Luton

Adult Social Care Direct Payment Policy

Title	Adult Social Care Direct Payment Policy
Service Area	Adult Social Care
Version number	4
IIA	October 2025
Date issued	March 2026
Review date	April 2028
Business owner	Jill Britton
Approved by	Catherine Dhokia
Date approved	2 March 2026

Change Record

Version	Details	Date	Author	Change Details
V1	Direct Payments Adult social care policy and guidance	November 2020	Danielle Davies	Published Version
V2	Adult and Children Social Care: Combined Direct Payments Policy and Guidance	January 2021	Dawn Smith (Children Services & ASC)	Unpublished – Decision taken not to publish a combined policy
V3	Direct Payment Policy (Adult Social Care)	March 2025	Harpreet Kaur	Unpublished – First Major ASC Revision
V4	Adult Social Care Direct Payment Policy	March 2026	Shopna Amin	Signed off awaiting publishing

BRIEF DESCRIPTION OF POLICY

This policy relates to the Councils statutory duties to provide Direct Payments for adults eligible for support under the Care Act 2014.

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Chapter 1. Introduction and Eligibility

1.1 What are Direct Payments?

Direct Payments give you money to arrange your own care and support, instead of the Council arranging services for you. This offers a flexible way to maximise choice and control whilst also considering your own support networks, assets, and strengths to meet your needs.

The Care Act 2014 says the Council must offer you a Direct Payment if you have eligible care needs and ask for one if certain conditions are met.

1.2 Our commitment

Our vision is that people in Luton with health and social care needs will lead a good everyday life with the people they value in the community they call home, with an equal voice in planning their own care and support. Direct Payments are an effective way to achieve this.

1.3 What this policy covers

This policy outlines:

- Who can have a Direct Payment

- How to set up and manage your payment

- What you can and cannot use it for

- Your responsibilities and the Council's responsibilities

- How we support you

- What happens if things go wrong

1.4 Legal Framework

Direct Payments are governed by law. The Council must follow:

The Care Act 2014 (Sections 31-33) - Sets out responsibilities for providing care and places a legal duty on the Council to offer Direct Payments to eligible individuals.

The Care and Support (Direct Payments) Regulations 2014 - Detailed rules about who can receive Direct Payments, when they can be made, and conditions that apply. These are set by Government and apply nationally.

The Mental Capacity Act 2005 - Governs situations where someone lacks capacity to consent to a Direct Payment.

The Equality Act 2010 - Requires the Council to make reasonable adjustments to ensure Direct Payments are accessible to everyone.

Section 117(2C) of the Mental Health Act 1983 - Covers Direct Payments for aftercare services.

Other relevant legislation includes the Children and Families Act 2014 (for those with SEND up to age 25) and the National Health Service Act 2006 (for jointly funded arrangements).

1.5. Who can have a direct payment?

1.5.1 Who is eligible?

Eligibility applies to:

- Adults aged 18 and over with physical disabilities, mental health conditions, learning disabilities, or sensory impairments
- Adult carers providing regular and substantial care
- Adults entitled to aftercare under Section 117 of the Mental Health Act (if not subject to certain exemptions - see below)
- Young people transitioning from children's services to adult services

You can request a Direct Payment if you meet ALL the following conditions:

1. You have eligible care and support needs assessed by The Council under the Care Act 2014

2. You agree to receive a Direct Payment and have the mental capacity to be responsible for it, or alternatively if you lack capacity to make this decision, an Authorised Person will take on the responsibility for you (see Section 4).

3. The Council is satisfied you, or your Authorised Person can manage the Direct Payment by way of employing staff or contracting with agencies / people who are self-employed, managing the money, and keeping records.

4. The Direct Payment is an appropriate way to meet your needs, and the payment will be used safely and effectively to meet your assessed needs.

1.5.2 Financial eligibility and contributions

Once you have been assessed as having eligible care needs, you will also receive a financial assessment to determine whether you need to contribute towards the cost of your care. This follows national rules in the Care and Support (Charging and Assessment of Resources) Regulations 2014.

1.5.3 Carers

If you provide regular and substantial care for someone else, you are entitled to a carer's assessment. If this assessment identifies eligible support needs, you can request a Direct Payment to help you in your caring role or maintain your own wellbeing.

1.5.4 When Direct Payments CANNOT be made

The Care and Support (Direct Payments) Regulations 2014 prohibit Direct Payments if you are:

- Subject to certain requirements under the Mental Health Act 1983 (specifically detained under sections that restrict your liberty for treatment)

- Subject to certain criminal justice requirements, such as a drug rehabilitation requirement under a community order, drug or alcohol treatment requirement, or similar scheme

- On release from prison on licence with drug testing requirements

1.6 Mental capacity to manage a direct payment - if you cannot make decisions yourself

1.6.1 Mental Capacity Assessments

The Mental Capacity Act 2005 says we must assume you have capacity unless proven otherwise.

If there are concerns about your capacity to manage a Direct Payment, we will arrange an assessment by a trained professional. This focuses specifically on whether you understand what a Direct Payment involves and the responsibilities it entails.

1.6.2 Authorised Persons

If you lack mental capacity to manage a Direct Payment, an Authorised Person can receive and manage it for you. This could be:

- A family member or friend

- Someone with Lasting Power of Attorney for your health and welfare (not just property and finance and excluding Enduring Power of Attorney which were replaced by Lasting Power of Attorney in 2007).

- A Court-appointed Deputy

- The Council must be satisfied the Authorised Person meets the five conditions detailed in Section 32 of the Care Act.

1.6.3 Disclosure and Barring Service (DBS) Checks for Authorised Persons

In some cases, an Authorised person may need an enhanced Disclosure and Barring Service (DBS) check. This is a legal requirement under the Care and Support (Direct Payments) Regulations 2014. We will arrange and pay for this check.

However, the majority of people are exempt and do not need a DBS check:

- Your spouse, civil partner, or partner you live with as such

- Close family who live in the same household (parent, adult child, sibling, grandparent, stepchildren)

- The spouse or partner of the above family members who also lives with you

- A friend already involved in providing your care

Chapter 2: Apply and Manage a Direct Payment

2.1 The Application Process

Step 1: Assessment

A needs assessment by our Adult Social Care team will identify whether you have eligible care needs and determine what support you require. A care and support plan is then developed, setting out:

- Your specific care and support needs

- The outcomes you wish to achieve

- How a Direct Payment could help meet these outcomes

- Any support you will need to manage the payment

Step 2: Financial Assessment (if applicable)

Most people will have a financial assessment to determine if they need to contribute toward their care costs (see Section 3 for details).

Step 3: Deciding on Direct Payments

If Direct Payments are suitable, we will explain:

- How they work

- Your responsibilities

- Support available to help you manage them

- What happens if things go wrong

You (or your Authorised Person) decide whether to proceed and sign a Direct Payment Agreement.

Step 4: Setting Up

Once you have agreed to have a Direct Payment, we will help you set up:

- A dedicated bank account - Either a pre-paid card account or a managed account. we would need to verify your identity to enable the account to be set up. (see Section 6)
- Your care arrangements - Deciding whether to employ Personal Assistants, use care agencies or someone who is self-employed, or a combination.
- Support services – We can sign post to third party organisations who can help with arranging help with payroll and employment if needed.
- A Direct Payment agreement – You will sign an agreement setting out your responsibilities and the conditions attached to the payment.

Step 5: First Payment

We will make your first payment once everything is ready. Payments are usually made four-weekly: two weeks in advance and two weeks in arrears.

2.2 Managing your direct payment

2.2.1 Payment Methods

Pre-paid Card Account

Most people receive their Direct Payment onto a pre-paid card. This account is used solely for managing care payments and should not be mixed with personal finances. You can access your account online and by phone, and the Council can monitor usage through a management portal.

2.2.2 Managed Account

If you need additional help managing the money, under exceptional circumstances, we can arrange a managed account delivered by a third-party provider commissioned by the Council. This provider can:

- Pay care agency or self-employed personal assistants' invoices after checking they match your care plan

- Process payroll for employed Personal Assistants

- Handle tax, National Insurance, and pension contributions

- Manage HMRC returns

2.2.3 What your Direct Payment can be used for

Your Direct Payment must meet the eligible needs in your care and support plan. You have flexibility in how you meet your needs, but the money must be used for your care and support and managed in accordance with the terms and conditions outlined in the "Direct Payment Agreement."

The Council supports the flexible and innovative use of Direct Payments which can be used for a variety of needs, for example:

- For accessing support, therapeutic interventions, personalised technology learning independent living skills and activities in the community
- Alternative use of respite where this has been identified in the assessment and care planning process i.e. instead of using residential services
- For adjusting and flexing your personal assistant hours from one week to another in accordance with agreed care and support plan to suit any given changes

2.4 Equipment and Adaptations

Direct Payments cannot be used for property adaptations or equipment that are funded through the Disabled Facilities Grant (DFG). However, the Council can support commissioning arrangements for an eligible adult who wishes to choose their own property adaptation or equipment funded by a DFG and/or would like to contribute from their own resources.

2.5 Paying close family members

Direct Payments should purchase care that would not otherwise be available and not replace family care. The law advises Direct Payments should not be used to pay family members living in the same household. However, exceptional circumstances may apply where this is the only way in which care and support can be delivered. For example:

- You have extremely specific, complex needs only someone who knows you well can meet

- You live in a rural area with no suitable care providers

- Cultural or language requirements mean a family member is best placed to provide care

An exceptional circumstances form must be approved by the relevant manager prior to the direct payment being arranged.

2.6. Using personal assistants, self-employed personal assistant, or care agency

2.6.1 Using Personal Assistants

If you employ Personal Assistants (PAs), you become a legal employer, unless they are employed as per 2.6.3. Your responsibilities include:

The individual/Authorised Person must understand and agree to fulfil the legal obligations of an employer. Luton Council is not involved and bears no responsibility in employment arrangements regarding personal assistants, private organisations, or service providers with regards to the recruitment, employment relationship, or contract.

The individual/Authorised Person is responsible for making any changes to payment arrangements following an increase or decrease in support detailed in the care and support plan.

2.6.2 Employer Responsibilities

If you become an employer of Personal Assistants, you have significant legal responsibilities. It is essential you understand what being an employer means before proceeding with a Direct Payment.

Your responsibilities as an employer include:

Before employment:

- Safer recruitment (advertising, interviewing, references, right to work checks)
- Obtaining enhanced DBS checks (mandatory - see Section 2.8)
- Providing contracts of employment within 2 months
- Registering as an employer with HMRC

Ongoing employment responsibilities:

- Paying at least the National Living Wage (or National Minimum Wage for under 23s)
- Operating PAYE (deducting tax and National Insurance from wages)
- Submitting Real Time Information (RTI) to HMRC after each payment
- Providing payslips to your employees - Auto-enrolling eligible employees into a pension scheme
- Providing statutory holiday entitlement (5.6 weeks per year)
- Providing Statutory Sick Pay when applicable
- Arranging Employer's Liability insurance (this is a legal requirement)
- Arranging Public Liability insurance (strongly recommended)
- Following employment law for performance management, discipline, and dismissal
- Keeping employment records for at least 6 years

Training and development:

Your PAs should receive appropriate training to carry out their role safely and effectively. This may include:

- Manual handling training
- Medication administration (if required)
- First aid training
- Safeguarding awareness
- Any condition-specific training related to your needs

The cost of necessary training can be paid from your Direct Payment.

Support available:

We strongly recommend using a payroll service to help manage these responsibilities. The cost can be paid from your Direct Payment. Your social worker can provide information about available support services.

2.6.3 Modern slavery awareness

While most Direct Payment arrangements operate safely and appropriately, it is important to be aware of potential risks and how to prevent them.

Why modern slavery is a concern:

Modern slavery could occur accidentally if: - An intermediary agent is involved in recruitment without proper transparency - Payment arrangements are not direct and transparent - Workers do not have full control over their wages or employment terms - Workers are not aware of their employment rights - There are language barriers that prevent workers understanding their situation

To minimise risks and ensure ethical employment:

Payment practices:

- Always check that bank details you are paying wages into match your PA's details
- If you employ multiple PAs, pay each into separate accounts
- **Never pay PAs in cash** - always use bank transfers with clear audit trails
- Provide clear payslips showing all deductions

Employment rights:

- Ensure your PA understands their employment rights and entitlements
- Pay at least the National Living Wage
- Provide clear, written contracts in a language your PA understands
- Provide regular payslips showing wages, tax, and deductions
- Ensure your PA has freedom to leave employment if they wish
- Respect holiday entitlement and allow time off
- Never withhold wages or documents (e.g., passport)

Recruitment:

- If using an intermediary or agency to find PAs, ensure they are reputable
- Check that recruitment fees are not being charged to workers
- Verify right to work documents directly with your PA
- Conduct interviews directly with potential PAs where possible

If you have concerns:

If you have any concerns about employment arrangements - your own or someone else's - speak to your social worker immediately. Signs to watch for include:

- A PA who seems fearful or controlled by someone else - A PA whose wages go to someone else
- A PA who cannot take time off or seems to have no control over their hours
- A PA who does not receive payslips or does not understand their pay
- A PA who seems unclear about their employment rights

Modern slavery is a crime. If you suspect someone is being exploited, you can also contact: - Modern Slavery Helpline: 08000 121 700 - Police**:** 101 (or 999 in an emergency)

2.6.4 Using Self-employed Personal Assistants

Some PAs work as self-employed contractors rather than employees. If using a self-employed PA, you should obtain:

- A contract confirming they are self-employed

- Their Unique Taxpayer Reference (UTR) from HMRC

- Evidence of professional indemnity and public liability insurance

- An enhanced DBS check

Self-employed PAs do not receive holiday pay, sick pay, or redundancy pay. They declare their own income to HMRC, so you do not need to operate PAYE.

To confirm employment status for tax purposes, complete the HMRC Employment Status Indicator (ESI) tool.

2.7 Using care agencies

Instead of employing PAs, you can use your Direct Payment to buy services from care agencies. The agency remains the employer and manages recruitment, DBS checks, training, and payroll.

You can mix employment and agency services flexibly to meet your needs.

2.8. Disclosure and barring service (DBS) checks

2.8.1 DBS checks for Personal Assistants

Every PA you employ must have an enhanced DBS check before starting work. This is a legal requirement under the Care and Support (Direct Payments) Regulations 2014.

You are responsible for requesting these checks. The Council will pay the cost for the DBS Check. Never allow a PA to start work before their DBS check is completed.

Even if they have a DBS check from another employer, they need a new one to work for you.

DBS checks should be renewed every 3 years.

2.9. Keeping records

You must keep clear records showing how your Direct Payment is spent:

- Receipts and invoices for all purchases

- Timesheets for any PAs you employ (or invoices if they are self-employed)

- Payslips and tax payment evidence

We may ask to see them during reviews or monitoring visits.

2.9.1 Unspent money

It is normal to have some unspent money - for example, saving for holiday pay or contingencies. You can hold up to 6 weeks' worth of payments as a buffer. However, reviews may occur if money accumulates suggesting your personal budget may be too high.

If your Direct Payment ends, unspent money normally needs to be returned once all costs (i.e. final invoices/wages) have been paid, except for:

- Money legitimately saved for future care expenses (holiday or notice pay)

- Small amounts where recovery costs would be disproportionate

2.10 Reviews and monitoring

First review take place within 6-8 weeks and thereafter annually or more often if your needs change. We will help resolve any problems which may arise.

During reviews we will:

- Check if your needs have changed

- Discuss whether your care arrangements are working

- Review your Direct Payment records and check if you are managing the responsibilities

- Update your care plan if necessary

2.10.1 Financial monitoring

The Direct Payments Finance Team will monitor all accounts within 12 weeks of first payment and annually thereafter. They may ask for evidence of how money has been spent. We will remind you of the monitoring requirements and if required we will refer to Adult Social Care to review your provision.

2.10.2 Tell us about changes

You must tell us about significant changes:

- Changes in your health or care needs

- Changes in your ability to manage the payment

- Changes in your finances

- Moving house

- Problems with your care

Chapter 3: Breaks, Transitions and Special Circumstances

3.1 Direct Payments for persons in supported living arrangements

Currently, it is not possible to purchase permanent residential care with a Direct Payment, however Direct Payments can be used by people living in supported living services to purchase part or all of their care. This includes people who have tenancies in a group living arrangement whereby the whole group is supported by one care agency.

3.2 Hospital admissions

Direct Payments are not automatically suspended when you are admitted to hospital. If admitted for less than 4 weeks, your payment will usually continue so you can keep paying any PAs you employ.

If your stay exceeds 4 weeks and you want your Direct Payment to continue, discuss this with Adult Social Care. Any hospital stay may result in a review of your care plan.

3.3 Being away from home (holidays)

Direct Payments are paid up to two weeks in any 12-month period while the person who needs support is away from their normal place of residence. This would be captured in the individuals care and support plan, for example, a holiday or taking a break (planned respite). This does not include the cost of travel, including flights, accommodation and any other costs related to travel and individual expenses for yourself or your Personal Assistant.

Individuals/Authorised person taking their personal assistant with them must ensure they are both covered by their liability insurance, particularly while travelling abroad.

Should the individual not return on the planned date Direct Payments may be suspended until it is clear when the individual has or is returning. Direct Payments will re-start when they return.

If you are away longer than 2 weeks, exceptional circumstances can be considered at the discretion of the relevant manager.

3.4 Young people transitioning to adult services

If you are under 18 receiving Direct Payments under children's legislation, we have a duty to assess you before you turn 18. Having eligible needs as a child does not automatically mean you will have eligible needs under the Care Act as an adult.

Your Direct Payment arrangements do not automatically continue - we will reassess your needs and you will need a financial assessment to determine any contribution.

3.5 Loss of capacity during Direct Payment

If you were managing your own Direct Payment but lose capacity to consent, we will discontinue payments to you and consider making payments to an Authorised Person instead. We will always make temporary arrangements to ensure continuity of support.

Chapter 4: Concerns and Terminations

Chapter 4.1: Refusing a Direct Payment

The Care Act 2014 requires the Council to provide a Direct Payment when requested, but we may refuse in specific circumstances defined by law.

Stage 1: Initial concern identified

If concerns arise during assessment or review, your social worker will discuss these with you and their team manager. Concerns might include:

- Safeguarding risks that cannot be managed.

- Inability to manage the payment even with all available support. For example, where there are concerns about a person's ability to manage Direct Payments, such as debt relating to care contributions which could not be resolved.

- Previous misuse that has not been resolved.

Stage 2: Formal decision and communication

If we propose to refuse your Direct Payment, we will:

- Write to you explaining the specific reasons

- Detail which legal conditions have not been met

- Explain what, if anything, you could do to meet the conditions in future

- Invite you to provide further information within 14 days

- Arrange interim care services to meet your needs

Stage 3: Review and appeal

After receiving your response, if you are still unhappy you can ask for the decision to be reviewed by the relevant manager. You will receive a written outcome within 10 working days.

Stage 4: Formal Complaints

If you remain dissatisfied with the response:

- Use the Council's formal complaints procedure

We will continue to meet your eligible care needs through other arrangements while any dispute is resolved.

4.2 Suspension or termination

If we suspend or stop your Direct Payment, we have a continuing duty to meet your eligible needs, so will arrange alternative services if required. Decisions to suspend or stop Direct Payments may be based on the following:

- Misuse of funds - The payment is being spent on things unrelated to your care needs.
- Failure to keep records - You repeatedly do not provide information during monitoring.
- Safeguarding concerns - There are serious risks of harm that cannot be managed.
- Your needs or circumstance have changed - You no longer have eligible care needs or for example, moving into permanent residential care.
- You lose capacity - And there is no suitable Authorised Person available.
- Non-payment of contributions – You are not paying your assessed contribution.

Process

If we are considering stopping your payment, we will:

- Write explaining the reasons

- Give you opportunity to address the concerns

- Set out what will happen to your care

- Usually give 28 days' notice (longer if you employ staff who need notice/redundancy pay)

4.2 Repaying misused funds

If your Direct Payment has been misused, we may require you to repay the amount. If this is a large sum this can be managed under a repayment plan. If you refuse to repay, we may take legal action to recover it.

If we find evidence of fraud or criminal activity, we will refer the matter to our internal audit team and potentially the police.

4.3 Death of Direct Payment recipient

If you die while receiving a Direct Payment, we will work with your Authorised Person (if you have one) to ensure all necessary arrangements are made legally and contractually. This includes:

- Ending employment of any PAs with proper notice/redundancy
- Paying outstanding invoices
- Making payments to HMRC
- Conducting a final audit
- Recovering any unspent funds

4.4 Safeguarding

The Council has a legal duty to protect you from abuse and neglect. We take all safeguarding concerns seriously and may conduct a safeguarding enquiry.

Report concerns immediately if:

- Someone is using your Direct Payment without your consent
- You are being pressured to use your payment in ways you do not want
- You feel at risk of harm
- You have concerns about a PA or care provider's conduct

Contact:

- Your social worker or the Adult Social Care team
- Adult Safeguarding team (24-hour service)

4.5 Compliments, complaints, and concerns

The Council welcomes and responds positively to all comments, compliments, and complaints as a means of demonstrating its commitment to working in partnership with individuals and carers.

Day-to-day concerns

Contact your social worker or the Direct Payments team. Many issues can be resolved quickly through discussion.

Formal complaints

If your concern can't be resolved informally, use the Council's Adult Social Care Complaints Procedure:

4.6 Data protection

We manage your personal information in accordance with the Data Protection Act 2018. We will only use your information to:

- Assess your needs and provide Direct Payments

- Monitor and review your care arrangements

- Meet our legal duties

- Prevent and detect fraud

We may share information with other agencies where we have a legal duty to do so (for example, safeguarding concerns).

For full details about how we use your information, see our Adult Social Care Privacy Notice on the Council website or request a copy from Adult Social Care.