

Third-party top-ups: the commissioner's perspective

The hotel industry offers a global star-rating system that indicates the quality of rooms, service and location. Websites provide interactive tours of facilities on offer and prices are stated accordingly. For an older person accessing a care-home the price, room type, location and sometimes level of service will vary according to who pays the bill. This paper seeks to explain this bizarre predicament from the viewpoint of a Local Authority buyer.

In 2004 William Laing identified that £1 billion a year would be needed across England to pay for a fully modernised independent care-home sector. (*Calculating a fair price for care: A toolkit for residential and nursing care costs* (2nd edn)). While elements of Laing's report remain subject to challenge, the truth of the matter was that care had been under-funded by the statutory sector – sometimes referred to as the “statutory gap.” Today, the cost of room in a care-home will vary according to whether the enquirer is self-funding, health-funded or local authority funded. A fourth category could be added to the list whereby a care-home asks for a bolt-on fee or “third-party top-up” (TPT) typically funded by relatives or friends of the service user (ostensibly for additional services.)

In simplistic terms, a top-up should only apply for services or facilities *in excess* of those identified in a professionally-assessed statement of need e.g. a view of the ocean or facilities for a pet. However, the need for TPT is often confused with whether or not a Local Authority can afford a placement in a particular home. The term “usual price” is frequently bandied around to justify what constitutes a reasonable price; however, across the South East alone there is significant variance in terms of what usual price means in pounds and pence. By the same token, service providers do not have a consistent approach to differentiating services that come as standard and those that require additional fees.

The statutory gap, variance in application of TPT and the patchwork of prices in homes causes a confusing and often unfair position for service users. The long-term funding of placements is also undermined by the annual inflationary process. Commissioners undertake budget building processes and frequently consult with service providers about cost pressures. However, there is no guarantee that “fair price” can be consistently met year on year as factors such as low central government settlements and Council Tax capping make the process heavily politicised. In the long term, inflationary awards must keep track with salary costs which alone account for 60-70 per cent of weekly fees otherwise the statutory gap will widen. It is difficult for commissioners to sustain strategic and meaningful long-term relationships with service providers when the culture of the annual inflationary process is unpredictable and frequently unscientific.

Commissioners can use contractual mechanisms to prohibit the application of a top-up except where agreed by all parties at the point the placement is made. Commissioners should contract for the gross fee inclusive of top-up and subsequently reclaim the balance from the third party responsible (as per OFT recommendations). However, it is a paradox that it is neither in the local authority's financial interest to assume the risk for non-payment of a top-up nor for it to audit all placements to discover hidden top-ups. It is relatively straightforward to ensure top-ups are precluded in block-contracts, but most commissioners do not have an accurate view of the true volume of relatives who have a direct TPT funding arrangement with the home.

There are significant pressures on commissioners to secure cashable efficiencies with block contracts that also secure market capacity. However, the more resource that is tied up at a specific home, the less choice is available to the service user.

There are competing agendas at play: the service provider will rightly seek to attract the best possible price for the services provided. The purchaser is obliged to seek the best deal and as a consequence the choice and influence of the service user can be marginalised.

In order for the situation to improve:

- Local authorities should scrap the concept of “usual price” and identify the average market rate for beds in conjunction with service providers (to continue the opening metaphor, the “rack rate”). Commissioners will highlight the resulting funding gap as a cost pressure at a local and national level. This rate must include a sustainable profit margin, but the trade off will be that no additional costs or charges will be levied upon the service user (i.e. the default position is no TPT.)
- Commissioners and service providers should continue to spell out the consequences of under funding the market to local and central government.
- Where homes do require a top-up, additional services will be clearly priced and publicised (as per Office of Fair Trading (OFT) recommendations). The only gap between a statutory fee and a non-statutory fee will be for items on the TPT list. This will not preclude prices a) being established at a local level and b) reflecting individually assessed levels of need.
- Councils should seek to award an inflationary settlement that acknowledges the costs of employing care staff (e.g. Average Earnings Index/ Health and Social Care Salary Index.)

**A local authority commissioner
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