

Direct Payments Policy

“Helping you to keep your independence and giving you the opportunity to decide how your care is provided.”

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1. DIRECT PAYMENTS OVERVIEW

Direct Payments were introduced in relation to social care services for adults through the Community Care (Direct Payments) Act 1996. This Act was repealed (in relation to England) by the Health and Social Care Act 2001 ('the 2001 Act') and Direct Payments are now governed by the 2001 Act and the Children Act 1989 ('the 1989 Act')

Direct Payments enable people to purchase community care directly rather than receiving services arranged or purchased by the Council.

The Community Care, Services for Carers and Children's Services (Direct Payments) (England) Regulations 2009 (which replaces all previous guidance) make it a duty on social care to offer Direct Payments to the majority of service users who have been assessed as being eligible for a community care service. People eligible for a community care service are those assessed as having needs above the Fair Access to Care Services (FACS) threshold. For detail please see FACS Guidance in our Community Care Handbook at Similar duties extend to children with a disability who are eligible for Children's Services.

The emphasis for Direct Payments is a person centred approach and as such the role of the care manager is of a facilitative nature, helping service users to determine their needs and their desired outcomes whilst working within the Council's guidelines.

Direct Payments should be a fully inclusive scheme, regardless of people's age, gender, ethnic group, religion, particular impairment, personal relationships and living and caring arrangements. They should also be considered for short term, long term, preventative care and rehabilitation support packages.

Telford & Wrekin Council will operate a Direct Payments scheme which incorporates the principles contained in the national guidance as set out in the various sections below. To ensure compliance with the Guidance and Council Policy a separate Direct Payments Procedure for staff guidance has been compiled.

T&W Council's intention is to ensure that every person who is eligible for a Community Care service is offered the opportunity to access relevant services through a Direct Payment if eligible as per the requirement of the Direct Payments Regulations.

The Council will ensure that:

- All service users are informed of their right to be offered a Direct Payment in lieu of the relevant care and support services, thereby empowering them to take more control over their life if they wish to do so.
- All service users are provided with support to reach an informed decision about whether Direct Payments is an option for them and that appropriate support is available should they choose to take up a Direct Payment.
- Appropriate audit arrangements are in place to protect the service user and the Council's interests

The Council recognises that to facilitate the shift towards more people choosing Direct Payments as their favoured method of service delivery we will ensure that:

- Public information about Direct Payments is readily available
- Training for Assessment & Care Management staff to enable them to fully support service users is held on a regular basis
- A specialist Direct Payments Support Scheme is in place to support people to make a decision about receiving a Direct Payment and support those who choose to have a Direct Payment on an ongoing basis
- Procurement and Commissioning strategies support service provision through Direct Payments and Personal Budgets

2. BENEFITS OF DIRECT PAYMENTS

Direct Payments, by their very nature, offer a flexible and creative option for the service user and care manager alike. The collaborative efforts made by all parties at the assessment stage will pay dividends for everyone in the care management stage. Service users can benefit from Direct Payments as they are a flexible way of meeting their assessed needs.

An important point to remember is that Direct Payments money is not new funding, it is a different way of using the same purchasing budget and Direct Payments are a way of re-channelling money to provide a service that enables the service user to have more choice and control.

Building on the success of Direct Payments, the previous and current Government have committed to personal budgets being made available to every adult eligible for social care services. A personal budget is the amount of money that a Council decides is necessary to spend in order to meet an individual's needs and Direct Payments are one way in which the person can choose to use that money in order to meet those needs. Not all people will want to exercise the level of choice and control that receiving a Direct Payment gives them, but the principles that apply to Direct Payments should extend to all people whichever method they choose to direct their personal budget.

Clearly the principle underpinning Direct Payments is that the individual should be free to choose how to use their Direct Payment as long as it is used in a way that meets their eligible needs. However a person does not have to accept Direct Payments and may direct the Council to meet their eligible needs in more traditional ways such as the Council providing or arranging services.

3. WHO CAN RECEIVE A DIRECT PAYMENT – DUTY TO OFFER DIRECT PAYMENTS

Each eligible individual should be offered the choice of having their needs for a service met through Direct Payments rather than through services provided or arranged by the council as part of the support planning process.

If individuals wish, the council can arrange mixed packages with some directly provided services and direct payments for other needs. Most people in receipt of social services from the council are eligible for a Direct Payment.

The council has a duty to offer direct payments to the following groups of people who have eligible needs:

- a) Older people and young adults, including disabled children aged 16 or 17, provided that the person is able to consent to the making of the payments either to themselves or to their nominee.
- b) An “appointed suitable person” where the person with eligible needs does not have the capacity to consent to the making of direct payments, the payments can be made to an appointed suitable person who will manage the payments on their behalf.
- c) A person with parental responsibility for a disabled child aged under 16 or a disabled person with parental responsibility for a child under 16,
- d) Direct Payments can also be made to carers, aged 16 and over to allow them to purchase the services they are assessed as needing **as carers** to support them in their caring role for someone over 18 and to maintain their own health and well-being

Direct Payments will only be continued to be paid to people whilst they are ordinarily resident in the Borough. Arrangements can be made within the scheme which do allow Direct Payments recipients to take holidays outside the Borough (both within the United Kingdom and abroad) subject to the timeframes set out.

4. POWER TO MAKE DIRECT PAYMENTS

The 2009 Regulations give councils a power (but not a duty) to make Direct Payments where someone has been conditionally discharged from hospital under the Mental Health Act 1983 or section 193(7) of the Mental Health (Care and Treatment) (Scotland) Act 2003.

Where someone is compelled to receive a service as a result of any of the following legislative provisions relating to mental disorder, councils have a power (but not a duty) to make direct payments to them in respect of that service. The provisions in question are:

- a) supervised community treatment, guardianship or on leave of absence from a hospital in which they are detained under the Mental Health Act;
- b) the supervision of a Social Worker or the Probation Service as a result of a supervision order made under the Criminal Procedure (Insanity) Act 1964;
- c) an offender released on licence under the Criminal Justice Act 1991, which includes a requirement to accept treatment for a mental health condition;

- d) an offender on a community rehabilitation order under the Powers of Criminal Courts (Sentencing) Act 2000, which includes a requirement to accept treatment for a mental health condition
- e) an offender on a community order or serving a suspended prison sentence under the Criminal Justice Act 2003, which includes a requirement to accept treatment for a mental health condition

Where a relevant service is one that has not been imposed by a condition under any of the above provisions, councils have a duty to make Direct Payments to the person concerned to meet their needs for that service.

5. WHO CANNOT RECEIVE A DIRECT PAYMENT

Direct Payments may not be made in respect of certain people who have been placed under certain conditions or requirements by the courts in relation to drug and/or alcohol dependencies, as listed below:

- a) offenders on a community order, or serving a suspended prison sentence, under the Criminal Justice Act 2003, which includes a requirement to accept treatment for drug or alcohol dependency
- b) an offender on a community rehabilitation order or a community punishment and rehabilitation order under the Powers of Criminal Courts (Sentencing) Act 2000, which includes a requirement to accept treatment for drug or alcohol dependency
- c) offenders released from prison on licence under the Criminal Justice Act 1991, the Criminal Justice Act 2003 or the Crime (Sentences) Act 1997 subject to an additional requirement to undergo treatment for drug or alcohol dependency

6. DIRECT PAYMENTS FOR ADULTS LACKING CAPACITY TO CONSENT

The Health and Social Care Act 2008 made amendments to the Health and Social Care Act 2001 to extend the possibility of Direct Payments to adults who lack the capacity to consent to receive them, where it is in their best interests, enabling them to benefit from the flexibilities that Direct Payments offer.

People benefiting from this extension of the Direct Payment scheme may include, for example, some adults with head injuries and some people with dementia. In addition, severely disabled children moving into adulthood, who would previously have lost the Direct Payments they received as a child, can now continue to receive them on reaching the age of 18

7. SUITABLE ADULT

Direct Payments can now be made to a suitable person who receives and manages the payments on behalf of the person who lacks capacity. With certain exceptions, councils now have a duty to make Direct Payments in respect of a person lacking capacity, provided that there is a willing suitable person who meets all the conditions set out in the Regulations.

Someone cannot just decide to be a suitable person in order to receive Direct Payments on behalf of another person. In most cases, the suitable person will be a family member or a close friend already involved in the provision of care for the person concerned. However, whatever the relationship of the proposed suitable person to the individual requiring care, the council must still follow the process set out in the 2009 Regulations, to ensure that the best interests of the person lacking capacity are prioritised above all other considerations.

A suitable person is a person appointed to manage the Direct Payment on behalf of someone who lacks capacity to consent to making the Direct Payment. The suitable person will often but not always have Lasting Power of Attorney or have been appointed by the Court of Protection as a deputy under the Mental Capacity Act 2005

- a) Usually a suitable person will be a family member or friend who may previously have been involved in the care of the person eligible for services.
- b) Before appointing a suitable person the following information must be sought:
 - Has the person been given Lasting Power of Attorney by the person needing services at some point before they lost capacity
 - Has the person been appointed a deputy for the person needing a service by the Court of Protection under section 16 of the Mental Capacity Act 2005

A representative, by virtue of the powers already given to them to manage the affairs of the individual should always be the first choice to act as a suitable person. If a representative exists but is unable, unwilling or inappropriate to act as a suitable person another suitable person can be sought.

The care manager must not make any decision about appointing a suitable person until the line manager has agreed that the person is suitable, appropriate checks have been carried out (see check list) and only after consideration has been given to the best interests of the individual.

In all cases where agreement cannot be reached. the final decision will be made by the Direct Payments Panel.

Good practice suggests that a friend, close relative or advocate for the service user spend time initially with the Direct Payment recipient and newly appointed personal assistant or support worker.

8. POWER OF ATTORNEY

Enduring Power of Attorney (EPA) was replaced in the 2005 Mental Capacity Act. Where an EPA only covers property and affairs a Lasting Power of Attorney (LPA) can also cover personal welfare decisions for people who lack capacity to make such decisions for themselves. The donor (the individual) can choose one person or several to make different decisions. As part of an LPA the representative can make a decision on the individual's behalf regarding whether a Direct Payment would be in their best interests. They can receive the Direct Payment on the individual's behalf.

Since the 2005 Act came into force only LPA's can be made. However existing EPA's made before that date will continue to be valid and can still be registered. A person would have made the EPA with the expectation that, if they lost capacity to consent the person appointed as the attorney would lawfully be able to continue to deal with their property and affairs once they lost capacity.

Now that Direct Payments can be made to persons lacking capacity to consent, an attorney under the EPA could potentially act as a suitable person.

9. PEOPLE WHO HAVE NOT SET UP A POWER OF ATTORNEY

If a person has not set up a power of attorney and, to the knowledge of the Council, becomes permanently incapable of managing a Direct Payment, whether alone or with assistance, Social Services are required by the Regulations to terminate the Direct Payments and provide or arrange for the provision of services instead. They can if a person can be identified now also appoint a suitable person,

10. CONSENT – DIRECT PAYMENTS FOR PEOPLE WITH CAPACITY

Consent or willingness to receive a Direct Payment is different from the ability to manage a Direct Payment and should be considered as a separate issue. When making a decision about a service user's ability to consent the following should be considered:

- a) the person's understanding of Direct Payments, including the actions required on their part;
- b) whether the person understands the implications of taking or not taking on Direct Payments;
- c) what help is available to the person;
- d) what kind of support the person might need to achieve their identified outcomes; and
- e) what arrangements the person would need to make to obtain this support
- f) their right to have independent advocacy support

11. WHAT CAN DIRECT PAYMENTS BE USED FOR?

Direct Payments can be used for meeting all assessed eligible needs. Whichever form of support an individual chooses, there should be no difference in the assessment of their needs, although under the 2009 Regulations the council must be

satisfied that the person's eligible needs (see FACS criteria at) can be met by means of Direct Payments and the way they intend to use them.

Care and support plans should be produced that focus on outcomes, rather than specific services.

In the case of services for children in need, the council is required to satisfy itself that the child's welfare will be safeguarded and promoted using Direct Payments

In the case of services for adults, the council will satisfy itself that the adult's welfare will be safeguarded and promoted using Direct Payments

Where the user's needs fluctuate over time, it will be important to discuss in advance how Direct Payments will be used to secure support that varies according to need.

The Council may set reasonable conditions on the Direct Payments, but must bear in mind when doing so that the aim of Direct Payments is to give people more choice and control over their support and how it is delivered.

Support might be provided for people in their own homes, including:

- equipment and modifications to their home (other than equipment provided through a pooled budget with the NHS) – maintenance and ownership rights will be agreed on a case by case basis
- help with personal and domestic activities
- support to return to work, perhaps through employing a personal assistant or undertaking an educational course to improve their skills
- use of their Direct Payments to facilitate better social inclusion
- to aid their general well-being, for example through fitness classes or arts and cultural activities

12. DIRECT PAYMENTS MUST NOT BE USED TO PAY FOR:

Direct Payments are not intended to replace existing support networks within families and communities. For this reason Direct Payments cannot be used to secure the services from relatives except in exceptional circumstances. Neither can they be used for:

- Permanent residential or nursing care
- Paying for extra hours of care or meeting needs that are not assessed and identified within the care and support plan
- Services that are the responsibility of the Health Authority or PCT (currently Personal Budgets are being piloted within the NHS)

- Housing services
- Services provided directly by the Council

13 AGREEMENT

Assuming eligibility and consent, the individual will be required to sign an agreement with the council before any payments are made. The agreement will include the following: (this is not a fully inclusive list for Service User Agreement)

- Opening a specific bank account (not necessary for one off payments or equipment)
- How the Direct Payment will be spent to achieve agreed outcomes
- Frequency of payments
- Record keeping and requirements
- Audit arrangements
- Recovery of unused/misused money
- Contingency plans

14. AGREEMENT FOR “SUITABLE PERSONS”

If a suitable person is to be appointed they must sign the Best Interests agreement to act in the best interests of the service user (as defined in the DoH Guidance on Direct Payments 2009 – page 69) contained in the Direct Payments agreement. In addition the suitable person should also sign the Direct Payments agreement

15. PAYMENTS AND CHARGES

The amount paid to the service user will be a sum of money equivalent to a reasonable estimate of the cost of providing services to meet the assessed needs on a cost effective basis.

Annual increases will be applied at the Council’s discretion with reference to the latest Consumer Prices Indices forecasts.

The Councils Community Care Charging Policy will apply. It is the services users’ responsibility to pay their assessed weekly contribution into the same Direct Payment account where the Council’s Direct Payment will also be paid.

Direct Payments must not accumulate in the account unless it is clear that it will be used at a later date for some purpose that is allowed. Any amount over six weeks payments must be agreed with the care manager.

16. REVIEWS

Entry on to the Direct Payment scheme does not alter the Local Authority's responsibility to conduct regular reviews and offer continued support as needed.

17. DIRECT PAYMENTS PANEL

A Direct Payments Panel will meet once a month (or sooner if urgently required) to discuss the following:

- Suspension of payments
- Termination of payments
- Employment of relatives
- Appeals against decision not to offer Direct Payments

- Any request for a suitable person to be appointed where there is disagreement between the parties

The service user or suitable person in question will be notified of any decisions made by the panel and will have the opportunity to appeal against any decision either by asking the panel to reconsider or by using the councils Complaints Procedure.