



## **DIRECT PAYMENTS**

### **FOR CARE AND SUPPORT TO ADULTS**

**From 01/04/2015**

**ANNEX B**

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### 1. Introduction

1.1 Direct payments are monetary payments to or for customers' to meet some or all of their eligible care and support needs. The legislative context for direct payments is set out in The Care Act 2014, Sections 31 to 33, Mental Health Act Section 117 (2C) and Care and Support (Direct Payments) Regulations 2014.

### 2. Making direct payments available

2.1 City of York Council has a key role in ensuring that customers are provided with relevant and timely information about direct payments, so that customers can decide whether to request direct payments to fund their care and support costs.

2.2 The council will make available information during the support planning stage setting out the following:

- what direct payments are;
- how to request a direct payment, including the use of nominated and authorised persons to manage the payment;
- explanation of the direct payment agreement (DP1);
- the responsibilities involved in managing a direct payment and being an employer;
- making arrangements with social care providers;
- signposting to local organisations, and the councils own support team, who can offer support to direct payment holders, and information on local providers;
- case studies of how direct payments have been used innovatively

2.3 Customers that wish to administer some or all of their personal budget through direct payments should request to do so. Direct payments are the governments' preferred method of administering care and support costs. The council will encourage customers to consider direct payments, and how they could be used to meet needs. Customers will not be forced to take a direct payment against their will. Customers will be informed of all of the choices

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available to them, following an assessment of their eligibility for care and support.

2.4 Where a customer requests a direct payment after the support planning stage, between care and support reviews, then the council will bring the review forward to accommodate the request for a direct payment.

2.5 The council must ensure that customers have the capacity to request direct payments, or whether a customers' capacity is likely to fluctuate. Capacity decisions should be recorded in a customers' support plan.

2.6 The following terms will be used as follows:

- Nominated Person is anyone who agrees to manage a direct payment on behalf of the person with care and support needs
- Authorised Person is someone who agrees to manage a direct payment for a person who lacks capacity according to the Mental Capacity Act 2005.

### **3. Assessing capacity and making direct payments available to people with and without capacity**

3.1 Where a customer requests a direct payment, then an assessment of capacity must be made on a case by case basis. The council will not assume that an individual has or lacks capacity because they have a particular condition or illness.

3.2 The council must clarify where the request for direct payments originates from. Direct payments will be made to a nominated person specifically where requested by the customer with care and support needs, and where the customer has capacity. Where this is the case, the nominated person should be involved in any appropriate stage of the care planning journey. The nominated person should receive information and advice regarding direct payments and the additional legal obligations and responsibilities in acting in the customer's best interests.

3.3 Where the council is satisfied that a customer has capacity to request a direct payment, The Care Act 2014 states that the council should give consideration to each of the following clauses.

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A failure of one of the conditions would result in the direct payment being declined. The conditions are:

- the customer has capacity to request a direct payment and where there is a nominated person, that person agrees to receive payments;
- the council is not prohibited by regulations under section 33 from meeting the customer's needs by making direct payments to the customer or nominated person, and if regulations under that section give the council discretion to decide not to meet the customer's needs by making a direct payment to the customer or nominated person, it does not exercise that discretion;
- the council is satisfied that the customer or nominated person is capable of managing direct payments on their own, or with whatever support the council thinks the customer or nominated person will be able to access;
- the council is satisfied that making direct payments to the customer or nominated person is an appropriate way to meet the needs in question.

3.4 In cases where the customer requiring care and support lacks capacity to request direct payments, an authorised person can request a direct payment on the customer's behalf. There are 5 conditions that must be satisfied as laid out in The Care Act 2014, section 32. Failure to meet any of the conditions would result in the request being declined. The conditions are:

- where an authorised person is **not** authorised to act under the Mental Capacity Act 2005, but there is at least one person who is authorised under the Mental Capacity Act 2005, that person **must** support the authorised person's request;
- the council is not prohibited by regulations under section 33 from meeting the customer's needs by making direct payments to the authorised person, and if regulations under that section give the council discretion to decide not to meet the customer's needs by making a direct payment to the authorised person, it does not exercise that discretion;
- the council is satisfied that the authorised person will act in the customer's best interests in arranging for the

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provision of care and support for which direct payments would be used;

- the council is satisfied that the authorised person is capable of managing direct payments by himself or herself, or with whatever support the council thinks the authorised person will need to access;
- the council is satisfied that making direct payments to the authorised person is an appropriate way to meet the needs in question.

3.5 Where the council decides to provide a direct payment, this will be recorded in the customer's care plan. Where the council decides to refuse a direct payment, the customer or person making the request will be provided with an explanation in writing, setting out the rationale behind the decision and how the customer or person making the request can appeal. The decision should refer to the relevant points of the Care Act 2014 that have not been met. The care planning process should continue to ensure that the customer's needs are being and continue to be met.

3.6 Where requests are made to support aftercare under Section 117 of the Mental Health Act 1983, the council has to give full consideration as to whether direct payments are the most appropriate way to meet the needs in question.

3.7 The council must also be satisfied that the customer, authorised or nominated person is able to manage the direct payment, with whatever support is deemed necessary. The council will provide information of organisations and sources of support to assist in the management of direct payments.

### **4. Administering direct payments, monitoring and reconciliation**

4.1 The council must be satisfied that the direct payment is being used to meet eligible care and support costs. Direct payments must be administered within the terms and conditions of the DP1 agreement under which direct payments are made. Care management will review direct payments initially at the 6-8 week review months and then annually.

4.2 The council will incorporate any 'on-costs' associated with employment, such as recruitment, training, redundancy and employers liability insurance in the amount paid as a direct

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payment. These may be paid as one off payments or incorporated into the regular monthly payment.

4.3 The council will pay direct payments net of any customer contribution. Where the customer has been advised that they have to contribute towards their care and support through their direct payment, then the customer should arrange to make payment into the direct payment account on a weekly or monthly basis.

4.4 The council will make direct payments available into individually designated bank accounts operated by Advanced Payment Solutions Ltd, known as 'cashplus' accounts. To reduce the monitoring burden to customers, the council retains the right to remotely access these accounts under the Data Protection Act 2003. Direct payment accounts will be monitored by the council and reconciled every two months for the first 6 months that the direct payment is in operation. Subsequently, accounts will be monitored and reconciled every 6 months.

4.5 The council will extend its monitoring of accounts to ensure that where the customer has employment responsibilities and liabilities such as tax and national insurance, that these costs are being met from the direct payment.

4.6 The purpose of reconciling the direct payment account is to ensure that there are sufficient funds available to meet the customer's care and support needs. It is the council's intention that the monitoring and reconciliation of accounts is as unobtrusive as possible, and reference will only be made to the customer, nominated or authorised person where there is cause for concern.

4.7 Where a customer has not fully used their direct payment money, or has purchased services that meet their care and support needs at an advantageous cost, the local authority retains the right to reclaim any excess amount. The customer will be notified in advance of any amount identified, which will then be reclaimed back from the cashplus account.

4.8 Where funding from other public bodies is agreed, such as the NHS, then integrated budgets paid to and managed through a single account, will be monitored by the council.

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### 5 Using direct payments

5.1 Direct payments are intended to be used flexibly and innovatively, and no unreasonable restriction should be placed on the use of the payment, as long as it is used to meet eligible care and support needs.

5.2 The council has discretion to allow prior consent for direct payments to pay close family living in the same household as the customer **for management and administrative support only**. This is especially intended where there are multiple complex needs and the direct payment may be substantial. Prior to consent, the council should be satisfied that any payment is reasonable and all parties should reach agreement prior to any payment being made.

5.3 The direct payment agreement will advise what steps to take in cases of a dispute regarding the management of the payment by a household family member. This will be especially relevant where the person providing the management and administrative support is also the nominated or authorised person. It may therefore be practical for the local authority not to exercise its discretion where there is a risk that the direct payment may be abused, or there are other prevailing issues such as safeguarding. Payment to family members providing care and support in the same household remain excluded from being paid for providing care.

5.4 Direct payments can be used for the purchase of short stays in residential care providing that the stay does not exceed a period of four consecutive weeks (28 days) in any 12 month period.

5.5 Regulations specify that where direct payments purchase short breaks in residential care, and where the interim period between two stays is less than four weeks, then these two stays should be added together. The total of these stays should also not exceed four weeks. In both cases, no further residential care can be purchased using direct payments until 12 months have elapsed since the start of the four week period. Alternative funding arrangement would need to be agreed at this time.

5.6 Regulations do allow direct payments to purchase short breaks in residential care where stays are four weeks and less, and are

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separated by four weeks, and do not exceed four week when added together. In this case, customers can use their direct payment to purchase short breaks in residential care throughout the year.

5.7 Direct payments may be considered for customers requiring non-residential care services that live permanently in a care home. Similarly customers may have temporary access to direct payments to try independent living.

5.8 The general rule is that direct payments should not be offered to customers to pay for care and support provided by the council. There may be cases however, where the customer wishes to make a one-off purchase of care or support from the council (such as short break). In these circumstances, it would be appropriate for the customer to use their direct payment for this purpose. Customer's are however free to purchase services directly from other councils.

## 6 Discontinuation and termination of direct payments

6.1 Customers entering hospital should consider how best to use their direct payment at that time, especially where they are an employer and suspension of the direct payment could necessitate a break in the employment contract. The customer should explore with the council how their care and support needs as well as their health needs are met at this time, and may involve personal assistants visiting the customer in hospital to help with personal care matters.

6.2 Where the nominated or authorised person requires a hospital stay, then the council must ensure that the customer continues to have their care and support needs met. This may be through a temporary nominated or authorised person, or through short term council arranged care and support.

6.3 Where a customer, nominated or authorised person decides that they no longer wish to receive a direct payment, the local authority must satisfy that no outstanding liabilities remain before terminating the agreement. Where contracts of employment require terminating, then this should be done in a timely manner to avoid additional costs. A review of alternative care and support provision would be arranged.

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6.4 The council must cease making direct payments where a customer advises, or no longer appears capable of managing them with necessary support.

6.5 The council will discontinue direct payments where the customer no longer needs the care and support for which the payment was made available. This would be applicable more so for customers receiving short-term support upon leaving hospital or residential care.

6.6 The council may discontinue direct payments where the customer, nominated or authorised person fails to comply with the any of the conditions imposed under the direct payment regulation or the council's terms and conditions of use.

6.7 The council will discontinue direct payments where a customer, nominated or authorised person loses capacity to consent. If the loss of capacity is considered temporary then payment can continue providing some one is willing to continue managing the payment on their behalf. The council will closely monitor these situations and will review capacity before discontinuing payment or entering into an agreement with another person.