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In Torbay, social care services are provided by Torbay and South Devon NHS Foundation Trust ('the Trust'), and funded by Torbay Council ("the Council"). In this document, 'we', 'our' or 'us' refers to the two organisations together, and should also be taken to include partners to whom we have delegated statutory duties.

Mission statement

Our purpose is to support and help people to stay as well and independent as possible, able to manage their own well-being in their own homes wherever possible. Where care is needed we want people to have a choice about how their needs are met and only have to tell their story once. People receiving services need to be at the heart of what we and providers deliver together.

Introduction

We want to make it as easy as possible for people to have choice and control in their lives; this includes how their care and support needs are met. We recognise that direct payments can be an important part of this. We want to ensure that people understand what direct payments are, the freedoms and choices that direct payments can bring, and the responsibilities that go with them. We also want to make sure the process of setting up a direct payment is as easy and smooth as possible.

Torbay and South Devon NHS Foundation Trust and Torbay Council share values and aspirations, which underpin this policy.

- To enable individuals to have greater choice and control in how they achieve their wellbeing goals.
- To support people to live a life which is as full and independent as possible.
- To support people to connect to, and be active, engaged citizens of their local community.
- To work in partnership with people and the other organisations which support them.
- To make direct payments and support as inclusive and easy to access as possible.
- To make sure that we spend public money wisely and remain within allocated budgets.

Purpose of this Policy

The purpose of this policy is to:

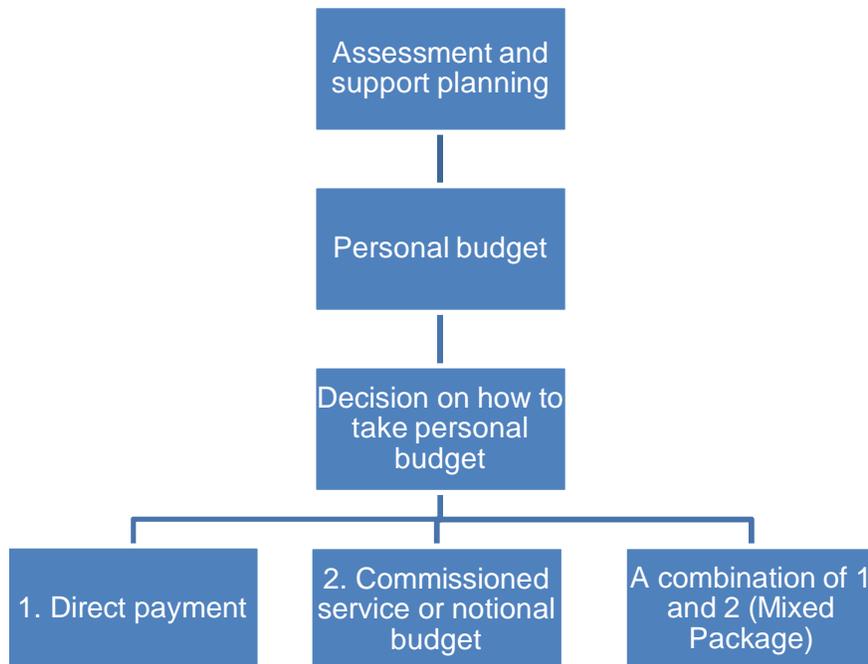
- Reflect our values and ensure that we demonstrate them in the way that we work with people.
- Help people to understand the opportunities and benefits that come with direct payments, but also the responsibilities and obligations involved.
- Ensure the legal and policy requirements in relation to direct payments are followed.
- Ensure that everyone is treated in a way which is fair and appropriate, with regard to their personal budget.
- Ensure that support provided via a direct payment achieves value for money for both individual and public.

Definitions

Throughout this document, we may use terms which are technical or unfamiliar. We have highlighted these in bold, and their definitions can be found in the glossary.

A direct payment is one way in which an adult with assessed eligible social care needs can choose to take their personal budget. A personal budget is the sum of money we have calculated that we would spend on meeting an adult's assessed eligible social care needs.

The relationship between personal budgets and direct payments is shown below:



This policy sets out the framework for enabling direct payments in Torbay, and applies to:

- All Torbay and South Devon NHS Foundation Trust employees, who are responsible for assessing needs of Torbay residents for Adult Social Care,
- Staff of any organisation to which Torbay Council have delegated the authority to carry out some of their delegated statutory duties.

Direct Payments Policy for Torbay

1. Legal and policy context

- 1.1 The legislative basis for enabling direct payments for Adult Social Care is set out in the Care Act (2014), Section 117(2C) of the Mental Health Act 2005 (the 1983 Act) and the Care and Support (Direct Payments) Regulations 2014.

2. Other relevant policies

- 2.1 Other relevant policies are:
- Charging Policy

3. Informing people, promoting choice and advocacy

- 3.1 We provide free information about direct payments to raise awareness of direct payments, the implications of having a direct payment, and how direct payments can be used. If appropriate this can be explored as part of your plan of support to meet your eligible Care Act needs.
- 3.2 People who have been detained under a section 3 of The Mental health Act get free help and support after they leave hospital. This legal right is often referred to as 'section 117 aftercare'. When a section 117 after care support plan is being developed, individuals will be advised which of their eligible needs may be met / provided through direct payments. Individuals will be provided with information about direct payments (rights and responsibilities, and how to use and manage them), so that they can make an informed decision.
People must request direct payments and may opt in or out of direct payment arrangements by notifying Torbay Adult Social Care team (Torbay and South Devon NHS Trust) at any time. This can be done by calling 01803 219700. Requests for direct payments are usually made, following discussion, during the support planning stage; but they can be requested at any other time.
- 3.3 Someone is eligible for advocacy under the Care Act 2014 if they have substantial difficulty in being fully involved in the social care processes for assessment, review and

safeguarding. Eligibility applies when there is no appropriate individual available to support and represent the person's wishes who is not paid or professionally engaged in providing care or treatment to the person or their carer.

4. Who can receive direct payments?

- 4.1 We have a duty to offer direct payments at every assessment or review, to people who are eligible to receive them. We will discuss with individuals the opportunities and choices a direct payment might provide in meeting their care and support needs, and the implications they might need to consider. Eligible individuals will be supported to make an informed choice.
- 4.2 The route to receiving a direct payment is for the adult to request one.
- 4.3 The requirements for the Trust and the Council, and organisations acting on behalf of the Council with delegated statutory duties, differ depending on whether the adult with care and support needs has the mental capacity to request a direct payment.
- 4.4 An adult with capacity who has eligible social care needs will be provided with a direct payment when requested, provided the following four conditions are fully met:
- i. The adult has capacity to make the request, and where there is an authorised person, that person meets the suitability criteria set out in section 6.4
 - ii. The local authority is not prohibited by regulations from meeting the adult's needs by making direct payments to the adult or authorised person.
 - iii. The local authority is satisfied that the adult or authorised person is capable of managing direct payments either by himself or herself, or with whatever help the authority thinks the adult or authorised person will be able to access
 - iv. The local authority is satisfied that making direct payments to the adult or authorised person is an appropriate way to meet the needs in question.
- 4.5 Adults without capacity should not automatically be prevented from having a direct payment, as long as there is an authorised person to manage the payments on their behalf. In these cases, the local authority must satisfy itself that the person meets the five conditions as set out in section 32 of the Care Act (2014). As with direct payments for people with capacity, each of these conditions must be met in their entirety. Failure to meet any of the conditions would result in the request being declined. An authorised person can request the direct payment on the person's behalf, and for this to be agreed all of these five conditions must be met:
- v. Where the authorised person is not authorised under the Mental Capacity Act 2005, a person who is so authorised supports the authorised person's request.

- vi. The local authority is not prohibited by regulations under section 33 from meeting the adult's needs by making direct payments to the authorised person.
- vii. The local authority is satisfied that the authorised person will act in the adult's best interests in arranging for the provision of the care and support for which the direct payments under this section would be used.
- viii. The local authority is satisfied that the authorised person is capable of managing direct payment by himself or herself, or with whatever help the authority thinks the authorised person will be able to access.
- ix. The local authority is satisfied that making direct payments to the authorised person is an appropriate way to meet the needs in question.

- 4.6 We will take the following steps to assess whether making direct payments to the authorised person is an appropriate way of meeting needs:
- i. So far as is reasonably practicable and appropriate, we will consult and account for the views of:
 - a) anyone named by the adult as someone to be consulted about whether direct payments should be made to the authorised person,
 - b) anyone engaged in caring for the adult or interested in their welfare,
 - c) anyone authorised under the MCA to make decisions about the adult's needs for care and support.
 - ii. So far as it is possible to ascertain, we will consider:
 - a) the adult's wishes and feelings, past and present; particularly any relevant written statement they may have made before they lost capacity,
 - b) the beliefs and values that would be likely to influence the adult's decision if they had capacity, and
 - c) other relevant factors the adult would be likely to consider, if they were able to do so.
 - iii. The Trust will provide DBS checks on behalf of direct payment recipients, where there is an authorised person managing the direct payment. Checks will be conducted upon request.

- 4.7 The authorised person must:
- Be named as the financial representative on the service user's electronic case record, to enable payments to be made.
 - Notify us if they reasonably believe that the adult has regained capacity.
 - Ensure that a DBS check has been carried out for any individual from whom a service is secured using direct payments; in accordance with the conditions outlined in 16.3 and 16.4

5 Who cannot receive direct payments?

- 5.1 If the adult does not have capacity, and there is no suitable authorised person to manage it on their behalf, in the best interests of the individual we are unable to offer a direct payment.

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- 5.2 Whilst most individuals who meet the conditions in sections 5 are eligible to receive direct payments, some exceptions do exist. These are in relation to people with drug or alcohol dependencies, who have had certain conditions imposed on them by the courts. See Appendix 1 for further details.
- 5.3 We will not make a direct payment to individuals who have savings above the threshold. See our charging policy for full details.

6. Declining a request for direct payments

- 6.1 Should a request for direct payments be declined, we will provide a written explanation of why the request was declined, including:
- Which conditions are unmet
 - Why the condition is considered to be unmet
 - What the person making the request may need to do to obtain a positive decision.
- 6.2 Information about how to appeal the decision through the complaints process will also be provided.
- 6.3 We will continue the planning process to agree with the adult whose needs must be met, how this can be achieved without the use of direct payments.

7. Calculating the amount of the direct payment

- 7.1 The following will take place in order to calculate a person's social care budget:
- A social care worker will have a conversation with the adult (or their authorised person); in order to identify whether they have needs eligible for support under the Care Act (2014), and the outcomes they would like to achieve.
 - Together, the social care worker and the adult (or their authorised person) will explore how such needs/ outcomes can be met. This will include exploring a person's own strengths and assets; such as their informal support network. It will also include exploring resources available to person in their community, and assistive technology. Wherever possible, we will empower the adult to meet their needs independently.
 - If, after exploring all of these options, the adult still has needs/outcomes which are unmet, social care funding will be considered.
 - The adult (or their authorised person) will then decide whether they would like a commissioned service or a direct payment to meet the eligible need/ outcome. The personal budget will then be calculated in line with the market costs for the service required and the mechanism providing it.
 - This information is then brought together to form the support plan.
- 7.2 The amount of the direct payment will be calculated after an assessment. If the adult decides they would like to meet their needs by directly employing someone, their budget will be calculated to include employer's additional costs, such as training and annual leave payments for the worker they employ. The adult (or the adult's authorised person)

will be responsible for ensuring the monies allocated for training, holiday pay etc. are used for this purpose.

- 7.3 We will review the amount of the direct payment on 1 April each year in line with the Council's rate setting process.

8. Financial assessment

- 8.1 All councils are able to charge for the services they provide under Section 14 of the Care Act 2014. This includes services purchased using direct payments.
- 8.2 The amount that anyone pays towards their care (their contribution) is based on a financial calculation which our Financial Assessment and Benefits (FAB) team carry out. This takes account of the individual's personal financial circumstances. This is effectively a means test. The adult's contribution is not based on the amount or type of support an adult receives, so not everybody has to pay the same amount.
- 8.3 If the FAB team confirm that the individual should pay a contribution towards the cost of their care, they will inform the direct payment recipient and the professional who assessed them that they will be required to pay this, and how it should be paid.
- 8.4 People who only have a direct payment must pay their contribution into their direct payment / pre-payment card account. If they have a mixed package which includes a direct payment and a commissioned service, the direct payment will usually be paid net of the client's contribution.
- 8.5 If the adult refuses a financial assessment, or will not complete the statement of financial circumstances with all evidence of income/expenditure required within 5 working days, we have to assume the individual has in excess of £23,250 in savings (figure correct as at 1st April 2020). This means that the individual will be liable for the full cost of their care and support and will not receive a direct payment.
- 8.6 The council will follow its procedures as outlined in the charging policy, if the adult does not pay their calculated contribution.
- 8.7 If the adult disagrees with their financial assessment, they should contact the FAB Team in the first instance to try and resolve any issues as soon as possible. The team will go through the information to check that the calculation is correct and that the assessment or decisions have considered all the relevant information in line with the charging policy. The team can be contacted by calling 01803 219700 and asking for the FAB team.
- 8.8 People who are eligible for Section 117 aftercare may still require a financial assessment if the care being delivered is independent of the needs arising from the mental disorder e.g. a 'physical' need.

8.9 The contribution an adult must pay towards the cost of their care may be backdated to the date when the financial assessment was carried out by the FAB team.

9. Types of direct payment

9.1 One-off payments can be made to the recipient for a specific item. These payments can be used for services / items which are non-chargeable such as equipment. See the separate 'Direct Payments for Equipment' policy guidance for details of this. One-off payments can also be made (for example at the start of an ongoing direct payment) to cover items such as employers' liability insurance.

9.2 On-going direct payments are made every two weeks and are paid in advance, usually backdated to the date that needs are identified. Ongoing direct payments are discussed in more detail later on.

10. How we pay direct payments

10.1 Direct payments, including emergency payments, are paid on the Council's behalf by the Trust's Finance team, and are made in accordance with our financial policies and procedures.

10.2 Direct payments for eligible adults are paid every two weeks in advance and are paid net of any contribution from the adult in need of care and support, who should add their contribution (if any) to the direct payment account.

10.3 Local authorities cannot require financial contributions for a direct payment for after care services under the Mental Health Act (MHA); these must be provided without charge to the individual with eligible needs.

10.4 All costs must be met within:

- Any agreed personal budget which includes any calculated contribution required from the adult receiving services
- The amount agreed as sufficient to meet the cost of s117 after care services.

11. Pre-payment cards

11.1 The Trust's preferred method of payment for on-going direct payments to adults, is via a prepayment card. This is a Mastercard which looks like any other credit or debit card, but no credit checks are required and it cannot go overdrawn. The direct payment funds are loaded onto the card, which can then be used to pay for the agreed care and support services.

11.2 If an adult makes a financial contribution towards the cost of their care, this should be paid directly into the prepayment card account.

- 11.3 The prepayment card can be issued in the name of either the adult receiving care and support, or the adult's authorised person.
- 11.4 The adult, or the adult's authorised person, can choose to set up their own bank account for direct payments if they so wish. This must be a new account, separate from their own personal accounts. If they choose to do this, they are responsible for retaining and providing all financial records, for monitoring and audit purposes, as set out in section 19.

12. Using direct payments

- 12.1 Direct payments must be used to pay for the things identified in the care and support plan to meet an adult's agreed outcomes. If a direct payment includes a payment to cover tax, NI, holiday pay, redundancy insurance etc. it must be used for this purpose.
- 12.2 Direct payments must be used to purchase services which are safe, legal, value for money and which adequately safeguard and promote the adult's welfare and wellbeing.
- 12.3 Direct payments may be subject to conditions imposed by the Council or the Trust, and may be discontinued and / or recovered if we have reason to believe that direct payments may have been misspent or accumulated without good reason.

13. Contingency funds

- 13.1 Direct payment recipients can retain an agreed level of contingency funding, where the Trust deems this appropriate to ensure continuity and flexibility of care and support; in line with the adult's care and support plan.
- 13.2 These can be used to cover specific one-off requirements and / or fluctuating needs, and should be recorded on the adult's care and support plan. In specific circumstances, one-off payments can be agreed for planned needs and should be recorded in the adult's support plan.

Example: 6-week contingency

John receives a direct payment of £50 a week (£200 a month). This means up to £500 can be in his account at any one time. £200 a month is committed on wages for his PA and the remaining £300 is his contingency.

John's Care and Support Plan details what this contingency can be used for, and includes covering sick pay and annual leave for his Personal Assistant (PA) and additional PA hours when his condition flares up.

14. What direct payments cannot be used for:

- 14.1 Direct Payments must ONLY be used for services and support which are safe and appropriate, and that help and individual meet the needs set out in their support plan.

14.2 Direct payments cannot be used for care services, or support in managing direct payments, provided by the adult's spouse/partner, or a close family member living in the same household as the adult; except in *exceptional circumstances*. Circumstances would be considered exceptional where there is no suitable alternative available to meet the adult's agreed outcomes. In such circumstances, the person providing care and support *must* be employed to do so by the adult, or their authorised person.

The Care Act gives the following example of these exceptional circumstances:

Example: Direct payment for services provided by a close family member

James has severe learning difficulties, as well as various physical disabilities. He has serious trust issues and a unique way of communicating that only his family, through years of care as a child, can understand. The local authority agrees that the best way to meet James's needs and outcomes would be for his parents to be employed to provide his care and support; as he would not engage with anyone else and it would likely cause him distress.

Direct payments also cannot be used for any of the following:

- Any service directly provided by the Council, or the Trust.
- Services, equipment and / or minor adaptations which are the responsibility of other public bodies.
- Agency Fees for 'introductory' home care agencies - If a direct payment recipient chooses to use an 'introductory' home care agency, the direct payment may be used to fund the costs of meeting the adult's direct care and support needs but not the introduction/administration fee to the agency.
- A social care direct payment cannot be used to provide or arrange any health service or facility which is required to be provided by the NHS.
- Long-term residential or nursing care but can be used to pay for:
 - Short stays of up to 4 consecutive weeks in any 12-month period. In calculating the period of 4 weeks, a stay of less than 4 weeks is added to any succeeding stay if the two stays are separated by a period of less than 4 weeks; but not otherwise.
 - Non-residential services, for example to trial independent living or to take part in daytime activities.
- Health services such as:
 - Primary medical services provided by GPs, as part of their primary medical service contractual terms and conditions
 - Vaccination or immunization
 - Health screening
 - NHS Health Checks
 - Urgent or emergency treatment services such as unplanned in-patient admissions to hospital or accident and emergency
 - Surgical procedures
 - NHS charges such as prescription or dental charges

- Gambling purposes
- Repayment of a debt
- Anything illegal or unlawful
- Alcohol, tobacco or drugs
- Day-to-day living expenses such as groceries or household bills, or to pay a loan or mortgage.

14.3 Direct payments cannot be used to duplicate public funding that is already coming from another source, for example, transport costs which should be covered by Disability Living Allowance if received.

14.4 An authorised person must not use direct payments to pay themselves to provide services to the adult without capacity, except in exceptional circumstances as described in 15, and expressly authorised in writing by us.

14.5 Where a support plan indicates that the direct payment may be used to fund things that may be seen as non-traditional and 'risky', more frequent reviews and financial auditing may be required to ensure that the expenditure is meeting the adult's outcomes as set out in their support plan.

15 Managing direct payments

15.1 Anyone who agrees to be responsible for managing direct payments must be capable of managing direct payments either independently or with help.

15.2 In this section, the following will be referred to as 'the group':

- Adults with capacity
- Authorised persons

15.3 Individuals defined in the group above can nominate a third party to assist them to manage direct payments in whatever way they require. The third party is known as the **authorised person** and is usually a family member or a friend.

15.4 Individuals in the group defined above may purchase assistance, for example with record keeping, payroll and other employment related services or Full Financial Accounts (in exceptional circumstances – see Appendix 3), from a direct payment support service of their choice.

15.5 If the direct payment recipient chooses to use their direct payment to purchase support from a CQC Registered home care agency, they are still able to access support with paying invoices etc from a direct payment support service of their choosing, but they must fund this themselves. The cost of the direct payment support service must not come out of their direct payment.

- 15.6 Regardless of whether an individual in the group above receives support from a third party, the individual in the group above remains responsible and accountable for how direct payments are used.
- 15.7 An authorised person acting on behalf of someone who lacks capacity is in a position of trust and is as liable as a direct payment recipient with capacity would be for any misuse of direct payments.
- 15.8 We maintain the right to withdraw the direct payment if we believe that the direct payment is not being appropriately managed by the adult (or their authorised person), or that retaining the direct payment would not be in the best interests of the adult.

16. Working with a Personal Assistant

- 16.1 Individuals may use direct payments to employ someone to provide care and support (usually referred to as a Personal Assistant), or to pay an agency to provide services. In some circumstances, people may also engage a self-employed Personal Assistant. Individuals may have a number of Personal Assistants supporting them.
- 16.2 The direct payment recipient must:
- Be advised that there are legal responsibilities involved in becoming an employer and maintaining good employment practices, including registering with HMRC as an employer.
 - Be strongly advised to seek advice about employer legal responsibilities, including being responsible for all employment-related costs, for example redundancy, and pension costs.
 - Obtain employers' liability insurance if they are to become an employer.
 - Satisfy themselves that Personal Assistants and/or agency staff are qualified and suitable to carry out identified care and support tasks. If using Personal Assistants or a non-CQC registered introductory agency, direct payment recipients are responsible for this.
 - Ensure that adequate contingency plans are put in place to provide continuity of care in the event that a Personal Assistant is unable to attend a shift (e.g. in the case of sickness, severe weather, or any other event preventing them from attending).
- 16.3 A PA may be treated as self-employed by HM Revenue & Customs (HMRC) for tax purposes but still be considered an employee in employment law, or for auto-enrolment into a workplace pension. It is very important for the direct payment recipient to determine the employment status of the PA before the PA starts work; and ensure that an appropriate contract or Service Agreement is in place between the two parties.
- 16.4 People with capacity are not obliged to carry out Disclosure and Barring Services (DBS) checks for people they employ through direct payments except where there are children either living in or frequently visiting the home. However, the Trust and Council strongly recommend that DBS checks are obtained for all personal assistants.

16.5 An authorised person must carry out DBS checking or obtain verification that DBS checking has returned a satisfactory result for any adult from whom a service is secured through direct payments where the authorised person is:

- A body corporate or unincorporated body of persons or
- An individual who is not the adult's spouse / partner, a close family member (as defined in the Glossary) or a friend of the adult who is involved in the adult's care.

17. Training

17.1 It is reasonable to assume that if the care and support plan identifies a need for a PA to carry out specific social care tasks, consideration should also be given to their training needs. If the direct payment recipient is employing the PA, they will be responsible for meeting these needs. Funding may also be needed for training updates, and provision for training for any new skills required as needs change.

17.2 Both employed and self-employed PAs can access training provided by the Trust. Bespoke training required to carry out certain PA duties (such as hoisting) may be arranged with the Trust's health and social care team, where appropriate.

17.3 Training should be provided by a competent person with a standard recognised as adequate for the task. The PA receiving the training should always keep full records of training given, including dates. There should be written evidence of competence assessments, where possible, against recognised standards such as National Occupational Standards.

17.4 Risk should be considered and where necessary a risk management plan put in place. There should be regular monitoring of competencies and access to regular training updates. This is especially important where the adult receiving support has a condition that is complex, unstable and/or deteriorating.

18 The direct payments agreement

18.1 Before receiving direct payments, the respective direct payments agreement must be signed and a copy of the signed agreement provided to all signatories.

18.2 **A Direct Payment On-going Agreement** must be signed by the adult with capacity, or by the Authorised Person for adults without capacity. The following may also need to be signed:

- **Form DP3 - Nominated Agent**, where a third party is nominated to manage payroll and financial record keeping for the direct payment

- **Form DP4 - Authorised Person**, Where the person in need of care and support has been assessed as lacking capacity to request the Direct Payment, a suitable Authorised Person can request and manage the Direct Payment on the person's behalf.

19 Monitoring and review of direct payments

- 19.1 The Trust or Council and their partners with delegated responsibilities will inform an individual about what records they must retain and what information they will be required to provide at each review before the direct payment agreement is entered into.
- 19.2 For direct payment recipients using a pre-payment card, receipts/ invoices/ evidence of expenditure may be required upon first review and selected randomly on subsequent reviews, but all receipts should be retained as directed by the Trust's Finance team; in case a full audit is required
- 19.3 For new direct payment recipients not using a pre-payment card, all receipts and bank statements will need to be retained for audit purposes. The Finance team will contact recipients after 6 weeks and a review of the account will be conducted after 3 months.
- 19.4 All direct payment accounts will be audited by Finance after 3 months. After this first audit, the account will be risk assessed to see whether receipts, invoices and statements should be sent in quarterly, every six months or annually.
- 19.5 The regularity of sending returns in to Finance will be reviewed regularly. Where there are no issues or queries relating to the direct payment account, the frequency of sending in returns may be reduced.
- 19.6 Reviews of the care and support being purchased via the direct payment and / or the finances will also be carried out at any time when we consider that:
- There has been a change in capacity, or
 - The adult previously eligible, is no longer eligible for S117, or
 - Any of the conditions listed at section 6 above are no longer met, or
 - Direct payments have not been used as intended, or
 - The adult's safety and welfare have been compromised or
 - There has been any change which may adversely affect the effectiveness and intention of the support arrangements.
- 19.7 The care and support review will establish if direct payments are being used to meet needs as intended, conditions are met and public monies are being used effectively.
- 19.8 Care and support reviews must involve the adult, any unpaid Carer(s) they may have, any authorised person, any family member providing paid administrative or management

support (as specifically approved by the us – see section 15 above) and anyone else that the adult requests be involved.

19.9 If the adult lacks capacity to make such a request, anyone who is authorised under the MCA to make personal welfare decisions (if different from the authorised person) or if there is no such individual anyone who appears to be interested in the adult's welfare should be involved.

20 When some or all of the direct payment needs to be returned

20.1 We will require full or partial repayment of direct payments if any condition is unmet or if we have reason to believe that direct payments have been used for purposes other than to meet needs as specified in the plan.

20.2 We may require repayment of any unspent direct payment if they are not required to meet needs as set out in the plan.

20.3 We will require repayment of excess funds accumulated in the dedicated bank account where there is no reasonable explanation for the surplus.

20.4 Direct Payments do not form part of an estate in the event that someone dies while receiving them. The money at all times belongs to us and remains public funds.

21 Ending direct payments

21.1 People receiving direct payments, either for themselves or on behalf of someone else, may decide at any time that they no longer wish to receive direct payments on giving 4 weeks written notice to us. We can agree to vary this notice period according to the individual's circumstances.

21.2 Notice will be given before direct payments are discontinued, unless in exceptional circumstances.

21.3 We will end direct payments if:

- The adult is no longer eligible for or no longer requires the services for which direct payments are made.
- The adult becomes excluded from receiving direct payments because they have been placed under a condition or requirement by the Courts in relation to drug and / or alcohol dependencies.
- Any of the conditions listed in section 4 are longer met.
- Direct payments are not safeguarding or promoting the adult's welfare.

- We believe that the direct payment is not being managed appropriately.

21.4 We may suspend or end direct payments either permanently or temporarily if:

- The adult does not require assistance because their condition has improved and / or they do not need the services that direct payments were intended to secure.
- Any condition attached by us is unmet or we have reason to believe that direct payments have been used for purposes other than to meet needs as specified in the plan.
- The adult fails to pay any assessed financial contribution (for adult social care direct payments only) into the direct payments account.
- Given all the circumstances, we consider it appropriate to end direct payments.

22 Changes in circumstances

22.1 The adult should inform their social care case worker of any change in the person's personal or financial circumstances that might affect their direct payment e.g. change of address or increase / decrease in their personal income, admission to hospital, or emergency placement.

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

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

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

23 Complaints

- 23.1 People will be provided with information about how to use the complaints procedure related to the individual organisation carrying out delegated statutory duties on behalf of the Trust and the Council, including their right to access advocacy as part of the appeals process.
- 23.2 Any person may use the complaints procedure if they are dissatisfied with the decision related to direct payments or the support they receive.
- 23.3 Additionally, people who receive, or consider that they should receive, direct payments have the same rights to access the Trust's complaints procedure as people whose support is provided directly or arranged by us.

24 Reviewing this policy

- 24.1 This policy will be reviewed three years from the date of implementation or sooner if required.
- 25.2 Any review of this policy must include individuals who have lived recent experience of direct payments.

Glossary of terms

Adult	For the purposes of this policy, an adult is someone over the age of 18 years.
Adult with capacity	Someone over the age of 18, who has the mental capacity to make decisions about direct payments.
Adult without capacity	<p>Someone over the age of 18, who is not deemed to have the mental capacity to make decisions about direct payments. People are always assumed to have capacity until established otherwise. Where there is any doubt about an adult's capacity to make decisions about direct payments, mental capacity will be assessed in accordance with our Mental Capacity Act policy.</p> <p>An adult will only be deemed to be without capacity when it has been established through a mental capacity assessment that this is the case.</p>
Assessment – of needs	An assessment of an individual's needs for social care, support or s117 after care services to enable them to live as independently as possible.
Assessment - financial	<p>An assessment of an individual's financial circumstances to determine whether or not they must contribute towards the cost of services required to meet eligible needs.</p> <p>No financial assessment is required for s117 after care services, children's social care or personal health budget direct payments as these must be provided free of charge.</p>
Authorised person	<p>An authorised person is someone who:</p> <ul style="list-style-type: none"> • is authorised under the Mental Capacity Act 2005 to make decisions about the adult's needs for care and support (i.e. is the holder of a lasting power of attorney given to them by the adult before they lost capacity or a Court appointed deputy), or • where the person is not authorised as mentioned above, a person who is so authorised agrees with the local authority that the person is a suitable person to whom to make direct payments, or • where the person is not authorised as mentioned above and there is no person who is so authorised, the local authority considers that the person is a suitable person to whom to make direct payments.
Carer	Someone aged 16+ who provides unpaid care for an adult, who could not manage without this help.

<p>Close family member</p>	<p>Someone who lives in the same household as the adult who is the adult's:</p> <ul style="list-style-type: none"> • Parent or parent-in-law • Son or daughter • Son-in-law/daughter-in-law • Stepson or stepdaughter • Brother or sister • Aunt or uncle • Grandparent, or • The spouse/partner of any of the people listed and living in the same household as the adult.
<p>Co-production</p>	<p>Co-production is defined by Think Local Act Personal as: “When you as an individual are involved as an equal partner in designing the support and services you receive. Co-production recognizes that people who use social care services (and their families) have knowledge and experience that can be used to help make services better, not only for themselves but for other people who need social care.”</p>
<p>Commissioned service</p>	<p>Commissioned services are those which have been designed, developed and purchased centrally by the Trust or the Council. As these services are purchased directly by us, people with direct payments are not able to purchase them (as this would result in double funding for these services). If an adult chooses solely commissioned services, they would not receive a direct payment.</p>
<p>DBS check</p>	<p>Screening through Disclosure and Barring Services. This checks criminal history and identifies people barred from working with children and vulnerable adults.</p>
<p>Delegated statutory duties</p>	<p>We have to assess people within Torbay who have or appear to have the need for care and support. This is called our statutory duty. Where we have commissioned a third-party organisation to undertake this duty on our behalf, it is called a delegated statutory duty.</p>
<p>Direct payments</p>	<p>Payment of our contribution towards a personal budget direct to a dedicated bank account, so that the adult, or someone authorised to act on their behalf, can arrange support services instead of having them arranged by us. Direct payments may also be provided in most instances to arrange s117 after care services.</p>
<p>Direct payments agreement</p>	<p>The written agreement which sets out the terms and conditions applicable to direct payments.</p>
<p>Duty to make direct payments</p>	<p>Where we have a legal obligation to make direct payments to eligible people because all conditions are met.</p>

Integrated Personal Commissioning (IPC)	Integrated personal commissioning is a new voluntary approach to joining up health and social care for adults with complex needs and also health, social care and education for children. Individuals should have one assessment and one support plan which looks at all their health and social care needs. Individuals may also have a single budget which combines health, social care and other sources of funding such as education.
MCA	Mental Capacity Act 2005
Mental capacity	<p>Having mental capacity means that a person is able to make their own decisions. The Mental Capacity Act says that a person is unable to make a particular decision if they cannot do one or more of the following four things.</p> <ul style="list-style-type: none"> • Understand information given to them. • Retain that information long enough to be able to make the decision. • Weigh up the information available to make the decision. • Communicate their decision - this could be by talking, using sign language or even simple muscle movements such as blinking an eye or squeezing a hand. <p>The Act is specifically designed to cover situations where someone is unable to make a decision because the way their mind or brain works is affected, for instance, by illness or disability, or the effects of drugs or alcohol.</p>
MHA	Mental Health Act 1983
Minor adaptation	An adaptation is defined as minor when the total cost including supply and fitting is less than £1000.
Mixed package	If an adult chooses a direct payment to meet some of their needs and commissioned services to meet others, they have a mixed package of care. All these options should be recorded on the adult's care and support plan.
Authorised person	<p>A person authorised by an adult with capacity to assist with day to day management of services and / or management of direct payment funds.</p> <p>The adult with capacity at all times remains responsible and accountable for how direct payments are used.</p>
Notional budget	Notional budgets apply to personal health budget holders and apply where we make the arrangements for the agreed care and support. They are the same as a commissioned service for adult social care.

Personal budget	The amount of money allocated by us to fund the assessed eligible care and support required. The personal budget for adults aged 18 and over is means tested. This means the adult may be required to make a financial contribution towards the total amount of their personal budget.
Personal health budget	The amount of money allocated by us to fund the assessed eligible health care and support required.
Personalised care and support	Tailoring care and support to the needs, wishes and preferences as far as this is possible so that the person concerned has as much choice and control over how their needs are met.
Plan	A plan which summarises how a person's needs will be met and which includes the details of needs to be met from direct payments.
Reassessment	A reassessment of needs for social care and / or support.
Review	Monitoring and review of direct payment arrangements to ensure that they continue to meet the needs. Usually carried out concurrently with a review of the adult's plan
Service User	An adult assessed by us as eligible to receive health, care and / or support services.
S117 after care services	A wide range of services necessary to meet a need arising from 's mental disorder when a person ceases to be detained under the MHA.

Adults Whose Needs the Local Authority Must Not Meet By Making Direct Payments

Direct payments may not be used to meet the needs of people who are:

- a) **subject to a drug rehabilitation requirement**, as defined by section 209 (drug rehabilitation requirement) of the Criminal Justice Act 2003 (“the 2003 Act”), specified in a community order (as defined by section 177 (community orders) of that Act, or a suspended sentence order (as defined by section 189 of that Act);
- b) **subject to an alcohol treatment requirement**, as defined by section 212 of the Criminal Justice Act 2003, specified in a community order (as defined by section 177 of that Act), or a suspended sentence order (as defined by section 189 of that Act);
- c) **released from prison on licence –**
 - i. under Chapter 6 of Part 12 (sentencing: release, licenses and recall) of the 2003 Act or Chapter 2 of Part 2 (effect of custodial sentences: life sentences) of the Crime (Sentences) Act 1997 (“the 1997 Act”), **subject to a non-standard licence condition requiring the offender to undertake offending behaviour work to address drug or alcohol related behaviour**; or
 - ii. **subject to a drug testing requirement** under section 64 (as amended by the Offender Rehabilitation Act 2014) (release on licence etc: drug testing) **or a drug appointment requirement** under section 64A (release on licence etc: drug appointment) of the Criminal Justice and Courts Services Act 2000;
- d) **required to comply with a drug testing or a drug appointment requirement** specified in a notice given under section 256AA (supervision after end of sentence of prisoners serving less than 2 years) of the 2003 Act;
- e) **required to submit to treatment for their drug or alcohol dependency** by virtue of a community rehabilitation order within the meaning of section 41 of the Powers of Criminal Courts (Sentencing) Act 2000 or a community punishment and rehabilitation order within the meaning of section 51 of that Act;
- f) **subject to a drug treatment and testing order** imposed under section 52 of the Powers of Criminal Courts (Sentencing) Act 2000;
- g) **required to submit to treatment for their drug or alcohol dependency** by virtue of a requirement of a community payback or probation order within the meaning of sections 227 to 230 of the Criminal Procedure (Scotland) Act 1995 or **subject to a drug treatment and testing order** within the meaning of section 234B of that Act; or
- h) **released on licence under section 22 or section 26** of the Prisons (Scotland) Act 1989 (release on licence etc) or under section 1 (release of short-term, long-term and life prisoners) or 1AA (release of certain sexual offenders) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 and subject to a condition that they **submit to treatment for their drug or alcohol dependency**.

Taken from the Care and Support (Direct Payments) Regulations 2014. Regulation 2, Schedule 1.

Document Control Information

This is a controlled document and should not be altered in any way without the express permission of the author or their representative.

Please note this document is only valid from the date approved below, and checks should be made that it is the most up to date version available.

If printed, this document is only valid for the day of printing.

This guidance has been registered with the Trust. The interpretation and application of guidance will remain the responsibility of the individual clinician. If in doubt contact a senior colleague or expert. Caution is advised when using clinical guidance after the review date, or outside of the Trust.

Ref No:	2646		
Document title:	Direct Payments Policy		
Purpose of document:	<ul style="list-style-type: none"> • Reflect our values and ensure that we demonstrate them in the way that we work with people. • Help people to understand the opportunities and benefits that come with direct payments, but also the responsibilities and obligations involved. • Ensure the legal and policy requirements in relation to direct payments are followed. • Ensure that everyone is treated in a way which is fair and appropriate, with regard to their personal budget. • Ensure that support provided via a direct payment achieves value for money for both individual and public. 		
Date of issue:	8 January 2021	Next review date:	8 January 2024
Version:	1	Last review date:	
Author:	Deputy Community Services Manager		
Directorate:	Adult Social Care Professional Practice		
Equality Impact:	The guidance contained in this document is intended to be inclusive for all patients within the clinical group specified, regardless of age, disability, gender, gender identity, sexual orientation, race and ethnicity & religion or belief		
Committee(s) approving the document:	Care and Clinicals Policies Group		
Date approved:	12 November 2020		
Links or overlaps with other policies:			

Have you identified any issues on the Rapid (E)quality Impact Assessment. If so please detail on Rapid (E)QIA form.	Yes <input type="checkbox"/>
	<i>Please select</i>

	Yes	No
Does this document have implications regarding the Care Act? <i>If yes please state:</i>	<input type="checkbox"/>	<input type="checkbox"/>
Does this document have training implications? <i>If yes please state:</i>	<input type="checkbox"/>	<input type="checkbox"/>
Does this document have financial implications? <i>If yes please state:</i>	<input type="checkbox"/>	<input type="checkbox"/>
Is this document a direct replacement for another? <i>If yes please state which documents are being replaced:</i>	<input type="checkbox"/>	<input type="checkbox"/>

Document Amendment History

Date	Version no.	Amendment summary	Ratified by:
8 January 2021	1	New	Care and Clinicals Group

The Mental Capacity Act 2005

The Mental Capacity Act provides a statutory framework for people who lack capacity to make decisions for themselves, or who have capacity and want to make preparations for a time when they lack capacity in the future. It sets out who can take decisions, in which situations, and how they should go about this. It covers a wide range of decision making from health and welfare decisions to finance and property decisions

Enshrined in the Mental Capacity Act is the principle that people must be assumed to have capacity unless it is established that they do not. This is an important aspect of law that all health and social care practitioners must implement when proposing to undertake any act in connection with care and treatment that requires consent. In circumstances where there is an element of doubt about a person's ability to make a decision due to 'an impairment of or disturbance in the functioning of the mind or brain' the practitioner must implement the Mental Capacity Act.

The legal framework provided by the Mental Capacity Act 2005 is supported by a Code of Practice, which provides guidance and information about how the Act works in practice. The Code of Practice has statutory force which means that health and social care practitioners have a legal duty to have regard to it when working with or caring for adults who may lack capacity to make decisions for themselves.

“The Act is intended to assist and support people who may lack capacity and to discourage anyone who is involved in caring for someone who lacks capacity from being overly restrictive or controlling. It aims to balance an individual's right to make decisions for themselves with their right to be protected from harm if they lack the capacity to make decisions to protect themselves”. (3)

All Trust workers can access the Code of Practice, Mental Capacity Act 2005 Policy, Mental Capacity Act 2005 Practice Guidance, information booklets and all assessment, checklists and Independent Mental Capacity Advocate referral forms on ICON.

<https://icon.torbayandsouthdevon.nhs.uk/areas/mental-capacity-act/Pages/default.aspx>

Infection Control

All staff will have access to Infection Control Policies and comply with the standards within them in the work place. All staff will attend Infection Control Training annually as part of their mandatory training programme.

Rapid (E)quality Impact Assessment (EqIA) *(for use when writing policies)*

Policy Title (and number)		Version and Date	
Policy Author			
An (e)quality impact assessment is a process designed to ensure that policies do not discriminate or disadvantage people whilst advancing equality. Consider the nature and extent of the impact, not the number of people affected.			
Who may be affected by this document?			
Patients/ Service Users <input type="checkbox"/>	Staff <input type="checkbox"/>	Other, please state... <input type="checkbox"/>	
Could the policy treat people from protected groups less favourably than the general population? <i>PLEASE NOTE: Any 'Yes' answers may trigger a full EIA and must be referred to the equality leads below</i>			
Age	Yes <input type="checkbox"/> No <input type="checkbox"/>	Gender Reassignment	Yes <input type="checkbox"/> No <input type="checkbox"/>
Race	Yes <input type="checkbox"/> No <input type="checkbox"/>	Disability	Yes <input type="checkbox"/> No <input type="checkbox"/>
Gender	Yes <input type="checkbox"/> No <input type="checkbox"/>	Pregnancy/Maternity	Yes <input type="checkbox"/> No <input type="checkbox"/>
Sexual Orientation			Yes <input type="checkbox"/> No <input type="checkbox"/>
Religion/Belief (non)			Yes <input type="checkbox"/> No <input type="checkbox"/>
Marriage/ Civil Partnership			Yes <input type="checkbox"/> No <input type="checkbox"/>
Is it likely that the policy could affect particular 'Inclusion Health' groups less favourably than the general population? (substance misuse; teenage mums; carers¹; travellers²; homeless³; convictions; social isolation⁴; refugees)			Yes <input type="checkbox"/> No <input type="checkbox"/>
Please provide details for each protected group where you have indicated 'Yes'.			
VISION AND VALUES: Policies must aim to remove unintentional barriers and promote inclusion			
Is inclusive language⁵ used throughout?			Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/>
Are the services outlined in the policy fully accessible⁶?			Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/>
Does the policy encourage individualised and person-centred care?			Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/>
Could there be an adverse impact on an individual's independence or autonomy⁷?			Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/>
EXTERNAL FACTORS			
Is the policy a result of national legislation which cannot be modified in any way?			Yes <input type="checkbox"/> No <input type="checkbox"/>
What is the reason for writing this policy? (Is it a result in a change of legislation/ national research?)			

Who was consulted when drafting this policy?		
Patients/ Service Users <input type="checkbox"/>	Trade Unions <input type="checkbox"/>	Protected Groups (including Trust Equality Groups) <input type="checkbox"/>
Staff <input type="checkbox"/>	General Public <input type="checkbox"/>	Other, please state... <input type="checkbox"/>
What were the recommendations/suggestions?		
Does this document require a service redesign or substantial amendments to an existing process? <i>PLEASE NOTE: 'Yes' may trigger a full EIA, please refer to the equality leads below</i>		Yes <input type="checkbox"/> No <input type="checkbox"/>
ACTION PLAN: Please list all actions identified to address any impacts		
Action	Person responsible	Completion date
AUTHORISATION:		
By signing below, I confirm that the named person responsible above is aware of the actions assigned to them		
Name of person completing the form		Signature
Validated by (line manager)		Signature

Please contact the Equalities team for guidance:

For Devon CCG, please email d-ccg.equalityanddiversity@nhs.net & d-ccg.QEIA@nhs.net
 For Torbay and South Devon NHS Trusts, please call 01803 656676 or email pfd.sdhct@nhs.net

This form should be published with the policy and a signed copy sent to your relevant organisation

Consider any additional needs of carers/ parents/ advocates etc, in addition to the service user

² Travelers may not be registered with a GP - consider how they may access/ be aware of services available to them

³ Consider any provisions for those with no fixed abode, particularly relating to impact on discharge

⁴ Consider how someone will be aware of (or access) a service if socially or geographically isolated

⁵ Language must be relevant and appropriate, for example referring to partners, not husbands or wives

⁶ Consider both physical access to services and how information/ communication is available in an accessible format

⁷ Example: a telephone-based service may discriminate against people who are d/Deaf.

Whilst someone may be able to act on their behalf, this does not promote independence or autonomy

Clinical and Non-Clinical Policies – Data Protection

Torbay and South Devon NHS Foundation Trust (TSDFT) has a commitment to ensure that all policies and procedures developed act in accordance with all relevant data protection regulations and guidance. This policy has been designed with the EU General Data Protection Regulation (GDPR) and Data Protection Act 2018 (DPA 18) in mind, and therefore provides the reader with assurance of effective information governance practice.

The UK data protection regime intends to strengthen and unify data protection for all persons; consequently, the rights of individuals have changed. It is assured that these rights have been considered throughout the development of this policy. Furthermore, data protection legislation requires that the Trust is open and transparent with its personal identifiable processing activities and this has a considerable effect on the way TSDFT holds, uses, and shares personal identifiable data.

Does this policy impact on how personal data is used, stored, shared or processed in your department? Yes No

If yes has been ticked above it is assured that you must complete a data mapping exercise and possibly a Data Protection Impact Assessment (DPIA). You can find more information on our [GDPR](#) page on ICON (intranet)

For more information:

- Contact the Data Access and Disclosure Office on dataprotection.tsdf@nhs.net,
- See TSDFT's [Data Protection & Access Policy](#),
- Visit our [Data Protection](#) site on the public internet.