

## Appendix 1

Sections highlighted in yellow below are the sections of the Policy that have been amended based on Internal Audit and DBS and Recruitment Team advice.



Policy Library Pro Forma  
This information will be used to add a policy, procedure, guidance or strategy to the Policy Library.

Title: Direct Payments Policy

Aim / Summary: To set out the Council's position in respect of: the way that Direct Payments are provided to service users with eligible needs; and the way that Direct Payments are administered, monitored and reviewed.

| Document type (please choose one) |   |           |  |
|-----------------------------------|---|-----------|--|
| Policy                            | X | Guidance  |  |
| Strategy                          |   | Procedure |  |

|                               |                       |
|-------------------------------|-----------------------|
| Approved by: Policy Committee | Version number: 1     |
| Date approved:                | Proposed review date: |

| Subject Areas (choose all relevant) |  |                      |   |
|-------------------------------------|--|----------------------|---|
| About the Council                   |  | Older people         | X |
| Births, Deaths, Marriages           |  | Parking              |   |
| Business                            |  | Recycling and Waste  |   |
| Children and Families               |  | Roads                |   |
| Countryside & Environment           |  | Schools              |   |
| History and Heritage                |  | Social Care          | X |
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| Leisure                             |  | Travel and Transport |   |
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| Author: Commissioning Officer | Responsible team:<br>Strategic Commissioning<br>Unit |
| Contact number:               | Contact email:                                       |

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| Please include any supporting documents |            |
| 1.                                      |            |
| 2.                                      |            |
| 3.                                      |            |
| Review date                             | Amendments |
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## Direct Payments Policy

### Section A – national and local policy context

#### 1. National and local policy context

1.1 Direct Payments are monetary payments made by the Council to individuals and carers who request to receive one to meet some or all of their eligible care and support needs. Direct Payments are the Government's preferred payment mechanism for personalised care and support. They provide independence, choice and control by enabling people to commission their own care and support in order to meet their eligible needs. The aim is to encourage people to take ownership of their care planning and be free to choose how their needs are met.

1.2 Priority Four of the Council's Strategic Plan deals with providing care and promoting health. It sets out the Council's intentions to develop individual and community resources to prevent, delay and reduce the need for care and support. While the provision of quality social care and health services for children, adults and the vulnerable has always been a priority for the County Council, the provision of these services is facing the new challenge of increasing demand due to a variety of factors. At the same time the Council is facing significant financial restraints. The Plan states that;

“We will always consider the needs and preferences of the individual, but we have a responsibility to balance this against the effective and efficient use of resources.”

1.3 The Council’s Adult Social Care Strategy states that:

“When commissioning services for people, we will place greater emphasis on the achievement of outcomes and value for money over the level of choice available. We will always aim to maximise people’s independence and take their preferences into account, but the funding made available to support an individual will be determined by the most cost effective care package, based on the local care market, the availability of local care providers and the cost of community based and residential care. All situations will have to be assessed and considered on an individual basis”

1.4 The legislative context for Direct Payments is set out in the Care Act, Section 117(2C) of the Mental Health Act 1983 (the 1983 Act) and the Care and Support (Direct Payments) Regulations 2014. Care and Support Statutory Guidance 2014 sets out how the Council should go about performing its care and support responsibilities.

1.5 The challenge for the Council is to balance the principles of individual choice and control, which are reflected in various ways in the requirements set out in the Care Act, with the need to use resources effectively and efficiently and to be accountable for the use of public money.

1.6 This policy sets out how the Council interprets its duties and responsibilities in relation to Direct Payments where the Care Act allows scope to do so, in line with the local strategic priority aim of ensuring the effective and efficient use of resources.

**2. Scope of this policy**

2.1 This policy covers:

- a) The agreement to receive a Direct Payment
- b) The amount of Direct Payment that an individual can hold at one time
- c) The use of pre-paid debit card accounts to manage the Direct Payment
- d) Self-employed Personal Assistants
- e) The employment by a Direct Payment recipient of close family members to provide assistance with the management and administration of Direct Payments
- f) The employment of people who are also acting in another capacity in relation to the Service User’s finances
- g) The use of Disclosure and Barring Service and Right to Work checks for Personal Assistants
- h) The use of Direct Payments to purchase residential care
- i) The use of Direct Payments to purchase health services
- j) Using a Direct Payment to buy general equipment or appliances

- k) Using Direct Payments to purchase local authority services or contracted services
- l) The use of Direct Payment Support Services.

## Section B – Principles and Commitments

### 3. Principles and Commitments

#### 3.1 This policy upholds the following principles:

- a) Direct Payments will enable people to experience choice and control over how their care and support needs are met
- b) Service users and any children and/or vulnerable adults who are part of their households will be safeguarded from abuse
- c) People receiving Direct Payments who choose to become employers will meet all of their legal responsibilities
- d) The Council may impose conditions on the receipt of a Direct Payments to ensure that the arrangements made are safe to the service user and others, and may require the disclosure of information in order to determine this
- e) Arrangements that are made to manage and use Direct Payments will avoid any potential conflicts between the best interests of the service user and those of others who are party to the arrangements
- f) The use of Direct Payments and any arrangements made to support people to manage Direct Payments will represent an effective and efficient use of resources
- g) Service users will be encouraged and supported to be as independent as possible in managing their Direct Payments
- h) People will be enabled to manage the risks inherent in independent living
- i) The Council will share responsibility with individuals, families and communities to maintain their health and independence
- j) Personal assistants will be well trained and supported.

### 4. Key actions to meet the commitments set out in the policy

#### 4.1 The Council will:

- a) Carry out assessments of need, and produce support plans for individuals that identify the outcomes of care and support services that are to be provided. **The Direct Payment can only be spent on outcomes set out within the Support Plan. This needs to be explained to all Service Users when completing the Direct Payment Agreement Form** *[Highlighted section added in response to Internal Audit requirement for increased clarity emphasising to staff the importance of explaining the process clearly to service users]*
- b) Set the personal budget that is to be made available as the Direct Payment
- c) Provide information about Direct Payments and ensure that service users who choose to receive a Direct Payment understand their roles and responsibilities. This will include responsibilities as an Employer where appropriate
- d) Help service users to obtain support that they need to manage the Direct Payment safely and effectively
- e) Review service users' needs and the way that Direct Payments are used to meet assessed need
- f) Monitor the status of Service User accounts
- g) Carry out financial audits of Service User accounts
- h) **Take steps to recoup from the Direct Payment account surplus monies above an agreed amount which is currently 6 weeks work of DP Monies** *[Addition to the Policy in response to Internal Audit feedback that the Council needs to explicitly state the number of weeks of surplus DP funding that can be retained in a DP recipient's bank account prior to ACFS recoup processes being triggered]*
- i) **Take steps to recover money where it is not known how the money has been used. This could include invoicing for the full Direct Payment paid out for any period where the bank statements have not been provided** *[Response to Internal Audit feedback requiring a stronger emphasis clearly stating that steps will be taken to recoup DP funds where evidence of appropriate spending is not provided to the Council]*
- j) **Recover money if the Direct Payment is misused**
- k) **Recover all unspent monies when a Direct Payment is ended** *[Same as point as paragraph 'i' – Response to Internal Audit feedback emphasising the Council's intention to recoup funds where evidence of appropriate spending is not provided]*
- l) **Act as the "Umbrella Organisation" through which checks on prospective employees must be carried out using the Disclosure and Barring Service**

*[Update of the Council's function as an Umbrella Organisation to ensure compliance with Safeguarding Vulnerable Groups Act 2006]*

- m) Commission, monitor and review Direct Payment Support Services
- n) Provide information, advice and guidance to operational teams on policy and practice issues relating to Direct Payments
- o) Ensure that service users, carers and provider organisations are actively involved in work to develop and improve the Direct Payment "offer" in Nottinghamshire
- p) Work with partner organisations providing other forms of state support to service users to develop approaches to harmonising the Direct Payments so that people do not have multiple payments.

## Section C - The Direct Payment Agreement

### 5. Agreement to receive a Direct Payment and who is responsible for managing the Direct Payment

5.1 In order to receive a Direct Payment, service users must sign an agreement with the Council. This agreement sets out the conditions under which Direct Payments can be made by Nottinghamshire County Council and includes details of what the service user and the Council must do. The agreement reflects the Council's policy and requires that, although service users will use the Direct Payment to purchase and contract for services in their own right, they will do so within parameters set by the Council to ensure that arrangements are legal and safe and that public money is properly accounted for.

5.2 The Direct Payment Agreement will be signed by the individual where they have capacity to manage the Direct Payment themselves and they will take on the responsibilities set out within the Direct Payment Agreement. An individual with capacity can choose to have a **Nominated Person** to assist them in managing the Direct Payment. This person would sign the agreement as a Nominated Person, but the individual would still maintain responsibility for ensuring that all the conditions of the Direct Payment Agreement are met.

Where an individual receiving support lacks capacity to manage a Direct Payment, an **Authorised Person** can be appointed to receive, manage and take legal responsibility for the Direct Payment. In these circumstances it will be the Authorised Person that signs the Direct Payment Agreement and not the individual receiving support. An Authorised Person can also choose to have a Nominated Person to provide support to manage the Direct Payment, but the Authorised Person would still maintain responsibility for ensuring that all the conditions of the Direct Payment Agreement are met.

### 5.3 Definitions of Authorised and Nominated Persons

#### **Authorised Person**

Direct Payments can be made to pay for the care and support of *individuals who do not have the mental capacity* to request them. In these circumstances an “Authorised Person” can request the Direct Payment on behalf of the person who lacks mental capacity. **The Authorised Person receives the Direct Payment and takes on the full legal responsibilities associated with this.**

The Authorised Person can nominate another person to assist with the management of the Direct Payment money. However, the full legal responsibilities of the Direct Payment including those associated with being an employer remain with the Authorised Person. Staff must be satisfied that the Authorised Person is able to understand and take on the responsibilities of managing a Direct Payment, taking account of any support that is available, for example from friends or relatives or from a Direct Payment Support Service.

In line with Care Act Section 33 regulations, Nottinghamshire County Council will make payments to the Authorised Person as long as the following conditions are met:

- The Local Authority is satisfied that the Authorised Person will act in the adult’s best interests in arranging for the provision of the care and support for which the Direct Payments under this section would be used;
- The Local Authority is satisfied that the Authorised Person is capable of managing Direct Payment by himself or herself, or with whatever help the authority thinks the Authorised Person will be able to access;
- The Local Authority is satisfied that making Direct Payments to the Authorised Person is an appropriate way to meet the needs in question.

#### **Nominated Person**

A Nominated Person is someone who takes responsibility for managing the Direct Payment money (not the legal responsibility) on behalf of a service user who **has capacity** to request a Direct Payment (or an Authorised Person acting for a service user who lacks capacity). This responsibility could include:

- Setting up and managing the bank account into which the Direct Payment is paid
- Taking responsibility for paying bills and keeping records.

Unlike the Authorised Person, the Nominated Person does not take on the legal responsibilities related to having the Direct Payment or of being an employer. These responsibilities remain with the service user or the Authorised Person. It is the service user or Authorised Person who is the main signatory of the “Agreement and Set-up Document”, which is the formal contract between the Council and the Direct Payment recipient. However, the Nominated Person should co-sign the “Direct Payment Agreement form” as evidence of their consent to support with the management of the Direct Payment money.

A Nominated Person can be a friend, a family member or a Direct Payment Support Service.

- The adult has the capacity to make the request
- The Nominated Person agrees to receive the payments
- The Council is satisfied that the Nominated Person is capable of managing the Direct Payments

The Council is satisfied that making Direct Payments to the adult or Nominated Person is an appropriate way to meet the needs in question.

*[Response to Internal Audit feedback requiring insertion of definitions of 'Nominated and Authorised Persons' and their respective roles]*

5.4 In circumstances where the terms and conditions of the agreement are not met, the Council will take reasonable steps to address the situation. In the event that the situation remains unresolved the Council will consider whether the Direct Payment is still an appropriate way to meet the service user's assessed needs. If necessary, and subject to appropriate alternative services being put in place, the Council will discontinue the Direct Payment and invoice for any money not used, where bank statements have not been provided for or misuse has been confirmed in line with DP agreement. It is also a requirement that where a service user has been assessed as having to pay a contribution, this should be made regularly 4 weeks in advance.

5.5 If there is a none return of bank statement after the original 3 weeks that is provided by ACFS for this to be completed, a further letter will go out by the Direct Payment Team giving 2 weeks to return the information. Telephone contact will also be undertaken. If bank statements are still not returned a final letter will go out giving 1 final week to return the information. It will also advise that failure to do so could lead to the Direct Payment being ended. An Alert will then be sent to the social work team to make contact with service user to arrange a review within 2 weeks of receiving the Alert.

5.6 Where ACFS have identified potential misuse on an account or a service user has not paid in their assessed contribution an ACFS Alert will be sent through to the Front line Team. It is expected that the social work team would arrange a review to look into this matter within 2 weeks of receiving the Alert.

5.7 Where deliberate misuse of the Direct Payment is suspected at review, this may trigger a fraud investigation by the Council, and/or a criminal investigation by the Police if there is sufficient evidence to suggest that a crime is being committed.

*[Response to Internal Audit feedback requiring clarification of the steps the Council will enact if the DP recipient does not comply with the terms and conditions of having a Direct Payment]*

## Section D – How much money can be held at any time

6. **The amount of Direct Payment that an individual can hold at one time**
- 6.1 The amount that is included in a Direct Payment must be sufficient to meet the assessed needs that the Council has a duty or power to meet. This may include an amount that is not needed on a week by week basis, but is required to meet additional costs that arise periodically, for example to employ alternative staff, to cover for periods when regular staff are using their statutory leave entitlements. People who receive Direct Payments may accrue money in their Direct Payment accounts up to an amount that will be agreed as part of the individual support planning process (this is usually a maximum of 6 weeks Direct Payment monies) and recorded in their support plan. The Council will recoup any funds that are in addition to this amount and are not required to meet assessed needs, in line with the support plan.
- 6.2 Any legitimate costs that cannot be paid for from the amount held in the service user's Direct Payment account will normally be met through the provision of a one-off payment. Such one-off payments must be authorised by a Team Manager and recorded in the support plan.

## Section E – Using a pre-paid debit card account

7. **The use of pre-paid debit card accounts to manage the Direct Payment**
- 7.1 The use of a pre-paid debit card account is Nottinghamshire County Council's preferred option for managing Direct Payments and should be considered when setting up and/or reviewing the Direct Payment. The benefits of having a pre-paid card should be advised to all service users. This should include that the payment goes direct onto the card enabling individuals to pay for their eligible support easily. They can view and manage their account online. It also allows them to set up regular payments such as direct debits and standing orders and purchase goods and services they need in-store and online. There is no need to set up a separate bank account or send in regular statements as this is done automatically by the Council. The Direct Payment Staff Guidance will provide more detail in relation to this issue. *[Response to Internal Audit feedback to make it clear that the Pre-payment Debit Card is the Council's preferred vehicle for Service Users to receive a DP and to make it clear to staff that the benefits of using a Pre-paid Debit Card must be explained to all DP Recipients]*

Service users will have the opportunity to request that the payment is made into a conventional bank account and will be made aware of this during the support planning stage of the assessment and support planning process. The Council

will make available the option of advocacy support to any individual who requests that the Council considers other arrangements.

7.2 Care and Support Statutory Guidance states that the use of pre-paid cards should not be provided as “the only option to take a Direct Payment. The offer of a “traditional” direct payment paid into a bank account should always be available if this is what the person requests and this is appropriate to meet needs. Consideration should be given to the benefit gained from this arrangement as opposed to receiving the payment via a pre-paid card.”

7.3 Service users cannot use the pre-paid debit card to withdraw cash unless it is demonstrated that there are no reasonable alternative ways to purchase an appropriate service and this has been recorded in the support plan.

*[Response to Audit feedback to minimise the use of cash withdrawals due to the difficulties of auditing expenditure to ensure it is the appropriate use of DP funding in line with the associated support plan]*

## Section F - Using a Direct Payment to employ someone

### 8. Self-Employed Personal Assistants

8.1 The Council will not make Direct Payments available in cases where the prospective recipient proposes to employ an individual who claims to be self-employed without evidence being supplied to demonstrate that the self-employed status is authentic in relation to the specific job role in question.

8.2 In order to demonstrate the employment status of the proposed working relationship, the individual must complete the HMRC Employment Status Indicator (ESI) Tool with the Council’s assessment worker. The answers given must accurately reflect the job description and the terms and conditions under which it is proposed the services are to be provided at the relevant time of the contract, therefore these must be provided to the assessment worker at the time of completing the ESI tool. HMRC will be bound by the ESI outcome where the employer or their authorised representative provides copies of the printer-friendly version of the ESI Result screen.

### 9. The employment of people who are also acting in another capacity in relation to the service user’s finances

9.1 Best practice guidance would be that people who are acting in the capacity of a Personal Assistant employed by the service user should not normally take on the role of Authorised Person / Nominated Person unless there are exceptional circumstances that make it the most appropriate way of meeting the needs. This would need to be agreed in advance by the Council.

- 9.2 Where it has been determined in an exceptional circumstance by a Team / Group Manager that an Authorised or Nominated Person can also be paid to provide support to an individual, it is very important that this is done in line with the conditions of the Direct Payment Agreement. As per the Council's Auditing policy the Authorised / Nominated Person managing the finances would need to provide full receipts and invoices for any money paid to them when requested to do so at Audit. The Authorised / Nominated Person managing the Direct Payment cannot make a payment to themselves which is higher than what is stated within the support plan or for reasons not included in the support plan without obtaining prior approval from the relevant Assessment and Reviewing Team.
- 9.3 Where a Personal Assistant is also acting in the role of an Authorised or Nominated Person, the social work team should also make ACFS aware of this so that this can be monitored during ACFS Audits.
- 9.4 In circumstances where the terms and conditions of the agreement are not met, the Council will take reasonable steps to address the situation. In the event that the situation remains unresolved the Council will consider whether the Direct Payment is still an appropriate way to meet the service user's assessed needs. If necessary, and subject to appropriate alternative services being put in place, the Council will discontinue the Direct Payment and invoice for any money not used, where bank statements have not been provided for or misuse has been confirmed in line with DP agreement.  
*[Response to Audit feedback that the Council needs to minimise the occurrences of the Nominated or Authorised Person also being the Personal Assistant. The risk in this situation is the conflict of interest that comes from the same person being the employee and the employer]*
10. **The employment by a Direct Payment recipient of close family members to provide assistance with the management and administration of Direct Payments.**
- 10.1 The Council will consider allowing Direct Payments recipients to pay close family members living in the same household to provide support to manage and/or administer the Direct Payment on a case by case basis and is not the usual accepted practice.

## Section G - Using Disclosure and Barring Service (DBS) Checks

11. **The use of Right to Work, and Disclosure and Barring Service checks for Personal Assistants**
- 11.1 For service users intending to use their Direct Payment to employ a Personal Assistant (PA) for the first time, the provision of the Direct Payment will be subject to;

- a) The requirement to carry out a “right to work” check and an “enhanced check with adults barred list check” on the prospective employee by the Disclosure and Barring Service (DBS) using the County Council as the “Umbrella Organisation” for the purposes of submitting applications for checks. As the generic role of a Personal Assistant is deemed to contain regulated activity it is therefore a statutory requirement for an Enhanced DBS and barred list check to be undertaken
- b) In cases where a check reveals information recorded, the DP recipient will be required to make a “suitability decision” in order to determine whether it is safe and appropriate to employ the person. A Council Officer will be required to advise and assist with this process, which will involve the Council Officer having sight of the DBS certificate. This will require the permission of both the DP recipient and the prospective employee, as there is no legal requirement within the DBS checking process for the Council to be involved in this way. However, unless consent is given in order for the Council to be meaningfully involved in the suitability decision, the Council cannot be confident that sufficient measures are being taken to safeguard the DP recipient from harm. In such circumstances the Council will take the view that a Direct Payment is not an appropriate way to meet the individual’s care and support needs and the offer of a Direct Payment will be withdrawn
- c) The sharing of any disclosed information included on certificates issued to prospective employees by the DBS with nominated Council Officers.

11.2 In order to use a Direct Payment to employ people to provide their care and support, prospective recipients must sign a form of agreement with the Council, which includes details of the Council’s requirements in relation to DBS and “right to work checks”.

11.3 Where service users are already in receipt of a Direct Payment and employing a PA, the status of any DBS check will be established at the annual review of the care and support plan. Service users will be required to sign the agreement relating to Council requirements for DBS checking. Subject to sight of the certificate by a nominated Council Officer, service users with existing PAs for whom checks were made in relation to their current job role within the last 3 years will not be required to take any further action, but may request that a new DBS check is carried out.

11.4 Existing service users whose PAs do not have a relevant DBS certificate or whose certificate is more than 3 years old will be required to undertake DBS checks for these PAs.

11.5 Service users who start to employ a PA who already has a DBS certificate that was applied for through the Council’s Environment and Resources Department within the previous three years will not be required to apply for a new check, but may request that a new DBS check is carried out.

11.6 DBS checks for all PAs must be renewed after 3 years at most.

11.7 The Council will maintain a record of all people who are employed by Direct Payment recipients for the purpose of ensuring that current DBS checks are in place and are renewed as necessary.

11.8 The requirement for DBS checks to be carried out can be waived in exceptional circumstances for both existing and new PAs where the PA is a close family member as a DBS check cannot be requested for close family members. This rationale needs to be included within the individual's Support Plan and the decision to waive the requirement for a DBS needs to be passed to the Team Manager.

*[Adjustment to Policy to ensure Council compliance with the Safeguarding Vulnerable Groups Act 2006 which makes the DBS check a statutory requirement. It is also a response to GDPR and consultation feedback regarding the Council becoming an Umbrella Organisation. The Umbrella Organisation Status will enable the Council to meaningfully participate in suitability of employment decisions with the DP recipient when they are employing PAs. This will enable the Council to fulfil its safeguarding responsibilities.]*

## Section H – What Direct Payments can be used to buy

### 12. The use of Direct Payments to purchase residential care

12.1 Nottinghamshire County Council has participated in a government pilot project to test the use of Direct Payments in long term residential care, as a result of which staff working with service users entering residential care can offer them a Direct Payment.

12.2 The use of Direct Payments to purchase health services

12.3 Local authorities must not meet needs by providing or arranging any health service or facility which is required to be provided by the NHS, However, local authorities can commission health services on behalf of clinical commissioning groups (CCGs), therefore, where CCGs provide funding for this purpose for individuals as part of a joint funding agreement to provide health and social care services, the health element will always be funded by the CCG.

13. Using a Direct Payment to buy general equipment or appliances

13.1 A Direct Payment can be used to purchase general equipment/appliances, for example, a computer or washing machine, if:

a) All alternative funding streams have been explored first

- b) It has been identified that the equipment will meet an identified outcome in the most cost effective way and reduces the need for long term support.
14. Using Direct Payments to purchase local authority services or contracted services
- 14.1 Direct payments may be used to purchase services provided directly by the County Council:
- a) If the use of such services is an appropriate way to meet an individual's needs and;
  - b) The need to use such services arises on a one off or irregular and infrequent basis.
  - c) It is less burdensome for the Council to accept the Direct Payment amount, rather than providing the service and then reducing the personal budget and Direct Payment accordingly.
- 14.2 Otherwise, where an in-house service has been chosen these will be provided via a managed personal budget.

## Section I – Direct Payment Support Services

### 15. The use of Direct Payment Support Services

- 15.1 Direct Payment Support Services are organisations that are paid to provide help to the service user or Authorised Person, to manage the Direct Payment. Support should only be made available after an assessment of an individual's capability to manage the various tasks associated with managing the Direct Payment has been completed and it has been established that help is necessary. The support that is provided should be the minimum that is required to enable the Direct Payment to be managed effectively and the level of support must be reviewed at least annually.
- 15.2 The Council will maintain a list of accredited providers of Direct Payment Support Services. The accreditation process will establish standards in relation to service provision and the working relationships between providers, service users and the Council.

**15.3 The Council strongly recommends that where a Direct Payment Support service is required that it will be an accredited provider that will be chosen to provide this. The Service User can though choose to use a provider who is not on the list, but if it is a Third Party Managed Account being offered they still need to meet the requirements needed by the Council.**

*[Policy revision to improve Care Act 2014 compliance – improved clarification that the Council cannot insist that a DP recipient use a particular Direct Payment Support Service. The final decision about selecting a DPSS will always sit with the DP recipient rather than the Council].*