adult social care



Direct Payments Guidance

June 2026

Kirklees COUNCIL

The principles and values for how we want Direct Payments to operate in Kirklees are summarised in our Direct Payment Vision Statement:

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

This guidance was originally created and co-produced with the Direct Payments Citizen working group. The document was amended by the Council, with limited involvement from the original Citizen Working Group.

There are also sets of 'I' and 'We' statements; the 'I' statements describe the expectations that people who have care and support needs can have regarding Direct Payments. The 'We' statements describe how Kirklees Council staff will work with you to organise your Direct Payment.

This guidance should be read in conjunction with the Kirklees Direct Payments Policy (Kirklees - direct-payments policy), of which it forms a supporting framework. The information below provides additional detail to assist in the interpretation and application of the policy.

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Glossary of terms

Authorised Person

Where you lack mental capacity to request a Direct Payment, and you have a Lasting Power of Attorney (LPA) or a Court appointed Deputy for health and welfare, they can act as an Authorised Person for a Direct Payment. If your Attorney or Deputy wishes to allow another person to act as an Authorised Person for a Direct Payment, they can choose a suitable person to do this with the agreement of the Council. Where you do not have a Lasting Power of Attorney or a Court appointed Deputy, the Council will work with you to appoint a person who they think is a suitable person to become an Authorised Person to manage your Direct Payment.

To decide who is best to become an Authorised Person, the Council will use the best interests process under the Mental Capacity Act 2005. This will include the Council being satisfied that the person will act in your best interests in arranging your care and support using the Direct Payment. As part of this process, we will also ask you who you might want to manage your Direct Payment as an Authorised Person. This will usually be someone who is known to you and trusted by you for example, a family member of close friend. This decision will be recorded.

The Authorised Person must sign the Direct Payment Agreement and comply with its terms. They must not receive any unauthorised financial benefit, including paying themselves to provide care.

If no Authorised Person is identified, you will not be eligible for a Direct Payment, and the Council will arrange alternative services to meet your needs.

Care Act assessment

A Care Act assessment will identify any needs that can be met by the Council. A personal budget to meet these needs, as well as outcomes identified with you, will be shared to help plan how both will be met. A financial assessment will determine whether you will need to pay towards your care and support.

Anyone who appears to have a need for care or support is entitled to an assessment.

Care and support needs

People who have eligible care and support needs and want their life to be safe, happy, comfortable, and respected in line with their wishes.

Care and Support Plan

A plan written in partnership with you after your assessment, setting out your care and support needs and desired outcomes, how they will be met and what support will be covered by the Direct Payment. Care and Support Plans must be flexible to meet assessed needs and outcomes.

Eligibility

Under the Care Act 2014, you are eligible for care and support if your needs relate to a physical or mental health condition, and because of those needs, you are unable to do certain everyday tasks, like washing, dressing, or keeping your home safe. If these difficulties have an impact on your wellbeing, such as your physical or mental health, independence, or ability to do the things that are important to you, then you may be eligible for support from the Council.

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.

Flexibility

Flexibility allows for a range of choices, the unpredictability of everyday life, as well as future and longer-term changes. It relates to how eligible needs are met, not to funding activities or items that fall outside the agreed Care and Support Plan.

Mental capacity

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

Nominated Person

A Nominated Person is someone you choose, where you have mental capacity, to manage your Direct Payment on your behalf or support you to do so. The agreed role must be clearly defined. The person responsible for managing the Direct Payment must sign the Direct Payment Agreement.

A Nominated Person may support with, or manage, the financial administration of the Direct Payment and may, for example, act as the employer of any Personal Assistants. However, signing the Direct Payment Agreement or managing the funds does not, in itself, make the

Nominated Person the employer. Where a Nominated Person is involved, the Direct Payment User and the Nominated Person should agree their respective roles and responsibilities.

The Council must be satisfied that the Nominated Person is suitable and capable of managing the Direct Payment, and may involve them in assessment, care planning, and reviews where appropriate.

A Nominated Person must not receive any unauthorised financial benefit from the Direct Payment. This includes acting as a Personal Assistant, care provider, or payroll provider, or paying themselves, unless this has been explicitly approved by the Council due to identified need or where permitted (for example, an appointed solicitor).

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.

Personal budget

The total cost of meeting eligible care and support needs and agreed outcomes. It may be met wholly or in part by the Council, with an assessed contribution from you where applicable, and/or other sources.

Wellbeing

The degree to which you are healthy, comfortable, and able to participate in and enjoy life events and activities.

What is a Direct Payment?

The Council can arrange care and support on your behalf but if you would like more control over how your needs and outcomes are met, you may be able to have a Direct Payment instead.

A Direct Payment is one of the ways you can receive your personal budget, following a financial assessment and Care Act assessment, to pay for the care and support that enables you to live a good life. This is instead of having services arranged by Kirklees Council.

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 where you feel comfortable.

You can receive a Direct Payment in conjunction with care and support organised by the Council. This can be discussed with your Social Care Practitioner.

As part of arranging your Direct Payment, you or your Nominated Person/Authorised Person (explained below) will sign a document called a Direct Payment Agreement. This outlines your responsibilities around the management of your Direct Payment.

How do I know if a Direct Payment is right for me?

Direct Payments give you choice and control over your care and support. Instead of the Council arranging services for you, the money from your personal budget is paid into a Direct Payment account (explained later this document).

What you need to consider

Direct Payments give you choice and control, but they also come with responsibilities. You will need to:

- Spend the money only on the support and outcomes agreed in your Care and Support Plan.
- Keep clear records of how you spend the money, including receipts where appropriate, and share these with the Council when requested.
- Pay any personal contribution identified in your financial assessment.
- Make sure the support you arrange is safe, appropriate, and meets your eligible needs.
- Tell the Council about any changes, for example if your needs change, the support arrangements change, or you are no longer able to manage the Direct Payment.

If you employ staff, make sure you:

- Recruit, pay, and manage them fairly.
- Meet HMRC legal duties as an employer (e.g., payroll, insurance, pensions).
- Are aware of your staff's right to maternity leave, paternity pay, and adoption rights.
- Take out suitable Employer Liability Insurance cover for each year you are an employer.
- Understand the potential cost of any redundancy.

Direct Payments may not suit everyone

They might not be the best option if you:

- Would rather the Council arrange and manage your care for you.
- Prefer not to manage money or employment responsibilities.
- Prefer not to manage your own care and support.
- Spend long periods in hospital or have unpredictable care needs.

What is a Care and Support Plan?

A Care and Support Plan is a document that outlines the care tasks you need to meet your wellbeing goals and your assessed needs under the Care Act 2014. You will have a copy of your Care and Support Plan for your records.

In order to identify your needs, you will first have a Care Act assessment, which determines your eligible care and support needs. A Care and Support Plan will then be developed with you to outline how any unmet needs will be met. As part of this process, a financial assessment will also be completed to determine whether the Council will contribute towards the cost of your care and, if so, how much you may need to contribute.

These assessments and your Care and Support Plan will be completed with you, your Nominated Person or Authorised Person, and Adult Social Care to ensure your views and preferences are fully considered

Your Care and Support Plan will list the costs of each care task on a weekly basis. The total weekly cost of your Care and Support Plan is known as your ‘Personal Budget.’

Each person’s Care and Support Plan is unique to their individual needs, choices, and agreed outcomes, so their Personal Budgets will be different too.

It is important that the cost of your arranged care does not exceed the total value of your Personal Budget. This helps ensure your budget remains appropriate to meet your assessed needs and protects you from being overcharged for your care. If you choose a provider that charges more than your Personal Budget, you will be responsible for arranging the difference in cost to be paid into your Direct Payment account. This is known as a top-up.

What this means for you

Your choices, views and wishes are central to your care and support planning and allow for flexibility. This includes:

- What is important to you and identifying achievable outcomes that you want to work towards.
- The things you can do to live well, stay well, and remain independent.
- The care and support you might need from others and how this fits into your day-to-day life.
- The flexibility you need to ensure your care and support is effective, practical, and safe.
- Preparing for your future, including making choices and stating in advance your preferences for care in the event of a temporary or permanent deterioration in your health, and for end-of-life care where relevant and appropriate.
- You can choose who you want to be involved in the care and support planning process.

Care planning is a “working together as equals” process, whereby people with care and support needs and/or their representative, meet with Social Care Practitioners to discuss how those needs can be met. If you are unable to make decisions about your care and support planning, then the Council will also consider the Mental Capacity Act 2005 to support your decision making under ‘Best Interest’ processes.

What this means for Kirklees Council

- We will support you to identify available services that can realistically meet your wellbeing goals and needs.
- We will support you to access services that promote choice and control and offer the least restrictive approaches to meeting your wellbeing goals.
- We will support you to identify achievable goals and offer you a review of your Care and Support Plan to see if these goals have been met and if not, to decide what needs to change, whilst also confirming that the services are still needed.
- If you are unhappy with the services outlined in your Care and Support Plan, we will offer you advice and guidance.

How do I get a Direct Payment?

Any person who has been assessed as having care and support needs (under the Care Act 2014), and eligible for financial support from the Council can request a Direct Payment.

It is important that all relevant parties, you; your Nominated Person/Authorised Person, and the Council are confident that you (or your Nominated Person/Authorised Person) can manage the Direct Payment to meet the needs and outcomes identified in the Care and Support Plan.

Once a discussion has taken place between all relevant people, the following things will be considered to ensure that a Direct Payment is the most appropriate option:

- whether you can make your own decisions about having and managing a Direct Payment (we call this having mental capacity to request, agree to, and manage Direct Payment).
- whether the Council is confident that the person who will deal with the Direct Payment can appropriately manage it (this includes your Nominated Person/Authorised Person, where relevant).
- whether the Council is confident that the use of a Direct Payment is the most appropriate way to fully meet the assessed needs and achieve the outcomes that matter to you, as agreed in the Care and Support Plan.
- where you qualify for Council funding following a financial assessment

Can everyone get a Direct Payment?

You can get a Direct Payment if:

You have participated in a Care Act assessment which has identified your needs and outcomes, your Personal Budget has been produced, and this information has been recorded in a Care and 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 it has been confirmed that you need some financial support from the Council. If applicable, you will need to pay your assessed charge towards your care needs as per your Care and Support Plan, the rest will be paid by the Council.

Following a discussion with your Social Care Practitioner, it is agreed that you would benefit from a Direct Payment to support wellbeing and independence.

Everyone will have different person-centred care and support needs, which are not defined by illness, disability, or condition. Rather, the Council will take a holistic (overall) view of the individual to determine, in partnership with them, and/or their Nominated/Authorised Person where appropriate, what support is needed to promote general wellbeing as determined by the Care Act 2014.

Restrictions on Managing a Direct Payment

Sometimes the Council cannot offer a Direct Payment. There are regulations which prevent the Council from agreeing a Direct Payment in some circumstances, which include things like a person being required to attend drug or alcohol rehabilitation as part of a court order.

There may be times when the Council considers that a Direct Payment is not a suitable way to meet the needs and outcomes identified in the Care and Support Plan, for example: when someone, even with support, will struggle to manage and use the Direct Payment effectively. This decision not to provide the Direct Payment will be explained by the Council, to enable the person and/or their Nominated Person/Authorised Person to understand, and to challenge the decision if they would like to do so. Guidance relating to challenging a decision is set out at the end of this document.

Certain financial restrictions may prevent someone from managing a Direct Payment account. This includes individuals subject to:

- Bankruptcy orders (undischarged bankrupts)
- Debt Relief Orders (DROs)
- Receiving Orders
- Interim Orders under the Insolvency Act
- Attending drug or alcohol rehabilitation, as part of a court order

If a person's financial situation means they cannot adequately manage money, and they do not have a Nominated Person/Authorised Person to act on their behalf, the Council may decide it is inappropriate to issue the Direct Payment.

Direct Payments and mental capacity

The Council must be satisfied that you have the mental capacity and ability to request and manage a Direct Payment, or that arrangements are in place for an Authorised Person to do so in the person's best interests under the Mental Capacity Act 2005.

You are assumed to have mental capacity unless knowledge of your circumstances indicates that this might not be the case. Where a Social Care Practitioner has reason to believe you may not have capacity to consent to Direct Payments, a mental capacity assessment must be completed.

Assessments of capacity must always be made on an individual basis and are decision and time specific. The principles of the Mental Capacity Act 2005 will be applied. Assumptions should not be made due to the existence of a particular condition, age etc.
To consent to Direct Payments, you must be able to understand the principle that Adult Social Care will be providing you with money to purchase the services you are assessed as needing.

The 'decision in question' should be 'do you have the capacity to consent to receive Direct Payments?' A further assessment may then be required in relation to your mental capacity to manage your finances. Consenting to Direct Payments should not be confused with the ability to manage the finances. You may well be able to understand the principles of Direct Payments but require assistance, of varying degrees, to manage the money.

How much will the Direct Payment be?

Social care and support services are not free. Unless you qualify for financial assistance, you will be liable to pay part or all of the cost of your care and support. If you are thinking about care services, you should complete an application for financial assistance online at Financial Assistance Online Form. If you have been assessed as needing to make a financial contribution towards your care, you will need to pay the amount you have been assessed to pay into your Direct Payment account.

The amount of money you will receive as a Direct Payment will depend on your individual circumstances. The Direct Payment must be sufficient, together with any contribution that you have been assessed as needing to pay, to meet the person-centred needs and desired outcomes you, or the person you are supporting, have agreed with a Social Care Practitioner in your Care Act assessment and Care and Support Plan. If you choose a provider that charges more than your Personal Budget, you will be responsible for arranging the difference in cost to be paid into your Direct Payment account. This is known as a top-up.

If you choose to employ a Personal Assistant, the amount of the Direct Payment will include employment costs such as wages; holiday pay and sick pay (more information on employing a Personal Assistant can be found further on in this guidance.

For standard rates in Kirklees Adult Social Care services, refer to Schedule of Adult Social Care Fees Paying for your adult social care | Kirklees Council

How will my Direct Payment be paid?

Direct Payments are paid four weeks in advance. This means that the money is paid to you before you need to pay for support, to make sure there are not any gaps in your support. Your Direct Payment can be paid in a few different ways.

1. Prepaid Card – a prepaid card is an alternative to a bank account and looks like a normal debit card. The card offers you a flexible, fast, and convenient way to manage your Direct Payments, without the need to send the Council your statements regularly, meaning you can worry less about your paperwork and focus more on what is important to you.

- Your Direct Payment is preloaded onto the card by the Council.
- You can view all your activity online or you can telephone the Prepaid Card service.
- There are services to find out your account balance.
- The Council can view your activity online, to monitor how the Direct Payment is being used.
- The card is MasterCard enabled, which means it gives you greater flexibility when paying for your support requirements including online and over the telephone.
- The Council will set up the card on your behalf. The Council will ask you for information to do this and once done, we will post a card to your address. It usually takes up to 10 working days to set up your account and deliver your card.
- Before you can start using your card you will need to activate it, instructions on how to do this will be issued with your card.
- You will have a unique PIN for your card which you should not share with anyone else.
- If you would like support with your Prepaid Card, please contact Prepaid Card Services on 02071 274276.

2. Managed Account – you and your Social Care Practitioner will discuss if there are complex care arrangements, safeguarding concerns or if your Nominated Person/Authorised Person need support to manage the Direct Payment which mean that a managed account is right for you. An account provider can hold the funds and make payments following your instructions. Managed accounts may involve an additional fee; this will only be funded by the Council when it has been assessed as necessary. You remain responsible for meeting all Direct Payment responsibilities and ensuring spending of it is as defined in your Care and Support Plan.

- Managed account providers are only authorised to make payments following your instructions.
- You (or your Nominated Person/Authorised Person) keep control over your support and are still responsible for managing the Direct Payment.

3. Into a Bank Account – if you would like your Direct Payment to be paid directly into a bank account, you will need to open a separate bank account that will only be used for Direct Payment purposes. To enable you to keep your personal money separate from the money the Council pays to you, you will need to use a different bank account for personal banking. The expectation is that the Direct Payment bank account is opened in your name. Where this is not possible you must use either a prepayment card or a managed account.

What can I spend my Direct Payment on?

Direct Payments are all about enabling you to meet the needs identified in your Care and Support Plan and empowering you to be independent and in control. The most important thing to consider, when choosing what to spend your Direct Payment on, is what has been agreed in your Care and Support Plan. This does not mean that your options will be very restricted, as there are many ways to meet the needs and outcomes identified in your plan.

Below are some examples to give you an idea of the many ways Direct Payments can be spent:

- support to access social opportunities, including personal interests/hobby clubs, sports activities, music events, cinema/theatre visits, meeting up with friends and day opportunities. Activity fees will only be funded where specified in your Care and Support Plan.
- 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, for example, recruitment, insurance, payroll, advocacy or Disclosure and Barring Service (DBS) check costs
- paying for a care agency or social enterprise.
- day care.
- equipment and assistive technology, including smart technology and virtual reality devices.
- support for independent living for example, personal care/daily living, support with cleaning, cooking, gardening, DIY, getting out and about, support to go on a holiday, or management of finances.
- support to attend appointments (before using Direct Payments for support to attend health appointments, please explore reasonable adjustments and accessibility support offered by the NHS or healthcare provider under the Equality Act 2010). Direct Payments can fund additional support, where agreed in your plan.
- pooling funds. For example, taking some of your Direct Payments and adding it to funding from one or more people to purchase a service together.

- Your Care and Support Plan may include an element of respite (short breaks). The need for respite will be identified and evidenced within your Care Act assessment and/or a Carer's Assessment. The amount and rate of respite funding will be determined during care planning and based on your assessed need. Respite will be used over the 12 months and weekly care hours (used specifically each week or flexibly over a four-week payment period). If there is a surplus amount after the 12-month period, the Council may request that the amount is returned – please see section below on repaying surplus Direct Payments.

All expenditure must be necessary, appropriate, lawful, and proportionate, and must be agreed by the Council as part of the Care and Support Plan. Direct Payments must not be used for purposes that do not directly meet your assessed needs and agreed outcomes.

What you cannot spend a Direct Payment on:

- To buy local authority-provided services from Kirklees Council. This includes Kirklees run residential homes, short stay/respite beds, and Council run day services. This restriction does not apply to services commissioned from external providers, which may be purchased with a Direct Payment where appropriate and agreed within your Care and Support Plan.
- To replace NHS provided services, Housing Services (such as Disabled Facilities Grants), or DWP benefits
- Long-term residential care (permanent care home placements) – only short-term respite of less than 4 weeks in a 12-month period is allowed.
- Anything not agreed in your Care and Support Plan or unrelated to assessed needs and outcomes.
- Anything illegal or unlawful.
- Rent or mortgage payments
- Utility bills
- General food and household expenses
- Alcohol, tobacco, or gambling products.
- Repaying debts, loans, or paying fines.
- Employing a spouse, partner, or close family member living in the same household, unless the Council has given prior written approval for exceptional circumstances.
- Services or care outside the UK without prior Council approval.
- Items or services that are unsafe, unregulated, or pose safeguarding risks.
- Activities that do not promote independence or wellbeing as outlined in the Care Act 2014.

What this means for you

- I am encouraged and enabled to use my Direct Payment flexibly and creatively to meet the needs and outcomes outlined in my Care and Support Plan.
- I am supported by people who understand me as an individual, who listen carefully so they know what matters to me and how to support me to live a good life.
- I enjoy the things I choose to spend my Direct Payment on, and it enables me to have the same choice and control over my life as someone who does not have care and support needs.

What this means for Kirklees Council

- We don't make assumptions about what people can or cannot do and we don't limit or restrict people's options on what they can spend their Direct Payment on – as long as it is legal and meets the needs and outcomes identified in their Care and Support Plan.
- We know how to have conversations with people to explore what matters most to them and how they can achieve their goals including: keeping safe; being part of the local community and enjoying their life.
- We use empathy to understand what the person with care and support needs is experiencing day-to-day. We believe that people with care and support needs should live with the same dignity; choice and flexibility as those who do not have those needs.

Being an employer to a Personal Assistant

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

A Personal Assistant is someone who is employed to provide personal and domestic support to you to lead an independent personal and social life. If you employ a Personal Assistant, you are the employer and must issue a written contract of employment and comply with employment law, including, but not limited to, PAYE, National Insurance, and workplace pensions, rights to maternity pay and leave, paternity pay and leave, adoption rights and understand the potential cost of any redundancy.

Employment on-costs, e.g. National Insurance, pension auto-enrolment and employer liability insurance, will be included in the Direct Payment where employing a PA is part of your plan.

You (or your Nominated Person/Authorised Person) will be signposted to advice about legal responsibilities as an employer. Further detailed information is below.

Contingency arrangements must be considered where employing a Personal Assistant, for example to cover sickness, annual leave, or other absence. You (or your Nominated/Authorised Person) are responsible for ensuring appropriate cover is in place so that your needs continue to be met.

What this means for you

- I am supported to be a good employer and to meet all my legal duties, regardless of whether I employ staff directly or via a Payroll Company.
- I trust my Personal Assistant, have a genuine connection with them and I am comfortable letting them know how I would like to be supported.
- I can develop support with my Personal Assistant to make sure that my needs and outcomes are fully met and that they continue to be met, following any changes.
- Finding the right Personal Assistant is important and it can be difficult to know where to begin to find that person (see employment related support section).

What this means for Kirklees Council

- We support people to understand what being a good employer means and ensure that the Direct Payment is enough to pay the Personal Assistant the National Living Wage.
- We make sure that being employed as a Personal Assistant in Kirklees is an attractive job which pays well, is valued, and allows people to develop their skills.
- We support people and their Personal Assistant to have ongoing access to training and workforce development resources.

Employer insurance

As an employer, you (or your Nominated Person/Authorised Person~~)~~ must take out an insurance policy which covers employer's liability.

This is a legal requirement that covers you if your Personal Assistant has an accident, and you are considered responsible. The insurance must cover costs such as redundancy, sickness, and possible legal and industrial tribunal costs. The funding for this will be included in the Direct Payment, where it is necessary. As an employer you would be expected to update your insurer in accordance with any terms and conditions of the insurance policy.

There are various insurance companies who offer these Policies, but not all of them include employment advice. The amount of Council funding is sufficient to purchase an insurance policy that includes employment advice.

Equality Act 2010

The Equality Act 2010 is a law that is designed to protect people from discrimination, harassment, and victimisation.

As an employer, under the Equality Act 2010, you will need to make sure your employees work in an environment where their age, disability, sex, gender reassignment, religion, race, sexual orientation, pregnancy and maternity status, marriage, and civil partnership are not subject to:

- less favourable treatment (discrimination)
- threatening, intimidating, offensive, or humiliating behaviour (harassment)
- further detrimental circumstances because of a complaint of harassment or discrimination being raised (victimisation).

Employment related support

Generally, where directly employed Personal Assistants are used, the Insurance Policy may offer employment advice. There is also the Council's In2Care Kirklees, and several other external agencies. It is important to note that the service, from these organisations, may have a charge.

In some situations, an employment issue can be extremely complex. As an employer you must hold appropriate liability insurance which provides cover for all employer-related risks, including but not limited to redundancy costs, employment tribunal claims, legal expenses, and statutory payments such as sick pay.

Whilst the Council cannot provide formal legal advice on employment matters, we can offer general guidance and signpost you to appropriate sources of support. If you choose to use a payroll provider, their role is typically limited to supporting you with HMRC-related responsibilities, such as managing tax, National Insurance, and payroll processing. Depending on the provider, they may also support with arranging employer's liability insurance and providing a basic employment contract. However, it is important to understand that the responsibility for all other aspects of being an employer remains with you.

This includes activities such as, but not limited to:

- Drafting adverts and job descriptions
- Shortlisting and interviewing candidates
- Requesting and checking references
- Arranging Disclosure and Barring Service (DBS) checks, where required
- Managing contracts of employment beyond any basic template provided
- Developing grievance and disciplinary procedures
- Arranging training for Personal Assistants, where required
- Undertaking risk assessments

There are a range of providers available, and while they can support with certain administrative tasks, you will retain full legal responsibility as the employer. There is also a lot of information about employing a Personal Assistant on the Skills for Care Information Hub.

In2care Kirklees can support you to draft adverts, they can be contacted by email at in2carekirklees@kirklees.gov.uk or phone at 01484 416200.

Disclosure and Barring Service (DBS checks)

It is strongly recommended for adults that have a Direct Payment, to carry out a DBS check for the people they employ (this is not a legal requirement). For people who have children in their household then enhanced DBS checks must be carried out (this is a legal requirement).

There is an in-house Kirklees DBS team who can help you carry out these checks. Where appropriate, the cost of the Disclosure and Barring Service check will be covered by the Direct Payment.

Tax and national insurance

As an employer you are required, by law, to operate Pay as you Earn (PAYE) on the pay of your employees and pay the correct National Insurance contributions to His Majesty's Revenue and Customs (HMRC). Every employer must give their workers the opportunity to join a workplace pension scheme that meets certain standards. Depending on how old they are, and how much they earn, many workers will be automatically enrolled into the scheme. Other workers will be entitled to join the scheme if they wish to do so.

Annual leave

Your employee will be entitled to paid holidays from work, known as annual leave. This should be agreed when an employee starts work and included in the employee's written contract.

Almost all workers are legally entitled to 5.6 weeks paid holiday per year. If you employ a replacement Personal Assistant to cover the annual leave of your regular Personal Assistant, please provide details of the replacement Personal Assistant, to the Council, to enable an additional payment to be made.

Pay rates

In Kirklees, all Personal Assistants should be paid a Living Wage. This is reviewed and updated by the Government every April, which can be found at National Minimum Wage and National Living Wage rates - GOV.UK.

Statutory payments

Statutory means something is required by rule or law. This is money you need to pay your employee under employment law, including wages.

You may need to pay your employees' Statutory Payments even when they are not actually working for you – for example, if they are ill and entitled to Statutory Sick Pay. Your Direct Payment will cover Statutory Payments which will be worked out with you during your care and support planning.

Personal Assistant expenses

It is important to make sure that your PA does not 'pay to work.' This means that your PA may need to be paid for things other than their statutory payments. This usually happens when you are supported outside of your home. These will in the first instance, need to be paid out of your Direct Payment, and if not via the Direct Payment, out of your own funds. For example, if you

would like to be supported to go out and about, and you will be eating outside of your home, you will need to pay for your PA's meal also, if they choose to eat with you.

Your Direct Payment can cover PA's expenses when away from home for extended periods of time. PAs should only be paid expenses with a completed claim form and with supporting receipts.

Car insurance and mileage

The PA will need business car insurance if they will be using their car within paid working time to support you. It does not usually cost anymore to add this to their policy. The Direct Payment cannot be used to pay for your PA's car insurance.

You will need to pay your PA for their mileage used whilst supporting you (but not for commuting to and from their shift). If you receive Mobility Benefit, you will need to use this in the first instance to cover your travel costs, including any mileage you pay your PA. Using the suggested rates from HMRC. If you have any concerns about paying for mileage or travel costs for your PA, please speak to your Social Care Practitioner.

Breaks

It is important that your PA is able to take an uninterrupted break during their working hours, where they are working 6 hours or more. This still applies if you ask your PA to accompany you on a day trip or something of a similar length of time. The break should be at least 20 minutes every 6 hours Rest breaks at work: Overview - GOV.UK, where the PA is not required to support you. Sometimes, it is understandable that it is not possible for the PA to take a genuine break from work. In this instance, the PA should be given time off later to reflect the missed break or should be paid for the extra time.

Self-employed Personal Assistants

The Council advises that it is usually better to employ someone directly. However, we understand that sometimes people prefer to receive support from someone who is self-employed. It is important to understand that, in this case, there are still some responsibilities for both you and the Personal Assistant to understand before they can start working with you.

A self-employed Personal Assistant may work for more than one person and is responsible for managing their own tax and National Insurance, which they declare directly to HMRC. Because they are self-employed, payroll arrangements are not required.

Self-employed PAs work on a contractual basis rather than as employees. This distinction is important because it affects who is responsible for tax, National Insurance, and employment arrangements. This means that they manage their own working arrangements and financial responsibilities which will include deciding what they will charge for their services (their fees).

Self-employed PAs must have their own public liability insurance in place. You should insist on seeing a copy of their policy certificate before they start providing support.

If the Personal Assistant is self-employed, they need to:

- provide you with a Unique Tax Reference number (UTR) issued by HMRC on HMRC headed paper stating they are self-employed
- arrange their own insurance to cover against public liability.
- provide a contract agreeing the terms and conditions of the support provided, prices charged/cost of service, which would be mutually agreed by you, including when and where to undertake the work
- provide you with invoices quoting their HMRC registration number to request payment from you for the specific service(s) they have undertaken
- arrange payment of income tax, National Insurance, and production of their general accounts
- prove their own equipment (unless agreed otherwise in contract agreement)
- provide other workers to support you if they are unable to provide the service themselves.

Whether a PA is self-employed or an employee is not a matter of individual choice. An arrangement which is called self-employment may be found, in fact, to be employment if the practical arrangements do not fit with what is understood by HMRC to mean a person is self-employed.

You can check if the Personal Assistant has registered themselves as self-employed by asking to see their letter from HMRC which states their Unique Tax Reference Number (UTR).

If in doubt you should seek appropriate advice. Suggested sources of advice include the ACAS website or helpline or if you have insurance, you can ring the employment law or legal services helpline provided by your insurer.

Can I employ someone who lives with me?

Generally, the Direct Payment cannot be used to employ family members who live with you to meet your care and support needs. This applies to your spouse, partner, or civil partner, as well as relatives who live in your house. However, if following a discussion, you and the Council agree in writing that it is necessary or beneficial, Direct Payments may be used to employ someone who lives with you, either to meet your care needs or to provide administrative and management support in line with legal obligations.

Decisions to allow a family member who lives with you to administer a Direct Payment should be recorded in the care plan and include the amount of the payments, their frequency and activities covered. The arrangement must be considered during allocation of the personal budget, so the amount remains sufficient to meet your needs and outcomes.

Please note: If your partner or relative does not live with you, the above restrictions do not apply.

Using a service provider

A service provider might be a:

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

If you want to use your Direct Payment to buy support from a service provider, you 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 your needs and outcomes will be met.

Where a provider charges more than the agreed Direct Payment amount, this does not automatically mean the Council will increase the personal budget. A review may be required to consider whether needs have changed or whether alternative provision (e.g. within the Council's framework of providers) can meet the agreed outcomes (see review and reassessment).

Working with care agencies

You can also choose to hire staff through an agency. In most cases if you use an agency, the staff who will work with you will be employed by the agency, but you will still need to check that this is the case.

The benefits of hiring staff through an agency include being able to say how, when and where you want your support to be provided so you maintain choice and control over the arrangements, without the added responsibility of directly employing them yourself. We recommend that you talk to several agencies to compare costs and the terms and conditions of services before you decide which one is best for you.

We recommend that you ask each agency:

- If they are Care Quality Commission (CQC) registered if your Care and Support Plan require them to undertake regulated activities (The regulated activities - Care Quality Commission)
- to show you the details of their registration with the Care Quality Commission (CQC). The CQC regulates this type of service and requires that certain minimum standards are met. (You can check CQC reports online or on the provider's website, to see how a service is performing).
- to see a copy of their insurance policy.
- how much it will cost you to use their services and whether there are any additional costs, e.g., mileage, working on bank holidays.
- if you will be asked to verify hours worked so that you can track that you are being invoiced for the correct amount.
- about the terms and conditions of the contract that you will sign.
- if they employ the staff and meet all their tax and national insurance payments.
- if all their staff have been screened through the Disclosure and Barring Service which checks criminal records and ensures that there is no known reason why staff should not work with vulnerable people.

- what qualifications and experience their staff have and what training and support the agency provides to its staff.
- if they will carry out a risk assessment for you and the staff who will work with you.
- how they manage staff and how often someone will visit you to check you are happy with their services.
- how you can tell them if you are not happy with their service and how they would deal with your complaint.
- how they arrange cover when your regular Personal Assistant is on holiday or on sick leave. You also need to know how the agency will let you know when there is a change like this – so that you are not surprised if someone that you do not know comes to your home.

The agency will invoice you for the cost of the services. You should check that the details are correct before paying the invoice from your Direct Payment account. Please keep copies of invoices and correspondence.

Please note: Some Care Agencies restrict the hours staff can work, please consider if this will impact on your ability to meet your agreed outcomes.

What do I do if I have concerns about my care provider or Personal Assistant?

If you have concerns about your Personal Assistant, you, as their employer, are responsible for taking appropriate action.

If you have concerns or difficulties about the staff or service of an agency from which you are purchasing support, you should contact the agency in the first instance. If you are unable to resolve the issue with the manager of the agency, you should contact the Community Health and Social Care Hub to discuss your concerns.

If you are worried that you may be being abused by a Personal Assistant or other provider, please contact the Community Health and Social Care Hub –0300 304 5555, immediately to discuss this as a safeguarding concern (Recognising signs of abuse or neglect | Kirklees Council). The usual duties for the Council would then follow in considering any safeguarding concerns and how to respond.

How my Direct Payment will be monitored

To ensure your Direct Payment is meeting your needs and delivering the outcomes set out in your Care and Support Plan, the Council will work with you to review how things are progressing. This will include monitoring both the care and support you receive and how the Direct Payment is being managed financially.

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

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

Everyone receiving a new Direct Payment will have a financial check after three months. Ongoing financial monitoring will then take place at three months, six months, or annually, depending on how effectively the individual or their Nominated Person/Authorised Person is managing the Direct Payment.

As part of this, we will also look at how the Direct Payment is being used to ensure it reflects your agreed support arrangements. This may include checking assessed financial contributions and any top-up payments, where these apply, to make sure everything is clear and on track. This process is separate from any review of your care and support needs (see section review and reassessment) and is there to support you to manage your Direct Payment safely and in line with your Care and Support Plan.

Financial checks will always be proportionate. This means that if all the evidence indicates you are managing the Direct Payment well and spending the money on the items and/or services that were agreed in the Care and Support Plan a simple check will be adequate.

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

If your financial circumstances change, for example a change in state benefits and/or savings, you must notify the Council within 28 days. We will work with you to understand how this affects your Direct Payment, which may lead to a review of your support arrangements.

You must keep adequate records such as timesheets, invoices, receipts, and task logs to evidence how the Direct Payment is used to meet your agreed outcomes. Keep these records for at least two full tax years, and six years where you employ staff.

The Council may ask you to provide the following information within 28 days of a request being made:

- copies of bank statements for your Direct Payment account. This will not be necessary if you have a Prepaid Card account
- evidence of the payroll service for any employees. You can do this by providing either a receipt from the HM Revenue and Customs (HMRC) for tax returns or payroll provider invoices.
- PA time sheets/task logs

- copies of invoices paid for care support - if you purchase services directly from an agency then you can send copies of invoices showing the number of care hours purchased
- receipts for goods purchased using Direct Payment monies.

Please note, those who use the Prepaid Card option should be aware that the Council will be able to monitor your account remotely.

What this means for you

- I am encouraged to use my DP flexibly and in creative ways to meet my needs and achieve the outcomes identified in my Care and Support Plan.
- I find the Direct Payment monitoring process manageable and not over-complicated or intrusive.

What this means for Kirklees Council

- We use a proportionate approach to monitoring Direct Payments focusing on whether needs and outcomes are being met rather than prescribing how they should be met.
- We work collaboratively with people to establish mutual trust and understanding regarding management of the Direct Payment.

Repaying surplus Direct Payments

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. The Council reserves the right to reclaim any unspent funds equivalent to 8 weeks of the weekly Direct Payment amount plus a quarter of your respite allowance.

The Council may request the return of surplus Direct Payment funds where there is an underspend or overpayment. This ensures public funds are used appropriately and in line with the individual's agreed Care and Support Plan. 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.

- The Council will always ensure sufficient funds remain in the account to cover agreed care and support needs, including any planned respite or one-off costs. This is ordinarily a total of 8 weeks of your Direct Payment funding plus a quarter of your respite allowance.
- Where a surplus exists, above that which has been agreed, as set out above, the Council will contact you (and/or your representative) to arrange repayment.
- If you contribute towards your care, your share of the contribution is used first to pay for the care, any remaining repayment will be returned in proportion to the amounts contributed by you and the Council.
- The Council will work with you to agree a reasonable repayment method if the account does not hold sufficient funds.

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. The Direct Payment can be used to contribute to redundancy costs of Personal Assistants but only if the insurance policy in place does not cover the full amount. Similarly, if there are unpaid invoices or staff wages, these can be paid from the unspent Direct Payment. A person's assessed contribution will be used in the first instance to pay for any outstanding invoices. Any remaining unspent money will need to be returned to the Council.

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

How long do I need to keep records?

You will need to keep records for two full tax years (The Tax Year runs April-April).

If you employ a Personal Assistant, you will need to keep records for six years.

Financial checks can feel intimidating, but the Council is committed to developing a trusting relationship with you and will always seek to request the minimum amount of information, in the first instance. This reflects Care Act Guidance which states that Councils 'must not require information to be provided more often and in more detail than is reasonably required for the purpose of enabling the authority to know that making Direct Payments is still an appropriate way of meeting the needs, and that conditions upon which it is made are being met.' (Care Act Guidance 2014).

Review and reassessment

When a new Direct Payment is set up, an initial review will take place to ensure you are comfortable using it and experiencing no initial issues, usually after six weeks.

Re-assessments of your care and support needs are expected to take place every 12 months. This is so that:

- you can reflect on how things are working.
- all parties can discuss any changes needed at this time.
- you identify the key outcomes and goals for the coming period.
- you understand whether the agreed outcomes, as set out in the original assessment, are being achieved.
- further or alternative means of increasing your independence and control over the way support is arranged including consideration of Direct Payments are fully explored.
- your Social Care Practitioner can check that the Direct Payment is being used in line with your agreed outcomes.

The Council will take all reasonable steps to reach agreement with you as to how your needs should be met.

However, reassessments can be carried out at any time if your circumstances change. This includes changes to your care and support needs, your financial situation, or your support network. If anything does change, please contact the Council as soon as possible so we can

ensure you continue to receive the right support in a safe way that promotes your wellbeing. (Contact Details - Community Health and Social Care Hub - 0300 304 5555).

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

- if it comes to attention that the qualifying conditions may no longer be met.
- there has been a change in your mental capacity.
- your 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.
- there has been a change in your financial circumstances.

A re-assessment might identify or highlight that your needs have changed. Your needs may have increased or decreased, and the updated Care and Support Plan will need to reflect all 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 by the Council.

Ending a Direct Payment

You may want to end a Direct Payment agreement because it is not working for you. If you want to do this, contact the Council, and ask for a review of your Care and Support Plan and Direct Payment. If there is a crisis, explain why and ask for the review to be undertaken urgently.

Sometimes, the Council may need to consider withdrawing your Direct Payment. This can be because your situation has changed, and it is no longer an appropriate way to meet your needs.

The Council will carry out a review and ensure any outstanding issues are dealt with. There must be no gap in the services you receive when you change from one method of support to another.

There are many different reasons why a Direct Payment may need to be ended such as, but not limited to:

- it has been used for items and/or services which the person receiving the Direct Payment cannot evidence as meeting their 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 rehabilitation.
- 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 is no longer satisfied that the Nominated Person/Authorised Person is acting in the person's best interests.
- the person has lost the capacity to consent to receiving Direct Payments (although the Council will consider making payments to an Authorised Person instead).
- the Council has evidence of financial abuse.
- the person has not told the Council, within 28 days, about an important change in circumstances which affects the Direct Payment, such as a change in benefits or savings
- 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 boundary and subject to a review, Kirklees is no longer responsible for their care
- the person has moved into residential care permanently.
- 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.
- there are safeguarding concerns/risks around the Nominated/Authorised Person.
- if following a review, the qualifying conditions for a Direct Payment can no longer be met.

Unless the legal requirements are no longer being met, Direct Payments should only be terminated as a last resort. Before that happens, you should be offered help or a revised support plan to help you manage better. Everything should be discussed with you as an equal partner in coordinating your care, in a way you understand, and with the people you trust to support you.

If the Council does need to bring the payments to an end, we will give you a reasonable period of notice. The standard is 28 days. However, sometimes what is reasonable depends on your circumstances, for example if someone is in crisis and there is an urgent need to arrange alternative care and support to keep them safe and well. In exceptional circumstances, (such as where there is an immediate risk of harm, fraud, or financial abuse) the Council may seek to end your Direct Payment with less than the standard 28 days.

If Direct Payments are discontinued, the person may find themselves with ongoing contractual responsibilities or having to terminate contracts for services (including possibly making employees redundant).

I have had a Direct Payment as a child; can I bring it with me when I become 18?

The provision of a Direct Payment changes as a young person becomes an adult, at the age of 18. Where appropriate, young people receiving Direct Payments from Children and Family Services will be referred to a transitions worker around age 17 to plan support into adulthood. A Social Care Practitioner will contact the young person / their parent or carer to arrange to meet. In some cases, a young person of 16 or 17 years may wish to take control of a Direct Payment that has been managed by their parent or carer, as part of their transition to Adult Social care. Where the young person lacks the mental capacity to consent to and manage the Direct Payment, a Best Interest decision will be made to determine who is the most appropriate person to manage the Direct Payment.

If a young person has been receiving a Direct Payment, and they have reached the age of 18, the Council is responsible for continuing to provide support whilst the assessment process is being carried out by Adult Social Care. The Care Act 2014 requires the Council to ensure there is no gap in provision. Support from Children and Family Services will continue until support from Adult Social Care is in place, or until it is clear after the assessment, that adult support does not need to be provided.

Using and sharing your personal information

To provide your Direct Payment the Council will need to share some of your information with appropriate internal and external services, including but not limited to, Financial Services, contracted providers of managed bank accounts and payroll services. Only the information necessary to facilitate and manage your Direct Payment will be shared. In rare circumstances, we may need to share other information, but this will only be in order to meet your needs, or if there is concern relating to safety, and where necessary safeguarding, fraud prevention, audit, payroll, or managed account oversight. For more information regarding how your data is used within Adult Social Care services, please see Adult Social Care Privacy Notice.

What happens if I am unhappy with a decision about my Direct Payment?

Direct Payments should always be organised in partnership with you. However, if you are not happy with a decision, you can ask for it to be looked at again. Speak to your Social Care Practitioner or their manager. If you are still unhappy with a decision, please follow the guidance below.

Adults Social Care:

The Social Care and Wellbeing for Adults Complaints Process is a simple way for you to ask for a decision to be reviewed.

Should the complaint investigation deem that the process has not been followed properly, we will take action to put things right.

Kirklees Council Adult Social Care Complaints

Email: SSCU@kirklees.gov.uk
Adult Social Care Customer Services,
PO Box 1720,
Huddersfield,
HD1 9EL
Tel: **01484 225115**