



ADULT SOCIAL CARE DIRECT PAYMENT POLICY

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Introduction

A Direct Payment is a monetary amount paid to a customer or their authorised or nominated person from their Personal Budget to be spent on the care and support needs outlined in their agreed Care & Support Plan. This allows a customer to choose how and when they receive services instead of Newham Council arranging services on their behalf.

This policy has been created to provide guidance to customers, residents of Newham Council and Newham Council staff on the making and receiving of Direct Payments. This policy provides guidance in line with sections 31-33 of the Care Act 2014 which relate to Direct Payments as well as the Care and Support (Direct Payment) Regulations 2014.

Section 1 – Receiving a Direct Payment

1. Who can receive a Direct Payment?

- 1.1 Any adult who has been assessed as being eligible for care and support or a Carer who has been assessed as being eligible for support from Newham Council can apply for a Direct Payment.
- 1.2 The following conditions must be met to receive a Direct Payment:
 - The Customer requests a Direct Payment;
 - Newham Council is not prohibited from making a Direct Payment outlined in Schedule 3, Care and Support (Direct Payments) Regulations 2014 or where discretion is allowed as part of Schedule 3, and Newham Council chooses not to exercise this discretion. Section 3 allows a small number of Local Authorities, which does not include the London Borough of Newham Council to make a Direct Payment for the purpose of securing long term residential care.
 - Newham Council is satisfied that the Customer is capable of managing a Direct Payment with or without support.
 - Newham Council is satisfied the making of a Direct Payment is an appropriate way to meet eligible needs.
- 1.3 There are cases where a Direct Payment may not be appropriate to meet needs. For example Direct Payments cannot be made to people subject to a court order to a drug or alcohol treatment programme or similar scheme.
- 1.4 A Direct Payment must be an appropriate way to meet the needs and outcomes set out in the Care & Support Plan. Everyone who is eligible has to consent to receiving the Direct Payment and be able to manage it, with support if required.

2. Assessing Mental Capacity to receive payments

- 2.1 Before a Direct Payment can be made an assessment of capacity will be carried out on a case by case basis. Mental capacity is the ability to make a decision. Under the 2005 Mental Capacity Act, a person lacks capacity in relation to a matter if at the time, they are unable to make a decision in relation to the matter because of impairment of, or a disturbance in the functioning of, the mind or brain.
- 2.2 Where there is any doubt about a person's ability to consent to a Direct Payment, Newham Council will assess whether or not the Customer has capacity to consent before making a Direct Payment available. Customers who would otherwise have no one to support them should be offered an advocate. In such cases, staff will refer to the Mental Capacity Act 2005 and its accompanying Code of Practice.
- 2.3 Inability to consent to receiving a Direct Payment does not mean a Customer with eligible needs cannot receive a Direct Payment.
- 2.4 Where a Customer in need of care and support has been assessed as lacking capacity to request the Direct Payment, an authorised person can request the Direct Payment on the Customer's behalf.
- 2.5 An authorised person is someone who agrees to manage a Direct Payment for a person who lacks capacity according to the Mental Capacity Act 2005. A nominated person is anyone who agrees to manage a Direct Payment on behalf of the Customer with care needs.
- 2.6 If appropriate an authorised/nominated person should be involved in the care and support planning process as well as receiving all the information advice and guidance a Customer would receive. The suitable person will sign an agreement to receive and manage the money on behalf of the Customer. By doing so they take on the legal responsibility related to employing and managing paid staff employed through the Direct Payments scheme. A copy of this can be found at Appendix 1
- 2.7 Consideration will also be given to cases where capacity is fluctuating or known to fluctuate. This should be covered in the care plan which details the steps to take where capacity fluctuates.

3. Receiving a Direct Payment

- 3.1 A request for a Direct Payment can be made at any time.
- 3.2 Customers may also receive Direct Payments from other forms of public funding. Where this takes place Newham Council will work with Customers and partner organisations to combine payments. This will avoid the person having multiple bank accounts and having to supply similar information to public bodies to account for Direct Payment spend, while allowing both bodies to meet their statutory responsibilities.

4. Customer's Contributions

- 4.1 A financial assessment will be made of a Customer's assets, savings and income to determine whether a financial contribution towards their care and support needs is

required. Customers who are required to pay a contribution must set up a standing order to their pre-paid card account. This will ensure that all the funds required for care and support are available and being spent from one account.

- 4.2 A failure to pay a Customer Contribution into the pre-paid card account may result in a reassessment of the Customer or their authorised/nominated person's eligibility for receipt of Direct Payments. In line with paragraph 22 Newham Council will take all reasonable steps to address any situations without the termination of the payment. If terminating a Direct Payment, Newham Council will ensure there is no gap in the provision of care and support.

5. Frequency of Payments

- 5.1 Direct Payments will be sent directly to a pre-paid card account on a 4 weekly basis in advance.

6. Payment Method

- 6.1 Newham Council will pay the Direct Payment amount agreed in the Care & Support Plan minus the Customer's contribution into either a pre-paid card account or a dedicated bank account. The Customer is expected to pay their contributions into the same account via standing order.

7. Bank Accounts

- 7.1 Newham Council has a pre-paid card system in place which can be used to receive Direct Payments. The pre-paid card system can be used like a basic bank account to make payments and set up direct debits or standing orders.
- 7.2 Pre-paid cards do not automatically allow cash withdrawals. In exceptional circumstances where cash withdrawals are needed this can be agreed by the Head of Service for Adult Social Care
- 7.3 In the event a customer loses their pre-payment card three times or more, they may be charged £5 for each subsequent lost card.
- 7.4 Newham Council is entitled to recover any under spend or misappropriation (theft) of Direct Payment funds from the Customer or their chosen decision maker (as the case may be). This will result in a review of the Customer's eligible needs.

8. Contingency and reserves

- 8.1 The Care & Support Plan may include a contingency element that can be used to cover fluctuating needs. The use of the contingency will be monitored by Newham Council to ensure that it is being spent in line with customers Care and Support Plan.
- 8.2 Customers should hold sufficient funds in their Direct Payment account to cover all planned expenditure. Anything held in excess of this amount that has not been agreed as part of fluctuating needs requirements will be recovered by Newham Council in line with section 18.1

9. Administration Costs

- 9.1 The management and administration of a large payment, along with organising care and support can be a complex and time consuming task.
- 9.2 Newham Council can provide support to customers to manage their Direct Payments through one of their 3rd Party Financial Service Partners. Customers are also free to identify an alternative provider of their choice. The costs of this service will be met from the customer's Personal Budget.
- 9.3 Customers can also choose to nominate a friend/family member to manage the Direct Payment on their behalf and can pay that friend/family for providing this service should they be able to demonstrate that the task warrants such payment. The cost of this service will be met from the Customer's Personal Budget.
- 9.4 The payment for administration to a friend/family member is not intended to be income replacement and there may be implications for the recipient in terms of tax and employment and payment may also impact upon other benefits.
- 9.5 Newham Council will need to be satisfied that it is necessary to make the payment to the family member to provide this service and that the Direct Payment will only be used for administration and management of the payment. The payment amount of up to £10 per month will be agreed on large Direct Payments of £300 per week and over where a Customer can demonstrate necessity. Payments outside of these conditions may be agreed by the Head of Service in exceptional circumstances where it can be demonstrated that the time taken in administration will exceed an average of an hour a month.
- 9.6 The circumstances and payment amount will be decided and agreed with the Customer, the family member, Newham Council and any other person (i.e. advocate), with Newham Council taking steps to ensure all parties agree.
- 9.7 These decisions will be recorded in the Care & Support Plan and include the amount of the payments, their frequency and the activities that are covered.
- 9.8 Newham Council will have in place an agreement between all parties about what steps to take in case of a dispute regarding the management of the payment by a household family member. This will be relevant especially where the person providing administration and management is also the nominated or authorised Direct Payment recipient. It would not be appropriate to allow this where there is a risk that the Direct Payment may be abused, or there are other sensitivities such as potential safeguarding issues
- 9.9 The Head of Service may agree for a family member to administer a Direct Payment from which another family member is being paid to deliver care. However, the paid carer cannot live at the same address as the customer.

Section 2 - How to Spend Direct Payments**10. What can Direct Payments be used for?**

10.1 Customers or their authorised/nominated person shall only use sums paid by means of a Direct Payment for the sole purpose of achieving the identified outcomes of the Care and Support plan. A failure to adhere to this section shall invoke the right reserved in paragraph 7.4 above.

10.2 Newham Council cannot draw up an exhaustive list as to how Customers can/cannot spend their Direct Payment. Each case must be decided on its own merits and documented in the Customer's Care & Support Plan, based on the following key principles. The service, activity or item proposed should:

- be clearly linked to the outcomes identified in the Support Plan to meet the Customer's assessed eligible community care needs.
- be able to show how it will keep the Customer healthy, safe and well.
- be affordable and proportionate to the Customer's assessed eligible care & support needs

10.3 Working within the above guiding principles, Direct Payments cannot be used for the following things:

- Anything illegal
- Purchase of alcohol, tobacco or gambling
- Long term residential care
- A health care need that should be provided by the NHS or CCG

10.4 The Direct Payments scheme has been designed to apply to a wide range of community care services in accordance with the Care Act 2014 and the Care and Support (Direct Payments) Regulations 2014. These could include:

- A personal assistant or agency care
- Community activities
- Attending a day centre
- Equipment

10.5 Where a Personal Assistant (PA) has been agreed in the Care & Support Plan, the Direct Payment will include funds to employ a PA, including recruitment costs (where required), employers national insurance contributions, income tax, employers' liability insurance, pension and other costs associated. Newham Council will provide information and support on how to begin employing a PA and will provide regular monitoring to ensure payments are being made correctly. Becoming an employer carries with it certain responsibilities and obligations, in particular in relation to paying Tax, National Insurance, minimum wage requirements and ensuring that any person employed has the right to work in the UK.

10.6 If for any reason a customer would like to spend their Direct Payment on anything other than items outlined in their Care & Support Plan they will need to contact the

Direct Payment team for agreement prior to purchase. Any change in spend may require a review of the Care & Support Plan.

- 10.7 Direct Payment cannot be used to pay for customers to live in long-term care home placements. They can be made to enable customers to purchase for themselves a short stay in care homes, provided that the stay does not exceed a period of four consecutive weeks in any 12-month period, or where the period between two stays in care homes is less than four weeks. This could be used to provide a respite break for a carer. Where the period between two care home stays is less than 4 weeks then the two stays should be added together to make a cumulative total, which should also not exceed four weeks.
- 10.8 People who are living in care homes may receive Direct Payments in relation to non-residential care services. For example, they may have temporary access to Direct Payments to try out independent living arrangements before making a commitment to moving out of their care home. Direct Payment can also be used by people living in care homes to take part in day-time activities.

11. Paying family Members

- 11.1 Direct payment cannot be used to secure the services from a spouse, a family member or a partner who lives in the same household as the customer with the exception of administration costs as outlined in section 9 except in exceptional circumstances which will need to be agreed in writing by the head of service.

12. Legal Rewards

- 12.1 Direct Payments are generally used to pay a PA for a service they provide. Direct Payments can also be used to pay for a 'legal reward'. Friends, family and neighbours can offer many kinds of support for free. The flexibility of a personal budget can allow a person to use a small amount of their money to say thank you for help received, we call these a legal reward.
- 12.2 A Legal reward can be paid to a maximum value in a given year of £250 per customer to comply with HMRC taxation law. Any amount over than £250 would need to be declared to HMRC for taxation and would no longer be considered a legal reward.
- 12.3 Any legal reward must be agreed by a Head of Service prior to the funds being spent. Alternatively the funds need to be allocated and agreed in the support planning process. Receipts for any purchases must be retained in line with section 17.1
- 12.4 In line with paragraph 10.3 legal rewards cannot be spent on the purchase of alcohol, tobacco, gambling or anything illegal.
- 12.5 The Council recommends that individuals who receive a legal reward in return for assisting a service user or carer and who are in receipt of benefits seek advice as to whether this will impact on their benefit entitlement. Individuals who claim benefits or tax credits and who participate in regular paid activity (without the status of an employee) will have an obligation to ensure that they do not breach the conditions of entitlement to their benefits and do not face being overpaid.

12.6 For example it could affect an individuals ability to meet the terms of their jobseekers agreement or may raise questions about their incapacity if they are claiming benefit as unfit for work.

13. Employment Duties

13.1 Customers need to be aware that they or their authorised/nominated person is responsible for the day-to-day management of their Direct Payments including that of employing suitably qualified workers where necessary to provide the assistance identified within their Care & Support Plan.

13.2 Newham Council will signpost customers to information in regards to their role as an employer. For customer that request or require further help or assistance Newham Council will arrange face to face advice and guidance.

13.3 When employing any person referred to in paragraph 10.5 above, the Customer shall comply with their legal duties and obligations as an employer in the United Kingdom including that which is required by HM Revenue and Customs and the UK Border Agency. The Customer or their nominated or authorised person shall be responsible for making appropriate deductions for tax and national insurance contributions from the remuneration paid to its workers, register as an employer with HMRC and ensure all checks are made of their potential employee including a DBS check and the right to work in the UK.

13.4 Customers will need to have in place Employers Liability Insurance. The Employers Liability Insurance should be taken out with a reputable insurance company or underwriters with a minimum limit for any one claim of £5 million (customers will be notified if this limit is increased or decreased in the future as reasonably required by the Chief Finance Officer of the Council.) The insurance policy and premium receipts must be produced on demand when requested by Newham Council.

13.5 The Customer or their authorised/nominated person must ensure that any person they employ with the use of Direct Payments will not be considered or consider themselves an employee or agent of Newham Council and that Newham Council will not be responsible for any income tax, National Insurance or any other payments or responsibilities in relation to the employee of the Customer. It must be clearly stated in their contract of employment or written statement of work that they are employed solely by the Customer or the authorised/nominated person.

13.6 Customers and or their authorised/nominated person will be expected by Newham Council to ensure that the Customer has made provisions for cover in emergency situations or when their PA is not able or not due to attend to support them, such as in cases of annual leave or sickness.

13.7 In the event that the normal contingency arrangements by the Customer or their authorised/nominated person for the provision of the services breaks down, in an emergency Newham Council shall endeavour to ensure that the Customer receives appropriate services to achieve their agreed outcomes for that period until the Customer or their authorised/nominated person is able to resume their usual arrangement. This will result in the need for repayment to Newham Council of monies already paid to the Customer. The amount will be recovered by Newham Council from

the Pre-payment card account and the details provided to the Customer or their authorised/nominated person in writing. Newham Council may recover any amount due greater than money in the Pre-payment card account from future Direct Payments after conducting a re-assessment of the Customer's needs in consultation with the Customer.

14. Safeguarding

- 14.1 It is an offence under the Criminal Justice and Court Services Act 2000 and Safeguarding Vulnerable Groups Act 2006 for anyone to knowingly offer work with vulnerable people or children to, or procures work with vulnerable people or children, or allows such an individual in such work.
- 14.2 The Customer or their nominated or authorised person shall ensure that when employing a person that will have unsupervised access to young or otherwise vulnerable people during the course of their work that the Customer or their nominated or authorised person conducts an enhanced DBS (Disclosure and Baring Service) check to ensure that the person has no relevant criminal convictions that would preclude them from working with children or vulnerable people. Newham Council will meet the cost of the DBS check.

15. Direct Payments – Paying for Council Services

- 15.1 As a general rule, Direct Payments should not be used to pay for services provided by Newham Council. If a customer wishes to receive a service from Newham Council that has been included in their Care & Support Plan this will be arranged by the Council and the Direct Payment will be reduced by the service cost before it reaches the pre-paid card account.
- 15.2 There may be cases where Newham Council will exercise discretion to provide care and support by receiving a Direct Payment amount, for example this could be where a person who is using Direct Payments wants to make a one-off purchase from Newham Council such as a place in day care. In these cases, Newham Council will take into account the wishes of the person requiring care and support when making a decision. In one off cases such as these, it may be less burdensome to accept the Direct Payment amount, rather than providing the service and then reducing the Personal Budget and Direct Payment accordingly.
- 15.3 This does not preclude Customers from using their Direct Payment to purchase care and support from a different local authority. For example, a person may live close to authority boundaries and another local authority could provide a particular service that their 'home' authority does not provide.

Section 3 – Audit and Review of Direct Payments

16. Review of Direct Payments

- 16.1 As part of the monitoring and review process an initial light-touch review will take place 4-6 weeks after Direct Payments have started to ensure that the Customer is comfortable with using the Direct Payment, and experiencing no initial issues. The review will take place to establish if the Direct Payment is being spent, to ensure

unmet assessed eligible community care needs and outcomes are being met and that the Direct Payment is being used as detailed in the Care & Support Plan and within the terms of the Direct Payment agreement. It should ideally be incorporated within the initial review of the care and support. However, if the initial review raises concerns or requires actions that affect the detail recorded in the Care & Support Plan, then a full review of the plan will need to be carried out.

- 16.2 If at the initial review it becomes clear that the Customer is struggling to understand their responsibilities in operating the Direct Payment, Newham Council shall assist with further information, advice and support.
- 16.3 Newham Council will review the Direct Payment arrangements six months following the initial payment, and thereafter every 12 months if no further issues arise to enable Newham Council to establish that the Direct Payment is still an appropriate way of meeting the Customer's needs and outcomes, and that conditions upon which it is made are being met.
- 16.4 The monitoring will take place across both the financial aspects of the Direct Payment and to identify risks and issues. For example, if the Direct Payment recipient is employing people, Newham Council will include in the review, checks to ensure the individual is fulfilling their responsibilities as the employer. In particular that they are submitting PAYE returns to HMRC as well as paying tax and National Insurance deductions made to HMRC.
- 16.5 Where a Direct Payment is being allocated to a nominated/authorised person, or where there may be a family carer being paid for administrative support, the review should, where possible, incorporate all of these parties as well as the person in need of care and support. This will ensure that Newham Council receives views from everyone involved in the Direct Payment to ensure there are no initial issues that require resolving.
- 16.6 Newham Council has the right to increase, decrease, suspend or terminate the Direct Payment in line with a regular review or reassessment of the Customer's assessed eligible community care needs.
- 16.7 Where Newham Council has identified a change in circumstance that it deems affects the current level of Direct Payments due, Newham Council will give the customer or their authorised/nominated person 7 days written notice of the change. This notice period may be extended where a reduction may affect any pre-existing contractual arrangements, such as a PA.
- 16.8 The Customer or their authorised/nominated person will ensure that arrangements are in place to notify Newham Council immediately if there are any changes in their circumstances which may affect their entitlement to Direct Payments. Examples of changes are: if the Customer is admitted to hospital, is going to be away for periods beyond 4 weeks or no longer requires the service, a change of address or support arrangements. It is the responsibility of the Customer to check with Newham Council if they are unsure if a change in circumstance will affect their eligibility to continue to receive Direct Payments.

- 16.9 Following discussion with the Customer or their authorised/nominated person Newham Council may temporarily reduce or suspend payments if the Customer is unable to receive services for a period of time, such as for long stays in hospital. Newham Council shall give consideration to Customer's individual circumstances upon admission to hospital. Direct Payments may continue to be paid for short stays in hospital to facilitate staff retention by the Customer.
- 16.10A formal review or reassessment of the Customer's circumstances by Newham Council can be requested at anytime.

17. Audit of Direct Payments

- 17.1 The Customer or their nominated or authorised person shall keep all documents and/or records generated in connection with the provision of services to which this agreement relates for a period of 6 years following the end of the services. The documents and/or records held by the Customer or their authorised/nominated person may be inspected by Newham Council via its staff including Newham Council Council's Internal Audit Service or other person authorised by Newham Council.
- 17.2 The activity on the pre-payment card account will be monitored by Newham Council via the pre-payment card on-line system. Newham Council will not normally require or request documentation for a transaction that appears on the on-line account that clearly identifies the service and is within the agreed Care & Support Plan limits.
- 17.3 Newham Council will request information and supporting documentation for an entry on the pre-paid card account that is not easily recognisable, exceeds or is notably lower than the agreed care or service costs. The Customer shall provide this information within 14 days of the request. Failure to provide such documentation shall result in a reassessment of the Customer or their authorised/nominated person's eligibility for receipt of Direct Payments.
- 17.4 Customers or their authorised/nominated person shall contact Newham Council Council's Direct Payment Team when requested and submit to the periodic monitoring and review of the service.
- 17.5 Newham Council will provide information and advice to Customers who opt to take their care and support through the payment of a Direct Payment. It will be made clear to the Customer that the Direct Payment account is auditable and the need for good record keeping on expenditure is important.
- 17.6 The Direct Payment account will be subject to regular audits in relation to the use and management of the Direct Payment, the account will be audited initially at 6-8 weeks from it starting and any issues will be addressed.
- 17.7 Thereafter Direct Payment accounts will be audited 6 months following the first payment and from then on annually if no further issues arise. Audits are required to ensure that the Direct Payment is being used for the purposes laid out in the Care & Support Plan with accurate receipts and records are being kept. Any discrepancies will be investigated and resolved and any debt will be recovered by Newham Council.

17.8 Newham Council has the right to suspend or terminate the Direct Payment as a result of the findings of the audit of the Direct Payment account.

18. Recovery of Direct Payments

18.1 Newham Council reserves the right, after consultation with the Customer or their authorised/nominated person, to adjust future payments to recover any over-payments or under-spends after taking into consideration any other expenses the Customer is required to meet in relation to their Direct Payments such as statutory holidays and payments due to the HM Revenue and Customs.

19. Unspent Direct Payments

19.1 Where money remains on the Pre-payment card account outside the allowed or agreed amount for contingency, HMRC, annual leave, respite, fluctuating needs or one-off payments for example, any overpayment or under-spend will be recovered from this account by Newham Council.

20. Wrongful Use of Direct Payments

20.1 Newham Council has a duty of care to ensure the Customer or their authorised/nominated person is using the Direct Payment to achieve the outcomes agreed in their Care & Support Plan, that the charges the Customer incurs are reasonable and that public funds are being used effectively. In line with 17.3 where requested the Customer is required to provide as much information as possible in the time frame given.

20.2 In the event that fraud, abuse or misuse is reasonably suspected Newham Council may refer the matter to Internal Audit for investigation and offer support to the Customer to reduce the risk of further loss occurring. Newham Council shall refer any potential criminal activity to the Police for further investigation and reserve the right to prosecute where fraud is suspected to have taken place.

20.3 Newham Council will not be responsible for any losses incurred by the Customer and will not therefore reimburse the Customer unless or until they have been cleared of any involvement in the loss.

21. Direct Payments and Hospital Stays

21.1 There may often be occasions when the customer requires a stay in hospital. If a customer is in hospital for 4 weeks or more a review will take place. Payments may be reduced in the event that a customer is due to remain in hospital for a long period of time as discussed in paragraph 16.8. Consideration to contractual agreements with PAs will be taken into account to ensure a continuity of care when discharged from hospital.

21.2 During the review consideration will be given to how the Direct Payment may be used in hospital to meet non-health needs or to ensure employment arrangements are maintained. For example, the customer may prefer the personal assistant to visit the hospital to help with personal care matters outside those performed by hospital staff.

This may be especially so where there has been a long relationship between the Direct Payment holder and the personal assistant. This should not interfere with the medical duties of hospital personnel, but be tailored to work alongside health provision.

- 21.3 In some cases, the nominated or authorised person managing the Direct Payment may require a hospital stay. In these cases Newham Council must be notified and an urgent review will be conducted to ensure that the person continues to receive care and support to meet their needs. This may be through a temporary nominated/ authorised person, or through short-term care and support arrangement.
- 21.4 Upon imminent discharge from hospital a review of the care and support needs of the Customer will be undertaken by Newham Council to ensure that an appropriate Care & Support Plan is in place before the Customer returns home and Direct Payments may be reinstated if these were temporarily ceased or reduced, provided the Customer continues to meet the eligibility criteria.

22. Direct Payments - Periods Away from Home

- 22.1 Customers intending to travel outside their ordinary area of residence for short periods, must inform Newham Council of their plans prior to making those arrangements. The Customer will need to state the period of time from which they will be away and to confirm their arrangements for support during this period.
- 22.2 The Customer retains the responsibility to ensure that if they employ someone when away, particularly if this is outside the UK the Customer must ensure that they comply with the country's employment rules and regulations.
- 22.3 The Customer or their authorised/nominated person must retain receipts for payment of wages to workers as well as all other documentation related to such employment; this includes copies of receipts and invoices relating to purchases made from their Direct Payment pre-paid card account. These should be submitted to Newham Council along with their financial monitoring returns.
- 22.4 The Customer or their authorised/nominated person retains responsibility of ensuring that arrangements are in place to pay the wages of their employee/s in the UK if they wish to retain them while they are away from home.

Section 4 - Ending Direct Payments

23. Terminating Direct Payments

- 23.1 Direct Payment will only be terminated as a last resort. Newham Council will take all reasonable steps to address any situations without the termination of the payment. If terminating a Direct Payment, Newham Council will ensure there is no gap in the provision of care and support.

24. Terminating Direct Payments by the Direct Payment Recipient

- 24.1 If a Customer expresses a desire to terminate the Direct Payment, the reasons for the termination should be provided to Newham Council. In these cases Newham Council

will then work with the individual to plan how their assessed eligible care needs will be met in an alternative way and Newham Council will ensure there are no outstanding contractual liabilities before the Direct Payment is terminated.

- 24.2 A Direct Payment may be terminated by the Customer or their authorised/nominated person by providing 4 weeks' notice to enable Newham Council to, if required meet the Care & Support Plan outcomes by alternative means to the Direct Payment.

25. Newham Council Terminating Direct Payments

- 25.1 Newham Council shall cease making Direct Payments if the person no longer appears to be capable of managing the Direct Payment or of managing the payment with support. Newham Council will make timely arrangements for services to be provided in lieu of the Direct Payments, to ensure continuity of support.
- 25.2 Direct Payment should be discontinued when a person no longer needs the support for which the Direct Payments are made. This might happen in situations where the Direct Payments are for short-term packages when leaving care home or hospital. Direct Payments for after-care services under section 117 of the Mental Health Act would also cease once the clinical commissioning group and Newham Council are satisfied that the person concerned is no longer in need of such services.
- 25.3 There may be circumstances in which Newham Council will discontinue Direct Payments temporarily. An example might be when an individual does not require assistance for a short period because their condition improves and they do not require the care and support that the Direct Payments are intended to secure. Newham Council will discuss with the person, their carer, and any other person concerned on how best to manage this.
- 25.4 The person should be allowed to resume responsibility for their own care after the interruption, if that remains their wish, unless there has been a change of circumstances which means that the conditions in the Act and/or Regulations are no longer met. If there is a change of circumstances that affects the Care & Support Plan Newham Council will revise the plan to ensure that it is still meeting outcomes within the Care and Support Plan.
- 25.5 Newham Council might also discontinue payments if the person fails to comply with a condition imposed under regulations to which the Direct Payments are subject or if for some reason Newham Council no longer believes it is appropriate to make the Direct Payments. For example, Newham Council may discontinue the Direct Payment if it is apparent that they have not been used to achieve the outcomes of the Care and Support Plan.
- 25.6 Direct Payment must not be provided under certain conditions, such as where the recipient is placed by the courts under a condition or requirement relating to a drug and/or alcohol dependency.
- 25.7 Where Direct Payments are discontinued as a result of criminal justice legislative provisions, Newham Council will make timely arrangements for services to be provided in lieu of the Direct Payments, to ensure continuity of support.

26. Discontinuing Direct Payments in the case of persons with capacity to consent

- 26.1 Where someone with capacity is in receipt of a Direct Payment but loses capacity to consent, Newham Council will discontinue Direct Payments to that person and consider making payments to an authorised person instead. In the interim, Newham Council will make alternative arrangements to ensure continuity of support for the person concerned.
- 26.2 If Newham Council believes the loss of capacity to consent to be temporary, it may continue to make payments if there is someone else who is willing to manage payments on the person's behalf. This situation should be treated as strictly temporary and will be closely monitored to ensure that, once the person has regained capacity, they are able to exercise overall control over the Direct Payments as before. If the person's loss of capacity to consent becomes prolonged, Newham Council will consider making more formal arrangements for an authorised person to take over receipt of the Direct Payments on that person's behalf. The arrangement is designed to be temporary, so that the person managing the Direct Payment does not enter into any long-term contractual arrangements

27. Discontinuing Direct Payments in the case of persons lacking capacity to consent

- 27.1 Newham Council will discontinue Direct Payments if Newham Council is not satisfied for whatever reason that the authorised person is acting in the best interests of the beneficiary, within the meaning of the 2005 Mental Capacity Act. Newham Council may discontinue the Direct Payments if it has sufficient reason to believe that the conditions imposed under regulations on the authorised person are not being met. Newham Council may wish to consider if someone else can act as an authorised person for the person lacking capacity, or whether there is a need for the Council to arrange services for them in place of the Direct Payments.
- 27.2 Direct Payment will be discontinued to an authorised person where Newham Council has reason to believe that someone who had lacked capacity to consent to Direct Payments has now regained that capacity on a long-term or permanent basis. Newham Council will not terminate Direct Payments to the authorised person before beginning to make Direct Payments to the service recipient themselves or to arrange services for them, according to their wishes. If Newham Council is satisfied that the regaining of capacity will only be temporary then it can continue to make Direct Payments to the authorised person if during the period that the adult has the capacity to make the request and is capable of managing the Direct Payment, the adult will manage the payments for him or herself.

28. How to discontinue Direct Payments

- 28.1 Newham Council will discuss as soon as possible with customers or their authorised/nominated person, their carers and any person managing the Direct Payments if it is considering discontinuing Direct Payments to them, in order to explore all available options before making the final decision to terminate the Direct Payments. For example, if ability to manage is an issue, the individual should be given an opportunity to demonstrate that they can continue to manage Direct Payments, albeit

with greater support if appropriate. Newham Council will not automatically assume when problems arise that the only solution is to discontinue or end Direct Payments.

- 28.2 If Newham Council does decide to withdraw Direct Payments, it will need to conduct a review of the plan and agree alternative care and support provision with the person, their carer and independent advocate if they have one, unless the withdrawal was following a review after which Newham Council concluded that the services were no longer needed. A 4 week period of notice will normally be given before Direct Payments are discontinued.
- 28.3 It will be extremely unlikely that Newham Council will discontinue Direct Payments without giving notice, although in serious cases this may be warranted (for example, the authorised person is not acting in the best interests of the person). Newham Council should explain to people, before they begin to receive Direct Payments, the exceptional circumstances in which this might occur and discuss with them the implications this has for the arrangements that individuals might make.
- 28.4 Newham Council retains the right to recover Direct Payments in full or in part if it is satisfied that the money had been diverted from the use for which it was originally intended.
- 28.5 If Direct Payments are discontinued, some people may find themselves with ongoing contractual responsibilities or having to terminate contracts for services (including possibly making employees redundant). Contractual obligations will require a notice period for termination such as service paid for in advance and employment contracts. These arrangements will need to be taken into consideration when Direct Payments are discontinued by both the Customer and or their authorised/nominated person.
- 28.6 There may be circumstances where the person has lost the capacity to manage the Direct Payment and there is no-one else to manage the payment on their behalf, or where a person needs additional support to terminate arrangements. In these cases Newham Council will provide support to ensure that any contractual arrangements are appropriately terminated to ensure that additional costs are not incurred.

29. Ending Direct Payments – on death

- 29.1 In the event of the death of the Customer any amount of Direct Payment remaining in the Customer's pre payment card account will be recovered by Newham Council following a discussion with the family and or authorised/nominated person. There will be funds available to pay for commitments outlined in the Care & Support Plan if an agreement is in place for advance payments or notice needs to be given before termination.
- 29.2 Any amount due to the estate of the Customer for the fulfilment of contractual and legal obligations relating to any person employed by the Customer or to HM Revenue and Customs shall be paid by Newham Council on receipt of supporting documentary evidence or an invoice relating to the services received.
- 29.3 Any personal contribution remaining on the pre-payment card account will be paid to the Customer or their estate within 28 days of termination of the Direct Payment, subject to all records being provided and available to Newham Council. Any additional

amount remaining on the pre-payment card account will be returned to Newham Council.

- 29.4 In the event of a Customer's death their PA will be entitled to a statutory redundancy payment. This will be paid for by Newham Council on receipt of the agreed contract or written statement of work which should show when their employment commenced.

Direct Payment Team – DPTeam@newham.gov.uk /020 8430 2000 (option 2)

Appendix 1 - Adult Social Services Direct Payment Agreement ("the Agreement")

1. Parties to the Agreement

This Agreement is between The London Borough of Newham ("the Council") and the Customer

Name of the Customer:

Address:

Postcode

CareFirst number:

Name of representative if the Customer is unable to sign the Agreement

Representatives Name:

Address:

Postcode:

Relationship to the Customer:

2. Basis of the Agreement

2.1 This Agreement should be read alongside Newham's Adult Social Care Direct Payment Policy. The Agreement is made on the basis that:

- 2.1.1 Your needs have been assessed as eligible to receive care and/or support services as identified and agreed in your care & support plan.
- 2.1.2 You are willing and able to secure the service(s) detailed in your care & support plan yourself, or with support.
- 2.1.3 The Council will make payment(s) to your direct payment account /your 3rd party provider to enable you to purchase the services agreed in your care & support plan to achieve the agreed outcomes

3 Start date of the Agreement

3.1 The Agreement will begin on **(insert date)**. Recurring payments from the Council will generally be made every 4 weeks in advance into your Direct Payment account/3rd party provider. The weekly amount paid will be in accordance with your signed care & support plan

4 Review

4.1 Your care & support plan and direct payment will be reviewed shortly after it has been set up to ensure you are happy with the services and are able to meet your outcomes identified in your care and support plan. This will normally be within 8 weeks of the start of your direct payment

4.2 Reviews after this will be carried out at least annually. Reviews can be carried out more frequently if either you or the Council have any cause for concern or need additional support.

4.2 You must inform the Council immediately if at any time you experience difficulty achieving the agreed outcomes in your care & support plan or managing your direct payment Direct Payment account.

5 General rules about how to use the money

5.1 Your direct payment is to enable you to buy the services as detailed and agreed in your care & support plan.

5.2 You must notify the Council if you wish to change anything in your care & support plan and obtain approval in writing from the Council prior to purchase.

5.3 You cannot use your direct payments to buy anything other than meeting your outcomes as agreed in your care & support plan. In particular, although not an exhaustive list, you cannot spend your direct payments on the following items:

- Anything that is illegal
- Alcohol, tobacco, drugs or gambling
- A Stay in a care home for longer than 8 weeks in a year
- Pay a close relative that lives with you

6 Directly Employing Staff

6.1 If you do choose to employ your own staff, you need to ensure you understand your responsibilities as an employer.

6.1 You need to comply with all your legal duties and obligations as an employer in the United Kingdom, including what is required by HM Revenue & Customs and the UK Border Agency.

- 6.2 You will need to have appropriate Employers Liability Insurance in place, taken out with a reputable insurance company or underwriters.
- 6.3 You shall be responsible for making appropriate deductions for Tax and National Insurance contributions from the remuneration paid to your workers.
- 6.4 Any person you employ with the use of direct payments will not be considered an employee or agent of the Council and the Council will not be responsible for any Income Tax, National Insurance, any other payments or responsibilities in relation to that person.

7 Records you must keep

- 7.1 You will need to retain all orders, correspondence, receipts and statements for any payment made in relation to the services received.
- 7.2 The activity on the Direct Payment account will be monitored by the Council, via the Pre-Paid Card On-line system or via the 3rd Party provider. The Council will not normally require or request documentation for a transaction that appears on the on-line account that clearly identifies the service and is within the agreed care or support plan limits.
- 7.3 The Council will request information and supporting documentation for any entry on the on-line account that is not easily recognisable, exceeds or is notably lower than the agreed care hours or service cost. You will be required to provide this information within fourteen (14) days of the Council's request.
- 7.4 Your payments may be suspended if you are unable to provide evidence of spend when required by the Council.

8 Inappropriate spending

- 8.1 The Council retains the right to recover direct payments in full or in part if it is satisfied that the money has been diverted from the use for which it was originally intended, as set out in your care and support plan.

9 Refund of Unspent Funds

- 9.1 Unspent money in your Direct Payment account/3rd Party Provider account should not normally exceed the equivalent of two weeks of your direct payment amount. This does not include any money that you have put by for outstanding commitments such as Tax or annual respite. Any excess money in Direct Payment account/3rd Party Provider account will be recovered by the Council following a discussion with you.

10 Ending the Agreement

- 10.1 This Agreement may be terminated by you or the Council by either party giving 4 weeks' notice in writing to the other party.
- 10.2 The Council may discontinue payments and terminate this Agreement with immediate effect, if:
- 10.2.1 After investigation, it is found by the Council that you are failing to comply with the terms and conditions of this Agreement and the Council has reason to believe that you are using the money illegally or inappropriately;
 - 10.2.2 The Council is not satisfied that your support needs can be met by a direct payment; or
 - 10.2.3 You no longer need care and support service.
- 10.3 Before terminating the Agreement, the Council will work with you to find a resolution to the issues wherever possible.

11 Agreement & Declaration

Here all parties are signing to indicate that they understand and agree to the terms set out in this Agreement.

Name of Council Representative:

Signature:

Date:

I, the Customer realise that I may be committing a criminal offence by giving false or misleading details, or withholding information in order to receive payments from the Council and that if I provide information which I know to be false, I may be liable to prosecution.

Customer Name:

Signature:

Date:

If the Customer is unable to sign or understand the Agreement - please complete this section: I confirm that the direct payment will be managed on behalf of the Customer as agreed in the signed care & support plan. I agree to act as Representative on behalf of the Customer. I am independent of the Direct Payments Provider and agree to be bound by the terms and conditions of this Agreement.

Representatives Name:

Signature:

Date:

If the Customer or representative requires services to support them in managing their payments, such as payroll, help with payment of invoices etc. and they have requested a Third Party Financial Services, please arrange for the provider to sign below

Third Party Provider Name:

Name of company representative:

Signature:

Date: