



Cyngor Castell-nedd Port Talbot  
Neath Port Talbot Council

# Social Services Direct Payments Policy

## August 2024

This document is also available in Welsh

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## SECTION 1 – RECEIVING A DIRECT PAYMENT

### 1. Policy Statement and Legal Framework

Neath Port Talbot Council ('the Council') is committed to ensuring that all people with an assessed eligible care and support need receive high quality, sustainable and personalised responses to meet that need and help them to achieve their agreed personal outcomes.

Direct Payments are payments of money made to individuals to use to meet some or all of their eligible care and support needs. This can increase a person's independence and choice by providing them with control over the ways in which their assessed needs are met and/or enable carers to continue in their caring role.

The purpose of this policy, and the accompanying Guidance document, is to meet the Council's statutory obligations and to provide a framework for the use of Direct Payments.

The policy applies to adults and carers aged 16 or over, who have been assessed as eligible to receive support under the Social Services and Well-being (Wales) Act 2014 ('the Act').

The Act, together with Regulations made and Codes of Practice and Guidance issued under it, is the legislative framework that sets out the Council's duties to meet an individual's need for care and support, or support in the case of a carer, following an assessment. The Council will have a duty to meet that need if the need meets statutory eligibility criteria and cannot be met by the person's own resources or community resources.

### 2. Eligibility Criteria – who can receive Direct Payments?

Direct Payments must be offered by the Council as a way of meeting some or all of a person's assessed needs if:

- The Council considers that direct payments are an appropriate way of meeting the needs, and
- The person is capable of managing the payments, either alone or with support, or if the person lacks capacity to manage their affairs, a suitable person will do so on their behalf.

A person does not have to agree to receive direct payments and can ask to have a service provided instead. A Direct Payment can be a single payment for a specific service or item or may continue for ongoing eligible needs.

Examples of people who may be eligible for a Direct Payment include:

- People with disabilities aged 16 and over, including those with physical and learning disabilities and sensory impairments
- Adults who meet the eligibility criteria in accordance with the Act
- Adults, including people who are entitled to after care in accordance with Section 117 of the Mental Health Act 1983, if they are not subject to certain exemptions
- Adults with parental responsibility for disabled children in order to meet the disabled child's needs
- Young carers and adult carers providing regular and substantial care
- People who are subject to drugs and alcohol-related provisions of certain criminal justice legislation, but only on condition that payment is made to another person who is suitable and both persons agree to the arrangement.

There are a number of **conditions** for the provision of Direct Payments:

- The person must agree to use the funds only to secure services to meet their eligible needs and outcomes as determined by the assessment and set out in the Care and Support Plan
- The Council must assess whether a person must pay a contribution towards the cost of the care and support they need, whether that need is to be met by the provision of services or through Direct Payments. Only the net amount of the Direct Payment will be paid following the outcome of the financial assessment. The person will be required to pay any assessed contribution into the Direct Payment account in line with the Council's **Residential and Non-residential Care Charging Policy**
- The Direct Payment will be regularly reviewed to ensure the care being provided is in accordance with assessed needs, and adjustments may be made to the amount of the Direct Payment as required.
- The Council will not be liable for any costs or liabilities incurred because of an individual's failure to pay their contribution into the Direct Payments account

Those eligible will be offered Direct Payments, although there are **exemptions**. Direct Payments will not be offered to people who, following assessment, would not be offered services in any circumstances. Individuals who are eligible, but decide not to take up Direct Payments, will have commissioned services arranged on their behalf.

Direct Payments **may be refused** to people who have been placed under certain conditions or requirements by the courts. These include:

- Any offenders subject to a community order, a community rehabilitation order, or a community punishment order and rehabilitation order, which include a requirement to accept treatment for drug or alcohol dependency
- Offenders released from prison on licence subject to an additional requirement to undergo treatment for drug or alcohol dependency

### 3. Direct Payments for Adults Lacking Capacity to Consent

In cases where the person in need of care and support is assessed as lacking capacity, as defined in the Mental Capacity Act 2005 ('the MCA'), to request Direct Payments, a **Suitable Person** can request the Direct Payment on the individual's behalf.

A Suitable Person is someone appointed to receive and manage Direct Payments on behalf of an individual who lacks capacity to consent to the making and receiving of the Direct Payments (provided that person is willing and meets all the conditions set out in the Regulations). The Suitable Person will often, but not always, have been given a Lasting Power of Attorney or have been appointed by the Court of Protection as a deputy under Section 16 of the MCA. Usually the Suitable Person will be a family member or friend who may previously have been involved in the care and support of the individual.

In these cases, before authorising a Direct Payment, the Council must satisfy itself that:

- It is not prohibited from meeting the individual's needs by making Direct Payments to the Suitable Person
- The Suitable Person will act in the individual's best interests in arranging for the provision of the care and support for which the Direct Payments would be used

- The Suitable Person is capable of managing the Direct Payment either independently or with support
- Making Direct Payments to the Suitable Person is an appropriate way of meeting needs

If there is no representative, then the Council itself must make the decision about whether or not someone should act as a Suitable Person to manage the payments on behalf of the person who cannot consent. This will be determined through a Best Interest Assessment meeting.

To protect the interests of people lacking capacity, the Council will require that the Suitable Person will be subject to a satisfactory Disclosure and Barring Service (DBS) check (see also 'Safeguarding' below).

#### 4. Transition

The Council has clear obligations regarding children and to make sure that Adult Services and Children and Young People Services (CYPS) cooperate to anticipate and support the transition of a young disabled person into adulthood. The guiding principle is that the welfare of the child is paramount.

A young person aged 16 or 17 can receive Direct Payments if they are assessed by the Council as being eligible. Direct Payments are given to 16 and 17 year old disabled children directly rather than to their parents or carers. The young person can then decide which services to use. This only applies if the young person is considered "competent" to organise their own care.

In determining whether the young person will be eligible for adult social care provision upon reaching the age of 18, Adult Services will need to complete a full assessment with the young person to identify the well-being outcomes and relevant care and support or assistance required to enable them to live their life as independently as possible. When the young person turns 18 they will also receive benefits in their own right, which means they will be required to declare their financial circumstances and be assessed to make a financial contribution.

Continuing a Direct Payment after childhood will be dependent on the individual and the identified well-being outcomes discussed in partnership during the transition process. The Direct Payment may reduce, increase or end but the family and the person themselves will be kept updated and informed during the process and provided with relevant support.

If people with parental responsibility are going to continue in their caring role after the young person becomes 18 then such carers may be entitled to receive Direct Payments as an alternative to carers' services.

There may be situations where a parent has been receiving Direct Payments to meet the well-being outcomes of their child who, on reaching the age of 18, does not have the requisite mental capacity to consent to the making of those Direct Payments. In such cases, it will often be appropriate for the person with parental responsibility to continue to receive the Direct Payments for the young adult lacking capacity, in the role of a Suitable Person (see 3 above). This will ensure continuity of care for the young adult, and ensure that the payments are managed by the person who is likely to be best placed to understand the individual's needs and preferences.

## 5. Financial Assessment

The Council will carry out a financial assessment under Part 5 of the Code of Practice with the person or their financial representative to establish how much, if anything, a person has to contribute towards their Direct Payment.

The Council will make a monetary payment into the Direct Payments account based on the client's assessed eligible needs and the completion of a Care and Support Plan.

Recipients will be paid net of any assessed charges. As such, individuals must ensure their contribution is paid directly into the Direct Payments account and will be included in the calculation for the overall total of a Direct Payment. Failure to pay this contribution will lead to insufficient funds being available to pay any responsibilities associated with the Direct Payment, e.g. wages, tax bills or payroll fees. Any contribution payable will be reviewed on an annual basis (or following a change in financial circumstances) and as such may be recalculated.

The principle of Direct Payments is that an individual manages their payments to buy care and support to meet their needs. The Council will not be liable for any costs and liabilities incurred because of an individual's failure to pay their contribution into the Direct Payments account or to manage their payments properly.

## 6. Reasonable Funding and Personal Top Up

The total amount of a Direct Payment will depend on the person's assessed need, but will not exceed what is considered reasonable for the person to have to pay to secure the relevant service(s). The Council has a duty to make adequate arrangements to meet the person's assessed needs but is not obliged to fund additional costs associated with the person's preferred method of securing the service or cost incurred by the person.

If a Direct Payment recipient chooses to secure services that are more expensive than the amount received as a Direct Payment, then the individual will need to make a payment from their personal funds for the difference in cost (**see Fairness of Service Provision Policy**).

The money is held by the Direct Payment recipient as a means of paying for their social care needs. It is not their personal money or welfare benefit, and they will be required to provide evidence that it has been used properly to meet their assessed needs.

## 7. How will I receive my Direct Payment

There are a number of ways in which funds can be received and the Direct Payments Support Service (DPSS) will be able to offer advice and guidance on the most appropriate for the individual concerned.

### **Prepaid Card**

This is an alternative to a bank account and looks similar to a debit card. Funds are preloaded onto the card by the Council and the person (where they have been assessed to make a financial contribution towards support). When the funds are transferred onto the Prepaid Card they are available to use instantly.

The card can be used to pay for care and support to meet needs as agreed in the support plan up to the value that is loaded onto the card.

The person can view spend activity online and this information is retained and available to print as needed. The client can upload documents, e.g. receipts, and there is no need to send the Council statements regularly, as the Council can access the information online. Using a pre-paid card will therefore reduce the financial monitoring requirements of the client.



### **Directly to a Bank Account**

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

Using this method the person must retain the bank account statements and receipts and submit these on request as evidence of the spending on care and support needs. Submission of these documents is usually quarterly and is set out in the agreement signed by the Direct Payment recipient.

### **Managed Account**

A Managed Account Service is a way to get additional help and support for recipients to administer their Direct Payments. Direct Payments are made to a commissioned payroll provider service which manages the funds on their behalf, but the recipient or Suitable Person remains responsible for how Direct Payments are used. For example, if Direct Payments are used to employ staff the recipient / Suitable Person is the employer, and (s)he must ensure that staff are properly trained for their role, e.g. in manual handling, and that this is kept up to date. The payroll provider will carry out payroll functions such as tax, National Insurance and pensions on a day to day basis. The DPSS will be able to offer advice and guidance on this.

## **SECTION 2 – HOW TO SPEND DIRECT PAYMENTS**

### **8. What can Direct Payments be used for?**

Direct Payments can facilitate a wide range of well-being outcomes and promote independence and choice. They can be used to purchase support and assistance, including preventive and rehabilitative support, as identified in the individual assessment of need and agreed as well-being outcomes in the Care and Support Plan. Examples include:

- Employing a Personal Assistant (PA) e.g. to provide support with daily living activities such as personal care, attending appointments and events
- To access support from an accredited domiciliary care agency
- Long term residential care
- Purchasing short breaks in a care home or other agreed facility which will meet the respite need (see **Respite Allocation Policy**)

- As a one-off payment for short-term interventions
- Purchasing specialist lower cost equipment and adaptations (i.e. excluding Disabled Facilities Grants). Although in principle equipment is available via a Direct Payment, in practice it may be more cost effective for the Council to purchase this
- Accessing daytime activities and support from providers

When completing a care and support plan, a person may choose which needs they would like to meet using Direct Payments and to have some of their needs met by commissioned services.

There may be a number of people who have similar support needs and would be interested in pooling some of their Direct Payments to organise joint activities or services. **Pooling funding** means taking some of your Direct Payments and adding it to funding from one or more people to purchase a service together. You may be able to get more for your money by sharing the cost of activities and have the opportunity to spend more time with other people.

## 9. Direct Payments cannot be used

- For anything which puts the recipient or others at risk.
- For gambling or anything illegal
- To purchase services/items that do not meet the agreed outcomes in a person's care and support plan
- To fund existing informal family support
- To pay for personal or household expenses, such as personal loans, utility bills, household bills, rent or mortgage payments
- To pay self-employed PAs
- To purchase a service for someone who is no longer resident in the Council's area other than by prior agreement in writing by the Council
- By a carer to pay him/herself for care and support provided to the person they care for
- To purchase services or equipment that would otherwise be the responsibility of other authorities to arrange, e.g. NHS or housing authorities (Direct Payments are not a substitute for Disabled Facilities Grants)

## 10. Paying Family Members

The person can use the Direct Payment to pay a family member. When considering whether employing the relative will provide the best well-being outcome for that individual, the local authority must consider the views of the recipient before coming to a decision. Where appropriate safeguards are in place the employment of a relative living in the same household is often the most suitable way of providing care as it enables and supports continuity of care, recognition of personal choice and promotes early intervention.

Under the Act, the Council has a duty to ensure that employing a family member is a suitable and safe use of the Direct Payment and that the support will meet the person's needs. This will be discussed with the person as part of the assessment and support planning process.

As such, the Council may authorise Direct Payments to pay a close relative living in the same household (close relative means parent, parent-in-law, aunt, uncle, grandparent, son, daughter, son-in-law, daughter-in-law, stepson or daughter, brother, sister or the spouse or partner, niece, nephew or grandchildren of any of the preceding). The Regulations state that this may happen where the Council deems it as necessary to meet the well-being outcomes of the person. Where the Council does not consider that it is necessary to promote a person's well-being, it must impose a condition that the Direct Payment is not to be used to pay a relative living in the same household.

## 11. Safeguarding

Safeguarding concerns the protection of vulnerable people from situations that place them at risk of harm, neglect or exploitation. Safety in transactions and all other areas of Direct Payments is crucial and assessing the risk factors associated with them is essential. The Council's policy and procedures on Safeguarding must be followed.

The nominated Suitable Person managing the Direct Payment shall ensure that, when employing anyone who will provide unsupervised support to young children or a vulnerable adult, they conduct the enhanced DBS (Disclosure and Barring Service) check to ensure that the person has no relevant criminal convictions that would preclude them from working with children or vulnerable people. This has to be completed and the DBS clear before they commence employment. The adult, carer, young carer, parent of a disabled child, suitable

person or organisation must share information with the Council when there are concerns about information on the DBS check which could result in a risk to the adult or child by contacting the Direct Payments Team. Any unclear DBS checks will have to be risk assessed before employment can commence.

If the Suitable Person mismanages the Direct Payment, the Council will investigate how this has happened. Financial abuse will be considered a safeguarding concern.

## SECTION 3 – REVIEW OF DIRECT PAYMENTS

### 12. Review of Care and Support Plans

All Care and Support Plans will be subject to a minimum of an annual review to ensure they remain the most appropriate option for meeting the individual's assessed needs, and to consider if their needs have changed and if a re-assessment is required.

Where needs and circumstances change the individual has the right to request a re-assessment of their needs for care and support. Further detail about re-assessment is included in the Code of Practice under Part 3 of the Act.

### 13. Assessments, Reviews and Reassessment

All assessments and reviews will be conducted in a timely manner in accordance with the Act, and should reflect the realities and needs of the individual. The focus will be on the person's well-being outcomes and any barriers that there are to the person achieving them. The assessor will draw on the person's strengths, assets, personal relationships and wider community networks and resources to explore all potential solutions.

It is important to ensure that the person's needs are being met to an appropriate standard and that the person is happy with the arrangement currently in place. Such reviews will be jointly undertaken by a Social Worker to assess whether the Direct Payment is meeting eligible need, and a Direct Payments Officer to review how the Direct Payment is working and whether all documents have been completed.

The focus of reviews will be on:

- Whether the person's needs/outcomes set in the original care and support plan are being met
- How they are managing Direct Payments
- Is the money being spent appropriately
- Are they receiving the appropriate level of support
- Have the care and support needs changed
- Are the concerns/risks identified in the risk assessment being managed

#### 14. Review of Direct Payments

The Council will review the arrangements for the making of Direct Payments and how they are being used at intervals determined in line with the requirements of the Codes of Practice for reviewing care and support plans, issued under Section 145 of the Act, but in any event an initial review will be undertaken within 6 weeks of the first payment made then at least annually following the first review.

#### 15. Financial Monitoring

The Council is accountable for the public money it manages, including Direct Payments funding. In addition to ensuring the person's assessed eligible care and support needs are being met by Direct Payments, financial monitoring will be undertaken to assess the individual's ability to manage the financial responsibility for purchasing services and to ensure there are sufficient funds to pay for employment related responsibilities (where applicable) or if funds are in excess of that needed to meet the agreed outcomes in the support plan.

As such, recipients (or Suitable Persons) of Direct Payments will be expected to keep accurate records to identify how the money is used to provide services to individuals.

In the event that fraud, abuse or misuse of the Direct Payment is suspected, the Council shall investigate and suspend/terminate the Direct Payment as appropriate. In such circumstances the Council will, wherever possible, try to resolve the issues with the individual. The Council will provide the care and support to meet eligible need in the interim or in the long-term if the Direct Payment has been terminated.

If a person misuses or fails to manage their Direct Payment properly, they may incur liabilities to others, or losses, which they do not have money to meet in their Direct Payments account. The Council is not responsible for any such losses or liabilities.

#### 16. Build-up of money in the Direct Payments account

The individual is permitted to build up money in the account when it is planned and stated in the Care and Support Plan. The amount of money can be up to 8 weeks' of the Direct Payment. Any amount above this will only be allowed in specific circumstances and the individual has to have written agreement from the Council to save this amount.

If the Council identifies that the Direct Payments account has an accrual equivalent to more than 8 weeks' of payments, or there is a build-up of money that has not been planned for and included in the Care and Support Plan, the Council can ask for the money to be given back or make a change to the amount of Direct Payments money.

#### 17. Seeking Repayment

In some circumstances the individual may be asked to repay some/all of the Direct Payments to the Council. This will happen if it appears that the money has not been used for the agreed purpose and to meet the agreed outcomes.

It may also happen if there is an accidental overpayment, illegal activity, or if excess money builds up in the account which is more than is needed to pay for assistance to meet the assessed needs.

If the individual fails to submit the required records when requested, they may be asked to repay some/all of the Direct Payments.

In the event of the death of the Customer receiving Direct Payments, payments to the Direct Payments account will be discontinued with effect from the date of death and any remaining balance in the account will be returned to the Council. There may still be outstanding commitments from the account for such things as Personal Assistant wages, or tax and National Insurance bills. There may also be an entitlement to statutory redundancy for a Personal Assistant.

The Council will assess whether it is appropriate to seek recovery on a case by case basis, based on the individual circumstances. Further information can be found in the **Adult Services Debt Management and Recovery Policy**.

In principle:

- The Council is likely to require full or partial repayment of Direct Payments if any condition attached to Direct Payments by the Council is unmet or the Council has reason to believe the payments have not been used to secure the care and support a recipient requires, and their personal outcomes have not been achieved.
- The Council may require repayment of any unspent Direct Payment if they are not required to meet needs as set out in the plan.
- The Council will require repayment of excess funds accumulated in the dedicated bank account where there is no reasonable explanation for the surplus. The Council may also seek to recover excess Direct Payment account balances following the course of the regular financial monitoring of the Direct Payments account. The powers available to the Council are intended to enable it to recover public money that has not been spent for the purpose for which it was intended or to recover money not spent at all. It is essential that before anyone receives a Direct Payment they understand completely the conditions that they will be required to meet.
- Direct Payments do not form part of an estate in the event that someone dies while receiving them. The funds at all times belong to the Council and remains public funds. In the event of the death of the Direct Payment recipient the Council will deal sensitively with the matter, and will contact the Suitable Person or executor of the deceased's estate to support them through the process of closing the Direct Payment, i.e. meeting any outstanding payments such as wages, redundancy, submitting any final returns to Finance, etc.

## SECTION 4 – ENDING DIRECT PAYMENTS

### 18. Discontinuing Direct Payments

Direct Payments may need to end for a number of reasons, including:

- Where it has been identified there is evidence of abuse or neglect related specifically to the Direct Payment, where Direct Payment conditions are not being met or where fraud has been detected

- The Council may decide it is not satisfied through the assessment care management/finance review process that the person's identified eligible well-being outcomes are being met or the funds are being used as intended
- When a person to whom Direct Payments are made, whether to purchase support for themselves or on behalf of someone else, decides they would prefer the Council to arrange their support directly, the recipient of the Direct Payment should finalise any outstanding payments including returning any unspent money to the Council and close the Direct Payment account within 28 days

The Council will give 28 days' notice to discontinue a Direct Payment. Care and support purchased after this period will be covered by Direct Payments.

### **Discontinuing Direct Payments in the case of persons with capacity to consent**

Where an adult or young person aged 16 or 17 with capacity is in receipt of a Direct Payment but loses capacity to manage the Direct Payment, the Council will discontinue Direct Payments to that person and consider making payments to a Suitable Person instead.

In the event that the loss of capacity to consent is temporary, the Council may continue to make payments if there is someone else who is willing to manage the payment. This will be a temporary measure until the person has regained capacity.

### **Discontinuing Direct Payments in the case of persons lacking capacity to consent**

The Council shall discontinue Direct Payments if the nominated person or organisation is not acting in the best interest of the person within the meaning of the Mental Capacity Act 2005.

In all cases the DPSS will work with the recipient or Suitable Person to ensure that any employment responsibilities (e.g. redundancies) are dealt with appropriately, conduct a review of the Care and Support Plan to consider alternative arrangements to meet needs, and ensure there is no gap in the care and support.

Direct Payments will be discontinued when a person no longer needs the support for which the Direct Payment is made.



## SECTION 5 – MISCELLANEOUS

### 19. Complaints / Appeals Procedure

Should a person who accesses services or their carer wish to challenge any decisions made, (s)he should refer to the Council's appeals procedure. This process has a clear route of appeal and timescale for handling appeals.

Individuals and/or their carers should be provided with information explaining how to complain about Social Services in Neath Port Talbot, which is available in accessible formats and different languages. The leaflet and details of the complaints procedure can also be accessed online via the Council's website [www.npt.gov.uk](http://www.npt.gov.uk). The dedicated Adult Services Complaints telephone number is (01639) 763445, or via email: [complaints@npt.gov.uk](mailto:complaints@npt.gov.uk)

### 20. Review of the Policy

The policy reflects the Council's current position and will be reviewed biennially.

### 21. Resources

Paying for Residential and Community Care: <https://www.npt.gov.uk/1290>

Direct Payments Suitable Person Guidance:

<https://www.allwalesforum.org.uk/wp-content/uploads/direct-payments-suitable-person-guidance.pdf>

The Mental Capacity Act 2005:

<http://www.legislation.gov.uk/ukpga/2005/9/contents>

Mental Health Act 1983:

<http://www.legislation.gov.uk/ukpga/1983/20/contents>

Respite Allocation Policy

Fairness of Service Provision Policy

Lifting Operations and Lifting Equipment Regulations 1998 (LOLER):

<http://www.hse.gov.uk/work-equipment-machinery/loler.htm>