

Adult Social Care

Working together to enable people to 'live well' and independently in Telford

Choice of Accommodation Policy

Choice of Accommodation for Adult Social Care Policy Governance

Title	Choice of Accommodation for Adult Social Care Policy
Purpose/scope	The purpose of this document is to provide guidance on supporting people with choice of accommodation, and contains essential information on the legislation, related to TWC's responsibilities for people entering specific types of care accommodation.
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1 Introduction

- 1.1. The policy of Telford and Wrekin Council (TWC) is to enable people to continue to live safely and independently in their own homes for as long as possible. However, it is recognised that for some people their needs can best be met by moving into care accommodation for example a residential or a nursing care home.
- 1.2. Moving into care accommodation is a major decision in anyone's life, and it's important both for the individuals involved and their families that they receive appropriate support with decision making, and adjusting to significant life changes.
- 1.3. The purpose of this document is to provide guidance on supporting people with choice of accommodation, and contains essential information on the legislation, related to TWC's responsibilities for people entering specific types of care accommodation.
- 1.4. The document is for Managers and Operational Staff working in TWC Adult Social Care Services
- 1.5. The document has taken account of existing legal advice, and draws upon relevant legislation and case law.

2. Principles and standards

- 2.1. TWC's aims are to enable people to continue to live safely and independently in their own homes for as long as possible.
- 2.2. The person and their family will be fully involved in decisions about where they live
- 2.3. Decision making about admission to care home accommodation will be fair, consistent and transparent, and will take into account TWC's need to allocate its financial resources in the most effective cost efficient way.
- 2.4. No decision will be taken about admission to care home accommodation until we are sure that independence and potential abilities have been fully maximised.
- 2.5. People moving into care home accommodation can expect a comprehensive assessment of their needs carried out in full consultation with themselves and involving all relevant agencies, carers and families where appropriate.
- 2.6. The assessment will look at person's circumstances and balance the desire for independence with the need for a safe environment.
- 2.7. Individuals and their carers/family will be given adequate information to allow them to make informed choices about where they wish to live.

3. Policy Context

- 3.1. TWC's position is determined by the Care and Support After-Care (Choice of Accommodation) Regulations 2014, and Care and Support Statutory Guidance issued under the Care Act 2014.
- 3.2. The Regulations and Statutory Guidance is intended to ensure that when local authorities with social care services responsibilities make placements in specified types of accommodation, that within reason, people are able to exercise genuine choice over where they live. The specified types of accommodation covered by the regulations are:
 - Care Home Accommodation (see regulation 6);
 - Shared Lives Scheme Accommodation (see regulation 7); or
 - Supported Living Accommodation (see regulation 8).
- 3.3. Hereafter, the term "accommodation" should be taken to refer to the specified accommodation listed above.
- 3.4. The Guidance applies to both long term and temporary accommodation
- 3.5. The Guidance describes the minimum of choice that local authorities should offer people and states that the local authorities should make all reasonable efforts to maximise choice as far as possible.

4. The Decision to arrange Accommodation

- 4.1. If after an assessment of need, made in accordance with the general principles of the Care Act 2014, and discussion with the person and their carer(s), TWC decides to provide accommodation of a specified type either permanently or temporarily, TWC will make a placement on behalf of the person in suitable accommodation.

5. Preferred Accommodation

- 5.1. There should be a general presumption in favour of people being able to exercise reasonable choice over the service they receive.
- 5.2. Where TWC is responsible for meeting a person's care and support needs and their needs have been assessed as requiring any of the specified types of accommodation in order to ensure that they are met, the person must have the right to choose between different providers of that type of accommodation provided that:
 - The accommodation is suitable in relation to the persons assessed needs.
 - To do so would not cost TWC more than the amount specified in the person's personal budget for accommodation of that type.
 - The accommodation is available; and
 - The provider of the accommodation is willing to enter into a contract with TWC to provide the care at the rate identified in the person's personal budget on TWC's terms and conditions.
- 5.3. The limitations on TWC's obligation to provide preferred accommodation as set out in the regulations are not intended to deny people reasonable freedom of choice but to ensure that TWC is able to fulfil its obligations for their quality of service provided and value for money

- 5.4. This choice must not be limited to those settings or individual providers with which TWC already contracts with, or those that are within TWC's geographical boundary. It must be genuine choice across the appropriate provision
- 5.5. If a person chooses to be placed in a settling that is outside TWC's area in accordance with the provisions above TWC must still arrange for their preferred care. In doing so, TWC will have regard to the cost of care in that area when setting the persons personal budget.

6. Suitability of Accommodation

- 6.1. In exercising a choice, TWC must ensure that the accommodation is suitable to meet a persons assessed needs and identified outcomes established as part of the care and support planning process
- 6.2. People are able to express a preference about the settling in which their needs are met through the care and support planning process. This process considers both the persons needs and preferences. Once this is agreed, the choice is between different settings, not different types of accommodation. For example, a person cannot exercise the right to a choice of accommodation to choose a shared lives scheme when the care and support planning process has assessed the person's needs as needing to be met in a care home.

7. Cost

- 7.1. The care and support planning process will identify how best to meet a person's needs. As part of that, TWC must provide the person with a personal budget, except in cases or circumstances set out in the Care Act 2014 (personal budget) regulations. The personal budget is an important tool that provides clear information on the cost of meeting the person's needs.
- 7.2. The personal budget is defined as the cost of meeting the person's needs which TWC chooses or is required to meet. However TWC should take into consideration cases or circumstances where this cost may need to be adjusted to ensure that needs are met. For example, a person may have specific dietary requirements that can only be met in specific settings.
- 7.3. In all cases TWC must have regard to the actual cost of good quality care in deciding the personal budget to ensure that the amount is one that reflects the local market conditions. This should also reflect other factors such as the person's circumstances and the availability of provision. In addition, TWC should not set arbitrary amounts or ceilings for particular types of accommodation that do not reflect a fair cost of care.
- 7.4. A person must not be asked to pay an additional amount or top-up towards the cost of their accommodation because of market inadequacies or commissioning failures, and there must be a genuine choice .TWC therefore must ensure that at least one option is available that is affordable within a person's personal budget, and should ensure there is more than one.

7.5. If no suitable accommodation is available at the amount identified in a personal budget, TWC must arrange care in a more expensive setting and adjust the budget accordingly to ensure that needs are met. In such circumstances, TWC must not ask for the payment of a top-up fee. Only when a person has chosen a more expensive accommodation can a “top-up” payment be sought. Section 11 sets out guidance on additional costs.

8. Availability

- 8.1. TWC has specific duties to shape and facilitate the market of care and support services locally, including ensuring sufficient supply. As a result, a person should not have to wait for their assessed needs to be met. However, in some cases, a short wait may be unavoidable, particularly when a person has chosen a particular setting that is not immediately available. This may include putting in place temporary arrangements – taking into account the persons preferences and securing their agreement – and placing the person on the waiting list of the preferred choice or provider for example. It should be remembered however that such arrangements can be unsettling for the person and should be avoided where possible. In such cases TWC must ensure that in the interim adequate alternative services are provided and set out how long the interim arrangement may last for.
- 8.2. In establishing any temporary arrangements, TWC must provide the person with clear information in writing on the detail of the arrangements as part of their care and support plan. As a minimum this should include the likely duration of the arrangement, information on the operation of the waiting list for their preferred setting alongside any other information that may be relevant. If any interim arrangements exceed 12 weeks, the person may be reassessed to ensure both the interim and the preferred option are still able to meet the person’s needs and that remains their choice.
- 8.3. Where a person contributes to the cost of their care following a financial assessment they must not be asked to pay more than their assessment shows they can afford.
- 8.4. In some cases a person may decide that they wish to remain in the interim setting, even if their preferred setting subsequently becomes available. If the setting where they are temporarily resident is able to accommodate the arrangement on a permanent basis this should be arranged and they should be removed from the waiting list of their original preferred setting. Before doing so, TWC must make very clear any consequences of that choice, including any financial implications.

9. Choice that Cannot be Met and Refusal of Arrangements

Whilst TWC will do everything it can to meet a person's choice, inevitably there will be some instances where a choice cannot be met, for example if the provider does not have capacity to accommodate the person. In such cases TWC must set out in writing why it has not been able to meet that choice and should offer suitable alternatives.

- 9.1. TWC must do everything it can to take into account of the person's circumstances and preferences when arranging care. However, in all but a very small number of cases such as when 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 a permanent basis.
- 9.2. Where a person unreasonably refuses the arrangements TWC must consider whether it has fulfilled its statutory duty to meet needs and if so, may inform the person in writing that as a result they need to make their own arrangements. This should be a step of last resort and TWC should consider the risks posed by such an approach, for both the authority itself and the person concerned. Should the person contact TWC again at a later date, TWC should reassess the needs as necessary and re-open the care and support planning process.

10. Contractual Terms and Conditions

- 10.1. In supporting a person's choice of setting, TWC may need to enter into a contract with a provider that they do not currently have an arrangement with. In doing so, TWC should ensure that the contractual conditions are broadly the same as those they would negotiate with any other provider whilst taking account of the individual circumstances. Strict or unreasonable conditions should not be used as a means to avoid or deter the arrangement.

11. Additional Costs or Top-Up Payments

- 11.1. In some cases, a person may actively choose a setting that is more expensive than the amount identified for the provision of the accommodation in their personal budget. Where they have chosen a setting that costs more than this, an arrangement will need to be made as to how the difference will be met. This is known as an additional cost or a top up payment and is the difference between the amount specified in the personal budget and the actual cost of the accommodation. In such cases, TWC must arrange for them to be placed there, provided a third party, or in certain circumstances the person in need for care and support, is willing and able to meet the additional cost.
- 11.2. The following sections of guidance only apply where the person has chosen a more expensive setting. Where someone is placed in a more expensive setting solely because TWC has been unable to make arrangements at the anticipated cost, the personal budget must reflect this amount. The person would then contribute towards this personal budget according to the financial assessment. The additional cost provisions must not apply in such circumstances.

Agreeing a “Top-Up” Fee

- 11.3. Having chosen a setting that is more expensive, based on good information and advice, TWC should ensure that the person understands the full implications of this choice, remembering that this is often a point of crisis. This should include for example that a third party, or in certain circumstances the person needing care and support, will need to meet the additional cost of that accommodation for the full duration of their stay, and that should the additional cost not be met they may be moved to an alternative setting, the cost of which is fully covered by the personal budget.
- 11.4. TWC must ensure that the person paying the top up is willing and able to meet this additional cost for the likely duration of the agreement, recognising that this may be for some time into the future. Therefore the person paying the “top up” must enter into a written agreement with TWC, agreeing to meet that cost. The agreement must, as a minimum, include the following:
 - The additional amount to be paid;
 - The amount specified for the accommodation in the person’s personal budget;
 - The frequency of the payments;
 - 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 might make;
 - A statement on the effect of any changes in the financial circumstances of the person paying the “top up”.
- 11.5. Before entering into the agreement, TWC must provide the person paying the “top up” with sufficient information and advice to ensure they understand the terms and conditions, including actively considering the provision of independent financial information and advice.
- 11.6. Ultimately, if the arrangements for a “top up” were to fail for any reason, TWC would need to meet the cost or make alternative arrangements, subject to a needs assessment. Further details are set out below in the consequences of ceasing to make payments.
- 11.7. TWC should therefore maintain an overview of all “top up” agreements and should deter arrangements for “top up” payments to be paid directly to a provider.

The Amount to be Paid

- 11.8. The amount of the “top up” should be the difference between actual costs of the preferred provider and the amount that TWC would have set in a personal budget or local mental health after care limit to meet the person’s eligible needs by arranging or providing accommodation of the same type.

Frequency of Type

- 11.9. In agreeing any “top up” arrangement, TWC must clearly set out how often such payments need to be made, e.g. on a weekly or monthly basis.

Responsibility for Costs and to whom the Payments are made

- 11.10. When entering into a contract to provide care in a setting that is more expensive than the amount identified in the personal budget, TWC is responsible for the total cost of that placement. This means that if there is a breakdown in the arrangement of a “top up”, for instance if the person making the “top up” ceases to make the agreed payments, then TWC will be liable for all fees until it has either recovered the additional costs it incurs or made alternative arrangements to meet the cared for person’s needs.
- 11.11. In terms of securing the funds needed to meet the total cost of the care (including the “top up” element) TWC has three options, except where it is being funded by a deferred payment agreement, in which case it is added to the amount owed. In choosing which option to take TWC will consider the individual circumstances of the case, and ensure the security of the arrangements and that there is no undue pressure on the person making the “top up” payment to increase the level of payment.

The options are:

- Treat the “top up” payment as part of the persons income and therefore recover the costs from the person concerned through the financial assessment (where the “top up” payments are being made by a third party rather than the cared for person, this is on the assumption that the third party makes the payment to the person with care needs);or
- Agree with the person, the third party paying the “top up” (if this is not the cared for person) and the provider that the payment for the “top up” element can be made directly to the provider with the local authority paying the remainder. However, as stated earlier this is not recommended; or
- **TWC’s preferred option is for the person making the “top up” payments pays the “top up” amount to the local authority. The local authority then pays the full amount to the provider.**

- 11.12. In the case of people with eligible needs who pay in full for their own care and support who ask the local authority to arrange their care, refer to section 15

Provisions for Reviewing the Agreement

- 11.13. TWC must set out in writing details of how the arrangements will be reviewed, what may trigger a review, and circumstances when any party can request a review.
- 11.14. Arrangements must be reviewed at least annually and in line with wider reviews of the financial assessment

Consequences of Ceasing to make Payments

- 11.15. TWC must make clear in writing the consequences should there be a break down in the arrangement to meet the cost of the “top up”. This should include that the person may be moved to alternative accommodation where this would be suitable to meet the needs and affordable within the personal budget or local mental health after care limit. TWC must undertake a new assessment before considering this course of action, including consideration of a requirement for an assessment of health needs, and have regard to the persons wellbeing

Price Increases

- 11.16. Arrangements will need to be reviewed from time to time, for example in response to any changes in circumstances of the cared for person, the person making the “top up” payments (if this is different from the cared for person), TWC’s commissioning arrangements of a change in provider costs. However, these changes may not occur together and TWC must set out in writing how these changes will be dealt with.
- 11.17. TWC must clearly set out in writing to the person or persons concerned its approach to how any increased costs may be shared. This should also include details of how agreement will be reached on sharing of any price increases. This should also state that there is no guarantee that these increased costs will automatically be shared evenly should the providers cost rise more quickly than the amount TWC would have increased the personal budget or local mental health after care limit and there is an alternative option that would be affordable within that budget.
- 11.18. TWC may wish to negotiate any future price rises with the provider at the time of entering into a contract. This can help provide clarity for adults and providers and help ensure that the top up remains affordable.
- 11.19. TWC should also make clear that where the person has a change in circumstances that requires a new financial assessment and this results in a change in the level of contribution the person them self makes this may not reduce the need for a “top up” payment.

Consequences of Changes in Circumstances of the Person Making the “Top Up” Payment.

11.20. The person making the “top up” payment could see an unexpected change in their financial circumstances that will impact on their ability to continue to pay the “top up” fee. Where a person is unable to continue making “top up” payments, TWC may seek to recover any outstanding debt owed pursuant to the written agreement to pay the amount specified, and has the power to make alternative arrangements to meet a person’s needs, subject to a needs assessment. TWC must set out in writing how it will respond to such a change and what the responsibilities of the person making the “top up” payment are in terms of informing the local authority of the change in circumstances.

12. First Party “Top Ups”

- 12.1. The persons 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 property disregard
 - Where they have deferred payment agreement in place with the local authority. Where this is the case, the terms of the agreement should reflect this arrangement. Or
 - Where they are receiving accommodation provided under S117 for mental health aftercare.

13. Individuals already in Accommodation

- 13.1. Persons already placed by TWC in accommodation, and those already in accommodation as self-funders but who, because of diminishing resources, are on the verge of needing TWC’s support, or those no longer eligible for CHC funding, have the same rights under the regulations as those who have yet to be placed by TWC. Any such individual who wishes to move to different or more expensive accommodation may seek to do so on the same basis as anyone about to enter accommodation for the first time.
- 13.2. Should a previous self-funder who now requires support from TWC, or a person no longer eligible for NHS Continuing Healthcare who is resident in accommodation that is more expensive than the amount specified in the persons personal budget following assessment, they should not automatically be asked for a “top up” or be expected to move to alternative accommodation within the cost of their personal budget, unless after a needs assessment they are deemed able to move to alternative accommodation.
- 13.3. For persons no longer eligible for NHS Continuing Healthcare, NHS funding should not be withdrawn until an agreement on funding is in place. Any suggestion that this may happen should be brought to the attention of the appropriate senior manager.
- 13.4. If following a needs assessment it is identified that the person would be at significant risk of harm if moved taking into account risk mitigation, the case should be referred to the Director/Assistant Director for Adult Social Care for a decision as to whether the cost in the person’s personal budget should be exceeded.

14. People who are Unable to Make their own Choice

- 14.1. There will be cases where a person lacks capacity to express a choice regarding their care and residence for themselves. In such cases the statutory principles and provisions of the Mental Capacity Act 2005 will be applied.

15. Self-Funders who ask the Local Authority to Change their Care

- 15.1. The Care Act 2014 enables a person who can afford to pay for their own care and support in full to ask the local authority to arrange their care on their behalf. Where the person requires care in a care home to meet their needs, TWC may choose to respond to the persons request by meeting their needs, although TWC has no obligation to do so. Where the person requires some other type of care, including other types of accommodation to which the right to a choice applies, TWC must meet those needs. In such circumstances, whether because the authority chooses to meet needs in a care home, or is required to meet needs in some other type of accommodation, the same rules on choice must apply.
- 15.2. In supporting self-funders to arrange care, TWC may choose to enter into a contract with the preferred provider, or may broker the contract on behalf of the person. Where TWC is arranging and managing the contract with the provider, it should ensure that there are clear arrangements in place as to how the costs will be met
- 15.3. Ultimately, TWC should assure itself that robust contractual arrangements are in place in such circumstances that clearly set out where responsibilities for costs lie and ensure that the person understands those arrangements. Self-funders will have to pay for the costs of their care and support including where they choose a setting that is more expensive than the amount identified in their personal budget.

16.Choice of Accommodation and Mental Health After-Care

- 16.1. Regulations made under section 117After Care of the Mental Health Act 1983 enable persons who qualify for after care under section 117 after care to express a preference for particular accommodation of the types specified in the regulations is to be provided as part of that after care TWC is required to provide or arrange the provision of the preferred accommodation if the conditions in the regulations are met.
- 16.2. The regulations give people who receive mental health after care broadly the same rights to choice of accommodation as someone who receives care and support under the Care Act 2014 but some differences arise because after care is provided free of charge and, as the legislative requirement for a care and support plan under the Care Act 2014 does not apply to section 117 after care, the care plan should instead be drawn up under guidance on the Care Program Approach (CPA). Care planning under the CPA should, if accommodation is an issue, include identifying the type of accommodation which is suitable for the persons needs and affording them the right to choice of accommodation set out in the regulations made under section 117after care. The person should be fully involved in the care planning process.
- 16.3. An adult has the right to choose accommodation provided that:
- The preferred accommodation is of the same type that the local authority has decided to provide or arrange;
 - It is suitable for the person’s needs;
 - It is available; and
 - Where the accommodation is not provided by the local authority, the provider of the accommodation agrees to provide the accommodation to the person on the local authority terms
- 16.4. The principles in sections, 5 and 14 apply equally where a local authority is providing, or arranging the provision of, accommodation in discharge of its after-care duty. The guidance in section 9 applies when the preferred choice cannot be met.
- 16.5. Where the cost of the person’s preferred accommodation is more than TWC would provide in a personal budget or local mental health after care limit to meet the person’s needs, then TWC must arrange for them to be placed there, provided that either the person or a third party is willing and able to meet the additional cost.

- 16.6. The guidance in section 11 applies where the adult has chosen more expensive accommodation. For the purpose of section 117 after care references to a third party should be read as including the adult receiving the aftercare (because an adult can also meet the additional cost when a local authority is providing, or arranging for the provision of accommodation in discharge of the after-care duty).
- 16.7. In securing the funds needed to meet the additional cost, TWC may:
- Agree with the person and the provider, and in cases where a third party is paying the “top up”, agree with that third party, that payment for the additional cost can be made directly to the provider with TWC paying the remainder; or
 - **TWC’s preferred option is that the person or the third party pays the “top up” amount to TWC. TWC then pays the full amount to the provider**

17. Information and Advice

- 17.1. Under section 4 of the Care Act 2014 TWC must establish and maintain service for providing people in its area with information and advice about the different care providers available in the local area to enable choice as well as information and advice to help people to understand care changes, different ways to pay and money management.
- 17.2. TWC should also have a role in facilitating access to financial information and advice provided independently of the local authority, including regulated information and advice where appropriate; to support people in making informed financial decisions. This may be particularly appropriate when a person is considering paying a top-up to help them understand what they would be paying the top-up and come to a judgement about whether it would represent good value for money.
- 17.3. Where a “top-up” arrangement is being entered into, all parties should fully understand their responsibilities, liabilities and consequences of the arrangements. TWC must provide the third party with sufficient information and advice to support them to understand the terms of the proposed written agreement before entering into it.
- 17.4. TWC’s financial information pack should be provided as soon as possible to people considering entering accommodation regardless of whether it is believed they will be self-funders or not.

The financial information pack includes

- Your Financial Assessment explained Leaflet
- Financial Assessment Form
- Paying for Care Services
- Property information pack including 12 Week Property Disregard
- Deferred Payment Information and Agreement
- Third Party Top Up Information and Agreement

18. Practice Guidance for arranging Care Home Placements

- 18.1. When a decision has been made for the person to move to a care home, a suitable period of planning for transition must be available, and the allocated social worker will develop a transition plan that will take account of the circumstances and needs of the person and their family.
- 18.2. Visits to alternative care settings for the person and their family will be facilitated by the social worker as part of the transition plan with appropriate transport provided where required.
- 18.3. Staff from the receiving care home will be assisted to become familiar with the person and their care plan prior to the date of the planned move.
- 18.4. The social worker will visit the chosen care home and take responsibility for ensuring the home can meet the persons assessed needs, and that all the persons personal documentation including assessment, risk assessment, support plan are up to date, accurate, and are provided to the new care home prior to the move. The social worker must also provide the care home with the following;
 - Key contacts – include family, health professionals, mental health services, advocates etc.
 - Any other assessments relevant i.e. falls, behaviour management plans
 - Area team contact details
- 18.5. The social worker will consult with the management of the care home, and the person and their family regarding the best way to organise the move.
- 18.6. The social worker will contact the care home in the 24 hours before the date of the planned transfer as a final check to ensure they are fully prepared to accept the person the next day.
- 18.7. The social worker will ensure that the appropriate transport arrangements are made ensuring that the vehicle is suitably equipped to accommodate the needs of the person who will be accompanied by a carer/family member who knows them and can offer support during the journey.
- 18.8. The social worker will maintain weekly contact with the care home after the move, and will conduct a review after 4-6 weeks to which family, care staff, relevant professionals will be invited to attend.
- 18.9. If required a further review will be scheduled for 6 weeks after the first review.
- 18.10. Following that, the usual 12 monthly (annual) review will apply, unless there is a request for a re assessment.

19. Emergency Short Term Placements

19.1. There may be circumstances where emergency placements may be required into short term care home accommodation i.e. crisis replacement care due to the breakdown of the persons care arrangements. In such circumstances the social worker must take all reasonable steps to ensure that the person's choice of accommodation is maximised as far as possible in line with the regulations.

20. Complaints

20.1. Complaints about the application of the regulations and decisions taken in individual cases will fall within the scope of the council's statutory complaints procedure. The social worker must ensure that all individuals are aware of and understand the existence of the complaints procedure and their rights under it.