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## CHOICE AND PAYMENT OF ADDITIONAL COSTS WHEN PROVIDING CARE (TOP-UPS) POLICY

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### Document Classification

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## **1. Introduction and statement of purpose**

- 1.1 The purpose of this policy is to make clear how people with eligible care needs can exercise choice over the care offered to them. It will also cover when and how third-party contributions can be made for social care services, both in the person's home or in residential and nursing care. The policy refers to adults over the age of 18 who are living at home or in residential or nursing care. It does not cover placements of those people who live in residential or nursing care under a bespoke care plan, such as adults with a learning disability or in some cases dementia.
- 1.2 Third party contributions (sometimes referred to as a "third party top-up") are a regular sum paid by a person or organisation to a residential or nursing home or a home care provider on behalf of the resident.
- 1.4. When seeking to support a person with eligible needs in their own home or a care home, the Council will make all reasonable efforts to enable individuals to remain or return in/to their own home or move to, or remain at, the care home of their choice.
- 1.5 The Council has a duty to meet eligible Social Care needs (including emotional and psychological) in the most cost effective means available to it. This ensures best use of public resources/funds. If the Council has made more than one reasonable offer (as outlined in this policy) and offered choice which meets an individual's eligible needs, then the Council has discharged its duty under the Social Services and Well Being Act 2014.<sup>1</sup> This will always be treated as a last resort and will be fully discussed with the person. A reasonable offer needs to take into account the person's assessed needs, an available care home or provider, in the case of care home as close as possible to the person's ordinary residence.

## **2. Maintaining contact with relatives at home or in a care home**

- 2.1. There will be situations when the Council cannot source provision of choice close to home or with a chosen provider. In the case of residential/nursing care, the geographic basis for this will be the person's ordinary residence. In such cases, the Council will endeavour to identify provision as close as possible to relatives to ensure maintaining family contact. The cared for and/or their family have a right to refuse an offer for reasons of access/travel distance or other valid reasons. In such a case, the Council will endeavour to identify alternative provision.

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<sup>1</sup> Section 10.3 Part 4 and 5 code of practice (SSWB Act 2014) states: "The local authority must ensure that the person has a genuine choice and must ensure that more than one option is available within its usual commissioning rate for a care home of the type a person has been assessed as requiring. However, a person must also be able to choose alternative options, including a more expensive home."

- 2.2. Where provision can be identified further away from home (in the case of residential care) or with a different provider or other variables (in case of home care), the Council will identify these. In the case of residential care, we will identify homes within geographical zones (please see Appendix 2). The assumption is that if a care home and the nearest relative or other significant individual (neighbour/friend) are within the same zone, this will be deemed a reasonable offer. We will also consider offering a care home if this is outside such a zone but is closer to a person's usual residence or a close relative.
- 2.3. If no care home can be identified within such a zone or nearby (see above), a decision will be taken by the Council to facilitate access outside the immediate zone. Every effort will be taken to include the service users and their families in this decision.
- 2.4. In the case of home-based care, an offer will be made as close as possible to the wishes of the cared for, including call bandings and provider. The council will also explain and offer Direct Payments which may present people with opportunities of flexibility and sourcing of support outside commissioned care providers. Whilst reasonable efforts will always be made to provide the service according to the wishes of the individual, final decisions have to take into account availability of provision and the potential financial implications of the choice the cared for wishes to exercise. Therefore, if the preferred/chosen provider costs more than the cost for which the Council can source with an alternative provider there will be a requirement for a third party contribution/top up.
- 2.5. Where relatives live significant distances away from the person's ordinary residence and no local family ties are available in Powys, the Council will endeavour to provide the service close to a family member if that is the wish of the cared for.
- 2.6. If reasonable offers have been refused on more than one occasion by the service user or family, the Council will discuss with the cared for and/or their family the potential implications, including a prolonged wait for an appropriate care offer. Please also refer to the provisions in 1.5. above.

### **3. Background documents**

- 3.1. Social Services and Wellbeing (Wales) Act 2016. The Council is responsible for the full cost of any residential placement it makes. Consequently, when entering into a contract with a care home that is more expensive than the amount the Council would usually pay for a placement at a home of this type, it is responsible for the total cost of that placements including the additional cost; there are exceptions to this, see below para 5.2.

3.2. Part 4 and 5 Code of Practice (Charging and Financial Assessment) (April 2019).

3.2. Human Rights Act (2008). The Council is required to treat everyone with fairness, equality, dignity, respect and autonomy. Of particular significance is the (qualified) right to respect for private and family life, home and correspondence.

3.3. Mental Capacity Act 2005

3.4. Powys County Council Charging Policy 2019



Social Care Charge  
policy April 2019.docx

## 4. Best Interest Decisions

- 4.1. When a Best Interest Decision (on the basis of the Mental Capacity Act 2005) has to be made in relation to care and accommodation, this cannot be used to simply provide someone with first preference at any cost or to override the principles in this policy.
- 4.2. A person lacking capacity does not have the right to access greater resources than someone with capacity and 'best interests' should not be used to do this. The Local Authority has legal authority to decide how it allocates its resources and this policy sets out to ensure this is done in a fair and consistent manner.
- 4.3. Social Workers and other practitioners leading on best interest decisions need to understand what is available under this policy as a reasonable offer and best interest decisions need to be in line with this policy and not offer something greater simply because the person lacks capacity.
- 4.4. Therefore, best interest decisions must take into account a reasonable view on access to resources that would be the same for someone who did not lack capacity.

## 5. Interim arrangements

- 5.1. Where a person is in the care of a hospital and is medically fit for discharge, the Council will seek to identify a suitable permanent place and provision of care.
- 5.2. Where long term home care or a care home placements cannot be made immediately the Council will discuss with the service user and/or their family suitable interim arrangements. A person who cannot be placed in the home of their choice will be placed on a waiting list for such a home whilst being in an interim placement. Provisions in 1.5. above will continue to apply.
- 5.3. These arrangements are based on the fact that a hospital placement is only meant to solve medical needs; as soon as these have been met the person is best placed either in their own home or a residential care home.

- 5.4. Where a long term solution cannot be identified immediately, the service user and/or their family will be offered an interim solution, such as e.g. a bed in a community hospital, including reablement support.
- 5.5. There will be situations where a home care provider arrangement has to be changed due to market situations. At the point of assessment, review and “offer made” this will be explained to the cared for and/or their family. The council will always take into consideration the best interests of the individual but may ultimately have to change provider where this is deemed necessary.

## **6. When a third party contribution can apply**

- 6.1. Under its statutory obligation, the Council will set its usual rates at the start of the financial or other planning period, or in response to significant changes in the cost of providing care. The setting of the usual rates will have due regard to the cost of providing care. The usual rates should be sufficient to meet the assessed care needs of supported residents in residential accommodation.
- 6.2. If there is no suitable accommodation available at the Council’s usual rate to meet the assessed needs of the resident, the Council will fund the full cost of care at the higher rate and a third party contribution will not be required. This situation may arise if the person’s needs exceed the usual offer made by the care home in the contract with the Council.
- 6.3. Third party contributions may be needed when a resident **chooses** a care home or room in a care home (or a home care provider) which is more expensive than the Council’s usual rate, and their assessed need could be met elsewhere at the Council’s usual rate or a lower rate than the preferred option.
- 6.4. Should the care home of choice (residential/nursing care) or home care provider be more expensive than the Council’s agreed rate, the service user (or family) will be alerted to the fact that this additional cost will not be met by the Council. Instead a third party (“top up”) agreement between the family and the care provider will be required.
- 6.5. For guidance on deciding whether a third party contribution can apply please refer to the flow diagram in Appendix 1.
- 6.6. Third party contributions can only apply when the Council has a contract for care with the care home.

## **7. What a third party contribution can and can’t be used for**

- 7.1. Some care homes may choose to charge a higher rate than the Council’s usual rate because they offer more expensive accommodation.
- 7.2. Third party contributions should be distinguished from charges made for extra items not covered by the home’s basic fees, which are permitted.

- 7.3. If a residential or nursing care home charges higher than the Council's usual rate and a third party contribution is required, the resident and third party should be informed why a third party contribution is needed (i.e. the care home of their choice provides more expensive accommodation than the Council's usual rate).
- 7.4. Where a person is placed in a care home situated outside of Powys, the Council will fund this placement to the level of the host county rates.

## 8. Who can make a third party contribution

- 8.1. A third party contribution can be made by:
- A friend
  - A relative or family member
  - Any other person, such as a charitable organisation
- 8.2. Third party contributions are not to be confused with the client contribution<sup>2</sup> or with the NHS Funded Nursing Care (FNC) contribution<sup>3</sup>.

## 9. Who the agreement is between

- 9.1. The Council must contract with the care home for the cost of the bed excluding any top-up. The third party (e.g. family) will pay their contribution (the top-up) to the home directly.
- 9.2. The third party contribution is a separate payment to the resident's assessed contribution towards their care (the "client contribution"). Please refer to the Council's Charging Policy for further information.
- 9.3. The Council must ensure that third parties are able to make payments for as long as the resident is in the care home. For this purpose, the Council will ask the person who has agreed to pay the additional cost to work with the council to understand the ability to pay. Usually this will be via a standard financial assessment. The Council's Finance team will assist in this matter.<sup>4</sup>

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<sup>2</sup> Client contribution refers to the amount the resident is financially assessed as requiring to contribute towards the Council's usual care home rate

<sup>3</sup> FNC is a fixed rate contribution paid by the NHS to the residential care home to fund care from registered nurses for residents assessed as eligible according to NHS continuing healthcare criteria

<sup>4</sup> Appendix C, part 4 and 5 code of practice of the Social Services and Well Being Act states "The local authority must ensure that the person paying the additional cost is willing and able to meet this for the likely duration of the arrangement, recognising this may be for some time into the future. **To confirm this it would be good practice for a local authority to ask the person who is to pay the additional cost to provide proof of their financial means to do this, such as evidence of their salary or savings.**"

- 9.4. The third party should be encouraged to discuss with a social worker the implications of making contributions before they make the financial commitment. In particular they should be made aware of:
- the length of time they may be making payments for
  - the top-up amount will likely increase over time as care homes increase their rate and that there is no guarantee any increases in accommodation fees will automatically be shared evenly between the Council and third party
  - an increase in a resident's income will not necessarily lessen the need for a third party contribution as the resident's income will be subject to financial assessment
  - if the third party fails to make the required payments it may result in the resident being moved to an alternative home
  - Only the third party or another third party (not the resident) can make the payment
  - The third party should sign the Council's third party contribution agreement (AS14) to show that they understand the implications of the commitment and that they agree to making the third party contributions.
- 9.5. The Council has a duty to ensure that arrangements are affordable and sustainable. We will therefore ask the person responsible for the payment of the additional cost to sign the document in Appendix 4 to ensure they understand the responsibilities they have under the Third Party Agreement.

## **10. What happens if the care home increases its weekly fees**

- 10.1 If a care home decides to increase its fees, it must first establish this in a revised contract with the Council, which incorporates any agreed or revised third party agreements established by the Council.
- 10.2 Any increase in a care home's or care provider's fees may result in a need to review third party contributions. Any increases in the care home's fees may not necessarily be shared evenly between the Council and third party. Before determining whether any change in the level of third party contribution is necessary, negotiations must be undertaken with the Care Home provider on proposed fee levels at the time of entering into a contract. As this can help provide clarity to individuals and providers and help ensure that additional costs remains affordable.



- 10.3 The third party contribution amount may only increase by agreement between the home and the third party. This applies if a care home or home care provider seeks to increase its fees beyond the Council's usual rate, as stated in paragraph 7.1.

## **11. What happens if the third party stops paying their contribution**

- 11.1 If an agreed third party agreement is not paid, or the third party gives notice to terminate their contribution, this may result in the resident having to move to a care home that charges the Council's usual rate.
- 11.2 Failure of a third party to maintain payments may result in the resident having to move to a care home that charges the Council's usual rate or nearer to the Council's rate.
- 11.3. If the third party is no longer able to pay the contribution (either through failure to pay or by terminating the agreement), the Council will take the following steps:
- i. Negotiate on behalf of the resident with the care home to see whether they will accept the Council's usual rate for the accommodation<sup>5</sup>
  - ii. If the care home cannot negotiate, the resident may need to move to a less expensive room in the same home or to an alternative home at the Council's usual rate
  - iii. If the resident is to be moved to a different home, the social worker should carry out a full integrated assessment to ascertain the potential impact of the move on the resident:
    - If the assessment identifies that the assessed needs can only be met in the current accommodation or that the risks of impact of moving on the resident are too great, the Council has a statutory obligation to pay the full cost of care at the higher rate.
    - If the assessment identifies that the assessed needs can be met elsewhere and the resident can be moved safely with the risks of moving appropriately mitigated the social worker should explore options to fund alternative accommodation at the Council's usual rate.

## **12. Limitation of liability**

- 12.1 The Council will not accept liability if it becomes clear that the top-up payments are being met from the person with eligible needs own resources outside the provision set out in the Social Services and Wellbeing (Wales) Act.

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<sup>5</sup> This may be done by the social worker, family member, Broker Team or whoever is best positioned to do so

12.2 No liability will be assumed by the Council for debts which are not notified to the Council within 4 weeks of the debt occurring.

### **13. Related policies**

- Powys County Council Charging Policy
- Powys County Council Deferred Payment Policy

### **14. Monitoring and review**

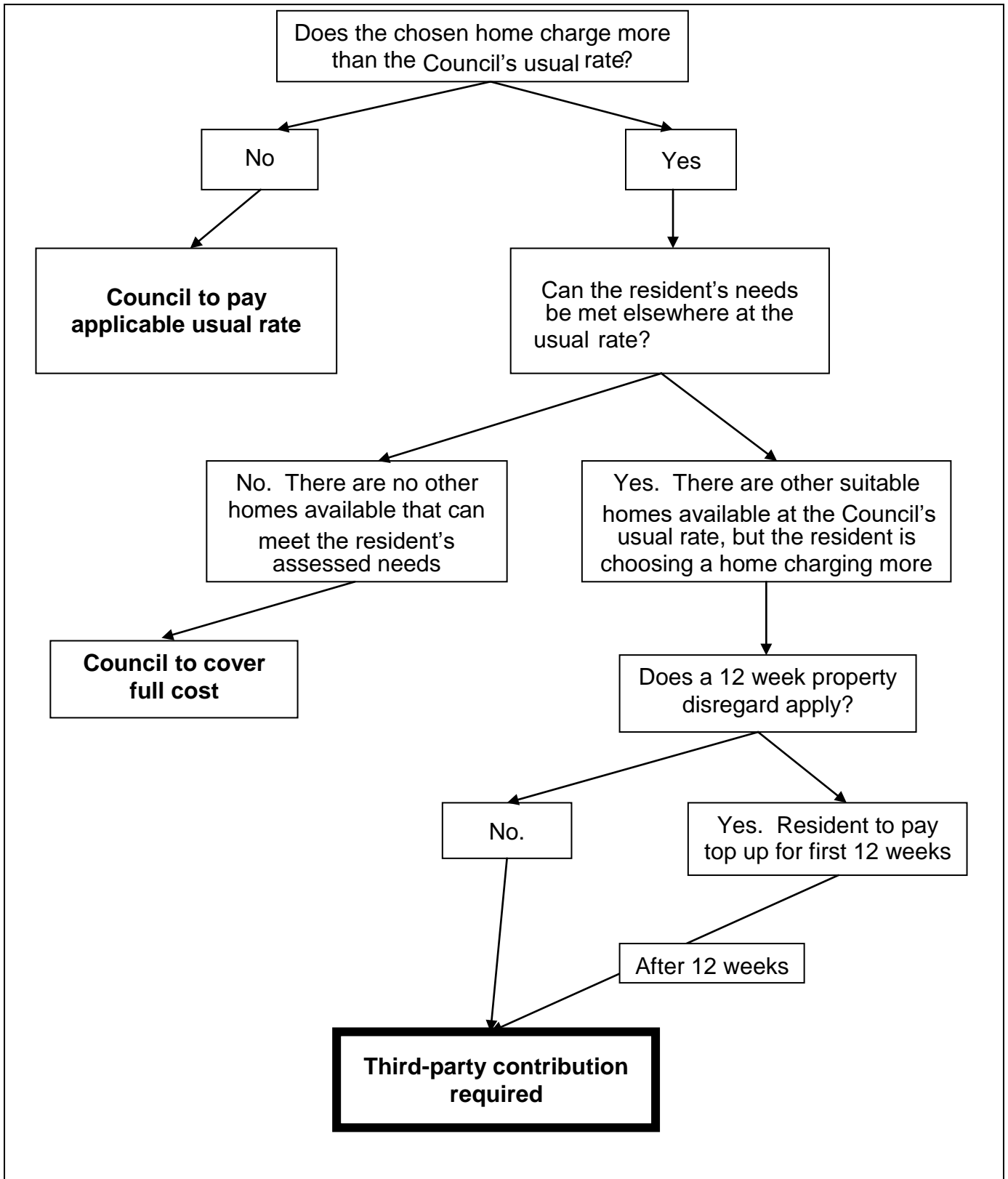
14.1 This policy will be periodically reviewed in line with any changes to national guidance.

14.2 Non-compliance with this policy may result in person with eligible needs choice being unfairly restricted and may also result in the Council being in breach of national regulations.

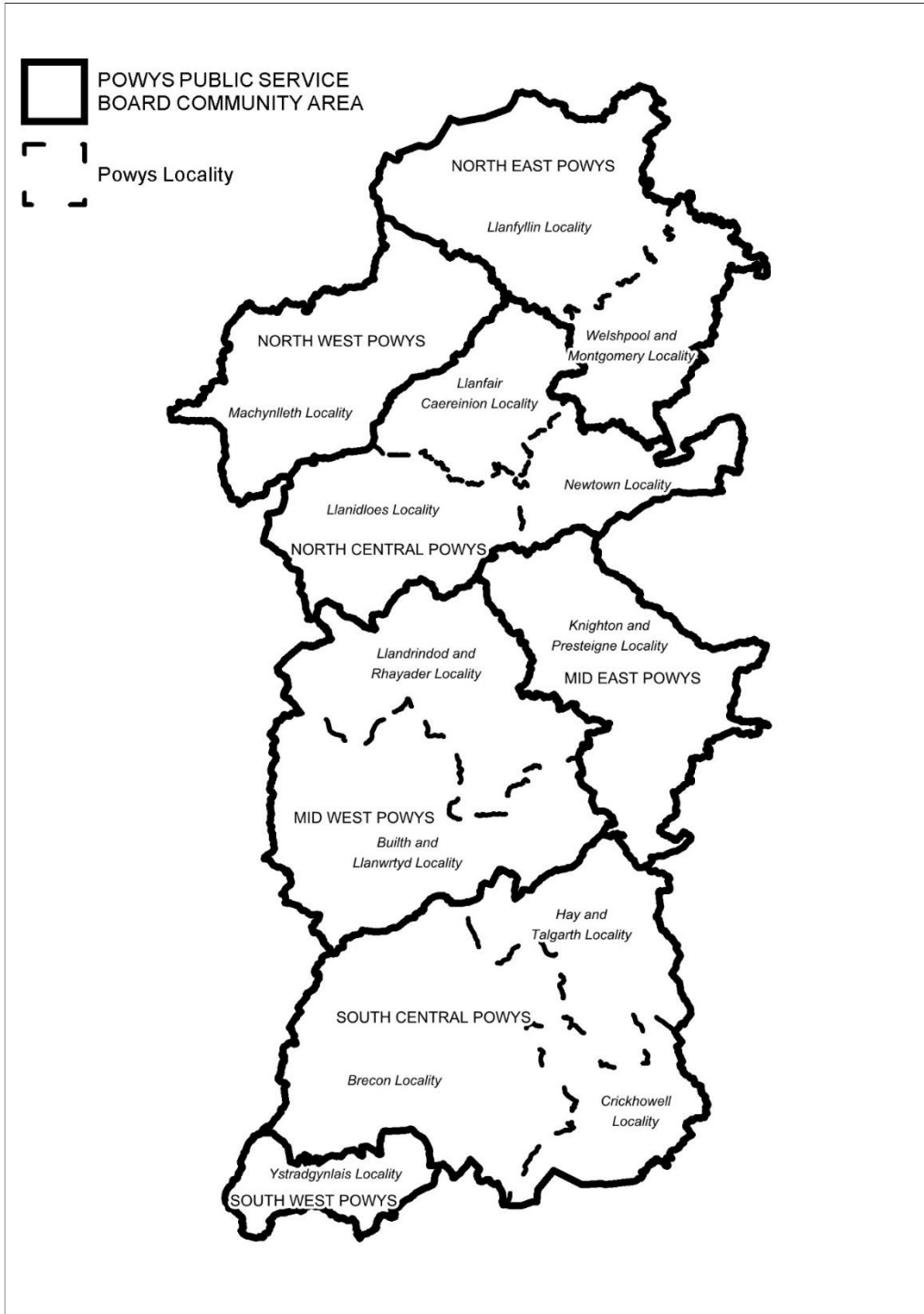
14.3 The effectiveness of this policy will be determined by the level of consistency in which third party contributions are applied. The main channels through which this will be ascertained are feedback through complaints, Resources, Quality and Review Group or via the Team Manager/Senior Practitioner, person with eligible needs contact with Social Work Teams and Welfare and Financial Assessment staff, and care home provider contact with the Contracts and Commissioning Team.

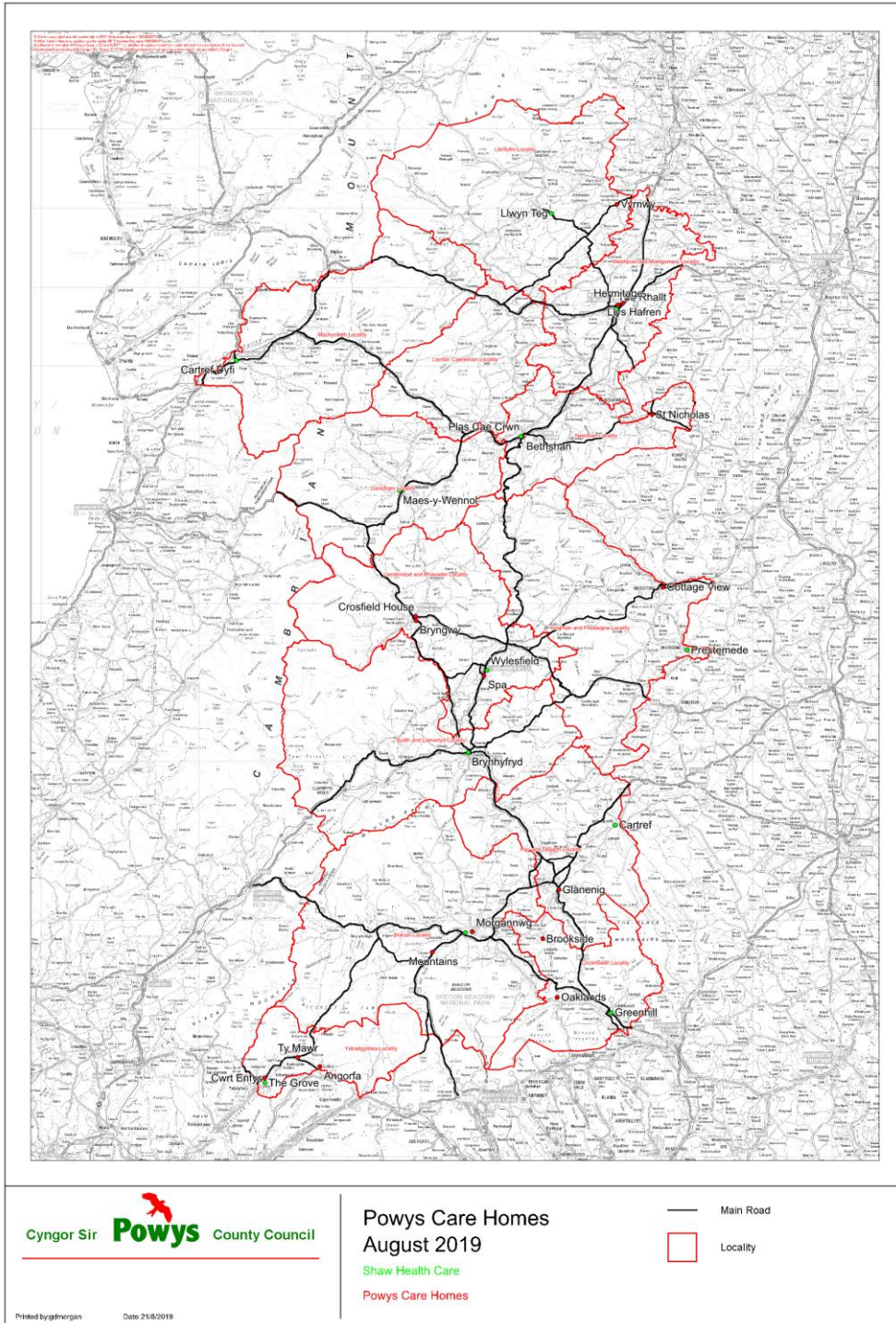
## Appendix 1 –Decision making flowchart for residential care

Flow diagram to decide whether third party contributions apply when the Council has agreed to fund the care at a care home which it has a contract with



### Appendix 3 – Locality Map for zoning





## Appendix 3 – Third Party (Top Up) Agreement

### Powys Council Logo

#### SCHEDULE 4

### THIRD PARTY AGREEMENT

#### Pre-Placement Agreement for the Spot Purchase of Care Home

#### Accommodation for Adults

Powys County Council Social Services directorate (“the Directorate”) helps people who have been assessed as needing residential care with the cost of a care home placement, where the amount is dependent on a financial assessment of the individual’s financial circumstances. The rate payable to the care homes by the Directorate is reviewed on a yearly basis, though some homes charge more than this amount or may charge a premium for extra facilities. In these circumstances, prospective residents may need to make arrangements for a Third Party who may be a relative, friend or other organisation to pay the extra amount. Ordinarily, a service user who is funded by the Directorate cannot pay their own Third Party contribution.

The agreed Third Party will be required to:

- i. Sign the Third Party Agreement with the Directorate;
- ii. Make a commitment to pay the Third Party contributions direct to the Care Home at an agreed frequency;
- iii. Pay any increases to the Third Party contribution;
- iv. Confirm that they have the financial means to meet the Third Party contribution for the duration of the Service Users placement;

Powys County Council is empowered to take legal action to recover the costs of the Third Party contribution from the Third Party should they fail to honour this agreement. Furthermore, if the agreed Third Party fails to keep to the commitment to pay the agreed amount then the Service User may have to change their accommodation within the home or to move to a new home where the fees are more affordable. It is therefore important that the Third Party gives due consideration to moving to a home where this arrangement applies. The Social Care Income and Finance Team of Powys County Council (Telephone ....) can provide additional advice and guidance, and so may your allocated Social Worker.

***Please complete the form overleaf –***

## THIRD PARTY AGREEMENT

Please complete before the Placement Agreement is signed

Name of Third Party: \_\_\_\_\_

Home address: \_\_\_\_\_

Name of Service User: \_\_\_\_\_

Name of Care Home: \_\_\_\_\_

Placement Address: \_\_\_\_\_

Start Date in Placement: \_\_\_\_\_

Third Party Contribution: £ \_\_\_\_\_ per week

### **DECLARATION**

#### **I confirm that:**

- I wish to act as Third Party and agree to accept responsibility for paying the above Third Party Contribution at the above rate and to the agreed frequency.
- I have the financial means to meet the Third Party Contribution for the duration of the placement detailed above.
- I understand that my contribution is the difference between the actual fee charged by the Home and the amount that the Service Purchasers will pay (the current contracted rates). I understand that this cost is subject to an annual review and may be subject to change.
- I understand that should I fail to maintain this payment, there is no obligation on the Service Purchasers to maintain the placement in more expensive accommodation and they have the right to reassess the placement with a view to arranging alternative care.

Signature: \_\_\_\_\_ (Third Party) Date: \_\_\_\_\_

Signature: \_\_\_\_\_ (Service User) Date: \_\_\_\_\_

Signature: \_\_\_\_\_ (Care Manager) Date: \_\_\_\_\_

Signature: \_\_\_\_\_ (Service Provider) Date: \_\_\_\_\_

Signature: \_\_\_\_\_ (Witness) Date: \_\_\_\_\_

**For information: Complete 2 originals, 1 to Third Party, 1 to records.**