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Adult Social Care

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| Top-up Guidance |
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| Applicable to: | Adult Social Care |
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Reason for this Top-up guidance

This document is to guide everyone involved in the process of ensuring a smooth transfer of people considering moving from their homes or hospital into accommodation where care is provided. The general principle governing this guidance is to ensure that there is clarity on the information we provide as they consider the options available to them.

The choice of accommodation and any top-up payment must extend to where the care and support planning process has determined that a person needs to live in a specific type of accommodation to meet their care and support needs. The Top-up guidance should apply to accommodation specified in regulations, for example a care home, shared lives, and supported living.

In line with the Care Act, Lambeth Adult Social Care seeks to ensure that an appropriate and proportionate response is taken in the delivery of social care intervention. Therefore, nothing in this guidance diverts away from the core principles of the Care Act.

1. Purpose of customer top-up information

This guidance outlines the 'top-up' arrangements for a person receiving care and support in one of the following settings:

- Registered residential or nursing care home
- Supported living accommodation
- Shared lives scheme

If a person wishes to choose a placement costing more than the amount that has been specified in their personal budget for the provision of accommodation of that type, then the council can seek a top-up payment.

For the purposes of this guidance a personal budget is the cost to the council of meeting those needs which it is required, or has decided, to meet and identified these needs in the persons care and support plan.

2. Right to choose

The care planning process will identify how needs are to be met. Where this involves one of the above types of accommodation then the person will have a right to choose between different services providers or locations, subject to certain conditions. The person may wish to choose a placement near to where they live; or opt to move to a different area to be closer to family; or choose a specialist home such as one run by a religious organisation. Cross-border regulations are in place, should someone wish to be placed in Wales, Scotland or Northern Ireland.

There are 6 conditions which need to be met in determining choice:

Needs

The care and support plan (or carers support plan incorporating services for a cared for person) must specify that a person's needs will be met in a care home; shared lives scheme; or a supported living accommodation setting.

The type of accommodation

The preferred accommodation must be the same as is specified in the person's plan. A person is not able, for example, to choose a particular care home if their care and support plan specifies that their needs are to be met by the provision of supported living accommodation or shared lives.

Suitability

The accommodation must be suitable to meet a person's assessed needs.

Cost

The council must provide at least one option within the personal budget which is available and suitable to meet the person's agreed needs. The council should provide a choice of options.

Availability

The accommodation must be available. If the person wishes to live in a specific care setting and it is not available at that time, then it may be necessary for them to go on a waiting list until a vacancy is available. In this event interim arrangements will be put in place, which could involve a temporary stay in suitable alternative accommodation or a package of care in the person's home.

The local authority must provide the person with clear information in writing on the detail of the arrangements as part of their care and support plan. This should include the likely duration of the arrangement, information on the operation of the waiting list for their preferred setting alongside any other information that may be relevant.

The local authority must also set out how long the interim arrangement may last for. If any interim arrangements exceed 12 weeks, the person may be re-assessed to ensure that both the interim and the preferred option are still able to meet the person's needs and that remains their choice.

Terms and conditions

The service provider of the specified accommodation must agree to the council's usual terms and conditions. We refer to this as the service agreement (contract), which the provider must sign before the service can go ahead.

3. If the person is in hospital

If the person is going to move from hospital to accommodation of their choice, then once that person has been assessed as ready to leave hospital the law requires that the council must arrange their move within a very short period. It is not in a service user's best interest to remain in hospital longer than necessary. This can lead to increased risk of such things as hospital acquired infection, loss of functional independence, decreasing social skill and depression. Therefore, if the preferred accommodation has no vacancy, then they may need to consider a temporary placement. The Patient Choice Guidance would apply for interim placements required following a hospital discharge.

4. Service User or third-party top-up payments

The service user may choose accommodation that costs more than the amount identified in their personal budget. Where they have chosen a setting that costs more than this, an arrangement will need to be made as to how the difference will be met. The service user (in certain circumstances) or a family member, friend or charity, must be willing and able to make a top-up payment to cover the difference between the service providers weekly rate and the amount in the person's personal budget for the duration of their stay. This is referred to locally as a service user or third-party top-up payment. Any third-party can agree to make top-up payments on the service user's behalf, provided that the council is satisfied that they can afford to do so for the likely duration of the placement.

A service user is only able to make top-up payments where:

*They have entered into a Deferred Payment Agreement for their care and support charges.

* They are within the 12 week period, during which the value of their property is being disregarded for the purposes of the council's financial assessment (this is usually the first 12 weeks of becoming a permanent resident in a care home); or

*The accommodation is being provided under Section 117 of the Mental Health Act 1983

The amount identified in a person's personal budget will be sufficient to meet their needs and the council must offer the person at least one appropriate and safe accommodation option to meet their needs. Please note that the range of availability would depend on the person's needs and the type of options available in the market. Therefore, the availability of accommodation may be limited because a number of care providers may not have the capacity to manage the person's unique needs.

The council will not force someone into paying a top-up fee if there is no suitable accommodation available to meet their assessed eligible needs. In these circumstances, the council may continue to explore the care market in order to find suitable accommodation. If there is still no suitable accommodation within the personal budget, if no preference has been expressed and no suitable accommodation is available at the amount identified in a personal budget, the local authority must arrange care in a more expensive setting and adjust the budget accordingly to ensure that needs are met.

5. Key points to consider before commencing with a top-up arrangement

It is important that service users are aware of the following:

- The person paying the top-up should be aware that the top-up amount may vary as service providers' review their fee levels and this may affect the level of the top-up payment. However, the provider must inform the council of any planned

fee increases and should never approach the person making the top-up payments.

- The personal budget will be considered in the regular reviews of a service user's care and support plan and may be adjusted in response to increased costs generally or to an increase in their care needs. This may result in the top-up amount being reduced.
- The service provider of the preferred accommodation may increase their costs. Unless this is matched by an increase in the customer's personal budget the additional cost will be passed on to the payer of the top-up.
- The top-up payment will always be the difference between the service providers weekly rate and the person's personal budget.
- Whoever is paying the top-up i.e., the customer or the third party will need to sign a written agreement confirming that they are willing and able to meet the difference in cost and will continue to do so throughout the persons stay. The preferred placement will not commence without a signed agreement being in place.
- In certain circumstances and depending on the size of the top-up amount, the council may require the person who has agreed to top-up to provide reasonable evidence of how they would afford the weekly payment. They may be asked to provide details of their assets and liabilities, as well as their income and expenditure.
- If the council is not satisfied that the person paying the top-up will be able to afford the top-up for the duration of the person's stay, then the Council will NOT agree to arrange care and support with the preferred service provider. Any outstanding debts already incurred will be considered as part of the decision-making process on a third party's ability to afford a top-up arrangement.
- If the person paying the top-up is unable to continue to pay the difference then the service user is likely to have to move to another room within the accommodation or to other accommodation that charges fees that are within the amount set in the person's personal budget.
- Any move to other accommodation will only take place after re-assessment of the person's needs to make sure that the alternate accommodation is able to meet their needs.
- Where the council incurs the costs of the top-up payment prior to making alternative arrangements within the customer's personal budget, the council will seek to recover these costs from the top-up payer under the top-up agreement.
- If the council is unable to transfer the service user to an alternative accommodation and the council subsequently has to take over the original top-up amount, recovery action may be taken against the top-up payer.

- If the council and the person paying have entered into the top-up agreement satisfied that it is sustainable for the duration of the stay but something has changed unexpectedly that impacts on their ability to pay (e.g. serious illness of the person paying so that they no longer have an income), the agreement may be brought to an end by the person paying without incurring further liability. Where a person is unable to continue making 'top-up' payments, the council may seek to recover any outstanding debt and has the power to make alternative arrangements to meet a person's needs, subject to a need's assessment. The person paying the top-up is responsible for informing the council of the change in their circumstances and providing suitable evidence demonstrating how the change in circumstances means they are no longer in a position to make the payments.

6. Reviewing the Top-up agreement

The Top-up agreement will normally be reviewed annually. Additionally, the agreement will be reviewed in the following circumstances:

- A. If the third party stops paying their contribution, Lambeth Council will review the care needs and placement. The service user may lose the right to certain additional facilities, be required to move room, or possibly move to an alternative care home. Lambeth council will usually seek to recover any unpaid fees from the third party or their estates. This would include if the third-party dies.
- B. Price increases – usually no more than annually in the absence of any other changes in circumstances. It is not guaranteed that price increases will be shared evenly if the provider costs rise more quickly than the amount the personal budget would be increased by. In most circumstances the increase will be shared on a 50/50 basis.
- C. Where the person making the top-up payment has a change in their circumstances which reduces the ability to maintain the top-up, Lambeth Council should be alerted as soon as possible of such changes. An attempt would be made to negotiate with the accommodation a reduction in the top-up to an affordable rate. Where this is not possible alternative accommodation will be sought after a new care needs assessment.

7. What will be in the written agreement?

- The amount of the top-up payment
- The amount of the person's personal budget How often payments are to be paid
- To whom the payments must be paid
- The provisions for reviewing the agreement
- The consequences should the person be unable to continue to make a

payment. The effect of any increases in charges made by the service provider.

- The effect of any changes in the financial circumstances of the person paying the top-up

8. Accommodation under Section 117 of the Mental Health Act 1983

A person who qualifies for the provision of aftercare services under S117 of the 1983 Mental Health Act may be provided with accommodation to meet needs arising from their mental disorder. If provided with accommodation under that section the person has the same rights to choose their preferred accommodation as above, save for the following differences:

Instead of a care and support plan they will have an aftercare plan, which would be reviewed regularly or at least once a year to determine if the section 117 needs to continue.

S.117 After care under the Mental Health Act is provided free of charge. The care plan should be drawn up under guidance on the Care Programme Approach (CPA). However, S.117A of the Mental Health Act makes provision for the person concerned to pay additional cost for the person's preferred accommodation

They will not have a personal budget. A top-up payment will therefore be required where the cost of the preferred accommodation exceeds the usual costs to the Council of providing that type of accommodation. The top-up amount will be the difference between this usual cost and the cost of the preferred placement.

The choice of accommodation will only apply to people aged 18 years and over.