

DIRECT PAYMENTS POLICY GUIDANCE (ADULTS)

(June 2016)



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Foreword

This is Nottingham City Council's Policy and Guidance for Direct Payments. It aims to provide practical assistance to all Adult Social Care colleagues and managers in the implementation of Direct Payments within the City of Nottingham.

Please note there is separate guidance covering Children's Services

The guidance was originally refreshed in preparation for implementation of the Act in April 2015.

Following the learning since implementation, this guidance was reviewed and updated after 6 months and is now reviewed annually. If the version identified on the front cover is older than 12 months then please ensure it is the latest version from the Direct Payment intranet page.

All up to date Direct Payments forms can be found on the Direct Payment Intranet page.

In addition to this guidance you can gain advice and support from:
Direct Payments Lead Officer or Direct Payments Team:
Email: dpo@nottinghamcity.gov.uk

If you have any comments or suggestions in light of using this Guidance please send to the Direct Payments Lead: dpo@nottinghamcity.gov.uk

Please do not save this document separately as the current version is available on the Adult Assessment Direct Payments page on the intranet.

<http://gossweb.nottinghamcity.gov.uk/nccextranet/index.aspx?articleid=19319>

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SECTION 1

INTRODUCTION

1.1 Legislation

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1 INTRODUCTION

1.1 Legislation

The Law Commission completed a review of social care legislation in 2010 which informed the development of the Care Act 2014.

- 1.1.1 The **Care Act 2014** brings together all previous social care legislation from the **National Assistance Act 1948** through to **Health and Social Care Act 2008** under one Act with sections 31, 32 and 33 relating specifically to Direct Payments and reinforces the duty to offer a Direct Payment. *These particular sections of the legislation replace the Community Care (Direct Payments) Act 1996 and subsequent regulations or statutory instruments through to 2009.*
- 1.1.2 The **Children & Families Act 2014** introduced new legal duties relating to children and young people with special educational needs and/or disabilities (SEND). The Act requires Local Authorities and the NHS to jointly plan and commission services, introduces a right to a Personal Budget for all children and young people who have an Education Health & Care Plan (EHCP) and assessment and planning is required from age 0 to 25 to help avoid the often difficult experience of transition from children's to adult services.
- 1.1.3 The **Care and Support Statutory Guidance 2014** supersedes the 2009 guidance on Direct Payments, and reflects the new legislative framework.

1.2 National Policy

- 1.2.1 During the 1980's/90's disabled people and disability rights groups campaigned for enshrined rights, along with more choice and control over their own lives. With a gathering weight of evidence and increasing pressure on successive governments the Community Care (Direct Payments) Act 1996 was given Royal Assent with implementation in 1997.
- 1.2.2 The principles that underpin Personal Budgets and enshrined in Self Directed Support have been at the core of government policy for social care ever since.
- 1.2.3 Successive policies such as, Valuing People 2001, Life Chances of Disabled People 2005, Our Health, Our Care, Our Say 2006, Putting People First 2007, National Carers Strategy 2008, Valuing People Now 2009, A Vision for Adult Social Care 2010, Capable Communities and Active Citizens 2010, reinforced the principles of a personalised and community based approach for everyone.
- 1.2.4 The "Think Local, Act Personal Partnership Agreement", published in November 2010 and finalised in January 2011, outlines the next steps that local authorities should take for Transforming Adult Social Care. It states that, "people eligible for ongoing City Council social care funding should receive this via a Personal Budget (either as a Direct Payment or a managed account) allowing them to exercise the same amount of choice and control as those who pay for their own care and support." It adds that "those who are eligible for ongoing City Council funding will receive this by way of a Personal

Budget, with Direct Payments as the delivery model for most, backed by appropriate local support to allow people to benefit from the flexibility that such payments offer.”

- 1.2.5 The Care Act 2014 reinforces all these principles and brings together all previous legislation to ensure that local authorities are clear in their responsibilities for personalised care or support for those people eligible for City Council funding. All eligible Citizens will have a **Personal Budget** and the government’s preferred means for Citizens receiving their Personal Budget is through a Direct Payment.

1.3 Nottingham City Council Policy

- 1.3.1 The City Council’s policy is to adhere to all the requirements under the Care Act 2014 and Care Act Guidance to ensure that all eligible Citizens are supported to access Direct Payments if that is their wish or in their best interests.
- 1.3.2 To use the guidance and protocols contained within this document to enable City Council colleagues to implement the use of Direct Payments.
- 1.3.3 To use such forms as are necessary to provide evidence and information that enables a Direct Payment to be made.
- 1.3.4 To ensure the City Council Direct Payments Guidance is congruent with other City Council policies and procedures.

1.4 Eligibility for a Direct Payment

- 1.4.1 Any adult who has needs that meet the appropriate threshold for provision of social care as defined in Care Act 2014 can request a Direct Payment in order to meet their assessed needs.
- 1.4.2 In order to determine that a Citizen meets the threshold an assessment of need has to be undertaken.
- 1.4.3 It is expected that most requests to receive Direct Payments will occur during the care planning stage as this is when we **must** inform the person of the needs that could be met via Direct Payments.

*The gateway to receiving a Direct Payment **must** always be through the request from the person. It is important that Citizens are fully aware of the options open to them so that they can make such choices.*

*Local authorities **must not** force people to take a Direct Payment against their will, or allow people to be placed in a situation where the Direct Payment is the only way to receive personalised care and support.*

- 1.4.4 The steps to follow after receiving a request for a Direct Payment will depend on whether the Citizen has been assessed as having capacity to make a decision about Direct Payments or not, and this should have taken place within the assessment of needs. (see Section 2)

1.5 Receiving a Direct Payment

- 1.5.1 Citizens can decide whether to receive Direct Payments so that they can purchase some or all of their community care services, which will meet their assessed needs and agreed outcomes.

Typical needs and tasks which can be met via Direct Payments include:

Assistance with personal care such as dressing, eating, washing and bathing, getting in and out of bed, and moving around the home. This can also include meeting the person's personal care needs when they are outside the home at leisure or social activities.

Assistance with their personal care may be provided as part of their educational or employment support arrangements, and this should be pursued with the College/University or with their employer.

Assistance with domestic care such as cleaning and tidying, cooking and preparing meals and washing up, essential laundering and ironing and essential shopping.

Supporting Social activities.

Specialised needs, such as a guide-communicator for a deaf/blind person or a person who has challenging behaviour.

Small aids and adaptations, which come within the legal definition of community care services but not services and equipment that would otherwise be arranged by other authorities (e.g. NHS or Housing Department - Direct Payments are not a substitute for Disabled Facilities Grants). (see Section 15)

Care Breaks, which could be care at home or provided in a residential setting.

*Short stay/respite in residential home
(Someone in long-term care can have temporary access to a Direct Payment if this is part of trying out the possibility of independent living)*

1.5.2 Payments **must not** be used for meeting Health Care needs. The Health Authority may provide Direct Payments via a Personal Health Budget and it is possible to combine the Direct Payment and personal health budget to ensure seamless services.

1.5.3 The amount of Direct Payment **must** be sufficient to meet the agreed care or support needs and will include any additional costs such as liability insurance, National Insurance, pension, support to manage the Direct Payment, employment support, recruitment costs, etc.

These 'sufficient costs' have been calculated and agreed by Senior Leadership Team and are reviewed at least annually, but one off payments for particular needs that are not part of the sufficient costs calculations can be requested upon evidence of need.

Contingencies should be considered to cover things like Personal Assistants sickness, maternity, holiday etc

Funding provision for Personal Assistants redundancies will be dealt with separately by Direct Payments Team.

1.5.4 The City Council promotes the use of the NCC DP Payment Card Account and it is expected that this is the default position for citizens wishing to receive a Direct Payment.

Key Benefits:

- In the past people receiving a Direct Payment had to open a separate bank account to pay for their support, with the Nottingham City Direct Payment Account, there is no need to open a separate bank account.
- It reduces paperwork for the citizen as they will not be required to submit regular monitoring about their care spending;
- Citizens have the option of banking online, paying by direct debit, standing order or by card;
- It gives the authorised or nominated person access to the card account so that they can look after the citizen's finances and speak directly with the DP Team if needed.
- The City Council will make all of the arrangements for issuing the card and will assist with activating the account.

1.5.5 The City Council expects all citizens in receipt of Direct Payments to have Payroll provision from one of the Framework providers. A citizen may choose a Payroll provider who is not on the Framework, but the City Council will need to be assured that the provider is able to meet the requirements expected of Framework providers.

In exceptional circumstances the City Council will agree to the citizen undertaking their own payroll responsibilities, but requests for this will need to be approved by Adult Panel following discussion and agreement with the Direct Payments Team.

1.5.5 Where two partners who live together have social care needs funded by Direct Payments and have joint care/support then they must be considered as two separate recipients of Direct Payments to avoid complications if either care/support package needs to end or change.

1.5.6 A copy of the care/support plan **must** be given to the Citizen.

SECTION 2

ASSESSING THE CITIZEN'S ABILITY TO MANAGE

2.1 Considerations

2.2 Adults with capacity

2.3 Adults without capacity

**2.4 Issues Applicable To All Potential
Direct Payments Recipients**

2. ASSESSING THE CITIZEN'S ABILITY TO MANAGE

2.1 Considerations

2.1.1 It is essential to know if the Citizen has the capacity to make a decision about having a Direct Payment and therefore if they are able to manage the Direct Payment with support if necessary.

Lacking capacity to manage a Direct Payment does not automatically exclude the Citizen from receiving one as the management of the Direct Payment can be done by others on their behalf e.g. family member, trusted friend, Third Party Support Service, circle of support, Nominated person, Authorised Person etc.

2.1.2 While capacity is 'assumed' under Mental Capacity Act (MCA), it is still important, as part of the needs assessment to consider if there are any concerns about the Citizen's capacity.

If any concerns arise then a capacity assessment will be required specific to the decision they are to make.

If a Citizen subsequently loses their capacity then a review will be required and then the process for a Citizen without capacity will apply.

2.1.3 It is important that Citizens requesting Direct Payments have the fullest possible understanding of what receiving Direct Payments entails, so they can make an informed choice. This should include encouraging use of Third Party support services, voluntary sector services, City Council information, national leaflets, internet information sites etc. Time should also be allowed for people to consider their options.

2.1.4 However, an emphasis on 'understanding' may disadvantage some Citizens. The Government has stated that "Local Authorities should make Direct Payments to anyone who is able to manage them (alone or with assistance). The presumption should be that a person will (with assistance if necessary) be able to manage Direct Payments unless there are compelling reasons to conclude that they are not." Within the Care Act the use of a '**Nominated person**' for those with capacity and an '**Authorised Person**' for those who lack capacity has been included.

2.2 Adults with Capacity

2.2.1 If it is deemed that the Citizen has capacity to make a request for Direct Payments the following four conditions **must** be satisfied.

1. The adult has capacity to make a request, and if there is a Nominated person, that person agrees to receive the payment.
2. The local authority is not prohibited by regulations under section 33 of the Care Act from meeting the adult's needs by making Direct Payments to the adult or Nominated person. This refers to cases or circumstances in which a local authority must not provide Direct Payments, or cases or circumstances in which it has the discretion to decide not to, meet needs by making Direct Payments. Direct Payments cannot be made to people

subject to a court order for a drug or alcohol treatment program or similar schemes.

3. The Citizen or Nominated person is capable of managing Direct Payments, either by themselves or with support that the City Council considers to be appropriate to help manage the payments.
4. Making Direct Payments to the Citizen or Nominated person is an appropriate way to meet identified needs.

If one of the conditions is not fully met, this would result in declining the request for Direct Payments:

If one or more of the conditions is no longer met the City Council must terminate the making of Direct Payments.

The **Nominated Person** will be the designated card holder and not the citizen receiving care. Any change in the named card holder will require a new agreement to be signed.

2.3 Adults lacking Capacity

2.3.1 If it is deemed that the Citizen lacks capacity to make a request for Direct Payments, an **Authorised Person** can request the Direct Payment on the Citizen's behalf. In this case five conditions must be satisfied.

1. Where the person is not authorised under the Mental Capacity Act 2005 (does not have capacity) but there is at least one person who is so authorised, that person who is authorised supports the person's request
2. The local authority is not prohibited by regulations under section 33 Care Act from meeting the adult's needs by making Direct Payments to the Authorised Person, and if regulations under that section give the local authority discretion to decide not to meet the adult's needs by making Direct Payments to the Authorised Person, it does not exercise that discretion.
3. The local authority is satisfied that the Authorised Person will act in the adult's best interests in arranging for the provision of the care and support for which the Direct Payments under this section would be used.
4. The local authority is satisfied that the Authorised Person is capable of managing Direct Payment by himself or herself, or with whatever help the authority thinks the Authorised Person will be able to access.
5. The local authority is satisfied that making Direct Payments to the Authorised Person is an appropriate way to meet the needs in question.

If one of the conditions is not fully met, this would result in declining the request for Direct Payments:

If one or more of the conditions is no longer met the City Council **must** terminate the making of Direct Payments.

A person is an **Authorised Person** for these purposes if—

(a) the person is authorised under the Mental Capacity Act 2005 to make decisions about the adult's needs for care and support,, or

(b) where the person is not authorised as mentioned in paragraph (a), a person who is so authorised agrees with the local authority that the person is a suitable person to whom to make direct payments, or

(c) where the person is not authorised as mentioned in paragraph (a) and there is no person who is so authorised, the local authority considers that the person is a suitable person to whom to make direct payments.

The **Authorised Person** will be the designated card holder and not the citizen receiving care. Any change in the named card holder will require a new agreement to be signed.

2.4 Issues Applicable To All Potential Direct Payments Recipients

2.4.1 Assessing whether the Citizen can manage may involve considering a range of support options, including delegating many of the tasks to a local support scheme or another third party. These options are open to all, not just to those with more severe levels of disability.

2.4.2 In some circumstances it may be appropriate to set up a formal trial period to give the Citizen the opportunity to test out their ability to manage (with or without help). Whilst such an arrangement may be helpful, it is important to consider whether this will pose difficulties for the Citizen in terms of recruiting staff and the potential upset of the trial period not being extended.

2.4.3 Considerations for Direct Payments must be handled sensitively and involve provision of information and assistance.

***Where accepted**, the decision should be recorded in the care plan, or support plan.*

***Where refused**, the person or person making the request should be provided with written reasons that explain the decision and this should be communicated clearly to them in writing.*

The Citizen should be informed they can use the complaints procedure to appeal this decision. (see section 11)

2.4.4 The original national guidance on Direct Payments emphasised that users could delegate management of Direct Payments, but “must remain in control of the arrangements”. The newer, more inclusive, emphasis is on the user’s “ability to express preferences”. This suggests that the Citizen may not need to be able to exercise detailed scrutiny over the third party’s actions. Nevertheless any support arrangements must be robust and capable of reflecting changes in the Citizen’s view and must be seen to minimise the possibilities of abuse.

2.4.5 The Care and Support (Direct Payments) Regulations 2014 excludes the Direct Payment from being used to pay for **care** from a close family member

living in the same household or someone else living in the same household except where the City Council determines this to be necessary. It provides a distinction between ‘care’ and ‘**administration/management**’ of the direct payment.

The regulations now allow citizens to pay a close family member living in the same household or someone else who may also be living in the same household to provide **management and/or administrative support** to the direct payment holder in cases where the City Council determines this to be necessary. It would be expected that this would be in such circumstances where the support needs of the citizen required the organising of complex care and support which is complicated and time consuming.

This is not intended to be income replacement for the family member, and citizens interested in requesting this option should be informed of tax and employment implications, along with any impacts upon other benefits and given (or signposted to) information and advice to help them decide. The City Council must be satisfied that it is necessary to make the payment to the family member to provide this service and that the direct payment will only be used for administration and management of the payment.

The emphasis is that **the City Council determines it to be necessary** so Adult Panel would require evidence to show:

- Why it is necessary,
- That the citizen (or jointly with the family member) is requesting payment to the family member to provide the management and/or administrative support
- That the family member can manage the payments and provide the management or administrative support for the support required.
- That the family member’s role in managing the support does not conflict with the citizen’s ability to exercise choice and control over their support.

Any such agreement for payment to the family member needs to be clearly detailed and recorded within the citizen’s care/support plan and is approved by Adult Panel.

2.4.6 It is important to give Citizens, Nominated or Authorised persons clear advice as to their responsibilities when using Direct Payments to employ Personal Assistants, such as the need to register with Her Majesties Revenue & Customs (HMRC) as an employer. Becoming an employer carries with it certain responsibilities and obligations, in particular to HMRC and Citizens need to be aware of these before agreeing to take up a Direct Payment.

2.4.7 The City Council must also ensure that the Citizen, Nominated or Authorised Person is aware of how to access Disclosure and Barring Service Checks (DBS – previously CRB checks) on individuals they wish to employ, for example by ensuring that a check has been made by the agency providing the service, the local authority, or by another body.

<https://www.gov.uk/government/organisations/disclosure-and-barring-service>

(Individuals cannot apply for DBS checks on other individuals, and the City Council or support service should make people aware of this and the importance of thorough checks and employment references in the recruitment process.)

- 2.4.8 When it is deemed that Citizens or their Nominated or Authorised Person will need support with managing elements of their Direct Payment then support options must be discussed. (see section 13)
- 2.4.9 If upon review the City Council has concerns that the Direct Payment is no longer meeting needs, not being used appropriately or the account is not being managed appropriately then the City Council can take reasonable steps to address the situation (see section 10).
- 2.4.10 It is important to ensure that citizens are completely clear that they cannot use their Direct Payment for anything other than their agreed care or support as stated in their Support Plan.

For example: Citizens cannot use their DP funding to pay for their shopping.

This is a breach of their agreement with the City Council and we will take action to retrieve the misspent monies. More importantly it means the citizen has not received the appropriate care and support identified as being needed in their Support Plan.

SECTION 3

CALCULATING THE AMOUNT OF A DIRECT PAYMENT

3. CALCULATING THE AMOUNT OF A DIRECT PAYMENT

3.1. It is important to remember that the needs assessment is exactly the same, whether it is for arranged services or Direct Payments. It is not an opportunity to give the Citizen more than they actually need, although Direct Payments can enable those needs to be met in a more imaginative way.

3.1.1 Having completed an assessment of need and developed a care or support plan, assessors need to calculate the average number of weekly care hours for which funding is sought, or the cost of any alternative arrangements, such as respite care or equipment. Once the package of care has been approved the weekly cost will be paid as a Direct Payment.

3.1.2 It is possible for a Citizen's Personal Budget to be split between a number of payment methods, a Citizen therefore may have a package that is made up of Direct Payments and commissioned services. Direct Payment costs will be paid directly to the Citizen or to a third party support, whereas commissioned services will be paid directly to the provider. Therefore, the value of a Citizen's Personal Budget and the value of the Citizen's Direct Payment may not be the same.

3.2 **Standard** rates of payment have been calculated in order to cover the gross cost of employing personal assistants and these should be used to calculate the cost of the care package. The hourly rate payable to the personal assistant will need to be set to ensure that holiday pay is covered within the agreed budget. The amount paid to Personal Assistants will differ from the amount used to calculate the value of the Direct Payment.

3.2.1. The Citizen cannot agree an increase in the rate of pay with their Personal Assistants unless they are paying the difference themselves or it has been agreed by panel. Increased rates of pay will impact upon the amount needed to cover holiday payments.

Should the citizen wish to pay a higher than agreed rate of pay, it must be agreed with the Direct Payments team first.

3.3 **Enhanced** rates of pay for a Personal Assistant can be negotiated in order to meet particular needs e.g. guide communicator for a deaf-blind person, nursing intervention, high level of support for behaviour that challenges services etc, but will need approval from Adult Panel.

Requested enhanced payment rates for Personal Assistants will be considered under the following criteria:

3.3.1 Specialised skill set to enable meaningful communication to take place with the citizen. This will be considered in circumstances where the PA caring for the citizens requires a qualification for example BSL or where the PA has had to develop an in-depth understanding and professional relationship with the citizen to understand non-verbal clues or verbal prompts)

- 3.3.2 Specialist skill set to complete a health/caring/support/urgent intervention/task that requires competency sign off from a professionally qualified colleague (i.e. Nurse, Occupational Therapist, Psychologist etc.)
- 3.4 Any National Insurance contribution will be calculated and paid separately to the hourly Personal Assistants rate. Where there is more than one Personal Assistant employed, all NI contributions are calculated assuming that there is an even split in hours. If the hours are not split evenly the Direct Payment Officer should be contacted about this.
- 3.5 Contingency payments should be discussed between the Citizen and the Social Care Practitioner to cover the cost of any short term breakdown of the regular support. Contingency payments will be held by the City Council and released upon request.
- 3.6 Direct Payments can include one off or annual costs such as third party support fees and Employment Liability Insurance. These costs will be used in calculating the value of the Direct Payment. Transactional charges and issue fees will be included in the cost of the Direct Payment.
- Where NCC Account Cards are lost or stolen the cost for a replacement card will usually be met by NCC, however NCC retain the right to require the replacement cost to be met by the card holder.*
- 3.7 When the Direct Payment is used to purchase a service directly from a provider (e.g. homecare agency, day centre placement) the value of the Direct Payment will be calculated using the chosen provider's agreed rate. If the provider then increases their rate(s) it is the responsibility of the Citizen or third party support provider to inform the City Council.
- 3.8 Direct Payment funds can be used flexibly to meet agreed needs but the Citizen or third party support providers have a responsibility to ensure that the continued cost of the care can be met by the Direct Payment.
- 3.9 Any set rates will be reviewed annually.



SECTION 4

ASSESSING THE CITIZEN'S FINANCIAL CONTRIBUTION

4. ASSESSING THE CITIZEN'S FINANCIAL CONTRIBUTION

- 4.1 For all applications, the Citizen must be given the opportunity to have a financial assessment by the Fairer Charging team.

If the Citizen declines to have a financial assessment they will be expected to contribute (under the current charging policy for Direct Payments) up to the maximum value of the package, excepting traditional day care and transport, which are subsidised by the City Council.

- 4.2 The purpose of the financial assessment is to determine if Citizens have the financial capacity to contribute towards the costs of their care/support package.
- 4.3 The financial assessment process will also include looking for opportunities, on behalf of the Citizen, to maximise their income via entitlements to additional benefits.
- 4.4 Once the needs assessment and eligibility threshold have been completed, the process for financial assessment will be that the social care practitioner will send a Fairer Charging request via CareFirst during preparation of the Panel Authorisation Form.
- 4.5 The outcome of the financial assessment will be given to the Direct Payments Team, who will then calculate the cost of the Direct Payment and contributions (if any) from the Citizen.
- 4.6 Upon completion of the Direct Payments Agreement (DP2), bank details form (DP4) and receipt of an authorised Panel Authorisation Form (PAF), the Direct Payments Team will make the appropriate payment to the Citizen.
- 4.7 The consequences of the Citizen not making their financial contribution will mean that there are insufficient funds to meet their agreed needs and outcomes.

It does not demonstrate ability to manage their Direct Payment and therefore would most likely lead to the cessation of their Direct Payment and a move to a directly commissioned service. (See Section 10)

SECTION 5

AUTHORISATION

5.1 Authorisation Process

5.2 Direct Payments Funding

5 AUTHORISATION

5.1 Authorisation Process

- 5.1.1 All care or support packages must be approved via the City Council Adult Social Care (ASC) Panel Process by the appropriate person in line with the current Constitution.
- 5.1.2 Temporary care/support via a Direct Payment should not include employment of Personal Assistants as this could have costly employment implications but can be used to buy services directly from a provider so as to meet the Citizen's needs and outcomes until a permanent package of care/support is agreed.
- 5.1.3 After panel authorisation, the Direct Payments Officer requires confirmation from the panel before Direct Payments funding can commence.
- 5.1.4 Until a decision by the panel has been made, the Citizen or representative should not be informed of any outcomes regarding the funding level of their care/support package as this can raise expectations that are then not met.
- 5.1.5 The Social Care Practitioner should then liaise with the Direct Payments Officer regarding the commencement date of the funding (i.e. once personal assistants have been recruited and the Citizen has an agreed start date).
- 5.1.6 All relevant paperwork will also be required to be completed prior to payments commencing. (see Section 7 Agreement with Citizen)
- 5.1.7 Until approval has been given and a start date agreed no services should be started. The City Council will not be responsible for any costs accrued prior to approval.
- 5.1.8 Care/Support Packages may be backdated in exceptional circumstances where approval was sort outside the normal process or where there is a delay in starting a payment.
- 5.1.9 Where exceptional one-off expenditure is required, e.g. respite care at short notice, e-mailed approval from the approver can be used in place of the official paperwork which must be completed as soon as possible. All approvals will still need to meet the Constitution.

5.2 Direct Payments Funding

- 5.2.1 Direct Payments funding is simply an alternative means for paying for care and no additional budget resources are available.
- 5.2.2 Direct Payments costs will be met by transferring budget allocations from other service budgets.
- 5.2.3 The value of the Direct Payment will be included within the calculation of the Citizen's Personal Budget.



5.2.4 The cost of any support service assistance is to be included as part of the Direct Payment. The City Council should not receive invoices for these services.



SECTION 6

METHOD OF PAYMENT

6 METHOD OF PAYMENT

- 6.1 Payments will be made on a 4 weekly basis. One-off payments and back dated payments at the start of a care/support package will be made weekly and cover periods up to the start of the next regular payment.
- 6.2 Payments will be made net of any assessed contribution, the Citizen will be responsible for ensuring any contribution is paid into the Direct Payments account.
- 6.3 The Citizen will be responsible for ensuring any care/support provided as part of the Direct Payments package is paid for directly to the Provider. The City Council should not receive invoices for this care.
- 6.4 Where a Citizen needs assistance with managing some or all aspects of their Direct Payments they may engage the service of a third party to do so. This third party may be a Direct Payments Support Service, a Nominated Person or an Authorised Person
- 6.5 If a Direct Payments package is mismanaged or the Citizen's capacity to manage changes the City Council may need to move the account to a third party to be involved. Continued problems may cause the Direct Payments to be stopped and alternative service provision put in place.
- 6.6 Payments are made 4 weeks in advance and cover the agreed level of care. Any additional care requested by the Citizen without approval will not be covered and the Citizen will be responsible for costs over the agreed value of the Direct Payments.
- 6.7 Payments to personal assistants by the Citizen can only be made by cheque, standing order, or possibly online banking arrangements. No cash/debit card should be in operation on the Direct Payment bank account. **PAYMENTS TO PA's SHOULD NOT BE MADE BY CASH.**
- 6.8 A new NCC Card Account will be opened on behalf of the citizen by NCC. All payments will be made into this account. A card will be generated by the card provider and sent directly to the card holder for activation.
- If the citizen insists that they retain/maintain their own bank account the practitioner will need to consider if this is appropriate and advice should be sought from the DP Team. In these circumstances a separate bank account must be set up and maintained for Direct Payments by the Citizen. The payment is made directly into the Citizen's bank account by Bankers Automated Credit System (BACS). In exceptional circumstances and on production of quotes or invoices one off payment may be made into a Citizen's personal bank account. The citizen must be reminded of the advantages of having the NCC Card Account.
- 6.9 No payment can begin without all relevant paperwork having been completed. The paperwork will vary dependant on the duration and management of the requested package of care.

SECTION 7

AGREEMENT WITH CITIZEN

7 AGREEMENT WITH CITIZEN

7.1 The Citizen or their Nominated Person or Authorised Person will be required to agree and sign the Direct Payments Agreement (DP2) form, confirming they accept their responsibilities and the conditions under which a Direct Payment is being made. They will have responsibility for:

- ensuring their assessed needs are met
- making HMRC payments
- making assessed contributions where necessary
- maintaining contingency plans
- where using self-employed Personal Assistants, ensuring they understand HMRC guidance about the appropriateness of self-employment for some jobs <http://www.hmrc.gov.uk/calcs/esi.htm>
- informing their Personal Assistants that payslips may be shared with Nottingham City Council for audit and fraud prevention purposes and that this will be confidential and not used for any other purpose than verifying tax and national insurance is being paid
- employment - Citizens should be offered the choice of using a payroll service to look after tax and National Insurance.
- health and safety of their employees
- employer's liability insurance
- maintaining a separate bank account for Direct Payments
- providing monitoring information
- advising Nottingham City Council of any changes in your circumstances that lead to an increase or decrease in support. Such as:
 - *Care needs either increasing or decreasing*
 - *If you are struggling to make your assessed contribution*
 - *Having insufficient funds to meet your care needs commitments*
 - *Admission to hospital, where you expect this will be greater than 4 weeks*

7.2 Where the Nominated or Authorised Person is taking on the whole or greater part of the management of the Direct Payment, they are required to sign the DP2 agreeing to comply with the agreement. *(A Managed Account provider will not be the Nominated or Authorised Person)*

The section within the DP2 relating to NCC Card Accounts must be completed by the card holder.

- 7.3 There will be a responsibility on the City Council to make prompt payments, assist with difficulties in managing finances and to review regularly that the person's needs are being met. The first Direct Payments review will take place within 6 months of implementation and every 12 months thereafter.
- 7.4 A care/support/direct payments/financial review may need to be arranged if circumstances change.
- 7.5 The agreement (DP2) will also contain details of the circumstances under which payments may be recovered. (See Section 8).
- 7.6 This agreement can be terminated by either party giving one month's notice. The Department may seek an immediate termination in exceptional circumstances of risk to the Citizen or fraud.
- 7.7 When a Direct Payment is terminated, the Social Care Practitioner will need to arrange for services to be provided to meet the assessed needs of the Citizen.
- 7.8 Any matters arising, which are not covered in the guide will be resolved by reference to **(a)** the policy principles set out in this guidance and **(b)** applicable Policy and Practice Guidance from national government.
- 7.9 The City Council will ensure that adequate advice is given to Citizens around becoming an employer, including appropriate advice explaining the difference between a regulated and unregulated provider, so as to help the Citizen make an informed decision.
- 7.10 The City Council will provide clear advice as to the Citizen's responsibilities when managing Direct Payments and whether they need to register with HMRC as an employer.
- 7.11 The City Council will fund any on-costs for employing a Personal Assistants and any reasonable costs for providing training as will be necessary for carrying out their caring / support responsibilities. The City Council will also meet any set-up costs for using a third-party provider for payroll, employment support or a managed account.
- 7.12 The City Council will provide payments to a close family member living in the same household or someone else who may also be living in the same household to provide **management and/or administrative support** to the direct payment holder in cases **where the City Council determines this to be necessary**. (see Section "2 (2.4.5)

The level of payment would be similar to what the council would expect to pay for Direct Payment third party support organisations that are on the City Council's Framework contracts but allowing for the fact that there will be not be the overheads that a support organisation would have.

Specific responsibilities as laid out in the DP2

YOUR RESPONSIBILITIES

1. To use the direct payment (including your own financial contribution) to employ personal assistants or an independent agency to meet your assessed need as identified in your care/support plan and agreed with your social care practitioner.
(Direct Payments cannot be used to employ relatives living in the same household or anyone else who lives in the same household to provide care)
2. You are strongly advised to make contingency plans in the event that your regular support package breaks down. E.g. Your PA is ill, your PA gives notice.
3. To ensure that you make your assessed financial contribution following your Fairer Charging assessment.
(Failing to make your financial contribution may lead to suspension or termination of your direct payment)
4. To fulfil your statutory responsibilities as an employer if you are employing personal assistants. These include paying minimum wage, deducting tax and national insurance, taking out employers and public liability insurance, paying holiday and sick pay, pension provision and ensuring a safe working environment, It is your responsibility to gain advice about your obligations as an employer.
5. When you are using self-employed personal assistants you must check government advice on the HMRC website <http://www.hmrc.gov.uk/calcs/esi.htm>
(You can get assistance from either your independent support service or the council's Direct Payments Team)
- 6 NCC will open and provide you with an NCC Card Account (bank account) for your direct payment, however where you have opted to open your own nominated bank account this account should be used for the sole purpose of you direct payment monies. *(Payments to Personal Assistants must not be made by cash)*
- 7 To keep records of any payments including to personal assistants, agencies, HMRC etc and to provide the council with the appropriate financial monitoring forms when requested.
- 8 To inform personal assistants that payslips may be shared with Nottingham City Council for audit and fraud prevention purposes and that this will be confidential and not used for any other purpose than verifying tax and national insurance is being paid.

- 9 To advise the council of any changes in your circumstances that lead to an increase or decrease in support or eligibility for Direct Payments.
Such as:
- *Care needs either increasing or decreasing*
 - *If you are struggling to make your assessed contribution*
 - *Having insufficient funds to meet your care needs commitments*
 - *Admission to hospital, where you expect this will be greater than 4 weeks*
 - *Moving out of Nottingham City Council's area*
- 10 You can only spend your Direct Payment on things that are legal, and that meet the outcomes agreed in your support plan.
If you do not use your Direct Payment for your care and support as agreed in your support plan we may ask you to pay back the money and we may stop you from having a Direct Payment in the future.
- 11 To use the council's Social Care Complaints Service should you wish to complain about any action of the council in respect of your care or support.
However the procedure should not be used for complaints you have about the services which you have arranged using your direct payment. You would need to address these with your personal assistant or the provider themselves.

OUR RESPONSIBILITIES

1. To provide you with an NCC Card Account for the sole purpose of managing your direct payment or make arrangements for payments to an agreed bank account where this is different to the NCC Card Account.
2. To provide you with the agreed sum of money sufficient for you to employ and manage your own personal assistants (PAs) or to purchase support from an independent agency.

The council can also make additional payments to cover other costs associated with your support package, such as payroll service, insurance and recruitment. These will need to be agreed in advance with your social care practitioner and be included within the agreed package of support.
3. To make agreed payments into the nominated bank account four weekly in advance.
4. To provide you with a copy of your care/support plan identifying your needs, which will be met by the Direct Payment.
5. To identify and record any moving and handling needs with you and to agree an appropriate way of addressing these.
6. To provide you with information on support services available to assist you in managing the scheme.
7. To inform you of your assessed financial contribution towards your support package following your fairer charging assessment.

8. To assist with difficulties in managing the scheme as appropriate when you have been unable to resolve them yourself. *(It is important that you inform the Direct Payments team as soon as possible when this is the case)*
9. To regularly review the direct payments to ensure that your needs are being met and to make any necessary adjustments to the payment if your needs have changed. Consideration will also be given to whether you are still able and wish to continue receiving direct payments.
10. The first review will take place within 6-8 weeks, then at least annually or more frequently if necessary.
11. To suspend, terminate or recover payments if monies are
 - *Unused for a substantial period (e.g. 8 weeks)*
 - *Spend is not in line with the agreed care plan*
 - *If you do not make you financial contribution*
 - *Move out of the authority area*
 - *Funds have been used illegally*
 - *Whilst an investigation takes place*
12. To meet your assessed needs in other ways, as appropriate, should the above occur. In the event of major or persistent difficulties with your support package your social care practitioner will discuss with you alternative ways of meeting your needs.
13. To monitor use of the direct payment via the online portal of the NCC Card Account provider website or via financial monitoring returns, bank statements and payslips to ensure you are a 'good employer' including appropriate payments to HMRC.

As part of the government's National Fraud Initiative we are required to share necessary information for the prevention of fraud. (For further information please visit our website at <http://www.nottinghamcity.gov.uk/nfi>)
14. To inform you of a change in the amount of payment resulting from a change in circumstances. The Council will give appropriate notice before any changes are made.
15. To inform you of the council's Social Care Complaints Procedure should you wish to complain about any action, decision or apparent failing of the council in respect of your care or support.

SECTION 8

REVIEWING

&

MONITORING

8 REVIEWING & MONITORING

Reviewing the usage of the Direct Payment

- 8.1 The City Council must be satisfied that the Direct Payment is being used to meet the Citizen's agreed care and support needs, and in order to be assured of this there are processes and systems in place to monitor Direct Payment usage.
- 8.2 Essentially this will be done via a care/support review and financial monitoring, with clear procedures where any concerns exist.
- 8.3 An initial review of the care/support plan is required within 6-8 weeks of the start of the care/support being in place and will include the management and usage of the Direct Payment. This gives opportunity to adjust the payment or the support to manage the payment.
- 8.4 Where a Citizen is employing Personal Assistants there is also a requirement to review the Direct Payment by the Direct Payments Team within 6 months to check if the Citizen is fulfilling their responsibilities as an employer, in particular that they are submitting PAYE returns to HMRC as well as paying tax and National Insurance deductions as required. We will expect the same from Third Party providers.
- 8.5 Thereafter a review of the Direct Payment by the Direct Payments Team is required at least every 12 months. This may also coincide with the care/support review.
- 8.6 The use of the money for regular care costs will be monitored in the following ways:
- (1) Separate bank accounts for Direct Payment Recipients. It is essential that an account is opened specifically for Direct Payments. This is for two reasons:
 - (a) Confidentiality – by using a separate bank account, private transactions will not be disclosed.
 - (b) Reconciliation – all transactions will be purely related to the scheme, which will assist in the monitoring of income and expenditure.

The same account can be used to receive Personal Health Budgets

- (2) Payroll records.

The Citizen must keep records of payments, BACs, Direct Debits or standing order. The payroll service would do this for them if they are using one. Otherwise a standard format can be provided by the Support Service or contact with HMRC. This should include the National Insurance number of their employees. Citizens must be registered with HMRC and inform on who they are employing. HMRC records should be made available for inspection at each review.

- (3) NCC Card Accounts, monitoring will be monitored on an ongoing basis through the online portal provided by the Card Provider. The Council may, at any time, supplement this by arranging a visit by a member of the DP team.

Where monitoring forms are provided by the Direct Payments Team, these must be completed and returned quarterly or 6 monthly as required by the Direct Payments Team, along with a copy of the Direct Payments Bank Account Statements for certifying that the money has been used as agreed, to meet the client's assessed needs. Citizen, Nominated or Authorised Person will provide copies of invoices, receipts and payslips as required. The Direct Payments Officer will process financial assessments, administer 4 weekly payments, monitor the financial information from Citizens and follow up any difficulties in a sensitive manner involving and/or informing the Social Care Practitioner as appropriate.

Monitoring of one off payments will be the responsibility of the Direct Payments Officer.

- 8.7 The care/support arrangements should be reviewed after the first 6 weeks by the Social Care Practitioner, and at appropriate intervals after this. These reviews would comply with the City Council ASC reviewing policy.
- 8.8 The Social Care Practitioner and Direct Payments Team should consider the following questions:
- Is the Citizen having their assessed needs met as outlined in the Care/support Plan?
 - Have the Citizen's needs changed?
 - Is the Citizen still able to manage their Direct Payment, or express preferences so as to influence any third party managing the payment on his/her behalf?
 - Is the amount of money sufficient to enable the Citizen to have their needs met?
 - Does the Citizen wish to continue to receive Direct Payments?
 - Has receiving a Direct Payment improved the quality of life for the Citizen?
 - Are any third party arrangements continuing to operate in the Citizen's best interests, in line with the Citizen's preferences and maximising the Citizen's potential to control the arrangements?
 - Are Citizen's happy with the support received from Third Party arrangements.
- 8.9 The Citizen should be advised of their right to involve an advocacy service in these reviews, if they wish.
- 8.10 Where there is a build-up of more than 8 weeks' worth of payments in the Citizen's Direct Payments account and there is a concern the Direct Payments Officer will alert the Social Care Practitioner or Team. The Social

Care Practitioner will decide whether to investigate reasons for this and if not satisfied suspension of payments will be considered.

- 8.11 If the review reveals that the Citizen's needs are not being met, the Social Care Practitioner should assist the Citizen to make alternative arrangements. Assistance from the Direct Payments Officer should be sought if there are concerns about the management of the Citizen's finances.
- 8.12 Where monitoring forms are not returned the Direct Payments Team will send a reminder letter 2 weeks after the due date and then a final reminder 2 weeks after that with a notification of concern to the relevant Team.
- 8.13 Social Care Practitioner contacts the Direct Payments Team following receipt of the final reminder notification to discuss next steps.
- 8.14 Failure to provide monitoring information could mean suspension or permanent cessation of the Direct Payment. (See *cessation process in Section 10*)
- 8.15 If there are any changes to the Direct Payment, such as the termination of a contract with a personal assistant, the citizen is required to contact the Direct Payments Team to advise them of the change in circumstances.

National Fraud Initiative

- 8.16 As part of the government's National Fraud Initiative, the City Council is required to share necessary information *about the citizen and their payment* for the prevention of fraud. Please see <http://www.nottinghamcity.gov.uk/nfi> for details.

SECTION 9

RECOVERY OF PAYMENTS

9 RECOVERY OF PAYMENTS

- 9.1 Where there is more than 8 weeks of funding accumulating in the Citizen's bank account, the Direct Payments Officer will proceed to recover excess funds via the excess funds recovery process. (letter, reminder letter, involvement of Social Care Practitioner etc) This will be done sensitively and consideration will be given through discussion with the Citizen if there are extenuating circumstances.
- 9.2 For citizens using the NCC DP Card Account the Council will after the agreed period from date of letter confirming decision, (usually 28 days), the Council will arrange for funds to be transferred back. For other accounts the Citizen should be requested to return payments via the agreed payment process e.g electronic transfer or cheque. This should be made payable to "Nottingham City Council" and should be returned to the Direct Payments Team. Where the Citizen fails to re-pay the money, the City Council will take reasonable steps to recover over-payment while maintaining the package of care. Should they fail to repay the money, the normal debt recovery procedure should be followed and Direct Payments may be terminated following review of care/support arrangements.
- 9.3 Another option available to Citizens would be to temporarily suspend payments (with agreement from the Citizen), until the funds have been reduced.
- 9.4 When a Citizen does not require assistance for a short period (e.g. because he or she is in hospital), the City Council may discontinue payments temporarily. However, it may be necessary to continue payments or pay a reduced amount in order to retain personal assistants and ensure that the Citizen can resume control over their care arrangements as smoothly as possible. Any change in the amount of payment must be discussed and agreed with the Citizen and Social Care Practitioner, wherever possible.
- 9.5 If the recipient dies, any outstanding liabilities will be recovered from the recipient's estate.
- 9.6 A common approach should be agreed where a Personal Health Budget is being paid, if they are also seeking recovery.

ABUSE / MISUSE OF FUNDS

- 9.7 Where it has been determined that the Citizen has wilfully misused their Direct Payments the City Council reserves the right to suspend/cease the Direct Payment, recover any misused expenditure and make alternative care/support arrangements, where necessary. The City Council reserves the right to undertake an audit where concerns may arise around possible fraud. (see link to NCC Fraud policy/strategy)

Where Social Care Practitioners have any concerns about possible abuse or misuse of funds they must discuss with their Manager or Senior Practitioner.

The Direct Payments Team must also be informed of the concerns and agreement will be made on necessary course of action. If fraud is suspected this may result in referral to the Counter Fraud Team.

LACK OF CONTRIBUTION

- 9.8 Where the Citizen is not making their assessed financial contribution, despite requests to do so as part of their Direct Payment agreement the City Council reserves the right to suspend/cease the Direct Payments, recover any outstanding contribution and make alternative care/support arrangements, where necessary.

SECTION 10

IN THE EVENT OF DIFFICULTIES

10.1 Contingency or Emergency Plans

10.2 Questions to ask if the Citizen seems to be having difficulty managing their Direct Payment

10.3 Process where the Citizen is unable to manage their Direct Payment or is not complying with the requirements in the DP2

10.4 Hospitalisation

10.5 Safeguarding

10 IN THE EVENT OF DIFFICULTIES

10.1 Contingency or Emergency Plans

10.1.1 The Citizen should be advised to make contingency plans for any breakdown in their care/support arrangements. Citizens can purchase services temporarily from home care agencies. However, they cannot use their Direct Payment to purchase services from the City Council so the level of payment will need to be reviewed while they are receiving a direct service.

10.1.2 Such plans should cover what should happen in an emergency such as a Personal Assistant is suddenly off sick or the adult or parent with children with disabilities or child is involved in an accident. For example, who to phone if the Citizen needs additional support because they become unwell or have an accident, to find emergency care and support cover, how is this funded and insurers phone numbers.

10.1.3 The City Council does, however, retain ultimate responsibility for providing alternative care and support services should the Direct Payment package break down completely.

10.1.4 A Direct Payment Support Service, if involved in the ongoing management of the package, should also support the Citizen to prepare a contingency plan and may be able to support the Citizen to manage in emergencies. These plans could be covered in other plans such as risk management plans.

10.1.5 If the Direct Payment recipient repeatedly comes back to the Social Care Practitioner or Team despite appropriate advice and assistance a review should be undertaken where it might be useful to answer the following questions:

10.2 Questions to ask if the Citizen seems to be having difficulty managing their Direct Payment:

- **Have the Citizen's needs changed?** If so there should be a new outcomes review and support plan completed.
- **Is the Direct Payment adequate to enable the Citizen to buy the necessary support?** It may be that someone cannot find a Personal Assistant at the rate funded by the City Council or that could meet their eligible needs. The City Council might need to consider paying a higher rate if there is no capacity within the market to support a Citizen's needs at the set rate.
- **Is the Citizen still able to manage Direct Payments, or do they need some assistance?** Someone new to Direct Payments may make mistakes at the beginning. This does not mean they are not capable of managing a Direct Payment. They may however, need some support to manage or training to manage.

- **Does the Citizen wish to continue to receive a Direct Payment?** The Citizen should be helped to overcome difficulties they encounter but ultimately they have a right to choose to receive services instead.
- **Has all the money been spent on the outcomes and needs identified in the support plan?** If not, why not?
- **Has the support for which the individual has paid been received?** If not, why not?
- **Has the money been spent wisely?** If not does the Citizen need support to manage their payment? Or does the evidence indicate they are unable to manage even with support or that they do not co-operate with support, making the package unviable or unsafe? Is a Mental Capacity assessment required?

10.3 Process where the Citizen is unable to manage their Direct Payment or is not complying with the requirements in the DP2

10.3.1 The Direct Payment Team needs to be notified as soon as any concerns are identified so that a check can be made that everything is ok. This information along with the telephone number for the Direct Payment Team should be stated in the Citizen's support plan.

10.3.2 In line with the City Council's reviewing policy, reviews of care/support plans which include Direct Payments should be completed. Prior to a care/support review the Direct Payments Team should be contacted to establish whether they have any concerns about the management of the Direct Payments package.

10.3.3 In the event that the Citizen is not able to manage their Direct Payment then additional support needs to be considered as a first point. If it is considered that the Citizen will be able to manage with increased support then a revised support plan with possible request for increase in support should be agreed at Adult Panel.

10.3.4 Where the Citizen is not able to manage the Direct Payment with additional support or the level of additional support is disproportionate to meeting their needs then cessation of the Direct Payment must be considered. **A Head of Service must be involved in this decision.**

10.3.5 Where it is determined that the Citizen or their Nominated or Authorised Person is deliberately not complying with their Direct Payment responsibilities or there are significant concerns raised.

For example:

- failure to provide monitoring information,
- financial concerns,
- not using the Direct Payment for the support needs agreed or
- not paying their assessed financial contribution
- Safeguarding:

wherever the use of the direct payment is placing undue risk of harm to the citizen, this should be reviewed using the risk assessment tool by the practitioner and raised with their manager

then the City Council may cease the use of Direct Payments.

10.3.6 Where cessation is accepted as the most appropriate way forward there may be implications in respect of redundancy payments for Personal Assistants or other employment responsibilities and will need to be factored in to possible costs.

10.3.7 The process of cessation must ensure continuity of support to ensure the Citizen’s essential needs are met. *(While timescales are given it is recognised that there may be some delays due to Citizen access, compliancy, engagement)*

Cessation Process

Timescale	Progress	Action	Additional Actions
Day 1	Concerns identified	Citizen is informed by the DP Team, by letter/telephone call of concerns in order for them to address the concerns.	Relevant Head of Service is informed, who will allocate to Team or Social Care Practitioner. Save any letters/emails to Castle or Liquid Logic. Record actions on care first/Liquid Logic observations.
Day 7	Citizen does not respond or does not address concerns	2 nd letter sent by DP Team to Citizen reminding of concerns and for them to urgently contact Direct Payments officer.	Copy to relevant Head of Service. Relevant Team or Social Care Practitioner is informed and they contact Citizen.
21 days	No progress of resolving issues.	Citizen is warned by letter from DP Team that we may cease their Direct Payment	Social Care Practitioner to arrange meeting with Citizen to address issue/s Direct Payments Officer to also attend.
28 Days	Meeting held with Citizen and or	Solutions identified and actions agreed.	Action Plan saved to Castle.



	representative.		Head of Service informed.
35 days	Meeting does not resolve the issue/s	Decision made to cease Direct Payment. Social Care Practitioner needs to determine how essential needs will continue to be met.	Citizen informed by letter from Head of Service. Social Care Practitioner is Informed.
			Citizen advised to inform employees of decision.
			Relevant team or Social Care Practitioner makes necessary arrangements to have essential needs met via commissioned services.
			Direct Payments Team identifies costs of cessation e.g. redundancy costs, and arranges final payments- such costs need to be presented to panel for financial approval.
42 days	Social Care Practitioner completes review and submits Panel request	Commissioned services identified and costed.	Panel approval
Within 7 days after approval	Commissioned services put into place		

10.4 Hospitalisation or Unplanned Short Term Care

- 10.4.1 In these circumstances, Personal Assistants can continue to provide support to the Citizen, however, any social care funding cannot be used to purchase healthcare and all personal and health care needs should be met by health professions working in a hospital. This support cannot be provided by Personal Assistants funded by Direct Payments.
- 10.4.2 Personal Assistants funded by Direct Payments might however still be required to support Direct Payment recipients with other tasks agreed in the support plan that take place outside of hospital, until the continuation of the Direct Payment is reviewed. This will be agreed on a case by case basis.
- 10.4.3 Personal Assistants will continue to be paid in full up to four weeks for the period whilst a Direct Payment recipient is in hospital. Any additional payments will be made on a case by case basis.
- 10.4.4 In some cases the continued support from a Personal Assistant will be relevant to the Citizen's discharge plan and this type of support can continue after four weeks in hospital. For example, a Citizen with mental health needs might require continued support from their Personal Assistants to facilitate effective discharge back in to the community.

10.5 Safeguarding

- 10.5.1 There is currently no mandatory requirement for personal assistants employed by Direct Payment employers to have a Disclosure and Barring Service (DBS) check, Direct Payments can be used to cover the costs of the DBS check if an adult who receives a Direct Payment plans to employ their own personal assistants.
- 10.5.2 DBS checks must be carried out when Citizens with parental responsibility are in receipt of Direct Payments and plan to employ their own Personal Assistants. In these cases, the Direct Payment recipients can ask the Direct Payments support service to organise the DBS' for any prospective Personal Assistants. The City Council will fund the costs of DBS checks **and the Practitioner is required to ascertain the outcome of the DBS check.**
If the citizen refuses to carry out a DBS check then the offer of Direct Payments will be withdrawn.
- 10.5.3 The City Council has a duty of care towards the Citizen even when they are organising their own care and support. Moreover, there might be more associated risks with adults who can purchase support from non-contracted, unapproved providers or Personal Assistants who do not have to be DBS checked, registered or have mandatory training.
- 10.5.4 Choosing non-contracted, unapproved providers or PAs without DBS checks could place some vulnerable people at risk of abuse or neglect. These risks could be minimised by considering any potential risk factors when assessing the Citizen and creating a plan to manage, reduce or prevent any potential safeguarding situation arising.

- 10.5.5 If there is any suggestion of abuse to the Citizen in receipt of Direct Payments the Adult Safeguarding procedures should be followed by City Council colleagues.
- 10.5.6 If there are any concerns that the Citizen in receipt of Direct Payments poses a safeguarding risk to other vulnerable adults or to children the relevant team in Adult Social Care or Children's Services should be alerted immediately.
- 10.5.7 The Citizen or Nominated or Authorised Person needs to be aware of the policies and procedures for safeguarding and how to make a referral when the service is first set up.
- 10.5.8 The use of advocacy services needs to be considered, where there are concerns about the individual's capacity relating to their use of a Direct Payment. This is particularly vital if there are safeguarding concerns that have been raised.
- 10.5.9 Guidance about the role of the citizen as an employer needs to be given from the outset, with boundaries regarding the employee / employer relationship to minimise risks
- 10.5.10 Advice regarding clear financial boundaries with the employee / employer relationship needs to be given when arranging a Direct Payment to minimise the risk of financial abuse. The recording of financial arrangements needs to be explicit and monitored within the review process.

SECTION 11

COMPLAINTS

11 COMPLAINTS

- 11.1 The Social Care and Complaints Service manages the social care complaints procedure for complaints made by anyone receiving adult social care services or who is affected by Children and Families' actions or decisions

The City Council's aim is to improve the quality of service provision by listening and responding to the views of Citizens.

- 11.2 The Social Care Complaints Service operates a statutory complaints procedure and may process or investigate complaints about all aspects of Direct Payments, including for example, the needs assessment, financial assessment and Direct Payment support agencies.
- 11.3 However Citizens may not use this procedure for complaints about the services which they have purchased from independent sector agencies, by using their Direct Payments. These must be addressed to the providers directly. The Social Care Complaints Service does not investigate complaints about carers employed by the Citizen, as this would be for the Citizen to address as an employer. However, where Citizens are concerned that the care/support they have purchased is not meeting their needs they should raise this with Adult Social Care, and where Citizens continue to be dissatisfied, then they may raise their complaints with the Social Care Complaints Service.
- 11.4 All relevant legislation has been considered within the Guidance but if an individual is concerned that their rights have not been taken into account they should use the Social Care Complaints Service procedures in the first instance.
- 11.5 Citizens and/or their carers will also be signposted to advocacy services to ensure that they have the opportunity to be supported independently, where it is requested or where the Social Care Complaints Service believes it may be helpful.
- 11.6 **Adult Social Care Services - complaints procedure**
- receive the complaint - acknowledge within 3 working days
 - decide on appropriate complaints handling - within 10 working days
 - consider the complaint - within 60 working days
 - sign off - within 15 working days

Contacting the Social Care Complaints Service

Social Care Complaints

The Clocktower

Eastcroft Depot

London Road

Nottingham

NG2 3AH

Tel:0115 87 65974

Fax:0115 87 61374

Email: socialcarecomplaints@nottinghamcity.gov.uk



SECTION 12

GUIDANCE ON CARERS SUPPORT

12 GUIDANCE ON CARERS SUPPORT

- 12.1 Under the Care Act, Carers have entitlement to support via a carers Personal Budget.
- 12.2 Where such entitlement exists this may be paid by a Direct Payment.
- 12.3 Carers' support is provided to meet the carer's own assessed needs. *Such needs will be identified after a joint assessment with the citizen or a separate carer's assessment.*
- 12.4 The process and practice should follow the key principles of self-directed support.
- 12.5 Carers needs can often be achieved by providing care/support services to the cared for person, e.g., day care, respite care. It is important to clearly record if carers' needs are met through a particular service to the Citizen.
- 12.6 However it may be necessary to provide a service which is focussed more on the carer's needs and in these circumstances distinct carer's support may be required.
- 12.7 This requirement will emerge when a comprehensive carer's assessment has covered all the relevant aspects of the carer's life, including such things as the ability to stay in employment, have a social life, etc.
- 12.8 This particular example is not meant to confine carers' services to a narrow range of 'practical' services. The key issue is the range of needs identified in the assessment, and in particular:
- Which needs appear most closely related to the continuation or breakdown of care
 - Which needs are the most important in the carer's view.
- 12.10 Sometimes, what appear to be minor aspects of the carer's situation will be identified by the carer as 'making all the difference'.
- 12.11 Nevertheless, the following categories are likely to frequently feature as priorities:
- Facilitating the carer to take a break from caring
 - Helping the carer continue to care by providing practical help where the carer prefers to undertake personal care themselves
 - Supporting the carer to enter or continue with employment, education or training.
- 12.12 The health and wellbeing of the carer should also be considered, although this may result in a referral to primary care rather than funding of a carers' service.
- 12.13 At this stage of the development of carers' services in Nottingham, it is not considered appropriate to have an exclusive list of expenditures, which will be allowable as services under the Act. A flexible and imaginative response to assessed needs will, over time, produce evidence about the appropriateness and effectiveness of a range of decisions. The City Council

can then review the situation and provide more detailed guidance if necessary.

Young Carers

- 12.14 A simple definition of a young carer is 'children whose needs arise because their carer's parenting capacity is impaired by their disability'.
- 12.15 In general, we should not normally be establishing arrangements, which create caring responsibilities for young people. However, in some circumstances, it may be appropriate to consider how Direct Payments could support their needs as carers, for example, in order to minimise the impact on their education.
- 12.16 Further advice in relation to supporting young carers can be found in the Inter-Agency Guidance on the Assessment of Children In Need, Nottingham City Council 2001.
- 12.17 In such circumstances it should be made clear whether any carers' assessment is being undertaken under Children legislation or Care Act.
- 12.18 Whilst assessments in relation to the provision of Direct Payments should be carried out using this guidance, consideration should always be given as to if, and in what other circumstances, the young person may be a 'child in need'. (See Children's Guidance)

SECTION 13

SUPPORT SERVICES

13.1 Managing an Account

13.2 Employment Support

13.3 Payroll Services

13.4 Payments to a close family member

13. SUPPORT SERVICES

Support Service providers are not to be the Nominated or Authorised Person.

13.1 Managing an Account

- 13.1.1 The Provider will manage the Direct Payment on behalf of a Citizen or a group of Citizens to enable them to purchase services, as agreed in their care plan.
- 13.1.2 Providers will support the Citizen or their representative to meet their payment responsibilities to their Personal Assistants, HMRC and suppliers. Providers will keep appropriate financial records for each individual and reconcile and report on accounts as agreed with commissioners.
- 13.1.3 The Provider shall be responsible for informing HMRC that they are managing the account on the Citizen's behalf and complete all necessary paperwork related to HMRC responsibilities
- 13.1.4 The Provider shall be responsible for informing insurance companies and other relevant parties that they are managing the account on the Citizen's behalf and complete all necessary paperwork relating to these services
- 13.1.5 The Citizen's care/support package details, as assessed by the City Council, will be supplied to the Managed Accounts provider. Managed Accounts will be paid on the basis of the care/support package details which will be monitored by the Provider. The Provider will notify the City Council immediately if discrepancies arise.
- 13.1.6 The Provider shall be responsible for notifying Citizens of personal contributions as determined by the City Council and collecting these at the appropriate time. The Provider will notify the City Council immediately if discrepancies arise.
- 13.1.7 The Provider will complete and return to the City Council **six-monthly** returns, and payments due in a timely fashion on behalf of the Citizen.
- 13.1.8 The Provider will retain all paperwork in connection with the service for a minimum of 7 years.
- 13.1.9 The Provider will ensure the Citizen meets all requirements in respect of supplier invoices
- 13.1.10 The Provider will be able to provide accurate statements in relation to the Citizen's income and expenditure which are able to be reconciled against bank statements.
- 13.1.11 The Provider will send a monthly statement of income and expenditure to the Citizen or their representative.

- 13.1.12 The Provider will ensure there are sufficient funds in the Citizen's account to meet expenditure and monitor the risk of potential debt. If issues around debt arise these should be reported to the Citizen and the City Council immediately.
- 13.1.13 The Provider will not use the Citizen's funds for any purpose other than to purchase agreed care/support services on their behalf and shall not use these funds for any form of personal or professional benefit
- 13.1.14 The Provider will not apply any additional charges to the Citizen other than agreed managed accounts charges under the Framework Agreement.
- 13.1.15 The Provider will submit a final account for any Citizen ceasing to use their services for whatever reason.
- 13.1.16 The Provider will set up an account for the Citizen than enables them to provide, track and monitor individual income and expenditure for that Citizen.
- 13.1.17 The Provider will notify the Citizen and the City Council immediately of any concerns relating to financial mismanagement.
- 13.1.18 The Provider will return all funds remaining in the Citizen's account and all other information relating to the account to the Citizen or City Council unless otherwise instructed.

13.2. Employment Support

Support with:

- 13.2.1 Advertising – including draft advertisements and where and how to advertise.
- 13.2.2 Job descriptions and person specifications – including sample job descriptions and person specifications will contain all relevant and appropriate information to ensure the Citizen has all the information required to select for interview.
- 13.2.3 Applications – including draft application forms and other methods of application, such as a CV.
- 13.2.4 Interview guidance – including information and advice on questions which can and cannot be asked and advantages and disadvantages of interviewing in their own homes or in other venues. A support activity can be undertaken as part of the selection process, before a firm decision is made to employ the Personal Assistant. This can be particularly useful where the Citizen does not use words to communicate or wants the Personal Assistant to take part in an activity as part of the selection process.
- 13.2.5 References – including draft reference request forms and guidance on what to ask for and how to verify references.

- 13.2.6 Contracts of employment – including draft contracts and grievance, disciplinary procedures.
- 13.2.7 Employers Liability Insurance Cover – including ensuring a Citizen understands the need for adequate insurance for their Personal Assistants and where to obtain such insurance, which should include Employers and Public Liability Cover, 24 hour employment law and Health & Safety advice lines and access to employment stationery. Where appropriate the supplier will support the Citizen in obtaining insurance.
- 13.2.8 Health & Safety legislation – Every person has a duty of care to all other people to prevent causing harm or injury by negligence. Everyone must take care of their own health & safety and that of others affected by your actions or omissions. (Health & Safety at Work Act 1974 section 7)
- 13.2.9 Risk Assessment – The Health & Safety at Work Act 1974 requires employers to provide whatever instruction, information training and supervision is necessary to ensure, so far as reasonably practicable, the health & safety at work of their employees.
- 13.2.10 Employment legislation – if an individual chooses to use their Personal Budget to employ their own staff they then take on the responsibilities of being an employer. This includes statutory payments, responsibilities to the employee and record keeping.
- 13.2.11 The Provider will advise the employer of sources of training for Personal Assistants. This could include, but is not limited to moving and handling, tissue viability, health interventions, safeguarding etc.

13.3 Payroll Services

- 13.3.1 Support the Citizen to meet their payment responsibilities to their employee/s, HMRC regarding statutory payments and record keeping, and advise the Citizen of meeting the Provider's requirements to provide the Service.
- 13.3.2 Undertake all Payroll tasks associated with the Service. This information would be derived by the Personal Assistant completing a time sheet which would record hours worked, sick leave and holiday leave. This would be authorised and signed by the employer.
- 13.3.3 Ensure the Citizen meets all the requirements in respect of all statutory payments. The national minimum wage is the minimum amount of pay that workers must be paid. (<https://www.gov.uk/national-minimum-wage-rates>)
- 13.3.4 Ensure that all Citizens have a range of information and advice on all aspects of managing their PAYE responsibilities, monitor to ensure responsibilities are being met, and provide support on all aspects of PAYE, HMRC and related matters.
- 13.3.5 Retain all paperwork in connection with the Service for 7 years.

- 13.3.6 Release information to the City Council in regard of financial monitoring (*consent is provided via DPT agreement*).
- 13.3.7 Produce payslips and a statement to the Citizen of their representative detailing how much employees have been paid.
- 13.3.8 Advise Citizens of the appropriate hourly payment rate to their employees, ensuring their Personal Budget is sufficient to meet all statutory payments such as tax, NI and sick leave.
- 13.3.9 Work within the City Council's Personal Budget guidelines and ensure all statutory payment duties are met within the agreed Direct Payment.
- 13.3.10 The Provider shall submit a final account for any Citizen ceasing to use their services for whatever reason.

13.4 Payments to a close member of the family.

- 13.4.1 The Care and Support (Direct Payments) Regulations 2014 excludes the Direct Payment from being used to pay for **care** from a close family member who lives in the same household or someone else living in the same household except where the City Council determines that there is no other way of meeting the citizen's needs. It provides a distinction between '**care**' and '**administration/management**' of the direct payment.

The regulations now allow citizens to pay a close family member living in the same household or someone else who may also be living in the same household to provide **management and/or administrative support** to the direct payment holder in cases where the City Council determines this to be necessary. It would be expected that this would be in such circumstances where the support needs of the citizen required the organising of complex care and support which is complicated and time consuming.

This is not intended to be income replacement for the family member, and citizens interested in requesting this option should be informed of tax and employment implications, along with any impacts upon other benefits and given (or signposted to) information and advice to help them decide. The City Council must be satisfied that it is necessary to make the payment to the family member to provide this service and that the direct payment will only be used for administration and management of the payment.

The emphasis is that **the City Council determines it to be necessary** so Adult Panel would require evidence to show:

- Why it is necessary,
- That the citizen (or jointly with the family member) is requesting payment to the family member to provide the management and/or administrative support
- That the family member can manage the payments and provide the management or administrative support for the support required.

- That the family member's role in managing the support does not conflict with the citizen's ability to exercise choice and control over their support.

The level of payment would be similar to what the council would expect to pay for Direct Payment third party support organisations that are on the City Council's Framework contracts but allowing for the fact that there will be not be the overheads that a support organisation would have.

Any such agreement for payment to the family member needs to be clearly detailed and recorded within the citizen's care/support plan and approved by Adult Panel.

SECTION 14

COMMUNITY EQUIPMENT

14 COMMUNITY EQUIPMENT

- 14.1 The Care Act does not explicitly identify payment for equipment that would normally be provided via OT assessment. However the following applies:
- 14.2 The City Council may make Direct Payments to enable people to purchase for themselves equipment that would otherwise have been provided by Adult Social Care. Direct Payments may also be made to enable people to pay for minor adaptations, which would otherwise have been provided or arranged by Adult Social Care.
- 14.3 Direct Payments cannot be used to purchase services or equipment for which the City Council is not responsible, for example, services that the NHS provides. Direct Payments are not a substitute for disabled facilities grants.
- 14.4 If making a Direct Payment for the purchase of items of equipment, the City Council will need to satisfy itself that the Citizen's needs for the service will be met by the Citizen's own arrangements. In particular, we will wish to ensure that the Citizen is adequately supported by specialist expertise. This is particularly true in the case of major items, when advice may be needed to ensure that equipment purchased is safe and appropriate.
- 14.5 Where the City Council makes a Direct Payment for equipment, it needs to clarify with the individual at the outset (just as it should where it arranges for the provision of equipment itself) where ownership lies as well as who has responsibility for ongoing care and maintenance. As Direct Payments mean that the individual will secure for themselves the equipment they are assessed as needing, the City Council will need to consider what conditions, if any, should be attached to the payment, for example, concerning what will happen to the equipment if the individual no longer requires the services for which the equipment was purchased. Equipment can be purchased as part of making a package cost effective, for example, supplying pagers or mobile phones to personal assistants.
- 14.6 Separate guidance is available:

City Council Intranet:

<http://gossweb.nottinghamcity.gov.uk/nccextranet/index.aspx?articleid=14882>

Or for practitioners TriX

<http://nottinghamcityadultsg.proceduresonline.com/index.htm?loginformused=1&forgotpassword=&username=nottsadults&password=1login2&login=Login>)



SECTION 15

RESIDENTIAL CARE

15 RESIDENTIAL CARE

- 15.1 Direct Payments cannot currently be used to pay for long-term residential care. However, the Government is currently testing the use of Direct Payments in care homes, with the original aim of introducing this in 2016.

A number of 'Trailblazer' authorities are undertaking an evaluation with the Department of Health which will look at:

- Assessing the impacts of Direct Payments in care homes on residents and their families, care home providers and Local Authority staff
- Understanding the different ways in which Direct Payments are offered to residents of care homes
- To examine the challenges arising for users, carers, care home providers and Local Authority staff

The learning from the trailblazer programme will be used to develop additional statutory guidance for local authorities.

(This may be delayed following the decision not to consider Phase 2 of the Care Act until 2020, an update will appear here following any government approval of Direct Payments for long-term residential care.)

- 15.2 Direct Payments can be made to enable Citizens to purchase a short stay in care homes, provided that the stay does not exceed a period of four consecutive weeks in any 12-month period. This could be used to provide a respite break for a carer.
- 15.3 Citizens can receive additional weeks in a care home once they have reached the four-week maximum, but they cannot purchase the additional stays using their Direct Payments. If the City Council and the Citizen agree that a longer stay is needed, then this would currently be directly commissioned. There is no restriction on the length of time for which the City Council may arrange such accommodation for the Citizen but it would not mean that they will fund any possible difference between the Direct Payment amount and the full cost of the placement if it was previously being topped up by the Citizen.
- 15.4 People who are living in care homes may receive Direct Payments in relation to non-residential care services. For example, they may have temporary access to Direct Payments to try out independent living arrangements before making a commitment to moving out of their care home. Direct Payments can also be used by Citizens living in care homes to take part in day-time activities. This can be particularly enabling for young people in transition. However the City Council's expectation is that the Provider would normally pay for day time activities as part of the care home fee and the City Council would not normally fund additional day-time activities without substantial evidence of need.

SECTION 16

CITIZENS NOT ELIGIBLE FOR FINANCIAL HELP

16 CITIZENS NOT ELIGIBLE FOR FINANCIAL HELP

- 16.1 The term usually used for people who need to use social care services but are not eligible for financial help from the City Council, is "Self Funders". This is because they have capital/savings/assets of over **£23,250** or have an assessed Fairer Charging contribution that is higher than the package of care offered applied by the City Council and are therefore expected to fund any care or support themselves.
- 16.2 However the City Council must undertake an assessment for any adult with an appearance of need for care and support, regardless of whether or not the City Council thinks the Citizen has eligible needs or whether they are above the financial thresholds.
- 16.3 The City Council also understands that advice and information regarding what support is actually needed for Citizens is very important, even if they are not eligible for social care services because of their financial assets, so that the Citizen can make informed decisions about securing appropriate support.
- 16.4 The City Council will therefore provide necessary assessments, information and advice as required to maximise Citizens' independence and enable best decision-making for each Citizen, their carer or family members.

SECTION 17

FURTHER INFORMATION

17. FURTHER INFORMATION

Government Care and Support Statutory Guidance for Care Act 2014:
<https://www.gov.uk/government/publications/care-act-2014-statutory-guidance-for-implementation>

Direct Payments Guidance (Sections 31, 32, 33 of Care Act)
Pages 201 – 220

Care and Support Planning (Sections 24 & 25 of Care Act 2014):
Pages 167 – 186

Personal Budgets (Section 26 of Care Act 2014)
Pages 187 - 199

Care Act Fact Sheets:

<https://www.gov.uk/government/publications/care-act-2014-part-1-factsheets>

Social Care Institute for Excellence:

<http://www.scie.org.uk/care-act-2014/>

<http://www.scie.org.uk/publications/guides/guide10/questions/>

Disclosure and Barring Service Information

<https://www.gov.uk/government/organisations/disclosure-and-barring-service>

Skills For Care

<http://www.skillsforcare.org.uk/Employing-your-own-care-and-support/Information-hub.aspx>

Further information can be found for Practitioners on the NCC Intranet Direct Payments page.

<http://gossweb.nottinghamcity.gov.uk/nccextranet/index.aspx?articleid=19319>

