

Direct payments policy and procedure



**A guide to how direct payments work
in Hammersmith & Fulham**

May 2008

This guide explains how direct payments work in Hammersmith & Fulham.

It describes the council's direct payment policy. It lays out the procedure for making direct payments available to people who have been assessed as needing community care services and who chose to use direct payments to meet their assessed needs. It describes the role and responsibilities of the social worker, the direct payments support service, the senior finance officer direct payments and the person receiving direct payments.

This procedure relates to adults of 18 or above.

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1. Background and legislation of direct payments

1.1 Direct payments enable people who have been assessed as needing community care services to purchase support to live in their own homes, to be fully involved in family and community life and to engage in work, education and leisure.

1.2 In 1988, the Independent Living Fund (ILF) was created as a response to reductions in funding which had led to some disabled people to be forced into residential care. The ILF is a trust fund which provides cash payments to individuals to buy community care. It was so popular that, after the full implementation of the 1990 NHS and Community Care Act, the fund was extended in 1993 to its current position, where it supplements social service provision. The ILF is currently under review and is part of the national 'cash and care' policy review of benefits and payments to support people in their own homes.

1.3 Hammersmith & Fulham was one of the first social services departments (SSD) to recognise that some disabled people could organise their own care in a more effective manner than could be provided by direct provision. A few people embarked on a pilot

scheme in the early 1990s (the 'Independent Living Scheme'), at a time when direct payment of cash from SSDs to users was technically illegal.

1.4 In 1997, the Community Care (Direct Payments) Act 1996 gave councils the power to make direct payments to people 18-65. This was extended to the over 65s in the Amendment Regulations 2000. On 8 April 2003, with the implementation of the Health and Social Care Act 2001 and the repeal of the Community Care Act (Direct Payments) Act 1996, new regulations came into force, which require local councils to make direct payments available to the following groups:

- all adults over 18 (includes older people, mental health, learning disability, physical and sensory impairment, HIV and AIDS service groups)
- carers aged 16 or over
- disabled young people aged 16-17
- people with parental responsibility for disabled children.

The regulations (Community Care, Services for Carers and Children's Services (Direct Payments) (England) Regulations 2003) provide that the duty to make direct payments applies to:

- community care services (NHS and Community Care Act 1990)

- services under section 2 of the Carers and Disabled Children Act 2000
- services provided under section 17 Children Act 1989.

1.5 Department of Health direct payments guidance is available on the Department of Health website:

www.dh.gov.uk/PolicyAndGuidance/OrganisationPolicy/FinanceAndPlanning/DirectPayments/fs/en

2. What is a direct payment?

2.1 A direct payment referred to in this guide is a cash payment made to an individual in place of a service provided by community services. It is different from the 'direct payments' made by the Department of Work and Pensions (DWP) of benefits and pensions directly into recipients' bank accounts.

2.2 The individual must have been assessed as being in need of community services support. Direct payments can be used to buy any support the individual has been assessed as needing, including but not confined to, personal and domestic support, community support, day care, items of equipment and respite. The individual can, with the help of others if necessary, either employ a personal assistant or buy

their support from an agency of their choice.

2.3 Once a 'person centred' needs and risk assessment has been made, support options are discussed to allow the individual to make an informed choice about how much control they wish to take. Since 2003, community services has a duty to ensure that direct payments are offered as a first option. With direct payments, all arrangements for support become the responsibility of the individual or carer. Review of the care plan and monitoring of the use to which the direct payment are similar to other care packages.

2.4 Direct payments cannot pay for permanent residential care, health care or any other local authority service, as local authorities cannot sell their services in this way. It can pay for periods of residential respite care (Section 14).

3. Who is eligible for direct payments?

3.1 Residents of Hammersmith & Fulham who are assessed as being in need of services, as referred to in Section 1.3.

3.2 Eligible people are offered a choice of having their needs met via a direct payment or by a service provided by the council, or a combination of the two.

3.3 Direct payments must be made to all eligible individuals who want them.

3.4 Direct payments need the agreement of the relevant service manager.

4. Refusing direct payments

Reasons for refusal of direct payments by community services:

- where there is evidence or reason to believe there has been financial mismanagement by the individual concerned
- where the ILF raises concerns about mismanagement which prompt further investigation
- where there may be concerns about the representative chosen by the individual who may not be able to manage ongoing support
- the representative may not want the responsibility
- community services has a responsibility to protect an individual who is not able to consent, and where the representative's abilities or trustworthiness give rise to concerns.

5. Complaints procedure

5.1 If the department refuses direct payments, and discussions between parties fail to achieve agreement, the individual can have recourse to community services complaints procedure. Complaints regarding service providers contracted by the individual must be taken up with that service provider and are not the responsibility of community services.

5.2 The individual may wish to consult with an advocate.

6. Consent issues

6.1 The individual must:

- through a 'person centred' approach to care planning, have a view of the way he/she wants to live and what direct payments can offer
- with supported decision making if required, be able to express a preference, make an informed choice and give consent, (advocate, family member or friend to be agreed by the individual)
- be able to receive and manage a direct payment (with assistance if required)
- be able to manage their own care on an ongoing basis (with assistance if required). Day to day management

responsibilities can be assumed by a nominated representative. However, the individual remains responsible for the direct payment, even if a nominated representative assists with day to day management

- understand in outline the legal responsibilities of being an employer and be able to cope with them (with assistance if required)
- be able to know that they receive the services they pay for (with assistance if required).

6.2 Guidance on consent is available in 'Direct Choices – what councils need to make direct payments happen for people with learning disabilities' (VIA 2004):
www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_4081030.

The content is applicable to all service groups.

6.3 Assessment for direct payments should be made with reference to other community services guidance, including the Inter-Agency Policy and Procedure for the Protection of Vulnerable Adults (Safeguarding Adults). Service users and carers should be made aware that adult protection issues are included in reviewing and monitoring arrangements.

7. People excluded from receiving direct payments

7.1 Direct payments cannot be offered to people who are subject to certain mental health or criminal justice legislation as follows:

- patients detained under the mental health legislation who are on leave of absence from hospital,
- conditionally discharged, detained patients subject to Home Office restrictions,
- patients subject to guardianship under the Mental Health Act and those covered by 'Supervised Discharge' introduced by the Mental Health (Patients in the Community) Act 1995,
- people who are receiving any kind of aftercare or community care which constitutes part of a care programme initiated under a compulsory court order, and
- offenders serving a probation or combination order subject to an additional requirement to undergo treatment for a mental health condition or for drug or alcohol dependency.

8. How much is paid as a direct payment?

- 8.1 The value of the direct payment will be no more than it would cost the council to provide the care package to meet the assessed need. The amount of a direct payment will vary across service groups and individual level of need, and be responsive to exceptional situations.
- 8.2 The individual will be expected to cover all costs of their support with the direct payment (including employer costs). If the individual can purchase the service more cheaply, the direct payment will be adjusted to this amount.
- 8.3 If the assessed need varies from week to week or month to month, monies can be held by the individual equivalent to two months payment to be used at a time suited them. More than this amount must be agreed in advance by the social worker.
- 8.4 If requested, an upfront payment of up to £150 can be made to cover recruitment costs. This will be deducted from the first monthly payment.

9. How direct payments are made

- 9.1 It is important that all the parties involved in the agreement and the making of direct payments understand the role each of them plays, in order for payments to be made accurately and in a timely way.
- 9.2 The process is described in two practice guides, one for social workers, the other for direct payment users (see Appendices A and B).
- 9.3 Individuals can ask community services to undertake criminal records checks on personal assistants they intend to employ.

10. Role of the social worker

- 10.1 To undertake a needs lead, 'person centred' assessment/ review and assess the individual against the direct payments criteria, using any supported decision making practice as required.
- 10.2 In line with the legal duty, social workers must offer direct payments as a first option for support needs.
- 10.3 Manage the following process:
 - discuss support needs, including Power of Attorney, trusts, circles of support

- where the direct payment user meets the eligibility criteria and agrees, apply to ILF (see Section 16)
- prepare a detailed care plan and costings including hours and rates
- prepare any necessary reports for panel and ensure the necessary authorisation is obtained (see 10.4)
- undertake initial visit with the senior finance officer direct payments to ensure user understands roles and responsibilities/identify particular needs
- be satisfied that the individual, a parent and any representative is fully prepared to embark on direct payments and understands their responsibilities, and agree a start date
- refer service user to the direct payment support service for employer support, and help with monitoring if required
- provide senior finance officer direct payment with following information:
 - care plan with hourly costings
 - the direct payment financial start-up and change details form
 - signed panel authorisation
- meet the service user with senior finance officer direct payments
 - progress framework purchase order
 - ensure the individual has care arrangements in place, including emergency cover
 - monitor care arrangements to ensure needs are being met, and if direct payments are sufficient/excessive. Agree an amount of direct payment which can be carried over by the service user from quarter to quarter
 - review care at required intervals, follow up on concerns raised by senior finance officer direct payments regarding spending anomalies or failure to provide monitoring information (reviews should include monitoring of the individual's financial management arrangements)
 - arrange direct services when individual's own arrangements break down, or when otherwise requested by the person
 - after discussion with the individual, and in consultation with team manager, be prepared to withdraw direct payments, either temporarily or permanently, if after investigation, there is sufficient reason to do so. One month's notice will be given to the individual unless a shorter notice period is appropriate. See Section 5 for the complaints procedure.

10.4 The heads of service for mental health, intermediate care, learning disabilities and assessment and care management are authorised to agree, suspend or terminate direct payments up to the value of £50k per annum. Authorisation over £50k will need to be agreed by the assistant director for adult social care.

11. Role of the finance department, senior finance officer, direct payments

11.1 Once referred, senior finance officer, direct payments will meet with the direct payment user jointly with the social worker, to explain the different roles and responsibilities of all those involved in direct payments, specifically those of the direct payment user themselves:

- need to set up a designated bank account for the receipt of the direct payment
- explain and sign with the direct payment user, the agreement between direct payment user and community services and for both parties to sign it
- employer liability insurance
- the need to maintain records of receipts and expenditure, providing quarterly monitoring information

- advise service user about the DPSS which can offer advice regarding:
 - recruitment of PAs
 - arranging care provision
 - compliance with all relevant employment, health and safety, and equal opportunity legislation
 - management and responsibility for any problems and disputes which arise with care staff
 - quarterly monitoring advice.

11.2 To undertake the following:

- to act upon information supplied by the social worker in the form of panel/manager authorisation (as in 10.4), completed individual details proforma and electronic records
- arrange employer liability insurance
- process the direct payment, four weeks in advance, and to a designated account, on or before the first day of the month for which the direct payment is intended, as stated in the agreement between the department and the disabled person
- make any increases or decreases to the direct payment, as authorised by the service manager as in 10.4
- take and resolve financial queries directly from direct

payment user and/or redirect them to the relevant service

- monitoring:
 - send out the quarterly financial summary proforma, with guidance notes, to the direct payment user, and follow up any failure to return the summary with a written reminder
 - if, four weeks after reminders have been issued, a direct payment user fails to return a financial summary, inform the social worker or assessment officer, who will then review the care plan and financial management. At the same time, the social worker or assessment officer will be advised of any direct payment user with excess funds (defined as more than two months' payment) will be asked to raise this with the direct payment user and seek repayment of the excess
 - After a further four weeks, send direct payment user who has still not complied with a request for a financial summary or with excess funds that cannot be justified, a letter informing them that payments will be suspended if an immediate response is not forthcoming
 - After liaison with social worker, and with the agreement of the service

manager (10.4), suspend payment for those direct payment users with effect from the month following a letter informing them of the suspension (or immediately if misuse is suspected)

- to work with social worker on financial implications of (re)assessments, direct payment adjustments, recovery of accumulating amounts, closure of accounts, recovery of monies, etc.

12. Responsibilities of the direct payment user

12.1 The direct payment user and/or their legal representative, will be ultimately responsible to do the following:

- sign an agreement with community services
- take out employer liability insurance
- set up a direct payments designated bank account details
- arrange care provision
- comply with all relevant employment, health and safety, and equal opportunity legislation
- manage and be responsible for any problems and disputes which arise with care staff
- for monitoring purposes, to return their quarterly financial monitoring forms to the senior

finance officer direct payments, completed correctly and within the given deadline, listing each transaction to demonstrate how the money was spent

- provide documentation, when requested, to substantiate the use of the direct payment
- inform their social worker of any temporary or permanent changes in their circumstances, including significant changing levels of need/hospitalisation/leaving home for more than four weeks.

12.2 Users of direct payments must be given the support they require to manage the direct payment and rectify any mistakes in providing monitoring information, whether that be via family of friends, community contacts or the DPSS.

13. The role of the direct payments support service*

13.1 Provide up to date and accessible information (in the required format and language) on all aspects of direct payments, and independent living.

13.2 Advise on the responsibilities of being a receiver of direct payments, legal obligations and practical issues of being an employer, including relevant health and safety, equal opportunity and employment law.

13.3 Advise and assist with recruitment and selection of PAs including:

- drafting job descriptions
- person specifications and advertisements
- assisting with short listing and interviews
- assist with references and police checks where required
- assist with the preparation of contracts of employment for PAs
- advise on setting up a bank account exclusively for the direct payment, and separate account for ILF monies
- advise on income tax, national insurance, payroll service (see below)
- assist in the design of work plans, schedules, rotas, and record keeping
- advise on employer liability insurance
- advise and assist with the management and supervision of PAs
- assist and advise in the setting up of emergency procedures and back up cover.

13.4 Offer ongoing episodic support, and facilitate the operation of peer group support networks.

13.5 The payroll/finance service can (for a charge):

- enable individual to register as employers with the Inland Revenue

*Currently provided by HAFAD

- process time sheets and PA's wages, and deal with all PAYE related matters (fee involved)
- calculate employees' holiday, sickness (SSP) and maternity pay (SMP)
- assist and train regarding quarterly financial summary returns and other financial management.

14. Who cannot provide care?

14.1 *'Unless a council is satisfied that it is necessary to meet satisfactorily a person's needs, a council may not allow people to use direct payments to secure services from a spouse (husband or wife), from a partner (the other member of an unmarried couple with whom they live), or from a close relative (or their spouse or partner) who live in the same household as the direct payment recipient.'* (Direct Payments Guidance 2003).

Community services is able to make conditions about the employment of spouses, partners or close relatives living in the same household; a decision will be taken according to the merits of each individual situation.

14.2 Close relatives are defined by the Community Care, Services for Carers and Disabled Children's Act Regulations 2003, section 6(2) as:

a) spouse

- b) person who lives with the disabled person as a spouse
- c) person living in the same household as the disabled person who is:
 - parent or parent in law
 - son or daughter
 - son in law or daughter in law
 - stepson or stepdaughter
 - brother or sister
 - aunt or uncle
 - grandparent
- d) the spouse of those in c) who live in the same household
- e) a person living as a spouse of those in c) who live in the same household.

15. Residential respite care

15.1 Direct payments may be made to enable individuals to purchase short stays in residential respite care.

15.2 Where two periods of residential respite care are less than four weeks apart, they should be added together for the cumulative total. If the two periods of care are more than four weeks apart, the periods are not added together. The cumulative total, calculated in this way, cannot be more than four weeks in any 12 month period. For example:

- One week taken every six weeks – these weeks are not added together because they are more than four weeks apart.

- Two weeks in residential care, then two weeks at home, then a week in residential care – the weeks in residential care are added together because they are less than four weeks apart. Only one more week would be available to purchase with the direct payment.

15.3 There is no restriction on the length of time for which community services can arrange additional residential care above the four weeks, in the normal way.

16. Application to the Independent Living Fund (ILF)

16.1 For details about how the ILF operates, and for eligibility criteria, go to www.ilf.org.uk.

If you would like any part of this document interpreted into your own language, please phone 020 8753 4040.

Albanian

Nëse e dëshironi cilëndo pjesë të këtij dokumenti të përkthyer në gjuhën tuaj, ju lutemi telefononi në numrin 020 8753 4040.

Amharic

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