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V0.4	Jacquie Bickers	Key decisions signed at Business Meeting	
V0.5	Jacquie Bickers	Agreed changes to text following BM for sign off	
V0.6	Jacquie Bickers	Final comments from TMs and CSC	
V0.7	Jacquie Bickers	Amendment to Surplus section	
V0.8	Jacquie Bickers	Addition of Carry over leave section	

Contents

1. Introduction

Direct payments enable people who are assessed as being in need of care and support to receive money directly from Portsmouth City Council so they can choose how and when they receive their support. This means that each direct payment recipient can arrange and pay for social care support to an agreed budget, instead of the Council arranging services for them. This can give the person (who receives the care) more flexibility and greater control over their care and support.

The Care Act 2014 (Sections 31-33) and the Care and Support (Direct Payment) Regulations 2014 set out the legal framework for Local Authorities to provide adults with independence, choice and control over how to meet their care and support needs through the use of direct payments. For children, the legal framework is set out in the Community Care, Services for Carers and Children's Services (Direct Payments) (England) Regulations 2009.

Councils have a duty to make direct payments available to anyone with eligible needs that is capable of managing direct payments and would like to receive them. This includes:

- Adults, 18+ who have been assessed as eligible to receive help from the Council in arranging care and support to meet their unmet needs in a setting other than a long term stay in a care home;
- People with parental responsibility for a child with disabilities until the young person reaches 18 years of age;
- Young people aged 16 and 17 years of age;
- Disabled people with parental responsibility for a child(ren);
- Carers aged 16 and over, for their own assessed needs, i.e. for services to support their caring role and to maintain their own health and wellbeing;
- An appointed authorised person for someone who lacks capacity.
- People whose care is joint funded by the Council and the NHS

2. Purpose

This Policy sets out how Portsmouth City Council will meet its statutory duties in administering and monitoring direct payments across Adult Social Care and Children's Services to provide a consistent and equal access approach.

Portsmouth City Council (the 'Council') is committed to fostering wellbeing and supporting people to live as independently as they can with as much choice and control as possible over their lives. Direct payments are a way of giving people that choice and control.

The Council will promote and recommend direct payments but recognises that direct payments may not be right for all people or they may not choose to have a direct payment. Individuals will have a choice between direct payments and services commissioned on their behalf. In some instances people may choose to have their needs met by a mixture of direct payments and direct provision.

3. Information and Advice

The health and social care practitioner should be able to explain what direct payments are and how they can used as part of the assessment and support planning process. The direct payments team can give further specialist advice about the different options for taking a direct payment.

Other sources: www.skillsforcare.org.uk/Home.aspx

4. Eligibility for a direct payment

To meet eligible needs following a Care Act assessment in adult social care, a Family Support Plan (Tier 3) or Single Assessment (Tier 4) for children's social care, the Council will calculate an amount of money to meet those needs. This is called the personal budget. The personal budget will be enough to purchase the support to meet those eligible social care needs and the outcomes set out and agreed in the care and support plan.

The Council will 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 right for the person:

- Can the person make their own decisions about having and managing a direct payment (have 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 will have to manage it on their behalf (we call this an Authorised person);
- Whether the person would like someone else to manage the direct payment for them (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 person's outcomes.

5. Nominees and Authorised Persons

5.1 Nominee

Individuals that have the capacity to request a direct payment but need assistance to manage them can still have a direct payments via a nominee. A nominee is someone the person has nominated to manage the direct payments on their behalf. Or is a person with parental responsibility for a disabled child or young person.

Before a nominee is appointed, the Council will need to be satisfied that:

- Direct payment will meet the person's needs.
- The nominee is not ineligible to manage the direct payment (appendix 2).
- The person is willing and able to take on the responsibilities of acting as the nominated person - this means receiving direct payments and arranging support. If the nominee needs help and support to do this, the direct payments team can advise on this and the different options for taking a direct payment.
- The nominee will act in the person's best interests and will enable the person to as much as possible, retain control and independence over their care and support arrangements.
- Given all of the circumstances, it is appropriate to make direct payment to a nominee.

The nominee will be required to sign the direct payments agreement to become legally responsible for its administration and the requirements set out in the direct payment agreement. The nominee is expected to act in the best interests of the person the direct payment is for.

The nominated person who manages the account will not be paid for services from the direct payments account.

5.2 Authorised Person

If the person in need of care and support has been assessed as lacking mental capacity to consent to the direct payment or to 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 LPOA for short) or Deputy appointed by a Court, to make health and welfare decisions for the person, or
- Has been appointed as a Lasting Power of Attorney (LPOA) or Deputy appointed by the court to make Property and Financial Affairs decisions for the person, or
- Another person that the LPOA 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 person's capacity to make decisions about a direct payment will be considered at a reassessment of their 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.

Portsmouth City Council can make a direct payment to a nominated or authorised person following a request, if all five conditions under section 32 of the Care Act are met.

When the person is not formally authorised under the Mental Capacity Act 2005 to make personal welfare decisions for the adult, Portsmouth City Council and any person who is so authorised will agree that the person making the request is a suitable person to make decisions about the individual's care and support and to receive and manage the direct payment;

- The Regulations do not prohibit the individual's needs from being met through direct payments.
- Portsmouth City Council is satisfied that the authorised person will act in the person's best interests in arranging for the provision of the care and support through the use of a direct payment and that they will manage the direct payment in the individual's best interests;
- Portsmouth City Council is satisfied that, the authorised person is capable of managing the direct payment either independently or with support;
- Making direct payments to the authorised person is an appropriate way of meeting the individual's needs.

5.3 Responsibilities of the Nominated or Authorised Person

When deciding whether someone can act as the nominated or authorised person, the Council will, where they can, find out the views of the person with care and support needs. Where there is a nominated person the Council will have to check that making the direct payment is an appropriate way to meet the care and support needs. This is 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 a nominated or authorised person. This may be because the person does not meet the conditions set out in 5.1 or 5.2, because of a safeguarding concern, or where there is concern about financial issues or concern that the nominated or authorised 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 which will be signed off by the Deputy Head for the relevant service in adult social care and the Service Manager for the relevant service in children's social care. The decision can be challenged through the Council's complaints process. Alternative nominated or authorised Person(s) should also be considered.

6. Transition from Children's Social Care to Adult Social Care

A young person aged 16 or 17 can receive direct payments if they are assessed by the Council as being eligible and can consent to taking a direct payment either on their own or with support. This will be looked at by the health and social care practitioner in children's social care. Direct payments can also be made to the person who has parental responsibility for a disabled child until the child reaches 18.

If the young person will likely have eligible needs when they reach 18 years of age, they will, as part of their transition plan have a Care Act assessment. This assessment will identify their eligible social care needs as a young adult. The young person will need to consent to an assessment under the Care Act if they have capacity to do so. A financial assessment will also be undertaken to consider if the young person will be required to contribute towards the cost of their care and support.

For a young person or adult carer who already has a direct payment and wishes to continue, a new Direct Payment Agreement will need to be signed based on the outcome of the Care Act Assessment. If the young person has been assessed to lack the mental capacity to consent to the direct payment, it may be appropriate for the person with parental responsibility to manage the direct payment in the role of an Authorised Person subject to the requirements set out in 5.1 and 5.2.

7. How will the direct payment be calculated?

Following an assessment to determine eligible needs, a support plan be written with the person. The support plan will look at assistance that is already in place and the support from the Council to clearly set out what has been agreed to meet eligible needs and the outcomes the person would like to achieve.

The Council will work out a personal budget to cover what has been agreed and this will be written in the support plan. If the person decides to take a direct payment, the support plan will clearly set out how the money will be spent for example, to get support from a care agency or to employ a personal assistant(s).

8. Paying for care - financial assessment (adult social care)

As part of the assessment for adult care and support needs we will undertake a financial assessment to find out whether the person will need to contribute towards the cost of the care. The amount to be paid will depend on the person's financial circumstances. Some people may get some help towards the cost of their care and support, while others will have to pay for their care from their savings and income.

A member of the financial and benefits (FAB) team will visit to discuss the options and can help the person to claim any benefits they may be entitled to. The team member will ask to see proof of income, savings and investments. We will also ask about any care and support services or equipment that has already been paid for. The financial assessment will consider the person's ability to contribute towards the care of cost.

9. What can the direct payment be used for?

Direct payments are to be used to pay for support and activities to meet the assessed eligible needs and outcomes agreed in the support plan. The direct payment should only be spent on things which are safe and legal and promote the person's wellbeing.

Any significant changes to the use of the direct payment that is not specified in the support plan should be discussed with the allocated health and social care practitioner who will seek agreement from their manager prior to the expenditure being incurred. If there is no allocated worker, the person will need to contact the adult service helpdesk or the locality team for children's services, for further advice and to determine if an unscheduled review is required.

Direct payments may be stopped and/or recovered if the direct payments are used for items, services or activities that do not meet the assessed eligible needs and outcomes agreed in the support plan.

If the Council decides to stop making direct payments, four weeks written notice will be given, setting out the reasons for that decision. The Council will, as part of this process, consider representations made by the person, nominee or authorised person. The final decision will rest with the Deputy Head of Service for adults and the Service Manager for children's. The responsible manage will ensure that written reasons of the Council's decision, following any reconsideration of the decision to stop direct payments, are given to the direct payment recipient. The person should be given details of the Council's complaint process should they wish to challenge the final decision.

10. What can the direct payment not be used for?

Direct payments allow people to make more creative choices about how to meet their eligible needs and outcomes agreed in their support plan. There are however some restrictions on what the direct payment can be used for. The Direct Payment Agreement will make clear what these restrictions are and include the following:

- Anything that is illegal;
- Debt repayments, investments or gambling;
- Alcohol and Tobacco;
- Cash payments except small amounts that have been agreed in exceptional circumstances;
- Housing adaptations or improvements;
- Medicines, healthcare and equipment the NHS would be expected to provide;
- Household bills, including food shopping;
- Long-term residential care.

The Care and Support (Direct Payments) Regulations (2014) do not allow the direct payment to be used to pay for care from a close family member living in the same household. This applies to a spouse, partner or civil partner, as well as close relatives such as parents or parents-in-law, children or children-in-law or stepchildren, grandparents and grandchildren, brother or sister, aunt or uncle, spouse or civil partner of any of these people.

There may however be short-term exemptions or specific circumstances that make it necessary to employ a person from the same household such as a relative moving in to provide respite care cover. This will need to be agreed at the time of support planning or where a request is made to meet the specific needs of the person. All requests will need to be discussed and signed off by the Deputy Head of Service or Service Manager.

It may sometimes be necessary to vary how the direct payment is spent to achieve the outcomes that were agreed in the support plan. 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 and are within the agreed budget.

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. Sometimes a person may need to spend money urgently on something where the outcome has not yet been agreed but there is insufficient time to discuss this with a health and social care practitioner first. In these circumstances the expenditure should be discussed with the health and social care practitioner at the first opportunity.

The Council, as a public body, 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 support plan. The direct payments team will conduct these checks three months after the start of the direct payment and thereafter annually unless more frequent financial checks are indicated.

SETTING UP A DIRECT PAYMENT

11. Available support to take a direct payment

The direct payments team will support the person in setting up the direct payment by ensuring they have all the information and resources required to manage the direct payment. This support will depend on whether the person wishes to manage the direct payment themself, use a payroll provider for a managed account or employ their own personal assistants.

12. Taking a Managed Account Service

Where an individual wants the benefits of receiving a direct payment but does not wish to take on all the responsibilities of administering the financial element of the account, then a managed account service is an effective alternative. A managed account service ensures that no one is excluded from having a direct payment to manage a personal budget for their eligible care and support needs.

Different providers may offer different services such as:

- A payroll service if you employ your own PA(s);
- Making payments to your care and support providers for services such as respite, day services, domiciliary care;
- Managing other related payments such as insurance;
- Managing all of the returns and paperwork associated with your direct payment account.

The managed account service will make sure that:

- All the care and support related services are paid for correctly and on time;
- The direct payment is only used on services agreed in the support plan;
- The direct payment is managed in accordance with the law and with the Portsmouth Direct Payments Policy.

The managed account service cannot support the person with other aspects of their care and support, such as the day to day management of PA(s).

13. Use of Agencies (adult social care only)

The direct payment recipient may wish to use a domiciliary care agency to provide their care. If the person chooses to use an agency, they must ensure the agency is registered with the Care Quality Commission (CQC).

The direct payment recipient will have choice and control over their care as they will make arrangements directly with the agency of their choice to agree how they wish to meet their outcomes. The staff will usually be employed by the agency and the agency will be responsible for managing the staff and will pay their wages. The care agency will invoice the direct payment recipient for the care provided and that person will be responsible for paying the invoices directly from their direct payment.

14. Becoming an employer - personal assistant(s)

Many people use their direct payments to employ a personal assistant (sometimes referred to as a PA). Some PAs are self-employed, however if the person decides to directly employ a personal assistant, the person managing the direct payments will need to:

- become an employer;
- ensure a contract of employment is in place;
- manage the employee;
- pay the employee's wages;
- keep simple employee records;
- purchase Employer's Liability Insurance;

- have a backup plan in place to cover the employee's absences and holidays, support will be provided to prepare this;
- be aware of and comply with employment rights legislation, including the Equality Act 2010. This law prohibits discrimination on the basis of protected characteristics such as age, disability, gender, race, and religion. Employers should ensure fair treatment of their PAs, providing a safe and inclusive working environment.
- calculate and record holiday entitlement;
- keep a timesheet record of the hours worked;
- inform payroll of hours, holidays and any changes to employment e.g. sickness, pregnancy;
- keep health and safety records;
- obtain legal advice (free legal advice is available via the insurer) if there are any changes to employment;
- check the employment status of the personal assistant to ensure they have the right to work in the UK (guidance is provided);
- provide the PA with a pension if they are eligible (managed by the payroll provider);
- advise the direct payments team of any employment changes.

The rate for employing personal assistants is based on the National Living Wage (as the starting point) plus an allowance that gives enough money to meet the costs of being an employer, known as "on-costs." If it is assessed as necessary during the assessment, the Council may make an initial, or one-off payment; for example, to pay for agreed set up costs such as insurance.

If a variation to the personal budget is required because, for example, a temporary increase in care is needed. The health and social care practitioner will need to discuss with their Team Manager and if approved it will be signed off by the Deputy Head of Service or Service Manager with an indication of how long the increase is for and if a review is indicated.

The Council will take into account its responsibility for fair treatment of people with care and support needs and our responsibility for managing public money, when making any decision to agree a personal budget increase.

15. Employment related support

As an employer, the direct payment recipient will be given advice about their legal responsibilities. Information about this will be available from the direct payments team when the direct payment is being set up.

The Council's direct payments team will provide all the resources needed to employ a PA such as providing template employment contracts and signposting to services that provide ongoing support.

On occasion, issues may arise when employing PAs that require further action. Whilst the direct payments team is unable to give specialist employment advice, the PA Noticeboard (PAN) www.portsmouth.panoticeboard.org.uk has information about recruiting a PA and the direct payment recipient will be directed to the website.

The PAN can provide support with:

- 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;
- Template contracts of employment;
- How to access free online training and training available for a fee;
- Employment Guides, and 'Skills for Care' guides as required;
- How to access a Payroll Service;
- How to access an Employer Liability Insurance provider;
- Health and Safety information.

16. Employment checks - Disclosure and Barring Service (DBS)

The Council strongly advises that as part of the process of employment, the DP recipient carries out a Disclosure and Barring Service (DBS) check on their potential personal assistant before employing them – this is a check on criminal offences/convictions relating to the potential Personal Assistant.

The Council does not insist that DBS checks are carried out on potential personal assistants, who will be working only with adults, recognising that the spirit of direct payments is to put choice and responsibility in the hands of the people taking the direct payment. It should be emphasised however that a DBS check is their right as an employer and can provide essential safeguards. The Council will include the cost of the DBS check with the direct payment personal budget.

People that are employed to provide services to children or to people who have children, **must** have DBS checks. If a child (under 18) is living or visiting the place of work, the PA **must** have a DBS check. This is a legal requirement and the PA(s) cannot start work until the DBS clearance is checked. Portsmouth City Council will arrange the DBS check on behalf of the employer.

17. Self-employed personal assistants (PA)

The direct payment recipient may choose to take on a self-employed PA with their direct payments. If they decide to do this, they need to be made aware of the following:

- It is important to ensure that HM Revenue & Customs agree that the PA may be treated as self-employed and will therefore be responsible for paying their own tax and national insurance. Being self-employed or employed (a worker's "status") is not a matter of choice: it depends on the terms and conditions under which the PA is engaged. More guidance is available from the HM Revenue and Customs web site: www.gov.uk/employment-status/selfemployedcontractor
- There is a Status Customer Service Team with whom the person can discuss their PA's status. The telephone number is: 0300 123 2326.
- It is especially important to confirm whether the PA should or should not be treated as self-employed. If the PA's status is wrong, the DP recipient could end up having to pay tax, NIC and possibly penalties to HMRC. If the PA claims to be self-employed and the person is not sure what to do, they should contact the Direct Payment Support Team on 02392 437896 for adults and the Finance Team for children's services.
- A PA might be treated as self-employed for tax purposes but have a different status in employment law. An employment tribunal or court may still make a decision that they

are a worker or employee for employment rights purposes. This means that a PA who has been treated as self-employed could claim they have, for example, been unfairly dismissed or have missed holiday pay. As the employer the direct payment recipient would be liable for any settlement. If a PA who is treated as self-employed has been paid, the person should ring the ACAS Helpline on 0300 123 1100 to discuss this with them. They can also contact the Direct Payment Support Team or the Finance Team in children's services for guidance.

- As for all PA related employment, the Council strongly advises the direct payment recipient to undertake a DBS check for self-employed 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.

The direct payments team will run through a checklist with the direct payment recipient and the PA to ensure they are genuinely self-employed in the work they will be doing for you. This will include checks such as public liability insurance and registration with HRMC. A working agreement will also be provided for you both to be completed before work commences.

Further information can be found here. *Understanding the employment status of personal assistants (PAs) A guide for individual employers.* **Skills for Care.**

18. How will the direct payment be paid?

The Council will pay the direct payment every four weeks in advance to the person who is managing the direct payment.

Direct payments paid into a prepaid card account using the Council's contracted provider (EML) is Portsmouth City Council's preferred method of making the direct payment for the purposes of effective financial management of the payment. However, this does not prevent payment for the direct payment being paid into a bank or building society account set up specifically for the purpose of receiving a direct payment.

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. For adults, the assessed contribution towards the cost of care and support will then be invoiced and paid separately.

19. Direct payments for carers

A person that provides unpaid care and support to someone who could not manage without this as an unpaid carer is entitled to a Carers Assessment. If the assessment identifies that the person has need for support because of their caring role, then they may be offered a carers direct payment.

A carers' direct payment is a sum of money provided by the Council directly to a carer to enable them to have a fulfilling life outside of caring and so that they can continue to care for the person in a way that they choose. A carer's direct payment is non chargeable and can be provided as a one off short break or a direct payment for a sitting service. The amount will depend on the carer's assessed needs and the outcomes they wish to achieve. It must support the person in their caring role to enable them to keep well and healthy.

Some examples of how a carers direct payment could be used to meet eligible needs are:
- Managing the impact of caring on their mental health – funding a short break away;
- Managing the impact of caring on their physical health – funding a year's gym membership or supporting the person to attend their own medical appointments
- Managing the impact of caring on their relationships – funding for a family day out
- Managing the impact of caring on their time - using the direct payment for a sitting service to enable the carer to have some time to themselves.

The carers direct payment is provided to support carer needs which arise because of their caring role so it cannot be spent on:
- day-to-day living expenses such as utility bills;
- anything that is deemed to be illegal or if it does not keep you safe and well.

All receipts relating to how the money has been spent should be kept, as these may be required for audit purposes. If evidence for how the money has been spent is not provided, the Council may ask for the money to be repaid.

MANAGING A DIRECT PAYMENT

20. What are the person's responsibilities?

When the person chooses to receive a direct payment, they will be required to meet certain duties and obligations. These include:

i. Ensuring that services are in place to meet assessed eligible needs when they are needed.
ii. Ensure there is a contingency plan or back up arrangement in place if the unexpected happens, or things go wrong. This could be an emergency contact or, an arrangement with a care agency so they can provide care if the personal assistant is unavailable.
iii. Spending the direct payment on services and activities that meet assessed eligible needs as detailed in the support plan.
iv. Submit to the direct payments team bank statements, pay slips, invoices and receipts on a quarterly basis for those on a traditional direct payment, that is, paid into a bank account.
v. Keep financial records, including timesheets, invoices and receipts, for six years as part of the legal requirements of HM Revenue and Customs (HMRC). The direct payments team can request evidence of the person's direct payment expenditure at any time for audit purposes.
vi. Making arrangements to secure appropriate services with help if necessary and agree to comply with all legal requirements that may arise in making such arrangements.
vii. Advising the direct payments team of any change in adult income/benefits/capital as this may change the amount they are expected to pay. Failure to advise the team of such changes could result in contributions being backdated and any backdated sums would be recovered from the direct payment. The person will be liable to re-pay these funds and meet ongoing client contributions.
viii. Not using the direct payment to purchase a service from any person living in the same household unless explicit prior agreement has been given to do so.

ix. Not paying for a service before the work is complete, so payment must never be made in advance.
x. Notifying the direct payments team immediately of any changes in circumstances which may affect entitlement to direct payments. Examples of changes are: hospital admission, being away for a period of more than 28 days or if the service is no longer required.

21. What are the Council's responsibilities?

Portsmouth City Council has a duty to:

i. Ensure that the person is meeting the requirements for receiving direct payments as explained at the start of the direct payment.
ii. Make certain the person/direct payment recipient is meeting the eligible care needs as set out in the support plan. To meet this responsibility, a health and social care practitioner will review the care at least annually to see if needs have changed. If needs have changed, the Council will ensure the person is receiving the right support;
iii. Make sure the person has the services and support they need, if the person/direct payment recipient decides that they do not wish to pursue or continue with direct payments, for example, receiving direct provision organised by the Council.
iv. Pay the direct payment money as agreed into the managed account, direct payment pre-paid care account or bank account, as long as the person continues to meet the criteria for receiving a direct payment;
v. Reclaim direct payment money that is unspent (outside of contingency arrangements) or is not spent as agreed in the support plan;
vi. Monitor the direct payment spend.

22. Monitoring the direct payment

The Council, as a public body, has to account for how it uses public funds and so the direct payments team will carry out financial check-ups to make sure that:

- The person has the right amount of money to meet the outcomes identified in the support plan;
- That the direct payment is being managed as expected and as agreed;
- The money is being used as agreed in the support plan. The Council will need to check how the money is being spent and that any personal contribution, insurance, payments to HRMC and pensions is being paid.

New direct payment recipients on a prepaid card or managed account will have monthly audits for the first three months and will then be audited on an annual basis.

Reviews 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 review/reassessment at any time.

Financial checkups will always be proportionate. As part of the financial audit, the Council reserves the right to request further information if needed in order to complete the audit.

23. Surplus

There will be times when the direct payment recipient builds up a surplus of funds in their direct payment account. There may be good reasons for this such as:

- awaiting invoices from a care provider;
- payments to HRMC;
- a contingency that has not yet been spent;
- respite funds that have not yet been used;

High balances are monitored by the direct payments team and if further information is required about the cause of the high balance, the person may be contacted by the health and social care practitioner to discuss the reason with them.

A continued surplus may indicate the direct payment recipient is not managing their direct payment or may indicate a review is required. In which case, the health and social care practitioner will need to follow up directly with the direct payment recipient.

24. Carrying leave over from one year to the next

There is no statutory right to carry leave over. All entitlement to leave must be taken in the year that it is accrued and cannot be carried forward to the next year. This is because the employer must provide their PAs with paid time off to ensure their health and safety.

So that the worker does not lose any unused leave entitlement, it is the responsibility of the employer to ensure the following three conditions are met:

- The worker must be given the opportunity to take paid annual leave;
- The worker must be encouraged to take paid annual leave;
- The worker must be informed that the right to paid leave will be lost at the end of the leave year, if not taken during the leave year in which it was accrued.

Exceptions to this may be agreed only if a worker cannot take all their leave entitlement because they are already on a different type of leave (for example sick, maternity, or parental leave).

SUSPENDING OR ENDING DIRECT PAYMENTS

25. Suspending a direct payment

There may be circumstances in which the Council suspends the direct payment. An example might be where there are safeguarding concerns or when an individual does not need assistance for a short period because of a hospital admission

If a person requires a stay in hospital, this does not necessarily mean that the direct payment will be suspended. The impact of a suspension will need to be considered in respect of the person having to break the employment contract with a personal assistant, causing distress and a lack of continuity of care when discharged from hospital.

Where a direct payment recipient is employing a personal assistant, continued payment of the individual’s assessed contribution is also required to ensure there is no risk to employment contracts.

If a nominated or authorised person’s stay in hospital exceeds 28 days, the Council would expect an alternative nominated, or authorised person to manage the direct payment, or may offer Council supported direct payment administration as a short term support. If there is no suitable alternative authorised or nominated person, the Council would look at a Managed Account.

26. Ending a direct payment

The person who receives a direct payment, (either for themselves or for someone else) may decide at any time that they no longer wish to receive direct payments.

Four weeks written notice should be given 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 where:

- There is evidence of misuse of the direct payment or suspected fraud;
- The direct payments has been used for things which were not agreed in the support plan for which there is no reasonable explanation when queried;
- 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 (see appendix 1);
- 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 has not told the Council about an important change in circumstances which affects the direct payment, such as a change in benefits.
- The person has not paid their assessed contribution.

If after an investigation, Portsmouth City Council finds there is evidence of misuse or fraudulent use of the direct payment, the Council will require either full or partial repayment of the direct payments.

27. Death of direct payment recipient

Direct payments do not form part of an estate in the event that an individual dies whilst receiving them. Direct payments at all times belong to Portsmouth City Council and remain public funds. Any fees due to HMRC will need to be resolved between the Deceased Estate and HMRC

28. What happens if a direct payment is refused

In some circumstances it may not be possible for adult and/or children's social care to agree a direct payment for an individual. This may because the person is exempt under legislation, there is evidence of inability to manage the direct payment, or where there are concerns that a person is not able or willing to act legally as an employer.

The Deputy Head of Service or Service Manager will have final responsibility for confirming the decision to refuse a direct payment and this will be clearly documented, discussed and communicated in writing to the person, potential nominee or authorised person. The person will be advised of their rights to challenge the decision and how to use the complaints procedure to do this.

29. Complaint Procedure

People have a right to complain if they are not satisfied with the outcome and should be encouraged to use the Council's complaints procedure via post, phone or email:
adult social care: asccomplaints@portsmouthcc.gov.uk, and
children's social care: csccomplaints@portsmouthcc.gov.uk

Appendix 1: Glossary of Terms

Authorised person	A person who manages direct payments on behalf of someone who does not have the mental capacity to look after the money themselves. The Council has to be sure it is someone who will manage money in the best interests of the person who receives it and make sure that the care they receive is beneficial to them.
Support plan	A plan that sets how the personal budget will be used to meet eligible needs and define the outcomes the person would like to achieve, and how the money will be used to make these happen. The Council must agree the plan before it makes money available.
Carer	Someone of any age who provides unpaid support to family or friends who could not manage without this help.
Council	Portsmouth City Council
Direct Payment	Money that is paid to the person (or someone acting on their behalf) on a regular basis by the Council to arrange their own support, instead of receiving social care services arranged by the council. Direct payments are available to people who have been assessed as being eligible for council-funded social care. They are not yet available for residential care.
Disclosure and Barring Service	A government organisation that checks criminal records and history to identify people barred from working with children and vulnerable adults.
Eligibility Eligible Care and Support Needs	When the person's needs meet the criteria that allow them to receive a service. The needs for care and support that the Council is required by law to meet. Under the Care Act 2014, councils no longer decide for themselves what type of needs they will meet and now have to follow the new national minimum eligibility threshold.
Financial Assessment	A discussion that the Council may have with the person to work out how much they can afford to pay towards the care and support needed. It involves looking at income, savings and individual circumstances. This will take place after an assessment of the person's care and support needs.
Mental Capacity or Capacity	This is the ability to make a decision about a specific issue, as set out in the Mental Capacity Act 2005.
Nominated Person	The person that receives direct payments from the Council to arrange your own care and support can choose someone they trust to receive these payments on their behalf. This person is called the 'nominated person' and is different to an 'authorised person', who receives direct payments on behalf of someone who does not have mental capacity to make decisions for themselves.
Personal Assistant (PA)	Someone who is employed to provide the support needed, in the way that suits them best. This may include cooking, cleaning, help with personal care such as washing and dressing, and other things such as getting out and about in your community. The personal assistant can be paid through direct payments or a personal budget.
Personal Budget	Money that is allocated by the Council to pay for care or support to meet assessed needs. The money comes solely from adult social care. The personal budget can be taken as a direct payment or the person can choose to leave the council to arrange services (sometimes known as a managed budget) - or a combination of the two.

Appendix 2: People excluded from having direct payments

Direct payments may not be used to meet the needs of people who are:

(a) subject to a drug rehabilitation requirement, as defined by section 209 (drug rehabilitation requirement) of the Criminal Justice Act 2003 ("the 2003 Act"), specified in a community order (as defined by section 177 (community orders) of that Act, or a suspended sentence order (as defined by section 189(c) of that Act);

(b) subject to an alcohol treatment requirement, as defined by section 212 of the Criminal Justice Act 2003, specified in a community order (as defined by section 177 of that Act), or a suspended sentence order (as defined by section 189 of that Act);

(c) released from prison on licence—

- (i) under Chapter 6 of Part 12 (sentencing: release, licenses and recall) of the 2003 Act or Chapter 2 of Part 2 (effect of custodial sentences: life sentences) of the Crime (Sentences) Act 1997 ("the 1997 Act"), subject to a non-standard licence condition requiring the offender to undertake offending behaviour work to address drug or alcohol related behaviour; or
- (ii) subject to a drug testing requirement under section 64 (as amended by the Offender Rehabilitation Act 2014) (release on licence etc: drug testing) or a drug appointment requirement under section 64A (release on licence etc: drug appointment) of the Criminal Justice and Courts Services Act 2000;

(d) required to comply with a drug testing or a drug appointment requirement specified in a notice given under section 256AA (supervision after end of sentence of prisoners serving less than 2 years) of the 2003 Act;

(e) required to submit to treatment for their drug or alcohol dependency by virtue of a community rehabilitation order within the meaning of section 41 of the Powers of Criminal Courts (Sentencing) Act 2000 or a community punishment and rehabilitation order within the meaning of section 51 of that Act;

(f) subject to a drug treatment and testing order imposed under section 52 of the Powers of Criminal Courts (Sentencing) Act 2000;

(g) required to submit to treatment for their drug or alcohol dependency by virtue of a requirement of a community payback or probation order within the meaning of sections 227 to 230 of the Criminal Procedure (Scotland) Act 1995 or subject to a drug treatment and testing order within the meaning of section 234B of that Act; or

(h) released on licence under section 22 or section 26 of the Prisons (Scotland) Act 1989 (release on licence etc) or under section 1 (release of short-term, long-term and life prisoners) or 1AA (release of certain sexual offenders) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 and subject to a condition that they submit to treatment for their drug or alcohol dependency.

Source: Care and Support (Direct Payments) Regulations 2014 – Regulation 2, Schedule 1