

Direct Payment Policy

North Tyneside Adult Social Care



North
Tyneside
Council

Author: Alison Tombs

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North Tyneside Council

Direct Payments Policy

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1. Introduction

Direct Payments have been in use in social care and support since the mid-1990s. Direct Payments provide independence, choice and control by enabling people to commission their own care and support in order to meet their eligible needs.

How the needs identified in the assessment will be met will be agreed within the support planning process. If a Direct Payment is agreed as a suitable way of meeting the person's needs, the individual (or a suitable person acting as a nominee) will have a direct responsibility for arranging and managing the support to meet their care and support needs.

Direct Payments are monetary payments made to individuals who request to receive one to meet some or all of their eligible care and support needs. The legislative context for direct payments is set out in the:

- Care Act 2014,
- Section 117(2C) of the Mental Health Act 1983,
- The Care and Support (Direct Payments) Regulations 2014

2. Policy

North Tyneside Council is committed to offering Direct Payments to all people who are eligible and agreed that this is a suitable way to meet their care and support needs.

A request for a Direct Payment can be made at any time.

North Tyneside Council will provide general information and advice about Direct Payments accessible online to all residents of North Tyneside, and directly provide this information to people with care and support needs and carers whenever:

- a. A person/carer asks for it
- b. A care and support need has been identified that could be met by a Direct Payment

The Council will promote the use of Direct Payments by:

Providing general generic information on:

- what Direct Payments are and what they can be used for.
- how to access a Direct Payment, including the use of nominated and authorised persons to manage the payment.
- explanation of the Direct Payment agreement and how the Council will monitor the use of the Direct Payment.
- the responsibilities involved in managing a direct payment and being an employer.
- guidance on how a Direct Payment can be used.
- support available to employers when using personal assistants.
- signposting to local organisations and the Council's own internal support, who offer support to Direct Payment holders.
- making arrangements with social care providers
- how often a Direct Payment is normally paid.
- how any assessed financial contributions should be made.
- where prepaid cards are available, how they work.
- provide information regarding monitoring, reviewing, and discontinuing Direct Payments including notice periods and circumstances where no notice will be given.

3. Who is eligible?

The following people may be eligible for a Direct Payment:

- **Adults with needs for care and support**
 - This includes all people aged 16 and over who have been assessed as having eligible care and support needs under the Care Act 2014, or aftercare needs under the Mental Health Act 1983 s.117.
- **A person with parental responsibility for a disabled child, including disabled 16- and 17-year olds**
 - This could include a parent or others with parental responsibility for a disabled child, such as a grandparent. The term "disabled" includes children with any kind of sufficiently significant additional support needs, for example a sensory need, learning or physical disability, or mental health issues. This could also include children whose impairments have arisen through illness.

- It may also include a disabled person with parental responsibility for a child.
- Such payments may be in satisfaction of any duty owed under section 17 of the Children Act 1989.
- **Disabled 16- and 17-year-olds – in their own right**
 - In lieu of services they have been assessed as needing under section 17 of the Children Act 1989.
- **Carers aged 16 and over**
 - People whom the council decides need support because they provide a substantial amount of care on a regular basis for someone aged 18 or over, may obtain Direct Payments to meet their own support needs identified in an assessment under Care Act 2014 s.10 (a 'carers assessment'), but not for services to meet the needs of the person that they care for.

4. People who cannot receive a Direct Payment:

Direct Payments may not be made in respect of certain people who have been placed under certain conditions or requirements by the courts in relation to drug and/or alcohol dependencies, as listed below:

- offenders on a community order, or serving a suspended prison sentence, under the Criminal Justice Act 2003, which includes a requirement to accept treatment for drug or alcohol dependency;
- an offender on a community rehabilitation order or a community punishment and rehabilitation order under the Powers of Criminal Courts (Sentencing) Act 2000, which includes a requirement to accept treatment for drug or alcohol dependency;
- offenders released from prison on licence under the Criminal Justice Act 1991, the Criminal Justice Act 2003 or the Crime (Sentences) Act 1997 subject to an additional requirement to undergo treatment for drug or alcohol dependency; and
- people subject to equivalent provisions under Scottish criminal justice legislation.
- Reference should be made to the Community Care, Services for Carers and Children's Services (Direct Payments) (England)

Regulations 2009 – Regulations 2(c) and 4(c) and Schedule 1 of the Care and Support (Direct Payment) Regulations 2014 for full details of persons excluded from receiving direct payments

A Direct Payment does not have to be provided when:

- a. It is more cost effective for the Council to commission the required service directly; *so long as*
- b. This does not have a negative impact on any flexible manner in which the service needs to be provided.

5. Consent and Ability

Service users should:

- not be forced to agree to a Direct Payment against their will.
- be able to make decisions and direct their services.
- be able to manage their Direct Payment, with assistance as necessary.
- have the capacity to consent to receive a Direct Payment.

6. Capacity

A person who lacks capacity to request or manage a Direct Payment is still legally entitled to receive one *as long as*:

- a. A legally authorised person has deemed it in their Best Interests (For example a Deputy or the holder of a Lasting Power of Attorney); or
- b. Where no legally authorised person exists, North Tyneside Council Social Care deems it to be in their Best Interests; and
- c. There is a suitable person available to receive and manage the Direct Payment.

A suitable person is a person who:

- a. Is willing to receive and manage the Direct Payment; and
- b. Is capable of managing the Direct Payment; and
- c. Is deemed likely to arrange support and services that are in the Best Interests of the person.

Once identified the suitable person will act in the role of the individual's nominee.

The person managing the account cannot also be a paid employee or benefit financially from the Direct Payment.

Fluctuating capacity

If a person has fluctuating capacity a suitable person must still be appointed to receive and manage the Direct Payment *but*:

- a. They must agree to the person with Care and Support needs making decisions about how the Direct Payment is used during periods where they have capacity to do so; and
- b. The responsible social care worker must be satisfied that this is going to be the case before arranging the Direct Payment.

Monitoring a suitable person

The responsible social care worker must make appropriate and proportionate arrangements to monitor the Direct Payment if there are concerns that a suitable person:

- a. May not be able to manage the Direct Payment; and/or
- b. May not arrange support and services that are in the Best Interests of the person; and/or
- c. Where the person has fluctuating capacity, may not permit them to make their own decisions about how the Direct Payment is used when they have capacity to do so.

7. Consideration of a request for a Direct Payment

Requests for a Direct Payment will be decided in as timely a manner as possible.

Where accepted, the decision will be recorded in the care and support plan.

Where refused, the reasons explaining the decision will be provided in writing and the person will be made aware of how to appeal the decision through the local complaints process.

Where the request has been declined, the Council will continue the care planning process so that it can seek to agree with the person how best to meet the needs, without the use of Direct Payments.

8. What Direct Payments can be used for:

Direct Payment funds may only be used to meet needs as specified in the current authorised care and support plan as part of or all of a Personal Budget. The outcomes to be achieved will be agreed by your allocated social care worker, any further changes must be agreed by the allocated worker. The types of service that may be bought to meet these needs include:

- personal assistant, employed or self-employed, including appropriate and agreed training.
- homecare agency or enabling support service / outreach
- live-in care
- respite care
- equipment
- day services
- carer support
- to purchase Section 117 After-Care (in certain circumstances)
- other services that may be developed to meet need, as set out in the support plan

9. What Direct Payments cannot be used for

Direct Payments cannot be used for:

- Any items or service not listed as outcomes in your current authorised care and support plan
- Gambling
- Debt repayment or financial investment

- Illegal activities or goods e.g. illegal substances
- Paying for shopping or other ordinary household bills such as gas or electricity
- Buying alcoholic drinks or cigarettes for anybody
- Anything that would be funded by another agency, for example the NHS or housing authority provisions e.g., a hospital bed or special adaptations, as in this case Adult Social Care Services and Children's Services would be subsidising those other statutory agencies.
- A service provided directly by North Tyneside Council
- Employing a family member or their partner, who lives in the same house as the individual receiving support. However, there are some exceptions to this. This would need to be discussed with the allocated worker and authorised by a senior manager.
- When employing a Personal Assistant, there needs to be a separate person to act as employer. The same person cannot be employer and employee.
- Direct Payments cannot be used as a substitute for a DFG (disabled facilities grant).
- Permanent residential care. They can however be used to fund short breaks for:
 - a) Periods of up to 4 weeks in total in any 12 months, or
 - b) periods which may total more than 4 weeks in a 12 month period as long as:
 - i) none of them exceed 4 weeks, and
 - ii) once the 4 week total has been reached, there is a period of at least 28 consecutive days when the Direct Payment user is not in residential accommodation before the next short break begins.

If the current support plan is not able to meet need, then it must be discussed with the allocated social care worker. The Direct Payment will

not change until a new social care assessment and support plan has been agreed.

10. Setting up a Direct Payment

North Tyneside Council's responsibilities

Adults / Children's Social Care Services will:

- Ensure that all individuals who receive a Direct Payment are provided with adequate support to ensure services are tailored to meet individual requirements, depending upon how the Direct Payment is to be used. This will be agreed as part of the assessment process.
- Provide information about the Direct Payment processes in a variety of formats, media and languages to enable service users to decide whether to apply for a Direct Payment.
- Assess, Monitor, review and record the service user's consent and ability to manage their own care.
- Agree the viability of the service user's plan to manage the Direct Payment with assistance from nominated person(s) if necessary, to ensure that the plan is sustainable and represents best use of public funds.
- Establish the level of the Direct Payment which will meet assessed need. This will be at a level that is sufficient to enable the recipient, to lawfully secure a service of a standard that the council considers reasonable, to meet the needs to which the Direct Payment relates, as set out in the current authorised support plan. This will include any employer costs and support related costs, such as payroll and insurance.
- Provide the Direct Payments agreement for individuals to sign. A Direct Payment will not be set up without a signed agreement, from the individual or their representative.
- Create an online bank account to administer the direct payment, this is the default option for managing payments, unless there are extenuating circumstances, which must be agreed by the Council.

Provision of sufficient identification would be required to comply with banking regulations.

- Payments will be made weekly, any assessed financial contribution to be collected by invoice, on a 4-weekly basis. Any unpaid invoices will be subject to the council's corporate debt policy and will be pursued.
- Ensure that spending of the Direct Payment is monitored and that accounts are properly audited. A maximum of 8 weeks direct payment would be left in the account, any amount above this will be recovered as surplus funds.
- Review the support plan regularly in line with care management policy to ensure the Direct Payment continues to meet the assessed needs.
- Respond swiftly as necessary to ensure safety in any crisis or emergency that may arise.

Access to the information sheets about Direct Payments are available under the Direct Payment section of My Care Adult Social Care Information Sheets. These can be accessed through the following link:

<https://mycare.northtyneside.gov.uk/web/portal/pages/help/facts>

- Using a Direct Payment to Employ Personal Assistants
- Using a Direct Payment to buy services
- Using a Direct Payment for respite
- Using a Direct Payment for Self Employed Personal Assistants

Direct Payment individual and/or their nominee's responsibilities

The person and or their nominee will sign an agreement to abide by the requirements of the North Tyneside scheme, including the following:

- Only spend the Direct Payment on the needs identified in the Support Plan, and in accordance with this policy.
- Draw up a plan outlining the proposed use of the Direct Payment which should be agreed with the allocated worker, who will be

satisfied that the proposed use will meet the presenting needs identified within the service user's Support Plan.

- Develop a plan for managing the Direct Payment, including contingency arrangements in emergencies, as well as planned hospital admissions etc.
- Provide relevant Identification to ensure prepaid bank account can be opened in line with banking regulations.
- Where individuals are employing personal assistant(s) they must comply with current employment legislation, HMRC guidelines, North Tyneside's Equality and Diversity Policy and insurance requirements.
- Where individuals are purchasing services, then an agreement should be entered into in writing.
- Where a care agency is used for the provision of personal care services, the agency must be registered with the Care Quality Commission.
- Make the required financial arrangements below and keep financial records as specified in this policy and guidance.
- All payments must have sufficient audit trail, i.e. invoice, payslip, receipt.
- Cash withdrawals are not allowed, without prior agreement.
- Provide the information required by Adult Social Care Services for monitoring purposes in the manner and within the time scales specified.
- Inform Adult Social Care Services of any relevant change of circumstances e.g. hospital admission, long term holiday plans.

11. Employer Responsibilities

The person or their representative is the employer if they pay a carer or personal assistant directly, even if they receive money from the Council as a Direct Payment, or the NHS as a Personal Health Budget, to pay for them.

Employees' rights

Anyone you employ must:

- have an employment contract
- be given payslips
- not work more than the maximum hours allowed per week
- be paid at least the National Minimum Wage

If they meet the eligibility requirements, they're also entitled to things like:

- Statutory Maternity Pay
- Statutory Sick Pay
- paid holiday
- redundancy pay
- a workplace pension

More information is available here:

<https://www.gov.uk/au-pairs-employment-law>

Help and Support

The Council will take all reasonable steps to make help and support available to whoever may require it, in order that the person is able to manage the Direct Payment.

The Council have a list of accredited Support Service Providers, that can help with your employer responsibilities, such as recruiting and paying a personal assistant. This information is available on the My Care North Tyneside website:

<https://mycare.northtyneside.gov.uk/web/portal/pages/help/facts/factsheet16>.

12. Terminating a Direct Payment

The Council may terminate the Direct Payments in the following circumstances:

- The Direct Payment is no longer required.
- A reassessment determines no ongoing support is required. The person managing a Direct Payment (Individual or Nominee) is no longer able or willing to manage the Direct Payment. This will require

a reassessment of support needs, as there will be a substantial change in circumstances, and the amount of informal support available to the individual with care and support needs.

- Where the Direct Payment has been used other than to meet the needs as identified in the support plan, funds have been misspent or overspent, or used in an illegal manner, the Council will audit and investigate any discrepancies. The investigation could result in the immediate suspension of any payments from the Direct Payment account. The Council has the power to seek repayment of any misspent funds, and this may result in a criminal investigation.
- Failure to engage in the audit process, which could result in a suspension or termination of the Direct Payment.
- If the person managing the Direct Payment ceases to be suitable to manage the Direct Payment.

The decision to terminate the agreement must be clearly communicated to the individual who must be informed of their right to use the Council's Complaints Procedure.

Alternative support will be arranged instead of those previously arranged via a direct payment must be organised to ensure individuals are not placed at risk. Any contractual obligations to employees must be taken into account, in terms of the notice period given.

The Council or the individual may terminate the Direct Payment and revert to alternative support at any time following consultation with the allocated worker.

Notification of termination of the Agreement will usually be 4 weeks in writing by either the individual or the Council, however in exceptional circumstances it may be less than this.

13. Complaints Procedure

If a customer is dissatisfied with the process or outcome of the direct payment, then they are entitled to request a reconsideration of the decision, and/or to make a formal complaint. Information about the reconsideration process is available on the My Care North Tyneside website:

<https://mycare.northtyneside.gov.uk/web/portal/pages/help/facts/informationsheet32>.

Further information about the formal complaints process is available from the council web page at:

<https://my.northtyneside.gov.uk/page/7856/complain-about-council-services>

Alternatively, customers or their representatives may contact the Customer First Office by telephone on 0191 643 2280.