Tameside Adult Social Care

Direct Payment Policy

2025-2027

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TABLE OF CONTENT S

INTRODUCTION

Section 1: Statement of purpose

1.1 This Policy is intended to cover Direct Payments for Adults and Carers.

1.2 The purpose of this Policy is to make clear Tameside Metropolitan Borough Council's (TMBC) 'the Council" approach to Direct Payments, and the responsibilities of the person who receives the Direct Payment. It should be read in conjunction with the Appendices 1 to 5.

1.3 The Care Act (2014) places a duty on Local Authorities to make Direct Payments to adults/Carers who have the capacity to request a Direct Payment and where an adult who lacks the requisite mental capacity in the circumstances as outlined below (Please see Appendix 1). Once the Care Act (2-14) Assessment has been completed.

1.4 Direct Payments are integral to the assessment and care planning process and such payments are not available unless the appropriate assessment has been undertaken and it is an assessed need.

1.5 The Council is committed to this approach (i.e. identify the individual's personal, community and social networks, and maximise those strengths to enable them to achieve their desired outcomes), thereby meeting their needs and improving and maintaining their wellbeing.

1.6 Further leaflets and easy read versions are available on the Councils website [INSERT LINK WHEN AVAILABLE]

Section 2: What are Direct Payments?

2.1 Once an individual has been assessed by Adult Social Care, and confirmed as eligible for support, a sum of money will be identified to pay towards any social care and support needed and will be outlined in the persons support plan (any personal budget assigned will be means tested in line with the Financial Assessment Policy).

2.2 This sum of money is called a Personal Budget (PB) and can be taken as a Direct Payment if chosen, so the individual can use the money to purchase the support needed in accordance with the assessed needs and outcomes.

2.3 Direct Payments can be used to purchase services for both adults and Carers.

2.4 The person who requires the support has some flexibility in how the sum of money is spent, if this is agreed in the support plan as achieving an identified outcome. A person can choose to:

- Have the personal budget managed by the Council
- Pay the sum of money to another organisation – such as a care provider
- Have the money paid Directly to themselves or someone they choose as a Direct Payment.

Or the above can be a 'mix and match' approach, having the Council arrange some of the care but with the individual choosing how the rest is spent as a Direct Payment.

2.5 The benefit of a Direct Payment is that it gives people more flexibility over how their support is arranged and provided.

For example, an individual can choose to hire care workers or personal assistants because they:

- Are experienced in supporting people who have care needs like the person
- Have things in common with the individual and are people who they choose to spend time with
- Work a time pattern that suits the individual's lifestyle
- Have been recommended

It's the choice of the individual but they must spend the sum of money on things that meet the agreed support plan.

2.6 There are other forms of personal budgets, for example, a personal health budget. The Council will work with individuals who are, or will be, in receipt of a personal health budget and a Council Direct Payment to ensure that a joint health and social care budget works in the best way for them. For information about personal health budgets visit the NHS website – Personal Health Budgets.

2.7 Under the legal framework (Appendix 1) a Direct Payment allows the individual choice and control over how their needs are met. The Council will ensure people are purchasing support that meets their identified outcomes.

Section 3: Who does the Council offer Direct Payments to?

3.1 The Council can plan (under the Care Act 2014) to make Direct Payments available to people with assessed eligible needs, who are able to manage a Direct Payment and would like to receive them. This group includes:

- Adults who have been assessed as eligible to receive help from the Council in arranging care and support (following a Care Act Needs Assessment and Financial

Assessment) to meet their unmet needs in a setting other than a long term stay in a care home

- Carers aged 18 and over, for their own assessed needs, i.e. for services to support their caring role and to maintain their own health and wellbeing
- An appointed authorised person for someone who lacks capacity. An authorised person could be a Department of Work and Pensions (DWP) appointee, an attorney for property and affairs or a deputy for property and affairs

Section 4: Direct Payments for Adults with Capacity

4.1 The Council can offer Direct Payments where:

A personal budget for an adult specifies an amount which the Council will pay towards the cost of meeting the person's eligible assessed needs, and,

A person requests the Council to meet some or all of their eligible assessed needs by making Payments to them or to a person nominated by them, and the following conditions are met*:*

Condition 1*:* The adult has the capacity to make the request and, where they have nominated a person to make the payments to, that person agrees to receive the payments.

Condition 2*:* The Council is not prohibited by regulations under section 33 of the Care Act 2014 from meeting the adult's needs by making Direct Payments to the adult or nominated person.

Condition 3: The Council is satisfied that the adult or nominated person can manage Direct Payments either by themselves or with whatever help the Council thinks the person or nominated person will be able to access.

Condition 4: The Council is satisfied that making Direct Payments to the adult or nominated person is an appropriate way to meet the adult's needs.

4.2 If the Council decides that it is not appropriate to make Direct Payments, it will put the reasons for the decision in writing and make a written record available to the individual. It will also inform the individual about how to complain if they are not satisfied with the decision of the Council.

Section 5: Direct Payments for Adults Lacking Capacity to Consent

5.1 In cases where a person in need of care and support has been assessed as lacking capacity to request Direct Payments, an authorised person can request the Direct Payment on the person's behalf, if that person satisfies all the following five conditions:

Condition 1*:* Where the person lacks the capacity under the Mental Capacity Act 2005 a DWP Appointee, an Attorney with a Lasting Power of Attorney for property and affairs or a Deputy with a Deputyship for property and affairs is authorised and can support the person's request.

If the individual has an Enduring Power of Attorney "EPA', the rules are different and Only EPAs made and signed before October 1, 2007 can still be used. After that date donors have to make a Lasting Power of Attorney (LPA) instead. Further information can be found on the Lasting Power of Attorney pages of the Government website.

Condition 2**:** The Council is not prohibited by regulations under the Care Act 2014 section 33 from meeting the adult's needs by making Direct Payments.

Condition 3*:* The Council is satisfied that the authorised person will act in the adult's best interests in arranging for the provision of care and support for which the Direct Payments under this section would be used.

Condition 4: The Council is satisfied that the authorised person can manage Direct Payments.

Condition 5**:** The Council is satisfied that making Direct Payments to the authorised person is an appropriate way to meet the needs in question.

5.2 The authorised person is managing the Direct Payment on behalf of the person lacking capacity on the understanding that they must act in their best interests.

5.3 The authorised person cannot receive the Direct Payment and be paid from it for providing care and support for the person lacking capacity, unless agreed by exceptional circumstances, with reasons clearly stated in the support plan.

5.4 For further information about appointing an authorised person, please refer to the Direct Payment factsheets [INSERT LINK WHEN AVAILABLE].

Section 6: Direct Payments for Carers

6.1 In relation to Carers, the Care Act relates to adult Carers (people over 18 who are caring for another adult).

6.2 A Carer is someone who helps another person, usually a relative or friend, in their day-to-day life. This is not the same as someone who provides care professionally, or through a voluntary organisation.

6.3 Using a strength-based approach to Carer assessments, Carers' unmet needs can be met in a number of ways. Following a Carer's Assessment, it may be agreed that the best way to help a Carer is by providing:

- Access to a range of universal services, including community support
- A Direct Payment to purchase services and or equipment for themselves
- Services to the person they are looking after
- A combination of the above.

6.4 Direct Payments may be awarded to Carers where providing the care is having a significant impact on the Carer's wellbeing and the care the Carer is giving is necessary and appropriate (i.e. the care being given is not disempowering the care recipient because the care is not needed).

6.5 Eligibility will be determined following the completion of a Carers Assessment. Direct Payments for Carers allow the Carer to purchase the services they are assessed as needing to support them in their caring role and to maintain their own health and wellbeing. The Care Act 2014 outlines that a Carer's need for support can be met by providing care to the person they care for, but decisions about who is being provided with the service may affect whether the service is chargeable.

6.6 It is important for all those involved to understand whose needs are intended to be met by a particular type of support, and to whom the support will be provided directly, and therefore who may pay any charges due. However, the Council will ensure that the person requiring care has choice and control and is involved in the decision-making process and agrees with the course of action.

6.7 Where a service is provided directly to an adult needing care, even though it is to meet the Carer's needs, then the adult would be liable to pay any charge. The Council will take steps to ensure that the wishes of the person requiring care are considered during these decisions, including obtaining the persons agreement to pay for any charges due.

6.8 Decisions about which services are provided to meet Carers' needs and which are provided to meet the needs of the person they care for will be decided as part of the support planning process, in discussion with the individuals concerned. As part of this process the Council will consider whether joint plans will be of benefit.

6.9 The Direct Payment will be terminated if the person being cared for is placed in a permanent residential setting or dies. Any funds remaining in the account must be returned to the Council.

Section 7: Carer's Direct Payments where the adult being cared for has no eligible needs

7.1 There may be instances where the adult being cared for does not have eligible needs, so does not have their own personal budget or care plan. In these cases, the Carer will have their own support plan specifying how their needs will be met. The personal budget would be for the costs of meeting the Carer's needs.

Section 8: Who is excluded from receiving Direct Payments?

8.1 Direct Payments cannot be made in respect of people who have been placed under certain conditions or requirements by the courts in relation to drug and/or alcohol dependencies as specified in Schedule 1 of the Care and Support (Direct Payments) Regulations 2014. These include:

- Offenders on a community order, or serving a suspended sentence under the Criminal Justice Act 2003 which includes a requirement to accept treatment for drug or alcohol dependency
- An offender on a community rehabilitation order under the Powers of Criminal Courts (Sentencing) Act 2000, which includes a requirement to accept treatment for drug or alcohol dependency
- Offenders released from prison on license under the Criminal Justice Act 1991, the Criminal justice act 2003 or the Crime (Sentences) Act 1987 subject to an additional requirement to undergo treatment for drug or alcohol dependency; and
- People subject to equivalent provisions under Scottish criminal justice legislation
- Where the recipient is placed by the courts under a condition or requirement relating to a drug and/or alcohol dependency

USE OF DIRECT PAYMENTS

Section 9: What can Direct Payments be used for?

9.1 Where a person is eligible to receive services from the Council, they may be eligible to receive Direct Payments so they can organise their own care and support. This is either as on-going support or as a one-off Direct Payment for such things as respite care or equipment.

Section 10: What can an adult spend their Direct Payment on?

10.1 An adult's Direct Payment can be used to purchase most services for people who are in Tameside that meet the needs and outcomes agreed in their support plan. For example, the types of services that can be purchased, can include:

- Personal care
- Community activities or day care
- Short-term breaks, such as respite care
- Help with maintaining a hygienic and habitable home where they are incapable of doing it themselves but only if the reasons for this are clearly identified in the support plan
- Community care services for disabled parents to assist with parenting tasks
- Items that will promote independence such as dressing aids

This is not an exhaustive list.

10.2 This may involve a person contracting with an agency to provide services or becoming an employer and recruiting their own Personal Assistant.

For more examples of what Direct Payments can be used for, see the Direct Payment pages on the Councils website.

Section 11: What can a Carer spend their Direct Payment on?

11.1 Direct Payments can be used to provide a Carer with practical help and support in their caring role to meet their physical, mental and emotional wellbeing. For Carers, the responsible Local Authority will be the one where the adult whom they care for is ordinarily resident.

11.2 There may be some cases where the Carer provides care for more than one person in different Local Authority areas. In these circumstances, the Council will consider how best to cooperate on and share the provision of support. It may have an agreement to jointly fund the support for the Carer, or it may take overall responsibility for certain aspects. For example, it may lead on reviews because it is geographically closer to the Carer's home.

11.3 The types of practical help and support for a Carer may include enabling them to:

- Develop and maintain family and other personal relationships
- Engage in recreational activities
- Maintain a habitable home environment
- Manage and maintain nutrition for themselves and their family

- Engage in work training and education

For further information about how Carer's can be supported visit the [Caring for Someone] pages on the Councils website.

Section 12: What can Direct Payments not be used for?

12.1 Direct Payments cannot be used to pay for:

a) Anything that is not covered by the care and support plan, for example but not limited to the following:

- Health related services such as dentist, chiropody, physiotherapy appointments
- Household expenses such as food, personal items or utility bills
- Accommodation costs including rent, mortgage, hotel and Airbnb Payments
- Non-statutory liabilities such as tips, bonuses, ex-gratia payments and any other personal expenses claimed by the Personal Assistant
- Anything that is a criminal act
- Gambling, lottery, bingo tickets, raffle tickets, alcohol and cigarettes
- An activity or item that exposes any person/s to serious risk from someone else or themselves
- Anything else that is not an assessed eligible need
- Long-term residential care services
- Repayment of loans

b) A close family relative or friend who lives in the same household as the cared for person unless the Council has received a request and agreed that it is necessary to allow this support to meet the identified outcome. This will only be after following exploration of all other options. The Council will ensure all decisions consider personal circumstances and will be given in writing.

c) Purchasing care or services that do not contribute to achieving the identified outcomes unless the Social Work Practitioner has been informed and a further reassessment conducted.

d) A Personal Assistant or agency at a higher rate for a service than the Council has used as the basis for calculating the Direct Payment. If the individual chooses to employ a Personal Assistant or agency at a higher rate for a service the person will be liable for the payment of the excess amount, which must be paid into the Direct Payment bank account.

e) Anything that is not an activity that will assist the individual to achieve their agreed outcomes as detailed in the care and support plan. The individual must seek the Councils written agreement to pursue different outcomes.

SETTING UP AND MANAGING A DIRECT PAYMENT

Section 13: Setting up a Direct Payment.

13.1 The availability of Direct Payments will be included in the universal information that the Council provides. This will allow people to be fully aware of what a Direct Payment is and what they can be used for. In addition to this general information the Council will explain to people during the care and support planning process what needs could be met by a Direct Payment.

13.2 It is expected that most requests to receive Direct Payments will occur during the assessment or support planning stage; however, the Council will consider requests for Direct Payments made at any time and will have processes in place to respond to requests, for example, when the support plan is being reviewed.

13.3 When a support plan is being created, Direct Payments will always be considered as an option.

13.4 If a person is interested in Direct Payments, they will receive advice and guidance about Direct Payments and how to manage them. There are also dedicated Direct Payment Workers who can provide support through the process. This includes being provided with a range of Direct Payments factsheets and being informed about:

- What a Direct Payment is
- How to request one, including the use of nominated and authorised persons to manage the payment
- The responsibilities involved in managing a Direct Payment and being an employer
- The Direct Payment agreement
- Where to get support from the Council, and details of what support and information is available from local providers

13.5 A Social Care Practitioner or Direct Payment Worker will be the initial source of information and advice during the assessment and support planning process.

Section 14: Managing a Direct Payment.

14.1 Most recipients of Direct Payments will be able to take full and complete responsibility for the management of the services they require, and others may need to get help to get started.

14.2 Where someone needs assistance to manage their Direct Payments, support will be available over a sustained period, not just for the set-up period. Recipients may choose to ask family, friends or advocacy/support groups to help them. They may also choose to buy in assistance, for example, with keeping records, management of day-to-day relationships with staff or using a payroll service.

Section 15: Direct Payment Support

15.1 The Social Care Practitioner is the first source of support for adults requiring support. There are also Direct Payment Workers who can help adults or Carers with Direct Payment queries, including information on the services and support available. There are also fact sheets on the Council's Direct Payment pages or from the Direct Payment workers which provide information on: using an agency; employing a Personal Assistant; acting as an authorised person; Carer's Direct Payments as well as general advice and information.

15.2 There are organisations that can provide independent and impartial advice, and support to people who are interested in learning more about Direct Payments as well as providing support and specialist advice such as:

- Help with insurance, recruitment, training, employment, contracts of employment, HMRC responsibilities, pension auto-enrolment, and national insurance.
- Support and advice about employment law, providing advice and support to sort out difficulties with employees.
- Calculating holiday entitlement, notice, redundancy pay etc. for employees.
- Providing a payroll service and payslips
- Easily accessible advice and support about payroll issues
- Managed accounts
- Support to process Disclosure and Barring Service checks (DBS)

Details of these organisations will be provided as part of the financial assessment pack for adults.

15.3 Information regarding the above can be obtained by contacting the social care practitioner or Direct Payments worker on 0161 342 5959 or directpaymentssectionmail@tameside.gov.uk

Section 16: Disclosure and Barring Service (DBS) Checks

16.1 The Council recommends that DBS checks are carried out on all employees, including existing and new employees. The cost of the check will be paid for by the Council. An enhanced DBS check is routinely completed for Personal Assistants (PA) on the adults PA pool.

16.2 At present, when employing people via Direct Payments a DBS check is at the discretion of the employer, with the exceptions of the following where a DBS must be undertaken:

- Where they are required by law for staff working with vulnerable adults
- Where there is a child aged 16 or less living in the household
- Where the Social Care Practitioner has assessed that a person may be vulnerable or other vulnerable people living in the household may be putting themselves at risk if a DBS check is not carried out
- Where there is an authorised person appointed, the regulations specify that if the authorised person is not the spouse, civil partner, partner, close relative (or spouse or partner of a close relative) or friend involved in the provision of care of the person lacking capacity, then the Council will obtain a DBS check for that authorised person, as a further protective measure for the person lacking capacity. For example, the authorised person may be an independent care broker or a solicitor acting as a professional deputy, who may not previously have been personally known to the service recipient.

16.3 Where the employer chooses not to complete a DBS check, they will be required to complete a form opting out of this (see Appendix 4).

Section 17: Role of the person receiving a Direct Payment

17.1 The person receiving the Direct Payment, the nominated, or authorised appointed person is entering into a contractual agreement (see Appendix 2) with the Council, so it is important that they make sure they fully understand the terms of the agreement and what is involved.

17.2 The Council will give advice to the recipients on the responsibilities of managing a payment and whether the person in receipt of a Direct Payment needs to register with HM Revenue & Customs (HMRC) as an employer. Becoming an employer carries responsibilities and obligations, to HMRC, and people must be aware of this before agreeing to take up a Direct Payment, as they are accepting responsibility to act legally as an employer. Responsibilities include:

- Registering as an employer
- Operating PAYE
- Checking that the potential employee has the right to work in the UK
- Ensuring that any employees have undergone DBS checks before they start work
- Ensuring that they pay their employees at least the Real Living Wage
- Complying with Working Time Directives and adhering to legislation around holiday, sickness, maternity and paternity pay
- Enrolling eligible employees into a workplace pension scheme
- Putting personal liability insurance in place before a person works in their home

17.3 The Council's Direct Payment workers can give access to information and advice on the support available for employers. There is also guidance available on the Direct Payment pages of the Councils website.

17.4 Once Direct Payments have started, the individual or the authorised appointed person (sometimes referred to as nominated or appointed), will be required to organise care to meet the agreed needs as set out in the support plan. This can include recruiting staff, employing an agency, maintaining records, managing the Direct Payment and providing evidence to the Council that the money is being used to meet the agreed needs and that the person is central to the management of the Direct Payment.

17.5 Where there is a change of need and/or the support plan no longer meets the needs, the Direct Payment recipient and/or the authorised person, must ask for a reassessment and a new support plan should be agreed.

For example, where a person's needs change from support at home to the need for respite breaks, this must be agreed by the Council in advance.

17.6 The person receiving the Direct Payment must ensure that support purchased meets an outcome specified in the support plan. Services that do not meet an outcome may be considered a breach of the Direct Payment agreement and could result in the Direct Payment being suspended or withdrawn.

Section 18: Lasting Power of Attorney for Health and Welfare

18.1 An adult with mental capacity can make a Lasting Power of Attorney (LPA) for health and welfare decisions. He or she makes the LPA in the expectation that if they lose capacity, the person appointed as their attorney will lawfully be able to continue to deal with his or her health and welfare once the power is registered with the Office of the Public Guardian.

18.2 The Care Act 2014 places a duty on the Local Authority to make Direct Payments for adults.

18.3 If the individual has an Enduring Power of Attorney “EPA’, the rules are different and Only EPAs made and signed before October 1, 2007 can still be used. After that date donors have to make a Lasting Power of Attorney (LPA) instead. Further information can be found on the Lasting Power of Attorney pages of the Government website.

Section 19: Dealing with emergencies/contingency arrangements

19.1 The Council expects each person receiving a Direct Payment to make arrangements or contingency plans to manage break downs in support and this responsibility is included in the Direct Payment Agreement.

19.2 The Council will ensure that support and advice on how to prepare appropriate arrangements can be made available if required.

19.3 In the event of an emergency, if the individual cannot organise care as detailed in their support plan, they can request assistance from the Council. Contact details for Adult Services can be found here on the Contact Us section of the Council website.

Section 20: Direct Payments and Hospital Stays

20.1 There may be occasions when Direct Payment holders require a stay in hospital. However, this should not mean that the Direct Payment must be suspended while the individual is in hospital. Where the Direct Payment recipient is also the person requiring care and support, consideration should be given to how the Direct Payment may be used in hospital to meet non-health needs or to ensure employment arrangements are maintained. Suspending or even terminating the payment could result in the person having to break the employment contract with a trusted personal assistant, causing distress and a lack of continuity of care when discharged from hospital.

20.2 In these cases, the local authority should explore with the person, their carer and the NHS the options to ensure that both the health and care and support needs of the person are being fully met in the best way possible. For example, the person may prefer the personal assistant to visit hospital to help with personal care matters. This may be especially so where there has been a long relationship between the direct payment holder and the personal assistant. This should not interfere with the medical duties of hospital personnel but be tailored to work alongside health provision.

20.3 In some cases, the nominated or authorised person managing the direct payment may require a hospital stay. In these cases, the authority must conduct an urgent review to ensure that the person continues to receive care and support to meet their needs. This may be through a temporary nominated/ authorised person, or through short-term authority arranged care and support.

HOW DIRECT PAYMENTS ARE CALCULATED AND PAID

Section 21: Calculating the cost of the Direct Payment

21.1 The Direct Payment will be an amount that is sufficient to meet the needs the Council has a duty to provide.

21.2 Following an assessment the support will identify outcomes which will then be calculated to provide the Personal Budget. This is then transferred into a Direct Payment.

21.3 For Carers, there is no contribution.

21.4 The Council will consider whether the needs to be met via a Direct Payment will result in any on-costs, such as those associated with being an employer.

21.5 Under the Pensions Act 2008 every employer must put eligible employees into a pension scheme and contribute towards it. The Council will only fund the minimum employer contribution from the Direct Payment.

21.6 Direct Payment recipients can use their own resources to purchase additional services if they wish to do so which is not an assessed need.

Section 22: How and when will the Direct Payment be made?

22.1 A separate current account or a managed account must be used for a Direct Payment. This must be in the name of the person receiving the Direct Payment or may be a third party if agreed by the person in receipt of the Direct Payment and the Council. The account cannot have an overdraft facility as the budget should be managed to avoid overspending.

22.2 The first Payment will only be made once the support plan has been agreed and the signed Direct Payment Agreement (Appendix 2) has been received.

22.3 Direct Payments will be made by Bankers Automated Clearing Service (BACS), into the recipient's Direct Payment account every two weeks in advance.

22.4 The amount of the Direct Payment may change following a review of assessed needs. Where this is the case, notice will be given by the Council and payments will be adjusted accordingly to either increase or decrease the sum of money.

Section 23: When a Direct Payment is Refused

23.1 In some circumstances it may not be possible for the Council to agree a Direct Payment for an individual. This may because they become exempt under legislation, where there is evidence of inability to manage the budget, or where there are concerns that a person isn't able or willing to act legally as an employer.

23.2 The reason for the decision will be clearly documented, discussed and communicated in writing to the person and where appropriate with any family or friends.

23.3 The person will also be advised of the decision and how to use the complaints procedure.

23.4 This may involve a meeting of the parties involved to try to find a solution to the issues raised in the formal rejection. This could include the person and their representatives, and representatives from the relevant Council department.

Section 24: Payment for goods and services from the Direct Payment account

24.1 All payments for goods and services to meet outcomes identified in the care and support plan must be paid from the Direct Payment account. Suitable methods of payment for variable payments are cheque, bank transfer or direct debit. A standing order should only be used for regular payments for items such as payroll fees.

24.2 Payments for goods and services should not be paid for from the person's personal account.

24.3 Cash payments cannot be made unless in exceptional circumstances and agreed in advance with the Council.

Section 25: Temporary and short-term residential care arrangements.

25.1 Direct Payments cannot be used to pay for people to live in long-term care placements.

25.2 Respite can be purchased for a maximum of 4 weeks at a time. Each stay must have a gap of at least 4 weeks in between to be purchased via a Direct Payment.

25.3 People can receive additional weeks in a care home once they have reached the four-week maximum. They cannot purchase the stay using their Direct Payments, but if the Council and the person agree that a longer stay is needed, it can still be arranged through a directly commissioned service and will require a review or re-assessment of needs under the Care Act.

Section 26: Client Contributions

26.1 The Council will carry out a financial assessment with the person or their financial representative who is the Attorney, Appointee or Deputy to establish how much, if any, a person must contribute towards their Direct Payment. They will be required to provide bank details and statements when doing so.

26.2 The client contribution will be invoiced monthly for the person to pay the Council. Should contributions not be paid, the Council will commence the debt recovery processes. The Policy for this can be found on the Debt Recovery pages of the Council website.

26.3 If contributions remain unpaid a reassessment may be required, and it may no longer be considered appropriate to remain on a Direct Payment.

Section 27: Personal Top-up

27.1 If the Direct Payment recipient chooses to secure the services of an agency the cost of care may be more expensive than the amount received as a Direct Payment. In this situation, the individual will need to make a payment from their personal funds for the difference in costs, this is known as a top-up. This top-up must not come from the Direct Payment account and should be invoiced for separately from the agency. The top up payment should be made from a separate bank account.

27.2 If a person chooses to arrange extra support from their Personal Assistant/s they are also responsible for additional employment costs incurred, such as accrued holiday, national insurance contributions, employers' national insurance, pension contributions, and redundancy payments, if appropriate. These additional costs must be paid as a top-up from a separate bank account.

27.3 If a Personal Assistant is employed in more than one role only the role/s relevant to meet the outcomes identified in the care and support plan can be paid from the Direct Payment. For example, if a person is employed as a gardener and as a Personal Assistant to provide personal care, but gardening is not an assessed need in the care and support plan, only the employment of the role of Personal Assistant should be paid from the Direct Payment. HMRC or a payroll provider can advise on the administration of payroll in these circumstances.

27.4 Any payment of a personal top-up from the Direct Payment account will be highlighted when the Direct Payment is financially audited. The Direct Payment recipient will be asked to repay any shortfall in the account due to overspending of Direct Payment funds, because of paying their personal top-up from the Direct Payment account. If the top-up funds are not repaid, an invoice will be raised.

TERMINATING DIRECT PAYMENTS

Section 28: Discontinuing Direct Payments

28.1 If an individual chooses to cancel their Direct Payment, a review will take place to ensure all financial/contractual responsibilities are complete and any ongoing care needs are supported via an alternative service. The Council will require this to be in writing and shall include the date that the Direct Payment should cease.

28.2 Where the Direct Payment is not used to employ Personal Assistants, the Direct Payment can be terminated by the Council who shall provide 4 weeks' notice that the Direct Payment will be withdrawn, and the reasons shall be given in writing.

28.3 Where the Direct Payment is used to employ Personal Assistants the Council shall give sufficient notice of termination to ensure the Direct Payment recipient/employer is able to give the employee appropriate notice under their contract of employment. In Tameside, Pay in Lieu of Notice (PILON) applies when the Direct Payment is ended.

28.4 Direct Payments will be discontinued when a person no longer needs the support for which the Direct Payment is made. This might happen in situations where the Direct Payment is for short-term packages. When leaving a care home, discharged from s117 Mental Health aftercare service as it is no longer required, safeguarding or when someone's condition improves.

28.5 When this happens, the Council will need to discuss this with the person, their Carer, and any other person how best to manage this and shall include how the person shall be allowed to resume responsibility for their own care. If there is a change of circumstances that affects the support plan the Council will revise the plan to ensure that it is still meeting needs.

28.6 Where a Direct Payment is discontinued because of criminal justice legislative provisions, the Council will make timely arrangements for services to be provided in lieu of the Direct Payments, to ensure continuity of support.

28.7 The Council may suspend the Direct Payment pending investigation of inappropriate spend, where funds have been spent on goods or services which do not meet the person's outcomes identified in the support plan. The Council will write to the person advising them of this course of action and seek to remedy any issues and explore whether additional support in the management of the Direct Payment is appropriate.

28.8 Where a Direct Payment is used to employ a Personal Assistant a Direct Payment may be suspended when there is evidence that the employer is not acting legally by complying with HMRC regulations or Working Time Directives, whilst the persons suitability to act an employer is considered and additional support explored.

28.9 The Council will only terminate a Direct Payment as a last resort, unless there is clear and serious contradiction of the regulations or where the conditions in sections 31 or 32 of the Care Act are no longer met, (except in cases of fluctuating capacity). The Council will take all reasonable steps to address any situations without the termination of the payment. This may include exploring additional support with management of the account and employer responsibilities.

Section 29: Recovering Direct Payments

29.1 Direct Payment recipients will be asked to repay funds into the Direct Payment account if it has been used to pay for goods or services which do not meet the agreed assessed outcomes in the support plan.

29.2 When the Direct Payment ends the closing balance of the Direct Payment must be returned to the Council.

29.3 The Council will request (via an invoice) for any overpaid or incorrectly paid funds to be repaid into the Direct Payment account or directly back to the Council. Non-payment of the invoice may be pursued through the Council's debt recovery process.

Section 30: Discontinuing Direct Payments and Capacity to Consent

30.1 Where someone with capacity who is in receipt of a Direct Payments subsequently loses capacity to consent, the Council will discontinue Direct Payments to that person and consider making payments to an authorised person instead. In the interim, the Council will make alternative arrangements to ensure continuity of support for the person concerned.

REVIEWS AND MONITORING

Section 31: Reviewing the Direct Payment

31.1 The Direct Payment shall be reviewed as part of the support planning process after the Direct Payment agreement has been signed. This will include discussions, such as how to manage the Direct Payment, and long-term support arrangements that may be appropriate, such as payroll, insurance cover and use of support services.

31.2 Should there be a change of the persons circumstances, a review shall take place.

31.3 If the Direct Payment recipient is employing people, the Council will, within the first 6 months, check to ensure that the individual is fulfilling their responsibilities as an employer, that they submitting PAYE returns to HMRC as well as paying tax and national insurance contributions. If a Direct Payment recipient is managing the account themselves (standard account), the Direct Payment Worker will provide finance training to the individual to support them with managing the account and ensure the financial returns are correct.

31.4 If a change in need is identified as part of a care assessment, this may result in a change to the Personal Budget, resulting in an increase or decrease of the sum of money paid. Additionally, alternative ways of meeting those needs may be identified which result in a change to the amount or use of Direct Payment, including the ending of the Direct Payment.

Section 32: Financial Monitoring

32.1 The Council is accountable for the public money it manages. This includes Direct Payment funding. Direct Payments are part of the accounting process and as such accurate records are required to identify how this money is used to provide services to individuals.

32.2 In addition to ensuring that the person's care and support needs are being met by the Direct Payment, financial monitoring will be undertaken to assess the person's ability to manage the financial responsibility for purchasing services.

32.3 The monitoring review will include reviewing spend to ensure there is sufficient money to pay for employment related responsibilities (where applicable) and to check the client contributions that are being paid.

32.4 Financial monitoring is also carried out to safeguard Direct Payment recipients from financial abuse or lack of care provision through insufficient funds.

32.5 If a Direct Payment is made to a Direct Payment bank account, the Council will request access to all transactions made and regular submission of spending returns will be required. All documents should be retained as the Council will ask to see samples of these, and where inappropriate spend has been identified will ask to see all evidence of spending. If this information is not provided to verify expenditure the Council may consider transferring the payment to a managed account.

32.6 The Direct Payment Worker will contact the Direct Payment recipient to remind them to submit this information if it is overdue. If accounts are not submitted following reminders, arrangements may be made for future Direct Payments to be paid to a managed account, so that expenditure from the Direct Payment can be verified.

32.7 The Direct Payment recipient will be placed on the 'Standard' financial monitoring once the Direct Payment has been put in place. The timetable for providing information will be discussed at the Direct Payment set-up meeting.

32.8 When the Direct Payment has been monitored (audit to be completed at least annually) a letter will be sent to the Direct Payment recipient if areas of concern have been identified stating what actions are required.

32.9 If the Direct Payment monitoring identifies funds more than that needed to meet the agreed outcomes in the support plan, this will be shown in a monitoring report. A breakdown of how the surplus has been calculated will also be provided. The calculation will take into account any known liabilities and will leave an additional four-week payment as a contingency. The Council will confirm whether the surplus funds are to be returned, and a full review of the care and support may be needed.

Section 33: Social Care Fraud

33.1 This type of fraud is when a person who receives social care services:

- Is dishonest about their financial status or care and support needs
- Misuses Direct Payments provided for non-care related expenditure
- Uses the Direct Payment account for money laundering

33.2 Some types of social care fraud include but are not limited to:

- Exaggerating a disability or illness to receive more support
- Failing to declare or undeclaring income benefits, savings or capital in financial assessments

- Failing to inform the Council when a person has died and keeping their Direct Payment money
- A person who abuses their position of care to take money from a vulnerable person
- Creating a fictious unregistered care provider i.e. Personal Assistant/Carer
- Submitting false receipts as evidence of care expenses
- Using money from the Council intended for care for their own personal use
- Deprivation of capital – when someone deliberately reduces their savings or gets rid of assets to avoid paying for care

33.3 The Council has a duty to protect the public purse and has a zero-tolerance approach to fraud and corruption. Action will be taken against any attempted or actual fraudulent acts relating to Direct Payments.

33.4 Everyone has a duty to report any concerns of fraud, or misuse of Direct Payments funds, and any report of fraud against the Council will be taken seriously.

33.5 To report Direct Payment fraud, please contact the Adult Social Care Finance Team on 0161 342 3101.

Section 34: Auditing of Processes

34.1 The Council's Internal Audit department will periodically review Direct Payments and associated processes, to ensure compliance with this policy and with the agreed terms and conditions in the Direct Payment agreement.

SAFEGUARDING RESPONSIBILITIES

Section 35: Safeguarding

35.1 Every adult has a right to live life free of fear, be treated with dignity and have their choices respected. This applies to people 18 and over who live in Tameside. Further information can be found on the Safeguarding pages on the Councils Website.

35.2 If the Direct Payment recipient shares a home with a child, the child needs to remain safe. We all share responsibility for safeguarding and promoting the welfare of children and young people, whether as a parent, Carer or family member, a friend or neighbour, an employer, or as a paid or volunteer worker. Tameside Safeguarding Children Partnership is responsible for making sure that children and young people are kept safe in Tameside. Further information can be found on the Tameside Safeguarding Children's Partnership pages of the Councils website.

Section 36: Complaints Procedure

36.1 This is available to all Direct Payment recipients and can be used to make a complaint about services or procedures undertaken by the Council.

36.2 A person who is considering Direct Payments may use this procedure to formally complain about the process, the decision making, or the amount offered as a Direct Payment but not about the services they have purchased.

36.3 Individuals, their families or Carers who wish to make a suggestion, compliment or complaint should contact the Adult Social Care Complaints Team.

APPENDICES

Appendix 1: Legal Framework	Appendix for legal framework - DP Polic
Appendix 2: Direct Payment Agreement	Direct Payments Agreement GROSS.dc
Appendix 3: Direct Payment Agreement for Managed Account	Direct Payments Agreement GROSS (n
Appendix 4: DBS Opt In/Out Form	Disclosure and Barring Service.docx
Appendix 5: Glossary	Glossary Final.docx

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