

Adult Social Care

DIRECT PAYMENTS POLICY

2023

ADULT SOCIAL CARE

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1. Introduction

1.1 Why do we have this Policy?

Much of what Sandwell Metropolitan Borough Council (the “**Council**”) does is set out in law, but in some areas, including direct payments, the law gives us an element of discretion over what we can do in certain circumstances. Where we have discretion, we are required to have a policy, and this document is our policy for direct payments.

This policy addresses areas of legal discretion with full guidance on the relevant regulatory framework being summarised in a separate **practice guidance document** for staff, and **factsheet** for service users, carers, and the public. This document has been created and approved by the Council and can be amended and/or changed in accordance with the Council’s democratic procedures.

The law says that where we have discretion, we must consider each case separately; we cannot set rules that say (for example) we will never fund certain costs. That would “fetter our discretion” which means it would stop us applying our judgement in individual cases which is unlawful. Nothing in this policy is intended to “fetter the discretion” of the Council, and any references in any of our adult social care documents to “the policy” or “this policy” or similar should be treated as a reference to the relevant part of this document.

This policy aims to balance these requirements and to be clear and transparent on how the Council manages direct payments, so that staff, service users, carers and the public can understand the purpose of our local policy and how we make decisions in respect of our direct payment scheme.

1.2 What Legislation is relevant to this Policy?

This policy is based on the following statutory documents:

- The Care Act 2014;
- The Care and Support (Direct Payments) Regulations 2014 (the “Regulations”);
- The Care and Support Statutory (CASS) Guidance October 2014;
- Safeguarding Vulnerable Groups Act 2006 (in respect of DBS checks);
- The Mental Health Act 1983 (to the extent that it relates to aftercare services commissioned under section 117(2c) which can be delivered via a direct payment).

2. Offering a Direct Payment

2.1 What is a Direct Payment?

A direct payment is a monetary payment made to individuals who request to receive one to meet some or all of their eligible care and support needs. It is available for people eligible for support to meet their needs, and for carers.

Direct payments are a key mechanism for delivering personalised care and support, and are an effective way of delivering services where people are able to manage them or there is a suitable individual who can manage the direct payment on the person’s behalf. Direct payments provide independence, choice, and control by enabling people to arrange and purchase their own care and support to meet their eligible needs.

Although information about direct payments should be readily available to all from an early stage, the key stage for information sharing is during care and support planning (or support planning where the direct payment is being considered for a carer). The person must be genuinely involved and influential throughout the planning process, and there should be a default assumption that the person, with support if necessary, will play a strong pro-active role in planning if they choose to.

Managing a direct payment involves being clear about the uses it will be put to in order to meet needs or outcomes; properly accounting for the use of public money; acting as an employer, or managing the relationship with an external provider; getting cover for absent staff; ensuring insurance and contingency arrangements are in place etc.

Once the Council has prepared a personal budget setting out (a) the costs of the person's care and support and (b) the amount that the Council will make available, the option of a direct payment must be clearly explained to the person in a way that works best for them, so that they can make an informed decision about the level of choice and control they want in respect of their care arrangements and whether a direct payment is right for them.

A direct payment can be paid to the person who is assessed as needing care and support, someone they choose (called a nominated person) or, if they lack capacity to make decisions about requesting a direct payment, the Council can agree to someone else managing this on their behalf (called an authorised person).

The final decision as to whether a direct payment should be offered depends on the whether the person requesting the direct payment and/or their nominated

and/or authorised person meets the conditions set out in the Care Act 2014.

Carers' Direct Payments are one-off sums, so only the indicated requirements and conditions in this document apply.

2.2 The Right to have a Direct Payment

The Care Act sets out that a person has a right to ask for a direct payment to deliver the care to meet their needs required in their personal budget. Subject to the conditions set out below, the Council must provide one to the person or to their nominated person. Having a direct payment is a choice for the person concerned, and the Council cannot and will not require anyone to have one.

These "conditions to be satisfied" exist to protect both the person and the Council; even if the person wants a direct payment, it may not be suitable for them, and the Council will work with the individual to understand whether the conditions in the next section are met; whether they wish to receive a direct payment and if they do, how the direct payment will operate based on their individual circumstances.

As a part of this joint work, the Council will need to ensure that;

- It is satisfied that making direct payments to the person or their nominee is an "appropriate way to meet the needs in question"
- it meets its duty to use public funds equitably and economically

These will be achieved by working with the individual to draw up costed options so that the Council's managers can make a decision as to which is the "best value option" in terms of possible care for the individual, with the full involvement of the person in that process.

The Care Act 2014 is clear that a Council **can** make choices on what services

they fund taking account of the costs, **providing** this is done on a case by case basis (taking all relevant considerations into account which includes the views of the individual and / or their representative) and is not a blanket policy. This does not mean choosing the cheapest option; but the one which delivers the outcomes desired for the best value.

In many cases this will be a direct payment as there can be lower overheads when the person themselves is managing their care compared with an external provider. However, that may not always be the case. The Council's decision on whether to agree to a request for a direct payment must balance the two key considerations; the individual's choice with the Council's duty to ensure that making direct payments is an appropriate way to meet the needs in question.

2.3 Conditions to be satisfied before making a Direct Payments – Adults with Capacity to request Direct Payments

A direct payment must be used to meet the needs and outcomes that have been agreed with the social care practitioner, but can be used in a way, which gives the person choice and control over who provides their support, when and how it is provided.

A person who is assessed by the social care practitioner as having capacity to make a request for direct payments to cover some or all of their needs, must meet the conditions set out in the Care Act 2014 in order for a direct payment to be made. A person with capacity may nominate a third party to assist them with managing the direct payment (i.e. the nominated person) – usually a family member or close friend.

When a person asks us for a direct payment, the Council must agree to provide one if they or their nominated person meets **all** of the following conditions as set out in the Care Act 2014:

- they have the capacity to make the request and, where they have nominated a person to make the payments to, that person agrees to receive the payments;
- the Council is not prohibited by section 33 of the Care Act 2014 or the Regulations from meeting the person's needs by making direct payments to the person or nominated person (this section refers to certain categories of persons subject to drug or alcohol treatment requirements);
- the social care practitioner is satisfied that the person (or their nominated person) has the capability to manage direct payment either by themselves, or with whatever help the practitioner thinks the person (or nominated person) will be able to access;
- the social care practitioner is satisfied that making direct payments to the person (or nominated person) is an appropriate way to meet the person's needs.

If the Council decides not to provide a direct payment on the basis that one or more of the conditions is not met, this decision can be challenged through the Council's [Reviews, appeals and complaints](#) process (ctrl and click to follow link).

Managed accounts: in exceptional cases, a person may be assessed as having the capacity to understand the issues involved in managing a direct payment, (including employing a personal assistant or an agency), but is unable to manage these issues on a day to day basis, and has no third party who can assist. In such cases, the Council may provide a managed account.

This is where a third-party contractor is funded by the Council to manage the person's direct payment funds on their behalf. The third-party contractor is responsible for all managing and accounting for the direct payment that a person would be responsible for, including audit and reporting. However, they will not deal with the management and employment of staff or providers; this will remain the responsibility of the individual.

2.4 Conditions to be satisfied before making a Direct Payment – Adults Lacking Capacity

In cases where a person in need of care and support has been assessed as lacking capacity to request a direct payment, the Council will not grant a direct payment to them unless they have an **authorised person** who meets all of the conditions set out in the Care Act 2014. When assessing whether the person lacks capacity to request a direct payment, the social care practitioner might ask them about the following relevant information –

- what is a direct payment?
- how a direct payment is used to pay for care and support services in accordance with the persons' care and support plan;
- a direct payment is an allocated sum of money;
- the person will be responsible for managing the direct payment etc (non-exhaustive).

The Care Act 2014 provides that a person will be an authorised person if –

- they are authorised under the Mental Capacity Act 2005 to make decisions about the adult's needs for care and support, e.g. if they have a lasting power of attorney for health and welfare; or

- if they are not authorised under the Mental Capacity Act 2005, a person who is authorised under that Act agrees with the Council that the person is suitable; or
- if they are not authorised under the Mental Capacity Act 2005 and there is no person who is authorised under that Act, the Council considers the person to be suitable.

The authorised person must satisfy **all of the following conditions** under the Care Act 2014:

- if they are not authorised under the Mental Capacity Act 2005 (i.e. they do not hold a lasting power of attorney) but there is at least one person who is so authorised, the person who is authorised supports the person's request;
- the Council is not prohibited by regulations under section 33 of the Care Act 2014 from meeting the adult's needs by making direct payments;
- the social care practitioner is satisfied that the authorised person will act in the adult's best interests in arranging for the provision of care and support for which the direct payments would be used;
- the social care practitioner is satisfied that the authorised person is capable of managing direct payments by themselves, or with whatever help the council thinks the authorised person will be able to access; and
- the social care practitioner is satisfied that making direct payment to the authorised person is an appropriate way to meet the adult's needs in question.

If the Council decides not to provide a direct payment on the basis that one or more of the conditions is not met, this decision can be challenged through the Council's [Reviews, appeals and complaints](#) process (ctrl and click to follow link).

2.5 Conditions to be attached to a Direct Payment

It is a condition of the Council's direct payment policy and scheme that any person (or their nominated person or authorised person) requesting or receiving a direct payment (apart from carers' direct payment which are one-off payments) must comply with the following conditions –

- must complete and sign the direct payment agreement, which sets out the conditions under which direct payments are able to be made by the Council, including important information regarding the responsibilities of the council, of the person and/or their nominated/authorised person;
- an authorised or nominated person must sign the direct payment agreement to manage the payments on behalf of the person. In doing so, they are agreeing to act as a suitable person on behalf of the individual and fulfil their duties and responsibilities. They also take on legal responsibility for managing the direct payment and employing and managing any paid staff in accordance with the direct payment scheme;
- must use the direct payment to purchase care and support as detailed in the person's care and support plan. Any arrangements must adhere to the conditions in this policy and the direct payment agreement to ensure they are legal, safe, and that public money is properly accounted for;
- Any authorised/nominated person must be involved in the care and support planning process by the social care practitioner, and be party to all the information and advice that the direct payment recipient would receive;
- Where people who are acting in the capacity of nominated or authorised person for the purpose of the direct payment, the Council would not normally pay them for providing any services using direct payment funds. Such an arrangement would not be appropriate where there is a risk that

the direct payment may be abused, or there are other sensitivities such as potential safeguarding issues.

- if employing any staff (including relatives), they must adhere to employment law and obligations and to use employee contracts that meet council standards. This will include the responsibilities and obligations to pay tax, national insurance, minimum wage requirements, sick pay and annual leave; to register as an employer with HMRC and ensure all checks are made of their potential employee including checks for DBS and their right to work in the UK; and to follow all relevant legislation including national Health and Safety guidance;
- must maintain a reserve for payments not yet made;
- the Council expect cash withdrawals from the direct payment fund to be strictly limited as they are difficult to account for – any cash withdrawals that are made require a higher level of audit and documentation;
- the Council may prohibit a named individual from providing care or support to a direct payment recipient where they do not believe it is an appropriate way of meeting the person's needs, considering all the circumstances and the individual's views;
- must provide such documentation as the Council may reasonably specify in order to allow effective monitoring of the use of the direct payment in delivering the care and support plan agreed for the person;
- must not use the direct payment to pay for the services of a **self-employed** personal assistant or administrator, unless the Council agrees that there are no alternative options – this decision must be made by a Service Manager. There are certain conditions that must be met for someone to be classed as working in a self-employed capacity and a personal assistant or administrator may not meet these conditions.

Only HM Revenue and Customs can decide a worker's status, and if HMRC decide (after the self-employed person has started working for the cared-for person)) that they are not self-employed, the cared-for person will be liable for the full tax and national insurance bill, and may also be fined. Direct Payment monies cannot be used to pay either the costs or the fines.

If the client still chooses to arrange support from a self-employed personal assistant or administrator, we recommend they ensure they are registered as self-employed and have a Unique Tax reference number (UTR). The self-employed person must also provide an invoice for their services rather than complete a timesheet.

3. Restrictions on Paying Close Family Members

The Care Act 2014 and the Regulations state that a direct payment must not be used to pay a specified person (a "**Close Family Member**") unless the Council considers it necessary to do so to:

- a) meet the care needs of the person; or
- b) to provide administrative and management support or services for the purposes of enabling a person to whom the direct payments are made to:
 - i. comply with the legal obligations arising from the making of and use of the direct payment; or
 - ii. monitor the receipt and expenditure of the direct payment.

The Care and Support Statutory Guidance provides the following example as to when a direct payment paid to a family member may be 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."

3.1 Who is a Close Family Member?

The Regulations define a Close Family Member as:–

- a) the cared-for person's spouse (husband or wife) or civil partner;
- b) a person who lives with the adult as if their spouse or civil partner (whether unmarried or part of a same sex couple);
- c) a person living in the same household as the adult who is the adult's;
 - i. parent or parent in-law;
 - ii. son or daughter;
 - iii. son-in-law or daughter-in-law;
 - iv. stepson or stepdaughter;
 - v. brother or sister;
 - vi. aunt or uncle;
 - vii. grandparent
- d) the spouse or civil partner of any person set out at paragraph (c) **living in the same household as the adult;**
- e) a person who lives with any person set out at paragraph (c) as if that person's spouse or civil partner (whether unmarried or part of a same sex couple).

3.2 How the Council decides if it is necessary to pay a Close Family Member for care

This section sets out the considerations that the Council will make when deciding whether it is **necessary** to pay a Close Family Member for providing care from a Direct Payment.

It is only in exceptional circumstances that a Direct Payment can be made to close family members. In these cases, there must be clear and specific reasons why only that family member can offer support. Unless the Council is satisfied that it is necessary to meet a person's needs, it may not allow funds to be spent in this way.

The social care practitioner will assess the following as a part of the decision-making:

- what alternatives have been explored;
- why employment of the close relative is deemed to be necessary;
- whether the use of a Close Family Member promotes the wellbeing of the person, or whether it might lead to a conflict of interest? Specifically;
 - can a balance be achieved between the person's wellbeing and that of any Close Family Member involved in caring for the person?
 - will using a Close Family Member allow the person to preserve their independence in making decisions, and ensure that they have control, not the Close Family Member?
 - how can any conflict of interest between the Close Family Member and the person (in terms of what care is delivered and what the person's priorities are) be avoided?
 - does the person understand that if they receive a direct payment, their Close Family Member would be their employee and the bottom line is that they may have to take appropriate disciplinary action, and ultimately could have to terminate the contract of employment?
 - how will the person be enabled to agree to the arrangement without undue pressure?

- If there is an appropriate person to support the person during assessment, care planning, and care delivery, or whether an independent advocate is required. Specifically;
 - If the social care practitioner determines that a person has difficulties in using or weighing up information as part of the process of being involved in their care and support, then they should be supported to do so by an appropriate person or independent advocate
 - It should be noted that the appropriate person "cannot be someone who is already providing the person with care or treatment in a professional capacity or on a paid basis (regardless of who employs or pays for them)".
- if the person lacks capacity;
 - how have they expressed their views on whether they want their Close Family Member to provide services under the direct payment?
 - is it in the person's best interests for the Close Family Member –to be employed to provide services under the direct payment? (As a best interest decision, this will require a Service Manager's sign off as set out below);
- in terms of other potential conflicts;
 - what arrangements will be required to ensure segregation of duties in terms of the delivery of care?
 - are any of the Close Family Members an "authorised person", a guardian or have financial or welfare power of attorney for person? If so, they cannot be paid via the direct payment for providing care;
 - how will the risk be managed of those delivering care not meeting employment laws and practice, e.g. by working excessive hours or supporting more than one person?
 - any wider consideration specific to the individual including any relevant considerations under human rights legislation.

In summary, therefore if a close family member is being considered as a care

provider for their relative **or** the cared-for person lacks capacity, then the social worker must summarise their response to these issues and submit it as a report to the Service Manager.

The Service Manager must then decide if they agree it is **necessary** and in the best interests of the cared-for person to employ a Close Family Member to meet their needs and that use of another service or another personal assistant is not appropriate. Every case will be considered on its own merits, with the well-being of the cared-for person as the priority. Examples could include:

- the person's care needs are intermittent and unpredictable to an extent that recruiting someone else to meet their needs is not possible;
- significant effort has been made to find alternative means which has been unsuccessful, and this is the only way for the person to receive their support;
- it is the only way of meeting the person's needs due to a sudden breakdown of other service arrangements.

The Council will take individual circumstances into account on a case-by-case basis and will consider the views of the person and/or their representatives as part of those considerations. Ultimately, it is the Council's decision as to whether paying a Close Family Member to provide services is necessary. Any decision made by the Council can be challenged through the [Reviews, appeals and complaints](#) process (ctrl and click to follow link).

If the arrangement is agreed, the social care practitioner must;

- decide and agree the circumstances and payment amount with the cared-for person, the Close Family Member, and any other person (for example, an advocate), with the Council taking steps to ensure all parties agree;

- ensure the decision is recorded in the person's care and support plan;
- ensure there is an agreement in place between all parties about what steps to take in case of a dispute regarding the paid delivery of care by a Close Family Member from Direct Payment funds.

3.3 How the Council decides if it is necessary to pay a Close Family Member for management and/or administration

The Care Act allows for Close Family Members living in the same household as a person receiving a Direct Payment to be paid from the DP to provide management and/or administrative support in cases where the local authority determines this to be necessary.

For the Council to decide whether it is necessary to pay a Close Family Member for such support, there are fewer considerations. The social care practitioner will need to ensure that:

- They are satisfied that it is necessary to make the payment to the family member to provide this service and that the direct payment will only be used for administration and management of the payment;
- arrangements are in place to ensure segregation of duties in terms of the management of the direct payment;
- the cared-for person understands that if the DP is managed by their Close Family Member, that relative would have control over the funding provided by the direct payment and the care arrangements then delivered;
- they have assessed that using a Close Family Member will allow the person to preserve their independence in making decisions, and will ensure that they have control, not the Close Family Member.

The circumstances and payment amount should be decided and agreed with the person requiring care and support, the Close Family Member, the Council, and any other person (for example, an advocate), with the Council taking steps to ensure all parties agree. The Council will also ensure there is an agreement in place between all parties about what steps to take in case of a dispute regarding the management of the payment by a Close Family Member.

These decisions must be recorded in the person's care and support plan.

The Council will take individual circumstances into account on a case-by-case basis and will consider the views of the person and/or their representatives as part of those considerations. Ultimately, it is the Council's decision as to whether paying a Close Family Member to provide services is necessary. Any decision made by the Council can be challenged through the [Reviews, appeals and complaints](#) process (ctrl and click to follow link).

3.4 Using family for care and support who do not live in the same household

If a family member does not meet the definition of a close family member as set out in section 3.1 above, the Care Act and Direct Payment regulations place no restrictions on their employment, and the decision as to appropriateness is made by the social worker.

Whilst Care Act Guidance makes clear that there should be "no unreasonable restriction placed on the use of the payment", the Council – based on experience in the past - considers it reasonable to include some checks in such circumstances. These are in place to ensure that any arrangement involving family members is in the best interests of the cared-for person, and that there is no conflict of interest.

Social care practitioners should promote the good practice option for any family member who wishes to provide care – whether they are living in the same household or not - that they take up a role as a formal regulated care worker for an agency.

This has the added advantage for both the cared-for person and the relative providing it that the service would be delivered to CQC standards, with all the associated governance, quality standards, DBS checks and ongoing training required of a registered provider.

The Council requires the social care practitioner to determine;

- If the person receiving the Direct Payment does not have capacity, how have they expressed their views on whether they want their relative to provide services under the direct payment?
- Does the DP recipient understand that if they receive a DP, their relative would then be their employee and the bottom line is that they may have to discipline them, and ultimately could have to terminate the contract of employment?

The social care practitioner will need to determine on the basis of this whether it is in the cared-for person's best interests for the relative to be employed for care and support, and will need their Area Manager's sign-off to their decision.

The decisions and outcomes must be recorded in the care and support plan and include the amount of the payments, their frequency and the activities that are covered.

4. Other requirements

4.1 DBS Checks

In accordance with the Safeguarding Vulnerable Groups Act 2006, a Disclosure and Barring (DBS) check is a mandatory requirement where people are providing some form of support (e.g. a personal assistant) for a person receiving a Direct Payment, except where they are providing those services in the course of a:

- family relationship; *or*
- a personal relationship

Where the check is mandated, there is no discretion; it **must** be obtained.

The family relationship described above is defined as a relationship between two persons who (a) live in the same household, and (b) treat each other as though they were members of the same family).

The personal relationship described above is defined as any person who is providing services under the direct payment in the course of a personal relationship (i.e. a relationship between or among friends) and for no commercial consideration.

Where direct payments are paid to and managed by an authorised person, it is the responsibility of the authorised person to obtain the above DBS checks providing that the authorised person is –

- a body corporate;
- an unincorporated body of persons;
- an individual who is not a Close Family Member; or
- an individual who is not a friend of the adult who is involved in the provision of care.

As it is not possible for an individual to obtain a DBS check against another individual, the individual or the authorised person can approach the council's managed service provider Ideal for All who can assist with obtaining these checks.

4.2 Safeguarding

People receiving a direct payment are entitled to make their own decisions and to take risks in the same way that any other person in the community are entitled to. Where appropriate, safeguards will be put in place to prevent any potential abuse and to support the person in making decisions and managing any associated risk as a result of that decision.

The Council will support adults receiving a direct payment so that together we can minimise the risk of abuse from anyone they employ, because these people are not employees of the Council and are not monitored by them

Adults directly employing a personal assistant or a person to manage or administer a direct payment can be placed at greater risk of abuse, depending on how rigorous the pre-employment checks carried out during recruitment were.

Safeguarding is everybody's business, and so it is essential that staff working for the Council, partnership organisations, agencies, third-party providers and members of the public remain alert and vigilant to the potential for abuse and can easily find the way that they can report safeguarding concerns.

If the Council considers that any member of staff and / or provider of care and support is placing a cared-for person at risk, the direct payment may be suspended and alternative provision provided, whilst a safeguarding

investigation is undertaken.

4.1 Employment Duties

It is the responsibility of social care practitioners to ensure that people receiving a direct payment (or their authorised/nominated person) understand, before they agree to take on the payment, that they will have significant responsibilities for the day-to-day management of their direct payment – particularly if they decide to employ suitably qualified workers to provide personal assistance in accordance with their care and support plan.

All potential direct payment recipients who are considering becoming an employer will be signposted to appropriate independent support services, funded by the Council, who can provide advice and support on a wide range of recruitment, employment and appropriate liability and other insurances.

Becoming an employer carries certain responsibilities and obligations in particular in relation to paying tax, national insurance, minimum wage requirements, sick pay, and annual leave. In order to ensure the management of risk associated with these obligations, the Council offers free of charge;

- a payroll service to people employing Personal Assistants via a direct payment;
- an employment support service which provides information and advice about legal obligations and responsibilities as an employer;
- employers' liability insurance to mitigate the risk to the direct payment recipient and the council if they fail to effectively insure risk;
- a recruitment support service for people who need but have not already identified a personal assistant, providing advice, information and support to enable them to recruit one or more personal assistants.

The person receiving the direct payment (or their authorised/nominated person) will be expected by the Council to ensure that they have made provisions for cover in emergency situations or when their personal assistant is not able to support them, such as annual leave or sickness. In the event of an emergency the Council will endeavour to provide some form of support until the situation is resolved.

4.4 Review and audit of Direct Payments

Except for Carer's Direct Payments (which are one-off sums), the Council is required to conduct a care review to ascertain whether a direct payment is an appropriate way to meet the person's needs. This will be conducted by a social care practitioner within the first six months of the direct payment being made and on an annual basis thereafter or sooner, if required (for example, where the person's needs have changed). The purpose – as with any care review – is to ensure that the person's care and support needs are being met.

In addition to the social care reviews, Direct Payment staff will conduct what Sandwell call "financial audits", which focus on the Direct Payment account and use of funds. The initial audit will be at around 6 months after the first payment, then again after about one year. Further financial audits will normally take place annually, but this frequency will vary according to the outcomes of previous care reviews by the social care practitioner – DPs which are considered higher risk may be audited more frequently.

The regulations (and the Council's practice guidance) sets out in more details the requirements of such care reviews.

4.5 Recovering Direct Payments

Direct payments are paid four weeks in advance and a person in receipt of a direct payment should not normally have more than a maximum of six weeks'

funding in reserve, if they are paying for the level of care set out in their care and support plan.

In the event that the Council makes an overpayment (e.g. paying more than four weeks' funding when only four weeks is due), the Council expects the person in receipt of the direct payment recipient to alert the Council immediately. The Council may seek to recover the overpayment via a lump sum or by making a reduction to future funding.

Where money in a direct payment account is unaccounted for by any item in a care and support plan or there is a surplus in excess of six weeks' funding in reserve, the Council may seek to recover these sums.

In most cases, unaccounted for and/or surplus funds will be identified by the direct payment practitioner during the financial audit, and they will advise the social care practitioner worker of the proposed recovery so that they may conduct a review.

Following this review by the social care practitioner and any recovery of unaccounted/unspent funds, the direct payment may be changed to ensure that it still meets the needs of the person whilst preventing surpluses accumulating – for example, a direct payment may be reduced where the recipient's needs have changed and they require less care and support to meet their needs.

Where a person in receipt of a direct payment dies, the Council will consider how to recover any unspent monies. Before seeking recovery of the unspent monies, the Council will consider if the person has incurred any liabilities that should legitimately be paid for using the direct payment (for example, services for which payment had not been made at the time of death, or employment obligations in respect of personal assistance).

4.6 Suspension and Termination of Direct Payments

Generally, direct payments should only be terminated as a last resort, or where there is clear and serious contradiction of the conditions set out in the Care Act 2014 (see pages 3 and 4) and / or the Regulations or the Council's direct payment agreement.

If the Council decides to suspend or terminate a direct payment, it will ensure there is no gap in the provision of care and support. The social worker will conduct a review of the care and support plan to ensure it is appropriate to meet the person's needs.

There are several circumstances which may result in a direct payment being terminated for example, where the person receiving the direct payment no longer wishes to receive the payment.

In accordance with the Care Act 2014 and the Regulations, the Council **must** terminate a direct payment where any of the conditions set out on page 3 of this Policy (direct payments for people with capacity) or page 4 of this Policy (direct payments for adults lacking capacity to consent) are no longer met.

The Council **may** (i.e. it has a discretion to) terminate a direct payment where -

- the direct payment is not being used to meet the adult's needs as set out in their care and support plan (including wrongful use of direct payment funds as set out below);
- the direct payment is used to pay a Close Family Member (as defined on page 6) and the Council has not agreed that it is necessary to make any such payment;
- an authorised person has failed to notify the Council that the adult has capacity to request the making of direct payments;
- the individual or the authorised person has failed to obtain a DBS check(s) in accordance with this policy;

- that a member of staff and/or provider of care and support is placing the person at risk;
- that the person (or their authorised or nominated person) no longer has the capability to manage the direct payment;
- that the care being delivered via a direct payment is no longer appropriate;
- that there is evidence of a material or significant breach of the direct payment agreement or this policy – for example, the person has failed to pay their non-residential contributions

Reasonable steps will always be taken to address any situations where it may be necessary to terminate a direct payment. Effective, proportionate monitoring through both the care review and financial audit processes will help identify any potential issues before a termination is deemed necessary.

The Council reserves the right to suspend a direct payment in situations where the Council may terminate a direct payment (as set out above). During any suspension, alternative provision must be provided whilst the matter is investigated and/or where a safeguarding investigation is being undertaken. Following a period of suspension, the Council reserves the right to terminate the direct payment if it considers it appropriate to do so taking into account the factors set out above.

The Council may also suspend a direct payment where for example, the person does not require assistance for a short period because their condition improves, and they do not require the care and support that the direct payments have been intended to secure.

4.6 Wrongful use of a Direct Payment

In the event that fraud, abuse, or misuse of a direct payment is reasonably suspected, the Council will refer the matter to the Council's internal audit team

for investigation, whilst offering support to the individual to reduce the risk of further loss occurring.

Any potential criminal activity will be referred to the police for further investigation, and the Council reserves the right to prosecute where fraud is suspected to have taken place. The Council will not be responsible for any losses incurred by the individual and will not reimburse the individual unless or until they have been cleared of any involvement in the loss.

In cases of misuse or fraud relating to the use of a direct payment, the Council will take action to recover all or part of the monies where appropriate from the person or from their nominated or authorised person where they have been responsible for managing the direct payment on the individual's behalf. In such cases, the Council reserves the right to refuse a direct payment in the future for that person.

5. Reviews, appeals and complaints

Anyone who uses our services (or their representative) has the right to challenge the Council's decision in relation to –

- whether we agree to give a person a Direct Payment or not;
- how we decided to apply any discretion the Council has
- If our decisions were in line with this policy.

Concerns are dealt via the Council's **Review and Appeals** procedures which are detailed in our Contributions Policy; the initial stage is a review by the Council. If the person concerned remains dissatisfied with the outcome of the review, they can attend an appeals panel to raise their concerns.

Where a person is still not satisfied with the outcome of the appeals panel hearing they will be advised of the right to contact their Councillor, MP or the Local Government Ombudsman. At this stage, the Council's processes will have been exhausted and there is no further action which the Council can take.

If the person who uses our services (or their representative) is unhappy about the way we set up or managed their direct payment, the Council's complaints procedure applies. This includes issues such as how staff behaved or their attitude, disagreement with the level or quality of service, or the time taken to undertake an assessment. Full details of these procedures can be found in our guidance and on our website.

6. Feedback

We welcome feedback from people who use services on the Direct Payments Policy and will use it to conduct future reviews. Contact details can be found in our guidance documents and on our website at **www.sandwell.gov.uk**