



Direct Payments Policy

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Introduction

Kirklees Council offers Direct Payments to give people greater choice and control over how their care and support is arranged.

A Direct Payment is a sum of money paid by the Council to you, or someone acting on your behalf, enabling you to organise your own care and support rather than having services arranged directly by the Council. You can also choose to receive a Direct Payment alongside care and support organised by the Council. This will be discussed, with you, by your Social Care Practitioner.

This policy sets out the conditions under which Direct Payments are agreed and managed.

This policy is made in line with:

- the Care Act 2014
- The Care and Support Statutory guidance (Care Act 2014)
- the Care and Support (Direct Payments) Regulations 2014
- the Mental Capacity Act 2005
- Section 117 of the Mental Health Act 1983

This policy must be read alongside the Direct Payments Guidance, which explains how the policy works.

What is a Direct Payment?

A Direct Payment is money the Council contributes so you can arrange your own care and support instead of the Council organising it for you. It is designed to give you more choice, flexibility, and control so you can find support that suits your needs and helps you live independently.

As part of setting up a Direct Payment, you (Nominated Person/Authorised Person) will sign a formal agreement called a Direct Payment Agreement. This sets out your responsibilities, including how you manage and record spending, and your duties as an employer if you choose to hire a care worker.

Who can get a Direct Payment?

You can get a Direct Payment if all the following apply:

- you have the mental capacity and ability to request and manage a Direct Payment, or arrangements are in place for an Authorised Person to do so in your best interests under the Mental Capacity Act 2005.
- you have eligible care and support needs.
- you have a Care Act assessment, Personal Budget and Support Plan.
- you qualify for Council funding following a financial assessment.
- as part of developing your Care and Support Plan it has been jointly agreed a Direct Payment will help meet your needs.



However, there are certain circumstances where the law prohibits the Council from offering a Direct Payment. This includes situations where an individual is subject to specific criminal justice circumstances, such as being on licence following release from prison, or where they must comply with drug or alcohol testing, treatment, or rehabilitation programmes as part of a community order or suspended sentence. These restrictions will be considered from the outset.

It is a condition of a Direct Payment that it must be managed safely, if this condition cannot be met, you will not be eligible for a Direct Payment, and the Council will arrange services directly to meet your needs.

What if I need support managing my Direct Payment?

Nominated Person

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

The Council must be satisfied that the Nominated Person is suitable and capable of managing the Direct Payment, and will 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, payroll provider, or paying themselves, unless explicitly approved by the Council due to identified need or where permitted (e.g. an appointed solicitor).

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 or 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.

Restrictions on managing a Direct Payment

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

- Bankruptcy orders (undischarged bankrupts)
- Debt Relief Orders (DROs)
- Receiving Orders
- Interim Orders under the Insolvency Act

How much will my Direct Payment be?

Your Direct Payment will be based on your Personal Budget, which is set following your Care Act assessment and is sufficient to meet your eligible needs and agreed outcomes depending on individual circumstances.

You may need to contribute money towards the cost of your care following your financial assessment.

If you choose care or support that costs more than your agreed personal budget, you will be responsible for ensuring these additional funds are added to your Direct Payment account.

What can I spend my Direct Payment on?

A Direct Payment must be used to meet your assessed needs and agreed outcomes, that are set out in your Care and Support Plan (or the plan of the person you support).

Direct Payments may be used flexibly to arrange care and support that meets your assessed eligible needs and agreed outcomes, as set out in your Care and Support Plan (or the plan of a person you support), which is agreed with the Council through the care planning process. They are intended to provide you with choice and control over how your support is arranged.

All expenditure must be necessary, appropriate, lawful, and proportionate, and must be agreed by the Council as part of your Care and Support Plan.

Direct Payments cannot be used for:

- Council-run services, NHS services, or housing/benefit costs
- Long-term residential care
- Everyday living costs (e.g. rent, bills, food)
- Alcohol, tobacco, gambling, debts, or fines
- Anything illegal, or not agreed in your plan
- Paying close family, you live with to support you (unless approved)
- Care or services outside the UK (unless approved)



Arranging support and employing staff

Direct Payments can be used to employ a Personal Assistant or purchase support from a provider. Where you employ staff directly, you (or your Nominated Person/Authorised Person) are their employer and responsible for meeting employer duties. Information and advice on these responsibilities is provided in the Direct Payments Guidance.

Monitoring and review

The Council monitors Direct Payments to ensure they continue to meet your needs. Your Care and Support Plan will be reviewed by the Council within the first three months, and then at least annually.

Your Care Act review looks at whether the outcomes identified in the care plan are being met. It will also review these goals to make sure they're still appropriate (and for instance, that your care and support needs haven't changed), and check that any risk assessments are up to date.

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 the individual or their Nominated Person/Authorised Person is managing the Direct Payment.

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

If it comes to attention that any conditions are no longer being met, the Council is required to review the Direct Payment to establish whether it can continue.

Repaying money to the Council

The Council may recover Direct Payment funds where they have not been used appropriately or where there has been an overpayment. The Council will explain any decision to recover funds and agree a reasonable approach to repayment with you.

If the Direct Payment money starts to build up because it is not being used, the Council will get in touch to talk about why this is happening and to make sure that everything is ok. The Council reserves the right to reclaim any unspent Direct Payment funds plus a quarter of your annual respite allowance.

If you are assessed to pay contributions towards the cost of your care, any further repayment will be shared between you and the Council, based on the proportion each has paid in.



Ending a Direct Payment

A Direct Payment can be ended at your request or by the Council where it is no longer appropriate.

Please speak to the Community Health and Social Care Hub as soon as possible if you are thinking of ending your Direct Payment arrangement.

The Council is required to end the Direct Payment following a review, if the qualifying conditions are no longer met. This may include where:

- it is no longer being used as agreed
- it cannot be managed safely
- circumstances have changed

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

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](#).