



Direct Payments

**Living your life with choice and
control**

Policy and Procedure

October 2021

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Direct Payments: Living your life with choice and control – Policy and Procedure

Bristol City Council is committed to ensure Direct Payments are delivered safely, efficiently and effectively. This Policy is to help ensure that members of staff, the public and health and care partners have the information they need to make informed decisions about Direct Payments.

This Policy supports Bristol City Council's commitment to promoting individual wellbeing and to supporting independence through preventing, reducing or delaying the need for care and support.

1. Purpose and Scope of this Policy

1.1 The purpose of this Policy is to reflect the requirements of the:

- Care Act 2014 effective from 1 April 2015;
- Care and Support (Direct Payments) Regulations 2014;
- Care and Support Statutory Guidance issued under the Care Act 2014 by the Department of Health in October 2014 (as amended)
- Coronavirus Act 2020 and subsequent Government Guidance 2021 relating to people in receipt of Direct Payments

1.2 The scope of this Policy covers the standards, guidelines, regulations and processes that Bristol City Council adheres to in the administration of Direct Payments.

1.3 This Policy sets out the responsibilities of Bristol City Council and responsibilities of Service Users and Carers to ensure appropriate management of the Direct Payment scheme to maintain adequate levels of care and support which meets eligible needs and outcomes.

2. What is a Direct Payment?

2.1 Direct Payments are monetary payments to enable people to make their own arrangements to meet eligible social care needs. Direct Payments are the government's preferred mechanism for personalised care and support as they promote independence, choice and control over how needs are met.

2.2. The amount of money allocated to fund the care and support required to meet an individual's needs is known as a Personal Budget. When certain conditions as outlined in the Care Act 2014 are met, all or part of Bristol City Council's proportion of a personal budget allocated under the Care Act 2014 can be paid direct to the person concerned (or in some circumstances to someone acting on their behalf) to meet needs as identified in the support plan. (see sections 2.2; 7.1; 7.5)

2.3 Direct Payments may also be used as a way of arranging after care services provided under s117 of the Mental Health Act 1983 (MHA).

2.4 Bristol City Council will be introducing Individual Services Funds (ISF) as an additional option for meeting eligible care and support needs (see section 9).

3. Definitions

Definitions of specific terms used in this Policy are defined at the Glossary at Appendix 1.

4. Legal context

4.1. This Policy derives from the legislation and government guidance set out in 1.1.

4.2. Other relevant legislation includes but is not limited to:

- Mental Health Act 1983 (MHA)
- Mental Capacity Act 2005 (MCA)
- Equalities Act 2010
- Human Rights Act 1998

5. Informing people, promoting choice and advocacy

5.1. Bristol City Council will provide information about Direct Payments to raise awareness of Direct Payments and how they can be used.

5.2. When a support plan to meet needs or discharge s117 duties is being developed, people will be advised which of their eligible needs, if any, or aftercare services may be met/provided through Direct Payments and offered the option of having them.

5.3. People may request Direct Payments and may opt in or out of Direct Payment arrangements by notifying the Council. Requests for Direct Payments are usually made at the support planning stage but may be made at any other time.

5.4 People who are likely to experience substantial difficulty in being involved in planning their support and have no appropriate person to support their involvement will be offered an independent advocate.

6. Who can receive Direct Payments

6.1. Anyone who has been assessed as needing care and support and wishes to manage their own care can receive a Direct Payment. This includes:

- people with care and support needs aged 18 or over (see section 26 regarding Young People moving from Children's to Adult Services)
- a Carer
- a disabled parent
- someone who has been nominated or authorised to manage payments on a Service User or Carer's behalf.

6.2 Except where an exclusion applies, where the conditions described at Paragraphs 7.1 (in respect of adults with capacity) and 7.5 (in respect of adults without capacity) are met, the Council has a duty to provide Direct Payments for people whose needs for care and support

have been determined to meet Care Act eligibility criteria and who have been allocated a Personal Budget to which Bristol City Council must contribute.

6.3 Except where exclusion applies, where the conditions described at paragraphs 7.1 and 7.5 are met, the Council has a duty to provide Direct Payments for people to whom aftercare services are provided under s117 of the MHA.

6.4. The regulations exclude people from receiving Direct Payments where they have been placed under certain conditions or requirements by the courts in relation to drug and/or alcohol dependencies (see Appendix 2)

See also section 20 Duty to Protect Public Funds.

7. Conditions for receiving Direct Payments

7.1. Direct Payments will be provided when requested by an **adult with capacity to do so and** when each of four conditions is fully met:

- a) the adult has capacity to make the request, and where there is a nominated person, that person agrees to receive the payments
- b) the local authority is not prohibited by regulations under section 33 from meeting the adult's needs by making direct payments to the adult or nominated person
- c) the local authority is satisfied that the adult or nominated person is capable of managing direct payments either by himself or herself, or with whatever support the authority thinks the adult or nominated person will be able to access
- d) the local authority is satisfied that making direct payments to the adult or nominated person is an appropriate way to meet the needs in question.

The Council will assess the appropriateness of the Service User/Nominated Person to manage the Direct Payment. The Council may request a Disclosure and Barring Service (DBS) check if there is a declaration involving dishonesty.

Where a conviction for dishonesty has been declared by the person who intends to administer the Direct Payment, the Council will assess whether it is appropriate for that person to administer the Direct Payment.

The Council can make a direct payment subject to other conditions such as the care must not be provided by a specific named person or specified information must be provided to the authority. Such conditions will be discussed with the service user and decided on an individual basis.

7.2. Adults without capacity to request direct payments

Adults without capacity to manage direct payments are entitled to receive them when there is an Authorised Person to manage them. Direct Payments will be provided when requested by an Authorised Person when each of the conditions at paragraph 7.5 is met.

7.3. An Authorised Person is someone who:

- is authorised under the MCA to make personal welfare decisions for the adult (i.e. the holder of a lasting power of attorney given to them by the adult before they lost capacity or Court appointed deputy), or
- is not MCA authorised, but the Council and any person authorised under the MCA to make personal welfare decisions for the adult agree they are a suitable person to whom to make Direct Payments, or
- is not MCA authorised and there is no MCA authorised person, but the Council considers that the person is a suitable person to whom to make Direct Payments.

7.4. When determining who is a suitable person to be an Authorised Person, the Council will consider all the relevant circumstances on a case by case basis.

7.5 In addition in order for an Authorised Person to receive Direct Payments the following four conditions must be met

- a) The regulations do not prohibit needs from being met through Direct Payments. See section 12 for restrictions on the use of Direct Payments.
- b) The Authorised Person will act in the adult's best interests in arranging care and support with Direct Payments.
- c) The Authorised Person is capable of managing Direct Payments either independently or with support.
- d) Making Direct Payments to the Authorised Person is an appropriate way of meeting needs.

7.6. The Council will take the following steps to assess whether making Direct Payments to the Authorised Person is an appropriate way of meeting needs.

- a) So far as is reasonably practicable and appropriate, the Council will consult and take into account the views of:
 - anyone named by the adult as someone to be consulted about whether Direct Payments should be made to the Authorised Person,
 - anyone engaged in caring for the adult or interested in their welfare,
 - anyone authorised under the MCA to make decisions about the adult's needs for care and support.
- b) So far as is reasonably ascertainable, the Council will consider:
 - the adult's past and present wishes and feelings.
 - any relevant written statement made by the adult before they lost capacity
 - the beliefs and values that would be likely to influence the adult's decision if the adult had capacity, and
 - other relevant factors the adult would be likely to consider if they were able to do so.
- c) The Council may request a Disclosure and Barring Service (DBS) check if there is a declaration involving dishonesty. Where the Authorised Person has declared a conviction for dishonesty, the Council will assess whether or not making Direct Payments to the Authorised Person is appropriate.

7.7 Bristol City Council will carry out an enhanced DBS check for:

- anyone who is **not** the adult's spouse/partner, a friend of the adult who is involved in providing their care, or a close family member (see Appendix 1 Glossary) who lives in the same household as the adult, and
- the person with overall responsibility for the day to day management of Direct Payments where the Authorised Person is a body corporate or an unincorporated body of persons.

7.8 The Authorised Person must notify the Council if they reasonably believe that the adult has regained capacity.

8. Declining a request for Direct Payments

8.1. Requests for Direct Payments will be declined if any condition set out at paragraphs 7.1 (for adults with capacity) and 7.5 (for adults without capacity) is unmet.

8.2. The Council will provide a written explanation of why the request was declined including:

- which conditions are not met,
- why the condition is considered to be unmet
- what the person making the request may need to do to obtain a positive decision.

8.3. Information about how to appeal the decision through the complaints process will also be provided.

8.4. The Council will continue the planning process to agree with the person whose needs must be met on how this can be achieved without the use of Direct Payments.

9. Individual Service Funds

9.1 If Direct Payments are not appropriate to achieve the desired outcomes for a Service User, once introduced Individual Service Funds (ISFs) will be an alternative option.

9.2 An Individual Service Fund is where the Service User chooses a Support Service Provider, rather than the Council, to manage their own personal budget.

9.3 The Support Provider will use the ISF to arrange services and support, with the Service User's agreement. With an ISF, the Service User gets choice and control of their support without having to manage the money themselves. The Support Provider remains accountable to the Service User.

9.4 The Bristol Direct Payment Account (BDPA) will be used to administer all ISFs. Appropriate monitoring will be in place to ensure that the eligible care and support needs of the Service User are met. The Service User will still need to be assessed for any personal financial contribution that may be required to be made towards the ISF.

10. Determining the amount of Direct Payments

10.1 Direct Payments are based on assessed need and cannot be offered until a full assessment or review has been carried out. Once the level of need has been identified, the services that are required to support those needs will be determined by the Council in discussion with the Service User.

10.2 A Support Plan will then be developed which identifies how the eligible needs will be met. This will specify a personal budget which is the amount sufficient to meet the needs that the local authority has a duty or power to meet.

10.3 The amount of the Direct Payment is derived from the personal budget as set out in the Support Plan and will be an amount which is sufficient to meet the needs unless the person is requesting a Direct Payment for only a part of their care and support requirements.

10.4 If the Service User or Nominated/Authorised person chooses to have more care and support or pay a higher hourly rate than stated in their support plan, they must add additional funds to their Direct Payment account to pay for the additional support. A personal 'top 'up' agreement must be completed in all cases.

10.5 If a Service User or Nominated/Authorised person chooses to arrange extra support from their Personal Assistant(s) they are responsible for additional employment costs incurred, such as accrued holiday, national insurance contributions, employer's national insurance, pension contributions, and redundancy payments, if appropriate. These additional costs must be paid as additional funds to the Direct Payment account.

10.6 If the Direct Payment is to be used to pay a care agency, and the Service User or Nominated/Authorised person chooses a care agency that charges a higher hourly rate than the Council's Direct Payment agency rate, they must add additional funds to their Direct Payment account to pay for the additional care and support.

10.7 The Council's Direct Payment rates are reviewed annually but this does not preclude more frequent reviews. Service Users or Authorised person will be notified by the Council of any changes to the rates in writing before the change comes into effect.

10.8 The Service User/Authorised person may request rates which are in excess of the published Direct Payment guideline rates. The request must be needs based, with a clear rationale and must evidence reasons for the request. The request can only be authorised by a Service Manager. Any agreement to a request in one case will not set a precedent for future cases.

10.9 In all cases the Service User or Nominated/Authorised person should retain a percentage of the funding in a **contingency fund** to cover ongoing employment costs, HMRC/NI requirements, emergency care cover and agency hourly costs if required.

The contingency fund held should normally equate to 4 weeks of the total value of the weekly Direct Payment at the prevailing rate set by the Council. If a surplus of funds

accumulates above the contingency, taking into account the need for contingency and any other anticipated expenditure, the Council will seek to reclaim the surplus. The Council will contact the Service User to discuss before any reclaim is made. Any surplus funds remain the property of Bristol City Council.

The Council may increase the number of weeks of contingency fund that can be held at any one time.

10.10 Following a financial assessment, Service Users/Authorised person may be required to make a **personal financial contribution** towards their total package of care. Service Users/Authorised person will be informed of the amount they are required to pay in writing. The Direct Payment from the Council will be paid net of the contribution.

If there is refusal or failure to make the assessed personal contribution the Council will communicate with the Service User to consider all alternative options to meet the eligible needs.

10.11 No action will be taken to withdraw a Direct Payment without ensuring suitable alternative arrangements are made to meet the Service User's assessed eligible needs.

11. Using Direct Payments

11.1. Direct Payments must be used **only** to pay for arrangements to meet the needs specified in the support plan.

11.2. Direct Payments must be used to purchase services which are safe, legal and which adequately safeguard and promote the person's welfare and wellbeing.

11.3. Direct Payments may be subject to conditions imposed by the Council and may be discontinued and/or recovered if the Council has reason to believe that they may have been misspent or accumulated without good reason. (See also section 20 Duty to Protect Public Funds.)

12. Restrictions on the use of Direct Payments

12.1. Direct Payments must not be used:

- to pay a family member living in the same household as the person with care and support needs, except where the Council considers there are exceptional circumstances to do so. Where it is believed that there are special circumstances, a request must be submitted to a Service Manager for authorisation and agreement. Requests will only be considered on a case-by-case basis (see also Section 13). Any request must evidence clear reasons for the request. Any agreement in one case will not set a precedent for future cases and must be approved in writing by the Council before any such payments are made to the family member (for definition of "close family member" see Appendix 1 Glossary).
- to purchase any service directly provided by Bristol City Council.

- to fund goods, services, equipment and/or minor adaptations that would normally be part of existing public services or the responsibility of other public bodies, including health service, public amenities and housing authorities.
- to pay for long term residential or nursing care but can be used for respite/short stay care. This will be decided on a case-by-case basis.

12.2. Carer Direct Payments are to meet the Carer's own assessed needs and must not be used to purchase services for the Service User.

12.3. An Authorised or Nominated Person must not use Direct Payments to pay themselves to provide services to the person who needs care, except under exceptional circumstances to only provide administration and/or management of a complex Direct Payment. Each case must be authorised by a Service Manager and confirmed in writing by the Council. See also section 20 Duty to Protect Public Funds

13. Flexible use of Direct Payments in exceptional circumstances

13.1 For the period covered by the Coronavirus Act 2020 or succeeding legislation, the Council will adopt a flexible approach in the use of Direct Payments where needed. This includes where there is a request to enable family members, including those who live under the same roof, to be employed as Personal Assistants and be paid through a Direct Payment. Flexibility will be applied on a case by case basis, according to assessed need and time limited in line with government guidance.

14. Managing Direct Payments

14.1. Anyone who agrees to be responsible for managing Direct Payments must be capable of managing them either independently or with support.

14.2. Adults with capacity can nominate a third party to manage Direct Payments for them. The Nominated Person is usually a family member or a friend. Bristol City Council must agree that the Nominated Person may manage Direct Payments on behalf of the person who needs care and support.

14.3. Anyone responsible for managing Direct Payments may purchase assistance, for example, record keeping, payroll and other employment related services or a managed account, from a Direct Payment Support Provider.

14.4. An Authorised or Nominated Person acting on behalf of a person who needs care and support is in a position of trust, is responsible and accountable for how Direct Payments are used and will be held liable for any misuse of Direct Payment funds.

15. Direct Payment recipients as employers

15.1. Service Users or Nominated/Authorised person may use Direct Payments to employ Personal Assistants (PAs), to engage self-employed Personal Assistants (PAs) or to pay an agency to provide services.

Where Service Users or Nominated/Authorised person employ PAs they must:

- be advised that there are legal responsibilities involved in becoming an employer and maintaining good employment practices
- be urged to seek advice about employer legal responsibilities, including being responsible for all employment related costs, for example employer liability insurance, workplace pensions, redundancy etc.

15.2 The Council requires Direct Payment recipients to purchase and maintain appropriate Employer's Liability Insurance for all PAs. This is a legal duty for all employers. The cost will be included in their Direct Payment funding for year 1. Insurance costs in subsequent years need to be paid by the Direct Payment recipient from the contingency fund. The Council may ask to see the insurance policy and premium receipts.

15.3 The Employer's Liability Insurance must have the appropriate level of cover for the activities that the PA will be undertaking. New staff must be added to the policy where required. Inadequate level of cover would be a breach of the Service Users or Nominated/Authorised person's agreement with the Council. The Council will verify that insurance is in place at the early review and annually thereafter.

15.4. The Council strongly recommends that an enhanced DBS check is obtained for all PAs whether the Service User has capacity or there is an Authorised Person. Funding for this will be included in the recruitment and set up costs for new Direct Payments if requested. Subsequent funding for enhanced DBS checks is to be taken from the contingency fund.

15.5 It is the Service User or Nominated/Authorised person's responsibility to make sure they have put a contingency support plan in place to cover emergency situations, for example when their PA is off sick, and to cover their PA's annual leave.

15.6 It must be clearly stated in a PA's contract of employment that their working conditions and arrangements are the sole responsibility of the Service User or Nominated/Authorised person.

15.7 When a PA is employed, the Council strongly recommends the Service User or Nominated/Authorised person to use a payroll advice service, or equivalent, to ensure that wages, national insurance, redundancy responsibilities and HMRC requirements are fulfilled.

15.8 The Council recommends that where self-employed PAs or a private care agency is used to provide care and support that the Service User or Nominated/Authorised person ensures that the relevant level of competencies are in place including enhanced DBS; insurances; references.

16. Accessing the Direct Payment

16.1 Bristol City Council's chosen method for providing Direct Payment funding is through the Bristol Direct Payment Account (BDPA). The Council contracts with a provider for the provision of the BDPA. The terms and conditions relating to how Direct Payments are agreed, paid, regulated and maintained will be in the Direct Payment Agreement with the Service Users or Nominated/Authorised person (see section 18 Direct Payments Agreement).

16.2 This approach uses a bank debit card that is issued with the Bristol Direct Payment Account, which is ordered and supplied on behalf of the Council at no cost to the Service User or Authorised person or Carer. The BDPA debit card differs from a standard bank debit card in that it is pre-paid and has no credit facility. The BDPA operates like a debit bank account allowing transactions to be made into and out of the account.

The card can be used to pay for services either:

- in person (using Chip and PIN)/contactless.
- by standing order or direct debit
- over the internet, by bank transfer, or by telephone.

16.3 Client and Carer Financial Services will pay Bristol City Council's contribution into the BDPA Account every 2 weeks in advance, to which the Service User/Authorised person must add **any assessed financial personal contribution** at no less than four weekly intervals. The account will be managed by the Service User or their Authorised/Nominated Person.

16.4 All BDPA cards have four blocks on them when they are issued. These are:

- Betting
- Dating/Escort Service
- Automated Fuel Dispenser
- Toll and Bridge fees

The Council has the authority to place additional restrictions on the use of the BDPA card should this be appropriate in accordance with the support plan and identified outcomes including where safeguarding concerns are raised.

16.5 If a Service User chooses not to use the BDPA as the method of receiving Direct Payments, the Council will discuss the reasons for this before other options are put in place. Bristol City Council has the facility to pay Direct Payments into a non BDPA separate bank account if a Service User declines the BDPA with clear reason for this choice.

16.6 Where a Service User maintains an existing bank account or has chosen to use a separate bank account for their Direct Payment funding, they must send statements to Client and Carer Financial Services on a three or six monthly basis as required by the Council, for account monitoring, or on request of the Council if these are required more frequently.

16.7 Where a separate bank account is used and a surplus of unspent Direct Payments has built up without any agreed plan for how it would be used to meet eligible needs, the surplus must be repaid to the Council. Failure to do so will result in action being taken by the Council.

16.8 If the Service User/Authorised person is unable to manage a BDPA, other options may be available to enable them to have a Direct Payment by using a managed account via a Direct Payment support provider. Alternatively, the Council may directly arrange services to meet the outcomes described in the support plan.

16.9 Where a Direct Payment ends, for example if a Direct Payment recipient maintaining an existing bank account were to die or move to residential or nursing care, remaining funds must be returned immediately to the Council after all residual costs are paid e.g. PA notice period, redundancy, HMRC, Care agency invoices, to avoid becoming part of the person's estate. This requirement is stipulated in the agreement with Bristol City Council signed by the Service User or Nominated/Authorised person. (see section 18 Direct Payments Agreement).

16.10 Direct Payments will be made in accordance with the requirements of Bristol City Council's financial policies and procedures.

16.11 Direct Payments will be paid net of any assessed personal contribution from the Service User, into the BDPA/Direct Payments account. The Service User/Authorised person must pay any assessed personal contribution into the Direct Payments account.

16.12 Bristol City Council will pay ongoing Direct Payments in advance at two weekly intervals.

16.13 All costs must be met within:

- any agreed personal budget which includes any personal financial contribution required from the Service User.
- the amount agreed as sufficient to meet the cost of s117 after care services.

17. Roles and responsibilities

17.1 The role of Bristol City Council is to assess eligible needs and calculate the appropriate budget which is approved to meet those needs. It is a duty for the Council to offer a Direct Payment as an option for Service Users and Carers to manage their own services.

17.2 The Council has a duty to ensure that social care funds are used effectively and that support plans adopt the principle of 'best value'. Should the Service User decide that they would like to receive a Direct Payment the Council will facilitate the process for this, whilst retaining the responsibility to ensure that the money is used appropriately to meet the needs identified.

17.3 There is a requirement for regular review and in certain circumstances the Council may determine that the Direct Payments should be ended (see section 21 Ending Direct Payments).

17.4 The Service User or Nominated/Authorised person is required to sign a Direct Payment Agreement with Bristol City Council to agree to the terms and conditions set out within this. This Agreement sets out the responsibility of the Service User or Nominated/Authorised person to use the Direct Payment solely for the purpose of meeting assessed eligible needs as identified in the support plan.

17.5 If a Service User has been assessed as having to make a personal contribution towards the cost of their care and support, they will be required to make this payment on a regular basis, in line with the signed agreement, into their Direct Payments account. Bristol City Council will pay the balance into their Direct Payments account.

17.6 Where the Direct Payment is used to employ a Personal Assistant (PA), the Service User/Authorised Person is obliged to assume the legal role of employer and to adhere to employment legislation.

17.7 Where the Direct Payment is used to purchase the services of a care agency or self-employed personal assistant the Service User/Authorised Person is responsible for making payment and other contractual obligations.

17.8 The Service User/Authorised Person is required to maintain appropriate records that provide evidence of how the money has been used and to account to the Council as required.

17.9 The Council uses providers of Direct Payment Support Services which will assist the Service User/Authorised person with a range of support options. Depending on the level of support required the cost of this service will be included in the Direct Payment sum paid to the Service User/Authorised person. This amount will be used to purchase the service directly with the Direct Payment Support Service Provider.

The Direct Payment Support Service will be responsible for providing support and assistance on employment related legislation and good practice. It will also provide assistance in managing Direct Payments if required.

The support provider is responsible for ensuring the organisation of payments related to the Direct Payments support that the Service User is receiving.

17.10 Where Direct Payments are used for the employment of PAs, the Service User/Authorised person is required to maintain appropriate records and adhere to employment law, regulations and HMRC procedures. At all times the responsibilities for employment of PAs remain with the Service User/Authorised person.

The Direct Payment rate for PAs includes an amount for National Insurance, tax and employment insurance. It is the responsibility of the Service User/Authorised person to ensure that all returns and payments are made to HMRC. The Service User/Authorised person is also required to retain some of the Direct Payment as a contingency to cover for leave, sickness and enhancements.

Where a contract of employment of a PA ceases the Service User/Authorised person as employer must comply with redundancy regulations and ensure that appropriate notice is given and redundancy costs are met as appropriate.

The Nominated person can also take on the role and responsibilities of the legal employer at the request of the Service User.

18. Direct Payments Agreement

18.1 For ongoing or one-off payments the respective Direct Payments Agreement must be signed or electronic signature provided using either postal services or email by the Service User in addition by the Nominated person if in place and by the Council funding manager.

18.2 Where an Authorised Person has been appointed, they are required to complete and sign the Authorised Person form to indicate that they will be responsible for managing the Direct Payment on behalf of the Service User. The Authorised Person will need to complete and sign or provide electronic signature for the Direct Payment Agreement.

18.3 A scanned copy of the Agreement will be held on the Council's Adult Care computer system and the original signed copy given to the Service User/Authorised Person.

19. Review and monitoring of Direct Payments

19.1. All ongoing Direct Payments will undergo financial review within the first six months of the first payment being set up. The purpose of these reviews is to ensure the Service User/ Authorised person is comfortable with using the Direct Payments and not experiencing initial problems including financial or employment issues and payment of any assessed personal contribution. Subsequently, if no issues have been identified, "light touch" financial reviews will be carried out annually.

19.2 In addition to this, an annual review will be carried out in accordance with the Council's duties under the Care Act, although this may be more frequent depending on circumstances. This review will have an emphasis on care needs, self-determination, safeguarding and financial probity. Should the Service User/Authorised person identify the need for an earlier review a request will need to be made through Care Direct.

19.3 The Council will inform Service User/Authorised person about what records they must retain and what information they will be required to provide at each review before the Direct Payment Agreement is entered into.

19.4 Reviews to ascertain whether Direct Payments remain an appropriate way of meeting the Service User's needs will be carried out at any time at the Service User/Authorised person's request, or if the Council considers that:

- there has been a change in capacity
- there is a change in care needs
- Direct Payments have not been used as intended
- making Direct Payments to the person, the Nominated Person or the Authorised Person is no longer an appropriate way to meet the needs
- there has been a breach of a condition including non-payment of assessed financial personal contribution.

The Council will exercise its discretion in each case.

19.5 The review will establish if Direct Payments are being used to meet needs as

intended, conditions are being met and public monies are being used effectively. See also Section 20 Duty to Protect Public Funds.

19.6 Following a financial review, the Council will provide the Service User with written advice that the account has been reviewed and will raise any identified concerns.

19.7 More detailed reviews will involve the Service User, any Carer, any Authorised/Nominated Person, any family member providing paid administrative or management support (as specifically approved by the Council) and anyone else that the Service User requests to be involved e.g. an advocate.

19.8 If the Service User lacks capacity to make such a request, anyone who is authorised under the MCA to make personal welfare decisions (if different from the Authorised Person) or if there is no such person, anyone who appears to be interested in the Service User's welfare should be involved.

19.9 The outcome of any review will be confirmed in writing to the Service User/ Authorised person.

19.10 Where a Service User/Authorised person uses a non-BDPA account the Direct Payment Agreement requires the Service User/Authorised person to submit returns to the Council as and when requested. Where the recipient is in receipt of a BDPA, the financial review will be a mixture of submitted returns and monitoring of the BDPA financial transactions.

19.11 The Service User/Authorised person is required to keep financial records retaining copies of payments received and made, including monthly timesheets, payroll, bank statements, BACs advice slips, receipts, invoices, cheques and any cash withdrawals. Timesheets should be kept for four years (including the current year); bank statements and payroll documents for seven years.

20. Duty to protect public funds

20.1. Like all local authorities, Bristol City Council has a duty to protect the public funds that it administers.

20.2. All suspected concerns about fraud, including fraud committed against other public bodies, will be reported to the Council's Internal Audit Investigation Team for investigation which may lead to:

- information sharing between Bristol City Council and other bodies responsible for auditing or administering public funds such as HMRC and the Department for Work and Pensions, and/or
- criminal prosecution

21. Ending Direct Payments

21.1. People receiving Direct Payments, either for themselves or on behalf of another person, may decide at any time that they no longer wish to receive Direct Payments. They must then inform the Council either in writing or electronic communication of this decision.

21.2 On receipt of this communication the Council will have a discussion with the Service User/Authorised person to establish why this decision has been made. Discussion will need to consider options for allowing the Direct Payments to continue and if the decision is confirmed to end these, to make sure that the care and financial consequences of ending the Direct Payments are understood including all employment and support costs.

21.3 The Council may suspend or end the Direct Payment to the recipient if there is evidence to suggest that the individual has breached the Direct Payment Agreement including non-payment of assessed financial personal contribution.

21.4 The Council will, wherever possible, enter into discussions with the Service User/Authorised person to resolve the situation. Any decision by the Council to end the Direct Payment will be made in writing giving at least 7 days' notice

21.5 The Council **will** end the direct payments:

- Where the Council is no longer satisfied that the Service User/Authorised Person is capable of managing Direct Payments:
 - (a) by himself or herself, or
 - (b) with whatever help they will be able to access
- Where the Council is not satisfied that making Direct Payments to the Service User/ Authorised Person is an appropriate way to meet the eligible needs.
- Where the Service User becomes excluded from receiving Direct Payments because they have been placed under a condition or requirement by the Courts in relation to drug and/or alcohol dependencies.
- Where the Council is no longer satisfied that making Direct Payments to the Authorised/Nominated Person is in the Service User's best interests.

21.6 The Council **may** suspend or end Direct Payments either permanently or temporarily if:

- The Service User does not require assistance because their condition has improved and/or they do not need the services that Direct Payments were intended to secure.
- Any condition attached by the Council is unmet or the Council has reason to believe that Direct Payments have been used for purposes other than to meet needs as specified in the plan.
- The Service User/Authorised person breaches any condition set out in the Direct Payment Agreement.
- The Service User leaves their place of ordinary residence or has a change in circumstances. This includes temporary or long term absence from their original residence e.g. extended periods at another location or travelling abroad. Direct payments while abroad will generally not be paid for more than four weeks in any one calendar year except under exceptional circumstances. Where it is believed that there are exceptional circumstances, a request must be submitted to a Service

Manager for authorisation and agreement. Requests will only be considered on a case by case basis.

N.B. Long term hospital stays will be considered on a case by case basis.

21.7 Bristol City Council may suspend a BDPA while investigations are undertaken if it appears that the account has been accessed without the consent of the Service User or their Authorised/Nominated Person or unusual transactions have occurred. If this needs to happen the Service User/Authorised person will be informed first. The Council will ensure that assessed needs are met during any investigation.

22. Direct Payments that have ended

22.1. Where Direct Payments are ended, for example, if a Service User dies or moves into nursing/residential care, Bristol City Council Client and Carer Financial Services (CCFS) will undertake a Direct Payment account reconciliation. The reconciliation will identify:

- Calculation of any overpayments
- Unpaid assessed financial personal contributions
- Outstanding invoices

22.2 CCFS may, on advice from the relevant insurer or Direct Payments Support Provider and on receipt of supporting documentary evidence, pay outstanding invoices or make payments to PAs where appropriate, subject to sufficient funds being available in the contingency fund. CCFS will **not** calculate notice periods or redundancy payments.

22.3 The Council may require full or partial repayment of Direct Payments if:

- a) any condition attached by the Council is unmet or if the Council has reason to believe that Direct Payments have been used for purposes other than to meet needs as specified in the support plan.
- b) Direct Payments are not required to meet needs as set out in the support plan.
- c) excess funds have accumulated in the Direct Payments account where there is no reasonable explanation for the surplus.

22.4 Failure to act in accordance with the Direct Payment policy and the terms and conditions of the Direct Payment Agreement may make the Service User or Authorised/Nominated Person liable for any cost arising as a consequence of the failure.

23. Death of Direct Payment recipient

23.1 In the event of the death of a Direct Payments recipient, Direct Payments do not form part of that person's estate. The money at all times belongs to Bristol City Council and remains public funds.

23.2 Any fees due to HMRC are to be resolved between the Deceased Estate and HMRC.

24. Carers' Direct Payments

24.1 The Carers' budget in Bristol is a pooled budget jointly funded by Bristol City Council and the local Clinical Commissioning Group.

24.2 Direct Payments are frequently used to meet the eligible needs of Carers who have been assessed with reference to Section 10 of the Care Act 2014.

24.3 Section 10 requires a local authority to carry out an assessment, known as a "Carer's Assessment", where it appears that a Carer may have needs for support at that time, or in the future. The assessment will be reviewed annually. The majority of Carers will be offered a one-off Direct Payment to meet their assessed eligible needs. This one off payment will be paid into the Carer's designated bank account or nominated person's bank account.

24.4 There are two rates of ongoing Direct Payments that are made to Carers. Any requests for enhanced rates must go to the Team Manager/Senior Practitioner of the Integrated Carers Team as the budget holder.

24.5 The chosen method of managing ongoing and larger one-off Direct Payments, anything over £1000, uses a Bristol Direct Payment Account (BDPA). The larger one-off Direct Payments must be signed off by the Team Manager/Senior Practitioner of the Integrated Carers Team.

24.6 Carers are permitted to accumulate their Direct Payments in order to save for an item, event or service that will meet their assessed eligible needs. Funds may be reclaimed when an overpayment has been made following either the death of the cared for person or the Carer themselves, or when the cared for person enters residential/nursing care. Any reclaim will only be carried out following conversations with either the Carer or the Carers family members.

24.7 The Council does not carry out financial assessments on Carers. This means Carers do not make a contribution to the Direct Payments they receive. A Carer may however choose to purchase support in addition to what is being provided to meet their needs.

25. Independent Living Service One-Off Direct Payment

25.1 The Independent Living Service (ILS) can prescribe the purchase of equipment via a one-off Direct Payment, following a full assessment that takes into account the Service User's needs and views as to suitability, in the environment within which they live.

25.2 All equipment provided to hospitals and people in their own homes will be sourced via a main catalogue and provided on loan until such time that it is no longer required. The equipment will then be returned to Bristol City Council.

25.3 If a Service User wishes to accept the equipment prescribed they can. If they wish they can add features that are not essential. In this situation, the Service User will purchase their preferred option/equipment and send the receipt to the Council.

25.4 The Council will provide funding to the level of the assessed need as a contribution to the total cost of the equipment.

25.5 The Direct Payment must be used to purchase the agreed equipment. If it is not used for this, it must be repaid to the Council. Any part of the Direct Payment that is not spent on meeting outcomes(s) must be repaid to the Council within 3 months.

25.6 The Council will own and assume responsibility for maintenance and repair of the equipment on receipt of proof of purchase, manufacturers' instructions and technical data. The equipment is therefore on loan to the Service User. All equipment should be returned to the Council when no longer required to meet outcome(s) or if the Service User leaves the area covered by Bristol City Council.

25.7 Alternatively the Service User can own the equipment themselves and therefore assume responsibility for repair, maintenance and disposal.

25.8 If the equipment is no longer required, Bristol City Council may offer a partial reimbursement of any contribution made to the cost of the equipment by the Service User, in addition to the Direct Payment. The reimbursement offered will depend upon the age and condition of the equipment.

26. Young People in receipt of Direct Payments moving from Children's to Adult services

26.1 Early referrals from the Disabled Children's Service (DCS) to the Preparing for Adulthood Team (PFA) are encouraged, in order that a Care Act Assessment can be completed in a timely manner and eligible needs identified. Where appropriate a Direct Payment can be put in place or can continue from the young person's 18th birthday. (NB. Direct Payments to a young person under the age of 18 are provisioned under the Children and Families Act 2014, as opposed to the Care Act.)

26.2 In order to provide a seamless service, if there are any delays in referrals or allocation the PFA Team, DCS may agree to continue to provide the existing Direct Payment after the young person reaches the age of 18, until the new Direct Payment is in place.

26.3 In such cases, the DCS will arrange transfer of the cost from the PFA budget to DCS until the new Direct Payment is in place. Once in place, the PFA Team will inform DCS of the start date of the new Direct Payment.

27. Complaints

27.1 People will be provided with information about how to use Bristol City Council's complaints procedure, including their right to access advocacy.

27.2 Any person may use Bristol City Council's complaints procedure if they are dissatisfied with a Bristol City Council decision or the support they receive. People who receive, or consider that they should receive, Direct Payments have the same rights to access the complaints procedure as people whose support is provided directly or arranged by Bristol City Council.

27.3 Any person who is using a Direct Payment Support Provider service should raise their complaint with the Provider initially. If this is not resolved to their satisfaction, they can forward their complaint to the Council.

28. Data protection

28.1 Bristol City Council is the data controller for the purposes of the combined Data Protection Laws (UK GDPR and DPA 2018) and other regulations, which means it determines what data is used for and why it is collected. We will only process data in line with the core principles of the combined Data Protection Laws (UK GDPR and DPA 2018). Data will only be shared where proportionate and necessary to fulfil the purpose outlined in this Policy.

29. Review of this Policy

This Policy was signed off by Adult Social Care Departmental Management Team on 14th October 2021 and will be reviewed annually. The next review will be October 2022.

Glossary

Adult with capacity

In the context of this policy, an adult who has the mental capacity to request a direct payment .

Adult without capacity

People are always assumed to have capacity until established otherwise. In the context of this policy, where there is any doubt about an adult's capacity to make decisions about Direct Payments mental capacity will be assessed in accordance with the Bristol City Council's Mental Capacity Act policy. An adult will only be deemed to be without capacity when it has been established through assessment that this is the case.

Assessment – of needs

An assessment of an individual's needs for social care, support or s117 after care services to enable them to live as independently as possible.

Assessment - financial

An assessment of an individual's financial circumstances to determine whether they must pay a personal contribution towards the cost of services required to meet eligible needs. No financial assessment is required for s117 after care services as these must be provided free of charge.

Authorised Person

Authorised person is someone who is authorised to receive and manage a direct payment on behalf of a Service User who lacks capacity to do so.

This can be someone who:

- Holds a lasting power of attorney given to them by the adult before they lost capacity, or
- Was appointed as a deputy for the adult by the Court of Protection under section 16 of the MCA

Where the person making the request for Direct Payments on behalf of an adult without capacity is not authorised to make personal welfare decisions as described above, Bristol City Council and any person who is authorised to make personal welfare decisions must agree that the person making the request is a suitable person to act as the Authorised Person.

Bristol Direct Payment Account (BDPA)

A card, linked to a bank account, where funds are preloaded and used in a similar way to a banking debit card. The account cannot become overdrawn because there is no credit facility. The card is operated by a separate company of behalf of the Council.

Carer

In the context of this Policy a Carer is defined as someone over the age of 18 who provides unpaid support to family or friends.

Close family member (see section 12.1)

Someone who lives in the same household as the adult and who is the adult's:

- Parent or parent-in-law
- Son or daughter
- Son-in-law/daughter-in-law
- Stepson or stepdaughter
- Brother or sister
- Aunt or uncle
- Grandparent, or
- The spouse/partner/civil partner of any of the people listed and living in the same household as the adult.

The 2009 Direct Payment Regulations excluded the payment from being used to pay for care from a close family member living in the same household, except where the local authority determined this to be necessary.

While the Care and Support (Direct Payments) Regulations 2014 maintain this provision regarding paying a family member living in the same household for care, it provides a distinction between 'care' and 'administration/management' of the direct payment. This allows people to pay a close family member living in the same household to provide management and/or administrative support to the direct payment holder in cases where the local authority determines this to be necessary. This is intended to reflect the fact that in some cases, especially where there are multiple complex needs, the direct payment amount may be substantial.

Contingency

Bristol City Council recognises there are additional costs when a DP recipient employs PAs. These costs can include annual leave; sick pay; HMRC payments; insurance; DBS checks etc. To ensure the DP recipient has sufficient funds in their account Bristol city council monies in excess of the weekly personal budget to be held in their direct payment account.

DBS checking

Screening through Disclosure and Barring Services. This checks a person's criminal history and identifies people barred from working with children and vulnerable adults.

Direct Payments

Payment of Bristol City Council 's contribution towards a personal budget direct to a dedicated bank account, so that the person or someone authorised to act on their behalf can arrange support services instead of having them arranged by Bristol City Council.

Direct Payments Agreement

The written agreement which sets out the terms and conditions applicable to Direct Payments, which must be signed by both parties.

Duty to make Direct Payments

Where Bristol City Council has a legal obligation to make Direct Payments to eligible people when all conditions are met.

MCA

Mental Capacity Act 2005

MHA

Mental Health Act 1983

Nominated Person

A nominated person is someone a Service User chooses to help manage the direct payment. The Care Act provides a power to enable direct payments to be made to the person in need of care and support, or a nominated person acting on their behalf if agreed by the person with care needs and that person has capacity.

The nominated person can take on the role and responsibilities of the legal employer at the request of the Service User.

Personal Budget

The amount of money allocated to fund the care and support required. The Personal Budget is means-tested and therefore the adult may be required to make a financial contribution towards the total amount of the Personal Budget.

Review

Monitoring and review of Direct Payment arrangements to ensure that they continue to meet the eligible needs. Usually carried out concurrently with a review of the person's support plan.

Service User

A person assessed by Bristol City Council as eligible to receive care and support services.

S117 after care services

A wide range of services necessary to meet a need arising from a person's mental disorder when a person ceases to be detained under the MHA.

People excluded from Direct Payments

(Care and Support (Direct Payments) Regulations 2014 – Regulation 2)

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.**