

# Adult & Children Social Care Policies and Procedures

## Direct Payments Policy

**WARNING!** Please note if the review date shown below has passed this procedure may no longer be current and you should check the PPG E Library for the most up to date version

## POLICY VERSION CONTROL

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	<b>Policy Version Control</b>	
<b>1</b>	<b>Policy Statement</b>	<b>4</b>
<b>2</b>	<b>Purpose</b>	<b>4</b>
<b>3</b>	<b>Definitions</b>	<b>4</b>
<b>4</b>	<b>Legal Context</b>	<b>4</b>
<b>5</b>	<b>Associated Policies</b>	<b>5</b>
<b>6</b>	<b>Informing people, promoting choice and advocacy</b>	<b>5</b>
<b>7</b>	<b>Duty to offer</b>	<b>5</b>
<b>8</b>	<b>Consideration of Request</b>	<b>5</b>
<b>9</b>	<b>Who can have a Direct Payments</b>	<b>5</b>
<b>10</b>	<b>16 &amp; 17 Year Old Young People with a Disability as Recipients of Direct Payments</b>	<b>6</b>
<b>11</b>	<b>For a young person moving from child to adult care</b>	<b>6</b>
<b>12</b>	<b>Who cannot have Direct Payment.</b>	<b>7</b>
<b>13</b>	<b>Consent and people with the mental capacity</b>	<b>7</b>
<b>14</b>	<b>Adults without capacity</b>	<b>7</b>
<b>15</b>	<b>Carers with Parental Responsibility as Recipients of Direct Payments</b>	<b>7</b>
<b>16</b>	<b>Transitions</b>	<b>7</b>
<b>17</b>	<b>Nominated Person</b>	<b>7</b>
<b>18</b>	<b>Appointing an 'authorised person'</b>	<b>8</b>
<b>19</b>	<b>Conditions for receiving direct payments</b>	<b>8</b>
<b>20</b>	<b>Declining Direct Payments</b>	<b>9</b>
<b>21</b>	<b>Using Direct Payments</b>	<b>9</b>
<b>22</b>	<b>What can direct payments NOT be used for?</b>	<b>9</b>
<b>23</b>	<b>Carer Direct Payments</b>	<b>10</b>
<b>24</b>	<b>Short respite breaks (Adults)</b>	<b>10</b>
<b>25</b>	<b>Short respite breaks (Children and Young People)</b>	<b>10</b>
<b>26</b>	<b>NHS Continuing Health Care &amp; Personal Health Budgets</b>	<b>10</b>
<b>27</b>	<b>Purchasing from a provider or organisation</b>	<b>11</b>
<b>28</b>	<b>Purchasing services from a self-employed worker</b>	<b>11</b>
<b>29</b>	<b>Paying someone to manage your Direct Payment</b>	<b>11</b>
<b>30</b>	<b>Becoming an employer</b>	<b>11</b>
<b>31</b>	<b>Employing relatives living in the same household to provide care</b>	<b>12</b>
<b>32</b>	<b>Employing friends or relatives not living in the same household</b>	<b>12</b>
<b>33</b>	<b>Direct Payments for Adaptations</b>	<b>12</b>
<b>34</b>	<b>Direct Payments for Equipment</b>	<b>12</b>
<b>35</b>	<b>Hospital stays</b>	<b>13</b>
<b>36</b>	<b>Safeguarding Alerts</b>	<b>13</b>
<b>37</b>	<b>Disclosure and Barring Service checks</b>	<b>13</b>
<b>38</b>	<b>Direct Payments Agreement (FIN107)</b>	<b>13</b>
<b>39</b>	<b>Payment &amp; Frequency</b>	<b>13</b>
<b>40</b>	<b>Pre Payments, bank accounts &amp; managed bank accounts</b>	<b>14</b>
<b>41</b>	<b>Cost of Services</b>	<b>14</b>
<b>42</b>	<b>Assessed Financial charge</b>	<b>14</b>

43	Financial monitoring arrangements	14
44	Social Care reviews	14
45	Suspending Direct Payments	15
46	Terminating Direct Payments	15
47	Repayment of Direct Payment monies	16
48	Complaints	16
49	Implementation	16
50	Audit and monitoring compliance	16
51	Review	16
	Appendix 1 - Definition	17
	Appendix – People excluded from Direct Payments	20

## **1. Policy Statement**

- 1.1. Direct payments are monetary payments made to named individuals who request to receive one, to meet some or all of their eligible care and support needs. The legislative context for direct payments is set out in the Care Act 2014, Section 117(2C) of the Mental Health Act 1983 (the 1983 Act), the Care and Support (Direct Payments) Regulations 2014 and the Children and Families Act 2014.
- 1.2. The named individual or person referred to in this policy can be an adult with eligible care needs, their representative, someone with parental responsibility for a disabled child who is eligible for support or a young person between the ages of 16 and 17.
- 1.3. Direct payments have been in use in adult care and support since the mid-1990s and they remain 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 their eligible needs.
- 1.4. Direct Payments have been available to support disabled children and young people between the ages of 16 and 17 since 2001 and must safeguard and promote the welfare of the child.
- 1.5. Lancashire County Council will continue to promote and prompt people to consider using a direct payment to get choice and control over their lives.
- 1.6. Direct Payments may only be made with the consent or willingness of the person concerned. When a person consents to receiving direct payments they need to have an understanding of what is involved in managing direct payments and they will be supported to do that. Where a person decides not to receive direct payments the Council will provide or arrange services.
- 1.7. Direct payments should be spent on items or services that are "safe, legal, meets an eligible care and support need and outcomes as detailed in the plan". It should also be proportionate and within the agreed budget and in the case of a child must safeguard and promote the welfare of that child. It must also only be spent meeting the needs of the person identified in the plan.

## **2. Purpose**

- 2.1. The purpose of this policy is to reflect the requirements of 4A(4) Children and Families Act 2014 and Part 1 of the Care Act 2014 which was effective from 1 April 2015, the Care and Support (Direct Payments) Regulations 2014 and the guidance found in the Care and Support Statutory Guidance issued under the Care Act 2014 by the Department of Health in October 2014.

## **3. Definitions**

- 3.1. Definitions of specific terms used within this policy are defined in Appendix 1

## **4. Legal Context**

- 4.1. Policy derives from the following legislation and government guidance:
  - The Care Act 2014 Care and Support (Direct Payments) Regulations 2014 Care and Support Statutory
  - Other relevant legislation includes but is not limited to:
  - Mental Health Act 1983 (MHA) Mental Capacity Act 2005 (MCA) Equalities Act 2010 Human Rights Act 1998 guidance issued under the Care Act 2014 by the Department of Health in October 2014.



- Part 3 of the Children and Families Act 2014
- The SEND Code of Practice (Chapter 2)
- The Special Education Needs (Personal Budgets) Regulations 2014:

## **5. Associated Policies**

5.1. The following documents are closely associated with this policy:

- FIN107 Direct Payments Agreement
- Safeguarding policy
- Support Planning and Review policy
- Finance and Charging policy
- Community Equipment and Adaptations policy
- Children's Policies

## **6. Informing people, promoting choice and advocacy**

- 6.1. The Council will provide universal information about direct payments to raise awareness of direct payments and how they can be used.
- 6.2. When a plan to meet needs or discharge s117 duties under the Mental Health Act 1983 is being developed, people will be advised which of their eligible needs, if any, or after care services may be met / provided through direct payments and offered the option of having them. People will be provided with information about their direct payment rights and responsibilities and how to use and manage them so that they can make an informed decision.
- 6.3. The Council may use a variety of methods to do this from providing fact sheets, describing realistic scenarios or case studies that are similar to the person's situation and use different styles of communication that are tailored to the persons understanding. They will also discuss the option of a direct payment along with others methods of support and offer choices more than once during their interactions with the person. They may refer the person to a Direct Payment support service, advocacy service or a peer support organisation for an independent advice.
- 6.4. People must request direct payments and may opt in or out of direct payment arrangements by notifying the Council. Requests for direct payments are usually made at planning stage but may be made at any other time.
- 6.5. People who appear to be unable to understand their rights and responsibilities in relation to direct payments but do not need to be supported under the Mental Capacity Act and have no other appropriate person to support them will be offered an independent advocate. The advocate will support the person to understand and participate in making a choice on how their care needs are to be met and if they wish to use a direct payment to do this.

## **7. Duty to offer**

- 7.1. Direct Payments must be offered and discussed with people who have eligible social care needs. This will be done during any social care assessment, reassessment or review and offered at planning stage. They can also be requested at any time by the person, parent or young person.
- 7.2. The person, parent of the child or young person in conjunction with their carer must make the decision themselves and make a request for a Direct Payment, it cannot be done by a third party.

## **8. Consideration of Request**

8.1. All efforts will be made to support an individual to receive a Direct Payment if they request one. If there is a reason why one cannot be provided this will be detailed in the individual's assessment and plan. If they wish to challenge this decision they will be referred to the Council's complaints process.

## **9. Who can have a Direct Payments**

9.1. People are eligible to receive their or their child's personal budget as a Direct Payment if:-

- They have been allocated a personal social care estimated budget and are eligible for financial support from the Council.
- They have parental responsibility of a child with a disability and a Framework assessment identifies a need for support.
- In the case of a child they satisfy the Council that the services provided by the direct payments will safeguard and promote the welfare of that child.
- They understand the responsibilities and financial implications of managing a Direct Payment.
- There is no evidence to suggest that a Direct Payment will not be managed appropriately or will not meet a person or child's eligible needs.
- They have the mental capacity to understand the implications or it has been decided as part of a best interest decision under the Mental Capacity Act and a person has been nominated to take on these responsibilities.
- They are not subject to a court order for drug or alcohol treatment programme or other offenders (see appendix 2).

## **10.16 & 17 Year Old Young People with a Disability as Recipients of Direct Payments**

10.1. The option of Direct Payments must be discussed with the young person and those with parental responsibility. Where there is a difference of views between a young person with a disability aged 16 or 17 and his or her parent, provided that the young person has sufficient understanding to make informed decisions, preference should be given to the young person's views.

If a young person is not able to manage a Direct Payment and the young person does not agree with this opinion, the young person should be allocated an advocate. The young person should also be informed of the Complaints Procedure.

10.2. A 16 or 17 year old young person in foster care may be a Direct Payments recipient provided the young person manages the Direct Payment. The foster carer, who will not have Parental Responsibility, cannot receive the payment on behalf of the young person.

## **11. For a young person moving from child to adult care**

11.1. For a person aged 18 and over who was in foster care Direct Payments cannot be used for costs associated with continuing to live with the foster carer. An alternative option to be considered in such a situation would be Shared Lives arrangement.

**12. Who cannot have a Direct Payment**

12.1. Those who cannot have a Direct Payment include:

- A company or organisation – a direct payment can only be made to a named person who is willing to take in the contractual responsibilities personally
- If a child, a person who does not have parental responsibility e.g. not a foster carer
- Someone who does not consent to having a direct payment
- Someone who a mental capacity assessment deems them not to have the capacity to understand the tasks or responsibilities
- If a risk assessment finds that risks to the person, the employee or the public cannot be reduced to an acceptable level
- Someone who has previously mismanaged their direct payment who has no plan on how they will manage it well this time or there is evidence that they will not use the direct payments detailed in the plan
- People subject to a court order for a drug and alcohol treatment program or similar schemes (Appendix 2)
- Prisoners including those in young offender institutions

**13. Consent and people with the mental capacity**

13.1. Direct Payments may only be made with the consent or willingness of the person concerned. When a person consents to receiving direct payments they need to have an understanding of what is involved in managing direct payments. Where a person decides not to receive direct payments the Council will provide or arrange services.

13.2. When a person consents to receive direct payments they are accountable to the Council for the way in which the money is spent. They will also take on responsibility for obtaining support through their own arrangements, which may involve taking on legal responsibilities (e.g. as an employer or by contracting with an agency).

13.3. If a mental capacity assessment is required it must follow the MCA guidelines and break the decision down into the various decisions such as the following:-

- Understand how they wish their care needs to be met
- Understand their responsibility to spend the budget on meeting these needs and not on other things
- Able to contribute to the planning process
- Able to keep themselves safe, for example by not passing on the PIN number for the prepayment card or their bank account.
- Able to understand their responsibilities as an employer (if that is relevant) with regard to setting tasks, keeping professional boundaries, not being intimidated by the employee or being at risk of being the subject of a complaint such as unfair dismissal or sexual harassment. Understanding that they may negotiate rates with providers.

**14. Adults without capacity**

14.1. Where a person lacks the mental capacity to consent to receive direct payments, a best interest decision under the Mental Capacity Act should be done to decide if a Direct Payment best meets their eligible needs. The worker can then identify a willing and appropriate 'eligible person' who will receive and manage the payment on their behalf. Direct payments should always be



considered where a person lacks capacity through the appointment of an 'eligible person'.

14.2. Direct payments can also be requested by an 'authorised person' under the Mental Capacity Act to make personal welfare decisions for the adult (i.e. the holder of a lasting power of attorney given to them by the adult before they lost capacity or a Court appointed deputy).

14.3. It is only possible for a person lacking capacity to receive direct payments if there is an appropriate and willing 'authorised person' to receive direct payments on their behalf.

### **15. Carers with Parental Responsibility as Recipients of Direct Payments.**

Direct Payments can only be arranged when the Council is satisfied that the parent is a person who will make arrangements that are designed to safeguard and promote the welfare of the child. Judgements as to whether parents are able to manage Direct Payments should be arrived at on a case-by-case basis.

### **16. Transitions**

16.1. Young people under the age of 16 will have their Direct Payments managed for them. As they progress towards the age of 16 consideration will be given to allow them to take responsibility for increasing parts of their direct payment, so that by the age of 18 they will have the ability to manage their own direct payment.

16.2. Young People aged 18 or over, whose Direct Payment was previously managed by their parents and who do not have the personal ability to manage a Direct Payment, are still entitled to Direct Payments. Appropriate arrangements must be made in good time to allow the Direct Payment to continue. This may require the appointment of a nominated or eligible person.

### **17. Nominated Person**

17.1. A person with capacity can nominate someone who will manage their Direct Payment and associated responsibilities on their behalf. This person is called a 'Nominated person' and will be required to sign a FIN107 agreeing to all terms and conditions related to direct payments. If a Direct Payment recipient has concerns or wishes to change this arrangement they should notify the Council immediately and an urgent review will take place.

### **18. Appointing a 'suitable person' using the Mental Capacity Act**

18.1. The Council will make the decision on who is to be the 'eligible person' by using the best interest decision process using its Mental Capacity Act procedures. So far as is reasonably practicable and appropriate, the Council will consult and take into account the views of:

- anyone named by the person as someone to be consulted about whether direct payments should be made to the eligible person,

- anyone engaged in caring for the person or interested in their welfare,
  - anyone authorised to make decisions about the adult's needs for care and support.
- 18.2. So far as is reasonably ascertainable, the Council will consider:
- the adult's past and present wishes and feelings, particularly any relevant written statement made by the person before they lost capacity,
  - the beliefs and values that would be likely to influence the person's decision if the adult had capacity, and
  - other relevant factors the person would be likely to consider if they were able to do so.
  - if it is satisfied that the person will act in the best interests of the person named in the support plan and is capable of managing the direct payment themselves or with whatever help the Council thinks they will be able to access
  - if the Council is satisfied that making a direct payment to a 'eligible person' is an appropriate way to meet the needs detailed in the support plan
- 18.3. If the Council appoint a eligible person they will carry out a DBS check on
- anyone who is not the person's spouse / partner
  - someone that has not previously been involved with supporting or managing the persons care
  - someone who is not a close family member who lives in the same household as the person
  - The person with overall responsibility for the day to day management of direct payments where the eligible person is a named person in a body corporate or an unincorporated body
- The eligible person must be named as the financial agent on the service user's electronic record to enable payments to be made and they should notify the Council if they reasonably believe that the person has regained capacity.
- 18.4. In both these situations only an individual can be nominated, a Direct Payment cannot be taken on by a company or organisation. That person will have to sign and understand their responsibilities to the council by signing the FIN107.
- 18.5. One of these responsibilities is to inform the Council of any changes to the person's circumstances including the need to cease the direct payment in the event of the person's death.
- 18.6. If the nominated or authorised person managing the direct payment requires a hospital stay or is unable to carry out their duties, the council should be notified and they will carry out an urgent review to ensure the person continues to receive care and support to meet their needs. This may be through a temporary nominated person/ authorised person or through short term authority to arrange care and support.

## 19. Conditions for receiving direct payments

- 19.1. Direct payments will be provided when requested by a **person with capacity** when each of the four conditions is fully met:
- The person has capacity for all the responsibilities of managing a direct payment and any nominated person agrees to receive and manage direct payments.
  - The regulations do not prohibit needs from being met through direct payments.
  - The person or the nominated person is capable of managing direct payments either independently or with support.
  - Making direct payments is an appropriate way of meeting needs.

## 20. Declining Direct Payments

- 20.1. Requests for direct payments will be declined if any condition in this policy is not met.
- 20.2. The Council will provide a written explanation of why the request was declined including:
- which conditions are not met,
  - why the condition is considered to be unmet
  - what the person making the request may need to do to obtain a positive decision.
- 20.3. If a complaint is raised at this stage, the Council will continue the planning process to agree with the person whose needs must be met how this can be achieved without the use of direct payments.

## 21. Using Direct Payments

- 21.1. The Council will support and encourage people to plan creative and innovative ways to meet their needs within their budget and will consider all requests as part of the planning process.
- 21.2. Direct payments are to be used to provide personalised care and support and spent on items or services that are "safe, legal, meets eligible social care needs as detailed in the plan, is proportionate and within the agreed budget".
- 21.3. Direct payments can be used to purchase services and supports including equipment that will meet the persons assessed eligible social care needs in the most appropriate way and should be detailed in the plan.
- 21.4. The whole budget can be taken as a direct payment but if more convenient can be split between a combination of council or third party provision.
- 21.5. The use of direct payments should:
- meet assessed eligible needs and achieve agreed outcomes
  - keep the person healthy, safe and support their wellbeing
  - be affordable and proportionate to the assessed eligible social care needs
  - be detailed and agreed in the plan
  - meet their responsibilities as an employer



**22. What can direct payments NOT be used for?**

- 22.1. Direct payments cannot be spent on items or services that do not meet the eligible social care need of the person named in the plan and are not detailed in a valid plan.
- 22.2. The Direct payments statutory guidance states that direct payments cannot be used to purchase the following:
- Permanent Residential Care
  - Permanent Foster Care
  - Services that the NHS is required to provide
  - Equipment that would be provided by the NHS
  - Any frequently Council provided services or support such as Day Care
  - As a substitute for Disabled Facilities Grants
- 22.3. A person can choose to receive their personal budget as a mix of services arranged or provided by the Council and a direct payments to purchase other support that will meet their assessed eligible needs.
- 22.4. Direct payments are for the purchase of social care services and support and cannot be used to purchase or pay for the following;
- Drugs, alcohol and tobacco products
  - Gambling
  - General household expenses
  - Rent and housing costs including housing repairs or maintenance
  - Furniture or carpets that are not meeting an eligible assessed need
  - Food and groceries that are not meeting an eligible assessed need
  - Holidays for the person named in the plan – see respite
  - They are not to be spent to benefit or meet the need of any other person that is not the person named in the plan.
  - The recipient of the direct payment whether that is the person or their representative cannot employ themselves to provide services.
  - Cars and car repairs
  - Non statutory liabilities such as tips or bonuses or ex gratia payments
  - Health related services such as dentist, chiropody or physiotherapy
  - Treatments that are available from GP's or other sources such as alternative therapies or exercise on prescription

**23. Carer Direct Payments**

- 23.1. Carer direct payments are to meet the carers own eligible assessed needs and cannot be used to purchase services for the cared for person. The above list of exceptions does not apply.

**24. Short respite breaks (Adults)**

- 24.1. Direct payments can be used to purchase short stays / respite breaks in residential care, provided the stay in residential care does not exceed a period of four consecutive weeks in any 12-month period.
- 24.2. The regulations also state that where the interim period between two stays in residential care is less than four weeks, then the two stays should be added together to make a cumulative total, which should also not exceed four weeks. However, if two stays in residential care are more than four weeks apart then they are not added together.



## **25. Short respite breaks (Children and Young People)**

- 25.1. Direct payments can be used to purchase a short term break in either a private or voluntary sector placement. This can either be in an establishment or a family placement arranged by either a voluntary or private sector fostering agency. The establishment or fostering agency must be registered with CSCI
- 25.2. A short term break is defined as lasting not more than 17 days, with a total of not more than 75 days a year.
- 25.3. Direct Payments may not be used to purchase a local authority placement, or to fund long term accommodation in any type of establishment or family placement. There may be some exceptions to this on a one off basis, such as using for a break at an activity that is run by the Council.
- 25.4. The placement must promote the young person's welfare. If there are doubts that the placement is not suitable (e.g.; does not have appropriate equipment or an inappropriate mix of people in residence) the recipient should seek another placement or appropriate changes. If this is not done then the Direct Payment could be withdrawn on the grounds that the placement will not promote and safeguard the welfare of the child or young person.

## **26. NHS Continuing Health Care & Personal Health Budgets**

- 26.1. Under current legislation NHS Continuing Health Care funds cannot be given as a direct payment to a person to purchase health related services. Should a person in receipt of direct payments meet the criteria and become eligible to be fully funded by NHS Continuing Health Care then it would be unlawful for the direct payments to continue. Direct payments can continue in jointly funded cases for the social care element but not the health related element. When a person is receiving direct payments to meet both social care and health needs, steps will be taken to harmonise the process to minimise administrative and compliance requirements.

## **27. Purchasing from a provider or organisation**

- 27.1. Where direct payments are used to purchase services from a private provider or organisation the person will be entering into a private contractual arrangement and it is their responsibility to ensure they are fully aware of any contractual obligations. Where direct payments are being used to purchase personal care, the agency must be registered with the Care Quality Commission. The provider or organisation will not receive payment direct from the Council and must not have direct access to the person's pre-payment card or bank account. If the person is unable to manage paying the providers invoices then they may consider using a managed bank account service or asking a nominated person to do it on their behalf.

## **28. Purchasing services from a self-employed worker**

- 28.1. Direct payments should not be used to purchase services from self-employed personal assistants for personal care as advice from HMRC is that the terms of engagement and the nature of the work undertaken by the worker would not meet the criteria for self-employed status. Where an individual is

considering engaging a self-employed worker, they must adhere to HMRC rules and regulations. Where an individual fails to follow adhere to HMRC rules and regulations and HMRC impose fines or seeking repayment of any outstanding monies, the individual will be liable for these payments and not the council. It may be possible to engage a self-employed person e.g. a cleaner, but it must be emphasised that any employment, insurance or tax issues are entirely the responsibility of the individual and not the council.

- 28.2. Where an individual requires advice and information regarding HMRC rules and regulations, the Council will signpost to relevant support services.

## **29. Paying someone to manage your Direct Payment**

- 29.1. In some instances if the nature of the package of care is complicated and subject to frequent changes then the individual may use some of their direct payment budget to pay somebody to care manage this for them. This would need to be detailed in the plan and the Council must be satisfied that this is necessary and sufficient budget to meet the essential care needs.

## **30. Becoming an employer**

- 30.1. Where direct payments are used to employ a personal assistant, this will involve legal responsibilities as the recipient will become an employer. It is the employer's responsibility to ensure they comply with all relevant legislation, purchase employer's liability insurance and provide or arrange any staff training required.
- 30.2. A person cannot be in receipt of a Direct Payment and pay themselves as an employee.
- 30.3. It is the employer's responsibility to ensure that they are registered with HM Revenue & Customs, make payments and submit end of year returns on time to avoid fines or penalties for which they will be liable.
- 30.4. The direct payments recipient must ensure that they retain sufficient monies from the direct payments to cover all costs associated with being an employer, including redundancy, notice payments, statutory sick pay and pensions. The employer is responsible for meeting all employee related costs, insurances and regulations. The Council has an advice service to support people with these responsibilities.

## **31. Employing relatives or others living in the same household to provide care**

- 31.1. The regulations state that unless a Council is satisfied that it is necessary to meet the person's needs they may not allow the use of direct payments to secure services from:
- A spouse (husband or wife)
  - A civil partner
  - The other member of the unmarried or same-sex couple of which they are part
  - A close relative with whom they live, or the spouse or partner of that close relative
- 31.2. In very exceptional circumstances, where the Council is satisfied that it is necessary to meet the persons needs the Council has the discretion to agree the use of direct payments to employ someone from the above list. This would have to be approved by the Council as part of a risk assessment on the sustainability of the arrangement and the impact on the wellbeing of all parties.

- 31.3. This restriction is intended to protect the family life and personal relationships of those living together, to support informal carers to have a break and to support their wellbeing including the opportunity to continue their participation in work, education, training or recreation, social and economic wellbeing and contribution to society. The Council would offer a carers assessment at this time if not already offered previously.
- 31.4. People may use their direct payments to employ a live-in personal assistant, provided that the person is not someone who would usually be excluded by the Regulations. The restriction applies where the relationship between the two people is primarily personal rather than contractual, for example if the people concerned would be living together in any event.
- 31.5. Direct Payments must not be used to pay for a direct payments recipient to live in another person's household or pay them to provide support or care. In such a situation this may be more appropriate to be a 'Shared Lives' arrangement.

### **32. Employing friends or relatives not living in the same household**

- 32.1. People can choose to use their Direct Payment to employ friends or family not living at the same address. The plan will define the boundaries between personal and professional relationships including the sustainability of that arrangement as well as employment legislation such as the working time directive and any informal carer support they may also contribute.
- 32.2. The Council would offer a carers assessment at this time if not already offered previously.
- 32.3. In the case of a child or young person a direct payment cannot be used to pay someone who has parental responsibility.

### **33. Direct Payments for Adaptations**

People may be eligible for financial assistance with certain adaptations. Reference should be made to the relevant policy concerning Community Equipment and Adaptations. Where financial assistance is made under this policy it can be in the form of a Direct Payment. Direct Payments cannot be used as an alternative to a Disabled Facilities Grant.

### **34. Direct Payments for Equipment**

People may require "aids to daily living" and can ask for a Direct Payment, rather than have the equipment provided by the council or council nominated supplier. An aid to daily living can be defined as equipment recommended by an Occupational Therapist following assessment. Such equipment covers a very broad spectrum from specialised crockery and cutlery at one end, to specialised baths and hoists.

Mobility aids, as recommended by a Physiotherapist, such as wheelchairs, walking frames and so on, are the responsibility of the Health Service and cannot be purchased by a Direct Payment.

### **35. Hospital stays**

- 35.1. Where the Direct Payment recipient requires a hospital stay, intermediate care or rehabilitation the direct payment may continue if required and their personal assistant can provide non-health care support for their employer in the health care setting. The personal assistant should not interfere



with medical duties of hospital personal but be tailored to work alongside health provision. There must be agreement with the health provider for the personal assistant to provide this support on their premises.

### **36. Safeguarding Alerts**

- 36.1. A safeguarding alert involving a personal assistant employed through direct payments which involves any type of abuse will need to be investigated under the Council's safeguarding policy and procedures, as will any other individual that is the subject of an alert. As part of the safeguarding alert process an assessment will be made on the suitability of continuing to provide a direct payment and this will be communicated to the person or their representative.

### **37. Disclosure and Barring Service checks**

- 37.1. The Council will inform the direct payments recipient that, while a DBS check is not mandatory for someone employed to support an adult, we would strongly recommend obtaining one as part of their overall risk management plan. It is mandatory if there is a child under the age of 18 or a vulnerable adult in the household that an enhanced DBS check is completed.
- 37.2. Adults with capacity to consent to direct payments are not obliged to obtain DBS checks for someone they employ with direct payments. Similarly, a 'Eligible Person' is not required to obtain DBS checks for people they employ with direct payments but are strongly recommended to do so.
- 37.3. Where a direct payment is used to employ someone to support a child or young person, it is mandatory that an enhanced DBS check is completed.
- 37.4. A DBS must be completed before someone employed to support a child or young person takes up post and no offer of employment should be made until a satisfactory Disclosure has been received.
- 37.5. In accordance with the regulations the Council will obtain a DBS check where the appointed 'Eligible Person' is not the spouse, civil partner, partner, close relative (or spouse or partner of a close relative) or friend involved in the provision of care of the person lacking capacity.
- 37.6. The Council will pay for DBS checks for successful applicants and as part of the start-up costs in the first year of the Direct Payment.

### **38. Direct Payments Agreement (FIN107)**

- 38.1. The Direct Payments Agreement sets out the responsibilities between the person and / or representative or appointed 'Eligible Person' and the Council. The Direct Payments Agreement must be read, understood and signed by the appropriate person(s) before any payments can be made.

### **39. Payment & Frequency**

- 39.1. Payments will be paid net of any assessed financial charge (if applicable) under the Council's Charging Policy and will be made every 4 weeks, unless there has been a previous over payment. The person is expected to add their assessed charge contribution to the net amount.

### **40. Pre Payments, bank accounts & managed bank accounts**

- 40.1. The Council's standard method for making payments is by a direct payments prepaid card but if people request and there is a specific reason as



to why it would meet their needs better, they can have it paid into a bank account that is separate and designated for the persons care costs only.

40.2. A managed bank account provider can be used if required. The charge for this will be detailed on the plan and will be met by the personal budget. It will be expected that a Managed Bank Account will provide the following services, as a minimum:-

- Setting up a dedicated bank account in the person's name (they can use a prepayment card if they choose)
- Receiving the direct payments and making sure they are correct
- Paying the personal assistants wages, care agency fees and any other bills
- Paying all amounts due to HM Revenue and Customs (HMRC)
- Keeping a record of all the income received and payments made
- Providing statements showing all transactions
- Dealing with the Council's audit and inspection checks
- Making sure employer's liability insurance is in place before any employee starts

40.3. A managed bank account is a private contractual relationship between the person receiving the direct payment budget and the managed bank account provider. The Council will have no contractual authority over this service and all direct payment responsibilities such as those of an employer, keeping records, spending within the plan and other responsibilities detailed in this policy remain with the person in receipt of the direct payment.

#### **41. Cost of Services**

41.1. Direct payments can be used to fund services where the total cost does not exceed the Council's reasonable estimate of securing a service of a requisite standard and which is more cost effective and available.

41.2. Direct Payment recipients can use their own resources to purchase additional support if they wish to do so. If the person chooses to purchase additional services, or services that cost more than agreed in the plan, the person can pay additional money onto the prepaid card from their own resources.

#### **42. Assessed Financial charge**

42.1. The person must pay their assessed financial charge (if applicable) onto their prepaid card. Persistent failure to do this will result in the agreement being terminated and alternative arrangements made to meet the persons assessed needs.

#### **43. Financial monitoring arrangements**

43.1. The Council has developed proportionate financial monitoring arrangements to fulfil its responsibility to ensure that the direct payments, which are public funds, have been spent as agreed in the plan. All records relating to direct payments should be made available to the Council on request.

43.2. If an individual does not engage with the financial monitoring arrangements and does not provide records upon request then the direct payment could be ceased and an alternative way of meeting needs offered.

43.3. The Direct Payments Prepaid Card enables the council to monitor spending remotely and in 'real time', enabling intervention where necessary to

take place much sooner. The remote monitoring arrangements are less intrusive and easier for the recipient.

#### **44. Social Care reviews**

- 44.1. The frequency of reviews will be agreed, in accordance with statutory requirements, when the plan is validated and signed off. In certain circumstances where there are identified risks which give cause for concern it may be necessary to review more frequently.
- 44.2. The Regulations provide for regular reviews as well as specifying circumstances in which the Council must review the arrangement for direct payments for someone lacking capacity. Direct Payments made to a eligible person should be reviewed within 6 months and at regular intervals thereafter, at least annually.
- 44.3. Following the review the amount of direct payments could increase or decrease if there has been a change in the person's eligible needs, a change in circumstances or as a result of changes to the Council policy. If there is a reduction in the direct payments, the Council will give four weeks written notice.

#### **45. Suspending Direct Payments**

- 45.1. When a person is admitted into hospital, short term care or they access rehabilitation / reablement services where the Direct Payments are used to purchase a service from an agency, the payments will be suspended in line with the provider's notice period.
- 45.2. Where direct payments are being used to employ a personal assistant the Council will continue to pay the direct payments for a period determined on a case by case basis but not normally exceeding 4 weeks to retain the personal assistants services, after which payments would normally be suspended.
- 45.3. Where a person moves out of the county for a period exceeding 4 weeks but their permanent residency remains in Lancashire and they intend to return (meaning that they are 'ordinarily resident' in Lancashire despite being temporarily away from home), the Council can agree for the payments to continue beyond 4 weeks but this must be agreed.

#### **46. Terminating Direct Payments**

- 46.1. A person may decide at any time that they no longer wish to continue receiving direct payments. If the person remains eligible for services the Council will make arrangements for alternative services to be provided.
- 46.2. The eligible person must inform the council if there is change in circumstances or the person who receives the care dies so that the payment can be ceased.
- 46.3. Where someone with capacity was receiving direct payments but then loses capacity to consent, the council should discontinue direct payments to that person and consider making payments to a eligible person instead. In the interim, the council should make alternative arrangements to ensure continuity of support for the person concerned.
- 46.4. Direct Payments must be discontinued where the recipient is placed by the courts under a condition or requirement relating to drug and / or alcohol dependency. Councils also have discretion to discontinue direct payments in respect of particular services if the person in question becomes obliged to receive that service as a result of certain provision of mental health legislation.

46.5. The Regulations provide that a council shall cease making direct payments if the person no longer appears to the council to be capable of managing the direct payments or of managing them with help. The Regulations also state that the council must stop making Direct Payments if it is not satisfied that the person's needs can be met by using direct payments.

46.6. The Council retains the right to terminate the direct payments with immediate effect if any of the terms of the Direct Payments Agreement are not adhered to, including when:

- The person is not spending the Direct Payments, or any part of the Direct Payments, as agreed in the plan;
- The council is not satisfied that the arrangements made by the person are adequate for securing services
- The person's assessed needs and agreed outcomes are not being met;
- The person is no longer capable of managing the Direct Payments with support
- A risk assessment finds that the person is putting themselves at risk of a complaint such as under employee legislation or the management of the Direct Payment is not legal
- A risk assessment concludes that there is an imbalance in the employer/employee relationship to the detriment of meeting the eligible care needs
- The person goes into permanent residential care
- A safeguarding investigation considers that the person is at risk of abuse or has suffered abuse.

#### **47. Repayment of Direct Payment monies**

47.1. The Council will ask the recipient to repay some or all of the Direct Payments in the following circumstances;

- The money has not been used as agreed in the plan
- There has been an overpayment
- Failure to provide the required records when requested
- There are more funds in the account than needed e.g. a surplus of greater than 10 weeks of direct payments monies.

If the recipient fails to repay the money, the Council will take legal action to recover the debt.

#### **48. Complaints**

48.1. People can raise concerns directly for local resolution. People who remain dissatisfied will be provided with information about advocacy and the Council's complaints procedure.

48.2. Any person may use the Council's complaints procedure if they are dissatisfied with a Council decision or the support they receive. People who receive, or consider that they should receive direct payments have the same rights to access the Council's complaints procedure as people whose support is provided directly or arranged by the Council.

#### **49. Implementation**

49.1. This policy will be implemented on 1 April 2016.

49.2. Policy will be communicated to staff via line managers through approved processes.

- 49.3. Policy will be published on the Council's intranet and external website and made known where relevant to commissioned providers through mutually agreed processes.

#### **50. Audit and monitoring compliance**

- 50.1. Compliance with this policy will be monitored through the following, as a minimum:
- Manager / supervisor oversight of assessment and planning processes
  - Case supervision
  - Case record audit procedures

#### **51. Review**

- 51.1. This policy will be reviewed one year from the date of implementation or sooner if required.



**Appendix 1 - Definitions**

<b>Definition</b>	<b>Meaning</b>
Adult with capacity	In the context of this policy, an adult who has the mental capacity to make decisions about direct payments
Adult without capacity	People are always assumed to have capacity until established otherwise. In the context of this policy, where there is any doubt about an adult's capacity to make decisions about direct payments mental capacity will be assessed in accordance with the County Council's MCA policy. An adult will only be deemed to be without capacity when it has been established through assessment that this is the case.
Assessment - financial	An assessment of an individual's financial circumstances to determine whether or not they must contribute towards the cost of services required to meet eligible needs. No financial assessment is required for s117 after care services as these must be provided free of charge.
Authorised person	<p>Someone who is authorised under the MCA to make personal welfare decisions about an adult without capacity, i.e. someone who: holds a lasting power of attorney given to them by the adult before they lost capacity, or was appointed as a deputy for the adult by the Court of Protection under section 16 of the MCA. Where the person making the request for direct payments on behalf of an adult without capacity is not authorised to make personal welfare decisions as described above, the County Council and any person who is authorised to make personal welfare decisions must agree that the person making the request is a suitable person to act as the authorised person.</p> <p>Also the person who as a result of a best interest decision has been identified as a suitable person to manage and take on the responsibilities of a Direct Payment.</p>
Assessment – of needs	An assessment of an individual's needs for social care, support or s117 after care services to enable them to live

	as independently as possible.
Carer	Someone of any age who provides unpaid support to family or friends who could not manage without this help.
Close family member	Someone who lives in the same household as the adult who is the adult's: Parent or parent-in-law Son or daughter Son-in-law/daughter-in-law Stepson or stepdaughter Brother or sister Aunt or uncle Grandparent, or The spouse/partner of any of the people listed and living in the same household as the adult.
DBS checking	Screening through Disclosure and Barring Services. This checks criminal history and identifies people barred from working with children and vulnerable adults.
Direct payments	Payment of the County Council's contribution towards a personal budget, so that the person or someone authorised to act on their behalf can arrange support services instead of having them arranged by the County Council. Direct payments may also be provided in most instances to arrange s117 after care services.
Direct payments agreement FIN107	The written agreement which sets out the terms and conditions applicable to direct payments.
Duty to make direct payments	Where the Council has a legal obligation to make direct payments to eligible people because all conditions are met.
Managed account	Direct payments are made to a service which manages the funds on their behalf. The person who receives the direct payment, remains responsible for how direct payments are used. For example, if direct payments are used to employ staff, the person is the employer, even though the commissioned service may carry out employment activities on a day to day basis. Adults who are able to provide consent may also elect to use a managed account.
MCA	Mental Capacity Act 2005
MHA	Mental Health Act 1983
Minor adaptation	An adaptation is defined as minor when the total cost including supply and fitting is less than £1000.
Nominated person	A person nominated by an adult with capacity to assist with day to day management of services and / or management of direct payment funds. An adult with capacity at all times remains responsible and accountable for how direct payments are used.

Person	Is the individual that receives the direct payment and uses it to meet their own assessed needs or those of another named on the plan. This can be an adult, someone with parental responsibility or a young person between the ages of 16 to 17.
Personal budget	The amount of money allocated to fund the care and support required. The personal budget is means tested and therefore the adult may be required to make a financial contribution towards the total amount of the personal budget.
Plan	A plan which summarises how a person's needs will be met and which includes the details of needs to be met from direct payments. This may be a care plan in the case of a child, a support plan for an adult in need of care, or a support plan in the case of a carer.
Reassessment	A reassessment of needs for social care and / or support.
Review	Monitoring and review of direct payment arrangements to ensure that they continue to meet the needs. Usually carried out concurrently with a review of the person's plan
Suitable Person	The term previously used to describe an authorised person. If the person with eligible care needs does not have the mental capacity under the MCA to decide to take a direct payment or be able to manage the responsibilities a suitable person can be identified by the Council as part of a best interest's decision to receive and take on the responsibilities for that person.
S117 after care services	Section 117 of the Mental Health Act 1983 gives a duty to the NHS and Local Authorities to provide after-care services to individuals who have been detained under certain provisions of the Mental Health Act 1983, until such time as they are satisfied that the person is no longer in need of such services. Section 117 is a freestanding duty to provide after-care services, without any financial contribution by the service user, for needs arising from their mental disorder.

## Appendix 2

### People excluded from direct payments

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

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

#### Source:

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