

Direct Payments Policy

Adult Social Care

November 2018

What is this?

This document sets out the way the Council provides direct payments for adults who need social care and carers. It briefly explains what direct payments are, who can get them, how to get them, how they can be paid and what they can and cannot be used for. There is also Direct Payments Guidance which gives more detailed information about the procedures and processes involved, support that is available and examples of different and flexible ways direct payments can be used.

We want people to live independently, have control over their lives, be as well as possible for as long as possible, and feel safe. This is set out in our Corporate Plan and Adult Social Care Vision:

- www.kirklees.gov.uk/corporateplan
- www.kirklees.gov.uk/adultvision

These and other documents mentioned in this policy are available online using the links provided or by contacting Gateway to Care on 01484 414933. It will also be made available in different formats and in places such as hospitals, libraries, and day centres.

Scope

This policy applies to adults and carers aged 16 or over, whom have been assessed as eligible to receive support in line with the Care Act 2014. Direct payments may also be used as a way of arranging aftercare services provided under s117 of the Mental Health Act 1983. The legal framework for direct payments is set out in the Care Act, Section 117 (2C) of the Mental Health Act 1983 and the Care and Support (Direct Payments) Regulations 2014.

Care Act Statutory Guidance sets out how Councils should complete assessments, work out when someone is eligible for support, allocate resources, and plan and deliver support to people who need social care and carers. If there are needs outside the Care Act eligibility the Council can decide using its discretion to provide support if it will help someone to maintain their wellbeing, independence, or safety.



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What is a direct payment?

A direct payment is money given to someone by the Council to buy the support they need, or the support someone else needs in some cases (see below). This is instead of the Council commissioning services for you directly. Direct payments provide independence, choice and control by enabling people to arrange their own care and support in order to meet their eligible needs, if they (or someone acting on their behalf) want to do so.

Who can get a direct payment?

Any person assessed as being eligible for social care support from the Council to meet their needs and outcomes, or where the Council has used their discretion to agree support to help maintain wellbeing, independence, or safety.

To get a direct payment from the Council:

- the person must be eligible (see details in the next section) for support from the Council, or the Council has agreed to them having support under their discretionary powers;
- the Council needs to be satisfied, that the person who intends to deal with the direct payment can manage a direct payment (with support from others if required); and
- the Council needs to be satisfied, that the use of a direct payment is an appropriate way to meet the person's needs and achieve the outcomes as set out in their support plan. The support plan is put together by the person with their assessor. The Council is responsible for producing this plan which sets out the support they have agreed they will provide. There is more information about this here:

➤ www.kirklees.gov.uk/careassessments

Direct payments can be paid to a person who is assessed as needing support, someone they choose (called a nominated person) or, if they cannot make decisions about this, the Council can agree to someone else managing this on their behalf (called an authorised person). There is more information about these options in the [Direct Payments Guidance](#).

How do I know if I am eligible?

An assessor works with the person and/or someone who supports them (called an advocate) to find out about their situation and assess if they have social care needs that they require support with to help them live their day-to-day life.

The assessment takes into account a range of factors for the person including:

- what the person can do;

- any care and support needs, and the impact of those needs on the person's wellbeing;
- any formal or informal support received, and if this will continue; and
- the outcomes that matter to them.

The assessor will establish if there are needs that are eligible for support to be provided from the Council.

Eligibility for support with social care needs

The Care Act sets out national eligibility to ensure that all Councils meet the same minimum level of social care needs for adults. The Care Act states, that the Council must provide for needs that meet the following three conditions:

1. The needs arise from or are related to a physical or mental impairment or illness;
2. As a result of those needs the adult is unable to achieve **two or more** of the specified outcomes:
 - a. managing and maintaining nutrition;
 - b. maintaining personal hygiene;
 - c. managing toilet needs;
 - d. being appropriately clothed;
 - e. being able to make use of the home safely;
 - f. maintaining a habitable home environment;
 - g. developing and maintaining family or other personal relationships;
 - h. accessing and engaging in work, training, education or volunteering;
 - i. making use of necessary facilities or services in the local community, including public transport, and recreational facilities or services; or
 - j. carrying out any caring responsibilities the adult has for a child.
3. As a result of not being able to achieve these outcomes there is, or there is likely to be, a significant impact on the person's wellbeing. This includes where the person can achieve the outcome but it takes them significantly longer than would normally be expected, it causes them significant pain, distress or anxiety, or it risks health or safety.

Additional information about eligibility is available online at the Social Care Institute for Excellence:

- www.scie.org.uk/care-act-2014/assessment-and-eligibility/eligibility/

Carer eligibility for support from the council

The council must provide support to carers for needs that meet the following three conditions:

1. The needs arise as a consequence of providing necessary care for an adult;
2. The effect of the needs is that the carer's physical or mental health is, or is at risk of, deteriorating or the carer is unable to achieve **any** of the following outcomes:
 - a. carrying out any caring responsibilities the carer has for a child;
 - b. providing care to other persons for whom the carer provides care;
 - c. maintaining a habitable home environment in the carer's home, whether or not this is also the home of the adult needing care;
 - d. managing and maintaining nutrition;
 - e. developing and maintaining family or other personal relationships;
 - f. engaging in work, training, education or volunteering;
 - g. making use of necessary facilities or services in the local community, including recreational facilities or services; and
 - h. engaging in recreational activities.
3. As a result of not being able to achieve these outcomes there is, or there is likely to be, a significant impact on the carer's wellbeing. This includes where the carer can achieve the outcome but it takes them significantly longer than would normally be expected, it causes them significant pain, distress or anxiety or it risks health or safety to them or others.

If there are needs outside the Care Act eligibility, the Council can also decide to provide support if it will help someone to maintain their wellbeing, independence, or safety. This is a discretionary power of the Council, and whenever discretion is used, the Council is still obliged to keep this under review and provide reasons for providing or declining such services or assistance.

How is a direct payment amount calculated?

If you need Council funded support, the assessor will work with you to decide about the amount and level of support you need. There is more information about this in the [Resource Allocation System \(RAS\) document](#) and via this link:

- www.kirklees.gov.uk/payingforcare

As part of the RAS a support planning tool has been created to help work out budgets in a consistent way. The support planning tool has a calculator that uses a formula reflecting current prices in the local care market for the type of support required (e.g. based on current home care or day care rates).

The support planning tool is used to work out an amount of money called an indicative personal budget, which is an early indication of the amount of money that may be appropriate to meet your needs. This indicative budget can help you start to think about how you might want your needs to be met.

In most circumstances the indicative budget will be an appropriate amount to provide the support you need and will become the actual personal budget you get to meet your needs. However if there is evidence to suggest the indicative budget is too high or too low to meet your support needs then the assessor can use their professional judgement to recommend an increase or decrease to the budget in line with this evidence.

A support plan will be created to show how your needs and outcomes (as per the Care Act) will be met and how much your personal budget will be. You have the option of producing a support plan with an assessor, on your own, or with someone else's help, such as an advocate. The assessor will always be responsible for ensuring it is appropriate to meet your identified needs.

Who pays for my adult social care support?

Support from Adult Social Care (unlike most health care) is not free. The Council will charge adults for care and support in order to sustain the delivery of care services such as home care to some of the most vulnerable members of society.

A financial assessment will be completed, and most people will pay for or towards these costs. The amount to pay will depend on the person's financial circumstances. Some people may qualify for financial assistance towards the cost of their care, while others will have to pay for their care from their savings and income. For more details on the financial assessment, go here:

- www.kirklees.gov.uk/financialassessment

The financial assessment will consider how much the support will be and what the person has to pay towards this. To work out how much the person has to pay, the assessment takes into account income, any savings or investments, and expenses (e.g. rent, mortgage, household bills). The Adult Social Care Charging Policy sets out the financial assessment rules, how charges are calculated, and reviews and appeals processes. You can find the policy here:

- www.kirklees.gov.uk/chargingpolicy

The personal budget can be used to provide support in a variety of different ways, including:

- a. the person receiving money via direct payment and arranging and managing the support identified in their support plan;
- b. the Council arranging and providing support;
- c. the Council arranging for another person or agency to provide a service; or

- d. a combination of the above.

The assessment determines the level of support you need and the direct payment will be enough to ensure your needs can be met.

If needs can be met with the options identified in the support plan, but the person prefers to have alternative options that cost more, they can choose to top-up their budget (pay the difference) for something else more expensive.

However, if people choose to use the more expensive provision and their income/assets then drop below the statutory level, the Council will not be obliged to pay for a more expensive service to meet their assessed need and would offer an alternative less expensive service provision. The Adult Social Care Charging Policy explains more:

- www.kirklees.gov.uk/chargingpolicy

How will I receive my direct payment?

There are a range of options to choose from as shown below (and there is further information in the [Direct Payments Guidance](#)).

1. Prepaid Card

This is an alternative to a bank account and looks similar to a debit card. The Council will set the card up and post it to the person's address. (It usually takes up to 10 working days to do this). The person needs to activate it using instructions provided with the card. There is a unique PIN number which should not be shared with anyone else.

Funds are preloaded onto the card by the council and the person (where they have been assessed to make a financial contribution towards support). When the funds are transferred onto the Prepaid Card they are available to use instantly.

The card can be used to pay for care and support to meet needs as agreed in the support plan up to the value that is loaded on to the card. The card is MasterCard enabled to give flexibility when paying for support requirements including online and over the telephone.

The person can view spend activity online and this information is retained and available to print as needed. They can also telephone the Prepaid Card Services to find out the account balance. There is no need to send the Council statements regularly, as the Council can access the information online.

2. Direct payment to a bank account

This is where money is paid into a high street bank account. This can be an account for the person or the person who represents them, but it must be a separate account from their normal bank account to clearly show the money being spent on care and support.

Using this method the person will have to keep hold of their bank account statements and receipts and submit these on request as evidence of the spending on care and support needs. Submission of these documents is usually quarterly or annually, and is set out in the direct payment agreement.

3. Virtual budget

This is when the council manages the personal budget on behalf of the person to put services in place or purchase support services from contracted providers including home care, care homes, and day services.

What can I spend my direct payments on?

Direct payments are an excellent way to choose how to get support but must be spent on meeting the needs and achieving the outcomes that have been agreed in the support plan.

There are many different ways to use direct payments including:

- a. Employing a personal assistant (PA) to provide support - this is not normally a family member living in the same property
- b. Hiring a personal assistant from a care agency to provide support
- c. Paying for a day opportunity – this could be in a day centre, activities at home or taking part in activities away from home
- d. Carers taking a break (respite) – It can be beneficial for a carers well-being and resilience to have a break from caring. If carers need a break and the cared for person needs some support or can't be left alone there are different kinds of respite care available. This includes and is not limited to: providing care in the person's home, accessing day opportunities, short stays in care homes or supported holidays for the carer and cared for. As this is a service provided to the cared for person it is charged to them, not to the carer.
- e. Short stays in residential or nursing care homes: direct payments can be made to enable people to purchase for themselves a short stay in care homes. They cannot currently be used to pay for long-term care home placements.
- f. One-off pieces of equipment for social care needs – an example could be a laptop to enable the person to keep in contact with their friends and family. It is not for equipment that the NHS would be required to provide.

Here are some examples of how a direct payment could be used. There are more in the [Direct Payment Guidance](#) document.

Employing a personal assistant

Susan had a stroke several years ago. She uses a walking frame indoors and needs support with getting out and about and with some of her personal care needs (e.g. getting showered). Her husband Dave provided support, but started a new job. Susan was assessed as eligible for support and chose to have a direct payment to meet her needs. She has employed a Personal Assistant (PA) and can choose the times she wants her PA to support her and can be flexible about how this works, so this is working well for her and for Dave.

Buying equipment that will help meet the person's needs and identified outcomes

Ben has long term mental health issues (anxiety and stress). He was supported to get a job, but his anxiety means he struggles with using public transport. He was assessed and was eligible, so got a one-off direct payment which enabled Ben to buy a bicycle to get to work and back. He is now settling into his new job.

Buy care from a private registered care agency

John has Parkinson's disease, which has worsened over time, and now needs some support with his personal care needs and making some meals. John was assessed to be eligible for support and chose to have a direct payment to pay an agency, so he could arrange how and when he got his support.

The person or their authorised person making their own arrangements as agreed in their care plan

Nazia has dementia causing a poor memory and arthritis, which impacts on her ability to do things for herself. Her husband Ishtiaq usually provides support day and night, as she can wake at night and be disorientated.

They used to arrange for Nazia to go to a care home for a week every few months, so that Ishtiaq could have a break from caring and visit a friend who lives away. He logged onto the Council website and found that Nazia could be eligible for a direct payment. He applied on her behalf, and it was agreed, that he could be an authorised person and deal with this for her.

Ishtiaq arranged for Nazia to spend these weeks at their daughter's house and used the direct payment to pay for carers to visit, to help with her personal care needs. He has noticed she seems much happier there than in the care home.

There are restrictions on what direct payments can be spent on and these include:

- anything that is against the law;
- long-term residential care, although they can be used for short term stays in residential care; and
- employing close relatives who live in the same household to provide care services (except in **exceptional circumstances*** and agreed at a senior level which would be a Head of Service or above within the Council).

***Exceptional circumstances**

There is no set definition for exceptional circumstances and every case will be considered on its own evidence with the well-being of the person using services as the priority. Examples could include:

- the person's care needs are intermittent and unpredictable to an extent that recruiting someone else to meet their needs is not possible;
- significant effort has been made to find alternative means which has been unsuccessful and this is the only way for the person to receive their support; and
- it is the only way of meeting the person's needs due to a sudden breakdown of other service arrangements.

If it is unclear at any time how the direct payment can be used or the person wants to buy things that have not been specifically agreed in their care plan they need to contact the Council to discuss this. This can be done online or by contacting Gateway to Care on 01484 414933.

What about employing a personal assistant?

A personal assistant (PA) may be self-employed but the person or their representative will need to check their PA's employment status with HM Revenue and Customs.

If a person decides to employ a personal assistant, they need to be fully aware of their responsibilities. These include, but are not limited to:

- advertising and recruitment, to employ the PA; and
- legal responsibilities you will have as an employer, including but not limited to:
 - employment checks (including Disclosure and Barring Scheme checks);
 - tax;
 - National Insurance;

- employer's liability insurance;
- public liability insurance;
- employer's pension income; and
- keeping employee information safe, secure, and up to date.

The above still applies if this is a family member (see below). There is also detailed information about responsibilities when employing a personal assistant and the support available to help with this in the [Direct Payments Guidance](#).

Can I employ family members?

The person can use the direct payment to pay a family member who does not live with them to provide care and support if the Council agrees this is appropriate to meet their needs. Under the Care Act, the Council has a duty to ensure that employing a family member is a suitable and safe use of the direct payment and that the support will meet the person's needs. This will be discussed with the person as part of the assessment and support planning process.

Under the Care Act the direct payment cannot ordinarily be used to employ a family member that the person lives with to provide their care and support. However when the person and the Council have tried all other available options and these do not meet the person's eligible needs, the Council can use discretionary powers to consider agreement for this in exceptional circumstances (see previous page).

The direct payment can be used to pay a family member (whether or not the person lives with them) to provide the management and administration of the direct payments, where the Council agrees that this is necessary.

How is the direct payment monitored?

The Council is required to monitor the direct payment to make sure the person is being given the right amount of money to meet their unmet eligible care and support needs and their outcomes as set out in their care plan. The Council will need to check how the money is being spent and what it is being spent on. If the person's needs change they need to get in touch with the Council to ensure they are getting the right amount of money.

If the direct payment money starts to build up because it is not being used, the Council will get in touch to find out what the plans for this are. There may be good reasons for this such as awaiting an invoice from a care provider, but if it is not going to be used to meet care and support needs and outcomes as specified in your care plan, the money will be taken back.

Can the direct payment be suspended or taken away?

If, after speaking with the person dealing with the direct payment and considering the evidence, it is found that the direct payment is being misused, the Council can suspend or cancel this direct payment and will offer an alternative means of support. This may be services arranged by the Council. The person can appeal against decisions to suspend or cease payments here:

- www.kirklees.gov.uk/adultappeals

Support to manage a direct payment

There are different ways people can be supported to manage a direct payment such as by choosing someone else to manage this for them or a Payroll Agency. The sort of help and support that might be useful could include one off advice on manual handling issues through to services to advertise for staff, help with recruitment, contracts of employment and running the payroll for you. There is information about this and where you can get help and advice in the [Direct Payments Guidance](#).

Reviews

Reviews will take place to find out if the support plan and the direct payments are meeting the person's needs.

The Council has a statutory duty to review support 6-8 weeks after the initial assessment. This might be as simple as a telephone call or a more in-depth conversation, if the person's needs are more complex.

Following this review, further reviews will occur every 12 months or less. Some people's needs or situations might be more likely to change than others, which is why they will have more regular reviews. This will be discussed with the person and recorded on the care plan.

The person can ask for a review at any time if their needs or circumstances change so that we can continue to support them in the right way. If the person's needs and/or situation have sufficiently changed, this may require a new assessment to be completed.

If the Council decides their identified needs are not being met in a satisfactory way using a direct payment, this may be suspended and the person would be offered alternative means of support such as commissioned care services.

Appeals, complaints, comments and compliments

Appeals are made during the decision-making process and are managed by the team that has done the assessment. There are established processes for managing these appeals and changing any decisions.

Appeals can be made online here:

- www.kirklees.gov.uk/adultappeals

The online form takes around 10 minutes to complete.

To find out more about how to send in compliments, comments, or complaints about how the Council has provided a service or made a decision, information is available here:

- www.kirklees.gov.uk/adultcomplaints

Alternatively you can contact the Council by contacting Gateway to Care on 01484 414933.