

Report for: Cabinet, October 2017

Item number: 10

Title: Choice & Third Party Top-up policy – Adult Social Care

Report authorised by : Charlotte Pomery, Assistant Director Commissioning

Lead Officer: Sam Jacobson, Commissioning Manager

Ward(s) affected: All

**Report for Key/
Non Key Decision:** Key Decision

1. Describe the issue under consideration

- 1.1 The Council is committed to giving residents choice and control over their care and support. During a significant life event such as moving into a care home, it is important that residents are offered appropriate choice to inform their decision of where to move to.
- 1.2 The Care Act (2014) established legislative guidance for local authorities on offering choice to residents who require accommodation-based care and support service (e.g. care homes etc.). The guidance also allows local authorities to operate local 'Third Party top-up' policies, which are arrangements whereby a person known to a service user pays the difference between the cost of a service and their personal budget.
- 1.3 The Council currently does not have a formal choice and top-up policy, setting out how service users will be offered a choice of accommodation-based service, and how and in what circumstances a third party top-up may apply. This report recommends a choice and third party top-up policy be introduced based on established local practice and the approaches used by Haringey's North Central London neighbours (Annex 1). This report also sets out a recommended approach to calculating service users' budgets, which forms the basis by which a potential third party top-up fee would be calculated, again based on established local practice.

2. Cabinet Member Introduction

- 2.1 It is very important that residents have a real choice when their health requires them to move away from their home into a care home or other service. This policy sets out the obligations of the Council to ensuring that residents are given an appropriate choice of good quality care homes. The policy also puts in place a

framework to manage circumstances where residents choose to live in a costlier environment, and how they can use 'third party top-ups' to access their preferred choice.

- 2.2 This policy builds on existing practice and seeks to ensure that residents have a consistent experience in choosing a care home or other service. The policy also ensures that the Council is compliant with its obligations under the Care Act (2014)

3. Recommendations

- 3.1 To agree the approach for calculating service users' personal budgets as set out in paragraph 5.3 of the report.
- 3.1 To agree the third party top-up policy for accommodation based services attached as Appendix 1.

4. Reasons for decision

- 4.1 The Care Act 2014 and The Care and Support and After-care (Choice of Accommodation) Regulations 2014 allows local authorities to apply third party top-up arrangements where service users/families choose accommodation-based services to meet identified needs which are more expensive than the local authority usually pays and exceeds the service user's personal budget. A third party top-up is an arrangement whereby a person known to a service user pays the difference between the cost of a service and their personal budget.
- 4.2 Currently, personal budgets are calculated based on the market rates of placements identified to meet individual needs. Haringey does not currently have a formal choice or third party top-up policy for accommodation-based services. This in practice means that fees paid for given placements varies widely. This fee variation is not always a reflection of differences in need or limits in supply, but in some cases may reflect service users and family members choosing particular placements that are of higher cost. This in effect leads to a higher personal budget than the assessed needs would require.
- 4.3 The Council does occasionally reach agreement with service users and their families for a 'third party top-up' where there is a difference between the care home a service user/family chooses to live in and their personal budget, based on the costs of a placement which meets their needs. However, this is not implemented consistently.
- 4.4 All of our North Central London neighbouring local authorities have a top-up policy. These are summarised in Annex 1 but the approach taken is largely consistent within each borough. In essence, where service users are presented with a choice of services which can meet their needs, but reject these in favour a more expensive option than their personal budget allows, then the service user must fund the difference between their preferred placement fee and their personal budget via a third party top-up.

- 4.5 In most instances within Haringey's neighbouring local authorities the difference between a service user's personal budget and the total cost of a service is funded via a third party top-up because a service user's income and savings is factored into the amount they pay on a weekly basis towards the cost of their care following a financial assessment. The service user cannot withhold a proportion of their income for the purpose of paying a top-up.
- 4.6 It is recommended in this report that a similar policy is introduced in Haringey. There are a number of variants to this broad approach dependent on how personal budgets are calculated which are summarised in an options appraisal below.

5. Options Appraisal

- 5.1 Haringey have two principal options in relation to calculating service user's personal budgets and implementing a third-party top up policy. These are:
- a. To base the personal budget above which third party top-ups should apply on 'usual rates' based on a benchmarking of average costs to meet needs, to be up-rated on an annual basis. These usual rates could form the basis of a resource allocation system for personal budgets, which service user's top-up via a third party should they wish to purchase care and support in excess of the personal budget rate
 - b. Personal budgets are calculated on a client-by-client basis, based on the average costs of provision that is identified by the commissioning team which can meet the assessed needs of service users. Should a service user or their family reject the choices presented to them by the commissioning team and express a preference for another, more expensive service, they will be required to make a third party top-up over the agreed personal budget.
- 5.2 It is recommended that the Council implements a variant of option b. This is for the following reasons:
- Option b is a more adaptable approach to the specific needs and requirements of service users. Given the wide spectrum of needs of the client groups that access accommodation-based services, basing personal budget allocations on a resource allocation system may be problematic and more open to challenge.
 - Option b will be more responsive to the capacity of the marketplace to meet people's needs and to the rates that they are able to provide a care package at based on individual need. This is more in line with the terms of the Care Act around 'sufficiency' of personal budgets, specifically:

Clause 11.25 "consideration should... be given to local market intelligence and costs of local quality provision to ensure that the personal budget reflects local market conditions and that appropriate care that meets needs can be obtained for the amount specified in the budget"

- Option a would be complex to administer and to determine the resource allocation system. Rates would have to be set for each client group, and would be challenging to develop in a way sensitive to fluctuations in individual need.

5.3 It is recommended that a variant of option b be implemented based on the following principles:

- The Council should set personal budgets based on quoted costs of meeting individual need and outcomes.
- The average fees used to determine service user's personal budgets should be calculated based on the average of the two least expensive offers from suppliers which meet outcomes on a case-by-case basis. More expensive offers should be discounted to ensure that the Council makes placements based on achieving user outcomes and best value.
- Where only one offer is received below the Council's 'price banding' for older people's residential and nursing placements (agreed across North Central London), then the Council will base the personal budget on the price which falls within the banding, should the service user/family reject this arrangement.

6. Contribution to strategic outcomes

6.1 This will contribute to the Corporate Plan Priority 2 ('Enable all adults to live healthy, long and fulfilling lives'), whilst also contributing to one of the enabling outcomes within the Corporate Plan, to achieve better value for money.

Statutory Officers comments (Chief Finance Officer, Procurement, Assistant Director of Corporate Governance, Equalities).

7.1 Finance

7.1.1 The budget for residential and nursing placements is £26.5m for 2017/18 via the General Fund however the Medium Term Financial Strategy shows that funding for services is constantly under review and there is no guarantee that these sums will be available in future years.

7.1.2 The revenue forecast position for this financial year as at Period 4 is £28.3m, prior to estimated savings which represents an overspend of £1.8m.

7.1.3 We would always recommend that value for money is obtained through the best use of resources ensuring that efficiencies and savings opportunities are always explored fully.

7.1.4 On this occasion given that the lowest two rates will be used for the basis of the top up calculation that this would indicate that unit costs will be driven down.

8.2 Procurement – Head of Procurement

- 8.2.1 The Head of Procurement notes the contents of this report; there are no procurement implications in instituting a third party top-up policy. However, Service must, ensure that where third party top-ups are agreed, suitable arrangements are in place to capture and enforce third party top-up payments to mitigate any financial risk to Council or the service user from placement break-down

8.3 Assistant Director of Corporate Governance

The statutory context to the proposed policy is the Care Act 2014 (“the Act”), the Care and Support and After-care (Choice of Accommodation) Regulations 2014 and the Care and Support Statutory Guidance updated 2017. Under the Act, a local authority may meet care and support needs by providing accommodation, for example in a care home. Section 30 provides for Regulations to be made where an adult’s needs are to be met by the provision of specified types of accommodation, and the adult has expressed a preference for particular accommodation of that type, the local authority must meet the adult’s preference, provided that specified conditions are met. Pursuant to this section, the Choice of Accommodation Regulation (i.e. the Regulations referred to above) was enacted which amongst others provides for:

- the types of accommodation to which the obligation to meet the adult’s preference applies (i.e. care home accommodation, shared lives scheme accommodation and supported living accommodation) (Regulation 2)
- the conditions which must apply in order for the local authority to be required to meet the adults preferences for accommodation (Regulation 3);
- the additional cost condition (Regulation 5); and
- written reasons for a refusal to provide preferred accommodation (Regulation 9)

Section 26 of the Act requires the local authority to provide each service user with a personal budget statement that, amongst other matters, sets out the total amount which it costs the local authority to meet the needs which it must or has decided to meet **and** broken down so that the adult can see from the statement the amount if any which the adult must pay towards that cost and the amount if any which the local authority must pay. The personal budget is an important tool that gives the person clear information regarding the money that has been allocated to meet the needs identified in the assessment and recorded in the plan. An indicative amount should be shared with the person, and anybody else involved, at the start of care and support planning, with the final amount of the personal budget confirmed through this process. The Care and Support Statutory Guidance advise that *“the most important principles in setting the personal budget are transparency, timeliness and sufficiency. This will ensure that the person..... is fully aware of how their budget was calculated, that they know the amount at a stage which enables them to effectively engage in care and support planning, and that they can have confidence that the amount includes all relevant costs that will be sufficient to meet their identified needs in the way set out in the plan... Paragraph 11.24”*

The draft policy is in accordance with the Act and the Regulations.

8.4 Equality

8.4.1 The Council has a public sector equality duty under the Equality Act (2010) to have due regard to the need to:

- Eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act
- Advance equality of opportunity for those with 'protected characteristics' and those without them
- Foster good relations between those with 'protected characteristics' and those without them.

8.4.2 The protected characteristics are: age, disability, gender reassignment, marriage/civil partnership status, pregnancy/maternity, race, religion/faith, sex and sexual orientation.

8.4.3 A draft initial Equality Impact Assessment (see appendix 2) is attached for this policy.

8.4.4 Summary of NCL boroughs approaches

Borough	Approach	What happens if the third party defaults on its top-up?	Markets the policy applies to
LB Camden	Third party top-ups apply where a service user/family chooses a home which is above the 'usual rate' the local authority pays for people with equivalent needs. The 'usual rate' is based on the average rate by the host authority for people with equivalent needs.	The Council reserves the right to move service users to more affordable accommodation subject to a needs assessment. The Council will pay the full cost of the placement temporarily.	Care Homes and other accommodation-based services
LB Islington	Third party top-ups apply where a service user/family chooses a home which is above the 'usual rate' the local authority pays for people with equivalent needs. The 'usual rate' is based on the average rate by the host authority for people with equivalent needs.	The Council reserves the right to move service users to more affordable accommodation subject to a needs assessment. The Council will pay the full cost of the placement temporarily.	Care Homes

LB Enfield	<p>Third party top-ups apply where service users/family reject 3 care home options and state a preference to move to another home at a higher rate.</p> <p>The top-up amount is calculated as the difference between the fees of the 3 or more identified care homes which can meet a service user's needs, and the fee for the home the service user/family want to move to.</p>	<p>Service users in a placement for more than 1 year will not be moved and the Council will pay the full cost of the placement.</p> <p>Service users in a placement for a shorter time-period may be moved subject to a needs assessment. The Council will pay the full cost of the placement temporarily.</p>	Care Homes
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9. Use of Appendices

Appendix 1 Third party top-up policy for accommodation based services
Appendix 2 – Equalities Impact Assessment