

Direct Payments Policy

Ref. No.	
Category (Y/N)	
People	Y
Place	
Corporate	
In Constitution	

Policy Details

What is this policy for?	The purpose of this policy is to set out the responsibilities of the Council in relation to direct payments, with a structure for their application in the provision of care and support services for adults eligible for services and/or support.
Who does this policy affect?	In accordance with Sections 31, 32 and 33 of the Care Act, the Council must promote direct payments when considering <u>any</u> care and support functions in respect of a person. Sections 11.8, 11.30, 11.31, 11.32, and 11.33 of the Care Act Statutory Guidance lay out the Council's further obligation to consider Individual Service Funds. Responsibility for applying this policy sits with everyone carrying out adult social care and support functions on behalf of the Council.
Keywords	Adult social care; Direct Payments; care assessment; financial assessment; personal budgets
Author	Michael Ford, Policy and Projects Manager
Does this policy relate to any laws?	Care Act 2014 Sections 31 to 33 Care Act 2014: Care and support statutory guidance Chapters 11 and 12 Mental Capacity Act 2005
Is this policy linked to any other Dorset Council policies?	Charging and Financial Assessment

Status and Approvals

Status	Approved.		
Last review date	15 February 2023		
Approved by (Director)	Vivienne Broadhurst		
Member/ Partnership Board Approval	Directorate Leadership Group		

People - Adults and Housing

Direct Payments Policy

Purpose	<p>The Care Act 2014 created a new statutory principle designed to embed direct payments as the default method to deliver care and support, ensuring that choice and control is placed in the hands of the person.</p> <p>Giving the person choice and control over their care is paramount. The Council will encourage the person to assume control and will promote direct payments to enable them to do this.</p> <p>The purpose of this policy is to set out the responsibilities of the Council in relation to direct payments, with a structure for their application in the provision of care and support services.</p>											
Scope	In accordance with Sections 31, 32 and 33 of the Care Act, the Council must promote direct payments when considering <u>any</u> care and support functions in respect of a person.											
Areas of responsibility	Responsibility for applying this policy sits with everyone carrying out care and support functions on behalf of the Council.											
Related Policies	Charging and Financial Assessment policy											
Keywords	Direct Payment; Nominated person; Mental capacity; Eligible care and support needs.											
Glossary of Terms / Definitions	<table><tr><th>Term</th><th>Definition</th></tr><tr><td>Dorset, the Council, we, ourselves, us</td><td>Dorset Council (the ‘local authority’)</td></tr><tr><td>The Care Act</td><td>The Care Act is a major reform of the law about care and support. It puts people and their carers in control</td></tr><tr><td>Policy</td><td>A policy is a set of principles, rules and guidelines that help the Council make decisions and that let people know what they can expect from us.</td></tr><tr><td>Outcome</td><td>An outcome can be summarised in a short statement about what it is important for a person to achieve</td></tr></table>		Term	Definition	Dorset, the Council, we, ourselves, us	Dorset Council (the ‘local authority’)	The Care Act	The Care Act is a major reform of the law about care and support. It puts people and their carers in control	Policy	A policy is a set of principles, rules and guidelines that help the Council make decisions and that let people know what they can expect from us.	Outcome	An outcome can be summarised in a short statement about what it is important for a person to achieve
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		<p>which will maximise independence and self-determination.</p> <p>Achieving outcomes should be empowering for the person and create independence from long-term intervention and funded services.</p>
	Direct Payment	Direct payments are monetary payments made to individuals who request to receive one to meet some or all their eligible care and support needs.
	Personalisation	Personalisation means that every person who receives support, whether it is provided by the County Council, or funded by themselves, will have choice and control over the 'shape' of that support in all care settings.
	Eligible needs	'Eligible' needs are those needs for care and support which Dorset may be <u>required</u> to meet by the Care Act. Although the Council has powers to meet any other needs, the determination of 'eligible' needs is important in helping people to access care and support.
	Capacity	The Mental Capacity Act protects people who are unable to make decisions for themselves. This could be for reasons such as a mental health condition, a severe learning disability, a brain injury, or a stroke.
Legislation and legal requirements	<p>The Care Act 2014</p> <p>The Human Rights Act 1998</p> <p>The Disability Discrimination Act 1995</p>	
Equality impact assessment	<p>The Department of Health published its equality impact assessment on the Care Act 2014 in May 2014. Below is an extract from Table 2 on page 13.</p> <p>"The primary objective of the proposals set out in the Care Act 2014 is to support people who use care and support and their carers to maintain their health, wellbeing and independence for as long as possible. As part of the overall objective of improving quality of care and experience, proposals are also intended to strengthen and enhance the social care market."</p>	

1.0 Provision of Direct Payments Funds Principle

- 1.1 The core purpose of adult care and support is to help people to achieve the outcomes that matter to them in their life. Underpinning all of the 'care and support functions' carried out by the Council is our focus on the needs and goals of the people concerned. This applies in all cases where the Council assesses an eligible need for care or support and ensures that control for meeting those needs is placed with the person.

2.0 Making Direct Payments Available

- 2.1 Direct payments will be offered at the earliest opportunity in the assessment and support planning process. Direct payments will not be made available to people serving custodial sentences; however, people in bail accommodation and approved premises who have not been convicted are entitled to direct payments, as they would have been whilst in their own homes.

- 2.2 A person can use their own resources to purchase additional support if they choose to do so. When considering arranging their own care and support through a direct payment the person will be provided with information in an accessible format covering:

- a) What direct payments are.
- b) How to request a direct payment – including the use of 'suitable persons' to manage the payment.
- c) An explanation of the direct payment agreement.
- d) The responsibilities involved in managing a direct payment and being an employer.
- e) Making arrangements with care providers.
- f) The availability of support to set up and manage a direct payment, including employment and payroll support.
- g) Case studies and evidence on how direct payments can be used to meet eligible needs innovatively.

- 2.3 When considering a request for a direct payment from a person with mental capacity to make a decision about a direct payment, the Council will agree to a direct payment if the following four conditions are met:

- 1) The person has capacity to make the request and, where there is a nominated person, that person agrees to receive payments.
- 2) The Council is not prohibited under section 33 of the Care Act from meeting the person's needs by making direct payments.
- 3) The Council is satisfied that the person, or nominated person, is capable of managing direct payments either by themselves, or with whatever help and support is available.
- 4) The Council is satisfied that making direct payments is an appropriate way to meet the person's needs.

- 2.4 In considering a request from a nominated person for a direct payment for a person without mental capacity to make a decision about direct payments, the Council will agree to a direct payment if the following five conditions are met:

- 1) The nominated person is authorised under the Mental Capacity Act 2005, and if not, then there is at least one person who is authorised to support the request.
- 2) The Council is not prohibited under section 33 of the Care Act from meeting the person's needs by making direct payments to the nominated person.
- 3) The Council is satisfied that the nominated person will act in the person's best interest in arranging care and support with the direct payment.
- 4) The Council is satisfied that the nominated person is capable of managing direct payments either by themselves, or with whatever help and support is available.
- 5) The Council is satisfied that making direct payments to the nominated person is an appropriate way to meet the person's needs.

2.5 Where a decision has been made to refuse a request for a direct payment, the person in need of care and support (or their nominated person) will receive the reasons for the refusal in a format accessible to them, stating which conditions have not been met and what they may need to do in the future to obtain a positive decision, together with details of how to access the appeals process.

2.6 Where a decision has been made to refuse a request for a direct payment, the Council will continue with the care planning process so it can agree with the person how best to meet their eligible needs without a direct payment.

2.7 A person will not be forced to take a direct payment against their will, but instead will be informed of the alternative choices available to them.

3.0 Calculating the Direct Payment

3.1 The gross amount of the direct payment will be equivalent to the Council's estimate of the reasonable cost of securing the provision of the service concerned to meet the needs for which it has a duty or power to meet. This may be increased in exceptional circumstances.

3.2 In estimating the reasonable cost of securing the required support, the Council will consider the associated costs incurred without which the service could not be provided lawfully. For example, recruitment costs; national insurance contributions; holiday; sick and maternity pay; insurance; payroll services; and criminal record checks. However, if a service of the required standard can be secured more cost-effectively in another way without unreasonably restricting choice and control, the Council may limit the amount payable accordingly.

3.3 Where a person disagrees with the amount of direct payment proposed, the person will be informed of their right to pursue the matter through the appeals and complaints procedures.

4.0 The Person's Contributions

4.1 The person will be assessed for charges in the same manner as if they were receiving services directly provided by the Council.

4.2 Where the person only receives a direct payment, and does not receive a commissioned service as well, the amount payable will be net of any assessed contribution. The person is required to pay their contribution into the direct payment account on a regular basis.

4.4 Where the person has support that includes a direct payment and a commissioned service, the council will invoice them for the full amount of their assessed weekly contribution.

- 4.5 Contributions will not be sought for aftercare services provided under section 117 of the Mental Health Act 1983.

5.0 Administering Direct Payments

- 5.1 The person receiving the service, and any nominated person appointed, will be required to open a separate bank account for the management of the direct payment and to keep full records of any monies received and spent and services received. A holding account service managed on behalf of the Council may be used to provide a payment service on behalf of the beneficiary.
- 5.2 The Council must be satisfied that the direct payment is being used to meet eligible care and support needs and therefore will have systems in place to monitor direct payment usage.
- 5.3 In addition to establishing that only the agreed outcomes are being met with direct payment funds, the Council will ensure that, where required, employer obligations to HMRC for PAYE, and National Insurance and legal obligations relating to the national minimum wage are being met. A check will be made to ensure appropriate employer's liability insurance is in place. Specific regard to the legal use of self-employed carers and personal assistants will be made.
- 5.4 The Council's practice will be that, except in exceptional circumstances, the monitoring process takes place six months after a direct payment has been initiated and annually thereafter. In cases where the direct payment beneficiary has demonstrated an ability to manage their accounts without concern the Council may opt to reduce the monitoring frequency.
- 5.5 Under the terms of the agreement, the Council will periodically review and recover unspent monies as well as monies inappropriately spent. When recovering unspent monies, the Council will allow the person to retain a contingency equivalent to four weeks funding.

6.0 Using the Direct Payment

- 6.1 Direct payments are designed to be used flexibly and innovatively and the Council will not place any unreasonable restriction on the use of the payments as long as they are being used to meet eligible care and support needs. However, our policy is that direct payments must not be used for:
- Paying for goods or services not related to the care needs identified in the support plan. For example: accommodation rental costs; mortgage payments; everyday food and drink; travel costs (unless this is part of the agreed support plan); fines; debts; leisure activities not related to achieving identified outcomes.
 - Purchasing of tobacco, alcohol or any illegal substance or activity.
 - Buying long-term residential care. However, additional services for people in a residential home can be accessed through a direct payment. For example, alternative day time activities.
 - Paying for care services from a spouse or partner, or a close relative living in the same household, except when agreed with the Council in exceptional circumstances. However, we may consider the payment of part of a direct payment to a family member in the same household for administrative support.

- Paying for frequently used services ordinarily provided by the Council. This restriction does not apply to purchasing services from another local authority. Direct payments may be used to purchase services directly from the Council in agreed circumstances.

- 6.2 Although direct payments cannot be used to pay for adults to receive long-term care in care homes, they can be used to enable people to purchase a short stay in residential care, provided this does not exceed 4 consecutive weeks in a 12-month period. When periods of residential stays are separated by less than 4 weeks, they will be added together for the purposes of calculating the number of consecutive weeks in the 12-month period.
- 6.3 The Council will continue to make direct payments to meet existing contractual obligations for up to 4 weeks in the event of hospitalisation. It is expected that the recipient will negotiate a reduced rate with the provider, if possible. Particular regard will be given to maintaining the direct payment recipient's employment arrangements with carers and personal assistants, to ensure continuity of care following hospital discharge.
- 6.4 In cases of hospitalisation, the Council will explore with the person, their carer(s) and the NHS available options to ensure that the health and care needs are being fully met in the best way possible.
- 6.5 In the event that a nominated person managing the direct payment should require a hospital stay, an urgent review will be carried out to ensure that the person receiving the service continues to receive care and support.

7.0 Reviewing Direct Payments

- 7.1 In addition to monitoring direct payments to ensure that they are being used to meet care and support needs, the Council will also review the making of the direct payment within six months of the first payment. Where relevant the first review will be combined with an initial care review 6-8 weeks after the sign-off of the personal budget and plan. This review is to ensure that the person is comfortable using the direct payment and experiencing no issues. It is also used to identify any long-term support arrangements that may be necessary.
- 7.2 Further reviews will be made no later than every 12 months. Where practical these reviews will be combined with the direct payment monitoring process.
- 7.3 Where a direct payment is being allocated to an authorised person, or where a family member is being paid for providing care or administrative support, the review will include all these parties whenever possible and practicable, as well as the person in need of care and support.
- 7.4 The outcome of the review will be written down and a copy given to all parties. Where there are issues that require resolving, the resolution method will be agreed, unless there are exceptional reasons why this is not possible.

8.0 Ending Direct Payments

- 8.1 Direct payments will only be ended as a last resort and only when the Council has taken all reasonable steps to address any situations leading to the decision to end the direct payment.
- 8.2 A minimum notice period of 4 weeks will, except in exceptional circumstances, be given before direct payments are ended.

8.3 Direct payments may be ended for the following reasons, after due regard to the conditions in paragraph 8.1 above. In all cases, the Council will ensure that alternative arrangements are in place to meet the care and support needs of the person before the direct payment is ended:

- A person to whom direct payments are being made to purchase support for themselves, or on behalf of someone else, decides they no longer wish to receive direct payments.
- The person receiving direct payments is no longer capable of managing direct payments, even with appropriate support.
- The person receiving direct payments no longer needs the care or support for which the direct payments are being made.
- The person fails to comply with a condition imposed under the regulations to which the direct payment is subject, or, in exceptional circumstances, the Council believes it is no longer appropriate to make the direct payment. For example, if it is apparent that the direct payment has not been used to achieve the outcomes on the support plan.
- The person receiving direct payment loses mental capacity. However, when the person receiving direct payment loses mental capacity the Council may continue with the direct payment if someone is willing to act on their behalf, but this arrangement will be treated as temporary and closely monitored.
- The person loses mental capacity on a permanent basis. The Council may, using its discretion, consider making a direct payment to a nominated person instead, provided that person is authorised elsewhere under this policy. However, if the nominated person fails to comply with the requirements of this policy, the Direct Payment may be ended.

8.4 Direct payments will also be ended for the following reasons. In all cases the Council will ensure that alternative arrangements are in place to meet the care and support needs of the person before the direct payment is ended:

- Direct payments to a nominated person will be discontinued where the person receiving the service regains capacity on a long-term or permanent basis.
- When the person, or nominated person, is placed by the courts under a condition or requirement relating to drug and/or alcohol dependency as defined in The Care and Support (Direct Payments) Regulations 2014.

8.5 When ending a direct payment where a person has lost capacity, and there is no-one else to manage the direct payment, or where a person needs additional support to terminate arrangements, the Council will provide appropriate support.

8.6 When the direct payment has ended, a final monitoring exercise to establish the extent of monies due to be returned to the Council (if any) will be undertaken. In calculating the amount to be returned, specific regard will be made to outstanding liabilities properly incurred during the period of the direct payment, and legitimately after the end of the direct payment, which may include redundancy commitments.

Appendix 1 -Procedure & Pathway for providing an emergency Direct Payment

This is only for exceptional circumstances and must be limited to four weeks **maximum**. Agreement for an emergency Direct Payment must be obtained from the Locality Manager

Scenario

All standard options for care/support have been explored and are unavailable but someone has been identified as able to provide care/support and an urgent mechanism is needed for them to be paid.

Exception Process

Explain to client (or authorised person) that this is a temporary arrangement and, if support is needed for more than 4 weeks the standard DP arrangements **must** apply.

Explain that the arrangement is between the client (or authorised person) and the provider of care – **not** between Dorset Council and the provider of care.

Also explain that, **as an exception**, a separate bank account will not be required, however invoices must be obtained for support paid for using the DP funds. These must be available for inspection by Dorset Council when requested.

Advise the potential carer that they are responsible for declaring the income to HMRC and paying any relevant tax. The carer must also be advised that any income may affect entitlement to benefits. **This must be Case Noted.**

A DP Letter of Agreement **is** required - details of the bank account where the payment is to be made must be completed and the agreement signed. (You can obtain the DP Letter of Agreement from the clients MOSAIC record in Documents/Forms and Letters/Create DP20 etc)

When the MOSAIC work step is created it **must** have an end date of no more than 4 wks.

Emergency Direct Payment Pathway

Client needs support and no other way has been identified of meeting the need

A person has been identified that can meet the need – they agree to DBS checks¹ and QA visits

Organisation identified to manage the Direct Payment

Quality Assurance programme identified, e.g. care manager or advocate has agreed plan of QA visits

If client lacks capacity, then Mental Capacity Assessment and Best Interest process required. If client has capacity, then client can agree to plans. ¹DBS checks may not be completed during the emergency period, but should be initiated.