# Direct Payments Procedure & Guidance

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# Direct Payments Procedure and Guidance

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1. **Introduction**

Direct payments and personal budgets are central to implementing the government's personalisation and self directed support policies. These are aimed at giving social care service users more independence, choice and control over how their support needs are met.

Every service user who is assessed as being eligible for support receives an allocation of funding which we consider is sufficient to meet their needs. This is called a personal budget. It is means tested so the service user may have to contribute towards the total amount of the personal budget.

The personal budget can be spent in one of three ways:

- We can make all arrangements for the service user’s support,
- We can pay our portion of the personal budget to the service user so that they can make their own arrangements, or
- The service user can choose to have a combination of the two – where we make some support arrangements and they make the rest.

When we pay our portion of the personal budget to the service user, this is called direct payments.

How we administer direct payments must be in line with the Community Care, Services for Carers and Children’s Services (Direct Payments) (England) Regulations 2009 and with Department of Health Guidance (2009) Guidance on Direct Payments.

You must be familiar with and follow the Direct Payments policy. **Always consult the Direct Payments policy first.** This guidance supports and expands on some areas of policy. Where applicable, procedures are included.

If you are uncertain about what to do, need support in decision making or are dealing with something unusual, **always seek advice from your supervisor or manager.**
2. **New direct payments**

**Making sure people are properly informed**

We must offer direct payments at every assessment and reassessment to people who are eligible to receive them – see also Capacity to Consent to and Ability to Manage Direct Payments.

We must not pressure people into having direct payments – having direct payments is a choice and people can opt in or out of having them at any time.

Direct payments give people more choice but they come with responsibilities. When we are offering direct payments, we should explain how direct payments work so that people can provide informed consent, e.g.

- They will have to meet all their support costs from within the personal budget.
- They will have to open a new bank account – unless they already have one that is used for support purposes - so that we can monitor how direct payments are used.
- Payments cannot be made in cash. Only cheque or electronic bank transfers must be used.
- There are some conditions. Direct payments have to be used to meet the service user’s support needs, they can only be spent on services / equipment / adaptations that are safe, legal and value for money (Policy ss8 - 9).
- They will have to keep records - their agreement and support plan, as well as bank statements, receipts, invoices, timesheets. We will want to see these records when we review direct payment arrangements.
- If they use direct payments to employ staff, they will have responsibilities as an employer.

We should also refer people to our website and provide written information. We can offer the following publications:

- The Direct Payment Support Services List.
- Adult Social Care Direct Payments Guide
- Becoming an Employer guide
• Suitable Person fact sheet

• Using an Agency fact sheet

We should always encourage people to seek independent advice about direct payments from our commissioned direct payments support services and other reputable sources.

It is particularly important that service users or a suitable person seek advice if they intend to use direct payments to employ staff. They, not the County Council, will be the employer. They will become responsible for meeting legislative (e.g. employment and health and safety laws) and contractual (the employment contract) requirements. They will be liable if requirements are not met. For example if they discipline or dismiss a staff member, they must be fair and operate within the law. Otherwise they may face legal proceedings or have to pay out on an unfair dismissal and/or redundancy claim.

The law requires that employers have compulsory Employers’ Liability insurance. The service user or suitable person is responsible for taking out the insurance and for ensuring that premiums are paid when due.

We cannot provide employment advice – this is not our area of expertise - but we have an obligation to make sure that people are aware that they will have to meet legal requirements. **We must urge people to seek advice from a reputable source about the legal responsibilities of becoming an employer.**

Commissioned direct payment support services can provide employment and other advice about requirements (for example, the minimum wage, leave, statutory sick pay, tax, national insurance, health and safety, employers’ liability insurance, terminating employment, redundancy). They may also encourage service users to think about their specific requirements, for example:

- Will a personal assistant will be expected to accompany the service user on holiday or be required to take their holiday entitlement while they are away?

- What will happen if the service user is in hospital and therefore does not require support at home?

The first consultation is usually free.

Service users or a suitable person can contract commissioned direct payment support services to provide employment and other services on their behalf. For example direct payment support services can provide payroll, DBS
screening, day to day staff management, record keeping and other services. These services attract fees which must be met from within the personal budget. Service users or a suitable person must be made aware that in these circumstances they, not the commissioned service, are the employer. Information about the services provided by direct payment support services appears on our website.

Training for personal assistants can be accessed free of charge (as at May 2014) from the County Council by booking through our 'Extra' website pages. Social care training is open to all personal assistants as is all the e-learning and e-assessment.
New service user assessment procedure

Arrange a visit with service user to complete the assessment


Take Basic Financial assessment form (ERIC docs) to complete.

Complete the assessment, informally assessing whether service user has the capacity to consent to DP and the ability to manage DP. **MCA processes are required if there are concerns about capacity to consent**

Explain assessment process including: eligibility criteria, indicative budgets, support planning and need for financial assessment for client contribution.

Refer to FAB team via workflow (ERIC) and highlight the ‘DP’ tick box

Complete FACE assessment to gain indicative budget – submit to Panel and gain approval

Discuss arrangements with service user to decide who will be completing the support plan
Support planning

Where eligibility criteria for direct payments are met, three options can be offered at support planning stage:

- We can make all support arrangements.
- We can make direct payments so the service user can make their own arrangements.
- We can offer a mixed package where the service user makes some of the arrangements and we make the rest.

Direct payments increase choice and control by ‘giving people a clear understanding of how much is to be spent on their care and support and allowing them to choose how they would like this funding to be used to suit their needs and preferences’. (2010 DH Guidance on Eligibility Criteria for Adult Social Care, p7). Direct payments allow service users to hold and control their own personal budget.

People can meet their support needs creatively, flexibly and innovatively provided that needs are met lawfully. Services purchased using direct payments must be as cost effective (i.e. best value for money) as services that we would arrange, although the increased flexibility, choice and control provided by direct payments represents some added value.

No matter who makes the arrangements (i.e. the service user or the County Council), all costs have to be met within the personal budget. This includes:

- The cost of ongoing services and all associated costs.
- Start up costs / one off expenditure, e.g. advertising for staff, DBS screening, the first employers’ liability insurance premium, and cost of equipment / minor adaptation.
- Fees for services offered by commissioned services, e.g. managed accounts, payroll services, recruitment / staff management, management of direct payments. Note: This slightly reduces the amount of funding available to meet assessed needs.

Note also that unusual costs, for example redundancy claims are not included within the direct payment. This means that if costs cannot be paid from contingency allowances within the direct payments account, they must be met from the service user’s own resources or, if the service user has died, from their estate.

Costs are written into the support plan. We should always stress the need to accumulate funds for things like insurance / tax, and to cover contingencies, e.g. for emergency cover if a personal assistant calls in sick. A quick support plan may be used if sufficient funds will not be accumulated in time to make a specific payment.
Direct payment recipients should be encouraged to contact us if they find that they are not managing, want to stop direct payments or arrangements are not meeting needs.

Support planning procedures begin on the next page.
Support Plan

Ensure SU is aware of any client contribution (FAB send letter to SU) and how this impacts on DP.

If SU selects Direct Payment as the ‘service provision’ to meet assessed needs, ensure ‘capability’ of individual or anyone who may be supporting with management of direct payment. This includes checking with Care Services Finance that the Service User has no outstanding dom care debts.

Explain options for getting support with managing DP (and need for SU to fund this support within IB)

Refer SU to GCC website with details of DP support services and what they can offer, costs and advise SU how to get in touch with the organisations to select which one they want to work with.

Complete the support plan

All services must come from the Indicative Budget.

The services to be purchased should each have a separate budget line selected from the direct payment type

- PA Hours
- Insurance
- Payroll/Support Costs
- Respite Care

Include details of the DP support service provider

Any services purchased using a formal provider **not through DP** should also be identified and entered on a separate budget line.

- Day Care
- Independent Care Provider

If the Personal Budget is over the Indicative Budget it needs to be considered as an Exception

Gain manager’s agreement
Complete the appropriate Direct Payment agreement (ERIC docs); referencing who will be managing the DP account. SU contributions should be recorded in the schedule of payments.

Explain the agreement, responsibilities and SU contribution to all signatories. Gain signatures and provide a copy to all signatories.

SCAN signed DP agreement in full onto ERIC docs

Check that bank details have been received, scan onto printer to own email and forward on by email to Care Services Finance team: careservicesfinance@gloucestershire.gov.uk (Delete email after sending)

(Do not scan bank details onto ERIC system)

Await email from Finance confirming that ‘vendor number’ has been inputted. Complete SU Change Sheet/New Service for entry (Finance to email allocated worker)

Complete 1st SU Change Sheet via ERIC for ‘first 8 weeks payment’ Send to team administrator/clerical for entry through workflow

Arrange who will be responsible for ensuring that ‘Care Services Finance’ receives a copy of the first provider invoice or PA time sheet. Service User or person acting for them to send to worker to forward to CSF and Payroll provider

NB. This is vital to confirm start date of service in order to arrange ongoing payments.

Await email confirmation from Care Services Finance who will advise start date. Complete 2nd SU Change Sheet via ERIC for ‘ongoing’ payments.

NB. This is essential to ensure ongoing payments and should be actioned a.s.a.p to ensure sufficient funds are in place.
Direct payment agreements

Service users and where applicable their nominees and any appointed suitable person must understand what is being agreed in the legally binding direct payments agreement.

There are several direct payments agreements so we need to select the appropriate one from ERIC documents and make sure that all details are correct.

We should explain the agreement to the signatories to be sure that they understand what they are agreeing to before they sign it (signatures must be witnessed) and provide each signatory with a copy for their records.
Review of direct payment arrangements before de-allocation

Direct payment arrangements are reviewed about 6 weeks after set up and before de-allocation to make sure that:

- Arrangements are meeting the service user's needs.
- The direct payments recipient is coping with arrangements.
- County Council, and where applicable the service user's contributions, are being paid into the direct payments account.

Arrangements should be revised if they are not working as planned. The review is also an opportunity for the service user / direct payment recipient to opt out if they want to.

If all is well, the next review date should be entered onto ERIC.

Reviews must occur at least annually. Exact timing depends on professional judgement about risks, for example the vulnerability of the service user, any potential instability, financial risks (e.g. concerns about money management abilities or where a financial allocation is particularly large).

Adults lacking capacity – special considerations

Having a suitable person – see Suitable Person - in place does not absolve us of our responsibility to safeguard vulnerable adults.

We may need to allow for more frequent monitoring and review visits especially in the early stages of direct payments to satisfy ourselves that the service user is not at risk and that their needs are being met.

We might also involve other people, particularly those consulted when the suitable person was first appointed, as well as independent advocates where appropriate.
Review of Direct Payment arrangements before de-allocation
(approximately 6 weeks after Direct Payment set up)

Check the following:
- Are the service users needs being met by service provision?
- Direct Payment is being received into bank account
- Standing order has been set up for service user contribution (ensure correct amount)
- Invoices, receipts and PA timesheets are being kept
- All payments are made by cheque or bank transfer

Double check the account is only being used for services as specified in the support plan (e.g. not for food/utilities)

Complete a SU Change request via ERIC to set up next review date and de-allocate.
**Review date must be within 12 months.**
3. **Capacity to consent to and ability to manage direct payments**

Before making direct payments we must be satisfied that informed consent can be provided and that the person who will receive direct payments is able to manage them – see Direct Payments policy s13.

**Capacity to consent to direct payments**

Where people have the capacity to consent, our responsibility is to make sure that they are fully advised about what is involved in direct payments so they can give informed consent.

Where the service user has expressed an interest in having direct payments and there is any doubt about their ability to consent, seek advice from your manager or supervisor. Mental capacity must always be assessed through our established MCA processes before any decisions can be made.

If the service user is assessed as lacking the capacity to consent, they can still have their needs met through direct payments provided that an appropriate ‘suitable person’ can be appointed - see Suitable Person.

**Changes in capacity**

Changes in capacity should also be referred to a manager or supervisor. This includes:

- loss of capacity in a service user who has been receiving direct payments.
- service user regaining capacity where they were previously assessed as not having capacity.
- fluctuating capacity. For example, a service user may have a condition which deteriorates occasionally affecting decision making ability but at other times has capacity.

Key information should be documented, particularly:

- why changes in capacity were suspected / evidence of change,
- who was consulted during assessment and decision making processes,
- what conclusions were reached,
- what arrangements have been made for interim or ongoing care and support, who was consulted and who approved the decision(s).
A. Loss of capacity: Where a service user receiving direct payments is assessed following MCA processes as having lost capacity, direct payments should be discontinued and alternative support arrangements made.

The 2009 DH Guidance on Direct Payments (p 92-93) states ‘If the council believes the loss of capacity to consent to be temporary, it may continue to make payments if there is someone else who is willing to manage payments on the person’s behalf and the service provider (e.g. a personal assistant) agrees to accept payment from this person instead. This situation should be treated as strictly temporary and closely monitored to ensure that, once the person has regained capacity, they are able to exercise overall control over the direct payments as before. If the person’s loss of capacity to consent becomes prolonged, then the council should consider making more formal arrangements for a suitable person to take over receipt of the direct payments on that person’s behalf.’

B. Regaining capacity - permanent: If we are satisfied that someone who previously lacked capacity has regained capacity on a permanent or long term basis, we have ‘a duty to discontinue the direct payments to the suitable person and instead to make payment to the person requiring care and support. However, before it does so, the council must consult with the person about whether they wish to receive direct payments.

Most importantly, councils should not terminate direct payments to the suitable person before beginning to make direct payments to the service recipient themselves (except where councils have decided to refuse direct payments) or arrange services for them, according to their wishes and subject to their entitlement. This will ensure that there is no period when they are not receiving care and support and therefore that there is no gap in the provision of their care.’ 2009 DH Guidance on Direct Payments p25.

C. Fluctuating capacity: Where we reasonably believe that capacity will fluctuate, direct payments should be subject to the condition that the suitable person will allow the service user to manage direct payments themselves during any period when we are satisfied that the service user has the capacity to consent to direct payments, is capable of managing them and wishes to do so.

‘In this way, arrangements for the making of someone’s direct payments do not have to be continually revisited as they lose or regain capacity. This makes things easier in practical terms for the suitable person and the council, and provides continuity of arrangements for the person requiring care and support.’ 2009 DH Guidance on Direct Payments, p25
Ability to manage direct payments (service users with capacity and appointed suitable person)

We must be satisfied that service users who can provide consent, and any suitable person acting for a service user without capacity, are capable of managing direct payments either on their own or with help. We must make sure that:

- service users with capacity understand that they remain responsible for how direct payments are used even when arrangements are made by someone else on their behalf.
- An appointed suitable person understands that they are as responsible as a service user would be for managing direct payments.

Most people will be able to self identify whether or not they need or want support in managing direct payments.

‘If a council is concerned that a person who wishes to receive direct payments may not be able to manage the payments, the council should ensure that it takes into account and subsequently records all relevant factors before making a decision not to make direct payments. These decisions may need to involve professional staff who are trained to assess capability and help people make decisions, and who should consider:

- the person’s understanding of direct payments, including the actions required on their part;
- whether the person understands the implications of taking or not taking on direct payments;
- what help is available to the person;
- what kind of support the person might need to achieve their identified outcomes; and
- what arrangements the person would make to obtain this support.’

2009 DH Guidance on Direct Payments (p27)

People responsible for direct payment arrangements should be capable of making care arrangements and of managing the direct payment funds. During the assessment, the assessor might ask the person whether they feel in control of their current finances to get a feel for whether they may require support. Basic money management skills may need to be explored. For example, do they have a poor credit rating / history of debt; trouble keeping up with household bills; are they likely to experience problems in opening a bank account? The assessor should check with Care Services Finance to see if the person has any outstanding debts related to dom. care services.
If there are concerns about money management skills and there is no one to assist, direct payments might be made conditional on the service user having a managed account.

With a managed account, direct payments are made to a commissioned service rather than to the service user. The commissioned service receives the direct payments as well as managing and accounting for day to day arrangements. Commissioned service providers charge a fee for managed accounts which must be met from within the personal budget.
4. **Suitable Person**

A suitable person is someone appointed to receive and manage direct payments for a service user assessed as lacking capacity to consent to receive direct payments.

Decisions about appointing a suitable person must be made with care. A suitable person is in a position of trust. Service users who do not have capacity to consent to direct payments may be more vulnerable to physical / financial and other abuse than other service users. They may be less able to clearly communicate what they want or tell us if something is happening that they do not like or frightens them. We must make sure that our decisions ensure that their needs are met and that they are not put at risk.

We must take care not to inadvertently pressure anyone into acting as a suitable person. The role comes with considerable responsibility. The suitable person is as liable as a service user would be for any misuse of direct payments. Without discouraging people from taking up the role of suitable person, we should explain the consequences of neglect or ill treatment and of financial misconduct. For example, a suitable person may be found guilty of fraud if they dishonestly abuse their position or use direct payments to benefit themselves or people other than the service user.

The suitable person must make decisions which are in the service user’s best interests. This includes encouraging and enabling the service user to be as involved as they can be in decisions that affect them. Service users often have the capacity to make some decisions even if they have been assessed as lacking capacity to make decisions about receiving direct payments. They should be encouraged to maintain as much control and independence as possible.

The suitable person may need to consult other people close to the service user or interested in their welfare, health and social care professionals where necessary, and anyone appointed as deputy (a deputy appointed by the Court of Protection) or LPA (holder of a lasting power of attorney).

The suitable person may have to manage family or other disagreements about how direct payments should be spent. We may have to provide support from time to time.
Decisions about making direct payments rest with the County Council unless there is a surrogate for the service user, i.e. a deputy or LPA whose authority includes making personal welfare decisions. (Note: a deputy / LPA is a representative but not a surrogate if powers do not extend to making personal welfare decisions).

Decision making authority is summarised in the diagram adapted from Community Care and The Law (Clements and Thompson, 2011 p430).

**Direct Payments in relation to adults who lack capacity to consent to such payments**

- **Is there an LPA or Deputy?**
  - Yes
  - Does the LPA or deputy have ‘personal welfare’ power?
    - Yes
      - LPA/Deputy’s have Power to Veto the DP as ‘Surrogate’
    - No
      - LA has discretion BUT LPA/Deputy has 1st Refusal as ‘Representative’
  - No
    - LA has discretion to make DPs
The steps that must be followed before making direct payments to a suitable person are outlined in Appendix 6 of the Direct Payments policy.

Consultation and in some instances DBS checking are required before decisions can be made about appointing a suitable person. Whether or not there is a surrogate to help with decision making, and whether or not the proposed suitable person is a representative, we have to consult before making a decision about direct payments.

We must be satisfied that:

- The service user’s needs can be met through direct payments.
- The suitable person understands what is involved in direct payments; is willing to receive them; and appears to be capable of managing direct payments either alone or with help. This includes checking with Care Services Finance that there are no outstanding dom. care debts.
- The suitable person will act in the service user’s best interests at all times.
- Given all the circumstances, it is appropriate to make direct payments to the suitable person.

An LPA / deputy should be our first choice of suitable person if they are willing, appear to be capable of managing them and are not an inappropriate choice for any reason. We should always seek the views of a representative or surrogate even if they do not want to act as the suitable person. They may have information about the service user’s wishes and feelings that should be taken into account.

If there is no LPA / deputy, or they do not wish to act as suitable person, we may explore other options. A family member or friend already involved in the service user’s care may be an appropriate choice as might a professional person, like a solicitor or independent care broker.

Every effort should be made to establish who the service user would like to act on their behalf and how their care should be arranged. An advocate might be useful in supporting the service user to make these decisions, especially if:

- The service user has no family or friends to take an interest in their welfare.
- Family members, or family members and professionals, cannot agree about what is in the service user’s best interests.
- The service user has already had contact with an advocate.
There is any concern about the protection of a vulnerable adult.

If after taking all of the steps required in Appendix 6 (Direct Payments policy), we are satisfied that it is in the service user’s best interests then, provided that any surrogate agrees, a suitable person can be appointed.

The suitable person must be made aware that:

- They must act in the service user’s best interests at all times when arranging services with direct payments.

- They must use direct payments only to arrange services that will meet the service user’s eligible needs.

- Direct payments cannot be used to pay themselves.

- Direct payments cannot be used to pay for services provided by the service user’s spouse, civil partner or partner, or a close relative who lives in the same household as the service user, unless we agree that this is absolutely necessary (see Exceptions - Using Direct Payments to Pay Family Members).

- Unless they are a close relative of the service user or a friend involved in the service user’s care, they will have to arrange DBS checking for people providing services through direct payments.

- They must maintain records which we will want to see when direct payment arrangements are reviewed.

- They must provide us with any information we consider necessary in connection with direct payments.

- They must let us know if they think that the service user has regained capacity.

We may make direct payments subject to additional conditions if we think this is in the service user’s best interests.
Appointing a suitable person

If the Service User does not have capacity, is there an existing representative?

i.e. someone who holds Lasting Power of Attorney, or is appointed as a Deputy by the Court of Protection.

Yes No

Check documentation to confirm representative status.

Note: A representative can be a range of powers, e.g. personal welfare, property and financial affairs decisions. There may be exclusions or restrictions.

If the person has authority to make personal welfare decisions they are a ‘Surrogate’.

Explore other options

Is there another person who is willing and capable of acting as the suitable person? e.g. a family member, a friend, or other person.

Yes No

Do not offer Direct Payments as an option for meeting the service user needs

Is the representative willing and capable of managing direct payments?

Yes No

If the existing representative does not wish to act as the suitable person explore other options as above

Follow the Direct Payments Policy Appendix 6 process for consultation, DBS checking and decision making

Outcome satisfactory

Providing any existing surrogate agrees, appoint the suitable person and obtain signature/s on the suitable person agreement and Direct Payment agreement

Outcome unsatisfactory

Seek management advice and discuss how to proceed
5. **Annual review of direct payments**

**Ongoing re-assessment and review**

Service user needs and circumstances are reassessed at least once a year to confirm that their personal budget is still appropriate to meet their needs. The Regulations require direct payments arrangements to be routinely reviewed at least once every 12 months, so the needs assessment and direct payments review are usually carried out concurrently.

The review of direct payments is to make sure that arrangements are meeting needs and that funds have been appropriately managed. Part B of the *Checklist for Direct Payments* should be used to record the review process then stored within ERIC documents.

When the review is being arranged, we should remind the direct payments recipient that they can arrange for their financial representative/advocate or any other support person to attend. We will need to see the bank statements and cheque book(s) for the year as well as all other supporting documentation, like invoices, timesheets or receipts.

We must always seek evidence that direct payments have been used to meet the service user's needs as agreed in the support plan. Any indication of improper use must be discussed with the service user and raised with your manager or supervisor.

**Cash reserves in the direct payment account**

As a rule of thumb, the reserves in the direct payments account should be between 4 to 8 weeks worth of payments. Smaller or larger reserves must be explored as this may indicate that needs are unmet (which should be addressed by re-assessment) or that there are problems managing direct payments.

Lower reserves than expected might be caused by:

- service user or County Council contributions not being paid into the account.
- paying for more support hours than anticipated.
- generally exceeding the budget.
- Improper use - using direct payments for purposes other than meeting needs.

If reserves seem to be too high, this might be because:
• funds have been accumulated for legitimate reasons connected to needs and outcomes, for example to pay tax, wages, holiday / emergency cover or other anticipated expenditure.

• there has been a break between the employment of personal assistants.

• support has not been purchased as agreed.

Concerns about cash reserves should always be raised with your manager or supervisor.

Where there is no satisfactory explanation for an accumulation of reserves, we must explain to the service user / direct payment recipient that funds must be recovered. Recovery is either by repayment or by suspending direct payments until the balance of the account is reduced.

Care Services Finance should always be advised and may have a view about the most appropriate option. If the excess is to be repaid, they will raise an invoice to create an audit trail.

Stopping or suspending direct payments

There are several reasons why direct payments may be stopped or suspended, including but not limited to:

• The service user is no longer eligible for services or for direct payments,

• The recipient is struggling to manage direct payments even with support,

• Deliberate misuse / mismanagement of funds,

• The service user dies or is admitted to hospital or residential care for an extended period.

Decisions about stopping or suspending direct payments should be referred to a manager or supervisor and are made on a case by case basis.

If direct payments are to be stopped and the service user continues to require support to meet assessed needs, we must make alternative arrangements.

We may need to stop / suspend direct payments which are being used to employ staff either directly or through commissioned services. Wherever possible, we should negotiate a termination date / terms which allow the direct payments recipient to comply with contractual requirements.
Where relevant, action should be taken to recover funds.

Care Services Finance must be notified if direct payments are to be stopped or suspended. They may wish to provide advice if funds must be recovered.

Changes to direct payment amounts

If the personal budget is reduced or increased following a reassessment of needs, a new support plan should be negotiated.

If subsequent changes to direct payments require alterations to staff working hours, particularly where hours must be reduced, adequate notice should be given so that the service user can comply with contractual or other obligations.

Care Services Finance must be notified of any changes to the amount of direct payments.
Review direct payment arrangements concurrently with reassessment of needs.

Check current service commitments and finance screen. Ensure financial assessment is within last 12 months. Worker is responsible for checking service user’s capacity to make decisions and checking the direct payment file, provider invoices and bank statement transactions to ensure appropriate management.

Confirm Direct Payment continues to achieve the outcomes outlined in the support plan

Check the service users direct payment file and bank statements.

Refer to Part B Checklist for Direct Payments

It is a requirement to keep documentation for 7 years (6 previous years plus current)

☐ All monthly bank statements have been filed
☐ Evidence of service user contribution (check correct amount re global uplift)
☐ Check statements to ensure appropriate transactions have been made – has there been any improper use of DP funds?
☐ Check cheque stubs re payee – any improper use indicated?
☐ Check receipts, provider invoices and/or PA timesheets
☐ Check balance in account is within 4 to 8 weeks worth of DP. (If above 8 weeks this could be due to monies put aside for PA holidays, tax etc or for respite)
☐ All unexplained excesses and deficits must be explored

Is everything in order?

Yes

No

Inappropriate use of funds and/or other concerns

Consider whether the Service User is able to manage Direct Payment.

Discuss with Manager/Supervisor – consider using Legal Services

Unaccountable excess amount in bank account

Seek advice from Care Service Finance on recovery process, i.e.

- Suspension of payment, or
- Request repayment of excess funds by raising an ‘invoice request’ on ERIC

Advise Service User of funds recovery process

Reassess and create new Support Plan and DP Agreement.
6. **Carer Direct Payments**

Carer direct payments are specific to services to meet the carer’s own assessed and eligible needs. They are for services that sustain the carer’s health, wellbeing and quality of life, and which support them to keep on caring, for example:

- Services that give the carer a break so that they can have some time to themselves. Carer direct payments can be used to pay for sitting services or general day care. They cannot be used to pay for services that involve physical contact like lifting, washing, grooming, feeding, dressing, bathing, toileting. These meet service user rather than carer needs.

- Services that allow carers to spend more time caring, like help in the home or garden.

- Other things that support the caring role, for example relaxation therapy.

Carer needs are routinely considered within the service user’s assessment. Where carer needs are considered independently of service user needs, the assessment is carried out by commissioned services unless the carer wishes the assessment to be completed by the County Council.

Irrespective of who carries out the assessment of carer needs, **direct payments are always arranged by the County Council**.

If you are reviewing existing carer direct payments and you believe that existing carer direct payments are not consistent with the requirements listed here, you should discuss your concerns with your manager or supervisor.

7. **Exceptions - using direct payments to pay family members**

Direct payments cannot be used to pay for services from the service user’s spouse, civil partner or partner; or a close relative (or their spouse or partner) who lives in the same household as the service user – see Direct Payments Policy Appendix 4.

The restriction is aimed at people who are living together anyway where caring relationships are primarily personal rather than contractual. It does not prevent the use of direct payments to employ other live in personal assistants.
For adults, exceptions can be made only if absolutely necessary to satisfactorily meet the service user’s needs. We must be satisfied that this is the only or most effective way of making sure that the service user is safe, their needs are met and their outcomes achieved. An exception might be considered:

- In an emergency.
- While alternative arrangements are being pursued.
- Where attempts to arrange independent services have failed, for example because services are required at times which are unattractive to staff or because the service user lives in an isolated location.
- Where a family member has re-arranged their life and living arrangements to be able to provide care for the service user.
- Where there are special cultural or communication needs. For example where it has been difficult to find staff who can effectively communicate with the service user, or who have the appropriate language skills and / or cultural expertise or sensitivity to provide services to someone from an ethnic minority community, and this is relevant to providing personal care services.

All decisions about exceptions are made on a case by case basis by a manager.

<table>
<thead>
<tr>
<th>Procedure for applying for approval for direct payments to be used to pay a family member</th>
</tr>
</thead>
<tbody>
<tr>
<td>Discuss the circumstances which suggest that an exception should be made either on an interim or ongoing basis with your manager. You must justify why the exception should be made.</td>
</tr>
<tr>
<td>If approval is granted, record in the ongoing record:</td>
</tr>
<tr>
<td>➢ what alternatives were considered,</td>
</tr>
<tr>
<td>➢ who was consulted,</td>
</tr>
<tr>
<td>➢ why the conclusion that an exception should be made was reached,</td>
</tr>
<tr>
<td>➢ requirements for review if arrangements are interim only, and</td>
</tr>
<tr>
<td>➢ who approved the decision.</td>
</tr>
<tr>
<td>Confirm the arrangements in a letter to the service user and / or person managing direct payments for them so that they have a record of the exception decision.</td>
</tr>
</tbody>
</table>

8. **High Dependency – top ups**

In high dependency cases, the indicative budget may be insufficient to adequately meet assessed needs within the service user’s own home. We may consider that a residential care placement would more fully meet the service user’s needs and be ‘best value for money’.

In such circumstances, a family may offer to ‘top up’ the service user’s direct payment with their own care provision so that the service user can remain at
home. Offers of top ups must be carefully considered on a case by case basis.

The 2010 Guidance on Eligibility Criteria for Adult Social Care, p20 requires that ‘needs should be considered on a person-centred basis recognising both individual need and taking into account the support that the individual’s family or support networks are willing and able to provide.’

We cannot make decisions based purely on ‘best value’ considerations. We must always ensure that assessed needs will be met and that service user choice and independence are maximised.

In some instances, we may reach the conclusion that direct payments – even with a top up – will not secure an adequate level of service to meet needs. For example a residential care placement may be the only way to meet assessed needs if a high level of nursing care is required or where there is severely challenging behaviour associated with dementia.

Alternatively, we may be satisfied that assessed needs can be met through direct payments topped up by additional care provided by family or others on a voluntary basis. Where service users lack capacity, the decision to allow a top up may fulfil one of the principles of the Mental Capacity Act 2005 that anything done for or on behalf of someone who lacks capacity should be the least restrictive of their basic rights and freedoms.

Decisions about top ups in high dependency cases should be referred to a manager or supervisor. Discussions and negotiations with family and others should be documented. The record should include:

- What information was considered during the decision making process
- Who was consulted / involved
- Any differences of opinion
- The reason for reaching the final conclusion
- Who approved the decision

Where a top up is agreed, it must be clearly explained to family that the contributions that they provide to the service user’s care are key to care arrangements meeting all the assessed needs. The family’s voluntary contribution should be documented in the support plan.

We must also explain to the family that if there is evidence on review that service user needs are not being met, there may be grounds for withdrawing
the direct payments on the basis that only residential care is able to meet the needs.

Agreement should be documented and signed by the parties so that there is a written acknowledgement from the family that they understand the nature of what has been agreed.

9. Extraordinary employment circumstances

Where direct payments are used to employ staff, the service user or the suitable person is responsible for all employment matters, including extraordinary payments not covered within the personal budget. The County Council is not the employer and for this reason does not accept responsibility for any employment related payments arising from the use of direct payments to pay staff.

All extraordinary employment circumstances raised as issues for the service user must be elevated to a manager for consideration on a case by case basis. Two common examples are statutory sick pay (SSP) and redundancy.

From 6 April 2014, employers can no longer claim back payments made for statutory sick pay (SSP). This may mean that extended periods of SSP cannot be sustained within the personal budget. Consideration must be given to how to fund ongoing care needs.

Redundancy occurs for a number of reasons, for example if the County Council decides to stop direct payments, the service user dies or the service user / suitable person decide to stop employing a staff member.

Unspent and uncommitted funds remaining in the direct payments account when direct payments are stopped may be used by the County Council to fulfil extraordinary service user responsibilities but this is always on a discretionary basis.
References

- Clements and Thompson (2011) Community Care and the Law, Legal Action Group

- Department of Health (2001) A Practitioner’s guide to Carer’s assessments under the Carers and Disabled Children Act 2000

- Department of Health (2009) Guidance on Direct Payments for Community care, services for carers and children’s services


- CIPFA (2007) Direct Payments and Individual Budgets Managing the Finances

- Community Care, Services for Carers and Children’s Services (Direct Payments) (England) Regulations 2009