

# REPORT

## Self Directed Support – Direct Payments

Edinburgh Integration Joint Board

13 June 2023

<b>Executive Summary</b>	<p>The purpose of this report is to:</p> <ul style="list-style-type: none"> <li>a) Update the Edinburgh Integration Joint Board on the process for reclaiming unused funds from people receiving a direct payment.</li> </ul>
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<b>Recommendations</b>	<p>It is recommended that the EIJB:</p> <ul style="list-style-type: none"> <li>a) Notes the operational approach to determining if those in critical need have underspent;</li> <li>b) Notes the impact on outcomes for people in need of removing allocated support;</li> <li>c) Notes the budget setting process and financial impacts;</li> <li>d) Notes that officers have committed to revising information for recipients of direct payments by September 2023 and publish this on the Edinburgh Health and Social Care Partnership website.</li> </ul>
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## Directions

Direction to City of Edinburgh Council, NHS Lothian or both organisations	No direction required	✓
	Issue a direction to City of Edinburgh Council	
	Issue a direction to NHS Lothian	
	Issue a direction to City of Edinburgh Council & NHS Lothian	

## Report Circulation

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1. This report has not been presented elsewhere but the content and issues raised in the paper have been explored and discussed at Full Council, Policy and Sustainability Committee and Finance and Resource Committee.

## Main Report

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2. On 16 March 2023, Full Council received a [report](#) on Self Directed Support (SDS) in response to a motion by Councillor Nicolson regarding the reclaiming of unused funds from people receiving a direct payment. A [report](#) was referred to Policy and Sustainability Committee on 23 May 2023 and a briefing note was circulated to Finance and Resource Committee members for their information on the use of surplus direct payment funds. This report consolidates recent reports and briefings for EIJB members to consider.
3. A Direct Payment is a mechanism that an individual can use in order to have more choice and control over their care and support. A Direct Payment is a cash payment paid directly from the Local Authority to an individual (or a third party) who has been assessed as being eligible for social care support. The aim of the Direct Payment is to fulfil the individual's agreed outcomes. By choosing to use their social care money as a Direct Payment, an individual is choosing Option 1 of 4 options of Self-directed Support (SDS) within the Social Care (Self-directed Support) (Scotland) Act 2013. It is not a state benefit, personal income stream or cost of living payment.
4. A direct payment can purchase any outcome that any of the other Self Directed Support Options delivers. While the care and support arrangements may differ across the Options (e.g., recipients of a direct payment can contract unregulated care, by exemption from the Regulation of a Care Act 2001) the *outcomes* (living a more independent life by greater choice and control) should not differ.
5. As public funds are at stake, the Council needs to evidence due diligence in their disbursement, management and recovery of direct payments. Apart from any other audit reporting, either internal or external such as to Audit Scotland, accountability to the citizens of Edinburgh is paramount. The recovery of surplus direct payment funds is a considered process and one that is used by all other local authorities.

### **Operational approach to determining if those in critical need have underspent:**

6. Identification of surplus funds can be identified in a range of different ways. It may be through the individual highlighting this or alternatively by a family carer, social care worker, managed account service or another relevant third

party. Contact is made by the Edinburgh Health and Social Care Partnership (EHSCP) with the person through a member of the social worker team to establish if the indicative surplus is an actual surplus. An actual surplus is considered as funds unused and unusable on any likely framework or pattern of approved purchase. Identifying an actual as opposed to an inferred surplus involves consideration of complex of factors that include the following:

- An unused respite allocation still appropriately being usable within the framework of a full year;
- 6 weeks of weekly direct payment being excluded from calculation as an inherent timing variation in all direct payments;
- Account is taken of unpaid invoices or unmet payroll costs including payments due to HMRC falling to the supported person;
- Contributions from other funders such as Independent Living Fund (ILF) or the persons' own assessed care charge;
- Recruitment delays that disrupt normal patterns of direct payment expenditure;
- The temporary unavailability of care provision, e.g., due to the impact of Covid and related restrictions;
- Fluctuations in purchase, normal to the supported person's life;
- Reporting delays generated by factors outside the person's control.

All of this needs to be considered in collaboration with the individual receiving the direct payment.

7. Briefing sessions have recently been delivered in localities and to relevant others on SDS with a particular focus on direct payments. The purpose of the briefing sessions is to increase or refresh staff's knowledge regarding direct payment and staff's duties under the act and ensure a more consistent approach to the use of SDS, including direct payments, across the city.
8. Officers have committed to revising the operational procedure for direct payments to include reclaiming of unused funds. This procedure will be used as written documentation to further support Assessors and complement briefings provided to staff.

### **Impact on outcomes for people in need of removing allocated support**

9. Given the complexity of the factors relevant to identifying an actual surplus, a conversation with the supported person is key to any sound judgement and decision making regarding the allocated funds. No recovery is made without first raising and agreeing with the person concerned an appropriate sum to recover. Working to consent, while not a binding legal necessity given these are public funds, is good practice that we adhere to.

10. Care is taken to ensure that sufficient funds remain in the direct payment account to purchase in full on an ongoing basis the original outcome identified on the person's approved support plan.
11. In the remote and unintended event that, in consequence of recovery, insufficient funds remain in the direct payment account to deliver the approved support plan then any or all the recovered sums can be restored.
12. In addition, work is undertaken with the person to update or improve the support plan in such a manner as to avert future surpluses. Included in this is further advice that can extend the use of the direct payment to ensure the plan outcome is met in full - and for the person's better support.
13. Any recovery should aim to improve future outcomes for the person whose care and welfare is the primary purpose.
14. An accessible, public facing version of the procedure will be published on the Edinburgh Health and Social Care Partnership website so that recipients of direct payment will be aware of the process to better illustrate that unused funds are appropriately recovered. An update is also being made to the Direct Payment Agreement Form that will state that any unused funds can be reclaimed. These actions will be undertaken by September 2023.

### **The budget setting process and financial impacts**

15. The 2022/23 budget for Direct Payments is £34.8m and is included in the overall budget delegated to the Edinburgh Integration Joint Board (IJB). When the budget is set it includes an assumption that there will be a certain level of reclaim of unused funds achieved. In 2022/23 this was £2.4m. Any change in practice agreed by the Council will therefore have a direct impact on the IJB's financial position. This which would have to be funded by the Council increasing the budget delegated to the IJB.

### **The total value of recovering unused funds each year for the last 5 year**

16. The total funding reclaimed over the past five years is as follows:

<b>Year</b>	<b>2018/2019</b>	<b>2019/2020</b>	<b>2020/2021</b>	<b>2021/2022</b>	<b>2022/2023</b>
Amount recovered	£1.9m	£2.6m	£2.2m	£1.9m	£5.6m

17. All funding that is recovered through this audit process is returned to the Direct Payment budget, so it can be reused to meet the needs of other people who have been assessed as being eligible for social care support.

## **Implications for Edinburgh Integration Joint Board**

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### **Financial**

18. This process continues to be factored into the Medium-Term Financial Strategy as an efficient means of managing existing resource. A £3.4m recovery has been factored into the 2023/24 budget
19. Any recovered unused funds are returned to the Locality Direct Payment budget where the initial payment originated from.

### **Legal/risk implications**

20. There are no legal implications with regard to the process outlined in this report.
21. If the Council did not recover unused funds in 2023/24, then it would increase the Partnership's financial deficit by £3.4m.

### **Equality and integrated impact assessment**

22. No Integrated Impact Assessment has been completed for the purpose of this report.
23. As the recovery of direct payment funds is based on surplus funds, there should be no adverse impacts on the individual. As stated in sections 9 - 12 above, care is taken to ensure that sufficient funds remain in the direct payment account to purchase in full on an ongoing basis, the original outcome identified on the person's approved support plan.

### **Environment and sustainability impacts**

24. There are no direct environmental or sustainability impacts arising from the content of this report.

### **Quality of care**

25. As outlined throughout this report.

## Consultation

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26. This report has been prepared with the support of the colleagues in the City of Edinburgh Council and Health and Social Care Partnership.

## Report Author

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## Background Reports

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The legislative background underpinning direct payments:

- National Assistance Act 1948  
<https://www.legislation.gov.uk/ukpga/Geo6/11-12/29>
- Social Work (Scotland Act) 1968  
<https://www.legislation.gov.uk/ukpga/1968/49/section/12A>
- Community Care Act 1990  
Part IV Scotland  
<https://www.legislation.gov.uk/ukpga/1990/19/contents>
- Children (Scotland) Act 1995  
<https://www.legislation.gov.uk/ukpga/1995/36/contents>
- Direct Payments Act 1997  
<https://www.legislation.gov.uk/uksi/1997/734/contents/made>
- Community Care and Health (Scotland) Act 2002  
<https://www.legislation.gov.uk/asp/2002/5/section/22>
- Social Care (Self-directed Support) (Scotland) Act 2013  
<https://www.legislation.gov.uk/asp/2013/1/contents/enacted>  
most recent guidance  
<https://www.gov.scot/publications/statutory-guidance-accompany-social-care-self-directed-support-scotland-act-2013-2/>

## Appendices

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None