

# Direct Payments Procedures

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# 1. Introduction

The Direct Payments procedure is aimed at all staff working within Adult Care and Wellbeing and Children, Young Peoples and Family Services at Sheffield City Council. In addition, and in the interests of transparency, it is also available to partner organisations and people who use social care services.

Direct Payments remain the Government's preferred mechanism for providing personalised care and support. Sheffield City Council are also committed to enabling as many people as possible to receive their support via Direct Payments. Direct Payments are a key commitment (four and six) within the Adult Social Care Strategy '*Living the Life I want to Live*' and delivery plan.

This new all age Direct Payment procedure replaces the Adults Direct Payments Procedures version 3, dated: 25 July 2017 and the Sheffield Children's Services Procedures Manual, dated: May 2018.

## 1a. How to use this procedure

This procedure covers how Sheffield City Council offers and operates Direct Payments for both adults and children. It provides guidance on many topics related to Direct Payments.

# 2. Purpose and Scope

The purpose of these procedures is to provide practice guidance on all aspects of Direct Payments. This includes how they are offered, implemented, managed as social care support and ended or closed. It sets out the values and principles, the agreed processes and the approach Sheffield City Council has adopted to meet its statutory duties. Links to more detailed resources and tools to aid in the positive implementation of Direct Payments are provided. These procedures also describe how Direct Payments work alongside other social care services and with services of partner organisations such as Health and Education.

The term 'person' referred to in these procedures can be an adult with eligible social care needs, their representative, carers, someone with parental responsibility for a disabled child who is eligible for support or a young person between the ages of 16 and 17 years of age.

# 3. Legal Framework

The purpose of these procedures is to reflect the requirements of the following legislation, regulations, and guidance:

- The Care Act 2014
- Care and Support (Direct Payments) Regulations 2014
- Care and Support Statutory Guidance issued with the Care Act 2014
- Section 117(2C) of the Mental Health Act 1983
- Children and Families Act 2014
- Mental Capacity Act 2005
- Special Educational Needs (Personal Budgets & Direct Payments) Regulations 2014
- Chronically Sick and Disabled Persons Act 1970
- Children Act 1989
- Equality Act 2010

# 4. Key Definitions

The key definitions for terms within this procedure have been taken from the Personalisation & Direct Payments Strategy (<https://www.sheffield.gov.uk/social-care/adults/direct-payments->

[managing-your-care](#).) We have worked with people with lived experience to develop and agree the following definitions:

**Personalisation** – recognising people as individuals who have strengths and preferences. It is where people are at the centre of their own care and support and are in control of their lives.

**Direct Payments** - money paid to a person (or someone acting on their behalf) from the local council so they can arrange their own support to meet their eligible needs. They are not available to pay for long-term residential care.

**Independence** - the right to choose the way a person lives their life. It does not necessarily mean living by themselves or doing everything for themselves. It means the right to receive the assistance and support needed so they can live the life they want and participate in the community as they wish.

**Personal Budgets** – money that is made available through the local council to pay for care and/or support to meet eligible needs. The money comes solely from adult social care and there are different ways that personal budgets can be received.

**Council Arranged Support** – care and/or support that is arranged by the local council on behalf of people with eligible needs. The local council may provide some services themselves, or they may buy services from care providers to meet the needs of their community.

A full list of definitions and terms used within these procedures are defined in Appendix 1.

## 5. What are Direct Payments?

Direct Payments are payments of money that are made to people who are eligible for social care support. They are made in lieu of a service that would have been offered by the Council. They are made to people who want independence, choice and control over their own care and support arrangements and enable people to buy in their own support or services to meet the outcomes agreed in their support plan.

Direct Payments are one way in which a person can choose to receive their personal budget. A personal budget is the sum of money the council has calculated as being sufficient to be able to meet a person's assessed Care Act eligible social care needs. Direct Payments can form part or all of the personal budget.

Workers must always promote, offer, and prompt people to consider taking Direct Payments as part of the care and support planning element of arranging people's support. Direct Payments should always be discussed as an option when workers are support planning. This ensures everyone has the choice of as much control over their lives as they want, as well as providing the person with more independence and choice. The Direct Payment Factsheet is available for workers to give to people they are planning support with. The factsheet describes what Direct Payments are, the benefits of choosing them and what's involved in having them. The factsheet can be found on the website: <https://www.sheffield.gov.uk/social-care/adults/direct-payments-managing-your-care>

Direct Payments are designed to be used flexibly, innovatively, and there should be no unreasonable restrictions placed on the use of the payment, as long as they are spent on items or services that are legal, safe, meet eligible care and support needs and meet the outcomes detailed in the person's support plan. The support should also be proportionate and within the agreed budget and, for children, it must safeguard and promote the welfare of that child.

The worker should support the person to understand what Direct Payments are and how they can be used to arrange their support. This will help them decide how they want to receive their Direct Payment. People can have as much or as little support as they need to manage their Direct

Payment. Information can be found on the Council website <https://www.sheffield.gov.uk/social-care/adults/direct-payments-managing-your-care> or they can be referred to the Direct Payment Support Service. This should be recorded on their Care and Support Plan.

Direct Payments should not be forced on people and can only be made with the consent or willingness of the person concerned. When a person consents to receiving Direct Payments, they should understand what is involved in managing them and what support is available to assist them.

To provide Direct Payments we must be satisfied that the person is capable of managing them either alone or with support. Evidence of how someone is going to manage their Direct Payment must be demonstrated in their Care and Support Plan.

Where a person decides not to receive Direct Payments, the Council must arrange appropriate services to meet the needs identified.

## **6. Who can take/receive Direct Payments?**

People are eligible to take their or their child's personal budget through Direct Payments if:

- They have been assessed and have Care Act eligible social care needs.
- They have parental responsibility of a child with a disability and a needs assessment identifies a need for support for the child.
- They are an unpaid carer that provides substantial care to another person and has eligible needs in their own right to support them to continue to care for that person.
- They can make decisions about the care and support they want Direct Payments to provide, or it has been decided as part of a best interest decision under the Mental Capacity Act, that a Suitable Person has been identified to take on these decisions and undertake these responsibilities.
- They understand the responsibilities in taking and managing Direct Payments or have a nominated third party to do this for them.
- They are not subject to a court order for drug or alcohol treatment programme, or release from prison on licence (see appendix 2).

### **6a. Direct Payments for 16 or 17-year-olds**

For children and young people under 18-year-olds, Direct Payments are provided to the person with parental responsibility, however, we must recognise that 16 or 17-year-olds are young people with the ability to contribute to decisions around their support. They should be involved in the decisions around taking a Direct Payments and the support arrangements.

The worker should encourage a person with parental responsibility and the 16 or 17-year-old to manage the Direct Payments together with the person with parental responsibility gradually relinquishing responsibility as the young person approaches 18 years. To ensure that the 16 or 17-year-old has all the advice and support they require it is essential that they are referred to the Direct Payments Support Service for on-going support and advice.

Where there is a difference of views in how the support is arranged between a young person and the person with parental responsibility, provided that the young person has sufficient understanding to make informed decisions, preference should be given to the young person's views. They should be allocated an advocate. Workers should talk to their manager to see how this can be arranged.

If the 16 or 17-year-old wishes to employ Personal Assistants (PAs), steps should be taken to ensure that the 16 or 17-year-old entrusted with employer's responsibility understands their legal obligations. They must, like all experienced employers, recognise when to seek advice and must be prepared to willingly act on such advice.

It is essential that the 16 or 17-year-old has adequate insurance cover. The worker will need to ensure the 16- or 17-year-old fully meets the Employers Liability Insurer's criteria. Even with these

measures, the 16 or 17-year old's management of the employment relationship should be reviewed periodically to identify any problems from an early stage. The reviews should be in line with current Children in Need reviewing procedures.

A young person in foster care may take Direct Payments provided they can manage the Direct Payment and meet the insurer's requirements. The foster carer does not have parental responsibility and cannot agree to or receive the payment on behalf of the young person although they can assist them to manage it. In situations where care is shared with the person with parent responsibility they may agree to the Direct Payment.

#### **6b. Direct Payments for Unpaid Carers**

Following a carer's assessment, Direct Payments can be made to carers in their own right for their eligible support needs as a carer. This must be to support them in their caring role and to maintain their own health and well-being.

Carers (other than those with parental responsibility for a child) may not receive a Direct Payment to purchase support to meet the needs of the adult they care for unless they are acting as the Suitable Person or Nominated Person.

Children and Young Peoples Service are responsible for carrying out assessments for young carers and should ensure that Direct Payments are offered to meet those needs. The worker should follow the same processes as they would for a young person with support needs.

The Sheffield Carers Centre is responsible for conducting adult carers assessments along with planning the support. The Carers Centre also have funding provided by the Council to provide the Direct Payment as a personal budget directly to the adult carer. The Carers Centre are also responsible for reviewing this care and support arrangement. For further information on support for unpaid carers see the Carers Guidance.

There are no financial contributions applied to support for unpaid carers.

#### **6c. People subject to section 117 aftercare**

If there is a support plan to meet needs for someone discharged with section 117 aftercare duties, Direct Payments can be used to arrange any care or support arrangements. F

There are no financial contributions applied for the support for people with section 117 aftercare orders, although support provided for new social care needs identified after the order may have a financial contribution applied.

#### **6d. People who require NHS funding for assessed health and wellbeing needs**

A personal health budget uses NHS funding to create an individually agreed personalised care and support plan that offers people of all ages greater choice and flexibility over how their assessed health and wellbeing needs are met.

The personalised care and support planning conversation identifies the care, support and services the Personal Health Budget will be spent on. This can include a range of things to give people access to care, support and services that are holistic, innovative and build on their strengths.

Personal Health Budgets are flexible and can be used to meet a variety of assessed needs, such as:

- For ongoing care and support to meet people's assessed health and wellbeing needs, e.g. NHS Continuing Healthcare, children and young people's continuing care, aftercare services under section 117 of the Mental Health Act
- For one-off budgets to support people to achieve specific goals or outcomes enabling supported self-management e.g. hospital discharge, mental health recovery

- To support children and young people with education, health and care plans aligned to expectations in the SEND Code of Practice.

Personal Health Budgets can be:

- Used to fully fund a person's health and wellbeing needs
- Integrated with a Social Care Personal Budgets, as part of a Joint Package of Care (JPOC).
- Integrated with education personal budgets
- Pooled to support several individuals to come together to achieve a common health and wellbeing goal, e.g. a group health weight management programme for people with a learning disability and / or autism
- Used to target and address wider system priorities such as identified health inequalities

In Sheffield, Personal health budgets are paid by the Council, through Direct Payments, on Health's behalf. The Council and ICB have a close working partnership which means that the guidance, tools and resources supporting the Direct Payments offer and practice are jointly agreed and adopted. This includes the costs within the Direct Payment Calculator, PA Rates Decision Tool, annual uplifts and Direct Payment monitoring process. The process map for arranging Direct Payments with the ICB is currently being developed and will be available on the Adult Care and Wellbeing Manual when it is finalised.

Further information on Personal Health Budgets can be found at [www.england.nhs.uk/personalisedcare/personal-health-budgets](http://www.england.nhs.uk/personalisedcare/personal-health-budgets)

## **7. What can Direct Payments be used for?**

Direct Payments should be used to provide personalised care and support and spent on support, services or items that are safe and legal, support the person's wellbeing and meet eligible social care needs as detailed in the support plan. It should also be affordable and proportionate and within the agreed personal budget.

The worker must support and encourage people to plan in creative and innovative ways and support people to try new things. People may consider alternative everyday solutions to meeting their needs as they are not constrained in their thinking of usual 'social care services.'

People should feel safe when making their own choices about the support they have. That said, people have the choice to take risks and make decisions that may be perceived as risky. It's important that the worker supports the person in understanding the choices they are making and considering how to manage risks positively. At the time of publication of these procedures Positive Risk-Taking policy and guidance are under-development and are due to be finalised in early 2025.

Direct Payments should be empowering and enabling. Support solutions may be about funding direct support solutions or acknowledging support provided by way of thanks or appreciation, e.g. thanking someone for undertaking an unpaid task or support activity by buying them a gift. This must always be in acknowledgment of an act meeting an agreed eligible need with evidence being captured to be reviewed. It is not intended to replace informal support that would have been provided by family, friends, or the community.

### **7a. What can Direct Payments not be used for?**

The support arranged through Direct Payments will vary from person to person and will always be in line with the outcomes agreed in the support plan, however, there are some activities and items that Direct Payments cannot be used to pay for:

- Illegal activities, substances, or drugs
- Permanent residential care
- Permanent foster care
- Local Authority provided services
- Support and services that are the responsibility of other statutory bodies, such as Health or Education
- Any personal contributions resulting from a financial assessment, such as city-wide care alarm charges, contribution to a disabled facilities grant, the contribution for social care, or short-term care in a residential home
- Debt repayment
- Personal expenditure on general household expenses, maintenance, tobacco, alcohol, gambling, or other personal expenses such as food or clothes. Drugs, alcohol, and tobacco products
- Any support or needs that are not agreed as eligible within the assessment or support plan

## 8. Support to manage Direct Payments

People may need information and support to understand what is involved in taking a Direct Payment, their responsibilities and how they set up and manage it. If they have chosen to employ Personal Assistants (PAs) with their Direct Payment, they will need to understand how to fulfil this role as an employer. Getting the right support, advice and information is crucial.

The worker should refer the person taking the Direct Payment to the Direct Payment Support Service (DPSS). This is a free service to everyone using social care, adults, and those with parental responsibility of a child.

Support provided by Direct Payment Support Service:

- Information, advice, signposting, and support hub
- Help and advice on setting up and maintaining the Direct Payment (agency or PAs), including financial records, time sheet recording, budgeting skills
- Recruitment and employment of PAs service
- Peer support

Substantial information is available on the Sheffield City Council website. There are many guides and factsheets co-designed with people with Direct Payments. Workers can provide the link or download documents for people from <https://www.sheffield.gov.uk/social-care/adults/direct-payments-managing-your-care>

The Council website also provides information on employing PAs, including a handbook, information on training and various factsheets on good employment practice: <https://www.sheffield.gov.uk/social-care/adults/employing-a-personal-assistant>

## 9. Offers and request for Direct Payments

### 9.1 Offering Direct Payments

Workers should always offer Direct Payments and prompt people to consider these as an option for meeting their needs when planning their support. This ensures everyone has the choice of as much control over their lives as they want. Direct Payments can pay for all of the support arrangements or part of them. People can have a mixture of both Direct Payments and Council



arranged support, for example a Direct Payment may fund activities or personal care and other support such as short breaks are organised and provided through the Council.

Direct Payments can bring value to anyone's support arrangements so there should be no assumptions made about whether the person may want to explore the option, whatever their age or situation. It is important to give people the option and talk through the support that is available to manage them if they did choose that route.

It's appreciated that for some people, they may not want Direct Payments straight away as they may be in a state of crisis or unable to consider too many options at one time. That does not mean that they can't be discussed again at a later date. Direct Payments must be discussed at each social care review.

We must not force people to take Direct Payments against their will or leave them in a situation where Direct Payments is the only way to receive their care or support.

Similarly, we must not remove or avoid offering Direct Payments because the support provider the person seeks is available as a Council arranged service.

## **9.2 Requests for Direct Payments**

People also have a right to request Direct Payments and providing that they have eligible care and support needs we have to consider the request. In the case of a child then the parent with parental responsibility can make the request or where the adult has not got the mental capacity then a Suitable Person may make the request.

The request must be agreed, unless:

- The person is subject to a requirement, license or order under criminal legislation that requires them to undertake drug or alcohol rehabilitation, behaviour therapy or testing
- They have not the mental capacity to agree to the Direct Payment and there is no Suitable person who can do this for them
- The person is unable to manage the Direct Payment with whatever help or support available to them
- The Direct Payment would be used on care provided by a prohibited named individual
- The person previously had Direct Payments and there is evidence that it was knowingly misused

The worker should consider whether any of these conditions apply before agreeing the Direct Payment. They should also check with the Customer Accounts Team whether the person or Suitable Person has existing debt with the Council and consider whether it is being appropriately dealt with from the person and Suitable Person in terms of genuine query or repayment. People should not be put in position where they are at risk of further financial mis-management or debt burden.

## **10. Consent and mental capacity**

When a person consents to Direct Payments, they are taking on responsibility for obtaining support through their own arrangements, which may involve taking on legal responsibilities, for example, as an employer or by contracting with a provider or agency. They become accountable to the Council for the way in which the money is spent.

A person is assumed to have mental capacity unless there is a reason to believe that their mental capacity requires further exploration. Where a worker has reason to believe a person may not have capacity to consent to Direct Payments, a mental capacity assessment must be completed.

Assessments of capacity must always be made on an individual basis and decision and time specific. The principles of the Mental Capacity Act must be applied. Assumptions should not be made due to the existence of a particular condition.

### **10.1 Adults without mental capacity**

Where a person lacks mental capacity to consent to receive Direct Payments, a best interest decision under the Mental Capacity Act should be made to decide if Direct Payments are the best way to meet their eligible needs.

It is only possible for a person lacking capacity to receive Direct Payments if there is an appropriate and willing 'Suitable Person' to receive Direct Payments on their behalf. This cannot be any Money Management Company as they cannot be the decision maker for the person.

The worker must identify who will take on the role as the Suitable Person. They make decisions and take on the overall responsibility for the Direct Payment on the person's behalf. The worker needs to be satisfied that the Suitable Person meets the same requirements as a person with capacity, as outlined in section 9.2: 'Requests for Direct Payment'. The worker should also be satisfied that the Suitable Person has the best interests of the person lacking capacity at heart and will arrange the support in a way that the person would have wished for. As with a person with capacity, the Suitable Person can have support to take on this role or can choose for a third party nominated agent to take on the day-to-day arrangements or to manage the Direct Payments money. The worker should talk to the Suitable Person about the support they need and should make a referral to the Direct Payment Support Service, if required, and provide the Factsheet 'Support to Manage the Direct Payment'.

Direct Payments can also be requested by an 'Authorised Person' under the Mental Capacity Act to make personal welfare decisions for the adult, i.e. the holder of a lasting power of attorney for health and welfare or a Court appointed deputy for health and welfare.

As with Direct Payments for people with capacity, each of these conditions in section 9.2 must be met in their entirety. Failure to meet any of the conditions would result in the Direct Payment being declined.

### **10.2 Fluctuating Mental Capacity**

Consideration will be given to cases where the person's capacity fluctuates. Decisions about who can take on decision making at this time should be agreed. Pre-agreed decisions and management arrangements by the person, when they have capacity, should be set out and recorded in the support plan. The worker may need to ensure these are put in place when the need arises.

The worker should discuss with the person the option of giving a family member or friend a lasting power of attorney should they lose mental capacity to request Direct Payments at a later date. This person would then become the authorised person under the Mental Capacity Act 2005.

## **11. Ability to manage Direct Payments**

To put Direct Payments in place, the worker must be satisfied that the person can manage them either alone or with support. It does not automatically follow that somebody with the capacity to request Direct Payments will have the ability to manage them.

A person with the ability to manage Direct Payments may choose to manage it themselves, have the assistance of a family member or friend, use the Direct Payment Support Service, or have a combination of all of these. Alternatively, they may decide to appoint a nominated agent to manage the payment and support arrangements on their behalf. In these circumstances the person must remain in control of all the decisions relating to their support.

The nominated agent may be a person or an organisation and there may be a charge for this service. The cost of this service should be included in the Direct Payment and not be a cost that the person incurs. The nominated agent must sign the Direct Payment Agreement form (F8).

Where the person is considered not to have the ability to manage the responsibilities of being an employer of PAs, there needs to be someone identified to take on this role, usually a family member or friend. Money Management Companies identified as a nominated agent **DO NOT** take on the employer role although they may provide payroll services.

Information on how someone is going to manage their Direct Payments must be included in their support plan.

## **12. Calculating the value of Direct Payments**

Direct Payments are based on the cost of meeting the person's assessed need. The subsequent plan should describe how the needs will be met and the well-being and outcomes it aims to achieve.

The support plan or for children and young people, the Direct Payment plan, provides details of support arrangements which enable the Direct Payment to be calculated.

The Direct Payments Calculator must be used for **all** Direct Payment calculations. It allows calculation of all the variety of support costs into one personal budget cost. Using the guidance, the worker can identify which costs are calculated on a week-by-week basis and which are required as an upfront cost. The oncosts of being an employer of PAs are also included and built into the calculator. The calculator can also store additional income information such as Health funding, personal contributions, top ups, Access to Work and Education funding.

The Direct Payment Calculator calculates a weekly amount for the full year's support. The default is 52 weeks however the number of weeks can be altered for support that requires differing weeks. The calculator will still calculate the reduced weeks to a 52-week figure because the Direct Payment is paid over 52-weeks.

Before completing the calculator, workers should have all the costs or rates for all of the planned support, e.g. PA rates of pay, provider costs, payroll cost, money management costs, etc. Support to complete the calculator is available through the Support and Payments team, Tel: 0114 273 5397, option 3, option 3 or email: [DirectPayments.ILFTeam@sheffield.gov.uk](mailto:DirectPayments.ILFTeam@sheffield.gov.uk).

The completed calculation should be stored within documents in Liquid Logic. A copy must be given to the person taking the Direct Payment and to the suitable person and/or nominated agent if this is someone else.

Payments are paid every four weeks, in advance. The usual procedure is for the first payment to include any backdated amount, or any upfront year one payments such as employer liability insurance, etc. Where annual fees are required, these are paid as an upfront payment for year one and then split into a weekly amount to build up in the account to fund subsequent years.

## **13. Setting up Direct Payments**

The person must open a separate bank specifically to receive their Direct Payment. This is used solely for their Direct Payments and other funding such as Health funding, Access to Work, etc. It must not be used for personal monies. Any assessed personal contributions should also be paid into this dedicated bank account. If the payments are to meet the needs of a disabled child, the

account should be opened in the name of the person with parental responsibility who will be managing the payments.

The full flowchart and step-by-step guide to setting up Direct Payments must be followed.

### 13.1 The Direct Payments Agreement (F8)

The Direct Payments Agreement (F8) form sets out the terms and conditions of use expected by the Council. These conditions are informed by the Council's statutory duties within social care and the use of public funds. The person, their suitable person or nominated agent where relevant, must understand and agree to them. All parties must sign the same agreement- one copy needs to be sent to all parties.

An original signed form must be completed, received, and uploaded onto Liquid Logic before the Direct Payment can be approved and put into payment.

### 13.2 Completing the Care Package Line Item (CPLI)

Once the plan has been completed and the costs calculated through the Direct Payment Calculator, the Direct payment must then be set up.

In Adult Services the worker, or in CYPS the Direct Payment Officer, must complete the CPLI within Liquid Logic. They must document the different elements of the Direct Payments. This confirms budget commitment from the Council and must match the Care and Support Plan so it can be authorised and signed off by the responsible budget holder. A video guide showing examples on how to complete the CPLI can be found on GoLearn.

Types of Direct Payments options on Adult Liquid Logic include:

- **One-off Setup Payment** – Full year 1 fees that are required upfront. E.g. Money Management fees, Employers Liability Insurance, Payroll, Pension set up. These payments are **Non-Chargeable**
- **One-off Equipment Purchases - OT Assessed** – Single purchase of equipment which has been assessed by an occupational therapist, as an alternative to traditional social care and support. **Non-Chargeable**
- **One-off Equipment Purchases - Non-OT Assessed** - Single purchase of equipment which has not been assessed by an occupational therapist, as an alternative to traditional social care and support.
- **Ongoing Weekly Direct Payments** – This is added as weekly payment, paid in advance, every 4 weeks.
- **Contingency Payments** – this is an agreed amount of funding to use for temporary increases or changes and added as an Intermittent payment which, once agreed, can be released on request.
- **Carers** – A Direct Payment in their own right to support them to meet their needs as a carer. **Non-chargeable**
- **Personal Health Budget (PHB)** – a budget for the person's health needs. The Council administer PHBs on behalf of Health and recharge for this. **Non-chargeable**

Once the CPLIs are authorised, the Support and Payments Team receive a notification. The Direct Payment request will be checked against the Care and Support Plan to ensure the completed and signed Direct Payment Agreement (F8) is in place and the payment recorded matches the support plan. Any errors mean the Direct Payment cannot go into payment; therefore, a notification will be sent to the inputting worker or the duty tray for allocation via LAS with advice to correct the details. It is vital that the errors are addressed and amended in a timely manner to prevent delay, otherwise the support is at risk of breaking down if the money is not available to pay wages or invoices.

The Support & Payments Team write to the person and any nominated agent on the day the payment starts. It informs them when their Direct Payments will be made and how much they can expect.

The Support and Payments Team must be notified, in writing, if there are any changes to the person's name, address and bank details or to whom the money is paid. A new F8 containing the updated information must be completed.

## **14. Employing Personal Assistants (PAs)**

Direct Payments give individuals flexibility and choice about who provides their support, and they may choose to employ their own PAs. Employing Personal Assistants (PAs) is the best option for people who prefer more flexible and tailor-made care and support.

People are in control with PAs as they directly instruct them to carry out the tasks that they require assistance with. Choosing PAs is very empowering for many people, and yet it can be challenging. PAs have employment rights and the person, or the suitable person has employment responsibilities. They must fulfil all of the duties under employment law and the HMRC.

Responsibilities include providing terms and conditions of work, contracts, policies, paying wages, statutory entitlements, health and safety, etc. The Council must ensure that people employing PAs have the right support and advice to undertake their responsibilities and have correct money to meet their employment costs.

The Direct Payment Support Services provide advice and support to people to help recruit PAs and they or person's chosen payroll service will advise and assist with all HMRC duties.

The person or their Suitable Person can employ workers of their choice, providing the prospective PA is eligible to work in the UK and do not live in the same household as the person they are supporting.

The Suitable or Nominated Person cannot be employed or paid as a Personal Assistant. The Suitable Person takes over responsibility for decisions on support arrangements, the funding, the quality and appropriateness of the support and often is the employer. There would be a direct conflict of interest if this person were also getting paid to provide the care and support.

### **14.1 Employment Costs**

The Council has a duty to ensure that when employing PAs, the person taking the Direct Payment has sufficient funds to employ their staff safely. This means there must be sufficient money to provide a reasonable rate of pay that will secure employment and all the employer oncosts.

The Personal Assistant Rates Decision Making Tool has been designed for people wanting to employ PAs to determine the appropriate pay rate. The tool should be worked through together with the Direct Payment recipient and the allocated worker prior to any recruitment taking place, or where recruitment has been attempted several times but been unsuccessful. The worker and person employing the PAs should consider all the questions determining the most appropriate answers. When scoring the questions consider the experience, skill, or responsibility the PA is required to have. It is not a review of the needs of the person as this has been done as part of the assessment. The tool will then provide a rate of pay banding level which should be used as the rate of pay. A copy of the tool must be given to the person / employer and a copy stored in Liquid Logic.

The employment oncosts that must be included are employer's national insurance, 5.6 weeks annual leave cover, PA pension, pension set-up and ongoing pension management costs, payroll fees, and employers liability insurance (enhanced rate recommended), there is a factsheet on ELI on <https://www.sheffield.gov.uk/social-care/adults/employing-a-personal-assistant>.

In addition, it is possible to pay bank holiday enhancements, costs for training when there are other funding options such as Skills for Care or in-house training, see further information on training here: <https://www.sheffield.gov.uk/social-care/adults/employing-a-personal-assistant>

The Direct Payment Calculator must be used to calculate all of the pay rate costs and oncosts. Please see section 12 'Calculating the Direct Payment'.

## **14.2 Working Hours**

Employers can decide the number of hours they want their PAs to work so that it fits around their needs and life. That said there are rules from employment law with the 'working time directive' it determines that workers cannot work more than 48 hours a week on average, normally averaged over 17 weeks. Workers can choose to work more by opting out of the 48-hour week. For under 18s, they cannot work more than 8 hours a day or 40 hours a week. These rules are to protect everyone's health, safety and wellbeing.

The Directive also rules that during a working day there should be a 20-minute rest break for those working more than 6-hours a day (going up to 40-minutes for 12 hours), between working days there should be either 11-hours rest between finishing work and starting work, and between working weeks either 24-hours every week (7 days) or 48-hours every 2 weeks (14 days).

Workers are also entitled to 5.6 weeks annual leave a year which they must take and not get payment in lieu of. This is for employers and their PAs to manage.

The worker should help the person think about how they can manage these responsibilities. For anyone who requires support every day they should consider employing more than one PA or for smaller support arrangements have some informal support or provider support that enables the PA to have their day off.

## **14.3 Disclosure and Barring Service Checks**

Disclosure and Barring Service (DBS) checks need to be completed on any PAs when there are children and young people under 18 years living in the same household or having regular unsupervised contact with the person taking Direct Payments. In these circumstances the Council is responsible for paying for and undertaking the check. Where the Council has undertaken the check, it must make the decision on whether the PA is suitable. The worker should include the prospective employer as much as possible in the decisions making.

If there is disagreement, the decision can be discussed at the Complex Direct Payment Forum. When the decision is made that the PA is unsuitable and cannot be employed, the worker must advise the employer and support them to get employment advice on withdrawing the job offer or ending any employment. It is vital that the worker checks that the PA does not work for any other person in the household. If they find that this is the case, they must notify the other allocated worker, team, or service immediately; working together to ensure that the PA ceases work with all members of the household in joined up approach.

For people over the age of 18 years, DBS checks should be promoted. If the person chooses to DBS their PAs, then the Council should pay for these, with costs being included in the Direct Payment Calculator. The Council does not undertake these checks. The person should choose a DBS Umbrella Service to undertake the check. The factsheet identifying DBS umbrella services should be given to the employer, the factsheet is on the Council website:

<https://www.sheffield.gov.uk/social-care/adults/employing-a-personal-assistant>

## **14.2 Employing close relatives**

Direct Payments are underpinned by the values of independence, choice, and control for the individual. Careful consideration has to be given when it is suggested that family members are

employed. The Care Act has specific clear rules around people employing family members that the Council has to follow.

- People can employ family members when they live outside the home of the person using Direct Payments
- There must be exceptional circumstances as to why a family member living in the same household as the person using Direct Payments is employed
- In the case of a child or young person, a Direct Payment cannot be used to pay someone who has parental responsibility

In either circumstance, it is important to consider the impact on the personal relationship of the person and the family member. An employer and employee arrangement will change the relationship and may cause issues around boundaries. A factsheet highlighting the positives and drawbacks should be given to the person and the family member for them to consider, [website link here](#). Workers should advise relatives that they will be entering into a paid employment which may affect benefits.

Regulations exclude Direct Payments being used to pay a close family member living in the same household as the person. Detailed guidance can be found on the [Using Direct Payments to Employ a 'Family Member' Living in the Same Household guidance](#).

In exceptional circumstances, it may be in the best interests of the person. Specific agreement to this must be given in advance by the [Complex Direct Payments Forum](#). They consider the individual circumstances when making these decision. The details of the agreed arrangement should be detailed in the individual's support plan.

The Care Act Regulations make a distinction between 'care' and 'administration / management' of the Direct Payment and allows people to pay a close family member living in the same household to provide management and/or administrative support to the person taking the Direct Payment.

These exclusions should not prevent people employing live-in Personal Assistants where there is contractual rather than personal relationship.

Where a family member acting as the Suitable Person or Nominated Agent cannot be a paid PA. See section 14 'Employing Personal Assistants'.

### **14.3 Redundancy pay**

Like with any employment situation, if the role of the PA is finishing, i.e. there is no longer the need for the role because the person the support is provided to has passed away or has moved into residential care, etc. then the employer of the PAs will have to ensure that any notice pay or redundancy requirements are met. Usually, the payroll company can calculate this and provide the details of any payments due. Redundancy pay depends on the length of service and age of the PA so there is no defined amount. Individual employers should not bear the cost of this from their personal income. Workers should encourage individual employers to take out enhanced ELI, as this usually covers redundancy. When redundancy is due the ELI company should be the first option to fund this. If this option is not available then any unspent remaining money in the Direct Payments account should be used. If there are insufficient funds then a payment from the Council, or other funder, e.g. ICB must fund the costs. The Direct Payment Audit team can assist with this as they close the Direct Payment account. Information on redundancies can be found in the Employing a PA Handbook, page 12: Becoming an Employer, found on the Council website <https://www.sheffield.gov.uk/social-care/adults/employing-a-personal-assistant>,

In some circumstances, where PAs are employed directly by the person, but the person will in future have their same support through a carer provider / care agency, PAs may have rights under TUPE (Transfer of Undertakings of Protected Employment) to be employed by the incoming care



provider. Council staff must not get involved in discussions or arranging this. The employer must get advice from their Employers Liability Company, the Direct Payment Support Service or ACAS.

#### **14.4 Purchasing support from someone who is self-employed**

Direct Payments can be used to purchase support from someone who is self-employed. Whether a PA is considered as self-employed is a decision for the HMRC and not something the person or the worker can decide. They must adhere to HMRC status, rules and regulation : HMRC check-employment-status-tool: <https://www.gov.uk/guidance/check-employment-status-for-tax>. The person using the self-employed PA and the social care worker should have sight of the self-employed status (unique tax reference (UTR) number) and emphasise to the person they are working with that any employment, insurance and tax issues are entirely the responsibility of the self-employed PA.

#### **14.5 Paying for Personal Assistants to assist the person on holiday, either in the UK or Overseas**

PAs offer very personalised support in bespoke ways. It is reasonable that PAs may well be asked by their employer to accompany and provide support during a holiday. This an acceptable practice and the Council should not interfere with this arrangement, however there are considerations to work through to ensure the arrangements are reasonable and equitable.

The worker should advise the person to check their Employers Liability Insurance covers PA employment abroad and the proposed destination.

All the same Direct Payment and employment duties remain in place and must be met. Paying personal contributions must continue and records of spending for wages, expenses or invoices / receipts of any support or care provided should be kept. Employment duties like adequate breaks, time off or working time directive waivers, if required, should be in place. Some employers may agree a differing 'block / day pay' arrangement with their PA which may be at a different rate to the usual rate of pay. This could be mutually benefitting to both parties as it may encourage the PA to take the trip but be less financially burdensome on the employer. The pay offered must at least cover the minimum wage equivalent of the hours worked. Employers may want to cap or set an amount for food allowances, for example £5.00 lunch, £15.00 evening meal. The value should reflect the costs for the destination.

It is reasonable to consider if the person needs the same level of support or whether additional support is required. Additional support maybe needed as other unpaid support may not be available or unfamiliar surroundings may mean that usual tasks take a little longer. Just because the PA may be away 24/7 does not mean that they should paid for 24-hour covered. Support should match the level of eligible support needs the assessment identified. It may be appropriate for the Council to cover the costs of expenses for the PA, if so, expenses should be a reasonable value, i.e. budget or standard fares or room rates. First class or business cost would not be considered as reasonable rate. The Top Ups on Direct Payments and Reasonable Preference guidance will assist you to consider if paying expenses is appropriate. In line with the Care Act 2004, the decision must be on individual circumstances and not a blanket rule for all.

If the PA is accompanying the person on purely a work-basis, i.e. they would not have been taking the trip on any type of personal level, then it is reasonable to cover expenses such as travel, accommodation or meal allowances. If the person being paid as the PA would have taken the trip regardless of providing support, for e.g., a family member would have travelled with the person or to the destination anyway, then costs or expenses will not be paid.

When travelling overseas or outside of the UK then the trip should be no longer than 4 consecutive weeks in any individual period. Trips longer than this has an impact on benefits and therefore subsequent financial contributions. People wanting to travel longer than 4-weeks must seek a decision on extending the trip prior to leaving. The worker should ensure the person is informed



about the impact on benefits and submit a referral to the Complex Direct Payment Forum to consider whether to continue to pay for the social care support.

People should be encouraged to manage any costs within their personal budget however if this is not possible then the 'Top Ups on Direct Payments and Reasonable Preference Guidance' should be used to determine if paying further costs is reasonable. If extra costs have been agreed then the Direct Payment calculator should be used to calculate the costs and a CPLI added for the value with the start and end date. If travel with PAs is known about at the support planning stage then the costs can be included in the regular payment.

### **15.6 PA sleep-in rates of pay**

For details of the in-year sleep-in rate and the method for increasing this for children, see here

Due to changes in employment legislation, Sheffield City Council has taken the decision to introduce a fixed rate of pay for 8-hour sleep-in shift for PAs. Sleep-ins are defined as workers who are required to sleep at the residence overnight with the possibility of waking to provide care up to three times a night or up to an hour's worth of support. For PAs who are required to work more than this, it becomes a 'waking night' and workers should be paid an hourly rate determined by the PA Rates Decision Making Tool. To maximise the control the employer has, then they can determine the times of when the 8-hour shift commences. This ensures that the timings of the sleep-in are made around the person's lifestyle choices. For example someone may want to sleep between 10pm – 6am whereas someone else may go to bed at 11pm – 7pm. These are examples and if people sleep for longer the hours of the sleep-in shift can be lengthened but the rate would not change as the person is still sleeping.

For sleep-in rates that are paid for children, it maybe necessary to increase the sleep-in time above 8 hours. If this is required the sleep-in rate can be increased by a fixed rate for each extra hour. This must not be perceived as an hourly rate, it is a simple way to proportionally adjust the rate.

At the time of a person's review, anyone currently being paid hourly rates for sleep-ins can be changed to a sleep-in rate. This should be calculated at the current value of the hourly rate total. This is because the person has employment obligations to their PAs and changes to their working conditions need to be considered. The risk of the support breaking down needs to be minimised. People should be advised to get support from the Direct Payment Support Service or their ELI company to help them with any contract changes. Over time the sleep-in rate will fall into line with the Council offer.

### **15.7 Personal Protection Equipment (PPE) for Personal Assistants**

If the PAs providing personal care support as part of their job, then the employer must provide them with protective wear like gloves, aprons, etc. Where the PAs are directly employed by the person taking Direct Payments then this needs to be included in the Direct Payment budget and included in the Direct Payment Calculator. That is because the Council has to ensure that any PA employer has all they need to meet their employment responsibilities, and this would form part of the employer's health and safety responsibilities. In terms of calculating a costs, these can be looked up on the internet and then determine roughly how much someone would need per week.

Where support is provided through a care provider or self-employed worker then they should provide all the appropriate PPE, not the person receiving the support.

See and share Preventing Infection Factsheet on the Council website

[https://www.sheffield.gov.uk/sites/default/files/2023-01/preventing\\_infection\\_factsheet\\_1.00\\_final.docx](https://www.sheffield.gov.uk/sites/default/files/2023-01/preventing_infection_factsheet_1.00_final.docx) to understand what PPE is needed.

## 15. Contracting a Provider or Care Agency

Where Direct Payments are used to purchase services from a provider or organisation, the person will be entering into a private contractual arrangement with the company, and it is their responsibility to ensure they are fully aware of any contractual obligations. The provider or organisation will not receive payment or have a contractual relationship from the Council. If support with personal care is being purchased, the provider must be registered with the Care Quality Commission (CQC). See factsheet about 'Arranging support from a provider or agency' on the website.

When the person has chosen Direct Payments, the costs of the provider must not be compared to any Council Frameworks or contracted providers rates, as these rates are competitive block purchase rates. Consideration should be given to the genuine marketplace costs.

Commissioning colleagues are in the process of creating a Market Provider Rates tool listing fees charged by care and support providers, services and agencies that **are not** commissioned by the Council, including details, where available, about the level of support offered. This will help you to make a market comparison against a range of fees typically charged by providers for similar service provision that does not make direct comparisons with commissioned / contracted services, which benefit from economies of scale. The Market Provider Rates Tool is currently under development.

If the worker determines that the specific costs are not reasonable, the Council is not obliged to fund it. The person may wish to negotiate an alternative rate with the provider, or they can top up their Direct Payment budget if the cost exceeds the Council's estimation of reasonable costs to secure it. To determine if the costs are reasonable and a top up is appropriate, the worker must follow the Top-Ups on Direct Payments and Reasonable Preference Guidance to make professional judgements about reasonable costs.

## 16. Reviewing Direct Payments

Initial contact should be made with the person or the Suitable Person within the first six weeks of making the Direct Payment to ensure that they are comfortable with the support arrangements and with how the Direct Payment is working. It should check whether they are experiencing any teething problems, including financial or employment issues, and paying their personal contribution. This initial review should be light touch. The worker should provide any necessary information, advice or support or refer to the Direct Payment Support Service.

Following the initial review, if the Direct Payment is deemed to be meeting the person's outcomes identified in the care and support plan, the Council will review the Direct Payments arrangements within six months following the start of the package, and thereafter every 12 months, unless the Council is required to review following a request from the person or their nominated/suitable person or where the Council considers it necessary due to a change in the person's needs or circumstance.

Direct Payments Reviews should be held in accordance with the relevant procedures for both Adults and Children and Young Peoples' services and are required to be undertaken in the same way as for those receiving council-commissioned services.

The review should include a supportive conversation and discussion with the person, or any suitable person and nominated agent. It should focus on how well the support arrangement are working and make sure the agreed outcomes are being achieved, and if any changes are needed. If the person/suitable person is struggling to understand their responsibilities in managing the Direct Payment, for example maintaining a Direct Payment bank account or keeping appropriate records, then the worker should refer them to the Direct Payments Support Service for further support.

During the review, workers should consider the arrangements for how the support or Direct Payment is arranged, specifically if there are questions over the person's mental capacity to make decisions about their support. As decisions about mental capacity are subject and time specific a mental capacity assessment may be needed to see if the person can still make decisions around their care and how it is managed. The worker should undertake any best interest decisions and changes to the support if needed.

Prior to the review the worker must contact the Direct Payment Audit Team to determine if monitoring was completed and if there have been any issues that need to be discussed or addressed.

Dependent on the outcome of the review, the support level may change, and the Direct Payment could be increased, decreased, suspended, or ended. The person must always be kept informed of any proposed changes. The worker cannot make immediate changes as they need to consider the implications for the person in terms of employment responsibilities or contractual arrangements with providers.

The outcome of any review must be confirmed in writing by the worker.

## **17. Annual Increases**

To make certain that people taking Direct Payments have as much autonomy and control as possible over their support arrangement and Direct Payments the Council automatically apply an annual increase in April. The value of the increase is determined by the Direct Payment and Finance Services reviewing the market, CPI changes and considering the National Living Wage. The percentage increase agreed are ratified and approved by the Finance and Resource, and the Policy Committees.

When the annual increase is approved, letters are sent by the Direct Payment Service to all Direct Payment recipients and any nominated contacts identified in the F8 form including Money Management Companies and to all known providers. People are advised that they can manage the adjustment to their personal budget as they want to as this increase is applied to the Direct Payment and not for particular services. The person has a choice whether to increase the rates.

The increase is automatically applied to all weekly Direct Payments CPLIs through Liquid Logic. The Integrated Care Board agree the same increases for joint packages of care and PHBs.

If any providers increase their rates higher than the annual increase provided by the Council, the person must negotiate directly with the provider as the contract is between them. The person has the responsibility to negotiate with their provider, choose to either adjust their support in order to remain within their budget, top up the budget with their own money or look to use another provider that is affordable.

Workers must only consider looking at increasing the Direct Payment above the new increased amount if the person is at risk because any other option would be detrimental to the person and their support arrangements. If a further increase adjustment is agreed, a new review needs to be completed with relevant new CPLIs so that the payments is changed.

As the increase is applied automatically in Liquid Logic payments system, it does not automatically change the costs detailed on the support plan. If a worker wants to know the updated cost of weekly Direct Payments, they need to look at the Purchase Plan. If a person requests updated support plans, then a new support plan will have to be created in the system which will pull in the costs of the CPLIs which can then be printed.

If a worker needs to make a change to the support or to the CPLIs they should always make sure they are using the correct latest costs or rates. It is best to avoid calculating any changes using the previous year's funding.

## **18. Financial Monitoring of Direct Payments**

The Council has a responsibility to ensure that public money is spent and accounted for appropriately. There is a statutory requirement to monitor Direct Payments every year. These checks ensure that the Direct Payment has been spent on items to meet the outcomes identified in the support plan. There is also a check to make sure the person has paid their personal contribution. Direct Payments monitoring is undertaken by the Direct Payments Audit Team.

People taking Direct Payments have a responsibility to comply with the Council's Direct Payments monitoring process, set out in the Direct Payment terms and conditions (F8) however, they can delegate this to their nominated agent. Where the nominated agent is a Money Management Company this responsibility automatically falls on them.

Monitoring is usually completed once a year. For a person newly starting Direct Payments, the Audit Team arrange a check-in call with person or nominated agent after 3 months. This check-in call is a chance where advice or support about Direct Payments can be given, how to maintain record keeping and ensures the person understands what is expected from them while they receive the Direct Payment. The check-in aims to offer reassurance and support to people while also enabling the Audit Team to pick up and address issues quickly before things go wrong. For e.g. non-payment of personal contributions or overspending of the budget.

People can submit their Direct Payments monitoring through submitting bank statements, with further relevant information attached, if needed, or by completing Direct Payment monitoring forms (bank statements may be requested for further clarity). Monitoring information can be provided via email or by post. To comply with GDPR data protection laws, employers or PAs must protect information about their PAs, particularly information that can identify them, such as names of PAs linked to their bank details on the Direct Payment bank statement. The person completing the monitoring should blank out the names of PAs and their personal bank details.

The person, suitable person or nominated agent must keep all documents and records relating to their Direct Payment spending, including copies of bank statements, invoices, receipts, timesheets, payslips. The person must keep this information for three years (HMRC information for five years). The Council reserves the right to request to see this information at any time during this period.

As part of the monitoring process the Direct Payment Audit Team aims to deal with any concerns or issues highlighted. However, where there are issues such as insufficient funding available, possible increased needs or continued non-compliance to fix issues the allocated worker will be contacted to assist with resolving the issues. Where the person has no allocated worker, the Direct Payment Review Team or Direct Payment social worker will assist.

### **18.1 Reclaiming Unspent Direct Payments**

The person may use their Direct Payment flexibly as long as they continue to meet the outcomes and needs agreed in their support plan. The person can flexibly use their support each week or month as long as they stay within their personal budget. Focusing the spending on outcomes and needs rather than individual tasks and activities, gives people the flexibility and freedom to use their personal budget as they need to.

Given that the support a person uses can alter, a build-up of unspent funds may accumulate in the Direct Payment account. This is defined as Unspent Direct Payment money. During the monitoring process the Audit Team identifies if there is any unspent Direct Payment money in the account.

As a rule, the person may hold up to four weeks' worth of their regular Direct Payment money in the account and any money that is being budgeted towards future support plans, outstanding invoices and any funds that building towards the next year's fees.

If it is determined that the balance in the account is more than that detailed above, the Direct Payment audit officer will contact the person to check that there is no further planned spending that has not already been identified. Once the amount of unspent money has been confirmed, an invoice will be raised to return this money to the Council.

The person must then pay the invoice or evidence why any further balance is required. At this point, an adjustment may be made. Any non-payment of invoices will be managed through debt recovery.

## **18.2 Inappropriate use or Misuse of the Direct Payment**

There are several reasons why a Direct Payment may have been inappropriately used. It could be a gap in understanding or knowledge about how Direct Payments work and the responsibilities of having one. There may have been a lack of information provided on what support was agreed, the money provided or on the personal contribution due. There are also circumstances where the person arranging or providing the support has taken advantage of the Direct Payment recipient and they are unaware of any wrongdoing. This scenario should evoke a safeguarding referral.

It is important to try to avoid misunderstandings by making sure the person has as much information as possible and the right level of support and advice to manage their Direct Payment well.

Unfortunately, in some situations, a person has intended to misuse the Direct Payment. In these situations where it is suspected that the Direct Payment has been inappropriately used or the Direct Payment Agreement has been breached, the Direct Payment Audit Team will review all receipts, invoices, payslips and bank statements. A discussion will be held with the person, any suitable or nominated person and the appropriate social care worker to review the situation and discuss how the Direct Payment is used. If necessary, a full review may be required.

The aim of the full review is to determine what has happened, whether people understood their responsibilities or whether the actions to misuse the money were intentional or not. Once an outcome has been determined the findings will help establish the next steps and a decision will be made as to whether the Direct Payment continues and what money needs to be repaid back into the Direct Payment account, if necessary, an invoice will be raised to recovery this misused monies.

If the misuse is due to a lack of knowledge, understanding or a genuine mistake has been made it may be appropriate for the Direct Payment to continue but to further support will be provided to give advice to ensure the situation does not repeat. This could be through providing links to factsheets or information, referral to the Direct Payment Support Service or arranging money management support.

If it is unclear whether there was intentional misuse, or misuse has taken place, but stopping the Direct Payment may cause significant risk to the person, a referral to the Adult Care & Wellbeing Complex Debt Panel should be made to discuss the situation and determine if the Direct Payment should continue and any safeguards required.

Ultimately the outcome may be that the Direct Payment should cease. In this circumstance, the Council still has a duty to meet the person's eligible needs through a council arranged service.

Any debts, fees or compensation owed due to intentional misuse of the Direct Payment, or non-payment of any personal contribution due is the person's responsibility to pay. Supporting People to Manage their Personal Contributions guidance will help determine whether misuse was intentional or not.

## **19. Contingency arrangements**

A person should be encouraged to plan arrangements for when their support may temporarily change or breakdown. Contingencies are temporary support arrangements and must be included as part of the support plan. Details of the arrangements with all costs should be outlined. Contingencies may arise when PAs are ill, the informal support arrangements breakdown temporarily, etc. Contingency solutions may include calling on other PAs, family or friends or care agencies. Not all contingency arrangements will have a cost attached to them as support may be covered by informal support.

It is important to establish who is going to put the contingency arrangements in place. Workers should encourage the person or their suitable person to take responsibility for this as part of the overall day-to-day responsibilities of having the Direct Payment.

Contingencies are highlighted in the plan but are not included in the weekly payment. The agreed contingency amount is set up as intermittent CPLI payments and only released on request when needed. The person can do this by request from the Support and Payments team, contact email: [directpayments.ilfteam@sheffield.gov.uk](mailto:directpayments.ilfteam@sheffield.gov.uk), or call: 0114 273 5397, option 3, option 3. The contingency amount will be paid to the person within ten working days of the request.

If the contingency plans fail, the Council has a duty to make sure the needs are met and therefore emergency cover needs to be organised by the duty worker.

## **20. Hospital stays**

When a Direct Payment recipient goes into hospital this does not mean their existing Direct Payments personal budget should stop.

The Council recognises that terminating Direct Payments for someone who employs PAs or using a provider privately may lead to care or support not being available when they are discharged home from hospital.

The PAs can continue to support the person with social care tasks while the Direct Payment recipient is in hospital. They might continue working all the regular hours or part of the hours. This is permitted if it is not interfering with medical treatment.

If the Direct Payment recipient does not require any or all the hours that they contract the PAs for, they might choose to pay a retainer. A retainer is a set amount of money paid regardless of whether the work is done. It enables employers to secure PA income and encourages them stay in the job. This stabilises the care and support arrangements for when the person returns home. A retainer is usually less than the usual pay, such as 75% or 50 %, agreed for a fixed period, for example two weeks.

Further information and a detailed checklist is available for the worker to go through when someone taking Direct Payments is in hospital: Direct Payments and Hospital Admissions – Checklist for Workers.

## **21. Ending, Changing or Suspending Direct Payments**

### **21.1 Closing Direct Payments**

These are the main reasons that a Direct Payment may stop:

- The person taking the Direct Payment chooses to end this arrangement
- The person passes away
- The person moves to full council arranged services, such as residential care

- The Council withdraws its offer to the person due a breach of the terms and conditions or where the conditions in sections 31 or 32 of the Care Act are no longer met
- The responsibility for meeting the person's needs is taken over by another body, such as Health

The Council should take all reasonable steps to address any situations arising without stopping the Direct Payment.

The Council retains the right to end the Direct Payments if any of the terms of the Direct Payments Agreement are not adhered to including when:

- The person no longer has the capacity to make decisions about the care and support arrangements and there is no one else able to take on the suitable person role
- It is clear that the person is no longer capable of managing the Direct Payments on their own or with support
- The person's assessed needs and agreed outcomes are not being met
- The person is not spending the Direct Payments, or any part of the Direct Payments, as agreed in the plan
- The council is not satisfied that the arrangements made by the person are adequate for securing services
- A risk assessment finds that the person is putting themselves at risk of a complaint under employee legislation or the management of the Direct Payment is not legal
- A risk assessment concludes that there is an imbalance in the employer/employee relationship to the detriment of meeting the eligible care needs
- A safeguarding investigation considers that the person is at risk of abuse or has experienced abuse

If ending a Direct Payment, the Council will write to the person, suitable person or nominated agent explaining why the Direct Payment is being ended. The Council will ensure there is no gap in the provision of care and support to the person with eligible needs by providing council arranged services as an alternative.

## 21.2 Ending the CPLI

Any backdated end date will claw money back to that date meaning that the payment may be a huge over or under payment depending on if the costs have gone up or down. This needs to be avoided. The only situation a backdated end date should be used is if a person has died. These packages need to be closed on the date the person died and any adjustments to pay outstanding invoices, wages or costs is managed by the Direct Payment Audit Team. The team also recovers any unspent balance from the Direct Payment account.

## 21.3 Changes to Direct Payment CPLIs

When making a change to an ongoing Direct Payment, the old CPLI must be ended and a new CPLI added for the new provision. The new provision must be completed with a start date of the day after the end date of the old provision. Workers that are making changes to the support or to the CPLIs must use the latest costs or rates and avoid calculating any changes from the old previous year's funding.

Both the closure and replacement in the Purchase Plan need to be sent to the manager for authorisation at the same time. Once the manager has authorised the Support Plan, all Adults Support Plan Service Provisioning tasks in the tray are reassigned to SCAS Support & Payments. Workers must **not** activate or de-activate services. If only the Service Provisioning task is sent to end to the service, it will stop the payment and claw back the money to the end date. A gap in payment means the person cannot pay for their support which could lead to a breakdown in support.

When decreases to the Direct Payment are required, workers must discuss with the person and/or nominated agent and explain the reasons why the Direct Payment is reducing and agree the date the change will take place. The end date should be the day the worker completes the CPLI (today) with the start date as the next day (tomorrow). Workers should never backdate changes of funding. Backdating claws back the change in money to the date input. It also adjusts any personal contribution values. This often means that the Direct Payment account can fall into deficit with no money to pay imminent costs. If the person is not aware of when the change takes place, they may continue buying the same support as before and so will still need to pay for it.

When the change is to the recipient of the Direct Payment, for example from the person to a nominated agent, the worker needs to have a conversation between the existing recipient and the new nominated agent to agree a date of the transfer. This allows a smooth transition of when and who pays any invoices. Once agreed, the change to the CPLI needs to happen before the agreed date. The new Direct Payment service should not be backdated. If the changes to the CPLI do not happen in time, a new date needs to be agreed by both parties.

#### **21.4 Temporary Stops / Suspensions**

Direct Payments cannot be temporarily stopped or suspended. They can only be ended and a new one restarted. Workers wanting to make a short-term end need to follow sections '21.2 – Ending a CPLI' and '21.3 – Changes to Direct Payments CPLIs'.

If the Direct Payment has been stopped for eight weeks or more then, a newly completed and fully signed Direct Payment Agreement (F8) is required. As with new Direct Payments, the Support and Payments team will check the information and documents are correct and in place before making the payment live.

## **22. Personal Financial Contributions**

As Direct Payments are an alternative way to receive social care support, they are subject to the Fairer Contributions Policy: <https://www.sheffield.gov.uk/social-care/cost-of-care>. It is the worker's responsibility to inform the person that they may be asked to make a financial contribution towards the support they receive and provide details of the maximum amount this could be.

Following receipt of an F1a form from the worker, the Funding Team will arrange a financial assessment. Once calculated they notify the person, and if relevant the suitable person or nominated agent, of their contribution towards the cost.

Where a person receives their entire personal budget via Direct Payments, the assessed contribution amount is deducted from the Direct Payment amount which means the Direct Payment is paid net (minus) of the contribution amount.

Where a person receives part of their personal budget via a Direct Payment as well as a council arranged support, the total personal contribution for both services will usually be deducted from the Direct Payment, however, by arrangement, it can also be invoiced for by the Council. Again, the Funding team will inform the person, and if relevant the suitable person or nominated agent, how much their contribution is and how it will be paid.

A person is advised to pay their contribution into their Direct Payment account to ensure there are sufficient funds to pay for their support or make a payment arrangement to the nominated agent if it is a Money Management Company.

The Direct Payment can start before the financial assessment has been finalised. In this instance, once the assessed contribution is known, the person will be invoiced for any contributions owed and all future contributions will be deducted from the Direct Payment.

Whilst the person is in council arranged respite, they should contribute towards the cost of their residential stay rather than pay their normal contribution into their Direct Payment account. The



Customer Accounts Team inform individuals of this and arrange for the contribution to be made to the service providing respite.

Support and services, including Direct Payments provided to children, young people or for adults in receipt of section 117 (aftercare) of the Mental Health Act are free of charge.

### **22.1 Personal contributions for people in hospital**

When Direct Payments are made to a person in hospital their contribution continues, however the benefits that some people receive may be affected during the hospital stay. This could affect the amount they can afford to contribute towards their support. If the person wishes to be financially reassessed to see if the amount they can afford to contribute has reduced, they can request a financial re-assessment from the Funding Team. The team will conduct a re-assessment and amend the contribution as appropriate.

People who request a re-assessment must inform the Funding Team once they are discharged from hospital. Where no notification is received by six weeks after the amendment, the Funding team contact the person. If the person has left hospital the contribution is readjusted again, and the person is invoiced for any money owed. Where the person is still in hospital the adjustment continues.

## **23. Individual Service Funds (ISFs)**

Sheffield Council is developing ISFs which will provide an alternative way for people to take their personal budget.

ISFs allow a personal budget to be managed by a provider on a person's behalf. The provider works with the person to arrange care and support that meets their needs.

The ISF holding provider may provide some of the care and support for the person, however they may also broker and sub-contract with other providers or organisations for other parts of the support arrangements, so the person has more choice and options.

ISFs may suit people who want flexible support without the responsibilities that come with taking a Direct Payment or may be an option for people who cannot have Direct Payments.

### **23.1 Development Pilot**

At the time of writing these procedures, Sheffield Council has established an ISF Project Group to lead the development work. A small pilot of ISFs is underway with people and providers who access Supported Living support through the Council's Adults with a Disability Framework.

The Council is working with providers interested in offering ISFs and adult social care teams to develop ISFs in collaboration and will involve people with lived experience to co-design this personalised approach in Sheffield.

The pilot will enable us to test out ISFs in Sheffield before opening the ISF offer across social care.

## **24. Compliments and Complaints**

If the person is unhappy about a decision or outcome relating to their Direct Payment, they can ask for it to be reviewed through the Council's complaints process.

Adults: <https://www.sheffield.gov.uk/your-city-council/complaints/adults-social-care-services>

Childrens: <https://www.sheffield.gov.uk/your-city-council/complaints/children-social-care-services>



## Appendix 1 - Definitions

Adult without mental capacity	People are always assumed to have capacity until established otherwise. In the context of this procedure, where there is any doubt about an adult's capacity to make decisions about Direct Payments, mental capacity will be assessed in accordance with the Council's Mental Capacity Act policy. An adult will only be deemed to be without capacity when it has been established through a mental capacity assessment that this is the case.
Adult with mental capacity	In the context of this procedure, an adult who has the mental capacity to request decisions about Direct Payments
Authorised person	An authorised person is someone who: <ul style="list-style-type: none"> <li>• is authorised under the Mental Capacity Act 2005 to make decisions about the adult's needs for care and support (i.e. is the holder of a lasting power of attorney given to them by the adult before they lost capacity or a Court appointed deputy), or</li> <li>• where the person is not authorised as mentioned above, a person who is so authorised agrees with the local authority that the person is a suitable person to whom to make direct payments, or</li> <li>• where the person is not authorised as mentioned above and there is no person who is so authorised, the local authority considers that the person is a suitable person to whom to make direct payments.</li> </ul>
Carer	A family member or friend of any age who provides unpaid support to someone who could not manage without this help.
Contingency	Part of the support plan that considers how the person can manage their support in a crisis or an emergency, e.g. if their usual support arrangements break down. The contingency may use informal support or have a value of money attached that the person can draw on when it is needed.
Disclosure and Barring Check / DBS check	Screening through Disclosure and Barring Services to check a person's criminal history and identifies people barred from working with children and vulnerable adults.
Direct Payment Agreement (F8)	The written agreement which sets out the terms and conditions for receiving Direct Payments. It addresses everyone involved responsibilities, including the Council, the Direct Payment recipient or suitable person, or nominated agent for managing the money (if this is in place). All parties must sign the agreement before the Direct Payment can be put in place.
Direct Payment Recipient or Person	The individual that the Direct Payment has been provided to in order to meet their assessed needs. This can be an adult, someone with parental responsibility for a child, a young person between the ages of 16 to 17 or an unpaid carer.
Individual Service Fund or ISF	When a personal budget is managed by a care provider on a person's behalf. The provider works with the person to arrange care and/or support that meets their needs. ISFs may suit people who want flexible support without them taking on the responsibilities that come with managing a Direct Payment.
Managed Account	When the Direct Payment is made to a third party who manages the funds on the person's behalf. This could be an individual or organisation. The person who the Direct Payment is for, or their suitable person remains responsible for how the Direct Payment is used. For

	example, if Direct Payments are used to employ staff, the person is the employer and not the managed account holder.
Money Management Company	A third-party organisation who manages the Direct Payment on behalf a Direct Payment recipient or their suitable person. The Direct Payment and any financial contribution will be held by the money management company is responsible for managing the budget and paying any bills, invoices, wages. They do not have responsibility for oversight, organising and managing the care or support. This duty remains with the Direct Payment recipient or their suitable person
Nominated Agent	A person nominated by an adult with capacity to assist with day-to-day management of the care and support and / or management of Direct Payment funds. The adult with capacity remains responsible and accountable for how Direct Payments are used.
Personal Assistant	A personal assistant works directly with one or more individuals, to support them with various aspects of their daily life so that they can live it in a way they choose.
Personal Budget	The amount of money allocated by Social Care to fund a person's care and support. The personal budget is means-tested and therefore the adult may be required to make a financial contribution towards the total amount of the personal budget.
Personal Health Budget	The amount of money allocated by Integrated Care Services to fund a person's health care.
Review	Review of the support arrangements and Direct Payment to ensure that the person's support continues to meet their outcomes and eligible needs.
Section 117 Aftercare	A range of services or support necessary to meet need arising from a person's mental disorder.
Suitable person	The person identified through best interests to decide if a person who lacks mental capacity, would want a Direct Payment. The suitable person would also be responsible for overseeing and managing the support and Direct Payment decisions. They can nominate a nominated agent to manage the day-to-day arrangement.
Support Plan	The plan identifies how a person's outcomes and needs will be met. It should highlight the outcomes the person wants to achieve and detail how the personal budget / Direct Payment will fund this. For children and young people this is called a Direct Payment plan, for adults a care and support plan and for carers a support plan.
Worker	All staff working in Adult Care and Wellbeing and Children and Young People's Services at Sheffield City Council.

## Appendix 2 - Adults Who Must Not Have Direct Payments – Rehabilitation and Licence Orders

### (Taken from the Care and Support (Direct Payments) Regulations 2014 – Regulation 2)

Direct payments may not be used to meet the needs of people who are:

- a) **subject to a drug rehabilitation requirement**, as defined by section 209 (drug rehabilitation requirement) of the Criminal Justice Act 2003 (“the 2003 Act”), specified in a community order (as defined by section 177 (community orders) of that Act, or a suspended sentence order (as defined by section 189 of that Act);
- b) **subject to an alcohol treatment requirement**, as defined by section 212 of the Criminal Justice Act 2003, specified in a community order (as defined by section 177 of that Act), or a suspended sentence order (as defined by section 189 of that Act);
- c) **released from prison on licence:**
  - i) under Chapter 6 of Part 12 (sentencing: release, licenses and recall) of the 2003 Act or chapter 2 of Part 2 (effect of custodial sentences: life sentences) of the Crime (Sentences) Act 1997 (“the 1997 Act”), subject to a non-standard licence **condition requiring the offender to undertake offending behaviour work to address drug or alcohol related behaviour**; or
  - ii) **subject to a drug testing requirement under** section 64 (as amended by the Offender Rehabilitation Act 2014) (release on licence etc: drug testing) **or a drug appointment requirement under** section 64A (release on licence etc: drug appointment) of the Criminal Justice and Courts Services Act 2000;
- d) required to comply with a drug testing or a **drug appointment requirement** specified in a notice given under section 256AA (supervision after end of sentence of prisoners serving less than 2 years) of the 2003 Act;
- e) **required to submit to treatment for their drug or alcohol dependency** by virtue of a community rehabilitation order within the meaning of section 41 of the Powers of Criminal Courts (Sentencing) Act 2000 or a community punishment and rehabilitation order within the meaning of section 51 of that Act;
- f) **subject to a drug treatment and testing order** imposed under section 52 of the Powers of Criminal Courts (Sentencing) Act 2000;
- g) **required to submit to treatment for their drug or alcohol dependency** by virtue of a requirement of a community payback or probation order within the meaning of sections 227 to 230 of the Criminal Procedure (Scotland) Act 1995 or **subject to a drug treatment and testing order** within the meaning of section 234B of that Act; or
- h) released on licence under section 22 or section 26 of the Prisons (Scotland) Act 1989 (release on licence etc) or under section 1 (release of short-term, long-term and life prisoners) or 1AA (release of certain sexual offenders) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 and subject to a condition that they **submit to treatment for their drug or alcohol dependency**.

## Appendix 3 – Customer Journey and Process Maps

All process maps for Direct Payment activities can be found on the Adult Care & Wellbeing Manual.

## **Appendix 4 - Examples**

### **Example 1: Making Direct Payments support accessible**

Abdul is a deafblind man. To communicate he prefers to use Braille, Deafblind Manual, and email. He directly employs several staff through Direct Payments. He receives payroll support from his local Direct Payments support service. Abdul suggested ways to make Direct Payments management accessible to him. He communicates with the support service mainly via email, but they also use Typetalk.

At the end of the month, Abdul emails the support service with details of the hours that his staff have worked. The support service works out any deductions from pay (such as National Insurance and Income Tax) and email him to tell him how much he should pay the staff via cheque. They then send him pay slips to be given to staff. The envelope that the payslips are sent in has two staples in the corner so that he knows who the letter is from. The payslips themselves are labelled in Braille so that he knows which staff to give them to.

Each quarter, the support service tells him how much he needs to pay on behalf of his employees in National Insurance and Income Tax. The service also fills in quarterly Inland Revenue paperwork. At the end of the year, the support service sends relevant information to the council, so that they are aware of how the Direct Payments are being spent.

Abdul has taken on only some of the responsibilities of employing people; he has delegated some tasks to the support service. Control still remains with Abdul and confidentiality is maintained by using accessible labelling. In terms of the wellbeing principle, the local authority has promoted Abdul's control over his day-to-day life.

### **Example 2: Direct Payment to pay a family member for administration support**

David has been using Direct Payments to meet his needs for some time and has used private agencies to provide payroll and administration support, funded by a one-off annual payment as part of his personal budget allocation.

David's wife, Gill provides care for him and is increasingly becoming more hands-on in arranging multiple PAs to visit and other administrative tasks as David's care needs have begun to fluctuate.

They jointly approach the local authority to request that Gill undertake the administration support instead of the agency as they want to take complete control of the payment and care arrangements so that they can best meet David's fluctuating needs and ensure that appropriate care is organized.

The local authority considers that Gill would be able to manage this aspect of the payment, and jointly revises the care plan to detail the aspects of the payment, and what services Gill will undertake to the agreement of all concerned. The personal budget is also revised accordingly.

The family now have complete control of the payment, Gill is reimbursed for her time in supporting David with his Direct Payment, and the local authority are able to make a saving in the one-off support allocation as there are no provider overheads to pay. In promoting David's wellbeing, the local authority has demonstrated regard for the balance between promoting an individual's wellbeing and that of people who are involved in caring for them. They have given Gill increased control in a way that David is comfortable with and supports.

### Example 3 – People who live together who choose to pool together some of their Direct Payments

Nine people who live at Stothard Court, a supported living setting where people live in individual flats with some shared communal space, have been working with a social worker to co-produce creative support plans based on their strengths and interests.

The people who live at Stothard Court all have individual Direct Payments packages of support and had no shared support before. Now they pool some of their personal budgets to use for additional activities such as: film nights in community room, growing flowers and vegetables in raised accessible planters, game evenings, crafts and sewing sessions, drumming sessions, chair aerobics etc. They also use the pool budget to go swimming. The additional activities are facilitated by the existing staff who share a range of different interests and skills which have not been tapped into before.

By pooling budgets, they are getting more from their individual budgets, they can spend more time together and are doing activities that keep them active and healthy. If anyone does not want a group activity is able to use their budget to arrange individual support to do what they want to do instead. Each person decides which activity they are interested in, and this is facilitated in smaller or bigger groups depending on how much interest the activity has. For example: three women at Stothard want to create a small walking group to visit local park, three other male tenants want to go to a football match. Some activities such as game nights are joined by most of the tenants.

We started this change from talking to each person individually, finding out about their hobbies and wishes. Stothard staff then spoke to the tenants as a group about the idea of pooling budgets and created a table/matrix of activities people were interested in.

The people who live at Stothard Court and their supported living provider know that their Direct Payments give them more choice and control over how they want to be supported and are able to choose to try out different support and activities that can meet their needs.

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