

Direct Payments Policy



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1. Purpose

This Policy sets out our approach to Direct Payments and gives guidance on the use of Direct Payments by service users. For Carers' Direct Payments, please see guidance in Appendix 1.

2. Who can have a Direct Payment?

Direct Payments are a way by which people can have control over how they receive support to meet some or all of their eligible care needs. They can help maximise people's independence and provide flexibility and choice around how their assessed eligible needs are met. We offer Direct Payments to people as an alternative to commissioned social care.

Direct Payments are payments of cash made to a service user through a dedicated account.

Personal Health Budgets

A Personal Health Budget is the NHS equivalent of a Direct Payment for funding health needs agreed through the NHS. Locally the council and the NHS work together to provide a joined-up service between Personal Health Budgets and Direct Payments.

Who can access a Direct Payment?¹

- Individuals with identified eligible needs in accordance with the Care Act 2014 including carers (for information on Carers' Direct Payments, see Appendix 1).
- Individuals assessed as having the mental capacity to manage a Direct Payment.
- Individuals with mental health support needs (including people who are entitled to after care in accordance with section 117 of the Mental Health Act 2007) excluding those subjects to compulsory measures under the Act.
- Individuals who lack mental capacity but have a person authorised under the Mental Capacity Act 2005 to make decisions about the individual's needs for care and support. An authorised person can nominate another person to receive the Direct Payment on behalf of the individual.
- Individuals who lack mental capacity and have no one authorised under the Mental Capacity Act 2005 to agree to a Direct Payment to meet their needs but have a suitable person as identified by the Council.

While using Direct Payments a person will need to manage how they receive money, make payments for the services used, pay personal assistants and make tax or national insurance payments to Her Majesty's Revenue and Customs (HMRC).

Assessing Mental Capacity to receive Direct Payments

Direct Payments can only be made where appropriate consent has been given by the service user, their representative or a family member authorised to act on the service user's behalf.

¹ In exceptional circumstances the Council may provide a Direct Payment to individuals who without eligible needs

The person, representative or nominee must be able to understand what is involved and give informed consent. They will then be required to sign a Direct Payment Agreement.

Where there is any doubt about an individuals' ability to consent to a Direct Payment, we will assess whether or not the individual has capacity to consent before making a Direct Payment available. We may consider providing advocacy to support people in such circumstances.

Exclusions from Direct Payments

There are certain individuals who are excluded by the Regulations from receiving Direct Payments. Direct Payments cannot be made to:

- Individuals who refuse a financial assessment.
- Anyone who is not an ordinary resident in Buckinghamshire
- Anyone who requires long term care and support in a nursing or residential setting.
- Anyone who has previously misused a Direct Payment
- Offenders subject to a court order for drug or alcohol treatment programme and offenders released on licence with a requirement to undertake offending behaviour work to address drug or alcohol related behaviour or drug testing.

3. Receiving a Direct Payment

Agreeing to a Direct Payment

Direct Payments will only be made when we receive a signed Direct Payment Agreement. If a person does not have capacity, the agreement can be signed by a person with delegated authority or Legal Power of Attorney. The Direct Payment Agreement sets out the conditions and responsibilities for both parties and is the contract between the individual and the council.

Payment options will be explained during a person's social care assessment and as the Direct Payment is set up. In the majority of cases Direct Payments will be made in the form of a pre-paid account. In exceptional circumstances payments may be made into an approved separate bank account or via a managed account.

Direct Payment rates

The Direct Payment will be sufficient to cover the cost of meeting the service user's eligible needs however we cannot pay more than it would cost if we arranged the service ourselves. The identified budget will cover costs for care. We will also provide an annual payment to cover employment costs such as insurance, wages, national insurance, holiday, sickness and maternity pay for those who directly employ a Personal Assistant. Usually this will be based on an hourly rate for the care needed.

Frequency of payments

We will make Direct Payments by bank transfer four weekly in advance for ongoing services. One-off payments may additionally be made as required.

Client contributions

Everyone that receives social care services from us is assessed to see whether they can contribute to the cost of their care, this is called a financial assessment. The assessment will determine the amount an individual need to contribute to their care and support needs, and how much we need to contribute.

We will deduct the assessed client contribution from the total amount of the Direct Payment before making payment to a person. The person must pay the assessed contribution into their account every 4 weeks. By making this payment, the person ensures that there is enough money available to pay for their full support as detailed in their Care and Support Plan.

Any non-payment of the assessed client contribution could result in the Direct Payment being stopped and where appropriate we would arrange care and support directly.

Top ups

If a person chooses a provider that charges more for support than we have agreed to fund, they must pay the difference, known as a 'top up'. The person must pay their top up onto their account every 4 weeks. By making this payment, the person ensures that there is enough money available to pay for their full support as detailed in the Care and Support Plan.

Any non-payment of the top up payment could result in the Direct Payment being stopped and where appropriate we would arrange care and support directly.

4. Using a Direct Payment

What can Direct Payments be used for?

Direct Payments can be used to meet outcomes in a person's care and support plan for example by:

- Employing a personal assistant and related expenditure, i.e. holiday pay, relief cover, etc.
- Contracting with an agency or service provider. It is recommended that contracts are made only with care providers registered with the Care Quality Commission (CQC)
- Paying for activities to help the individual stay well such as gym membership.
- Short breaks including in a residential setting or care delivered at home.

Although Direct Payments can be used to fund transport, people are expected wherever possible to meet their own needs for travelling, either using private or public transport, including mobility vehicles. If using a Direct Payment for transport the Council strongly recommends that only licenced taxi companies should be used.

Personal Assistants

A Direct Payment can be used to employ a Personal Assistant. A self-employed Personal Assistant must be registered with HMRC, be DBS (Disclosure and Barring

Service) checked, be responsible for their own tax and NI payments, submit an annual tax return and have their own Public Liability Insurance.

Personal assistants should continue to be paid in full for up to four weeks for the period whilst a Direct Payment recipient is away from home for short periods. The Council's Service Director must agree any additional payments after the four weeks in writing, but such approval will only be given where there are very exceptional circumstances.

Paying a person in the same household

A Direct Payment cannot be used to employ family members living in the same household as the individual. However, where there are exceptional circumstances and where clearly identified that this is the only way in which the assessed needs can be met, these can be agreed in writing by the Council's Service Director.

Safeguarding

The Council strongly encourages people to use services or employ individuals with current Disclosure and Barring Service (DBS) checks in place. Where there are any concerns about the risk of harm, neglect or exploitation of a Direct Payment recipient, the Council should be contacted immediately on 0800 137915 or by emailing safeguardingadults@buckinghamshire.gov.uk.

Holidays

Direct Payments cannot be used to fund holidays for the service user but can be used for respite care. The payment can be used to meet an individual's eligible needs outlined in the individual's care & support plan whilst they are on holiday.

Hospital stays

There may be occasions when an individual requires a stay in hospital. Personal assistants should continue to be paid in full for up to four weeks for the period whilst a Direct Payment recipient is in hospital. If an individual is in hospital for 4 weeks or more, payments may be reduced should the individual have to remain in hospital. Any additional payments after the four weeks may be made on a case-by-case basis.

Consideration will be given to how the Direct Payment may be used in hospital to meet non-health needs or to ensure employment arrangements are maintained.

In some cases, the authorised/nominated person managing the Direct Payment may require a hospital stay. In these cases, the Council must ensure that the individual continues to receive care and support to meet their needs.

Direct Payments cannot be used for:

- Anything that is not outlined in an individual's Care & Support Plan to meet their agreed outcomes
- Anything illegal
- Gambling or betting
- Nursing care or medicines
- Services or equipment that are the responsibility of the NHS or the Council to arrange such as wheelchairs or pendant alarms

- Ordinary living costs, food, bills, clothing, holidays, etc.
- Telecare and pendant alarm standing charges
- Equipment and adaptations that are provided by health or through a Disabled Facilities Grant (DFG)
- Permanent care in a care home

5. Auditing and Reviewing

Contingency

The Care and Support Plan may include a contingency element to cover fluctuating needs. The individual should hold sufficient funds in their Direct Payment account to cover all planned expenditure, including any contribution that they need to make. If there is a build-up of funds, excess funds will be recovered by the Council.

Monitoring

The Council has a responsibility to ensure all Direct Payments continue to meet assessed need and are being used appropriately. To do this the Council will require the individual or their nominated representative to complete regular financial returns and will carry out audits on a risk/value basis in accordance with the Council's Direct Payment Audit Policy Guidance Note.

The individual or their authorised/nominated person must keep all documents and/or records relating to a Direct Payment agreement for a period of 7 years following the end of the services. The Council may request to see documents and/or records held by the individual or their authorised/nominated person.

If financial irregularities or other concerns are discovered, these will be investigated and may result in a transfer to commissioned services and further actions. Wherever possible the Council will try to resolve issues with the individual.

Recovery of Direct Payments

The Direct Payment may be adjusted to recover any overpayments or underspends after consultation with the individual or their authorised/nominated person and taking into consideration any other expenses the individual is required to meet in relation to their Direct Payments.

The Council will recover Direct Payments in full or in part if it is satisfied that the money has not been used for the purpose for which it was originally intended.

6. Ending Direct Payments

Termination

An individual can choose to end a Direct Payment at any time to reflect a change in their circumstances.

The Council will only terminate a Direct Payment as a last resort. The Council will discuss the possibility with the individual at the earliest opportunity and will take all reasonable steps to address any situation without the termination of the payment.

The Council will normally provide a 4-week notice period before a Direct Payment is discontinued. Direct Payments would only be terminated immediately, without giving notice, in serious cases (for example, the authorised person is not acting in the best interests of the individual).

If a Direct Payment is terminated, the Council will undertake a review to determine how a person's eligible needs can be best met. Alternative care and support provision will be agreed with the individual, their carer and independent advocate if they have one, unless the termination was due to services no longer being needed. The Council will ensure there is no gap in the provision of care and support.

Termination of Direct Payments may mean that some individuals will need to end contracts for services, which may include making employees redundant. This could involve notice periods and such arrangements will need to be taken into consideration when considering discontinuation of a Direct Payment.

The Council may terminate or suspend a Direct Payment if:

- It is apparent that the individual is no longer capable of managing the Direct Payment either on their own or with support
- The individual no longer needs the support for which the Direct Payment was intended
- The terms or criteria for the Direct Payment were breached
- The individual is declared bankrupt or involved in corruption
- The Council is satisfied that the nominated or authorised person is not acting in the best interests of the individual
- There is illegal or fraudulent use or misuse of a Direct Payment
- It is a relevant part of a safeguarding investigation

Ending Direct Payments on death

In the event of death, any amount of Direct Payment remaining in the individual's account will be recovered by the Council following a discussion with the family and/or authorised/nominated person. Funds will be available to pay for commitments outlined in the Care & Support Plan if an agreement is in place for advance payments or notice needs to be given before termination.

Direct Payments cannot be used towards the costs of funeral expenses.

Any amount due to the estate of the individual for the fulfilment of contractual and legal obligations relating to anyone employed by the individual or to HM Revenue and Customs will be paid by the Council on receipt of supporting documentary evidence or an invoice relating to the services received.

Any personal contribution made for dates after the Direct Payment has ceased will be paid to the individual's estate within 28 days of termination of the Direct Payment, subject to all records being provided and available to the Council. Any additional amount remaining on the individuals account will need to be returned to the Council.

7. Appeals and Complaints

Appeals where Direct Payments are refused

In some situations, it may not be possible for the Council to offer or continue to offer an individual a Direct Payment. The reasons for the decision will be documented, discussed and clearly communicated in writing to the individual and where appropriate with any family or friends. Any person has a right to appeal against the decision.

Complaints Procedure

The Complaints Procedure is available to all people receiving support from adult social care. The Procedure may be used to formally complain about the process, the decision-making or the amount offered as a Direct Payment, but not about the services an individual has purchased with their Direct Payment.

8. Review

This Policy was been approved by the Cabinet Member for Health and Wellbeing in September 2019 and will be reviewed in autumn 2020.

9. Background

Direct Payments are covered by several pieces of legislation including the Care Act 2014, section 117(2C) of the Mental Health Act 2007 and the Care and Support (Direct Payments) Regulations 2014.