

## FINAL Policy for direct payments

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### Document Sign-Off

<b>Joint Commissioning Committee</b>	<b>Date:</b>
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## Mission statement

Bath & North East Somerset Council (the council) and NHS Bath and North East Somerset Clinical Commissioning Group (the CCG) seek to ensure that people are able, regardless of their age, abilities and circumstances, to live the life they want to live, achieve their greatest potential and be valued for the contribution they make to our community in Bath and North East Somerset.

## Introduction

The council and the CCG want to make it as easy as possible for people to exercise choice and control over their lives, including their care and support needs, and recognise that **direct payments** can be an important part of this. The council and CCG want to ensure that people understand what direct payments are, the freedoms and choices that direct payments bring and the responsibilities that go with them. We also want to make sure the application process is as easy as possible.

By combining the policies for adult and children's social care as well as health direct payments, we will make the processes underpinning direct payments easier to understand and simpler to implement.

The values that the council and CCG both share underpin this policy. They are the reason we make budgets available to individuals and they describe what those budgets should achieve for people who use them.

These shared values and aspirations for people with health, care and support needs are:

- To support those people to exercise choice and control, to have and maintain independence in how they live their lives and to get a life and not just a service
- To support those people to be active citizens
- To work in partnership with those people and with other organisations
- To make direct payments and support for people with direct payments non-discriminatory and as accessible as possible
- To make sure public money is spent wisely

## Purpose of this policy

The purpose of this policy is to:

- Reflect both the values and commitment of the council and CCG to support more people to have independence, choice and control over their lives.
- Provide clarity on the responsibilities and freedoms that direct payments provide for existing users, potential users, their families and staff members supporting them.
- Ensure the legal and policy requirements in relation to direct payments across adults, children's and health are included
- Ensure that support provided via a direct payment achieves value for money for the individual, the council and / or the CCG.

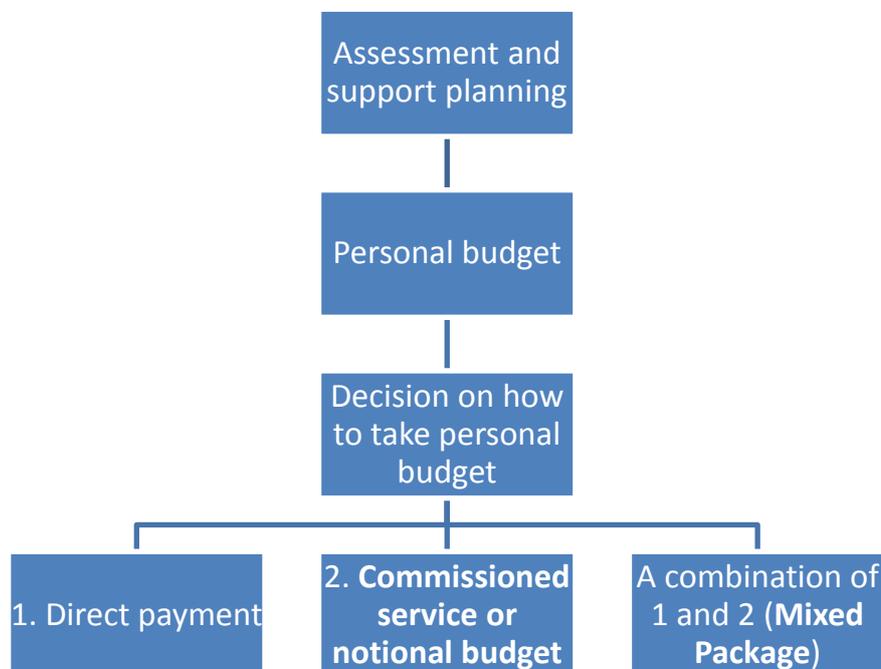
## Definitions

Throughout this document, technical or unfamiliar terms are highlighted in **bold text** with definitions provided in the glossary.

A direct payment is one way in which an individual with assessed eligible health and social care needs can choose to take their personal budget. A personal budget (or personal health budget) is the sum of money the council (or CCG) has calculated it would spend on meeting a person's assessed eligible social care or health needs.

The council provides a **personal budget (PB)** to meet assessed eligible social care needs. The CCG provides a **personal health budget (PHB)** to meet assessed eligible health needs. **Integrated Personal Commissioning (IPC)** budgets contain both PB and PHB funding. Throughout this document the term personal budget will be used to mean any of the above.

The relationship between personal budgets and direct payments is shown in below:



This policy sets out the framework for enabling direct payments in Bath and North East Somerset and applies to:

- All Bath & North East Somerset Council and NHS Bath and North East Somerset Clinical Commissioning Group employees who are responsible for assessing needs for care and support and their managers
- Staff of any organisation to which Bath & North East Somerset Council and NHS Bath and North East Somerset Clinical Commissioning Group have delegated the authority to carry out some of their **delegated statutory duties**.

Throughout the document, where 'the council or CCG' are named, this should be taken to include those partners with delegated statutory duties. Current partners with delegated responsibility to carry out these functions are Sirona Care & Health and NHS Avon and Wiltshire Mental Health Partnership Trust (AWP).

## Policy for direct payments in Bath and North East Somerset

### 1. Legal and policy context

- 1.1 The legislative basis for enabling direct payments for adults social care is set out in the Care Act, Section 117(2C) of the Mental Health Act 1983 (the 1983 Act) and the Care and Support (Direct Payments) Regulations 2014.
- 1.2 For children and young people it is the Children and Families Act (2014), the Statutory Guidance and Code of Practice for special educational needs and disability 0-25 years (2014) and the 'The Special Educational Needs (Personal Budgets) Regulations (2014).
- 1.3 For health it is the guidance in relation to personal health budgets which is summarised in Attachment 2.

### 2. Other relevant policies

2.1 Other relevant policies are:

- [Care and Support Assessment & Eligibility Policy](#) (November 2015)<sup>1</sup>
- [Care and Support Planning policy](#) (May 2016)<sup>2</sup>
- [Guide to Non-Residential Charging Policy for Social Care Services in Bath & North East Somerset](#) (April 2015)<sup>3</sup>
- [Complaints: Assurance Framework for Bath and North East Somerset Council's Adult Social Care Duties](#) (Dec 2015)<sup>4</sup>
- [Ordinary Residence and Continuity of Care policy](#) (Jan 2016)<sup>5</sup>
- [Guidance on Direct Payments for Healthcare: Understanding the Regulations](#) (March 2014)<sup>6</sup>
- The provision of PHBs is being expanded beyond CHC funding and is outlined in the [Local Offer for BaNES](#)<sup>7</sup>

### 3. Informing people, promoting choice and advocacy

- 3.1 The council and CCG provide free to access information about direct payments to raise awareness of direct payments and how they can be used. This available on the council and CCG's websites, through commissioned services and in paper format.

<sup>1</sup> [http://www.bathnes.gov.uk/sites/default/files/siteimages/assessment\\_and\\_eligibility\\_final\\_02.11.2015\\_3.pdf](http://www.bathnes.gov.uk/sites/default/files/siteimages/assessment_and_eligibility_final_02.11.2015_3.pdf)

<sup>2</sup> [http://www.bathnes.gov.uk/sites/default/files/siteimages/care\\_and\\_support\\_planning\\_policy\\_final\\_may\\_2016.pdf](http://www.bathnes.gov.uk/sites/default/files/siteimages/care_and_support_planning_policy_final_may_2016.pdf)

<sup>3</sup> [http://www.bathnes.gov.uk/sites/default/files/siteimages/bnes\\_guide\\_to\\_non-residential\\_charging\\_policy\\_final\\_april\\_15.pdf](http://www.bathnes.gov.uk/sites/default/files/siteimages/bnes_guide_to_non-residential_charging_policy_final_april_15.pdf)

<sup>4</sup> [http://www.bathnes.gov.uk/sites/default/files/siteimages/complaintspolicyandguidance\\_final\\_09.12.2015.pdf](http://www.bathnes.gov.uk/sites/default/files/siteimages/complaintspolicyandguidance_final_09.12.2015.pdf)

<sup>5</sup> [http://www.bathnes.gov.uk/sites/default/files/siteimages/ordinary\\_residence\\_and\\_continuity\\_of\\_care\\_policy\\_jan16.pdf](http://www.bathnes.gov.uk/sites/default/files/siteimages/ordinary_residence_and_continuity_of_care_policy_jan16.pdf)

<sup>6</sup> [http://www.personalhealthbudgets.england.nhs.uk/\\_library/Resources/Personalhealthbudgets/2014/Guidance\\_on\\_Direct\\_Payments\\_for\\_Healthcare\\_Understanding\\_the\\_Regulations\\_March\\_2014.pdf](http://www.personalhealthbudgets.england.nhs.uk/_library/Resources/Personalhealthbudgets/2014/Guidance_on_Direct_Payments_for_Healthcare_Understanding_the_Regulations_March_2014.pdf)

<sup>7</sup> <http://www.bathandnortheast Somersetccg.nhs.uk/documents/links/personal-health-budgets-local-offer>

- 3.2 When a plan to meet needs or discharge **s117 after care duties** is being developed, individuals will be advised which of their eligible needs, if any, or after care services, may be met / provided through direct payments, and offered the option of having them. Individuals will be provided with information about direct payments (rights and responsibilities and how to use and manage them) so that they can make an informed decision.
- 3.3 People must request direct payments and may opt in or out of direct payment arrangements by notifying the council or CCG at any time. Requests for direct payments are usually made at planning stage but may be made at any other time.
- 3.4 People aged 16 years and over who appear to be unable to understand their rights and responsibilities in relation to the ways in which they can receive their personal budget or personal health budget, and have no other appropriate person to support them, will be offered an independent advocate. Children aged 0 – 15 years should be supported in their decision making by their parent / legal guardian.

#### 4. Who can receive direct payments

- 4.1 The Council and CCG will offer direct payments at every assessment or review to people who are eligible to receive them.
- 4.2 As long as the conditions described in section 6 below are met in relation to the individual's capacity, the council has a duty to provide direct payments for people (including carers) whose needs for care and support have been determined to meet either Care Act, or Children and Families Act eligibility.
- 4.3 The CCG will consider the PHB eligibility guidance in order to determine who can receive a PHB as a direct payment. This is available online via the [Personal Health Budgets Local Offer](#)<sup>8</sup>.

#### 5. Who can't receive direct payments

- 5.1 Whilst most individuals who meet the conditions in sections 4 and 6 are eligible to receive direct payments, some exceptions do exist. These are in relation to people with drug or alcohol dependencies who have had certain conditions imposed on them by the courts. See Attachment 1 for further details.
- 5.2 In relation to adult social care direct payments, the council will not make a direct payment to individuals who have savings above the threshold. See the [Guide to Non-Residential Charging Policy for Social Care Services in Bath & North East Somerset](#)<sup>9</sup> for full details.

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<sup>8</sup> <http://www.bathandnortheastsomersetccg.nhs.uk/documents/links/personal-health-budgets-local-offer>

<sup>9</sup> [http://www.bathnes.gov.uk/sites/default/files/siteimages/bnes\\_guide\\_to\\_non-residential\\_charging\\_policy\\_final\\_april\\_15.pdf](http://www.bathnes.gov.uk/sites/default/files/siteimages/bnes_guide_to_non-residential_charging_policy_final_april_15.pdf)

## 6. Mental capacity – requesting direct payments

6.1 The route to receiving a direct payment is for the person to request one, or, in the case of children, for the parents or guardians to request one on behalf of the child.

6.2 For adults, the requirements for the council and CCG and those organisations acting on behalf of the council and CCG with delegated statutory duties differ depending on whether the adult with care and support needs has the **mental capacity** to request a direct payment.

6.3 An **adult with capacity** who has eligible adult social care needs will be provided with a direct payment when requested provided the following four conditions are fully met:

- the adult has capacity to make the request, and where there is a **nominated person**, that person agrees to receive the payments
- the local authority is not prohibited by regulations from meeting the adult's needs by making direct payments to the adult or nominated person
- the local authority is satisfied that the adult or nominated person is capable of managing direct payments either by himself or herself, or with whatever help the authority thinks the adult or nominated person will be able to access
- the local authority is satisfied that making direct payments to the adult or nominated person is an appropriate way to meet the needs in question

6.4 For adults with health needs, a person who has mental capacity to make an informed decision to voluntarily accept a level of risk in relation to taking a direct payment is entitled to do so. However, the CCG is not obliged to fund it and may instead offer a commissioned service. The CCG remains accountable for the proper use of public funds. Sufficient evidence and information must be provided for an informed decision to be made by the individual, their representative and the CCG to manage identified risks.

6.5 **Adults without capacity** should not automatically be prevented from having a direct payment, as long as there is an **authorised person** to manage the payments on their behalf. For details of who can be an authorised person, please see the glossary.

6.6 Direct payments for an adult without capacity with eligible adult social care needs will be provided to an authorised person when requested providing each of the following conditions are met:

- a) where the person is not authorised under the Mental Capacity Act 2005 but there is at least one person who is so authorised, that person who is authorised supports the person's request
- b) the local authority is not prohibited by regulations under section 33 of the Care Act from meeting the adult's needs by making direct payments to the authorised person, and if regulations under that section give the local authority discretion to decide not to meet the adult's needs by making direct payments to the authorised person, it does not exercise that discretion

- c) the local authority is satisfied that the authorised person will act in the adult's best interests in arranging for the provision of the care and support for which the direct payments under this section would be used
- d) the local authority is satisfied that the authorised person is capable of managing direct payment by himself or herself, or with whatever help the authority thinks the authorised person will be able to access
- e) the local authority is satisfied that making direct payments to the authorised person is an appropriate way to meet the needs in question

6.7 The local authority or CCG will take the following steps to assess whether making direct payments to the authorised person is an appropriate way of meeting needs:

1. So far as is reasonably practicable and appropriate, the council / CCG will consult and take into account the views of:
  - a. anyone named by the adult as someone to be consulted about whether direct payments should be made to the authorised person,
  - b. anyone engaged in caring for the adult or interested in their welfare,
  - c. anyone authorised under the MCA to make decisions about the adult's needs for care and support.
2. So far as is reasonably ascertainable, the council / CCG will consider:
  - a. the adult's past and present wishes and feelings, particularly any relevant written statement made by the adult before they lost capacity,
  - b. the beliefs and values that would be likely to influence the adult's decision if the adult had capacity, and
  - c. other relevant factors the adult would be likely to consider if they were able to do so.
3. The council / CCG will arrange for a **DBS check** to be carried out (via the Council's People Services) for:
  - a. anyone who will be acting as the authorised person, regardless of their relationship to the person with care and support needs, and
  - b. The person with overall responsibility for the day to day management of direct payments where the authorised person is a body corporate or an unincorporated body of persons.

6.8 The authorised person must:

- Be named as the financial representative on the service user's electronic case record to enable payments to be made.
- Notify the council / CCG or their representative if they reasonably believe that the adult has regained capacity.
- DBS check any person from whom a service is secured using direct payments where the conditions specified in paragraph 16.3 and / or 16.4 apply.

6.9 Parent carers of children and young people manage direct payments on behalf of their children and are not required to undergo a DBS check as legal parental responsibility is in place. Once the young person turns 16, they are eligible for a direct payment in their own right. A review should be carried out to determine whether the direct payment should be paid directly to the young person or

continue to be paid to the parent / guardian / authorised person if the child lacks capacity.

## 7. Declining a request for direct payments

7.1 Requests for direct payments will be declined if any condition set out at 6.3 (for adults with capacity) and 6.6 (for adults without capacity) above is unmet, or if any of the conditions within section 5 apply.

7.2 The council or CCG or partner organisation will provide a written explanation of why the request was declined including:

- Which conditions are not met,
- Why the condition is considered to be unmet
- What the person making the request may need to do to obtain a positive decision.

7.3 Information about how to appeal the decision through the complaints process will also be provided.

7.4 The council / CCG or partner organisation will continue the planning process to agree with the person whose needs must be met how this can be achieved without the use of direct payments.

## 8. Calculating the amount of the direct payment

8.1 The amount of the direct payment will be calculated after an assessment. If the person meets their needs by directly employing someone, their budget will be calculated to include costs of employment such as training and holiday payments etc. The person (or their authorised person) will be responsible for ensuring the monies allocated for training, holiday pay etc. are used for this purpose.

8.2 For further details of how the budgets are calculated, please see the relevant policy:

- **Adult social care:** Care and Support Planning policy (May 2016)<sup>10</sup>
- **Children's social care:** Following an assessment of need from the Disabled Children's team<sup>11</sup>
- **Health:** A PHB is set by first establishing the persons need for care and support. Using the CHC/CCC Decision Support Tool, the Nurse Assessor will have identified the level of care and support likely to be required. With this information an "indicative" budget can be formulated.
  - For adults: To calculate the indicative Personal Budget practitioners will complete the "Budget Setting Tool (which is in the PHB Toolkit). The indicative budget should then be checked and if appropriate agreed by the nurse assessor's Team Manager. Final agreement for the "indicative budget" will need to be given by the CCG.
  - For Children: Each request for a PHB will be considered on an individual basis and the "indicative budget" will be set individually.

<sup>10</sup> <http://www.bathnes.gov.uk/services/care-and-support-and-you/professionals-and-practitioners>

<sup>11</sup> <http://www.bathnes.gov.uk/services/children-young-people-and-families/families-disabled-children/disabled-children>

8.3 The council and CCG review the amount of the direct payment on 1 April each year in line with the council and CCG's rate setting process.

## 9. Financial assessment

**9.1 Please note this section is relevant only to adult social care direct payment recipients.**

9.2 All councils are able to charge for the services they provide under Section 14 of the Care Act 2014. This includes services purchased using direct payments.

9.3 The amount that anyone pays towards their care (their charge) is based on a financial calculation which the councils Client Finance team carry out. This takes account of the individual's personal financial circumstances. This is effectively a means test. The charge is not based on the amount of service a person receives, so not everybody has to pay the same amount.

9.4 If the Client Finance team confirm that the individual should pay a charge, they will inform the direct payment recipient and the professional who assessed them that they will be required to pay this and how it should be paid. People who only have a direct payment must pay their charge into their direct payment / pre-paid card account, if they have a mixed package which includes a direct payment and a commissioned service, the council will invoice them for the full amount of their assessed charge.

9.5 If the person refuses a financial calculation or will not complete the statement of financial circumstances with all evidence of income/expenditure required within 5 working days, we have to assume the individual has in excess of £23,250 in savings (figure correct as at 2016/17). This means that the individual will pay the full cost of their care and support and will not receive a direct payment.

9.6 The council will follow its procedures as outlined in the 'Guide to Non-Residential Charging Policy for Social Care Services in Bath & North East Somerset' which can be found here: <http://www.bathnes.gov.uk/services/care-and-support-and-you/money-and-legal/paying-care-and-support> if the person does not pay their calculated charge.

9.7 If the person disagrees with their financial assessment, they should contact the Client Finance Team in the first instance to try and resolve any issues as soon as possible. The team will go through the information to check that the calculation is correct and that the assessment or decisions have considered all the relevant information in line with the charging policy.

9.8 NB – people subject to S117 aftercare may still require a financial assessment if the care being delivered is independent of the needs arising from the mental disorder e.g. a 'physical' need.

## 10. Types of direct payment

### 10.1 Social care

#### 10.1.1 One off

A single payment made to the recipient for a specific item. These payments can be used for services / items which are non-chargeable such as equipment. See the separate 'Direct Payments for Equipment' policy guidance for details of this. One off payments can also be made (for example at the start of an ongoing direct payment) to cover items such as employers liability insurance.

#### 10.1.2 Ongoing

On-going direct payments are made every two weeks and are paid in arrears usually from the date that needs are identified. Note that plans are in place to move these payments to every two weeks in advance. This change will be planned and communicated appropriately.

Ongoing direct payments are discussed in more detail later on.

#### 10.1.3 Carers

Carers can receive a social care direct payment in their own right to support them to meet their needs as a carer. Please see the Care and Support Planning Policy for further details.

### 10.2 Health

The following groups of people are currently eligible to apply for a personal health budget:

Right to **have** a personal health budget:

- Since April 2014 Adults in receipt of NHS continuing health care funding have had the right to have a PHB.
- Since Oct 2014 Children and young people in receipt of continuing care funding have had a right to have a PHB.

The following groups have the right to **request** a personal health budget:

- Since Sept 2014 Children with special educational needs and disabilities as part of their Educational Health and Care (EHC) plans have been able to request a personal budget.
- Since April 2015 Children with complex health needs and long term conditions have had the right to request a PHB.

However this would need to be agreed by the CCG taking the following into consideration:

- Maintaining existing service provision for other users of a block contract
- Offering a reasonable level of health provision
- Commissioning responsibly (i.e. NHS England or CCG)

The CCG is currently working on expanding PHBs to other groups of people.

### 10.3 Integrated Personal Commissioning

In July 2014 NHS England announced plans to pilot integrated commissioning approaches. This would involve providing people with a combination of health and social care funding as an integrated personal budget / personal health budget.

Personalisation of healthcare embodies **co-production**. It promotes individuals working in partnership with their family, carers and professionals to plan, develop and procure the services and support that are appropriate for them. It also enables CCGs, local authorities and healthcare providers to work together more effectively to enhance their health and social care provision.

- The personalised approach must support the principles of the NHS as a comprehensive service, free at the point of use, as set out in the NHS Constitution, and should remain consistent with existing NHS policies.
- There should be clear accountability for the choices made.
- No one will ever be denied essential treatment as a result of having a PHB.
- Having a PHB does not entitle someone to more or more expensive services or to preferential access to NHS services.
- There should be good and appropriate use of NHS resources.

## 11. How we pay direct payments

11.1 Direct payments, including emergency payments, are paid on behalf of the council and CCG by the council's Client Finance team and are made in accordance with the council's financial policies and procedures.

11.2 Direct payments are paid every two weeks in arrears (see 10.1.2 for plans to change this to in advance) and, in the case of adults with social care direct payments, are paid net of any contribution from the person in need of care and support, who should add their contribution (if any) to the direct payment account.

11.3 Local authorities cannot require financial contributions for a direct payment for after care services under the Mental Health Act (**MHA**); these must be provided without charge.

11.4 All costs must be met within:

- Any agreed personal budget which includes any calculated charge required from the person receiving services
- The amount agreed as sufficient to meet the cost of s117 after care services

11.5 The council is currently working towards implementing a pre-paid card solution, and it is expected that the majority of new direct payment recipients will use a pre-paid card as their direct payment bank account once this solution is in place.

11.6 Until pre-paid cards are in place, and for all PHB and IPC budgets, a separate direct payment bank account must be opened which must be used solely for receiving and managing direct payments. The bank account must have no overdraft facility.

11.7 Payments of up to £500 will not need to be made into a separate bank account.

Table 1 below summarises the options for payment:

Direct Payments Recipient	Direct payment options
A child aged under 16	<ul style="list-style-type: none"> <li>• Pre-paid card account (from April 2017)</li> <li>• Separate bank account in the name of the parent / guardian only</li> <li>• Managed account</li> </ul>
An adult (or young person aged 16 and over) with capacity.	<ul style="list-style-type: none"> <li>• Pre-paid card account (from April 2017)</li> <li>• Separate bank account in the name of the service user only</li> <li>• Managed account</li> </ul>
An adult (or young person aged 16 and over) with capacity who has a <b>nominated person</b> to assist with the ongoing management of the funds and care.	<ul style="list-style-type: none"> <li>• Pre-paid card account (from April 2017)</li> <li>• Separate bank account in the name of the service user or in the name of the nominated person, or with Client Finance approval a joint account</li> <li>• Managed account</li> </ul>
An adult (or young person aged 16 and over) without capacity who has an <b>authorised person</b> who will receive the direct payment on behalf of the person.	<ul style="list-style-type: none"> <li>• Pre-paid card account (from April 2017)</li> <li>• Dedicated direct payments separate bank account in the name of the authorised person only</li> <li>• Managed account</li> </ul>

## 12 Using direct payments

- 12.1 Direct payments must be used to pay for the things identified in the care and support plan. If a direct payment includes a payment to cover tax, NI, holiday pay, redundancy insurance etc. it must be used for this purpose.
- 12.2 Direct payments must be used to purchase services which are safe, legal, value for money and which adequately safeguard and promote the person's welfare and wellbeing.
- 12.3 Direct payments may be subject to conditions imposed by the council or CCG and may be discontinued and / or recovered if the council or CCG has reason to believe that direct payments may have been misspent or accumulated without good reason.

## 13 Contingency funds

- 13.1 Direct payment recipients can retain an agreed level of contingency funding holding a balance of up to 4 weeks after planned monthly payments have been made. The balance at the start of the month may exceed 4 weeks, however retained balances once all payments have been made should not be over the 4 week contingency level.

- 13.2 These can be used to cover specific one off requirements and / or fluctuating needs and should be recorded on the person's care and support plan. In specific circumstances one off payments can be agreed for planned needs and should be recorded in the person's support plan.

**Example: 4 x week contingency**

John receives a direct payment of £50 a week (£200 a month). This means up to £400 can be in his account at any one time. £200 a month is committed on wages for his PA and the remaining £200 is his contingency. John's Care and Support Plan details what this contingency can be used for, and includes covering sick pay and annual leave for his PA and additional PA hours when his condition flares up.

## 14 What direct payments cannot be used for

14.1 Direct payments **cannot** be used for:

- Care services or support in managing direct payments provided by the adult's spouse / partner or a **close family member** living in the same household as the adult. However, in exceptional circumstances the council / CCG can agree a direct payment to a close family member living in the same household. The Care Act gives the following example of these exceptional circumstances:

**Example: Direct payment paid to a family member where necessary**

James has severe learning difficulties as well as various physical disabilities. He has serious trust issues and a unique way of communicating that only his family, through years of care as a child, can understand. The local authority agrees that using a direct payment to pay for care from his parents is necessary as it is the best way to meet James's needs and outcomes.

- Any service directly provided by the council.
- Services, equipment and / or minor adaptations which are the responsibility of other public bodies.
- Non-CQC registered 'introductory' home care agencies. If a DP recipient chooses to use a CQC registered 'introductory' home care agency, the DP may be used to fund the costs of meeting the person's direct care and support needs but not the fee to the agency.
- A social care direct payment cannot be used to provide or arrange any health service or facility which is required to be provided by the NHS.
- Long term residential or nursing care but can be used to pay for:
  - Short stays of up to 4 consecutive weeks in any 12 month period. In calculating the period of 4 weeks, a stay of less than 4 weeks is added to any succeeding stay if the two stays are separated by a period of less than 4 weeks but not otherwise.
  - Non-residential services, for example to trial independent living or to take part in daytime activities.
- Health services such as:
  - Primary medical services provided by GPs, as part of their primary medical services contractual terms and conditions
  - Vaccination or immunization

- Health screening
  - The national child measurement programme and
  - NHS Health Checks
  - Urgent or emergency treatment services such as unplanned in-patient admissions to hospital or accident and emergency
  - Surgical procedures
  - NHS charges such as prescription or dental charges
  - Gambling purposes
  - Repayment of a debt
  - Anything illegal or unlawful
  - Alcohol, tobacco or drugs
- 14.2 Direct payments cannot be used to duplicate public funding that is already coming from another source, for example, transport costs which should be covered by an adults' disability living allowance if received.
- 14.3 Carer direct payments are to meet the carer's own assessed needs and cannot be used to purchase services for the person they care for.
- 14.4 An authorised person must not use direct payments to pay themselves to provide services to the adult without capacity except as expressly authorised in writing by the council or CCG.
- 14.5 Where a support plan (or care and support plan) indicates that the direct payment may be used to fund things that may be seen as non-traditional and 'risky', more frequent reviews and financial auditing may be required to ensure that the expenditure is meeting the person's outcomes as set out in their support plan.

## 15 Managing direct payments

- 15.1 Anyone who agrees to be responsible for managing direct payments must be capable of managing direct payments either independently or with help.
- 15.2 In this section, the following will be referred to as 'the group':
- Adults with capacity
  - Parent carers of children aged 0 – 16
  - Young people aged 16 and over with capacity
  - Authorised persons
- 15.3 Individuals defined in the group above can nominate a third party to assist them to manage direct payments in whatever way they require. The third party is known as the **nominated person** and is usually a family member or a friend.
- 15.4 Individuals in the group defined above may purchase assistance, for example with record keeping, payroll and other employment related services or a managed account, from a direct payment support service of their choice.
- 15.5 If the direct payment recipient chooses to use their direct payment to purchase support from a home care agency, they are still able to access a

managed account from a direct payment support service of their choosing, but they must fund this themselves. The cost of the direct payment support service must not come out of their direct payment.

- 15.6 In some circumstances, for example where the direct payment recipient has a poor credit rating, a managed account may be necessary.
- 15.7 Regardless of whether an individual in the group above receives support from a third party, the individual in the group above remains responsible and accountable for how direct payments are used.
- 15.8 An authorised person acting on behalf of someone who lacks capacity is in a position of trust and is as liable as a direct payment recipient with capacity would be for any misuse of direct payments.

## 16 Becoming an employer

- 16.1 People may use direct payments to employ staff, or to pay an agency to provide services. The direct payment recipient must:
- Be advised that there are legal responsibilities involved in becoming an employer and maintaining good employment practices including registering with HMRC as an employer,
  - Be strongly advised to seek advice about employer legal responsibilities, including being responsible for all employment related costs, for example redundancy, and pension costs,
  - Obtain employers' liability insurance if they are to become an employer, and
  - Be signposted to the direct payment support service for further advice and support.
- 16.2 A PA may be treated as self-employed by HM Revenue & Customs (HMRC) for tax purposes but still be considered an employee in employment law, or for auto-enrolment into a workplace pension. It is very important for the direct payment recipient to determine the employment status of the PA before the PA starts work.
- 16.3 People with capacity are not obliged to carry out Disclosure and Barring Services (DBS) checks for people they employ through direct payments. However, the council and CCG strongly recommend that DBS checks are obtained for all personal assistants.
- 16.4 An authorised person must carry out DBS checking or obtain verification that DBS checking has returned a satisfactory result for any person from whom a service is secured through direct payments where the authorised person is:
- A body corporate or unincorporated body of persons or
  - An individual who is not the adult's spouse / partner, a close family member (as defined in the Glossary) or a friend of the adult who is involved in the adult's care.
- 16.5 For people employed to support children and young people under the age of 16 DBS checks are required.

## 17 Training

- 17.1 It is reasonable to assume that if the care and support plan identifies a need for a PA to carry out specific health / social care tasks, consideration should also be given to their training needs. As the direct payment recipient is the employer they will be responsible for meeting these needs. Funding may also be needed for training updates, and provision for training for any new skills required as needs change.
- 17.2 Training should be provided by a competent person with a standard recognised as adequate for the task. The PA receiving the training should always keep full records of training given, including dates. There should be written evidence of competence assessments, where possible, against recognised standards such as National Occupational Standards.
- 17.3 There should be clear guidance and protocols in place so the PA is not required to make clinical judgments outside their competence. There should be an appropriate level of supervision and mentorship available, with on-going development opportunities, to ensure competency is maintained and new competencies are acquired when needed. Supervision and mentorship should be proportionate to the task and the competencies of the PA, and appropriate to the specific needs of the person receiving support.
- 17.4 Risk should be considered and where necessary a risk management plan put in place. There should be regular monitoring of competencies and access to regular training updates. This is especially important where the person receiving support has a condition that is complex, unstable and/or deteriorating.

## 18 Integrating direct payments with other sources of funding

- 18.1 The council and CCG are currently piloting Integrated Personal Commissioning (see Glossary for a description of this) and intend to further develop integrating budgets from different sources (including Education) in the future.
- 18.2 It is our shared intention that integrated budgets will follow an integrated assessment and support plan, and will be paid into a single bank account. People with an integrated budget will only have to provide a single set of monitoring information, at the specified intervals.

## 19 The direct payments agreement

- 19.1 Before receiving direct payments, the respective direct payments agreement must be signed and a copy of the signed agreement provided to all signatories.
- 19.2 There are three direct payment agreements:
- **Standard** agreement – signed by the adult, where the adult is managing the direct payment
  - **Nominated person** agreement – countersigned by the adult and the nominated person, where the nominated person is managing the direct payment

- **Authorised person** agreement – signed by an authorised person managing direct payments for an adult without capacity.

## 20 Monitoring and review of direct payments

- 20.1 The council or CCG or their partners with delegated responsibilities will inform an individual about what records they must retain and what information they will be required to provide at each review before the direct payment agreement is entered into.
- 20.2 For direct payment recipients using a pre-paid card, no receipts will need to be sent in, but all receipts should be retained as directed by the council's Client Finance team (including for personal health budget recipients) in case a full audit is required. Client Finance will still be carrying out scheduled audits on the accounts as per 20.4 below.
- 20.3 For new direct payment recipients not using a pre-paid card, all receipts and bank statements will need to be retained and sent in to Client Finance after 2 months to be audited.
- 20.4 All direct payment accounts will be audited by Client Finance after 2 months. After this first audit, the account will be risk assessed to see whether receipts, invoices and statements should be sent in monthly, every six months or annually.
- 20.5 The regularity of sending returns in to Client Finance will be reviewed regularly. Where there are no issues or queries relating to the direct payment account, the frequency of sending in returns may be reduced.
- 20.6 Reviews of the care and support being purchased via the direct payment and / or the finances will also be carried out at any time when the council or CCG considers that:
- There has been a change in capacity, or
  - Any of the conditions listed at section 6 above are no longer met, or
  - Direct payments have not been used as intended, or
  - The adult's safety and welfare have been compromised or
  - There has been any change which may adversely affect the effectiveness and intention of the support arrangements.
- 20.7 The care and support review will establish if direct payments are being used to meet needs as intended, conditions are met and public monies are being used effectively.
- 20.8 Care and support reviews must involve the person, any carer(s) the person has, any authorised or nominated person, any family member providing paid administrative or management support (as specifically approved by the council or CCG – see section 15 above) and anyone else that the person requests be involved.
- 20.9 If the person lacks capacity to make such a request, anyone who is authorised under the MCA to make personal welfare decisions (if different from the

authorised person) or if there is no such individual anyone who appears to be interested in the person's welfare should be involved.

## **21 When some or all of the direct payment needs to be returned**

- 21.1 The council or CCG will require full or partial repayment of direct payments if any condition attached by the council or CCG is unmet or the council or CCG have reason to believe that direct payments have been used for purposes other than to meet needs as specified in the plan.
- 21.2 The council or CCG may require repayment of any unspent direct payment if they are not required to meet needs as set out in the plan.
- 21.3 The council or CCG will require repayment of excess funds accumulated in the dedicated bank account where there is no reasonable explanation for the surplus.
- 21.4 Direct Payments do not form part of an estate in the event that someone dies while receiving them. The money at all times belongs to the council or CCG and remains public funds.

## **22 Ending direct payments**

- 22.1 People receiving direct payments, either for themselves or on behalf of another person, may decide at any time that they no longer wish to receive direct payments on giving 4 weeks written notice to the council or CCG. The council or CCG can agree to vary this notice period according to the individual's circumstances.
- 22.2 Notice will be given before direct payments are discontinued, unless in exceptional circumstances.
- 22.3 The council or CCG will end direct payments if it is satisfied that:
- The person is no longer eligible for or no longer requires the services for which direct payments are made.
  - The person becomes excluded from receiving direct payments because they have been placed under a condition or requirement by the Courts in relation to drug and / or alcohol dependencies. See attachment 2 for details
  - Any of the conditions listed at paragraphs 6.3 and 6.6 are no longer met.
  - Direct payments are not safeguarding or promoting the person's welfare.
- 22.4 The council or CCG may suspend or end direct payments either permanently or temporarily if:
- The person does not require assistance because their condition has improved and / or they do not need the services that direct payments were intended to secure.
  - Any condition attached by the council or CCG is unmet or the council or CCG has reason to believe that direct payments have been used for purposes other than to meet needs as specified in the plan.
  - The adult fails to pay any assessed financial contribution (for adult social care direct payments only) into the direct payments account.

- Given all the circumstances, the council or CCG considers it appropriate to end direct payments.

### **23 Changes in circumstances**

- 23.1 The person should inform their social worker or health professional of any change in the person's personal or financial circumstances that might affect their direct payment e.g. change of address or increase / decrease in their personal income, admission to hospital, or emergency placement.
- 23.2 There may often be occasions when direct payment holders require a stay in hospital. However, this should not mean that the direct payment must be suspended while the individual is in hospital. Where the direct payment recipient is also the person requiring care and support, consideration should be given to how the direct payment may be used in hospital to meet non-health needs or to ensure employment arrangements are maintained. Suspending or even terminating the payment could result in the person having to break the employment contract with a trusted personal assistant, causing distress and a lack of continuity of care when discharged from hospital.
- 23.3 In these cases, the council / CCG will explore with the person, their carer and any others the person chooses, the options to ensure that both the health and care and support needs of the person are being fully met in the best way possible. For example, the person may prefer the personal assistant to visit hospital to help with personal care matters. This may be especially so where there has been a long relationship between the direct payment holder and the personal assistant. This should not interfere with the medical duties of hospital personnel, but be tailored to work alongside health provision.
- 23.4 In some cases, the nominated or authorised person managing the direct payment may require a hospital stay. In these cases, the council / CCG must conduct an urgent review to ensure that the person continues to receive care and support to meet their needs. This may be through a temporary nominated/ authorised person, or through short-term authority arranged care and support.

### **24 Complaints**

- 24.1 People will be provided with information about how to use the complaints procedure related to the individual organisation carrying out delegated statutory duties on behalf of the council and CCG, including their right to access advocacy as part of the appeals process.
- 24.2 Any person may use the complaints procedure if they are dissatisfied with the decision related to direct payments or the support they receive.
- 24.3 Additionally, people who receive, or consider that they should receive, direct payments have the same rights to access the council and CCG's complaints procedure as people whose support is provided directly or arranged by the council or CCG.

## **25 Reviewing this policy**

- 25.1 This policy will be reviewed one year from the date of implementation or sooner if required.
  
- 25.2 Any review of this policy must include individuals who have lived recent experience of direct payments (for example the direct payment champions).

## Glossary of terms

<b>Adult</b>	For the purposes of this policy, an adult is a person who is aged 18 years or over.
<b>Adult with capacity</b>	In the context of this policy, an adult who has the mental capacity to make decisions about direct payments
<b>Adult without capacity</b>	<p>People are always assumed to have capacity until established otherwise. In the context of this policy, where there is any doubt about an adult's capacity to make decisions about direct payments, mental capacity will be assessed in accordance with the Council's Mental Capacity Act policy.</p> <p>An adult will only be deemed to be without capacity when it has been established through a mental capacity assessment that this is the case.</p>
<b>Assessment – of needs</b>	An assessment of an individual's needs for social care, support or s117 after care services to enable them to live as independently as possible.
<b>Assessment - financial</b>	<p>An assessment of an individual's financial circumstances to determine whether or not they must contribute towards the cost of services required to meet eligible needs.</p> <p>No financial assessment is required for s117 after care services, children's social care or personal health budget direct payments as these must be provided free of charge.</p>
<b>Authorised person</b>	<p>An authorised person is someone who:</p> <ul style="list-style-type: none"> <li>• is authorised under the Mental Capacity Act 2005 to make decisions about the adult's needs for care and support (i.e. is the holder of a lasting power of attorney given to them by the adult before they lost capacity or a Court appointed deputy), or</li> <li>• where the person is not authorised as mentioned above, a person who is so authorised agrees with the local authority that the person is a suitable person to whom to make direct payments, or</li> <li>• where the person is not authorised as mentioned above and there is no person who is so authorised, the local authority considers that the person is a suitable person to whom to make direct payments.</li> </ul>
<b>Carer</b>	Someone of any age who provides unpaid support to family or friends who could not manage without this help.
<b>Close family member</b>	<p>Someone who lives in the same household as the adult who is the adult's:</p> <ul style="list-style-type: none"> <li>• Parent or parent-in-law</li> <li>• Son or daughter</li> <li>• Son-in-law/daughter-in-law</li> <li>• Stepson or stepdaughter</li> <li>• Brother or sister</li> <li>• Aunt or uncle</li> <li>• Grandparent, or</li> <li>• The spouse/partner of any of the people listed and living in the same household as the adult.</li> </ul>
<b>Co-production</b>	<p>Co-production is defined by Think Local Act Personal as:</p> <p><b>“When you as an individual are involved as an equal partner in designing the support and services you</b></p>

	<b>receive.</b> Co-production recognises that people who use social care services (and their families) have knowledge and experience that can be used to help make services better, not only for themselves but for other people who need social care.” In Bath and North East Somerset we would expand this to include people with health care needs.
<b>Commissioned service</b>	Commissioned services are those which have been designed, developed and purchased centrally by the council or CCG. As these services are purchased directly by the council or CCG, people with direct payments are not able to purchase them (as this would result in double funding for these services). If a person chooses solely commissioned services, they would not receive a direct payment.
<b>DBS check</b>	Screening through Disclosure and Barring Services. This checks criminal history and identifies people barred from working with children and vulnerable adults.
<b>Delegated statutory duties</b>	The council and CCG have to assess people within Bath and North East Somerset who have or appear to have the need for care and support. This is called our statutory duty. Bath & North East Somerset Council and NHS Bath and North East Somerset CCG no longer carry out this duty themselves, but have contracted with a different organisation to do this on their behalf. This means this function has been delegated to a different organisation.
<b>Direct payments</b>	Payment of the council or CCGs contribution towards a personal budget direct to a dedicated bank account, so that the person or someone authorised to act on their behalf can arrange support services instead of having them arranged by the council / CCG. Direct payments may also be provided in most instances to arrange s117 after care services.
<b>Direct payments agreement</b>	The written agreement which sets out the terms and conditions applicable to direct payments.
<b>Duty to make direct payments</b>	Where the council has a legal obligation to make direct payments to eligible people because all conditions are met.
<b>Integrated Personal Commissioning (IPC)</b>	Integrated personal commissioning is a new voluntary approach to joining up health and social care for adults with complex needs and also health, social care and education for children. Individuals should have one assessment and one support plan which looks at all their health and social care needs. Individuals may also have a single budget which combines health, social care and other sources of funding such as education.
<b>Managed account</b>	Managed accounts are used in limited circumstances, for example where an adult / authorised person has a poor credit rating. Direct payments are made to a commissioned service which manages the funds on their behalf. The adult / authorised person(s) remain responsible for how direct payments are used. For example, if direct payments are used to employ staff, the adult /authorised person is the employer, even though the commissioned service may carry out employment activities on a day to day basis. Adults who are able to provide consent may also elect to use a managed account.

<b>MCA</b>	Mental Capacity Act 2005
<b>Mental capacity</b>	<p>Having mental capacity means that a person is able to make their own decisions. The Mental Capacity Act says that a person is unable to make a particular decision if they cannot do one or more of the following four things.</p> <ul style="list-style-type: none"> <li>• Understand information given to them.</li> <li>• Retain that information long enough to be able to make the decision.</li> <li>• Weigh up the information available to make the decision.</li> <li>• Communicate their decision - this could be by talking, using sign language or even simple muscle movements such as blinking an eye or squeezing a hand.</li> </ul> <p>The Act is specifically designed to cover situations where someone is unable to make a decision because the way their mind or brain works is affected, for instance, by illness or disability, or the effects of drugs or alcohol.</p>
<b>MHA</b>	Mental Health Act 1983
<b>Minor adaptation</b>	An adaptation is defined as minor when the total cost including supply and fitting is less than £1000.
<b>Mixed package</b>	If a person chooses a direct payment to meet some of their needs and commissioned services to meet others, they have a mixed package of care. All these options should be recorded on the person's care and support plan.
<b>Nominated person</b>	<p>A person nominated by an adult with capacity to assist with day to day management of services and / or management of direct payment funds.</p> <p>The adult with capacity at all times remains responsible and accountable for how direct payments are used.</p>
<b>Notional budget</b>	Notional budgets apply to personal health budget holders and apply where the CCG makes the arrangements for the agreed care and support. They are the same as a commissioned service for adult social care.
<b>Personal budget</b>	The amount of money allocated by the council to fund the assessed eligible care and support required. The personal budget for adults aged 18 and over is means tested. This means the adult may be required to make a financial contribution towards the total amount of their personal budget.
<b>Personal health budget</b>	The amount of money allocated by the CCG to fund the assessed eligible health care and support required.
<b>Personalised care and support</b>	Tailoring care and support to the needs, wishes and preferences as far as this is possible so that the person concerned has as much choice and control over how their needs are met.
<b>Plan</b>	A plan which summarises how a person's needs will be met and which includes the details of needs to be met from direct payments. This may be either a care and support plan for an adult in need of care, or a support plan in the case of a carer.
<b>Reassessment</b>	A reassessment of needs for social care and / or support.
<b>Review</b>	Monitoring and review of direct payment arrangements to ensure that they continue to meet the needs. Usually carried out concurrently with a review of the person's plan
<b>Service User</b>	A person assessed by the council or CCG as eligible to

	receive health, care and / or support services.
<b>S117 after care services</b>	A wide range of services necessary to meet a need arising from a person's mental disorder when a person ceases to be detained under the MHA.

## Attachment 1

### Adults Whose Needs the Local Authority Must Not Meet By Making Direct Payments

Direct payments may not be used to meet the needs of people who are:

- a) **subject to a drug rehabilitation requirement**, as defined by section 209 (drug rehabilitation requirement) of the Criminal Justice Act 2003 (“the 2003 Act”), specified in a community order (as defined by section 177 (community orders) of that Act), or a suspended sentence order (as defined by section 189 of that Act);
- b) **subject to an alcohol treatment requirement**, as defined by section 212 of the Criminal Justice Act 2003, specified in a community order (as defined by section 177 of that Act), or a suspended sentence order (as defined by section 189 of that Act);
- c) **released from prison on licence –**
  - i. under Chapter 6 of Part 12 (sentencing: release, licenses and recall) of the 2003 Act or Chapter 2 of Part 2 (effect of custodial sentences: life sentences) of the Crime (Sentences) Act 1997 (“the 1997 Act”), **subject to a non-standard licence condition requiring the offender to undertake offending behaviour work to address drug or alcohol related behaviour**; or
  - ii. **subject to a drug testing requirement** under section 64 (as amended by the Offender Rehabilitation Act 2014) (release on licence etc: drug testing) **or a drug appointment requirement** under section 64A (release on licence etc: drug appointment) of the Criminal Justice and Courts Services Act 2000;
- d) **required to comply with a drug testing or a drug appointment requirement** specified in a notice given under section 256AA (supervision after end of sentence of prisoners serving less than 2 years) of the 2003 Act;
- e) **required to submit to treatment for their drug or alcohol dependency** by virtue of a community rehabilitation order within the meaning of section 41 of the Powers of Criminal Courts (Sentencing) Act 2000 or a community punishment and rehabilitation order within the meaning of section 51 of that Act;
- f) **subject to a drug treatment and testing order** imposed under section 52 of the Powers of Criminal Courts (Sentencing) Act 2000;
- g) **required to submit to treatment for their drug or alcohol dependency** by virtue of a requirement of a community payback or probation order within the meaning of sections 227 to 230 of the Criminal Procedure (Scotland) Act 1995 or **subject to a drug treatment and testing order** within the meaning of section 234B of that Act; or
- h) **released on licence under section 22 or section 26** of the Prisons (Scotland) Act 1989 (release on licence etc) or under section 1 (release of short-term, long-term and life prisoners) or 1AA (release of certain sexual offenders) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 and subject to a condition that they **submit to treatment for their drug or alcohol dependency**.

Taken from the Care and Support (Direct Payments) Regulations 2014. Regulation 2, Schedule 1.

## Attachment 2

### Personal health budgets legislative context

- National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) (Amendment) (No. 3) Regulations 2014<sup>12, 13</sup>
- Guidance on Direct Payments for Healthcare: Understanding the regulations<sup>6</sup>
- Direct Payments for Healthcare: Guidance on Ensuring the Financial Sustainability of Personal Health Budgets<sup>9</sup>

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<sup>12</sup> The NHS Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012 are the principal regulations as originally made. They were amended by the NHS Commissioning Board and CCGs (Responsibilities and Standing Rules) (Amendment) Regulations 2013, which introduced the “right to ask” for a PHB from 1<sup>st</sup> April 2014.

<sup>13</sup> The NHS Commissioning Board and CCGs (Responsibilities and Standing Rules) (Amendment) (No.3) Regulations 2014 amended the regulations once again, from 1<sup>st</sup> October 2014, to bring in the “right to have” a PHB