

Version: 3 FOI Status: Public	Derbyshire County Council Adult Social Care & Health  Third Party Top Up Fee Residential Care Home Policy and Procedure	Originally Issued: April 2019 Issued: December 2025 Review Due: December 2027 Author: Ben Marsh
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## Adult Social Care and Health

# Third Party Top Up Fee Residential Care Home Policy and Procedure

## Version 3

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This guidance will be reviewed on a regular basis – if you would like to make any comments, amendments, additions etc. please email: [asch.adultcare.policy@derbyshire.gov.uk](mailto:asch.adultcare.policy@derbyshire.gov.uk)

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## Purpose

The purpose of this policy is to explain the parameters and process applied when an individual chooses care and support which is more expensive than the amount allocated in the personal budget.

## Scope

This policy is intended to be followed by officers of Derbyshire County Council (DCC) involved in carrying out social care need assessments and financial assessments when a person chooses more expensive care and support than is allocated to them in their personal budget to meet their eligible needs. The policy covers permanent and long term residential or nursing care, not short term respite care in an independent sector care home.

## Context

The [Care Act 2014](#), [The Care and Support and After-care \(Choice of Accommodation\) Regulations 2014](#) and the [Revised Care and Support Statutory Guidance \(Annex A\)](#) published by the Department of Health in February 2017 provide the legal framework in relation to top-up charges or 'additional payments' for residential care placements.

## Definitions

**"Personal Budget"** - is an agreed amount of money that is allocated to an individual by the council following an assessment of their care and support needs.

**"Top Up Contribution"** - the difference between the chosen service provider's rate and the person's personal budget.

**"Third-Party"** - a person or persons who have entered into an agreement to pay the top up contribution.

**"First-Party"** - the person whose needs are to be met by the care home placement ("first party") may themselves choose to make top-up payments in some specific circumstances.

## Choice of accommodation and additional payments

Choosing a care home is an important decision which requires careful consideration and planning in terms of practicalities, the wellbeing of the individual, and financial consequences. The council is committed to ensuring that at least one choice of accommodation is affordable within an individual's agreed available personal budget.

However, there may be circumstances in which a person chooses to move into a care home that costs more than their available budget. This could be for reasons of comfort, location, or personal preference.

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Where a person chooses accommodation that is more expensive than their budget, an arrangement will need to be made as to how the difference will be met. This additional cost will need to be met by a third party, such as a relative or friend or, in certain specific circumstances, the person in need of care and support. Financial assistance may also be sought from charitable organisations to help meet additional top-up costs e.g. Royal Masonic Benevolent Institution, Royal Airforce Benevolent Fund.

**In exceptional cases, if no suitable care and support is available** at the specific amount identified in the personal budget, then the council may arrange care at a more expensive rate and adjust the personal budget accordingly to ensure that an individual's needs are met without the need to pay a top fee. This may mean the person having to move homes when a suitable bed at the council's agreed rate becomes available. Such temporary arrangements would be made at the best affordable price, closest to the council's agreed rate. In such circumstances, the council cannot ask for the payment of a 'top-up' fee nor would the council accept that this inclusive value is the normal rate that the council would buy a placement for. In these circumstances it will be made clear to the resident that they may be asked to move to an alternative home if a bed becomes available and their personal budget may be reduced accordingly. If the resident wishes to remain in the original accommodation, they may be asked to find a "top up" fee.

### Third party top-ups

Taking on the responsibility for paying a top-up for a person who is moving into a care home is a commitment that should **only** be undertaken after careful consideration and the council would encourage that people should also consider obtaining independent financial advice and information.

The council may refuse to enter into a third party agreement if it is not satisfied that the third party has sufficient funds to ensure payments are made.

The third party (the person who has agreed to make the additional payment) **must** be aware that they are committing to the payment of the top-up for the full duration of the person's stay in a care home. At **no** point can the third party use the cared for person's assets or income, including their personal expenses allowance, to cover the "top up" payments.

The council is unable to confirm a placement until the third party has agreed to the terms and conditions of the individual service agreement by completing and signing a third party agreement form.

Only **one person** can be named as the third party contributor on the individual service agreement, which confirms the details of the placement. However, this does not mean that the named person cannot collect funding from other family members who may also wish to contribute to the top-up payment.

It is the council's preferred option that the third party pay all top-up payments directly to the care provider unless the person requests to pay the council directly.

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The council's contract with care home providers details the collection arrangements of top-ups that care home providers should put in place. The provider is required to advise the council of any proposed fee increases and to share with the council any concerns where they experience difficulties in receiving payment.

If the third party is no longer able to continue with the agreement, the council must be informed of this as soon as possible. The council will then consider the options available and complete a needs assessment of the cared for person to determine the most appropriate course of action, which **will include moving** the person to an alternative care home if the council is unable to renegotiate the top up. The council will continue to pay the top-up charge until alternative arrangements to meet the cared for person's needs have been confirmed.

If the third party fails to pay the required amount to the accommodation provider, the council is liable for the full cost of the accommodation until it has either recovered the additional costs it incurs or has made alternative arrangements to meet an individual's needs. The council is obliged to pay any outstanding sums to the accommodation provider, provided that the accommodation provider notifies the council as soon as practicable as per council's terms and conditions of accommodation. The amount outstanding in respect of the top up will be sought from the person who signed up to the agreement to be the resident's third party payee and the monies will be pursued as a debt from this individual.

### First party top-ups

The person whose needs are to be met by the care home placement ("first party") may themselves choose to make top-up payments in some specific circumstances.

First party top-ups may be an option where the person owns their own property and is subject to a 12-week property disregard. The top-up may be paid from the cared for person's disregarded income or savings (savings below the lower capital limit) during this period. If after the 12 week property disregard period the resident chooses not to join the deferred payment scheme, they can no longer pay their own top-up charge and a Third Party would have to assume responsibility for the payment of the top-up or the first party will have to move.

If the cared for person has not sold their property after the 12-week property disregard period they may be eligible to join the council's Deferred Payment Scheme. If accepted onto the scheme, the person may use the equity in their property to accrue the top up amount as well as the capital element of their contribution.

Once accepted onto the Deferred Payment Scheme, the council will pay the top-up payments directly to the provider, along with any other accommodation costs that are to be added to the accrued debt, until such a point that the property is sold. The council will then recover the total amount loaned to the person to cover their accommodation and top-up charges, plus an amount for interest and administrative costs (if not paid up front).

A person may also choose to pay their own top-up payments where they are receiving accommodation provided under S117 for mental health aftercare.

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## Price increases

Each year the council reviews the prices paid for the provision of care and decides how much it is prepared to inflate an individual's personal budget.

Care homes may also decide to increase their prices following a review of their costs. The increased price may be more than the amount allocated in an individual's personal budget and may be more than the amount the council is prepared to pay for the type of care being provided.

Any **additional amount** that the council does not pay will need to be funded through an increase to the amount of top-up paid by the third party or be added to the loan available through the Deferred Payment Agreement.

If the cared for person has a change in circumstances (e.g. a move to a nursing home from a residential home) a new financial assessment may need to be completed which may change the level of contribution the person has to pay. However, this would not affect the need for a top-up payment if the home charges above the agreed DCC fee rate.

## Guidance for Individuals and Third Party Representatives

The council will ensure that individuals and their representatives understand their right to choose their care home arrangements and the consequential financial implications.

The assessor will provide relevant documentation to people and will not proceed with any aspect of the arrangements detailed in this procedure until they are assured that the information is understood.

The third party should be encouraged to discuss with a social worker or relevant council officer, the implications of making top-up contributions before they make the financial commitment and sign the third party contribution (top-up) agreement with the council. In particular the third party should be made aware of:

- the length of time they may be making payments for (on average this will normally be less than 3 years, but it could be much longer )
- the top-up amount will likely increase over time as accommodation providers increase their rate and that there is no guarantee any increases in accommodation fees will automatically be shared evenly between the council and third party
- an increase in the individual's income will not lessen the need for a top-up as the additional income will affect the individual's contribution, not the top-up
- if the individual has a change in circumstances that requires a new financial assessment and this results in a change in their contribution, this may not reduce the need for a top-up payment

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- if the third party fails to make the required payments it can result in the individual being moved to an alternative suitable accommodation setting
- only they or another third party (not the individual) can make the payment (see section on “first party top-ups”)
- they should sign the council’s third party top-up agreement (only after they have verbally assured the responsible council officer that they understand the agreement - the officer is also required to record this conversation in the person’s records to show that they understand the implications of the commitment and that they agree to make the top-up contributions before the resident is placed in the care home)
- before signing the agreement, the third party and individual should be provided with sufficient information and advice to ensure they understand the implications, including signposting to independent financial information and advice - sources of information include the council leaflet on how to access independent financial advice, [Derbyshire's Care Services Directory](#) the [Council's 'Trusted Trader' website](#) and the [Care Act 2014 statutory guidance Annex A \(Choice of accommodation and additional payments\)](#)
- further guidance can be found at on the Derbyshire County Council [website](#)
- all parties to a contract for the provision of accommodation, including a third party agreement, must understand the overall nature of that contract and agreement
- if the individual moves to a different accommodation setting, and a top-up is required, any third party top-up agreement with their previous accommodation provider will terminate and a new third party contribution (top-up) agreement will be established with the new accommodation provider
- If the placement is **terminated** by the individual and their representative without a breach or a change in care needs (e.g., residential to nursing) then the council will need to provide 28 days’ notice to the care home, unless a shorter time frame can be agreed.
- The individual cannot move until an agreed date and the “third party top up” will need to continue to be paid up to the last day.
- If the individual and family decide to move before the notice period is exhausted, then the council will not be responsible for funding the new identified placement until the notice period has expired and the family and individual could then be held responsible for paying for two placements.

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## Author History

### Approval and Authorisation History

Authored by: John Ahmed March 2019

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### Change History

Version 1 John Ahmed March 2019 New Guidance

Version 2 Ben Marsh May 2023 Review & update

Version 3 Ben Marsh December 2025 Review & update