Direct Payments Policy

For use in Adult Social Care and Children’s Schools and Families
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For information on Carers Direct Payments, please click here.
1 FOREWORD – SURREY COUNTY COUNCIL’S POSITION

Surrey County Council is committed to increasing choice and independence for its residents, aiming to ensure a better quality of life for each individual. Key to this aim is the County Council’s Direct Payments Policy.

We are committed to promoting Direct Payments as a positive option for individuals and their carers who are eligible for support from Surrey County Council to enable them to live safely and independently.

Changes in legislation and government policy mean that Direct Payments are now even more accessible for people that we support, and we should ensure that they are actively explored as a way to help to meet an individual’s assessed needs and agreed outcomes. To do this, we will discuss the option of Direct Payments with everyone who is potentially eligible to receive them and ensure they have the information and help they need to decide if this the right option for them and their family.

This policy outlines the key principles of Direct Payments in Surrey and is aimed at supporting individuals and carers who have a Direct Payment. The policy also gives information and guidance to social care practitioners to make the best use of the opportunities Direct Payments can provide.

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INTRODUCTION TO DIRECT PAYMENTS

“Direct Payments are monetary payments made by councils directly to individuals who have been assessed as having eligible needs for [social care] services. Subject to a few exceptions, councils must offer people who qualify for services the option of having a Direct Payment if they are eligible for this. Direct Payments are one way in which people can direct their own support by purchasing the assistance or services that the council would otherwise provide. They are crucial to delivering the personalisation agenda”. (Department of Health, 2009, Guidance on Direct Payments: For community care, services for carers and children’s services).

“Paid as cash in lieu of directly provided services, a Direct Payment gives the service user flexibility to look beyond ‘off-the-peg’ service solutions at options that may include employment, education and leisure activities as well as personal assistance to meet their assessed needs. Many people using Direct Payments have experienced the benefits of increased opportunities for independence, social inclusion and enhanced self-esteem.” (Department of Health, 2009, Guidance on Direct Payments: For community care, services for carers and children’s services).

“The Government’s aim is to improve service provision across the board for disabled children and their families. It includes a commitment to give families with disabled children real choice and control to design flexible service packages that respond to their needs. Direct Payments are one way of enabling families and disabled young people to achieve this ambition.” (Department of Health, 2009, Guidance on Direct Payments: For community care, services for carers and children’s services).

Surrey County Council is committed to promoting independence, choice and control for people eligible for social care services, and increasingly moving from a service based upon care to one based on support and enablement. Direct Payments are a key means of achieving this and should be offered to everyone who is eligible at assessment and review. Although we, as a Local Authority, have a duty to ensure public money is spent appropriately, these requirements need to be based around an individual assessment of need and risk so that we can really offer choice to those we serve.

Direct Payments help in “supporting individuals to take control of their own lives and to make the choices which matter to them” (Department of Health, 2005, Independence, Well-being and Choice: Our vision for the future of social care for adults in England).
3 LEGISLATIVE AND POLICY CONTEXT

3.1 Legislation

The relevant legislation that covers Direct Payments is the Community Care (Direct Payments) Act 1996 and subsequent issuing of the Community Care, Services for Carers and Children’s Services (Direct Payments) England regulations 2003.

The Community Care (Direct Payments) Act 1996 sets out the circumstances when Direct Payments should be considered. It gives local authorities the power to offer people cash payments as an alternative to arranging social care services to meet their assessed, eligible needs.

The introduction of the 2003 Direct Payments Guidance published by the Department of Health meant that Local Authorities no longer have the option to make Direct Payments, but have the duty to offer Direct Payments as an alternative to all individuals and their carers who have been assessed as needing community care services or equipment and who meet the authority’s eligibility criteria.

The Carers and Disabled Children Act 2000 also extended the power of local authorities to offer Direct Payments to 16 and 17 year-old disabled people and those with parental responsibility for disabled children. It should be noted that any support paid for through a Direct Payment must promote and safeguard the welfare of children in need, as stated in the Children Act 1989.

On the 9th November 2009, significant changes were made to regulations governing Direct Payments. In the Direct Payment extension 2009, new regulations came into force which extends Direct Payments to people with mental health problems that are subject to mental health and certain criminal justice legislation and also provides for Indirect Payments to be made on behalf of people who lack capacity to consent.

Following the Direct Payment extension 2009, new Guidance on Direct Payments: For community care, services for carers and children’s services was developed which provides information on how local councils might operate Direct Payments. It reflects the changes brought about by the new regulations and supersedes the 2003 Direct Payments guidance.

In 2012, Statutory Instrument Number 206 Education England The Special Educational Needs (Direct Payments) (Pilot Scheme) Order 2012 enabled a group of Local Authorities, including Surrey County Council, to pilot the use of Direct Payments to meet some educational needs of children with Special Educational Needs and disabilities. This is part of the reform of provision for children and young people with Special Educational Needs - SEND Green Paper ‘Support and Aspiration – a new approach to Special Educational Needs and Disability’ where Direct Payments can be considered as part of a personal budget offer. Legislation is currently being drafted to put these proposals into practice by 2014.
3.2 Policy Context

The principles that underpin Direct Payments and Self Directed Support are at the core of government policy for social care:

In 2005 the government’s policy ‘Improving the Life Chances of Disabled People’ set out a new vision for the services that support disabled people. At its heart it proposed that by 2012 all disabled people would control their own Individual Budget.

In 2006, the government released the white paper ‘Our Health, Our Care, Our Say’ A direction for communities’, which confirmed the vision of empowering individuals to take control over their own lives and have greater choice around the services they receive. As stated in the white paper the government’s strategy is “to put people more in control, to make services more responsive, to focus on those with complex needs and to shift care closer to home.”

More recently, in 2007, the government released a Ministerial Concordat ‘Putting People First’ that confirmed their intention to put individual empowerment at the heart of adult social care: ‘the right to self-determination will be at the heart of a reformed [adult social care] system only constrained by the realities of finite resources and levels of protection, which should be responsible but not risk averse.’

In June 2008, the Prime Minister personally launched the Government’s new ‘National Carers Strategy’ and Ministers have highlighted that the Personalisation agenda will be seen of key importance in improving support for carers.

In 2010, the government published ‘A Vision for Adult Social Care. Capable Communities and Active Citizens’. Under the vision for personalisation, it “challenges councils to provide personal budgets, preferably as Direct Payments, to everyone eligible”, “by April 2013”. In addition, in the context of the benefits of personalisation, “pooling budgets is one way of maximising outcomes”, and this can be done “using Direct Payments”. It goes on to add that “more carers [should be] receiving Direct Payments for breaks from care over the next few years”.

The ‘Think Local, Act Personal Partnership Agreement’, published in November 2010 and finalised in January 2011, outlines next steps that local authorities should take for Transforming Adult Social Care. It states that, in order to help achieve a “personalised, community-based approach for everyone”, “people eligible for ongoing council social care funding [should] receive this via a personal budget (either as a Direct Payment or a managed account) allowing them to exercise the same amount of choice and control as those who pay for their own care and support.” It adds that “those who are eligible for ongoing council funding will receive this by way of a personal budget, with Direct Payments as the delivery model for most, backed by appropriate local support to allow people to benefit from the flexibility that such payments offer.”
The Green Paper ‘Support and aspiration: A new approach to special educational needs and disability’ was published on 11th March 2011. The response to this consultation entitled ‘Support and aspiration: a new approach to special educational needs and disability – Progress and next steps’ sets out the progress in taking forward the Green Paper reforms. As part of the next steps, Surrey Children’s Services are a pathfinder Local Authority in collaboration with the SE7 Partnership and as such will be building on our Direct Payment experience to implement a pilot for children’s personal budgets.

“We intend to introduce legislation early in 2013 so that we can fulfil the commitments we made in the Green Paper. We are already testing out our reforms through local pathfinders, developing the knowledge and skills that will be needed for their successful implementation, and making sure that we have the right measures in place to hold services to account. The lessons learnt from the pathfinders will help shape the changes we make to the law.” (Department for Education, 2011, ‘Support and aspiration: A new approach to special educational needs and disability’)
ABOUT DIRECT PAYMENTS

4.1 Direct Payments in Surrey

Surrey County Council is committed to ensuring that:

- The option of a Direct Payment is explored with, and understood by everyone who is eligible to receive one.
- Direct Payments are made to all individuals who are eligible to receive them and who want them.
- All eligible people will be given information about Direct Payments at the point of assessment and review.
- Everyone who wants to consider or take up a Direct Payment has access to timely and appropriate information, support and advice, in an accessible format, through the whole process.
- Decisions on eligibility for Direct Payment will be made promptly, and where a Direct Payment is not considered appropriate, the decision and reason will be recorded and shared.
- Surrey County Council will make a Direct Payment based on the Indicative Weekly Budget and agreed Support Plan.
- Once a Direct Payment has been approved, the first payment will normally be made within two weeks of the confirmation of approval. (Approval cannot be confirmed until the Direct Payment Agreement has been signed and bank account details received by the Council).

4.2 Who can get a Direct Payment?

Direct Payments are the Council's preferred option for the way in which people receive social care services. Direct Payments must be made to all individuals who are eligible to receive them and who want them.

Direct Payments can be offered to all adults aged 18 and over, including their carers, carers with parental responsibility for a disabled child under 18 years (as defined in the Children Act 1989), disabled young people aged 16-17 years, and young carers aged 16-17 years (who, in exceptional circumstances, have a substantial caring role for a disabled individual) who:

- have been assessed as in need of community care services, or family support services;
- have the mental capacity to consent to receive a Direct Payment and have given that consent (as defined in the Mental Capacity Act 2005);
- are able to make choices and direct how the payment is used;
- are able to manage their Direct Payment (independently or with assistance);
- agree to receive Direct Payments instead of, or alongside other Community Care Services, and
- are not subject to certain mental health or criminal justice legislation as defined in the regulations, and set out in section 4.3.
In addition, people who lack mental capacity to consent can have a Direct Payment via a third party who can be classed as a “suitable person”. This is subject to agreement by Surrey County Council that the person will act in the best interests of the individual.

This means that Direct Payments can be made to people in all client groups, carers, parents of disabled children and young people in transition to adulthood. Direct Payments can work particularly well for people who have needs that are different to the majority of people in the community, for example people with specific cultural needs and people who have variable or episodic support needs, as they allow maximum flexibility and individual choice and control. This means that people can use the money to get support to help deliver their outcomes in a more personalised way from within their own family or community.

The assessment on whether someone is able to manage a Direct Payment should be central to the Supported Self Assessment (SSA). In coming to a decision on the person’s ability to manage a Direct Payment, the assessment should always take account of the views of others including health professionals, the Direct Payment Support Service provider and the views of individuals and their carers.

In making this assessment the Council should be satisfied that there is an understanding of what is involved in managing Direct Payments. When someone has the mental capacity to consent but needs additional support, they can have that support either through a nominated individual (e.g. to sign a cheque) or through a Supported Managed Account, provided by the Direct Payment Support Service provider.

4.3 Who cannot get a Direct Payment?

Direct Payments may not be made to certain people whose liberty to arrange their care is restricted by certain mental health or criminal justice legislation as follows:

- patients detained under mental health legislation who are on leave of absence from hospital;
- conditionally discharged detained patients subject to Home Office restrictions;
- patients subject to guardianship under mental health legislation and those covered by the new power of supervised discharge introduced by the Mental Health (Patients in the Community) Act 1995;
- people who are receiving any form of after-care or community care which constitutes part of a care programme initiated under a compulsory court order;
- offenders serving a probation or combination order subject to an additional requirement to undergo treatment for a mental health condition or for drug or alcohol dependency;
- offenders released on licence subject to an additional requirement to undergo treatment for a mental health condition or for drug or alcohol dependency;
- people subject to equivalent restrictions in Scottish mental health or criminal justice legislation; and
- “Carers” of disabled children if they do not have Parental Responsibility, where the payment relates to the care plan of the disabled child, for example foster carers or extended family members.
Reference should be made to the Regulations for full details of the circumstances in which the duty to make a Direct Payment does not apply.

People who have given Enduring Power of Attorney or Lasting Power of Attorney to another may continue to receive Direct Payments even when they no longer have legal capacity, provided consent was given while they were still able to make such decisions. However, the attorney cannot give consent on the person’s behalf if it becomes appropriate for the person to receive different support.

4.4 Methods of assisting people with Direct Payments

Advice and support must be offered to people to help them manage their Direct Payments package. Support with managing Direct Payments can take many forms, it can be provided by a variety of sources including family, friends, peers, professionals, advocates, support services, and Lasting Powers of Attorney.

To enable Direct Payment recipients to take as much control of their lives as possible, Surrey County Council work with a partner organisation who provide Direct Payments information, advice and support across Surrey.

In Adult Social Care, the Sourcing Teams initiate payment, provide on-going financial monitoring of payments and reconciliation of individuals’ payments alongside their Support Plan. It is the responsibility of Adult Social Care practitioners to ensure that individuals in receipt of a Direct Payment use those payments to meet the assessed, eligible needs and achieve the outcomes identified in their Support Plans.

In Children’s Services, the Social Worker or Family Support Worker for the child or young person will calculate the Direct Payments, obtain appropriate agreements and initiate payments which are then made by Children’s Finance Teams. The ongoing reconciliation and monitoring is carried out by Children’s Direct Payment Support and Monitoring team. It remains the responsibility of the Children’s Social Workers to ensure that individuals use their Direct Payment to meet the assessed, eligible needs and achieve the outcomes identified in the child or young person’s care plan.

There are two types of Direct Payments, and both can be made as a one-off or ongoing payment.

4.4.1 Individual Direct Payment – The individual or carer is able to consent to a Direct Payment, and signs the agreement. If an individual is not able to manage the financial side of the Direct Payment then another person can be named on the bank account as well as the Direct Payment recipient. The payment can be a one-off payment or an ongoing Direct Payment.

4.4.2 Indirect Payment - If an individual does not have the capacity to consent to a Direct Payment, and a Mental Capacity Assessment (MCA) has been completed, then an Indirect Payment (INDIP) can be arranged and set up. The Practitioner will have completed the assessment and determined that there is a suitable person to manage and receive the Direct Payment on behalf of the individual.
In addition, if the individual can consent to a Direct Payment, however cannot manage the administration, then a Supported Managed Account (SMA) can be arranged as a means of managing the Direct Payment. The support organisation funded by Surrey County Council will set up a bank account on behalf of the individual and manage the ongoing administration of their Direct Payment. However the individual will still make the decisions about how that Direct Payment is spent.

4.5 Direct Payments and risk enablement

There is a balance to be struck between enabling choice and control whilst maintaining the safety of individuals and the level of risk will vary. This is a balance of protecting people from harm whilst supporting them to understand and manage their own risks. On balance, however, where people have capacity to make decisions and understand the risks and benefits of the various support options open to them, our role should be to enable them to take as much control of their lives as possible.

For children, the Direct Payment agreement requires parents to ensure that an adequate enhanced Criminal Records Bureau (CRB) check is taken out for any staff employed by the parent to look after the child. This CRB is applied for by the support agency and paid for by Surrey County Council.

4.6 What can Direct Payments be used for?

Individuals can use their Direct Payment to meet the assessed eligible needs identified in their Support Plan. The money must be spent to meet these needs in a way that is safe, lawful, and affordable (for the individual, carer and council).

Individuals may choose to employ people directly or to commission support from an independent or voluntary sector provider, or they may choose to plan their support in more flexible ways that fit in with their lives.

The key factor is whether the proposed plan will meet the person’s eligible needs and stated outcomes in a way that suits them. As long as the money is used lawfully, to meet the person’s needs, there can be a great degree of flexibility about how the money is spent. For this reason there is not a definitive or exhaustive list of support the money can be used for.

It is important to remember that people can also use a combination of Direct Payments and Local Authority provided or directly commissioned support, i.e. a 'mixed' package. One-off payments can also be made, for example for equipment or other single items that do not require an ongoing payment.

Where a Direct Payment is used to buy equipment, e.g. a hoist, computer or washing machine, the equipment becomes the legal property of the individual. The individual is also able to top up the Direct Payment to buy a higher specification model provided that it helps to deliver their outcomes and is agreed as suitable by the practitioner. The individual then becomes responsible for ongoing maintenance and repair of the equipment and this should be taken into account in the decision to provide a one-off payment. Any ongoing maintenance costs should be accounted for within an individual’s personal budget and Support Plan, as appropriate.
Direct Payments can be used for short term breaks, however regulations place a restriction on the number of individual 'short breaks', and on the maximum number of weeks for each stay, that a person can use their Direct Payment to purchase accommodation and support in a registered care home over a twelve-month period.

Additional guidance is available for social care practitioners on the Adult Social Care procedures pages of the County Council’s intranet (SNet).

4.7 What can’t Direct Payments be used for?

Generally, although some exceptions may apply, Direct Payments cannot be used for things such as:

- health care, housing costs, or household bills;
- residential or nursing-home costs, unless it’s for short periods of respite, for example to give a carer a break;
- services from Surrey County Council or any other Local Authority (including educational costs) or from the NHS; or
- support for needs that have not been assessed by Surrey County Council and are not in the agreed Support Plan.
- employing partners or close relatives living in the same household

As above, additional guidance is available for social care practitioners on the County Council’s intranet.
5 SURREY COUNTY COUNCILS FINANCIAL OPERATIONAL POLICY FOR DIRECT PAYMENTS

5.1 Bank Accounts

For adults, Surrey County Council will only make Direct Payments over £50 per week into bank accounts which are used solely for meeting the outcomes and provisions of the agreed Support Plan.

For children, all on-going Direct Payments should be made into a dedicated account. One-off Direct Payments (e.g. Carers Breaks) can be made into any nominated bank account.

Where there are issues in obtaining a bank account, Surrey County Council or the Direct Payment Support Service provider can offer support with this.

5.2 Charges

Adults will be given the choice of receiving their Direct Payment Gross or Net of any assessed charge. If an individual has not expressed a preference then payments will be made net of the assessed charge.

Surrey County Council do not make any charges for children’s Direct Payments.

5.3 Frequency of Payment

Direct Payments are made in advance. Individuals are offered the choice of whether they wish to receive their Direct Payment on a quarterly or monthly basis. If an individual has not expressed a preference then the payment will be made at the frequency most suitable for the delivery and management of the Support Plan.

5.4 Agreement between SCC and the Individual

Surrey County Council is agreeing the individual will manage a Direct Payment to meet their agreed Support Plan, to give the individual a written explanation of the money which will be made available to them at least once a year, and to give adequate notice in writing, following discussion, for any changes to the payments made.

The individual is agreeing to manage the money in accordance with Terms & Conditions as set out in the Direct Payment Agreement.

5.5 Monitoring and Reconciliation

Adults receiving a Direct Payment are required to submit reconciliations to their area Sourcing Team detailing their Direct Payment income and expenditure, along with statements from the nominated bank account used for receipt of the Direct Payment. This can be done by themselves or with support from the Direct Payment Support Service provider.
For children, the returns can be completed by the individual or Direct Payment Support Service provider and should be sent to Children's Direct Payment Support and Monitoring team for review along with copies of bank statements and evidence of expenditure. Individuals who would prefer to use the finance team from our support organisation may do so and there is no charge to the individual for this service.

The frequency of these reconciliations will be dependent on the level of risk to both the individual and the Local Authority, which must form part of the individuals Support Plan and Direct Payment Agreement.

5.6 Reviews

Direct Payments are subject to a minimum annual review requirement for adults and six monthly for children, and an initial review should be undertaken within 13 weeks of the Direct Payment commencing. These reviews should look at how the Direct Payment is being used to meet the identified needs in the Support Plan, and should ensure the payment is being managed within the terms and conditions of the individual’s Direct Payment Agreement.

5.7 Suspension and Ceasing of Direct Payments

No Direct Payment should be suspended or ceased without a formal review involving a social care practitioner, individual and any relevant parties.

5.8 Reclaiming

Surrey County Council will reclaim any unused Direct Payments that have not been used.

If Surrey County Council identifies that a Direct Payment has not been used in line with the Support Plan or has been misused or misappropriated, then it may seek to recoup this cost from the individual.