

# Adult Social Care

Making a Difference in the Right Way, Every Day

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## Direct Payments Policy

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**Solihull**  
METROPOLITAN  
BOROUGH COUNCIL

Version	Date	Author Name	Rationale
1.0	02/01/2020	Roger Catley	Document Created
2.0	26/08/2021	Roger Catley	Scheduled review
3.0	22/03/2023	Jason Ward	Scheduled review



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## 1. INTRODUCTION

This policy outlines how to access direct payments for adults in Solihull. It gives guidance on the use of direct payments, the procedure for accessing the scheme, and the responsibilities of the different people involved.

The Care Act 2014 defines a person who has care and support needs as an adult or individual. Consequently, where these terms are used within this policy the person referred to is the individual receiving the service due to their own care and support needs as defined within the Act, or their representative. Solihull Metropolitan Borough Council (the Council) is committed to promoting individual wellbeing and to supporting independence through preventing, reducing or delaying the need for care and support.

Direct payments are monetary payments to enable individuals to make their own arrangements to meet their eligible care and support needs. Direct payments are the Government's preferred mechanism for paying for personalised care and support as they promote independence, choice, control and flexibility over how needs are met.

Direct payments may also be used as a way of arranging aftercare services provided under s117 of the Mental Health Act 1983. This Policy has been created to provide guidance in line with the following legislation and guidance relating to direct payments:

Care Act 2014: <http://www.legislation.gov.uk/ukpga/2014/23/contents>

Care and Support Statutory Guidance:

<https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance>

Care and Support Direct Payment Regulations:

[http://www.legislation.gov.uk/uksi/2014/2871/pdfs/uksi\\_20142871\\_en.pdf](http://www.legislation.gov.uk/uksi/2014/2871/pdfs/uksi_20142871_en.pdf)

Mental Health Act 1983: <http://www.legislation.gov.uk/ukpga/1983/20/section/117>

This Policy is effective from the 1st April 2018 and will be reviewed to ensure that it continues to reflect current legislation and guidance.

## 2. DIRECT PAYMENT ELIGIBILITY

### 2.1. Who can access a Direct Payment?

- Individuals identified eligible outcomes in accordance with the Care Act 2014.
- Individuals assessed as having the mental capacity to manage a direct payment.
- Individuals with mental health support needs (including people who are entitled to after care in accordance with section 117 of the Mental Health Act 1983) excluding those subject to compulsory measures under the Act.
- Individuals who lack mental capacity but have a person authorised under the Mental Capacity Act 2005 to make decisions about the individual's needs for care and support. An authorised person can nominate another person to receive the

direct payment on behalf of the individual.

- Individuals who do not have identified eligible needs but the Council decides to use its discretionary powers to meet their needs.
- Individuals who lack mental capacity and have no one authorised under the Mental Capacity Act 2015 to agree to a direct payment to meet their needs but have a suitable person as identified by the Council.

## **2.2. Restrictions on who can receive a Direct Payment**

- Individuals responsible for the full cost of their care following a financial assessment.
- Individuals who refuse a financial assessment.
- Anyone who is not an ordinary resident in Solihull.
- Direct payments will not be made in respect of people who have been placed under certain conditions or requirements by the Courts in relation to drug and/or alcohol dependencies:
- Offenders subject to a community order, or serving a suspended prison sentence, under the Criminal Justice Act 2003, which includes a requirement to accept treatment for drug or alcohol dependency.
- An offender subject to a community rehabilitation order or a community punishment and rehabilitation order under the Powers of Criminal Courts (Sentencing) Act 2000, which includes a requirement to accept treatment for drug or alcohol dependency.
- Offenders released from prison on license under the Criminal Justice Act 1991, the Criminal Justice Act 2003 or the Crime (Sentences) Act 1997 subject to an additional requirement to undergo treatment for drug or alcohol dependency; and
- Offenders subject to equivalent provisions under other UK criminal justice legislation.

### **2.3. Assessing mental capacity to receive a Direct Payment**

Before a direct payment is made, an assessment of mental capacity may be carried out on a case-by-case basis. Mental capacity is the ability to make a decision. Under the 2005 Mental Capacity Act, an individual lacks capacity in relation to a matter if at the time, they are unable to make a decision in relation to the matter because of impairment of, or a disturbance in the functioning of the mind or brain.

Where there is any doubt about an individual's ability to apply for a direct payment, the Council will assess whether or not the individual has capacity before making a direct payment available. Individuals who would otherwise have no one to support them will be offered an advocate. In such cases, staff will refer to the Mental Capacity Act 2005 and its accompanying Code of Practice.

Where an individual in need of care and support has been assessed as lacking the capacity to request the direct payment, an 'authorised' person can request the direct payment on their behalf. An authorised person is someone who manages a direct payment on behalf of the individual with eligible care and support needs, who lacks mental capacity. This could be a friend or family member.

If an 'authorised person' makes a request for a direct payment on behalf of the individual, then Section 32 of the Care Act requires, that the local authority is satisfied that the authorised person will act in their best interests when arranging for their care and support for which the direct payments under this policy must be used.

Solihull Council strongly recommends that an Enhanced Disclosure Barring Service (DBS) check is obtained if the authorised person represents a business, organisation, charity, community group or they are not a friend of the adult who is involved in the provision of their care.

Solihull Council strongly recommends that an Enhanced DBS check is undertaken for the authorised person if they are not a member of any of the following list of people:

- (a) the spouse or civil partner of the adult;
- (b) a person who lives with the adult as if their spouse or civil partner;
- (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, or
  - (vii) grandparent;
- (d) the spouse or civil partner of any person specified in sub-paragraph (c) who lives in the same household as the adult; and
- (e) a person who lives with any person specified in sub-paragraph (c) as if that person's spouse or civil partner

If appropriate, an authorised person should be involved in the care and support planning process. The authorised person will be required to sign an agreement to receive and manage the money in accordance with the Council's terms and conditions on behalf of the individual with eligible needs. By doing so they take on the legal responsibility related to employing and managing staff employed through the direct payment.

Consideration will be given to cases where capacity is fluctuating or known to fluctuate. This will be covered in the individual's care and support plan and detail the steps to take where capacity fluctuates.

### **3. SPENDING DIRECT PAYMENTS**

The care and support plan will detail the eligible outcomes for an individual for which the direct payment can be used.

The total hourly rate paid through the direct payment, is not the hourly rate expected to be paid to the personal assistant since it covers other expenditure that will or may fall to be paid as part of an employer's responsibilities.

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

Depending on circumstances, individuals can spend their direct payment on:

- Employing a personal assistant and related expenditure, i.e. holiday pay, relief cover, etc.
- Contracting with an agency or service provider.
- Paying for activities to help the individual stay well such as gym membership.
- Paying for equipment that reduces an individual's need for support.
- Respite care in a residential or community setting, or care delivered at home.

#### **3.2. Direct payments cannot be used for:**

- Anything that is not outlined in an individual's Care and Support plan to meet their agreed outcomes.
- Anything illegal.
- Alcohol or tobacco.
- Gambling.
- Services provided by the NHS.
- Ordinary living costs, food, bills, clothing, holidays, etc.
- Telecare and pendant alarm standing charges
- Equipment and adaptations that are provided by health or a disabled facilities grant.
- Purchasing services from Solihull MBC or the Health Authority

- Long-term care in a care home.

### **3.3. Paying anyone who lives in the same household**

A direct payment cannot be used to employ anyone who lives in the same household as the individual except in circumstances where it has been assessed as necessary. Agreement will be required in writing by the Council's Head of Service where there are very exceptional circumstances that apply and where there is evidence that there is no other alternative option to meet an individual's eligible needs.

### **3.4. Direct payments for equipment**

The value of direct payments provided for equipment will reflect the cost of standard items available through the Council's Community Equipment and Wheelchair Service. However, for non-standard provision (equipment not stocked/provided by the Council), the direct payment will be made at 'market value' cost.

If an individual chooses to purchase a more expensive option to meet their assessed needs than the Council has agreed to fund, they must pay the difference, known as a voluntary personal supplement (see section 4.7).

Where an individual is assessed as needing equipment as part of their care and support plan the Council will offer a choice of how the equipment can be provided:

- The Council can provide the equipment.
- The Council can pay a direct payment to the individual, of an equal cost for direct provision of the equipment.
- The Council can pay a direct payment to the individual, of an equal cost to the direct provision of the equipment, and the individual can make a voluntary personal supplement to purchase equipment with additional features.

Where an individual chooses to purchase their own equipment they must receive approval from the Council that the equipment meets their assessed needs as detailed in their care and support plan. The Council will provide written approval to the individual confirming their authority to purchase the specified equipment.

All equipment purchased becomes the property of the individual receiving the direct payment who will then be responsible for the maintenance of the equipment. This includes taking all legal and contractual responsibilities that may arise from this.

Maintenance agreements do not need to be set up for standard daily living equipment (perching stools, toilet frames, etc.), as this type of equipment is more likely to need replacing due to wear and tear.

Solihull Council considers maintenance, warranty renewals and service requirements on a case-by-case basis. It assumes all equipment purchased via a direct payment has a 1-year manufacturer warranty, but would then look to explore the most cost effective method of providing necessary maintenance/service provision, provided the piece of equipment is still meeting eligible need.



So for example in the case of a mobile hoist (expected to last for many years) a 5-year warranty/servicing contract might be provided, but in the case of a toilet seat (low cost/short life) it would not, as it would be cheaper to replace the item than extend the warranty.

The individual will be responsible for obtaining regular checks and maintenance of the equipment in accordance with the manufacturer's instruction.

The Council will not be liable if an accident occurs as a consequence of the equipment not being used in accordance with the manufacturer's instructions and/or Occupational Therapy (OT) recommendations.

### **3.5. Direct Payments - paying for Council services**

Direct payments are not to be used to pay for services provided directly by Solihull Council. If an individual wish to receive a service from Solihull Council that is included in their care and support plan, the Council will arrange this and any direct payment will be reduced accordingly.

Care and support can be purchased from a different local authority if a particular service included in an individual's care and support plan is not provided by Solihull Council.

### **3.6. Hospital stays**

There may be occasions when an individual requires a stay in hospital. If an individual is in hospital for 4 weeks or more, a review will take place and payments may be reduced or suspended should the individual have to remain in hospital.

Personal assistants should continue to be paid in full for up to four weeks for the period whilst a direct payment recipient is in hospital. Any additional payments after the four weeks may be made on a case-by-case basis. During the review, consideration will be given to how the direct payment may be used in hospital to meet non-health needs or to ensure employment arrangements are maintained.

In some cases, the authorised/nominated person managing the direct payment may require a hospital stay. In these cases, the Council must be notified and an urgent review will be conducted to ensure that the individual continues to receive care and support to meet their needs.

### **3.7. Periods away from home**

Personal assistants should continue to be paid in full for up to four weeks for the period whilst a direct payment recipient is away from home for short periods. The Council's Head of Service must agree any additional payments after the four weeks in writing but such approval will only be given where there are very exceptional circumstances.

## 4. RECEIVING A DIRECT PAYMENT

While using direct payment the individual will need to manage how they receive the money, make payments for the services used, pay personal assistants and make tax or national insurance payments to HMRC.

Direct payments will only be made where the Council has received a signed Agreement to Pay Form, a direct payment agreement and a signed care and support plan from the individual receiving the direct payment or their authorised person/representative.

There are three ways to handle a direct payment depending on how much responsibility an individual wants:

- Prepayment Card
- Managed Account
- Bank Account

These options will be explained during an individual's social care assessment and the direct payment set up process.

### 4.1. Prepayment card

The Council has a pre-paid card system to receive direct payment. The pre-paid card system works like a basic bank account and can be used to make payments and set up direct debits or standing orders. The Council will pay an individual's direct payment money onto the card to enable the individual to pay their Personal Assistant or any other expenses to meet their assessed care and support needs.

The Council's Direct Payments Team has access to all pre-paid card accounts for the purposes of monitoring. Access to the account will be proportionate and only undertaken as part of the quarterly monitoring process or in response to specific queries or issues.

The use of the prepaid card will be restricted to organisations that provide products and services detailed in your care and support plan.

Pre-paid cards do not automatically allow cash withdrawals. In exceptional circumstances where there is an identified need for cash withdrawals in the person's care and support plan, the Council's Head of Service must agree this arrangement. The Council has set a limit of £150 per day for any approved cash withdrawals.

In the event an individual or their representative loses their pre-payment card three times or more, they may be charged £5 for each subsequent lost card.

### 4.2. Managed account

The Council commissions an organisation to manage Direct Payment money on behalf of the individual. The Council will pay the direct payment to the organisation which manages the funds on the person's behalf to purchase support to meet their eligible

needs as detailed in the individual's care and support plan.

#### **4.3. Bank account**

Where a person chooses not to have a prepayment card or a managed account the direct payment must be paid into a separate bank or building society account that must be used specifically for the direct payment only. This must be in the name of the individual receiving the direct payment or may be made to a third party/suitable appointed person if agreed by the individual in receipt of care and support.

#### **4.4. Direct payment rates**

The amount of the direct payment will be an amount that is a reasonable cost of securing the provision of the service concerned in the local market place to meet the assessed eligible needs of an individual as detailed in their care & support plan.

Payments made will include amounts that are to cover other expenses as set out in paragraph 3 to 3.8.

#### **4.5. Frequency of payments**

The Council will make direct payments by way of bank transfer every four weeks in advance, paid into the nominated direct payment account.

#### **4.6. Client contributions**

Everyone that receives social care services from the Council is assessed to determine whether they are required to make any financial contribution to the cost of their care, this is called a financial assessment. The financial assessment will determine the amount an individual is required to contribute to their care and support needs.

The Council will deduct the assessed contribution from the total amount of the direct payment before the individual receives the payment. The individual must pay the assessed contribution onto their pre-payment card, into their nominated direct payment bank account or into their managed account every 4 weeks. By making this payment, the individual is ensuring that there is enough money available to pay for their full support as detailed in the care and support plan.

The Council will not issue invoices to the individual for contributions to their direct payment.

In exceptional circumstances, the Council may make payments gross which would require prior approval by the Head of Service. If so approved, invoices will be submitted to the person for their assessed contributions to be paid directly to SMBC.

Any non-payment of the assessed contribution will result in the direct payment being stopped, recovery action taken to recover the non-payment and where appropriate care and support being arranged by the Council.

#### **4.7. Purchasing additional or more expensive care (Voluntary Personal Supplement)**

Purchasing additional care or more expensive care refers to the following situations:

- Purchase of care services beyond what is assessed as necessary to meet their eligible needs
- Selection of a more expensive provider that the person considers preferable

In the above situations the person is not barred from purchasing additional care or more expensive care if they wish to do so and are able to pay for it. Similarly, a third party is not barred from purchasing additional care for another person. However, there is presently no legal framework which exists for the Council to assess a 'top-up' payment to be combined with the direct payment and the person's assessed contribution.

When a person is in a receipt of a direct payment and they choose to purchase services that are more expensive than the direct payment rates or in addition to their care and support plan this is referred to as a Voluntary Personal Supplement and in line with the principles of choice and control are a private arrangement between the person and the provider.

It is therefore the responsibility of the person or the third-party to assure themselves of the affordability and sustainability of such payments when making arrangements with their provider.

Where a person chooses a more expensive care provider they must maintain the full level of support as detailed in the care and support plan to meet their assessed needs. For example, paying for more expensive provision that is less hours than the person requires is not meeting their assessed level of needs.

Failure to do so will result in the direct payment being ceased and where appropriate care and support being arranged by the Council.

#### **4.8. Contingency and reserves**

The care and support plan may include a contingency element to cover fluctuating needs. The Council will monitor the use of the contingency to ensure that it is being spent in line with the individual's care and support plan.

The individual should hold sufficient funds in their direct payment account to cover all planned expenditure. Anything held in excess of this amount, which has not been agreed by the relevant social work team as part of fluctuating needs requirements will be recovered by the Council.

#### **4.9. Personal Assistants**

A personal assistant (PA) is defined as a person employed specifically by the individual to meet the identified needs within their care and support plan.

If an individual uses their direct payments to employ a personal assistant, they must also take out Employers' Liability Insurance and Public Liability Insurance to cover against such issues as:

- Legal costs relating to Health and Safety/unfair dismissal claims
- Damages and other costs.

Individuals are legally required, as a person who employs staff, to have Employers' Liability Insurance. Relevant insurance must be in place before a PA can start work. The Employers Liability Insurance should be taken out with a reputable insurance company or Underwriters with a minimum limit for any one claim of £5 million.

Public Liability Insurance will insure you against any damages or injury caused to someone else by you or your PA while working for you.

The Council funds the cost of the cost of Employers Liability and Public Liability Insurance within an individual's direct payment. Individuals must provide the Council with copies of their insurance policy and premium receipts when requested.

Relatives of the individual with care & support needs who do not live within the same household can be employed as personal assistants. The Council will assess any risk of vulnerability when considering such an arrangement, for example breakdown in relationship between the two or employment law issues.

A personal assistant must have a legal right to work in the UK and it is the responsibility of the individual hiring the personal assistant to ensure this.

Individuals employing a personal assistant must ensure that they comply with all legal requirements as an employer, for example, this includes paying tax, national insurance, holiday pay, statutory sickness pay etc.

If an individual person needs to suspend a personal assistant on full-pay (for instance if the personal assistant is subject to a safeguarding enquiry) then the individual should initially fund this using their direct payment reserve and contact the Council immediately to agree contingency plans.

If an individual chooses a managed account they will retain the employer responsibilities and not the provider who manages the account on their behalf.

#### **4.10. Personal assistants and the right to a workplace pension**

The PA may potentially have a right to a Workplace Pension. (This is dependent on age, the number of hours worked and earnings). Support with Workplace Pensions will be provided by the Direct Payments Support Service Providers Payroll service; however, anyone taking up direct payments and not utilising the Payroll service will need to set up the Workplace Pension themselves, as they are signing a contract stipulating that they are capable of managing the employer's responsibilities.

#### **4.11. Safeguarding**

The Council should be contacted immediately on 0121 704 8007 or online at <http://www.solihull.gov.uk/adultabuse> where there are concerns about personal assistants, carers or agencies involved in providing care and support to someone receiving direct payment.

#### **4.12. Disclosure and Barring Services (DBS) checks**

When an adult, carer, young carer, parent of a disabled child or the nominated authorised person or organisation employs personal assistants that person or organisation shall comply with their legal duties and obligations as an employer and ensure all checks are made of their potential employees including DBS checks.

Solihull Council strongly recommends that all adults carry out an enhanced Disclosure and Barring Service (DBS) check on their potential Personal Assistant before employing them. This is a check on criminal offences/convictions relating to the potential Personal Assistant.

Solihull council can co-ordinate a DBS check and cover the cost of doing so at no cost to the individual or the Personal Assistant.

In addition to DBS checks for Personal Assistants, Solihull Council strongly recommends that an enhanced Disclosure and Barring Service (DBS check) is carried out for any authorised person who is not:

- the spouse or civil partner of the adult;
- a person who lives with the adult as if their spouse or civil partner;
- a person living in the same household as the adult as a family member (see section 2.3 of this policy)
- The persons Lasting Power of Attorney (LPA)
- A court appointed Deputy

Solihull Council will support with the application for the authorised persons to be subject to a DBS check and cover the cost of doing so.

For adults with capacity to consent to, and manage, Direct Payments, the local authority does not insist that DBS checks are carried out on potential Personal Assistants, recognising that the spirit of Direct Payments is to put choice and responsibility in the hands of the people using the service. However, it must be emphasised to adults that a DBS check is a key way to promote their safety, and is their right as an employer.

Where there are children in the household, even though the services are not being provided to the child a DBS check must take place on any potential Personal Assistants. Solihull Council will advise on how we can facilitate the process of undertaking a DBS check. Where such checks do not occur, the respective Team Manager must be made aware of any safeguarding concerns.

## 5. REVIEW AND AUDIT OF DIRECT PAYMENTS

### 5.1. Review

The Council will undertake an initial review after 6 weeks of the direct payment starting to check that the account is working correctly. The direct payment will also be reviewed as the planned review of the persons care and support needs.

### 5.2. Audit of Direct Payments

The Council will provide information and advice to any individual who opts to take their care and support through the payment of a direct payment. It will be made clear to individuals that the direct payment account is subject to auditing and the need for good record keeping on expenditure is important.

The individual or their authorised/nominated person shall keep all documents and/or records generated in connection with the provision of services to which a direct payment agreement relates for a period of 7 years following the end of the services. The documents and/or records held by the individual or their authorised/nominated person may be inspected by any authorised representative of the Council.

Auditing is required to ensure that direct payment is being used for the purposes laid out in the care and support plan and accurate receipts and records are being kept. Any discrepancies will be investigated and resolved and the Council will recover any debt.

The Council has the right to suspend or terminate the direct payment as a result of the findings of the audit of the direct payment account

### 5.3. Frequency of audits and information required

All direct payment accounts will be subject to quarterly (every 3 months) monitoring. Individuals shall provide this information within 14 days of the quarter end request. Failure to provide such documentation shall result in a reassessment of the individuals' eligibility for receipt of a direct payment. Individuals will be required to submit the following information:

**Prepayment card:** - Individuals who receive their direct payment onto a pre-paid card do not have to submit bank statements as the Council's direct payments team have access to monitor the pre-paid account. Access to the account will be proportionate and only undertaken as part of the quarterly monitoring process or in response to specific queries or issues. Individuals will need to submit receipts/invoices/payslips and timesheets relating to all expenditure.

Individuals must provide this information on a quarterly basis (every 3 months) or at any time the Council requests them to do so. Failure to do so will affect your direct payment.

**Nominated bank account:** - Individuals who receive their direct payment into a nominated bank account you will need to submit bank statements/ receipts/ invoices/ payslips/ and timesheets relating to all expenditure.

Individuals must provide this information on a quarterly basis (every 3 months) or at any time the Council requests them to do so. Failure to do so will affect your direct payment.

**Managed Account:** - Individuals who receive their direct payment through a managed account will need to submit invoices, receipts, payslips and timesheets relating to all expenditure directly to managing agent on-going basis to enable the support you have chosen to be paid. Failure to do so will affect your direct payment.

#### **5.4. Recovery of Direct Payments**

The Council reserves the right, after consultation with the individual or their authorised/nominated person, to adjust future payments to recover any over-payments or under-spends after taking into consideration any other expenses the individual is required to meet in relation to their direct payment such as statutory holidays and payments due to the HM Revenue and Customs.

If the Council is unable to recover monies through on-going direct payments paid, we will raise an invoice and recovery through our sundry debtor processes.

Direct payment accounts will be reviewed by Finance if there is an unexpected balance in excess of 8 weeks' payments. Finance will contact the adult in receipt of the direct payments to review whether there is a need for a surplus and if there is, whether the current level of surplus is appropriate.

#### **5.5. Duty to protect public funds**

Like all local authorities, the Council has a duty to protect the public funds that it administers, all suspected concerns about fraud, including fraud committed against other public bodies, will be reported to the Council's Internal Audit Investigation Team for investigation which may lead to information sharing between the Council and other bodies responsible for auditing or administering public funds such as H.M. Revenue and Customs and the Department for Work and Pensions, and /or criminal prosecution.

## **6. ENDING DIRECT PAYMENTS**

### **6.1. Terminating Direct Payments**

Direct payment will only be terminated as a last resort. The Council will take all reasonable steps to address any situations before the termination of a direct payment. If terminating a direct payment, the Council will take reasonable steps to ensure there is no gap in the provision of care and support.



## **6.2. Solihull Council terminating Direct Payments**

The Council shall cease making a direct payment if the individual or the representative no longer appears to be capable of managing the direct payment. The Council will make timely arrangements for the provision of services in lieu of the direct payment, to ensure continuity of support.

Direct payment will be discontinued when an individual no longer needs the support for which the direct payment is intended. The Council will discuss with the individual, their carer, and any other person concerned on how best to manage this.

The Council might also discontinue payments if the individual fails to comply with a condition imposed under regulations to which the direct payment are subject or if for some reason the Council no longer believes it is appropriate to make the Direct Payment. For example, the Council may discontinue the direct payment if it is apparent that they have not been used to achieve the outcomes of the persons care and support plan.

Where the direct payment is discontinued as a result of criminal justice legislative provisions, the Council will make timely arrangements for services to be provided in lieu of the direct payment, to ensure continuity of support.

## **6.3. Discontinuing direct payments where the person becomes continuing health care (CHC) funded or entitled to a personal health budget**

Where a person in receipt of a direct payment becomes CHC funded or entitled to a personal health budget the Council will discontinue the direct payment 28 days from the funding decision date.

## **6.4. Discontinuing Direct Payments where the person lacks capacity to consent**

The Council will discontinue the direct payment if they are not satisfied for whatever reason that the authorised person is acting in the best interests of the individual, within the meaning of the 2005 Mental Capacity Act. The Council may discontinue the direct payment if it has sufficient reason to believe that the conditions imposed under regulations on the authorised person are not being met. The Council may wish to consider if someone else can act as an authorised person for the individual lacking capacity, or whether there is a need for the Council to arrange services for them in place of the direct payment.

The direct payment will be discontinued to an authorised person where the Council has reason to believe that the individual who had lacked capacity to consent to direct payment has now regained that capacity on a long-term or permanent basis. The Council will not terminate a direct payment to the authorised person before beginning to make a direct payment to the individual themselves or to arrange services for them, according to their wishes.

If the Council is satisfied that the individual's recovery of capacity will only be temporary, then it can continue to make a direct payment to the authorised person.

## **6.5. How to discontinue a Direct Payment**

If the Council is considering discontinuing a direct payment they will make all reasonable attempts to discuss, as soon as possible, with the individual or their authorised person all available options before making any final decision to terminate the direct payment. For example, if ability to manage is an issue, the individual or their authorised person should be given an opportunity to demonstrate that they can continue to manage the direct payment, albeit with greater support if appropriate. The Council will not automatically assume when problems arise that the only solution is to discontinue or end the direct payment.

If the Council does decide to withdraw a direct payment, it will make all reasonable attempts to conduct a review of the plan and agree alternative care and support provision with the individual, their carer and independent advocate if they have one, unless the withdrawal was following a review that concluded that the services are no longer needed.

The Council will normally provide a 4-week notice period before the direct payment is discontinued.

It will be extremely unlikely that the Council would discontinue a direct payment without giving notice, although in serious cases this may be warranted (for example, the authorised person is not acting in the best interests of the individual).

The Council retains the right to recover the amount of the direct payment in full or in part if it is satisfied that the money has not been used for purpose(s) for which it was originally intended.

If a direct payment is discontinued, some individuals may find themselves with on-going contractual responsibilities or having to terminate contracts for services (including possibly making employees redundant). Contractual obligations will require a notice period for termination such as services paid for in advance and employment contracts. These arrangements will need to be taken into consideration when the individual and/or their authorised/nominated person discontinue a direct payment.

There may be circumstances where the individual has lost the capacity to manage the direct payment and there is no one else to manage the payment on their behalf, or where an individual needs additional support to terminate arrangements. In these cases, the Council will provide support to ensure that any contractual arrangements are appropriately terminated to ensure that additional costs are not incurred.

## **6.6. Ending a Direct Payment on death**

In the event of death, the Council will place an immediate suspension on the direct payment account, including prepaid cards.

Any amount of direct payment remaining in the individual's account will be recovered by the Council following a discussion with the family and/or authorised/nominated person. There will be funds available to pay for commitments outlined in the care and

support plan if an agreement is in place for advance payments or notice needs to be given before termination.

Direct payments cannot be used towards the costs of funeral expenses.

Any amount due to the estate of the individual for the fulfilment of contractual and legal obligations relating to any persons employed by the individual or to HM Revenue and Customs will be paid by the Council on receipt of supporting documentary evidence or an invoice relating to the services received.

Any personal contribution made for dates after the direct payment has ceased, which remains on the pre-payment card account or in the managed account will be paid to the individual's estate within 28 days of termination of the direct payment, subject to all records being provided and available to the Council. Any additional amount remaining on the individuals account will need to be returned to the Council.

### **6.7. Redundancy payments for personal assistants**

In the event of a personal assistant's services being terminated by an employer or in the event of the death of an employer a redundancy payment may be due to the personal assistant. The Council has included within the hourly direct payment rate it makes to individuals for a personal assistant an element to cover such eventuality.

## **7. APPEALS AND COMPLAINTS**

### **7.1. Appeals where a direct payment is refused**

In some situations, it may not be possible for the Council to offer or continue to offer an individual a direct payment. The reasons for the decision must be documented, discussed and clearly communicated in writing to the individual and where appropriate with any family or friends. They must be advised of their rights to appeal against this decision or how to use the Complaints Procedure.

The appeal may take the form of a meeting of the parties involved to try to find a solution to the issues raised in the formal refusal of a direct payment. This could include the individual and their representatives.

## **8. COMPLAINTS PROCEDURE**

This is available to all people receiving support from Adult Care & Support and can be used to make a complaint about services or procedures undertaken by the Department. This process may be used to formally complain about the process, the decision-making or the amount offered as a direct payment but not about the services an individual has purchased with their direct payment.

Further information is available at <https://www.solihull.gov.uk/Tell-us/Comment-complain-or-compliment-our-services>

