

**Isle of Wight Council  
Adult Social Care**

**Third Party Top Up Policy for  
Residential and Nursing Care  
Placements**

**June 2022**

## 1 Document Information

<b>Title:</b>	<b>Adult Social Care's Third Party Top Up Policy for Residential and Nursing Care Placements.</b>
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Version History		
Version	Date	Description
V0.1	July 2015	Draft
V0.2	August 2015	Following meeting on 11/08/15
V0.3	September 2015	Following meeting on 01/09/15
V0.4	September 2015	Following meeting on 04/09/15 between Jackie Raven and Catherine Smith-Ivory
V0.5	September 2015	Rewritten following advice from Helen Miles, Legal
V0.6	September 2015	Explanation regarding purchasing over and above contract price.
V0.7	September 2015	Helen Miles amended wording on Section 3.
V1.1	November 2016	Annual review
V1.2	Jan/Feb 2017	Clarify consequences of failing to pay the top up
V1.3	17 <sup>th</sup> – 21 <sup>st</sup> February 2017	Changes following direction from Leadership Group, Mike Corrigan and meeting with Matt Porter and Jane Davis.

V1.4	8 <sup>th</sup> May 2017	Agreed by Roger Merry/Garion Bird, Legal Team
V1.5	Feb 2020-March 2021	Review of entire policy. Amendments and additions made by Hannah Donbavand and Julia Coles with agreement from Laura Gaudion, Elizabeth Hughes and Garion Bird.
V1.6	June 2022	Changes to the Director of Adult Social Care and 'Your needs assessment' terminology updated to 'Care Act Assessment'. Complains and appeals links updated.

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### **3 Purpose, Scope and Aims**

On 1<sup>st</sup> April 2015, the rules regarding the charging of third party top ups for residential and nursing care changed. The Care and Support Statutory Guidance issued under the Care Act 2014 sets out the circumstances in which top ups changed.

This policy relates to accommodation types specified in the Care Act 2014:

- Residential / Nursing Care
- Supported Living accommodation

Sometimes a provider will request a more expensive price for a placement than the Isle of Wight council (IWC) has identified it will pay in the personal budget.

A top up payment is the additional money needed to be paid by a third party to meet the difference between the amount the IWC will pay (as identified in the social care personal budget) and the money the provider requires for the placement.

The IWC will ensure individuals know the full implications of choosing an accommodation that is more expensive and that the additional cost will need to be met for the full duration of the time in the accommodation. Should the additional cost not be met, the person could be moved to alternative accommodation, the cost of which is within the personal budget.

### **4 Making Arrangements for an Additional Top Up Payment**

When developing a support plan with the individual, the IWC will provide a social care personal budget which will be sufficient to meet the person's eligible care and support needs. All decisions will be taken on an individual basis and will consider the wellbeing of the individual.

If the person receives a support service in the community or in their own home and they wish their needs to be met at a cost above that agreed in their personal budget, the person will need to enter into a private agreement with a service provider for any additional costs. Legislation prevents the council from accepting a top up payment from an individual for care and support being delivered in the community or in a person's own home.

When support is to be met in specified accommodation as defined above, the individual has the right to choose accommodation that is suitable and available at the cost the IWC has agreed in their personal budget.

If the council is able to arrange support in the specified accommodation at the cost the authority has agreed in the personal budget, but the person has chosen a service provider that costs more, the IWC can arrange the chosen accommodation if the third party top up agreement has been signed.

The top up needs to be paid by someone else (i.e. a third party) from their own income and/or savings.

The individual is entitled to pay their own top up under the following circumstances;

- Their property is disregarded in the first 12 weeks of staying in a care home
- They have entered into a Deferred Payment Agreement with the IWC and the top up has been agreed as part of this agreement

The Care Act stipulates adults who are receiving their accommodation under Section 117 MHA are allowed to make top up payments on the same basis as third parties.

The person offering the top up payment must be willing and able to meet and sustain the additional cost for the duration of the stay.

The IWC will provide the individual and/or the third party with information and advice (Third Party Top Up Factsheet) to ensure they understand the terms and conditions relating to top up payments. The council also recommend individuals seek independent financial / legal advice about other options for paying for the costs of care.

If the individual wishes to proceed with the arrangement and the council is satisfied it is affordable, the person and/or the third party will enter into a written Third Party Top Up Agreement with the IWC to meet the additional cost of their chosen accommodation.

The agreement will make it clear that the individual and/or the third party will have to meet the additional cost for the duration of the stay.

The care home, council and third party must all agree to the third party contribution. The third party must sign an agreement form with the council which will set out how much they will need to pay, to whom and how often.

A care home should not ask a resident, their family, friends or carers directly for a third party contribution without the council's involvement, as the council also has to be involved and sign the agreement even where the third party will be paying the care home directly. If this happens please let the Financial Assessment and Charging Team know immediately on [01983 823479].

Before signing the agreement, the third party must be sure they can keep making the payments for as long as you are in the care home. The third party must consider the potential impact on the individual receiving care should the third party be unable to make payments in the future, including the potential for the individual to have to re-locate to an alternative placement.

The council will monitor the additional payments (top up payments). If there is a breakdown in the payment of a top up at any point, the council will contact the relevant person to discuss further action. The IWC will:

- Seek to recover the additional costs or
- Make alternative arrangements for the accommodation, the cost of which is

within the personal budget

The additional payment (top up payment) may be subject to change. The council will review the arrangement annually and/or when:

- The cost of the accommodation has changed
- At the person's request, or if they or the third party's financial circumstances have changed
- The individual's personal budget amount changes

The IWC will check that payments have been made consistently and decide whether the arrangement continues to be sustainable. When the social care worker reviews the placement, they will check if the person is still willing and able to make the necessary payments.

## **5 Changes to Payments / Reviews**

The council reviews and may revise its standard residential care fees annually and individuals will be notified of any such changes in advance of them coming into force. The person responsible for paying the top up will remain liable for the difference between the total cost of the placement and the individual's personal budget at that time.

Providers often review their fees which will most likely result in an increase in the total cost of the placement. Should this happen, the IWC will not revise its personal budget payment towards the placement. The person responsible for the top up will be required to pay the IWC any additional sums charged by the provider of the placement, by way of increasing their weekly top up payment from the date specified.

It should also be made clear that the individual's assessed contribution towards the cost of their care will have no bearing on the sum the IWC is prepared to contribute towards their care costs or the sum they are required to pay in order to maintain the placement. Therefore, any changes in the individual's financial circumstances that result in a change to their assessed contribution will have no effect on the amount the individual is required to pay under the Third Party Top Up Agreement.

## **6 Consequences of failure to pay the Top Up**

If the person does not maintain payments in accordance with the Third Party Top Up Agreement, the individual may be required to leave the chosen home and will be placed in an alternative residential / nursing care setting at a cost that is within their Personal Budget. Details of the arrangement for such a change are set out in the section 9 below.

In the event that one payment of the Top Up Payment amount is missed, the council will send a letter requesting that the missing payment is made within 7 days of the date of the reminder letter.

If no payment is received after this time, the council will refer the matter to its debt recovery team for commencement of IWC's standard recovery procedure. This may result in enforcement action before the County Court where we will ask that interest is added to the debt being accrued.

If payment is not received within 7 days of the reminder letter, the IWC will start to source an alternative placement for the individual.

If more than three reminder letters are sent within any 12-month period, the council will terminate the Agreement as set out 9 below.

If pre-litigation debt recovery action does not result in payment, the council will exercise its rights to Terminate the Agreement as in Section 9 below.

## **7 Changes in Financial Circumstances**

If the financial circumstances change resulting in the person being unable to make the necessary top up payment, the council will require the individual to inform them straight away to discuss their options.

## **8 Termination of the Agreement**

The IWC will bring the Third Party Top Up Agreement to an end if the individual:

1. Fails to make payment of the third party top up payment amount in full within 7 days of the date of a reminder letter.
2. Fails to make three payments of the third party top up payment amount on time in any 12-month period.
3. Notifies the IWC, in writing, that they are no longer able to sustain the agreed weekly payments.
4. Notifies the IWC, in writing, that they would like the Agreement to end.

In the event that one of the termination triggers arises and the council chooses to exercise its right to bring the Third Party Top Up Agreement to an end, the individual will be required to move into alternative accommodation, the cost of which is within their assessed personal budget.

Before any decision to move the individual is taken, a Care Act Assessment will be undertaken. The final decision as to whether the person will need to move to alternative accommodation will rest with the relevant manager who will take into account the circumstances of the case.

The IWC will not maintain the placement if the third party top up is unable to be maintained.

If the council decides to terminate the Third Party Top Up Agreement, it will serve notice on the person providing them with the same period of notice as required in accordance with the contract it has with the provider. In most cases the period of notice the council is required to give to a provider will be 28 days and on the assumption that this is the position the individual will be required to leave the placement no later than the end of the 28 day notice period.

During the 28 days, or the period of time stipulated in the contract with the provider



of the placement, the council will commission care in an alternative placement that is able to meet the individual's assessed needs within the personal budget. This will be in line with the usual arrangements put in place for individuals who have not previously received the benefit of a third party top up payment.

## **9 Joint Third Party Arrangements**

If the Third Party Top Up Agreement involves more than one third party making contributions to the individual's care costs, the duties arising are joint and several.

This means that if one or more of the third-parties fails to pay their agreed contribution, the other third-parties to the agreement will be liable to the council for the full amount of the defaulting party's share.

If the remaining third parties are unable to pay the top up payment amount in full, the council will terminate the Third Party Top Up Agreement.

## **10 How to make a Complaint or Appeal**

If individuals are unhappy with the process, their assessment, care and support plan or direct payment, we would like to hear about it as soon as possible. We recommend they speak to an Adult Social Care member of staff in the first instance.

Complaint details can be found by visiting: <https://beta.iow.gov.uk/adult-social-care/feedback/make-a-complaint/>

If individuals disagree with a decision made about their assessment of adult social care needs, or finances, or a decision about your Independence Plan, they can make an appeal. Details on appeals can be found by visiting: <https://beta.iow.gov.uk/adult-social-care/feedback/appeal-a-decision/>