

Adult Social Care

Direct Payments Policy

Please see the [Gloucestershire Children's Social Care Procedures Manual](#) for information about direct payments for children.

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Adult Social Care Direct Payments Policy

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1. Introduction

1.1 This policy applies when Gloucestershire County Council (we / the Council) intends to:

- meet unmet eligible needs under the Care Act 2014 (the Care Act) or
- discharge its after-care duties under s117 Mental Health Act 1983 (the MHA).

For more information about meeting needs under the Care Act and about s117 MHA after-care, please see our:

- [Adult Social Care policy for people with care and support needs](#)
- [Adult Social Care policy for carers](#)
- [S117 MHA aftercare policy](#)

1.2 This policy sets out the conditions that apply to direct payments and applies to:

- adults (including carers) assessed as having unmet eligible needs under the Care Act where the Council intends to fund part or all of the cost of meeting those needs
- adults entitled to after-care services where the Council is discharging its duties under s117 of the Mental Health Act 1983.
- Adult Social Care staff
- any individual or organisation to whom the Council has delegated its duties for support planning and review under the Care Act or its S117 after-care duties.

1.3 When the Council is going to contribute towards the cost of meeting needs under the Care Act or pay for S117 after-care arrangements, people who would like to arrange some / all of their own support may apply to the Council for direct payments. Direct payments are not yet available for residential care.

1.4 Most people apply for direct payments when they agree their plan for support / after-care with the Council but they can apply at any other time. They may also opt out of direct payment arrangements at any time by notifying the Council if they change their mind about having direct payments.

2. Supporting choice and involvement

- 2.1 The Council will publish [direct payments information](#) on its website.
- 2.2 We will explain about direct payments at the planning stage so that people may apply for one if they would like to arrange some or all of their own support / after-care.
- 2.3 We will actively support people to be involved in planning their support / after-care. We will make reasonable adjustments in line with our duties under the Equality Act 2010 and the Care Act to overcome barriers to involvement. Please see also our:
- [Adult Social Care Accessible Information policy](#)
 - [Independent Advocacy in Adult Social Care policy](#)
- 2.4 We will assume that adults are able to make their own decisions about direct payments. Where this is not the case, we will follow the [Gloucestershire Multi Agency Mental Capacity Act policy and guidance](#).

3. Applying for direct payments

Conditions - adults with capacity / nominated person

- 3.1 The Council will provide direct payments when it is satisfied that:
1. the adult has capacity to request direct payments and where applicable any nominated person (see paragraphs 3.2 and 3.3 below) agrees to receive direct payments, and
 2. the Care and Support (Direct Payments) Regulations 2014 do not prohibit needs from being met through direct payments (please see [appendix 2](#)) and
 3. the adult or any nominated person is capable of managing direct payments either independently or with support, and
 4. making direct payments to the adult / nominated person is an appropriate way of meeting needs.
- The Council will ask any adult / nominated person who wishes to manage direct payments to declare any convictions involving dishonesty. If a conviction is declared, we will assess whether or not it is appropriate for that person to manage direct payments.
- 3.2 Adults with capacity may nominate someone else (often a family member or friend) to manage direct payments on their behalf.
- 3.3 The Council must agree to the arrangement as the nominated person is in a position of trust, is responsible and accountable for how direct payments are used and will be held liable for any misuse of payments.

Conditions - authorised person for an adult who lacks capacity

- 3.4 Requests for direct payments for an adult who lacks capacity to request them must be made by an authorised person. This means someone:
- a) who is authorised under the MCA to make personal welfare decisions for an adult without capacity because they:
 - hold a registered lasting power of attorney given by the adult before the adult lost capacity
 - are a deputy appointed by the Court of Protection

or

 - b) that the Council (and anyone authorised under the MCA to make personal welfare decisions for the adult) agree is a suitable person to be the authorised person to manage direct payments.

The Council will consider all the relevant circumstances on a case by case basis when determining who is a suitable person to be the authorised person to manage direct payments.

- 3.5 The Council will provide direct payments when it is satisfied that:
1. where the person making the request for direct payments is not authorised under the MCA to make personal welfare decisions for the adult, any person who is so authorised supports the request, and
 2. the Care and Support (Direct Payments) Regulations 2014 do not prohibit needs from being met through direct payments (please see [appendix 2](#)) and
 3. the authorised person will act in the adult's best interest in arranging care and support with direct payments, and
 4. the authorised person is capable of managing direct payments either independently or with support, and
 5. making direct payments to the authorised person is an appropriate way of meeting needs.

- 3.6 When assessing whether making direct payments to the authorised person is an appropriate way of meeting needs, the Council will:

1. Consult and take into account the views of anyone:
 - named by the adult as someone to be consulted about whether direct payments should be made to the authorised person,
 - engaged in caring for the adult or interested in their welfare,
 - authorised under the MCA to make decisions about the adult's needs for care and support.

2. Consider:

- the adult's past and present wishes and feelings, particularly any relevant written statement made by the adult before they lost capacity,
- the beliefs and values that would be likely to influence the adult's decision if they had capacity, and
- other relevant factors the adult would be likely to consider if they were able to do so.

3. Ask the authorised person to declare any convictions involving dishonesty and take any declared conviction into consideration when assessing whether or not it is appropriate for that person to administer the direct payment.

4. Carry out a Disclosure and Barring Services (DBS) check for:

- any authorised person who is **not** the adult's spouse / partner, a close family member (as [defined at Appendix 1](#)) who lives in the same household as the adult or is a friend of the adult who is involved in the adult's care, and
- the person with overall responsibility for the day to day management of direct payments where the authorised person is a body corporate or an unincorporated body of persons.

3.7 An authorised person acting on behalf of an adult who lacks capacity:

- must notify the Council if they reasonably believe that the adult has regained capacity.
- must (except as stated at paragraph 8.4) carry out a DBS check for any person from whom a service will be secured using direct payments.
- is in a position of trust, is responsible and accountable for how direct payments are used and will be held liable for any misuse of direct payments.

4. Declining an application

4.1. The Council will decline any application for direct payments where the conditions set out at paragraphs 3.1 (adults with capacity) or 3.4 (adults who lack capacity) are not met in full.

4.2 When the Council declines an application for direct payments, we will:

- explain in writing:
 - which condition(s) was not met
 - the reason why the Council considers the condition(s) to be unmet
 - what the person may need to do to obtain a positive decision
 - how to appeal the decision through the Council's complaints process.
- continue planning with the adult to ensure that their needs are met / after-care services provided without the use of direct payments.

5. When a direct payment is agreed

Direct payments agreements

- 5.1 When a direct payment is agreed, the person who is going to manage the direct payment must enter into a written agreement with the Council.
- 5.2 The Council will provide a copy of the signed agreement to signatories.

Payment Card accounts

- 5.3 The Council will set up a Payment Card account for the person responsible for managing direct payments.
- 5.4 Other options may be available to enable the adult to have a direct payment if the adult/nominated person/authorised person as relevant is unable to manage a Payment Card account. For example in some circumstances, the Council may make direct payments conditional on having a managed account.
- 5.5 Means tested charges apply in almost all cases where the Council is meeting an adult's needs for care and support under the Care Act. Where a charge applies, we will ask the adult to have a financial assessment (a means test). This determines the amount they must pay towards the full cost of their care and support.
- 5.6 Where the financial assessment determines that the adult must pay some or all of the cost of their care and support:
 - the adult must pay the assessed amount into the Payment Card Account at no less than four (4) weekly intervals
 - the Council will then add its contribution where relevant. Any contribution from the Council starts once any relevant assessed amount has been fully used. Excess funds which accumulate in the account remain the property of the Council.
- 5.7 The Council will pay the **full** amount agreed in the plan into the Payment Card Account each month for:
 - S117 after-care arrangements / carer support. Charges do not apply to after-care arrangements or to support directly provided to carers. Where an adult has consented to receive services in order to meet / reduce their carer's needs, charging and financial assessment will apply to the adult.
 - any adult assessed as not having to contribute towards the full cost of their care and support.

5.8 The Council:

- will pay its share of the cost of meeting needs / providing after-care services as agreed in the plan into the Payment Card Account in advance at 4 weekly intervals.
- may make an initial or one off payment to the account, for example for agreed set up costs from within the agreed amount.

5.9 The person responsible for managing direct payments uses the funds in the Payment Card account to arrange the care / after-care agreed in the plan and must meet all costs within the amount agreed.

6. Getting help to manage direct payments

6.1 Anyone (including any nominated or authorised person) who agrees to be responsible for managing direct payments must be capable of managing direct payments either independently or with help.

6.2 People managing a direct payment may purchase assistance, for example record keeping, payroll and other employment related services or a managed account.

6.3 In some circumstances, the Council may make direct payments conditional upon having a managed account.

7. Conditions that apply to the use of direct payments

7.1 The Council may:

- make direct payments subject to conditions
- discontinue and / or recover direct payments where the Council has reason to believe that direct payments may have been misspent or accumulated without good reason. See also [section 9 Council Duty to Protect Public Funds](#).

7.2 Direct payments **must** be used only as agreed in the direct payments agreement and **must** be used to pay for:

- support to meet needs or for after-care services as agreed in the adult's plan.
- services which are safe, legal, adequately safeguard and promote the adult's welfare and wellbeing and are value for money. This does not mean choosing the cheapest option but the one which delivers the outcomes desired at best value for public money.

7.3 Direct payments **must not** be used to purchase:

- any service directly provided by the Council
- services, equipment and / or minor adaptations which are the responsibility of other public bodies.
- long term care in a care home. However they **may** be used to pay for:
 - short breaks in a care home provided that in any 12 month period direct payments are not used to pay for:
 - more than 4 consecutive weeks of care in a care home or
 - two periods of less than 4 weeks care in a care home which are less than 4 weeks apart and when added together exceed 4 weeks of care in total
 - non-residential services for someone who lives in a care home, for example to try out independent living before moving out of the care home or so that the adult can take part in daytime activities.

7.4 Except in exceptional circumstances and only as expressly authorised in writing by the Council, direct payments **must not** be used to pay the adult's spouse / partner or a close family member (as [defined at Appendix 1](#)) who lives in the same household as the adult to:

- meet the adult's needs or
- provide administrative or management support or services in managing the direct payment

7.5 Except in exceptional circumstances and only as expressly authorised in writing by the Council, an authorised or nominated person **must not** use direct payments to pay themselves to provide services to the person with care and support needs.

7.6 Carer direct payments **must not** be used to purchase care and support for the person with care and support needs. They **must** be used only to meet the carer's own unmet eligible needs.

8. Using direct payments to employ staff

Legal responsibilities as employers

8.1. Direct payments may be used to employ staff, to engage self employed personal assistants or to pay an agency to provide services. People using direct payments to employ staff become employers and as such have legal responsibilities. An outline of responsibilities can be found at:

<https://disabilitytaxguide.org.uk/> and <https://www.gov.uk/employing-staff>

8.2 Where direct payments will be used to employ staff, the Council will:

- advise the person responsible for managing direct payments that there are legal responsibilities involved in becoming an employer and maintaining good employment practices
- urge the person to seek advice about:
 - employer legal responsibilities, including being responsible for all employment related costs, such as workplace pensions, redundancy
 - compulsory employers' liability insurance
- provide a list of direct payment support service providers (published on the [Council's website](#)) which can provide information, advice and support.

Disclosure and Barring Services (DBS) checks

8.3 Adults with capacity and any nominated person acting on their behalf are not obliged to carry out DBS checks for people they employ through direct payments but please see paragraph 8.5 below.

8.4 An authorised person **must** carry out DBS checking for any person from whom a service is secured through direct payments **except** where the authorised person is the adult's spouse / partner, a close family member (as [defined at Appendix 1](#)) or a friend of the adult who is involved in the adult's care but please see paragraph 8.5 below.

8.5 The Council **strongly recommends** that DBS checks are carried out for all personal assistants even when the person managing direct payments is not obliged to do so.

9. Council duty to protect public funds

9.1 The Council has a duty to protect the public funds that it administers.

Debt recovery

9.2 The Council will continue to meet needs for care and support if an adult fails to pay the assessed amount (where relevant) into the Payment Card account but the Council:

- will follow its usual debt recovery procedures to recover the debt to the Council
- may suspend or end direct payments either permanently or temporarily.

Fraud and misuse of public funds

9.3 Suspected concerns about fraud, including fraud committed against other public bodies, will be reported to the Council's Internal Audit Investigation Team for investigation which may lead to:

- information sharing between the Council and other bodies responsible for auditing or administering public funds such as H.M. Revenue and Customs and the Department for Work and Pensions, and / or
- criminal prosecution.

10. Monitoring and reviewing direct payments

10.1. The Council will keep direct payments under review to ensure that they are being used as intended, that conditions are met and that public funds are being used effectively.

10.2 We will inform anyone entering into a direct payment agreement with the Council about monitoring and review requirements including what records they must retain and what information they will be required to produce.

10.3 We will review how direct payments are being used within the first six months of the agreement and then at intervals of no more than 12 months.

10.4 The Council will also review direct payments at any time when it considers that:

- there has been a change in capacity, or
- any of the conditions listed at paragraphs 3.1 (adults with capacity) or 3.4 (adults who lack capacity) is no longer met, or
- direct payments have not been used as intended, or
- the adult's safety and welfare have been compromised or
- there has been any change which may adversely affect the effectiveness and intention of the support / after - care arrangements.

10.5. Reviews will be appropriate and proportionate to the relevant circumstances. The review may:

- be a 'light touch' online review of the Payment Card Account after which the Council will write to the person managing direct payments to confirm that the account has been reviewed and to raise any identified concerns.
- be more detailed and involve all relevant parties. The Council will confirm the outcome of the review in writing.

10.6 When an adult is receiving direct payments to meet both social care and health needs, the Council will make every effort to coordinate processes to try to reduce administrative and compliance requirements.

11. Discontinuing Direct Payments / Requiring Repayment

Discontinuing Direct Payments

- 11.1. People managing direct payments, either for themselves or on someone else's behalf, may discontinue direct payments at any time by giving 4 weeks written notice to the Council. Depending on the circumstances, the Council may agree to vary this notice period.
- 11.2 The Council will provide notice before discontinuing direct payments except in exceptional circumstances when direct payments may be discontinued without notice.
- 11.3 The Council will end direct payments where it is satisfied that:
- the person no longer requires the support or after-care services for which direct payments are made.
 - the person becomes excluded from having direct payments - please see [Appendix 2](#).
 - any of the conditions set out at paragraphs 3.1 (adults with capacity) or 3.4 (adults who lack capacity) are no longer met.
 - direct payments are not safeguarding or promoting the person's welfare.
- 11.4 The Council may suspend or end direct payments either permanently or temporarily if:
- the adult does not require assistance because their condition has improved and / or they do not need the services that direct payments were intended to secure.
 - any condition attached by the Council is unmet or the Council has reason to believe that direct payments have been used for purposes other than as specified in the adult's plan.
 - the adult fails to pay the assessed amount (where relevant) into the direct payments account.
 - given all the circumstances, the Council considers it appropriate to end direct payments.
- 11.5 The Council may suspend a Payment Card account while investigations are undertaken if it appears that the account has been accessed without the consent of the person managing direct payments or that unusual transactions have occurred.

Requiring repayment

- 11.6. The Council will require full or partial repayment of direct payments if any condition attached by the Council is unmet or the Council has reason to believe that direct payments have not been used as agreed in the adult's plan.
- 11.7 The Council may require repayment of any unspent direct payment if they are not required for the purposes agreed in the adult's plan.

- 11.8 The Council will require repayment of excess funds accumulated in the dedicated bank account where there is no reasonable explanation for the surplus.
- 11.9 Direct Payments do not form part of an estate in the event that someone dies while receiving them. The money at all times belongs to the Council and remains public funds.

12. Concerns and complaints

- 12.1. As a first step, the Council encourages anyone who is dissatisfied with Adult Social Care services or with an Adult Social Care decision to:
- discuss their concerns with the staff member they are dealing with or
 - ask to speak to the staff member's manager instead.

The Council will try to resolve concerns quickly or explain why this is not possible.

- 12.2 If the concern is not resolved, or if preferred, people may use the [Council's complaint's procedure](#) to make a complaint. We will provide information about how to use the complaints procedure.

13. Implementing, monitoring and reviewing policy

- 13.1. This policy will be published on the Council's website.
- 13.2 The Council will advise staff and any delegated organisations that policy has been revised.
- 13.3 The Council will monitor compliance with this policy through routine quality assurance processes such as:
- manager / supervisor oversight of casework
 - internal audit procedures
 - contract management and monitoring and other processes agreed with organisations authorised or commissioned by the Council to act on its behalf or provide services for the Council.
- 13.4 The Council will review this policy by 31 August 2024.

Appendix 1 - Definition of terms in this policy

<p>Adult with capacity</p>	<p>An adult who has the mental capacity to make decisions about direct payments</p>
<p>Adult without capacity</p>	<p>An adult who does not have the mental capacity to make decisions about direct payments. The Council will assume that people are able to make their own decisions about direct payments until we have established that they cannot. We will follow the Gloucestershire Multi Agency Mental Capacity Act policy and guidance where capacity is in doubt.</p>
<p>Authorised person</p>	<p>Someone who is authorised under the MCA to make personal welfare decisions about an adult without capacity, i.e. someone who:</p> <ul style="list-style-type: none"> • Holds a lasting power of attorney given to them by the adult before they lost capacity, or • Was appointed as a deputy for the adult by the Court of Protection under section 16 of the MCA. <p>Where the person making the request for direct payments on behalf of an adult without capacity is not authorised to make personal welfare decisions as described above, the Council and any person who is authorised to make personal welfare decisions must agree that the person making the request is a suitable person to act as the authorised person.</p>
<p>Carer</p>	<p>A carer is someone of any age who provides practical or emotional support to / looks after a family member, partner or friend who needs help because of frailty, physical or mental illness, or disability. This does not usually include people who are paid, employed or volunteer to act as carers.</p> <p>The term 'carer' in this policy means an adult caring for another adult.</p>

<p>Close family member</p>	<p>Someone who lives in the same household as the adult who is the adult's:</p> <ul style="list-style-type: none"> • Parent or parent-in-law • Son or daughter • Son-in-law/daughter-in-law • Stepson or stepdaughter • Brother or sister • Aunt or uncle • Grandparent, or • The spouse/partner of any of the people listed and living in the same household as the adult.
<p>DBS checking</p>	<p>Screening through Disclosure and Barring Services. This checks criminal history and identifies people barred from working with children and vulnerable adults.</p>
<p>Financial assessment</p>	<p>Means tested charges apply in most cases when the Council meets unmet eligible needs for care and support under the Care Act. Where the Council intends to charge for meeting needs, our Financial Assessment and Benefits (FAB) Team carry out a financial assessment (a means test) to decide whether the person can afford to pay all, part or none of the cost of their care and support.</p> <p>Charges do not apply when the Council is:</p> <ul style="list-style-type: none"> • providing after - care services under S117 MHA • meeting the unmet eligible needs of carers under the Care Act
<p>Managed account</p>	<p>Managed accounts are used in limited circumstances, for example where an adult / authorised person has a poor credit rating. Direct payments are made to a commissioned service which manages the funds on their behalf. The direct payments recipient remains responsible for how direct payments are used. For example, if direct payments are used to employ staff, the direct payments recipient is the employer, even though the commissioned service may carry out employment activities on a day to day basis. Adults who are able to provide consent may also elect to use a managed account.</p>

MCA	Mental Capacity Act 2005
MHA	Mental Health Act 1983
Minor adaptation	An adaptation is defined as minor when the total cost including supply and fitting is less than £1000.
Nominated person	A nominated person is someone selected by an adult with capacity to manage direct payments on their behalf. The nominated person takes full responsibility for managing the direct payments so the Council has to agree to the arrangement.
Payment Card Account	A card, linked to a bank account, where funds are preloaded and used in a similar way to a banking debit card. The account cannot become overdrawn because there is no credit facility. The account is run by a company called EML Payments.
Plan	<p>A plan which summarises:</p> <ul style="list-style-type: none"> • how it has been agreed that unmet eligible needs under the Care Act for someone who needs care and support or a carer will be met • what S117 MHA after-care services have been agreed
Review	Monitoring and review of direct payment arrangements to ensure that they continue to meet the needs. Usually carried out concurrently with a review of the person's plan
S117 after care services	A wide range of services necessary to meet a need arising from a person's mental disorder when a person ceases to be detained under the MHA.

Appendix 2 - People excluded from having direct payments

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

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

Source:

Care and Support (Direct Payments) Regulations 2014 – Regulation 2, Schedule 1

Appendix 3 – legal context

This policy is based on the following legislation and guidance:

- [The Care Act 2014](#) in particular sections 31 - 33, and 75 (7)
- [The Mental Health Act 1983 section 117 \(2C\)](#)
- [The Care and Support \(Direct Payments\) Regulations 2014](#)
- [Care and Support statutory guidance](#) - in particular chapter 12

Local authority duties to achieve best value derive from:

- [The Local Government Act 1999 - section 3](#)

Other legislation relevant to this policy includes but is not limited to:

- GDPR as enacted in the [Data Protection Act 2018](#)
- The [Equality Act 2010](#)
- The [Human Rights Act 1998](#)
- The [Mental Capacity Act 2005](#) (MCA)
- The [Mental Capacity \(Amendment\) Act 2019](#)