



# **Adult Social Care and Health**

## **Direct Payment Policy and Procedure**

**Version 6a**

Version: 6a FOI Status: Public	Direct Payment Policy and Procedure Derbyshire County Council - Adult Social Care	Originally Issued: January 2014 Issued: November 2022 Review Due: November 2024 Author: Camille Pace
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If you would like to make any comments, amendments, additions etc please email  
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## Introduction

This policy and procedure will:

- ensure that Derbyshire County Council (DCC) staff are able to meet the council's statutory obligations in relation to [The Care Act 2014](#), [Mental Capacity Act 2005](#), [Care and Support Statutory Guidance Care and Support \(Direct payments\) Regulations 2014](#).
- Support staff to better understand and promote direct payments, helping to ensure all eligible clients are aware of their right to request a direct payment at any time.
- achieve consistent approaches for individuals accessing direct payments
- provide procedure for supporting people to access direct payments
- provide procedure to support individuals where difficulties arise
- support social workers, occupational therapists, community care workers (allocated worker) and managers to facilitate the offer and making of a direct payment
- support situations where a personal health budget or EHC (Education, Health and Care) plan is in place and may be combined with the direct payment

## Terminology

**Individuals** are a person who is eligible for support and includes disabled residents of Derbyshire and/or their carers.

An **authorised** person is someone who is authorised to act on behalf of an adult who lacks mental capacity to make a decision, in this case to have the capacity to request a direct payment.

A **nominee** is someone an adult with capacity nominates to manage and take over control of the direct payment on their behalf.

The **case coordinator** refers to the Derbyshire County Council worker who is allocated to provide professional support to the individual, which will include assessment, helping to identify needs and proportionate help and advice around support planning. Ordinarily this would be a senior practitioner, social worker or community care worker.

**Support plan** refers to the individuals care and support plan or the carers support plan.

The **direct payment worker** is a member of the Direct Payment team who is allocated to support with direct payments.

**Direct payment agreement** – An agreement between the local authority and the individual or their representative which sets out the terms and conditions of the direct

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payment and outlines responsibilities to achieve the individuals needs as set out in their care and support plan.

## 1. Direct Payments Policy

**Direct payments** are monetary payments made by in this case by Derbyshire County Council Adult Social Care (ASC), directly to an individual (or someone on their behalf) who has been assessed as having eligible needs for social care support, in order to help promote independence, choice and control over their individual care and support arrangements ('direct payments'). These payments form all or part of the person's individual or personal budget. A direct payment may be combined, by agreement, with other funds such as a personal health budget.

A range of information relating to direct payments will be available to the public through the council's universal services. This will enable people to consider if direct payments are something which may be a way, they wish to receive their personal budget.

- 1.1 All staff within Adult Care will be responsible for ensuring all eligible clients are aware of direct payments and their right to request a direct payment at any time.
- 1.2 Following assessment and review case coordinators' must explore with clients and their representatives, how their eligible needs could be met through the provision of a direct payment. A referral to the direct payment team for further information can be made at this point.
- 1.3 Individuals interested in direct payments can access further information through their case coordinator, through the assessment process. There is also a range of information available via the DCC Brokerage service and online at the Derbyshire County Council [website](#).
- 1.4 After eligibility for a personal budget has been confirmed, a request to take it in the form of a direct payment should be made by the individual or their representative to either their case coordinator or Call Derbyshire Following this request Derbyshire County Council will consider the request for the individual to receive their personal budget as a direct payment.
- 1.5 The case coordinator should provide information regarding a direct payment as part of the support planning process undertaken with individuals and their representative to enable them to make informed decisions about the suitability and use of a direct payment.
- 1.6 Derbyshire County Council will not force individuals to receive their personal budget in the form of a direct payment or allow people to be placed in a position where a direct payment is the only way to receive personalised care and support.
- 1.7 Where a request for a direct payment is received, case co-ordinators may refer to the Direct Payment team for support with setting up a direct payment

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## Adults with Capacity

- 1.8 Derbyshire County Council has a duty to make a direct payment, following a request, where the following conditions are met:
- the person requests a direct payment
  - Derbyshire County Council is not prohibited from making a direct payment as outlined in Regulation 2 and Schedule 1 of the Care and Support (Direct Payments) Regulations 2014
  - where regulations made under s.33 of the Care Act 2014 provide the local authority with discretion to decide not to meet a persons' needs by making a direct payment, the local authority chooses not to exercise that discretion
  - the individual is not a prisoner - prisoners who we have a duty to provide care and support for are not entitled to a direct payment
  - Derbyshire County Council is satisfied that the individual is capable of managing a direct payment with or without support
  - Derbyshire County Council is satisfied the making of a direct payment is an appropriate way to meet eligible needs
- 1.9 (a) Direct payment individuals **must** understand the responsibilities linked to having and managing a direct payment and agree to have their personal budget as a direct payment. Individuals should not be coerced into accepting a direct payment. All reasonable steps should be taken to support the individual to understand the nature of the decision to request a direct payment and to ensure that they can make an informed choice. All direct payment recipients with capacity to request a direct payment in their own right must sign the direct payment agreement and understand what they have agreed to. All individuals in receipt of a direct payment will be provided with an explanation of the direct payment agreement.
- 1.10 (b) Individuals accessing direct payments must be able to manage the direct payment with or without assistance, though assumptions must not be made about an individual's ability to manage. Once the individual has made a request to receive their personal budget as a direct payment, the case coordinator must complete a support assessment form. This provides a clear framework to check the support needed by the individual to manage the direct payment and minimises risk to both the individual and to Derbyshire County Council. Support to manage the direct payment using the support assessment form must be explored with the individual. Mitigation of risk may include the use of managed bank accounts, support from family, support from a direct payment support service and people trusted by the direct payment user. Case coordinators' must be satisfied there are no safeguarding concerns which could be exacerbated by the provision of a direct payment.
- 1.11 (c) Individuals who are not able to manage a direct payment without support, can still access a direct payment, via a nominee. Where the individual has the

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capacity to request a direct payment, they may nominate someone to manage the direct payment on their behalf. In this situation the nominee signs the direct payment agreement and becomes legally responsible for its administration and the compliance requirements set out in the agreement.

### **Adults who Lack Capacity**

- 1.12 Mental capacity is the ability to make a specific decision. Under the Mental Capacity Act 2005, an individual lacks capacity in relation to a matter if, at the material time, they are unable to make a decision in relation to the matter because of an impairment of, or a disturbance in the functioning of, the mind or brain.
- 1.13 Where there is no impairment or disturbance in the functioning of the mind or brain, adults must be assumed to have capacity to request a direct payment.
- 1.14 Where there is an impairment or disturbance in the functioning of the mind or brain which appears to impact on an individual's capacity to make a decision regarding the direct payment, Derbyshire County Council must carry out a mental capacity assessment, specific to the decision to request the personal budget as a direct payment.
- 1.15 Where the person is assessed as lacking capacity to request a direct payment, an authorised person can make a request to receive a direct payment on behalf of the person who lacks capacity.
- 1.16 Derbyshire County Council has a duty to make a direct payment to the authorised person, following a request, if the following conditions are met:
- anyone who is authorised to act on the individual's behalf, such as a lasting power of attorney or a court appointed deputy, must agree to the person requesting the direct payment becoming the authorised person (if this is not they)
  - Derbyshire County Council is not prohibited by Regulation 2 and Schedule 1 of the [Care and Support \(Direct Payments\) Regulations 2014](#) from meeting the adult's needs by making direct payments to the authorised person.
  - Where regulations made under Section.33 of the Care Act 2014 provide the local authority with discretion to decide not to meet a persons' needs by making a direct payment, the local authority chooses not to exercise that discretion -
  - prisoners are excluded from direct payments
  - Derbyshire County Council 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 will be used
  - Derbyshire County Council is satisfied that the authorised person is capable

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of managing direct payments by himself or herself, or with whatever help the authority thinks the authorised person may require and will be able to access

- Derbyshire County Council is satisfied that making direct payments to the authorised person is an appropriate way to meet the needs in question
- where the authorised person is not a close family member, they have a satisfactory disclosure and barring service check

- 1.17 (a) The authorised person will be required to sign a direct payment agreement and they will be legally responsible for administering the direct payment on behalf of the individual who needs care and support and in compliance with the conditions set out in the agreement.
- 1.18 (b) The authorised person requesting a direct payment must be able to manage direct payments with or without assistance. Case coordinators must complete the support assessment form (found on the person's DCC electronic care record) with the authorised person in mind. This provides a clear framework to check the support needed by the authorised person to manage the direct payment and minimises risk to Derbyshire County Council. Support to manage the direct payment using the support assessment form must be explored with the authorised person. Case coordinators must be satisfied there are no safeguarding concerns which could be exacerbated by the provision of a direct payment.
- 1.19 Direct payments will be used to meet a person's eligible social care outcomes. Authorised persons, with involvement and regard to the individual requiring support, should be encouraged to take ownership of support planning and be flexible in choosing how needs are met. The outcomes will be directly linked to the eligible need allowing the direct payment recipient flexibility in how they achieve the outcomes within the agreed budget. Individuals should not have unnecessary restrictions built in around use of their funds. They should be allowed and encouraged to find preferred and effective ways of meeting their outcomes using the money available to them. The support plan should enable the authorised person to understand how they can use their direct payment.
- 1.20 Direct payments can be used to purchase support, which is healthy, safe and legal and meets the eligible outcomes detailed within the assessment and the support plan.
- 1.21 A direct payment cannot be used to fund:
- long term residential care
  - short term residential care for periods of more than 4 consecutive weeks in any 12-month period - periods of short-term care which are less than 4 weeks apart will be combined for this purpose to provide a cumulative total period which should also not exceed 4 weeks



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- local authority services, unless there are exceptional circumstances, or they are purchasing from a neighbouring local authority - (Please see [section 6](#) for further information)

Direct payments cannot be used to employ an “excluded person”, except where DCC determines this to be necessary. An excluded person for the purposes of this policy is defined as:

- a spouse or civil partner of the person receiving care and support
- a person living as if the spouse or civil partner of the person receiving care and support
- a family member living in the same household as the person receiving care and support
- anything which does not achieve an eligible outcome documented on the care and support plan and/or support plan
- any personal contributions resulting from a financial assessment, such as co-funding, tele-care charges, contribution to a disabled facilities grant, or individual contribution for short term care in a residential home

- 1.22 Direct payments can be used to purchase equipment with prior approval from the case coordinator. In such instances the individual or allocated person will be required to sign a separate direct payment agreement for equipment, prior to purchase and needs to have clear agreement on any maintenance costs or schedules. Equipment approved will usually be equipment which is not available through existing DCC contracts and /or where it enables the person to substantially increase their independence and reduces the need for support. The individual must consider any health and safety requirements – especially if others are using the equipment as part of their caring duties.
- 1.23 Individuals may wish to join with others to pool their direct payment – for example to help access social or day opportunities or for shared living arrangements - to help achieve better outcomes for participating individuals. Such arrangements need to consider responsibilities and contingency measures should one or more parties wish to end or change the agreement.
- 1.24 Direct payments cannot be used to fund personal daily living costs, debt repayment, gambling or for any illegal purpose.
- 1.25 All individuals will be provided with information and support to enable them to manage the direct payment. They each will be provided with the direct payments information pack, in a format which is accessible to them.
- 1.26 All direct payment recipients will continue to have a named case coordinator to support them and carry out our statutory obligations. If at any time the case coordinator changes the individual must be notified.

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- 1.27 The making of a direct payment will be reviewed within 6 months of set up by the Direct Payment team and at 12 months alongside the social care review by the case coordinator. Where concerns are raised at the 6-month review of making a direct payment, the annual social care review should also be carried out. The making of a direct payment will then be reviewed annually by the case coordinator alongside the social care review (or more often if necessary) to ensure the support arrangements are meeting the outcomes identified in the support plan. Reviews should be carried out more frequently where there are concerns regarding safeguarding, ability to manage the direct payment or a change in the individual's circumstances.
- 1.28 Derbyshire County Council will provide a personal budget which is sufficient to achieve the eligible outcomes documented in the care and support plan. Direct payment recipients are responsible for managing the money provided and services they purchase with it, with support if necessary. This will include planning 'contingency' funds to pay for additional costs such as employer's liability insurance, managed account fees, employers national insurance contributions and pension schemes.
- 1.29 Appropriate support will be provided to individuals in receipt of direct payments. This will be determined and recorded through the support assessment form in respect of Adult Social Care.
- 1.30 Derbyshire County Council provide direct payment support services via contract arrangements with Penderels Trust and an approved list of managed accounts and payroll services.
- 1.31 Derbyshire County Council will signpost direct payment recipients to their insurance provider to manage health and safety and other employment matters. Derbyshire County Council will also refer to Penderels Trust for help fulfilling employer responsibilities and to the approved provider list.
- 1.32 Personal assistants (PA) employed through a direct payment will have access to appropriate training, which will be paid for by the direct payment recipient, who in this case would be the employer of the PA. It may be that extra funding to cover training/expenses will need to be agreed by the case coordinator from DCC Adult Social Care.
- 1.33 (a) Disclosure and Barring Service (DBS) checks will be facilitated and paid for by Derbyshire County Council acting as an umbrella organisation for all DCC direct payment recipients employing PAs.
- 1.34 (b) DBS check outcomes are currently issued directly to the subject and not the potential employer or the umbrella organisation. Employers will need to ask their PA to advise them of the outcome of the check and to make necessary decisions based on this information.

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- 1.35 The financial management of the direct payment will be monitored proportionately by Derbyshire County Council in line with requirements set out by and agreed with DCC Audit Social Care services.

## 2. Requests for Direct Payments

- 2.1 As part of the assessment for Adult Social Care services, a person's eligible outcomes will be identified. Where these outcomes cannot be achieved through personal strengths and resources or through universal services, Derbyshire County Council will provide information regarding direct payments.
- 2.2 Case coordinators' must actively promote the use of direct payments, including exploring ways a direct payment could be used to achieve a person's outcomes. Examples of how direct payments have been used should be provided to help individuals see how a direct payment may benefit them.
- 2.3 A referral to the direct payment team or Penderels Trust can be made to provide more information and support individuals and/or their representative to consider a direct payment.
- 2.4 Where a person requests a direct payment, Derbyshire County Council will consider their request against the conditions set out in the Care and Support (Direct Payments) Regulations 2014.
- 2.5 Where there is impairment in function of mind or brain, a mental capacity assessment must be carried out to establish whether the person is able to request a direct payment.

### **Direct Payment for Adults with Capacity**

- 2.4 Where a person has capacity to request a direct payment, this will be recorded in the person's case notes.
- 2.5 A person's ability to manage the direct payment scheme will be assessed and documented in the support assessment form. A copy of this will be kept in their DCC electronic care records. The support assessment form should document what support the person requires and what support has been arranged to manage a direct payment. The case coordinator should consider safeguarding issues as part of the person's ability to manage their own support and well-being.
- 2.6 Derbyshire County Council will provide information and signposting to enable the individual to manage their own direct payment. This should include contact information for [Skills for Care](#), other appropriate voluntary sector agencies, independent sector agencies, care providers and any other information relevant to the individual .
- 2.7 The person will be encouraged to complete their own support plan, with whatever

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support is necessary, including being completed by the case coordinator if required. The person receiving the direct payment should be supported to take full responsibility for managing their own care. The support plan will document the amount, frequency, and sufficiency of the direct payment, along with agreement about how the direct payment will be used to meet eligible outcomes.

- 2.8 A person who has capacity to consent to the making of a direct payment can choose to nominate someone with their agreement, to manage the direct payment on their behalf [\(see 1.6 \(c\)\)](#).
- 2.9 The support plan should document how the eligible outcomes will be achieved but the level of detail required need actually only be proportionate to the complexity of a person's needs and the risks being dealt with.
- 2.10 The amount of the direct payment paid to the person will be sufficient for them to achieve their eligible outcomes and any associated reasonable administrative costs.
- 2.11 The person, carer, nominee or authorised person will sign a direct payment agreement, which will outline what support they can expect from Derbyshire County Council and what their responsibilities will be. The direct payment agreement will also be signed by the allocated worker or direct payment worker on behalf of Derbyshire County Council.

### **Direct Payments for Those who Lack Capacity**

- 2.12 Where there is impairment of function in the mind or brain of the person requiring care, leading to concerns about the individuals capacity to request a direct payment, a decision specific mental capacity assessment will be completed. This will document the person's capacity to request a direct payment and what that means.
- 2.13 Where a person lacks mental capacity to request a direct payment, someone involved in their care and support can request a direct payment on their behalf. Where agreed, this person would become the 'authorised' person.
- 2.14 In the first instance, Derbyshire County Council will look to any person who has been granted lasting power of attorney or appointed by the courts to act as a deputy for the person who lacks capacity, for health and welfare, to ensure they support the request.
- 2.15 Where an authorised person has been appointed by Derbyshire County Council, they cannot also become the PA employed to provide care, on an employed or self-employed basis to the person for whom they are an authorised person. Neither can the authorised person be paid as an agency carer or be financially linked to the agency providing the care.

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- 2.16 Derbyshire County Council, or any employee of the council, cannot act as an authorised person on behalf of an individual who lacks capacity even where Derbyshire County Council are court appointed deputy for their finances and property. Where there is no request for a direct payment, direct payments cannot be provided.
- 2.17 The authorised person shall be subject to a satisfactory DBS check, if they are not the individual 's spouse, civil partner, partner or close relative.
- 2.18 The authorised person's ability to manage the direct payment scheme will be assessed and documented in the support assessment form and filed within the electronic care records of the person they are acting on behalf of. The support assessment form will document any support the authorised person requires to manage the direct payment and what support has been arranged.
- 2.19 Derbyshire County Council will provide information and sign posting to enable the authorised person to manage the direct payment. This should include contact information for appropriate voluntary sector agencies, independent sector agencies, care providers and any other information relevant to the management of a direct payment.
- 2.20 The authorised person should complete a support plan, with whatever support is necessary, including being completed by the allocated worker or direct payment worker if required. The support plan should document how the authorised person intends to use the direct payment to meet the person's eligible needs and achieve their agreed outcomes.
- 2.21 The support plan should document how the eligible outcomes will be achieved but the level of detail required need only be proportionate to the complexity of a person's needs and the risks being dealt with.
- 2.22 The amount of the direct payment paid to the authorised person will be sufficient for them to achieve the person's eligible outcomes and any associated reasonable administrative costs.
- 2.23 The authorised person will sign a direct payment agreement, which will outline what support and requests they can expect from Derbyshire County Council and what their responsibilities will be. The direct payment agreement will also be signed by the allocated worker on behalf of Derbyshire County Council.

### 3. Initiating Payments

- 3.1 Derbyshire County Council will arrange a dedicated prepaid bank account for the direct payment to be paid into. Cards linked to this account will be in the name of the person responsible who signed the direct payment agreement.
- 3.2 Where the prepaid account is not suitable, Derbyshire County Council will

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explore other ways of making a direct payment, in order to identify a suitable method of making the direct payment.

- 3.3 Where there is funding from multiple sources, such as continuing health care or education funding, all payments can be made into one account to reduce the complexities of administration for the direct payment recipient.
- 3.4 Allocated workers must complete a purchase order request for the weekly personal budget to be paid.
- 3.5 Requests can be made for upfront costs on the purchase order for start-up costs, though these costs must be met from the personal budget. Derbyshire County Council will fund an additional £99.00 for employer's liability insurance on start-up only, in addition to the personal budget where required.
- 3.6 The direct payment agreement must be uploaded to the electronic records by area business services and originals forwarded to the Client Financial Services
- 3.7 On receipt of the completed forms and purchase request the Client Financial Service team will initiate making the payments.
- 3.8 Once the relevant documentation, including the support assessment form and purchase order is received, unless there is an exception payment will be made to the individual within 10 working days.
- 3.9 Care should be taken when determining a start date for the care arrangements as a direct payment can only be backdated up to 28 days from receipt of the completed documentation without specific agreement and approval from the direct payment service manager. It is important that all documentary evidence required at the start of and during the course of a direct payment is submitted in a timely manner as failure to do so could put the direct payment at risk.
- 3.10 The individual, carer, nominee, or authorised person receiving direct payments ('direct payment recipient') is responsible for their own recruitment and selection. Derbyshire County Council will not have any influence or involvement over the selection of staff employed under the direct payment. Where there are concerns that securing services from an individual known to the council will place the individual at risk, Derbyshire County Council may make a condition that they shall not secure the relevant service from a particular person or particular agency.
- 3.11 Derbyshire County Council will recommend and facilitate enhanced disclosure and barring service checks for PA's.
- 3.12 The individual is responsible for making contingency arrangements; they must ensure they save enough money to provide cover if their staff are absent, and when necessary, will be able to make arrangements for alternative cover. Allocated workers must ensure that they have discussed with direct payment

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recipients the need for covering emergency and unplanned situations and have plans in place to cover such arrangements, in advance of them being required. All contingency arrangements must be recorded on the support plan. Derbyshire County Council still maintains a “duty of care” and where all emergency cover arrangements have been exhausted Call Derbyshire or social care emergency out of hours contact details must be given to the individual. If planned cover arrangements breakdown, the allocated worker will provide support to make alternative arrangements. Brokerage can be accessed by an individual to assist them to find cover where arrangements breakdown.

- 3.13 The individual should also have robust contingency plans in place for if they were unable to manage the direct payment on a temporary or permanent basis. This could be due to hospital admission, loss of mental capacity or death. Individuals should consider who would meet their statutory responsibilities if they were not able to do so, and where possible agree with a family member who could deal with the direct payment in this eventually. All contingency arrangements must be recorded on support plans and reviewed at least annually.
- 3.14 Individuals who choose to employ their own staff are responsible for all aspects of being an employer. Individuals should seek advice and support from independent agencies, support agencies in Derbyshire, insurance providers and national organisations.
- 3.15 Derbyshire County Council will support the individual to be a good employer. Individuals will be provided with a ‘Brief Guide to Employing a PA’ where required. Derbyshire County Council will also signpost individuals to Skills for Care, who provide a range of toolkits for employers and in-depth information about becoming an employer. Where required Derbyshire County Council will make referrals to Penderels Trust. Other options are available through a range of services which can be found in the direct payment information pack. Further information is available on Derbyshire County Council [website](#).
- 3.16 Allocated workers and direct payment workers are responsible for ensuring individuals who employ their own PA have access to support and advice in respect of the management of their employees and effective administration systems. Such support may be around the need to consider and take disciplinary action: for example, employment advisory service, such as their insurance provider if applicable or ACAS.
- 3.17 As employers’ individuals are responsible for the health and safety of their staff, including all risk assessments required to be undertaken by an employer. Derbyshire County Council will refer for support with risk assessments if required.
- 3.18 Where an allocated worker has concerns that an individual is carrying out an activity which presents unmanaged risk, they will carry out a review of the use of direct payments. This may involve joint work with an occupational therapist where appropriate. Following any recommendations, the allocated worker will then notify

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the individual that they should ensure that the activity is carried out in a safer way by minimising the risk. If the individual is unwilling to follow the guidance from Derbyshire County Council and where the risks cannot be minimised, Derbyshire County Council retain the right to withdraw the direct payment. If the direct payment is terminated, alternative services will be provided. The individual must be advised to contact their insurance provider for advice on terminating employee's contracts and any potential TUPE (Transfer of Undertakings and Protection of Employment) issues.

- 3.19 The individual remains responsible for implementing the recommendations of the risk assessment and being a safe employer. They cannot require staff employed by them to carry out activities that would put their employee or themselves at risk.
- 3.20 PAs employed through direct payments are eligible to attend training courses provided by Derbyshire County Council without charge. Employees can attend the relevant Skills for Care short courses. The payment of wages during this time must be paid by the individual from the direct payment where it is essential training for the role agreed by Adult Social Care. If there are insufficient funds in the contingency, Derbyshire County Council can allocate additional hours for training costs that are essential to the role required.
- 3.21 The Direct Payment team will respond to requests for support and information to the public, individuals, carers, and assessors about any aspect of direct payments.
- 3.22 The Client Financial Services will respond to requests for support and information to the public, individuals, carers, and assessors about financial monitoring.
- 3.23 Information updates will be available on the Derbyshire County Council [website](#). This information will be available on request in other formats.

#### 4. Employing Family Members

- 4.1 Individuals, including authorised persons and nominees, are able to employ family members to provide support to achieve eligible outcomes, where these family members do not live in the same house as the person receiving support.
- 4.2 Family members employed via the direct payment may not fulfil the role of representative where the individual has substantial difficulty being involved in their assessment and care and support planning. Where a family member is being employed as a PA and there are no other suitable family members willing or able to represent the individual, an independent advocate must be sourced.
- 4.3 Family members are still legally employed, and the individual has a responsibility to ensure their legal obligations are fulfilled. These include ensuring any tax or national insurance contributions are paid, there is insurance in place, the employee is given written terms and conditions of employment and receives a



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wage slip detailing their wages and deductions.

- 4.4 Excluded persons cannot be employed via a direct payment unless Derbyshire County Council is satisfied that such an exception is necessary in order to meet the person's assessed eligible needs and achieve their outcomes. An excluded person is:
- a spouse or civil partner of the person receiving care and support.
  - a person living as if the spouse or civil partner of the person receiving care and support; or
  - a family member living in the same household as the person receiving care and support
- 4.5 Full consideration and exploration of other options to meet the individual's needs must be undertaken along with the impact of employing close family members on the individual and their family.
- 4.6 An application for consideration must be submitted for approval by the Direct Payment team service manager, detailing how it is necessary to meet the individual's needs.
- 4.7 An assistant director will have the final decision over exceptional circumstances.
- 4.8 Once approved the exceptional circumstance should be reviewed at each social care review by the case coordinator, to ensure suitability and continued relevance.
- 4.9 An individual can make payments to a family member living in the same house for administration and/or management of the direct payments. This would normally be a similar payment to the cost of procuring a third-party managed account or payroll provider.
- 4.10 Payments can also be made to an authorised person or nominee for administration and management of the direct payment.
- 4.11 Any payments for administrative work in managing the direct payments must be agreed with the allocated worker and included in the support plan and budgeting calculation. Such payments will need to be proportionate and recorded clearly on financial submissions and will be subject to normal tax and national insurance regulations.
- 4.12 Payments made to a family member for administrative and management support must not impact on the ability to secure services to achieve the eligible outcomes identified in the assessment. This will be reviewed as part of the review of the making of a direct payment to ensure it contributes positively to meeting the outcomes listed in the support plan.

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## 5. Pooling Direct Payments

- 5.1 Direct payment recipients may choose to combine their personal budget with another individual to achieve common outcomes. This is known as a pooled direct payment.
- 5.2 A pooled direct payment can be used to purchase services or employ PAs.
- 5.3 The direct payment recipient should be supported to consider which eligible outcomes they wish to achieve by pooling their direct payment with other recipients and how much of their personal budget they will pool. The allocated worker is able to support with decisions relating to pooling a direct payment.
- 5.4 Where an individual has expressed a wish to pool their direct payments with others who have a similar interest or wishes to live independently with others, the allocated worker needs to obtain the consent of the individual as to how much and what personal information should be shared with others. This could include other individuals, their families, professionals and interested parties involved with the individual. The individual or allocated worker may know of others with a similar interest and with consent from the person or their representative, enable individuals to make contact.
- 5.5 Where meeting an individual's eligible needs involves a possible group living arrangement, better social inclusion, and educational opportunities or to aid their general well-being, the worker should explore the possibility of the individual pooling part or all of their direct payment in a joint enterprise or scheme with others.
- 5.6 The amount an individual has available to pool with others will be dependent on the available personal budget. When making decisions about the amount and outcomes to be met, the individual will need to be mindful that their budget is subject to review and may vary according to any changes in their circumstances. The allocated worker should discuss this possibility with the individual and, where appropriate, signpost the individual to other support services.
- 5.7 Arrangements for administration and financial management should be agreed when setting up the arrangement to pool personal budgets.
- 5.8 Payments will be made to individuals who can each contribute to the shared costs. Arrangements for managing the shared care must be agreed between the individual or their representatives. Payments can also be made to a third-party managed account where the costs are shared between the individuals pooling their direct payments.
- 5.9 All individuals wishing to pool their direct payments will be provided with information and support.

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- 5.10 Pooled direct payment arrangements are subject to the same terms and conditions as individual direct payment arrangements as detailed in this policy and procedure.

## 6. Purchasing Local Authority Services

- 6.1 Ordinarily a direct payment cannot be used to purchase local authority services.
- 6.2 Where a person with eligible outcomes wishes to receive a service provided by the local authority, this will normally be arranged and managed by Derbyshire County Council on behalf of the person.
- 6.3 Where an individual is receiving a direct payment and wishes to purchase a service from a local authority other than Derbyshire County Council, they will be able to use their direct payment where the providing local authority is able to provide its services to 'self-funders' and agrees to provide the service for a fee. Such examples might be where an individual wishes to purchase services from a neighbouring local authority.
- 6.4 Where an individual wishes to access a service provided by Derbyshire County Council on an ad-hoc basis, such as attendance at a local authority day service on a drop-in basis, and the service provider agrees they have capacity to accept this arrangement, a direct payment could be used to fund this. This would not be agreed for a regularly provided service.

## 7. Equipment

- 7.1 The need for equipment should be considered as part of an assessment. Appropriate equipment will be identified by a health and/or social care professional, and the individual will be given advice as to how the equipment can be sourced.
- 7.2 Individuals choosing to receive a direct payment may have an assessed eligible need for specific equipment to promote their safety or to promote the safety of staff working with them e.g., a hoist. This type of equipment would ordinarily be provided through the usual ICES (Integrated Community Equipment Service) contract.
- 7.3 Other equipment may be identified that would specifically assist with the individual's independence and prevent or reduce the level of care support/ hours required (e.g., a talking microwave). This type of unique equipment may be available through a "one off" direct payment or purchased from an on-going direct payment with prior agreement.
- 7.4 The support plan will identify what equipment is required and which outcomes for the individual (if any) could be met by a unique piece of equipment.

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- 7.5 A direct payment for equipment agreement should be signed by both the individual or authorised person and the allocated worker before the item is purchased, even if the equipment is part of an overall personal budget. This is important if the equipment belongs to the individual. They **MUST** be able to understand and accept their ownership responsibilities such as warranty cover, servicing, and any health and safety requirements for both themselves and their employees.
- 7.6 The process for assessing for equipment/minor adaptations does not change because a personal budget direct payment is being considered. Assessors will make an assessment of need and then decide eligibility and complete the support assessment form. Authorisation goes through the normal channels.

### **Equipment in Group Living Situations**

- 7.8 In a group living situation only the equipment specific to an individuals assessed needs should be provided. Any equipment that is generic, (i.e. could be used by any of the residents, e.g. grab rail in the bath, shower chair, raised toilet seat, talking microwave, etc.) should be provided/funded either by the housing provider or by negotiation and agreement of the individual s, families, their care workers and managers, and may be funded as a pooled one off direct payment.

### **Occupational therapy assessment**

- 7.9 Equipment that has been identified through a professional assessment e.g., by an occupational therapist will be, in most cases provided through the ICES contract on a loan basis. This will be free of charge to the direct payment recipient and will be authorised at the agreed health or Adult Social Care management level. Through ICES staff can source products not on the main contract list in order to meet specific clinical need, all such requests should be authorised by a service manager. All non-contract product requests over £500 should be referred to the Non-Contract Equipment Panel at ICES. In exceptional circumstances equipment can be procured on an individual basis outside of the ICES but this is strictly only in agreement with the group manager.

### **Small aids to assist daily living and equipment to reduce support needs**

- 7.10 Small aids and adaptations e.g., raised toilet seats; grab rails, bath seats etc., should in most cases be provided through the ICES contract on a loan basis. Where the person is identified as eligible, this will be free of charge to the individual and will be authorised at the agreed health or Adult Social Care level.

Equipment that is classed as a small aid, not requiring a professional judgement, e.g. dressing aids, kettle tippers, room to room alarms, standard beds, i.e. anything that can be purchased on the high street, will not be provided via the ICES contract as these products are not within the core responsibility of the service. An individual would ordinarily be required to purchase these items with

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their personal finances. Call Derbyshire or the DCC Brokerage team can signpost people to where they can buy them. These items may, if unique to the individual in meeting an identified outcome, be funded as a one-off direct payment.

Equipment which will help reduce individuals longer term support needs, reduce risk or reduce the support package e.g., talking microwaves, communication aids, accessible computer equipment to facilitate online shopping etc., may, as above, be funded via a direct payment.

The allocated worker should discuss how the equipment will meet the agreed outcomes - to support independence in the support plan and seek guidance from their line manager about alternative funding arrangements e.g., self-funding, charities, or by a direct payment, and should be negotiated with the individual and recorded within the assessment.

## Health and Safety Equipment

- 7.11 Equipment that is needed to meet health and safety requirements, i.e. protective equipment such as gloves, aprons or other safety equipment including appropriate clothing and gloves when the PA is preparing food, may be funded as an integral part of the direct payment. The funding for this is found from the personal budget. The need for personal protective clothing or equipment should be included in the support plan.

Equipment requiring a major adaptation to the home, e.g., stair lifts, shower rooms etc. are required to be assessed under the disabled facilities grant (DFG) process for all individuals. Staff should refer for an occupational therapy (OT) assessment – see [Major Adaptations Practice Guidance](#) for more information. Following this assessment, agreement may be sought for a direct payment to pay for a major adaptation, minus a person’s financially assessed contribution, if it is felt there is a particular reason why the DFG is not appropriate. Agreement must be made by the group manager in these situations.

Equipment that Derbyshire County Council is not responsible for (e.g., health equipment, pressure care mattresses etc.) must be provided via the usual ICES route that requires a health professional assessment and authorisation. For advice and guidance contact the ICES team.

## 8. One Off Direct Payments and/or Short-Term Services

- 8.1 Where appropriate and required, a direct payment may be provided for a one off or a short-term service. This may be:
- to facilitate hospital discharge
  - to provide a short-term service whilst long term services are being sourced
  - to provide support for a one-off event

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- 8.2 Information will be provided about a short-term service or one-off direct payment where appropriate. Individuals with capacity or a representative for individuals who lack capacity to request a direct payment may receive the one off or short-term payment.
- 8.3 Where a one-off direct payment is agreed, a one-off direct payment agreement will be signed. The direct payment agreement will detail the amount of direct payment, how it will be used and the period it covers. A purchase order request and the completed direct payment agreement are required to initiate payment.
- 8.4 The payment will be made into a prepaid account unless there are specific reasons this is not suitable.
- 8.5 The one-off payment or short-term service can be for a period of up to 6 weeks. Where this is prior to extended assessment or in lieu of reablement, co-funding will not apply.
- 8.6 Where an extended assessment confirms the individual is not eligible for care and support, the short-term payment may be ended prior to the end date and any remaining funding returned to Derbyshire County Council.
- 8.7 Where an extended assessment confirms the need for ongoing care and support, prior to the end of the 6-week period, co-funding may apply which includes liability to fund the full cost of care and support.
- 8.8 Any unneeded funding from the one off or short-term direct payment will be collected by Derbyshire County Council.
- 8.9 If an on-going direct payment is not required, the direct payment will be terminated at the end of the agreed period.

## 9. Safeguarding and Disclosure and Barring Service (DBS) Checks

- 9.1 Where it is apparent that there are safeguarding concerns, Derbyshire County Council will consider if a direct payment could exacerbate any risks to an individual. This will not exclude the person from receiving a direct payment but will ensure that there is full consideration of how the direct payment will be made, who will manage the expenditure, and monitor on-going compliance with any requirements detailed in the direct payment agreement. It may be that the allocated worker decides that a direct payment cannot be justifiably made and if this is the case then this will need evidencing on the person's electronic record. Derbyshire County Council will write to the individual explaining the reasons for this decision.
- 9.2 Where safeguarding procedures are initiated to protect an adult in receipt of a direct payment, the individual should be involved in the procedures as an employer or commissioner where relevant. Where there are safeguarding

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concerns, employees' rights to the correct disciplinary procedures should be considered as part of any protection plans. The employer is responsible for taking advice regarding their employees. Individuals should be advised to contact their insurance provider for employment advice. A member of the Direct Payment team will be invited to attend any safeguarding conference held where a direct payment recipient is involved.

- 9.3 Where there are concerns about the welfare of a child and safeguarding procedures are initiated, risk to the child must be considered in relation to the continuance of direct payments.

### **Safeguarding Other Direct Payment Individuals**

- 9.4 Where there are safeguarding concerns regarding a PA who the council is aware is working with other individuals, the service manager responsible for the safeguarding will consider if the risks warrant further safeguarding investigations for the other direct payment individuals and alert other allocated workers.
- 9.5 Where safeguarding concerns relate to a PA who is either self-employed or employed by an individual, a risk assessment must be completed considering the severity and likelihood of abuse for each of the other individuals for whom the PA works. This may include a safe and well review with each of the other individuals to ensure their safety and clarify the potential of any risks.
- 9.6 Where a low level risk is identified to an individual, and the individual has capacity to make their own decision, the service manager responsible for the safeguarding investigations will send a letter to the individual informing them that we are investigating their PA in relation to their work as a PA and recommend they take advice from their insurance provider or ACAS (Advisory Conciliation and Arbitration Service) regarding the employment of the PA. Individuals should follow the advice of their insurance provider in regards to the employment of their PA.
- 9.7 Where a high risk exists, the direct payment should be immediately suspended and alternative services arranged, pending the outcome of the investigation. If the risk is in respect of the PA, then the individual should be informed that the PA is under investigation for a serious allegation, and the individual needs to take advice from their insurers or ACAS in relation to the worker's employment rights. The direct payment will then be reviewed when the case conference has been held.

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## Disclosure and Barring

- 9.8 The Disclosure and Barring Service (DBS) helps employers make safer recruitment decisions and prevent unsuitable people from working with vulnerable groups, including children. It replaces the Criminal Records Bureau (CRB) and Independent Safeguarding Authority (ISA). For individuals employing or wishing to employ a PA, Derbyshire County Council can act as an umbrella organisation to process DBS checks. There are other organisations that also do this.
- 9.9 A DBS check is recommended for adults employed to undertake any work defined as regulated activity relating to adults (within the meaning of Schedule 4 Part 2 of the [Safeguarding Vulnerable Groups Act 2006](#)). For work with adults, DBS checks for a PA are not mandatory but are encouraged as good practice and play an important part in safeguarding vulnerable people.
- 9.10 The Direct Payments team will provide application forms for a DBS check. This should be completed by the potential employee; the identification is verified by the allocated worker and returned to the designated admin support staff who will process the completed DBS form. Only the PA will receive the outcome of the DBS and should show this to their employer.
- 9.11 Employers will have responsibility to ensure that the PA they employ are suitable. A risk assessment should include consideration of the individuals ability to safely employ staff. Individuals will also need to understand that they are recommended to take all checks on a new employee including references and a DBS check. If there are concerns about an individuals ability to safely choose staff, this should be explored prior to the direct payment commencing.

## 10. Payments and Monitoring Requirements

- 10.1 The direct payment will be paid every 4 weeks, in advance, unless otherwise agreed with the Client Financial Services team.
- 10.2 Client Financial Services will write to individuals informing them of payments to be made into the designated account at the start of the direct payment.
- 10.3 Monitoring of direct payments is crucial and enables Derbyshire County Council to account for public funding within the guidelines laid down by The Chartered Institute of Public Finance and Accountancy (CIPFA).
- 10.4 All individuals are required to keep all documents relating to their expenditure. This documentation will be reviewed by Derbyshire County Council in the first 6 months. This documentation must be available if requested by Derbyshire County Council at any time.
- 10.5 The Direct Payment team will monitor the use of the direct payment over the first



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6 months, which will include checking that employer responsibilities have been fulfilled - such as tax, national insurance contributions, any workplace pension contributions, employer liability insurance and self-employment status. These legal obligations remain the responsibility of the individual. The Direct Payment team will have responsibility to alert the recipient if they find any cause for concern. If, after they have alerted the direct payment recipient, there continues to be concerns, the allocated worker will be informed, and Derbyshire County Council will reassess the recipients ability to manage the direct payment scheme. The Direct Payment team can support allocated workers to resolve concerns relating to the ability to manage a direct payment. Derbyshire County Council may suspend or terminate a direct payment where legal obligations as an employer are not being fulfilled, and work with the individual to arrange alternative services.

- 10.6 A contingency check (meaning a check to see if there are excess funds in the direct payment account), will be carried out periodically. Ordinarily there should be no more than eight weeks' direct payment in the account unless the recipient is saving towards a high-cost service as identified in the support plan. This may be for respite or a contingency plan for example.
- 10.7 Where there is an under spend of the direct payment, leading to more funds than necessary in the direct payment account, Derbyshire County Council will collect the amount in excess. This will be collected, following notification to the individual.
- 10.8 An individual may contact the team if they are accumulating surplus funds for a particular reason, such as fluctuating care needs or respite cover, and this will be taken into consideration when calculating contingencies. If required, the allocated worker will be contacted to give confirmation of the need for a larger contingency.
- 10.9 Where the direct payment is part of a blended budget with health and/or education, this agreed contingency may be changed to harmonise management of the budgets.
- 10.10 Where an individual is considering withdrawing from the direct payment scheme, due to difficulty in managing the administrative requirements, Derbyshire County Council will explore ways to offer additional support to enable the individual, if they wish to, continue with their direct payments.

## **11. Reviewing the Making of a Direct Payment**

- 11.1 The making of a direct payment will be reviewed within 6 months of the first payment.
- 11.2 The making of a direct payment review will focus on the appropriateness of a direct payment and the individual, carer, nominee, or authorised person's ability to manage a direct payment and comply with the requirements set out earlier in

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this document.

- 11.3 The review will be carried out by the Direct Payment team, at a time no longer than 6 months from the start date of the direct payment. The allocated worker should begin this sooner where concerns are raised through the monitoring process.
- 11.4 The review will consider:
- if the person, carer, nominee, or authorised person has all documentation to support expenditure of their direct payment
  - if there are any concerns with the documentation provided
  - if where relevant, there is appropriate deductions for tax and national insurance and pensions
  - if where relevant, there is a unique tax reference number for any self-employed workers
  - if where relevant, the person or authorised person has purchased employer's liability insurance
  - if the review highlights any possible concerns regarding use of the direct payment, such as unaccounted for transactions
  - if the current expenditure is within the allocated budget and highlight any under or overspending concerns
  - if there appears to be anyone employed who lives within the same household (without prior approval)
- 11.5 Where issues are identified through the Direct Payment team's appraisal of the direct payments monitoring, they may contact the allocated worker to conduct the social care review.
- 11.6 The direct payment review should look to address any highlighted concerns, provide any required support or signpost to direct payment support services.
- 11.7 Further reviews for of the direct payment should be completed as part of the annual Adult Social Care review. Allocated workers should use the 'direct payment - reviewing a direct payment checklist' to ensure they have covered all issues at the review and complete the annual direct payment review document found within the electronic records. Advice, information and support may be requested from the Direct Payment team.

## **12. Suspension, Conditions and Termination**

- 12.1 The direct payment agreement with Derbyshire County Council may be suspended temporarily.

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A temporary suspension may be placed on the account where:

- it appears that there has been a breach of the direct payment agreement
- it is suspected the direct payment has been used for fraudulent purposes
- there is a change in circumstances
- if the individual receiving support is at risk of abuse, or is being abused
- if the individual receiving support is admitted to hospital or short-term care
- DCC assesses the person responsible no longer has the ability to manage a direct payment

12.2 If the direct payment is suspended and the individual has eligible social care needs specified in the assessment and support plan, alternative services must be provided.

12.3 In order to reinstate a temporarily suspended direct payment the allocated worker must complete a purchasing next action request on the person's electronic record.

### **Imposed Managed Account**

12.4 As an alternative to suspension or termination, Derbyshire County Council may impose a condition of receiving the direct payment via a third-party managed account provider with the individuals consent, where it is appropriate.

12.5 Where suspension is required, the individual will be offered the option of a managed bank account as an alternative to suspension.

12.6 Individuals can contact the brokerage service for support on selecting a managed account provider if they wish to continue their direct payment via a managed account provider. Individuals will be issued with the approved provider list for managed account and payroll services list.

### **Termination**

12.7 Derbyshire County Council, or the individual, can terminate the direct payment by providing four weeks' notice in writing (or in an alternative format).

12.8 Direct payments will only be terminated by Derbyshire County Council, after there has been opportunity for the direct payment recipient to explore options for managing the direct payment and the support available to them or where re-assessment determines they are no longer eligible for social care funding.

12.9 Despite the normal four weeks' notice period, there may be occasions when direct payments are terminated either immediately or sooner by any of the parties.

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- 12.10 If the individual is still eligible for social care and the assessment of need has not changed, Derbyshire Adult Social Care still has a duty of care. The allocated worker must ensure services are provided when the direct payment has ceased. (Note that direct payments are paid four weeklies, in advance).
- 12.11 If the individual has a contract with a provider (this maybe a domiciliary care agency, day service provider or alternative) the allocated worker must ensure the individual can fulfil the terms and conditions of such a contract, for example, one weeks' notice in writing.
- 12.12 Where the direct payment recipient employed PAs, they will need to be advised to take appropriate action in relation to their employment rights. Individuals should take advice from their insurance provider, ACAS (Advisory Conciliation and Arbitration Service) or other employment specialist. Support with this can be provided by Penderels Trust.

### **Termination Due to Loss of Mental Capacity to Request a Direct Payment**

- 12.13 Where there are concerns that an individual no longer has capacity to request the direct payment, the allocated worker must carry out or arrange for a decision specific capacity assessment to be completed. Where it is determined that the direct payment recipient lacks capacity to request the direct payment, the payment to them directly must be terminated.

## **13. Recovering Monies**

- 13.1 Unspent money within the direct payment account remains the property of Derbyshire County Council.
- 13.2 Any unused funding will be collected by Derbyshire County Council. There will be regular checks on the balance of the account and accumulated amounts in excess of funding required to achieve the outcomes will be recouped by Derbyshire County Council.
- 13.3 At the end of the direct payment scheme, other than where the individual receiving support becomes liable for the full cost of meeting their own care, the remaining funds may be used to fulfil any legal obligations such as statutory redundancy payments.
- 13.4 Where an individual becomes liable for the full cost of meeting their own care in the community and chooses to terminate or reduce the support they currently arrange, rather than funding this themselves, they will be liable for any legal obligations associated in reducing or terminating the support, such as redundancy costs.
- 13.5 In the event of the individual or authorised person's death the remaining funding in the account may be used by the individual's representative to fulfil any legal

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obligations such as statutory redundancy payments. However, any unused direct payment is money owed to Derbyshire County Council and must be repaid.

- 13.6 Where the individual or individuals have used the direct payment to fund items or costs which have not met eligible needs, this will be unauthorised expenditure. Derbyshire County Council may ask for repayment of any unauthorised expenditure.
- 13.7 At the end of a direct payment, a reconciliation will be carried out, the final balance of the direct payment account, and any unauthorised spending or unpaid co-funding contributions will be collected by Derbyshire County Council

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## Author History

### Approval and Authorisation History

Originally authored by Camille Pace Social Worker – Direct Payments December 2008

Originally approved by Tim Dowdell Service Manager January 2009

Originally authorised by Policy and Procedure Group January 2014

### Version Control

Version 1	January 2009	Sue Illingworth / Camille Pace	New document
Version 2	April 2012	Camille Pace	Review and Update
Version 3	December 2014	Camille Pace	Implementation of the Care Act 2014
Version 4	November 2017	Camille Pace	Update to include provision of Prepaid accounts and Direct Payment team
Version 5	June 2018	Camille Pace	Update changes with direct payment support services
Version 6	November 2020	Camille Pace	Update changes with direct payment support services and review. Removal of references to TLAP.
Version 6a	November 2022	Camille Pace	Review minor changes