LONDON BOROUGH OF HARROW

Residential & Nursing Placement Choice & Top Up Fees Policy

Policy Revision

Owner: Adult Social Care
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Version control table

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Contents

Purpose of this document and legal framework

- This document sets out the Council's approach to supporting individual choice in care and support planning and specifically the potential implication and procedure for third party and individual top up fees with respect to preferred residential and nursing placements in care homes.
- The aim of the document is to outline the responsibilities of Harrow Council, care homes, and families where the cost of a preferred home is more than an available appropriate option offered by the Council, that falls within the usual indicative personal budget rates paid by the Council.
- This policy is framed within The Care Act 2014; The Care and Support and Aftercare (Choice of Accommodation) Regulations 2014; and The Care and Support Statutory Guidance, Annex A: Choice of accommodation and additional payments. [Appendix 3 has a link to a summary of relevant excepts from the Care Act 2014 Statutory Guidance and a link to the Guidance itself.]

1.0 How are care home placements sourced and when would top up payments apply?

1.1 If the Council's Adult Social Care team assesses an individual as having eligible needs that can't be met by supporting them in their own home or in the wider community, they will look at options for residential care. The Council will assess the personal finances of the individual. The assessment will determine whether the individual is self-funded, fully funded by Harrow Council or is assessed as having to pay a contribution towards the cost of their care.

1.2 Where care home fees are funded or part funded by the Council, the Care Act 2014 stipulates that Harrow should <u>provide at least one option</u> of a placement that meets the individual's care needs. * (Care Act Statuary Guidance Annex A sections 18-26 -link in Appendix 3)

1.3 In order to source an option for an appropriate placement, the Council's Arranging Care Team will carry out a search that includes considering the:

- Assessed needs of the individual detailed by the social worker in the Assessment and Care and Support Plan.
- Availability of places in various homes likely to be able to meet the individual's needs on the current list of providers approved by the Council.
- Cost of the available placements to ensure they are reasonable based on our usual range of indicative personal budget rates.
- Preferences the individual or their family have expressed about particular care homes. Where placements are found that are comparable in cost, the choice will be given to the family. However, if there are available alternatives that would both adequately meet a resident's needs, but costs differ significantly, the council can consider its available budget where one placement would involve significantly more expenditure than the other and offer only the lower cost placement.
- Costs of placements prior to hospital discharge and when the discharge takes place. Where a placement becomes available at or below our usual rates before the individual has been discharged and placed, this will be offered and will take precedence over any offers above our usual rates that have already been made.
- Geographical location of potential homes, If care homes in the borough do not have a suitable available placement, we will look for homes outside of Harrow.
- Length of time the Council can reasonably search for a placement without putting the individual at risk or preventing their discharge from hospital. If it is safe to do so, Harrow Council may delay placing an individual until the market conditions improve and more affordable better-quality options are available.

1.4 The council will source at least one and up to three placements with availability depending on demand in the care home market and invite the homes to assess the client to confirm that they will accept the individual.

1.5 The assessed needs of the individual form the core driver of the process and will vary greatly depending on the person. The Care and Support Plan developed by the staff who carried out the assessment details the needs of the individual that providers are required to stipulate they can meet, within the cost agreed should they offer a place.

1.6 Harrow Council will always consider the wishes of the individual and their family as to where the person is ultimately placed. However, the care home provider market is volatile and constantly changing due to varying levels of demand for placements and the different prices charged by individual care home providers according to the type/quality of service they offer, and availability of places at any given point in time.

1.7 The Council cannot refuse to pay over a certain amount, where that is the cost of <u>the only available appropriate care placement at that point in time</u>. If after waiting a reasonable amount of time, there are no appropriate, local, reasonably convenient care homes which are in the Council's usual range of indicative personal budget rates, the Council will fund the full cost of the more expensive available option (subject to the usual financial assessment). However, this may be categorised as a 'temporary placement' and the individual can be requested to move to another care home at a later date, if an option within the Council's usual range of indicative personal budget rates (that meets the needs of the individual) subsequently becomes available.

1.8 Where there <u>is</u> an option of a placement available that will meet the individual's needs and is within the usual range of indicative personal budget rates the Council would consider; the Council <u>is entitled*</u> to refuse to cover the full cost of a more expensive care home that is preferred by the individual or their carers/family. *(Care Act Statuary Guidance Annex A sections 18-26 -link in Appendix 3)

1.9 It is important to note that when considering needs, some additional service items may be outside of those that would be considered appropriate by the local authority as required to meet the assessed needs of the individual. For example, some culturally specific services are over and above the assessed needs for social care and therefore would not form essential criteria for an appropriate placement option.

1.10 If the individual or their representatives maintain their preference for a more expensive care home to the one the Council has offered or/and want additional services provided beyond those considered as required to meet an individual's assessed needs, this choice is still possible. If someone is willing and able to pay the difference in cost between the option offered by the Council (the cost of which will be established as the level of personal budget allocated to pay to meet the needs of the individual) and the higher cost of the preferred care home the council can arrange the placement.

1.11 It is not usually permitted for individuals to pay their own 'top-up', it must be paid by someone else, usually called a 'Contributor', who could be a friend, a relative or even a charitable organisation. This is what is known as a **'third party top-up'**.

1.12 This top-up is paid *in addition to* any client contribution *made by the individual themselves* to the cost of their care as determined by the financial assessment mentioned in section 1.1.

1.13 Individuals are only permitted to additionally pay their own top-up when:

- They have entered into a Deferred Payment Agreement for their care and support charges.
- They are within the first 12 weeks of becoming a permanent resident in a care home, during which the value of their property is being disregarded for the purposes of the Council's financial assessment.
- The accommodation in question is being provided under Section 117 of the Mental Health Act 1983

2.0 How would a third party top up arrangement be set up and managed?

2.1 If the individual (and / or their family) express a clear preference for a particular care home placement then Adults Social Services must arrange for that option to be provided unless:

- The preferred placement is unsuitable in meeting the assessed needs of the individual.
- A placement / vacancy at that specific home is unavailable.
- The care home provider is unwilling to provide a placement subject to the Council's usual terms and conditions for such provision.
- As stated in section 1, to do so would cost the Council more than it would usually expect to pay for a placement for someone with the person's assessed needs, *unless a third-party Contributor is willing to 'top up' the placement cost.*

2.2 Where the individual, family or alternate carer have stated their preference for a top-up arrangement to be put in place the Council's Arranging Care Team, in conjunction with social work staff, will support with setting up and managing top-up arrangements.

2.3 Individuals should receive an explanation of their rights and their responsibilities (see Care Act 2014 references in Appendix 3 and Contributors self-declaration and contract agreement details in Appendix 1 & 2) with respect to top-up fees and charges, and be signposted towards independent advice, including financial advice, where relevant.

2.4 Where a top-up is discussed, the third-party Contributor and the individual must be made aware of the following:

i. If a potential third-party Contributor is unable to maintain their top-up payments there may be serious consequences, given the potential upheaval and complications for the individual and the financial implications for the Council. Therefore, if the person proposing to pay the top-up cannot satisfy the Council that they will be able to afford the payments for the probable duration of the individual's stay, then the Council will not agree to arrange care and support with the preferred service provider and an alternative placement will be put in place, unless the individual or their representative state they will make their own care arrangements independent of the Council.

ii. The Council is in the process of introducing new financial checks that will require evidence that the Contributor has the means to sustain TopUp payments. However currently the Contributor must sign a self-declaration that they are willing and able to pay the top up amount and enter a contractual arrangement with the Council that commits the Contributor to maintain top up payments for the duration of the relevant placement (see appendix 2&3). These payments will be made directly to the Local Authority who will manage their administration in relation to payment to the provider.

iii. Any increases in the accommodation fees imposed by the provider will lead to an increase in the third-party top-up amount

iv. That an increase in the individual's income (the individual receiving care in the placement) will not lessen the need for a top-up as the individual's income will be subject to financial assessment in the normal way

v. That failure to keep up top-up payments may result in the individual having to move to other accommodation.

2.5 Where an individual is *funding their own top-up* from their beneficial interest in a property under a Deferred Payment Agreement and there is no third party to pick up the top-up, they should be made aware that the same points apply in the event they have exhausted their ability to cover the cost of care.

2.6 Harrow Council will review known top-up arrangements on an annual basis through its Review Team collaborating with the Arranging Care Team.

3.0 What if the cost of the placement increases or decreases?

3.1 If the care home increases the charges it makes to the Harrow Council for the accommodation of the individual (due to inflationary rises or other factors), Harrow Council will notify the Contributor, and the Contributor will then be liable to pay the Council an increased top up amount that includes the rise in cost.

3.2. In the event of any reduction in charges that the home makes the Council shall credit to the Contributor an appropriate proportion of the deduction. The credit will be used to offset against future payments due from the Contributor, or if no such payments are due, shall be refunded directly to the Contributor.

4.0 What happens if the Contributor stops paying the top up?

4.1 Where a third-party contributor is no longer able to afford top-up fees, the Council should be notified by the Contributor or the individuals' representatives as soon as possible. If the Contributor is more than two weeks late in making full payment of the agreed excess amount the Council is entitled to terminate the placement of the individual and arrange for an alternative placement at a home whose charge does not exceed the Council's usual cost/indicative personal budget rates. (see clause 6 of the contract in Appendix 2).

4.2 If the care home will not accept the individual without the additional fees, the Council may look at the feasibility of moving the individual to an alternative placement available at a cost that falls within the range of the Council's usual indicative personal budget rates.

5.0 What if a placement in a care home is not the option recommended by the Council to meet the individual's needs?

5.1 In some cases where the Council has assessed a resident and recommended that they receive care *in the community* (usually costing less than a residential placement), families may disagree with the Council's recommendation and wish to place the resident in a placement and propose paying a top-up to cover the rest of the cost of care.

5.2 The Council may, at its discretion, consider providing funding up to the amount that would have been paid towards community care. In these cases, there are two main considerations affecting whether the Council will provide this funding.

I. The availability of placements. If there are limited places available at the home in question, and placing someone there will affect Harrow Council's ability in future to place a resident there whose needs <u>have</u> been assessed as requiring a placement, the Council may refuse to put in place a top-up arrangement.

II. The second is the financial sustainability of the placement and top up agreement. Residential placements are often considerably more expensive than community placements and the risk of families being unable to afford the placement on a long-term basis may be significant. As stated in section 2 the Council will ask to see a self-assessment/financial evidence setting out how the placement will be affordable, and if there is doubt over whether the family can afford it then the Council may refuse to put in place a top-up arrangement.

5.3 Third party top-up payments are optional payments used in the main to allow individuals greater freedom in choosing the care home in which they wish to live. Provided it is affordable and sustainable by a willing Third Party, the Council cannot refuse to allow top-up payments once the Council has agreed to exercise its discretion to place in a residential setting. The Council does however, have a duty to ensure that third parties concerned are '<u>able</u> and willing' to pay the top up fees.

1 Appendices:

Appendix 1 Contributors Ability to Fund Top-Up

Application to be a Contributor - Financial Circumstances Form

<u>Purpose of the form:</u>

- This form is for use by people wishing to enter into a sponsorship agreement with the Council/Care Home with regard to the provision of residential/ nursing care.
- A contributor arrangement will be necessary where the potential resident has expressed a preference to move to a care home whose fees are more than the cost of an available option sourced by the Council which meets the residents assessed needs and falls within the Council's usual range of rates.
- The Council will only be able to place the resident at the chosen home if it can be satisfied that there is a third-party contributor who is willing & able to make the additional payments over and above the cost of the alternate option offered by the Council (hereinafter called the ***"usual cost"***). The Contributor must be able to make the payments required on a regular basis from the date that that the resident entered **the Home** and for the duration of the residents stay at **the Home**, and must make the payments from their own resources, and not those of the resident.
- This form should be completed by the person wishing to become the Contributor and to pay the additional payments. They may be required to complete a financial self-assessment and provide evidence in the form of Bank Statements/Proof of Income to support the self-certification.

Full Name of resident:

Title …… First name(s)…………………Surname/ family name ………………….

Full name of Contributor:

☐ If the resident will be the contributor tick this box, then complete the Self Certification on the next page (only eligible if the resident is subject to a 12-week property disregard/deferred payment/short term or respite care/subject to S117 after care).

Title ………….. First name(s)……………………………………………….

Surname/ family name ……………………………………………………….

Relationship of Contributor to resident: ………………………………………………..

Address of Contributor: ………………………………………………………………

☎ …………………….………………(day) ……………………………………(eve)

Self-Certification – Ability to Pay

I, ______________________________ can confirm that I have the financial ability to be able to fund the additional payments over and above the Council's **usual cost**.

I know not of any current or impending circumstances that may affect the payment of this additional amount to the Local Authority.

It has been made clear to me that in signing this self-certification it has been taken under good faith without detailed verification checks. Any subsequent discovery that information provided had not been as presented will lead to further action.

I can contribute to the cost of the voluntary top-up:

£ …………………….. per week/Month

Important Information:

The authority is under a duty to protect the public funds it administers, and for this purpose may use the information you have provided on this form within this authority for the prevention and detection of fraud. It may also share this information with other bodies administering public funds solely for this purpose.

Declaration

I declare that the information given on this form is correct & complete to the best of my knowledge. I will tell the Council immediately of any changes in my circumstances.

Signed ………………………………………………………… (Contributor)

Date ……………………………………………………………………

Date resident entered ***the Home*** and/or the council agrees the payment applies

……………………………………………………………………………

ANY FALSE DECLARATION WILL BE TREATED VERY SERIOUSLY AND THE COUNCIL MAY UNDERTAKE PROSECUTION IF THIS LEADS TO THE COUNCIL OR THE HOME PUT AT A FINANCIAL LOSS.

Appendix 2 Third Party Top –Up - Standard Contractual Agreement

Third Party Top –Up - Standard Contractual Agreement

This agreement is made the ____ day of ____________________ between the London Borough of Harrow, Civic Centre, Harrow, London HA1 2XF (herein after called "**the Council**") – acting by its Director of Adult Social Services of the first part, AND

A third party making a financial contribution to the cost of the placement or (Herein after called "**the Contributor**") of the second part AND

The person living within the placement
(Herein after called "**the Resident**") of the third part.

Where the term 'the Home' is used in this agreement it includes placements made on both a long-term, respite and temporary care basis to both Residential and Nursing Care Homes.

The Contributor and the Resident are strongly advised to seek independent financial and/or legal advice to ensure that they are fully aware of the obligations and commitment that has been agreed to be undertaken by way of this agreement before signing and entering it.

The Background:

1. **The Council** has assessed **the Resident** as needing residential based care which if not provided by **the Council** would not otherwise be available to **the Resident**.

2. **The Resident** has exercised their choice to live and receive their care at ______________________________ (hereinafter called "**the Home**")

3. The cost of the placement at **the Home** exceeds the agreed amount that **the Council** would usually expect to pay for someone with **the Residents** assessed needs (hereinafter called the "**usual cost**"). The amount over and above the **cost of the placement option sourced by the council within its usual range of rates** is **£__________ per week.**

4. **The Council** can show that a suitable alternative placement is available at the Council's **usual cost.** This determines that the Council has provided suitable funds to meet all assessed needs, and **the Contributor and Resident** are exercising a choice of placement that is more expensive.

5. **The Resident** has a **Contributor** who states that they are willing and able to meet the amount over and above the cost of the placement option offered by the Council from funds other than those belonging to **the Resident** and is prepared and willing to enter into a legal agreement to make those payments from the date **the Resident** entered **the Home** for the duration of the residents stay at **the Home.**

The Agreement:

It is agreed as follows:

1. To meet **the Resident's** expressed choice of Care Home **the Council** will enter into a contract with the chosen Care Home whereby **the Council** shall pay the **usual cost** of the placement less any other deductions which include but not exclusive to Client Contribution, Funded Nursing Care, Agreed Top-Up though subject to any charges assessed under The Care and Support (Charging and Assessment of Resources) Regulations 2014 and The Care and Support and After-care (Choice of Accommodation Regulations 2014 which **the Resident** is liable to pay themselves.

2. From the date of first admission to the Home and for so long as a placement is held for **the Resident** at **the Home, the Contributor** shall pay the cost over and above the **Council usual cost** of **£__________ per week** and as per section 3 above, also in line with Clause 3 on price changes below. The **Contributor** will pay the amount directly to the Local Authority on demand as billed by **the Council**.

3. If there are increases in the charges paid to Harrow Council for the accommodation of **the Resident**, **Harrow Council** shall notify **the Contributor** of this fact, and **the Contributor** shall pay to **the Council** the amount as stated in the notification to be the new excess.

4. As a preference **the Council** and **the Contributor** will enter into a standing order or Direct Debit agreement to provide regular payments of the excess amount. **The Contributor** will co-operate with **the Council** in amending payment instructions in the event of a change to the excess amount as per section 4.

5. In the event of any reduction in charges that **the Home** is entitled to make under our contract, **the Council** shall credit to **the Contributor** an appropriate proportion of the deduction. The credit due shall be offset against future payments due from **the Contributor**, or if no such payments are due, shall be refunded to **the Contributor**.

6. If the **Contributor** is more than Two weeks late in making full payment of the agreed excess amount **the Council** shall be entitled to terminate the placement of **the Resident** at **the Home** and shall arrange for an alternative placement at a home whose charge does not exceed **the Council's usual cost.**

7. **The Council** may terminate this agreement in the event that **the Home** fails to comply with the conditions of any separate agreement or contract between the **Home** and t**he Council. The Council** also reserves the right to move a **resident** in consultation with the **Resident** and **Contributor** when there is evidence that the home becomes unsuitable to meet the **Resident's** needs. In these circumstances **the Council** will give 8 weeks' notice of its intention to withdraw from the agreement and will work with the **resident** to identify an alternative suitable placement.

8. **The Contributor** may withdraw from this agreement by providing written notification to **the Home and the Council**. Such notification is to be sent by recorded delivery to the Director of Adult Social Services or other nominated person. It must include the name of **the Resident** and of **the Home** and must give at least 8 weeks' notice of **the Contributors** intention to withdraw from this agreement.

9. If **the Council** is properly notified of **the Contributors** intention to withdraw from this agreement, **the Council** shall be entitled to terminate the placement of **the Resident** at the chosen home and shall arrange for an alternative placement at a home appropriate to the residents assessed needs whose charge does not exceed **the Council's usual cost.**

10. In the event of **the Resident** being moved to alternative accommodation as a consequence of an action under clause 8 or clause 10 above, **the Resident** agrees to co-operate with **the Council** in moving to a new home and will not seek to assert any right to remain in **the Home.**

Signed and Agreed by the Parties to this Agreement:

*Signed on behalf of **the Council*** ________________________________
Head of Service/Service Manager

*Signed by **the Contributor*** ____

(Print Name) ____

*Signed by **the Resident*** ____

(Print Name) ____

Date ……………………………………………………………………………….

Date resident entered ***the Home*** and/or the council agrees the payment applies

…………………………………………………………………………………………

Appendix 3 Link to The Care and Support Statutory Guidance:

Care and support statutory guidance - GOV.UK

Link to a Summary of Relevant Extracts on Choice, Usual Cost Range and Top Up Agreements from the Statutory Guidance: