



# Nottinghamshire County Council

## 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; the way that Direct Payments are administered, monitored and reviewed.

### Document type (please choose one)

|          |   |           |  |
|----------|---|-----------|--|
| Policy   | X | Guidance  |  |
| Strategy |   | Procedure |  |

**Approved by:**

**Version number:**

**Date approved:**

**Proposed review date:**

### Subject Areas (choose all relevant)

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|---------------------------|--|----------------------|---|
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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.

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.

- d) 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.
- e) 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.
- f) Service users will be encouraged and supported to be as independent as possible in managing their Direct Payments.
- g) People will be enabled to manage the risks inherent in independent living.
- h) The Council will share responsibility with individuals, families and communities to maintain their health and independence.
- i) 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.
- 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.
- d) Help service users to obtain any 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 money paid out as a Direct Payment as determined in the individual support plan.

- i) Take steps to recoup money if the Direct Payment is misused or if the Direct Payment is ended.
- j) Act as the “Registered Body” through which checks on prospective employees must be carried out using the Disclosure and Barring Service.
- k) Commission, monitor and review Direct Payment Support Services.
- l) Provide information, advice and guidance to operational teams on policy and practice issues relating to Direct Payments.
- m) Ensure that service users, carers and provider organisations are actively involved in work to develop and improve the Direct Payment “offer” in Nottinghamshire.
- n) 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**

- 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 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 users assessed needs. If necessary, and subject to appropriate alternative services being put in place, the Council will discontinue the 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 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 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.”
- 7.2 The use of a pre-paid debit card account is Nottinghamshire County Council's preferred option for managing direct payments. However, 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.
- 7.3 Service users can use the pre-paid debit card to withdraw cash if it is demonstrated that there are no reasonable alternative ways to purchase an appropriate service.

## **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, bearing the 14 digit ESI reference number, and the Enquiry Details screen.

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

- 9.1 People who are acting in the capacity of nominated or authorised person for the purpose of the Direct Payment, or who otherwise have formalised control or influence over the recipient's financial affairs (for example property and financial affairs lasting power of attorney) may not also be employed to provide care and support services that are paid for through the Direct Payment.

### **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.

## **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 a “Registered Body” for the purposes of submitting applications for checks.
  - b) In cases where a check reveals information, a nominated Council Officer within the Adult Social Care and Health Department will make a “suitability decision” in relation to whether the proposed contract of employment is a safe and appropriate way to meet the individual’s care and support needs. This will involve consultation with the prospective employee and (with the prospective employees’ permission) the service user, to discuss the concerns identified and the service users views about such issues.
  - 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.



## **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 is participating in a government pilot project to test the use of direct payments in long term residential care. All staff dealing with service users entering residential care must offer them a direct payment.

### **13. The use of Direct Payments to purchase health services**

- 13.1 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.

### **14. Using a Direct Payment to buy general equipment or appliances**

- 14.1 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.

### **15 Using Direct Payments to purchase local authority services or contracted services**

- 15.1 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.
- 15.2 Otherwise, where an in-house service has been chosen these will be provided via a managed personal budget.

# Section I – Direct Payment Support Services

## 16. The use of Direct Payment Support Services

- 16.1 Direct Payment Support Services are organisations that are paid to provide help to the Service User or the nominated 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.
- 16.2 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.
- 16.3 Service users can use any support provider organisation they choose, unless a managed account is to be provided (see 16.4 below). The costs associated with support must be agreed in advance, be affordable from the personal budget and be recorded in the support plan.
- 16.4 Service users who need a Direct Payment Support Provider to manage the money on their behalf (to act in the capacity of a nominated person) must use one of the Council's accredited providers for this purpose.