



# **Direct Payments**

## **Living your life with choice and control**

### **Policy and Procedure**

**REVISION 2026**

<b>Contents</b>	<b>Page</b>
<b>1. Purpose and scope of this Policy</b>	<b>4</b>
<b>2. What is a Direct Payment?</b>	<b>4</b>
<b>3. Definitions</b>	<b>5</b>
<b>4. Legal context</b>	<b>5</b>
<b>5. Informing people, promoting choice and advocacy</b>	<b>5</b>
<b>6. Who can receive Direct Payments?</b>	<b>5</b>
<b>7. Conditions for receiving Direct Payments</b>	<b>6</b>
<b>8. Declining a request for Direct Payments</b>	<b>8</b>
<b>9. Individual Service Funds (ISFs)</b>	<b>8</b>
<b>10. Determining the amount of Direct Payments</b>	<b>9</b>
<b>11. Using Direct Payments</b>	<b>11</b>
<b>12. Restrictions on the use of Direct Payments</b>	<b>12</b>
<b>13. Managing Direct Payments</b>	<b>12</b>
<b>14. Direct Payment recipients - methods of employing/engaging support</b>	<b>13</b>
<b>15. Accessing the Direct Payment</b>	<b>15</b>
<b>16. Roles and responsibilities</b>	<b>17</b>
<b>17. Direct Payments Agreement</b>	<b>18</b>
<b>18. Review and monitoring of Direct Payments</b>	<b>19</b>
<b>19. Duty to protect public funds</b>	<b>20</b>
<b>20. Ending Direct Payments (Inc Hospital Stays/Travelling Abroad)</b>	<b>20</b>
<b>21. Direct Payments that have ended</b>	<b>22</b>
<b>22. Death of Direct Payment recipient</b>	<b>23</b>
<b>23. Carers' Direct Payments</b>	<b>23</b>

<b>24. Occupational Therapy one off direct payment</b>	<b>25</b>
<b>25. Young people in receipt of Direct Payments moving from Children’s to Adult services</b>	<b>25</b>
<b>26. Complaints</b>	<b>26</b>
<b>27. Data protection</b>	<b>26</b>
<b>28. Review of this Policy</b>	<b>26</b>
<b>Appendix 1 - Glossary</b>	<b>27</b>
<b>Appendix 2 – People excluded from Direct Payments</b>	<b>31</b>

## **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.

**Please note that throughout this policy when referring to people who draw on care and support from adult social care or Nominated Persons or Authorised Persons who are managing a direct payment will be referred to as Direct Payment recipients.**

### **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)

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.

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 as amended (MHA)
- Mental Capacity Act 2005 as amended (MCA)
- Equality Act 2010 as amended
- Human Rights Act 1998 as amended

### **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 the planning of 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 living in the community 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 & 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). The regulations preclude people from receiving Direct Payments to fund permanent care in a residential/nursing care home.

See section 19 Duty to Protect Public Funds and section 10.10.

## **7. Conditions for receiving Direct Payments**

### *Adults with capacity to manage their own 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 can manage 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.

7.2 The Council will assess the appropriateness of the individual 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.

7.3 The Council can make a Direct Payment subject to such other conditions as it thinks fit, such as stipulating that the care must not be provided by a specific named person, or that specified information must be provided to the authority at specified intervals. Such conditions will be decided on an individual basis and discussed with the service user before being incorporated into the person's Direct Payment agreement.

### *Adults without capacity to manage their own Direct Payments*

7.4. **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.

7.5. 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.

7.6. 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.

7.7 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 can manage Direct Payments either independently or with support.
- d) Making Direct Payments to the Authorised Person is an appropriate way of meeting needs.

7.8. 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 consider 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 making Direct Payments to the Authorised Person is appropriate.

7.9 Bristol City Council may 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.

7.10 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 by the Council if any condition set out at paragraphs 7.1 (for adults with capacity) and 7.4 (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 be able to do to obtain a positive decision.

8.3. Information about how to seek a review of the decision through the complaints process will also be provided. See section 26.

8.4. The Council will continue the care and support planning process to ensure that any assessed needs are met using alternative care arrangements.

## **9. Individual Service Funds**

9.1 If Direct Payments are not appropriate to achieve the desired outcomes for someone who wants to draw on care and support, once introduced, Individual Service Funds (ISFs) will be an alternative option.

9.2 An Individual Service Fund is where the person who wants to draw on care and support 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 person who wants to draw on care and support. With an ISF, there is choice and control of their support without having to manage the money themselves. The Support Provider remains accountable to the ISF recipient.

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 ISF recipient 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 Payment**

10.1 Direct Payments are based on assessed need and cannot be offered until a full Care Act assessment or review has been carried out and a support plan generated. Once the level of need has been identified by way of determining which of the eligible outcomes the person is unable to achieve, the services that are required to meet those needs and enable the person to achieve their eligible outcomes will be determined by the Council when the care and support plan is being produced.

10.2 A support plan will be developed which identifies how the eligible needs will be met. This will specify a personal budget which is the amount of money the Council considers will be sufficient to meet the needs that the local authority has identified the person is unable to achieve without support. As part of this process, the person who wants to draw on care and support will be consulted, and all reasonable steps will be taken to reach agreement with the person as to the content of the support plan before it is finalised.

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 identified in the support plan unless the person is requesting a Direct Payment for only a part of their care and support requirements. Any expenditure incurred by the Direct Payment recipient that exceeds that provided for by the personal budget will be the responsibility of the Direct Payment recipient and the Council will not pay more than the sums specified in the personal budget.

10.4 If the DP recipient wishes to purchase more costly services or have more hours than their personal budget (i.e., their direct payment plus any assessed individual personal contribution) provides for, they will need to provide additional funds to their personal budget with the necessary amount in addition to their individual personal contribution. The Direct Payment recipient must add extra funds to their personal budget to pay for the additional care and support and must sign the Bristol City Council personal 'additional funds' letter or email in all cases as well as the Direct Payments Agreement.

10.5 If the Direct Payment is to be used to pay a care agency, and the Direct Payment recipient chooses a care agency that charges a higher hourly rate than the Council's Direct Payment agency rate or any rate that is authorised by the Council, they must add additional funds to their personal budget to pay for the additional care and support and must sign the

Bristol City Council personal additional funds letter or email in all cases as well as the Direct Payments Agreement.

10.6 The Council's published Direct Payment guideline rates are reviewed annually. This is separate from Care Act or financial reviews. Direct Payment recipients will be notified by the Council of any changes to the rates in writing or any other requested communication method before the change comes into effect.

10.7 The Direct Payment recipient may request rates which are more than the published Direct Payment guideline rates. The request must be needs based, with a clear rationale and must evidence reasons for the request. This will be recorded on the Council's Electronic Records. 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.

10.8 In all cases the Direct Payment recipient should retain a percentage of the funding in a **contingency fund** to cover, amongst other things:

- ongoing employment costs,
- HMRC tax/National Insurance requirements,
- annual employers' liability insurance, 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. In exceptional circumstances the Council may consider a higher level of contingency, and this should be stated on the Support Plan.

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 Direct Payment recipient to discuss before the reclaim of any excess contingency is made. The Council will undertake a review of why the surplus has arisen, considering the totality of the DP recipient's eligible needs. The DP recipient will be given a full opportunity to provide written representations as to the why the surplus has occurred and why it should not be recouped. Any surplus funds remain the property of Bristol City Council.

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

#### *Financial Assessments*

10.10 All recipients of local authority care and support services are subject to a financial assessment to calculate how much, if anything, they should contribute towards the costs of their care and support. This is a means tested assessment and is based on provisions of The Care and Support (Charging and Assessment of Resources) Regulations 2014.

A financial limit, known as the 'upper capital limit', exists for the purposes of the financial assessment. This sets out at what point a person is entitled to access local authority support to meet their eligible needs.

The upper capital limit is currently set at £23,250 (as at 2025/26). Below this level, a person can seek means-tested support from the local authority. This means that the local authority will undertake a financial assessment of the person's assets and will make a charge based on what the person can afford to pay. This is called a **personal contribution** (see Section 6).

If the financial circumstances of a DP recipient change the DP recipient must inform Bristol City Council. This may affect the amount of the personal contribution. For example, changes to income, savings and investments; properties (that are not lived in as the main home) or receipt of a legacy/inheritance.

Direct Payments are paid into the Direct Payment account net of this contribution. Direct Payment recipients will be informed of the amount they are required to pay in writing or in any other requested communication method.

Where the Direct Payment is for 10 hours or less the Direct Payment recipient will be paid gross and an invoice raised for the payment of the any assessed personal contribution.

10.11 Failure to make payment of assessed personal contributions may result in the Direct Payment recipient being invoiced directly by the Council for any unpaid contribution. If the Council feels it is in the person's best interest to continue with their Direct Payment, then all future personal contributions will be on an invoice only basis. If non-payment of personal contributions persists the Council may choose to replace the Direct Payment with alternative care arrangements.

10.12 No action will be taken to withdraw a Direct Payment without ensuring suitable alternative arrangements are made to meet the Direct Payment recipient's assessed eligible needs, unless fraud is suspected (see section 19).

## **11. Using Direct Payments**

11.1. Direct Payments must be used only to pay for arrangements to meet the needs or achieve the outcomes specified in the support plan. Direct Payment recipients must use the eligible outcomes identified in the support plan to determine what the Direct Payments can be used to purchase or fund.

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. As specified below, 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 19 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. 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 person they provide care for. Conversely, the cared for person’s Direct Payment must not be used to purchase services to meet a Carer’s needs. For the avoidance of doubt, respite or replacement care are services contained within the cared for person’s support plan, not that of a Carer.

## **13. Managing Direct Payments**

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

13.2. Adults with capacity can nominate a third party to manage Direct Payments for them (A Nominated Person). 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.

13.3. 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 (see section 16.9).

13.4. 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, including to the criminal standard where appropriate. Authorised or Nominated Person’s will need to sign relevant Direct Payment documents.

13.5. An Authorised or Nominated Person must not use Direct Payments to pay themselves to provide care and support services to the person who needs care, except to only provide reasonable administrative support and/or management of a complex Direct Payment. Each such case must be authorised by a Service Manager and confirmed in writing by the Council. See also section 19 Duty to Protect Public Funds

13.6 The bank account into which direct payments are made must provide a full audit trail of all expenses and payments to carers or the organisation appointed to manage the funds. Direct Payment recipients must therefore not transfer funds from the direct payment account into their own personal or business accounts for any purposes. Bank transfers to other family members or friends who are not employed as carers or providing any service is also prohibited. This can be authorised in exceptional circumstances by the council.

#### **14. Direct Payment recipients - methods of employing/engaging support**

14.1. Direct Payment recipients may use Direct Payments to employ Personal Assistants (PAs), to engage self-employed Personal Assistants (PAs) or to pay an agency to provide services.

##### *Using employed PAs*

14.2 Where Direct Payment recipients 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, HMRC, redundancy etc and ensuring PAs have a 'Right to work' check. Direct Payment Support Providers can provide information and advice on employment responsibilities.

14.3 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 at review or financial audit.

14.4 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 Direct Payment recipient's agreement with the Council. Failure to arrange liability insurance may result in the Council not being liable for any employment related costs. The Council will verify that insurance is in place at the early review and at subsequent annual reviews.

14.5 The Council strongly recommends that an enhanced DBS check is obtained for all PAs whether the Direct Payment recipient has capacity or there is an Authorised Person. This is particularly important where a Direct Payment recipient may lack capacity to be able to monitor or report the actions of their PA or there are children in the household. 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.

14.6 It is the Direct Payment recipient'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.

14.7 It must be clearly stated in a PA's contract of employment that their working conditions and arrangements are the sole responsibility of the Direct Payment recipient.

14.8 When a PA is employed, the Council strongly recommends the Direct Payment recipient to use a payroll advice service, or equivalent, to ensure that wages, national insurance, redundancy responsibilities, pensions, and HMRC requirements are fulfilled.

14.9 The Council offers the services of Direct Payment support providers to assist Direct Payment recipients with complying with their employment duties. The Council will provide funding within the Direct Payment to cover the costs of such services. Information about the Direct Payment support providers offered by the Council will be provided at the time the person requests a Direct Payment. It is strongly recommended that Direct Payments recipients use the services of a Direct Payment support provider to assist them with complying with their duties as an employer (see section 16.9).

14.10 If Direct Payments recipients do not wish to use the services of one of the Council's recommended Direct Payment support providers, further information about setting up as an employer can be found on the Bristol City Council website.

#### *Using self-employed PAs or private care agencies*

14.11 The Council recommends that where self-employed PAs or a private care agency is used to provide care and support that the Direct Payment recipient ensures that the relevant level of competencies are in place including enhanced DBS; right to work; insurances and references. If a PA is self-employed the Direct Payment recipient must ensure they have a Unique Tax Reference number (UTR) from HMRC and that it is referenced on their invoices. Invoices must be raised by either the self-employed PA or care agency for any care and support that is provided, and invoices will need to be retained for audit purposes.

14.12 Where a person chooses to use PAs to meet their needs, it is important for Direct Payment recipients to correctly identify the contractual relationship between themselves and those PAs namely if they are employed or self-employed (see Appendix 1 - Glossary).

14.13 The Council wishes to make clear that the Direct Payment recipient is ultimately responsible for identifying the employment status of the PA in question. The Direct Payment recipient needs to make the correct decision in each individual case and minimise the risks of wrongly identifying the PA's employment status at the outset (see Appendix 1 - Glossary). Direct Payment support providers can provide information for Direct Payment recipients.

14.14 Generally, the Council would suggest that, if the Direct Payment recipient is in any doubt as to the PA's employment status, it would be best to consider the PA employed. It is

ultimately for the Direct Payment recipient to decide on the employment status of the PA, not the PA.

## 15. Accessing the Direct Payment

15.1 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 (see section 17 Direct Payments Agreement).

15.2 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 Direct Payment recipient. Where an Authorised Person has been appointed the BDPA card will be issued in their name. 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.

15.3 Bristol City Council will pay its contribution into the BDPA Account every 2 weeks in advance, to which the Direct Payment recipient must add **any assessed financial personal contribution**. This can be paid into the BDPA account weekly, fortnightly or 4 weekly. It is important that it is paid within these timescales to avoid the DP account falling into arrears or any contingency fund being used erroneously. The account will be managed by the Direct Payment recipient.

15.4 All BDPA cards have automated blocks on them when they are issued. These are:

- Betting (including Lottery Tickets, Casino Gaming Chips, Off-track)
- Internet gambling
- 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.

If the card is lost or stolen or it is believed its security has been compromised the card holder must inform card issuer customer services department immediately.

15.5 If a Direct Payment recipient 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 Direct Payment recipient declines the BDPA with clear reason for this choice.

15.6 Where a Direct Payment recipient has chosen to use a separate bank account for their Direct Payment funding, they must send statements showing all transactions relating to the Direct Payment to Client and Carer Financial Services on reasonable request by the Council. Failure to comply with any audit request may result in the Council taking action which could include termination of the Direct Payment. See section 20.3

15.7 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 upon request. Failure to do so will result in action being taken by the Council to recoup the sums from the Direct Payment Recipient.

15.8 If the Direct Payment recipient is unable to manage a BDPA, other options may be available to enable them to have a Direct Payment by using a supported account via a Direct Payment support provider. A supported account is where a DP support provider facilitates both payments in and out of the account on behalf of the Direct Payment recipient. This includes arrangement of direct debits, payment of invoices including HMRC and making sure appropriate annual insurances are in place. Alternatively, the Council may directly arrange services to meet the outcomes described in the support plan.

15.9 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, DP support providers, payroll costs to avoid such sums becoming part of the person's estate. This requirement is stipulated in the agreement with Bristol City Council signed by the Direct Payment recipient (see section 17 Agreement).

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

15.11 Direct Payments will be paid net of any assessed personal contribution from the Direct Payment recipient, into the BDPA/Direct Payments account. The Direct Payment recipient must pay any assessed personal contribution into the Direct Payments account and failure to do so will result in the Council considering whether the use of Direct Payments is an appropriate way of meeting needs or taking debt recovery action against the Direct Payment recipient.

15.12 If a Direct Payment is for 10 hours or less Bristol City Council, will pay the Direct Payment gross into the account. The Direct Payment recipient will be invoiced for any assessed personal financial contribution.

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

15.14 All costs must be met within:

- any agreed personal budget which includes any personal financial contribution required from the Direct Payment recipient; or
- where applicable, the amount agreed as sufficient to meet the cost of s117 after care services.

## **16. Roles and responsibilities**

16.1 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 people who draw on care and support for the Council and Carers to manage their own services.

16.2 The Council has a duty to ensure that local authority resources are used effectively and that support plans adopt the principle of 'best value'. Should the individual decide that they would like to receive a Direct Payment, the Council will make arrangements for this. The Council will retain responsibility to ensure that the money is used appropriately to meet the needs identified.

16.3 There is a requirement for regular review and in certain circumstances the Council may determine that the Direct Payments should be ended (see section 20 Ending Direct Payments).

16.4 The Direct Payment recipient must enter into a Direct Payment Agreement with Bristol City Council to accept the terms and conditions set out within the agreement. This Agreement sets out the responsibility of the Direct Payment recipient to use the Direct Payment solely for the purpose of meeting assessed eligible needs as identified in the support plan.

16.5 If a Direct Payment recipient has been assessed as having to make a personal financial 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 Direct Payment agreement, into their Direct Payments account.

16.6 Where the Direct Payment is used to employ a Personal Assistant (PA), the Direct Payment recipient is obliged to assume the legal role of employer and to adhere to employment legislation.

16.7 Where the Direct Payment is used to purchase the services of a care agency or self-employed personal assistant the Direct Payment recipient is responsible for making payment and other contractual obligations on receipt of relevant invoices.

16.8 The Direct Payment recipient is required to maintain appropriate records that provide evidence of how the Direct Payment monies have been used and to provide such information to the Council as required.

16.9 The Council uses providers of Direct Payment Support Services which will assist the Direct Payment recipient 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 Direct Payment recipient. This amount will be used to purchase the service directly with the Direct Payment Support Service Provider.

16.10 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.

16.11 Where Direct Payments are used for the employment of PAs, the Direct Payment recipient 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 Direct Payment recipient. (see Appendix 1 - Glossary)

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

16.13 Where a contract of employment of a PA ceases the Direct Payment recipient as employer must comply with redundancy regulations and ensure that appropriate notice is given, and redundancy costs are met as appropriate. Direct Payment Support Providers and/or insurance providers can advise on this and support with ensuring compliance if instructed to support the Direct Payment recipient to manage their Direct Payment. However, for those Direct Payment recipients who are not using a Direct Payment Support Provider or a privately arranged payroll provider to manage the Direct Payment, there is a government statutory redundancy calculator - [Calculate your statutory redundancy pay - GOV.UK \(www.gov.uk\)](https://www.gov.uk/calculate-your-statutory-redundancy-pay) (refer to section 21.3)

16.14 The Nominated Person can also take on the role and responsibilities of the legal employer at the request of the Direct Payment recipient.

## **17. Direct Payments Agreement**

17.1 For ongoing or one-off payments the respective Direct Payments Agreement must be signed or an electronic signature provided using either postal services or email by the Direct Payment recipient in addition by the Nominated Person if in place and by the Council funding manager. Where a Nominated Person is appointed, both the Direct Payment recipient and the Nominated Person are responsible for complying with the terms of the Direct Payment agreement.

17.2 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 Direct Payment recipient. The Authorised Person will need to complete and sign or provide electronic signature for the Direct Payment Agreement. The

Authorised Person will be solely responsible for complying with the terms of the Direct Payment agreement.

17.3 Where there is a change to the Authorised Person or nominated Person a new Direct Payment Agreement will need to be completed and signed.

17.4 A scanned copy of the Agreement will be held on the Council's Adult Care computer system and the original copy given to the Direct Payment recipient.

## **18. Review and monitoring of Direct Payments**

18.1 All ongoing Direct Payments will be supported in the first 6 months of the first payment being set up by BCC. The purpose of this support is to ensure the Direct Payment recipient is comfortable using the Direct Payment and is not experiencing initial problems including payment of any assessed personal contribution, employer's liability insurance is in place etc.

18.2 In addition to this, reviews will be carried out in accordance with the Council's duties under the Care Act. Reviews may be more frequent depending on circumstances. Reviews will have an emphasis on care needs, self-determination, safeguarding and financial probity. Should the Direct Payment recipient identify the need for an early review a request will need to be made through Care Direct.

18.3 The Council will inform the Direct Payment recipient 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.

18.4 Reviews to ascertain whether Direct Payments remain an appropriate way of meeting the Direct Payment recipient's needs will be carried out at any time at the Direct Payment recipient'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 or any term of the Direct Payments Agreement has not been complied with
- 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.

18.5 The review will establish if Direct Payments are being used to meet needs as intended (including compliance with the terms of the Direct Payments Agreement), conditions are being met, and public monies are being used effectively. (See also, Section 19 Duty to Protect Public Funds.)

18.6 Following a financial audit into spending on the Direct Payment account, the Council will provide the Direct Payment recipient with written advice that the account has been audited and will raise any identified concerns.

18.7 More detailed audits will involve the Direct Payment recipient, 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 Direct Payment recipient requests to be involved e.g. an advocate.

18.8 If the Direct Payment recipient 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 Direct Payment recipient's welfare should be involved.

18.9 The outcome of any review or financial audit will be confirmed in writing to the Direct Payment recipient.

18.10 Where a Direct Payment recipient uses a non-BDPA account the Direct Payment Agreement requires the Direct Payment recipient to submit bank or building society account statements to the Council as and when requested. Where the recipient is in receipt of BDPA, the financial review will be a mixture of submitted returns and monitoring of the BDPA financial transactions which the Council will have access to in any event.

18.11 The Direct Payment recipient 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.

## **19. Duty to protect public funds**

19.1. Like all local authorities, Bristol City Council is required by law to protect the public funds that it administers. (also refer to section 27.1- Data Protection).

19.2. All suspected concerns about fraud, including fraud committed against other public bodies, will be reported to the Council's Counter Fraud and Investigation Team who will conduct an investigation into suspected misuse which could constitute a criminal offence. The investigation may involve liaison with DWP, HMRC, the Police or other agencies and could result in prosecution.

## **20. Ending Direct Payments**

20.1. 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.

20.2 On receipt of this communication the Council will have a discussion with the Direct Payment recipient to establish why this decision has been made. Discussion will need to consider options for allowing the Direct Payments to continue. If the decision is confirmed to end the Direct Payment, it is important to make sure that the care and financial consequences of ending the Direct Payments are understood by the Direct Payment recipient including all employment and support costs.

20.3 The Council may suspend or end the Direct Payment to the recipient if there is evidence to suggest that any person responsible for managing the Direct Payment has breached the Direct Payment Agreement including non-payment of assessed financial personal contribution or any mispending of Direct Payment monies.

20.4 The Council will, wherever possible, enter into discussions with the Direct Payment recipient 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

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

- Where the Council is no longer satisfied that the Direct Payment recipient 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 Direct Payment recipient is an appropriate way to meet the eligible needs.
- Where the Direct Payment recipient 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 Direct Payment recipient's best interests.

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

- The Direct Payment recipient 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 to the Direct Payment by the Council has not been complied with or the Council has reason to believe that Direct Payments have been used for purposes other than to meet needs or achieve the outcomes specified in the support plan.
- The Direct Payment recipient breaches any condition or fails to comply with any term set out in the Direct Payment Agreement.
- The Direct Payment recipient leaves or changes 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.
- The Direct Payment recipient changes their ordinary residence by moving to live permanently within another Local Authority area, changing their ordinary residence. Bristol City Council will continue to fund the direct payment until a Care Act assessment has been undertaken by the new funding Local Authority, and the personal budget has been agreed.

20.7 A Direct Payment should not be used whilst abroad for more than four weeks in any one calendar year without the express permission of the local authority. Where such permission is required, a request must be submitted to a Service Manager for authorisation and evidence in support of the application will need to demonstrate how the care and support needs will continue to be met using the direct payment whilst the person is abroad (i.e. is the person taking a PA with them or is a care agency allocating a member of staff to accompany them whilst away). Requests will be considered on a case-by-case basis and will be kept under review. Any evidence of non-compliance with this requirement (either by way of failure to notify or failure to await permission from the local authority) will result in a review of whether the direct payment remains an appropriate way to meet the person's needs.

20.8 Long term hospital stays will be considered on a case-by-case basis.

20.9 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 Direct Payment recipient or their Authorised/Nominated Person or unusual transactions have occurred. If this needs to happen the Direct Payment recipient will be informed. The Council will ensure that assessed needs are met during any investigation.

20.10 Whenever a Direct Payment is suspended or ended, the Council will ensure that alternative arrangements are put in place to meet the individual's assessed eligible care and support needs.

## **21. Direct Payments that have ended**

21.1. Where Direct Payments are ended, for example, if a Direct Payment recipient 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
- Known outstanding invoices

21.2 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 within the Direct Payment recipient's Direct Payments account. CCFS will **not** calculate notice periods or redundancy payments.

21.3 Unless it can be shown by reference to documentary evidence that the Direct Payment sums paid by the Council were insufficient to cover all reasonable costs arising from arrangements legitimately made under the Direct Payment recipient's support plan, the Council will not be liable for any claims or demands for money made against a Direct Payment recipient by any third party following the ending of a Direct Payment. These costs could include HMRC, redundancy, pension or outstanding invoices.

21.4 Should any claims or demands for money made against a Direct Payment recipient by any third party following the ending of a Direct Payment arise, the Council will consider whether it is willing to allow the sums in the contingency fund to be used for such purposes. If the Council does not consider it appropriate to use the contingency fund to pay any third-party claims or demands for money or if there are insufficient sums in the contingency fund to cover such claims or demands, the Direct Payment recipient who was responsible for managing the Direct Payment shall remain liable for the payment of any such claims or demands for money.

21.5 The Council may require full or partial reimbursement of Direct Payment monies 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.

21.6 Failure to act in accordance with the Direct Payment policy and the terms and conditions of the Direct Payment Agreement may make the Direct Payment recipient personally liable for any cost arising because of the failure. The reimbursement of any misspent Direct Payment monies may be achieved by way of claim made against the Direct Payment recipient in the County Court unless such sums are repaid voluntarily on request.

## **22. Death of Direct Payment recipient**

22.1 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.

22.2 Unless the Council has expressly agreed to fund any shortfall in accordance with paragraph 21.4 above, any sums due to HMRC or any other third party are to be resolved between the Deceased Estate, HMRC and any other third party

## **23. Carers' Direct Payments**

23.1 The Carers' budget in Bristol is a pooled budget jointly funded by Bristol City Council and the local Integrated Care Board.

23.2 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.

23.3 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. A Carer's assessment can be a supportive process, giving the carer a unique opportunity to discuss their caring role and how this affects their well-being. The assessment could result in a number of different outcomes depending on the needs of the

Carer. Where a direct payment is identified as the best option to meet a Carer's outcomes, a one-off payment is preferable to ongoing weekly payments in most cases. This would be paid into their account or a Bristol Direct Payment Account.

23.4 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.

23.5 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.

23.6 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.

23.7 The Council does not carry out financial assessments on Carers. This means Carers do not make a personal contribution to the Direct Payments they receive as a carer.

23.8 Where a Carer enters into an employment arrangement rather than using a care agency or self-employed PA to provide a Carer's break there are certain specific regulations that need to be adhered to (see section 14.00 and appendix). Carers need to:

- 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, HMRC, redundancy etc and ensuring PAs have a 'Right to Work' check.

23.9 When considering how to use direct payment to allow a carer to have a break, individuals need to bear in mind paragraph 11.39 of Care and Support statutory guidance in relation to 'replacement care

*'Replacement care' may be needed to enable a carer to look after their own health and wellbeing alongside caring responsibilities, and to take a break from caring. For example, this may enable them to attend their own health appointments or go shopping and pursue other recreational activities. It might be that regular replacement care overnight is needed so that the carer can catch up on their own sleep. In other circumstances, longer periods of replacement care may be needed, for example to enable carers to have a longer break from caring responsibilities or to balance caring with education or paid employment. In these circumstances, where the form of the replacement care is essentially a homecare service provided to the adult needing care that enables the carer to take a break, it should be considered a service provided to the cared-for person, and thus must be charged to them, not the carer.'* Care and support statutory guidance 2014.

## **24. Occupational Therapy One-Off Direct Payment**

24.1 Occupational Therapy Services in the Council 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.

24.2 All equipment provided to 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 the integrated community equipment service provider.

24.3 If a Service User wishes to accept the equipment prescribed, they can. However, if they wish to add features that are not essential or choose a non-catalogue item, a direct payment to the value of the catalogue item can be provided. In this situation, the Service User will purchase their preferred option/equipment using the direct payment and send the receipt to the Occupational Therapy practitioner.

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

24.5 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.

24.6 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.

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

24.8 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.

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

25.1 Early referrals from the Disabled Children's Service (DCS) to the Young Adults Transition Service (YATS) 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.)

25.2 In order to provide a seamless service, if there are any delays in referrals or allocation the YATS 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.

25.3 In such cases, the DCS will arrange transfer of the cost from the YATS budget to DCS until the new Direct Payment is in place. Once in place, the YATS Team will inform DCS of the start date of the new Direct Payment. If this is a BDPA then a new account will need to be created, and a new card will be issued for all future transactions under adult service.

## **26. Complaints**

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

26.2 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 Payment recipients have the same rights to access the complaints procedure as people whose support is provided directly or arranged by Bristol City Council.

26.3 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.

## **27. Data protection**

27.1 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. Data is used for the prevention and detection of crime/fraud and will be shared with the Cabinet Office for data matching – <https://www.bristol.gov.uk/council/data-protection-and-foi/fraud-prevention-and-detection>

## **28. Review of this Policy**

This Policy was signed off by Adult Social Care Departmental Management Team on 8<sup>th</sup> January 2026 and will be reviewed every three years

## **Appendix 1**

### **Glossary**

#### **Adding additional funds**

If the DP recipient wishes to purchase more costly services or have extra hours than their personal budget provides for (i.e., their direct payment plus any assessed individual personal contribution), they can add additional funds to their personal budget with the necessary amount.

#### **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

- 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 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.

**Direct Payments Recipient**

A Service User, Nominated Person or Authorised Person respectively in receipt of a direct payment.

**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.

**Gross**

This is where Bristol City Council will pay the total personal budget of a Service Users Direct Payment and an invoice will be created where there is any assessed personal contribution.

**Introductory agencies**

Introductory agencies are online platforms where individuals can search for self-employed PAs.

**MCA**

Mental Capacity Act 2005

**MHA**

Mental Health Act 1983

**Net**

Bristol City Council will pay the cost of a Service User's Direct Payment, less the amount of any assessed personal contribution. The Service User then pays the assessed personal contribution in the Direct Payment account themselves.

**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 assistants – employed**

A personal assistant works directly with one or more individuals, to support them with various aspects of their daily life so that they can live it in a way they choose. Personal assistants are usually employed directly by a person who needs care and support, and who manages and pays for this through a personal budget or with their own money. This person is their employer.

### **Personal assistants - self employed**

Self-employed personal assistants have autonomy over the rate of pay they receive, the hours of work and need to be registered with HMRC and are fully responsible for all of their own NI and tax obligations. The Council considers that it is in rare circumstances that a PA will be truly self-employed. The HMRC publishes guidance on self-employed working.

### **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.

### **Personal Contributions**

The amount of money a Service User is assessed to be able to contribute towards the cost of their care and support following a means tested assessment.

### **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.

## Appendix 2

### 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.**