



**Doncaster
Council**

DIRECT PAYMENTS GUIDANCE

January 2019

Contents

1	INTRODUCTION	4
1.1	What are Direct Payments?.....	4
1.2	Direct Payments Policy Context & Legislation	5
2	ABOUT DIRECT PAYMENTS	5
2.1	Direct Payments in Doncaster	5
2.2	Eligibility	6
2.3	Who may not receive a Direct Payment.....	6
2.4	Assisting People with Direct Payments.....	6
2.5	What Direct Payments can be used for	7
2.6	What Direct Payments cannot be used for.....	8
2.7	Information, Advice and Support	8
2.8	Safeguarding	10
2.9	Complaints	10
3	DONCASTER'S OPERATING & FINANCIAL POLICY FOR DIRECT PAYMENTS	11
3.1	Direct Payments and Personal Budgets	11
3.2	The Direct Payment Agreement Form	11
3.3	Payment Methods & Record Keeping.....	11
3.4	Payment Frequency	12
3.5	Start-up Costs	12
3.6	Employing a Personal Assistant	12
3.7	Legal Rewards	15
3.8	Receiving a Direct Payment while in Hospital.....	16
3.9	Receiving a Direct Payment while in Residential Care.....	16
3.10	Receiving a Direct Payment while away from home (not in Hospital).....	16
3.11	Care and Support while staying outside of the UK.....	17
3.12	Purchase of Equipment	17
3.13	Financial Assessment and Contributions	18
3.14	Monitoring and Reconciliation.....	19
3.15	Reviews.....	22
3.16	Suspending or Ending a Direct Payment	23
3.17	Reclaims	24
4	DIRECT PAYMENTS FOR CARERS	25
4.1	The Care Act and Carer's Assessments.....	25
4.2	The Use of a Carer's Direct Payment	26
4.3	Payment Methods	26
4.4	Monitoring & Reclaims.....	27
4.5	Resolving Disputes.....	27
5	APPENDICES	28
5.1	DP Agreement.....	28

5.2	DP workers flowchart.....	28
5.3	Suitable Nominated/Authorised person guidance	28
5.4	Case study	28

1 INTRODUCTION

All Councils are required to offer a Direct Payments Scheme as an option for people with care and support needs. This policy outlines Doncaster Council's scheme, who can receive Direct Payments and how they operate.

It aims to provide independence, choice and control by enabling people to commission their own care and support in order to meet the outcomes agreed in their support plan. Direct Payments provide flexible, personalised alternatives to the social care services offered by the Council.

This guidance and procedure includes the roles and responsibilities of the Council and people receiving Direct Payments. This guidance and procedures will be regularly reviewed and updated as necessary.

Access to flexible support is available to help people who can manage their own care and support.

Direct Payments also contribute to the delivery of the Caring element of the Council's Corporate Plan.

What are Direct Payments?

"I am in control of planning my care and support"

Direct Payments are one way for an individual, who has been assessed as eligible to receive support from Doncaster Council, to receive their personal budget. Direct Payments are monetary payments paid directly to the person or their representative.

Direct Payments are the Government's preferred mechanism for personalised care and support. They provide independence, choice and control by enabling people to commission their own care and support in order to meet the outcomes agreed in their support plan.

Key Principles

- People will be encouraged to take ownership of their care and support planning, and be free to choose how their needs are met. This can be through Council or third party provision, by Direct Payments or a combination. It must be within the limits of legislation, taking into account the strengths and needs of individual users and the outcomes agreed in their Support Plan.
- The Council will prompt people to consider Direct Payments and how they could be used to meet their needs.
- People must not be forced to take a Direct Payment against their will, but instead be informed of the choices available to them.
- For Direct Payments to have maximum impact the processes involved in administering and monitoring the payment will be as simple and as streamlined as possible, while still allowing the Council to fulfil its statutory responsibilities.
- People who decide to use a Direct Payment to meet their needs will be encouraged to receive this via a Direct Payment Card or a Managed Account.

- There may be cases where a Direct Payment is not appropriate to meet a person's needs. Where a request for a Direct Payment has been declined, the person in need of care and support, and any other person involved in the request, will be informed of the reasons in a format that is accessible to them.

1.2 Direct Payments Policy Context & Legislation

The legislative context for Direct Payments is set out in the Care Act 2014, the Care and Support (Direct Payments) Regulations 2014, and Section 117(2C) of the Mental Health Act 1983.

Please also refer to the Councils Direct Payments Policy.

2 ABOUT DIRECT PAYMENTS

Direct Payments in Doncaster

Definitions

Personal Budget

In adult social care, this is the sum of money available to meet the person's assessed care and support needs. It is the total amount of the budget, including the proportion the council will contribute and the amount the person will pay, following a Financial Assessment.

Commissioned Arrangement

The Council may manage the Personal Budget, and arrange care and support on behalf of the person, in line with their wishes.

Direct Payment

The Personal Budget can be provided to the individual, enabling them to commission their own care and support to meet their needs.

Indirect Payment

The Personal Budget can be paid to a nominated, authorised or suitable person to manage or arrange care and support to meet the service users' needs.

Individual Service Fund/Third Party Arrangement

The Personal Budget can be placed with a third-party provider to arrange the care and support on behalf of the person, in line with their wishes.

Direct Payment Card

The personal budget can be paid onto a Direct Payment Card to pay for support by telephone or internet banking.

Managed Account Provider

The Personal Budget can be placed with a third party provider to manage the financial side of the Direct Payment.

"I can decide the kind of support I need and when, where and how to receive it"

Doncaster Council is committed to ensuring that the option of a Direct Payment is explored with, and understood by, everyone who is eligible to receive one.

All eligible people will be given information about Direct Payments at the point of assessment and review, and will have access to appropriate information, support and advice, in an accessible format, through the whole process.

Decisions on eligibility for a Direct Payment will be made promptly, and where a Direct Payment is not considered appropriate, the decision and reason will be recorded and shared. Doncaster Council reserve the right to refuse a direct payment.

2.2 Eligibility

Adults who have been assessed as having eligible needs for care and support may request a Direct Payment to meet some or all of these needs. A broad range of people may receive a Direct Payment, with each individual treated according to specific circumstances.

Carers of adults may also request a Direct Payment to meet their needs to continue in their caring role and to maintain their own health and wellbeing, taking into account the outcomes they wish to achieve in their day to day life.

The Council will support the person's right to request a payment by ensuring that they are given relevant and timely information and advice about Direct Payments. People may be given support to use and manage the Direct Payment appropriately.

2.3 Who may not receive a Direct Payment

The regulations specify that Direct Payments may not be offered to certain people as follows:

- Direct Payments cannot currently be used to secure long-term residential care, see Section 3.9 for further details.
- People restricted by certain criminal justice legislation e.g. those subject to alcohol treatment or drug rehabilitation requirements, or those released from prison on license. See Schedule 1 of the Care and Support (Direct Payments) Regulations 2014, for further details.
- Those who have previously received a Direct Payment but who did not manage it well.

2.4 Assisting People with Direct Payments

Doncaster Council will work to support people as far as possible to make decisions for themselves. All eligible individuals wishing to explore the option of a Direct Payment may be referred to the Direct Payment Managed Support Service. Additionally, spouses, other family members and friends are often able to provide support.

Authorised Person

Where an individual is assessed under the Mental Capacity Act as lacking capacity to make the decision to manage their own care and support an "authorised person" can be nominated, following a best interest meeting. This is a meeting held with those relevant to the individual and the Council, to determine whether the decision in question is in the best interests of the individual. This would be determined in a 'Best Interest' meeting.

The authorised person will sign an agreement to receive and manage the money on behalf of the individual. By doing so they take on the legal responsibility related to employing and managing paid staff employed through the Direct Payments scheme.

Where the Council acts as Deputy for Property & Affairs or Corporate Appointee it will not act as the Authorised Person in this case. A court-appointed deputy or a *donee* of Power of Attorney (enduring Power of Attorney, or its replacement, Lasting Power of Attorney) can act as an authorised person to receive a Direct Payment on behalf of an individual who lacks capacity, if that person agrees to this.

Where someone with capacity (i.e. the authorised person) was receiving a Direct Payment but then loses capacity to consent, the Council will discontinue the Direct Payment to that person and consider making payments to an authorised person instead. In the interim, the Council will make alternative arrangements to ensure continuity of support for the person concerned. Where an individual loses capacity and there is a nominated person receiving the Direct Payment, then the Council will review the suitability of continuing that arrangement on a temporary basis until the appointment of an authorised person can be considered.

Nominated Person

Individuals who do not wish to take on the responsibility of managing the Direct Payment can choose to nominate another person to administer the money. The purpose of this arrangement is to enable people who receive support to retain control over their support and care, while not having to manage the financial part of this, as the nominated person will do this on their behalf. Often the nominated person will be a family member or spouse.

The nominated person will sign an agreement to receive and manage the money on behalf of the individual. The individual will remain the employer of any staff.

If a nominated person is not a close friend, spouse, partner or a relative of the person receiving support, the nominated person may be required to have a Disclosure and Barring Service (DBS) check completed prior to taking on the responsibility of managing the allocated funds.

To avoid any potential conflict of interest, the nominated person cannot also be employed as a Personal Assistant by the supported individual.

2.5 What Direct Payments can be used for

Direct Payments can only be used to pay for support that meets the outcomes agreed in the support plan. The support, services and equipment purchased need to be legal, safe and not harm anyone else.

Examples of Direct Payment purchases that would support outcomes are:

- Employing a Personal Assistant to provide support with personal care
- Buying personal care or other services from a private care provider
- Accessing social or educational activities in the local community by paying towards support costs

- Respite care (for the service user) to provide a break for unpaid carers providing a substantial amount of support
- Equipment that the Council has assessed the individual as needing and is included in the support plan

2.6 What Direct Payments cannot be used for

The appropriate use of Direct Payments will vary from person to person, and should always be in line with the outcomes agreed in the support plan. However there are a number of things that Direct Payments cannot be used for:

- Anything that is illegal, gambling or alcohol
- Pay household bills or other personal expenses such as food or clothes
- Anything that should be provided by the NHS (e.g. pressure relieving mattresses). The NHS offers health personal budgets for such support needs
- Long term residential care
- Local authority provided services such as day centers.
- To employ family members living at the same address (unless specifically agreed in advance with the Council, see 3.7)
- Anything that should be provided by other organisations

For any item not listed in the support plan, individuals should refer to Doncaster Council before purchasing goods or services with Direct Payment funds. Funds used to purchase goods or services outside of the support plan will be reclaimed and may result in suspension or termination of the Direct Payment.

2.7 Information, Advice and Support

“I have access to easy-to-understand information about care and support which is consistent, accurate, accessible and up to date.”

Assessment and Care Management

When an individual is assessed as being eligible for support, Direct Payments will be discussed with them throughout the care and support planning, or review, process. The individual will be informed of both the benefits and responsibilities of receiving a Direct Payment to manage their own care and support.

The Care Manager assesses the individual's suitability to understand and manage a Direct Payment, considering factors such as:

- Do they consent to have their care and support met via a Direct Payment
- Do they understand how a Direct Payment differs from commissioned care (Council arranged care)
- Do they understand their responsibilities in managing the funds (provided to meet the outcomes identified in the support plan)?
- Do they understand the financial assessment process?
- Do they understand that the council will carry out a financial assessment to decide the final

- amount they may need to pay towards the cost by meeting their care and support needs
- Have they the capability to manage a Direct Payment, with support if necessary, including fulfilling employer and contractual responsibilities where appropriate

If the Care Manager is satisfied that the above criteria are met then the individual may be referred to Direct Payment Managed Support Service to discuss the Direct Payment further and arrange the set-up.

Direct Payment Managed Support Service

All individuals eligible for support who wish to explore a Direct Payment may be referred to Direct Payment Managed Support Service.

It is advisable that all individuals have a face to face meeting with a representative from a Doncaster Direct Payment Support Provider if they wish to take up a Direct Payment. This is to ensure that all necessary paperwork is completed and that rights and responsibilities as an employer are explained to the individual or their authorised/nominated person.

Direct Payment Managed Support Service will discuss different options with the individual including ways of managing a Direct Payment to best achieve chosen outcomes. However, the individual will remain in control of their care, how it is arranged and who it is provided by.

Individuals may need support with setting up and managing their Direct Payment and fulfilling their role as an employer. This support is crucial in promoting choice, independence and flexible support.

The Direct Payment Managed Support Service can provide:

- Setting up the Direct Payment
- Recruiting a suitable Personal Assistant or provider, and in meeting employer responsibilities.
- Helping with budgeting (e.g. to ensure there is enough money put aside for carer's holiday entitlement and liability insurance)
- Ongoing support with queries from people who receive support, or where issues arise around their Direct Payment

Direct Payments Monitoring Team

The Business Support and Assurance Team (BSU) within the Councils Finance Team is responsible for the payment and monitoring of Direct Payments.

Once completed forms are received from the Care Manager, including the Direct Payment Agreement Form, BSU will arrange for payment to be made. It will confirm in writing to the individual that the arrangement is now in place.

BSU will then monitor all Direct Payments on an ongoing basis.

2.8 Safeguarding

People who receive a Direct Payment are entitled to make their own decisions and to take risks in the same way that any other person is entitled to make choices involving risk. However it is essential to put safeguards in place to reduce any risk of potential abuse and to support Direct Payment recipients with making potentially hazardous decisions.

Safeguarding is everybody's responsibility and therefore it is essential that council staff, staff and volunteers of partner organisations, and members of the public remain alert and vigilant to the potential of abuse.

As with other people who receive support, those receiving Direct Payment may be at risk of abuse from family members, friends, carers, neighbours, professionals and strangers. People employing Personal Assistants may be at greater risk of abuse and pre-employment checks should be undertaken during the recruitment process.

People in receipt of a Direct Payment have a detailed support plan and annual care management review, as do all people who receive support. If needs change during the year they will be reassessed and their Direct Payment allocation may change.

In addition to the annual review there is a provision in place to reduce the risk of potential abuse:

- *Support with the recruitment process.* The Direct Payments Managed Support Service will help individuals to identify a suitable Personal Assistant or support worker.
- *Contract of employment.* Those receiving Direct Payment will sign a contract of employment with their staff. This will include terms and conditions, a detailed job description making the Personal Assistant's role and responsibilities clear.
- *CQC registration.* Where an individual chooses to purchase support through a private agency, the agency should hold a Care Quality Commission registration.
- *Contingency planning.* Direct Payment Managed Support Service will assist the individual with appropriate contingency planning, including backup care provision for example to cover holidays or sickness. It will ensure that there are sufficient funds set aside from the Direct Payment budget to cover expenses and bills.
- *Monitoring.* The monitoring approach undertaken by Doncaster Council has safeguarding at the core, with BSU, care management and Direct Payment Managed Support Service working closely together to ensure any potential concerns are reviewed promptly.

2.9 Complaints

When a Direct Payment recipient is not satisfied with the service received or decisions made by Doncaster staff, they are entitled to make a complaint through the Council's published complaints procedure by writing to:

Doncaster Council
Civic Office, Waterdale
Doncaster
DN1 3BU

Or online at complaints@doncaster.gov.uk

When a Direct Payment recipient is not satisfied with the service received from a Personal Assistant supplied by an agency, they should contact the agency manager. Where they are still not satisfied and the agency is registered with the Care Quality Commission (CQC), then they can contact CQC via enquiries@cqc.org.uk.

When a Direct Payment recipient is not satisfied with the service received from a Personal Assistant directly employed, then as the employer, they are responsible for dealing with any concerns about their performance. Direct Payment Support Services can be contacted for advice in these circumstances.

3 DONCASTER'S OPERATING & FINANCIAL POLICY FOR DIRECT PAYMENTS

"I know the amount of money available to me for care and support needs, and I can determine how this is used (whether it's my own money, direct payment, or a council managed personal budget)"

Direct Payments and Personal Budgets

The Direct Payment an individual will receive to purchase their support will be confirmed following the calculation of the Personal Budget and financial assessment.

3.2 The Direct Payment Agreement Form

Before Direct Payments can start, an Agreement Form has to be completed. The Agreement Form sets out the summary terms and conditions associated with receiving the Direct Payment.

The Direct Payment Agreement Form will be signed by the person agreeing to manage the funds. This may be the person eligible for support themselves, their identified nominated person, or an authorised person where the supported individual does not have capacity.

A copy of the Direct Payment Agreement Form is attached at Appendix A.

3.3 Payment Methods & Record Keeping

There are three payment methods by which an individual may receive a Direct Payment from Doncaster Council, with the Direct Payment Card being the Council's preferred option. In all cases, Direct Payment recipients must keep receipts for any expenditure from their direct payment monies for six years and along with routine monitoring, they may be asked to submit additional information from time to time.

1. *Direct Payment Card Account:* individuals can receive a Direct Payment Card and pay for support by telephone or internet banking, including standing order and direct debit. The Direct Payment Card works like a debit card, and reduces time spent on completing financial returns because the Council are able to monitor spending and have online access. This is Doncaster Council's preferred method for paying Direct Payments.

Some individuals may need to pay for certain providers, as agreed in their support plan, by cash. There are limited reasons for this as most providers take card or bank payments. Where this is identified, individuals and their Care Manager should discuss and agree how this will be monitored (usually with supplying receipts/details of payees). The proportion of weekly budget agreed to be spent in this way should be recorded for monitoring purposes.

2. *Managed Account:* If an individual is not able to manage their Direct Payments through the Direct Payment Card, or would prefer not to take on the full administrative responsibility associated with making payments, they will be offered an option of Managed Account. The Managed Account provider will look after the financial side of the direct payment such as paying the PA or other bills associated with care and support. If the service user has been assessed as lacking the mental capacity to make decisions, the authorised person would be part of this decision.
3. *Bank Account:* In some circumstances, individuals may wish to have a separate bank account to manage their Direct Payment. If this is required, individuals and Direct Payment Managed Support Service should discuss the increased responsibilities on the Direct Payment recipient for submitting regular, detailed monitoring returns such as bank statements and receipts.

3.4 Payment Frequency

Direct Payments will be paid weekly into the account net of any assessed financial contribution.

3.5 Start-up Costs

When a Direct Payment is being set-up Direct Payment Managed Support Service will assist the individual to work out an appropriate budget to ensure funds are set aside for all ongoing expected costs.

Where the individual chooses to employ a PA, the service user's Personal Budget will need to include costs to cover the Council's necessary employer's liability insurance and recruitment advertising costs (where applicable) at the start of the Direct Payment. The costs of renewing insurance policies after the first 12 months should be budgeted for within the Direct Payment funds.

3.6 Employing a Personal Assistant

Direct Payments give individuals flexibility and choice about who they want to employ and how their support is provided. The individual can employ a worker of their choice, providing the person is eligible to work in the UK and any other checks that may be necessary. Direct Payment Managed Support Service can provide advice and support when choosing a Personal Assistant or support worker.

The person receiving a Direct Payment is required to:

- Sign a contract with the Personal Assistant laying out their terms of employment. As an employer, you will be liable for their HMRC contributions
- Purchase employer's liability insurance to protect the individual and the Personal Assistant

in case of an accident, and in case of redundancy

- Register with Her Majesty's Revenue and Customs (HMRC) as a new employer
- Use the Pensions Regulator's Duties Checker to determine requirements and then ensure that the appropriate employer pension contributions are made

Doncaster Council strongly recommends 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 will check on criminal offences/convictions relating to the potential Personal Assistant. The Money Management/Direct Payment Support Provider will carry out enhanced DBS checks on the adult's behalf with the cost of the DBS check being taken from the adults Direct Payment allocation.

For adults with capacity to consent to, and manage their Direct Payment, Doncaster Council does not insist 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 Money management service Provider should emphasise this to the adult. Where such checks do not occur the support Provider or assessor must advise the respective Team Leader

Responsibilities as an Employer

When employing a Personal Assistant, the service user or the authorised person is responsible as an employer, under employment law. This includes wages, statutory entitlements, health and safety etc. The Direct Payment recipient or their authorised/nominated person also has financial responsibility for managing the Direct Payment funds and paying bills related to the support provided such as tax, pension and National Insurance contributions, insurance and payroll charges.

Direct Payment Managed Support Service can assist to calculate an hourly rate and ensure sufficient funds are set aside to pay on-costs such as National Insurance, administration costs and payroll charges.

Contract of employment

The service user or the authorised person employing Personal Assistants are legally obliged to sign a written contract of employment with their Personal Assistant within two months of commencement of employment. The contract will outline the terms and conditions of the Personal Assistant's work including all the statutory entitlements (e.g. maternity leave) and the job description. The employer and employee should both sign the contract and keep copies for future reference.

The essential terms that must be included in the contract are:

- The date when the employment commenced/will commence

- Job title
- Place of work
- Hours of work
- Details of remuneration (which must meet the national minimum wage)
- Statutory entitlements such as sick pay and maternity/paternity pay.
- The nature of the contract i.e. fixed-term or permanent
- Pension scheme provision as applicable
- Notice requirements

The employer should notify their employees of any changes to the terms and conditions of their work both legally and in writing.

Tax and National Insurance Responsibilities and Employment Status

Where support is being purchased through a contract with an agency, the agency will pay HMRC directly.

Where a Personal Assistant or other worker is engaged directly, the responsibility for paying Income Tax and National Insurance depends on whether the Personal Assistant is self-employed or employed by the individual or their authorised person.

According to the HMRC guidance in relation to self-employed providers, the vast majority of Personal Assistants employed via Direct Payments do not fall under this category. This is primarily due to the terms and conditions of Personal Assistant work which is agreed in the individual's support plan and cannot be dictated by the self-employed provider.

It might however be acceptable to contract a self-employed person such as a gardener or window cleaner who provides support on a sporadic basis as long as this complies with the HMRC self-employed regulations. More guidance on this can be found on the HMRC website.

The HMRC website also has a useful tool known as The Employment Status Indicator (ESI) tool. This enables checks on the employment status of an individual; that is whether they are employed or self-employed for tax, National Insurance contributions or VAT purposes.

It is essential that confirmation of a worker's employment status is known at the start of the employment arrangement so that the responsibilities of both parties are clear. It is the responsibility of the Direct Payment recipient or their nominated authorised person to ensure their self-employed worker's status is checked and confirmed by HMRC and that any relevant responsibilities, particularly in relation to tax and National Insurance contributions, are fulfilled. Failure to do so may result in the Direct Payment recipient or their nominated authorised person being responsible for the Personal Assistant's unpaid taxes and also be liable to pay a fine.

Where the Direct Payment recipient or the authorised person employs a worker they are legally responsible for calculating Income Tax and National Insurance contributions and paying regular contributions to HMRC. These payments are known as Pay As You Earn (PAYE) and are deducted from the salary paid to the worker and then paid to HMRC.

If the worker is self-employed, they are responsible for paying their own income tax and National Insurance.

PA Registers and Introductory Agencies

Where an individual does not have a suitable relative or friend to employ as a Personal Assistant, they may need to recruit more widely. In these circumstances Direct Payment Managed Support Service can provide assistance and information on local PA registers.

PA registers allow an individual to view the profile of local carers, or advertise their particular requirements to invite applications.

However a PA register or introductory agency may charge fees for their services.

Where a PA register or introductory agency has been used, the Direct Payment recipient or the authorised person should ensure that employer liabilities are fully met. Personal Assistants recruited through a register or introductory agency will be subject to the same employment status considerations under HMRC regulations as those recruited directly.

Employing a Relative

Direct Payments cannot usually be used to pay a person who is living in the same home as the person who needs support, but can be paid to a relative who does not live in the same household.

In exceptional circumstances, it may be considered in the best interests of the person who needs support to employ a person living in the same household to provide care. Specific agreement to this must be given in advance by the care manager, who will consider individual circumstances when making this decision. The details of the agreed arrangement should be detailed on Doncaster Council's recording systems. For some people in receipt of a substantial Direct Payment, relatives living in the same household may be paid to provide financial administrative support. However, this has to be agreed in advance with the Council.

Relatives employed as Personal Assistants will need to consider the effects on any other income such as state benefits (e.g. carers' allowance), private income or pensions. The Council recommends that relatives contact the Department of Work and Pensions to discuss their individual circumstances before entering into a contract.

If a service user is in receipt of a Direct Payment, they should not work as a paid carer for another service user receiving a direct payment. This has to be agreed by a Care Manager and recorded.

3.7 Legal Rewards

Most individuals use their Direct Payment to pay people or agencies for the support or services they receive. But Direct Payments can also be used to buy something for someone who has helped you, to say thank you or to help them support you, such as a friend, neighbour or acquaintance. This is called a legal reward. Money or wages do not change hands but a small "gift" is given instead.

An example of a legal rewards given by those receiving a Direct Payment is:

- a gift such as a small bunch of flowers / box of chocolates / payment voucher

Legal Rewards are not meant to be used to thank main, informal carers who provide substantive and regular support or who may receive carers' allowance, or who may be receiving a personal budget in their own right as a carer. This is because Carers' Legislation gives recognition and support for these carers.

Legal Rewards are more for recognition of ad-hoc types of support. This means that there is no structured timetable of support or set work tasks and no work contract (either explicit or implicit), no regular cash payment takes place and there is no expectation of there being a cash payment of any kind.

HMRC have rules covering payment vouchers. They are seen as a small cash gift in kind and there is a ceiling above which these become taxable. £250 is the total amount that can be paid by one person to another per tax year.

Therefore where an individual uses Direct Payment funds for Legal Rewards, the receiver needs to be aware that, dependent upon their individual circumstances, they may be liable to taxation and may have to declare any amounts paid to them for tax purposes.

Anyone in receipt of a state benefit, who also receives a legal reward, should take independent advice on the likely impact on their benefits.

3.8 Receiving a Direct Payment while in Hospital

Contact the Direct Payments Managed Support Service if someone's admission to hospital lasts longer than four weeks to discuss retainer fees. If a person is admitted to hospital and employs a PA, they can continue to be paid if they are providing the same number of support hours. If they do not provide any hours then a retainer fee can be negotiated. It is the service user's or nominated/authorised person's responsibility to inform the council of any changes.

3.9 Receiving a Direct Payment while in Residential Care

A Direct Payment cannot be used to fund a long-term stay in a care home.

But Direct Payments can be used to fund a short stay in a care home, defined as not exceeding a period of four consecutive weeks in any (rolling) 12 month period; the break between stays in a care home needs to be more than four weeks in order for them not to count as a single stay.

If a stay of more than four weeks in total does occur, then the Direct Payment cannot be used to pay for any more care home services until 12 months have passed from the start of the four-week period. However, additional weeks may be commissioned but cannot be taken using a direct payment.

3.10 Receiving a Direct Payment while away from home (not in Hospital)

Direct Payments are paid up to four weeks while the person who needs support is away from their normal place of residence.

Confirmation of the following information is required before the individual has left their home:

- If the individual is taking their Personal Assistant with them they must ensure they are both covered by their liability insurance, particularly while travelling abroad
- Health and Safety Regulations must be followed to ensure that the environment is safe for the Personal Assistant to work
- That the Personal Assistant agrees to travel and support the individual while away from home
- The individual or Personal Assistant is prepared to cover the cost of travel including flights, accommodation and any other costs related to travelling and supporting the individual while away from home from their own funds
- The individual has supplied Doncaster Council with the address they intend to stay at, a contact telephone number, and the dates of departure and return
- The individual has demonstrated how they intend to meet their support needs while they are away

3.11 Care and Support while staying outside of the UK

Direct Payments while abroad will usually not be paid for more than four weeks in any one calendar year. It is the individual's responsibility to advise Doncaster Council that they are going abroad. Failure to return home on the expected date will generally result in the suspension and possible termination of the Direct Payment, requiring a reassessment of need. Any overpaid Direct Payment funds will usually be reclaimed from the individual.

Due to differences in tax and health and safety regulations it is usually not possible to use Direct Payments to pay for support or employ staff based in another country.

This is guidance and Doncaster Council may depart from it in exceptional circumstances. Applications to depart from Section 3.11 of the guidance suggest, that exceptional circumstances may exist. If an individual considers that they have exceptional circumstances which may justify a departure from the guidance, they should write to Doncaster Council explaining why they believe this to be the case. One matter which Doncaster Council will take into account is the current support needs assessment, and whether that identifies any care need to spend more than a month per calendar year abroad.

3.12 Purchase of Equipment

A Direct Payment may be used to purchase daily living equipment or minor adaptations needed to promote independence that would otherwise be provided directly by Doncaster Council. The advantage of this to the individual is that they may wish to purchase equipment from a different supplier to the one that Doncaster Council uses, or choose to put the Direct Payment towards a more costly, higher specification, model.

Direct Payments must be spent on meeting agreed outcomes and the purchase of equipment should be agreed in advance and included in the support plan. Funds will only be provided towards equipment that the Council would normally have a responsibility to provide. Direct Payments cannot be used to purchase items that would normally be provided by other providers

(e.g. NHS or Housing).

Where Direct Payment funds are used to purchase equipment, the individual or their nominated or authorised person is responsible for paying the supplier in full. Where the funds provided by the Council are more than the cost of the equipment purchased, the Council is entitled to reclaim the overpayment.

Where maintenance costs have been included in the Direct Payment, the individual or the authorised person is responsible for the insurance, maintenance and upkeep of the goods/equipment. This includes all legal responsibilities that may arise from the ownership or use of the equipment (including health and safety). Any expense relating to goods/equipment which exceeds the Direct Payment funds provided by Doncaster Council will be met by the individual's personal funds.

The individual/recipient must not sell or dispose of goods/equipment purchased with Direct Payment funds without the Council's prior written agreement. If sold without Doncaster Council's prior agreement, Doncaster may reclaim the full amount of the goods/equipment from the Direct Payment account, the individual or their authorised or nominated person.

If the individual is assessed as needing new or different goods/equipment, the individual or their authorised or nominated person is responsible for any costs incurred in disposing of existing goods/equipment bought with DP funds. Any income raised by the disposal must be put towards the cost of new goods/equipment and will form part of any new Direct Payment.

3.13 Financial Assessment and Contributions

People in receipt of support funded by the Council may be required to pay a financial contribution towards their care. Individuals need to provide details of their income, expenditure and savings. A financial assessment will then be carried out by the Financial Assessment Team. This is the same for all individuals, whether they receive their support through a service commissioned by Doncaster or through a Direct Payment.

In cases where the individual's savings are above a certain level as set by the Government, the individual will be required to pay the full cost of their care. Under these circumstances the individual can still choose to receive a Direct Payment in respect of their personal budget. Where this has been agreed, the individual must pay the full cost of the support into the Direct Payment account, and spend will be monitored against this as with other Direct Payments.

Doncaster Council pays Direct Payment funds net of assessed contributions. People receiving Direct Payments who are assessed to pay a contribution towards their support must arrange to pay this amount into their Direct Payment account or to their managed account provider. This can be done in a number of ways: the individual can set up a standing order for the contribution amount to be transferred from their personal account to the Direct Payment account, or they can make a payment by bank transfer.

Individuals must pay their assessed contributions or they will not have enough money available to pay for their support or to meet the costs of the support in place.

Non-Payment of Assessed Contribution

If an individual does not pay their assessed contribution in full, BSU will write to the individual to remind them of their obligations. Direct Payment Managed Support Service will be asked to provide assistance.

Direct Payment Managed Support Service will assist the individual or their nominated or authorised person to meet any shortfall of contribution to the DP account in full and to ensure that all employer obligations are being met. This includes HMRC payments, insurance, contractual wage payments, and that appropriate contingency planning is budgeted for.

Where Direct Payment Managed Support Service identify the individual or their nominated or authorised person is off-setting non-payment of assessed contribution by not meeting employer obligations in full, and they are unable to resolve the concerns with the individual or their nominated authorised person, then BSU will refer the individual to care management for review as the individual or their nominated authorised person may be at risk.

Where the individual or their nominated or authorised person is off-setting non-payment of their assessed contribution by reducing their planned support hours, then BSU will refer the individual to care management for review. Care management will then consider the risks to the individual of this reduced support level. Where no significant risks are identified then the Direct Payment amount may be reduced to reflect the lower level of support the individual now requires.

Where all employer obligations are being met without the assessed contribution being paid into the Direct Payment account, then BSU will refer the service user to care management for review as they may have less care needs.

Where the full assessed contribution continues to be unpaid then the suitability of continuation of the Direct Payment will be considered by care management and BSU working together. This may result in suspension or termination of the Direct Payment.

3.14 Monitoring and Reconciliation

The Council monitors Direct Payments to ensure the Direct Payment is being spent appropriately to support the individual, and to protect and account for public funds.

In signing the Direct Payment Agreement Form, the service user or Direct Payment recipient accepts the responsibility of ensuring the recording of all income and expenditure and to keep appropriate records and supporting documentation for a period of six years, even if the Direct Payment has come to an end. The submission of monitoring information when requested is a key element of the Direct Payment Agreement.

Monitoring aims to be proportionate and while the process is different for each payment method, every Direct Payment is monitored to ensure:

- The support being purchased is in line with that agreed in the support plan

- Where a Personal Assistant is employed, there is evidence of appropriate tax and national insurance payments being made
- Evidence of employers liability insurance where appropriate
- Evidence that a payroll agency or alternative is being used to support pay calculations
- Where a care agency is being used, CQC registration is evident
- An appropriate level of contingency is being held in the account, generally four to six weeks equivalent of the Direct Payment
- Any assessed personal contribution is being paid into the account.

All monitoring activity is undertaken with safeguarding in mind, ensuring that any concerns, financial or otherwise, are reported promptly and appropriately. Where it would appear the individual could benefit from some further support in managing their Direct Payment, then a joint approach will be taken by the Direct Payment Monitoring Team, care management, and Direct Payment Managed Support Service.

Direct Payment Card Accounts

A Direct Payment Card operates much the same way as the debit card that most people have for their personal accounts. Bank transfers can be made online or over the telephone, and the card can be used to purchase goods or services wherever card functionality is available.

The ability to withdraw cash is turned off as a default, as card payments or bank transfers are possible in most circumstances. Where it has been agreed in advance with the care manager that cash withdrawals are appropriate in meeting outcomes identified in the support plan, receipts should be kept and may be asked for by BSU to verify the purchases made. This approach ensures that funds are being spent appropriately, all employment obligations are being met and that the individual is protected from financial harm.

BSU is able to access online, real time transaction information on each Direct Payment Card account, largely removing the need for monitoring information to be requested from the individual regarding their Direct Payment.

Unusual transactions may be expected and allowable for some individuals, but often provides the first indicator that a fuller review is needed.

Individual Direct Payments are periodically reviewed in full. While the in-depth detail of some Direct Payments may be monitored annually in line with their care management review, some will be reviewed on a monthly or even weekly basis. This may occur where the individual is being supported to improve the management of the account, or while concerns are being investigated.

Managed Account Service

Where an individual wants the benefits of receiving a Direct Payment but does not wish to take on all the responsibilities of administering the account, then a Managed Account Service is an effective solution. BSU will pay the Direct Payment funds to the approved service, who will manage the account on behalf of the individual. The Managed Account Service will make payments for wages, HMRC etc. and also ensure that the account is regularly cross matched to

incoming/outgoing monies as well as what the monies are to be spent on so it balances. The Managed Account Service will also submit the required quarterly monitoring information to BSU on behalf of the individual, and act as the first point of contact for many queries that arise.

For some individuals this is an option of choice from the start of their Direct Payment, others may be required to move to this method when they have failed to manage their account appropriately using one of the other payment methods.

Bank Accounts

For individuals who hold separate bank accounts for the management of their Direct Payment, monitoring requests are made generally every three to six months. Individuals are asked to submit copy bank statements to BSU, with further information where transactions are not self-explanatory.

Further information may be requested from the individual to support the monitoring review, such as carer pay slips or invoices/receipts.

Where individuals consistently do not respond to monitoring requests, they will be moved to a Direct Payment Card Account. If the individual refuses then the suitability of continuation of the Direct Payment will be considered by care management and BSU. This may result in suspension or termination of the Direct Payment, and repayment.

Mismanagement & Misuse

Monitoring activity may identify cases that require further review. This may be where concerns exist over how the Direct Payment is being managed, and in these circumstances BSU will work jointly with care management and Direct Payment Managed Support Service to resolve the issues.

Where this action does not resolve the concerns satisfactorily, or where Direct Payment funds have been identified as potentially misused, then the case will be referred for review under the Misuse process. A Direct Payment Monitoring Officer will consider the following:

- Background to the case provided by the Direct Payment Monitoring Officer
- Information available from case notes including any recent care management activity
- The extent of the misuse identified and the corresponding potential risks
- Any further information required from the individual or their nominated authorised person

Contact will be made with the care manager, or a request will be made to have the case allocated where no identified care manager is in place.

A professionals meeting will then be scheduled, attended by the BSU Deputy Team Manager and care management. Where appropriate, colleagues from Financial Assessments, Direct Payment Managed Support Service, Internal Audit and other departments may also attend. This meeting will review the monitoring concerns and information collated to agree actions taking into account any risks to the wellbeing of the individual.

The care manager will then meet with the individual to review any unusual transactions identified, and discuss whether it meets agreed outcomes within the support plan.

If it is clear that spend is not in line with the agreed support plan, a reclaim will be actioned. Options for the future management of the Direct Payment will also be considered, and may involve the account being transferred to a managed account or commissioned service.

At all points in the process the continued wellbeing of the individual will be considered. They will be encouraged to access additional advice and assistance through Direct Payment Managed Support Service or independent advocacy services.

Where concerns over fraud are highlighted, including fraud committed against other public bodies, the BSU Team and care management have a duty to report this to the Council's Internal Audit Team.

Privacy and Data Protection

The Direct Payment Agreement (see Appendix A) that is signed before the Direct Payment starts informs the individual or their nominated or authorised person about the information they supply relating to their Direct Payment:

Doncaster Council are also required under Part IIA of the Audit Commission Act 1998 to participate in the National Fraud Initiative (NFI) data matching exercise:

The council works with partners to provide you with public services. To do this, we may need to share your information. We will do this in a way that protects your privacy.

The General Data Protection Regulations gives you the right to see your personal information:

To request information we hold about you please request a subject access request form. You can find more information on our website.

We are under a duty to protect public funds. We may use any of the information you have provided for the prevention and detection of fraud. We may also share this information with other bodies that are responsible for auditing and administering public funds. Please let us know when any of your contact details change.

3.15 Reviews

The Direct Payment is reviewed on a regular basis; it must be reviewed within 6 weeks and at least every 12 months thereafter. The first review should be incorporated within the initial review of the support plan, and should ensure that:

- The individual or nominated or authorised person is comfortable using the Direct Payment
- The Direct Payment is being managed and used appropriately in line with the support plan
- The individual or nominated or authorised person is meeting their obligations

The annual review of the Direct Payment will aim to coincide with the annual support plan review. When planning an annual review, the Social Care worker must check for information about how the Direct Payment is being managed. If there are any concerns, then BSU and care management will work together through the review process to investigate and address them.

If the individual's needs change before their annual review is due, they are encouraged to contact their care manager to arrange a reassessment. The Direct Payment allocation can increase or decrease, based on the individual's needs, required support and any advances in assistive technology that may be available (e.g. telecare). Any changes to the Direct Payment allocation will be discussed with the individual.

If following an assessment the individual's needs increase they will still be entitled to receive a Direct Payment, and the level of Direct Payments will increase accordingly. The frequency and method of payment should remain the same. The individual will be advised of any changes by their care manager prior to receiving their Direct Payment.

Changes to any payments affecting the Personal Assistant's terms and conditions of work such as wages, hours of work, statutory entitlements etc., should be discussed with the worker/s prior to implementing those changes. It is the individual's responsibility as employer to ensure that employees are fully informed of these changes, relevant contracts are updated and payroll are notified.

If a Personal Assistant or other worker is employed The Council strongly advises the service user or the authorised person to seek advice from Direct Payment Managed Support Service on any changes to the terms and conditions of work e.g. hours of work or rate of pay. Any contractual changes to the terms and conditions of work may have legal implications for the employer and should be discussed with the employee prior to making these changes.

3.16 Suspending or Ending a Direct Payment

Reasons a Direct Payment may be suspended include:

- how the Direct Payment is being used or managed is under investigation
- the individual or their nominated/authorised person has not responded to requests for information

A decision on suspending a Direct Payment will always be made in conjunction with care management and will be communicated to the individual or their authorised/nominated person.

A Direct Payment will end if one of the following occurs:

- The individual is no longer eligible to receive services
- Direct Payments are no longer an appropriate way of delivering their services
- The individual has passed away
- The individual has moved out of Doncaster or has moved to a permanent residential placement
- The individual has chosen to end the Direct Payment

- The individual or their nominated/authorised person has misused or mismanaged the Direct Payment and a decision is made by The Council that a Direct Payment is no longer a suitable option
- The Council considers that the individual is at risk of, or is being abused in some way or is being abused
- Financial monitoring information is repeatedly not provided as requested
- The nominated bank account is not a separate bank account. The Direct Payment bank account must be completely separate from any other monies for audit purposes.

The Care Manager will discuss the end of the Direct Payment with the individual or their authorised/suitable person or next of kin if they have passed away. The individual or their nominated authorised person or next of kin should then give notice to any employed workers and calculate any outstanding bills. If necessary they can contact Direct Payment Managed Support Service for assistance with settling these matters.

Settling final costs and returning remaining funds

For individuals using a Direct Payment Card, their card will be frozen following the end of the Direct Payment. Once the individual or their next of kin has calculated the final costs they should inform BSU. A final audit and balance will be undertaken by the BSU which will consider factors such as the balance remaining on the account and whether the assessed contribution due has been paid, before any decision is taken on releasing funds for the final costs to be settled.

Where an individual uses a Managed Account Service, the service provider will submit a final balance to BSU and arrange for any remaining funds to be paid back.

Individuals using a bank account must settle their bills and then arrange for any remaining funds to be returned to Doncaster through payment of a Sales Invoice. This will be sent by BSU. BSU will also require a final figure which provides information relating to the final balance on the account.

3.17 Reclaims

Doncaster may reclaim Direct Payment funds from the individual or their nominated authorised person in the following circumstances:

- The Council has overpaid the service user and needs to balance out agreed amounts into the account
- An excess of more than eight weeks contingency has built up in the account
- Funds have been misused i.e. not spent in line with the agreed support plan
- A client contribution hasn't been made

Excess Funds

An individual may build up an excess in their account for a number of reasons. This can be due to a short term change in circumstances, such as a family member staying with the individual resulting in less formal support being required. Other examples are where the support purchased

has been sourced at a lower cost than originally planned, or that the individual's outcomes are being successfully met with less than the planned support by finding alternative creative solutions.

Where excess funds are identified on an account, BSU will contact the individual or their nominated authorised person or the managed account provider in the first instance to advise that an excess has been identified and ask whether the funds are being held for a particular purpose, for example an upcoming HMRC bill. Following this, a figure for reclaim may be agreed, dependent on outstanding liabilities, and this will be processed by the BSU. This may be off-set against future payments or the individual or their nominated authorised person may be asked to pay the funds back to Doncaster Council.

Spending patterns will be considered as part of this process to identify any obvious reason why the excess funds have accumulated. Where it is apparent that the support being purchased is considerably lower than that identified in the support plan, then this will be flagged to care management for review to ensure the individual's outcomes are being met and that support is not being over-provided.

Misuse

Where misuse has been confirmed an invoice will be issued for the final reclaim amount. This must be paid from personal funds, not Direct Payment funds.

The individual or their nominated authorised person can discuss payment arrangements with Accounts Receivable if they are not in a position to settle the invoice in full. If an individual or their nominated authorised person fails to settle the invoice, or keep within the terms of an agreed repayment arrangement, then The Council may decide to take legal action in line with its standard debt recovery procedures.

4 DIRECT PAYMENTS FOR CARERS

"I have a network of people who support me – carers, family, friends, community and if needed paid support staff."

The Care Act and Carer's Assessments

Following a carer's assessment, an unpaid carer who is providing regular and substantial care may be eligible for a personal budget in their own right. In Doncaster this is currently offered as a Direct Payment, which can be paid in two ways:

- as a one-off lump sum
- as an ongoing weekly equivalent

Where the carer is to receive their Direct Payment as ongoing support, a referral may be made to Direct Payment Managed Support Service to assist them with the set-up process.

Support provided to a carer directly following a carer's assessment is not chargeable.

4.2 The Use of a Carer's Direct Payment

A Carer's Direct Payment is designed to support the Carer to continue in their caring role through helping to improve their health, well-being and quality of life.

Carers must always use their Direct Payment to meet the specific outcomes agreed in their support plan; depending on the Carers specific circumstances examples might be:

- relaxation/stress management
- development of new work skills or refreshing existing skills, to enable the return to or continuation of paid work alongside the caring role
- pursuit of hobbies
- help with staying in touch with family and friends.
- In exceptional circumstances Doncaster Council can agree that a Carer's Direct Payment can be used to pay for a sitting service, in order to give the Carer a break if the cared for person refuses an assessment or community care services. The service must not include any intimate or personal care support.

A Carer's Direct Payment cannot be used:

- to buy services or pay contributions for the person you care for - for example, help with personal care; the cared for person would need to be assessed for this support separately and this may be a chargeable service
- to employ a close relative (or their spouse or partner) who lives in the same household except where The Council has agreed beforehand that there are exceptional circumstances and it is necessary in order to meet a person's needs
- to pay for everyday living expenses such as food shopping, heating, lighting, council tax, rent or mortgage payments
- for anything that is illegal, gambling or alcohol

Where a Carer's Direct Payment is used to purchase therapies such as counselling, massage or acupuncture then it is the Carers responsibility to ensure that the provider is appropriately trained and insured for the services being provided

4.3 Payment Methods

Where the Direct Payment is awarded to a carer, this will normally be paid onto a Direct Payment card account. This may be when a Carer plans to use their Direct Payment to purchase things such as:

- a laptop or replacement washing machine
- where the carer wishes to use their Direct Payment for ongoing support, such as gym membership or relaxation classes
- where a carer uses their Direct Payment for a combination of one-off purchase and ongoing support

4.4 Monitoring & Reclaims

The monitoring and reclaims processes for carer's Direct Payments will largely mirror that of other Direct Payments and will remain proportionate and appropriate considering the level of the personal budget and the outcomes agreed in the support plan.

The exception is where Direct Payment funds have been paid into the carer's personal bank account. In these circumstances, Carers must submit receipts to BSU when requested to demonstrate how the funds have been spent. Failure to submit this information may prevent the Carer from receiving future money via a bank account, and may result in Direct Payments funds being reclaimed from that individual.

4.5 Resolving Disputes

When a Direct Payment recipient is not satisfied with the service received or decisions made by Doncaster Councils staff, they are entitled to make a complaint through the Council's complaints procedure by writing to:

Doncaster Council
Civic Office, Waterdale
Doncaster
DN1 3BU

Or online at complaints@doncaster.gov.uk

When a Direct Payment recipient is not satisfied with the service received from a Personal Assistant supplied by an agency, they should contact the agency manager. Where they are still not satisfied and the agency is registered with the Care Quality Commission (CQC), then they can contact CQC via enquiries@cqc.org.uk

When a Direct Payment recipient is not satisfied with the service received from a Personal Assistant directly employed, then as the employer, they are responsible for dealing with any concerns about their performance. Direct Payment Managed Support Service can be contacted for advice in these circumstances.

5 APPENDICES

A) DP Agreement



**Updated Revised
Direct Payment Agree**

B) DP workers flowchart & list



Direct Payments Set Up Flowchart.pdf



Direct Payments Set Up List.pdf

C) Suitable Nominated/Authorised person guidance



**21.11.18 Suitable
Person Guidance.doc**

D) Case study



**DP case study
Using Alexa to meet**

Please find all relevant documents via the link below:

<https://intranet.doncaster.gov.uk/directorates/adults-health-wellbeing/direct-payments-employment-information-for-service-users>