



# **Direct Payments Policy**

*“Direct Payments in Kirklees will embody the principles of flexible and creative support and will be designed and developed with the people who use them, to enable them to live the life that is important to them.”*

This policy explains to people who have care and support needs, and carers of both adults and children, how Direct Payments are arranged in Kirklees. It also outlines the principles that Kirklees Council will use in both Adult and Children’s Social Care when making decisions about Direct Payments.

The Council is committed to promoting wellbeing and supporting people and families to live independently, with as much choice and control as possible over their lives. A Direct Payment can be a positive way of helping people achieve their aspirations and improve their quality of life.

Social Care staff will offer the use of Direct Payments where appropriate, ensuring that the process is well understood by everyone involved, whilst keeping other options for care and support under review.

Where the policy says ‘the person’ we mean a person who has care and support needs. This includes children and their parent/carers. In this policy where we say ‘the Council’ we mean Kirklees Council

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# Glossary of terms

## **Social Care Assessment**

The way the Council will work with you to identify whether you need help or support because of age, disability or illness. Anyone who appears to have a need for care or support is entitled to an assessment.

A social care assessment will identify if a person has needs which need to be met by the council. A personal budget to meet these needs, as well as outcomes identified with that person, will be shared to help plan how both will be met. A financial assessment will work out if the person will need to pay towards their care and support.

## **Personal Budget**

Money from the Council to meet someone's needs and outcomes.

## **Wellbeing**

The degree to which a person is healthy, comfortable, and able to participate in and enjoy life events and activities.

## **Financial Assessment**

The way the Council works out how much you may need to pay towards the cost of your care and support. The assessment will look at two things: your income and your living costs.

## **Support Plan**

A plan written in partnership with a person after their assessments, setting out what their care and support needs are, how they will be met and what support will be covered by the Direct Payment. Support Plans must be flexible.

## **Care and Support Needs**

People who need support to live their life to be safe, happy, comfortable and with their wishes respected.

## **Outcomes**

An aim or objective you would like to achieve or need to happen – for example, continuing to live independently in your home, taking part in activities that you like, or being able to spend time with the people who are important to you.

## **Flexibility**

Flexibility allows for a range of choices, the unpredictability of everyday life, as well as future and longer-term changes.

## **Mental Capacity**

This is a legal and professional decision made under the Mental Capacity Act 2005 relating to a person's ability to make a decision at the time it needs to be made.

# What is a Direct Payment?

The council can arrange care and support on a person's behalf. For people who want more choice and control over how their needs and outcomes are met, a Direct Payment can be arranged.

A Direct Payment can also be used to pay for support on behalf of someone, and this can be done by an organisation or an individual. This is instead of the Council organising support on your behalf.

Direct Payments are all about working with you to support and enable you to make the best use of your personal budget, to find the best support for you, and to empower you to be independent and in control.

Direct Payments can be used for many types of support, so you can do the things that matter to you, in the places you feel comfortable and live a good life.

As part of arranging your Direct Payment, you or your Nominee (explained below) will sign a document called a Direct Payment Agreement. This says:

- how the council want you to record your spending – for example, keeping receipts
- your responsibilities as an employer - if you choose to pay for a care worker/ personal assistant.

# Who can get a Direct Payment?

You can get a Direct Payment if:

- you have participated in a social care assessment and have identified your needs and outcomes, your Personal Budget has been producee and these have been noted in a Support Plan (or you act on behalf of someone who has had an assessment).
- you have completed a financial assessment to determine if you need to pay towards your care costs, and you are found to need financial support from the Council. This excludes children.
- following a discussion with a social care practitioner, it is agreed that a person would benefit from a Direct Payment to support wellbeing and independence.

Everybody who has care and support needs is different, and these needs are not defined by illness, disability, or condition. Rather, the Council will take a holistic view of the individual to determine, in partnership with them, what support is needed to promote general wellbeing as determined by the Care Act.

**Please note: A Direct Payment cannot be made to people who are required to attend drug or alcohol rehabilitation as part of a court order.**

# How do I know if I can get a Direct Payment?

Any adult who already has a personal budget, or acts on behalf of someone who does, can request to receive this as a Direct Payment.

A person with Parental Responsibility can receive Direct Payments for a disabled child or young person.

Direct Payments can be given to 16 and 17-year-old children directly rather than to their parents or carers.

If either you, or someone you act on behalf of, do not currently have a personal budget, you have the right to request a social care assessment. The Council are required to work in partnership with all applicants and carry out an assessment, regardless of any factors that may indicate a lack of eligibility.

To request an assessment, please contact Gateway to Care on 01484 414933. To learn more about how assessments are carried out, your rights, and how we can work with and support you, please see the guidance which accompanies this policy.

# What if I need support managing my Direct Payment?

Gateway to Care can signpost you to support for any queries or problems you may encounter either with managing your own Direct Payment or if you manage a Direct Payment on behalf of someone else.

If you feel you need support managing a Direct Payment, you can also nominate someone to help you, or, someone can be authorised to manage your affairs for you.

## **A Nominee Managing the Direct Payment for You**

A Nominee can have different roles and responsibilities for a Direct Payment. A Nominee can take full responsibility for your Direct Payment even if you have [mental capacity](#) to do so yourself, if you wish, and if the Nominee has agreed to do so, or they can support you to manage the direct payment yourself.

It is important that you are clear from the start whether the Nominee is supporting you or is fully responsible for the management of your Direct Payment. Whoever is responsible for the Direct Payment signs the contract.

# How much will my Direct Payment be?

The amount of money you will receive with your Direct Payment will depend on individual circumstances. The Direct Payment must be sufficient to meet the person-centred needs and desired [outcomes](#) you, or the person you are supporting, have agreed with a social care professional in an assessment.

Depending on the circumstances of the person with care and support needs, the person may need to pay towards the cost of their care and support. This is worked out in a financial assessment.

Carers are not asked for a contribution towards their Carer's Direct Payment.

# What can I spend my Direct Payment on?

The money is for you to access the support you need, so you can live the life that is important to you.

Your Direct Payment can be used to pay for any support that meets your person-centred needs and outcomes which you have agreed in your support plan, or the plan of person you support.

This means that there is a lot of flexibility and opportunity for you to self-direct what your support looks like.

Direct Payments may be used for, but are not restricted to:

- social opportunities, including personal interest/hobby clubs; sport activities; music events; cinema/theatre visits; meeting up with friends, day opportunities
- help to access training, employment, and voluntary work
- employing a personal assistant or contracting with a provider for support with daily living
- costs associated with employing a personal assistant e.g., recruitment, insurance, payroll, advocacy, Disclosure and Barring costs
- paying for a care agency or micro social enterprise
- day care
- equipment and assistive technology including new smart technology and virtual reality devices
- support to take a break from caring
- support for independent living, e.g., personal care, daily living tasks such as cleaning and gardening, getting out and about, management of finances

- support to attend appointments
- pooling funds (taking some of your direct payments and adding it to funding from one or more people to purchase a service together).

Direct Payments **cannot** be used:

- to buy permanent residential care or any services provided directly by Kirklees Council
- to replace NHS provided Services, Housing Services (such as Disabled Facilities Grants) or DWP benefits
- for the purchase of alcohol, tobacco, or gambling products
- for anything unlawful.

# How will my Direct Payment be paid?

Direct Payments are paid four weeks in advance.

Your Direct Payment can be paid in a few different ways.

## 1. Into a Bank Account

If you would like your Direct Payment to be paid directly into a bank account, you will need to arrange a separate bank account to keep your personal money separate from the money the Council pays to you.

## 2. Prepaid Card

Your Direct payment is preloaded onto the card by the Council. If you have been assessed as needing to pay towards your care, you will also pay this amount onto the card.

You will have a unique PIN for your card which you should not share with anyone else.

## 3. Managed Account Service

If you would prefer to not to take on the full administrative responsibility that comes with a separate bank account or prepaid card, you can also receive your Direct Payment using a managed account.

Payments are made to a separate bank account organised by an independent organisation, which then makes payments on your behalf.



# Personal Assistants

Direct Payments may be used to employ Personal Assistants, also known as PAs.

The person (or their Nominee/Parent) will be signposted for advice about legal responsibilities as an employer.

If you or the person you are caring for uses the Direct Payment to employ a PA, there might be additional costs involved (i.e., recruitment costs incl. Disclosure and Barring Service checks, auto-enrolment pension costs, National Insurance, and Income Tax cost). These will be included in your Direct Payment.

As an employer, the person (or their Nominee/Parent) must take out an insurance policy which covers employer's liability. The funding for this will be included in the Direct Payment, where it is necessary. There are various insurance companies who offer these Policies, but not all of them also include employment advice. The amount of Council funding is adequate to purchase an insurance policy that includes a level of employment advice.

Adults who have a Direct Payment do not have to carry out Disclosure and Barring Service (DBS) checks for people they employ using Direct Payments, however a check is strongly recommended.

If staff are employed to provide services to children, or to people who have children in their household then enhanced DBS checks must be carried out.

## Working with self-employed Personal Assistants (PAs)

A self-employed PA may work for more than one person. They declare their own income to HMRC, so Payroll is not required. A self-employed PA is not entitled to any holiday pay, sick pay, redundancy, or other employment related payment. Self-employed PA's must have their own public liability insurance certificate – which they should show to the person or their carer(s), on request, before they commence work.

## Using a service provider

A service provider might be a:

- Care Agency
- Day service
- Community based service/ Microenterprise.

If a person wants to use their Direct Payment to buy support from a service provider, they should have an up-to-date Service Agreement. This should describe the service being provided, include confirmation that the provider has appropriate current insurance and provide specific details relating to how the person's needs and outcomes will be met.

# Monitoring Direct Payments

The Council has to carry out financial checks on a Direct Payment to make sure that:

- the person has sufficient money to meet the needs and outcomes identified in the Care and Support Plan
- that the Direct Payment is being managed as expected and as agreed
- that the person is paying their contribution for the cost of care and support (where the person has been assessed as needing to pay towards the cost of care and support).

If the Direct Payment money starts to build up because it is not being used, the Council will get in touch to have a conversation about why this is happening and to make sure that everything is ok.

Everyone who has a Direct Payment will have a financial check after 6 months. After this, checks will generally be carried out every twelve months. This is not the same as reassessments of the person's care and support needs.

Re-assessments of the person's care and support needs are expected to take place every 12 months but can be more often if needed, for example if a person's circumstances change, they can request a reassessment at any time.

Financial checks will always be proportionate. This means that if all the evidence indicates that the person is managing the Direct Payment well and spending the money on the things that were agreed in the Support Plan; a simple check will be adequate.

If the person's situation is more complex, then a more detailed check may be appropriate, together with a conversation to discuss and understand certain details and perhaps enable more comprehensive records to be put in place, to confirm the support that person's Direct Payment is providing.

Following the financial check, the Council will contact the person with care and support needs (or the Nominee/Parent) to advise if further information is needed.

## Re-assessment/Review

This is when someone from the Council's Social Care team, works in partnership with a person with care and support needs (or the Nominee/Parent), to carry out a review of the person's care and support needs.

The Council can also choose to do a re-assessment, or a financial check, at any time for any of the following reasons:

- there has been a change in the person's mental capacity
- the person's safety and welfare is causing concern
- there has been a change which might affect the support arrangements
- the Direct Payment is no longer meeting the agreed outcomes identified in the support plan.

A re-assessment might identify or highlight that the person's needs have changed. The person's needs may have increased or decreased, and the updated care and support plan will need to reflect all of the changes. If the care and support plan changes then this could affect the amount of the Direct Payment, which could increase or decrease as a result. Any change in the amount of the Direct payment will be put in writing.

# Ending a Direct Payment

The Person who receives a Direct Payment, (either for themselves or for someone else) may decide, at any time, that they no longer wish to receive Direct Payments. Please speak to Gateway to Care as soon as possible if you are thinking of ending your Direct Payment arrangement.

- the person is in hospital for longer than 28 days
- if financial circumstances have changed and the person is no longer eligible for financial assistance from the Council.

A Direct Payment can be ended or suspended if the person does not keep to the terms of the Direct Payment Agreement. Before reaching this decision, the Council will do everything reasonable to support people and resolve any issues.

As a last resort, a Direct Payment will be stopped or suspended temporarily, where:

- it has been used for things which the person receiving the Direct Payment cannot evidence as meeting their agreed social care needs and/or outcomes
- the Council is concerned that the person is no longer able to manage a Direct Payment, even with support
- the Council is no longer allowed to pay a Direct Payment because of the rules regarding court orders with a requirement to attend drug and alcohol rehab
- the Council has tried to resolve financial concerns and carry out checks of the account, but the person has not responded to any communications
- the Council has evidence of financial abuse
- the person does not pay for the cost of their care, even after support and assistance has been provided (This is only relevant if the person has been assessed as needing to pay towards their care following the financial assessment)
- the person has moved out of the Kirklees Council area
- the person has moved into residential care permanently

## Repaying money to the Council

If the Council decides that a Direct Payment needs to be repaid because of any of the reasons described, the person will be given an explanation and details of how to repay any money. This may be in one lump sum or spread over time, depending on the person's circumstances. The Council will always act in a reasonable manner and will support people who receive Direct Payments to resolve any issues before repayment is required. Repayment should be made within 8 weeks of the request.

In the event of a person dying and there being unspent money in the Direct Payment account, the money cannot be used to pay for any funeral costs, but the Direct Payment can be used to contribute to redundancy costs of Personal Assistants. Similarly, if there are unpaid invoices or staff wages, these can be paid from the unspent Direct Payment. Any remaining unspent money will need to be returned.

If the money remains unpaid, the Council will recover it through its debt recovery process.

## Using and sharing your Personal Information

To provide your Direct Payment the council will need to share some of your information with relevant internal and external services, Social Work and Social Care, Financial Services, and our contracted providers of managed bank accounts and payroll services. Generally, the data shared will be your name, contact information and financial information. The person will give their consent to this when signing the Direct Payment agreement. Sometimes, we may need to share other information, but this will only be in order to meet the person's needs, or if there is concern relating to safety.

# The Law

This Policy applies to adults and carers aged 18 or over, who have been assessed as eligible to receive care and support by applying the Care Act 2014.

It also applies to children under the age of 18, and their carers, who have been assessed as needing care and support in an Educational Health and Care Plan (EHCP) or any services under section 17 Children Act 1989.

The Council must work in a way that is within the law when we support people.

For adults, we do this in accordance with the Care Act 2014 which sets out how we should support and work with people.

For children, we do this by following:

- section 49 of the Children and Families Act 2014
- the Special Educational Needs (Personal Budgets) Regulations 2014/1652
- section 57 Health and Social Care Act 2001
- section 17A Children Act 1989, and
- the Community Care, Services for Carers and Children's Services (Direct Payments) (England) Regulations 2009/1887.

## **The Care Act 2014**

A law passed in England in 2014 that sets out what care and support a person is entitled to and what local councils must do to identify and meet a person's needs.

## **Children Act 1989**

A law passed in England in 1989 that sets out how children and their families should be supported to be safe, healthy, and happy.

