

## With a Direct Payment I can live the life I want



### Open and Honest

**Working Together**, through **open** and **honest** communication the right information can be shared from the first decision to have a Direct Payment and every step of the way after.

### Flexible and Creative

**Working Together**, Direct Payments can be used in **flexible** and **creative** ways, so that they support wellbeing and the lives people want to lead.

### Clear and Simple

**Working Together**, Direct payments can be straightforward and managed in a **clear** and **simple** way which develops skills and confidence as an employer.



# Shropshire Council Adult Social Care

## Direct Payments Policy and Guidance

Contents Page	
Page Number	Title
3	<a href="#">This part is about why there is a Policy</a>
3	<a href="#">This part is about the law and other rules The Council must comply with</a>
4	<a href="#">This part is about how The Council must tell people about direct payments</a>
4	<a href="#">This part explains what a direct payment is</a>
5	<a href="#">This part explains who can get a direct payment</a>
6	<a href="#">This part explains about eligibility for care and support</a>
7	<a href="#">This part explains what happens if a direct payment Request is turned down</a>
7	<a href="#">This part explains how someone can have a direct payment if they lack mental capacity to ask for or manage one.</a>
8	<a href="#">This part explains how someone, with mental capacity to request a direct payment, can be supported to manage the direct payment</a>
9	<a href="#">This part explains the responsibilities of the Authorised or Nominated person</a>
10	<a href="#">This part explains how a direct payment is calculated</a>
11	<a href="#">This part explains things a direct payment can't be used for</a>
12	<a href="#">This part explains what to do if the person is temporarily away from home.</a>
12	<a href="#">This part explains about managing direct payments</a>
13	<a href="#">This part explains how direct payments are paid</a>
14	<a href="#">This part explains about being an employer</a>
15	<a href="#">This part explains about using self-employed Personal Assistants (PAs)</a>
15	<a href="#">This part explains about using a service provider</a>
15	<a href="#">This part explains about employment related support</a>
16	<a href="#">This part explains about monitoring Direct Payments</a>
18	<a href="#">This part explains about ending a Direct Payment</a>
19	<a href="#">This part explains about repaying money to the Council</a>
19	<a href="#">This part explains what to do if you disagree with a decision from Shropshire Council about a direct payment.</a>
20	<a href="#">This part explains The Council's duty to protect public funds</a>
20	<a href="#">This part explains how The Council use and protect personal information</a>
21	<a href="#">Extra Reading</a>

To reflect the direct payment vision that direct payments will be Open and Honest, Flexible and Creative and Clear and Simple this policy has been co-produced with Shropshire Council staff and people who use direct payments. It aims to promote direct payments, to help those who already have a direct payment and those who are thinking about getting one, as well as staff working in Adult Social Care.

To help to make the document clear, some words are explained throughout the Policy; and the meanings are also listed at the end of the Policy.

## 1. This part is about why there is a policy

This policy is to explain the principles that Shropshire Council will use in Adult Social Care when making decisions about direct payments, which are specific to the Council.

The Council is committed to promoting wellbeing and supporting people to live as independently as possible with as much choice and control as possible over their lives.

A direct payment can be a very good way of helping people achieve that.

Adult Social Care staff will promote and recommend the use of direct payments and keep other options for care and support under review, to ensure that direct payments are promoted as the preferred option.

Shropshire Council is committed to supporting people who use direct payments direct payments to be good employers.

### Wellbeing

#### **Wellbeing means thinking about –:**

*Personal dignity, physical and mental health and emotional well-being and protection from abuse and neglect.*

*It means thinking about the control a person has over day-to-day life, taking part in work, education, training or recreation; social and economic well-being; domestic, family and personal relationships; suitability of loving living accommodation, and their contribution to society.*

## 2. This part is about the law and other rules The Council must comply with

This Policy applies to adults and carers aged 18 or over, who have been assessed as eligible to receive care and support by applying the Care Act 2014.

The Council must work in a way that is within the law when we support people. For adults, we do this by following the Care Act 2014 which sets out how we should support and work with people.

**In this policy where we say ‘the person’ we mean a person who has care and support needs.**

**In this policy where we say ‘the Council’ we mean Shropshire Council.**

### Eligibility

*Eligibility is decided by using the Care Act 2014, If you need help in two or more areas such as washing yourself, getting dressed, getting in and out of bed, and keeping your home safe because you have a physical or mental impairment and this has a significant impact on your wellbeing.*

This policy is written based on the Care Act 2014 and other current law and guidance and is guided by the vision.

The law and guidance is listed at the end of the policy on **page number 19**.

#### The Care Act 2014

*A law passed in England in 2014 that sets out what care and support you are entitled to and what local councils have to do.*

### **3. This part is about how The Council must tell people about direct payments**

The Council will explain about direct payments through its website and through Adult Social Care Staff providing information when they carry out assessments. Information and advice will be given by the Direct Payments Team and through a variety of available publications, including this Policy. This information will tell people:

- What direct payments are
- How to request one including the use of Nominated or Authorised persons to manage the direct payment
- What the direct payment agreement is and how the Council will monitor the use of the direct payment
- The responsibilities involved in managing a direct payment and being an employer
- How to find information about making arrangements with social care providers
- How to find other organisations who offer support to direct payment holders, and information on local providers
- Stories of other people who have direct payments and how they use them

### **4. This part explains what a direct payment is**

A direct payment allows a person to receive money directly from the Council so that they can choose how and when they receive their support by making their own arrangements instead of the Council arranging their care services. This can give the person (who receives the care) much more flexibility to the person and greater control over their care and support.

It means the person has more control and flexibility in choosing how and when they receive care and support as agreed in the Care and Support Plan, rather than needing to rely on the have the Council to do this for them. This can be a more creative way to meet the outcomes that matter to the person and can give more control over support and how it is delivered.

Following a Care Act needs assessment, if the person has eligible social care needs, the Council calculates an amount of money needed to meet those needs. This is called the Personal Budget. The personal budget will be enough to purchase the support to meet the outcomes that matter to the person which were agreed in the Care and Support plan. It will be stated on the Care and Support Plan.

There will also be an assessment to work out whether the person has to make a contribution of their own to the direct payment account. Help and support is available from the Financial Assessment Team to make sure that all Disability Related Expenditure has been taken into account and that the assessed contribution is correct.

People will also receive a welcome letter at the start of a direct payment that will outline the funding they will receive and also tell them if they have to contribute towards the costs of their care and support.

## **5. This part explains who can get a direct payment**

Anyone who is eligible for social care support from the Council can ask for a direct payment and the Council must offer a direct payment to everyone who meets the eligibility criteria for one. The following things will be considered by the Council to make sure that a direct payment is the right solution:

- Whether the person can make their own decisions about having and managing a direct payment (we call this having mental capacity to request and agree to a direct payment)
- If the person is not able to make their own decision about a direct payment, then someone can manage it on their behalf (we call this an Authorised person)

### Care Act Needs Assessment

*The way the Council will decide whether you need help or support because of age, disability or illness. Anyone who appears to have a need for care or support is entitled to a needs assessment.*

### Personal Budget

*Money that is allocated to you by The Council to pay for care or support to meet your assessment needs. The money comes from audit social care.*

### Disability Related Expenditure

*Money that has to be spent on things because of a person's disability, that would not have to be spent otherwise. This may be for things like extra laundry, high heating bills or special clothes. The law says that The Council should look at these expenses when it does a financial assessment.*

### Mental Capacity

*The ability to make a decision at the time it needs to be made. To do this, you need to be able to understand, use or weigh and retain information, and then communicate what you have decided.*

### Authorised Person

*Someone who can request and manage Direct Payments from The Council on behalf of a person who does not have mental capacity to do this themselves.*



- Whether the person (with capacity) would like someone else to manage the direct payment for them (we call this a Nominated person)
- The Council must be sure, that the person who will deal with the direct payment can manage it (with support from others if required)
- The Council must be sure that the use of a direct payment is the right way to meet the outcomes that matter to the person, which meet their assessed needs, and which were agreed in the Care and Support Plan

Sometimes the Council isn't allowed to give someone a direct payment. There are regulations which prevent the Council from agreeing a direct payment in some circumstances (there is a list explaining this at the end of the Policy)

There may be times when the Council does not think a direct payment is a suitable way to meet the persons eligible needs, such as when a person might be likely to spend the direct payment on things that the Council does not agree would meet the outcomes in the Care and Support Plan.

The Council will try to make swift decisions on direct payments, and where possible within 28 days of the request

## **6. This part explains about eligibility for care and support**

The Council is committed to support people to fully take part in their own assessment. This starts by making sure that they know the areas of eligibility which will be covered. The person will be able to look at a Pre-Support Plan ahead of an assessment with support from someone who knows the person well (if needed). The person may choose to be supported by the Nominated Person or the Authorised Person but could

### **Nominated Person**

*A person with mental capacity can choose someone to receive and manage Direct Payments on their behalf.*

### **Outcomes**

*An 'outcome' means an aim or objective you would like to achieve or need to happen – for example, continuing to live in your own home, or being able to go out and about.*

### **Care and Support Plan**

*A written plan after an assessment, setting out what a person's care and support needs are, how they will be met and what services will be covered by the direct payment.*

### **Pre-Support Plan**

*An information sheet which tells people exactly what the eligible areas are for care and support and helps people have time to think about them in advance of an assessment.*

choose someone else. This simple guide will go through the areas that the Council considers when deciding on eligibility for social care support.

The next step is for a social worker or social care practitioner to carry out an assessment to decide if the person has eligible social care needs that mean they require support to help them live their day-to-day life. The assessment considers:

- What is important to the person;
- What the person can and cannot do (with or without assistance);
- What assistance the person needs and how this impacts on their wellbeing;

Any support the person has already, whether this is paid support or from family or friends, and if this will continue. It is not mandatory for the person to consider the Pre-Support Plan before an assessment, but it can help inform them about what will be discussed regarding their care and support needs and eligibility. The information that is outlined in the Pre-Support Plan will be discussed and used to create a Care and Support Plan, describing the outcomes that matter to the person to ensure that their assessed needs are met so they can be supported to live their life the way they want to live it.

## **7. This part explains what happens if a direct payment Request is turned down**

Sometimes a request for a direct payment may not be agreed by the Council.

If the Council makes a decision not to provide a direct payment, the person will be advised in writing (or another way which is accessible to them with) and given reasons about which conditions they haven't met. The person will be told that they can appeal and what they can do in order to get secure a direct payment in the future. They will be given the Council's complaints procedure.

### **Complaints procedure**

*The procedure that Shropshire Council uses to process complaints. These can be formal or informal and all feedback is welcomed.*

If a direct payment request is turned down, the Council will discuss other ways of making sure the outcomes agreed in the Care and Support Plan are met.

Information about how to challenge the decision through the complaints process will also be provided and explained when the request is turned down.

## **8. This part explains how someone can have a direct payment if they lack mental capacity to ask for or manage one.**

If the person in need of care and support has been assessed as lacking mental capacity to request the direct payment or manage it, an Authorised Person can request the direct payment and manage it on the person's behalf.

An Authorised Person is someone who:

- Has been appointed as a Lasting Power of Attorney (we call this LPA for short) or Deputy appointed by a Court, to make health and welfare decisions for the person, or
- Another person that the LPA or Deputy agree is suitable to be the Authorised Person, or
- If there is no LPA or Deputy for health and welfare decisions someone who the Council considers is suitable to be the Authorised Person. The Authorised Person must be able to act in the person's best interests and manage the direct payment, with support if required. This will mean that the Authorised Person will sign the Direct Payment Agreement instead of the person with care and support needs.

The Authorised Person must let The Council know if they think that the person with care and support needs has regained mental capacity. The persons capacity to make decisions about a direct payment will be considered again at a reassessment of the care and support needs or if the Council is asked to consider it again.

If the Authorised Person is unwilling or unable to carry on with this role at any point, they should let the Council know.

The Council will always seek to understand the wishes and feelings of the person with care and support needs about appointing an Authorised person.

#### Lasting Power of Attorney

*Lasting power of attorney is where a person with capacity chooses someone to make decisions on their behalf about property and finances or health and welfare, if the time comes when the person is unable to make these decisions themselves.*

#### Court Appointed Deputy

*Someone appointed by the Court of Protection to make decisions on behalf of a person who lacks capacity to make those decisions. A deputy can be appointed to make decisions about property and financial affairs, or about health and welfare, or both.*

#### Best Interests

*Other people must act in your 'best interests' if you are unable to make a particular decision for yourself. When they are deciding what is best for you, they must take account of your wishes, feelings and beliefs, the views of your close family and friends on what you would want, and all your personal circumstances.*

### **9. This part explains how someone, with mental capacity to request a direct payment, can be supported to manage the direct payment**

A person with care and support needs, who is thinking about starting a direct payment, can choose someone to help them manage it. We call this role a Nominated Person. When someone is nominated to manage a direct payment on a friend or relatives behalf, they



have the responsibilities that go with it. This will mean that the Nominated Person will sign the Direct Payment Agreement and agree to the responsibilities explained in it.

The Council can agree for someone to be a Nominated Person if

- The person choosing them has capacity to make the request, they consent to the request and the Nominated Person agrees to receive and manage the payments
- The Council is not prevented from paying direct payments because of some of the rules it has to follow. These are explained at the end of this Policy.
- The Council is satisfied that the Nominated Person can manage direct payments either by themselves, or with whatever help they will be able to access
- The Council is satisfied that making direct payments to the Nominated Person is an appropriate way to meet the needs in question
- If the Nominated Person is unwilling or unable to carry on with this role at any point, they should let the Council know.
- If at any time the Nominated Person thinks that the person's mental capacity has changed, they should ask for a mental Capacity assessment.

## **10. This part explains the responsibilities of the Authorised or Nominated person**

When deciding whether someone can act as the Authorised or Nominated Person, the Council will, where they can, find out the views of the person with care and support needs. An Authorised Person must act in the person's best interests. Where there is a Nominated Person then the Council will have to check that making the direct payment is an appropriate way to meet the care and support needs, because the person themselves still has mental capacity to act but is choosing to have someone else to do this for them.

There may be occasions where someone is considered to be unsuitable by the Council to be an Authorised or Nominated person. This may be due to a concern about the person's safety, another kind of safeguarding issue, or where there is concern over a DBS report or a conflict of interest. It may also be concerns about financial issues or concern that the Authorised or Nominated person would not act in the best way for the person with care and support needs.

If the request is refused, the person will be provided with a written explanation. The decision can be

### **Safeguarding**

*The process of ensuring that adults are not being abused, neglected or exploited, and ensuring that people who are deemed 'unsuitable' do not*

### **Disability and Barring Service**

*A government organisation that checks people's criminal records, in order to prevent unsuitable people from working with children or adults who may be at risk of harm or abuse.*

challenged through the Council's complaints process. Alternative Nominated or Authorised Person(s) should also be considered.

### **11. This part explains how a direct payment is calculated**

Following a Care Act Needs Assessment, a Care and Support Plan will be written. This will look at the support the person already has, and the support needed from the Council.

This is then set out in a Care and Support Plan. This plan should be written with the person (they might want to involve the Authorised or Nominated Person too) and should be written in a way that is clear about what has been agreed. If the person then decides to use a direct payment, the Care and Support Plan will also say clearly which areas the money can be spent on and what the outcomes that matter to the person are.

The Council will then work out a budget to cover everything agreed in the Care and Support Plan. The amount the person will receive for their personal budget will be written in the Care and Support Plan and explained clearly in the welcome pack. It will include the cost of care and support, a weekly cost for payroll and a weekly cost for Insurance.

Redundancy costs are not included in the payment. Redundancy is a rare occurrence and the Council has decided that where redundancy costs occur the Council will meet them, taking into account any unspent funds in the direct payment account.

There is one set rate for paying Personal Assistants (PAs) and this may change each year. The current rates will be provided in the Welcome Pack. Occasionally there may be circumstances where an enhanced rate is required. In these situations, the request for enhanced rates needs to be made to the Social Work Team who will consider the Care and Support Plan and how the person's care and support needs can be met. The request for an enhanced rate will be made to the Team Manager and if approved it will be signed off by a Service Manager.

If the request is not agreed, the reasons will be given to the person in writing along with an explanation of how to challenge the decision. They will be given details of the Council's complaints procedure.

The Council does not routinely pay mileage to PAs to attend their place of work. However there are some exceptional situations where this can be agreed and included in the Care and Support Plan. This might be for example where a PA works several different shifts in one day requiring them to travel between home and work numerous times. They would not be paid for the first and last journey but those in-between can be considered.

## 12. This part explains things a direct payment can't be used for

Direct payments are an excellent way for people to make more creative choices about their care and support. However, the direct payment should only be spent on things which will meet the outcomes for the person's life which were agreed in the Care and Support Plan, which are safe and legal and promote the person's wellbeing.

There are a few restrictions in the law about things a direct payment cannot be spent on. The direct payment Agreement will also make these restrictions clear to the person or the Authorised/Nominated person when they sign it.

The direct payment cannot be spent on the following:

- Anything that is against the law
- Housing adaptations or improvements
- Medicines, healthcare and equipment the NHS would be expected to provide (this doesn't mean that a PA cannot support someone to a health-related appointment or therapy)
- Household bills
- Long-term residential care

### Residential Care

*Care in a care home, with or without nursing, for older people or people with disabilities who require 24-hour care. Care homes offer trained staff and an adapted environment suitable to meet a person's needs.*

### Direct Payment Agreement

*This is a contract between the person with care and support needs (or the Authorised/Nominated person) and The Council. It sets out all the rules and responsibilities for having a Direct Payment. It must be signed before a Direct Payment is made.*

The Council doesn't usually pay a direct payment for someone who lives in the same household to provide the support, but this will be considered where the Council considers it necessary such as to cover P.A sickness, specific cultural requirements or temporary gaps in recruitment,

Where an unpaid Carer has a direct payment in their own right, this money cannot be used to pay for support needed by the cared for person.

The Council has to account for how it uses Public Funds and so it will carry out financial check-ups to make sure the money is being spent, as agreed in the Care and Support Plan on meeting the outcomes that matter to the person. Further detail is provided in this Policy under the section headed "This part explains about monitoring **Direct Payments**"

### Public Funds

*Public funding is money that comes from the government and is then used to help the public such as by paying benefits or providing social care services.*

A person may sometimes need to vary how they spend the direct payment to achieve the outcomes that were agreed in the Care and Support Plan. Generally, this can be done without the need to seek approval first, as long as it can be shown that the change meets

the specified outcomes in the Care and support plan and approval is sought from the Council as soon as possible afterwards. For example, it might be that a social activity is no longer accessible, so the person uses the same amount of money to go to a different activity or someone may have a P.A to drive them to a meeting, but their P.A is sick and there is no time to find another, so the person takes a taxi to the meeting.

Sometimes a person may need to spend money urgently on something where the outcome has not yet been agreed in the Care and Support Plan, but there isn't always sufficient time to discuss this with a social worker first. A person can spend up to £100 of their direct payment in any one year to cover these types of events.

The spend of money must be clearly explained on the financial record kept by the person, either on the Spending Record (a helpful sheet provided at the start of a direct payment) or any record of their own and the Social Worker should be informed as soon as it is possible, in case a review of the Care and Support Plan is needed. If the outcomes are ultimately not agreed as necessary to meet the persons care and support needs, then the Council could ask for this money to be repaid.

#### Financial Record

*A record of spending from the Direct Payment account which can be sent into The Council when they do a financial check-up.*

### **13. This part explains what to do if the person is temporarily away from home.**

Sometimes things might happen in a person's life which affect the use of a direct payment.

There may be times when a person with a direct payment is ill or temporarily in hospital or temporarily away from home for another reason.

In these situations, the person should inform the Adult Social Care team as soon as possible. The Council will consider continuing the direct payment in full for a period of up to six weeks. Beyond this, the Council might agree to pay an amount to retain the services of the PA until the person with care and support needs is at home again.

### **14. This part explains about managing direct payments**

Anyone who agrees to be responsible for managing direct payments must be capable of managing them, either independently or with help. In line with the Councils vision (as set out at the start of this document) and this Policy for direct payments, support will be offered to build skills and confidence; for example, online training for individual employers. The Council's direct payment website link will be kept up to date with all resources and offers of support and training.

Anyone responsible for managing direct payments can use the direct payment to pay for help with payroll services to calculate wages, tax and pension. When this is required, it will be included in the Care and Support Plan and included in the amount of the direct payment paid to the person. In some circumstances, a managed account may be recommended. This means another organisation can be used to manage the money and payroll.

#### Managed Account

*A managed account is where a third party holds the Direct Payment money on behalf of the person in receipt of the Direct Payment.*

*This service is for those people who wish to receive a Direct Payment but where circumstances mean it would be more appropriate for someone else to manage the money.*

Once the person has decided to have a direct payment and the Council has agreed, they (or their Nominated / Authorised Person) will be asked to sign a direct payment Agreement before the payments begin.

The Direct Payment Agreement sets out the Council's responsibilities to the person and the person's responsibilities to the Council. If there is an Authorised or Nominated Person, they will sign the direct payment Agreement and will be responsible for its terms and conditions.

An Authorised Person or a Nominated Person acting on behalf of a person with care and support needs is in a position of trust and they are responsible and accountable for how the direct payments are used. This responsibility is given to them when they sign the direct payment Agreement.

### 15. This part explains how direct payments are paid

Direct payments have to follow the Council's usual financial policies and procedures (there is a list of these documents and where to find them at the end of this Policy.)

A direct payment must be paid into a separate bank account which is used solely for the purpose of managing the direct payment. This will be called the direct payment Account. It can be an existing bank account which has a zero balance.

#### Direct Payment Account

*This is a bank account set up just for a Direct Payment to be paid into. It will not attract interest and no other payments will be made into it.*

If the direct payment is a one-off payment rather than an ongoing payment then the rule about a separate bank account doesn't apply. An example of this might be a payment to a carer to have a day out when they need a break from caring, this would not need a separate bank account to be opened.



Where a Personal Budget has been agreed and the person is required to contribute towards their care and support, the direct payment will be paid into their direct payment Account with their personal contribution already deducted.

#### Personal Contribution

*The amount a person needs to pay towards the cost of social care services. Councils receive guidance from the Government on how much they can charge.*

The person will need to pay their personal contribution into the direct payment Account at least every four weeks to make sure there is enough money to pay for things to meet the outcomes that matter to the person.

The Council will pay the direct payment in advance every four weeks into the Direct Payment Account.

If it is assessed as necessary during a Care Act needs assessment, the Council may make an initial, or one-off payment; for example, to pay for agreed set up costs such as recruitment or training.

### 16. This part explains about being an employer

Direct payments may be used to employ a Personal Assistant/s (P.A). The person (or their Authorised/Nominated Person) will be given advice about the legal responsibilities as an employer. Information about this is available from the Social Work team, on the Shropshire Council direct payment website and in the Welcome letter.

As an employer, the person (or their Authorised/Nominated Person) must take out an insurance policy which covers employer's liability. The funding for this will be included in the direct payment, where it is necessary. There are various insurance companies who offer these Policies, but not all of them also include employment advice. The amount of Council funding is adequate to purchase an insurance policy that includes a level of employment advice.

People who have a direct payments do not **have** to carry out Disclosure and Barring Service (DBS) checks for people they employ through Direct Payments, however it is recommended, and the Council can provide support with this.

An exception to this is if staff are employed to provide services through direct payments paid for by direct payments to children or to people who have children, then they **must** have DBS checks.

Information about help and support with employment and employment issues can be found on the Shropshire Council direct payment website.

## **17. This part explains about using self-employed Personal Assistants (PAs)**

Self-employed workers are not paid through PAYE (Payroll) and they do not have employment rights. A self-employed PA may work for more than one person.

They declare their own income to HMRC, so Payroll is not required. A self-employed PA is not entitled to any holiday pay, sick pay, redundancy or other employment related payment.

Self-employed PA's must have their own public liability insurance – which they should show to the person, on request, before they commence work.

People can check if the PA has registered themselves as self-employed by asking to see their letter from HMRC which states their Unique Tax Reference Number (UTR).

If the person chooses to contract with a self-employed person, the Council's Finance Team will ask to see the person Unique Tax Reference (UTR) (full details are in the welcome letter, website and the Direct Payment Agreement)

### **Self Employed Person**

*A person is self-employed if they run their business for themselves and take responsibility for its success or failure. Self-employed workers aren't paid through PAYE, and they don't have the employment rights and responsibilities of employees.*

## **18. This part explains about using a service provider**

A service provider might be, for example a:

- Care Agency
- Day service
- Community based service

If the person wants to use their direct payment to buy support from a service provider, they should have a service agreement in place where relevant. This would describe the service, that they provide, that they have appropriate insurance and can meet the person's needs. Further detail is in the welcome letter, website and Direct Payment Agreement.

### **Service Provider**

*A service provider provides services to another party. The provision of services between a service provider and a 'Client' usually has some kind of service agreement.*

### **Service Agreement**

*An agreement can include any understanding between two parties about what they promise to do for each other.*

*To create a service agreement, all parties need to understand and agree about their rights and responsibilities.*

## **19. This part explains about employment related support**

Sometimes issues may arise when someone is employing PAs which the person will need to address. If advice and support is needed with this, the Social Work Team or the Council's

Direct Payment Team can provide details of where to find advice and support. Information is also on the Shropshire Council direct payment website.

Generally, where directly employed PAs are used, the Insurance Provider should also provide employment related advice, or there are a number of external agencies.

In some situations the employment issue is extremely complex and cannot be resolved after seeking advice from all the usual channels. In these circumstances, the person will be able to ask the Social Work Team to consider the cost of specialist employment advice as a one-off payment, within the direct payment.

Whilst the Direct Payment Team cannot directly assist by offering formal legal advice with employment issues, they can provide general advice and support with the following aspects of Direct Payment management:

- How to write adverts and job descriptions to advertise for a PA
- Advice on how to short list and interview potential candidates
- Advice on how to take up and check references
- How to access the DBS checking service as required
- How to create contracts of employment
- What to include in a Grievance and Disciplinary Policy
- How to find suitable training providers for PA's if required
- Employment Guides, and 'Skills for Care' guides as required
- How to access a Payroll Service
- How to access an Employer Liability Insurance provider
- How to do a home-based risk assessment

## **20. This part explains about monitoring Direct Payments**

The Council has to carry out financial check-ups on the direct payment to make sure that:

- The person has the right amount of money to meet the outcomes identified in the Care and Support Plan.
- That the direct payment is being managed as expected and as agreed
- The money is being used as agreed in the Care and Support Plan.

The Council will need to check how the money is being spent and that any personal contribution from the person is being paid.

A build-up of money in the direct payment Account might suggest that a review is needed of the person's care and support. If the direct payment money starts to build up because it is not being used, the Council will contact the person to find out why. There may be good reasons for this such as:

- awaiting invoices from a care provider
- a contingency that hasn't yet been spent
- respite funds that have not yet been used
- money set aside for training

#### Contingency

*This means planning for something which might happen in the future.*

Everyone will receive a 'Welcome Pack' which contains all the information they need and details of where to get advice and support. The Council will provide clear and simple information to help people who have a direct payment keep records and know what information they have to provide at each financial check-up, as part of the welcome pack.

Everyone who has a direct payment will have a financial check-up after three months, then after six months, and after that, a financial check-up will generally be every twelve months. These check-ups are not the same as reassessments of the person's care and support needs.

Re-assessments of the person's care and support needs are expected to take place every 12 months but can be more often if needed, for example if a person's circumstances change, they can request a reassessment at any time.

#### Re-assessment

*This is when someone from Adult Social Care carries out a new assessment of a person's needs for care and support.*

Financial check -ups will always be proportionate. This means that if all the evidence indicates that the person is managing the budget well and spending money on the things that were agreed in the Care and Support Plan; a simple check -up will be adequate. If the person's situation is more complex, then a more detailed conversation may be appropriate to explain the paperwork and understand the paperwork in place to support the person.

Following the financial check -up, the Council will contact the person with care and support needs (or the Authorised/Nominated Person) to confirm that the check-up is completed, or that further information is needed in order to complete the check-up. The letters which are sent to people will always have the date that the information is needed by.

The Council can also choose to do a re-assessment or a financial check-up at any time for any of the following reasons:

- there has been a change in the persons mental capacity
- the persons safety and welfare is causing concern
- there are concerns about how the direct payment is being used
- there has been a change which might affect the support arrangements and how they meet the outcomes for the person's life.

A re-assessment might mean that the persons needs have changed. The persons needs may have increased or decreased, in which case the Care and Support Plan will need to change. If the care and support plan changes then the Council can change the amount of the direct payment, this means it could increase or decrease.

### **21. This part explains about ending a Direct Payment**

The Person who receive a direct payment, (either for themselves or for someone else) may decide at any time that they no longer wish to receive direct payments. They should try to give 4 weeks written notice to the Council, but the Council can agree to a different notice period based on the person's circumstances.

The Council can end or suspend a direct payment if the person does not keep to the terms of the direct payment Agreement. Before reaching this decision, the Council will do everything reasonable to support people to resolve any issues.

As a last resort, a direct payment will be stopped or suspended temporarily, where:

- It has been used for things which weren't agreed in the Care and Support Plan and when queried, there wasn't a reasonable explanation for this change.
- The Council is concerned that the person is no longer able to manage a direct payment, even with support.
- The Council is no longer allowed to pay a direct payment because of the Regulations about this (see the list at the end of this Policy)
- The Council has tried to resolve some financial concerns and carry out check-ups of the account, but the person has not responded to any communications.
- The person hasn't told the Council about an important change in circumstances which affects the direct payment, such as a change in benefits.



- The Council has calculated a contribution that the person needs to pay towards their care and support, but the person hasn't paid it, even after support and assistance has been provided by The Council or advocate.
- The person has moved out of the Shropshire Council area.
- The person has moved into residential care permanently.
- For any reason where the Council considers that it is no longer appropriate to make a direct payment to the person.

If this happens, the direct payment money paid in advance will be recalculated. After this calculation, the person may be asked to return some or all of the direct payment to the Council, depending on the reasons for stopping the direct payment.

If the Council stops or suspends the direct payment, they will arrange another way of making sure the person's care and support needs are met.

## **22. This part explains about repaying money to the Council**

If the Council decides that a direct payment needs to be repaid because of any of the reasons already described, the person will be given an explanation and details of how to repay any money, this may be in one lump sum or spread over time, depending on the person's circumstances.

The Council will always act in a reasonable manner and will support people who receive direct payments to resolve any issues. If the person does not agree with The Council's decision, they should raise this in the first instance with the Social Work Team. The Social Work Team will direct the person as to whether it can be dealt with by the Social Work or Direct Payments Team, or whether the person should follow the Council's complaints process.

The Council may also ask the person to repay any money which is unspent and was not needed to meet the outcomes for the person's life, set out in the Care and Support Plan.

In the event of a person dying and there being unspent money in the direct payment Account, the money cannot be used to pay for any funeral costs, but the direct payment can be used to contribute to redundancy costs where these were not included in the direct payment. Similarly, if there are unpaid invoices or staff wages for support provided prior to the death, these will be paid from the unspent direct payment Account.

Any remaining unspent amount in the direct payment Account belongs to the Council and in these circumstances, the Council will ask for return of the unspent amount. It is important that services or service agreements are cancelled in a timely way, following a person's death.

### **23. This part explains what to do if you disagree with a decision from Shropshire Council about a direct payment.**

People have a right to ask for a decision to be looked at again and have a right to access advocacy as part of this process. This should initially be addressed to the relevant Social Work Manager who will review the decision.

People still have a right to complain and should use the Council's complaints procedure, which can be found online at [www.shropshire.gov.uk](http://www.shropshire.gov.uk) or is explained at the end of this Policy.

### **24. This part explains The Council's duty to protect public funds**

Like all local authorities, Shropshire Council has a legal duty to protect the public funds that it administers. This means it will take seriously anything which may be considered as fraud or unlawful.

### **25. This part explains how The Council use and protect personal information**

The Council will only share the Personal Data of the recipients of direct payments in line with the Data Protection Legislation with relevant Health and Social Care Partners, when it needs to share this in order to meet the person's social care or health needs.

#### **Personal Data**

*Any data which relates to an identifiable person.*

The person will sign their agreement to this when they sign the Direct Payment Agreement and will agree that the Council can hold and use their Personal Data to provide the direct payment.

This Personal Data will be used as part of assessing and reviewing the direct payment ongoing and to make sure it is used in the right way to keep the person safe.

The person who decides to have a direct payment will be informed of their right to know what Personal Data is being held and how the Council may use it.

The Council Policy on this can be read on the weblink here or people can ask to be sent a hard-copy. <https://www.shropshire.gov.uk/media/14524/data-protection-policy-v10.pdf>

The person (or the Authorised/Nominated Person) should be made aware of their responsibilities under GDPR. Further information about this is provided in the welcome pack.

## Extra Reading

Regulations and guidance, relating to this Policy:

- The Care Act 2014 (this provides guidance regarding eligibility)  
<https://www.legislation.gov.uk/ukpga/2014/23/contents/enacted>
- Care and Support (Direct Payments) Regulations 2014  
<https://www.legislation.gov.uk/uksi/2014/2871/contents/made>
- Care and Support Statutory Guidance  
<https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance>

Other relevant legislation includes (but not limited to):

- Mental Health Act 1983 (MHA)
- Mental Capacity Act 2005 (MCA)
- Equalities Act 2010
- Human Rights Act 1998 (HRA)
- General Data Protection Regulation (GDPR)
- Employment Rights Act 1996.
- National Minimum Wage Act 1998

All Shropshire Council Policies can be found on the Shropshire Council website:  
[www.shropshire.gov.uk](http://www.shropshire.gov.uk) (search for 'Policies')

## Cases where a direct payment cannot be made

A direct payment cannot be made to:

- Offenders on 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 on 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 licence 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
- People subject to equivalent provisions under Scottish criminal justice legislation.