halton to Arrange Their Care</b></p> <p>Under the Care Act 2014, a person who can afford to pay for their own care and support in full can ask their local authority to arrange care on their behalf. This was to have been implemented in Phase 2 (April 2016) of the Act. This has now been deferred until 2020. Hence a local authority no longer has a duty to provide such an arrangement. However, it still may do so by way of providing information and advice.</p> <p>If the individual already has a contract with a provider then it must be made clear to them that although they are entitled under the Care Act to have their LA assess and commission their care with the same or a new provider, they must first see out the terms of their contract with their current provider. Usually they will have to give notice of termination to their provider 4-6 weeks in advance. In addition, they would have to meet all of their financial commitments to their provider prior to ending their contract. The person may also decide, having ended the contract and brought all payments up-to date, to move to another Care Home.</p> <p>In supporting self-funders to arrange care, the LA can choose to enter into a contract with the provider, or may broker a contract on behalf of the person. Where the LA is arranging and managing the contract with the provider, it should ensure there are clear arrangements in place around how costs will be met, including any Top-Up element. These contractual arrangements must clearly set-out where the responsibilities for all costs lie and that the self-funder understands those arrangements.</p> <p>Self-funders will have to pay for the costs of their care and support. This includes situations where they choose a setting that is more expensive than the amount identified in their personal budget and the Top-Up element for the new cost for that setting.</p> <p>The Care Act recommends that LAs should enter into a tripartite agreement with self-funders and care home providers. The self-funder would pay the full amount to the Council who would then pay the provider. This would enable the Council to monitor all payments from the self-funder and identify problems with payment at an early stage, before a large debt</p>	<p>It is important that the Social Worker carrying out the social care assessment, discusses this issue and makes it clear where liability lies.</p> <p>The Care Act recommends this approach as 'best practice.' It enables the LA to monitor payments being made and any financial difficulties spotted at an early stage.</p>

	was accumulated and the situation became critical.	
<b>15</b>	<b>People Who are Unable to Make Their Own Choice</b>	
15.1	If a person lacks capacity to express a choice for themselves then the LA will act on choices made by the person's advocate, carer or legal guardian in the same way they would on the person's own wishes.	This is provided the representatives are acting in the best interests of the person. Hence a Best Interests Assessment would be necessary.
<b>16</b>	<b>Choice of Accommodation and Mental Health After-care</b>	
16.1	Under Section 117A of the Mental Health Act 1983 those who qualify for after-care may express a preference for particular accommodation, provided such accommodation is specified in the regulations as part of that after-care.	For details of how S117 of the mental Health Act 1983 (amended 2007) overlap with the Care Act see HBC policy: Section 117, Mental Health Provision of Aftercare Services, April 2015. Top-Ups are discussed in 1.9.4.  The SW (Mental Health) is responsible for developing a care plan with the person.
16.2	After-care is provided free of charge and for the purposes of S117 after-care, references to a 3 <sup>rd</sup> party should be read as 'the adult receiving the after-care.' This is because an adult can also meet the additional cost when a local authority is providing or arranging the provision of accommodation in discharge of the after-care duty.	
16.3	As a means of securing funds to meet the additional cost to the LA the person or 3 <sup>rd</sup> party will pay the Top-Up amount to the LA and the LA then pays the full amount to the provider.	
<b>17</b>	<b>Risk If 3<sup>rd</sup> Party Defaults on Payments</b>	
17.1	Where the agreement has been solely between the 3 <sup>rd</sup> 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.	
17.2	Conversely, an agreement which clearly states that liability will lie with the 3 <sup>rd</sup> 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 3 <sup>rd</sup> party to pay.	
<b>18.0</b>	<b>Agreeing Top-Ups and what happens next</b>	
18.1	The amount of the Top-Up must be agreed at the time the person starts receiving care and support or when they enter the care home. The care provider can review the Top-Up as long as they give suitable notice to the third party and it is	

18.2	<p>agreed between all three parties. The Care provider must notify the council of any intention they may have to alter the agreement.</p> <p>Once the council has received a copy of the Top-Up agreement from the third-Party and the financial assessment results, it will complete discussions with the provider and then inform the care manager to arrange a moving date for the person. However, this will only happen when the council is satisfied the third-party has the funds to make the agreed payments.</p>	<p>The social Worker is responsible for explaining the consequences, if the 3<sup>rd</sup> party should fail to make their Top-Up payments.</p>
------	---	---

Draft

**HALTON BOROUGH COUNCIL**

**THIRD PARTY TOP-UP AGREEMENT FOR RESIDENTIAL CARE**

This agreement is in respect of (“the service user”).....  
It concerns a placement in .....  
Residential Care Home (“name of the *Care Home*”).....  
The cost of this requires a Third-Party Top-Up.

Following a full social care assessment of the Service User’s needs, we the Local Authority (LA) have established that residential care is necessary to meet their needs, and the Service User or their representative (where appropriate) has chosen to move to/ remain in “the Care Home” above, in which they will be/ are currently self-funding.

The Care Home’s weekly fee is greater than the “usual cost” Halton Borough Council has negotiated with care homes in its area or (where the Care Home is outside Halton) the “usual cost” agreed by the local authority within which the care home is located.

I agree to pay the Top-Up fee in respect of  
(service user’s name).....  
Resident at.....  
.....

The cost of the Top-Up fee is £.....Per week as of (dd/mm/yy)

As third party, I agree to make the payments from the date of admission. The consequences of failing to maintain payment of Top-Up fees has been fully explained to me. I understand payment is an ongoing commitment for which I am financially liable until the service is no longer required.

I understand that the Top-Up cannot be paid from any monies that I hold, manage or receive for the resident other than as laid down in accordance with the provisions of the Care Act 2014, its accompanying statutory guidance and the Care and Support and After-care (Choice of Accommodation) Regulations 2014.

I understand that should I fail to pay the Top-Up fee for a period of more than 6 weeks, Halton Borough Council has the right to arrange for alternative residential accommodation to be provided for (**service user's name**), subject to a needs assessment.

The Top-Up is agreed at the rate and at the time of the person requiring care and support. The current weekly cost of the Care Home, Halton Borough Council's "usual cost" and the amount of Third Party Top-Up are as follows:-

	£
Care Home Weekly Fee	_____
The Council's "Usual Cost" (per week)	_____
Third Party Top-Up required (per week)	_____

The third party Top-Up is the difference between the agreed contract rate paid by Halton Borough Council and the charge made by the above care provider. The Top-Up payment excludes the individual's personal allowance and the assessed contribution the person is required to make towards the costs of the home. It also excludes any NHS nursing fees.

Name of third party.....

Signature of third party.....

Name of Provider Manager.....

Signature of Provider Manager.....

Name of HBC Area Manager .....  
(Revenues and Benefits)

Signature of HBC Area Manager.....  
(Revenues and Benefits)

**Those considering paying third party Top-Ups for a Service User should seek independent legal advice, if they have any concerns regarding matters set out in this agreement, or generally.**

**Declaration**

- I understand that Halton Borough Council (HBC) will fund the Care Home placement at the level of its “usual cost”, less the Service User’s assessed weekly contribution (if applicable).
- I agree to pay the Third Party Top-Up set out above, and any subsequent increases, for the duration of the placement directly to the Provider. I agree to provide HBC with details of my financial circumstances and accept that the placement will not be agreed until this information has been provided. (In line with Guidelines from the Department of Health, HBC has the right not to agree to a Third Party Top-Up until they have received enough information about my financial circumstances and is reassured that I can continue to pay the difference.)
- I understand that, as a private enterprise, the Care Home may revise the overall cost of care and the level of Third Party Top-Up needed will always be the difference between the Care Home’s fee and HBC’s “usual cost”.
- I understand that I will be given suitable notice (at least 4 weeks) by the Provider of any such increase in the overall cost of my Top-Up payment.
- I understand that the Third Party Top-Up will be paid direct to the Provider. I understand that failure to continue Third Party Top-Up payments may result in the need for the Service User to move to another room within the Care Home or to an alternative care home, but only after a full Community Care and risk assessment. The Service User may be moved, unless it is identified during the assessment that the current Care Home is the only home which can meet their assessed needs.
- In the event of financial difficulty in paying the Top-Up amount, I must inform HBC as soon as possible and HBC will provide me with advice on how I may receive further financial information from local or national Independent Financial Advisors.
- Should HBC be required to make payments in lieu of any unpaid Third Party Top-Up payments in order to safeguard the Service User’s placement, I agree to indemnify HBC for such payments (provided that I have been given written notice of the amount and duration of such payments).

**Signed** \_\_\_\_\_

**PRINT NAME** \_\_\_\_\_

**Relationship to Service User** \_\_\_\_\_

**Date** \_\_\_\_\_

# Choice of residential accommodation and third party “Top Ups”

This information tells you about your right to choose the accommodation in which you will receive care and support, whether it is in a care home, supported living or shared lives, once the care planning process has identified that one of these types of accommodation is the most appropriate way of meeting your needs. It also explains what you will have to do if you wish to choose accommodation that costs more than the amount that has been specified in your personal budget for the provision of accommodation of that type.

For choice to apply the council could be proposing that you live in, a care home that also provides nursing care, a shared lives setting or supported living and social work staff will have advised you which will meet your care needs most appropriately.

A personal budget is the cost to the council of meeting those of your needs which it is required to or has decided to meet and has identified in your care and support plan.

### Your Right to Choose

The care planning process will have identified how your needs are to be met. Where this involves a particular type of accommodation, you have the right to choose between different providers and/or locations of that type of accommodation in England and your social worker or care coordinator will be able to give you a list of all of the relevant settings for you to choose from. You may wish to choose to live near to where you are living now or move to a different area to be closer to your family, or in a specialist home such as one run by a religious organisation. There are special cross-border arrangements if you wish your local council to arrange for you to live in accommodation in Wales, Scotland or Northern Ireland. You should seek advice from social work staff if you would like the council to arrange this.

There are 6 conditions which need to be met for you to have your choice of setting. These are:

#### 1. Care and support needs

That your care and support plan specifies that your needs are going to be met by arranging care in a care home, shared lives or a supported living accommodation.

#### 2. Type of Accommodation

That the accommodation you choose is of the type specified in your care and support plan.

#### 3. Suitability of Accommodation

That the accommodation you choose is suitable to meet your eligible care needs. Social work staff will advise you which types of accommodation are suitable to meet the needs that are set out in your care and support plan.

#### 4. Cost

Your council will have undertaken a care planning process and prepared a personal budget for you that will cover the cost of meeting your eligible care and support needs. The amount in your personal budget must be sufficient to meet your

assessed eligible needs and ensure that you have at least one choice of setting that is affordable within that amount and the council should try to ensure there is more than one affordable setting. However, you might wish to choose a setting that costs more than the amount in your personal budget. If you do, a payment will need to be made to meet the difference between the weekly charge for accommodation and the amount in your personal budget. This extra amount is called a Top-Up payment and these are explained later in this leaflet.

If you choose a setting outside of your local area the local authority will still pay the amount identified in your personal budget.

## **5. Availability**

The accommodation that you choose may not have space available. If you do not want to choose different accommodation it may be necessary for you to go on a waiting list until a place becomes available and go into alternative accommodation or receive care at home while you are waiting. This is called an Interim Care arrangement.

Your social worker will explain how long you are likely to wait, but this will only be an estimate and not a guarantee.

If the temporary accommodation charges more than the amount in your personal budget the council will pay the difference. If this happens and you decide to stay in that accommodation permanently you will only be able to stay there if a Top-Up is made – Top Up payments are explained later in this leaflet.

## **6. Terms and Conditions**

The provider of the accommodation you choose must agree to contract with the council to provide you with accommodation subject to the council's usual terms and conditions.

### **If you are in Hospital**

You have all of the rights set out in this leaflet if you are going to move from hospital to accommodation of your choice, but there are some special rules for this.

As soon as medical staff have agreed that you can be discharged from hospital the law requires that the council must arrange your move within a very short period. If the accommodation that you choose does not have a place available, the hospital will not be able to allow you to stay in hospital until a place becomes available. Instead, you may need to have an Interim Care arrangement, as set out above.

### **Your Right to Choose More Expensive Accommodation and Top Up Payments**

When making your choice, you may choose a setting that costs more than the amount identified in your personal budget. There are many reasons why a setting may cost more. It could be due to commercial business reasons or because the provider considers that the accommodation is of a superior standard - a bigger room or other additional services.

The amount identified in your personal budget must be sufficient to meet your needs and the council must ensure that at least one option is available that is affordable within your personal budget and should ensure that there is more than one. However, you can choose to live somewhere that costs more if you wish. If you do, your family, a friend or someone

else such as a charity, or in some circumstances you, must be willing and able to make a top up payment to cover the difference between the care homes fees and the amount in your personal budget for the likely duration of your stay. Your council must never force you into having to pay a top up fee because no suitable accommodation is available within the amount in your personal budget. In these circumstances, the personal budget must be adjusted to meet the costs of the accommodation needed to meet your assessed eligible needs.

It is very important that you are aware of the following:-

- The amount set in your personal budget will be reviewed regularly and may increase to ensure the amount is still sufficient to meet your eligible needs. However, the council cannot guarantee that the accommodation will increase its costs at the same rate and this may affect the level of the top up payment.
- The Top-Up will always be the difference between the care home's fees and your personal budget.
- Whoever is paying the top-up (you or the third party) will need to sign a written agreement that they are willing, able and financially liable to meet the difference in cost and will continue to do so throughout your stay. Prior to signing the agreement, the person paying the top-up will have to satisfy the Council that they can afford the weekly top up amount. If the person paying the top-up cannot satisfy the Council that they will be able to afford the top up for the likely duration of your stay, the Council will not agree to arrange care and support in the preferred accommodation.
- The person paying the top-up should be aware that the top-up amount may vary as providers review their fee levels usually on an annual basis in line with inflation.
- If the person paying the top-up is unable to continue to pay the difference you may have to move to another room within the accommodation or to another accommodation that charges fees that are within the amount set in your personal budget.
- Any move to other accommodation will only happen after a community care and risk assessment of your needs to make sure that the other accommodation is right for you.

**I am a considering paying a Top-Up fee, what does this mean for me?**

The council providing care and support will want to know that you are willing and financially able to make the additional payment for the cared for person, for the likely duration of the contract. They will therefore want to assure themselves that you can afford this and will ask you to fill out a financial questionnaire and to sign a written agreement confirming you are willing and able to make the payments. Should you fail to make the necessary payments you will be liable for the cost of all Top-Up arrears. In addition, the cared-for person may have to be moved to alternative accommodation.

**What will be in the written agreement?**

The written agreement must include the following:

- The amount of the top up payment
- The amount of the Council will fund (Usual Cost)
- How often payments must be paid
- To whom the payments must be paid – this should normally be the council as they must have oversight of all top up arrangements.
- Signatures of: Third party, care provider and Area Manager (Revenues and Benefits).
- How and when the Top-Up arrangement is to be reviewed
- The consequences should you be unable to continue to make a payment. This could include moving the person receiving care.
- The effect of any increases in charges made by the provider
- The effect of changes in the finances of the person paying the Top-Up.

**Other Information**

If you or your family have any other questions about your rights to choose accommodation, please talk to your social worker.

Information on payments for the accommodation is given in a separate leaflet which your social worker can provide for you.

I confirm I have received and understand this factsheet: Choice of residential accommodation and third party contributions “top ups”

Service User Name: .....

Signed: ..... Date: .....

### Independent Financial Advice - Local and National

Financial advisors fall into two broad groups:

1. Those who are regulated by the Financial Conduct Authority (FCA) and have to charge for any advice they give;
2. Those which are not regulated by the FCA and who can offer free advice.

1. Since 2013 FCA **regulated advisors** cannot be paid a commission if they provide advice about: pensions, investments or retirement income products such as annuities. They must instead charge a fee. However, if they are giving advice on equity release, mortgages and general insurance (life insurance), they can charge a commission.

Typical FCA regulated Independent Financial Advisor's fees vary from £75 to £350 per hour and the UK average is £150/ hour. Depending upon the nature of the advice there are alternative ways of paying:

- A set fee for a particular type of work. Depending upon the size of the work this could be hundreds or thousands of pounds;
- A monthly fee which can be either a flat rate or a percentage of what the person wishes to invest;
- An ongoing fee if they are providing an ongoing service.

To find a local financial advisor that is FCA regulated there are a number of websites which simply require your postal code to generate a list. Examples are:

- Find Financial Advisors;
- Local Financial Advisors.

We cannot recommend any particular adviser or advice service and it's important that you find out if an adviser is qualified to give advice. Below are list of organisations that may be able to help you find a suitable independent financial organisation:

**[Society of Later Life Advisers \(SOLLA\)](http://societyoflaterlifeadvisers.co.uk)** (<http://societyoflaterlifeadvisers.co.uk>)

SOLLA helps people to find independent financial advisers who specialise in the financial needs of older people. All advisers on the database have to prove that they meet appropriate criteria and have the right qualifications before they are accredited by SOLLA.

See the [adviser search on the SOLLA website](#) to find a local, fully accredited adviser quickly and easily.

**[Paying for care](http://www.payingforcare.org/)** (<http://www.payingforcare.org/>) Paying for Care is a website that offers advice on care costs and planning for care. They also help you to search for local care fees advisers.

**[The Money Advice Service](https://www.moneyadvice.service.org.uk/en)** (<https://www.moneyadvice.service.org.uk/en>) The Money Advice Service was set up by the Government, and offers impartial and unbiased money advice and information to help you make the most of your money, whatever your circumstances.

**My Care, My Home** (<http://www.mycaremyhome.co.uk/>) My Care, My Home is an organisation that provides support and guidance to people who fund their own care. The initial assessment, information and advice is free. They can offer telephone advice or do home visits.

2. Free Financial Advice – **non-regulated**. This means they are not liable for any product they are likely to recommend to you which later turns out to be unsuitable with the result that you have fewer rights in law. Examples of good general free financial advice are:
- Which magazine;
  - Citizens Advice Bureau (local);
  - MoneySaving Expert.com is free to use;
  - Media – newspapers, magazines and the BBC (Moneybox) or their related websites;
  - Government-led or Government-backed services;
  - Commercial organisations such as comparison websites.

In addition, there are specific services which are aimed at those who are over 50 or who offer free debt or free tax advice...etc. Examples are:

Advice for those who are aged 50+

- Age UK;
- Tax help for older people

Free Debt Advice:

- Christians against poverty;
- CAB local;
- StepChange debt charity;
- Debt Advice Foundation;
- National Debtline.

Free Tax Advice:

- Low Income Tax Reform Group – provide advice to anyone on a low income such as students and pensioners;
- Tax help for older people – independent free advice;
- Taxaid (a charity).