

Thurrock Council
Adult Social Care
Direct Payments policy and guidelines

This Policy:

- sets out the processes by which Thurrock Council's Adult Social Care Directorate (the Service) will meet the duties defined within the Act
- defines the Council's undertaking to service users and their representatives concerning the service they should expect to receive
- should be read in conjunction with the Council's Personal Budget Policy and Assessment and Eligibility Policy
- has been refreshed to ensure compliance with the Care Act (the Act) 2014

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Language and terminology

The words, names and terms below are used in this document. Definitions are provided to help make the Policy more accessible:

- 'The Council' – Thurrock Council
- 'The Person' – refers to an individual who is eligible for care and support or is undergoing a care assessment
- 'Care Professional' – will be a Social Worker or Support Planner involved in the assessment or support of a person
- 'Service Manager' or 'Strategic Lead' – refers to senior managers within the Council at varying levels
- 'Finance Officer' – refers to a member of the Customer Finance Team responsible paying and auditing Direct Payments
- 'Donee' – Is a person who is given a power of appointment
- 'Surrogate' – is a substitute, especially a person deputising for another in a specific role

1. The law

1.1. This policy has been put together in response to the following pieces of legislation:

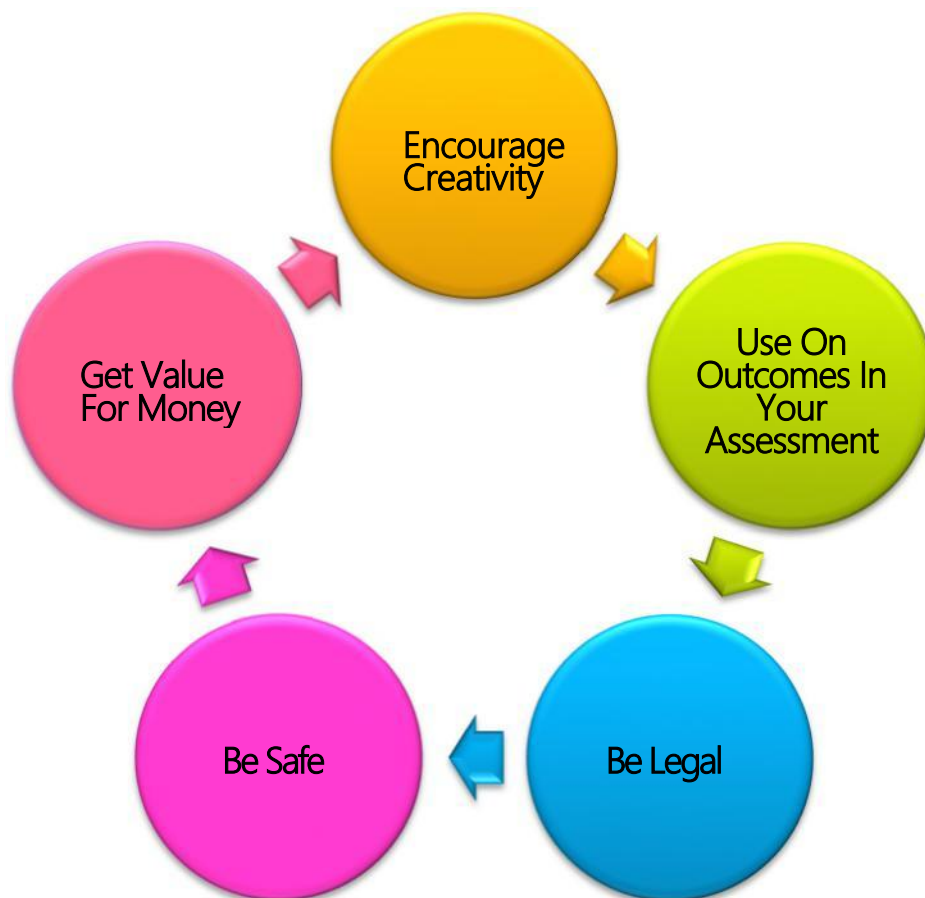
- Health and Social Care Act Section 57
- Childrens Act 1989 Section 17A
- Community Care - Services for Carers and Children's Regulations 2003
- Care Act 2014 (which supersedes the above)
- Mental Health Act 1983
- Care and Support (Direct Payments) Regulations 2014

1.2. The policy will be reviewed each year (or when necessary) to ensure it is still in keeping with any changes to the law.

2. The principles

2.1. The principles contained in the picture below will inform how the Direct Payment policy will shape the views and approach the Local Authority will take towards providing and monitoring this service.

2.2. The principles will be as follows:



encourage creativity – to use any available services or things within or outside the community to meet the person's outcomes. If the person has an idea on how to meet their outcomes, they should be given a chance to express this. If they are unsure if this is okay, they should be able to simply ask.

use on outcomes in the assessment – make sure that direct payment money is only used on what outcomes are shown in their (most recent) assessment. If they think something is missing, they can ask to be reviewed.

be legal – make sure the person only buys services or things that are legal. Even if they are paying for someone's time, they need check to make sure that things like VAT or other taxes are being paid or else they could get into trouble.

be safe – make sure items bought are safe to use. make sure anyone the person buys services from is qualified, insured and have the right security checks in place.

get value for money – as the person is given an amount of money from Thurrock council to meet their outcomes, they need to make sure they can meet them all. They need to keep in mind that if they want to pay more for one thing, they may have less to spend on others, and if they can get something cheaper, they will have more money left over to use elsewhere.

3. Who can have a Direct Payment

3.1. To be eligible to have a service they must have at least 2 of the following outcomes for adults with care and support needs:

- managing and maintaining nutrition
- managing personal hygiene
- managing toilet needs
- being appropriately clothed
- being able to make use of the adult's home safely
- developing and maintaining family or other personal relationships
- accessing and engaging in work, training, education or volunteering
- making use of necessary facilities or services in the local community (including public transport and recreational facilities / services)
- carrying out any caring responsibilities the adult has for a child

3.2. For carers (16 or over) with support needs they would need at least 1 of the follow outcomes:

- carrying out any caring responsibilities the carer has for a child
- providing care to other persons for whom the carer provides care

- maintaining a habitable home environment in the carer's home, whether or not this is also the home of the adult needing care
 - managing and maintaining nutrition
 - developing and maintaining family or other personal relationships
 - engaging in work, training, education or volunteering
 - engaging in recreational activities
- 3.3. If a person who is eligible but lacks capacity to look after or manage a Direct Payment, they can get a 'Suitable Person' to help. This could be a person with Lasting Power of Attorney; someone appointed by the Court of Protection or a friend or family member who agrees.
- 3.4. Other people that can receive Direct Payments if eligible are:
- families with disabled children
 - disabled people aged 16 or over, including those with short-term as well as long-term needs
- 3.5. The Council likes people to have Direct Payments as they give them the most choice and control over their care as they can pick and choose when, where and how it is taken.
- 3.6. **But** – Direct Payments are a choice; they do not have to have them if they don't want to.

4. Who cannot have a Direct Payment

- 4.1. There are only a few situations where a person cannot have a Direct Payment. These situations are focused around a person's mental health or around where a person has or are in legal actions due to issues with money. These are:
- A. People detained under mental health laws who are on 'leave of absence' from hospital.
 - B. People who are described as 'conditionally discharged patients' that are such to restrictions from the Home Office
 - C. People subject to 'guardianship' under mental health laws
 - D. People getting any form of 'care' started by a compulsory court order
 - E. People on probation, or a combination order, or released on licence that need treatment for mental health issues or drug and/or alcohol dependency issues
 - F. People subject to similar / equivalent restrictions in Scottish mental health or criminal justice laws
 - G. People in legal proceedings to do with financial management like bankruptcy

- 4.2. The Council has to think about what the Care Act (2014) states about this as well (sections 31 and 33) in allowing access to Direct Payments. Also if a person owes any other money to the Council (things like Council Tax, rent or care charges) then the person may not be able to have a Direct Payment as this may show the person may not be able to handle money very well.
- 4.3. **However** – the decision to give a Direct Payment to a person who owes money to the Council will be viewed as an exception and would have to be made by a Service Manager or Strategic Lead.

5. Mental capacity

- 5.1. The Council must establish if a service user has capacity to consent to receiving Direct Payments before it can provide them. Obtaining consent might be a process involving continuous discussion.
- 5.2. An easy read guide to this topic can be found at:
www.local.gov.uk/publications/mental-capacity-act-2005-easy-read-guide
- 5.3. If a service user has capacity to consent to Direct Payments but needs additional support in order to manage them, Direct Payments can be paid to a nominee who can help the person manage them, as long as the person who is eligible to receive the Direct Payments is in agreement.
- 5.4. If a service user lacks capacity to consent (subject to certain conditions), Direct Payments may be made to another person on behalf of the person needing support. This must be an appropriate and willing suitable person.
- 5.5. Details on assessing capacity can be found in the 'Thurrock Policy on Mental Capacity' Capacity is assessed on an individual basis, in relation to the specific decision to be made, and in accordance with the Mental Capacity Act 2005. This stipulates that there is a presumption of capacity, unless it can be established that a person lacks capacity. In order to comply with the requirements of the Act, the Council must take all practicable steps to help the service user make the decision before it can treat them as unable to make the decision. The steps taken to assess capacity will be recorded. Any decision that a person lacks capacity to consent must be shown to be reasonable.
- 5.6. If capacity is borderline, the Council may set up a trial period of Direct Payments during which capacity can continue to be assessed.
- 5.7. A person might have capacity to consent to receiving a Direct Payment for one service, for example one that involves paying a regular small payment, but not one that involves more complexity, such as employing an assistant. The latter involves compliance with the tax and national insurance regimes and employment law. In this situation it may be appropriate that a Trust is developed to enable the service user to employ the assistance.
- 5.8. The Council will review any decisions about a service user's capacity at appropriate intervals so that it can be sure that all those in receipt of Direct Payments have as much control as possible.

- 5.9. If the Council is satisfied that regained capacity is only temporary, it will continue to make Direct Payments to the suitable person. In accordance with the Guidance, the suitable person in these circumstances must allow the beneficiary to manage their own Direct Payments during any time when they have gained or regained capacity to consent and are able to manage payments themselves.
- 5.10. The Council may discuss with the person receiving Direct Payments the possibility of making a Lasting Power of Attorney to manage their affairs relating to personal welfare in the event that they lose capacity to consent to Direct Payments in the future.

6. People who lack capacity to consent to Direct Payments

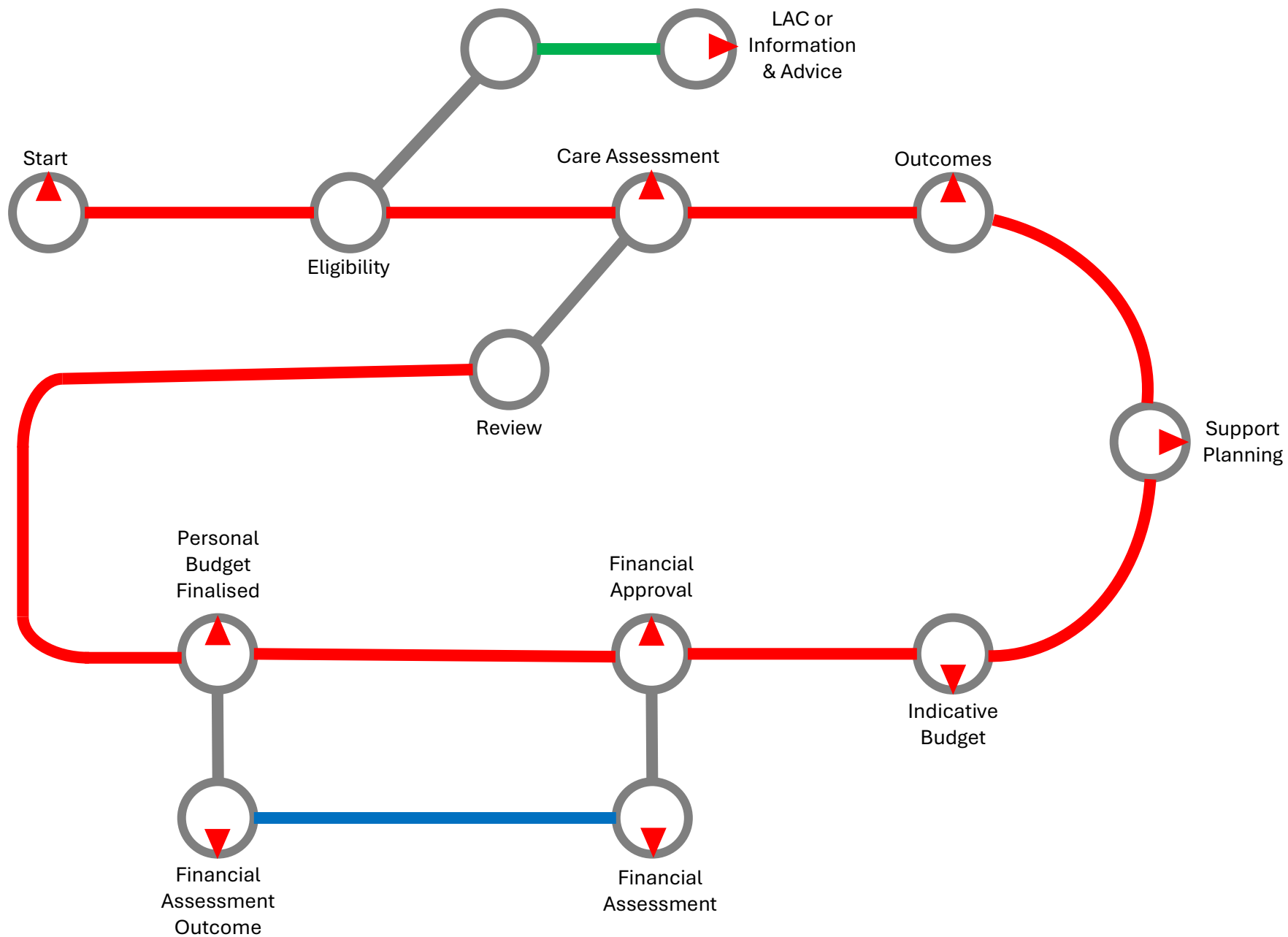
- 6.1. Where an adult service user lacks capacity to consent to receipt of a Direct Payments the Council must:
- undertake a Best Interest Assessment to test if it is the best interest of the person to receive Direct Payments
 - consult family and friends as part of the best interest decision-making process
 - be satisfied that the person's community care needs can be met by the Direct Payments
 - be satisfied that the recipient of the Direct Payments will act in the best interests of the service user
 - that in all the circumstances, a Direct Payments would be appropriate
 - obtain an enhanced Disclosure and Barring Service Certificate for the suitable person, if they are not the spouse, civil partner, partner, close relative (or spouse of a close relative) or friend involved in the provision of care of the person lacking capacity

7. Where Court of Protection or Lasting Power of Attorney is in place

- 7.1. A surrogate, that is a Deputy appointed by the Court of Protection or a donee of a Lasting Power of Attorney created by them who has been given authority to make "decisions about securing the provision of a community care service" to meet that person's needs.
- 7.2. A surrogate has the power to refuse to consent to a Direct Payments.
- 7.3. If the deputy or donee does not have the power to make "decisions about securing the provision of a community care service", the Council will ask them first if they wish to be the person's representative.

8. Customer journey (overview)

- 8.1. The picture below shows the person's journey through the Adults Social Care system at a very high level.



8.2.

The steps are as follows:

- **Eligibility** – does the person qualify for care and support?
 - i. if no, the person will get information and advice
 - ii. if yes, the person will receive a full care assessment
- **Care Assessment** – this will detail the person's needs and will look at the support they have from friend, family or the community.
- **Outcomes** – these will be the things the person wants to achieve.
- **Financial Assessment** – the Care Professional will ask the person to complete a form for a financial assessment. A Finance Officer will then come out to complete this.
- **Indicative Budget** – this will be the estimate of what it will cost to meet these outcomes. This may consist of a panel review process.
- **Support Planning** – this will be where the person will choose how to meet their outcome (receive a Direct Payment, for example) and determine what sort of services / businesses / things the money they get can be used on.
- **Financial Approval** – the Care Professional will have their worked checked (usually by their manager) and they will then agree to fund the care or not. If they don't the Care Professional may want to speak to the person about other ways to meet your outcomes.
- **Personal Budget** – this is the amount of money that it will cost to meet the person's outcomes after the person's contribution (that the financial assessment makes clear) taken away.

9. What a Direct Payment can and cannot be spent on

9.1. The Care Act (2014) tells us that Direct Payments must be spent on goods or services that are:

- are legal, including legal requirements such as tax and National Minimum Wage
- meet your eligible needs

9.2 Should an individual choose to purchase services that incur additional charges due to VAT these additional charges are not covered and must either:

- Be met by the individual within their existing budget.
- Add monies to the same value to the additional charges into the appropriate account to meet the additional cost.
- Request the Council commission the service directly so the authority can recover the additional amount.

Where the Council becomes aware that a Direct Payment is being used to purchase care from a non-CQC registered commercial provider with turnover above £90,000, the Council should satisfy itself that the provider is not carrying on a regulated activity (personal care) without CQC registration. If there is a concern, this should be escalated as a safeguarding and regulatory compliance matter.

The Council may wish to consider, as a longer-term measure, whether it can support micro-enterprises in obtaining CQC registration where the services they provide fall within the scope of regulated activities. This would bring those providers within the VAT exemption and resolve the issue at source.

Where, in an individual case, a non-CQC provider is lawfully providing a non-regulated service (such as companionship, domestic cleaning or community transport), is VAT-registered, and the VAT gap prevents the individual from meeting their assessed needs, the Council should offer to commission the service directly (recovering VAT under section 33 of the Value Added Tax Act 1994) or, in exceptional circumstances, consider a discretionary uplift to the Direct Payment.

- 9.3. The Council also states the following things would be inappropriate use of a Direct Payment unless a Service Manager or Strategic Lead has been given their agreement beforehand.

Example 1.



Name: Elizabeth
Outcomes: Reduce Social Isolation

Support Plan: To use a Direct Payment to access activities in the community.



Issue: Elizabeth used her Direct Payment to take her to bingo and purchase tickets. If she had just paid for transportation to and from the activity it would have been okay.

It is easy to forget all the rules around Direct Payments, but a person can always call their care practitioner to check.

Example 2.



Name: George

Outcomes: To reduce social isolation and support to learn to travel independently.

Support Plan: To use a Direct Payment to access activities in the community, maintain circles of support and to learn to travel independently.



Issue: George used his Direct Payment to buy his own meals and drinks when he went bowling with friends. However, the cost of the activity, travel and even meal cost for the carer supporting him would have been okay.

10. Whether the person will have to pay towards their Direct Payment

- 10.1. The person may have to. **But** the Council will have to complete a financial assessment to see if you have to. This assessment looks at your income and the things you pay out for such as rent; mortgage; household expenses; things you pay out for due to any conditions the person may have. A basic overview is shown below:

$$\begin{aligned} &\text{Maximum amount towards care} = \\ &\quad \text{Amount you get} \\ &\quad \text{minus Amount to live on} \\ &\quad \text{minus Amount paid out on illness and conditions} \end{aligned}$$

- 10.2. Not all benefits and income are included in the assessment but the Council does have a policy that details how it charges which is available on request, or the person can speak with a member of the Customer Finance Team.

- 10.3. If you have been financially assessed to contribute towards the cost of your care services, this amount will be deducted from your Direct Payment funds before they are released. It is your responsibility to ensure your contribution is paid into the nominated bank account every 28 days. You can do this via:

- Direct Debit
- Standing Order
- Bank transfer

11. Employing relatives

- 11.1. At present Direct Payment regulations prevent people from using Direct Payments to buy services from the following:

- A. A spouse (husband or wife)
- B. A partner (the other member of an unmarried couple with whom they live)
- C. A close relative (or their spouse or partner)

- 11.2. **However**, this only applies if they live in the same household as the person receiving the Direct Payment. But exceptions can be made if it is the best way of meeting the person's outcomes though this would need to be agreed by a Service Manager or Strategic Lead.

- 11.3. Employing relatives can create additional types of interactions that could place additional stress on a person's own situation and blur the lines of the existing relationships that need to be considered by both the person and the care practitioner.

- 11.4. Some of the most common types of overlapping relationships are shown below (though it is possible for several of these to overlap at the same time).



- 11.5. The additional pressures of adding an employer / employee dynamic may cause existing relationships to be strained or falter and will need to be considered in the care practitioners contingency plans.
- 11.6. The person has all the same responsibilities and requirements in employing a spouse / partner / relative that they would have employing any other person as a carer. These can be found at: www.gov.uk/contract-types-and-employer-responsibilities
- 11.7. If the spouse / partner / relative being employed by the person is claiming any benefits personally or relating to any current caring role, they would need to disclose any paid employment to the appropriate benefit agency.

12. Subsistence claims

- 12.1. What this means is any additional money the person's carer can claim while performing their role in helping meet the person's outcomes.
- 12.2. These expenses are those that would not be set out within the contract of employment (whereas mileage payments would) and tend to revolve around things such as meals.
- 12.3. The subsistence rates that are applied to Thurrock Council employees are below but can only be claimed if the person is working outside of normal working times or duties:
- Breakfast £6.75
 - Lunch £9.25
 - Dinner £12.00
 - Accommodation per night..... £77.50

- 12.4. Claims should be relevant to the person's outcome i.e. if your outcomes are for the delivery of personal care in the morning and the contract the person has is just for this, it would be extremely unlikely any claims would be necessary.
- 12.5. Any need for subsistence should be discussed at the point of assessment of needs so this can be captured and reflected in contingency plans (if appropriate). Amounts considered for subsistence should be appropriate to where the outcomes will be met (i.e. central London will be more expensive). Alternatively the person and the care practitioner should discuss amounts that could be appropriately used to cover the entire day.
- 12.6. Regardless of the approach the **main** consideration should be – how and what the person is to pay out for on behalf carer and **how will they meet the rest of their outcomes with the money they have left.**

13. Getting a Direct Payment started

13.1. What the person has to do:

- The person will have to first decide from whom they wish to purchase services to meet their outcomes. They can be loosely broken down as follows.

Agency	This could be: - self-employed people – that is, sole traders and micro enterprises. - registered care providers – that is, homecare agencies. registered with the Care Quality Commission (CQC).
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Personal assistant	Choosing to employ a person yourself or from the list of community micro enterprises
Day opportunity / activity / one-off	These can be: - agencies providing day opportunities. - residential homes offering respite - one-off costs, such as training or pieces of equipment

- It is important to remember that in whatever option a person chooses they must **always** stay within the law, therefore they must always have the correct insurance; pay the correct levels of tax; and national insurance.
- All the responsibilities of being an employer can be found at: www.gov.uk/contract-types-and-employer-responsibilities
- This can be a very complicated and technical area and help and support can be provided by the Council contracted agency or Advocate support that a care professional can direct people to.
- The person would then have to decide how they would like the Direct Payment to be managed and this can be done in a number of ways.

Self-managed	This is where the person manages all aspects of their Direct Payment – that is, account set-up, payments and audit returns to the Council.
Managed account	This is where a company (normally one with which the Council has a contract) deals with all aspect of payments however the person still chooses the suppliers, what rate is paid and how the service is used.
Process only	This is where a company (normally one with which the Council has a contract) works out things like tax and pension deductions but audit returns are still completed by the person.

- The person must also be willing to have a dedicated account (if they choose to self-manage their Direct Payment) in which to receive the payment. This makes providing evidence on how the money is used much easier for both the person and the Council.
- The person will also complete the sections of the Direct Payment agreement that apply to them, sign it and return this to the care practitioner. This agreement can be quite technical and if the person requires support, then the care practitioner can arrange Advocate support to ensure the person has the correct level of advice and support.

13.2. What the council has to do:

- the steps a care professional has to take are:
- check to see whether the person would like, or requires, support through this process – for example, advocate or support agency
- if help is required, complete the appropriate paperwork to obtain this in a timely manner and send it to the correct organisations
- explain the Direct Payment agreement that is required to be completed by the Council and the person
- ensure the appropriate start-up costs and rates are included
- ensure the account being used by the person is appropriate – that is, it is used only for Direct Payments and only the appropriate people have access

It is important to remember that the Council (at present) delegates its legal responsibility to provide information advice and support as well as payroll and managed account services. Therefore we must ensure the offer of support (or indeed Advocacy) is always made. This is in addition to any support that may be required due to issues with a person's mental capacity. This would need to be done in a timely manner in order to not hold up the Care Assessment unnecessarily.

The Direct Payment Agreement is the legal basis to enable money to be paid to the person from the Council. Ensuring this is explained clearly and it has the appropriate information, rates and start-up cost is essential. If this is incorrect it may cause the person difficulty in purchasing care / support or even hold up monies being paid to help meet identified eligible needs.

Start-up costs are provided to the person when they wish to employ a Personal Assistant. These are made as a one-off payment when the Direct Payment is first issued and it is expected that the person put aside money from future payments to account for these expenses. The Council currently pays:

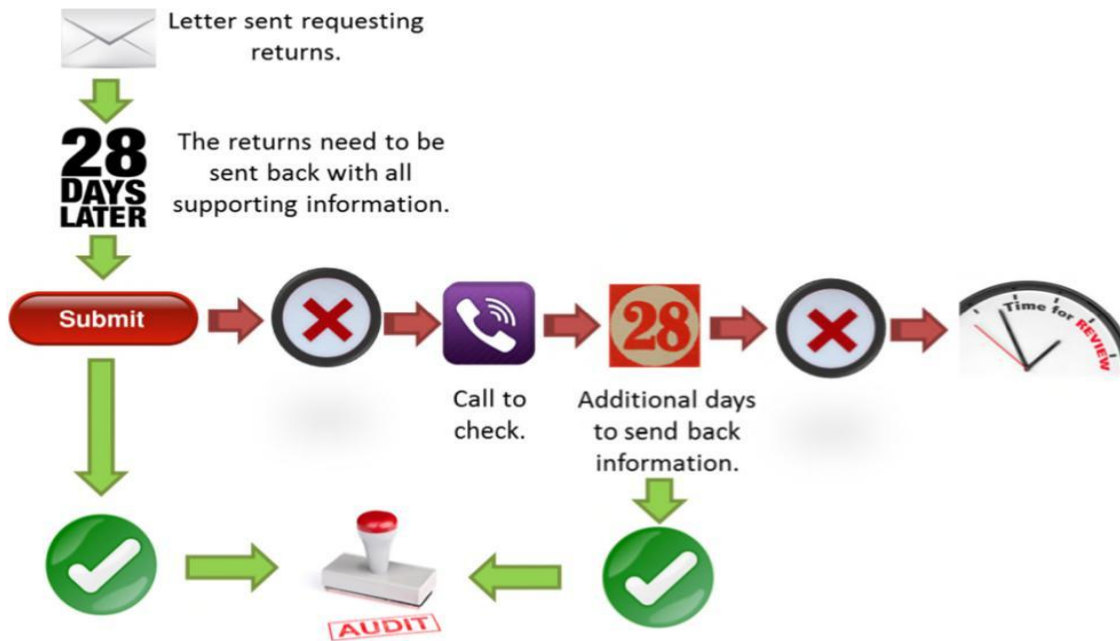
- **£135.00** for Employer Liability Insurance.
- **£44.00** per DBS check required.
- **£150.00** advertising costs.

Ensuring the account the individual uses is only used for Direct Payments will aid the person and the Council in the long term as it will be easier to see what the person has to meet their outcomes and easier to evidence when they complete their return. In addition to this checking to ensure the appropriate people have access to this account will help with contingency planning and help reduce any potential for safeguarding concerns.

14. Requesting Direct Payment spend information

- 14.1. A person is required to send in details of how they have used their Direct Payment – this is called a return or audit.
- 14.2. The Audit is a legal requirement for the Council as we must make sure Public money is used appropriately.
- 14.3. The first step of this is for the person to send back the information to the Council at the correct time and these can be different depending on the following.
- 14.4. Normally a person will send in their returns as follows:
 - Where possible the authority would seek to complete the audit within the first 3 to 6 months to allow any concerns to be raised earlier and support given if it is required. If the issues cannot be resolved, a care review will take place. This may take the form of a light touch discussion or a full audit.
 - If the person has had any issues or is within the first 2 years of having a Direct Payment, the information will need to be returned **every 6 months**.
 - If there have been no issues on a person's returns after 2 years, they will only need to be submitted **every 12 months**.
 - All returns are scanned and the originals returned to person for their records.

14.5. The process showing how the Council does this is illustrated below.



14.6. The steps for the above are as follows.

- A letter is sent to the person from the Council asking for the details of how their Direct Payment was spent for a particular period.

The person has 28 days to return the information in the freepost envelope provided.

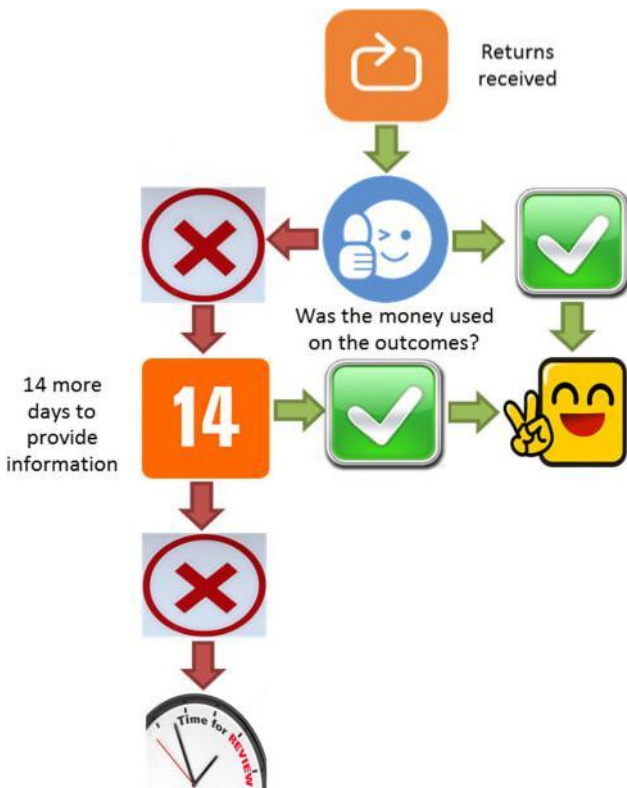
- If the information is provided to the Finance Officer will undertake the audit (look through the return to see if the spending is in keeping with the person's outcomes).
- If the information is not returned within 28 days the person will receive a telephone call from a Finance Officer to enquire why this has not been provided and see if the person requires any help.
- Another 28 days will be given to the individual to return the information and a letter will be sent by the Finance Officer to state this.
- If the information is received within 28 days the Finance Officer will audit the return.
- If the information is not received within 28 days the Finance Officer will request a care review to see if the Direct Payment is still the right way to meet the person's outcomes.

14.7. Once the returns have been sent to the Council, they will be reviewed by a Finance Officer. The Officer will check to see if the spend is in keeping with the person's outcomes.

15. Audits for Direct Payments

15.1. The audit process is where the Finance Officer check the person's Direct Payment spend against the outcomes in the care assessment.

15.2. The process for doing this is illustrated below.



15.3. The steps for the above are as follows.

- The Finance Officer goes through the return and compares what the Direct Payments has been spent on to the person's outcome as stated in their care assessment.
- If the items / services purchased are legal and appropriate, the audit is finished and diarised.
- If the audit shows that monies were used on items / services that do not appear appropriate, the person will be written to asking for clarification. They will be given 14 days in which to respond. If the person is unwell or unable to respond within 14 days this can be extended by the Finance Officer.
- If the additional information resolves any concerns, the audit is completed and diarised.
- If the additional information does not address the concerns, the person will undergo a care review in order to determine if a Direct Payment is still appropriate to meet their outcomes.

16. Underspends

- 16.1. An underspend is where the person has money left over in their Direct Payment account after they have bought all the necessary support to meet their outcomes in a set period of time.
- 16.2. The Council monitor this as, if a person is not using all the allocated money, it may suggest that they are not meeting all their outcomes and this could put the individual at risk.
- 16.3. A person's may keep up to **8 weeks** of money in their Direct Payment account. It can be more of this if you let the Council know. The person should think about the following.

Using agencies:

- Agencies can charge more on weekends and bank holidays. You may need to save more money than you 8 weeks tolerance to cover this. If you do you will need to let the Finance Officer know.
- Agencies will want to be paid in a specific way i.e. a month in arrears. You should be aware of this and make sure you have the money in your account to cover this. Recording any outstanding amounts on the returns will prevent any misunderstandings when auditing the spend later on.

Using personal assistants:

- In order to meet a person's outcomes more than 1 Personal Assistant may need to be employed. This means there may be a need for additional costs for recruitment such as advertising and security checks.

The person, will need to consider how to deal with things like sick pay, redundancy etc. as this will need to be saved (if required) and may cause the 8 weeks tolerance level to be increased. If this is being saved it will need to be shown in the returns when the audit takes place.

Day opportunity / activity / one-off:

- If the person has received money in advance to purchase respite or future activities that have not been paid for, they would need to make clear in any return how much is left in the Direct Payment account to meet the identified outcomes to prevent any future issues.
- As day opportunities may charge VAT or have hidden costs that (if invoiced in arrears) that may result in a build-up of money that could easily exceed the tolerance levels.

- 16.4. Should a person exceed the tolerance level and there is no obvious reason why this level is exceeded, a care review will be scheduled and the money over the 8 weeks tolerance would have to be repaid to the Council. A person will however have the opportunity to discuss any reasoning behind increased levels of money before any refunds will be paid. If there is any disagreement over the returning of any tolerance a Service Manager of Strategic Lead will make the final decision.

- 16.5. If the person has a Direct Payment for respite care in a residential care setting, they need to remember that the Care Act states:
- the length of 1 stay should not exceed 28 days in a 12-month period
 - if the gap between 2 stays is less than 4 weeks, then the stays will be added together
 - if the person reaches or exceeds the 28-day limit, they cannot purchase any more respite for 12 months
- 16.6. It is always good practice for the person to either put in writing any need to exceed the tolerance level to prevent any or ensure this is captured within the Care Assessment or a contingency plan.

17. Misuse of Direct Payments

- 17.1. The 'misuse' of a Direct Payment is where:
- the money has been used illegally
 - where items or services are bought that do not meet the person's outcomes
 - where one or more of the terms of the direct payment agreement have been broken
- 17.2. Where one or more of the above has seemed to have taken place a care practitioner will be asked to carry out a review to see if a Direct Payment is still the best way to meet the person's outcomes.
- 17.3. During this review the care practitioner should take all reasonable steps to remain in contact with the individual throughout the review process and carry out the review as quickly as possible.
- 17.4. Where it is appropriate and / or requested Advocacy or other support should be offered so that the person's views and best interests are represented.

17.5. An overview of the review process is illustrated below.



17.6. The steps for the above are as follows:

17.6.1. The care review takes place in order to determine if the Direct Payment used appropriately.

17.6.2. If the person requires support throughout this process, they can have an Advocate or suitable person present to help represent their interests.

17.6.3. If it has, then the Direct Payment remains in place and the relevant Council systems updated with the outcome.

17.6.4. If it is deemed that the Direct Payment has been misused, then the Direct Payment will cease and other options discussed about how to meet the person's outcomes.

17.6.5. Any misused money will be requested back. If the person is happy to do so then the following options are available:

17.6.5.1. Deductions from future monies received from the Authority, although the individual would be required to meet the shortfall in funds to meet their outcomes from their own monies.

17.6.5.2. A repayment plan with the Council where the person would have to pay an appropriate sum on a regular basis.

17.6.6. If the person does not agree to refund monies, then legal action may be taken to recover the funds. This may result in the person paying Court fees and interest as well if the Court finds against them.

17.6.7. If the person does not agree with the outcome, they may object via the Council's complaints process.

17.7. Just because an individual has had a Direct Payment removed it does not mean that they may never receive a Direct Payment again, unless their situation is reflected in the 'Who Cannot Have a Direct Payment' section (5). If the Care Practitioner upon review decides with the person that the outcomes can be met best via a Direct Payment this can be put back in place with 'reasonable restrictions' in place such as (but not limited to):

- The Direct Payment account to be managed by a third party
- For the person to undergo more regular reviews (care or financial)
- For only a limited number of outcomes to be met via a Direct Payment to reduce any financial risk

17.8. If the person chooses not to agree to these restrictions, then the Direct Payment would not be put back in place and the outcomes can be met by alternative methods.

17.9. The person may choose to be supported via an Advocate or appropriate adult during any review and / or discussion in regards or reasonable restrictions discussions.

18. Health funding

18.1. When the majority of a person's needs are health-related they may qualify for NHS continuing healthcare funding. Information about this can be found at:
www.nhs.uk/conditions/social-care-and-support-guide/money-work-and-benefits

18.2. If the person is eligible for this:

- they will have discussions with health services on how their needs will be met and how services will be delivered
- the Council will work with the person and with health services to transfer the responsibility safely and appropriately.