Third Party Payments
for care home fees in Wales
Report of a national review by CSSIW

July 2010
Purpose of review

In 2009 the Care and Social Services Inspectorate Wales (CSSIW) undertook a review of the application of third party payments in Wales. This report describes the review process. It contains information on the methods, the information gathered and the key findings. It ends with an outline of the conclusions to be drawn from the findings.

Some independent care homes charge fees which are higher than the maximum amount that Social Services can contribute. This maximum amount is often referred to as ‘the usual costs’. If Social Services contributes towards the care home fees, and the service user chooses to move into a home which charges a higher fee than the ‘usual costs’ then the difference between the two amounts is paid by a third party, usually a relative. Third party payments are sometimes referred to as ‘top-up’ payment¹.

The review considered the up to date position across Wales by considering the views, experiences and perception of carers and older people about third party payments.

The evidence for the review was drawn from surveys completed by care home providers who provide care for older people requiring both personal and nursing care. Further evidence was gained from an examination of local authority policies and from meetings with provider representative organisations and the local authority representative organisation: the Association of Directors of Social Services (ADSS).

The review considered whether the charging of third party payments is consistent across Wales by:

- considering the legislative and policy context in Wales;
- estimating the number of people paying third party payments;
- gathering information and data on the highest, lowest and average payments;

¹ Top ups will be referred to as third party payments other than when used as a quote
clarifying the distribution of third party payments across Wales and identifying the rationale for such payments; and

considering the impact of these arrangements on service users.

Background

Concerns have emerged over several years about third party payments. People who use services, their carers, and relatives have provided a range of anecdotal evidence across local authority areas. Local authorities have raised issues of concern through their commissioning partnerships. Ministers have received complaints from care home residents, their families and friends. Taken together these suggest that there may be variation across Wales in the way the Directions and guidance are interpreted, resulting in third party payments being inappropriately requested in some cases. In February 2008 a letter was sent to all Directors of Social Services, Chief Executives of Local Authorities and all registered Care Homes in Wales reminding them of the provisions of the National Assistance Act (Choice of Accommodation) Directions 1993 and of Circular NAFWC 46/2004 and of the correct operation of third party payments.

The evidence from this review suggests there are two different rationales operating regarding third party payments:

a) Where a person's chosen accommodation is more expensive than the price paid by the local authority for accommodation of that sort, then, rather than being limited to homes within the local authority price bracket, the person can make additional payments to enable them to live in the home of their choice. These additional payments can be referred to as ‘top-ups’.

b) When a person is a resident in a home arranged by a local authority there is a contract between the local authority and the home setting out what facilities and services are covered by the agreement and the amount to be paid by the local authority for them. Regulation 5A of the Care Homes Wales regulations requires that each resident should be given a statement setting out what fees are payable.
and for what services and facilities. Sometimes a home will provide optional additional services or facilities which are not part of the contract and may offer these to residents for an additional charge. These requests for payment for additional services are sometimes also referred to as top-ups.

There has been disquiet about the second type of request as providers may be asking for payment for services which are already covered in the local authority contract. These concerns were the background to an Office of Fair Trading (OFT) Report in 2005\(^2\).

The OFT identified confusion in the use of additional payments by third parties, so called ‘third party payments’. These can give older people receiving local authority funding a wider choice of care homes and facilities within a home. However they should be voluntary and to the older person’s advantage. Statutory guidance applicable in Wales requires that third party payments are only requested when individuals themselves request a placement in a more expensive home then their authority would normally fund in order to meet their assessed care needs in full, or where the individual has requested services and/or facilities beyond those required to meet their assessed care needs in full. A third party payment cannot be requested to meet the costs of the care package that a person has been assessed as requiring to meet their long term care needs\(^3\).

The OFT research suggested that an increasing number of people were paying third party payments, and 40 per cent of the Authorities that were surveyed suspected that more third party payments were being paid in their area than they knew about. The study also showed that some people were likely not to get all the necessary information needed about third party payments. This meant in some cases where an older person

\(^2\) Office of Fair Trading ‘Care Homes for Older People UK a market study 2005’


NATIONAL ASSISTANCE (RESIDENTIAL ACCOMMODATION) (ADDITIONAL PAYMENTS AND ASSESSMENT OF RESOURCES) (AMENDMENT) (ENGLAND) REGULATIONS 2001
was entitled to local authority funding of a care home place they and their relatives may mistakenly believe that a third party payment is required before a care home place can be found.

The OFT report found that 44 per cent of service users received financial support only from the local authority, 24 per cent received local authority funding that was then ‘topped up’ by third parties, and 32 per cent were self funding. This meant that in 2005 across the UK that one third of people in receipt of local authority funding also relied on additional payments from third parties.

Throughout the OFT study, the issue of the level of government funding was raised by a range of stakeholders. In particular, people stated that the fees paid by local authorities to care homes for older people did not cover the full costs to the care home of providing care, plus a reasonable profit margin. Most of these concerns were identified by the results of our survey across Wales. Provider groups representing the sector in Wales confirmed that the majority of their members stated that they charged third party payments due to the pressure on finances and the need to ensure that they remained financially viable as required by Regulation 27 of The Care Homes (Wales) Regulations 2002.

The OFT’s concerns about the consequences for older people of low levels of funding are that:

a) low prices paid to care homes may force care homes out of the market and lead to a shortfall in capacity in some areas; and
b) care homes may be charging higher fees to privately funded clients in order to cross subsidise publicly funded residents.
Summary

The survey was sent to all care home providers for older people in Wales, approximately 620, and 237 providers (38%) responded. We can assume that this sample is representative of all care homes as those that did not respond do not have different characteristics to those that did. Findings are however subject to a margin of error as they are based on a sample of providers. The key findings were:

- around 40 per cent of homes in our survey charged third party payments;
- the remaining 60 per cent stated that they did not charge third party payments;
- there were regional variations in the number of homes in an area charging third party payments;
- the explanation for these variations is not certain but the evidence from our survey suggests that in part it may be due to demographics i.e. areas of social deprivation, high vacancy rates in some areas and also the number of care homes available in certain localities;
- the most common reason given for the charging of third party payments was that the fee paid by the local authority did not reflect the actual costs of delivering the service. Another reason given was that the payment reflected the difference between the local authority rate and the providers published rate and that the payment was charged to provide equity between local authority and privately funded service users;
- in some areas the local authority paid above the average fee rate yet providers still charged third party payments;
- the size of third party payments varied considerably generally from the lowest at £15 per week to the highest at £45 per week across the range of care homes providing either personal or nursing care. There were some outliers whose payments ranged from £100 - £257 per week.
Methodology

The population of Wales is just under three million, with the population of people aged 18 and over being around 2.4 million\(^4\) and 0.5 million are aged 65 or over. The rate of older people (aged 65 or over) supported by local authorities in care homes per 1,000 population aged 65 is 23 per cent\(^5\).

Out of the total care home sector, the number of beds available for the care of older persons is 23,000; this represents 88 per cent of the total number of care home beds in Wales.

The review was undertaken through:

- A survey that went out to all care homes providing both personal and nursing care for older people in Wales;
- meeting with representatives of the regional commissioning forum of the ADSS;
- meeting with representatives of Care Forum Wales and the Registered Nursing Homes Association (RNHA);
- focus groups with services user and carers facilitated by Age Alliance.

The survey went out in September of 2009. In order to estimate the percentage of third party payments across Wales a census based approach to all care homes for older people excluding Local Authority settings was required. This was due to the relatively small number of settings of interest (620) and the very small number of settings within local authority areas, e.g. only seven care homes in Merthyr Tydfil, with 59 in Conwy.

\(^4\) Source: Office for National Statistics: Resident Population Estimates by Broad Age Band, Mid 2008, Crown Copyright

\(^5\) Source: Local Government Data Unit – Wales: National Assembly for Wales Performance Indicators, 2008-09
The analysis covered the following:

- Local Authority area;
- Size of care home;
- Nursing and personal care;
- The broad policy context was also considered by the provision of information from Local Authorities.

**Context – legislation**

There is a wide range of legislation that local authorities are obliged to work within when commissioning and providing services. They are required by law to charge for the personal care and accommodation provided to people who need long-term care. This includes help with bathing, feeding and getting around. The local authority undertakes an assessment of a person’s ability to pay for their care. They are expected to work within national guidance issued by the Welsh Assembly Government to ensure that charges across Wales are as consistent as possible. Under the guidance Charging for Residential Accommodation Guide (CRAG), which supports The National Assistance (Assessment of Resources) Regulations 1992 the contribution people make to their accommodation and care costs is assessed by taking account of their income (including most benefits and pensions) and their capital (such as savings, investments and the value of any property owned) and applying the appropriate income and capital disregards that are set out in legislation.
Residents’ contribution to paying for care

Property owned by a resident where no spouse, partner or dependent relative lives, forms part of the assessment of that person’s ability to pay towards the cost of residential care. However, that property is excluded from the assessment for the first 12 weeks. A deferred payment scheme can be offered to individuals, so that the authority places a legal charge on the person’s property and pays towards the costs of that person’s residential care and accommodation for the duration of the scheme. When the property is subsequently sold, the authority recovers the amount it has spent on care costs.

The 1948 National Assistance Act (“the Act”) states that where a person is provided with accommodation under Part 3 of the Act, section 22(1) of the Act requires that they be charged for the accommodation. Section 22(2) of the Act requires the local authority to fix a “standard rate” for the accommodation, which the Act provides should represent the full cost to the local authority of its provision of the accommodation. If a person who is provided, or to whom it is proposed to provide with accommodation under part 3, is unable to pay the standard rate, the local authority must assess their ability to pay, and decide what lower amount should be charged (in accordance with section 22(3)).

When setting its usual cost(s) an authority must be able to demonstrate that this cost is sufficient to provide most residents with the level of care services that they could reasonably expect to receive if the option for resident and third party contributions did not exist.

An authority should not seek resident or third party contributions in cases where the authority offers a place in more expensive accommodation in order to meet a person’s assessed needs. Where there are no placements at the authority’s usual rate, the authority should not leave individuals to make their own arrangements having determined that they need to enter a care home and do not have care and attention otherwise available to them. In these instances, authorities should make suitable alternative arrangements and seek no contribution from the individual other than their
contribution as assessed under the National Assistance (Assessment of Resources) Regulations 1992. Authorities must never encourage or otherwise imply that care home providers can or should seek further contributions from individuals in order to meet assessed needs.

Additional payments by third parties

The National Assistance Act 1948 (Choice of Accommodation) Directions 1993 sets out clear criteria to assist local authorities when making decisions about placing individuals in care homes. The Directions give guidance to councils with social services responsibilities that when making placements in care homes or care homes providing nursing care, that, within reason, individuals should be able to exercise genuine choice over where they live. Individuals have the right to enter more expensive accommodation, or to choose higher quality accommodation or to receive extra services, beyond what their authority would normally pay for. In such circumstances a third party (such as a family member) must be willing to pay the difference. This is known as a third party ‘top up’ payment.

Service users are only able to make this additional payment from their own specified resources on their own behalf if they are subject to the 12 week property disregard clause or have entered into a deferred payment plan with the authority.

Policy context and the setting of fees for care homes

Sections 7 and 7A of the Local Authority Social Services Act 1970 place a duty on local authorities to exercise their social services functions in accordance with the guidance and directions issued by the Welsh Ministers - "section 7 guidance". Although Section 7 guidance does not have the force of law, local authorities are required to act in accordance with such guidance and can only depart from it with good reason. Part of that statutory guidance is ‘Promoting Partnerships in Care’ which was produced in 2003. The aim of this guidance was to ensure that commissioners and providers worked effectively together to provide services that promote independence, self esteem and
social inclusion with a genuine commitment for improved outcomes for service users and their carers.

This statutory guidance reflected on the fact that providers had become increasingly concerned that some commissioners had used their dominant position to drive down or hold down fees to a level that recognised neither the costs to providers nor the inevitable reduction in the quality of service provision that follows. It states that fee setting must take into account the legitimate current and future costs faced by providers as well as factors that affect those costs, and the potential for improved performance and more cost effective ways of working. It further states that contract prices should not be set mechanistically but should have regard to providers’ costs and efficiencies, and planned outcomes for people using services. However it is clear from the survey results that many providers feel that the ethos of Promoting Partnerships in Care is not being considered by local authorities.

The Welsh Assembly Government is planning to issue a new Commissioning Framework under Section 7(1) of the Local Authority Social Services Act 1970. This statutory guidance is in the form of standards which local authorities are expected to achieve. The Framework’s commissioning standards set the benchmark against which the effectiveness of local authority commissioning will be measured. The standards are based around on the development of evidence-based commissioning plans and their delivery through effective procurement. The Framework also provides good practice in commissioning and procurement although it is largely silent on the issue of fees and third party payments. This new commissioning guidance, which has been issued for consultation, contains similar statutory requirements to Promoting Partnership in Care with regard to fee setting.
Local Authorities

Local authorities were asked to submit their policies relating to third party payments as part of this review. Of the 22 local authorities in Wales 17 of them complied with this request whilst the remaining five failed to respond. All of the policies recognise that many providers will ask for third party payments and the policy documentation clearly sets out the legal framework governing residential care. The policies, in relation to these payments, generally focused on advice to third parties and practitioners. They also gave information on how each authority handled the issues of third party payments from agreement with providers through to the administration of the payments.

As part of our review the views of the representative organisation ADSS was sought in order to establish the impact that the application of third party payments may have on the local authority’s position when placing service users into residential or nursing care. The focus of the meeting was as follows:

- Considering the distribution of third party payments across Wales;
- the effect on commissioning arrangements;
- the impact of third party payments on Delayed Transfers of Care (DToC);
- the impact on choice for service users;
- the extent of any collaboration between local authorities to respond to the issues raised by third party payments.

From discussions it was evident that the number of third party payments appeared to vary across local authority boundaries and this was confirmed by the regional variation in the survey results. However this does not mean that it is not a serious issue for all commissioners and users of services as the impact on users and carers in relation to choice may be significant – the danger is of a post code lottery in relation to choice of care home, dependent on an ability to pay a third party payment.
It was suggested by the ADSS that social workers were confronted by the third party payment issue in the placing process as they were the ones who had the direct contact with the service user and their representative. The issue of third party payments was not considered a factor in DToC as generally there were reasonable vacancy rates in care homes therefore a good deal of choice available. It was suggested that residential care was no longer the first choice with most individuals electing to have their needs met at home for as long as possible. A large amount of capital investment is tied up in residential provision and the view of the ADSS representatives was that this would need some rationalisation in the future and that there should be increased collaborative working with all partners in order to shape the market for the future needs of older people.

A further view expressed was that third party payments are a symptom of the current system of paying for care. Recognising this some authorities are involved in innovative work with providers where they have jointly developed a quality tool based on a person centered approach for service users, relatives and staff. The fee rate which they have negotiated with providers is set using the Laing and Buisson\(^6\) model up to the point of return on capital and includes the provision for ongoing sustainability. As long as all quality indicators are met the fee rate will be increased to its maximum over a two year period and when providers have reached the maximum rate for the enhanced quality standard then implicit agreement has been reached that no third party payments will then be charged. This has been met with a positive response from those providers engaged in the process.

The new Commissioning guidance from the Welsh Assembly Government is also linked to quality standards and should therefore enable Commissioners to negotiate fairly and reasonably with providers.

\(^6\) Calculating a fair market price for care: a toolkit for residential and nursing homes. William Laing
**Summary of Survey Results**

From the 620 homes that were surveyed, responses were received from 237, a return rate of 38 per cent. The number of homes that responded by local authority area are as follows:

<table>
<thead>
<tr>
<th>Local Authority</th>
<th>Total care homes Number</th>
<th>Care homes responding to survey Number</th>
<th>Per cent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Isle of Anglesey</td>
<td>20</td>
<td>12</td>
<td>60</td>
</tr>
<tr>
<td>Gwynedd</td>
<td>28</td>
<td>13</td>
<td>46</td>
</tr>
<tr>
<td>Conwy</td>
<td>59</td>
<td>21</td>
<td>36</td>
</tr>
<tr>
<td>Denbighshire</td>
<td>47</td>
<td>14</td>
<td>30</td>
</tr>
<tr>
<td>Flintshire</td>
<td>28</td>
<td>13</td>
<td>46</td>
</tr>
<tr>
<td>Wrexham</td>
<td>34</td>
<td>13</td>
<td>38</td>
</tr>
<tr>
<td>Powys</td>
<td>32</td>
<td>15</td>
<td>47</td>
</tr>
<tr>
<td>Ceredigion</td>
<td>14</td>
<td>6</td>
<td>43</td>
</tr>
<tr>
<td>Pembrokeshire</td>
<td>34</td>
<td>15</td>
<td>44</td>
</tr>
<tr>
<td>Carmarthenshire</td>
<td>38</td>
<td>17</td>
<td>45</td>
</tr>
<tr>
<td>Swansea</td>
<td>50</td>
<td>19</td>
<td>38</td>
</tr>
<tr>
<td>Neath Port Talbot</td>
<td>21</td>
<td>8</td>
<td>38</td>
</tr>
<tr>
<td>Bridgend</td>
<td>21</td>
<td>8</td>
<td>38</td>
</tr>
<tr>
<td>The Vale of Glamorgan</td>
<td>20</td>
<td>9</td>
<td>45</td>
</tr>
<tr>
<td>Cardiff</td>
<td>48</td>
<td>5</td>
<td>10</td>
</tr>
<tr>
<td>Rhondda Cynon Taf</td>
<td>32</td>
<td>14</td>
<td>44</td>
</tr>
<tr>
<td>Merthyr Tydfil</td>
<td>7</td>
<td>2</td>
<td>29</td>
</tr>
<tr>
<td>Caerphilly</td>
<td>21</td>
<td>7</td>
<td>33</td>
</tr>
<tr>
<td>Blaenau Gwent</td>
<td>13</td>
<td>5</td>
<td>38</td>
</tr>
<tr>
<td>Torfaen</td>
<td>19</td>
<td>2</td>
<td>11</td>
</tr>
<tr>
<td>Monmouthshire</td>
<td>15</td>
<td>8</td>
<td>53</td>
</tr>
<tr>
<td>Newport</td>
<td>19</td>
<td>4</td>
<td>21</td>
</tr>
<tr>
<td>Anonymous</td>
<td>-</td>
<td>7</td>
<td>-</td>
</tr>
<tr>
<td><strong>Wales</strong></td>
<td>620</td>
<td>237</td>
<td>38</td>
</tr>
</tbody>
</table>
This table relates to the geographic location of the providers within local authority boundaries. As the number of providers responding for some local authorities is small, analysis of the survey results by local authorities will be unreliable. We have therefore focused on the national picture and discuss variations within this.

**Fee rates by local authority area**

Respondents were asked to list the ‘usual fee rates’ for the authorities they contracted with for both personal and nursing care. We were therefore able to find an estimate of the local authority fee rate by averaging the information provided.

**Personal Care**

The average weekly fee across all of the authorities was £402; the lowest weekly fee rate was £361. The highest weekly fee rate was £436; the difference between the lowest and highest average figure was £75. The highest incidence of providers charging third party payments was in a local authority area where the authority paid above the average fee rate across Wales; this may indicate that the issue of third party payments in all cases is not solely linked to fee rates paid by a local authority.

**Nursing Care**

The average weekly fee across all of the authorities was £513; the lowest weekly fee rate was £476. The highest weekly fee rate was £549; the difference between the lowest and highest figure was £73. Again the highest incidence of providers charging third party payments was in a local authority area where the authority paid above the average fee rate for nursing care across Wales.
Out of the 237 returned surveys 96 respondents (41 per cent of the sample) confirmed that they charged third party payments and it is these respondents who went on to provide information about third party payments.

**Third party payment rates by area**

The variation in providers charging third party payments by local authority is quite large but this could be due to small sample sizes at local authority level. There did appear to be some correlation between high percentages of third party payments and the population density of local authorities. The lowest rate of third party payments appeared to be in the South Wales valley areas and parts of North Wales. It is possible that this in part may be linked to the number of care homes available in local authority areas, i.e. a higher rate of third party payments charged where the market is more buoyant and where there is a greater number of care homes, but low vacancies, with a lower rate of third party payments charged where there are higher vacancy rates. This analysis is based on small numbers and subject to some degree of error. Nevertheless, the data suggests that there may be a link between the charging of third party payments and land values and with the level of affluence in certain areas. Vacancy rates also appear to play a part.

**Size of third party payments**

We asked providers to supply their lowest and highest third party payment charge. The range of third party payments charged varied considerably although a number of the respondents indicated that they had a fixed third party fee. In personal care homes the median\(^7\) lowest third party payment was £20 per week and the median highest third party payment was £45 per week, although a small number of respondents indicated third party fees varying by as much as £100 per week.

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\(^7\) The median is the middle value in an ordered series of data. It provides a description of the middle ground of a dataset. In this case the lowest fee charged by each provider was ordered and the middle value found.
In care homes providing nursing care the median lowest third party payment was £15 per week and the median highest third party payment was £32 per week. Again, as in personal care homes, there were some examples of third party payment fees ranging from £120 – £164 per week with one care home reporting a maximum third party payment fee of £257 per week.

In general the third party payment fee in care homes providing nursing care is lower than in those providing personal care. This may, in part, reflect the higher fee rates paid by commissioners which includes the NHS funded nursing care element to all service users in receipt of nursing care.

Anecdotal evidence from users and carers indicated that there is almost certainly restrictions on choice in some authority areas and this can be attributed to the additional third party fees charged by providers – it was suggested for example, that only a very small number of care homes in the Cardiff area do not charge third party payments and this in turn affects peoples choice based on affordability.

**Setting care home fees**

Providers were asked whether local authorities negotiated with them prior to setting their fee rate. Over 70 per cent of the respondents stated that they were not consulted prior to fee rates being set. Contrastingly, the evidence provided by representatives of ADSS and from Provider groups is there is some negotiation in relation to fee rates. Comments from the survey suggest that the perception of providers is that authorities inform them of what the fee rate will be and leave no scope for negotiation. This in turn needs to be balanced with anecdotal evidence of local partnership arrangements in place across Wales which resulted in some positive comments from providers.

Following meetings with the main representative provider organisations - Care Forum Wales and the Registered Nursing Home Association - it was clear that both provider organisations and commissioning groups attempted to work together in the annual round of fee setting – both provider groups evidenced comprehensive information on
actual costs that they provided to local authorities in order to justify the requested increase in fee rates. However both groups also stated that the financial consequences of the exceptional increases in energy costs, food, increased statutory holiday entitlement and new staff vetting procedures should be factored into fee settlements if the sector is to attain stability and confidence for the future.

Whilst recognising the severe impending financial pressures on public services over the next few years they were anxious to point out that they also faced the specific pressures described above. Providers felt they had had little control over most of these costs and this eroded the profit margins that are essential to the viability of their businesses.

Local Authorities awareness of top–ups

97 per cent of respondents to the care home survey who charged third party payments reported that local authorities were aware that these payments were requested. Of these, 30 per cent confirmed that local authorities negotiated with them on the amount of third party payments charged. Of providers charging third party payments 68 per cent directly negotiated this fee with a third party on behalf of potential or existing service users.

When providers were asked whether they automatically informed local authorities regarding the top up arrangement, over 80 per cent confirmed that they did so. In order to establish that service users and relatives were clear regarding the arrangements providers were asked ‘if a third party agrees to pay a top up, what would they have to sign’?

Of the respondents charging third party fees (96 cases) 46 per cent had tri partite contracts between the care home, local authority and third party; 27 per cent had a contract that was solely between the third party and care home and 25 per cent had a contract with the local authority. The remaining two per cent had no written contract.
The survey results also show that around 70 per cent of third party payments were made directly to the home, with the remaining 30 per cent made via local authorities.

Reason for charging third party payments

There were two main reasons that providers gave for charging third party payments. A small proportion of the respondents stated that the top up fee was charged due to extra services such as en-suite bedrooms or larger rooms, sea views etc. However the most common reason stated was that local authority fee rates were inadequate for the home to provide sufficient levels of care to the service users.

A number of respondents also explained that privately funded residents paid more than the Local Authority fee level, so the third party payment provides equity across the care home community.
A selection of the responses is shown below:

‘Fees do not match our published fees which are based on commercial needs because the fees paid to us do not adequately reflect our legitimate costs. Local Authorities and Local Health Boards have failed to pay realistic fees in accordance with their obligations under "promoting partnerships in care". We have meetings and have provided all the information they ask for to populate the Laing and Buisson Toolkit "fair price for care" and then they ignore the results and pay what they say they can afford’.

‘Our current fees are £650 nursing and £570 personal, there is a shortfall from local authorities making it necessary to charge 'top ups'. As a business we cannot survive on just local authority fees’.

‘Everybody does, was told by social services I should be charging’.

‘Various room sizes and most with en-suite facilities. Bay window, sea view rooms’.

**How the payment is calculated**

It is important to state that there is a difference between the calculation of the provider’s fee rate and fee rates from local authorities. Fee rates are set by local authorities through their contractual responsibilities. Providers state that they set their fees based on the actual cost of providing care in the main by using the Laing and Buisson model. The third party payment is then the difference between their published fee rate and the fee rate set by the local authority.

When asked how the amount of third party payment was decided several respondents stated that they were using the ‘Laing and Buisson’ toolkit, whilst others stated they had a general fixed increase in fee rates and raised the ‘top up’ to match this. They used the third party payment to increase payment levels to that of privately funded service users. A sample of the respondents comments are shown below.

‘There is a standard fee for all service users that has been costed to provide a fair fee for the comprehensive range of services provided. Any top up fee is the difference between the standard fee and a lesser fee from the council’.
‘We calculated the fair price for care and our charge is to try to get closer to that amount and also taking into account what people can afford to contribute. It still doesn’t meet the full cost, we also charge extra for newer and therefore larger rooms or en-suite showers, but even this charge doesn’t meet shortfall. LHB’s pay less for continuing care than for basic nursing care and demand more equipment etc so we have to charge for the shortfall to reduce it’.

‘On needs of resident’.

‘Level of top up depends on level of accommodation and service provided’.

‘It depends on the room allocated to the service user and the level of nursing needs’.

‘By negotiating through the local authority, usually the consequence is what a third party is willing or able to pay. Top up plus LA fees would not exceed publicized rate of charge’.

‘We try very hard to keep any increase to a minimum. Our outgoings as a care home are very high, we need to control (in some way) what is coming in and going out to maintain a good standard of care and good staffing levels’.

‘When we asked if there were any circumstances in which a provider might agree to waive a third party payment, 60 per cent confirmed that it would be considered’.

Some of the actual responses are detailed below.

‘In exceptional circumstances we have considered accepting local authority fees for charitable reasons’.

‘Yes, when no suitable third party or when third party is unable to fund a top up’.

‘There have been no circumstances where the family is unable to meet the costs. Families are made aware of costs before viewing the home’.

‘Yes we would consider all circumstances’.

‘Yes, if the customer cannot afford to pay it and service user wants to stay living at the home’.

‘Again as we are a charity, if peoples circumstances were such that they had no family who were able to pay the top up then we would waive it.’.
'We have done twice on humanitarian grounds as there were no relatives to pay the top up. Business was performing well at the time, would be difficult in this economic climate'.

'We have agreed to waive a top up where a resident may be a higher dependency but a top up would cause the third party hardship'.

'No, as previously stated, we cannot provide our standards on local authority rates'.

'No, unfair to others'.

If a third party agreement fails

Generally it was evident that local authorities were consulted if this occasion arose. A number of comments stated that the authority would then take over the payment of the fee themselves. Generally the view from respondents was that discussions would be held to determine a fair approach for the future which might include a reduction in the third party fee. The majority of respondents stated that they would act in a way which would put service users needs first. There were only a few responses that indicated that service users might be asked to vacate the home and to find an alternative placement. Some of the actual responses are shown below.

'Social Services pay it or they find an alternative home'.

'Local authority have paid the top up on a couple of occasions'.

'We would expect the local authority to meet the shortfall'.

'Local authority can agree to pay the top up or family may choose to move the service user. (The Act.) says local authority should pay if the move poses a risk to service user and wellbeing'.

'We would endeavour to keep the resident anyway and try to negotiate with the third party'.

'Discussion would take place'.

'They would move to another home with lower fees'.
‘If a suitable arrangement cannot be made then the service user will be given notice to leave the home’.

From the survey results it was established that in only one case had a service user had to leave a home in the past twelve months due to the breakdown in a third party arrangement.

**Charges over and above third party payments**

When asked whether there were any other charges to service users in addition to any agreed third party payment over half of the respondents confirmed this to be the case. The services which were most commonly stated were Hairdressing and Chiropody, there were also several occurrences of taxi fares and escort services (grouped in travel/escort below), newspapers, toiletries, TV licensing and other (which contains one record of activities, e.g. bingo, telephone calls, batteries, clothing and dental care) The graph below shows the number of times each category was recorded.
Not all respondents completed the “average cost” section of the questionnaire but of those that did the charges ranged from the lowest at £1 for toiletries, newspapers, home activities to the highest at £25 which was for travel.

**Service users making their own third party payment**

We asked how many service users paid their own third party payments if they were subject to the 12 week property disregard clause or had entered into a deferred payment plan with the local authority. Only a small number of providers responded to this question which involved under ten service users. The reasons for this were stated as follows:

- ‘Shortfall in local authority contribution’.
- ‘Deferred payment plan’.
- ‘To meet payment based on individual needs’.
- ‘Local authority say service user is a private resident’.

When respondents were asked whether the charges had been agreed with the funding local authority, four authorities had agreed this. However only the deferred payment plan in the comments above complies with the legislation around service users contributions and it is worrying that some providers appear to be charging service users directly.
Review of third party arrangements

The chart below outlines the results in relation to how often third party arrangements were reviewed. It is evident that in the majority of these cases they are reviewed annually and this is often linked to the local authority fee rate increase.

Information was requested in order to assess whether local authorities were monitoring the amount of third party payments being applied and the effect this may be having on service users and their families. When asked ‘do authorities place restrictions on the amount or frequency of review of the third party payment 20 per cent answered ‘yes’. From the evidence it is clear that some authorities had agreements in place that no third party payments would be charged, others reviewed the amount annually. From the responses it is clear that some authorities use their contracts with providers to restrict the amount by which third party payments could be increased.

When asked how increases in third party payments were negotiated, it was clear from most of the evidence that this was a formal process undertaken by providers through formal written agreements. However there were a small number of examples where this
was described as a verbal agreement and, more worryingly, no agreement at all with some. A small number of providers said they negotiated increase in third party payments by different means, including:

- ‘Meeting with the family’
- ‘we are unable to negotiate an increase in top up once a contract is in place’
- ‘top ups agreed when placement commences, no negotiations necessary’
- ‘local authority tells us what it will be after financial assessment’
- ‘we advise in writing - 30 days notice’
- ‘our fees are stated at onset and authority inform family of any difference’.

Finally, providers were asked if they automatically informed local authorities of any increase in third party payments for service users. Not all respondents answered this question but of those that did over 50 per cent confirmed that they informed authorities of any changes to the third party arrangements.

**Impact on service users/carers**

Age Alliance were commissioned to undertake some focused work with service users and carers in order to assess the impact that third party payments had on families in terms of choice of care home and the financial impact.

A number of consultation events were held across Wales; these incorporated representative views from both urban and rural communities and took into account cultural aspects across Wales. Participants were relatives of people living in care homes who were currently making third party payments.

Age Alliance provided a summary report of these meetings, the details have been anonymised and a sample of views is stated below:
One relative explained how her mother had been forced to sell her house. She had lived on her own, and suffered a stroke at a fairly young age. She was admitted to a hospital closer to where her daughter lived. The family had applied for Continuing Care funding and was hopeful that if it was authorised that the requirement for third party payments would be removed as NHS care is supposed to be free at the point of delivery. The impact on the family and the individual had made considerable necessitating changes to their lives to accommodate the increased financial demand.

Another carer stated that her mother was 98 and had suffered a fall. She had been living on her own until she was 97, after which she lived with family. When the family found it difficult to cope, they asked for an assessment of her nursing needs and her mother moved eventually into a nursing home. This carer felt that in relation to third party payments, there was no relationship between price and the quality of care in some of the homes.

Another carer described how her mother had been resident in a care home for 5 years. The carer and her husband were both in their 70s and due to the financial demands of paying the third party fees for her mother over this protracted time were concerned that they had only been able to make limited financial arrangements for their own later years. Fees had increased by almost 60 per cent over the last five years, and having to pay over £700 per month for the top up was financially and emotionally draining for the carers.

One relative had been informed that third party payments were nothing to do with social services and were a private arrangement between the individual and the home; however their belief was that this was due to a shortfall in the amount local authorities were prepared to pay for the care of older people. When they had asked for advice from the local authority regarding the third party payment and their ability to manage it into the long term and the potential consequences for her mother the advice was ‘if you cannot pay then move to another home’. This was of obvious concern to the relative as her mother had been resident in that particular home for over five years.
Other participants commented that families have conflicting responsibilities, financial and otherwise regarding caring for parents and caring for themselves. It was felt that there may be long term implications; if a family member was unable to fund a ‘top-up’ then this may increase costs in the long run and increase pressure on hospital beds with older people becoming delayed in hospital.

The evidence from Age Alliance should be treated with some caution because of the relatively low number of participants. This does not dilute the powerful messages from those that did engage in the process, which provide tangible evidence of the impact on carers of those being charged third party payments.

Conclusion

This review provides a snapshot of the situation in Wales based on a small scale survey and focus group activity. Nevertheless it provides a good indication of the prevalence of third party payments and some insight as to why people are being asked to pay them. The review sought to estimate the number of people paying third party payments across Wales. The survey indicates that around 40 per cent of providers across Wales charge third party payments. This is based on a 38 per cent response rate to a survey of all care homes in Wales.

The review aimed to clarify the distribution of third party payments across Wales. The evidence has shown that although third party payments are charged across most local authority boundaries it is a bigger issue in some areas than others with higher numbers of people being affected in certain areas. For instance the lowest rate from the survey results appears to be in the South Wales valley areas and parts of North Wales and the highest rate in the larger more urban communities such as Cardiff and Swansea.

It is clear that most providers see these payments as being necessary to support their businesses. The majority of respondents highlighted a shortfall between the real costs of providing care and the ‘usual cost’ paid by local authorities.
In personal care homes the median lowest fee charged across local authorities was £20 per week, the median highest fee charged was £45 per week, although a small number of providers had a range of ‘top-up fees’ from £100 - £200 per week.

In care homes providing nursing care the median lowest fee charged was £15 per week and the median highest fee charged was £32 per week. Again as in personal care homes there were some examples of providers charging from £120–£164 per week with one provider reporting a maximum charge of £257 per week.

The impact on the finances of third parties can be great. The anecdotal evidence of the negative impact on families from the focus groups carried out by Age Alliance is very powerful. As the squeeze on public finances increases in the coming years the impact on carers is likely to increase.

Providers for the most part accept the fee rate offered by the local authority – this is the rate agreed to meet a person’s care and accommodation needs. Some providers then go on to charge an additional payment to a third party. In 88 per cent of responses from our survey providers stated that they charged third party payments to make up the difference between the costs of them providing the care and the rate the local authority paid them. There were no benefits to the service users. In only 12 per cent of cases did providers state that this charge was for increased services or facilities. Therefore it can be assumed that a proportion of the cost of the care and accommodation is being charged twice.

Local authority commissioners are confronted by a range of legislative, policy, financial and ethical demands as they seek to manage the market for care homes and secure the pattern of services required to meet the needs of their citizens. They are very aware of the third party payments charged by care providers and many of them add the cost of the additional third party payment into their contract and administer this for the third party, some also negotiate the amount of the payment on behalf of the third party. There was no evidence from our review of local authority policies that authorities established
and monitored the benefits to the service user being achieved by the third party payment.

The National Assistance Act 1948 (Choice of Accommodation) Directions 1993 states that Authorities must never encourage or otherwise imply that care home providers can or should seek further contributions from individuals in order to meet assessed needs. The evidence from this review suggests that providers and those who use social care services do not believe that local authorities are always meeting either the letter or the spirit of these directions. The limited direct evidence from local authorities considered by the review does little to counter this criticism.

**Recommendation**

Our survey told us that at least 40 per cent of providers across Wales charge third party payments, but that figure could be higher and there is still more to learn about the extent and impact of this issue.

It is difficult to underestimate the impact of the practice of third party payments on both service users and carers. It potentially restricts choice when choosing long term care options and may restrict access to care based on affordability. It causes continuing confusion for both service users and carers at a time of stress. We recommend that:

1. Local authorities should review the way in which they identify, monitor and review the provision of third party payments in order to be confident that they are complying with statutory guidance.
2. As part of the development programme for the implementation of the new commissioning guidance, the Welsh Assembly Government should discuss the findings of this review with commissioners and providers of care to ensure that there is a collaborative approach to responding to the issues raised.