

Stockport Council Adult Social Care

Direct Payments Policy

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1 Introduction

1.1 Stockport Council is committed to the health and wellbeing of residents by providing flexible interventions that allow people to choose the way their care and support needs are arranged.

1.2 Direct Payments are available to eligible adults who need support and care and to help them maintain independence and control of their lives.

1.3 Direct Payments are cash payments made to adults to pay for the services they need. It allows the person to take ownership of their own care planning and make the most of their lives by choosing how and when they receive support instead of the council arranging services on their behalf.

1.4 The council will provide information, advice, and guidance about Direct Payments to raise awareness and support its application.

2 Legal Context

2.1 Policy derives from the following legislative and government guidance:

- Section 26 (Personal Budgets) of the Care Act 2014
- Section 117(2C) of the Mental Health Act 1983
- Care and Support (Direct Payments) Regulations 2014
- Care and Support Statutory Guidance June 2022

2.2 The Care Act provides a duty to enable Direct Payments to be made to the adult in need of care and support, or a nominated/authorised person acting on their behalf if the adult with care and support needs so requests.

2.3 This policy will directly link to any relevant current policy on Section 117.

3. Eligibility for Social Care (Care Act 2014)

3.1 To receive a Direct Payment, a service user must meet the eligibility threshold for adults with care and support needs as set out in the Care and Support (Eligibility Criteria) Regulations 2014. The threshold is based on identifying how a person's needs affect their ability to achieve relevant outcomes and how these impact on their wellbeing.

3.2 An adult's needs are only eligible where they meet **all three** of the following conditions:

Condition 1. The adult's needs arise from or are related to a physical or mental impairment or illness.

Condition 2. As a result of the adult's needs they are **unable** (see 3.3) **to achieve two or more** of the specified outcomes:

- a. managing and maintaining nutrition
- b. maintaining personal hygiene
- c. managing toilet needs
- d. being appropriately clothed
- e. being able to make use of the home safely
- f. maintaining a habitable home environment
- g. developing and maintaining family or other personal relationships
- h. accessing and engaging in work, training, education, or volunteering
- i. making use of necessary facilities or services in the local community including public transport and recreational facilities or services

- j. carrying out any caring responsibilities the adult has for a child

Condition 3. As a result of being unable to achieve these outcomes there is, or there is likely to be, a significant impact on the adult's wellbeing.

3.3 The criteria for "being unable" to achieve an outcome includes any of the following circumstances, where the adult:

- is unable to achieve the outcome without assistance
- can achieve the outcome without assistance but doing so causes the adult significant pain, distress or anxiety
- can achieve the outcome without assistance, but doing so endangers or is likely to endanger the health or safety of the adult, or of others
- can achieve the outcome without assistance but takes significantly longer than would normally be expected.

4. Agreement to receive a Direct Payment

4.1 To receive a Direct Payment, a service user must have eligible care and support needs as defined by the Care Act 2014 (See Section 3). The social care assessment will identify the two or more outcomes that are unable to be met and will be clearly outlined in the associated Support Plan, which will stipulate how the service user will meet these outcomes using the Direct Payment.

4.2 The Direct Payment Agreement must be completed and co-signed with the council's representative. The Agreement sets out the conditions under which Direct Payments can be made and includes information outlining the responsibilities of the council, the individual, and/or their nominated/authorised person.

4.3 Payment should secure support of a standard and value that the council considers appropriate to meet the eligible needs and outcomes of the service user. A service user can top up their Direct Payment budget if the cost of their chosen intervention exceeds the council's estimation of reasonable costs.

4.4 The council reserves the right to exercise discretion in how services are provided, ensuring the council's limited public funding is spent efficiently and effectively.

4.5 Where the terms and conditions of the agreement are not met, the council will take reasonable and proportionate steps to address the issues arising, support the individual whenever possible and maintain the Direct Payment.

4.6 If issues remain unresolved, the council will carry out a Care and Support review and consider whether the Direct Payment continues to be an appropriate arrangement to meet the individual's assessed needs. If appropriate, the council will discontinue the Direct Payment and put in place alternative support to meet the person's needs.

5 Who can Receive a Direct Payment?

5.1 A request for a Direct Payment can be made at any time by an adult, or a carer on behalf of an adult, who has been assessed as eligible for care and support from the council (See Section 3).

5.2 To receive a Direct Payment **all** the following conditions must be met:

- The service user is unable to achieve two or more of the specified outcomes (see 3.2)

- The service user requests a Direct Payment
- The council is satisfied that the service user or nominated/authorised person can administer the Direct Payment (as outlined in the Agreement) with or without support
- The council agrees that a Direct Payment is appropriate to meet eligible needs
- The service user's income is not above the threshold where an individual has sufficient funds to pay for his or her own care and support needs, currently £23,250. Please see the council's non-residential charging policy for more information on this:
[Care Act and charging policies - Stockport Council](#)

5.3 In line with Section 3 of the Care and Support (Direct payments) Regulations 2014, Direct Payment are not appropriate or are prohibited by law in the following circumstance if the service user:

- Has capacity to manage their finances but requires support and is unable to nominate a suitable person to help them
- Is unable to manage their finances and the council is unable to authorise a suitable person to manage it on their behalf
- Is subject to a court order for a drug or alcohol treatment programme or similar scheme
- Nominates a family member to both administer the Direct Payment and deliver their support
- Is using the direct payments to pay a spouse/civil partner or persons living in the same household who are related to the service user, unless the council feels this would be necessary.

5.4 For service users who are in receipt of a Personal Budget in the form of a Direct Payment from other statutory organisations, the council will endeavour to work with the service user and partner organisations to combine payments.

5.5 The council may decide that a service user with capacity is unable to manage a Direct Payment, having considered the individual's views and circumstances. If the service user disagrees with the council's decision, the council will ensure the person has access to an advocacy service so that their views and representations can be considered.

5.6 If a service user's ability to consent to a Direct Payment is in doubt, the council will assess their capacity to consent before authorising a Direct Payment. Service users who would otherwise have no one to support him or her will be offered an advocate. In such cases, staff will carry out their duties as outlined in the Mental Capacity Act 2005 and its accompanying Code of Practice.

5.7 Inability to consent to a Direct Payment does not mean an individual with eligible needs cannot receive a Direct Payment. Where an individual has been assessed as lacking capacity to request the Direct Payment, an authorised person can request the Direct Payment on their behalf if they are:

- Authorised under the Mental Capacity Act 2005 (MCA) to make personal welfare decisions for the adult (i.e., the holder of a lasting power of attorney given to them by the adult before they lost capacity or a Court appointed deputy), or
- Not MCA authorised, but the council and any person authorised under the MCA to make personal welfare decisions for the adult, agrees that the person is suitable to whom to make direct payments, or

- Not MCA authorised and there is no MCA authorised person, but the council considers that the person is a suitable person to whom to make direct payments.

The authorised or nominated person:

- 5.8 Must be involved in the care and support planning process and be party to all the information, advice, and guidance that the service user would usually receive.
- 5.9 Cannot become the paid Personal Assistant (PA) in delivering any part of the person's care and support package.
- 5.10 Must sign the Direct Payment Agreement and meet the terms and conditions. By doing so they take on any legal responsibilities, including employing and managing paid staff employed through Direct Payments.

5.11 Consideration will be given to cases where capacity is fluctuating or known to fluctuate. This should be covered in the service users Support Plan which details the steps to take where this occurs.

6. Calculating the Value of the Direct Payment including Service User Contributions

6.1 The Direct Payment amount meets the council's estimation of the reasonable cost of providing the support required. It should be sufficient to secure support of a standard and value that the council considers suitable to meet the eligible needs and outcomes of the service user.

6.2 Where the support of a Personal Assistant (PA) has been agreed in the Support Plan, the Direct Payment will include funds to employ a PA and pay employers' National Insurance contributions and income tax. Stockport Council will provide information and support through the Brokerage Service on how to begin employing a PA. Becoming an employer carries certain responsibilities and obligations, in particular in relation to paying tax, National Insurance, pension contributions, minimum wage requirements and ensuring that any person employed has the right to work in the UK.

6.3 Direct Payments should not affect other central government benefits. However, it is expected that other benefits are used to pay for everyday living costs. When in receipt of more specific benefits, the payments should be used to support the outcomes outlined in the plan i.e., Travel for those with Higher Level Personal Independence Payment (PIP), which includes mobility allowance. The council should also identify other related benefits that may support the service user's outcomes e.g., the Blue Badge scheme and associated parking benefits for disabled people with severe walking difficulties who travel either as a driver or as passenger and free public travel for people with disabilities (Transport for Greater Manchester).

Contributions

6.4 The council is not obliged to fund specific costs associated with the service users preferred method of securing their needs and outcomes. Service users can top up their Direct Payment budget if the cost of their chosen intervention exceeds the council's estimation of what is reasonable.

6.5 The council is required to undertake a financial assessment which determines the assets, savings and income of the person and determines whether a financial contribution towards their care and support needs is required. The council will give service users as much notice as possible of the value

of the Direct Payment and any financial contribution they are expected to pay towards the cost of their care and support.

6.6 Service users required to pay a contribution must set up a standing order or direct debit into their Direct Payment bank account. Contributions must be made four weeks in advance to ensure that all the funds required for care and support are available and are being spent on the provision of care and support from the Direct Payment account.

6.7 Failure to pay a service user contribution into the Direct Payment bank account may result in either one or a combination of the following:

- suspension of the Direct Payment
- review of the Support plan and eligibility for receipt of a Direct Payment. This may result in the termination of the Agreement and the council commissioning services for the service user directly
- a recoupment of the shortfall of funds arising from non-payment of contributions.

6.8 On closure of a Direct Payment account, any shortfall of funds arising from non-payment of user contributions will be payable by the person in receipt of Direct Payments.

Contingency and Reserves

6.9 The Support Plan may include a contingency element that should be used to cover fluctuating needs, of up to eight weeks funding. The use of the contingency will be monitored by the council to ensure that it is being spent in line with the interventions and outcomes agreed in the Support Plan.

6.10 Individuals should hold sufficient funds in their Direct Payment account to cover all planned expenditure. Accounts will be reviewed on a regular basis and unused funds may be recovered by the council.

Administration Support and Costs

6.11 If the service user requires support in managing the Direct Payment, the council will provide access to a Managed Account Provider. Alternatively, service users can identify a provider of their choice. The costs of this will be met from the service user's Direct Payment.

6.12 Service Users can choose to nominate a friend or family member to manage the Direct Payment on their behalf. Where the council considers it to be necessary it may agree for a family member to administer a Direct Payment from which another family member is being paid to deliver support. In these circumstances, a Service Manager from Adult Social Care may agree the arrangements and they will be subject to review to ensure that the needs and outcomes of the service user continue to be met.

6.13 Any administrative payments for high-cost complex care packages must be agreed with the council. The service user must be able to demonstrate that the tasks warrant such a payment. The cost of this service will be met by the service user's Direct Payment.

6.14 The amount of the administration payment must be reasonable and fair and reflective of market value. The payment must be agreed between the service user, the council, and any other interested person such as an advocate.

6.15 These decisions will be recorded on the service user's Support Plan and include the amount, frequency, and activities to be undertake.

7. Payment Methods

7.1 A Direct Payment can be administered in the following ways:

- A payment card (this option is not suitable for a service user to employ a personal assistant); or
- A dedicated personal Direct Payment bank account; or
- Individual Service Fund (ISF)
- Managed Account Provider.

7.2 Payments will be made on a four-weekly basis in advance for a Direct Payment or 13 weeks in advance for an Individual Service Fund (ISF).

7.3 Funds cannot be transferred to any other personal bank account. All transactions to meet needs and outcomes must be made via the designated Direct Payment bank account.

Direct Payment Bank Account

There are strict administrative duties required including:

1. The requirement for a separate bank account set up specifically in the user's name (or the name of the authorised person) for the purposes of a DP or managing care finances.
2. The monies in the bank account must be kept totally separate from any private personal expenditure.
3. The spend is subject to the council's auditing process.
4. The user must deposit their assessed financial contribution alongside the council's contribution.

Individual Service Fund (ISF)

ISF's can be used to pay the whole or part of a Direct Payment to a named care provider or agency. The care provider must agree to open a bank account and to manage the personal budget on the user's behalf. The monies can then be used to pay for services that can be flexibly delivered by the care provider in direct consultation with the user with needs. The council will liaise directly with the agency when auditing the account.

Managed Account Providers

7.4 The Managed Account Providers must take responsibility for a range of tasks:

- Receiving all your Direct Payments and making sure they are correct
- Paying Personal Assistant wages, agency fees and various other bills
- Paying all amounts due to HM Revenue and Customs (HMRC)
- Keeping a record of all the income received and payments made
- Providing you with a statement showing all transactions
- Dealing with the councils' audit and inspection checks.

8 Transition - when a child becomes an adult

8.1 Planning, coordinated by the Children's SEN and Adults Transition Team, will take place to consider outcomes in the Education Health and Care plan to ensure a smooth move from child to adult services. The review will have highlighted if the young person is likely to be eligible for Adult Social Care financial support post-18 and in line with the Care Act eligibility framework. If eligible, young people from the age of 16 can consent to receiving a Direct Payment. As a young person

becomes an adult (on their 18th birthday), the council will have taken reasonable steps to ascertain whether the young person, consents to receiving a Direct Payment.

8.2 Any Direct Payment paid by Children Services will end once the child turns 18 on the basis that the EHC plan outcomes have been finalised. The indicative budget will be used to develop a Support Plan which will evidence how the eligible outcomes can be achieved. The relevant Adult Social Care team will work with the young adult to ensure they can maximize their independence.

9 What Direct Payments can be used for

9.1 Payments must only be used to meet outcomes as outlined in the Support Plan so that service users are able to maintain their independence, health, and wellbeing. Costs must be affordable and proportionate to the service user's assessed eligible care and support needs. All costs must be in line with a standard and value that the council considers appropriate. A service user will be expected to top up their Direct Payment budget if the cost of their chosen intervention exceeds the council's estimation of reasonable costs to secure it.

9.2 Working within the above guiding principles, the following are examples of how a Direct Payment can be used:

- To employ a personal assistant or care agency
- To access and engage in work, training, or volunteering, where all other legitimate funding streams have already been exhausted (e.g., Access to Work)
- To enable individuals to meet their outcomes as identified under the Care Act 2014 and articulated in the Support Plan
- Pay for one-off pieces of equipment that are not available through other support services
- An innovative intervention that meets the service user's outcomes and, in so doing, prevents, reduces, and delays the onset of longer-term care needs. Such interventions are subject to approval and scrutiny by the Service Manager.
- The council may consider a direct payment being used for travel and accommodation associated with holidays, as an alternative to commissioned respite provision where this would meet an individual's identified Care Act support needs.

9.3 If the service user has a carer who has been assessed, Direct Payments can be made to the service user to purchase a respite stay in a care home, provided that:

- The stay does not exceed a period of 4 consecutive weeks in any 12 month period;
- The period between 2 stays in care homes is less than 4 weeks;
- If the period between the care home stays is less than 4 weeks, then the 2 stays will be added together to make a cumulative total which should also not exceed 4 weeks.

9.4 In some circumstances, people living in care homes may receive a Direct Payment in relation to non-residential care services if, for example: they are trying out independent living arrangements; or require community activities to promote outcomes to live independently. This can be empowering for young people in transitioning to independent living.

9.5 Direct Payments cannot be used to secure long term placements in care homes.

9.6 Any Direct Payment spent on purchasing care outside of the country will need to be approved by a Head of Service in Stockport Council on a case by case basis and cannot be assumed.

9.7 What Direct Payments **cannot** be used for:

- Everyday living costs (these will be covered by means tested benefit or, if they have their own assets, should be funded by the service user's own income):
 - household bills, such as rent or mortgage, Council Tax or utility bills
 - food and drink including paying for meals and refreshments for the user, their carer or family
 - costs already considered by other benefit payments i.e., travel for those receiving Personal Independence Payment (PIP), which includes mobility allowance.
- Anything illegal
- Day to day travel expenses – the council may agree to fund reasonable expenses dependent on the person's circumstances and needs.
- Anything that will harm a person's health, safety or wellbeing
- Purchase of alcohol, tobacco or gambling
- Services or support that are considered to be the responsibility of the NHS, e.g., dental, chiropody, psychological or physiotherapy services
- Permanent residential or nursing care
- Short term support such as Intermediate Care or Reablement services
- Paying for services from a spouse, family member or partner who lives in the same household as the service user, unless this has been agreed by the council.
- Aids, adaptations or equipment up to £1000 where the equipment should legally be provided by the council
- Pay for non-statutory liabilities, such as tips, bonuses or ex gratia payments
- Pay for items or activities that are not related to the person's assessed needs.
- When granting a direct payment, the council will consider an individual's particular to enable people to consider flexible, creative and personalised ways to meet their assessed needs.

9.8 If there is a change in an individual's circumstances or needs which is not included in their original support plan, they, or their representative should contact the council to request a review.

Paying for council Services

9.9 There may be circumstances when Stockport Council will exercise discretion in providing a council service via a Direct Payment. In these cases, the council will consider the person's needs and support requirements at the time. It may be less burdensome to accept the cost on the Direct Payment, rather than to provide the service and reduce the Direct Payment. If, however, the use of the council service becomes regular it may not be appropriate to continue with the Direct Payment.

9.10 This does not exclude individuals from using their Direct Payment to purchase care and support from a different local authority.

10 Employment duties

10.1 Service Users or their authorised/nominated person are responsible for employing suitably qualified workers where necessary to provide the assistance identified within their Support Plan.

10.2 The council will provide advice and in regard to their role as an employer which carries certain responsibilities and obligations in particular in relation to paying tax, national insurance, pensions, minimum wage requirements, sick pay and annual leave. It will also be necessary to register as an employer with HMRC and the council strongly advises that all checks are made of their potential

employee including checks for Disclosure and Barring (DBS). Legally, people in receipt of, or managing a direct payment on behalf of another person need to check and be assured of potential employee's right to work in the UK.

When paying for a self-employed Personal Assistant, evidence is required of their status and registration with HMRC, and payment can only be made on receipt of formal invoices detailing the times and hourly costs associated with the work they have undertaken.

10.3 The service user or their authorised/nominated person who employ staff must have the appropriate Employers Liability Insurance and Public Liability Insurance with a minimum limit for any one claim of £10 million (individuals will be notified if this limit is increased or decreased by the council). This can be arranged by the Brokerage Service. The insurance policy and premium receipts must be produced on demand when requested by the council.

10.4 The service user or their authorised/nominated person will be expected by the council to ensure that the individual has made provisions for cover in emergency situations or when their Personal Assistant is not able to support them, such as during periods of annual leave or sickness. Their social worker will discuss this with the service user and ensure that adequate arrangements are in place and recorded in the care and support plan.

10.5 In the event of a breakdown in the service user's contingency arrangements for care, the council will endeavour to put in place appropriate services to achieve their agreed outcomes for the period until the individual or their authorised/nominated person is able to resume their usual care arrangement. This may result in the council seeking a repayment of Direct Payment monies paid to the individual.

Safeguarding

10.6 Individuals in receipt of a Direct Payment are entitled to make their own decisions and to take risks in the same way that any others in the community are entitled to. Where appropriate, safeguards will be put in place to prevent any potential abuse and to support the service user in making decisions and managing any associated risk because of that decision.

10.7 Service users directly employing a Personal Assistant (PA) can be placed at greater risk of abuse depending on the level of rigor and pre-employment checks undertaken during the PA recruitment process. The council strongly recommends that enhanced Disclosure and Barring Service (DBS) checks are undertaken on PA's working with vulnerable adults. This is particularly important when employing a PA who supports service users who lack capacity, as in these situations the service user may be unable to verbalise concerns about their care. PA's who have unsupervised access to service users must have and be able to disclose on request a current enhanced DBS check.

10.8 The service user or their nominated/authorised person is strongly advised by the council to ensure that an enhanced Disclosure and Barring Service (DBS) check is undertaken when employing a person who will have unsupervised access to children, young people or vulnerable adults (as above) during the course of their work. The check is undertaken to ensure that the person has no relevant criminal convictions that would preclude them from working with children or vulnerable people.

10.9 In the event that the council considers the provider of support to be placing the service user at risk, the Direct Payment may be suspended, and alternative provision provided, whilst a safeguarding investigation is undertaken.

Health and safety

10.10 Stockport Council advises the recipients of a Direct Payment to ensure they follow health and safety guidelines when employing someone to provide care, general information on health and safety issues, including moving and handling, is provided by the Brokerage Service. To support the safe delivery of care the council will give service users the results of any risk assessments carried out as part of their assessment for care.

10.11 Individuals eligible for support have a responsibility for their own health and safety, including assessment and management of risk to others involved in the provision of care. The council advises the service user/authorised or nominated person to visit the Health and Safety Executive website at www.hse.gov.uk for further information. Advice is available from the Brokerage Service.

11 Reviewing the Plan and Auditing Payments

11.1 Stockport Council has a responsibility to ensure that public money is spent and accounted for appropriately. This responsibility is executed through the review and audit processes.

11.2 An initial check will be undertaken by the Brokerage Service and their social worker within the first six weeks of a payment. This is to assure the council that the service user understands their responsibilities and is coping well with the expected administration of the account. A formal audit will be undertaken at four months – this allows time for a pattern of spend to be established and for the first bank statement to arrive. If there are no issues with the first audit, they will be carried out every six months.

11.3 If at the initial audit check it becomes clear that the service user is struggling to understand their responsibilities in managing the Direct Payment, the council will assist with further information, advice and support to enable the Direct Payment to remain in place. If the difficulties continue, the council will undertake an immediate review to decide if a Direct Payment is the appropriate method to deliver care and support.

11.4 The initial check will be followed by a Social Care review of the Support Plan after eight weeks. If after this review the Direct Payment is deemed to be meeting the person's care and support and needs, Social Care will undertake a review within 12 months of the date of the first payment and thereafter, every 12 months. The council can review outside these timelines following a request from the individual, or if an individual's circumstances change.

11.5 Stockport Council has the right to increase, decrease, suspend or terminate the Direct Payment in line with a review or reassessment of the individuals assessed eligible needs.

Evidence you must provide for Audit

11.6 The individual or their nominated/authorised person shall keep all documents and records generated in connection with the provision of care and support provided by a Direct Payment Agreement with Stockport Council for a period of seven years following the end of the agreement. The documents or records held by the individual or their authorised/nominated person may be inspected by Stockport Council at any point during this period.

11.7 If the service user or their nominated/authorised person has set up their own dedicated Direct Payment bank account, a quarterly return is required with following documentation:

- A fully completed quarterly return form, with details of all purchases/transactions made during the quarter, showing cheque numbers to aid the council reconciliation of payments in the account
- Copies of all bank statements from the relevant quarter
- Invoices, pay slips* and timesheets if someone is employed to deliver the care
- Receipts for any purchases made using your direct payment funds including one-off purchases.

*If using SMBCs payroll Services, the payslips will be electronic.

11.8 Stockport Council will request additional evidence for any entry on the Direct Payment bank account if the transaction is not easily recognisable, exceeds or is notably lower than the agreed care or service costs. The individual or the Managed Account Provider must provide this information within 14 days of the request. Failure to do so can result in a reassessment of the individual's eligibility for a Direct Payment.

11.9 Where a Direct Payment is being managed by a nominated/authorised person, or where a family member or friend is being paid for administrative support, the review will seek to include all relevant parties involved in the care arrangements. This will ensure that Stockport Council receives views from everyone involved in the Direct Payment and seek to resolve any issues.

11.10 Where Stockport Council has identified a possible change in a person's circumstance or needs, it will arrange at the earliest opportunity for a review to be undertaken. If the outcome of the review is a change in direct payment funding levels the council will provide the individual or their authorised/nominated person with written notice within 28 days of the change. This notice period may be extended where a reduction may affect any pre-existing contractual arrangements, such as with a Personal Assistant.

11.11 Stockport Council has the right to suspend or terminate the Direct Payment as a result of the findings of the audit of the direct payment subject to the Care and Support (Direct Payment) regulations and sections 31 to 33 of the Care Act 2014.

11.12 The service user or their authorised/nominated person will ensure the council is notified immediately and seek a review if there are any changes in circumstances that may affect their entitlement to a Direct Payment. For example:

- admission to hospital for longer than 4 weeks
- stays away from their home address for periods beyond four weeks
- no longer requires the service
- a change of address or support arrangements.

It is the responsibility of the individual to check with the council if they are unsure if a change in circumstance will affect their eligibility to receive a Direct Payment.

11.13 The council may reduce or suspend payments temporarily if the individual is unable to receive services for a period of time, such when a long stay in hospital is required. Direct Payments may continue to be paid for short stays in hospital for up to four weeks to facilitate staff or PA retention by the individual. Requests for extensions beyond four weeks will need to be discussed with and agreed by a social worker and will only be granted in exceptional circumstances.

12 Recovery of Direct Payments

12.1 There may be circumstances where the council believes direct payment monies have not been used to support or achieve an individual's outcomes as per their Care Act assessment. In these circumstances and if necessary the council will work with the person or their representative to recover these monies, however if necessary, this may also be referred to the council's Debt Recovery Agency for collection or legal action.

Unspent Direct Payments

12.2 Where money in a Direct Payment bank account is uncommitted or unaccounted for beyond an 8 week payment period, the council will seek to undertake a review with the individual to discuss their needs and the effectiveness of the direct payment. Following the review, the direct payment may be changed to ensure it still meets the needs of the person concerned. The council may seek to recover any underspend.

Wrongful use of a Direct Payment (misuse and fraud)

12.3 In the event that fraud, abuse or misuse is reasonably suspected, the council will refer the matter to the Internal Audit Team for investigation and offer support to the individual to reduce the risk of further loss occurring.

12.4 The council will refer any potential criminal activity to the Police for further investigation and reserve the right to prosecute where fraud is suspected to have taken place.

12.5 The council will not be responsible for any losses incurred by the individual and will not therefore reimburse the individual unless or until they have been cleared of any involvement in the loss. See also section 11.11 above.

12.6 In serious cases, the council may take a view that the individual is no longer be eligible for a Direct Payment in the future.

13 Suspension, Termination and Discontinuing Direct Payments

Council Decision to Suspend or Terminate

13.1 Direct Payments will only be suspended or terminated as a last resort. Where possible the council will take all reasonable steps to address any situations without the need to suspend or terminate. If terminating a Direct Payment, the council will ensure there is no gap in the provision of care and support to the person with eligible needs.

13.2 Stockport Council will suspend or terminate Direct Payments if:

- The service user is no longer capable of managing the Direct Payment on their own or with support
- The service user no longer meets the eligibility criteria for care and support
- If one or more of the qualifying criteria or terms in the Direct Payment Agreement are breached
- The service user is involved in any type of corruption
- If the council is no longer satisfied that the nominated/authorised person is acting in the best interests of the individual
- For reasons of illegal or fraudulent use or misuse of a Direct Payment or if the council are unable to obtain records and information to verify if care and support needs are being met in an appropriate way

- The service user is placed by the court under a condition or requirement relating to a drug and/or alcohol dependency
- The service user is part of an investigation or plan under the Safeguarding Adults Procedures if relevant to the direct payment.

13.3 In such cases, and if appropriate, the council will put a managed service in place to ensure that the individual's eligible needs are met. The council will initiate a Support Plan review to consider revision of the Plan and Direct Payment.

13.4 Notice required will depend on individual circumstances but Stockport Council will endeavour to put in place a four week notice period, unless an evaluation of risks or other relevant factors require a faster resolution.

13.5 Once a Direct Payment has been suspended or terminated a new Direct Payment will not be considered until all outstanding issues from the original Direct Payment have been resolved.

13.6 Stockport Council retains the right to recover Direct Payments in full or in part if it is satisfied that the money had been diverted from the use for which it was originally intended.

13.7 If Direct Payments are discontinued, some people may find themselves with ongoing contractual responsibilities or having to terminate contracts for services, including making employees redundant. Contractual obligations will require a notice period for termination, such for a service paid for in advance or employment contracts. These arrangements will need to be taken into consideration when Direct Payments are discontinued by either the service user and/or their authorised/nominated person.

13.8 A final financial return should be completed on closure of the Direct Payment Service and all unused funds to be returned to Stockport Council.

13.9 Failure to comply with the auditing and monitoring of your Direct Payment may result in it being temporarily suspended and replaced by an alternative form of support until evidenced.

13.10 Carers will no longer be eligible to apply for a Carer's One-Off Payment if the cared for person is admitted to long term residential care.

13.11 If the service user moves out of the Borough, six weeks funding will be made available during the transition period.

13.12 On closure of account, shortfall of funds arising from overuse of Direct Payment funds or non-payment of client contributions will be payable by the service user or authorised/nominated person.

Service User Decision to Suspend or Terminate

13.13 Service users can terminate a Direct Payment at any time. Reasons can include because they no longer wish to receive Direct Payments, they are no longer able to manage the Direct Payment, or they no longer need the support for which the Direct Payment is made.

13.14 If an alternative form of support to a direct payment is required by an individual, the council will require four weeks' notice to allow it to make assessment and new commissioning arrangements from a new source.

Discontinuing Direct Payments in the case of persons with capacity to consent

13.15 If someone loses capacity to consent, the council will discontinue Direct Payments to that individual and consider making payments to an authorised person instead. In the interim, the council will make alternative arrangements to ensure continuity of support.

13.16 If the loss of capacity to consent is temporary, the council may continue to make payments if there is someone willing to manage payments on the behalf of the service user. This situation is strictly temporary and will be closely monitored to ensure that, once the individual regains capacity, they are able to exercise control over the Direct Payments as before.

13.17 If the individual's loss of capacity to consent becomes prolonged, Stockport Council will consider making formal arrangements for an authorised person to take over receipt of the Direct Payments on that person's behalf.

Discontinuing Direct Payments in the case of persons lacking capacity to consent

13.18 The Council may discontinue Direct Payments if they are not satisfied for whatever reason that the authorised person is acting in the best interests of the service user, within the meaning of the Mental Capacity Act 2005.

13.19 The Council may discontinue the Direct Payments if it has sufficient reason to believe that the conditions imposed by Direct Payment regulations on the authorised person are not being met.

13.20 A Direct Payment will be discontinued to an authorised person where Stockport Council has reason to believe that someone who had lacked capacity to consent to Direct Payments has now regained that capacity on a long-term or permanent basis.

13.21 The council will 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 Payments.

14 Ending Direct Payments following a death

14.1 In the event of the death of the service user, any amount of Direct Payment remaining in the Direct Payment bank account will be recovered. The council will consider outstanding commitments in line with the Support Plan to fulfil contractual and legal obligations relating to any person employed by the individual or to HMRC. The council will require the receipt of supporting documentary as evidence and an invoice relating to the services received.

15. Stay in Hospital

15.1 If an individual is in hospital the Direct Payment will continue for four weeks and may then be suspended until the individual returns home. The council must be alerted to all admissions into hospital, this is the responsibility of the individual or the person managing the Direct Payment. A review of the Direct Payment will then be arranged by the hospital social worker, neighbourhood team or a mental health social worker. Payments may be suspended or reduced if an individual is due to remain in hospital for more than four weeks, however, there may be exceptions to this, which will need to be discussed and agreed with a social worker. Consideration to contractual agreements with PAs will be taken into account to ensure a continuity of care to support the discharge and return home from hospital.

15.2 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. This may require a temporary variation of the DP and support plan.

15.3 In some cases, the nominated/authorised person managing the Direct Payment may require a hospital stay. In these cases, Stockport Council must be notified and an urgent review will be conducted to ensure that the person continues to receive care and support to meet their needs. This may be provided by a temporary replacement nominated / authorised person, or by the council putting in place a short-term care and support arrangement.

15.4 Upon imminent discharge from hospital, a review of the care and support needs of the individual will be undertaken by Stockport Council to ensure that an appropriate Support Plan is in place before the individual returns home.

15.5 The Direct Payments may be fully reinstated if these were temporarily ceased or adjusted.

16 Period away from home

16.1 The service user retains the responsibility to ensure that any employee, particularly if from outside the UK, complies with the country's employment rules and regulations.

16.2 The service user or their authorised/nominated person must retain receipts for payment of wages to employees as well as all other documentation related to such employment; this includes copies of timesheets, receipts and invoices relating to purchases made from their Direct Payment bank account. These should be submitted to the council along with their financial monitoring returns every quarter.

17 Disputes

17.1 Any disputes in relation to the allocation or provision of a Direct Payment will be subject to the council's statutory complaints procedure.

17.2 If the service user or nominated/authorised person has a complaint about services they have purchased independently, they should address this with the service provider or employee concerned and inform the council. The council will review the issues outlined in the complaint and may take appropriate action, including safeguarding procedures if required.