1. **When are top-up payments required**

If an adult with care needs chooses to live in care accommodation that charges more than the amount allocated in their personal budget for the provision, they - or a third party acting on their behalf - must agree to make up the difference through payment of a top-up fee.

We cannot ask an adult/third party to make top-up payments because of ‘market inadequacies’ or ‘commissioning failures’. We should ensure that there are a number of suitable affordable options available when they are needed. If we cannot ensure that at least one affordable option is available, we must adjust the personal budget to reflect the cost of the more expensive accommodation.

As soon as it becomes clear that the adult/third party is considering accommodation for which a top-up fee will be required, the social worker and/or brokerage should provide information and advice on the implications.

2. **Who is responsible for making the payments**

In the majority of cases a third party (usually a family member) will be responsible for making the payments.

The Care Act 2014 also allows for ‘First Party top-ups’. This means that in some cases the adult with accommodation needs will be responsible for making top-up payments. First party top-ups can only be made if the adult –

- is subject to a 12 week property disregard;
- has a deferred payment agreement in place. Where this is the case the deferred payment agreement must reflect this arrangement;
- receives accommodation under section S117 for mental health aftercare.

3. **Informed decision making**

**Discussing top-up charges**

The adult or third party must agree to pay the top-up charge for the duration of the adult's tenancy/license, so it is important that they fully understand the implications of moving into the accommodation.

Brokerage should discuss the range of suitable accommodation that is available with the adult/third party, including accommodation where a top-up fee will not be needed. If it becomes clear that the adult/third party will only consider accommodation for which a top-up charge will be required, we must –

- let them know **how much** the top-up charge is currently. It is important to let them know that this fee is not set in stone. If the accommodation provider increases their charge, the adult/third party may need to pay a higher top-up fee. Also, if the adult’s income
increases we will carry out a financial assessment to determine how much the top-up charge should be;
- let them know **how often** they will need to make the payment;
- make it clear that **failure to pay** the top-up charge could result in us moving the adult to other accommodation. We may also take legal action against them to recover the costs;
- provide them with information on services so that they can **seek independent financial advice** if needed.

**Payment assurances**

Before securing the accommodation, a member of the finance team should take steps to satisfy themselves that the adult/third party will be able to make the top-up payments.

**Writing to the adult/third party about top-up charges**

If the adult/third party chooses to proceed, Brokerage must write to them once arrangements have been made to move into the accommodation of their choice. The letter should include information regarding the advice we have already given them, the cost they will be liable for (including a reminder that the cost may change in the future), and the implications of falling behind in payments.

We will also need to provide them with information on our approach to top-up charges, and a copy of a Top-Up Agreement for them to read, sign and return.

For more information see –
- Top-up charge letter
- Top-up Agreement

**4. What happens if we only have a few days to arrange the accommodation?**

Sometimes we need to arrange accommodation within a short time-span. We may need to place the adult into accommodation that costs more than that which is allocated in their personal budget. In circumstances like this we will arrange the accommodation on a temporary 6 week placement, and adjust their personal budget to cover the cost.

During the 6 week placement we will explore other suitable – and affordable - accommodation options with the adult/third party. If at the end of the 6 weeks they choose to remain in the accommodation (despite being presented with suitable affordable options), or they choose to move to accommodation that costs more than that allocated in their personal budget, they will need to agree to pay the top-up charge. If they do not agree to pay the top-up charge, we should consider moving them to alternative accommodation. For more details see section 6.

**5. How are top-up payments made?**

Southwark are responsible for paying the accommodation provider. The Finance team recoup the top-up charge from the adult/third party in one of two ways (except where the accommodation is being funded by a deferred payment agreement):
- we can treat the top-up payment as part of the adults income (where a third party makes the payment this is done on the assumption that the party makes the payment to the person with care needs). Using this method we can recover the costs from the adult through the financial assessment. Or;
the adult or third party can make top-up payments direct to Southwark as per the arrangements detailed in the top-up agreements.

The adult or third party can also make payments direct to the accommodation provider if this has been agreed by the third party and accommodation provider, however this is something we should discourage.

6. What happens if the third party fails to make the top-up payments?

We must continue to make payments to the accommodation provider for the entire cost of the care accommodation, even if the adult or third party fails to pay the top-up charge.

If the adult or third party falls into significant and/or persistent top-up arrears the social worker and Finance team should remind them that the debt puts the adult’s current accommodation placement at risk. Where it has been previously agreed that the adult/third party will make the top-up payments direct to the accommodation provider, the accommodation provider should notify the Finance team within a week of each missed payment. The Finance team will need to arrange for the payment of the outstanding monies to the accommodation provider.

In some cases it may be necessary to move the adult to other accommodation for which a top-up charge is not required. If the adult/third party fails to clear their top-up debts following verbal and written warnings Finance should notify the relevant social care team. A Social Worker will need to assess the adult’s needs again before considering alternative accommodation arrangements are considered. We will not move the adult to alternative accommodation if the adult’s assessed needs can only be met in the accommodation that they are in.

7. What about adults who agreed the top-up charge before the Care Act 2014 was enacted?

If the adult agreed to the top-up charge before 1st April 2015, their top-up charge arrangements are subject to the requirements set out in the Charging for Residential Accommodation Guide 2014. However, once we review their Care and Support Plan after the 1st April 2015 their payment arrangements become subject to the regulations set out in the Care Act.

Although many of the financial arrangements prior to the enactment of the Care Act are the same, the Act introduced minimum requirements for the written Top-Up Agreement which are not met by our old Top-Up Agreements. Following the review of the adult’s Care and Support plan the Social Worker should make attempts to get the adult or third party to sign the revised Top-Up Agreement. If the adult or third party refuses to sign the amended Top-Up Agreement the Social Worker should record this, and inform the Team Manager.