

# LINCOLNSHIRE COUNTY COUNCIL DIRECT PAYMENTS POLICY 2017

<b>Directorate</b>	Adult Care and Community Wellbeing		
<b>Service Area</b>	Adult Frailty and Long term Conditions Specialist Adult Services Carers Children and Families		
<b>Author</b>	Gina Thompson / Theo Jarratt		
<b>Approved by</b>	DMT	<b>Version:</b>	Published 1.0
<b>Approval date</b>	12/06/2017	<b>Review date:</b>	June 2020

## 1. Policy Introduction

- Legal and Regulatory Framework
- Equality and Diversity

## 2. Purpose

## 3. Scope, Definitions and related Policies

## 4. Policy Details

- Eligibility for a Direct Payments
- Nominee and Authorised persons
- Use of Direct Payments
- Equipment
- Pooled budgets
- Responsibilities

## 5. Direct Payments Procedures Safeguarding and Disclosure and Barring Service (DBS) Checks

## 6. Finance and Monitoring

## 7. Complaints

### Terminology:

Term	Meaning
<b>Authorised Person</b>	If someone has been found as lacking the capacity to consent to receive Direct Payments, and yet Direct Payments would be beneficial, a Direct Payment can be made if there is someone who is willing and able to fulfil the role of an "authorised person". The law tells the Council who can act as this authorised person. This is either: <ul style="list-style-type: none"><li>a) A Court of Protection deputy for personal welfare or an Attorney under a Lasting Power of Attorney for personal welfare</li><li>b) where the person is not authorised as mentioned in paragraph (a), but 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</li><li>c) Where no one fills a) or b) above the authorised person can be someone who the authority considers to be a suitable person for Direct Payment purposes.</li></ul>
<b>Carer</b>	An adult who provides or intends to provide unpaid care for another adult (needing care)
<b>Direct Payments</b>	"Monetary payments made to individuals who request to receive one to meet some or all of their eligible care and support needs
<b>Direct Payments Recipient</b>	A Direct Payments recipient is the person receiving the Direct Payments and who has the legal obligations to manage this appropriately. This may be the individual in need of care and support, a nominee, or an authorised person managing the Direct Payment.
<b>Delegated Responsibility/Associated Partners</b>	Delegation is the assignment of any responsibility or authority to another organisation to carry out specific activities or services, such as providing Mental Health Services. Associated Partners are organisations which may be charities or businesses, or other public service providers, the Police and the NHS. The Council may commission Associated

	Partners to provide services on their behalf, which may include the delegation of the undertaking of some statutory functions.
<b>Family: (Close Family)</b>	(a) the spouse or civil partner of the adult; (b) a person who lives with the adult as if their spouse or civil partner; (c) a person living in the same household as the adult who is the adult's — (i) parent or parent-in-law, (ii) son or daughter, (iii) son-in-law or daughter-in-law, (iv) stepson or stepdaughter, (v) brother or sister, (vi) aunt or uncle, or (vii) grandparent; (d) the spouse or civil partner of any person specified in subparagraph (c) above who lives in the same household as the adult; and (e) a person who lives with any person specified in subparagraph (c) as if that person's spouse or civil partner.
<b>Individual/s or Persons</b>	Individuals or persons eligible for support include residents of Lincolnshire and/or their carers.
<b>Nominee</b>	A nominated person is someone an adult with capacity has chosen to help with on-going management of the money, or receive and manage the Direct Payments on behalf of the person. Any help given can vary depending on your needs.
<b>Practitioner/Allocated worker</b>	A member of staff employed by the council or by a delegated service provider to provide professional support to the person and to undertake care and support assessments and reviews. Ordinarily this would be a Qualified Practitioner, Social Worker or Community Care Officer.
<b>LCC</b>	Lincolnshire County Council

## 1. Introduction

### 1.1 Legal and Regulatory Framework

1.1.2 Direct Payments along with personal budgets and personalised care planning, has been mandated for the first time and is set out in the Care Act 2014, Section 117 (2C) of the Mental Health Act 1983 and the Care and Support (Direct Payments) Regulations 2014. This Policy along with the procedures and practice guidance is based on the Council's understanding of the relevant legislation, government guidance, and sets out how the Council should go about performing its care and support responsibilities and ensure that Lincolnshire County Council are able to meet their statutory obligations in relation to:

- The Care Act 2014
- Care and Support (Direct Payments) Regulations 2014
- Care and Support Statutory Guidance issued with the Care Act 2014
- Section 117(2C) of the Mental Health Act
- Children and Families Act 2014
- Mental Capacity Act 2005
- Special Educational Needs (Personal Budgets & Direct Payments) Regulations 2014
- Chronically Sick and Disabled Persons Act 1970
- Children Act 1989
- Equality Act 2010
- Think Local Act Personal (TLAP): Improving Direct Payments delivery 2011

1.1.3 This Policy is to set out the guidelines for the delivery of Direct Payments within Lincolnshire County Council Adult Care and Children's Services. It applies equally to adults with care and support needs, their Carers and for those with parental responsibility for a child who has an Education, Health & Care Plan (EHCP). The Policy has been produced to reflect recent government changes and changes to our internal procedures and practice.

1.1.4 This Policy will support staff in promoting and arranging Direct Payments to:

- Achieve consistent approaches for individuals accessing Direct Payments.
- Provide context for procedure for supporting Individuals to access Direct Payments.
- Provide context for procedure to support individuals where difficulties arise.
- Practitioners (allocated workers) and Managers to facilitate the offer and making of Direct Payments.
- Support situations where a Personal Health Budget or Education, Health and Care Plan (EHCP) are in place which may be combined with the Direct Payment.

### 1.2 Equality and Diversity

1.2.1 Lincolnshire County Council will strive to ensure equity in the access, support and delivery of Direct Payments regardless of an individual's socio-economic status or protected characteristic; age, disability, race, religion or belief, sex, sexual orientation, gender reassignment, marriage and civil partnership and pregnancy and maternity. The Council will also work to ensure individuals are treated equally when choosing to have services arranged and purchased on their behalf to meet their needs rather than accepting a Direct Payment.

## 1.2.2 Direct Payments Equal Opportunities Statement

- Lincolnshire County Council aims to ensure equality of treatment and access to services for all members, staff and customers;
- No person or group of persons applying for services or contracts with the Council will be treated less favourably than any other person or group of persons on grounds of gender, sexual orientation, race, nationality, ethnic origin, disability, marital status, age, religion or belief;
- Lincolnshire County Council will consult with an individual about the planning and delivery of services and take account of the specific needs of those groups who may experience discrimination or be disadvantaged;
- Information about the Council's services will be accessible and, where necessary, targeted to those who may otherwise have trouble in accessing information or services;
- So far as is reasonably practicable the Council's buildings will be accessible to an individual with disabilities;
- The Council will scrutinise policies and procedures to ensure non-discriminatory practice is at the core of planning.

## 2. Purpose

2.1 Lincolnshire County Council (LCC) wishes to promote Direct Payments as a fully accessible way of paying for care and support. LCC believe that Direct Payments enable individuals who have care and support needs (including families and carers) to have more choice and control. We know from evidence built up over many years, that for those who have used them, Direct Payments can achieve better outcomes for individuals than services arranged by the Council. LCC recognise that Direct Payments may not be appropriate for some individuals or they may not want to have a Direct Payment. Individuals will have a choice as to whether or not they would like to have a Direct Payment. In some instances individuals may choose to have their needs met by a mixture of Direct Payments and direct provision.

2.2 To achieve this, LCC will ensure that suitable arrangements are in place to support the take-up of Direct Payments by individuals who are eligible for them. In accordance with our statutory duty, information about Direct Payments can be found at Lincolnshire County Council Website.

We will provide information and sign posting to enable the Direct Payment recipient and/or the nominated or authorised person to manage the Direct Payment. This should include information on how to access the personal assistant finder, other appropriate voluntary sector agencies, independent sector agencies, care providers and any other information relevant to the management of a Direct Payment.

2.3 LCC embraces strengths based approaches and will embed this into what we do, this approach involves promoting inclusion and supporting customers to identify their own skills and resources and what the people around them can do in their relationships and their communities. LCC believe that a person needs to be seen as more than just their care needs – we want individuals to feel confident in making their own choices about using Direct Payments, taking more control in achieving their outcomes within their community.

2.4 This Policy and associated Procedures and Practice guidance will set out how LCC will deliver Direct Payments within Adult Social Care and Children's Services for our customers. This policy applies to all LCC practitioners and those who carry out the role of practitioner or

administrator under a delegated responsibility, where social care assessments, reviews, care and support planning, arrangements and administration of services are undertaken.

### **3. SCOPE, DEFINITIONS AND RELATED POLICIES**

3.1 A Direct Payments is defined as:

“Monetary payments made to individuals who request to receive one to meet some or all of their eligible care and support needs”

3.2 In this policy Direct Payments are those payments that are made by Lincolnshire County Council Adult Care and its associated partners, for example Lincolnshire Partnership Foundation Trust (LPFT). These payments are made directly to the individual (or someone on their behalf) who have been assessed as having eligible needs for social care support and can form all or part of their Personal Budget. Direct Payments can also be made by Health under s.12A of the National Health Service Act 2006.

3.3 Direct Payments promote independence, choice and control of individual care and support arrangements They can help an individual to live in their own homes, be fully involved in family and community life and to take part in work, education and leisure in order to achieve the outcomes as shown on their care or support plan. Direct Payments may be combined, by agreement, with other funds such as a Personal Health Budget or an Education, Health and Care Plan (EHCP) Direct Payment.

3.4 The Council has a key role in ensuring that individuals are given relevant and timely information about Direct Payments, so that the individual can make informed decisions about the suitability and use of a Direct Payment and, if doing so, is supported to use and manage the payment appropriately to meet their eligible needs. A range of information and factsheets are available on the Lincolnshire County Council website.

3.5 The Adult Care and Children's Manual, available online, outlines the key procedure and practice documents for all LCC Officers involved in carrying out assessments, reviews and support planning or providers who have delegated responsibilities under partnership arrangements described in section 2.4.

### **4. POLICY DETAILS**

#### **4.1 Eligibility for Direct Payments**

The request to take a Direct Payment may be made by the person or their representative through the allocated practitioner or person acting on behalf of LCC or by contacting LCC Customer Service Centre.

4.1.1 LCC will consider all requests for a Direct Payment. At the outset of the process practitioners will ascertain whether or not the individual has capacity to request and receive Direct Payments. Whilst Direct Payments arrangements can be made for an individual who lacks capacity the process and procedure differs according to whether the individual has capacity at the time to request, receive and manage a Direct Payment. Decisions about an individual's capacity under the Mental Capacity Act is decision specific (for example the ability to make a decision about Direct Payments) and time specific (at the time the decision has to be made).

4.1.2 Where there is a decision not to provide a Direct Payment to a person making the request, the person will be provided with written reasons that explain the decision, and be made aware of how to appeal the decision through the complaints process.

#### 4.1.3 Adults with capacity to make a decision to request a Direct Payment

Where Lincolnshire County Council concludes that an individual has capacity to make a decision to request a Direct Payment, it must consider the conditions set out in s.31 Care Act 2014. These conditions must be met in their entirety. A failure in one would result in the request to receive Direct Payments being declined. Individuals who have capacity may choose to manage their Direct Payments themselves and/or with the support available to them, or, they may wish to nominate somebody to manage Direct Payments on their behalf. Where an individual chooses to nominate someone that person is referred to as a nominee.

These four conditions, as set out in the Care and Support Statutory Guidance (CSSG) is as follows:

- the adult has capacity to make the request, and where there is a nominated person, that person agrees to receive the payments;
- the local authority is not prohibited by regulations under section 33 from meeting the adult's needs by making Direct Payments to the adult or nominated person
- the local authority is satisfied that the adult or nominated person is capable of managing Direct Payments either by himself or herself, or with whatever help the authority thinks the adult or nominated person will be able to access;
- the local authority is satisfied that making Direct Payments to the adult or nominated person is an appropriate way to meet the needs in question.

#### 4.1.4 Adults lacking capacity to make a decision to request a Direct Payment

Where an individual lacks the capacity to make a decision to request Direct Payments an "authorised person" or a "suitable person" may request Direct Payments on the individual's behalf.

A person is authorised for the purposes of Direct Payments if

- a) the person is authorised under the Mental Capacity Act 2005 to make decisions about the adults needs for care and support.
- b) where a person is not authorised under the Mental Capacity Act 2005 as mentioned in a) above, a person who is so authorised agrees with the local authority that the person is a suitable person to whom to make the Direct Payments.
- c) where there is no such person authorised under a) and b) above, the local authority considers that the person is a suitable person.

A person is a suitable person who falls within paragraph a) and b) above.

Where the individual lacks capacity to request Direct Payments the following conditions "must be met in their entirety":-

- where the person is not authorised under the Mental Capacity Act 2005 but there is at least one person who is so authorised, that person who is authorised supports the person's request;
- the local authority is not prohibited by regulations under section 33 from meeting the adult's needs by making Direct Payments to the authorised person, and if regulations under that section give the local authority discretion to decide not to meet the adult's needs by making Direct Payments to the authorised person, it does not exercise that discretion;
- the 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;
- 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;
- the local authority is satisfied that making Direct Payments to the authorised person is an appropriate way to meet the needs in question.

There are some individuals for whom Direct Payments cannot be made whether or not they have capacity. These are set out in Schedule 1 of the Care and Support (Direct Payments) Regulations 2014. These are individuals who are subject to a court order for a drug or alcohol treatment programme or similar schemes.

4.1.5 The person in receipt of Direct Payments **must** understand the responsibilities linked to having and managing Direct Payments and agree to have their personal budget as Direct Payments. All reasonable steps should be taken to support the person to understand the nature of the decision to request Direct Payments and to ensure that they can make an informed choice.

4.1.6 All Direct Payments recipients with capacity to request Direct Payments in their own right must sign the Direct Payments agreement and understand what they have agreed to. Persons should not be coerced into accepting Direct Payments. Practitioners must be satisfied there are no safeguarding concerns which could be exacerbated by the provision of Direct Payments.

4.1.7 Individuals accessing Direct Payments must be able to manage the Direct Payments with or without assistance, practitioners must guard against assumptions and decisions must not be made about a person's ability to manage based upon the person's religion, sex, disability or age.

4.1.8 Individuals that agree to receive Direct Payments including carers will need to sign Direct Payments agreement.

## **4.2 Nominees and Authorised Persons**

4.2.1 Individuals who are not able to manage Direct Payments themselves can still access Direct Payments via a nominee. Where the person has the capacity to request a Direct Payment they may nominate someone to manage Direct Payments on their behalf. In this situation the nominee signs the Direct Payments agreement and becomes legally responsible for its administration and the requirements set out in the agreement. They are expected to act in the best interests of the person the Direct Payments are for.

4.2.2 The nominated person who manages the account should not be paid for services from the Direct Payments account, unless previously agreed by the Council.



4.2.3 Lincolnshire County Council can make a Direct Payment to an authorised person following a request, if all 5 conditions under section 32 of the Care Act are met – outlined in 4.1.3.

4.2.4 Lincolnshire County Council will need to be 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 will be used. The authorised person must be capable of managing Direct Payments by himself or herself, or with whatever help the authority thinks the authorised person may require and will be able to access.

4.2.5 Where the authorised person is not a close family member, they must have a satisfactory Disclosure and Barring Service (DBS) check. If a DBS check is required, additional funding can be provided in Direct Payments to cover the cost to the individual for the DBS application. If a child is under 8 and care is to be provided in the employee's home they will need to be a registered child minder.

4.2.6 The authorised person will be required to sign a Direct Payments agreement and they will be legally responsible for administering Direct Payments on behalf of the person who needs care and support and in compliance with the conditions set out in the agreement.

### **4.3 Direct Payments for Children and Young People:**

4.3.1 LCC may make a Direct Payment to assist with meeting a child or young person's social care or educational needs. Where a child or young person has an Educational need, Direct Payments can be made to:

- A person who is a parent of the child
- The young person if they are over 16
- A nominee who has been nominated in writing by the child's parent or young person to receive the Direct Payments on their behalf

In each case, Direct Payments may only be made to a person if LCC determine they are capable of managing Direct Payments without assistance, or with support available to them.

The person must also be over compulsory school age and have capacity to consent to the making of Direct Payments to them.

4.3.2 Where a child has social care needs, anyone who has Parental Responsibility for them may take a Direct Payment. The payments can then be used in a number of ways to provide care and support services for the disabled child or young person. The system may provide added flexibility for the parent or carer to choose and arrange the services or support they is feel most appropriate, at home or when out and about.

### **4.4 Information and Advice:**

4.4.1 All individuals that are eligible for social care or have an education, health and social care plan will be provided with information about Direct Payments, and what support is available to enable them to manage the Direct Payment. LCC or organisations with delegated authority (example LPFT) will provide a Direct Payments information pack in a format which is accessible to the individual.

4.4.2 Information, advice and support relating to Direct Payments will also be available to the public through the Direct Payments Support Service Lincolnshire; further details can be found on the LCC website. The service will be able to support individuals to consider if they wish to receive all or part of their personal budget as Direct Payments and also support them to understand their responsibilities as an employer if they wish to employ someone directly; this will include support for payroll tasks, recruitment, sick pay and pension advice. The service can also provide third party support to manage a Direct Payment.

4.4.3 Information and advice and what other support may be available can be requested by contacting the LCC Customer Service Centre on 01522 01522 552222, Fax: 01522-516137 Minicom: 01522-552055 or email: [customer\\_services@lincolnshire.gov.uk](mailto:customer_services@lincolnshire.gov.uk)

#### **4.5 Provision of Direct Payments:**

4.5.1 Lincolnshire County Council does not present Direct Payments as the only method available to obtain personalised care and support. LCC has a diverse range of sources including quality providers and also other options for example, employing a personal assistant or accessing the community.

4.5.2 The use of Direct Payments is a highly personalised way of providing care and support. The appropriate use of Direct Payments to meet the needs of one person may not be suitable for another person. Direct Payments are to be used to meet a person's outcomes as agreed and outlined in their own Care and Support plan or Education, Health and Social Care plan.

4.5.3 Authorised persons, with involvement and regard to the individual requiring support should be encouraged to take ownership of support planning and be flexible in choosing how needs are met. The outcomes will be directly linked to the need, allowing the Direct Payments recipient flexibility in how they achieve the outcomes within the agreed budget. LCC will work to ensure that the Care and Support Plan or Education, Health and Social Care plan is not overly prescriptive in the description of the ways in which need can be met.

4.5.4 Direct Payments are designed to be used flexibly and innovatively and there should be no unreasonable restriction placed on the use of the payment, as long as it is being used to meet eligible care and support needs as identified in the Care and Support plan or Education, Health and Social Care plan.

However there are some restrictions on the use of Direct Payments as set out below:

Direct Payments cannot be used for:

- Short term residential care for periods of more than 4 consecutive weeks in a 12 month period. (Periods of short term care less than 4 weeks apart will be combined for this purpose and will add to the total period.
- Local authority services, unless there are exceptional circumstances or they are purchasing from a neighbouring local authority who may offer services that Lincolnshire County Council does not.
- Employing a spouse, partner or other close relative, if that person lives in the same household as the Direct Payments recipient. (However this may be agreed by Lincolnshire County Council in exceptional circumstances if it can be satisfied that it is necessary to meet the

person's needs, or, if the person needing care is a child and it is necessary to promote the child's welfare). A spouse, partner or other close relative living in the same household can however provide management and/or administrative support for the Direct Payment. The details and amounts will be agreed and recorded in the individual's care and support plan.

- To pay the person who is responsible for managing the Direct Payments account
- Anything which does not achieve an unmet eligible outcome identified in the care and support plan or Education, health and Social Care Plan.
- Any personal contributions resulting from a financial assessment, such as the person's financial contribution towards their care and support, tele-care charges, contribution to a Disabled Facilities Grant or person contribution for short term care in a residential home.
- Direct Payments cannot be used to fund personal daily living costs, debt repayment, investments, gambling or for any illegal purpose.
- Making cash payments – payments to care or service providers should be made by card payment, bank transfer, standing order or direct debit. Unless this is agreed in an individual's care and support plan.

4.5.5 However the use of Direct Payments by adults in long term residential care is allowed in Lincolnshire. Direct Payments for Individuals living in residential care can give them and their families more control over the resources available to pay for some of their care. To increase choices Direct Payments can also be used by Individuals living in care homes to take part in day-time activities outside of the Care Home. Under The Care and Support (Direct Payments) Regulations 2013 Schedule 2, LCC are named as a local authority which is not prohibited from allowing the use of Direct Payments for securing long term care in a care home.

#### **4.6 Equipment:**

4.6.1 Direct Payments should not normally be used for the purchase of Equipment to aid daily living for adults or children. Equipment should be purchased through the existing commissioned Integrated Community Equipment Services (ICES) contract or if it is not available, through a 'non-contract special order'.

4.6.2 In exceptional circumstances, where equipment required to meet the needs of the individual is not available through the ICES route, Direct Payments may be used. Prior agreement from the allocated practitioner must be obtained and the following details outlined in the Direct Payments agreement.

- Purpose of equipment
- Responsibility for ensuring maintenance and safe operation of the equipment
- Responsibility for maintenance costs and any other ongoing costs

#### **4.7 Pooled Budgets:**

4.7.1 Recipients of Direct Payments may wish to join with others to pool their Direct Payment – for example, where support may be expensive, it is possible to join with other individuals who use Direct Payments to form a group and combine Direct Payments to buy support and services that would not normally be accessible to the individuals alone - to help achieve better outcomes for all participating individuals. An agreement for pooled Direct Payments needs to be signed by or on behalf of all individuals sharing the collective

arrangement. Such arrangements need to consider responsibilities and contingency measures should one or more parties wish to end or change the agreement.

#### **4.8 Responsibilities:**

4.8.1 LCC regards that individuals will be responsible for Direct Payments under the following circumstances:

- Where the person eligible for care and support, is the recipient of the Direct Payments and manages the account and purchase of care services. Under this situation the recipient is solely responsible for meeting the terms and conditions of receiving the payment as set out in the Direct Payments Policy, Direct Payments agreement and associated terms and conditions.
- Where a nominated person is acting on the behalf of an individual and where it is agreed by the person with care and support needs and they have capacity, the nominated will be solely responsible for meeting the terms and conditions of receiving Direct Payments.
- Where the person with care and support needs has been assessed as lacking the capacity to manage Direct Payments and an authorised person is appointed to manage the account and purchase care and support services on behalf of the customer, the authorised person is the recipient and is responsible for meeting the terms and conditions of receiving Direct Payments.
- Where Direct Payments are made to a person with parental responsibility to pay for services under an Education, Health and Social Care Plan, the recipient will be solely responsible for meeting the terms and conditions of receiving a Direct Payment.
- Where a young person with a disability aged 16 or 17 has been considered competent to organise their own care, LCC can make Direct Payments to them to meet the needs outlined in their Education, Health and Social Care Plan. The young person will be solely responsible for meeting the terms and conditions of receiving a Direct Payment.

4.8.2 LCC provides a range of services to provide support, advice and guidance to individuals in receipt of a Direct Payment. The current range of advice and support services includes personal assistant recruitment, personal, payroll support and also managed bank accounts.

4.8.4 Practitioners will make individuals aware of and how to gain access to advice support services during assessment of needs, support planning and reviews.

4.8.5 PA (Personal Assistant) costs – If the person employs a PA then we will calculate the Direct Payments amount by taking into account the associated costs that are necessarily incurred in securing provision, without which the service could not be provided, or could not lawfully be provided. Direct Payments recipient is responsible for making contingency arrangements; to provide cover if their staff are absent, and when necessary will be able to make arrangements for alternative cover. The need for plans to cover emergency and unplanned situations will be discussed with Direct Payments recipients.

4.8.6 Lincolnshire County Council still maintains a “Duty of Care” and where all emergency cover arrangements have been exhausted. The Customer Service Centre or Emergency Out of Hours contact details will be given to the Direct Payment recipient. If planned cover arrangements breakdown, a practitioner may be allocated to provide support to make alternative arrangements. Brokerage can be accessed by Direct Payments recipients to assist them to find cover where arrangements breakdown.

4.8.7 If the responsible person employs a PA, they must ensure they have signed a ‘contract of employment’ and that they carry out the necessary pre-employment checks. The responsible person will also need to ensure that all legal requirements for being an employer are met.

4.8.8 Personal Assistants employed through Direct Payments will have access to appropriate training, which will be paid for by the Direct Payments recipient, who in this case would be the employer of the Personal Assistant. It may be that extra funding to cover training/expenses will need to be agreed by the practitioner.

4.8.9 For Adults who receive a Direct Payments to meet assessed needs, the person responsible for meeting the terms and conditions of the Direct Payments agreement will be responsible for paying the contribution to the cost of care, calculated through the Adult Care Non-Residential Contributions Policy. It is also compulsory that for any respite services taken within a Residential Home setting that the flat rate contribution will also be paid.

## **5. Direct Payments Procedures Safeguarding and Disclosure and Barring Service (DBS) Checks**

### **5.1 Safeguarding**

5.1.1 Individuals accessing Direct Payments must be able to manage the Direct Payment with or without assistance, though assumptions will not be made about a client’s ability to manage. Once the person has made a request to receive their personal budget as a Direct Payment, the practitioner must be satisfied there are no safeguarding concerns which could be exacerbated by the provision of a Direct Payment.

5.1.2 The authorised person requesting Direct Payments must be able to manage Direct Payments with or without assistance. The Practitioner must be satisfied there are no safeguarding concerns which could be exacerbated by the provision of a Direct Payment.

5.1.3 Where safeguarding concerns are raised at the initial review of making a Direct Payment, a care and support review should be carried out to determine the individual’s ability to manage the Direct Payment.

### **5.2 Disclosure and Barring (DBS)**

5.2.1 Disclosure and Barring (DBS) checks will be paid for by Lincolnshire County Council for all LCC Direct Payment recipients employing Personal Assistants.

5.2.2 An enhanced Disclosure and Barring Service (DBS) check must be obtained for anyone, prior to commencing work, who is involved in the provision of the support where this is regulated care, working with a child or there are children in the house. This will also apply to any person who will have overall responsibility for the day to day management of the Direct Payment, except if they are a person’s spouse, civil partner, partner, or close relative of the assessed person. Sight of the satisfactory DBS should be recorded in the client’s electronic social care record.

## 6. FINANCE AND MONITORING

### 6.1 Payment of the Direct Payments

6.1.1 Direct Payments will be made by Lincolnshire County Council or its delegated representatives on a 4 weekly basis. One-off payments and payment cycles of different frequencies can also be arranged if they are appropriate to meet a person's needs.

6.1.2 LCC will provide a prepaid card account for all persons who take a Direct Payment. This is a separate bank account, with a debit card set up for the person by Lincolnshire County Council. This will be the default option for all new Direct Payments.

6.1.3 Where there is a request for the new Direct Payments recipient to set up their own bank account for Direct Payments, the practitioner will consider the benefit gained from this arrangement as opposed to receiving the payment via a pre-paid card. This should be presented to, and approved by a Lead Practitioner where requested.

6.1.4 LCC will make available the option of advocacy support to any individual who requests that the Council considers other arrangements.

6.1.5 For Adults with an eligible assessed care need, the Direct Payments made by LCC shall be NET of any contribution to the cost of care that it is determined for the individual to pay under the Adult Care Non-Residential Contributions Policy.

### 6.2 The amount of Direct Payments

6.2.1 Where needs will be met via Direct Payments consideration is given as to whether the personal budget is sufficient, for example around any other costs that may be required to meet needs or ensure individual are complying with legal requirements associated with becoming an employer. In calculating the budgeted costs for an individual's care and support personal budget this should be based on the current amount that is the cost to the local authority of meeting the person's needs.

6.2.2 Consideration of the local market intelligence and costs of local quality provision will also be taken account of to ensure that the personal budget reflects local market conditions and that appropriate care, that meets needs, can be obtained for the amount specified in the budget.

### 6.3 Audit and Review for Direct Payments

6.3.1 Monitoring of Direct Payments is essential and enables Lincolnshire County Council to account for public funding within the guidelines lay down by [The Chartered Institute of Public Finance and Accountancy \(CIPFA\)](#)

6.3.2 LCC must be satisfied that Direct Payments are being used to achieve the outcomes identified in the support plan and that Direct Payments is still an appropriate way to meet eligible needs. To give this assurance, Direct Payments will be monitored through the LCC 'audit' process and a review of the individual's care and support plan. The audit process will support any reviews related to the person's care and support to ensure that Direct Payments care still the most appropriate way of ensuring a person's outcomes are met.

6.3.3 LCC will audit the use of Direct Payments in an efficient and proportionate way; this will support the person to use Direct Payments flexibly in order to meet their needs. The aims of the audit will be to:

- Provide early support and assurance to all new Direct Payments recipients. This will enable Identification of any problems at an early stage, and enabling access to appropriate support
- Monitor the use of Direct Payments to provide assurance to LCC that Direct Payments are being spent to achieve outcomes identified in support plans
- Highlight excess balances to be returned to LCC
- Identify fraudulent use of funds which are intended to provide care and support to the individuals with care needs
- Confirm that contributions are correct and being made to LCC
- Ensure that employer responsibilities are being met e.g. tax, NI. Pension contributions
- Ensure that evidence is available i.e. receipts of what is being purchased

6.3.4 LCC will audit Direct Payments accounts using a risk based approach. This will take account of factors such as the annual Direct Payments amount, complexity of the personal budget, the person's ability to manage and the level of support they have (such as managed account or pre-paid card). This will mean that some individuals who use Direct Payments are audited more frequently than others.

6.3.5 Persons identified as responsible for managing a Direct Payments (as outlined in section 4.8.1) will manage the money provided and services they purchase with it, with support if necessary. This will include planning funds to pay for additional costs such as employer's liability insurance, employer's national insurance contributions, contributions to pension schemes and staff training time and evidence of the support purchased. Audit and practitioner will carry out a basic check with the Direct Payments recipient in the initial 6-8 weeks to ensure that the account is setup and being managed and support is in place.

6.3.6 Practitioners will review Direct Payments at least once within 6 months of Direct Payments being set up and at intervals as determined appropriate but not exceeding 12 months thereafter. Practitioners will utilise any information available about Direct Payment usage through audit, as part of their review of how needs are met. This will include monitoring of the payment of contribution amounts.

## **6.4 Suspending or Ending Direct Payments;**

6.4.1 Direct Payments may be **suspended** if:

- The recipient is temporarily unable to receive support for any reason (e.g. has a stay in hospital).
- There is a break down in support and alternative support cannot be organised. The Council will ensure that the needs of the individual will be met in the intervening period whilst the break down in support is investigated.
- It is considered that the support the person is receiving is not of an adequate standard, or does not meet the assessed support needs; the Council will provide support in the intervening period so that the individual is not left without support.

#### 6.4.2 Direct Payments may be **ended** if:

- There are changes in legislation or other legal circumstances by - giving 4 weeks written notice.
- LCC are not satisfied that the support the person receives is of an adequate standard or meets the person's support needs (we will give 21 days written notice prior to ending a Direct Payment).
- Direct Payments has been spent on anything other than meeting the assessed support needs (we will give 21 days' written notice prior to ending a Direct Payment). In these circumstances LCC will consider recovering Direct Payments monies from the recipient.
- The person has not complied with the terms and conditions of the Direct Payment Agreement and they have failed to rectify this within 4 weeks of being notified by Lincolnshire County Council (the agreement will end with immediate effect).
- The person has become unable to manage their Direct Payment. Where appropriate, we will make alternative arrangements to ensure the person continues to receive support.
- The person no longer wants or is no longer eligible for Direct Payments.
- For Adults with an eligible care need, there is evidence that the required contribution to the cost of care is not being paid into a Direct Payments account.
- Where individuals continue to require care and support to meet their assessed need alternative support will be arranged.

6.4.3 Direct Payments that are ended will require an audit to be undertaken to finalise the account. This will determine if all liabilities have been discharged and if there are any funds to be repaid to LCC.

### **6.5 Reclaiming funds**

6.5.1 LCC will recover Direct Payments if they have not been used for the intended purpose as agreed in their assessment of needs and identified outcomes or if they have been paid to a person excluded from receiving Direct Payments.

6.5.3 It is expected that an individual in receipt of an on-going Direct Payment may build a reserve of up to 8 weeks payment or more if agreed in the support plan. Any balance over this amount will constitute an excess balance and should be repaid to LCC.

6.5.4 Where a balance remains following ending of a Direct Payments account and the discharge of all liabilities, LCC will request the repayment of the entire remaining balance.

6.5.5 Where an account is terminated due to the death of a Direct Payments user, it will be the responsibility of the executors of the deceased's estate to discharge any liabilities. This may include payment of outstanding invoices, wages, tax, pensions and any other liabilities relating to the Direct Payment. The entire remaining balance must be repaid to LCC.



## 7. Complaints

### 7.1 Complaints

7.1.1 Where there are difficulties around setting up Direct Payments these can be resolved locally between the Practitioner and Direct Payments recipient. If the individual/s remains unhappy about any action or decision within this process, they have the right to complain and they can make a formal complaint.

7.1.2 Once the recipient has received their Direct Payment and they have arranged their care and support they are encouraged to resolve any issue, should any arise with their employee/agency. If issues persist and the Direct Payment recipient wishes to contact Adult Care for support/advice, they can contact the Customer Services Centre on 01522 552222, Fax: 01522-516137 Minicom: 01522-552055 or email: [customer\\_services@lincolnshire.gov.uk](mailto:customer_services@lincolnshire.gov.uk)

Advice / guidance can be offered in relation to resolving the issues/complaints where the council has no contractual relationship with the employee/agency employed. At this stage the Council may not deal with this matter under the complaints procedure, help and/or signposting should be provided.

If an individual in receipt of Direct Payments needs support to appeal or complain they should be referred to the appropriate advocacy service.

7.1.3 Where an individual has chosen to use facilities which are directly provided by the County Council, such as a County Council care home or day facility, s/he may use the complaints procedure to complain about the service received.