

Policy Statement: Personal Budgets and Direct Payments for Residents Supported to Live in their Locality and their Carers

1 Introduction

- 1.1 Croydon Council aims to ensure that all residents and carers eligible for Council funded care and support receive personalised care, in the right place and at the right time. Our approach is centred on a strength based model of support that promotes wellbeing, self-care and independence
- 1.2 The Council seeks to increase independence for residents who need care and support and their carers by:
 - supporting those of working age to live independently in a home of their own;
 - helping older people by supporting them to remain in their homes;
 - helping the parents and carers of children with disabilities to care for their children at home, and;
 - avoiding, delaying and or reducing the use of residential care.
- 1.3 We believe the best way for residents to achieve these aims is through a personal budget with a direct payment that give residents choice and control over their care and support.

2 Care Support Plans and Personal Budgets

- 2.1 Everyone's needs for care and support are different, and needs can be met in many different ways.
- 2.2 The care and support planning process is there to help decide the best way to meet a residents' needs. The Council works with residents who request support to consider a number of different things, such as what needs a person might have, what they want to achieve, what they can do by themselves or with the support they already have, and what types of care and support might be available to help them in their local area.
- 2.3 The planning process takes place between the Council and the resident seeking support, and any carer they may have and any other person they ask the Council to involve – this could be a relative, friend or other person who can advise and or help. This process will decide how to meet a person's needs and the Council will do everything it reasonably can to reach agreement with an eligible resident as to how their needs should be met.
- 2.4 With the eligible resident, the Council will write a plan that sets out the detail of what was agreed to support the person's needs. All residents and carers assessed as being eligible for Council funded care and support will receive a Care and Support Plan that clearly sets out what support the resident will need to enable them to live as independently as possible in their own home, or family home. Depending on a person's circumstances this plan could include a combination of support provided by relatives or neighbours; support paid for by the resident; and or support funded by the Council.
- 2.5 All residents and carers in receipt of Council funded care and support will be informed of their Personal Budget setting out the amount of money that the Council has worked out it will cost to arrange your care and support. This includes any amount that the Council is going to pay itself towards those costs (which might range from all, to none of the total). A person may then take control over arranging their own care and support by choosing to have their personal budget in the form of a direct payment.

2.6 A **direct payment** is a payment of money from the Council to either the person needing care and support, or to someone else acting on their behalf, to pay for the cost of arranging all or part of their own support. The Council will make a direct payment instead of arranging or providing any services itself, if a resident wishes so. This ensures that any person can take full control over their own care and choose how they want to receive their care and support and from who.

3 Taking up Direct Payments and Eligibility

3.1 In order to promote resident independence, choice and control the Council will encourage all residents eligible for Council funded support to help them live at home to take up a direct payment to pay for all or some of their care and support:

- All residents who the Council assesses as being eligible for community based care and support will be offered a Direct Payment and other advice and support in order to access this support
- All residents in receipt of a Council commissioned service as a result of an emergency care package will be supported in transferring to Direct Payments at their six week review
- All residents with a current care and support plan and accessing Council commissioned services will be presented with the opportunity to transfer to Direct Payments as part of any review and supported through any transfer
- All residents with a current care and support plan and accessing Council commissioned services will be able to request a transfer to Direct Payments at any time and supported in this transfer

3.2 All eligible residents will be supported in setting up their Direct Payments arrangements and finding the care and support they think will best meet their needs.

3.3 Where a resident is refused a Direct Payment they will be provided with a written reason that explains the decision.

3.4 To receive a Direct Payment the following conditions must be met:

- The resident requests and or agrees to a Direct Payment
- The Council is not prohibited from making a Direct Payment as outlined in Section 3 of The Care and Support (Direct Payments) Regulations 2014
- The Direct Payment is not used for the purpose of securing long term care in a care home.
- The Council is satisfied that the eligible resident or nominated/authorised person is capable of managing a Direct Payment with or without support
- Council agrees that a Direct Payment is appropriate to meet eligible needs
- The resident signs a Direct Payments agreement with the Council

3.5 There are cases where a Direct Payment may not be appropriate to meet a resident's needs.

For example:

- The resident has capacity to manage their finances but requires support and is unable to **nominate** a suitable person to help them.
- The resident lacks capacity to manage their finances and the Council is unable to **authorise** a person to manage it on their behalf.
- When a resident is subject to a court order for a drug or alcohol treatment program or similar scheme.

- 3.6 The Council will not approve an individual onto a Direct Payment if they wish to nominate a family member to administer the Direct Payment as well as paying the same family member to deliver their support. In exceptional circumstances a the Head of Service or Director responsible for the Care and Support Plan may approve an arrangement contrary to this provision; however this cannot be agreed if the paid carer lives at the same address as the recipient.
- 3.7 A Direct Payment must be an appropriate way to meet the needs and outcomes set out in the Care and Support Plan, or carer's support plan. The recipient of the Direct Payment or the authorised/nominated person for the recipient must be able to manage the Direct Payment with or without support.
- 3.8 Residents may be in receipt of a Direct Payment from other statutory organisations.. The Council will endeavour to work with the resident and partner organisations to combine payments, to assist managing income streams whilst allowing statutory bodies to meet their responsibilities. The Council and Croydon CCG will put in place arrangements that will integrate arrangements where a resident has a Council Direct Payment and a NHS Personal Health Budget.

4 Capacity to receive payments and nominated and authorised persons

- 4.1 Anyone who agrees to a Direct Payment is responsible for managing it either independently or with help.
- 4.2 Residents with Direct Payments who have capacity to manage their finances may nominate a third party to assist them. The third party is usually a family member or close friend and is known as the **nominated person**.
- 4.3 The Council may decide that a person with capacity is unable to manage a Direct Payment, having taken into consideration the individual's views and circumstances. If the person disagrees with the Council's decision, the service will provide access to an advocacy service to ensure their views have been fully taken into account.
- 4.4 Where there is any doubt about a person's ability to consent to a Direct Payment, the 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 will be offered an advocate. In such cases, staff will carry out their duties as outlined in the Mental Capacity Act 2005 and its accompanying Code of Practice.
- 4.5 Inability to consent to a Direct Payment does not mean an individual with eligible needs cannot receive a Direct Payment. Where an individual has been assessed as lacking capacity to request the Direct Payment, an **authorised person** can request the Direct Payment on their behalf.
- 4.6 As with Direct Payments for residents with capacity each of these conditions must be met in full:
- where the person is not authorised under the Mental Capacity Act 2005 but there is at least one person who is so authorised, that person who is authorised supports the person's request
 - the Council is not prohibited by regulations under section 33 from meeting the adult's needs by making direct payments to the authorised person, and if regulations under that section give the Council discretion to decide not to meet the adult's needs by making direct payments to the authorised person, it does not exercise that discretion

- the Council is satisfied that the authorised person will act in the adult's best interests in arranging for the provision of the care and support for which the direct payments under this section would be used
 - the Council is satisfied that the authorised person is capable of managing direct payment by himself or herself, or with whatever help the authority thinks the authorised person will be able to access
 - the Council is satisfied that making direct payments to the authorised person is an appropriate way to meet the needs in question
- 4.7 An authorised person is a suitable person who agrees to manage the Direct Payment for the person who lacks capacity on their behalf or has the power, such as a lasting power of attorney, for the person as outlined in the Mental Capacity Act 2005.
- 4.8 The authorised or nominated person will be involved in the care and support planning process and be party to all the information, advice and guidance that the resident would usually receive. The authorised or nominated person will sign the Direct Payment Agreement to manage the payments on behalf of the individual. By doing so they take on the legal responsibility related to employing and managing paid staff employed through the Direct Payments scheme.
- 4.9 The authorised or nominated person will sign the Council's Direct Payment agreement to act as a suitable person on behalf of the individual and fulfil their duties and responsibilities.
- 4.10 Consideration will be given to cases where capacity is fluctuating or known to fluctuate. This should be covered in the recipients Care and Support Plan which details the steps to take where this occurs.

5 Calculating the Value of the Direct Payment

The Direct Payment amount is the equivalent to the Council's estimation of the reasonable cost of providing the support required. The details of these costs are included in the Personal Budget. The payment should be sufficient to secure support of a standard and value that the Council considers appropriate to meet the eligible needs and outcomes of the recipient. The Council uses a Resources Allocation System (RAS) to fairly and transparently calculate an Indicative Personal Health Budget which may then be adjusted as part of a resident's assessment and the agreement over the Care and Support Plan.

- 5.1 The Council will provide support in accordance with the needs, interventions and outcomes agreed in the person's Care and Support Plan. It does however reserve the right to exercise discretion in how services are provided in the interests of safeguarding, ensuring proper use of public funding and making efficient and effective use of the Council's limited resources.
- 5.2 The Council is not obliged to fund specific costs associated with the recipients preferred method of securing their needs and outcomes. A resident can top up their Direct Payment budget if the cost of their chosen intervention exceeds the Council's estimation of reasonable costs to secure it.
- 5.3 The Council will give recipients as much notice as possible of the value of the Direct Payment and any financial contribution they are expected to pay towards the cost of their care and support.

6 Resident Contributions

- 6.1 Where a Direct Payment or Council service is provided to meet eligible needs the Council is required to undertake a financial assessment which ascertains the assets, savings and income of the person and determines whether a financial contribution towards their care and support needs is required.
- 6.2 Individuals who are required to pay a client contribution must set up a standing order into their Direct Payment account. Payments must be made four weeks in advance to ensure that all the funds required for care and support are available and are being spent on the provision of care and support from one account.
- 6.3 Failure to pay a client contribution into the Direct Payment account may result in a suspension or reassessment of the person's eligibility for receipt of a Direct Payment.
- 6.4 On closure of a Direct Payment account, shortfall of funds arising from non-payment of client contributions may be payable by the person in receipt of Direct Payments.

7 Methods of Payment Online - Accounts System

- 7.1 The Council has put in place an online Direct Payments account system that enables residents to receive their Direct Payments and arrange for their care and support. This online system is called Virtual Wallet.
- 7.2 The online Direct Payment account system is designed to reduce the burden and time spent by a resident on managing their Direct Payment funds and their care and support. The account can be viewed via a portal, provided by the Council that reduces the need for a recipient or their nominated/authorised person to submit bank statements or proof of payments to the Council. The account enables a resident or their representative to view their funds, to make payments to providers and help manage queries on payments to be more effectively resolved. It reduces the documentation requirements of the Council for monitoring purposes. The portal also gives residents or their nominated/authorised person direct access to a menu of care and support services and service providers who will be able to meet their needs. Residents are not restricted to this online menu when choosing their care and support.

Other Payment Options

- 7.3 All residents who choose a Direct Payment will be encouraged to take their payments through the Council's online Direct Payments account system. However, on application residents may instead opt to receive their Direct Payments through:
 - Pre-paid card – where the resident wishes to take personal control of their direct payment but is unable to use the Council's online Direct Payments account system
 - A dedicated personal Direct Payment bank account – where the resident will be required to provide documentary evidence of all spend (see 26 below)
 - Finance Brokered Account - A managed account held by the Council with support provided in line with the resident's wishes – where the resident is unable, or unwilling, to use the Council's online Direct Payments account system and where there is no nominated or authorised person who can support the resident in using the online account
- 7.4 Payments made to residents who choose to take their Direct Payments through a personal bank account will be made on a four weekly basis in advance. Unlike the online account service, the Council will require the recipient to provide copies of bank statements and receipts of all the financial transactions on a quarterly basis. See 26 below.

- 7.5 Council will load the Direct Payment online account or dedicated Direct Payment account every four weeks in advance with the amount agreed in the Care and Support Plan. If the individual has to pay a contribution towards their care and support needs, the sum provided will be the amount less the person's contribution.
- 7.6 If there is any underspend or misappropriation (theft) of the Direct Payment funds by the individual or their nominated/authorised person, the Council will seek to recover any money owed. This will also result in a review of the individual's care and support needs and whether it is appropriate for the Direct Payment to continue. If necessary this may also be referred to a Debt Recovery Agency for collection or legal action.

8 Individual Service Funds

- 8.1 An Individual Service Fund is a form of Direct Payment where the funds are managed on behalf of a resident by a third party, sometimes the agency who is providing the care and support to the resident. A resident may then draw down on the funds and or services as and when they need them. Individual Service Funds may be used in instances where a resident has fluctuating needs and or only needs support periodically.

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 the Council to ensure that it is being spent in line with the interventions and outcomes agreed in the Care and Support Plan.
- 9.2 Individuals 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 investigated and if necessary recovered by The Council. Payments that have not been used and are unaccounted for within an eight week payment period will be recovered by the Council.
- 9.3 As a general rule the Council will recover funds held by a recipient where they exceed eight weeks of the weekly Direct Payment. Specific reasons for holding a larger balance will be considered on request.
- 9.4 Where a resident employs a Personal Assistant they will need to build up a contingency to cover the possibility of having to make a redundancy payment. This should amount to the equivalent of one week's wages for each year the Personal Assistant has been employed.

10 Administration Support and costs

- 10.1 Recipients can choose to nominate a friend or family member to manage the Direct Payment on their behalf.
- 10.2 Council will not generally agree for a family member to administer a Direct Payment from which another family member is being paid to deliver support. In exceptional circumstances Head of Service for Director responsible for the Care and Support Plan may approve an exception. However, this cannot be agreed if the paid carer lives at the same address as the recipient.

- 10.3 A nominated friend or family member who administers a recipient's Direct Payment on their behalf may apply for a one-off payment depending on the size and complexity of the Direct Payments.
- 10.4 These decisions will be recorded on the recipient's Care and Support Plan and will include the amount, frequency and activities to be covered.

11 Transition - when a child becomes an adult

- 11.1 Young people from the age of 16 can consent to receiving a Direct Payment. Where a young person in respect of whom a Direct Payment is being made becomes an adult (on their 18th birthday), The Council will take reasonable steps to ascertain whether the young person, if eligible, still consents to receiving a Direct Payment.
- 11.2 Where a young person in receipt of Council commissioned services becomes an adult (on their 18th birthday) the Council will take steps to offer the resident a Direct Payment to cover all or some of their services where the resident meets the relevant conditions.

12 Transfers between Direct Payments and Council provided service

- 12.1 If, for any reason, the person does not agree to a Direct Payment or if they are no longer in a position to arrange their own services, the Council will put in place arrangements to ensure they receive the care needed.
- 12.2 Residents who are already in receipt of Council commissioned services may choose to switch to a Direct Payment.
- 12.3 Residents may arrange a mixture of Council provided services and a Direct Payment, if this will meet the care and support needs set out in the resident's Care and Support Plan.

13 Responsibility for spending Direct Payments

- 13.1 The Council has a duty of care to residents eligible for services. It also has a duty to protect public funds, ensuring they are being spent appropriately. In delivering this responsibility, the Council must be satisfied that the Direct Payment is being used to meet eligible needs as set out in the person's Care and Support Plan or Support Plan if meeting the needs of a carer.
- 13.2 Individuals or the authorised managed account providers can only spend up to the amount that has been loaded into their Direct Payments account, on support which meets their eligible needs and outcomes as set out in the Care and Support Plan.
- 13.3 Funds cannot be transferred to any other personal bank account. All transactions to meet needs and outcomes must be made via the designated Direct Payment account.

14 What Direct Payments can be used for

- 14.1 Direct Payments can be used for any support that is legal, meets eligible needs and helps the recipient to achieve the outcomes as identified in their Care and Support Plan.
- 14.2 The Council is unable to draw up an exhaustive list as to how residents can spend their Direct Payment. Each case must be decided on its own merits and follow the key principles, as set out below:
 - Be clearly linked to the interventions and outcomes agreed in the recipient's Care and Support Plan or Support Plan if the recipient is a carer.

- Be applied to a wide range of interventions and outcomes so that recipients are able to maintain their independence, health and wellbeing.
- Be affordable and proportionate to the recipient's assessed eligible care and support needs as defined by the Care Act 2014.
- As a broad guideline, residents needs are assessed against the following needs domains and Care and Support Plans will set out which needs are to be met through Council funds:
 - a) Eating and drinking
 - b) Washing
 - c) Going to the toilet
 - d) Maintaining a habitable home environment
 - e) Staying safe at home
 - f) Friends and family networks
 - g) Getting out and about inc. running errands, going to the shops or to medical appointments, etc
 - h) Caring responsibilities
 - i) Support to take medication
 - j) Support to manage finances
 - k) Respite and short breaks

14.3 Working within the above guiding principles, the following are examples of how a Direct Payment **can** be used:

- To employ a personal assistant or care agency
- Accessing and engaging in work, training, or volunteering
- Making use of necessary services and facilities in the local community, such as public transport and recreation facilities.
- Taking part in Active Lives opportunities
- Pay for one-off pieces of equipment that are not available through other support services
- An innovative intervention that meets the Care and Support Plan outcomes and in so doing prevents, reduces and delays the onset of longer term care needs.

14.4 Residents with a Direct Payment may pool their resources with other Direct Payment account holders to purchase tailored group services and to achieve better value for money. Examples of pooling Direct Payments include residents with learning disabilities pooling funds to buy a group weekend break, or a group discount when attending an exhibition.

15 Care outside of the UK

15.1 Direct Payments may be used to purchase care and support whilst staying in a country outside of the UK, but for no longer than for three months in any twelve month period. The use of Direct Payment funds abroad must be agreed by the relevant social care team. Any exchange of Direct Payment funds into a foreign currency must be evidenced in order to show the exchange rate. All expenditure on care must also be evidenced.

16 Personal Assistants

- 16.1 Where a Personal Assistant (PA) has been agreed in the Care and Support Plan, the Direct Payment will include funds to employ a PA, including employers national insurance contributions, income tax, employers' liability insurance, pension, out of pocket expenses spent in the performance of work, e.g. travel and refreshment costs when accompanying their employer and other associated costs. The Council will provide information and support on how to begin employing a PA and will provide 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 UK.
- 16.2 Residents who use Direct Payments 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.
- 16.3 Becoming an employer carries certain responsibilities and obligations in particular in relation to paying tax, national insurance, minimum wage requirements, sick pay and annual leave. It will also be necessary to register as an employer with HMRC and ensure all checks are made of their potential employee including checks for Disclosure and Barring (DBS) and their right to work in the UK.
- 16.4 Residents using their Direct Payments to employ staff must have the appropriate insurance in place. Employers Liability Insurance and Public Liability Insurance should be taken out with a reputable insurance company or underwriters with a minimum limit for any one claim of £XX million (individuals will be notified if this limit is increased or decreased by the Council.) The insurance policy and premium receipts must be produced on demand when requested by the Council. The Council will reimburse the first year's premium with the resident required to budget for insurance costs in future years.
- 16.5 The resident or their authorised/nominated person must ensure that any person they employ through a Direct Payment will not be considered nor consider themselves an employee or agent of the Council and that the Council will not be responsible for any income tax, National Insurance or any other payments or responsibilities in relation to the employee of the individual. It must be clearly stated in their contract of employment or written statement of work that they are employed solely by the individual or the authorised/nominated person.
- 16.6 The resident or their authorised/nominated person will be expected by the Council to ensure that the individual has made provisions for cover in emergency situations or where their PA is unable to support them due to sickness, annual leave or other reasons of absence.
- 16.7 In the event of a breakdown in the resident's contingency arrangements for care, the Council will endeavour to put in place appropriate services to achieve their agreed outcomes for the period until the individual or their authorised/nominated person is able to resume their usual care arrangement. This will result in the Council seeking a repayment of Direct Payment monies paid to the individual. The amount will be recovered by the Council from their Direct Payment account with details provided to the individual or their authorised/nominated person in writing. The Council may recover any amount due, greater than the money in the Direct Payment account from future Direct Payments after conducting a re-assessment of the individuals needs in consultation with the individual.
- 16.8 The Council can refer residents to a specialist service who can support and advise them in recruiting a personal assistant and in their role as an employer.

17 Service Directories - Gateway to Support

- 17.1 To assist residents with Direct Payments as well as self-funding residents the Council has established a website providing directories of information on Service Providers who are able to support residents' care and support needs. This website is called Gateway to Support.
- 17.2 Whilst the Council will endeavour to keep the information up to date, the directory is open to registration by any organisation and therefore inclusion of any organisation does not reflect any endorsement and, or views on behalf of the Council
- 17.3 The Council nor PCG Ltd, the provider of the directory, make no representations or warranties of any kind, express or implied about the completeness, accuracy, reliability, suitability or availability with respect to the website or the information, products or services contained on the website for any purpose. The Council does not recommend or endorse any Service or Provider.
- 17.4 Any reliance placed on the contained information is therefore strictly at a purchaser's risk and in no circumstances will the Council be liable for any for any loss or damage including without limitation, indirect or consequential loss or damage, or any loss or damage whatsoever arising out of, or in connection with the use of this website.
- 17.5 Residents seeking to use or access a service or provision are responsible for undertaking their own checks to determine the suitability and fitness for purpose of that service and provision. Some providers will be registered and inspected by external agencies, such as the Care Quality Commission. Anyone working with people with care and support needs will be required to have appropriate Disclosure and Barring Service Check (the replacement for the Criminal Record Check), safeguarding policies and insurance in place, which they should make available to you on request.

18 Direct Payments and Residential care

- 18.1 Direct Payments cannot be spent on long term residential care. However, they can be made to residents and carers in order in order to purchase a short-term stay in a care homes provided that:
- The stay does not exceed a period of 4 consecutive weeks in any 12 month period;
- The period between two stays in care homes is less than 4 weeks;
 - If the period between the care home stays is less than 4 weeks then the 2 stays will be added together to make a cumulative total which should also not exceed 4 weeks.
- 18.2 In some circumstances, people living in care homes may receive a Direct Payment in relation to non- residential care services if for example: they are trying out independent living arrangements; or require community activities to promote outcomes to live independently. This can be empowering for young people in transition to independent living.
- 18.3 Where a resident requires a stay in residential care that is longer than four weeks and the Council agrees that this is necessary the Council will make provision outside of the Direct Payments policy.

19 Equipment

- 19.1 Direct Payments may be used to purchase one off items of equipment, but only where such items are not available via the Council's Community Equipment Service or where the equipment can be purchased at a lower cost than is available via the Community Equipment Service.

20 What Direct Payments cannot be Spent On

20.1 Direct Payments cannot be used for:

- Anything illegal
- Anything that will harm a person's health, safety or wellbeing
- Paying for anything related to regular day to day living expenditure e.g. food, drink, fast food takeaways, etc.
- Purchase of alcohol, tobacco or gambling
- Paying for anything that other Council services or statutory organisations provide, for example the NHS
- Paying any rent or household bills e.g. gas, electricity
- Permanent residential or nursing care
- Paying for services directly from the Council, except in specific circumstances, see 21 below
- Paying for services from a spouse, family member or partner who lives in the same household as the individual, unless it is administrative support which Council has agreed as being necessary
- Spend involving commitments outside of the United Kingdom (UK) unless the care and support outside of the UK for no longer than three months in any one year. See 15 above.

20.2 If recipients wish to spend their Direct Payment on anything other than for outcomes outlined in their Care and Support Plan they must seek agreement from the Council as a review of their plan will be required. Failure to notify the Council of spends unrelated to the agreed outcomes will result in a review of whether a Direct Payment is an appropriate method of delivering care and support.

21 Direct Payments and Council Delivered Services

21.1 As a general rule, Direct Payments cannot be used to pay for services provided by the Council. Where a resident chooses to receive a service from the Council the Direct Payment will be reduced by the service cost before it reaches the Direct Payment account.

21.2 Residents may choose to receive their support through a mixture of Council provided services and non-Council services purchased through Direct Payments and or their own funds.

21.3 The Council will exercise discretion in providing a Council service via a Direct Payment, for example where a resident wants to make a purchase for infrequent or one off attendance to a Council ran Day Service. In these cases, the Council will take into account the person's needs and support requirements at the time. It may be less burdensome to accept the cost on the Direct Payment, rather than to provide the service and reduce the Direct Payment. If however the use of the Council service becomes regular it would not be appropriate to continue with the Direct Payment.

21.4 This does not exclude individuals from using their Direct Payment to purchase care and support from a different local authority. For example, a resident who lives close to a boundary with another local authority may use their Direct Payment to access a particular service in that area to meet their outcomes.

22 Safeguarding

22.1 Residents who use Direct Payment are entitled to make their own decisions and to take risks in the same way that any others in the Croydon are entitled to. Where appropriate, safeguards will be put in place to prevent any potential abuse and to support the resident in making decisions and managing any associated risk as a result of that decision.

- 22.2 The Council will support residents in receipt of a Direct Payment to minimize risk of abuse from people who are individually employed by the recipient as it is noted that these employees are not monitored by the Council.
- 22.3 Residents directly employing a Personal Assistant (PA) can be placed at greater risk of abuse depending on the level of rigor and pre-employment checks undertaken during the PA recruitment process. The Council strongly recommends that enhanced Disclosure and Baring Service (DBS) checks are undertaken on PA's working with vulnerable adults. This is particularly important when employing a PA who supports recipients who lack capacity, as in these situations the recipient may be unable to verbalize concerns about their care. The DBS check must be undertaken if the PA has unsupervised access to the person they are caring for. PA's who have unsupervised access to recipients must have and be able to disclose on request a current enhanced DBS check. The Council has employed an organisation who will undertake these checks on behalf of a resident using Direct Payments.
- 22.4 The resident or their nominated/authorised person must ensure that an enhanced Disclosure and Baring Service (DBS) check is undertaken when employing a person who will have unsupervised access to children, young people or vulnerable adults during the course of their work. The check is undertaken to ensure that the person has no relevant criminal convictions that would preclude them from working with children or vulnerable people.
- 22.5 Safeguarding is everybody's business and therefore it is essential that staff working for the Council, partnership organisations, agencies, and members of the public remain alert and vigilant to the potential for abuse and are informed of the mechanism for reporting safeguarding concerns.
- 22.6 In the event that the Council considers the provider of support to be placing the recipient at risk, the Direct Payment maybe suspended and alternative provision provided, whilst a safeguarding investigation is undertaken.

23 Quality of Support

- 20.1 The Council has the right to require you to change the person or organisation who is providing the support or services if in the opinion of the Council they (as a Service Provider) are not able to provide an adequate service or is unfit to provide a service
- 20.2 If the Council does not in any way require you to change the Service Provider, this does not in any way constitute a recommendation by the Council of the Service Provider's ability to provide the service.

24 Health and Safety

- 24.1 Residents using Direct Payments will need to ensure they follow health and safety guidelines when employing someone to provide care, general information on health and safety issues is provided by the Self-Directed Support Service. To support the safe delivery of care the Council will give recipients the results of any risk assessments carried out as part of their assessment for care.
- 24.2 Residents eligible for support will have a responsibility for their own health and safety, including assessment and management of risk to others involved in the provision of care.

25 Review of Direct Payments

- 25.1 An initial light-touch review will take place within the first six weeks after a Direct Payment has first started to ensure the recipient is using their Direct Payment and to provide any necessary advice or support.
- 25.2 The initial review will help establish if the Direct Payment is being spent appropriately within the terms of the Direct Payment Agreement and to ensure it is meeting the eligible needs and outcomes as detailed in the Care and Support Plan. Where a resident is employing someone through their Direct Payment the review will check to ensure that the resident is fulfilling their responsibilities as an employer, e.g. PAYE and HMRC requirements. If the initial review raises concerns or requires actions that affect the detail recorded in the Care and Support Plan, then a full review of the plan may need to be carried out.
- 25.3 If following the initial review the Direct Payment is deemed to be meeting the resident's outcomes and needs, The Council will review the Direct Payment arrangements in six months following the initial payment, and thereafter every 12 months, unless the Council is required to review following a request from the individual.
- 25.4 If at the initial review it becomes clear that the resident is struggling to understand their responsibilities in managing the Direct Payment, for example maintaining their Direct Payment account or keeping appropriate records, the Council will assist with further information, advice and support to enable the Direct Payment to remain in place. If the resident, authorized/or nominated person continues to experience difficulties in carrying out their responsibilities the Council will undertake a review to decide if a Direct Payment is the appropriate method to deliver care and support.
- 25.5 Where a Direct Payment is being managed by a nominated/authorised person, or where a family member or friend is being paid for administrative support, the review will seek to involve all relevant parties involved in the care arrangements. This will ensure that the Council receives views from everyone involved in the Direct Payment and seek to resolve any issues.
- 25.6 The Council has the right to increase, decrease, suspend or terminate the Direct Payment in line with a review or reassessment of the individuals assessed eligible care needs.
- 25.7 Where the Council has identified a change in circumstance that it deems affects the current level of Direct Payments, the Council will undertake a review of the Direct Payment and provide the resident or their authorised/nominated person with written notice within 28 days of the change. This notice period may be extended where a reduction may affect any pre-existing contractual arrangements, such as with a PA.
- 25.8 The individual or their authorised/nominated person will ensure that arrangements are in place to notify the Council immediately and seek a review if there are any changes in circumstances that may affect their entitlement to a Direct Payment. For example:
- admission to hospital;
 - stays away from their home address for periods beyond four weeks;
 - no longer requires the service;
 - a change of address or support arrangements.

It is the responsibility of the individual to check with the Council if they are unsure if a change in circumstance will affect their eligibility to receive a Direct Payment.

- 25.9 The Council may temporarily reduce or suspend payments if the individual is unable to receive services for a period of time, such when a long stay in hospital is required. Following discussions with the individual or their authorised/nominated the Council will give consideration to the individual's circumstances and consider the appropriate action. Direct Payments may continue to be paid for short stays in hospital for up to 4 weeks to facilitate staff or PA retention by the individual.
- 25.10 Following any initial and or six month care and support review a resident's Direct Payments will be reviewed no later than every twelve months.

26 Monitoring and Audit of Direct Payments

- 26.1 The Council must be satisfied that the Direct Payment is being used to meet the eligible needs and outcomes as agreed in the Care and Support Plan. The Council also has a responsibility to ensure that public money is spent and accounted for appropriately.
- 26.2 Council monitoring will look at all aspects of the Direct Payment to identify risks and issues. For example, if the Direct Payment user is employing someone to provide the care, the Council will review and check to ensure the individual is fulfilling their responsibilities as the employer. In particular that they are submitting PAYE returns to HMRC, and that tax payments and National Insurance deductions are being made.
- 26.3 The individual or their nominated/authorised person shall keep all documents and records generated in connection with the provision of care and support provided by a Direct Payment Agreement with the Council for a period of six years following the end of the agreement. The documents or records held by the individual or their authorised/nominated person may be inspected by the Council at any point during this period.
- 26.4 Activity on the Council's Direct Payment online account will be monitored via the online portal on a regular basis. The Council will not normally require or request documentation for a transaction that appears on the online account that clearly identifies the payment and is within the agreed Care and Support Plan.
- 26.5 If the resident or their nominated/authorised person is using their own dedicated Direct Payment bank account, a quarterly return is required with following documentation:
- A fully completed quarterly return form, with details of all purchases/transactions made during the quarter, showing cheque numbers to aid the Council reconciliation of payments in the account.
 - Copies of all bank statements from the relevant quarter
 - Invoices, pay slips and timesheets if someone is employed to deliver the care.
 - Receipts for any purchases made using your direct payment funds
 - One off purchases
- 26.6 The Council will request information and supporting documentation for any entry on the online account or an individual's dedicated Direct Payment bank account if the transaction is not easily recognisable, exceeds or is notably lower than the agreed care or service costs. The individual or their nominated/authorised person must provide this information within 14 days of the request. Failure to provide such documentation can result in a reassessment of the individual's eligibility for a Direct Payment.

- 26.7 The Council will provide information and advice to individuals who opt to take their care and support through a Direct Payment. It will be made clear to the individual that the Direct Payment account is auditable and the importance for good record keeping on expenditure.
- 26.8 The Direct Payment account may be subject to an audit, to ensure that the Direct Payment is being used for the purposes laid out in the Care and Support Plan with accurate receipts and records being kept. Any discrepancies will be investigated and resolved and any debt will be recovered by the Council.
- 26.9 The 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 however such action will not be unreasonably applied.

27 Unspent Direct Payments

- 27.1 Where money in a Direct Payment account is uncommitted or unaccounted for beyond an eight week payment period, the Council will seek to recover the uncommitted amount from the account.
- 27.2 In some cases the Council will undertake a review of the Care and Support Plan with to ensure they are not disadvantaged. Following a review, the Direct Payment may be changed to ensure it still meets the needs of the recipient.

28 Wrongful use of a Direct Payment - misuse and fraud

- 28.1 In the event that fraud, abuse or misuse is reasonably suspected, the Council may refer the matter to the Internal Audit Team for investigation and offer support to the individual to reduce the risk of further loss occurring.
- 28.2 The Council will 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.
- 28.3 The Council will not be responsible for any losses incurred by a resident who uses Direct Payments and will not therefore reimburse the individual unless or until they have been cleared of any involvement in the loss.
- 28.4 In cases of misuse or fraud relating to the use of a Direct Payment, the Council will take action to recover all or part of the monies where appropriate.
- 28.5 The Council may seek repayment from the nominated or authorised person where they have been responsible for managing the Direct Payment on the individual's behalf.
- 28.6 In serious cases, the individual may no longer be eligible for a Direct Payment in the future.

29 Stays in Hospital

- 29.1 There may be occasions when the resident requires a stay in hospital. If a resident is in hospital the Direct Payment will continue at the full amount for up to two weeks, at 50% for weeks three and four and then cease until the individual returns home. The Council must be alerted to all admissions into hospital, as a review of the Direct Payment 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. Consideration to contractual agreements with PAs will be taken into account to ensure a continuity of care when discharged from hospital.

- 29.2 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.
- 29.3 In some cases, the nominated/authorised person managing the Direct Payment may require a hospital stay. In these cases the Council must be notified and an urgent review will be conducted to ensure that the person continues to receive care and support to meet their needs. This may be provided by a temporary replacement nominated/ authorised person, or by the Council putting in place a short-term care and support arrangement.
- 29.4 Upon imminent discharge from hospital a review of the care and support needs of the resident will be undertaken by the Council to ensure that an appropriate Care and Support Plan is in place before the individual returns home. The Direct Payments may be reinstated if these were temporarily ceased or adjusted.

30 Period away from home

- 30.1 Residents who use Direct Payments intending to travel outside their ordinary area of residence for short periods must inform the 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. If the individual does not notify the Council until they return, they may be unable to claim the expense for the care received whilst away from their home address.
- 30.2 The resident retains the responsibility to ensure that any employee particularly if this is outside the UK, complies with the country's employment rules and regulations.
- 30.3 The resident or their authorised/nominated person must retain receipts for payment of wages to employees as well as all other documentation related to such employment; this includes copies of timesheets, receipts and invoices relating to purchases made from their Direct Payment bank account. These should be submitted to Croydon Council along with their financial monitoring returns every quarter. Residents using the Council online Direct Payment account system need not retain receipts where they can be recorded on the online system.

31 Disputes

- 31.1 Any disputes in relation to the allocation of a Personal Budget or provision of a Direct Payment will be subject to the Council's statutory complaints procedure.
- 31.2 If the individual or nominated/authorised person has a complaint about services they have purchased independently, they should address this with the service provider or employee concerned and inform the Council. The Council will review the issues outlined in the complaint and take appropriate action, including safeguarding procedures if required. CHECK

32 Suspension or termination of Direct Payments

- 32.1 Direct Payments will only be suspended or terminated as a last resort. Where possible the Council will take all reasonable steps to address any situations without the need to suspend or terminate. If terminating a Direct Payment, the Council will ensure there is no gap in the provision of care and support to the person with eligible needs.

33 Suspending or terminating a Direct Payment - By the resident

- 33.1 A resident using Direct Payments can choose to terminate a Direct Payment at any time. This may be because they no longer wish to receive Direct Payments, they are no longer able to manage the Direct Payment or they no longer need the support for which the Direct Payment is made
- 33.2 A Direct Payment may be terminated by the resident or their authorised/nominated person by providing four weeks' notice to enable the Council to provide alternative provision of support if required.
- 33.3 The Council will suspend or terminate Direct Payments if:
- It is apparent that the resident is no longer capable of managing the Direct Payment whether on their own or with support
 - The resident no longer needs the support for which the Direct Payment is made
 - The resident does not require assistance for a short period because their condition improves. The Council will discuss with the resident, carer, and any other person concerned on how best to manage this.
 - If one or more of the qualifying criteria or terms in the Direct Payment Agreement are breached by the resident
 - If the recipient is involved in any type of corruption
 - If the Council is no longer satisfied that the nominated/authorised person is acting in the best interests of the individual
 - For reasons of illegal or fraudulent use or misuse of a Direct Payment or if the Council is unable to obtain records and information to verify if care and support needs are being met in an appropriate way
 - The resident is placed by the court under a condition or requirement relating to a drug and/or alcohol dependency
 - As part of an investigation or plan under the Council's Safeguarding Procedures.
- 33.4 In such cases the Council will put a managed service in place to ensure that the individual's eligible needs are met. The Council will also initiate a review to consider revision of the Care and Support Plan and Direct Payment.
- 33.5 Notice required will depend on individual circumstances. The Council will endeavour to put in place a 4 week notice period unless an evaluation of risks or other relevant factors require a speedier resolution.
- 33.6 Once a Direct Payment has been suspended or terminated for the above reasons a new Direct Payment will not be considered until all outstanding issues from the original Direct Payment have been resolved, for example all outstanding balances are repaid and safeguarding issues resolved.
- 33.7 The 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.
- 33.8 If Direct Payments are discontinued, some people may find themselves with on-going contractual responsibilities or having to terminate contracts for services, including making employees redundant. Contractual obligations will require a notice period for termination such for a service paid for in advance or employment contracts. These arrangements will need to be taken into consideration when Direct Payments are discontinued by either the individual and or their authorised/nominated person.
- 33.9 A final financial return should be completed on closure of the Direct Payment Service and all unused funds to be returned to the Council

- 33.10 Failure to comply with the auditing and monitoring of your Direct Payment may result in the Direct Payment being temporarily suspended until evidenced.
- 33.11 A Carer's Direct Payment will be terminated if the person being cared for is admitted to long term residential care.
- 33.12 If the recipient moves out of the Borough, XXX weeks funding will be made available during the transition period.
- 33.13 On closure of account, shortfall of funds arising from overuse of Direct Payment funds or non-payment of client contributions will be payable by the person in receipt of direct payments.

34 Discontinuing Direct Payments in the case of persons with capacity to consent

- 34.1 Where someone with capacity is in receipt of a Direct Payment but loses capacity to consent, the Council will discontinue Direct Payments to that individual and consider making payments to an authorised person instead. In the interim, the Council will make alternative arrangements to ensure continuity of support.
- 34.2 If the Council believes the loss of capacity to consent to be temporary, it may continue to make payments if there is someone willing to manage payments on the behalf of the recipient. This situation should be treated as strictly temporary and will be closely monitored to ensure that, once the individual regains capacity, they are able to exercise control over the Direct Payments as before. If the individual's loss of capacity to consent becomes prolonged, the Council will consider making formal arrangements for an authorised person to take over receipt of the Direct Payments on that person's behalf.

35 Discontinuing Direct Payments in the case of persons lacking capacity to consent or death

- 35.1 The Council may discontinue Direct Payments if they are not satisfied for whatever reason that the authorised person is acting in the best interests of the beneficiary, within the meaning of the Mental Capacity Act 2005.
- 35.2 The Council may discontinue the Direct Payments if it has sufficient reason to believe that the conditions imposed by Direct Payment regulations on the authorised person are not being met.
- 35.3 The Council may wish to consider if someone else can act as an authorised person for the individual lacking capacity, or whether there is a need for the Council to arrange services for them in place of the Direct Payments.

- 35.4 Direct Payment will be discontinued to an authorised person where the 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.
- 35.5 In the event of the death of a resident using Direct Payment any amount of Direct Payment remaining in their account will be recovered by the Council following a discussion with the family and or the authorised/nominated person. Funds will be 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.
- 35.6 Any amount due to the estate of the individual for the fulfilment of contractual and legal obligations relating to any person employed by the individual or to HMRC shall be paid by the Council on receipt of supporting documentary evidence or an invoice relating to the services received.
- 35.7 Any personal contribution remaining in the Direct Payment bank account will be paid to the individual or their estate within 28 days of termination of the Direct Payment, subject to all records being made available to Croydon Council. Any additional amount remaining in the Direct Payment bank account will be returned to Croydon Council.