



Adult Social Care Select Committee
5 September 2013

Care home top-up fees

Purpose of the report: Scrutiny of Services and Budgets/Policy Development and Review

In July 2013, the Independent Age published a report into Care home top-up fees. The report, based on a Freedom of Information request (FOI) rated all 152 councils, including Surrey, according to how the councils responded to the FOI.

This report has been prepared at the request of the Select Committee to explain the practice in Surrey regarding top-up fees.

Introduction:

Background to care home top-up fees

1. In broad terms, if a person is assessed as needing support, either permanently or temporarily, in a residential or nursing care home, and either the person does not have the financial means to pay the full cost of their care or has the means but is unable to make their own arrangements, the council has a duty to make arrangements on behalf of the person in suitable accommodation.
2. Under, the National Assistance Act 1948 (Choice of Accommodation) Directions 1992, if the person expresses a preference for a particular residential or nursing care home, the council must arrange for care in that accommodation, provided:
 - the accommodation is suitable for the person's assessed needs
 - the preferred accommodation is available
 - the provider is willing to accept the council's usual terms and conditions.
 - it would not cost the council more than it would usually expect to pay having regard to the person's assessed needs.

3. The intention of the National Assistance Act 1948 (Choice of Accommodation) Directions 1992, is to give a person choice, within reason, over where they live. However, when a person's preferred accommodation is more expensive than the council would usually expect to pay (to meet the person's assessed needs), the council *must* still arrange for care in the preferred accommodation, *providing that a third party, or in certain circumstances, the person themselves, is willing and able to pay a top-up*. Top-ups are therefore an important element of the funding arrangements for residential and nursing care and enable people to exercise some choice over their placement.
4. If there are no places available at a given time, at the council's usual rate, then a placement at a higher rate must be arranged by the council without the need for a top-up.
5. Top-ups are usually paid by a third-party; this may be a friend, an organisation or a family member. It is important that the third-party is willing and able to pay the top-up for the duration of the placement, allowing for fee increases. There are only two specific circumstances when the resident can top-up from their own resources i.e. during the twelve week property disregard period or under a deferred payment agreement .
6. The amount of the top-up is the difference between the gross cost of the accommodation and the council's usual rate for meeting the person's assessed needs. For example, the current usual rate for a nursing home placement is £460.44. If a person chooses a nursing home at £650, (net of the funded nursing care element), the top-up would be the difference between the two figures i.e. £189.56. The resident is still required to contribute towards the £460.44 net cost to the council, based on an assessment of their ability to pay from any income and savings they hold. (Two case studies are shown in the attachment at Appendix A.)

Independent Age Report July 2013 : Care home top-up fees

7. In July 2013, the Independent Age published a report 'Care home top-up fees: the secret subsidy.' There are no specific references in the main body of report to the practice around top-ups in Surrey. However, to inform their report, the authors issued a Freedom of Information Request [FOI] in February 2013 to all 152 social services authorities concerning the extent and level of top-up fees for people aged 65+. The report authors then rated authorities into 3 categories, 'good, bad and ugly' based on the responses received. The report deemed a good council to be 'a council following national guidance' (based on the responses from the FOI) 'a bad council to be a council 'providing no information regarding top-ups in their area' and an ugly council to be 'a council whose information appeared incomplete or appeared to have a blanket policy'. Surrey was erroneously rated by the Independent Age in the latter 'ugly' category. To date, the report has received minimal media attention.

8. The FOI request asked for:
 - the percentage of total care home placements in the local area where a third-party top-up is being paid over a 4-year period from April 2009 – 2013,
 - the amount of those top-ups, (minimum amount, maximum amount and average), and
 - whether there was a record of the person being directed to independent advice before agreeing to pay a top-up.
 - whether there is a check at annual review of the third-parties ability to continue to fund the top-up

9. Adult Social Care's response to the FOI, advised that we hold the information regarding top-ups on paper files and scanned images. In order to fully respond to the FOI, a manual search of all residential placements going back to April 2009 for persons aged 65+ would have been necessary to extract and compile the information. The manual search would have taken in excess of 18 hours to extract the data. Under the Freedom of Information Act 2000 we are not obliged to comply with a request for information if we estimate that the cost of complying with the request would exceed £450. It was made clear in the response to the FOI that this was the case but this fact was not reflected in the report by the Independent Age. The inference that we do not hold this information or that we might have a blanket policy is spurious. Though we cannot currently report on the volume of top-ups from the AIS system, we are looking at ways in which we might be able to do so in future. Nevertheless, information is held on a case by case basis.

10. The Freedom of Information Act gives the public a right of access to recorded information held by public authorities. It does not require us to create information that does not already exist by manipulating data to create new information. This was also made clear in the response but not reflected in the report.

11. The FOI response directed the authors to the council's 'paying for care leaflet' which is routinely issued by care practitioners as part of the funding discussions. The leaflet makes several references to the need to seek independent advice as part of the decision making process. Further, the discussion and agreement with the third party at the outset makes clear the need to fund the top-up for the duration of the placement.

12. The Independent Age report highlighted 4 areas of good practice regarding top-ups. In brief these are:
 - to review policy and practice to ensure top-ups are consistent with national guidance
 - to signpost relatives to independent advice
 - to maintain an up-to-date list of care homes accepting the 'standard' rate on the council's website
 - to offer training to all relevant social care professionals, to ensure awareness of the national guidance

Current practice

13. Guidance to care practitioners on the use of top-ups is clear and fully reflects the legal requirements of the National Assistance Act 1948 (Choice of Accommodation) Directions 1992 referred to in sections 3 to 5 above. The guidance also explains:
- Where third party funding is arranged, the Council is still responsible for the full gross cost of care. Section 26(3A) of the National Assistance Act 1948 allows the Council to agree with the individual and the care home's representative that the third party top-up will be paid directly to the provider with the Council paying the difference. This is our usual arrangement.
 - A Third Party Agreement must be completed before the placement is made, the Agreement must be signed by the practitioner, the third party and the individual unless the individual lacks the mental capacity to do so. A copy should be given to the third party and the individual and a copy kept on the individual's electronic file.
 - The practitioner must be satisfied that third party funding is available for the duration of the placement. The Third Party Agreement explains that failure to maintain top-up payments may result in the individual having to move to other accommodation, unless after an assessment of need, it is shown that the individual's assessed needs can only be met in the current accommodation or no alternative accommodation is available at the council's usual cost.
 - We are also very clear that providers should not negotiate a top-up in addition to the fee agreed with the council and will take steps to address the issue with the provider if we are alerted to such practice.
14. In addition to the council's 'Paying for Care' leaflet' mentioned in section 9, there is information on the council's website regarding top-ups. The council's website also advises people to seek independent financial advice with regard to paying for care and provides a number of links to organisations able to advise on funding matters. We do not provide a list of care homes at the usual fee guidance levels on the council's website. A significant aspect of the national guidance on the application of top-ups, is the availability of a placement at the council's usual rate at a given time. At present, we are unable to have real time information on the availability of beds in particular homes.
15. Inevitably, there are occasional instances when the arrangements breakdown; either the third-party or the provider may approach the council to raise concerns about the ongoing payment of a third-party top-up. The individual circumstances of the case will determine the outcome in each case but we work proactively to resolve any issues, having regards to the needs of the resident.

Provisions in the Care Bill

16. On 18 July 2013, the Government published its consultation on how changes to the funding system for care and support should be organised. The Care Bill includes a provision for a person to express a preference for particular accommodation and to pay some or all of the additional costs involved. The detailed arrangements are likely to be set out in regulations but there is a clear indication that 'top-ups' will continue to be an important part of the future funding arrangements.
17. The Care Bill also includes a requirement on authorities to facilitate access to independent financial advice and sets out legal duties for authorities to provide residents with information to help them to plan for and contribute towards care costs. Officers from Surrey are involved in discussions with the Department of Health concerning the potential scope and shape of future information provision.

Conclusions:

18. In summary, top-ups are an essential element of the current funding arrangements for residential and nursing care and the Care Bill provisions indicate that top-ups will continue to enable people to have choice over where they live in the longer term.
19. The current guidance for practitioners reflects the national guidance concerning top-ups and is consistent with good practice. This guidance will be re-issued to ensure compliance.
20. The council's website and 'Paying for Care' booklet encourage people to seek independent financial advice.

Financial and value for money implications

21. The council is obliged to set usual rates, annually, that they would expect to pay to meet assessed needs in residential and nursing care accommodation. The council is not obliged to pay more than these rates if appropriate accommodation is available, at that time, at that rate. These are guideline rates; they can be exceeded in response to specific need and market availability at the time of placement need.

Equalities Implications

22. The approach to top-ups is consistent with national guidance and is applied after an assessment of need.

Risk Management Implications

23. There is a financial risk to the council if a third-party defaults on the arrangement but there is no evidence to suggest that the current approach poses a significant risk. Payment of the top-up by the third party to the provider facilitates a financial relationship between the

provider and the family and avoids the need for the council to collect further charges.

Implications for the Council's Priorities or Community Strategy

24. None.

Recommendations:

25. The committee is asked to note this report.

Next steps:

The guidance to practitioners will be reissued in September 2013.

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Sources/background papers:

National Assistance Act 1948

Local Authority Circular LAC(2004)20 : National Assistance Act 1948 (Choice of Accommodation) Directions 1992

[Independent Age Report July 2013 : Care home top-up fees: the secret subsidy. Passingham A et al](#)

Case study 1

Mrs A was self-funding her nursing home placement at a weekly cost of £783.80. Her family chose the home primarily on the recommendation of others. When her savings dropped to the capital threshold level of £23,250, Adult Social Care was asked to assist with funding. Following completion of the Supported Self Assessment, Mrs A's needs could be met in a general nursing bed at £460. A similar bed could be found at £462.30 (this figure includes the contribution required from the residents own resources). The family wanted Mrs A to remain in the same nursing home. Adult Social Care negotiated a reduction in the fee to £691.30, plus NHS funded nursing care.

Total cost of home	£ 800.00 per week
NHS funded nursing care	£ 108.70 per week
Net Cost	£ 691.30 per week
ASC contribution	£ 319.30 net cost (gross cost £462.30 paid to home)
Contribution from Mrs A	£ 143.00
Third party top-up	£ 229.00

Case study 2

Mr B was discharged from hospital to a nursing care home. Mr B was self-funding and his family chose a premium rate room at £1566 per week. When his savings rapidly dropped to the capital threshold level of £23,250, Adult Social Care was asked to assist with funding. The home was not willing to reduce the rate of the room and his family had concerns regarding a move to a cheaper home. In the circumstances of the case, it was deemed that a move to an alternative home would not be in Mr B's best interests. Adult Social Care negotiated a move within the home to a standard room at £850 per week without the need for a third party top-up.

Total cost of home	£ 958.70 per week
NHS funded nursing care	£ 108.70 per week
Net Cost	£ 850.00 per week
ASC contribution	£ 558.45 net cost (gross cost £850.00 paid to home)
Contribution from Mr B	£ 291.55
Third party top-up	£ 0.00

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