

Choice of Accommodation Policy Solihull Adult Care & Support



Solihull
METROPOLITAN
BOROUGH COUNCIL

Version Control Log

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Choice of Accommodation Policy

An individual's ability to make an informed choice is a key element of the care and support system. This extends to where the care and support planning process has determined that an individual requires a specific type of accommodation to meet their needs.

This policy covers; the choice of accommodation when arranging care and support; and outlines additional or 'top-up' payments for preferred accommodation. Further information on additional or 'top up' payments can be found in the Council's Top Up Policy

1. Introduction

An individual's ability to make informed choices and have control over how they live is emphasised throughout the Care Act 2014 and is key to maximising wellbeing and supporting a person centred approach in the care and support planning process. It is also central to the Adult Care and Support offer, 'Our Offer To You'.

The care and support planning process will identify the individual's needs, their preferences and where appropriate a particular type of accommodation to best meet their identified care and support needs. This could be, for example, a care home, or extra care housing.

Where the type of accommodation is one of those specified within the Care & Support/After-Care (Choice of Accommodation) Regulations 2014, the individual will have the right to choose the provider or location. This applies as long as their assessed needs and identified outcomes would be met and their choice would not cost the Council more than the amount specified in their personal budget for accommodation of this type.

Individuals have the right to choose more expensive accommodation than the amount specified in their individual budget for the provision of accommodation, as long as an arrangement is made as to how the difference in cost will be met. This is known as an additional cost or 'top up' payment.

2. Scope

The right to a choice of accommodation and the payment of additional costs applies equally to those entering care for the first time, those who have already been placed by the local authority and those who have been self-funders who may subsequently require Council support.

Guiding Principles

- Good communication of clear information and advice to ensure well informed decisions;
- A consistent approach to ensure genuine choice;

- Clear and transparent arrangements for choice of accommodation and any 'top-up' arrangements;
- Responsibility to deliver social care services in a cost effective manner that meets the needs of individuals within available resources;
- Clear understanding of potential consequences should 'top-up' arrangements fail;
- The choice is suitable to the individual's identified care and support needs

3. Choice of Accommodation

Where an individual is assessed to need a particular type of accommodation in order to meet their care and support needs it is the right of the individual to choose between different providers of that type of accommodation provided that:

- The preferred accommodation is suitable in relation to the individual's assessed needs, including age, culture, religion and ethnicity.
- To accept the individual's preferred option would not cost the Council more than the amount specified in the adult's personal budget for accommodation of that type;
- The preferred accommodation is available; and
- The provider of that accommodation is willing to enter into a contract with the Council to provide the care at the 'standard rate' identified in the individual's personal budget on the local authority's terms and conditions. The exception to the 'standard rate' is when an individual has additional needs over and above those that are usually met through provision at the standard rate, in which case those additional elements would be specifically costed in the personal budget.

4. Suitability of Accommodation

The Council will ensure that the accommodation chosen by the individual will meet their needs and the outcomes identified during the care and support planning process.

This Choice of Accommodation Policy only applies to the settings in which an individual's needs and preferences, agreed through the care and support planning process will be met; not the type of accommodation. Therefore if the process identifies that one type of accommodation is needed e.g. a residential care home, the individual can choose from providers of this type but does not have the right to choose other types of accommodation e.g. nursing home.

5. Costs

The care and support planning process will identify how best to meet the individual's needs, taking into account the individual's circumstances and the availability of provision.

The Council will provide the individual with a personal budget.

The Council will ensure that at least one option is available that is affordable within the individual's personal budget, and where possible will try to ensure there is more than one such option. If no suitable accommodation is available at the amount identified, the Council will arrange care in a more expensive setting and adjust the budget accordingly to ensure that needs are met. The personal budget is based on market availability at the time of need.

Individuals who wish to choose more expensive accommodation than those offered by the Council can do so by way of an additional payment or 'top up'. This is the difference between the amount specified within the individual budget and the actual cost. See 'Additional Payments – Top Up Fees' section later in this document.

6. Availability and Interim Accommodation

In most cases an individual should not have to wait for their assessed needs to be met. However, in some cases this may be unavoidable, particularly when an individual has chosen a setting that is not immediately available.

In such cases, the Council will ensure that an interim adequate alternative within the personal budget is available. Where an individual contributes to their care following a financial assessment they must not be asked to pay more than their assessment shows they can afford.

7. Choice that cannot be met and refusal of arrangements

The Council will do everything it can to meet the individual's choice within the context of this Policy. However, inevitably there will be some instances where a choice cannot be met, for example the provider does not have capacity to accommodate the individual. In such cases the Council will offer at least one suitable interim alternative within the personal budget which meets an individual's needs, until the preferred option becomes available.

Where an individual unreasonably refuses the interim arrangements, Solihull Metropolitan Borough Council will consider that it has fulfilled its statutory duty to meet needs. The individual will be informed in writing that as a result they need to make their own arrangements. This will be a step of last resort and the Council will consider the risks posed by such an approach, for both the Council itself and the individual concerned.

Individuals have the right to use Solihull Metropolitan Borough Council's statutory complaints procedure to take forward any complaints associated with these arrangements. It is good practice that individuals are provided with details about how to make a complaint.

8. Additional Payments 'Top-Up' Fees

Individuals have the right to choose more expensive accommodation than could be purchased with the amount in their personal budget for accommodation as long as arrangements are made as to how the higher cost will be met. This is known as a 'top-up' payment and is the difference between the amount specified in the personal budget and the actual cost of the accommodation.

In such cases the Council will arrange the placement subject to the following:

- The third party; who could be a family member, friend or charity, is willing and able to make the additional payment;
- The third party is made fully aware by the Council of their responsibilities including:
 - The amount payable,
 - to whom the payments are made,
 - frequency of payments and
 - consequences of ceasing payment.
- The Third Party understands that 'top up' costs can increase over time and they need to make arrangements to cover these increases, for example, when the provider increases the cost of care.
- A written agreement is in place to meet that cost.
- Where the top-up amount is more than £25.00 per week, the Third Party will need to provide evidence that they have savings to the value of at least three years' worth of the required top-up amount, or complete a **budget sheet** to demonstrate that they have weekly income that exceeds their weekly expenditure by the required top-up amount.
- The Third Party will be required to sign a direct debit mandate for the payment of the agreed top up fee
- In certain limited circumstances the individual in need of care and support can make top up payments

Please see further information in the Council's Top Up Policy.

9. Agreeing a 'top-up' fee

When an individual chooses a more expensive setting, the Council will provide them with information and advice to ensure they understand the full implications of this choice. This includes:

- Understanding that the third party or in certain limited circumstances the individual needing care and support, will need to meet the additional cost for the setting for the full duration of their stay;
- That the top up is in addition to the individual's assessed contribution;

- That should the additional costs not be met the individual needing care may, in most instances, be moved to an alternative setting that is affordable within the personal budget amount.

The Council will ensure that the individual paying the 'top-up' fee is willing to enter into a written agreement. The agreement will, as a minimum, include the following:

- The additional amount to be paid;
- The amount specified for the accommodation in the individual's personal budget;
- The frequency of the payments and affordability for the Third Party
- To whom the payments are to be made;
- 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 individual paying the top-up fee

The chosen care arrangements cannot proceed until the top up agreement is signed and the direct debit mandate completed.

10. First Party 'top ups'

The individual whose needs are to be met by the accommodation may themselves choose to make a 'top-up' payment but only in the following circumstances:

- Where they own a property and the value of the property is being disregarded in the Financial Assessment for an initial 12-week period; or
- Where they have a Deferred Payment Agreement in place with the Council or are in the process of arranging one. This will be from week 13 if a 12-week property disregard period is applicable, or from when the Deferred Payment Agreement is entered into if the person still owns their home and has been paying the full cost of their care home from other resources. They can apply for the top-up to be included in the deferred payment, providing the top-up is sustainable for the likely period over which the person would want to use the Deferred Payment Agreement. As a starting point, the Council would likely consider whether there is sufficient equity within the property value to cover the following;
 - The deferred payment loan value for the difference between the current financial assessment and the personal budget for three years,
 - The top-up payment for three years,
- The equity in a property deferred which may be under a Deferred Payment Agreement does not extend to the full value of the property. The 'equity limit' which can be deferred is the value of the property, less

any encumbrances on it (such as a mortgage), less 10% of its value to account for fluctuations in price or selling costs, and less the lower capital limit.

- Where the person is receiving accommodation provided under S117 for mental health aftercare, subject to other conditions in relation to the preferred accommodation being met.
- After the end of a 12-week property disregard, a person cannot make a top-up payment themselves in the following circumstances;
 - From their statutory weekly personal allowance.
 - From any savings below the upper capital limit.

11. Amount to be paid

The amount of the 'top-up' will be the difference between the actual costs of the preferred provider and the amount that the Council has set in a personal budget, or Mental Health Act Section 117 after care plan, to meet the individual's eligible needs by arranging or providing accommodation of the same type. When considering the cost of care, the Council will identify costs which apply to different circumstances and types of settings.

12. Responsibility for Costs

It is important to note that the Council is still liable to pay the full costs of the accommodation if the Third Party fails to pay the required amount to the provider. In such circumstances the Council reserves the right to:

- Recover the outstanding sum due from the third party, and,
- Move the individual to alternative suitable accommodation. As with any change of circumstances the Council will undertake a new assessment of need and risk assess the impact of any potential move.

In the case of people with eligible needs who pay in full for their own care and support and ask the Council to arrange their care please see the 'Self-Funders' section in this document.

13. Reviewing the agreement and changes

The Council will confirm how the arrangements will be reviewed, what may trigger a review and the circumstances when any party can request a review.

It is expected that a full review of the third party top up arrangements will be incorporated within the annual review of an individual's care and support plan.

A review may be triggered by a change in circumstances of: the cared for individual, the individual making the 'top-up' payments (if different), local authority commissioning arrangements or any change in provider costs.

The Council will set out how any increased costs will be met and it should not be assumed that any additional cost will be shared evenly between the Council and third party.

A change in circumstances that requires a new financial assessment which results in a change to the level of contribution the individual makes may not reduce the need for a 'top-up' payment.

It is the responsibility of the third party to inform the Council immediately of any changes in their circumstances which affect their ability to continue making the top up payment.

14. Default

Individuals must be made aware that if the third party can no longer pay the top up then in most cases the individual may be moved to less expensive accommodation within their personal budget, unless there are exceptional circumstances which mean the individual cannot be moved.

15. People who are unable to make their own choice

In cases where an individual lacks capacity to express a choice for themselves, the Council should act on the choices expressed by the individual's advocate, carer or legal guardian, unless in the Council's opinion it would be against the best interests of the individual. This will be managed via the Best Interests Assessment process.

16. Self-Funders

The Care Act enables an individual who can afford to pay for their own care and support in full to ask local authorities to arrange care on their behalf.

Where an individual requires care in a care home to meet their needs, the Council may choose to respond to this request.

Where the individual requires some other types of care, including those to which the right to choice applies the Council must meet those needs.

In supporting self-funders the Council may choose to enter into a contract with a preferred provider, or may broker a contract on behalf of the individual. Where the Council is arranging and managing the contract with the provider the Council will ensure that there are clear arrangements in place as to how the costs will be met, including any 'top-up' element.

The Council will assure itself that robust contractual arrangements are in place which clearly sets out responsibility for costs and ensure that the individual understands the arrangement. Self-funders will have to pay the costs of their care and support including, (in cases where they choose a setting that is more expensive than the amount identified in their individual budget), the top-up element of the cost for that setting.

17. Choice of accommodation and mental health after-care

Regulations under section 117A of the Mental Health Act 1983 enable people who qualify for after-care under section 117 to express a preference for particular accommodation if accommodation of that type is to be provided as part of the after-care. The Council is required to provide or arrange the provision of the preferred accommodation if the conditions in the regulation are met.

The Regulation broadly gives the same rights to choice of accommodation as those who receive care under the Care Act. However aftercare is provided free of charge and the care plan should be drawn up under guidance within the Care Approach Programme (CAP).

An individual has the right to choose accommodation provided that:

- The preferred accommodation is of the same type that the Council has decided to provide or arrange;
- It is suitable for the individual's needs;
- It is available (for mental health after-care purposes, 'assessed needs' means needs identified in the CPA care plan); and
- where the accommodation is not provided by the Council, the provider of the accommodation agrees to provide the accommodation to the individual on the council's terms

The principles set out in this document apply equally to where the Council is arranging accommodation in discharge of its after care duty. Guidance also applies to when the preferred choice cannot be met.

Where the cost of the accommodation is more than the local authority would provide within the Mental Health Act Section 117 after care plan the Council must arrange for the individual to be placed there, provided that either the individual or a third party is willing and able to meet the additional cost.

For the purpose of section 117 aftercare reference to a third party should be read as including the adult receiving the after-care.

18. Complaints

Any disputes in relation to the Choice of Accommodation Policy will be subject to Solihull Metropolitan Borough Council's statutory complaints procedure.

19. Relevant Policies

This policy should be read in conjunction with the Councils Fairer Charging Policy and Deferred Payment Policy and the Top Up Policy.

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