



Policy for the Provision of Direct Payments

November 2016

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Direct Payments Policy

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Direct Payments Policy

1 Introduction

- This policy outlines how to access Direct Payments for adults in Stoke-on-Trent.
- It gives guidance on uses of Direct Payments, the procedure for accessing the scheme, and the responsibilities of the different people involved.
- The Care Act 2014 defines a person who has care and support needs as an Adult or individual. Consequently where these terms are used within this policy the person referred to is either the person receiving the service due to their own care and support needs or due to them being identified as a carer as defined within the Act.

2 Context

- The legislative framework for local authorities in England to make Direct Payments is contained within the Care Act 2014. A full explanation of the authorities' obligations can be viewed within the Care Act guidance.
- Where an individual has been assessed as having eligible needs Stoke-on-Trent City Council will offer to meet these needs via the provision of a direct payment in line with its statutory duties as laid out in the Care Act 2014.

3 Principles

- Individuals who have eligible needs should have choice and control over how their outcomes are achieved.
- Individuals should be encouraged to meet their outcomes in creative ways but must have regard to cost effectiveness.
- Individuals should be treated equitably when devising their person centred support plan.
- Provision of support will embrace flexible approaches but must abide by Legal constraints as set out in the Care Act 2014.

4 Who can access a Direct Payment

- Individuals with identified eligible outcomes.
- Individuals who have been assessed as having the mental capacity to manage a direct payment.
- Individuals who lack mental capacity but have a person authorised under the Mental Capacity Act 2005 to make decisions about the individuals needs for care and

support. An authorised person can nominate another person to receive the direct payment on behalf of the individual.

- Individuals who do not have identified eligible needs but the local authority decides to use its discretionary powers to meet needs.
- Individuals who lack mental capacity and have no one authorised under the Mental Capacity Act 2015 to agree to a direct payment to meet needs but have a suitable person as identified by the local authority.

5 Overview - uses of Direct Payments

- The following is a guide as to the use of Direct Payments. It should be recognised that Direct Payments use is as individual as the people using the service. Within the boundaries of what is allowed by legislation, any use that meets the person's needs should be considered.
- Direct Payments can be used to help individuals to live independently, meeting their eligible needs and delivering their agreed outcomes:
- The provision of Direct Payments provide the opportunity to meet eligible needs rather than the financial means to do so and must be seen in this way and not as a way to supplement an individual's income. Consequently the provision is intended to support individuals (via the provision of a PA etc.) to meet identified outcomes rather than for the purchase of items, i.e. admission costs etc.
- Direct Payments cannot be used to purchase care directly provided by the local authority with responsibility for meeting the individual's eligible needs. These services are usually referred to as In House services.
- Direct Payments **cannot** be used to:
 - Purchase long-stay residential care (residential stays must be less than 4 weeks at any one time, and each stay of less than 4 weeks must be separated by at least 4 weeks of non-residential time)
 - Provide care that the NHS should be providing
 - Pay costs relating to regular day to day living expenditure, e.g. utility bills, food and drink.
- The acceptable use of Direct Payments is entirely the decision of the assessor (during assessment/reassessment) based upon their professional judgement over what is required to meet the eligible needs of the individual. The care and support plan must specify the parameters and outcomes for the use of Direct Payments.
- The Team Manager must be consulted and agree that provision of a direct payment meets the identified eligible needs of the individual.
- The individual can request to change the way in which they utilise their Direct Payment but this must be agreed by the assessor with a new care and support plan being completed detailing the new parameters.
- Any requests for changes to the provision of an existing Direct Payment linked to a change in need not originally identified will require a reassessment prior to a new care and support plan being completed.

6 Personal Assistants

- A personal assistant (PA) is defined as a person employed specifically by the individual to meet identified needs.
- If a person uses their Direct Payments to hire a Personal Assistant, they **must** also take out liability insurance to cover against such issues as:
 - Legal costs relating to Health and Safety/unfair dismissal claims
 - Damages and other costs.
- Relatives of Individuals **who do not live within the same household** can be employed as Personal Assistants. However, assessors should weigh up any risk of vulnerability when considering such an arrangement, i.e. breakdown in relationship between the two or employment law issues.
- Relatives of Individuals **who live within the same household** can be employed as Personal Assistants following the agreement of the assessor and Team Manager. However this should only be where this is the most appropriate way of meeting the Adults identified eligible needs. Consideration also needs to be given to any potential conflict as identified above.
- A Personal Assistant must have a legal right to work in the UK and it is the responsibility of the person hiring the Personal Assistant to ensure this. Further responsibilities are outlined in Appendix 1.
- Individuals employing a Personal Assistant must ensure that they comply with all legal requirements as an employer. The local authority may make training available through the Training and Development Service, and can advise the individual of any training that we believe may be appropriate.
- If a Service User needs to suspend a Personal Assistant on full-pay (for instance if the Personal Assistant is subject to a Safeguarding Enquiry) then the person should initially fund this using their Direct Payments reserve and contact social care (if they do not have an allocated assessor) to agree contingency plans. If the suspension was done without good reason then no extra services should be provided (unless necessary to meet eligible care and support needs).
- Personal Assistants and the right to a Workplace Pension:

Any individual that is thinking about recruiting a Personal Assistant (PA) through Direct Payments needs to be made aware by the Social Care Assessor, that if the PA route is chosen, then the PA may potentially have a right to a Workplace Pension. (This is dependent on age, the number of hours worked and earnings).

Support with Workplace Pensions will be provided by the Direct Payments Support Service providers Payroll service; however anyone taking up Direct Payments and not needing the Payroll service will need to set up the Workplace Pension themselves, as they are signing a contract stipulating that they are capable of managing the employer responsibilities.

The Social Care Assessor will need to sign post the individual to the Pension Regulator Website for further guidance. (<http://www.thepensionsregulator.gov.uk/>).

The Direct Payments Support Service Advisor will also be able to offer advice and guidance as part of the support Package element of the Service (Anyone who is recruiting a PA will be provided with 12 weeks' support and information will also be given via pay slips from the provider's Payroll service).

Any individual that has gone down the PA route and does not feel that they can manage the employer responsibilities because they have not opted to use the Direct Payment Support Payroll service will require a review by Adult Social Care to look at options to help with support.

There are three types of employee categories which are as follows:

- 1) Eligible Job Holders.
- 2) Non- Eligible Job Holders.
- 3) Entitled Job Holders.

Eligible job holders are workers who:

Are aged between 22 and State Pension Age, earn over the earnings threshold, currently, £10,000 per year; and work, or ordinarily work in the UK and have a contract of employment, (i.e. they are a worker, and not self-employed or who have a contract to provide work and/ or services personally (No sub-contract to a third party)). (Eligible Jobholders will be automatically enrolled and will need to opt out if they do not require a pension).

Automatic enrolment legislation gives employers a duty to:

- Automatically enrol all staff who are eligible ('eligible jobholders').
- Other staff who have the right to ask to opt in or join a pension.
- Communicate to their staff.
- Manage opt outs and promptly refund contributions.
- Every three years, automatically re-enrol staff who are eligible.
- Complete a declaration of compliance with the regulator.
- Maintain payments of pension contributions.
- The employee safeguards mean that employers:
 - Must not induce staff to opt out or cease membership of a pension.
 - Must not indicate, when recruiting new staff, that the decision to employ them will be influenced by whether or not they intend to opt out.

Non- Eligible job holders:

Do not need to be automatically enrolled, but do have the right to ask to join the scheme, they may also receive employer contributions.

Are aged either between 16 and 21, or aged between State Pension Age and 74. Earn over the earnings threshold, currently, £10,000 per year; and work or ordinarily work in the UK and have a contract of employment (i.e. is an employee or who have a contract to provide work and/ or services personally (No sub-contract to a third party)).

Aged between 16 and 74; earn between the lower earnings amount of, currently, £5,824 per year and the earnings threshold of, currently, £10,000 per year; and work, or ordinarily work in the UK and have a contract of employment (i.e. is an employee and not a self-employed contractor) or who have a contract to provide work and/ or services personally (No sub-contract to a third party)).

Entitled Job Holders:

Are aged between 16 and 74; earn less than the lower earnings amount of, currently, £5,824 per year; and work, or ordinarily work in the UK and have a contract of employment (i.e. is an employee and not a self-employed contractor) or who have a contract to provide work and/ or services personally (so can't sub-contract to a third party)).

The employer will have to deduct contributions on behalf of the Entitled worker and pay these into the scheme.

However, the employer does not have to pay into the scheme themselves, unless they choose to do so, or have chosen a scheme.

7 Other uses of Direct Payments

- Direct Payments can be used to replace care provided by informal carers on a short term basis but in such cases informal carers should not provide the direct support. Informal carers are defined as not being employed or paid to provide the support. Such short term support could include time away from the home or additional support in the home whilst the informal carer is absent.
- If Direct Payments are used to fund short breaks instead of traditional residential care this must be claimed in a weekly block and is subject to a standard weekly contribution.
- Direct Payments should not be used to fund 'holidays'. However it can be used to meet eligible needs whilst on 'holiday'. This could include the Personal Assistants expenses or the care provision whilst away. Consequently costs incurred by the Individual or informal carer should not be claimed.
- One-off Direct Payments can be made where a relatively small investment up-front, meets eligible needs in a cost-effective way. Under Personal Budgets, people may choose to receive some of their budget as one-off Direct Payment to meet specific needs.
- A one-off Direct Payment to the value of £500 (£1000 for minor adaptations/equipment) can be agreed by the relevant Team Manager – they must be agreed for specific purposes rather than just as a general cash payment, and the assessor must review after payment to ensure that the money was spent as agreed and eligible needs have been met. In the rare occasions that the Direct Payment amount required is above these amounts agreement should be sought from the appropriate Strategic Manager.
- If a one-off Direct Payment is the sole Direct Payment being received by a person, no referral is necessary to the Direct Payments Support Service – the assessor can arrange for the payment to be made by sending the DP2 (bank account details) and DP3/5 (Direct Payments Agreement Form) in to Finance.

- If a one-off Direct Payment is the sole Direct Payment being received by the person, they do not have to be paid into a separate Direct Payments bank account – they can be paid directly in the person’s normal account.
- If a one-off Direct Payment is being used to fund community equipment, the amount paid will be what ICES (Integrated Community Equipment Store) would pay for that same piece of equipment plus a nominal fitting cost (£10) where appropriate; the ICES Pooled fund manager will need to approve this spend before the case is agreed by the Team Manager.
- If a one-off Direct Payment is used to fund a minor adaptation, the amount paid will be equal to the most cost-effective quote obtained by SCOTS for that work, and the work must be carried out by someone that SCOTS agrees is suitable and to an agreed standard and specification.
- If a one-off Direct Payment is used to fund community equipment/minor adaptations requiring annual servicing, the one-off payment would include a contribution for this servicing (equal to the cost of a three year agreement, this cost to be agreed on a case-by-case basis) – we would make it clear that this is our total contribution and the responsibility remains with the adult to arrange maintenance/servicing.
- A one-off Direct Payment is subject to the following Non Residential Charging (Fairer Charging) rules:
 - One-off Direct Payments for community equipment/minor adaptations will not be fairer charging assessed (the council cannot charge for these services)
 - One-off payments provided to a carer will not be Fairer Charging assessed (the council chooses not to charge for these services)
 - One-off payments for items costing less than £100 will not be Fairer Charging assessed (the cost of the assessment is likely to be more than any charge) – the exception to this is if a adult is provided with two or more one-off Direct Payments within the same financial year, in which case the assessor will need to make a referral to Fairer Charging
 - All other one-off Direct Payments will be Fairer Charging assessed. After the assessment is completed each case will be referred to the Financial Services Officer who will decide exactly how the charge will be levied. Full regard will be taken as to what the adult can afford to pay each week and no adult will be charged more than this. Over time the Financial Services Officer will create a list of examples of use of one-off payment and how these were Fairer Charged
- If a person’s use of one-off Direct Payments does not meet their eligible needs, so that we need to provide other services within a 12 month period to meet those same needs, then the council **may** choose to invoice the person to reclaim the one-off Direct Payments. This would be decided by the assessor and their Team Manager (in consultation with the relevant Strategic Manager) on a case-by-case basis.
- Capital purchases with Direct Payments. Direct Payments (either one-off or on-going) can be used for the purchase of capital assets only if these are a cost-effective way of meeting the person’s needs. Capital purchases should only be to the value of £500 (£1000 for minor adaptations) and should be agreed by the relevant Team Manager. Capital purchases must follow the rules relating to one-off purchases.

- Capital purchases become the property of the person spending their Direct Payments. However, if the person's capital purchase does not enable them to meet their eligible needs, so that we need to provide other services within a 12 month period to meet those same needs, then the council **may** choose to invoice the person to reclaim the cost of the capital purchase. This would be decided by the assessor and their Team Manager (in consultation with the relevant Strategic Manager) on a case-by-case basis.

Direct payments should not ordinarily be used for the following:

- ***Transport Costs.*** Including purchasing fuel unless transport is part of meeting an assessed eligible need and other options for meeting such needs have been explored. Consideration needs to be given to the Local Authorities Transport Policy.
- ***Personal Protective Equipment.*** Unless it is part of meeting an assessed eligible need. Consequently a person can choose to use Direct Payments to pay for personal protective equipment (gloves etc.) for their Personal Assistant if these are required to complete the tasks identified to meet any identified eligible needs. However, Direct Payments should not be used for health supplies such as continence pads.
- ***Gambling.*** Direct Payments should not be used to fund gambling or access to gambling establishments for the adult. It could be used to purchase entry for any PA if they were required to accompany the adult in order to ensure eligible needs were met appropriately. They should never be used for actual gambling (e.g. they should not be used to place a bet on a horse or buy a bingo card).
- ***Alcoholic and Non Alcoholic drinks and food.*** Direct Payments should not be used to purchase these items. Where a social activity involves a meal or drink the Direct Payment can be used to purchase a basic meal and non-alcoholic drink for any PA if they were required to accompany the adult in order to ensure eligible needs were met appropriately. The Direct Payments should not be used to purchase these items for the adult or other family members unless they are acting as the official PA. To avoid doubt a social activity does not include going for a drink and/or meal out and/or take away.
- ***Sex workers.*** Although some aspects of the sex worker trade are legal, other areas are not, and for the avoidance of any ambiguity Direct Payments should not be used to procure the services of a sex worker.
- ***Entrance/Admission Costs.*** Direct payments should not be used to pay for admission and/or entrance costs to establishments, i.e. Theme Parks, Cinema, Theatre, Gym. They can be used to pay for the PA's/Support Workers admission to such establishments where the Adult requires their presence. Attempts should be made to clarify whether the establishment in question allows PA's/Support Workers free admission when accompanying an Adult before any spending on such activities is agreed.

8 Pooled Direct Payments.

There is no issue with a group of people pooling their Direct Payments to jointly fund a service (for instance, rental of a hall or payment of a shared Personal Assistant). In order to ensure equity and proper use of finances, each of the people must

maintain a separate Direct Payments bank account and pay their share of the pooled costs from this.

9 Criminal Records Bureau/Independent Safeguarding

- Stoke-on-Trent City Council strongly recommends that all adults carry out a Disclosure and Barring Service (DBS) check and check against the barring list on their potential Personal Assistant before employing them – this is a check on criminal offences/convictions relating to the potential Personal Assistant. The Direct Payments Support Provider will carry out enhanced DBS checks on the adult's behalf with the cost of the DBS check being taken from the adult's Direct Payment allowance.
- For adults with capacity to consent to, and manage, Direct Payments, the local authority does not insist that DBS checks are carried out on potential Personal Assistants, recognising that the spirit of Direct Payments is to put choice and responsibility in the hands of the people using the service. However, it must be emphasised to adults that a DBS check is a key way to promote their safety, and is their right as an employer.
- Where there are children in the household, even though the services are not being provided to the child a DBS check **must** take place on any potential Personal Assistants. Both the assessor and the Direct Payments Support Provider should emphasise this to the adult. Where such checks do not occur the support Provider or assessor must advise the respective Team Manager.

10 Financial monitoring and finance procedures

- (i) The Assessor explaining the scheme and the rights and responsibilities that come with it as part of the assessment process. For people who choose a Direct Payment the agreement will be signed during a joint visit with the Direct Payment Adviser and the Assessor. The care and support plan should detail how the adult will use their Direct Payments (this will have been agreed between the Assessor and adult). If there is any specific exclusion (e.g. Direct Payment uses that are allowed in general, but are considered inappropriate in this particular case) then these will also be identified by the Assessor at this stage. The schedule of on-going support visits from the support provider will also be decided upon by the Assessor as part of building the Direct Payments support plan, with four monitoring bandings:

Band 1 Telephone support with pre-arranged appointments at the Direct Payments Support Providers premises as and when required by the adult.

Band 2 One home visit per annum (the annual visit will take place midway between the annual reviews completed by Adult Social Care) with telephone support and pre-arranged appointments at the Direct Payments Support Providers premises as and when required by the adult.

Band 3 One home visit per quarter with telephone support and pre-arranged appointments at the Direct Payments Support Providers premises as and when required by the adult.

Band 4 One home visit per month with telephone support and pre-arranged appointments at the Direct Payments Support Providers premises as and when required by the adult.

- (ii) During the initial set up of Direct Payments both the Social Care Assessor and Direct Payments adviser can be involved as required to:
 - Make sure the person is managing the money effectively, including keeping receipts (which need to be kept for 7 years) etc.
 - Helping the person to set up systems to manage their Direct Payment if necessary
 - Assist with recruitment and selection of Personal Assistants if required
 - Ensure the person is using their Direct Payment in ways that meet the outcomes and are not excluded by the support plan (if the person is not able to meet their outcomes/manage their Direct Payments even with this support then the Direct Payment Adviser will refer the case back to the Assessor for reassessment for a third party or managed account, or traditional services)
- (iii) Following the 6 to 12 week review (and assuming that the person is managing their Direct Payment appropriately) further support will be provided in line with the support banding allocated by the Social Care Assessor. The support will be provided by a named Direct Payment Adviser who will keep in contact with them. The support banding can be changed at this point, but any increase in support must be agreed by the Team Manager.
- (iv) At the 12 week review and the annual review, if the adult is not managing their Direct Payment effectively (either not meeting their outcomes or not able to manage the financial responsibilities of the scheme), then the Assessor has options of:
 - Identifying a suitable person to manage the Direct Payment on the person's behalf
 - Requesting the provision of a managed account for the person
 - Increasing the level of support provided by the Direct Payment Adviser
 - Withdrawing Direct Payments and providing traditional services.
- (v) The adult will be required to send in bank statements to Finance every 2 months (if the account is not in the adult's name – because it is being managed on their behalf – then the adult's name and first line of address must be written on the statement).
- (vi) Finance will check the statements to ensure the correct amounts are going into the account, and that there is evidence of some activity (i.e. that the person is using their Direct Payments).
- (vii) Finance will also check that sufficient client contributions are being paid into the account. If the contributions are being underpaid then Finance will contact the adult informing them of the intention to invoice them for their contribution. If it is a managed account then this responsibility first lies with the Direct Payments Support Provider.
- (viii) An excessive balance depends on the Direct Payment's purpose. For Direct Payments 1) to a Carer or 2) only for day opportunities or 3) only to purchase home care from an agency, the balance is deemed excessive if two consecutive statements show a balance in excess of 8 weeks' Direct Payments. Finance will contact the adult with a view to suspending payments until the amount has reduced.

- (ix) If however the Direct Payments is used to employ someone(s) then finance will review cases individually. Finance may contact the adult to ask if the money is being deliberately stockpiled for employment purposes and the calculations which support this.
- (x) If a person does not send in their bank statements, Finance will contact the person and check that all is OK/ensure they understand the requirement for sending in the paperwork. If three sets of bank statements in a row are not sent in, or are only sent in after prompting, Finance will request a reassessment from the appropriate Locality team with a view to withdrawing Direct Payments or providing a third party/managed account.
- (xi) Finance reserves the right to audit any Direct Payments case giving 14 days' notice. Finance will audit a set percentage of cases per year, and will also audit cases where Assessors have real concerns about potential misuse of the Direct Payments. In all cases it remains the duty of the adult (or the third party managing the account) to maintain the audit trail of records.
- (xii) If during audit it becomes clear that some receipts are not available then the Financial Services Officer – Non Residential (in liaison with the Assessor if one is allocated) will use its discretion as to whether the amount should be reclaimed and/or the person's use of Direct Payments needs to be reassessed. Finance's discretion is limited so such cases may be referred to Adult Social Care.
- (xiii) During any review, the Assessor should ensure that the provision of direct payments is meeting the adult's eligible needs and agreed outcomes which may involve checking receipts (or requesting that Finance does so). The Assessor will involve the Direct Payment Adviser in the review (by seeking their views and comments beforehand). **Please note; it is best practise for the Assessor to contact Finance before any review to ask whether they have any concerns about the person's Direct Payments.** The assessor **must** ensure that the care and support plan reflects the adult's situation and how Direct Payments will be utilised to meet eligible needs.
- (xiv) When a person ceases to receive Direct Payments, Finance will arrange invoicing for the unspent and/or overpaid amount, and will advise the Direct Payment Support Service who will then close the case.
- (xv) When there is a managed account in place the Direct Payment Support Service Provider will monitor the DP account as well as our Finance Team.
 - The Direct Payment Support Service Provider will alert the City Council to an excessive balance when two consecutive statements show a balance in excess of 8 weeks Direct Payments. An email will be sent to the Finance Team, within the email the Direct Payment Support Service Provider will give a basic summary of whether the balance is justified or not.
 - If there are no concerns reported back to the Direct Support Service Provider by the Finance following the alert, the Direct Payment Support Service Provider will continue to monitor as per the current arrangements.
 - If the Finance Team are concerned with the excessive balance then they will need to liaise with the Direct Payment Support Service Provider, directly so

that the Direct Payment Support Service Provider can support the Finance Team to investigate further, if required.

- The Finance Team will inform the appropriate Community Wellbeing Team/ and or Social Care Assessor where necessary, as a review by the Social Care Team, to look at whether Direct Payments is still suitable may be required.
- The Direct Payment Support Service Provider will on request provide a breakdown of contingences to each individual assessor as and when required to do so, (time scales will be negotiated with the Direct Payment Support Service Provider dependent on complexity of request from the Assessor). The Social Care Assessor when reviewing support needs will need to consider the following when looking at excessive accounts, (Finance can assist with this):
 - Redundancy pay following two years of employment.
 - Potential sick pay if eligible.
 - Notice pay in some circumstances i.e. residential care admission (four weeks standard notice period)
 - Any untaken holiday pay. Holidays should be taken throughout the year, however, should annual leave not be taken and a PA is made redundant they will be entitled to the amount accrued to the point of employment ending- maximum being 5.6 weeks.
 - Contingency cover may be through an agency in some cases, therefore dependent on individuals contingency arrangements additional funds may be required should a contingency plan need implementing for cover/ emergency situations.
 - Accrual to cover the PA's holiday leave, unless the PA takes holiday when the adult is in respite.
 - Contingency made to provide the PA(s) with 26 weeks' sickness pay.
 - Other contingencies include- DBS costs/ Employer's Liability insurance annual renewal charge.

(xvi) If Adult Social Care has reason to believe that fraud may have been committed with Direct Payments, then the Assessor must:

- Suspend the persons direct payments
- Provide traditional services if required to keep the person safe
- Seek approval from the Strategic Manager on whether to involve the police
- Request Finance investigate and invoice for all non-legitimate amounts

11 Managing a Direct Payment and payment to third parties

- The local authority will ordinarily offer Direct Payments to people if they have the capacity to consent to them. However, many people may not be able to manage their Direct Payments without support.
- The support provided by the Direct Payment Advisers in the setup stages may be enough to enable a person to manage their own Direct Payments, but if this is not sufficient then the next option to be investigated is to pay the Direct Payments to a third party who will manage the money on the person's behalf.
- A third party can be a friend or relative of the person needing Direct Payments, or a group of people or a professional involved in supporting the person. The only key factors to consider in identifying a third party are:
 - That the third party is capable of managing the Direct Payments on the person's behalf (Section 31 (6b) Care Act Guidance).
 - That we are confident that the third party will manage the Direct Payments in the person's best interests and in consultation with them.
 - That the third party will follow the rules of the Direct Payments scheme including letting us know if the Adult is not paying their contributions.
- To confirm their understanding, anybody operating as a third party must sign a 'Suitable Person/Third Party Agreement Form' (DP17 – see Appendix 5) – this details what is expected of the third party.
- There is no requirement for a third party to undergo a DBS check prior to appointment.
- If a person does not have capacity to consent to Direct Payments, we will still offer Direct Payments where we believe this is in the person's best interests. In order to safeguard the individual lacking capacity to consent, we must appoint a 'suitable person' to manage the Direct Payments on their behalf. This suitable person will be somebody who the council is confident will manage the Direct Payments in the best interests of the person, and will normally be a family member or close friend already involved in the care of the person (often they will be someone who holds Lasting Power of Attorney for the person). They are not the person's agent, but are managing Direct Payments in the person's best interests.
- Before appointing a suitable person, the assessor must consider a number of key factors, i.e.:
 - Has a Mental Capacity Act assessment shown that the Adult does not have capacity to consent to Direct Payments, and that the provision of Direct Payments is in their best interests
 - Is the Adult eligible for Direct Payments, and is such provision appropriate.
 - Is there someone with Lasting Power of Attorney/Deputyship for the Adult (they should be first choice as suitable person, and have to power to veto other proposed suitable persons)
 - Does the proposed suitable person understand what is involved in the role
 - Does the proposed suitable person need a DBS check (required if they are not family or close friend to the Service User)

- To ensure that assessors consider these points, a 'Suitable Persons checklist' (see Appendix 6) has been produced. This lists all the points in checklist format.
- The person chosen must consent to becoming the suitable person. They must also confirm that they understand the requirements placed upon them by the guidance, i.e.:
 - To follow the normal scheme rules around recruiting family members
 - To always act in the best interests of the person
 - To involve the Adult as much as possible in decision-making
 - To inform Social Care if there is a change in the person's capacity
 - To account for Direct Payments spending following normal scheme rules
 - To inform Social Care if the person's financial contributions are not being paid
 - To have a DBS clearance (if they are not a close relative or friend of the Service User)
 - To submit bank statements at least every 2 months or upon request.
- To ensure that the suitable person has given explicit agreement to these terms, a DP17 'Suitable Persons Agreement Form' must be completed. If the suitable person requires an enhanced DBS check and check against the barred list, this will be recorded by the social worker on the DP17. If a suitable person requires a DBS check, any Personal Assistant they employ must also be DBS checked.

12 Provision of a Managed Account

- In a few cases, a person will have a legal right to Direct Payments, but will only be capable of managing those Direct Payments with support, **and** will have no family/friends or other involved people willing and able to act as suitable person/third party.
- For this group of people a 'managed account' can be funded by the local authority – i.e., an independent organisation is paid to hold a bank account in the person's name, and to pay invoices/salaries in line with the person's support plan. The organisation keeps all the financial records for audit purposes. This system gives the adult choice and control, whilst managing risks relating to the person's need for support in handling finances.
- The managed account service can be provided by the Direct Payment Support Service provider, or by other service providers (organisations or individuals) if the assessor is confident they will meet the person's needs.
- Control of managed account provision is held at Team Manager level. A managed account should not be provided as standard. The following criteria is to be applied when deciding if a managed account is required:
 - That they have been **assessed as lacking capacity to manage** their own Direct Payments
 - They have **nobody willing or able to act as suitable person/third party** to handle the Direct Payments for them (or we are not willing to allow someone else to act in that role due to safeguarding concerns)
 - That there are **concerns** that the provision of a direct payment may leave the adult vulnerable to exploitation by others

- That where a direct payment has been previously provided, concerns have been raised that these **funds have been spent inappropriately** and there is a likelihood that this would occur again.
- The cost of the managed account service is funded by the local authority. The Direct Payment money will be paid directly to the Direct Payment Support Provider. Once provision has been agreed by the Team Manager the appropriate section of the DP3/5 is completed by the assessor.
- The use of the managed account option only allows for the financial side of a Direct Payment to be overseen. Social Care Assessors would still need to identify an individual who would be responsible for overseeing the employment aspect of any arrangements made.
- The Finance Team will complete financial monitoring as normal and the provider of this service will be obliged to fully respond to any request made.
- Where an Adult lacks capacity to manage a Direct Payment including any employment and commissioning process and there is no one suitable to act on their behalf the provision of Direct Payments should not be offered.

13 Direct Payments/ Court of Protection and Personal Assistant employment

- Court of Protection (Deputyship) is often put in place when someone lacks capacity to manage their property and financial affairs. A financial deputyship allows for the financial side of Direct Payments to be overseen. Social Care Assessors would still need to identify an individual who would be responsible for overseeing the employment aspect of any arrangements made. In some cases the financial deputy can manage the employment of a PA and can administer the PAYE and associated responsibilities. Where the local authority is appointed as the financial deputy the social care assessor should discuss the situation with the finance department.

When Court of Protection is in place and the Adult does not have the capacity/ capability of managing the Direct Payments, Personal Assistant employment responsibilities (care element) and commissioning processes and there is no one suitable to act on their behalf the provision of Direct Payments should not be offered.

A Social Care Assessor needs to be able to be satisfied during the assessment process that the individual is capable of managing the care element independently, if no appropriate third party can be identified. (An Advocate may be required to support with this process).

The below list includes possible employer responsibilities in relation to the Personal Assistant element of Direct Payments. (Not all employer responsibilities are listed below).

- Ensuring PA is turning up at the correct time.
- Ensuring PA is delivering care that is meeting the needs of the person.
- Ensuring PA is completing timesheet appropriately and correctly.
- PA is paying Tax and National Insurance contributions.
- Reporting any Safeguarding Concerns.

- Ensuring PA is completing tasks in a person centred way and meeting the needs of the Care and Support plan for the person.
- Adhering to all legal obligations in respect of employing a Personal Assistant including complying with employment law, contracts of employment, Tax and National Insurance rules, Health and Safety, risk assessments, good employment practice and how to manage problems.

Section 31(6) condition 3 (Care Act Guidance) states - The local Authority must be satisfied that the Adult or nominated person is capable of managing Direct Payments:

- a) By himself/herself.
- b) With whatever help the Authority thinks the Adult or nominated person will be able to access.

14 People travelling or moving out of area

- If a person goes away temporarily (e.g. on holiday) then their Direct Payments should continue as they are still ordinarily resident in Stoke-on-Trent and will still have eligible needs requiring our support. The rules of ordinary residence should be applied in deciding whether to cease the Direct Payments.
- If a person goes into hospital their Direct Payments will continue to be paid if the person has existing commitments such as a Personal Assistant. However further discussions should take place with the person to ensure any identified eligible social care needs continue to be met whilst an inpatient, i.e. they may prefer their PA to continue to provide personal care. The Direct Payments cannot be used to fund support that falls within the remit of the NHS. The Team Manager must be consulted in such cases. If a decision is taken to suspend a person's Direct Payments these can be restarted and/or increased when the person is ready for discharge, or can be kept suspended until the person is at home and stable with traditional services. Such decisions should be taken on a case by case basis with further information being available via the Care Act 2014 guidance.
- If a person moves out of Stoke-on-Trent permanently, then our responsibility ends but we can choose to continue the Direct Payments for up to 6 weeks (following negotiation with the receiving authority). This would be to ensure continuity of care for the person.
- Where the local authority supports a carer via direct payments and the cared for person moves out of Stoke-on-Trent on a permanent basis the same rules as above will be applied.

15 Roles and Responsibilities

- The **Referring Assessor** will retain case management responsibility for all social care issues until such time as the Direct Payments have been agreed, set up (including establishment of any bank account required), and a satisfactory review (this should be within 12 weeks after the service has started) has taken place.

- The assessor's **Team Manager** is responsible for considering applications for Direct Payments, Managed Accounts and for signing off on Direct Payments packages.
- If the Team Manager feels unable to approve a Direct Payments package for any reason they should refer the case to their **Strategic Manager** for decision.
- The **Direct Payments Support Service Provider** will (once a referral has been accepted by the Direct Payments support service) take on day-to-day support tasks to help the adult to set up and manage their Direct Payments. The Direct Payments Support Service Provider will also check that the adults Liability Insurance is up-to-date.
- The **Direct Payments Support Service Provider** should notify the local authority of any potential mis- spending of direct payments, or variations in the agreed care and support plan.
- The **Adult** will have the responsibility for purchasing and administering the services provided, with support from their Direct Payments Support Service Provider; also, the adult must comply with the conditions of the agreement (form DP3/5) with the City Council. No Direct Payments shall be made until a DP3/5 has been signed by both parties.
- As with all areas, consideration needs to be given to the mental capacity of the adult to enter into the agreement with the council. Whilst starting from a presumption that the person has capacity, if there are doubts then a Mental Capacity Assessment must be carried out by the **Assessor** giving consideration to the Mental Capacity Act.
- The **Adult** must use the Direct Payments only in accordance with the agreed Care and Support Plan. If an adult wishes to make changes to their pattern of Direct Payments spending but still within the agreed parameters of the Care and Support Plan, this should only be done following liaison with their Direct Payments Support Service Provider/Support Worker.
- Where an **Adult** feels that the direct payments spending needs to change due to a change in their assessed needs this must only be done following the consultation and review with a Social Care Assessor.
- The **Adult** (with support if required from the Direct Payments support service) must ensure comprehensive financial records are maintained in connection with the Direct Payments scheme (the exact level of financial monitoring undertaken by the council may vary from time to time). All records must be kept for 7 years to fulfil HMRC requirements, and must be accessible by the council when required.
- The **Financial Services Team** will have responsibility for payment of the Direct Payments amount agreed by Team Manager into a Direct Payments bank account for each individual.
- The **council** is responsible for ensuring that:
 - The public money has been spent in accordance with the agreement between the Adult and the Direct Payments scheme
 - The service identified meets the assessed eligible needs of the Adult
 - The care needs of the Adult are reviewed at regular intervals

- The Adult has made the assessed contribution as shown on their DP3/5
- The Adults contribution is annually reassessed

16 Review

- The assessor will carry out a review within 6 months of it starting. This would ordinarily be at 12 weeks. Prior to this review the assessor **must** contact the Direct Payments Support Service Provider to identify if the advisor has any concerns/questions that need to be addressed as part of the review. If there are no concerns regarding the management of the Direct Payments account the Direct Payments Support Service Provider does not need to attend the review.
- The assessor **must** contact the Financial Services team prior to any review to identify any issues.
- If the support is not meeting the identified eligible needs, then the assessor will revisit the care and support plan and make any necessary changes, and will then carry out a further review within twelve more weeks.
- If the provision of Direct Payments is meeting the identified eligible needs, then future reviews will be carried out at least annually (once per 12 months). Reviews can be more regular than this, as required. Reviews will be carried out by whichever team would review the person if they received traditional services.
- The purpose of the review is to:
 - Review whether the outcomes of the care and support plan have been achieved via the provision of support including direct payments.
 - Identify whether further support is required from adult social care.
 - Evaluate the quality of care received
 - Explore any difficulties which have arisen
- Outside this review timetable, the Adult, Support Provider or Financial Service Team can request a review to be undertaken.

17 Stopping Direct Payments

- There are a number of reasons why Direct Payments may need to stop (either temporarily or permanently). In all cases, Finance should be informed of the date when Direct Payments are no longer required, and whether this is a temporary or permanent stop.
- Finance will stop the Direct Payments from the date requested. If the Direct Payments are stopping permanently, Finance will then make arrangements to reclaim any overpaid, unspent and/or inappropriately spent of Direct Payments.
- If Direct Payments are being used to pay a Personal Assistant then Finance will pay an additional four weeks' Direct Payments to cover any notice period. However, this will not happen if the Service User has a high balance in their account which Finance need to reclaim, or have used their Direct Payments inappropriately. When informing Finance of a date to stop Direct Payments it must be made clear whether a Personal Assistant is involved and whether this stop-date includes a four-week notice period.

- If Direct Payments are being stopped because of concerns over an individual's ability to manage, then alternative services should be provided to meet the individual's eligible needs.

18 Complaints

- All complaints relating to the involvement of Adult Social Care including the provision of Direct Payments will be dealt with via the Social Care Complaints procedure.

Documents relating to right to work in the UK

EITHER :(required)

- A document giving **permanent** NI Number and name i.e. P45/P60/NI card or letter from a Government agency (NI Numbers beginning with TN or ending in E to Z not accepted)

TOGETHER WITH ONE OF THE FOLLOWING:

- A full birth certificate issued in the UK, Channel Islands, Isle of Man or Ireland, including the names of parents
- A certificate of registration or naturalisation stating they are a British citizen
- A letter or Immigration Status Document issued by the Home Office to the person stating they can stay indefinitely in the UK (may also state their right to take up employment of the type offered)

Please note that if their name differs on the two documents they will also need to supply a further document explaining the reason e.g. marriage certificate, divorce document, deed poll, adoption certificate or statutory declaration.

Li

OR ONE OF THESE DOCUMENTS: B (one document required)

- A passport showing you are a British citizen or have the right of abode in the UK
- A passport or national ID card showing you are a national of an EEA country or Switzerland
- A residence permit issued to you by the Home Office as a national of an EEA country or Switzerland
- A passport/other document issued by the Home Office with an endorsement stating you have a current right of residence in the UK as a family member of an EEA/Switzerland national who is resident in the UK
- A passport/other travel document endorsed to show you can stay indefinitely in the UK
- A passport/other travel document endorsed to show you can stay in the UK and endorsed to allow you to do the type of work you are offered
- An Application Registration Card issued by the Home Office stating you are permitted to take up employment

OR

- A work permit or other approval to take employment issued by Work Permits UK

TOGETHER WITH ONE OF THE FOLLOWING:

- A letter issued by the Home Office, passport or other travel document endorsed to show you are able to stay in the UK and can take the work permit employment in question

Please note that if your name differs on the 2 documents you will also need to supply a further document explaining the reason e.g. marriage certificate, divorce document, deed poll, adoption certificate or statutory declaration"



APPOINTING SUITABLE PERSON CHECKLIST

Adults Name

Adults ID
Number

Suitable Person's
Name

Assessor Name

Date
Completed

This form records that key factors have been considered in appointing a suitable person to accept and manage Direct Payments for an Adult lacking the capacity to consent to these payments

Section 1 - Capacity and Best Interests Assessment

- | | Yes | No |
|--|--------------------------|--------------------------|
| 1.1 Has a Mental Capacity Act Assessment shown that the person does not have the capacity to consent to the use of Direct Payments to meet their eligible needs? | <input type="checkbox"/> | <input type="checkbox"/> |
| 1.2 Is a copy of the Mental Capacity Act Assessment held on the person's record? | <input type="checkbox"/> | <input type="checkbox"/> |
| 1.3 Have sufficient time and resources been devoted to the best interests' decision? | <input type="checkbox"/> | <input type="checkbox"/> |
| 1.4 Has an advocate been considered, and involved if necessary? | <input type="checkbox"/> | <input type="checkbox"/> |
| 1.5 Are Direct Payments considered to be in the best interests of the person, with reasons documented? | <input type="checkbox"/> | <input type="checkbox"/> |

Section 2 – Authorised Person Assessment

- | | Yes | No |
|---|--------------------------|--------------------------|
| 2.1 Does the Adult have an authorised person under a Lasting Power of Attorney, or a Court Appointed Deputy, who is willing to act as suitable person in accordance with the conditions identified in the Care Act 2014 guidance? | <input type="checkbox"/> | <input type="checkbox"/> |
| 2.2 Is the local authority satisfied that the authorised person will act in the Adult's best interests. | <input type="checkbox"/> | <input type="checkbox"/> |
| 2.3 Is the local authority satisfied that the authorised person is capable or managing the direct payments independently or with appropriate support? | <input type="checkbox"/> | <input type="checkbox"/> |
| 2.4 Is the local authority satisfied that making direct payments to the authorised person is an appropriate way to meet the Adults needs. | <input type="checkbox"/> | <input type="checkbox"/> |

Section 3 – Appointment of Suitable Person

If there is an authorised person in place they must give permission for the appointment of a suitable person.

- | | Yes | No |
|---|--------------------------|--------------------------|
| 3.1 Where there is no authorised person has the local authority identified an individual who they feel is a suitable person to receive a direct payment on behalf of an adult. | <input type="checkbox"/> | <input type="checkbox"/> |
| 3.2 Does the suitable person understand what is involved in managing this, and are they willing to be accountable for the Direct Payments? | <input type="checkbox"/> | <input type="checkbox"/> |
| 3.3 Has a DBS check been completed for the suitable person (if required)? <i>DBS check for suitable person is <u>not</u> required if they are a close relative (or spouse/partner of a close relative) or a friend of the Adult. Otherwise a DBS check must be undertaken.</i> | <input type="checkbox"/> | <input type="checkbox"/> |
| 3.4 Has the suitable person agreement form DP17 been completed? | <input type="checkbox"/> | <input type="checkbox"/> |
| 3.5 Has Line Manager approval been sought for the suitable person? | <input type="checkbox"/> | <input type="checkbox"/> |

Signed: _____

Social Care
Assessor

Signed _____

Team Manager



SUITABLE PERSONS/THIRD PARTY AGREEMENT FORM (DIRECT PAYMENTS)

Adults Name

**Adults CareFirst
Number**

**Adults Address inc
postcode**

**Suitable Person
Name**

**Suitable Person
CareFirst Number**

**Suitable Person
Address inc
postcode**

**DBS Ref Number (if
applicable)**

Please read carefully and sign below your agreement to the conditions below

- 1 I consent to accept and manage Direct Payments on behalf of:

| |
|--|
| |
|--|

- 3 I understand that I must always make sure I am acting in the best interests of the Adult. This may mean involving other health and social care professionals as and when appropriate.
- 4 I understand I must involve the Adult as fully as possible in all areas of managing their Direct Payments and provision of care.
- 5 I understand that I must inform Stoke-on-Trent Adult Social Care as soon as possible if there is a change in capacity of the Adult.
- 6 I understand I must account for the spending of the Direct Payments on behalf of the Adult and follow all other rules of the service as detailed on the agreement.
- 7 I understand that if the Adult is required to make a financial contribution to the cost of their care, they must pay this contribution into the account that we pay the Direct Payments into. I will inform Stoke-on-Trent Adult Social Care if these payments are not made.
- 8 I understand that any abuse of my position as a suitable person may result in the council taking any appropriate action required to safeguard the service user and recover funds.
- 9 I confirm that I have DBS clearance (where required) and a copy of this has been given to Stoke-on-Trent Adult Social Care.

Signed: _____

Print name: _____ Date: _____