

Version: 1.3 FOI Status: Public	Derbyshire Social Services Direct Payments Policy and Procedure	Issued November 09 Review Due: May 2011
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## DERBYSHIRE COUNTY COUNCIL ADULT SOCIAL SERVICES

### Direct Payments Policy and Procedure

#### 1 Approval and Authorisation

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Authorised by:	Policy and Procedures Group	November 2009

#### 2 Change History

Version	Date	Reason	Name
0.1	8 <sup>th</sup> May 2007	Initial draft	Camille Pace
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## Introduction

These policy and procedures apply to all staff in older people's services, disability services to include Derbyshire Mental Health Services Trust and Learning Disability Federation within Derbyshire County Council. They will:

- Ensure that Derbyshire County Council staff meet our statutory obligations in relation to [Community Care \(Direct Payments\) Act 1996](#), [Community Care \(Direct Payments\) Act 1999](#), [Carers and Disabled Children Act 2000](#), [Health and Social Care Act 2001](#), [Mental Capacity Act 2005](#), [Health and social Care Act 2008](#), [Community Care Guidance on direct Payments](#), services for Carers and Children's Services (Direct Payments) (England) 2009 [The Community Care, Services for Carers and Children's Services \(Direct Payments\) \(England\) Regulations 2009](#). [CITFA Direct Payments and Individual budgets, Managing the Finances 2007](#).
- Achieve consistent approaches for individuals accessing direct payments.
- Provide procedure for supporting people to access direct payments.
- Provide procedure to support individuals where difficulties arise.

## 1 - Direct Payments Policy

Direct Payments are monetary payments made by Derbyshire County Council's Adult Care Services. These payments are made by the local authority directly to individuals who have been assessed as having "eligible" needs for certain services. In order for people to receive a direct payment DCC workers must carry out an Assessment and discuss the options of how any personal budget could potentially be paid.

A Support & Risk Assessment Matrix must also be completed, identifying the level of support and risk to both Derbyshire County Council and the DP Recipient. The level identified, high, medium or low must be logged appropriately on Frameworki and should appear on the Purchasing Order Form informing DP Finance of the outcome of the support and risk assessment.

- 1.1 An assessment should be carried out before considering direct payments. This includes using a resource allocation system to determine an indicative budget in respect of Adult Care.
- 1.2 All staff **must** offer a direct payment as an option to meet eligible needs following an assessment or as a way of receiving a personal budget. The local authority has, in most cases, a "duty" to make direct payments. However, in certain circumstances the local authority has a "power" rather than a duty, in relation to direct payments made to people subject to certain mental health legislation or aspects of the criminal justice legislation relating to a mental disorder. This excludes those individuals who are still excluded as outlined in the 2009 guidance.
- 1.3 Individuals **must** agree to a direct payment. Individuals should not be coerced into accepting a direct payment. Once the person has indicated a preference to receive their personal budget as a direct payment, DCC workers must complete the Support & Risk Matrix Assessment (found on Framework I). This provides a clear framework to check the support needed by the individual and minimises risk to Derbyshire County Council.

All reasonable steps should be taken to support the individual to understand the nature of the decision, to ensure that they can make an informed choice.

- 1.4 Individuals accessing direct payments must be able to manage direct payments with or without assistance, though assumptions must not be made about individual's ability to manage. Support to manage the scheme using the Support & Risk Assessment Matrix must be explored. This may include the use of managed bank accounts, support from family, DCIL and people trusted by the direct payment user. Assessors must be satisfied there are no safeguarding concerns which could be exacerbated by the provision of a direct payment. (please see Safeguarding Section).
- 1.5 Individuals who are not able to manage a direct payment with or without support, can still access a direct payment, via a nominee or suitable person. Where the individual has the capacity to consent they may nominate someone to manage the direct payment on their behalf. Where the individual lacks capacity to consent, then providing there is a willing suitable person who meets all the conditions set out in the regulations they can have a direct payment.'

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- 1.6 Direct payments will be used to meet an individuals social care outcomes. How someone wishes to meet their needs will be specified in a support plan or care plan though the individual can be flexible in how these needs are met.
- 1.7 Direct payments cannot be used to purchase Derbyshire County Council services.
- 1.8 NHS funding cannot be used to provide direct payments.
- 1.9 Direct payments must not be used to employ family living within the same home, except in exceptional circumstances, for which approval by an area manager is required.
- 1.10 All individuals and their Derbyshire County Council worker must sign the appropriate direct payment agreement, which sets out the responsibilities for direct payments of both the individual and Derbyshire County Council (or where appropriate a nominee/suitable person).
- 1.11 All individuals will be provided with information and support to enable them to manage the direct payment. They each will be provided with a direct payments handbook, in a format which is accessible to them.
- 1.12 All direct payment recipients will continue to have a named worker to support them and carry out statutory obligations. If at anytime the DCC worker changes you must notify the direct payment recipient.
- 1.13 All direct payments will be formally reviewed annually, or more often if necessary. Reviews should be carried out more frequently where there are concerns regarding safeguarding, ability to manage the direct payment or a change in the individual's circumstances.
- 1.14 Direct payment recipients are responsible for managing the money provided and services they purchase with it, with support if necessary.
- 1.15 Appropriate support will be provided to individuals in receipt of direct payments. This will be determined through the Support and Risk Matrix in respect of Adult Care.
- 1.16 Derbyshire County Council will support voluntary and other partner agencies to assist in the support of direct payments.
- 1.17 Derbyshire County Council will signpost individuals to manage health and safety and provide financial support to access risk assessments where required.
- 1.18 Personal assistants employed through a direct payment will have access to appropriate training, which will be paid for by their Employer and the direct payment's mechanism. It may be that extra funding to cover training/expenses will need to be triggered by DP Finance.
- 1.19 The financial management of the direct payment will be monitored by Derbyshire County Council.

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1.20 Derbyshire County Council will provide a personal budget to enable individuals receiving direct payments to purchase appropriate care to meet their needs.

All information and written documents will be provided in required accessible formats.

1.22 Where there are safeguarding concerns regarding an individual receiving direct payments, [safeguarding children](#) or [safeguarding adults](#) procedures apply. Any safeguarding issue identified will automatically trigger a “High” level of risk and support via the Support and Risk Assessment matrix.

1.23 Complaints regarding Direct Payments are excluded from the Derbyshire County Council Adult Care complaints procedures.

1.24 The Self Directed Support LAA Target Indicator 130 is defined as: “The number of adults receiving social care through a Direct Payment or Individual Budget”. In relation to carers this means “carers receiving carer’s specific services ages 18 or over”. With immediate effect the threshold for eligibility for a Direct Payment will change in line with the revised carer’s assessment threshold.

## 2 - Direct Payments Procedures

- 2.1 All individuals assessed as eligible for community care services will be offered a direct payment as an option to meet their needs. Individuals routed through self direct support may choose to take their personal budget as a direct payment.
- 2.2 Following an assessment and agreed resource allocation support planning should include the option of direct payments. Whether the individual has consented and has the ability to manage and decision making process will be recorded, following completion of the Support and Risk Assessment Matrix. The worker should consider safeguarding issues as part of the ability to manage the direct payment. Where a child is registered on the at risk register, the decision to make direct payments should be agreed with relevant child protection worker/team, to ensure the appropriateness of direct payments. Where the individual lacks capacity, the following procedures apply '**making direct payments where the individual lacks capacity to consent**' (page 4-5 of the Policies and Procedures).
- 2.3 The individual, with support, will plan how they are going to use the direct payment to meet their personal outcomes. The individual may choose to use an agency, employ their own personal assistant or secure other services to meet their needs and outcomes. Personal assistants may be a family member but must not reside within the same household unless exceptional circumstances are identified. Exceptional circumstances must be approved by an area manager. A live in carer could be employed through a direct payment.
- 2.4 Derbyshire County Council will provide information and sign posting to enable the individual to manage their own direct payment. This should include contact information for Derbyshire Coalition for Inclusive Living, other appropriate voluntary sector agencies, independent sector agencies, care providers and any other information relevant to the individual.
- 2.5 Individuals must use a current bank account which is specifically for the direct payment. No other payments or transactions should be used from this account unless previously agreed with DP Finance and the DCC Worker (an example of this may be Access to Work funds, or Independent Living Funds.)
- 2.6 Where an individual is unable to open an account, Derbyshire County Council will support the individual in writing to the bank. Alternatively the individual could access a managed bank account, where the money is held in an organisation held bank account and managed on behalf of the individual.
- 2.7 A direct payment within Adult Care will be initiated by the completion of the framework i purchasing episode and completion of the 'New Client Form'. The Service Manager signs off the Purchase Order.

Within Mental Health Services a direct payment is initiated through the Mental Commissioning Form. DP Finance will check to see whether the Support and Risk Assessment Matrix has been completed before payments begin.

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2.8 Once the relevant documentation including the Support & Risk Assessment Matrix and purchase order is received, unless there is an exceptions, payment will be made to the individual within 10 working days.

Exceptions:

a) The personal assistant will be working with children or in a household in which there are children under 18 years of age, and direct payment is subject to a satisfactory enhanced CRB clearance.

2.9 Where a child, 'defined as someone under 18 years of age' is present in the home, the Derbyshire County Council insists on an Enhanced Criminal Records Bureau check before the direct payment commences. Where there are no children there is still a recommendation that an Enhanced Criminal Records Bureau check is carried out. This will be administered and funded by Derbyshire County Council.

2.10 The direct payment care management team will provide application forms for an Enhanced Criminal Records Bureau check. This shall be completed by the potential employee, the identification verified by the Derbyshire County Council worker and returned to the designated Admin Support staff who will process the completed CRB Form. They will liaise with the CRB and inform the DCC worker and the employee of the outcome of the CRB check.

2.11 The direct payment recipient is responsible for their own recruitment and selection. Derbyshire County Council will not have any influence or involvement over the selection of staff employed under the direct payment. Where there are concerns that securing services from an individual will place the direct payment recipient at risk, Derbyshire County Council may make a condition that they shall not secure the relevant service from a particular person. Derbyshire County Council will use the relevant safeguarding protocol to inform their decision.

2.12 The direct payment recipient is responsible for making contingency arrangements, to ensure they save enough money to provide cover if their staff are absent, and when necessary will be able to make arrangements for alternative cover. Derbyshire County Council workers must ensure that they have discussed with DP Recipients the need for covering emergency situations and have plans in place to cover such arrangements, in advance of them being required. The local authority still maintains a "Duty of Care" and where all emergency cover arrangements have been exhausted "Call Derbyshire" or Social Care Emergency "Out of Hours" contact details must be given to the DP Recipient. If planned cover arrangements breakdown, the allocated worker will provide support to make arrangements.

2.13 Derbyshire County Council will support the individual to be a good employer. Direct payments recipients will be provided with a handbook, fact sheets, sample forms and letters. Derbyshire County Council have developed a Service Level Agreement with Derbyshire Coalition for Inclusive Living (part of the voluntary sector) to offer support services to direct payment recipients. Other options are available through a range of services which can be found in the Direct Payment's Adult Care Handbook.

2.14 Direct payment recipients who choose to employ their own staff are responsible for all aspects of being an employer. Individuals should seek advice and support from

independent agencies, support agencies in Derbyshire, insurance providers and national organisations.

- 2.15 Derbyshire County Council workers are responsible for informing individuals employing their own personal assistants as to where they can get support and advice in respect of the management and administration of employees, such as disciplinary action. For example; employment advisory service, such as their insurance provider if applicable, DCIL or ACAS.
- 2.16 Direct payment recipients are responsible as employers for the health and safety of their staff. Derbyshire county council will provide funding and signposting for the individual to access risk assessments where required,
- 2.17 Where the assessor is concerned that an individual is carrying out an activity which presents risks, they will carry out a review of the use of direct payments. Where the assessment supports an individual to carry out the activity in a safer way, or minimise the risks, the direct payment recipient remains responsible for implementing the recommendations of the risk assessment and being a safe employer. Where the risks cannot be minimised or the direct payment recipient continues to carry out an activity in a way which it is likely to lead to serious injury of any party, Derbyshire County Council retain the right to withdraw a direct payment as a way of meeting assessed and eligible needs and will in this instance implement appropriate alternative services.
- 2.18 Personal assistants employed through direct payments are eligible to attend training without charge provided by Derbyshire County Council. Employees can attend the relevant Skills for Care short courses and access NVQ II (providing their role allows them to meet the requirements set out by City and Guilds). The payment of wages during this time must be found from the direct payment. If there is insufficient funds in the contingency, Derbyshire County Council will allocate additional hours for training costs that are essential to the role required.
- 2.19 The direct payment care management team will respond to requests for support and information to the public, direct payment recipients, carers and assessors about any aspect of direct payments.
- 2.20 The direct payment care management team will provide at least 6 direct payment support meetings each year.
- 2.21 The direct payment finance team will respond to requests for support and information to the public, direct payment recipients, carers and assessors about financial monitoring.
- 2.22 Information updates will be provided to direct payment recipients by newsletter 6 times a year, which will include policy changes and information about national agendas.
- 2.23 The direct payment will be monitored by submission on a four weekly basis of Expenditure summaries, 4 weekly timesheets, and bank statements unless a lighter touch monitoring is agreed. They are also required by law to keep records pertaining to wages for a minimum of 5 years. .

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- 2.24 The direct payment will be paid every 4 weeks, in advance, unless otherwise agreed with the DP Finance Team. (I am thinking of one off payments for carer's assessed need, equipment, gym subscription, etc).
- 2.25 If required, Derbyshire County Council Worker can seek the support of the direct payment care management team or finance team to resolve difficulties in completing the monitoring forms. Derbyshire County Council Workers should signpost direct payment recipients to Derbyshire Coalition for Inclusive Living for support with managing a direct payment. Personal Assistants should be directed to ACAS or citizens advice bureaux or their local legal advice centre.
- 2.26 Where an individual is considering withdrawing from the direct payment scheme, due to difficulty in managing the process, the Direct Payment Team will look with the DCC worker, at ways to offer additional support to enable the individual to continue with their direct payments.
- 2.27 Where the individual leaves the direct payment scheme, they must take advice from agencies such as ACAS, DCIL, their own Insurers, regarding terminating their employee's employment.
- 2.28 Derbyshire County Council workers retain the responsibility to review direct payment care packages on a regular basis. This will be annually, unless more frequently is required. It will be the workers responsibility to assess how frequently a review is required. The direct payment care packages will be reviewed when necessary, if an individual's circumstances change. A review may also be called by the direct payment recipient by contacting their DCC worker.
- 2.29 Where safeguarding procedures are initiated to protect an adult on direct payments, they should be involved in the procedures as an employer. The need for safeguarding should not override an employee's rights and disciplinary procedures must be used to protect an individual where an employee is the perpetrator. Where Safeguarding procedures are instigated and a Safeguarding Strategy Meeting called a member of the Direct Payment Team must be invited in accordance with the Derbyshire Safeguarding Adult Partnership Board, Protection of Vulnerable Adults, Policy and Procedures.
- 2.30 Where there are concerns about the welfare of a child and safeguarding procedures are initiated, risk to the child must be considered in relation to the continuance of direct payments.
- 2.31 Review of a direct payment care package will concentrate on the direct payment achieving the outcomes specified in the original support plan.

### **3 - Accessing Direct Payments where the individual lacks capacity to consent to a direct payment**

- 3.1 A direct payment should only be made where an individual consents to receiving their services as a direct payment. Where an individual lacks capacity to consent to a direct payment, the direct payment can be made to a 'suitable person' to manage the direct payment on their behalf.
- 3.2 In most cases, the suitable person will be a family member or a close friend though Derbyshire County Council must follow the process set out in The Community Care, Services for Carers and Children's Services (Direct Payments) (England) Regulations 2009.
- 3.3 If someone who has been given Lasting Power of Attorney or been appointed as a deputy they can be the suitable person. (I have changed will to can. They may not want to be the suitable person even if they could be)
- 3.4 Where there is no court appointed individual, Derbyshire County Council will make the decision about who is the suitable person. When making the decision the following should be considered:
  - What are the wishes of the person who lacks capacity, and have they been supported to make their wishes known?
  - Is there anyone who was named by the individual before they lost the capacity to make decisions as someone to consult or support with their care?
  - Is there anyone currently caring for the individual?
  - A Personal Assistant paid through direct payments cannot be a suitable person.
- 3.5 Derbyshire County Council must be satisfied that the individual's needs will be met by the provision of a direct payment, and that the suitable person is capable of managing the direct payment (with support where necessary).
- 3.6 The suitable person shall be subject to a satisfactory Criminal Records Bureau check, if they are not the individual's spouse, civil partner, partner or close relative.
- 3.7 Reviews should consider if the direct payment is meeting the agreed outcomes and also if the suitable person is acting in the individual's best interests within the meaning of the Mental Capacity Act 2005.

## 4 - Recovering Monies

- 4.1 The direct payment finance team will monitor the use of direct payments. A contingency check, meaning a check to see if there are excess funds in the direct payment account, will be carried out least every 6 payments.
- 4.2 Where there is an under spend of the direct payment, leading to more funds than necessary in the direct payment account, Derbyshire County Council will reclaim the amount in excess. Each direct payment recipient will be asked to complete a direct debit mandate, which will enable DCC to reclaim excess funds. The direct debit mandate is a signed document allowing withdrawal from an account by a third party.
- 4.3 Where there is no direct debit mandate in place, the finance team will write out the individual requesting the surplus funds to be paid back to the Council.
- 4.4 An individual may contact the team if they are accumulating surplus funds for a particular reason, such as redundancy payment.

## **5 - Suspension Procedure**

- 5.1 When the DCC worker or the DP Recipient is considering suspending or terminating a direct payment it is important to consider all the implications of such actions.
- 5.2 Either, Derbyshire County Council, The Direct Payment Recipient or their Nominee may suspend or terminate the direct payment by ordinarily providing four weeks notice in writing (or in an alternative format).
- 5.3 Direct Payments will only need to be suspended or terminated by any of the parties, albeit on very few occasions, and only after full discussions and decisions have been made and responsibilities understood.
- 5.4 The Direct Payment Agreement with Derbyshire County Council may be suspended temporarily.

### **Temporary Suspension**

- The Direct Payment Recipient's circumstances change
- If the Direct Payment Recipient is at risk of being abused or is being abused
- If the Direct Payment Recipient is in hospital for a period longer than 4 weeks and there is no role for the personal assistant.
- The Direct Payment Recipient has asked for a temporary suspension in with the knowledge of the responsibilities they have.
- Financial monitoring and appropriate returns are not sent into the Direct Payment Finance Department.

### **Termination**

- 5.5 In order to reinstate a temporarily suspended direct payment the DCC worker will need to provide written notice to the Direct Payment Finance Team and record the information on Framework I.
- 5.6 Despite the normal four weeks notice period, there may be occasions when Direct Payments are terminated either immediately or sooner by any of the parties.
- 5.7 If the Direct Payment recipient still needs services to be provided and the assessment of need has not changed, Derbyshire Adult Care still has a "Duty of Care". You will therefore need to ensure services are available when the Direct Payment has ceased. (Note that Direct Payments are paid four weekly in advance).
- 5.8 If the Direct Payment recipient has a contract with a Provider (this maybe a domiciliary care agency, day service provider or alternative) you will need to ensure the Direct Payment Recipient can fulfil the terms and conditions of such a contract. For example, four weeks notice in writing. Ensure the Direct Recipient is aware of any obligations they may have and taking the appropriate action.

## 6 - Monitoring Direct Payments

- 6.1. Monitoring of direct payments is a crucial and enables Derbyshire County Council to account for public funding within the guidelines laid down by The Chartered Institute of Public Finance and Accountancy (CIPFA)
- 6.2. Where there is no submission of monitoring forms in 3 payment periods, the finance team will contact the assessor responsible for reviewing the direct payment. It will be the assessor's responsibility to contact the direct payment recipient and discuss support to enable submission of the monitoring forms. Where there are difficulties for the individual in completing the paperwork, it will be the assessor's responsibility to explore ways of supporting them, and assess if direct payments is still appropriate.
- 6.3. Where there is no submission of monitoring forms in 3 payment periods, without contact and agreement, the direct payments finance team will write out to the individual and a copy will be sent to the care manager. Where no response is received within 4 weeks, the finance team will write to the service user again, giving the individual 4 weeks notice of suspension, the care manager and service manager will be copied in to the correspondence. Four weeks notice is given in writing for the individual and assessor to rectify to situation or arrange alternative care. Once the 4 weeks have passed without resolution, with the assessor's agreement, the direct payment will be suspended until the account is in order.

## 7 - Safeguarding

- 7.1 Where it is apparent that there are safeguarding issues, the direct payment recipient will automatically fall into the “high” banding on the Support & Risk Assessment Matrix, this will not exclude the person from receiving a direct payment but where a decision is made to make a direct payment a thorough review of how the direct payment is made and to who and the support mechanisms put into place. However, it may be that the DCC worker decides that a direct payment cannot be justifiably made, this will need evidencing on Frameworki.
- 7.2 Where safeguarding procedures are initiated to protect an adult on direct payments, they should be involved in the procedures as an employer. Where there are safeguarding issues, employees rights to the correct disciplinary procedures should be adhered to. Any safeguarding conference instigated where a direct payment recipient is involved, a member of the Direct Payment Team will be invited to attend.
- 7.1 Where there are concerns about the welfare of a child and safeguarding procedures are initiated, risk to the child must be considered in relation to the continuance of direct payments

## 8 - Additional Funding

- 8.1 Direct Payment recipients are responsible for managing the direct payment and ensuring their identified outcomes and all associated costs are met from the direct payment.
- 8.2 All costs associated with the running of the direct payment and employment of personal assistants must be met from the overall budget except:
- Where an individual requires protective equipment such as gloves, aprons or other safety equipment to meet their health and safety responsibilities. In these circumstances an additional purchase order will be completed for the required amount.
  - Where there are insufficient funds to adequately meet the individuals needs and outcomes from the allocated direct payment, for example where a specialist agency is required. In these circumstances additional funds will be made available.
  - Where additional hours are required to enable a personal assistant to attend essential training. In these circumstances an additional purchase order will be completed for the personal assistants wages to attend training.
  - Advertising costs over £50.00 which will require approval from the allocated worker and an additional purchase order completed.
  - Room Hire costs over £60.00 which will require approval from the allocated worker and an additional purchase order completed
- 8.3 Where there are insufficient funds to meet the running costs of the direct payment, such as annual employer's liability insurance or managed bank account fee, it should be reviewed on an individual basis with a view to providing additional funds as required. This will be providing there is a genuine reason why it cannot be met from the current resource allocation.