

Policy and Sustainability Committee

10am on Tuesday 24 October 2023

Direct Payment Policy, Procedure and Agreement

Executive/routine
Wards
All

1. Recommendations

- 1.1 The Policy and Sustainability Committee is asked to:
 - 1.1.1 Note the contents of this report.
 - 1.1.2 Approve the use and publication of the updated Direct Payment policy, procedure and agreement documents.

Mike Massaro-Mallinson

Interim Chief Officer, Edinburgh Health and Social Care Partnership

Contact: Sarah Hayden, Business Manager, South East Locality

E-mail: sarah.hayden@edinburgh.gov.uk | Tel: 0131 529 5151

Report

Direct Payment Policy, Procedure and Agreement

2. Executive Summary

- 2.1 On 13 June 2023 (reconvened to 27 June) a paper was brought to the Edinburgh Integrated Joint Board (EIJB) that provided an update on the process for reclaiming unused funds from people in receipt of a Direct Payment (DP). One of the report recommendations was to produce revised information for DP recipients, to be published on the Edinburgh Health and Social Care website. (Appendix 1 – EIJB SDS Report).
- 2.2 This paper shares the work taken to update and produce a revised policy, procedure, and agreement document in relation to Direct Payments, and seeks approval of these documents.

3. Background

- 3.1 Prior to 2023, a Direct Payments Policy, Procedure and Agreement existed to ensure compliance with The Community Care (Direct Payments) (Scotland) Regulations 2003, The Community Care (Direct Payments) (Scotland) Amendments Regulations 2007 and the Social Care (Self Directed Support) (Scotland) 2013 Act. This was approved on 11 November 2014 and was previously published and available to staff via the intranet.
- 3.2 Overtime these documents were removed from circulation for revision, but those revising them left their roles before the updated documents were approved and implemented.

4. Main report

- 4.1 Following the interest in the Direct Payments reclaims process, and updates to SDS legislation in 2022, it was felt that an updated policy, and procedure should be developed and published to improve the understanding of staff and members of the public in relation to Direct Payments.

- 4.2 In addition, an updated Direct Payments agreement document has been developed that clearly sets out the responsibilities of the DP recipient.
- 4.3 To support the development of these documents a sample of staff from the following departments and organisations have been consulted:
- Edinburgh Health and Social Care Partnership
 - Children and Families
 - Social Care Payments
 - Finance
 - Principal Social Work Officer
 - Lothian Centre for Inclusive Living (LCIL)
 - CEC Legal Team (updated agreement document only)

5. Next Steps

- 5.1 Should the Policy and Sustainability approve the use and publication of these documents, the following actions will take place:
- 5.1.1 Request documents be added to the Policy Register on the CEC public facing website.
- 5.1.2 Request documents be added to the Policy Register on the CEC intranet.
- 5.1.3 Request documents be added to the EHSCP public facing website.
- 5.1.4 Share updated documents with staff via the staff newsletter.
- 5.1.5 Engage with line managers to ensure staff are aware of updated documents.

6. Financial impact

- 6.1 No financial impact is expected as a result of these documents.

7. Equality and Poverty Impact

- 7.1 An Integrated Impact Assessment (IIA) was undertaken on 25 September 2023 (See Appendix 2).
- 7.2 A requirement for 'easy read' guidance to supplement these documents has been identified, which will be taken forward as part of the IIA action plan.

8. Climate and Nature Emergency Implications

- 8.1 No implications to climate or nature emergencies have been identified.

9. Risk, policy, compliance, governance and community impact

- 9.1 The documents have been co-produced with the departments and organisations listed in Section 4.
- 9.2 We will further engage with third sector partners in the development of 'easy read' guidance to supplement these documents as part of the IIA action plan.

10. Background reading/external references

- 10.1 Links to relevant background reading sources can be found in the draft Direct Payments policy (Appendix 3).

11. Appendices

Appendix 1 – Self Directed Support – Direct Payments. Paper to Edinburgh Integration Joint Board on 13 June 2023.

Appendix 2 – Integrated Impact Assessment (IIA) Dated: 25/9/2023

Appendix 3 – Draft Direct Payments Policy.

Appendix 4 – Draft Direct Payments Procedure.

Appendix 5 – Draft Direct Payments Agreement.

REPORT

Self Directed Support – Direct Payments

Edinburgh Integration Joint Board

13 June 2023

Executive Summary	<p>The purpose of this report is to:</p> <p>a) Update the Edinburgh Integration Joint Board on the process for reclaiming unused funds from people receiving a direct payment.</p>
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Recommendations	<p>It is recommended that the EIJB:</p> <p>a) Notes the operational approach to determining if those in critical need have underspent;</p> <p>b) Notes the impact on outcomes for people in need of removing allocated support;</p> <p>c) Notes the budget setting process and financial impacts;</p> <p>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.</p>
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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

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

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:

Year	2018/2019	2019/2020	2020/2021	2021/2022	2022/2023
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

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

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

Mike Massaro-Mallinson

Service Director, Operations

Edinburgh Health and Social Care Partnership

Email: mike.massaro-mallinson@nhslothian.scot.nhs.uk

Background Reports

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

None

Integrated Impact Assessment – Interim Summary Report

Each of the numbered sections below must be completed
Please state if the IIA is interim or final

1. Title of proposal

Introduction of a Direct Payment policy, procedure and agreement.

2. What will change as a result of this proposal?

New policy will be introduced which gives greater clarity to staff and members of the public the duties and responsibilities EHSCP have in relation to Direct Payments.

3. Briefly describe public involvement in this proposal to date and planned

None

4. Is the proposal considered strategic under the Fairer Scotland Duty?

No

5. Date of IIA

25th September 2023

6. Who was present at the IIA? Identify facilitator, lead officer, report writer and any employee representative present and main stakeholder (e.g. Council, NHS)

Name	Job Title	Date of IIA training
Sarah Hayden	Business Manager	9 th March 2022 Facilitator & Report Writer
Deborah Mackle	Locality Manager – South West	EHSCP – Lead Officer
Catherine Mathieson	Cluster Manager – South East	EHSCP employee
Ashley Mazs	SDS Advisor	EHSCP employee
Antonis Samartzis	Project Manager	EHSCP employee
Andrea Ritchie	Team Manager – Social Care Payments	CEC employee
Lorraine Macfarlane	Team Leader – Social Care Payments	CEC employee

Name	Job Title	Date of IIA training
Vivienne Robertson		CEC employee
Zoe McIntyre		Stakeholder - LCIL

7. Evidence available at the time of the IIA

Evidence	Available – detail source	Comments: what does the evidence tell you with regard to different groups who may be affected and to the environmental impacts of your proposal
Data on populations in need	Edinburgh Population and Demographics data – link here	The data are taken from a number of sources, most of which were published during 2020; some high-level estimates were published in 2022.
Data on service uptake/access	LGBF Bench marking 2020 – 21 - Link here	Page 111 shows that uptake of DP in Edinburgh is higher than the Scottish average.
Data on socio-economic disadvantage e.g. low income, low wealth, material deprivation, area deprivation.	Edinburgh Population and Demographics data – link here	
Data on equality outcomes		
Research/literature evidence		
Public/patient/client experience information		
Evidence of inclusive engagement of people who use the service and involvement findings		
Data on populations in need		
Data on service uptake/access		
Data on socio-economic disadvantage e.g. low income, low wealth, material deprivation, area deprivation.		

Evidence	Available – detail source	Comments: what does the evidence tell you with regard to different groups who may be affected and to the environmental impacts of your proposal
Data on equality outcomes		
Research/literature evidence		
Public/patient/client experience information		
Evidence of inclusive engagement of people who use the service and involvement findings		
Evidence of unmet need		
Good practice guidelines	Direct Payment Factsheet - Link here Self-directed Support Legislation - Link here Self-directed Support – guide for carers: - Link here	
Carbon emissions generated/reduced data		
Environmental data		
Risk from cumulative impacts		
Other (please specify)		
Additional evidence required		

8. In summary, what impacts were identified and which groups will they affect?

Equality, Health and Wellbeing and Human Rights	Affected populations
<p>Positive</p> <ul style="list-style-type: none"> • Provides clarity for people in receipt of a Direct Payment of their responsibilities. • Provides clarity for people on the appropriate use of a Direct Payment meaning they are less likely to lose benefits. • Provides flexibility for people accessing services to meet their assessed, eligible need. • Detailed and clear documentation could reduce barriers for some people accessing direct payments. • Greater clarity on how the Direct Payment can be flexibly used to meet a person’s assessed, eligible need will be beneficial to some. • Gives people more control of how their assessed, eligible needs can be met. • Consulting with the cared for person is a core part of the assessment process, ensuring their voice is heard and they have more control of how their assessed, eligible needs are met. • By improving access to care and support, vulnerable children and adults are better protected and healthier lifestyles could be promoted. 	<p>All citizens that receive a Direct Payment. People in receipt of benefits, carers.</p> <p>People living in rural and coastal communities.</p> <p>People affected by discrimination. Equality of opportunity – improved access.</p> <p>Enable people to have more control of their social/work environment. Promote participation, inclusion, dignity and control over decisions.</p> <p>Protect vulnerable children and adults, promote healthier lifestyles.</p>
<p>Negative</p> <ul style="list-style-type: none"> • Complex document that could be difficult for some people to read and understand. • Trans people’s identities may be challenged as Allpay (bank) account would use legal name. • It may be difficult for some people to open bank accounts, which is a requirement of having a direct payment. • Frustration for people with a Direct Payment where no appropriate services exist in their area. 	<p>Older people, younger people, disabled people, minority ethnic people, refugees and asylum seekers, people with low literacy/numeracy, carers.</p> <p>Trans people.</p> <p>Refugees and asylum seekers.</p> <p>People living in rural and coastal communities. People affected by discrimination.</p>

Equality, Health and Wellbeing and Human Rights	Affected populations
<ul style="list-style-type: none"> • Complex documentation could make the Direct Payment process more intimidating for some people. • There is a lack of services in some areas of the city, meaning people are not always able to use the Direct Payment as flexibly as they would like. 	Equality of opportunity – improved access.

Environment and Sustainability including climate change emissions and impacts	Affected populations
Positive	None identified
Negative	None identified

Economic	Affected populations
Positive <ul style="list-style-type: none"> • Improved access to and use of community services. • Potentially could increase the use of PAs to provide support to the cared for person. 	Support local businesses. Improve local employment opportunities
Negative	

9. Is any part of this policy/ service to be carried out wholly or partly by contractors and if so how will equality, human rights including children’s rights, environmental and sustainability issues be addressed?

Not applicable.

10. Consider how you will communicate information about this policy/ service change to children and young people and those affected by sensory impairment, speech impairment, low level literacy or numeracy, learning difficulties or English as a second language? Please provide a summary of the communications plan.

If approved, the following process will be followed to communicate the documents to staff and members of the public:

- Policy, Procedure and Agreement to be updated on in the Adult Care Services section of the [Policy Register](#) on CEC’s public facing website.
- Policy, Procedure and Agreement documents to be added to the [Direct Payment](#) section of CEC’s public facing website.
- Policy, Procedure and Agreement documents to be made available of the CEC intranet for staff.

- Policy, Procedure and Agreement documents to be included in the staff newsletter.
- Policy, Procedure and Agreement documents to be shared with Managers for use with their staff.
- Staff information sessions will be set up to inform staff of the new documents.
- The agreement document will be shared with people in receipt of a direct payment.

It has been identified that easy read versions of the documentation is required to ensure all people are able to understand the policy, procedure and their responsibilities in relation to the agreement, which includes documents in non-English languages.

To mitigate this it is expected that the person’s allocated worker will explain the documents and purposes and responsibilities of having a Direct Payment to the supported person. The Social Care Payments Visiting Team can also support with this as required.

11. Is the plan, programme, strategy or policy likely to result in significant environmental effects, either positive or negative? If yes, it is likely that a Strategic Environmental Assessment (SEA) will be required and the impacts identified in the IIA should be included in this. See section 2.10 in the Guidance for further information.

Not applicable.

12. Additional Information and Evidence Required

If further evidence is required, please note how it will be gathered. If appropriate, mark this report as interim and submit updated final report once further evidence has been gathered.

13. Specific to this IIA only, what recommended actions have been, or will be, undertaken and by when? (these should be drawn from 7 – 11 above) Please complete:

Specific actions (as a result of the IIA which may include financial implications, mitigating actions and risks of cumulative impacts)	Who will take them forward (name and job title)	Deadline for progressing	Review date
Create easy to read versions of all documents.	SDS Advice Team	March 2024	
Produce all documents in other languages.	SDS Advice Team	March 2024	
Edit documents to make them easier to use for disabled people, included replacing grey boxes with headings so that screen readers can be used, include a contents	SDS Advice Team	March 2024	

Specific actions (as a result of the IIA which may include financial implications, mitigating actions and risks of cumulative impacts)	Who will take them forward (name and job title)	Deadline for progressing	Review date
page, enable the use of electronic signatures.			

14. Are there any negative impacts in section 8 for which there are no identified mitigating actions?

None

15. How will you monitor how this proposal affects different groups, including people with protected characteristics?

Through feedback with people and by liaising with organisations that support people with Direct Payments, such as LCIL.

16. Sign off by Head of Service

Name

Date

17. Publication

Completed and signed IIAs should be sent to:
integratedimpactassessments@edinburgh.gov.uk to be published on the Council website www.edinburgh.gov.uk/impactassessments
Edinburgh Integration Joint Board/Health and Social Care
sarah.bryson@edinburgh.gov.uk to be published at www.edinburghhsc.scot/the-ijb/integrated-impact-assessments/

Direct Payments Policy

Implementation date: **1 October 2023**

Control schedule

Version control

Approved by		Edinburgh Health and Social Care Partnership	
Version	Date	Author	Comment
0.1	01/10/2023	Jack Blaik & Ashley Mazs	
0.2	28/09/2023	EHSCP – Executive Management Team	Brickchand Ramruttun, Interim Service Director - Operations

Subsequent committee decisions affecting this policy.

Date	Committee	Link to report	Link to minute
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Direct Payments Policy

Policy statement

This policy document ensures consistency of the City of Edinburgh Council's Direct Payments policy with <https://www.gov.scot/publications/statutory-guidance-accompany-social-care-self-directed-support-scotland-act-2013-2/> revised November 2022.

This policy ensures that the Health and Social Care and Children and Families Departments follow The Community Care (Direct Payments) (Scotland) Regulations 2003, The Community Care (Direct Payments) (Scotland) Amendments Regulations 2007, the Direct Payments Scotland Regulations 2014, and the Social Care (Self Directed Support) (Scotland) 2013 Act.

Scope

Since June 2003 the Council has had a duty to offer Direct Payments (DP) to children in need and adults who are assessed as requiring community care and/or housing support services due to illness or mental disorder or any form of disability or due to infirmity or age (if aged over 65). Support for continuing health needs may also lawfully be received as a Direct Payment.

The Social Care (Self Directed Support) (Scotland) Act 2013 which was implemented on 01 April 2014, places a duty on local authorities to offer anyone assessed as eligible for social care support **four** options of self-directed support:

1. A Direct Payment (DP).
2. The ability to 'direct' their own support package and ask the local authority or a third-party organisation to procure and manage that package on their behalf. This is also known as an Individual Service Fund (ISF).
3. Ask the local authority to choose, make arrangements for and manage their support package on their behalf.
4. A combination of any of the three options above.

The Act also places a duty on local authorities to explain each of the four options and their implications for the individual when offering them to a person assessed as eligible for social care support.

The principles and definitions within this policy apply to all Direct Payments activity carried out by or on behalf of The City of Edinburgh Council.

This policy should be read in conjunction with the "[Risk Assessment Policy](#)".

Those primarily involved are social workers, occupational therapists and community care assistants within the Edinburgh Health and Social Care Partnership and Communities and Families and their management teams. This includes Locality teams, hospital, reablement and mental health teams, service managers for disabled and older client group services (e.g., short breaks, housing support) and the Social Care Finance Team.

Definitions

Direct Payment (DP)

A Direct Payment is a form of self-directed support that **offers individuals increased flexibility, choice, and control over how their support needs are met**. The department makes the payment to them instead of arranging the services it has assessed as being required. The individual then uses the payment to secure the agreed care and support.

Direct Payments are an alternative to local authority arranged community care and children's services and therefore need only be offered at the point where the local authority would normally have assessed and agreed to provide the services. Service provision must be equitable and not put people who choose to receive either Direct Payments or a direct service arranged by the local authority at a disadvantage.

A Direct Payment (DP) is a cash payment made by the Edinburgh Health and Social Care Partnership to an individual (or in certain circumstances his or her representative) who has been assessed as needing community care (including housing support) or within children's services and who chooses to take up the Direct Payment route. It can be described by the term Self-Directed Support.

Glossary

AWI - Adults with Incapacity

Council - City of Edinburgh Council

DP - Direct Payment

Employer - An individual using Direct Payments to employ a Personal Assistant

SCP – Social Care Payments Team (previously Funding Independence Team)

LCiL - The Lothian Centre for Inclusive Living, an independent user-led disability support organisation

PA - Personal Assistant - a support worker employed by a Direct Payment recipient. All Personal Assistants should be members of the PVG scheme (see below)

PVG Scheme - Protecting Vulnerable Group Scheme

SDS - Self-Directed Support

Policy content

The aim of Direct Payments is to offer individuals increased flexibility, choice, and control over how their assessed and eligible support needs are met.

Personalisation is a core social work value and self-directed support (SDS) is central to the personalisation of health and social care services. Direct Payments are one of the key mechanisms of delivering SDS. Direct Payments aid social inclusion and independent living and help deliver a more person-centred and individualised approach to service provision.

Direct Payments can be used flexibly so long as the outcomes achieved are consistent with assessed and eligible need. They can be used for housing support, day service, home care, respite, equipment, and temporary adaptations and assessed support identified by children's services. The support services they purchase do not have to be the same as those that the Council would have arranged. Direct Payments (Adults) can also be used to meet continuing health needs; in these cases, the Council administers the funding on behalf of NHS Lothian for joint packages of support.

Direct Payments will be paid via an Allpay card and may in some instances be paid to a third party, e.g., pay roll company, attorneys, and guardians with the relevant AWI powers, and those with parental responsibility for a child up to age 18. This may arise when the person lacks the capacity, even with assistance, to manage their own Direct Payment because of adult incapacity in AWI terms, or where s/he is a child under 16 years. If an individual aged between 16 and 18 lacks capacity to fully manage their own Direct Payment, then the parent may support them to do this or continue to do this on their behalf. For children, the payment for support is paid to the person with parental responsibility.

The cost of providing the client with a Direct Payment will not be greater than the cost to the Council of providing or purchasing the support.

Under The City of Edinburgh Council's charging policy, there is no financial advantage or disadvantage to having a Direct Payment in lieu of an arranged service. All individuals (except children) are assessed for a financial contribution in the usual way.

Who can receive a Direct Payment

Adult Services:

Disabled persons aged 16 and over at the commencement of the Direct Payment. This includes people with any kind of disability including those with

physical, sensory, and learning disabilities and people who are disabled by illness (e.g., those with mental illness, arthritis, cancer or by HIV / AIDS) and who can manage Direct Payments with or without assistance.

Persons aged 65 and over, using community care services due to infirmity or old age.

Attorneys, guardians, or other adults acting as 3rd parties with the consent of the affected person.

Attorneys and guardians with the relevant welfare and/or financial powers, provided they consent to receive Direct Payments on behalf of people who are unable to give consent to arrange their own services.

Another third party, acting as a person's agent, may receive and handle the money. However, the legislation does not allow Direct Payments to be paid to a third party unless the recipient remains effectively in control of how the funds are spent. This is the case even when the services provided are specifically intended to assist the recipient's carer.

Carers, in their own right, where a carer is assessed as requiring a support service, and where we would provide a service under the Carers (Scotland) Act 2016, then the carer had a right to any SDS option in delivering that service including DP. As services to carers under the 2016 Act are not chargeable then the DP is paid gross.

Not everyone who is eligible for community care services will be eligible for Direct Payments. The 2003 Regulations, (made under [Section 12B \(1\) \(b\)](#) of the 1968 Act) specify those to whom Direct Payments may not be offered (see section 7).

Children's Services:

Since 2003, parents and/or those with parental responsibility can use Direct Payments to purchase services for children who have been assessed as being "in need". This definition includes all children who have an assessed support need, those who are affected adversely by the disability of any other person in the family, or those whose health or development may be impaired or below a reasonable standard without the intervention of care services. Any service should be aimed at safeguarding or promoting the welfare of the child/children in need.

Disabled People aged 16 or 17:

If a disabled individual aged 16 or 17 lacks capacity to manage their Direct Payments, then the adult with parental responsibility may continue to manage them on their behalf.

Disabled Parents:

Disabled parents can receive Direct Payments for services to assist them in their parenting role. Direct Payments can be used to meet the assessed social care needs of them and their families that arise from their disability.

Parents of a Disabled Child:

Direct Payments for children should be designed to maximise the child's abilities and give children the opportunity to lead lives that are as normal as possible. Direct Payments should only be made if the department is satisfied that the parent will make arrangements that are designed to safeguard and promote the welfare of the child to fulfil their potential.

Adults requiring Housing Support:

Direct Payments may be available for people moving from an emergency into a more long-term service (e.g., after a period of six months). They are not however appropriate for those in an emergency (i.e., homeless or at risk of homelessness) when support would be provided on a short-term basis to resolve the crisis.

Direct Payments are also not appropriate for services where people move into accommodation-based services where there are shared service costs. People will be considered to "opt in" when they enter services such as sheltered housing, supported housing and temporary accommodation and as such these services would be excluded.

Attorneys and Guardians ([See section Adult Services](#)).

A Third Party Acting as a Recipient's Agent ([See section Adult Services](#)).

Provision of a Direct Payment

Duty to Offer

If the person is assessed as eligible for services, the assessing worker has a duty to offer a Direct Payment as an alternative to arranged services, and to support the individual through the process of applying for the Direct Payment. Once the payment has been authorised, the worker must provide help, where required, either individually or by referral to the support/payroll service, to assist the person to understand how they can undertake the purchase of care and support.

Consent

All potential Direct Payment recipients must give their consent to receive such payments and should receive as much support as they need to reach a decision. If the person who requires the service is clearly unable to give consent, then an attorney or guardian, with the relevant powers, can give consent on their behalf.

Mechanism for Payment

A Direct Payment will be made to the individual via an Allpay account, or via a payroll provider or Solicitor acting as Power of Attorney/Financial Guardian. The Allpay account is pre-loaded with the agreed Direct Payment. The Allpay account is the default method of payment for all DP, unless a payroll provider or Solicitor is managing the DP.

Ability to Manage

Direct Payments should only be offered to people who are able to manage, both to direct their own care and manage the financial aspects, either alone or with assistance. The judgement as to whether someone can manage following initial support from the worker, must be made on an individual basis. If it is judged that someone could only manage Direct Payments with ongoing support, it is essential to confirm that this help is available over a sustained period before offering a Direct Payment.

The ability to manage a Direct Payment includes:

- willingness and ability to purchase and direct their own support to meet the agreed assessed care needs.
- willingness and ability to manage either the Allpay account or arrange for a Solicitor or Payroll provider to manage a designated bank account to pay for support.
- willingness and ability to maintain financial records:
 - for those employing Personal Assistants this includes keeping individual workers' time sheets, signed by them contemporaneously, confirming the actual hours they have worked for each period of the day.
 - evidence of Tax and National Insurance contributions
 - valid Employer's Liability Insurance
- ability to comply with employment law if the person chooses to recruit and employ their own staff.

Recipients of Direct Payments can use their payment to purchase:

Personal assistants (PA's)

Eligible service users can use Direct Payments to employ their own staff (i.e., Personal Assistants - PA) to provide the care and support which the Council has assessed is needed. PA's can also be used to support an individual to access alternatives to traditional services.

The Council **strongly recommends** that all prospective Personal Assistants employed by Direct Payment recipients should have registered for the PVG

scheme membership as part of safe recruitment practice. PA employers should be so advised at outset.

Homecare or Care at Home Services

The individual can arrange contracts with any care agency that is registered with the Care Inspectorate. The department cannot insist that the client only contracts with the service providers that the Council is currently using. The individual would need to top up any shortfall in funding.

Day Care Services

Day Care services can be purchased from the department or from another local authority. If the service is provided within Edinburgh, then travel costs to and from the service may be considered for inclusion in the package only if the individual is not entitled to a mobility allowance or is unable to take public transport. If the DP purchased service is provided in another authority, the individual may have to pay the travel costs to and from the service.

Housing Support Services

These include services, other than care or housing management, and excluding such services as noted at 4.1.6 above, which enable an individual to establish or maintain occupancy of a dwelling. Services purchased might include services to help set up a new tenancy, budgeting and building life skills to live more independently.

Equipment and Temporary Adaptations

Such a purchase, either of equipment and/or temporary adaptations, will usually be a one-off payment. Before making such a payment, the department should satisfy itself and agree the safe installation, the future ownership and where responsibility lies for service, maintenance, and repair – especially for complex and expensive pieces of equipment. Direct Payments cannot be used as a substitute for Home Improvement Grants, for adaptations required by the landlord or for equipment normally provided by the NHS.

Jointly Commissioned Services with Health

In general, Direct Payments cannot be used to purchase health services. However, they can be used where jointly commissioned services include aspects of continuing health care such as ventilation, skincare, and the management of pressure sores and the administration of percussive physiotherapy.

Practice/Locality Teams should work with their NHS partners to provide a joint Direct Payments package wherever possible, covering health and community care needs. The Health contribution to any package should be noted on the direct payment application form. This is because the NHS has no lawful mechanism to pay the person directly. People are paid the Health contribution in

their Direct Payment and the City of Edinburgh Council can claim it back from the NHS.

Direct Payments cannot be used for:

Long-term stays in Residential Accommodation

Other than short respite breaks, Direct Payments cannot be used to purchase residential care.

Goods – food, drink, fuel, clothes, etc

A Direct Payment cannot be used to pay for daily living expenses. Use of DP for regular daily living costs may risk disentitling the person to many welfare benefits. DP purchase of alcohol, tobacco, gambling, drugs, **must never be permitted**.

Transport

Another exception may be transport to and from day services or respite services, for both the person and Personal Assistant. Travel costs to and from the service may be considered for inclusion in the package only if the person is not entitled to a mobility allowance or is unable to take public transport or requires specialist transport such as an ambulance.

Who cannot be employed using a Direct Payment?

The 2007 amendment regulations (Adult Support and Protection (Scotland) Act 2007) amends Direct Payments legislation and changes the rules on employing close relatives using Direct Payments under the 2003 regulations.

The regulations specify that usually, relatives of the person cannot be employed using Direct Payments. The restriction applies because the relationship between the two people is primarily personal rather than contractual.

From 12 November 2007, unless a local authority is satisfied that securing a service from such a person is necessary to meet the beneficiary's need for a service, or that securing the service from such a person is necessary to safeguard or promote the welfare of the child in need, a local authority may not allow certain close relatives to be employed to provide support services (the precise services to which this applies are specified in regulation 4 of the 2003 regulations as amended by the 2007 regulations).

The 2007 regulations also expand the list of close relatives of the beneficiary from which services may not normally be purchased. This is to reflect modern family set-ups and applies irrespective of where they live. For more detail consult SDS Guidance November 2022 as given above.

This general position remains important because of the very different relationships that a person would have with an employee and a family member and the conflicts of

interest that can result from employing a close relative. This applies to relatives irrespective of where they live.

In no circumstances can a PA manage a Direct Payment by payment to themselves, nor should any Direct Payment paid PA be the Direct Payment recipient. The latter circumstance would arise if the employed relative were receiving the Direct Payment on behalf of the person as an authorised third party (e.g., AWI). Therefore, the Power of Attorney or Guardian of the individual cannot also be their PA. In both cases there would be a clear conflict of interest that would not be in the best, or sustainable, interest of the supported person.

Exceptional circumstances can only be applied if authorised by Senior Management and if in line current SDS Guidance issued by Scottish Government.

Independent Advice and Support

The Lothian Centre for Inclusive Living (LCiL) is funded by the City of Edinburgh Council to provide independent information to Direct Payment recipients in the following areas:

- employing Personal Assistants - job descriptions, advertising and recruitment of staff including criminal record checks
- tax and national insurance
- health and safety at work
- emergency cover
- employer's liability insurance.

LCiL also offers the following services:

- payroll services (incurs a charge)
- training for employers
- training for Personal Assistants.

PVG Scheme membership

Eligible individuals can use Direct Payments to employ their own staff (i.e., Personal Assistants) to provide the support which the Council has assessed is needed. The Council strongly recommends that all prospective Personal Assistants employed by Direct Payment recipients should have registered for PVG scheme membership as part of safe recruitment practice.

See <https://www.mygov.scot/organisations/disclosure-scotland>

Termination of Direct Payment

This can occur where the recipient chooses to end the Direct Payment, or through the death or increasing incapacity of the recipient. It can also occur when the Council determines that a DP is no longer appropriate or safe.

On termination payment may be made:

- a. Up to 4 weeks beyond termination date to give sufficient or required notice to a Regulated Provider, taking any outstanding invoices to the termination date into account.
- b. Up to 6 weeks beyond termination date to give sufficient payment in lieu of notice or redundancy where Personal Assistants were employed, taking any gross wages or HMRC payments to termination date into account.

Any claim for payment more than these periods will require legal representation to the Council and in the latter case supplementary payroll summaries evidencing length of contracted service.

The extent of any payments made will be determined by the circumstances of the termination and at the Council's discretion.

The Council is not liable for the cost of contracts of employment, or contracts with regulated providers, that exceed the funding the Council provides or entered into without the Council's knowledge and agreement.

Recovery of unused funds

This will take place when it is determined that there are funds in a Direct Payment account that have not been used, nor are reasonably expected to be, to meet the individuals assessed eligible need.

The Council will, after discussion with the DP recipient, or where appropriate their legal proxy, and having reviewed the individual Personal/Child's Support Plan recover those public funds the Council in its best judgement can determine as unused and unusable.

- Any recovery of funds will be based on the minimum balance in the account over the most recent 6 months activity. The following will also apply to the calculation of any reclaim; Any outstanding invoices/salaries due to be paid on the advice of the person or with their knowledge their payroll provider.
- Where the DP remains active, 6 weeks of the regular DP in effect at the time of the recovery will be deducted from the amount reclaimed. This to protect the person from an error in recovery or an unidentified liability unknown to the person.
- 6 months of respite cost is a recommended sum to remain in the account at any one time. The remaining sum after these factors are taken into consideration will be the amount to recover.

The DP recipient will be advised of the sum proposed to be reclaimed and provided with an opportunity to notify any additional factors that may be relevant for consideration prior to the reclaim.

The Council will make every effort, reasonable in its own judgement and consistent with SDS Guidance issued by the Scottish Government, to satisfy the person and seek their consent to the action.

Only in the last resort will the Council act as single arbiter on the recovery of these public funds.

If further information emerges after recovery that the sum reclaimed was for any reason in error, some or all the recovery will be restored to the person on the Council's best judgement and at the earliest period that administration enables.

Overriding every other consideration will be the safety, sound care and independent living of the person at the heart of the support the DP sustains. No recovery will occur without a qualified social worker or occupational therapist making a judgement on these lines. This will be recorded to file.

Any person dissatisfied with any outcome can make complaint of the Council's actions in the normal manner by contacting Adult's [0131 553 8395](tel:01315538395) or email socialwork.complaints@edinburgh.gov.uk Children's [0131 529 2572](tel:01315292572) or email childrensservices.socialworkcomplaints@edinburgh.gov.uk

Recovery of misuse of funds

If the DP has in the best judgement of the Council been misused and funds are to be recovered, the practitioner will email: FundingIndependentLiving@edinburgh.gov.uk to advise them.

Implementation

This policy document is a revision of an existing policy, which has been updated in line with an update in legislation. Once agreed, the policy document along with supporting materials will be made available to staff via the Orb. It will also be made available to members of the public via the Policy Register on the City of Edinburgh Council's website.

Roles and Responsibilities

All relevant Edinburgh Health and Social Care Partnership and Children and Families staff are responsible for complying with this policy. Including Agency staff.

Related documents

Legislative Context

The Social Work (Scotland) Act 1968

Sections 12B and 12C of the 1968 Act place a duty on local authorities to make Direct Payments available to certain adults and children who wish to receive them. This includes disabled people.

Direct Payments are an alternative to local authority arranged community care and children's services and therefore need only be offered at the point where the local authority would normally have agreed to provide the services. They must not put people who choose to receive local authority services at a disadvantage.

The Community Care (Direct Payments) (Scotland) Amendment Regulations 2003, and the Mental Health (Care and Treatment) (Scotland) Act 2003 (Modification of Subordinate Legislation) Order 2005.

Where a person is over 18 and clearly unable to give consent, or is under the age of 18, the 2003 Regulations specify certain categories of people who can give consent on behalf of the person, namely those with parental responsibility, and attorneys and guardians (AWI Act 2000) who have powers to manage the Direct Payment on the person's behalf.

Not everyone who is eligible for community care or children's services will be eligible for Direct Payments. The 2003 Regulations (as amended by the 2005 Order) specify that Direct Payments may not be offered to certain people who are restricted by certain mental health or criminal justice legislation. People in these groups are required to receive specific community care services. Offering them Direct Payments in lieu of those services would not give a sufficient guarantee that the person would receive the services required. Details of these categories are given in National Direct Payment Guidance.

Adult Support and Protection (Scotland) Act 2007

Section 63 of this Act amends Direct Payments legislation. The Act empowers local authorities to offer increased flexibility in tailoring individualised packages of support.

The 2007 amendment regulations (see below) change the rules on employing close relatives using Direct Payments under the 2003 regulations.

The Community Care (Direct Payments) (Scotland) Amendment Regulations 2007

From 12 November 2007, unless a local authority is satisfied that securing a service from such a person is necessary to meet the beneficiary's need for a service, or that securing the service from such a person is necessary to safeguard or promote the welfare of the child in need, a local authority may not allow certain close relatives to be employed to provide support services (the precise services to which this applies are specified in regulation 4 of the 2003 regulations as amended by the 2007 regulations). The 2007 regulations also expand the list of close relatives of the beneficiary from which services may not normally be purchased. This is to reflect modern family set-ups and applies irrespective of where they live.

Associated Documents

- [The Social Work \(Scotland\) Act 1968 \(guidance on the sections relating to direct payments\)](#)
- [The Children \(Scotland\) Act 1995](#)
- [The Community Care \(Direct Payments\) Act 1996](#)
- [Regulation of Care \(Scotland\) Act 2001](#)
- [Community Care and Health \(Scotland\) Act 2002](#)
- [Community Care \(Direct Payments\) \(Scotland\) Regulations 2003](#)
- [National Health Service Reform \(Scotland\) Act 2004 \(asp 7\)](#)
- [The Community Care \(Direct Payments\) \(Scotland\) Amendment Regulations 2005 \(SSI 2005 No. 114\)](#)
- [The Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Modification of Subordinate Legislation\) Order 2005 \(SSI 2005 No. 445\)](#)
- [The Disability Equality Duty \(DED\) as enacted 2006](#)
- [Adult Support and Protection \(Scotland\) Act 2007](#)
- [The Community Care \(Direct Payments\) \(Scotland\) Amendments Regulations 2007 \(SSI 2007 No. 458\)](#)
- [The Social Care \(Self-directed Support\) \(Scotland\) Act 2013](#)
- <https://www.gov.scot/publications/carers-scotland-act-2016-statutory-guidance-updated-july-2021/pages/1/>
- Direct Payments procedure
- This policy should be read in conjunction with the "[Risk Assessment Policy](#)".

Further information:

- The full 2013 Act here: <https://www.legislation.gov.uk/asp/2013/1/enacted>
- Original 2014 Statutory Guidance here: <https://www.gov.scot/publications/statutory-guidance-accompany-social-care-self-directed-support-scotland-act-2013/pages/8/>
- Full text of the 2014 Regulations here: <https://www.legislation.gov.uk/ssi/2014/25/made>
- Existing SDS Practitioner Guidance at <https://www.gov.scot/publications/self-directed-support-practitioners-guidance/pages/6/>
- More information on human rights in Scotland at <https://www.scottishhumanrights.com/projects-and-programmes/human-rights-based-approach/>
- Audit Scotland Self-directed Support report (PDF): https://www.audit-scotland.gov.uk/uploads/docs/report/2017/nr_170824_self_directed_support.pdf
- My Support My Choice reports: <https://www.sdsscotland.org.uk/mysupportmychoice/>
- National Care Service, visit: <https://www.gov.scot/policies/social-care/national-care-service/>
- SDS Framework of Standards: <https://www.gov.scot/publications/self-directed-support-framework-standards-including-practice-statements-core-components/documents/>
- Getting it right for every child, and guidance on Children and Young People (Scotland) Act 2014 Part 12: Services in Relation to children at risk of becoming Looked After: <https://www.gov.scot/publications/children-young-people-scotland-act-2014-national-guidance-part-12/documents/>
- The 2014 Act: <https://www.legislation.gov.uk/asp/2014/8/contents/enacted>, which made some amendments to the 1995 Act (<https://www.legislation.gov.uk/ukpga/1995/36>)
- The Carers Charter: <https://www.gov.scot/publications/carers-charter/>

Integrated impact assessment

An Integrated Impact Assessment (IIA) of this Policy was undertaken in September 2023 by council officers and third sector organisations.

As this is a revision of an existing policy, which has been updated in line with an update in legislation, the group found no significant negative impacts to any groups because of the policy. However, recommendations were received to improve accessibility and readability of the policy which will be taken forward.

Risk assessment

Failure to adopt this policy and contents carry the following risks:

Non-compliance with Social Care (Self Directed Support) (Scotland) 2013 Act as it is a requirement to offer four options, including Direct Payments following assessment of need.

Review

This policy will be reviewed every 2 years, or more frequently because of changes to legislation or statutory guidance.

Direct Payment Procedure

VERSION 1.0
 IMPLEMENTATION DATE 01/10/2023
 REVIEW DATE 01/10/2025

DEPARTMENT RESPONSIBLE

Department:	Edinburgh Health & Social Care Partnership		
Division:	Operations		
Section:	South East Locality		
Owner:	Nikki Conway		
DPIA :	Yes <input type="checkbox"/> No <input type="checkbox"/>		
	Link to DPIA:		
IIA:	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/>		
	Link/Location:		
If appropriate, has Health and safety had oversight of this procedure	Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/>		
	Name of contact:	Date: July 2023	

VERSION HISTORY

VERSION	APPROVED BY	REVISION DATE	DESCRIPTION OF CHANGE	AUTHOR
V1.1	Nikki Conway, SE Locality Manager	24/09/23		Jack Blaik & Ashley Mazs
V1.2	Brickchand Ramruttun, Interim Service Director - Operations	28/09/23		Catherine Mathieson

PURPOSE

The purpose of the procedure is to detail all the activities undertaken by the Council/EHSCP staff in the setting up of Direct Payments, for Adults and Children. We aim to give people more choice and control over their care, and we want to create a flexible and individual care package to meet the required needs and desired outcomes.

SCOPE

The procedure relates to all activities in relation to the making of, closing of, and auditing of Direct Payments (DP). The activities within the procedure will be conducted by the Council/EHSCP, Children Services, the Social Care Payments Team, Locality Business Support, and the DP Audit Team.

1. Duties under the SDS Act 2013
 - I. Duty to have regard to the general principles of involvement, informed choice, and collaboration as part of the assessment and the provision of support.
2. Duty to take reasonable steps to facilitate the person's dignity and participation in the life of the community in which the person lives.
3. Duty to offer four options to the supported person.
 - I. Direct Payment (DP)
 - II. Individual Service Fund (ISF)
 - III. Service managed by the Local Authority
 - IV. A mixture of the above
4. Duty to explain the nature and effect of the four options and to signpost to other sources of information and additional support (applies to adults, children/families, adult carers, and young carers).

DEFINITIONS

TERM	DEFINITION
CEC	The City of Edinburgh Council
SDS	Self-Directed Support
DP	Direct Payment
EHSCP	Edinburgh Health & Social Care Partnership
SCP	Social Care Payments Team (previously Funding Independence Team - FIT)
PSP	Personal Support Plan
AWI	Adult with Incapacity
PA	Personal Assistant
KYC	Know Your Customer
FMS	Financial Management Service
LCiL	Lothian Centre for Inclusive Living
FBS	Fife Business Services
BACS	Solicitor's or FMS bank account
CAB	Citizens Advice Bureau
FSA	Financial Services Authority

PROCEDURE

- The Practitioner will visit the person and discuss the four options of SDS and agree on a suitable care plan. Staff carrying out assessments of an individual's service needs and desired outcomes, must ensure that the appropriate eligibility criteria are satisfied before social care services are provided. Once the Personal Support Plan is completed, the Practitioner work flows this to their Manager/Senior to be approved.
- The PSP should contain all relevant information, what the person's needs, and desired outcomes are and what services are required to meet their needs and outcomes. The more information that is provided the better it will avert misunderstanding or confusion. Clearly state what the DP funds can be used for. For Eligibility Criteria see:
https://orb.edinburgh.gov.uk/downloads/file/10456/eligibility_criteria_for_adult_social_care

- The start date is the date the service i.e., PA/Agency start. If the PA/Agency has not started, please record: 'To be Confirmed' in the start date section on the PSP, then advise SCP once a date is known. An exception is where the DP is for Respite, an arrangement where DP funds can accumulate if intended for a short break.
- All new DPs should transact through the Allpay account, unless being managed by a Solicitor or Financial Management Service. The cardholder must be able to manage telephone or online banking and be aware of their responsibilities. In the cardholder information section on the PSP, please also give an email address of the cardholder to allow SCP to email the relevant forms. If the cardholder wishes to have these forms posted, please also write this in the relevant box.
- If the account is to be managed by a FMS, it is the responsibility of the Practitioner to contact the relevant FMS provider and set up that arrangement. The FMS provider will then send a BACS to SCP to set up the relevant bank account for the DP funds to be paid to. The FMS providers CEC have in our Framework Contract are: LCiL, FBS and Accountability. The person can choose any FMS Provider of their own if they so wish, if they are registered with the FSA.
- The DP is paid 4 weekly in advance.
- If the person/proxy is due back dated funds, please ask them to email SCP at: FundingIndependentLiving@edinburgh.gov.uk or call 0131 469 3334. Proof of invoices/payment is required.

What can a DP be used for:

A Direct Payment is a mechanism that an individual can use to have more choice and control over their care and support. The DP must be used to meet the assessed, eligible needs of an individual but can be used in a flexible way that provides a more personalised range of options for the person.

- Home Based Care
- Day Service (can be for activities if there is an assessed need for a day service, and where this meets identified outcomes. Agreements on what this will entail must be itemised in the Personal/Child Support Plan and financially approved. The cost cannot be greater than the cost of a day service the Council/EHSCP would provide)
- Respite (can be used for short breaks or 'holidays' as an alternative to respite - if there is an unpaid carer and an assessed need, and where this meets identified outcome, food or drink, in any form, should not be included in the cost. This can include the individual and the unpaid carer going on holiday together as a form of respite. But the DP would only pay for the individual and only up to the agreed respite budget. Any excess cost for the individual would need to be met by them and no increase in the DP will be given for future respite if the full budget for respite has been within that respite year)

- Equipment (needs approval from a Senior)
- Equivalency model for residential/nursing care (as a DP Budget, see below)
- Creative solutions that meet the person's assessed needs and outcomes e.g., Alexa, Gym equipment/membership, electronic tablet, Football Season Ticket, Art Therapy, Sports Fees, etc.

What a DP cannot be used for:

- Alcohol
- Cigarettes or other drugs
- Gambling
- Food or household items
- Restaurants/Take Aways
- Holiday (other than an assessed respite break)
- Paying any type of utility/bill (other than care bills)
- Paying an agency or provider not regulated by the Care Inspectorate
- Care and support outside the UK, other than from a PA – as being a care service not regulated in the UK i.e., that outcome would need to be self-funded.
- Long term Residential/Nursing Home care
- Health services (other than some continuing health needs)
- Private health care
- Loan repayments
- Self-payment – i.e. to and by the supported person or their Guardian/active Power of Attorney
- Cash
- Transport – (other than the Council/EHSCP may pay for a support worker/Personal Assistant to drive the car for an individual or to accompany them on a journey, but this must be part of the assessed need and desired outcomes. There may be some exceptional circumstances where the Council/EHSCP would agree to pay for transport e.g., specialist transport is needed such as an ambulance to transport for an individual to respite).

DP in lieu of service

The cost of a DP should not normally exceed the cost of the service for which it is a surrogate or proxy. [Guide to Price information can be found on the Orb.](#)

Community based services generally have known cost. This cost will be net of any charge normally applied. A DP should therefore be netted of the charge that would normally be applied to a service.

Where the DP is made in lieu of residential/nursing home care on the basis that the person remains in their own home, then the latter will not be a realisable asset. DP in lieu of residential/nursing home care should be made at a value of the placement cost in effect at the time and uprated accordingly in line with service practice. For older people this will be the National Care Home Contract rate, other than in exceptional circumstances whereby a care home would charge more due to exceptional needs e.g., behaviours that challenge. For those under 65 years old appropriate care homes should be approached to ascertain what they would charge to meet the person's needs. Where possible several costs should be obtained and the most appropriate used.

Employing a PA:

- PAs are, not regulated by the Care Inspectorate.
- They are exempt from the Regulation of Care (Scotland) Act 2001.
- PAs are not yet subject to mandatory PVG or verified identity by the Council/EHSCP.
- The person receiving support will usually be the employer. [They must fully understand the responsibilities they are taking on prior to recruiting staff.](#)
- The **employer** must pay their **employee** no less than the Scottish Living Wage.
- The employer should be aware that the DP rate paid is not the gross rate to give the PA.
- The **employee's** gross pay may be subject to Tax/NI, depending on personal circumstances.
- The Council/EHSCP staff should **not** give employment advice or set an exact wage rate for the **employee**. Instead, they should signpost the employer to a support organisation such as LCIL – or signpost to the PA Handbook <https://handbook.scot/>
- The contingency is retained to pay for HMRC, Holiday/sick pay for PA, pension and future years Employer's Liability Insurance, training, and other **employer** costs etc. When setting up a DP for PA, include payroll costs and first year's Employer's Liability Insurance costs ([DP Payroll Support](#)).
- Obtain financial approval. Ensure you **ONLY** use the agreed standard agency rate and agreed standard PA rate (higher PA rate is for exceptional, complex circumstances e.g., someone is ventilated, peg fed etc).
- If the person wishes to have a self-employed PA, this needs to be discussed as the best option **and** be an arrangement agreed the Manager/Senior. A [Self-Employed PA Disclaimer form](#) must be completed by both the DP recipient or their legal representative and the PA.
- A self-employed PA is funded at the net rate normally applied to PA; no contingency is paid.
- The DP regulations specify that usually relatives of the person cannot be employed using Direct Payments. Exceptional circumstances can only be applied if authorised by Senior Management, via the financial approval process, and if in line current SDS Guidance issued by Scottish Government.

- In no circumstances can a PA manage a Direct Payment by payment to themselves, nor should any Direct Payment paid PA be the Direct Payment recipient. The latter circumstance would arise if the employed relative were receiving the Direct Payment on behalf of the person as an authorised third party (e.g., AWI). Therefore, the Power of Attorney or Guardian of the individual cannot also be their PA. In both cases there would be a clear conflict of interest that would not be in the best, or sustainable, interest of the supported person.

RESPONSIBILITIES

- Practitioner Visits the person at home to discuss their needs and their expectations.
- Practitioner Explains the 4 SDS Options if necessary and discuss what will meet the needs of the person. Have information on costs, i.e., equivalency model for DP Budgets in lieu of Care Home placements. Assess the person for capacity or consider whether there is a proxy (Guardianship or Power of Attorney) in place to manage the DP on their behalf. If the person does not have capacity in the meaning of AWI, the proxy must have POA or Guardianship to manage the DP and Allpay account.
- Practitioner Should refer the person to LCiL to get advice on Care Agencies and becoming an Employer. LCiL receives funding from CEC to manage this on CEC behalf. If the person wishes to employ a PA, you can also refer them to CAB.
- Practitioner Once the PSP is agreed with the person, the worker submits this to their Senior/Financial Huddle – depending on budget for approval of funding. Once approved, the PSP is work flowed to Social Care Payments (SCP) (7230).
- Practitioner Take a copy and discuss the DP Agreement form with the person/proxy so they understand the DP is in lieu of a service and their responsibilities.
- SCP Process the PSP, setting up a DP Tracking Case Note, then email the cardholder with the KYC form and DP Agreement to sign. One Allpay account is required for each person.
- Practitioner Should ensure the person is able to complete the forms and return to SCP. The cardholder must be resident in the UK – if no other appropriate cardholder available, a Financial Management Service could be considered.
- Practitioner Must give the person or their proxy a copy of the PSP, and request confirmation of receipt. Confirmation of receipt of PSP is required to be signed on the DP Agreement.
- SCP Process the Allpay application (KYC) and wait on the account to be set up. If all the relevant information has been recorded on the PSP, and there is a start date for the service, the payment should be made on the next relevant payment run.

- SCP Set up the service and costs on Swift to ensure the DP will be paid and connect to bank details.
- SCP Send a letter to the cardholder to advise when the payment will be made and the amounts.
- Practitioner Must undertake a 6-week initial DP Review to ensure the correct funds are being paid, and the DP is being used appropriately. This is essential to avert future problems with the DP by identifying any issues early.

DP FOR END OF LIFE/PALLIATIVE CARE

- Practitioner Once the PSP is approved, please email: ehscpescalations@edinburgh.gov.uk to request the DP be prioritised.

RECOVERY OF UNUSED FUNDS

Recovery will start with a conversation with the person by the key worker, taking the persons views fully into account.

The following approach will be adopted:

- Determine the extent of funds appropriate to recover the baseline of the minimum balance in the account over the most recent 6 months activity will be used.
- Ensure enough funding remains to pay outstanding invoices/salaries, on the advice of the person.
- Ensure enough funding remains to cover 6 weeks of regular DP activity. This is to protect the person from an error in recovery or an unidentified liability unknown to the person.
- 6 months of Respite funding to remain in the account.
- The remaining sum after these factors are taken into account will be the amount to recover.
- This sum will be communicated to the person, to give further opportunity for a conversation and to identify costs not yet considered. The person can be supported through advocacy or 3rd party support of their choice in this conversation.
- The SDS Advice Team will make every reasonable effort, consistent with SDS Guidance issued by the Scottish Government, to satisfy the person and seek their consent to the recovery of funds.
- Only in the final event should EHSCP act as single arbiter on the recovery of these public funds.

- If further information emerges after recovery that the sum reclaimed was for any reason in error, some or all the recovery will be restored to the person on the team's best judgement and at the earliest period that administration enables.
- Overriding every other consideration will be the safety, sound care and independent living of the person at the heart of the support the DP sustains. No recovery will occur without a qualified social worker or occupational therapist, or community care assistant involved and will be recorded in line with the organisations case recording guidelines.

DP BACS – The Locality Business Support team (HSC.DPAudits@edinburgh.gov.uk) request necessary audit information by letter and process service users audit paperwork on the Swift system. Standard checks are carried out by Business Support prior to a service users annual review such as considering that the care plan is being adhered to, if CEC funds are being spent as agreed and highlighting any concerns when necessary to the Locality Cluster team for investigation and or further action.

Once an Audit return is processed on Swift, the details of the return must be entered on the SE Direct Payment Tracker, this is sent via email to the Cluster Managers at the end of each month to allow progress to be monitored.

DP Allpay – A yearly Review should be carried out on DP's, and Allpay statements can be requested from: FundingIndependentLiving@edinburgh.gov.uk. Please see the Review Checklist for guidance.

WHEN THE PERSON IS IN HOSPITAL

The DP will continue to be paid for four weeks. After this period, the Locality need to review the situation and advise if the DP is to continue, depending on the period of hospitalisation and if PAs are being paid.

WHEN REVIEWING A DP

Please use the [DP Review Checklist](#).

RECOVERY OF FUNDS DUE TO MISUSE OR OVERPAYMENT:

If the DP has been misused and funds are to be recovered. The Practitioner must discuss this with their manager and alert the Locality Manager. The Practitioner should inform the DP recipient of the plan to recover funds and must then email: FundingIndependentLiving@edinburgh.gov.uk and provide the following information:

- Name and AIS number
- DP Contact name and address if different from above
- Total amount to be repaid and period of repayment (this should be discussed and agreed)

ENDING A DP

If a DP is to end, e.g. the person has gone into residential care, moved to another SDS option, moved LA, is no longer able to manage the DP or the DP is no longer required, the worker **must** either workflow confirmation to Social Care Payments (7230) or email to advise them of this:

FundingIndependentLiving@edinburgh.gov.uk.

Outstanding payments on the ending of a DP for any reason, including death of the supported person:

- where a Regulated Provider was contracted with all or part of the DP, the relevant proportion can be funded up to 4 weeks beyond termination date to enable payments to the Provider.
- where a reported Self-Employed PA was contracted, no payments beyond termination date will be made in respect of that worker as there is no entitlement to notice or redundancy payments.
- where the PA was directly employed, payments up to 4 weeks' notice can be funded, with a potential further element for redundancy costs. Approval from Budget Holder will be required which may include advice from Council Solicitor and the pay roll provider.
- where the package cost was shared with ILF this funder should be approached for a proportion of the cost.
- in the event of death, where there is a recognised Executor, that person will be expected to manage the closing of the DP by making payment to relevant parties. Where there is no known Executor, the Council may make these closing payments directly.

Flexible uses of DP

- A key benefit of a DP is that it increases the amount of choice, control and flexibility that people have over their lives. It should be used to support the individual to achieve the outcomes agreed in their Personal Support Plan to meet their eligible assessed needs in a person-centred way.

- In line with SDS Guidance issued by Scottish Government the Council/EHSCP aims to evidence person centred creativity of use across all the SDS Options including SDS option 1 namely Direct Payments (DP).
- Because a DP is literally a payment method it risks being conflated with other forms of public funding including welfare benefits. If used instead of these sources to fund **other than community care needs** DP risks generating a disentitlement to Benefits that leaves the person potentially poorer.
- As a further example if a family member is employed by means of a DP **their earnings properly treated by the state** may result in lost Benefits. Some family members may not fully appreciate this aspect.
- It is important therefore that DP's are used on a lawful basis as intended **as a form of community care service**.
- Creativity is in achieving those outcomes that a community care service aims to provide. Creativity is not a means to reduce cost of living expenses for disabled people.
- The Council/EHSCP wishes to maximise worker autonomy in line with SDS Guidance.
- Regarding any purchase or outcome **not already authorised in the PSP**, or where the PSP is unclear, the following guidelines will apply:
 - To encourage creativity and a truly outcomes focussed approach, while doing so with equity and consistency across the Council/EHSCP a framework for authorising the creative use of DP is required.
 - Currently that framework will take the form of authorisation structured on accountable levels **that match current finance approvals in service provision**.
 - All those authorising such payments must **on their best professional judgment** be capable of defending their decision as "the delivery of outcomes appropriate to a community care service."
 - The PSP must be updated to reflect what has been approved.

Appendix 1 Quick Guide Direct Payment Application Process

1. Complete an assessment which clearly shows needs and desired outcomes and ensure eligibility criteria are met.
2. Ensure the person has capacity or there is a proxy (Guardianship or Power of Attorney) in place to manage the DP on their behalf. Ensure they understand what it means to have a DP.
3. Complete the Personal/Child's Support Plan, clearly showing what the DP will be used for:

Quick Guide to Using a Direct Payment

YES:

- Home Based Care
- Day Service (can be for activities if there is an assessed need for a day service, and where this meets identified outcomes. Agreements on what this will entail must be itemised in the Personal/Child Support Plan and financially approved. The cost cannot be greater than the cost of a day service the Council/EHSCP would provide)
- Respite ((can be used for short breaks or 'holidays' as an alternative to respite - if there is an unpaid carer and an assessed need, and where this meets identified outcome, food or drink, in any form, should not be included in the cost. This can include the individual and the unpaid carer going on holiday together as a form of respite. But the DP would only pay for the individual and only up to the agreed respite budget. Any excess cost for the individual would need to be met by them and no increase in the DP will be given for future respite if the full budget for respite has been within that respite year)
- Equipment
- Equivalency model for residential/nursing care as a DP Budget (made at a value of the placement cost in effect at the time and uprated accordingly in line with service practice. For older people this will be the National Care Home Contract rate, other than in exceptional circumstances whereby a care home would charge more due to exceptional needs e.g., behaviours that challenge. For those under 65 years old appropriate care homes should be approached to ascertain what they would charge to meet the person's needs. Where possible several costs should be obtained and the most appropriate used).
- Creative solutions that meet the person's assessed needs (including carers) and outcomes e.g., Alexa, Gym equipment/membership, electronic tablet, Football Season Ticket, Art Therapy, Sports Fees, etc.

NO:

- Alcohol
- Cigarettes or other drugs
- Gambling
- Food or household items
- Restaurants/Take Aways
- Holiday (other than an assessed respite break)
- Paying any type of utility/bill (other than care bills)
- Paying an agency or provider not regulated by the Care Inspectorate – that's unlawful
- Care and support outside the UK, other than from a PA – as being not regulated there i.e., that outcome would need to be self-funded.
- Long term Residential/Nursing Home care

- Health services (other than some continuing health needs)
 - Private health care
 - Loan repayments
 - Self-payment – to the supported person or their Guardian/active Power of Attorney
 - Cash
 - Transport – (other than the Council/EHSCP may pay for a support worker/Personal Assistant to drive the car for an individual or to accompany them on a journey, but this must be part of the assessed need and desired outcomes. There may be some exceptional circumstances where the Council/EHSCP would agree to pay for transport e.g., specialist transport is needed such as an ambulance to transport for an individual to respite).
4. Record the start date of the DP on the Personal/Child's Support Plan (PSP).
- The start date is not the date of assessment, it is **the date the service starts**.
 - If the service has not started, record 'To be confirmed'. Unless the DP is for Respite, as that funding can build up, if required for a short break.
 - Advise the person to phone the Social Care Payments Team (0131 469 3334) once they have a start date. Ask them to **leave a message** with their name, telephone number and start date.
5. Ensure you inform the person of the correct current Gross PA rate:
- The Council/EHSCP pay the DP recipient the amount on the PSP, as the gross rate **paid to the employer**.
 - Gross rate includes a contingency amount to cover the **employer's** cost of holiday/sick pay, pensions, employer liability insurance, training, and other **employer** costs etc.
 - The **employer** should pay their **employee** no less than the Scottish Living wage, as the Council/EHSCP fund them to deliver no less than that outcome.
 - The **employee's** gross pay may then be subject to Tax/Ni, depending on personal circumstances.
 - The Council/EHSCP staff should **not** give employment advice or set an exact wage rate for the **employee**. Instead signpost the employer to a support organisation like LCIL – or signpost to the PA Handbook <https://handbook.scot/>
6. Obtain financial approval in the usual way, including for any exceptional requests. Ensure you **ONLY** use the agreed standard agency rate and agreed standard PA rate (higher PA rate is for very exceptional, complex circumstances e.g., someone is ventilated). If a PA is being used in lieu of a Day Service you must use the PA rate, not the Day Service Rate.
7. Ensure the Allpay cardholder details are on the PSP. Preferably an email address, if the cardholder agrees, or advise if a KYC (Know Your Customer) form is to be posted to them instead. Give the person/their proxy a copy of the PSP, ensure they understand and agree. Ensure you record that this has been done.

9. Once financially approved and agreed by the person/their proxy, the PSP should be work flowed to the Social Care Payments Team (7230).
10. The DP Agreement form and Allpay Card form (KYC) will be sent to the cardholder by the Social Care Payments Team once the PSP is received and the process begins. The cardholder must be resident in the UK – if no other appropriate cardholder available, a Financial Management Service could be considered.
11. The DP Agreement form must be signed and this recorded. The Assessor is responsible for ensuring this happens and that the person understands the DP Agreement.
12. Allpay Card form (KYC) must be completed and this recorded. The Assessor is responsible for ensuring this happens and the person understands how the Allpay card will work.
13. The Assessor must keep in touch with the person/their proxy throughout the process and complete an initial review after the DP has been paid and the service is in place.

KNOWN RISKS

RETENTION PERIOD

RECORD	LOCATION	RESPONSIBLE OFFICER	RETENTION PERIOD

ASSOCIATED DOCUMENTS

DOCUMENT	TYPE
Title of document, where possible hyperlink to location.	(e.g. legislation, process, forms)
Direct Payments Policy	
Direct Payments Agreement	

DRAFT

Dear

**Direct Payment Agreement
Social Care (Self Directed Support) (Scotland) Act 2013**

I am writing to advise you that your Direct Payment budget has been approved for XXXX and I am attaching herewith a copy of your Direct Payment Agreement.

The Direct Payment is awarded for the purchase of support to meet your assessed personal needs and outcomes as detailed in the Personal/Child's Support Plan that you agreed with your Assessor.

Please note that the award of a Direct Payment is subject to the following conditions:

- The Direct Payment funding must comply with the attached Agreement.
- The Direct Payment funding must only be used to purchase support as detailed in the Personal/Child's Support Plan you agreed with your Assessor.
- The Personal/Child's Support Plan will be reviewed regularly, where you will have the opportunity to discuss any issues relating to the administration of the Direct Payment.
- The Direct Payment start date is the date your service i.e., PA/Agency starts.
- That you act to the Council/EHSCP's advice on the use of the Direct Payment, as a condition of payment

If you have chosen to employ staff directly, the Direct Payment includes provision for your salary costs, National Insurance and Tax (where applicable), Statutory Sick Pay (SSP), annual leave cover as well as Employers Liability Insurance – **which you must renew annually**. Please note that if you are purchasing support from a regulated care provider (see 5.3 on DP Agreement) these costs will be met by your chosen provider.

If you are assessed by the Council or Edinburgh Health and Social Care Partnership (EHSCP) as no longer eligible to continue to receive a Direct Payment, you or your representative/s will be required to repay any payments made in advance by the Council/EHSCP for periods during which you are not entitled to receive Direct

Payments. The Council/EHSCP's calculation of the amount due to be repaid shall be binding.

If you have any queries regarding your Personal/Child's Support Plan you should contact your Assessor or local office.

If you are satisfied with your Personal/Child's Support Plan and the terms contained within the attached Direct Payment Agreement, please can you:

- Complete the attached Allpay 'Know Your Customer' (KYC) form. If you wish your Direct Payment to be managed by a third party instead, such as a solicitor or payroll company, please tell us which company or organisation this will be.
- Sign your Direct Payment Agreement on pages 13 and 14 (two copies – one for your records and one to return to us).
- If you are signing the Direct Payment Agreement on behalf of the named supported person as their Power of Attorney or Welfare and/or Financial Guardian, a copy of your certificate or order should be returned with the signed agreement.
- Return both the Direct Payment Agreement and KYC Form within 14 days of receipt either by email to FundingIndependentLiving@edinburgh.gov.uk or posted to the address below. Please retain the Direct Payment Agreement copy for your future reference.

Once we are in receipt of your signed Direct Payment Agreement, your completed KYC form, and any other requested documents, and once there is a confirmed start date for your service, the Council/EHSCP will commence payment of your Direct Payment.

PLEASE NOTE THAT COUNCIL/EHSCP CANNOT START YOUR DIRECT PAYMENT UNTIL YOU HAVE SIGNED AND RETURNED THESE DOCUMENTS.

If you require any advice or support with the management of your Direct Payment you can contact the Council/EHSCP's local support organisation, Lothian Centre for Inclusive Living (LCIL), Norton Park, 57 Albion Road, Edinburgh, EH7 5QY, Tel: 0131 475 2350 Email: admin@lothiancil.org.uk

Yours sincerely

Social Care Payments | Transactions - Assessment and Finance | Customer and Digital Services| Corporate Services | The City of Edinburgh Council | Waverley Court, Level C.3, 4 East Market Street, Edinburgh, EH8 8BG

Option 1 (Direct Payment) Agreement

FOR THE PROVISION OF A DIRECT PAYMENT to meet identified care, support, and personal outcomes.

Between

THE CITY OF EDINBURGH COUNCIL, a local Council constituted under the Local Government etc (Scotland) Act 1994 and having its Principal Offices at: Waverley Court, 4 East Market Street, Edinburgh, EH8 8BG (who and whose statutory successors and permitted assignees are hereinafter referred to as “the Council”)

And

Supported Person (*Full Name*) hereinafter referred to as “you” or “your”

Name:

Address (including postcode):

Swift Reference Number:

WHEREAS:

1. A Direct Payment is used when a Supported Person has chosen Option 1 of the Social Care (Self- directed Support) (Scotland) Act 2013. This means the Supported Person, or their representative will direct their own support and manage their Direct Payment in agreement with their Assessor.
2. The Council has an obligation to provide care and support to Supported Persons who are eligible within its area and the Council is committed to increasing choice and control for people who are assessed as needing services to assist them to achieve their agreed personal outcomes and empowering those Supported Persons to make decisions about their support and how this is delivered.
3. The Council/Edinburgh Health and Social Care Partnership, in consultation with the relevant professionals and others involved in your care, has carried out an assessment of your needs and have drawn up a Personal/Child’s Support Plan to reflect your needs and personal outcomes.
4. This Agreement sets out the terms and conditions together with the rights and responsibilities of the Council and the Supported Person under this Agreement.

1. DEFINITIONS

For the purposes of this Agreement the following words and phrases shall have the meanings stated below:

“Agreement” means this Agreement between you and The City of Edinburgh Council together with Schedule 1.

“Care Inspectorate” means the name for the time being given by Social Care and Social Work Improvement Scotland (SCSWS) the body established under section 44 of the Public Services Reform (Scotland) Act 2010 having its headquarters for the time being at Compass House, 11 Riverside Drive, Dundee, DD1 4NY.

“the Council” means The City of Edinburgh Council constituted in terms of the Local Government (Scotland) Act 1994 and having its principal office at Waverley Court, 4 East Market Street, Edinburgh, EH8 8BG

“Direct Payment” means the individual budget paid to you under the Social Care (Self-Directed Support) (Scotland) Act 2013 to meet your agreed personal outcomes as set out in your Personal Support Plan.

“Disclosure” means a criminal record certificate or enhanced criminal record certificate issued by Disclosure Scotland under Part V of the Police Act 1997.

“Disclosure Scotland” means the Disclosure Bureau empowered under Part V of the Police Act 1997 to issue criminal record certificates and enhanced criminal record certificates and based for the time being at the Scottish Criminal Record Office, Pacific Quay, Glasgow, G51 1EA.

“Legal Representatives” means a person who has been appointed to and on your behalf in a legal capacity and includes an ongoing power of attorney or a financial and welfare guardian (which may in the case of a child include the parent).

“Nominated Representative” means someone you may appoint to act on your behalf but who has no legal powers to take decisions on your behalf. Where you remain the decision maker.

“Option 1” means option 1 of the Social Care (Self-Directed Support) (Scotland) Act 2013.

“Outcomes” means the aims and objectives agreed in your Personal Support Plan.

“Personal Assistant” is any individual who you may have employed directly to provide care and support services.

“Provider” means the person, organisation, charity or company regulated by the Care Inspectorate, or equivalent UK body outside Scotland, with whom you enter into an Agreement to provide your care and support services.

“PVG Scheme” means the disclosure system as defined by Section 44 of the Protection of Vulnerable Groups (Scotland) Act 2007 (the PVG Act) and managed by

Disclosure Scotland for persons undertaking Regulations Work with Protected Adults and/or Children as defined in the PVG Act.

“**Schedule 1 Form**” means the separate form completed (or to be completed) by you in connection with this Agreement detailing your Allpay account or other account or payroll provider (as the case may be).

“**Assessor**” means the lead social worker, occupational therapist, health worker or other professional employed by EHSCP or NHS Lothian, who has undertaken your assessment.

“**Personal/Child’s Support Plan**” means the plan which details the support you require to meet your assessed needs and personal outcomes as agreed between you and your Assessor.

2. PERIOD OF AGREEMENT

- 2.1** This Agreement shall commence on the start date and shall continue until terminated in accordance with the appropriate provisions of this Agreement.

3. COUNCIL OBLIGATIONS

3.1 It is the responsibility of the Council to:

- a. Pay your Direct Payment either:
 - I. into your designated Direct Payment Allpay bank account; or
 - II. by such other method as the Council may choose, acting reasonably, and intimated to you.
- b. Review, regularly, your Personal/Child’s Support Plan which will include reviewing your identified personal outcomes.

4. YOUR OBLIGATIONS

4.1 You will be responsible for:

- a) Using the Direct Payment **only to purchase support** as detailed in your Personal/Child’s Support Plan.
- b) Exercising overall control and responsibility for your Direct Payment and any support services purchased or Personal Assistants employed. This includes where you have nominated a representative to administer your Direct Payment on your behalf.

- c) Complying with the Council's Financial Monitoring in accordance with Clause 9 (Financial Monitoring)
- d) Keeping your Assessor advised of any material changes to your circumstances.

5. YOUR SERVICE

- 5.1** Your Direct Payment is being provided to you to enable you to arrange and purchase your own care and support in accordance with your agreed Personal/Child's Support Plan. You can choose to either employ your own Personal Assistant/s or contract the services of a regulated care and support Provider, purchase your chosen short break and/or purchase items/services.
- 5.2** If you choose to employ Personal Assistant/s under this Agreement, it will be your responsibility:
- a) To ensure that all employment liabilities including tax, national insurance and pension payments are paid as appropriate. Your Direct Payment may be terminated should you employ personal assistant/s on an informal basis and/or without HMRC registration.
 - b) To have appropriate employers' liability insurance and third-party cover.
 - c) To comply with all aspects of employment law in relation to your personal assistant/s employment.
 - d) To satisfy yourself of the employment status of your worker, and directly with HMRC if required.
- 5.3** If you choose to purchase your care and support as a service from a Regulated Provider:
- a) The Council **strongly recommends** that you ask for a signed agreement between you and the Provider detailing the services, the rates they are charging, and any notice period required to terminate the service. The Council may not be liable to pay notice.
 - b) The Council **strongly recommends** you ensure the Provider holds the appropriate registration for your care and support with the Care Inspectorate or their successor thereof. Registration with the Care Inspectorate is a legal requirement. You can check a Provider's registration by going to www.careinspectorate.com.

5.4 You are fully responsible for obtaining your own legal advice in relation to:

- a) This Agreement; and
- b) The items and/or services you secure under your Direct Payment.

5.5 **The Council's sole liability is to pay the Direct Payment to you and has no direct liability to any Provider or Personal Assistant arising under this Agreement. The Council does not and will not indemnify you in any way in respect of any claim which may be made against you by any Personal Assistant/s you have employed or any Provider with whom you have contracted to provide services.**

6. EMPLOYING STAFF

6.1 **Employing a potentially illegal worker without carrying out appropriate checks on their right to work and remain in the UK may make you liable to a civil penalty** so, if you decide to employ an individual to provide some or all your care, the Council **strongly recommends all of the following:**

- a) You ask to see proof of identity, including present and recent addresses.
- b) You ask to obtain proof of Right to Live and Work in the UK. The local support service can advise you further about this.
- c) You obtain a self-declaration from prospective employees and/or Personal Assistants that details any past criminal history, including ongoing criminal investigation, or other information as to their conduct and behaviour, that makes them unsuitable to undertake such work.
- d) You check any Personal Assistant employed by you is a member of the Protecting Vulnerable Groups (PVG) Scheme. This means they are not barred from working with children and/or vulnerable adults.
- e) You ask your Personal Assistant to let you see his or her Scheme membership statement from Disclosure Scotland.
- f) If your Personal Assistant is not a member of the Scheme, you ask them to join the Scheme prior to them commencing employment.
- g) You offer any post subject to a trial period.

h) The Council **strongly recommends** you consider carefully before you contract with an ostensibly self-employed worker and consider seeking advice from the local support service. You must sign and return a Disclaimer form provided by the Council/EHSCP.

6.2 The local support service can help you with any queries regarding employing your Personal Assistant/s. Your Assessor will provide you with their contact details.

6.3 If you fail to comply with any relevant employment laws the Council shall be entitled, but not necessarily obliged, to terminate this Agreement under clause 17.3 on the grounds of your breach of a civil obligation.

7. EMPLOYING RELATIVES

7.1 The Self-directed Support (Direct Payments) (Scotland) Regulations 2013 state that a family member as provided at 7.3 **may** provide support only in certain circumstances. You must have the Council's **written agreement prior to employment commencing** before employing a family member to provide your support.

7.2 **In the event you employ a family member without the prior approval of the Council, your Direct Payment may be terminated in terms of clause 17.**

7.3 In the Regulations "family members" means:

- a) The spouse or civil partner of the direct payment user
- b) A person who lives with the direct payment user as if their spouse or civil partner
- c) The direct payment user's...
 - I. Parent
 - II. Child
 - III. Brother or sister
 - IV. Aunt or uncle
 - V. Nephew or niece
 - VI. Cousin
 - VII. Grandparent
 - VIII. Grandchild
- d) The spouse or civil partner of any person listed in sub-paragraph (c).

- e) A person who lives with any person lived in sub-paragraph (c) as if their spouse or civil partner.

8. FINANCE

- 8.1** The Council will pay your Direct Payment into your designated Allpay or to a nominated third party such as a Solicitor or payroll provider. No cash transactions or withdrawals can be made from any account holding your DP.
- 8.2** The Council fully reserves the right to change the method of payment. Any such changes will be intimated to you prior to being implemented.
- 8.3** The Council will pay your Direct Payment 4 weekly in advance.
- 8.4** The Council can monitor your Allpay account, therefore you do not need to keep bank statements on using this account.

9. FINANCIAL MONITORING

- 9.1** The Council will monitor how your Direct Payment has been spent. You will be asked to submit a return detailing your expenditure including bank statements, invoices, receipts, and any other relevant materials to evidence this. If you are on the Allpay account, you will not normally need to send these unless requested. Failure to provide the requested information may result in your Direct Payment being terminated in accordance with Clause 17.
- 9.2** If the Council identifies there is a surplus in your Direct Payment account that is not required to cover unpaid care costs given in your Personal/Child's Support Plan, the Council reserves the right to recover any surplus DP funds that the Council deems appropriate.
- 9.3** Should the surplus funds fail to be returned, the Council reserves the right to terminate your Direct Payment and seek recovery. This clause shall not apply to funds being held against services which have been delivered but not yet paid for.
- 9.4** In the event of termination of the Agreement, the Council reserves the right to recover the funds remaining in the Direct Payment account.

10. EDINBURGH COUNCIL CHARGES

- 10.1** Where the Council has a policy to charge individuals an assessed contribution towards their care services, your assessed contribution will be deducted from your Direct Payment.
- 10.2** Should you be required to pay a contribution, the Council will advise you of this prior to this charge coming into effect.

11. PAYING FOR SERVICES

- 11.1** If you have chosen to have your Direct Payment paid to a nominated third party such as a Solicitor or payroll provider, the Council will pay your Direct Payment directly to them. The nominated third party will be responsible for making the appropriate payments to your Personal Assistant/s or Provider on receipt of the appropriate time sheets or invoices from you.
- 11.2** You will remain responsible for ensuring that the appropriate payroll information for your employees is submitted to the nominated third party.
- 11.3** If you have chosen to have your Direct Payment paid to a nominated third party, you will still retain overall responsibility for your Direct Payment in accordance with Clause 4.1b.
- 11.4** If you have chosen to manage your Direct Payment yourself and are employing the services of a Provider, you will be responsible for ensuring the Provider's invoices are paid timeously.

12. EQUAL OPPORTUNITIES AND DISCRIMINATION

- 12.1** You shall not unlawfully discriminate in contracting with or employing others either directly or indirectly on such grounds as colour, race, nationality or ethnic origin, gender, physical abilities, age, religious beliefs, or sexual orientation. Without prejudice to the generality of the foregoing you shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 or other relevant or equivalent legislation. You shall ensure the observance of this condition by any employees or representatives.

13. SERVICE REVIEW

- 13.1** The Council will review your Personal/Child's Support Plan as required in accordance with Clause 3.1b. Your review will include discussion about how you are managing your Direct Payment and if this option remains the most appropriate for you.
- 13.2** The level of payment made to you may be revised following a review of your Personal/Child's Support Plan in accordance with Edinburgh Council's Eligibility Criteria. Your Assessor will advise you of any change if required.
- 13.3** Acting responsibly, you may request a review of your Personal/Child's Support Plan or your option to take a Direct Payment at any time. This is in addition to your review. You may do this by contacting your allocated Assessor or Social Care Direct on 0131-200 2324 (0131-200 2327 for Children & Families).

14. COMPLAINTS

- 14.1** Should you wish to make a complaint about the support you have received from The City of Edinburgh Council, you can do so in writing, in person, by telephone, by email or online.

A complaint may relate to situations such as: -

- Failure or refusal to provide a service.
- Inadequate quality or standard of service
- Dissatisfaction with one of our policies or its impact on the individual involved.
- Failure to properly apply law, procedure or guidance when delivering services.
- Failure of administrative process
- Delays in service provision
- Treatment by or attitude of a member of staff and/or
- Disagreement with a decision made in relation to social work services.

You can find out more about the Council's complaints procedures on the Edinburgh Council website <https://www.edinburgh.gov.uk/complaints>.

15. NOTICES

15.1 We may need to give you notice of Termination – see Section 17 below

16. EFFECT OF ANY EARLIER AGREEMENTS

16.1 This Agreement shall supersede any prior Option 1 (Direct Payment) Agreement(s) between the parties.

17. TERMINATION OF YOUR DIRECT PAYMENT

17.1 Your Direct Payment or part of your Direct Payment will be terminated if any of the following circumstances arise: -

- a) You have secured the provision of care and/or support services from a relative and the Council are not satisfied that you are eligible to do so in accordance with Clause 7 of this Agreement.
- b) The Council acting reasonably considers that you have not been managing the Direct Payment appropriately and in accordance with the requirements of this Agreement.
- c) The Council, acting reasonably, considers your care needs and personal outcomes are not being met by virtue of the services you are purchasing.
- d) You have used any of your Direct Payment for items or services not agreed with The City of Edinburgh Council and detailed in your Personal/Child's Support Plan. In this event, the Council will require reimbursement of the misspent payments in accordance with clause 9.3 of this Agreement.
- e) Your circumstances require that the local authority provide you with residential and/or nursing care for a period more than 28 days in any 12-month period.
- f) After a review of your needs and outcomes it has been determined that care and support is no longer required.
- g) You do not comply with the requirements to monitor how you Direct Payment has been used in accordance with Clause 9 (Financial Monitoring) of this Agreement.

- h) You do not comply with the requirement to review your care needs and outcomes in accordance with Clause 13 (Services Review) of this Agreement or.
- i) You have failed to comply with any of the conditions or this Agreement resulting in a material breach of contract.
- j) If you otherwise become ineligible to receive Direct Payments.

17.2 You will be given 4 weeks' notice of the termination of the Direct Payment in any of the above circumstances including confirmation of the grounds for your termination and the effective date of the termination.

17.3 If the Council considers on reasonable grounds that you have breached the criminal law or a civil law obligation in relation to the support to which the Direct Payment related, your Direct Payment may be terminated with immediate effect.

17.4 If the Council, acting reasonably, is satisfied you are at risk of significant financial abuse it shall be entitled to terminate your Direct Payment. The Council will then consult with you about alternative arrangements to support your care.

17.5 This Agreement shall terminate automatically on the date of your death.

18. PROPER LAW AND JURISDICTION

18.1 This Agreement shall be subject to and constructed and interpreted in accordance with Scots Law and, shall be subject to the exclusive jurisdiction of the Scottish Courts to which both Parties hereby submit.

By signing below, you are entering into legally binding contract and are required to comply with the conditions of this Agreement.

The Supported Person:	
Print Name:	
Signed:	 <i>(Supported Person or POA/Guardian)</i>
Date:	

PLEASE NOTE:

You are advised to read this Agreement carefully before signing. By signing this Agreement, you are committing to a legally binding contract.

If you are in any doubt about the content of this agreement you should obtain independent legal advice.

If you are signing as Power of Attorney or Welfare and/or Financial Guardianship for the named Direct Payment recipient, a copy of your certificate or order should be returned with this Agreement.

If your account is to be managed by a third party, the City of Edinburgh Council will contact your named Solicitor/payroll provider to obtain their bank details and make payment directly to them. **Please be aware that as the named recipient of the Direct Payment or the person acting on the recipients' behalf, you will be responsible for these funds.**

If no confirmation of account details is declared, payments will not be processed.

I confirm that I have read and understood the terms and conditions contained in this Self-Directed Support Option 1 Agreement and herewith accept the Option 1 (Direct Payment) budget from The City of Edinburgh Council.

Signed:		Print Name:		Date:	
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I confirm I have received a copy of my Personal/Child's Support Plan, and will use the Direct Payment funding for my assessed needs accordingly, as recorded on, and in line with, my Personal/Child's Support Plan.

Signed:		Print Name:		Date:	
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