

**London Borough of Tower Hamlets
Adult Services Directorate**

**Personal Budget and
Direct Payment Policy**
Adult Social Care

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Executive Summary and Key Points

- Our approach to personal budgets and Direct Payments is intended to give adult social care users and carers more choice, more control and improved outcomes. This policy promotes the creative and flexible use of Direct Payments as a way of ensuring that people with support needs can exercise maximum choice and control over how they are supported. We have made the management of Direct Payments less onerous whilst still ensuring that risks are minimised. For example, the monitoring frequency will be reduced where people are successfully managing their Direct Payments and people will have the ability to make changes to the way they arrange their support without having to request a Social Work review or reassessment. We would encourage Social Workers to always consider Direct Payments as an option with people during the support planning process.
- A personal budget in adult social care is *the sum of money required to purchase the services required to meet the needs the council has assessed it will meet*. They are available to both service users and carers.
- There are different types of personal budget. The most common are “managed budgets” that are held by the local authority, and direct payments that are paid out by the local authority. There are also Individual Service Funds (personal budgets placed with a third party provider) and “combined” budgets whereby the budget or direct payments of a group of adult social care users, an adult social care user or carer, or health and social care budgets are combined. A “mixed package” is where a person has more than one type of personal budget.
- Assessments in adult social care are carried out using the Tower Hamlets Practice Framework. As part of this, a statement will be drawn up setting out the needs of the individual and the resources that will meet those needs in the best and most cost effective way. A decision will be made by the council about how many of the identified needs can be afforded beyond those we have a legal duty to meet. Once this decision is made a Support Plan can be prepared. This will set out the amount of the personal budget, what proportion is to meet the needs the council has a legal duty to meet and what proportion is to meet needs that are being met on a discretionary basis.
- A personal budget amount will be based on the “best value” option to meet the individual’s specific needs. The Brokerage team can support practitioners to find this option. If service users or carers would prefer a more expensive support option than the council has a duty to provide, they have the option to pay the difference in line with the Adult Social Care Top-Up Policy.
- We recognise that people may need funding for specific items, ranging from the costs associated with employing a Personal Assistant to the cost of respite care in an emergency. This policy sets out what we will consider and whether the cost will be included in the overall personal budget amount.
- Personal budgets and direct payments are designed to be flexible, but there are a small number of rules setting out how they can and cannot be used. This policy sets out what these rules are.
- Likewise, there are a small but important number of restrictions on who can receive a direct payment. This policy sets those out, including our approach to consent and mental capacity.

- Direct payment holders initially send monitoring forms back to Brokerage team every three months. After six months, the future frequency of monitoring arrangements is then agreed.
- This policy sets out the responsibilities of direct payment holders and the Council. It sets out when people need to notify us of a change in circumstances, and our approach to recouping unspent funds.
- Support with direct payments is available to people from the Real Support Service, Brokerage and adult social care practitioners.
- Personal budgets and direct payments are reviewed at least annually, in line with our overall approach to reviewing people's needs.

TABLE OF CONTENTS

Section 1: Background

1	Introduction	5
2	Scope	6
3	Definitions	6

Section 2: Personal Budgets and Managed Budgets

4	Calculating a Personal Budget	8
5	How Managed Personal Budgets can be used	9
6	How Managed Personal Budgets cannot be used	10

Section 3: Direct Payments

7	Our approach to Direct Payments	11
8	How Direct Payments can be used	11
9	How Direct Payments cannot be used	12
10	Specific issues to consider for Service Users employing Personal Assistants	14
11	Requesting a Direct Payment	14
12	People who may be eligible for Direct Payments	14
13	People who cannot receive a Direct Payment	15
14	Consent	16
15	Employing a Personal Assistant	17
16	Calculating a Personal Budget	20
17	Starting a Direct Payment	20
18	Monitoring a Direct Payment	21
19	Reviewing a Direct Payment	23
20	Misused or unaccounted-for direct payment	23
21	Terminating a Direct Payment	23
22	Tower Hamlets Council Responsibilities	24
23	Direct Payment Holder Responsibilities	25
24	Support with Direct Payments	27
25	Change in Circumstances	27
26	Complaints	28
27	Interdependencies	29
28	Review of the Policy	29

Appendices

I	Identifying a suitable person	
II	Risk Tool	
III	Direct payment agreement	
IV	Bank details form	
V	Direct payment monitoring return	
VI	Calculating a Direct Payment	

Section 1: Background

1. Introduction

- 1.1 As part of section 26 of the Care Act 2014, personal budgets have become law for the first time. The Act introduces new duties, policies and procedures for Local Authorities to offer a personal budget to people with eligible care and support needs.
- 1.2 This policy sets out our approach to personal budgets in adult social care. It should be seen within the context of a strategy to deliver personalised care and support for all service users and carers based on practice that is person-centred and person-led. Our Practice Framework sets out the way that this will be achieved.
- 1.3 A personal budget is the financial value of the services required to meet the needs the council has decided to meet. The Practice Framework will support a process of flexible decision making between the person and the council to ensure that the resources most likely to bring about the improvement in the person's well-being they seek.
- 1.4 It will be clear how the size of the personal budget was arrived at. There will be a personal budget statement within the person's support plan breaking down the costs for meeting the person's needs payable by the Local Authority and by the person, if appropriate.
- 1.5 The main elements in delivering a personal budget in Tower Hamlets include:
 1. **An assessment** – Tower Hamlets uses a practice framework which is based on the rationale of being person-centred, maximising people's strengths, informal networks. This starts with a self-assessment, which would be further developed on by professionals with the person (see Practice Framework guidance). This concludes with a Statement of Needs and identifies the needs to be met. This will identify those the council is under a duty to meet and those it has discretion to meet.
 2. **Support plan** – Once this decision is made a Support Plan can be prepared which will outline the resources that will meet the needs in the most cost effective way. This will include the size of the personal budget.
 2. **Risk management** - It is important to consider any risks and ways of minimising those risks when support planning.
 3. **Client Contribution** – When the Support Plan has been completed and the costs calculated, the level of contribution will be identified and communicated to the service user where applicable.
 4. **Review and Monitoring** – Regular reviews by social work teams and monitoring by the Contract Monitoring Teams and Brokerage Team will

be required to ensure that the quality of the support is maintained and any issues are picked up before crisis point.

2. Scope

- 2.1 This policy must be applied by staff in adult social care services in Tower Hamlets, including mental health services.
- 2.2 This policy applies equally to both adult social care users and to unpaid carers. For the purposes of this policy the term 'service user' encompasses both service users and carers.
- 2.3 This policy also includes one-off direct payments previously available to carers through the Carers Centre. Since April 2015, these one-off direct payments can be requested on someone's behalf by the centre as part of the self-directed assessment process.

3. Definitions

3.1	Personal budgets	The Care Act defines a personal budget as “a statement which specifies the cost to the local authority of meeting those of the adult’s needs which it is required or decides to meet, the amount which, on the basis of the financial assessment, the adult must pay towards that cost, and if on that basis the local authority must itself pay towards that cost, the amount which it must pay”.
3.2	Direct payments	This is defined as “monetary payments made to individuals who request to receive one to meet some or all of their eligible care and support needs ¹ ”.
3.3	Managed budgets	Personal budgets managed by the local authority
3.4	Standard direct payments	An amount of money paid to the adult social care user or a nominated individual.
3.5	Individual Service Funds	These are personal budgets placed with a third party provider. Currently a small number of people have Individual Service Funds and our future approach is currently being developed.
3.6	Mixed package	This comprises of a direct payment, an Individual Service Fund and/or a managed personal budget.
3.7	Combined direct payment for both the service user and carer	Each individual will be allocated a personal budget in line with our Practice Framework, but have the option of pooling this together.
3.8	Combined	This would enable “micro-commissioning”, whereby a group

¹ 12.1 of Care Act Statutory Guidance

	direct payment for two or more service users.	of people pool their direct payments together and commission services as this group. Each individual would be allocated a personal budget in line with our Practice Framework, but have the option of pooling this together.
3.9	Combined budget	This comprises of a social care direct payment and a direct payment from a partner organisation (such as personal health budgets from the NHS). Pilots for combined budgets with health are currently being planned ² .
3.10	Practitioner	Social Workers, Care Co-ordinators and other professionals who are involved in assessing and supporting adult social care users.
3.11	Service user	Someone who is eligible for support from adult social care services. Carer refers to an unpaid carer who is eligible for support. For the purposes of this policy the term “service user” will be used to cover both service users and carers.
3.12	Personal Assistant	A person who is employed to provide support to the service user and who is paid by using the direct payment.
3.13	Support Service	A service contracted to an organisation commissioned by Tower Hamlets Council to provide support specifically to people with a direct payment. Real is currently commissioned to provide this.
3.14	Payroll Company	People with a direct payment can buy the services of a payroll company to generate monthly payslips for their Personal Assistants and calculate any associated Tax and National Insurance payments.
3.15	Management Company	People with a direct payment can buy the services of a management company who will hold and manage the direct payment on the service user’s behalf in addition to providing a payroll service.
3.16	Practice Framework	This sets out the Council’s vision for Adult Social Care as a strong partnership between Tower Hamlets residents and officers. The Council and its partners aim to make a difference to the health and wellbeing of everyone living in the Borough. It aims to support vulnerable residents to be safe from abuse and as independent as possible, maximising the appropriate use of informal resources and minimising the use of public services.
3.17	Support Plan	This is a document that describes how a person wishes to meet their needs, who will support them and how often this would happen.

² Please contact marion.tunstall@towerhamlets.gov.uk for further information on this.

Section 2: Personal Budgets

4. Calculating a personal budget

4.1 Overview

Our approach to calculating a personal budget is drawn from:

- The Practice Framework in adult social care; and
- The Adult Services Directorate Charging and Top-Up Policy³

4.2 A personal budget is based on the cost of meeting needs:

In line with the Practice Framework in adult social care, the council will define a personal budget as it is by the primary legislation, which is *the sum of money required to purchase the services required to meet the needs the council has assessed it will meet*. The personal budget will be clear what proportion is to meet the needs the council has a duty to meet and that which is being met through exercise of its power. Please see the Practice Framework for more information.

4.3 A personal budget is based on the “best value” option to meet individual needs

In line with the Adult Services Directorate Charging and Top-Up Policy, a personal budget amount will be based on the “best value” option to meet the individual’s specific needs. The Community Catalogue and the Brokerage team will provide information and advice on the range of options available to meet needs. One option must be the cost effective option that will meet the council’s duty under “best value”. This can range from the “best value” rate for personal care to the “best value” for one-off items (e.g. laptops). In all cases, it is important to note that “best value” options apply to a person’s specific needs and so is likely to vary from person to person. Some additional points to note in relation to this are:

- ‘Cost effectiveness and best value’ will not be confused with ‘cost cutting’.
- This approach applies equally to direct payments. If the best value option to meet an individual’s needs is through a service provided by the local authority, the direct payment amount will be based on the cost of this option.
- The flexibility in support planning that is required to deliver cost effective and “best value” support will be secured through the strategic commissioning function ensuring that resources are freed up over time from undue levels of pre-purchasing and that regulated services are able to work flexibly and responsively to individual need that deliver personal outcomes.

4.4 Service users can pay a top-up if they prefer a more expensive option:

In line with the Adult Services Directorate Top-Up Policy, service users or carers have the option to “top-up” their personal budget with their own resources if they would prefer a more expensive support option than the council has a duty to provide. The Tower Hamlets Top-Up Policy is currently being developed and has more details on this.

³ At the time of writing (May 2017) the Top-Up Policy is progressing through approval processes.

4.5 Respite and “replacement care” will often be part of the cared-for person’s personal budget:

In most cases, the “direct recipient” of the service will have the cost of that service factored into their personal budget. This means that we would normally expect respite or replacement care to enable an unpaid carer to have a break to go in the service user’s personal budget. However, if the service user is not eligible for services, replacement care will be factored into the carer’s personal budget.

4.6 Some individuals may need contingency plan costs factored into their personal budget:

Contingency planning is part of the overall assessment and support planning activity. Good contingency planning aims to head off any issues should caring arrangements break down or if the person has fluctuating needs. Practitioners can include the cost of contingency plans if there is sound evidence suggesting it is likely that it will be called upon. People may be awarded pool hours that they can call upon through the year for example to support people to attend appointments. In the case of Direct Payments any underspend needs to be paid back to the Council at the end of the financial year. If there is no clear evidence that the contingency plan will be called upon, the cost will not be factored into the personal budget. Instead, additional funds and/or services can be called upon if needed, using a central contingency fund budget.

4.7 Setting out the personal budget calculation

The Support Plan will have a personal budget statement breaking down what the Council is paying towards a person’s care and what the person themselves are paying towards their care.

5. How Managed Personal Budgets can be used

5.1 Overview

Service users and carers have a choice as to whether to receive a managed personal budget, direct payment or the other models described in section (3). However, it is important to note that there are restrictions on what can be purchased with a personal budget or direct payment. Practitioners are expected to talk through these restrictions with service users and carers to enable them to make an informed choice.

5.2 To meet needs

Personal budgets are allocated to meet the needs it has been agreed to meet. It can be used for anything identified in the Support Plan to meet the outcomes that have been identified.

5.3 To purchase services from a “preferred provider”

Managed personal budgets can be used to purchase services from providers who are part of the local authority’s “preferred provider” list. We have

“preferred provider” lists for home care, day care, respite⁴ and other services. This means that if a service user or carer wants to purchase support from a homecare, day care or respite provider who is not one of our “preferred providers”, they will need to organise a direct payment in order to do this. Brokerage can advise practitioners who the local authority’s “preferred providers” are. In exceptional circumstances where the person not able to manage a direct payment and the need could not be met by a preferred provider Brokerage would purchase from alternative organisation.

5.4 To purchase one-off or other items

If there is a clear argument for doing so, managed personal budgets can be used to purchase “one-off” items such as laptops, or more frequent items such as the cost of a college course. Brokerage can organise this.

6. **How Managed Personal Budgets cannot be used**

6.1 Items that fall outside the agreed support plan

As stated in Section 4, managed personal budgets are allocated to meet the needs it has been agreed to meet. This includes the needs we have a duty to meet and any “non-eligible” needs we are using our discretion to meet.

6.2 Personal Assistants

In line with (5.3), managed personal budgets cannot be used to employ a Personal Assistant. This is because only services from homecare providers on our “preferred provider” list can be purchased with a managed personal budget unless there are exceptional circumstances.

6.3 Illegal items

Anything that is against the law.

6.4 Gambling

Including lottery tickets, bingo, etc.

6.5 Bills

Food shopping bills, vet bills or utility bills (including gas, electric, water, telephone bills), mortgage or rent payments.

6.6 Cigarettes and alcohol

6.7 Intermediate care or reablement services

Care Act Statutory Guidance (11.20) states that “intermediate care/reablement should usually be provided as a free, universal service under section 2 of the Act, and therefore would not contribute to the personal budget amount”

6.8 Health care needs

⁴ However it should be noted that there is no preferred provider list for respite for adults who do not have a learning disability.

Personal budgets cannot be spent on health care needs that should be paid for by Health Services. As noted in Section 3, we can consider combining direct payments with personal health budgets on request, but expenditure must be clear for accounting and audit purposes to each agency.

Section 3: Direct Payments

7. Our approach to direct payments

- 7.1 We recognise that direct payments enable people to employ and purchase their own support, and to exercise choice and control.
- 7.2 We will give people relevant and timely information about their direct payment.
- 7.3 We will take all reasonable steps to provide support to people to access direct payments.
- 7.4 We will consider all requests for direct payments in a timely fashion.
- 7.5 Our approach to monitoring direct payments is proportionate to the needs to be met and the care package.
- 7.6 We will take all reasonable steps to address any situations without the termination of payment.

8. How Direct Payments can be used

- 8.1 To meet needs:
Direct payments are allocated to meet the needs it has been agreed to meet. It can be used for anything identified in the Support Plan to meet the outcomes that have been identified.
- 8.2 Administration fees for nominated individuals handling a direct payment can be considered on request:
Individuals managing a direct payment on behalf of a service user have the option of making a request for an administration fee to be paid to them. This discretionary payment is for particularly complex support packages and will need to be agreed by a Service Head. The need for an administration fee will need to be made clear in the request. For example, it may be that managing the direct payment is a significant burden to the individual due to its complexity and the amount of time taken to administer it.
- 8.3 On specific activities for people in a care home:
People who are living in care homes and have additional eligible needs that can only be met outside of residential care will have a personal budget in relation to these non-residential care services or day-time activities⁵. This can

⁵ In practice this is likely to be a rare occurrence, given that care homes provide day-time activities and that a care home would be identified with this in mind.

be taken as a direct payment. Direct payments can be used to purchase short term stays in care homes, provided that the stay does not exceed a period of four consecutive weeks in any 12-month period⁶.

8.4 Legal rewards are permitted

There may be occasions when it is more appropriate and or cost effective for the person to be supported on an ad hoc basis which can be “rewarded” rather than paid for in a contractual way. This is called a legal reward.

Examples of legal rewards are:

- Buying a small bunch of flowers / box of chocolates / vouchers to say thank you to a neighbour who gave them a lift to a regular evening class.
- Paying for someone’s petrol in exchange for taking the service user out.

An individual legal reward should not exceed £30. This is to ensure that Her Majesties Revenue and Customs (HMRC) deems it to be ‘reasonable’.

The upper limit for the amount of legal rewards paid out in any financial year is currently set at £250. Any so-called legal rewards need to be part of the Support Plan and agreed by the relevant social work team.

HMRC set the limit at £250 and if this limit is exceeded, then the whole amount will be treated as taxable income and would have to be declared for tax purposes by the person receiving it. The service user can provide rewards to as many people as they want, but the total limit of £250 has to be kept to.



Practitioners - You should aim to minimise restrictions to the uses of a direct payment and recognise that there can be innovative and creative ways to meet a need. Whilst the list above notes that people should not use their direct payments to pay food shopping bills there may be explicit exceptions. E.g. a person in receipt of a direct payment has an assistant dog that helps with her domestic tasks. In order for her to be able to afford this support she uses her direct payment to pay for the dog food.

⁶ See 12.41 of Care Act statutory guidance for more detail on this.

9. How direct payments cannot be used

There are a number of core restrictions on how a direct payment can be used. They cannot be spent on:

- 9.1 Items that fall outside the agreed support plan
As stated in Section 4, direct payments are allocated to meet the needs it has been agreed to meet. This includes the needs we have a duty to meet and any “non-eligible” needs we are using our discretion to meet.
- 9.2 Council-funded services
As a general rule, direct payments should not be used to pay for local authority-provided services from the ‘home’ local authority. However in cases where it is less burdensome to do this we can exercise discretion – for example where a person who is using direct payments wants to make a one-off purchase from the local authority.
- 9.3 Employing close family members:
Direct payments cannot normally be used to employ a close family member living in the same household to provide care unless there are exceptional circumstances. Any exception to this must be agreed by the relevant Service Manager. See section 15.4 for more details
- 9.4 Illegal items
Anything that is against the law.
- 9.5 Gambling
Including lottery tickets, bingo, etc.
- 9.6 Bills
Food shopping bills, vet bills or utility bills (including gas, electric, water, telephone bills), mortgage or rent payments.
- 9.7 Cigarettes and alcohol
- 9.8 Intermediate care or reablement services
Please see Care Act Statutory Guidance 11.20 for more details on this.
- 9.9 Health care needs
Direct payments cannot be spent on health care needs that should be paid for by Health Services. As noted in Section 3, we can consider combining direct payments with personal health budgets on request, but expenditure must be clear for accounting and audit purposes to each agency.
- 9.10 Permanent residential care
Personal budgets cannot be used for permanent residential care. However, as noted in 7.3, people who are living in care homes may receive direct payments in relation to non-residential care services or day-time activities.

This aspect will be reviewed in light of the 16/17 Care Act reforms on Care Accounts.

10. Specific issues to consider for Service Users employing Personal Assistants

- 10.1 It is recommended that those employed with a direct payment (e.g. Personal Assistants) are paid London Living Wage as a minimum.
- 10.2 “On costs” will also need to be calculated on a case-by-case basis by REAL when the referral is made.
- 10.3 Employer-related costs that cannot be anticipated in advance (for example, statutory sick pay) will not be factored into a personal budget amount. Instead, additional funds should be requested by the DP recipient at the time the SSP/SMP has been paid so the funding in the account can be adjusted.
- 10.4 Employer-related costs that can be anticipated in advance (for example, a Personal Assistant who opts into a pension scheme that requires a contribution from their employer) can be factored into a personal budget amount.
- 10.5 Where people have noted that they would like a direct payment but have not identified the PAs to employ they should be provided with funding and support to recruit. Funding will allow for payment of any advertising costs (typically around £200). Support to recruit can be provided by the Real Support Service⁷.

11. Requesting a direct payment

- 11.1 From a new service user: A request for a direct payment from someone who does not currently receive support will be treated in the same way as a request for an assessment.
- 11.2 From an existing service user: A request for a direct payment from an existing service user will normally result in a support package review being brought forward. It should be noted that the review does not necessarily mean that a reassessment needs to take place, but a Support Plan will need to be written up with the relevant costs. The person would also need to be assessed with regards to their ability to manage or nominate a third party.
- 11.3 For agencies not on the councils Preferred Provider List
In all cases where someone wants to receive support from a provider that is not on the councils preferred provider list, whether it is for day care, homecare or meals, then that person will have to take a direct payment to do so.

⁷ A Personal Assistant Register is currently in development. When “live”, this register will support individuals to recruit Personal Assistants.

12. Who may be eligible for direct payments?

- 12.1 Any person who is eligible for a personal budget as assessed by Tower Hamlets Council and who consents to receive a direct payment and is able to manage this alone or with assistance.
- 12.2 Service users are eligible for a direct payment if the conditions in the table below⁸ are met:
- I. An individual must be eligible for adult social care services as defined within the Care Act. It should be noted that service users, carers, people living in the community and people in residential care are all potentially eligible for direct payments.
 - II. An individual must be able to consent to receive a direct payment or have an authorised person who can request the direct payment on the person's behalf⁹.
 - III. An individual must be able to manage a direct payment alone or with support if necessary.
 - IV. The local authority must be satisfied that making direct payments to the adult or nominated person is an appropriate way to meet the needs in question.
- 11.3 The Care Act sets out a set of conditions that must be met if a direct payment is being requested on behalf of someone who lacks capacity¹⁰. These are set out in Appendix (Appointing a Suitable Person).

13. People who cannot receive a direct payment

- 13.1 People who do not meet one or more of the criteria set out in the last section cannot receive a direct payment.
- 13.2 In addition, restrictions are placed on people placed under certain conditions or requirements by the courts in relation to drug and/or alcohol dependencies. People cannot receive a direct payment if:
- I. Offenders on a community order, or serving a suspended sentence, under the Criminal Justice Act 2003, which includes a requirement to accept treatment for drug or alcohol dependency;
 - II. 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 alcohol dependency
 - III. Offenders released from prison on licence under the Criminal Justice Act 1991, the Criminal Justice Act 2003 or the Crime (Sentences) Act

⁸ More detailed information is available in section 12.14 of Care Act statutory guidance.

⁹ In cases where the person in need of care and support has been assessed as lacking capacity to request the direct payment, an authorised person can request the direct payment on the person's behalf. In these cases, the local authority must satisfy itself that the person meets the five conditions as set out in section 32 of the Care Act.

¹⁰ Please see 12.17 of Care Act Statutory Guidance

1997 subject to an additional requirement to undergo treatment for drug or alcohol dependency; and

- IV. People subject to equivalent provisions under Scottish criminal justice legislation.

13.3 There may be cases where it is more appropriate to meet needs via directly-provided care and support, rather than by making a direct payment. For example, this may be where there is no local market for a particular kind of care and support service that the person wishes to use the direct payment for, except for services provided by the local authority. In all circumstances, consideration should be given to the expected outcomes of each delivery route.

14. Consent

14.1 People will not be forced to agree to a direct payment against their will. We will encourage people to take ownership of their care planning and will promote direct payments. However, we also recognise that the gateway to receiving a direct payment must be through a request from the person.

14.2 Practitioners will need to have assessed whether the service user has capacity to make a decision about direct payments or not. This should have taken place at the assessment of needs.

14.3 If a person does not have capacity to consent, a representative or “suitable person” to act in their best interests can be identified by the practitioner. However, this person would need to meet certain conditions and would need to agree to and have the ability to manage the direct payment on the service user’s behalf. See Appendix I for guidance on how to identify a suitable person.



Practitioner tips - You may consider a person to have ability to consent because they are able to express their wishes and agree to using a Management Organisation. However, this does not necessarily mean that a direct payment is suitable. People need to be able to manage their staff or relationship with an agency. When a Management Company manages the financial aspects of the direct payment on their behalf, they do not manage the staff. You must consider this fully during the Support Planning process to ensure that individuals are not put at risk. Further guidance on assessing and enabling consent can be found in Care Act statutory guidance on direct payments



Practitioner tips - A person may be able to manage a Personal Assistant and be able to direct them by giving instruction but they may not have the ability to manage finances. It is still possible for the person to have a direct payment because they could nominate an individual to manage the financial aspects of the direct payment or they could purchase the services of a Management Organisation to do this on their behalf. The service user or nominated individual must maintain control even if someone else manages the money.

In any case you should present the person with a copy of the Agreement which contains the Terms and Conditions. This will ensure the person is aware of their responsibilities when taking a direct payment.

15. Employing a Personal Assistant

15.1 Real Support Service:

The Support Service provided by Real can help people to recruit Personal Assistants (please see Section 22).

15.2 E-marketplace and PA Register:

Tower Hamlets has an online “e-marketplace” that sets out some of the support options available to people. A register of Personal Assistants on the e-marketplace is currently being developed. When this register goes “live”, social care users and practitioners will be able to view a list of Personal Assistants on the e-marketplace who have been through the East London “Ensuring Quality” scheme, which means they have met the minimum standards of quality for Personal Assistants agreed by Tower Hamlets. People should be directed to this resource and supported to use it where needed. People may decide to employ a Personal Assistant who has not been through the “Ensuring Quality” scheme. When the register goes “live”, practitioners should support people to make fully informed decisions on this and any risks should be identified and managed using the Risk Tool (Appendix II).

15.3 Employer responsibilities:

Practitioners will provide service users (either directly or through sign-posting) with clear information on the implications of employing a Personal Assistant. This includes responsibilities as an employer.

15.4 Personal Assistant Restrictions:

Direct payments cannot be used to secure care services from the following without the permission/agreement of the council:

- The spouse or civil partner of the adult;
- A person who lives with the adult as if their spouse or civil partner;
- A close relative not living in same the household
- A person who would normally live in the same household as the direct payment user which include those who are his/her:

- Parent or parent in law;
 - Son or daughter, stepson or stepdaughter, or son in law or daughter in law;
 - Brother or sister;
 - Aunt or uncle;
 - Grandchildren or step grandchildren
 - Grandparent; or
- The husband, wife or partner of any of the above.

All requests for employment of any of the above would be considered within the decision making framework below and referred to a service manager for a decision.

The council would only agree to any of the above being employed if it was satisfied that it was deemed necessary to meet the person's need for that service. In any circumstance the council would insist that where family members are being employed the Direct Payment must be managed by a third party organisation in order to ensure that there is no conflict of interest and all employees are registered to pay tax and national insurance where applicable.

Decision Making Framework:

The practitioner undertaking Support Planning with the individual must:-

- a. Be clear why it is deemed necessary to consider the employment of a close relative.
- b. Ensure that the individual concerned has been informed of opportunities to access independent advocacy services.
- c. Discuss with the Carer the impact that being employed can have in relation to family dynamics, access to benefits and/or their ability to undertake alternative paid work. Also consider any potential impact on the health and wellbeing of the individual, for example in relation to manual handling. If appropriate, refer the carer to organisations which can give advice on this e.g. Age Concern, Counsel and care for the Elderly.
- d. Consider any potential or actual safeguarding issues.
- e. Consider any equalities implications.
- f. Offer a Carer's Assessment to any Carer undertaking significant unpaid caring responsibilities under the relevant legislation, and provide support to the relative in order to enable them to continue in their caring role, where this is accepted.

- g. Explicitly record in the relevant funding approval documentation the wish to use the Direct Payment/Personal Budget in this way, and the outcomes of using the Risk Tool.

When considering whether to agree use of a Direct Payment to employ a close relative the service manager must:-

- h. Ensure the risks and benefits of the proposed course of action are explicitly stated and recorded;
- i. Consider any safeguarding implications
- j. Consider any equalities implications.
- k. Be satisfied that any responsibilities arising from the relevant Carer's legislation have been properly discharged;
- l. Where care and support has previously been provided on an unpaid basis, what the impact of shifting to employed arrangements would make to the close relative and the supported individual.

As a general principle, where a family member is being employed, a third party organisation must be used to manage the Direct Payment.

Once the decision is made by the service manager this should be forwarded to the relevant Service Head for information.

Where the individual concerned is dissatisfied with the decision reached by the Service Manager, the Council's Complaints Procedure will be available to them. Given that the decision will have been made at Service Manager level the procedure for handling any complaint will generally be equivalent to that followed for Members Enquiries.

15.5 Organisations ¹¹ are available that can administer payments to Personal Assistants on behalf of the service user. The organisation can deal with payroll and related administrative duties.



Practitioners - During the Support Planning process you should discuss any risks associated with employing a family member and consider any previous safeguarding incidents that may be applicable. You should do this whilst using the Risk Tool.

¹¹ Please contact the Brokerage team or Support Service for more details on this.



Direct Payment Users - If DP users change their PA and decide to employ a family member they need to report this back to the relevant **Social Work Team** to seek Service Manager approval. Any existing **Support Service** should also inform the council if they have become aware of such a situation.

16. Calculating a direct payment

When a Personal Assistant is going to be employed the initial Support Plan will be calculated by multiplying the number of hours with an hourly rate and applying an additional percentage for on-costs. The assumption is that the London Living Wage will be used as the minimum hourly rate. Where individuals want to apply a higher hourly rate for their PA they may have to pay the top up and will have to provide justification for this to the Council. Please see the Top Up Policy for further guidance.

Any one off costs for items will be added to the final calculation.

See Appendix VI for guidance on the calculations.

When someone has been assessed as able to pay a client contribution this amount will be deducted from the amount of the Direct Payment. It is expected that services users will make regular payments into their Direct Payment account so that they can make the payments to meet their eligible needs. If people do not pay their client contribution into the account they will be reassessed for their ability to continue to use a direct payment.

17. Starting a direct payment

The direct payment is ready to start when the following has been completed:

- 17.1 The service user has identified a PA and/or an agency and employment contracts or service agreements have been signed by all parties.
- 17.2 The service user has signed a Direct Payment Agreement and returned it to Brokerage. (Appendix III)
- 17.3 The service user has completed and signed a Bank Details Form (where applicable) and returned it to Brokerage (Appendix IV). A dedicated bank account must be set up for the sole use of a direct payment or a third party organisation identified to manage the payments.
- 17.4 The service user has signed an agreement form with a third party management company (where applicable).
- 17.5 A creditor record has been set up in the central finance system and the number is recorded in the service users FWI record.

- 17.6 The allocated broker will liaise with the Service User and/or the Support Service to agree a start date for the direct payment. Any existing services will be ended.
- 17.7 Clear contingency plans are in place setting out how needs will be met in the event of an emergency (e.g. in the event of a Personal Assistant being absent). This will be set out in an individual's support plan.
- 17.8 The Support Service can help people set up the things they need to start receiving a direct payment. This is currently provided by Real.

18. Monitoring a direct payment

- 18.1 Direct payment holders have to return regular monitoring forms to satisfy the council that they are managing the direct payment and spending funds appropriately.
- 18.2 When a direct payment is initially set up returns will be completed quarterly. After the first two quarters have been returned the monitoring frequency will be assessed by the allocated Finance and Admin Officer (who monitors the returns) and any changes agreed with the Brokerage Team Manager. Any changes will take into consideration any risks identified in the Support Plan and Risk Tool. All parties will be informed of the new arrangements.
- 18.3 Where a direct payment is managed by a management organisation the relevant Brokerage Finance officer will monitor this at six monthly intervals for the first year and will then review to see if this can be moved to annual monitoring.



Practitioners - When a direct payment is initially set up then you should utilise the risk tool and highlight any potential risks associated with changing the monitoring frequency. At the initial six week review you should request to see the initial monitoring forms which should have been completed and the associated bank statements. This should highlight any potential problems which can be addressed at the early stages.

After the first two quarters have been returned the monitoring frequency will be reviewed and all parties informed of the new arrangements.

- 18.4 A return consists of a complete listing of all transactions - expenditure and income (including interest) using a paper format or electronic format (Appendix V). This listing is backed up with copies of bank statements and or receipts covering the relevant period, which give evidence of all transactions.
- 18.5 Direct payment users may keep their own computerised versions instead, provided all the information is included. However, users must ensure they retain all invoices and receipts relating to their direct payment for potential auditing by the Inland Revenue or spot checking by the council.
- 18.6 The monitoring returns also require the direct payment user to identify any changes either to their circumstances or the way the payment is being spent.
- 18.7 Returns are sent to the Access to Resources Team (ART) where they are logged and checked by the relevant Finance and Admin Officer. The Finance and Admin Officer will communicate directly with the direct payment user or via the Support Service to deal with any minor problems or queries. Any continued or substantial problems will be referred back to the Social Worker who will work in partnership with the service user, Access to Resources Team and Support Service to come to a satisfactory resolution.
- 18.8 ART will regularly communicate with direct payment users to prompt the completion of returns and offer support where required.
- 18.9 When the monitoring forms show a significant underspend this will be queried with the direct payment user. If it is identified that the funds will not be spent and there is a surplus amount in the account (over and above two weeks money to be used as contingency) the service user will be requested to return this amount to the council. The money will ordinarily be recovered by brokerage adjusting payments temporarily. Details of recouping this money (i.e. what amount and in what time frame) can be agreed depending on circumstances.
- 18.10 At the end of the financial year the closing balance will be assessed to see if any unspent funds should be recovered. Brokerage Finance Officers will use the clawback calculator to identify the amount to be recovered either by variation to future payments or request for the return of funds. This calculation will allow for a contingency of two weeks' worth of money being left in the account.
- 18.11 Organisations can administer payments to Personal Assistants on behalf of the service user. The organisation can deal with payroll and related administrative duties. These organisations will provide monitoring at the agreed times or will provide on line access for real time monitoring.
- 18.12 Practitioners carrying out a review with an adult service user will liaise with the Brokerage Finance Officers in the Brokerage team before the review meeting to check that there are no issues with the monitoring returns. At a minimum, Brokerage Finance Officers will have checked that the returns show payments have been made to individuals/agencies for wages, payments have been

made to HMRC and any client contributions have been paid into the account where appropriate.

- 18.13 Where monitoring returns are not submitted by the individual the Brokerage Finance Officer will take steps to contact the person. If the individual continues not to engage and there are 2 quarters that have not been submitted then a referral will be sent to the relevant operational team who will need to reassess ability to manage. Any further payments will be suspended until a decision is reached by the Social Worker regarding ability to manage or the returns are submitted.
- 18.14 Where no monitoring or receipts for one-off payments are submitted the council will assume that the funds have been misused and the full amount paid to the individual from the council will be recovered.

19. Reviewing a direct payment

- 19.1 Adult Services have a responsibility to review Support Plans whether they are being met through a direct payment or managed services. The annual review will, as well as reviewing the Support Plan, review the level of the Personal Budget in the light of the previous year's spending and the management of the direct payment. Practitioners should note that London Living Wage is generally uplifted annually.

20. Misused or unaccounted-for direct payment

- 20.1 If a person uses the direct payment money for any other purpose than to meet the needs as identified in the Support Plan or they employ a family member without Service Head approval, adult social care has the power to seek full repayment of any misspent funds.
- 20.2 As noted in 18.14, where no monitoring or receipts for one-off payments are submitted the council will assume that the funds have been misused and the full amount paid to the individual from the council will be recovered through the civil courts and according to the Council's debt recovery procedure.
- 20.3 Where there is a clear argument for not seeking to recover some or all unaccounted for or misused funds, approval must be sought to "write off" the debt and cease recovery. Debt to the level of £5,000.00 can be written off by a Service Manager. Anything above this level must be approved by a Service Head.

21. Terminating a direct payment

Adult Services in the following circumstances may terminate a direct payment:

- 21.1 If a person no longer wishes to receive a direct payment.

- 21.2 If a person no longer has any needs as identified in the Support Plan, i.e. is no longer in need of services. This may be due to the person's needs changing or it may be due to the person moving into a care home or passing away.
- 21.3 If a person does not comply with the requirements of managing a direct payment or conditions that Tower Hamlets Council makes as outlined in the Service User Agreement.
- 21.4 Any misuse of funds must be investigated thoroughly before a decision to withdraw the direct payment is made. However where fraud, abuse or employment of a family member is suspected payments may be suspended or management of the budget should be transferred to a third party organisation during investigation. The decision will be clearly communicated to the direct payment user and they will be informed of their right to use the complaints procedure. Alternatively directly provided services, as identified in the Support Plan, could be organised to ensure the person is not placed at risk.
- 21.5 When terminating a direct payment for any reason, any contractual obligations to Personal Assistants will be taken into account and statutory redundancy will be observed.

22. Tower Hamlets Council responsibilities

22.1 Practitioners will:

- Provide support to people receiving a direct payment as outlined in previous sections.
- Provide service users with information and advice to enable them to make informed decisions and manage their direct payment effectively. At a minimum this includes the Terms and Conditions of the Direct Payments Agreement.
- Assess the service user's consent and ability to manage their own care where necessary.
- Agree the viability of the service user's plan to manage the direct payment with assistance from nominated person(s) if necessary, to ensure that the plan is sustainable and represents best use of public funds.
- Calculate the direct payment amount using guidelines in this policy and the adult social care Practice Framework.
- Review the support plan regularly on at least an annual basis ensuring that the support purchased using the direct payment continues to meet the needs and that the person is still able to manage.
- Respond swiftly as necessary to ensure safety in any crisis or emergency that may arise.

22.2 Brokerage will:

- Find the best value support option available to meet a person's needs.
- Ensure that direct payments are processed in a timely fashion and without unnecessary delay.

- Ensure that spending of the direct payments is monitored and that accounts are properly audited as necessary. Any problems will be raised with the service user (via the Social Work teams for significant issues) in the first instance.
- Ensure the direct payment user receives due payments promptly. Payments are made monthly in advance by electronic transfer (BACS).



Practitioners - At the initial review you should ensure that the person is able to manage the direct payment and ask to see initial evidence of payments and record keeping.

At the annual reviews you will need to ensure that you assess not only that the support meets the needs but that the person is managing the budget and complying with the terms and conditions of managing a direct payment including any employer responsibilities. You should contact the relevant **Brokerage Finance Officer** in the Access to Resources Team to see if satisfactory monitoring returns are being submitted prior to going out to review.

23. Direct payment holder responsibilities

23.1 It should be noted that the person who receives the direct payment holds the responsibility for how it is spent. The direct payment user will sign an agreement to abide by the requirements of Tower Hamlets council, including the following but not limited to:

23.2 Only spend the direct payment on the needs identified in the support plan, and in accordance with this policy.



Practitioners – You will sign the Agreement with the direct payment holder when the direct payment is ready to start because at this stage the management arrangements will be clear and therefore the relevant people will sign the form. People will have been made aware of the responsibilities associated with managing a direct payment by the practitioner and, where applicable, by the Support Service. Terms and Conditions associated with a direct payment will have also been fully explained and copies made available to the person when Support Planning initially takes place.

- 23.3 Open or identify a bank account with a cheque book or facility to make bank transfers and have access to bank statements for the **sole** use of the direct payment. Except for one off direct payments where submission of copies of receipts will provide proof of purchase.
- 23.4 Arrange to make regular payments into the Direct Payments account where assessed as able to pay a client contribution.
- 23.5 Make the necessary checks to ensure that all PA's employed are eligible to work in the UK.
- 23.6 Notify the Council of any significant changes to the arrangements set out in the Support Plan
- 23.7 Develop a plan for managing the direct payment, including contingency arrangements in emergencies.
- 23.8 Comply with the requirements of employment legislation and insurance requirements.
- 23.9 Never make cash payments to employees from direct payments
- 23.10 Make the required financial arrangements below and keep financial records as specified in this policy and guidance.
- 23.11 Provide the information required by Tower Hamlets council for monitoring purposes in the manner and within the time scales specified. This authority is under a duty to protect the public funds it administers, and to this end may use the information you provide for the prevention and detection of fraud. It may also share this information with other bodies responsible for auditing or administering public funds for these purposes.
- 23.12 Inform Tower Hamlets council of any relevant change of circumstances e.g. hospital admission, long term holiday plans.
- 23.13 The direct payment user is responsible for ensuring that Inland Revenue Tax and National Insurance requirements for employees are complied with. They will also be responsible for meeting the following costs from the direct payment:
- employer's national insurance contributions,
 - all other insurances including public liability insurance,
 - statutory payments in respect of maternity leave pending reimbursement by the relevant central government agency,
 - statutory payments in respect of sickness
 - pension contributions where applicable
 - staff training costs,
 - advertising costs,
 - any other costs related to employment of staff and administration of the direct payment,
 - maintenance and replacement costs of any capital goods as agreed in the support plan.

24. Support with direct payments

24.1 Social care users: The following support will be made available either through practitioners, brokerage or the commissioned Support Service (currently provided through Real) to adult social care users:

- Providing initial information and advice on the benefits and responsibilities of direct payments.
- Advice and support on opening bank accounts
- Formulating a plan for managing the direct payment
- Compiling job descriptions
- Recruitment of personal assistants and liaison with care agencies
- Training and support in completing quarterly monitoring returns
- Public and liability insurance
- Training and ongoing support in employment practices and requirements
- Applications for a DBS (Disclosure & Barring Service) check where necessary
- Recommendation of payroll services to assist in tax and NI payments.
- The Support Service at Real provide workshops and one-to-one assistance for individuals to complete monitoring returns if needed.
- Support with setting up Direct Debit mandates to pay the client contribution into the DP Account.

25. Change in circumstances

25.1 Minor change in circumstances:

If there is a relatively minor change in circumstances (e.g. if someone replaces their Personal Assistant) the service user does not need to inform adult social care. This includes if a service user employs a different Personal Assistant - if they are not a family member - or if they change to a different provider who meets their needs and stays within the direct payment amount¹². These changes can be discussed and recorded during review meetings with practitioners and can be recorded on monitoring returns.

25.2 Changing providers:

If a service user wants to change to a provider who costs more than the agreed direct payment amount, the service user will contact their key team/worker. Practitioners will need to decide if the person's needs have changed (in which case a review will be necessary) and/or review the best-value option to meet the person's needs. If the individual's needs have not changed and they want to switch to a provider that is more expensive than the "best value" option identified by the Brokerage team during the support planning process, the "Top-Up Policy" will then apply.

¹² Practitioners will need to make clear in the support planning stage that any underspend needs to be returned to the local authority.

25.3 Change in the type of service purchased:

Individuals are able to change the type of support they purchase as long as it continues to meet the need and is within budget. For example a gym membership may not be successful so instead the individual purchases a bike to promote exercise and mobility. Or the person decides to no longer attend a day service but uses the equivalent money to attend the theatre with an escort on a less frequent basis. These changes would be noted in the returns submitted to brokerage with the explanation for how it continued to meet the need in the support plan.

23.4 Significant change in circumstances:

Direct Payment holders should notify adult social care of any significant change in circumstance either at review or by contacting their key team/worker. The direct payment will then be adjusted accordingly in line with any changes to the Support Plan, following re-assessment. Any decreases to a Support Plan should be applied with one month's notice to allow for any contractual obligations towards employees.

23.5 Hospital or respite stays and Reablement:

Periods spent in hospital or respite or with Reablement will not necessarily result in a direct payment being suspended, as a provider or Personal Assistant may still be providing care or may expect to be paid under employment law. Actions can be agreed on a case-by-case basis. As far as possible, contingency plans covering these issues should be included in a person's support plan (for example, it may be agreed that a PA will take annual leave in the event that a person is hospitalised) and should be reflected in the contract between the Personal Assistant and their employer.

23.6 Change following hospital discharge or Reablement:

Where changes in need are recommended following a hospital admission or period of Reablement the increase or decrease will initially be calculated based on the existing Support Plan hourly rate paid to the PA or Agency multiplied by the number of hours. Practitioners must ensure that the increase or decrease is communicated to the service user and that any increase can be picked up by the existing PA or agency. An urgent response should be sent to brokerage to make the change to payments. In the case of a decrease to PA hours, the PA must reduce the actual hours delivered with immediate effect but the pay will be reduced after a period of 1 month to give adequate notice of the change. This will enable changes to take effect immediately and the support plan can subsequently be amended following the six week review.

26. Complaints

- 26.1 In the event of a disagreement between the direct payment user and the practitioner or other Adult Social Care services representative, which cannot be resolved informally, the direct payment user has the right to use the Adult Services Complaints Procedure. This includes a refusal to give a direct payment on the grounds of inability to manage or control the payment.

- 26.2 The direct payment user must be given information about the procedure, and information about and help in obtaining advocacy services to enable them to use the procedure.

27. Interdependencies

This policy should be read in conjunction with the following

- The Adult Social Care Practice Framework
- The Community Catalogue in adult social care
- Adult Social Care Safeguarding policies and procedures
- Adult Social Care Ensuring Quality Scheme
- Adult Social Care Top-Ups Policy
- Adult Social Care Mental Capacity policy
- Adult Social Care Charging Policy

28. Review of the Policy

This policy and practice guidance will be subject to review by the ART manager and operational managers every 18 months from the date of implementation.