

Version: 1.1 FOI Status: Public	Derbyshire County Council Adult Care Practice Guidance Direct Payments	Issued: May 2017 Review Due: May 2019
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Derbyshire County Council Adult Care Practice Guidance

Direct Payments

Name	Job Title	Date
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Change History

Version	Date	Name	Reason
V 1	March 2015	Camille Pace	Development of new practice guidance
V 1.1	May 2017	Camille Pace	Update

Derbyshire County Council Adult Care publishes a range of practice guidance documents to support workers managing individual cases. They are written in plain language and give clear and precise guidance detailing how professionals and other relevant parties should respond when dealing with Direct Payments.

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1. Introduction and Legal Context

Direct payments are financial payments made to individuals who request to receive all or part of their personal budget in monetary form to meet some or all of their eligible care and support needs. Direct payments have been in use in adult care since the mid - 1990s and they remain the Government's preferred mechanism for delivering personalised care and support. They provide independence, choice and control by enabling people to commission their own care and support in order to meet their eligible needs. Direct payments, along with personal budgets and personalised care planning, mandated for the first time in the Care Act 2014, provide the platform with which to deliver a modern care and support system. People should be encouraged to take ownership of their care planning, and be free to choose how their needs are met, whether through local authority or third-party provision, by direct payments, or a combination of the three approaches.

In this guidance, references to care and support to meet an adult's eligible needs include care and support provided or commissioned by a local authority to discharge its duty under section 117 of the Mental Health Act 1983.

The statutory duties and responsibilities around Direct Payments are set out in:

- [The Care Act, 2014 \(Section 31,32,33\)](#)
- [Care and Support Statutory Guidance 2014](#)
- [The Care and Support \(Direct Payments\) Regulations 2014](#)

The Care Act 2014 supersedes all previous legislation and guidance relating to direct payments.

Links to other legislation are:

- [The Mental Health Act 1983](#) (s117)
- [Mental Capacity Act 2005](#)
- [Human Rights Act 1998](#)
- [Equality Act 2010](#)

2. Making Direct Payments Available

Adult Care Workers have a key role in ensuring that people are given relevant and timely information about direct payments, so that they can make a decision whether to request a payment, and, if doing so, are supported to use and manage the payment appropriately. The route to a direct payment is for a person to request one, but the local authority should support the person's right to make this request by providing information and advice. People must not be forced to take a direct payment against their will, but instead be informed of the choices available to them.

Individuals need sufficient information to enable them to make an informed choice about whether a direct payment is right for them. This includes ensuring they understand what their responsibilities will be but also what support is available to them if they do choose to receive their personal budget via a direct payment.

To fulfil the council's responsibilities set out in The Care Act 2014 the local authority needs to make information available to everyone as part of our universal offer. The required information to be given to clients and public will be the '**Direct Payment Fact Sheet**'. Anyone wishing to explore direct payments further should be given the '**Direct Payments Information Pack**'.

Both these can be found on the Derbyshire website:
www.derbyshire.gov.uk/directpayments

Anyone with access to the internet can also be signposted to this page for further information. The Care Act 2014 guidance specifies that in addition to this general information, authorities must also explain to people during the care and support planning process what needs could be met by direct payments.

3. Requests for a Direct Payment

The local authority must consider requests for direct payments in a timely manner. The steps to follow after receiving a request for a direct payment will depend on whether the person has been assessed as having capacity to make a decision about direct payments or not.

Assessing Capacity

The Care Act 2014 specifies that individuals must have the capacity to request a direct payment. Mental Capacity Assessments for direct payments should be carried out using the principles of the Mental Capacity Act 2005 (see link page 2).

To establish a lack of capacity to request a direct payment, you need to explore providing the information in the direct payment agreement in a variety of ways or different formats. It may be that someone needs support to understand the responsibilities. Disability Derbyshire Coalition for Inclusive Living (DDCIL) may be able to help individuals understand further. However there is no easy read direct payment agreement as it is a legal document which the client has to understand to sign it: This in itself will be a test of capacity. The client doesn't have to understand every word of the direct payment agreement to sign it, but must understand the basics covered in the direct payment agreement explanation.

Request from an Adult with Capacity to Request a Direct Payment

Where the council receives a request from an adult with capacity, we must consider each of the four conditions outlined in section 31 of the Care Act. An adult with capacity can also request a direct payment to be managed by a 'Nominee', if that person is in agreement. Where there is a 'Nominee' this person becomes the direct payment recipient and has full legal responsibility for the direct payment.

The conditions are:

- the adult has capacity to make the request, and where there is a nominated person, that person agrees to receive the payments;

- the local authority is not prohibited by regulations under section 33 from meeting the adult's needs by making direct payments to the adult or nominated person;
- the allocated worker is satisfied that the adult or nominated person is capable of managing direct payments either by himself or herself, or with whatever help the adult or nominated person will be able to access;
- the allocated worker is satisfied that making direct payments to the adult or nominated person is an appropriate way to meet the needs in question.

Where a nominated person has been requested to receive the direct payment, the allocated worker should involve the nominated person in any appropriate stages of the care planning journey, such as the development of the care plan, as long as the person with care needs agrees to this. Where the person does not specifically request this involvement, the allocated worker should consider whether to encourage the person to make that request. During this process, the nominated person should receive information regarding the local authorities direct payments processes, as well as information and advice on using and managing the direct payment, so that the nominated person understands their legal obligations as the direct payment recipient to act in the best interests of the person requiring care and support.

Adults Lacking Capacity

In cases where the person in need of care and support has been assessed as lacking capacity to request the direct payment, an authorised person can request the direct payment on the person's behalf. In these cases, the local authority must satisfy itself that the person meets the five conditions as set out in section 32 of the Care Act:

- where the person is not authorised under the Mental Capacity Act 2005 but there is at least one person who is authorised, that person who is authorised supports the person's request
 - this means that where there is a lasting power of attorney for example, but they are not the person requesting a direct payment, they must agree to the direct payment
- the local authority is not prohibited by regulations under section 33 from meeting the adult's needs by making direct payments to the authorised person, and if regulations under that section give the local authority discretion to decide not to meet the adult's needs by making direct payments to the authorised person, it does not exercise that discretion
- the allocated worker is satisfied that the authorised person will act in the adult's best interests in arranging for the provision of the care and support for which the direct payments under this section would be used
- the allocated worker is satisfied that the authorised person is capable of managing a direct payment by himself or herself, or with whatever help the authority thinks the authorised person will be able to access
- the allocated worker is satisfied that making direct payments to the authorised person is an appropriate way to meet the needs in question.

Where a request for a direct payment is declined, the person making the request should be notified in writing with details of why the request for a direct payment was

not agreed. This letter should be uploaded on to the person in need of care and support's electronic record.

Request from a Carer

A carer can request to receive a direct payment to meet the needs set out in their support plan. This may include arranging 'replacement care' for the person in need of care and support. Under the Care Act there is no "minimum hours" requirement for a carer to be eligible for support.

Further information about direct payments for carers – including how the level of a direct payment will be worked out will be issued in an update to this guidance. Also check Derbyshire's services for carers information for any updates that may affect direct payments.

4. S33 Exclusions from a Direct Payment

The local authority is prohibited from making a direct payment to some people: these are particularly related to criminal law and court orders such as community orders or drug and alcohol treatment orders. Prisoners eligible for care and support are also excluded from choosing a direct payment. Full details of the exclusions can be found in Schedule 1, [The Care and Support \(Direct Payments\) Regulations 2014](#)

5. Ability to Manage a Direct Payment and Support

Allocated workers should explore appropriate support for clients and be confident that the person responsible for the direct payment is able to manage. Concern regarding ability to manage does not exclude clients from having a direct payment. Initially we should consider if the difficulties can be overcome with support, such as a managed bank account.

We could also choose to place conditions on the direct payment, such as a managed bank account or that they cannot employ a particular person where we have specific concerns.

Managing risk and safeguarding for direct payment clients is more than safeguarding clients against potential abuse. It is also about safeguarding them from financial loss and tribunals. Many direct payments fail where they were not set up well to begin with.

Direct Payment Support Assessment Form

A support assessment form must be completed for any new direct payment set up. The support assessment form is a tool to document the assessment of the support that an individual needs. The support assessment form should be created as a document in the support planning episode in the person's electronic record, though it can be created as a stand-alone document. Where the person responsible for managing the direct payment is the authorised person or nominee, the support

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assessment form should be completed with them in mind, not the person in need of care and support.

A direct payment will not be made to a client unless the support assessment form is fully completed.

To safeguard clients, it is imperative to offer and arrange support to get the direct payment off the ground successfully. Clients need to understand what their responsibilities are in terms of monitoring and recording, keeping records and where to go with any concerns. They also need to understand their responsibilities as an employer.

Everyone beginning to set up a direct payment must be given a [Direct Payment Information pack](#), which includes all the information and contact points they may need.

Additional support to both the client (& representative) and allocated worker is setting up a direct payment is available from the Adult Care Direct Payments Team.

Purchasing Services or Buying in Support

Where the client wishes to purchase support via an agency, it is their responsibility to contract with the agency. We should not be involved in making arrangements, contacting agencies or instructing the agency in what provision is required. If the client requires support to arrange this, a family member could assist them or they can contact DDCIL. It is good practice to remind clients to check their contract with the agency, paying particular attention to notice periods and administration charges. Charges for agencies are for the individual to negotiate.

Employing a Personal Assistant

Where someone is choosing to employ a personal assistant, they should be advised to take safeguards.

Clients should be signposted to Disability Derbyshire Coalition for Inclusive Living (DDCIL) for support with recruiting staff. DDCIL can provide an application sending and receiving service, protecting personal details from the general public. Clients should be advised to interview with someone supporting them, never alone and preferably not in their own home.

DCC staff must never support people with recruitment and selection of personal assistants; this includes introducing a potential employee. DCC staff must not keep databases of potential personal assistants or make any introductions.

Employers should be signposted to the Skills for Care Employers checklists which can be found at:

www.skillsforcare.org.uk

Self Employed Personal Assistants

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We do not recommend that direct payment recipients contract with self-employed PA's, due to HMRC and employment status, however where they choose to do so, they need to be advised to take safeguards. These include checking the personal assistant is registered as self-employed, obtaining their unique tax reference number, having a contract specifying the arrangement and obtaining invoices from the personal assistant.

References and Disclosure and Barring Service (DBS) Checks

Once an employee is selected, clients should make checks to ensure the potential PA is safe to work with them. They should take references and carry out a DBS check. A DBS check is not mandatory unless there is a child in the house, however all clients employing personal assistants should be encouraged to undertake an enhanced DBS check on their employees. Where a DBS check is recommended but refused, this should be recorded. A DBS form can be requested from the direct payment social work team. The personal assistant completes the form and the allocated DCC worker must verify their identity and documentation. The DBS is then sent to business services at County Hall adult care.

Employer Responsibilities

All employees should be provided with written terms and conditions of employment. Clients should provide their personal assistants with a contract of employment. DDCIL can support clients with contracts of employment. Clients can also obtain advice regarding contracts from their insurance provider.

Clients need to be informed about Tax, National insurance and workplace pension responsibilities, including signposting for appropriate support. The information pack contains information about organisations which support with payroll or clients can contact brokerage to find the right provider for them.

All employers must purchase Employers' Liability insurance, and DCC recommend purchasing one which includes employment advice and support with tribunals. The information pack contains information regarding suitable insurance policies. Clients must be advised to take out the appropriate insurance and to contact the insurer where advice regarding their employee is needed.

Once the direct payment is in place and arrangements are organised well, the client needs to know where to go with any concerns. You need to ensure that if the client has any concerns they know the appropriate agency to contact. It is important that they understand if they have any concerns about their own welfare, or the welfare of another person that they contact the local authority.

The direct payment social work team can help you, if you are unsure where to sign post your client with direct payments.

Here is a table of support available to direct payment clients and who should provide the support and advice.

Direct Payment Task	Support Available
Choosing a direct payment	Allocated worker

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	Direct Payment Social Work Team 01629 532023 directpayments@derbyshire.gov.uk DDCIL Direct Payment Support 01773 742165 Email: direct.payments@dcil.org.uk Website: www.dcil.org.uk
Recruiting a personal assistant	DDCIL Direct Payment Support 01773 742165 Email: direct.payments@dcil.org.uk Website: www.dcil.org.uk
Understanding monitoring requirements	Allocated worker Direct Payments Finance Team 01629 532119 DDCIL Direct Payment Support 01773 742165 Email: direct.payments@dcil.org.uk Website: www.dcil.org.uk
Completing paperwork	Informal family support Managed account- Brokerage can support to find the right managed account 01629 537763
Calculating and Paying Tax and National insurance	Payroll Services Brokerage can support to find the right payroll service 01629 537763 HMRC Tel: Employers helpline 0300 200 3211 or 0300 200 3200 for advice and to register. Or visit www.hmrc.gov.uk
Contracts of employment	DDCIL Direct Payment Support 01773 742165 Email: direct.payments@dcil.org.uk Website: www.dcil.org.uk Individuals can also contact their insurance provider or payroll who may also be able to provide sample contracts.
Employer and disciplinary advice	Insurance provider – suitable insurance providers can be found in the direct payments information pack. ACAS (Advisory, Conciliation and Arbitration Service) - 08457 47 47 47 ACAS can help with employment matters providing independent free advice to employers and employees to solve problems. There is also a question and answer section on direct payment employment matters in the Advice A – Z topics on their website. www.acas.org.uk
Employer support	DDCIL Direct Payment Support 01773 742165 Email: direct.payments@dcil.org.uk Website: www.dcil.org.uk
Resolving complex direct payment issues other than employment	Allocated worker Direct Payment Social Work Team Camille.pace@derbyshire.gov.uk

6. Using Direct Payments

Think Local Act Personal states that support plans should not set too many restrictions on how the money will be used to meet outcomes. A direct payment can be used for support which achieves eligible outcomes and is safe, healthy and legal.

A direct payment cannot be used for:

- Anything which does not achieve outcomes agreed on the support plan.
- Anything which is an ordinary living cost such as ordinary bills, furniture, white goods, food shopping.
- Anything illegal, alcohol or gambling.
- Anything the client has been financially assessed as their personal contribution including STC, co-funding, DFG's and telecare standing charges.

A direct payment can be used for:

- Support which will achieve eligible outcomes on the support plan.
- Employing a personal assistant or contracting with a provider for support with activities of daily living.
- Costs associated with employing a personal assistant.
- Day care where it meets an eligible need.
- Short term care in a residential establishment, excluding any financially assessed contributions. Anyone with capital over £23,250 cannot use their direct payment for residential care.
- Equipment which substantially increases independence and reduces support needs.
- PA expenses where the activity is meeting an eligible outcome such as health and safety or respite. This should not normally include travel to the activity which should be looked at with regard to the transport policy.

Local Authority Services

Normally any local authority services should be arranged via a virtually managed budget and not paid for from a direct payment. However the Care Act does allow for a direct payment to be used for local authority services in exceptional circumstances. This may be a local authority day service which has agreed an individual can attend on an ad hoc basis and only pay for when they attend. Individuals may also purchase local authority services with their direct payment from neighbouring authorities.

Pooling Direct Payments

Direct payment recipients may choose to share the costs of services, by 'pooling' their direct payment. Examples of this may be:

- Activities including hiring a tutor, room hire, transport
- Renting an allotment and buying appropriate tools, etc.
- Employing a Personal Assistant to go out, i.e. cinema, days out, etc.
- Form or join a social or friendship group.

Each client should have their own direct payment to meet the outcomes on their support plan. To set up a pooled direct payment it is best to arrange a meeting to include all interested parties, this should be:

- The clients
- Their DCC workers
- Chosen family member, supporter or advocate
- Direct payment team Social Worker.

Specific contingency arrangements need to be considered for all parties to a pooled budget for situations where one party withdraws from the agreement.

For further support with setting up a pooled direct payment, contact the direct payment social work team.

Budgeting

Some individuals may require more support than others with budgeting. This should be done as part of the support plan and laying out the support plan in a format which is easy to understand could help you be clear how they are going to achieve their outcomes and the client know exactly what they are doing.

While we should not be too prescriptive and should not timetable the support they are going to receive. DDCIL are able to support individuals with budgeting.

7. Employing Family Members

A direct payment can be used to employ a family member as long as they do not live within the same household. Employing close family who normally live within the same house as the direct payment recipient is not allowed via a direct payment unless the local authority is satisfied that it is necessary to meet the person's needs. We have the discretion to make the exception if we feel it is required to meet the person's needs. A Group Manager is required to make the decision to grant exceptional circumstances and workers should submit information to the group manager where they feel a family member living in the same house is the only way we can meet the client's needs. This should take into account all factors as to why another service or another personal assistant is not appropriate and consider if it is necessary to make an exception, to meet the person's needs. This also applies to the authorised person or nominee as they become the direct payment recipient.

It may be helpful to consider the following in coming to a decision:

- Why can the support not be met by another personal assistant or agency?
- Why is it exceptional in these circumstances and why now?
- Have other routes been explored?
- Is it envisaged to be a long term or a short term option?
- If the DP recipient does not have capacity how have they expressed their views on whether they want their close relative to be their PA?
- Does DP recipient understand if they receive a DP, their close relative would then be their employee and the bottom line is that they may have to discipline them, ultimately could have to terminate the contract of employment.

- What will they do when the employee is sick or on leave? Who will cover the support required?

Examples of Exceptional Circumstances

- Communication difficulties where only the family member can understand their needs.
- Geographical location preventing access to provide care i.e a remote location
- Unpredictability of times that support is required
- Cultural or religious factors that cannot be found in the local community
- Mental health considerations such as severe anxiety, etc

These are only examples, and each circumstance must be considered by itself. If it is just choice, then this is not allowed in the regulations for direct payments. If there is a reason that no one else can provide the care then we can agree an exceptional circumstance. All decisions regarding exceptional circumstances are made by the relevant Group Manager and should be recorded on the individual's records including how the decision was made and by whom.

Payment for family members for administration

The Care Act 2014 gives local authorities the discretion to agree for family members to be paid for managing the direct payment. This can be family members living in the same house and exceptional circumstances do not apply to this. However it is something which must be agreed upfront by us as part of the support planning. The Care Act 2014 guidance suggests that this be comparable with the cost of a commercially available 3rd party managing the account. Any agreement to pay close family members for administrative support must be recorded in the support plan.

We are suggesting that, dependant on individual circumstances:

- Where care and support is provided by an agency there would be no payments to family for administration.
- Where there is employment of personal assistants, a family member made choose to be paid the comparable cost of a 3rd party to support with monitoring, payments and payroll.
- Where support is complex and requires support arranging over a 24 hour period, it may be reasonable to agree up to 5% of the package cost to a family member for managing staff, organising rotas, paying staff and submitting monitoring returns.

Actual amounts agreed should reflect the complexity of the role required and these are guidelines only.

8. Initiating Payments and Monitoring

Direct Payment Agreement

The direct payment agreement should be signed by the person who will take responsibility for the direct payment and receive the payments. This could be:

- An adult with capacity
- A nominee - nominated by an adult with capacity
- An authorised person on behalf of an adult who lacks mental capacity to request a direct payment
- A carer.

Bank Accounts

Direct payments can only be paid into the account in the name of the person who has signed the direct payment agreement or to a managed account on their behalf. The bank account must be used solely for the purpose of the direct payment.

Initiating a Payment

To initiate a payment the direct payment finance team require:

- A signed direct payment agreement (signed by the person responsible for managing the direct payment)
- Printed bank details of the account payments will be made into or the name of the managed account provider
- Completed co-funding declaration
- A purchase Order request detailing the weekly payment amount and any upfront costs (such as for employers liability insurance).

All these documents can be uploaded to the case management system (formerly FWI), clearly titled '**DP new client set up information**' and originals forwarded to the direct payment finance team. In addition to this the support assessment form must be completed for all new clients and a FACE mental capacity assessment for those with an 'authorised person'.

Payment will be made 2-3 weeks after the direct payment finance team receives all the documentation. The direct payment finance team can only backdate 28 days from when the direct payment finance team receive all the completed paperwork. If there is delay in workers getting the paperwork to the finance team for any reason and you need the direct payment back dating further than 28 days, workers will need to obtain Group Manager Approval with an explanation of the reason(s) for the delay.

Monitoring

Unless a client has chosen a managed account or a lighter touch monitoring has been agreed, they will be required to submit monitoring to the direct payment finance team. The monitoring required every 4 weeks is:

- Bank statement
- Completed timesheet or invoices
- Any receipts
- Completed 4 weekly expenditure summary.

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Clients need to be aware that any expenditure from the direct payment bank account must be accounted for by some documentation.

The direct payment finance team will do 'contingency' checks on the account and request back unused direct payments. Contingencies unless otherwise agreed usually equate to eight weeks of direct payments. If you have agreed for a client to save for anything, such as respite you need to let the finance team know.

9. Safeguarding

Any safeguarding concerns regarding an adult should be dealt with via [adult safeguarding procedures](#) and any concerns about a child should be referred to [children's services](#).

Where the safeguarding relates to a client who is also an employer, they must be included in the safeguarding process. Safeguarding the client does not override employment law and the employer needs to be given the opportunity to fulfil their legal obligations once they have taken advice from their insurance provider or ACAS.

A member of the direct payment social work team should be consulted about any safeguarding strategy meeting which relates to a direct payment. The direct payment social work team can offer support looking at the range of options and safeguarding the client from tribunal action as well as from potential abuse. The strategy meeting should consider options for safeguarding the client.

Where possible, the employer should be involved in the safeguarding and given the opportunity to understand the concerns. Clients should be advised to contact their insurance provider for employment advice following discussion regarding the concerns. Enabling the direct payment recipient to carry out proper disciplinary procedures is the preferred way of safeguarding the client. The client can get support from DDCIL with carrying out the insurance provider's advice. Where the allegation is serious and poses considerable risk to the client, we should consider suspending the direct payment and advising the client to take advice regarding their employee.

Employer Non Co-operative

Where the client in need of safeguarding is the employer, but does not agree with our concerns, the safeguarding procedures will need to make decision if the direct payment can continue on the grounds that the client is unable to achieve their outcomes via a direct payment and is putting themselves at risk. This would need to be dependent on the nature of the concerns with any serious risks resulting in suspension of the direct payment and signposting the client to their insurance provider or ACAS to receive advice on their personal assistants employment status. The local authority can also place a restriction on a direct payment that it cannot be used to employ a particular person.

Capacity Concerns

Where a client has lost capacity, or there are reasons to suspect their current capacity, a full mental capacity assessment must be completed. If the client is no longer able to consent to a direct payment, the local authority can agree to an authorised person taking on the direct payment. If someone appropriate can be authorised, the direct payment can continue with them as the new employer. Where no one suitable can be obtained, the direct payment must be terminated and where there is no one able to undertake any of the responsibilities, the local authority would have to make arrangements for the dismissal of employees.

Concerns about an Authorised person

Where the safeguarding concerns relate to an authorised person or nominee, the strategy meeting need to consider the removing of that authorised person and immediately suspending the direct payment. If no other person requests to receive the direct payment on a person who lacks capacity's behalf, the worker would need to arrange virtually managed services. The authorised person would need to be signposted to take advice regarding the personal assistants employment.

Possible Financial abuse

Where there is suspected abuse of the direct payment funds by a third party, but the care arrangements are working well, we could provide the direct payment via a managed bank account to minimise the risk. However if the financial abuse involves the personal assistant, then proper disciplinary channels should be followed in the first instance.

Other Direct Payment Clients

At any strategy meeting regarding a personal assistant, if that personal assistant is known to other direct payment clients should be checked. The finance team can be consulted on this for information. HMRC can also be contacted to identify where a personal assistant works for more than one client. Where there are other direct payment clients employing or contracting on a self-employed basis, the personal assistant in question, disclosure to other clients will need to be considered. Once abuse is substantiated or if it's of a nature serious enough to cause concern for the other clients safety and welfare, a decision to disclose to others or not must be made. A risk assessment to other clients must be completed and a decision reached by the service manager and group manager to disclose to the other clients.

Disclosure to other clients

Once the decision to disclose to other direct payment clients has been reached, a further strategy will need to be agreed. The other clients will be told that their PA is under investigation relating their conduct as a personal assistant, but not given details. They should be instructed to take advice from their insurance provider about how to proceed. Where the client does not take action, a decision if we will suspend their direct payment must also be taken. A risk assessment looking at the severity and likelihood of abuse to the other direct payment client should be completed and the decision made to either suspend the direct payment, place a condition that they

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do not employ the personal assistant or that they continue to employ the personal assistant aware of the risk to themselves.

All assessments and decisions must be recorded as part of the safeguarding process.

10. Reviewing Direct Payments – and The Making of a direct payment

The direct payment finance team will closely monitor the paperwork submitted for the first 6 months for all new direct payments after April 2015. At a time no later than 6 months they will initiate a review of the direct payment on the client's electronic record. They will complete a review looking specifically at the monitoring returns. This will be an episode on the electronic record called Part I direct payment review.

Once they have completed their review, it will be assigned into the allocated worker's incoming work as Part II direct payment review which will review the appropriateness of the direct payment. Workers should use the information provided by the finance team to focus the review. Workers should also signpost direct payment recipients to further support if this is required. Where any concerns are identified, the social care review 'review support plan' episode will be carried out at the same time. If there are no concerns at this time, the 'making of a direct payment' will be reviewed again at 12 months alongside the social care annual review. This will reduce meetings for the direct payment recipient and explore if the outcome have been achieved. It also enables us to align future reviews of the direct payment with the annual social care review.

Ongoing reviews

Annual review should concentrate on if the outcomes have been achieved rather than how they have spent the direct payment. However where there are concerns raised by the finance team about how the direct payment has been spent, a review can be the opportunity to look at the appropriateness of the expenditure, along with checking it has achieved the outcomes.

Workers should utilise the [reviewing a direct payment checklist](#) when carrying out the review.

Reviews can be difficult where the direct payment has been set up previously by a different worker, especially where the initial assessment has included expenditure which you may not feel achieves the outcomes or where it is an ordinary living cost. It is important to reassess against the eligibility criteria but also consider the risk of withdrawal of the current services.

The direct payment social work team can support workers where there are concerns about the use of the direct payment and reducing care packages.

Reviewing schedules should reflect any risks or concerns about the direct payment package but be no less than annual reviews after the first 6 month review.

11. Suspension and Termination

Sometimes, even with extensive support, clients cannot manage a direct payment. Some of the common concerns about a person's ability to manage a direct payment are:

- Non submission of monitoring
- Overspending
- Under spending
- Health and Safety concerns
- Inability to retain staff
- Numerous employment issues, such as tribunals
- Unauthorised use of direct payment
- Not meeting needs
- PA's taking control of care arrangements

In the first instance we should offer support to try and resolve the difficulties. This could be a joint visit with a member of the direct payment social work team, a referral to DDCIL for support or arranging a managed bank account. Where these efforts do not resolve the direct payment management problems, we may need to take further action. This may include terminating the direct payment. Terminating a direct payment may be a complex process. It is vital that we give sufficient notice to terminate a direct payment to give employers time to take advice from their insurance provider regarding their employment responsibilities.

Where a direct payment is suspended or terminated whilst there is ongoing eligible need, a virtually managed service must be arranged.

Where there are concerns about a client's ability to manage a direct payment, workers should contact the direct payment social work team who can support and advise the best course of action.

Where suspension or termination is required it is vital to give direct payment recipients 4 weeks-notice to enable them to fulfil their legal obligations.

Flow Chart -Initiating a Direct Payment

Request for a direct payment



Mental Capacity

Complete FACE mental capacity assessment if required



Who is the Direct Payment Recipient?

Adult with Capacity
Nominee on behalf of an Adult with Capacity
An Authorised Person on behalf of an adult who lacks capacity
A Carer



Ability to Manage

Complete Support Assessment Form
Arrange appropriate support



Bank Account

In the name of the person signing the direct payment agreement
Or arrange a managed bank account



Upload Documents labelled 'Direct Payment Set up Forms'

Signed Direct Payment Agreement
Printed Bank Details
Co-funding declaration



Purchase Order request

Detailing weekly amount
Any upfront costs required

Flow Chart- Reviewing the making of a direct payment

Close monitoring over the first 6 months

Carried out by the direct payment finance team



DP Finance create new episode on the electronic record

Initiated no later than 6 months from the first payment



Complete 'Part I Direct Payment Review' episode

Any issues relating to the management of the direct payment are identified and recorded



Outcome to Allocated worker

Allocated worker receives 'Part II direct payment review' in their incoming work



Review Support Plan

To be carried out at 6 months where concerns are raised or 12 months

Annually thereafter

Annual reviews to also review the making of a direct payment

Suspension or Termination Flow Chart

For use after the first 6 months, where submission of monitoring is not received for 2 payment periods.

Direct payment finance team write out requesting monitoring submission.

Alert sent to allocated worker



Allocated worker contacts the direct payment recipient to offer support



Where monitoring is not submitted within 4 weeks, the direct payment team will **write giving 4 weeks-notice of suspension or transfer to a managed account** if monitoring is not received. Alert sent to allocated worker and service manager.



Where monitoring is not received by the notice date, the direct payment will be suspended or transferred to a managed account.

Alternative services must be provided where the direct payment is suspended.



Allocated worker explores if a direct payment is still an appropriate way of meeting eligible needs.

Support required to manage is explored.



A Purchase Adjustment Request is required, reinstating direct payments if appropriate.

Appendix 2

Care and Support Planning for Direct Payments

Care and Support Planning for a Direct Payment to be Care Act 2014 compliant

A Care and support plan for a direct payment should document the **amount, frequency and what eligible needs and outcomes it will be used to meet**. These are duties placed on us in the Care Act 2014. Whilst we should not timetable care for direct payment recipients or place unreasonable restrictions on expenditure, we should document how the direct payment will be used, including flexibility, planning for contingencies and what information and advice we have provided.

- 1. Documenting how eligible needs will be met** In 'What Adult Care will do' we need to document that we will meet the agreed eligible outcomes via a direct payment. We also need to document what outcomes the direct payment will be used to achieve. For example in Nutrition and hydration:

What I or community will do	What Adult Care will do
I will get myself snacks and cold drinks left by my chair. My friend will help me with shopping on occasion. I will manage my direct payment, to employ someone to provide care and support to ensure my diet improves and I have a regular hot meal.	<p>DCC will provide a direct payment which I will use to employ personal assistants to achieve my outcomes.</p> <p>Nutritional Outcomes to be achieved:</p> <ul style="list-style-type: none"> • PA's to prepare hot meals and encourage me to eat on a regular basis to improve my health and well-being along with preventing further weight loss. • Drinks to be left accessible on a regular basis to maintain better hydration and reduce sugar intake from drinking coca cola. • Support to access food from shops to be provided. This will be shopping for me or supporting me to go to the shop depending on my health.

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2. Advice and Information

The Care and support plan should document advice and information provided about the direct payment. This should include the **amount and frequency** of the direct payment and what has been agreed. The information and advice section is an ideal place to record this. We should also document that we have provided information relating to responsibilities of a direct payment.

An example of this would be:

Information and advice provided	Modify
Adult care will provide a direct payment of £180.84 per week. The Direct payment will be used to employ personal assistants to provide support 2-3 times per day, as and when required for fluctuating health and ability. The budget is sufficient to employ personal assistants for 17-18 hours per week to meet ALL eligible outcomes in the support plan. The hours can be used flexibly to meet my as and when required.	
Discussed pendant alarms for emergencies- refused at this time	
Discussed support from V Spa-currently already working with V Spa	
Provided Direct Payment Information pack, Discussed employer responsibilities, insurance and HMRC/payroll	
Discussed direct payments and co-funding	
Discussed difficulty with PA- referral made to DDCIL for support and advised to contact insurance provider for legal advice.	

Even where a direct payment will be used to fund alternative services or creative solutions, there should be recording regarding what has been agreed in the care and support plan.

For example, where we are agreeing alternative respite provision, we may document in maintaining family and relationships in 'What Adult care will do' that the direct payment will be provided to arrange 'respite when required to provide an adequate break for main carer', but then provide further advice and information in the care and support plan, for example.

'Provision of a £222.15 per week as a direct payment. £182.15 is sufficient to afford 18 hours personal assistant time, which I will arrange as and when required to meet my eligible outcomes as per the care and support plan. £40 per week will be saved to be used as respite and is sufficient to afford 6 weeks residential respite per year. Respite arranged may be residential care or alternatively a stay with care provision whilst at a chosen holiday location as long as sufficient respite is arranged to meet the carers needs within the

available budget' Or we could document '£2040 per year of the direct payment will be used to fund respite to support the carer with their caring role. This will be arranged within residential care, where a personal contribution from your own pocket of £130.70 per week will be required. Or can be used to fund alternative respite as preferred, as long as it achieves the outcome of provision of a break for the main carer'

Or for equipment:

'A one off payment of £415 to be made into the direct payment account. This is to be used to fund a hand held sat nav, which will enable me to travel around University independently'

The budget we agree should be sufficient to meet eligible needs on an average weekly basis, though the client may use this flexibly. Where we agree additional budget to make provision for fluctuating needs, this should be documented in the support plan also.

'Provision of a direct payment of £237.35 per week. I will use my direct payment to pay an agency to support me, my regular care will cost £207.45 per week, though I will arrange this care flexibly with the agency. The budget also affords an additional £30 per week will be banked to request additional care from the agency if needed, such as if my carer is unwell'

Both the client and future workers should be able to understand, how much per week the direct payment is and what it was agreed to be used for. This supports individuals feel confident about using their direct payment, along with making reviewing direct payments more straightforward. It also supports decision making where individuals raise concerns their budget isn't sufficient to meet their needs. Or to assess how much per week is sufficient as the IB may be more or less than required. It helps with future assessment where the full direct payment has not been utilised.

If we just provide direct payment clients with the full IB, we risk either giving more than required, leading to unauthorised expenditure and large contingencies or less than required leading to complaints or overspending. The statutory guidance states that the personal budget must be transparent, so individuals can understand how it was arrived at. The amount of the personal budget should be rationalised in the care and support plan.

Any additional agreed expenditure should also be documented in the care and support plan, this can include payment to family for administration or additional costs which need to be made over and above the payment for care. For example:

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‘A Direct Payment of £103.75 per week. This is sufficient to afford 2 days at day services up to £50 per day, to access community facilities and provide respite for the carer. There is also £3.75 per week for managed account costs’

‘A direct payment of £312.53 per week. This is sufficient to afford around 30 hour’s personal assistant per week. It is also agreed that £5 per week of this budget has been agreed to be made in payment to John Smith for administration of the direct payment. John Smith will manage all payroll deductions and submit monitoring for the direct payment when required’

A recent High Court Ruling demonstrated the need for a defensible budget. Following the closure of the ILF the local authority reassessed an individual and felt needs could be met for a reduction amounting to a 42% reduction in budget. The high court ruled that the direct payment budget was appropriate based on calculations of PA rates plus sufficient for ‘on costs’ based on how much time the client required support. This care and support was not ‘timetabled’ but did determine the budget based on 63 hours per week and 7 sleep-ins, based on assessment that the client was able to be alone for no more than 2 hours at a time. If this budget had not been so documented with their reasoning to the amount of the personal budget, they may not have been successful. The local authority in question was able to provide a defensible budget and used this to successfully defend a claim through judicial review.

Contingency Planning

The Care and Support plan should document what will happen in event of changes in circumstances, example may be:

If this happens	My contingency plan is	Modify
My PA does not arrive	Arrange for an alternative PA, family member or friend to support me.	
I am not happy with my PA's conduct	Contact my insurance provider, Premier care to get advice on what to do. I can also contact DDCIL direct payment support on 01773 742165 for help with this.	
If my needs change, if I need less or more support	In the short term, I may arrange more support one day, and less another. As long I do not spend more than my budget allows, I can use my direct payment flexibly. If I need more support than this, I should contact my Allocated care co-ordinator for a review. If I no longer need support or my circumstances change I should contact my allocated care co-ordinator.	
If I am not able to manage my PA's or	Even from hospital I will manage the direct payment. My son is to manage the direct payment if I am really	

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Direct Payment due to illness or hospitalisation	unable to.
If I am unwell	Contact my GP
If I need urgent medical attention	Call 111 or 999



Appendix 3

Determining a Personal Budget as a Direct Payment

When the support planning process has clearly identified outcomes, explored what is needed to meet those outcomes and costed accordingly – a final personal budget can be agreed.

Be CUTE

Thanks to In Control for coming up with an easy way to remember some key things about setting budgets: clear, upfront, transparent and enough (**CUTE**)

Clear information

It's important to make information available to people about direct payments that makes clear how direct payments can be used. This can either be the examples with the Direct Payment Fact sheet or the direct payment information pack. We should advise people how budgets are agreed and how they can be used.

Upfront

Be upfront about how the personal budget will be calculated and how the indicative budget is a guide to work with, but does not represent the final personal budget.

Transparent calculation

Talk to people about how their budget has been calculated – make setting the budget as transparent as possible. Discuss openly reasons why items can't be included or how costs are calculated.

Enough to meet the need

A direct payment should always be sufficient to meet the outcomes identified in the care plan.

The indicative budget is a guide – it shouldn't be used as a limit, fixed allocation or entitlement. The personal budget may be more or less than the indicative amount depending on what is required to achieve the eligible outcomes.

Other considerations

Before you start to think about budget setting get a clear idea of average costs for care agency or services chosen and personal assistants, including on-costs, as these will be key to working out the money. The budget should include any regular payments and their cost, such as £45 per week for day service. Where care is to meet daily needs in the home, it may be most useful to agree a weekly average

amount of care required. It is important we don't timetable as the client should make those decisions on a day to day basis. But it is reasonable to agree an average amount of time to meet care needs.

It is ok to think outside the box in support planning- the question is how could something help achieve this outcome? And how much does it cost? Is it a reasonable expenditure? Cost should not be the only factor in making a determination, but achieving the best outcome in a cost effective way should be.

Standard General Agency Domiciliary Care

To cost for agency care, we can use the home care cost calculator, using the average care required to give a weekly cost for care. This does not mean the client has to arrange the services as per your calculations, but gives an amount for them to arrange their care within.

Specialist or higher cost Agency Care

Where a standard agency cannot meet an individual's needs, the direct payment will need to be based on the actual cost of the agency which is able to meet the needs. This also applies where DCC is unable to source care and support at contract rates. Brokerage can help source specialist agencies and can provide a cost for that service on an average week.

Personal Assistant Care at home

Our recommended hourly rate for personal assistants currently (April 2017) is £8.50 per hour. Personal budgets for personal assistants should be costed at £8.50 x weekly average hours +25%. (the 25% is to cover additional costs such as holiday cover, insurance, payroll etc)

For example an average of 10.5 hours per week is required for care at home:

$10.5 \times £8.50 + 25\% = £111.56$ per week required in direct payment

If someone has needs which could not be met by standard care provision or additional factors such as location, we may need to consider and agree a higher hourly rate than £8.50. This must depend on if we consider they would be able to recruit non family personal assistants at the rate we offer, or if they would need a higher rate to attract personal assistants or recruit someone with specific skills.

Sleep in Support

Anyone who requires support overnight, though not someone awake overnight, commonly known as a sleep in, we should cost £71.50 per night whether they are

using an agency or a PA. This is the current agreed rate for all sleep in's and is enables in most instances to afford minimum wage.

Waking night support

We pay waking night support at the same rate as day support rates. So the hours would need to be added to the average weekly hours.

Fluctuating needs

Where someone has frequent changes in need, or their carer has fluctuating ability to provide care, it is reasonable to agree an additional amount in the budget which is not used on a weekly basis but can be called on when care needs increase on a temporary basis. This should be an estimate calculating the additional hours which may be required occasionally, and how often. For example where someone often needs extra care approximately every 2-3 months due to carer illness, we may agree an additional amount of care for 1-2 weeks x 6 per year.

Day Services or day opportunities

This should be budgeted for at the actual cost. Where this may be arranged as and when required, with more at certain times, we should cost up the service on an annual basis and divide by 52. For example 1 day per week, plus 3 days per week when its non-term time at college:

1 day x 52 x £50	£2704
2 days x 13 x £50	£1300
Total	£3004 / 52 = £57.77 per week

Equipment

For any equipment agreed to be purchased from the direct payment, we should request a quote and budget the exact amount of the equipment.

Residential Respite

When funding residential respite via a direct payment, the client is still subject to financial assessment for residential charges and required to make the necessary contributions. This means where someone has below £50,000 in capital and receives a non-residential service, but has over £23,250 in capital, they cannot use their direct payment to fund residential respite.

For anyone with below £23,250, the direct payment can be used to fund residential respite. However there are strict limits on the amount of respite which can be

purchased with a direct payment and individuals are still required to pay their personal contribution. The limit is 4 weeks respite in any one year, though stays more than 4 weeks apart are not added together. This means as long as an individual has at least 4 weeks at home, they should not reach the limit.

In budgeting for residential respite we should use the standard DCC residential rate, unless there are specialist needs which mean the needs can only be met from a specific provider. We would then, following assessment, agree a reasonable annual amount of respite which will enable the care to get a sufficient break and maintain their relationship. How much we fund will be:

DCC standard contract rate minus personal contribution.

For example:

£489.99 - £134.45 personal contribution = direct payment for £355.54 per week of respite.

4 weeks per year agreed = £1422.16 per year to spend on residential respite

Non-residential respite

Where client's carers require a break, but the client does not wish to go into a residential home, respite can be arranged in other ways. This could be additional care at home whilst their carer is away. This could be costed into the weekly budget:

E.g. meal preparation required whilst carer away plus lunch and tea time personal care:

An average of an additional 12 hours per week care and support whilst carer is away:

$12 \times £8.50 + 25\% = £127.50$ for 4 weeks per year = £510 per year for respite at home or £9.81 per week.

Where someone has very high needs at home, we may feel their needs could be better met in a care home, though the individual refuses this service. We may then agree what it would cost us to arrange residential respite, and the individual can use this funding to purchase care at home instead and choose to top up the direct payment to arrange more care.

Transport costs

Eligibility for transport should be considered against the same criteria whether the client receives a direct payment or not. Transport or funding for transport through a direct payment will only be made available:

- Where a person has no other method of transport available
- And access to the activity is essential to meet an assessed eligible need and the related outcomes as recorded in the person's support plan.

If transport is required to meet eligible outcomes, and the individual has no other method of transport, the budget should include sufficient to pay for the travel. If this isn't a fixed cost, it is reasonable to agree an average weekly cost to be used as and when required.

Legal rewards and volunteer expenses.

Where someone wants to use their budget to reward someone for helping without pay, this should be either very occasionally or formally as a volunteer. A volunteer should only claim actual incurred expenses. Where someone chooses a volunteer and they are going to pay mileage, you may agree an amount of miles per year up to 10,000, at 40p per mile. Think about an average number of miles someone may need to do to achieve their outcomes, multiply by 40p. For example, a client enjoys being out in the car and drives into Derbyshire, whilst providing respite for a carer. 100 miles per week on average x 40p per mile = direct payment £40 per week. The client and their volunteer can choose to go different distances each week as long as the average is within the budget.

Where someone wishes to give a friend or family member a small thank you, with prior agreement this can be a way of achieving outcomes. There is a strict limit for HMRC of up to £250 in one year, so the budget may agree £250 per year which can be spent on small thank you for informal support (excluding family who live within the same house)

Anything else?

Cost it up and write it in the support plan.