**HOUSING & COMMUNITY LIVING**
**CHOICE OF ACCOMMODATION & ADDITIONAL PAYMENTS**
**POLICY / GUIDANCE**

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<th>TITLE</th>
<th>Choice of Accommodation &amp; Additional Payments Policy &amp; Guidance</th>
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<td>SERVICE AREA</td>
<td>Adult Social Care</td>
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<td>WRITTEN BY/OWNER</td>
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<td>APPROVED BY</td>
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**BRIEF DESCRIPTION OF POLICY:**
An individual's ability to make and informed choice is a key element of the care and support system. This extends to where the care and support planning process has determined that an individual requires a specific type of accommodation to meet their needs.

This policy covers:

The choice of accommodation when arranging care and support; and additional or ‘top-up’ payments for preferred accommodation

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The policies and procedure database holds the most recent and approved version of this policy or guidance. Staff must ensure they are using the most recent guidance.

**RELATED REFERENCE DOCUMENTATION:**
Care Act 2014- Annex A Choice of Accommodation and Additional Payments
Care & Support & After care (Choice of accommodation) Regulations 2014
Mental Health Act 1983 Sections 117 & 117A
Luton Council Policies
Charging & Financial Assessment Policy
Ordinary Residence Policy
Support Planning Policy
Individual Budgets Policy
Cross Boarder Placement’s Policy
Deferred Payment Agreement Policy

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<tr>
<td>Prepared By</td>
<td>Jacqueline Casson</td>
<td>19th May 2014</td>
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<tr>
<td>Consultation With</td>
<td>Vicky Sowah. Legal, Helen Lambert, Finance</td>
<td>June 2015</td>
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<td>Approved by</td>
<td>HCL SMT</td>
<td>1st Dec 2015</td>
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**Change Record**

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Summary of changes made to last approved version:

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### Equality and Diversity

The **Equality Act 2010** seeks equal opportunities in the workplace and in wider society; and prohibits discrimination on the grounds of any of the following protected characteristics in relation to goods, services and employee protection;

- Age
- Disability
- Gender Reassignment
- Race
- Pregnancy/maternity
- Marriage/civil partnership
- Religion and Belief
- Sexual orientation
- Gender

The Equality Act aims, and in particular its General Duties, applies across the council and to any organisation delivering services on a contractual, commissioned or voluntary basis on behalf of the Council. Although legal duties relate to equality, the Councils approach within Luton extends to the promotion of community cohesion and social inclusion. The Councils commitment to social justice goes beyond anti-discrimination to include fairness of treatment, dignity and respect.

**Feedback:**

Customers should expect first class services which the Council aims to provide. We therefore welcome feedback about our policies and procedures. If you have any comments about this document please e-mail: [RPRComplaints@luton.gov.uk](mailto:RPRComplaints@luton.gov.uk)
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Appendix 1 Wellbeing Principle
1. **Introduction & Context**

1.1 An individual’s ability to make informed choices and have control over how they live is emphasised throughout the Care Act 2014 and is key to maximising wellbeing\(^1\) and supporting an individual centred approach in the care and support planning process.

1.2 The care and support planning process will identify the individuals needs, their preferences and determines what type of accommodation will best suit the individual’s needs. This could be, for example, a care home, shared lives or extra care housing.

1.3 Where the type of accommodation is one of those specified within the Care & Support / After-Care (Choice of Accommodation) Regulations 2014, the individual will have the right to choose the provider or location. This applies as long as their assessed needs and identified outcomes would be met and their choice would not cost the Council more that the amount specified in their individual budget for accommodation of this type.

1.4 Individuals have the right to choose more expensive accommodation than the amount specified in their individual budgets for the provision of accommodation, as long as an arrangement is made as to how the difference in cost will be met. This is known as an additional cost or ‘top up’ payment.

**Scope**

1.5 The right to a choice of accommodation and the payment of additional costs applies equally to those entering care for the first time, those who have already been placed by the local authority and those who have been self – funders who may subsequently require Council support.

**Guiding Principles**

1.6 Luton Council will have regard to the following principles:

- Good communication of clear information and advice to ensure well informed decisions;
- A consistent approach to ensure genuine choice;
- Clear and transparent arrangements for choice of accommodation and any ‘top-up’ arrangements;
- Responsibility to deliver social care services in a cost effective manner that meets the needs of individuals within available resources;

\(^1\) Section 1 of the Care Act 2014 sets out the **Wellbeing Principle** which is embedded throughout the Act. Appendix 1 provides an overview of the general duties, principles and definitions
• Clear understanding of potential consequences should ‘top-up’ arrangements fail with clear exit strategies; and
• The choice is suitable to the individual’s needs

Choice of Accommodation

2 Choice of Accommodation

2.1 Where an individual is assessed to need a particular type of accommodation in order to meet their care and support needs it is the right of the individual to choose between different providers of that accommodation provided that:

• The accommodation is suitable in relation to the individual’s assessed needs;

• To do so would not cost the Council more than the amount specified in the adults individual budget for accommodation of that type;

• The accommodation is available; and

• The provider of the accommodation is willing to enter into a contract with the Council to provide the care at the ‘standard rate’ identified in the individual’s individual budget on the local authority’s terms and conditions.

2.2 Choice must be genuine and not limited to those settings or individual providers which the council already has contracts with, or those within Luton Council’s geographical boundary.

2.3 If an individual chooses to be placed in a setting that is outside the Council’s area, the Council will still arrange for their preferred care. In doing so, the Council will have regard to the cost of care in that area when setting an individual’s individual budget. Please see the section 3 of the Council’s Ordinary Residence Policy and section 3 Cross Border Placements Policy and Procedure.

2.4 In supporting the individual’s choice of setting, the Council may enter into a contract with a provider we do not currently have arrangements with. If we do so we will ensure that the contractual arrangements are consistent with the ADASS (Associate Directors of Adult Social Services) general terms and conditions.
3. **Suitability of Accommodation**

3.1 The Council will ensure that the accommodation chosen by the individual will meet their needs and the outcomes identified during the support planning process.

3.2 Choice only applies to the settings in which a 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 eg a care home, the individual cannot choose a different type of accommodation.

4. **Costs**

4.1 The care and support planning process will identify how best to meet the individual's needs, taking into account the individual’s circumstances and the availability of provision.

4.2 The Council will provide the individual with an individual budget, except in circumstances set out in the Council’s Individual Budget Policy.

4.3 The Council will ensure that at least one option is available that is affordable within the individual's individual budget. If no preference is expressed and no suitable accommodation is available at the amount identified, the Council will arrange care in a more expensive setting and adjust the budget accordingly to ensure that needs are met.

4.4 Individual Service Users who wish to choose more expensive accommodation than those offered by the Council can do so by way of an additional payment or ‘third party top up’. This is the difference between the amount specified within the individual budget and the actual cost. In such cases the Council will arrange the placement subject to the following:

- The third party; who could be a family member, friend, charity or in certain circumstances the individual in need of care and support, is willing and able to make the additional payment;

- The third party is made fully aware by the Council of their responsibilities including:
  - the amount payable, to whom the payments are made, frequency of payments and consequences of ceasing payment;  
  **Appendix 2 “Care Home Top Up Payments”**
• And with written agreement in place to meet that cost. Appendix 1 - Individual Placement Agreement (IPA)

4.5 An individual must not be asked to pay a 'top-up' towards the cost of accommodation because of market inadequacies or commissioning failures.

5. Availability and Interim Accommodation

5.1 In most cases an individual should not have to wait for their assessed needs to be met. However, in some cases this may be unavoidable, particularly when an individual has chosen a setting that is not immediately available.

5.2 In such cases, the Council will ensure that an interim adequate alternative is available. Where an individual contributes to their care following a financial assessment they must not be asked to pay more than their assessment shows they can afford.

5.3 If any interim arrangement exceeds 12 weeks, the individual may be reassessed to ensure that both the interim and the preferred accommodation are still able to meet the individual’s needs and that remains their choice.

5.4 An individual can decide to remain in the interim setting, even if their preferred setting becomes available. This assumes that where the individual is temporarily resident is able to accommodate them on a permanent basis.

6. Choice that cannot be met and refusal of arrangements

6.1 The Council will do everything it can to meet the individual’s choice. However, inevitably there will be some instances where a choice cannot be met, for example the provider does not have capacity to accommodate the individual. In such cases the Council will set out in writing why they have not been able to meet the individual’s choice and will offer suitable alternatives. The Council will also provide details of their complaints procedure and details about if and when the decision may be reviewed.

6.2 The Council will do everything it can to take into account the individual’s circumstances and preferences when arranging care. However, in all but a very small number of cases, (such as where an individual is being placed under guardianship under Section 7 of the Mental Health Act 1983), an individual has a right to refuse to enter a setting whether that is on an interim or permanent basis.
6.3 Where an individual unreasonably refuses the arrangements, the Council will consider that it has fulfilled its statutory duty to meet needs. The individual will be informed in writing that as a result they 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 itself and the individual concerned.

6.4 Should the individual contact the Council again at a later date, the Council will reassess their needs as necessary and re-open the self-directed support planning process.

Additional Payments ‘Top-Up’ Fees

7. Additional Costs or ‘top up’ Payments

7.1 Individuals have the right to choose more expensive accommodation than could 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 individual budget and the cost of the accommodation.

7.2 In circumstances where the Council arranges a placement in a more expensive setting because it has been unable to find a suitable local placement, the individual is not required to pay a ‘top-up’. In these cases the individual budget must be adjusted accordingly to reflect the cost of the accommodation.

8. Agreeing a ‘top-up’ fee

8.1 When an individual chooses a more expensive setting, the Council will provide them with information and advice to ensure they understand the full implications of this choice. This includes understanding that the third party or in certain circumstances the individual needing care and support, will need to meet the additional cost for the setting for the full duration of their stay and that should the additional costs not be met they will in most instances be moved to an alternative setting.

8.2 The Council will ensure that the individual paying the ‘top-up’ fee is willing to enter into a written agreement. The agreement will, as a minimum, include the following:

- The additional amount to be paid;
- The amount specified for the accommodation in the individual’s individual budget;
• The frequency of the payments and affordability
• To whom the payments are to be made;
• Provisions for reviewing the agreement;
• A statement on the consequences of ceasing to make payments;
• A statement on the effect of any increases in charges that a provider may make;
• A statement on the effect of any changes in the financial circumstances of the individual paying the top-up fee

8.3 The terms and conditions of the third party agreement are set out in Appendix 1. The chosen care arrangements cannot proceed until the contract is signed.

9. Amount to be paid

9.1 The amount of the ‘top-up’ will be the difference between the actual costs of the preferred provider and the amount that the Council has set in an individual budget, or local mental health after-care limit, to meet the individual’s eligible needs by arranging or providing accommodation of the same type. When considering the cost of care in our area, the Council will identify costs which apply to different circumstances and settings.

10. Responsibility for Costs

10.1 It is important to note that the Council is still liable to pay the full costs of the accommodation if the third party fails to pay the required amount to the provider. In such circumstances the Council reserves the right to:

10.1.1 Recover the outstanding sum due from the third party
10.1.2 Move the individual to alternative suitable accommodation. As with any change of circumstances the Council will undertake a new assessment of need and risk assess and risk assess the impact of any potential move.

10.2 In the case of people with eligible needs who pay in full for their own care and support and ask the Council to arrange their care please see section 15 of this document

11. Reviewing the agreement & Changes

11.1 The Council will set out in writing details of how the arrangements will be reviewed, what may trigger a review and the circumstances when any party can request a review.
11.2 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.

11.3 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 change in provider costs.

11.4 The Council will set out in writing how any increased costs will be met and it should not be assumed that any additional cost will be shared evenly between the Council and third party.

11.5 The Council will also make it clear that a change in circumstances that requires a new financial assessment which results in a change to the level of contribution the individual makes may not reduce the need for a ‘top-up' payment.

11.6 It is the responsibility of the third party to inform the Council of any changes in their circumstances which affect their ability to continue making the top up payment.

12 Notification of default

12.1 The provider has a responsibility to advise the individual, or their Deputy or other legal representative, of any default by the third party. Individuals must be made aware that if the third party can no longer pay the top up that that in most cases the individual will be moved to less expensive accommodation at the Council's standard cost, unless there are exceptional circumstances which mean the individual cannot be moved.

12.2 The provider must notify the Council of any default in payment within the timescales and in accordance with the conditions set out in the Council's agreement with the provider which may be reviewed by the Council periodically.

13. First Party ‘top ups’

13.1 The individual whose needs are to be met by the accommodation may themselves choose to make a ‘top-up' payment only in the following circumstances:

- Where they are subject to a 12 week disregard – please see the Council's Charging and Financial Assessment Policy; or.
• Where they have a deferred payment agreement in place with the Council. In these cases, the terms of the agreement should reflect this arrangement; or
• Where they are receiving accommodation provided under S117 for mental health aftercare

14. People who are unable to make their own choice

14.1 In cases where an individual lacks capacity to express a choice for themselves, the Council should act on the choices expressed by the individual’s advocate, carer or legal guardian, unless in the Council’s opinion it would be against the best interests of the individual.

15. Self Funders

15.1 The Care Act enables an individual who can afford to pay for their own care and support in full to ask local authorities to arrange care on their behalf.

15.2 Where an individual requires care in a care home to meet their needs, the Council may chose to respond this request.

15.3 Where the individual requires some other types of care, including those to which the right to choice applies the Council must meet those needs.

15.4 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 any ‘top-up’ element.

15.5 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.

16. Choice of accommodation and mental health after-care

16.1 Regulations under section 117A of the Mental Health Act 1983 enables people who qualify for after-care under section 117 to express a preference for particular accommodation if accommodation of that type is specified in the regulations is to be provided as part of the after-car. The Council is required to provide or arrange the provision of the preferred accommodation if the conditions in the regulation are met.
16.2 The Regulation broadly gives the same rights to choice of accommodation as those who receive care under the Care Act. However aftercare is provided free of charge and the care plan should be drawn up under guidance on the Care Approach Programme (CPA).

16.3 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.

16.4 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.

16.5 Where the cost of the accommodation is more than the local authority would provide within the local mental health aftercare financial threshold 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.

16.6 Guidance from section 11 – 13 applies. For the purpose of section 117 aftercare however, reference to a third party should be read as including the adult receiving the after-care.

17. Complaints

17.1 Any disputes in relation to the Choice of accommodation and Additional Payments Policy and Guidance will be subject to Luton Borough Council’s statutory complaints procedure.
Wellbeing Principle
The Council has a duty to promote the wellbeing of the individual, particularly when carrying out any care and support functions and making decisions in relation to them. The wellbeing principle underpins the whole of the Care Act and its associated regulations and guidance. It applies to adults, carers and, in some circumstances, to children in transition, their carers and to young carers. The wellbeing principle applies equally to people who do not have eligible needs if they come into contact with the care system. Commissioners of new services will need to incorporate/reflect the wellbeing principle in new services which are developed and commissioned.

Definition
The Care Act recognises that ‘Wellbeing’ is a broad concept and describes it as relating to the following nine areas in particular:

- Individual dignity (including treatment of the individual with respect);
- Physical and mental health and emotional wellbeing;
- Protection from abuse and neglect;
- Control by the individual over day to day life (including over care and/or support provided and the way it is provided);
- Participation in work, education, training or recreation;
- Social and economic wellbeing;
- Domestic, family and individual relationships;
- Suitability of living accommodation;
- The individual’s contribution to society.

Promoting wellbeing
Promoting wellbeing means actively seeking improvement in the aspects of wellbeing described above when carrying out a care and support function in relation to an individual. This applies at any stage of the process. It is not always about the Council directly meeting needs, but includes a focus on providing information and advice to delay and prevent needs from developing and support people to live as independently as possible for as long as possible. The approach to Promoting wellbeing will depend on the individual’s needs, goals and wishes. The Council should consider each individual’s case on its own merits, based upon what the individual wants to achieve and how the Council’s actions will affect their wellbeing.

All of the nine aspects of wellbeing fore mentioned are of equal importance. However it is likely that some aspects will be more relevant to one individual than another. The Council should adopt a flexible individual centred approach that focuses on those aspects that matter most to the individual concerned.
In addition to the wellbeing principle, the Care Act sets out a number of other key principles which local authorities must have regard to when carrying out the same activities or functions

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<th>Key Principle</th>
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<td>The importance of beginning with the assumption that the individual is best placed to judge the individual’s wellbeing;</td>
<td>Building on the principles of the Mental Capacity Act, the local authority should assume that the individual themselves knows best their own outcomes, goals and wellbeing and assumptions should not be made.</td>
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<td>The individual’s views, wishes, feelings and beliefs;</td>
<td>Considering the individual’s views and wishes is critical to an individual-centred system. Where particular views, feelings or beliefs (including religious beliefs) impact on the choices that an individual may wish to make about their care, these should be taken into account. This is especially important where a individual has expressed views in the past, but no longer has capacity to make decisions themselves</td>
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<td>The importance of preventing or delaying the development of needs for care and support and the importance of reducing needs that already exist</td>
<td>At every interaction with an individual, the Council should consider whether or how the individual’s needs could be reduced or other needs could be delayed from arising. Effective interventions at the right time can stop needs from escalating, and help people maintain their independence for longer</td>
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<td>The need to ensure that decisions are made having regard to all the individual’s circumstances</td>
<td>Decisions should not be based only on their age, appearance, any condition they have or aspects of behaviour which might lead to unjustified assumptions. Local authorities should not make judgments based on preconceptions about the individual’s circumstances, but should in every case work to understand their individual needs and goals</td>
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<td>The importance of the individual participating as fully as possible</td>
<td>By being provided with the information and support necessary to enable the individual to participate. Care and</td>
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<td>The importance of achieving a balance between the individual’s wellbeing and that of any friends or relatives who are involved in caring for the individual</td>
<td>support should be individual, and local authorities should not make decisions from which the individual is excluded</td>
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<td>People should be considered in the context of their families and support networks, not just as isolated individuals with needs. Local authorities should take into account the impact of an individual’s need on those who support them, and take steps to help others access information or support</td>
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| The need to protect people from abuse and neglect | In any activity which a local authority undertakes, it should consider how to ensure that the individual is and remains protected from abuse or neglect. This is not confined only to safeguarding issues, but should be a general principle applied in every case |

| The need to ensure that any restriction on the individual’s rights or freedom of action that is involved in the exercise of the function is kept to the minimum necessary for achieving the purpose for which the function is being exercised | Where the local authority has to take actions which restrict rights or freedoms, they should ensure that the course followed is the least restrictive necessary |

Neither these principles nor the requirement to promote wellbeing require the Council to make a specific decision or undertake a particular action. The steps the Council should take will depend entirely on the circumstances of each case, having regard to these principles, for the purpose of setting common expectations for how the Council should approach and engage with people.