

SOCIAL CARE DIRECT PAYMENT POLICY

Direct Payment Policy

Contents

Introduction & Legislation	2
Section 1 – Receiving a Direct Payment.....	4
1. Who can receive a Direct Payment?	4
3. Assessing Mental Capacity to receive payments	5
4. Receiving a Direct Payment.....	5
5. Resident's Contributions.....	6
6. Frequency of Payments.....	6
7. Payment Method.....	6
8. Bank Accounts	6
9. Contingency and Reserves	7
10. Administration Costs	7
Section 2 - How to Spend Direct Payments	8
11. What can Direct Payments be used for?	8
12. Paying Family Members.....	9
13. Legal Rewards.....	10
14. Employment Duties	10
15. Safeguarding.....	11
16. Direct Payments – Paying for Council Services	12
Section 3 – Audit and Review of Direct Payments	12
17. Review of Direct Payments.....	12
18. Audit of Direct Payments.....	14
19. Recovery of Direct Payments	14
20. Unspent Direct Payments	15
21. Wrongful Use of Direct Payments.....	15
22. Direct Payments and Hospital Stays	15
23. Direct Payments - Periods Away from Home.....	16
Section 4 - Ending Direct Payments	16
24. Terminating Direct Payments	16
27. Discontinuing Direct Payments in the case of persons with capacity to consent	18
28. Discontinuing Direct Payments in the case of persons lacking capacity to consent.....	18
29. How to discontinue Direct Payments.....	18
30. Ending Direct Payments – on death.....	19

Direct Payment Policy

Introduction & Legislation

This Policy covers Direct Payments in Children's and Adults Social Care. It also includes Direct Payments in relation to Education and Travel Assistance. A Direct Payment is a monetary amount paid to a resident or their authorised or nominated person from their Personal Budget to be spent on the care and support needs outlined in their agreed Care and Support Plan. This allows a resident to choose how and when they receive services instead of Newham Council arranging services on their behalf.

This Policy has been created to provide guidance to residents, families and staff of London Borough of Newham (LBN), on the making and receiving of Direct Payments for children, young people, their families and adults where there is an assessed need.

This Policy provides guidance in line with Sections 31-33 of the Care Act 2014 which relate to Direct Payments and the Care and Support (Direct Payment) Regulations 2014.

The Community Care (Direct Payments) Act 1996 first allowed Local Authorities to make payments directly to adults in relation to Social Care Services.

The Carers and Disabled Children Act 2000 extended eligibility to include 16 - 17 year olds and those with parental responsibility for disabled children. This was achieved by inserting Section 17A in the Children Act 1989. In making Direct Payments under Section 17A of the 1989 Act, Councils are subject to the general duty provided by Part 3 of this Act to safeguard and promote the welfare of children in need and to promote their upbringing by their families when making these payments, in exactly the same way as when providing Direct Services.

Before making any decision about providing Direct Payments, the Council must ascertain and give due consideration to the child's wishes and feelings (Section 17 (4A) of the 1989 Act).

This Policy has been written to reflect the changes introduced by amendments made to Section 57 of the Health and Social Care Act 2001 by Section 146 of the Health and Social Care Act 2008, changes introduced by the Mental Capacity Act 2005 ('the 2005 Act') and by the Community Care, Services for Carers and Children's Services (Direct Payments) (England) Regulations 2009 ('the Regulations'), as amended by The Community Care, Services for Carers and Children's Services (Direct Payments) (England) (Amendment) Regulations 2010.

Section 49 of the Children and Families Act 2014 makes provision to which Direct Payments may relate if a Local Authority maintains an Education, Health and Care Plan (EHCP) for a child or young person.

The Local Authority retains discretion over how long it chooses to provide services under Section 17 while an EHCP remains in place. Where the young person no longer has an EHCP, the Local Authority no longer has the power to extend the provision of these services to young people over 18. However, the Care Act 2014 makes provision when a Local

Direct Payment Policy

Authority assesses a young person who is receiving support under legislation relating to Children's Services, the Act requires the Local Authority to continue providing the young person with that support through the assessment process. This will continue until adult care and support is in place to take over, or until it is clear after the assessment that adult care and support does not need to be provided.

The Community Care, Services for Carers and Children's Services (Direct Payments) (England) 2009 Regulations which were supplemented by 'Guidance' issued by the Department of Health on Direct Payments for Community Care, Services for Carers and Children's Services: England 2009. The 2009 Guidance sets out how Local Authorities should develop and administer their Direct Payment Schemes.

Under Section 49 of the Children and Families Act 2014, the Council has a duty to offer a Personal Budget to children and young people aged from birth to 25 years to enable them to access services and support where an EHCP is in place or where the Council is preparing an EHCP following a full assessment of a child or young person's eligible needs. A Direct Payment may form part of a child or young person's Personal Budget, based on their identified, assessed needs. The legislation is set out in the Special Educational Needs (Personal Budgets) Regulations 2014/1652, Section 57 Health and Social Care Act 2001 and Section 17A Children Act 1989.

The Special Educational Needs and Disability Code of Practice 0-25 years is the statutory guidance that supports Part 3 of the Children and Families Act 2014. The Guidance instructs Local Authorities, Early Year's Settings, Schools, Colleges, Health and Social Care Providers and others what they must and should do to identify, assess and provide for children and young people with Special Education Needs (SEN) or disabilities.

The provisions arising from the Children and Families Act relate to the needs identified in the EHCP whereas the support under Section 17 Children Act 1989 relate to the assessment of need specified in the Child in Need Plan. It is possible that there may be some overlap.

When the young person reaches 18 years of age, their community care needs will normally be met by Adult Social Services, although the criteria for eligibility for care and support for adults is different and it may be that more or less support is provided.

For young people who have EHCPs their support may continue from age 18-25 years on the same basis as set out in this Policy.

Direct Payment Policy

Section 1 – Receiving a Direct Payment

1. Who can receive a Direct Payment?

- 1.1 A child or adult who has been assessed as being eligible for care and support or a carer who has been assessed as being eligible for support from Newham Council can apply for a Direct Payment.
- 1.2 The following conditions must be met to receive a Direct Payment:
 - The resident/carer/parent requests a Direct Payment. In the case of children parent includes Persons with Parental Responsibility for a disabled child (as defined by the Children Act 1989) and somebody who has care of the child.
 - Some disabled young people aged 16-17 years, following a Mental Capacity Assessment who meet the threshold for a service may also be able to make an application for a Direct Payment if they have sufficient Mental Capacity to do so.
 - Newham Council is satisfied that the resident is capable of managing a Direct Payment with or without support.
 - Newham Council is satisfied the making of a Direct Payment is an appropriate way to meet eligible needs.

2. Where a Direct Payment is not appropriate

- 2.1 There are cases where a Direct Payment may not be appropriate or available to meet needs. For example, Direct Payments cannot be made to people subject to a court order to a drug or alcohol treatment programme or similar scheme.
- 2.2 In the case of children a Direct Payment may not be available when the support is being provided as part of a larger budget (for example a contract with the NHS to provide all speech and language therapy or occupational therapy) and the Council is not able to separate out or 'disaggregate' the Personal Budget from that overall larger budget because it would have an adverse impact on other services for children and young people with EHCPs or would not be an efficient use of the Local Authority's resources.
- 2.3 Newham Council is prohibited from making a Direct Payment for Residential Care outlined in Schedule 2, Care and Support (Direct Payments) Regulations 2014. 1.4 here are a number of different categories of persons who may not receive Direct Payments under the Children Act 1989 and the Care Act 2014.
- 2.4 A Direct Payment must be an appropriate way to meet the needs and outcomes set out in the Care and Support Plan. Those assessed as eligible have to consent to receiving the Direct Payment and be able to manage it, with support if required.

Direct Payment Policy

- 2.5 A Direct Payment may be made either for part, or for the whole of the total package of care of a disabled child.

3. Assessing Mental Capacity to receive payments

3.1 Before a Direct Payment can be made an assessment of capacity will be carried out on a case by case basis and in relation to the specific decision which needs to be taken. Mental Capacity is the mental ability to make a decision. Under the 2005 Mental Capacity Act, a person's lacks capacity in relation to a matter if at the time they are unable to make a decision in relation to the matter because of impairment of, or a disturbance in the functioning of the mind or brain and they have difficulty with understanding, retaining and weighing the information or communicating their decision.

3.2 Where there is any doubt about a person's ability to consent to a Direct Payment, Newham Council will assess whether or not the resident has capacity to consent before making a Direct Payment available. Residents who would otherwise have no one to support them should be offered an advocate. In such cases, staff will refer to the Mental Capacity Act 2005 and its accompanying Code of Practice.

3.3 Inability to consent to receiving a Direct Payment does not mean a resident with eligible needs cannot receive a Direct Payment.

3.4 Where a resident in need of care and support has been assessed as lacking capacity to request the Direct Payment, an authorised person can request the Direct Payment on the resident's behalf.

3.5 An authorised person is someone who agrees to manage a Direct Payment for a person who lacks capacity according to the Mental Capacity Act 2005. A nominated person is anyone who agrees to manage a Direct Payment on behalf of the resident with care needs.

3.6 If appropriate an authorised/nominated person should be involved in the care and support planning process as well as receiving all the information advice and guidance a resident would receive. The suitable person will sign an agreement to receive and manage the money on behalf of the resident. By doing so they take on the legal responsibility related to employing and managing paid staff, who are employed through the Direct Payments Scheme. A copy of this can be found in Appendix 1.

3.7 Consideration will also be given to cases where capacity is fluctuating or known to fluctuate. This should be covered in the Care Plan which details the steps to take where capacity fluctuates.

4. Receiving a Direct Payment

4.1 A request for a Direct Payment can be made at any time, although in the case of children and young people with EHCPs only at the time of assessment or review/reassessment.

Direct Payment Policy

4.2 Residents/carers may also receive Direct Payments from other Public Authorities. Where this takes place Newham Council will work with residents/carers and partner organisations to combine payments. This will avoid the person having multiple bank accounts and having to supply similar information to public bodies to account for Direct Payment spend, while allowing both bodies to meet their statutory responsibilities.

5. Resident's Contributions

5.1 A financial assessment will be made of the resident's assets, savings and income to determine whether a financial contribution towards their care and support needs is required for Direct Payments in Adults Social Care. Residents/carers who are required to pay a contribution must set up a standing order to their Prepaid Card Account. This will ensure that all the funds required for care and support are available and being spent from one account.

5.2 A failure to pay a contribution into the Prepaid Card Account may result in a reassessment of the resident or their authorised/nominated person's eligibility for receipt of Direct Payments. In line with Paragraph 22 Newham Council will take all reasonable steps to address any situations without the termination of the payment. If terminating a Direct Payment, Newham Council will ensure there is no gap in the provision of care and support.

6. Frequency of Payments

6.1 Direct Payments will be sent directly to a Prepaid Card Account on a four weekly basis in advance.

7. Payment Method

7.1 Newham Council will pay the Direct Payment amount agreed in the Care and Support Plan minus the resident's contribution into either a Prepaid Card Account or a dedicated bank account. The resident is expected to pay their contributions into the same account via standing order.

8. Bank Accounts

8.1 Newham Council has a Prepaid Card System in place which can be used to receive Direct Payments. The Prepaid Card System can be used like a basic bank account to make payments and set up direct debits or standing orders.

8.2 Prepaid Cards do not automatically allow cash withdrawals. In exceptional circumstances where cash withdrawals are needed this can be agreed by the Head of Service.

8.3 In the event a resident loses their Prepaid Card three times or more, they may be charged £5 for each subsequent lost card.

8.4 Newham Council is entitled to recover any under spend or use of the Direct Payment for purposes not contained in the Care and Support Plan/EHCP or misappropriation (theft)

Direct Payment Policy

of Direct Payment funds from the resident or their chosen decision maker (as the case may be). This will result in a review of the resident's eligible needs.

9. Contingency and Reserves

- 9.1 The Care and Support Plan may include a contingency element that can be used to cover fluctuating needs. The use of the contingency will be monitored by Newham Council to ensure that it is being spent in line with residents Care and Support Plan.
- 9.2 Residents should hold sufficient funds in their Direct Payment account to cover all planned expenditure. Anything held in excess of this amount that has not been agreed as part of fluctuating needs requirements will be recovered by Newham Council in line with Section 19.1.

10. Administration Costs

- 10.1 The management and administration of a large payment, along with organising care and support can be a complex and time consuming task.
- 10.2 Newham Council can provide support to residents to manage their Direct Payments through one of their Third Party Financial Service Partners. Residents are also free to identify an alternative provider of their choice. The costs of this service will be met from the resident's Personal Budget.
- 10.3 Residents can also choose to nominate a friend/family member to manage the Direct Payment on their behalf and can pay that friend/family member for providing this service should they be able to demonstrate to the council's satisfaction that the task warrants such payment. The amount will need to be agreed in writing. The cost of this service will be met from the resident's Personal Budget.
- 10.4 The payment for administration to a friend/family member is not intended to be income replacement and there may be implications for the recipient in terms of tax and employment and payment may also impact upon other benefits.
- 10.5 Newham Council will need to be satisfied that it is necessary to make the payment to the family member to provide this service and that the Direct Payment will only be used for administration and management of the payment. The payment amount of up to £10 per month will be agreed on large Direct Payments of £300 per week and otherwise where a resident can demonstrate necessity.
- 10.5 The circumstances and payment amount will be decided and agreed with the resident, the family member, Newham Council and any other person (i.e. advocate), with Newham Council taking steps to ensure all parties agree.
- 10.6 These decisions will be recorded in the Care and Support Plan and include the amount of the payments, their frequency and the activities that are covered.

Direct Payment Policy

- 10.7 Newham Council will have in place an agreement between all parties about what steps to take in case of a dispute regarding the management of the payment by a household family member. This will be relevant especially where the person providing administration and management is also the nominated or authorised Direct Payment recipient. It would not be appropriate to allow this where there is a risk that the Direct Payment may be abused, or there are other sensitivities such as potential safeguarding issues
- 10.8 The Head of Service may agree in writing for a family member to administer a Direct Payment from which another family member is being paid to deliver care.

Section 2 - How to Spend Direct Payments

11. What can Direct Payments be used for?

- 11.1 Residents or their authorised/nominated person shall only use sums paid by means of a Direct Payment for the sole purpose of achieving the identified outcomes of the Care and Support Plan/EHCP. A failure to adhere to this section shall invoke the right reserved in Paragraph 8.4 above.
- 11.2 Newham Council cannot draw up an exhaustive list as to how residents can/cannot spend their Direct Payment. Each case must be decided on its own merits based on the following key principles. The service, activity or item proposed should:
- Be clearly linked to the outcomes identified in the Support Plan to meet the Resident's assessed eligible community care needs
 - Be able to show how it will keep the resident healthy, safe and well
 - Be affordable and proportionate to the resident's assessed eligible care and support needs
- 11.3 Working within the above guiding principles, Direct Payments cannot be used for the following things:
- Anything illegal
 - Purchase of alcohol, tobacco or gambling
 - Long term Residential Care
 - A health care need that should be provided by the National Health Service (NHS) or Clinical Commissioning Group (CCG)
- 11.4 The Direct Payments Scheme has been designed to apply to a wide range of Community Care Services in accordance with the Care Act 2014 and the Care and Support (Direct Payments) Regulations 2014. These could include:
- A Personal Assistant (PA) or agency care

Direct Payment Policy

- Community activities
- Attending a day centre
- Beneficial activities such as swimming lessons, guitar lessons
- Social activities such as play schemes
- Equipment

- 11.5 The disabled child's sibling(s) may, if appropriate, participate in the activity with the disabled child. Things to consider are the ability of the carer to supervise the number of siblings involved safely and with regard to each of their needs; commonality of interest in and suitability of the activity. There may be occasions where the carer assists a parent to take siblings out together.
- 11.6 Where a PA has been agreed in the Care and Support Plan, the Direct Payment will include funds to employ a PA, including recruitment costs (where required), Employers' National Insurance Contributions, Income Tax, Employers' Liability Insurance, Pension and other costs associated. Newham Council will provide information and support on how to begin employing a PA and will provide regular monitoring to ensure payments are being made correctly. Becoming an employer carries with it certain responsibilities and obligations, in particular in relation to paying tax, National Insurance, minimum wage requirements and ensuring that any person employed has the right to work in the United Kingdom (UK). Workers may also gain employment rights which could result in their making claims and insurance for this purpose is highly recommended.
- 11.7 If for any reason a resident would like to spend their Direct Payment on other outcomes than outlined in their Care and Support Plan they will need to contact the Direct Payment team for written agreement prior to purchase. Any change in spend may require a review of the Care and Support Plan.
- 11.8 Direct Payment cannot be used to pay for residents to live in long term Care Home placements. They can be made to enable residents to purchase for themselves a short stay in Care Homes, provided that the stay does not exceed a period of four consecutive weeks in any twelve-month period. The period is counted as consecutive where the period between two stays in Care Homes is less than four weeks. This could be used to provide a respite break for a carer.
- 11.9 People who are living in Care Homes may receive Direct Payments in relation to Non-residential Care Services. For example, they may have temporary access to Direct Payments to try out Independent Living arrangements before making a commitment to moving out of their Care Home. Direct Payments can also be used by people living in Care Homes to take part in day time activities.

12. **Paying Family Members**

- 12.1 Direct Payments cannot be used to secure the services from a spouse, a family member or a partner who lives in the same household as the resident with the exception of administration costs as outlined in Section 10, except in exceptional

Direct Payment Policy

circumstances which will need to be agreed in advance in writing by the Head of Service.

13. Legal Rewards

- 13.1 Direct Payments are generally used to pay a PA for a service they provide. Direct Payments can also be used to pay for a 'Legal Reward'. Friends, family and neighbours can offer many kinds of support for free. The flexibility of a Personal Budget can allow a person to use a small amount of their money to say thank you for help received, we call these a Legal Reward.
- 13.2 A Legal Reward can be paid to a maximum value in a given year of £250 per resident to comply with Her Majesty's Revenue and Customs (HMRC) taxation law. Any amount over £250 would need to be declared to HMRC for taxation and would no longer be considered a Legal Reward rather as income.
- 13.3 Any Legal Reward must be agreed in advance in writing by a Head of Service prior to the funds being spent. Alternatively, the funds need to be allocated and agreed in the support planning process. Receipts for any purchases must be retained in line with Section 17.1.
- 13.4 The Council recommends that individuals who receive a Legal Reward in return for assisting a service user or carer and who are in receipt of benefits seek advice as to whether this will impact on their benefit entitlement. Individuals who claim benefits or tax credits and who participate in regular paid activity (without the status of an employee) will have an obligation to ensure that they do not breach the conditions of entitlement to their benefits and do not face being overpaid.
- 13.5 For example, it could affect an individual's ability to meet the terms of their jobseekers' agreement or may raise questions about their incapacity if they are claiming benefit as unfit for work.

14. Employment Duties

- 14.1 Residents need to be aware that they or their authorised/nominated person is responsible for the day-to-day management of their Direct Payments including that of employing suitably qualified workers where necessary to provide the assistance identified within their Care and Support Plan.
- 14.2 Newham Council will signpost residents to information in regards to their role as an employer. For residents who request or require further help or assistance Newham Council will arrange face to face advice and guidance.
- 14.3 When employing any person referred to in Paragraph 11.6 above, the resident shall comply with their legal duties and obligations as an employer in the UK including that which is required by HMRC and the UK Border Agency. The resident or their nominated or authorised person shall be responsible for making appropriate deductions for tax and National Insurance contributions from the remuneration paid to its workers, register as

Direct Payment Policy

an employer with HMRC and ensure all checks are made of their potential employees including a Disclosure and Barring Service (DBS) check and the right to work in the UK.

- 14.4 Residents will need to have in place Employers Liability Insurance. The Employers Liability Insurance should be taken out with a reputable insurance company or underwriters with a minimum limit for any one claim of £5 million (residents will be notified if this limit is increased or decreased in the future as reasonably required by the Chief Finance Officer of the Council). The Insurance Policy and premium receipts must be produced on demand when requested by Newham Council.
- 14.5 The resident or their authorised/nominated person must ensure that any person they employ with the use of Direct Payments will not be considered or consider themselves an employee or agent of Newham Council and that Newham Council will not be responsible for any Income Tax, National Insurance or any other payments or responsibilities in relation to the employee of the resident. It must be clearly stated in their contract of employment or written statement of work that they are employed solely by the resident or the authorised/nominated person.
- 14.6 Residents and or their authorised/nominated person will be expected by Newham Council to ensure that the resident has made provisions for cover in emergency situations or when their PA is not able or not due to attend to support them, such as in cases of annual leave or sickness.
- 14.7 In the event that the normal contingency arrangements by the resident or their authorised/nominated person for the provision of the services breaks down, in an emergency Newham Council shall endeavour to ensure that the resident receives appropriate services to achieve their agreed outcomes for that period until the resident or their authorised/nominated person is able to resume their usual arrangement. This will result in the need for repayment to Newham Council of monies already paid to the resident. The amount will be recovered by Newham Council from the Prepaid Card Account and the details provided to the resident or their authorised/nominated person in writing. Newham Council may recover any amount due greater than money in the Prepaid Card Account from future Direct Payments after conducting a re-assessment of the resident's needs in consultation with the resident.

15. **Safeguarding**

- 15.1 It is an offence under the Criminal Justice and Court Services Act 2000 and Safeguarding Vulnerable Groups Act 2006 for anyone to offer work with vulnerable people or children to someone they know or have reason to believe is a barred individual, or procures such a person to work with vulnerable people or children, or allows such a barred individual to engage in such work.
- 15.2 The resident or their nominated or authorised person shall ensure that when employing a person who will have unsupervised access to young or otherwise vulnerable people during the course of their work, that the resident or their nominated or authorised person conducts an enhanced DBS check to ensure that the person has no relevant criminal

Direct Payment Policy

convictions that would preclude them from working with children or vulnerable people. The cost of the DBS check will be met through the personal budget.

16. Direct Payments – Paying for Council Services

- 16.1 As a general rule, Direct Payments should not be used to pay for services provided by Newham Council. If a resident wishes to receive a service from Newham Council that has been included in their Care and Support Plan this will be arranged by the Council and the Direct Payment will be reduced by the service cost before it reaches the Prepaid Card Account.
- 16.2 There may be cases where Newham Council will exercise discretion to provide care and support by receiving a Direct Payment amount, for example this could be where a person who is using Direct Payments wants to make a one-off purchase from Newham Council such as a place in Day Care. In these cases, Newham Council will take into account the wishes of the person requiring care and support when making a decision. In one-off cases such as these, it may be less burdensome to accept the Direct Payment amount, rather than providing the service and then reducing the Personal Budget and Direct Payment accordingly.
- 16.3 This does not preclude residents from using their Direct Payment to purchase care and support from a different Local Authority. For example, a person may live close to authority boundaries and another Local Authority could provide a particular service that their 'Home' authority does not provide.

Section 3 – Audit and Review of Direct Payments

17. Review of Direct Payments

- 17.1 As part of the monitoring and review process an initial light-touch review will take place four-six weeks after Direct Payments have started to ensure that the resident is comfortable with using the Direct Payment, and experiencing no initial issues. The review will take place to establish if the Direct Payment is being spent, to ensure unmet assessed eligible community care needs and outcomes are being met and that the Direct Payment is being used as detailed in the Care and Support Plan and within the terms of the Direct Payment agreement. It should ideally be incorporated within the initial review of the care and support. However, if the initial review raises concern or requires actions that affect the detail recorded in the Care and Support Plan, then a full review of the plan will need to be carried out.
- 17.2 If, at the initial review, it becomes clear that the resident is struggling to understand their responsibilities in operating the Direct Payment, Newham Council shall assist with further information, advice and support.
- 17.3 Newham Council will review the Direct Payment arrangements six months following the initial payment, and thereafter every twelve months if no further issues arise to enable Newham Council to establish that the Direct Payment is still an appropriate way of

Direct Payment Policy

meeting the resident's needs and outcomes, and that conditions upon which it is made are being met.

- 17.4 The monitoring will take place across both the financial aspects of the Direct Payment and to identify risks and issues. For example, if the Direct Payment recipient is employing people, Newham Council will include in the review, checks to ensure the individual is fulfilling their responsibilities as the employer. In particular, that they are submitting Pay As You Earn (PAYE) returns to HMRC as well as paying tax and National Insurance deductions made to HMRC.
- 17.5 Where a Direct Payment is being allocated to a nominated/authorised person, or where there may be a family carer being paid for administrative support, the review should, where possible, incorporate all of these parties as well as the person in need of care and support. This will ensure that Newham Council receives views from everyone involved in the Direct Payment to ensure there are no initial issues that require resolving.
- 17.6 Newham Council has the right to increase, decrease, suspend or terminate the Direct Payment in line with a regular review or reassessment of the resident's assessed eligible community care needs/EHCP.
- 17.7 Where Newham Council has identified a change in circumstance that it deems affects the current level of Direct Payments due, Newham Council will give the resident or their authorised/nominated person seven days' written notice of the change. This notice period may be extended where a reduction may affect any pre-existing contractual arrangements, such as a PA.
- 17.8 The resident or their authorised/nominated person will ensure that arrangements are in place to notify Newham Council immediately if there are any changes in their circumstances which may affect their entitlement to Direct Payments. Examples of changes are: if the resident is admitted to Hospital, is going to be away for periods beyond four weeks or no longer requires the service, a change of address or support arrangements. It is the responsibility of the resident to check with Newham Council if they are unsure if a change in circumstance will affect their eligibility to continue to receive Direct Payments.
- 17.9 Following discussion with the resident or their authorised/nominated person Newham Council may temporarily reduce or suspend payments if the resident is unable to receive services for a period of time, such as for long stays in Hospital. Newham Council shall give consideration to resident's individual circumstances upon admission to Hospital. Direct Payments may continue to be paid for short stays in Hospital to facilitate staff retention by the resident.
- 17.10 A formal review or reassessment of the resident's circumstances by Newham Council can be requested at any time and it will be considered by the Council.

Direct Payment Policy

18. Audit of Direct Payments

- 18.1 The resident or their nominated or authorised person shall keep all documents and/or records generated in connection with the provision of services to which this agreement relates for a period of six years following the end of the services. The documents and/or records held by the resident or their authorised/nominated person may be inspected by Newham Council via its staff including Newham Council's Internal Audit Service or other person authorised by Newham Council upon giving reasonable notice.
- 18.2 The activity on the Prepaid Card Account will be monitored by Newham Council via the Prepaid Card Account on-line system. Newham Council will not normally require or request documentation for a transaction that appears on the on-line account that clearly identifies the service and is within the agreed Care and Support Plan limits.
- 18.3 Newham Council will request information and supporting documentation for an entry on the Prepaid Card Account that is not easily recognisable, exceeds or is notably lower than the agreed care or service costs. The resident shall provide this information within fourteen days of the request. Failure to provide such documentation within the timescale indicated shall result in a reassessment of the resident or their authorised/nominated person's eligibility for receipt of Direct Payments.
- 18.4 Residents or their authorised/nominated person shall contact Newham Council Council's Direct Payment Team when requested and submit to the periodic monitoring and review of the service.
- 18.5 Newham Council will provide information and advice to residents who opt to take their care and support through the payment of a Direct Payment. It will be made clear to the resident that the Direct Payment account is auditable and the need for good record keeping on expenditure is important.
- 18.6 The Direct Payment account will be subject to regular audits in relation to the use and management of the Direct Payment. The account will be audited initially at six-eight weeks from it starting and any issues will be addressed.
- 18.7 Thereafter Direct Payment accounts will be audited six months following the first payment and from then on annually if no further issues arise. Audits are required to ensure that the Direct Payment is being used for the purposes laid out in the Care and Support Plan and that accurate receipts and records are being kept. Any discrepancies will be investigated and resolved and any debt will be recovered by Newham Council.
- 18.8 Newham Council has the right to suspend or terminate the Direct Payment as a result of the findings of the audit of the Direct Payment account on being satisfied that there has been a breach of the Agreement.

19. Recovery of Direct Payments

- 19.1 Newham Council reserves the right, after consultation with the resident or their authorised/nominated person, to adjust future payments to recover any overpayments

Direct Payment Policy

or underspends after taking into consideration any other expenses the resident is required to meet in relation to their Direct Payments such as statutory holidays and payments due to the HMRC.

20. **Unspent Direct Payments**

- 20.1 Where money remains on the Prepaid Card Account outside the allowed or agreed amount for contingency, HMRC, annual leave, respite, fluctuating needs or one-off payments for example, any overpayment or underspend will be recovered from this account by Newham Council.

21. **Wrongful Use of Direct Payments**

- 21.1 Newham Council has a duty of care to ensure the resident or their authorised/nominated person is using the Direct Payment to achieve the outcomes agreed in their Care and Support Plan/EHCP, that the charges the resident incurs are reasonable and that public funds are being used effectively. In line with Paragraph 18.3 where requested the resident is required to provide as much information as possible in the time frame given.
- 21.2 In the event that fraud, abuse or misuse is reasonably suspected Newham Council may refer the matter to Internal Audit for investigation and offer support to the resident to reduce the risk of further loss occurring. Newham Council shall refer any potential criminal activity to the Police for further investigation and reserve the right to prosecute where fraud is suspected to have taken place. Newham Council will not be responsible for any financial losses incurred by the resident and will not therefore reimburse the resident unless exceptional circumstances apply.

22. **Direct Payments and Hospital Stays**

- 22.1 There may often be occasions when the resident requires a stay in Hospital. If a resident is in Hospital for four weeks or more a review will take place. Payments may be reduced in the event that a resident is due to remain in Hospital for a long period of time as discussed in Paragraph 17.8. Consideration to contractual agreements with PAs will be taken into account to ensure a continuity of care when discharged from Hospital.
- 22.2 During the review consideration will be given to how the Direct Payment may be used in Hospital to meet non-health needs or to ensure employment arrangements are maintained. For example, the resident may prefer the PA to visit the Hospital to help with personal care matters outside those performed by Hospital staff. This may be especially so where there has been a long relationship between the Direct Payment holder and the care PA. This should not interfere with the medical duties of Hospital Personnel, but be tailored to work alongside health provision.
- 22.3 In some cases, the nominated or authorised person managing the Direct Payment may require a Hospital stay. In these cases, Newham Council must be notified and an urgent review will be conducted to ensure that the resident continues to receive care and

Direct Payment Policy

support to meet their needs. This may be through a temporary nominated/ authorised person, or through short-term care and support arrangement.

- 22.4 Upon imminent discharge from Hospital a review of the care and support needs of the resident will be undertaken by Newham Council to ensure that an appropriate Care and Support Plan is in place before the resident returns home and Direct Payments may be reinstated if these were temporarily ceased or reduced, provided the resident continues to meet the eligibility criteria.

23. Direct Payments - Periods Away from Home

- 23.1 Residents intending to travel outside their ordinary area of residence for short periods, must inform Newham Council of their plans prior to making those arrangements. The resident will need to state the period of time from which they will be away and to confirm their arrangements for support during this period.
- 23.2 The resident retains the responsibility to ensure that if they employ someone when away, particularly if this is outside the UK the resident must ensure that they comply with the country's employment rules and regulations.
- 23.3 The resident or their authorised/nominated person must retain receipts for payment of wages to workers as well as all other documentation related to such employment; this includes copies of receipts and invoices relating to purchases made from their Direct Payment Prepaid Card Account. These should be submitted to Newham Council along with their financial monitoring returns.
- 23.4 The resident or their authorised/nominated person retains responsibility of ensuring that arrangements are in place to pay the wages of their employee/s in the UK if they wish to retain them while they are away from home.

Section 4 - Ending Direct Payments

24. Terminating Direct Payments

- 24.1 Direct Payments will only be terminated for breach of conditions of the Direct Payment agreement at the Council's discretion. Newham Council will take all reasonable steps to address any situations without the termination of the payment. If terminating a Direct Payment, Newham Council will ensure there is no gap in the provision of care and support.

25. Terminating Direct Payments by the Direct Payment Recipient

- 25.1 If a resident expresses a desire to terminate the Direct Payment, the reasons for the termination should be provided to Newham Council. In these cases, Newham Council will then work with the individual to plan how their assessed eligible care needs will be met in an alternative way.

Direct Payment Policy

- 25.2 A Direct Payment may be terminated by the resident or their authorised/nominated person by providing four weeks' notice to enable Newham Council to, if required meet the Care and Support Plan outcomes by alternative means to the Direct Payment.

26. Newham Council Terminating Direct Payments

- 26.1 Newham Council shall cease making Direct Payments if the person no longer appears to be capable of managing the Direct Payment or of managing the payment with support. Newham Council will make timely arrangements for services to be provided in lieu of the Direct Payments, to ensure continuity of support.
- 26.2 Direct Payment should be discontinued when a person no longer needs the support for which the Direct Payments are made. This might happen in situations where the Direct Payments are for short-term packages when leaving Care Home or Hospital. Direct Payments for Aftercare Services under Section 117 of the Mental Health Act would also cease once the CCG and Newham Council are satisfied that the person concerned is no longer in need of such services.
- 26.3 There may be circumstances in which Newham Council will discontinue Direct Payments temporarily. An example might be when an individual does not require assistance for a short period because their condition improves and they do not require the care and support that the Direct Payments are intended to secure. Newham Council will discuss with the resident, their carer, and any other person concerned on how best to manage this.
- 26.4 The resident should be allowed to resume responsibility for their own care after the interruption, if that remains their wish, unless there has been a change of circumstances which means that the conditions in the Act and/or Regulations are no longer met. If there is a change of circumstances that affects the Care and Support Plan/EHCP Newham Council will revise the plan to ensure that it is still meeting outcomes within the Care and Support Plan/EHCP.
- 26.5 Newham Council might also discontinue payments if the person fails to comply with a condition imposed under regulations to which the Direct Payments are subject or if for some reason Newham Council, no longer believes it is appropriate to make the Direct Payments. For example, Newham Council may discontinue the Direct Payment if it is apparent that they have not been used to achieve the outcomes of the Care and Support Plan/EHCP.
- 26.6 Direct Payments must not be provided under certain conditions, such as where the recipient is placed by the courts under a condition or requirement relating to a drug and/or alcohol dependency.
- 26.7 Where Direct Payments are discontinued as a result of criminal justice legislative provisions, Newham Council will make timely arrangements for services to be provided in lieu of the Direct Payments, to ensure continuity of support.

Direct Payment Policy

27. **Discontinuing Direct Payments in the case of persons with capacity to consent**

- 27.1 Where someone with capacity is in receipt of a Direct Payment but loses capacity to consent, Newham Council will discontinue Direct Payments to that person and consider making payments to an authorised person instead. In the interim, Newham Council will make alternative arrangements to ensure continuity of support for the person concerned.
- 27.2 If Newham Council believes the loss of capacity to consent to be temporary, it may continue to make payments if there is someone else who is willing to manage payments on the person's behalf. This situation should be treated as strictly temporary and will be closely monitored to ensure that, once the person has regained capacity they are able to exercise overall control over the Direct Payments as before. If the person's loss of capacity to consent becomes prolonged, Newham Council will consider making more formal arrangements for an authorised person to take over receipt of the Direct Payments on that person's behalf. The arrangement is designed to be temporary, so that the person managing the Direct Payment does not enter into any long-term contractual arrangements

28. **Discontinuing Direct Payments in the case of persons lacking capacity to consent**

- 28.1 Newham Council will discontinue Direct Payments if Newham Council is not satisfied that the authorised person is acting in the best interests of the beneficiary, within the meaning of Section 4 Mental Capacity Act 2005. Newham Council may discontinue the Direct Payments if it has sufficient reason to believe that the conditions imposed under regulations on the authorised person are not being met. Newham Council may wish to consider if someone else can act as an authorised person for the person lacking capacity, or whether there is a need for the Council to arrange services for them in place of the Direct Payments.
- 28.2 Direct Payments will be discontinued to an authorised person where Newham Council has reason to believe that someone who had lacked capacity to consent to Direct Payments has now regained that capacity on a long-term or permanent basis. Newham Council will not terminate Direct Payments to the authorised person before beginning to make Direct Payments to the service recipient themselves or to arrange services for them, according to their wishes. If Newham Council is satisfied that the regaining of capacity will only be temporary then it can continue to make Direct Payments to the authorised person if during the period the adult has the capacity to make the request and is capable of managing the Direct Payment, for him or herself.

29. **How to discontinue Direct Payments**

- 29.1 Newham Council will discuss as soon as possible with residents or their authorised/nominated person, their carers and any person managing the Direct Payments if it is considering discontinuing Direct Payments to them, in order to explore all available options before making the final decision to terminate the Direct Payments. For example, if ability to manage is an issue, the individual should be given an opportunity to demonstrate that they can continue to manage Direct Payments, albeit

Direct Payment Policy

with greater support if appropriate. Newham Council will not automatically assume when problems arise that the only solution is to discontinue or end Direct Payments.

- 29.2 If Newham Council does decide to withdraw Direct Payments, it will need to conduct a review of the plan and agree alternative care and support provision with the person, their carer and independent advocate if they have one, unless the withdrawal was following a review after which Newham Council concluded that the services were no longer needed. A four-week period of notice will normally be given before Direct Payments are discontinued.
- 29.3 It will be extremely unlikely that Newham Council will discontinue Direct Payments without giving notice, although in serious cases this may be warranted (for example, the authorised person is not acting in the best interests of the person). Newham Council should explain to residents\carers before they begin to receive Direct Payments, the exceptional circumstances in which this might occur and discuss with them the implications this has for the arrangements that individuals might make.
- 29.4 Newham Council retains the right to recover Direct Payments in full or in part if it is satisfied that the money had been diverted from the use for which it was originally intended.
- 29.5 If Direct Payments are discontinued, some residents\carers may find themselves with ongoing contractual responsibilities or having to terminate contracts for services (including possibly making employees redundant). Contractual obligations will require a notice period for termination such as service paid for in advance and employment contracts. These arrangements will need to be taken into consideration when Direct Payments are discontinued by both the resident and or their authorised/nominated person.
- 29.6 There may be circumstances where the person has lost the capacity to manage the Direct Payment and there is no-one else to manage the payment on their behalf, or where a person needs additional support to terminate arrangements. In these cases Newham Council will provide support to ensure that any contractual arrangements are appropriately terminated to ensure that additional costs are not incurred.

30. **Ending Direct Payments – on death**

- 30.1 In the event of the death of the resident any amount of Direct Payment remaining in the Resident's Prepaid Card Account will be recovered by Newham Council following a discussion with the family and or authorised/nominated person. There will be funds available to pay for commitments outlined in the Care and Support Plan if an agreement is in place for advance payments or notice needs to be given before termination.
- 30.2 Any amount the estate of the resident is liable to pay for the fulfilment of contractual and legal obligations, including statutory redundancy payments, relating to any person employed by the resident or to HMRC which the estate is not able to fund may be paid

Direct Payment Policy

by Newham Council on receipt of supporting documentary evidence or an invoice relating to the services received.

- 30.3 Any personal contribution remaining on the Prepaid Card Account will be paid to the resident or their estate within twenty-eight days of termination of the Direct Payment, subject to all records being provided and available to Newham Council. Any additional amount remaining on the Prepaid Card Account will be returned to Newham Council.

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