



Subject / Detail	This policy covers; the choice of accommodation when arranging care and support; and outlines additional or 'top-up' payments for preferred accommodation. Further information on additional or 'top up' payments can be found in the Council's Top Up Policy		
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V0.4	Jacquie Bickers	Scope updated to include reference to short term and respite care	
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1. Introduction

It is the policy of Portsmouth City Council (the Council) to enable people to maintain their independence and to receive care and support in their own home for as long as possible. We do this through a strengths and assets-based approach which focuses on what people can do, not what they cannot do, and by building on their strengths, networks and utilising community assets.

Where a person's care and support needs cannot be met in their own home and it has been determined the person's needs can best be met by living in a specific type of care accommodation; a person's ability to make an informed choice is a key element of the care and support system. Moving into care accommodation can be a significant decision and it is important that the person and their family receive the right support around that decision.

The Council has a duty to advise people to obtain information about possible options and take independent financial advice before they are at the point of considering a move into accommodation and before any detailed work on assessment of their care and support needs takes place. The Council is committed to ensuring all residents and potential users of services have information on available options to them when accessing adult social care.

When the Council is arranging care accommodation and certain conditions are met, the ¹Care Act 2014 gives people the right to choose their preferred care provider or location. This policy sets out the conditions which apply to the choice of long-term accommodation arranged by the Council.

2. Scope

This policy applies when the Council intends to meet a person's eligible care needs through home care services, respite, short-term or long-term residential or nursing care. This is because the person may:

- Needs home care services in line with their assessed needs;
- Need respite or short-term residential care on a planned or emergency basis;
- Be moving into long-term care for the first time;
- Be moving from one care home to another;
- Be eligible for Council financial support because they were previously self-funding and have/will soon have reached the threshold to receive local authority funding support (see the Adult Social Care Depletion Policy);
- Have been funded previously by another organisation, such as an NHS body under Continuing Health Care funding and has now become the funding responsibility of the Council;
- Be moving to a long-term placement but funding may be on an interim basis, or the funding source may change over time. However, the placement remains the long-term place of residence for the individual.

3. Choice of care provider for home based services

To ensure that public funds are used in the most effective and efficient way, the Council will not fund a care support package where:

¹ [The Care and Support and After-care \(Choice of Accommodation\) Regulations 2014](#)



1. The registered provider is rated Inadequate by Care Quality Commission ("CQC") or significant safeguarding concerns have been raised.
2. The cost of the service user care package exceeds the best available option that has been identified. The best available option will determine the service user's personal budget.
3. The provider has not given written explanation of how they will meet the service user's care and support needs.
4. The Council does not consider the placement or package to be appropriate to meet the service user's care and support needs.

If a service user wishes to purchase from a provider other than the best available option identified to meet their eligible needs, and the Council agrees that it is an appropriate service, then the Council will usually agree to fund at the personal budget rate (less any assessed contribution). In this circumstance, the service user will need to purchase via a Direct Payment.

If the costs of the care the individual wishes to purchase via a Direct Payment exceeds the personal budget the individual may still choose to have their needs met at the higher cost by paying the additional fees necessary, provided they are able to evidence how those additional fees can be managed and sustained.

3. Choice of accommodation

An individual who is assessed to need a particular type of accommodation to meet their care and support needs has the right to choose between different providers of that type of accommodation provided that:

- The preferred accommodation is the same type of accommodation as agreed in the care and support plan and is suitable to meet the person's assessed needs;
- The preferred option does not cost the Council more than the personal budget set out in the person's care and support plan;
- The preferred accommodation is available; and
- The preferred care provider is willing to enter into a contract with the Council to provide the care at the agreed rate and agrees to the Council's terms and conditions for provision of care and support.

The Council must ensure that at least one care home option is available that can meet the person's needs and is affordable within the personal budget. People who wish to choose accommodation that exceeds the cost the Council has identified in the care and support plan, can do so by way of an additional payment or 'top up'. This is the difference between the amount specified as suitable to meet the person's assessed needs and the actual cost of the care accommodation.

4. Suitability of accommodation

The Council will ensure that the accommodation chosen by the individual will meet their needs and the outcomes identified during the support planning process. This Choice of Accommodation Policy only applies to the settings in which an individual's needs and preferences, agreed through the care and support planning process will be met; not the type of accommodation. Therefore if the process identifies one type of accommodation is needed e.g. a residential home, the individual cannot choose a different type of accommodation.

5. First and Third party top-ups

Individuals have the right to choose more expensive accommodation than can be purchased with the amount in their individual budget for accommodation as long as arrangements are made as to how the difference will be met. This is known as a 'top-up' payment and is the difference between the amount specified in the personal budget and the cost of the accommodation.

The First Party or Third Party Top Up Agreement is a contract between the Council and the First or Third Party. The contract sets out that the First or Third Party agrees to pay the difference between the cost of the care accommodation and the cost the Council has identified to meet the person's care and support needs.

5.1 First party top-ups

A person with care and support needs cannot pay their own 'top-up' arrangements except in the following circumstances:

- Where a person is receiving care and support under section 117 of the Mental Health Act 1983, they are eligible for a 'first party top-up', or a third-party arrangement.
- If a person chooses to take out a deferred payment, to cover the cost of their care and support provision, they can opt to defer the 'top-up' costs under the deferred payment as a 'first party top-up' arrangement.
- Where the person is subject to the 12-week property disregard, they can opt to make a 'first party top-up' arrangement for the 12-week period. However, at the end of the disregard, a third-party arrangement must be set up for any ongoing 'top-up' fees.

5.2 Third party top-ups

In some cases, a person may actively choose a setting that is more expensive than the amount identified for the provision of the care and support in the personal budget. Adult Social Care staff must ensure, before a third party top up is discussed, that the person is actively making a choice to opt for a more expensive option. The Council should evidence the price identified via the Council's brokerage system and how this is used to set a person's personal budget.

Discussions about care accommodation should be documented. Where the person has chosen care and support costs that are more than the personal budget, a contractual arrangement will need to be made as to how the difference will be met. This is known as an additional cost or 'top-up' payment and is the difference between the amount specified in the personal budget and the actual cost of the care. In such cases, the Council will arrange for the care, provided a third party is willing and able to meet the additional cost, and that this is sustainable. This will be confirmed via a level of affordability assessment of the Third Party.

Where this applies, the Adult Social Care *Third Party Top Up Policy* is to be followed by staff.

5.3 Reviewing the agreement and changes

The Council will confirm how the arrangements will be reviewed, what may trigger a review and the circumstances when any party can request a review.

It is expected that a full review of the third party top up arrangements will be incorporated within the annual review of an individual's care and support plan. A review may be triggered by a change in circumstances of: the cared for individual, the individual making the 'top-up' payments (if different), local authority commissioning arrangements or any change in provider costs.

6. Arrangements where the person lacks mental capacity

There will be occasions when a person appears to lack the mental capacity to exercise choice for themselves. When this occurs, a mental capacity assessment, which considers the person's capacity to make relevant decisions regarding accommodation, for the purpose of receiving support, should be undertaken, if this is not already in place. Where a person is assessed to lack capacity, the decision about moving to the residential or nursing home (or between residential/nursing homes) is taken on a best interest's decision basis.

Consideration will need to be given to the preferences expressed by the person, an advocate, family member or someone holding a Lasting Power of Attorney (Health and Welfare) authority, or someone who has been appointed as a Deputy by the Court of Protection for Health and Welfare. If the views expressed by such a person appear to be contrary to the best interests of the person with assessed care and support needs, the Council may make a different decision. The Council is required to consider the costs associated with meeting assessed needs and the overall effectiveness of using public funds to meet those needs, as well as the impact on the person's wellbeing in making such choices.

7. Self-Funders

The Care Act enables a person who can afford to pay for their own care and support in full to ask the Council to arrange care on their behalf. An individual who has been assessed as having capital above the upper capital threshold of £23,250.00 that requests Portsmouth City Council to commission, arrange and manage their community care and support services on their behalf, will be subject to the "Self-Funding Arrangement Fee". Please refer to *The Adult Social Care Charging Policy* for more information.

Where the individual requires other types of care, including those to which the right to choice applies, the Council must meet those needs. In supporting self-funders the Council may choose to enter into a contract with a preferred provider or may broker a contract on behalf of the individual.

Where the Council is arranging and managing the contract with the provider the Council will ensure that there are clear arrangements in place as to how the costs will be met, including situations where another person(s) is paying towards the cost of the care. The Council will assure itself that robust contractual arrangements are in place which clearly sets out responsibility for costs and ensure that the individual understands the arrangement.

Self-funders will have to pay the costs of their care and support including, (in cases where they choose a setting that is more expensive than the amount identified in their individual budget), the top-up element of the cost for that setting.

8. Choice of accommodation and mental health after-care

Regulations under section 117A of the Mental Health Act 1983 enable people who qualify for after-care under section 117 to express a preference for particular accommodation if accommodation of that type is to be provided as part of the aftercare. The Council is required to provide or arrange the provision of the preferred accommodation if the conditions in the regulation are met.

The Regulation broadly gives the same rights to choice of accommodation as those who receive care under the Care Act. However, after care is provided free of charge and the care plan should be drawn up under guidance within the Care Approach Programme (CAP). An individual has the right to choose accommodation provided that:



- The preferred accommodation is of the same type that the Council has decided to provide or arrange;
- It is suitable for the individual's needs;
- It is available (for mental health after-care purposes, 'assessed needs' means needs identified in the CPA care plan); and
- Where the accommodation is not provided by the Council, the provider of the accommodation agrees to provide the accommodation to the individual on the Council's terms.

The principles set out in this document apply equally to where the Council is arranging accommodation in discharge of its after care duty. Guidance also applies to when the preferred choice cannot be met. Where the cost of the accommodation is more than the local authority would provide within the Mental Health Act section 117 after care plan the Council must arrange for the individual to be placed there, provided that either the individual or a third party is willing and able to meet the additional cost. For the purpose of section 117 aftercare reference to a third party should be read as including the adult receiving the aftercare.

9. Choice that cannot be met and refusal of arrangements

The Council will do everything it can to meet the person's choice within the context of this policy. Nevertheless, there may be occasions where a choice cannot be met, for example the preferred provider has reached their accommodation capacity. In such circumstances,

the Council will offer at least one suitable interim alternative within the personal budget until the preferred option becomes available.

If an individual does not wish to take up any of the offers made to them, they have not put forward an alternative, that is within their personal budget, and there is nobody willing to pay a top-up to assist with accessing a more expensive placement, this will be passed to the Head of Service for the relevant service area to determine whether they believe a reasonable choice of accommodation has been offered.

'Reasonableness' will be determined by the facts relating to the person's individual circumstances.

- Offers made should take account of specific ethnic or cultural requirements or preferences, or the need to be in a particular location. An individual's human rights should always be considered, for example, Article 8 the right to a family life.
- The Council will broker a placement that can meet the person's identified eligible needs. This does not necessarily mean that the placement will be the closest geographical location to a relative's own home address or the individual's original home address, for example.
- A specific care home provider, just because it is the home of preference for the person/their representative, may not be a home that the Council will agree to fund either because the care provided is unable to meet need or support the individual safely or is above the personal budget and there is no top-up available

If the Council is of the view that a reasonable choice of accommodation has been offered, then the Council will consider that it has fulfilled its statutory duty to meet needs. Where an individual is not willing to accept the offer made by the Council, then they will be informed in writing that as a result, they will need to make their own arrangements. This will be a step of



last resort and the Council will consider the risks posed by such an approach, for both the Council, and the person concerned.

People have the right to use the Council's statutory complaints procedure to take forward any complaints associated with these arrangements and should be encouraged to use the Council's complaints procedure via post, phone or email:

- by phone on [023 9284 1172](tel:02392841172) (you can also phone to request a postage-paid complaints form)
- in person by making an appointment
- by writing to: The Complaints Manager for Social Care, Portsmouth City Council, 5th Floor, Civic Offices, Guildhall Square, Portsmouth, PO1 2EP
- by sending an email to asccomplaints@portsmouthcc.gov.uk