

**REPORT TO:** Executive Board

**DATE:** 19 November 2015

**REPORTING OFFICER:** Strategic Director, People and Economy

**PORTFOLIO:** Health & Wellbeing

**SUBJECT:** Additional Payments (for Accommodation) - Policy

**WARD(S)** Borough-wide

## **1.0 PURPOSE OF REPORT**

**1.1** To outline the circumstances around 'Additional Payments' (sometimes known as Top-Ups) made by people who choose to pay extra for an enhancement to their home accommodation. Such additional payments can be made by individuals whose care home costs are partially or totally supported by the Council, or who are self-funders with Halton arranging their social care.

**2.0 RECOMMENDED: That the Board agrees the current 'Additional Payments' Policy.**

## **3.0 SUPPORTING INFORMATION**

**3.1** Under the Care Act 2014 an individual can choose care home accommodation best suited to their needs. This may be more expensive than the 'going rate' for the type of accommodation that Halton has negotiated with the provider for a person with such needs. In such cases, a 3<sup>rd</sup> party, usually a nominated family member, will agree to pay the additional amount the provider is asking. Dealing with these 'additional payments', monitoring them and agreeing liability when the 3<sup>rd</sup> party can no longer continue to make such payments is what the policy sets out.

**3.2** Prior to the Care Act, those who had the financial resources to pay for their own social care (self-funders) typically communicated entirely with their provider of choice. If they opted for an improvement on their current accommodation which was more expensive than initially arranged, then a 3<sup>rd</sup> party would agree to pay any additional amount required. This would be a private agreement between the 3<sup>rd</sup> person and the provider, Halton was not involved.

**3.3** For those who were part-funded or wholly funded by Halton, the person or their family would choose an appropriate care home from a number of affordable options. The provider would enter into a contract with Halton to provide care at the rate specified and on Halton's terms

and conditions.

- 3.4 However, if the person or their family selected a provider that was more expensive than their funding entitlement from HBC allowed, or perhaps selected an upgrade to a slightly bigger room, then they would arrange to pay the extra separately to the provider as an additional payment. This would be a separate agreement between the 3<sup>rd</sup> party who was paying the extra amount and the provider. Halton was not involved, as this was viewed as part of the person's independence and freedom to choose his/her own living accommodation.
- 3.5 Because responsibility for top-ups has historically been between the 3<sup>rd</sup> party and the provider, Halton has never previously required an Additional Payments policy. However, in the light of the changes stemming from the Care Act and advice from Halton's legal department, this approach is no longer regarded as best practice. It could result in a greater risk of litigation in situations where the 3<sup>rd</sup> party is no longer able to maintain payments. Legal felt that a policy would be beneficial. The Act recommends that each LA should have a level of oversight of the Top-Up payments between 3<sup>rd</sup> party and provider.
- 3.6 Halton's legal department have recommended that most appropriate way to achieve this is to have a policy and a tripartite agreement which clearly states that liability lies with the 3<sup>rd</sup> party if Top-Up payments can no longer be met. Failure to do so could result in prolonged and expensive legal cases involving not only the provider, but also the 3<sup>rd</sup> party or the person in need of care.
- 3.7 This report strongly recommends the second option and a draft contract is provided in Appendix 1 of the policy. Having both a policy and a contract is viewed by the Department of Health as best practice. In addition, clearly identifying the 3<sup>rd</sup> party as being solely liable for any additional payments will indemnify the Council against unnecessary legal costs.
- 3.8 Advantages:
- If the agreement was between the 3<sup>rd</sup> party and the provider and the 3<sup>rd</sup> party failed to maintain payments for whatever reason, then depending upon the provider's accounting system it could be weeks before the deficit was noticed. In the absence of a contract clearly stating that liability lies with the 3<sup>rd</sup> party, the provider could make a claim for the shortfall off the Council and this could have accumulated to a considerable sum. Having a tri-partite agreement (HBC, 3<sup>rd</sup> party and Provider) which clearly states that the 3<sup>rd</sup> party is liable for all

Additional payments would be a better approach;

- Further, if the 3<sup>rd</sup> party notify the Council at an early stage that they are experiencing difficulty making the extra payment then HBC could then take appropriate steps to investigate the problem and offer financial advice. Adopting this approach gives Halton a level of oversight that would enable any 3<sup>rd</sup> party financial difficulties to be spotted early and acted upon;
- The Care Act Guidance recommends that although not a duty, it is nonetheless best practice for a LA to monitor and assist where possible by offering such financial information and advice;

3.9 According to estimates, of the number of self-funders in Halton 207 receive care and support at home and 300 are in residential or nursing homes. It is possible there could be a significant increase in the number of individuals choosing accommodation where an additional payment is required. Research carried out by Age UK in 2013 found that around 30% of care home residents in England were expected to supplement the cost of their stay by making additional payments (often as much as an extra £140 per week) through a 3<sup>rd</sup> party.

3.10 This policy recommends that as best practice, a 3-way agreement be drawn between the 3<sup>rd</sup> party, the provider and HBC. This agreement stresses that liability for payment of the additional amount lies with the 3<sup>rd</sup> party. The Council will be responsible for paying agreed standard fee that it has negotiated with the provider and the 3<sup>rd</sup> party is responsible for making extra payments direct to the Provider. In the event of the 3<sup>rd</sup> party having financial difficulty making such payments, they must inform HBC as soon as possible, so that advice and assistance can be provided.

#### **4.0 POLICY IMPLICATIONS**

4.1 This is a new policy.

#### **5.0 SAFEGUARDING IMPLICATIONS**

5.1 There are no implications for this priority.

#### **6.0 FINANCIAL IMPLICATIONS**

6.1 In 2013 Age UK estimated that around 30% of Care Home residents in England were making 'Additional Payments' (often as much as £140 per week through a 3<sup>rd</sup> party, to their care home provider (an annual increase of 5%). They suggested this was likely to continue as more providers viewed such payments as a means of supplementing their income, by claiming that Council funding for placements was not enough.

- 6.2** According to the Performance Team, Halton currently has 620 people in care homes in and out of the Borough. This figure includes those whose full cost is arranged by Halton CASSR. In addition, there are 300 self-funders making a total of 920 in residential care in the Borough. Using the Age UK estimate of 30% this suggests that 276 of these are paying additional fees to providers in 2015 through 3<sup>rd</sup> parties. If we assume a 5% increase each year then this will suggest 305 by 2017 and 353 by 2020. These figures represent a rate of 5 per week (2015) to 7 per week (2020). What is the financial implication of these figures?
- 6.3** However, according to the Area Manager (Revenues & Benefits) this impact is likely to be minimal and can be absorbed within current practice, with few changes, without the need for extra staff and without extra cost.
- 6.4** The Social Work assessment team will need to flag up the issue of 'Additional Payments' during the assessment process which can be weeks before the financial assessment. Again, this can be included in the current assessment procedure, with present staffing, using current procedures and at no extra cost.
- 6.5** The Care Arranging team currently create a service agreement for each individual entering residential care at basic cost. The cost of producing additional service agreements can be absorbed by the extra Care Arranger posts that were created as part of Halton's implementation process for the Care Act. These allow the Council considerable flexibility in coping with any potential increases in the volume of service agreements.

## **7.0 IMPLICATIONS FOR THE COUNCIL'S PRIORITIES**

### **7.1 Children & Young People in Halton**

There are no implications for this priority.

### **7.2 Employment, Learning & Skills in Halton**

There are no implications for this priority.

### **7.3 A Healthy Halton**

There are no implications for this priority.

### **7.4 A Safer Halton**

There are no implications for this priority.

### **7.5 Halton's Urban Renewal**

There are no implications for this priority.

**8.0 RISK ANALYSIS**

8.1 This is covered in section 16 of the policy

**9.0 EQUALITY & DIVERSITY ISSUES**

9.1 There are no Equality and Diversity implications arising as a result of the proposed action.

**10.0 LIST OF BACKGROUND PAPERS UNDER SECTION 100D OF THE LOCAL GOVERNMENT ACT 1972**

None.