** Direct Payments**

**Policy**

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**1. What are Direct Payments?**

**1.1 Introduction to Direct Payments**

Direct payments have been in used in adult social care and support since the mid-1990s. They provide independence, choice and control by enabling customers to choose the services they need to meet their eligible needs instead of having it provided or arranged directly by the local authority.

Direct payments are monetary payments made to individuals, a carer or an individual who is acting on your behalf who request to receive them to meet some or all of their eligible care and support needs.

Direct payments promote independence, choice and inclusion by enabling people to live in their own homes, be fully involved in family and community life, and to engage in work, education and leisure opportunities, by purchasing support, and services they are assessed as needing to meet any agreed outcomes.

The Local Authority has a duty to provide direct payments as an option to meet an individual’s assessed social care outcome (with the exception of customers requiring permanent residential care).

This policy reflects the Care Act 2014;

In accordance with the Children and Families Act 2014 children with a special educational need or disability (SEND) who are eligible for a direct payment will have their payment made to their parent or guardian up until the age of 16. A young person of 16 or older can opt to have their direct payment paid directly to themselves.

Where there are issues of capacity to consent or there are concerns about the young person’s ability to correctly manage the direct payment, the Local Authority must have a best interest meeting and can insist that an appropriate third party of the young person’s choice is appointed to manage the direct payment on their behalf.

**1.2 The Legal Framework**

The legislative context for direct payments to meet the care needs of adults is set out in the Care Act 2014. The legislative context for direct payments to meet the needs of children and families is set out in the Health and Social Care Act 2001, The Children Act 1989, Children and Families Act 2014 and The Special Educational Needs (Personal Budgets) Regulations 2014.

Under the 2014 Legislation and Statutory Guidance, local authorities have a duty to provide Direct Payments to all adults, carers and children with special educational needs and disabilities (SEND) with Education, Health or Care Plans (EHC) who meet the Council’s eligibility criteria and who request them. This policy is implemented in accordance with the Care Act 2014.

Section 31 of the Care Act specifies the conditions that must be satisfied in order to trigger the Local Authority duty to provide a direct payment. It relates to adults who have the capacity to request a direct payment.

[Section 32](http://login.westlaw.co.uk/maf/wlbo/app/document?src=doc&linktype=ref&publication=SSC&context=18&crumb-action=replace&docguid=I6C5AA741E61C11E3A350A156035B4697&publication=SSC) deals with those who lack capacity.

In general [s.31](http://login.westlaw.co.uk/maf/wlbo/app/document?src=doc&linktype=ref&publication=SSC&context=18&crumb-action=replace&docguid=I6C5A8031E61C11E3A350A156035B4697&publication=SSC) states that direct payments must be provided if:

* an adult requests direct payments and has capacity to do so – and/or if they have nominated someone to manage the payments on their behalf, that person agrees to receive the payments;
* the local authority is required to contribute towards meeting the adult’s assessed needs;
* the local authority is satisfied that the adult or nominated person is capable of managing direct payments – by themselves or with help;
* the local authority is satisfied that making direct payments is an appropriate way to meet the needs in question; and
* the provision of direct payments is not prohibited by the regulations, and if the regulations give the authority discretion not to provide direct payments, it exercises that discretion.

The Local Authority must make payments to the adult or nominated person, subject to the regulations and provided that the following four conditions **are all met:**

* Condition 1: the adult must have capacity to request direct payments, and any person nominated to receive a direct payment on their behalf must agree to doing so (subs.(4));
* Condition 2: the local authority is not prohibited by regulations from making direct payments, and the authority does not exercise its discretion in certain circumstances;
* Condition 3: the local authority must be satisfied that the adult (or anyone nominated on their behalf) is “capable of managing” a direct payment, either on their own or with help for instance from family members and
* Condition 4: the local authority is satisfied that making direct payments (either to the adult or someone nominated) is an appropriate way of meeting the needs for care and support.

The statutory guidance makes clear that *all these conditions need to be met* in their entirety and a failure in one would result in direct payments being declined.

Direct Payments to Adults who lack mental capacity (Section 32)

[Section](http://login.westlaw.co.uk/maf/wlbo/app/document?src=doc&linktype=ref&publication=SSC&context=20&crumb-action=replace&docguid=I6C5AA741E61C11E3A350A156035B4697&publication=SSC) 32 provides that direct payments must be made if:

* a person authorised under the [Mental Capacity Act](http://login.westlaw.co.uk/maf/wlbo/app/document?src=doc&linktype=ref&publication=SSC&context=20&crumb-action=replace&docguid=I5D1C8770E42311DAA7CF8F68F6EE57AB&publication=SSC) or a suitable person requests direct payments to meet some or all of the adult’s needs;
* the local authority is required to contribute towards meeting the adult’s needs;
* the local authority is satisfied that the authorised person will act in the adult’s best interests;
* the local authority is satisfied that the authorised person is capable of managing direct payments – by themselves or with help;
* the local authority is satisfied that making direct payments to the authorised person is an appropriate way to meet the needs in question; and
* the provision of direct payments is not prohibited by the regulations, and if the regulations give the authority discretion not to provide direct payments, it exercises that discretion.

Direct payments under [s.32](http://login.westlaw.co.uk/maf/wlbo/app/document?src=doc&linktype=ref&publication=SSC&context=20&crumb-action=replace&docguid=I6C5AA741E61C11E3A350A156035B4697&publication=SSC) must be discontinued if the person subsequently gains capacity.

If the gaining of capacity is temporary, the Local Authority can continue payments to the authorised person if during that period the adult will manage the payments themselves.

Authorised Person

The Authority must be satisfied that the authorised person will use the direct payment in the best interests of the adult and that making a direct payment to the authorised person is an appropriate way of meeting the adult’s needs.

An authorised person can be:

1. Someone who is authorised under the [Mental Capacity Act 2005](http://login.westlaw.co.uk/maf/wlbo/app/document?src=doc&linktype=ref&publication=SSC&context=20&crumb-action=replace&docguid=I5D1C8770E42311DAA7CF8F68F6EE57AB&publication=SSC) as a court appointed Deputy or under a lasting power of attorney, to make decisions about the adult’s needs for care and support; or
2. Another person who the local authority and the authorised person agree is a suitable person to receive the direct payments; or
3. If there is no person authorised under the [Mental Capacity Act](http://login.westlaw.co.uk/maf/wlbo/app/document?src=doc&linktype=ref&publication=SSC&context=20&crumb-action=replace&docguid=I5D1C8770E42311DAA7CF8F68F6EE57AB&publication=SSC), a person who the local authority considers is a suitable person to whom to make the payment.

The statutory guidance makes clear that all legal conditions need to be met in their entirety and a failure in one would result in direct payments being declined.

The guidance also explains that where requests for direct payments are accepted, the decision should be recorded in the care and support plan, where refused, the customer should be provided with written reasons that explain the decision, and be made aware of how to appeal the decision through the local complaints process.

Legislation sets out steps which a local authority must take in order to be satisfied that making direct payments to an authorised person is an appropriate way to meet the assessed needs.

These include consulting and taking into account the views of:

* anyone named by the adult as someone to be consulted on this matter;
* anyone caring for or interested in the adult’s welfare; and
* any person who is authorised under the [Mental Capacity Act 2005](http://login.westlaw.co.uk/maf/wlbo/app/document?src=doc&linktype=ref&publication=SSC&context=20&crumb-action=replace&docguid=I5D1C8770E42311DAA7CF8F68F6EE57AB&publication=SSC) to make decisions about the adult’s needs for care and support; and

It also includes considering the adult’s wishes and feelings, their beliefs and values and other relevant factors.

Use of Direct Payments

The statutory guidance makes clear that local authorities must be satisfied that the direct payment is being used to meet the care and support needs set out in the care and support plan and should therefore have systems in place to “proportionally monitor direct payment usage to ensure effective use of public money”. It goes on to state that:

The local authority must stop making direct payments if any of the conditions in [s.31](http://login.westlaw.co.uk/maf/wlbo/app/document?src=doc&linktype=ref&publication=SSC&context=22&crumb-action=replace&docguid=I6C5A8031E61C11E3A350A156035B4697&publication=SSC) or s.[32](http://login.westlaw.co.uk/maf/wlbo/app/document?src=doc&linktype=ref&publication=SSC&context=22&crumb-action=replace&docguid=I6C5AA741E61C11E3A350A156035B4697&publication=SSC) are no longer met.

The Local Authority is permitted to stop making direct payments and to require repayment of direct payments it has already made if there is a breach of any condition imposed by the Local Authority or if the direct payment is not used to pay for the needs specified in the care and support plan.

This policy recommends that customers consider a Disclosure Barring Service (DBS) check to be undertaken on all Personal Assistants working alone with children (under 18’s) and vulnerable adults is carried out prior to engaging them.

Direct payments cannot be used to fund long-term residential and nursing care in a care home.

Direct Payments to Children and Families

Except for children under 16, the person using the service should remain in control, and is accountable for the way in which the direct payments are used.

Where a child is assessed as needing services under section 17 of the 1989 Act, the Council also has to be satisfied that the direct payment will ‘safeguard and promote’ the welfare of the child for whom the service is needed.

**2. Consent, capacity and ability to manage**

**2.1 Who is eligible to receive Direct Payments?**

* An adult who has assessed support needs and meets the requirements set out in s.31 and s.32 of the Care Act as detailed in section 1 of this policy.
* A person with parental responsibility for a disabled child may receive direct payments. This may include a parent or others, such as a grandparent, with parental responsibility for a disabled child. It may also include a disabled person with parental responsibility for a child.
* Carers aged 16 and over. People whom the Council decides need services because they provide a substantial amount of care on a regular basis for someone aged 18 or over. Carers (but not employees, persons working under contract or for a voluntary organisation) may obtain direct payments in respect of their own assessed needs for services but not for services in respect of the needs of the person they care for.

Under the legislation, councils have a power (although not a duty) to make direct payments:

1. To people (“restricted patients”) who are conditionally discharged under the Mental Health 1983 (or the equivalent Scottish legislation). Such people are offenders who have been detained in hospital under the Mental Health Act 1983 and who remain liable to recall to hospital if necessary for their own health and safety or the protection of others.
2. In respect of services which the person in question is under an obligation to accept as a result of any of the provisions of the Mental Health Act 1983, the Criminal Procedure (Insanity) Act 1964, the Criminal Justice Acts 1991 and 2003, the Powers of Criminal Courts (Sentencing) Act 2000 and similar Scottish legislation.

**2.2 Who is excluded from Direct Payments?**

Direct payments may not be made to certain people whose liberty to arrange their care is restricted by certain mental health or criminal justice legislation as follows:

i) Offenders on a community order or serving a suspended prison sentence under the Criminal Justice Act 2003, which includes a requirement to accept treatment for drug or alcohol dependency;

ii) An offender on a community rehabilitation order or a community punishment and rehabilitation order or a community punishment and rehabilitation order under the Powers of Criminal Courts (Sentencing) Act 2000, which includes a requirement to accept treatment for drug or alcohol;

iii) Offenders released from prison on licence under the Criminal Justice Act 1991, the Criminal Justice Act 2003 or the Crime (Sentences) Act 1997 subject to an additional requirement to undergo treatment for drug or alcohol dependency;

iv) People subject to equivalent restrictions in Scottish mental health or criminal justice legislation.

**2.3 Capacity to consent to a Direct Payment**

When assessing capacity to make a decision, the Council should consider the following:

* Does the person have a general understanding of what decision they need to make and why they need to make it?
* Does the person have a general understanding of the likely consequences of making, or not making the decision?
* Is the person able to understand, retain, use and weigh up the information relevant to this decision?
* Can the person communicate their decision (by talking, sign language or any other means)? Would the services of a professional be helpful? Can anyone else help the person to make choices or express a view?
* Is there a need for a more thorough assessment (perhaps by involving a doctor or other professional expert)?

**2.4 Assessing the ability to manage a Direct Payment**

The Council is not under a duty to make a direct payment if it does not appear to it that the person is capable of managing the payment alone or with assistance.

However, many people will be willing and able to do so, especially if they know they have access to guidance and support. The Council will provide and give access to relevant support and guidance to enable customers to manage their direct payment.

Where the Council is concerned that a person who wishes to receive a direct payment may not be able to manage the payment, the Council will ensure that it takes into account all relevant factors before making a decision not to make a direct payment. This includes ensuring that such persons have access to independent advocates and the local authority must satisfy itself that the person meets the five conditions set out in s.32 of the 2014 Care Act.

The assessment of the customer and therefore the initial decision about a customer’s ability to manage a direct payment is to be made by the Council social work practitioner. If it is concluded that the customer would not be able to manage direct payments with appropriate support, the Council should state the reasons for the decision in writing to the customer and make them aware of how they can appeal the decision via the Council’s complaints procedure if they disagree with the decision:

<https://www.merton.gov.uk/council-and-local-democracy/complaints-compliments-and-comments>)

The Council will also make clear to customers that they do not have to agree to a direct payment simply because they are eligible to receive one, and that services can be arranged via commissioned services if the customer decides not to accept direct payments.

The Council will also discuss with customers what they should do if they no longer wish to receive direct payments and assure them that they have the right to withdraw from the direct payment scheme at any time and other service options would be made available to meet their needs.

**2.5 Direct Payments for adults lacking mental capacity to consent**

Direct payments can be made to a suitable person who receives and manages the payments on behalf of the person who lacks capacity, provided that there is a willing suitable person who meets all the conditions set out in the legislation.

Someone can be made a representative in one of two ways:

* If the person has been given lasting power of attorney by the person needing services at some point before they lost mental capacity; or
* If the person has been appointed a deputy for the person needing services by the Court of Protection under Section 16 of the Mental Capacity Act 2005.

If there is neither a surrogate nor any other representative, then the council itself must make the decision about whether or not someone should act as a suitable person to manage the payments on behalf of the person who cannot consent.

As with all direct payments, the council must be satisfied that the customer’s needs can be met by means of the direct payment and that the recipient (or the approved person/third party) is capable of managing the direct payments. The approved person manages the direct payments on behalf of the person lacking capacity, on the understanding that in doing so, they must act in the best interests of that person and have a legal obligation to manage that direct payment under the terms and conditions set out in the direct payment agreement between themselves, the direct payment recipient and the Local Authority.

The approved person must be made aware that they will also be required to sign the direct payments agreement on behalf of the direct payments customer.

**2.6 Young Persons moving into Adulthood/Transitional cases**

Whatever decisions are made when the disabled child reaches age 16 or 17, people with parental responsibility for a disabled child may not continue to receive direct payments to purchase services that meet the needs of that child once the child receives the direct payment in his or her own right.

Parents, however, may be entitled to receive direct payments as an alternative to

directly provided carers’ services under s.5 of the Carers and Disabled Children Act (2000), if they are going to continue as carers. Carers’ services would be given to support the parent carer in their caring role and to help them maintain their own health and well-being.

**2.7 Children and Young people with Special Educational Needs and Disabilities (SEND)**

Under the Children and Families Act 2014 local authorities must provide direct payments for children with Education Health and Care Plans (EHCP) when requested to do so. Each local authority has an obligation to provide adequate information advice and time specific support for those who opt for direct payments to meet the outcome of their plans.

All direct payment money management options must be explained in a positive way and those who opt for direct payments must be signposted for adequate support to set up the direct payment, this is especially pertinent when families are employing their own personal assistants.

If a direct payment is refused the family must be made aware that they have a right to appeal the decision and seek mediation.

**2.8 Trusts/Circle of Friends**

Some customers may need extra assistance and support to manage their direct payments. Direct payments may be made to a third party (an Agent) on behalf of the customer and the day to-day management of finances may be delegated in this way. However, the person to whom the direct payment is made must have control over how services are delivered.

Direct payments may also be provided through someone with a valid power of attorney for the individual or a customer-controlled trust.

Before direct payments begin, the Council must satisfy themselves that the relationship between the individual and the nominated person will act in the best interests of the individual and that individual will always remain in control. Any request for help in establishing trust arrangements should be referred to the Direct Payment Team.

**2.9 Episodic/Fluctuating Conditions**

Many people with an episodic or fluctuating condition can manage direct payments very adequately. Nevertheless, some people may be better able to manage a direct payment if a friend, relative or some other third party is willing to provide greater assistance when their condition worsens. When considering the care and support package, calculating an average week out of a month, would be appropriate, as direct payments is flexible and can be used anytime within the month rather than restricted to certain days/times.

It is important that the needs of people with dementia and their carers’ are properly considered, and direct payments should continue if the person needing the service is able to manage with appropriate support. The Council will raise with direct payments recipients the option of giving a family member or friend lasting power of attorney to manage their affairs should they lose the capacity to consent to direct payments at a later date.

**2.10 Direct Payment Nominated Person/Third Party/Agent or Organisations**

A Nominated Person or Third Party is an individual nominated by the direct payment customer to act on their behalf to either receive the direct payment and/or take on the employment/payroll responsibilities. The nominee can be named as an authorised person to speak on the customer’s behalf in matters relating to the direct payment in order for them to assist the customer with managing the administration and financial arrangements for staff or services.

However, the customer must remain in control of directing his or her service and making key decisions, for example, deciding who their personal assistant will be.

The nominated person would then have to understand employment responsibilities/legislation, the appropriate payroll arrangements and remain responsible for these elements of the direct payments on behalf of the customer. Only the customer and their nominated individual have the authority to alter any arrangements with regards to Personal Assistants, staff or services.

**2.11 Lasting Power of Attorney (LPA)**

Any person with legal capacity can make a LPA. They make the LPA in the expectation that if they lose capacity the person appointed as attorney will lawfully be able to continue to manage his or her property and affairs and/or health and personal welfare, once the power is registered with the Office of the Public Guardian.

**3. Services that Direct Payments can cover**

The direct payments scheme has been designed to be used to access a wide range of services to meet the assessed needs and outcomes of customers and/or carers creatively in a personalised way. These could include, but not be limited to:

1. Personal Assistants to aid the customer with their daily living requirements (e.g. bathing, etc.) and their social needs.
2. Respite care, (but subject to the restrictions outlined in paragraph 3.4 below). (Direct payments cannot be used for long-term residential care).

Direct payments should be person centred and used to ensure flexibility and facilitate creativity in the services available to individual direct payments customers. The Council, when drawing up the support plan for a direct payment, should emphasise what outcomes are to be met. For example, a direct payment customer’s need could be that they require support ‘with accessing the community’ rather than ‘customer is to attend a day centre to relieve isolation’.

* 1. **Employment of Personal Assistants**

Managing the employment of Personal Assistants (PA) is often the biggest area of responsibility for customers with a direct payment as they are officially their employer and will have to take responsibility for such things as:

* preparing an employment contract
* checking references and carrying out Disclosure and Barring Service (DBS) checks
* calculating their wages, tax and national insurance contributions and paying their salary and contributions
* varying their employment terms if required
* terminating their employment if necessary
* ensuring health and safety criteria are met
* managing their annual leave allowance
* managing any sickness leave they may have
* being prepared to deal with any problems that may arise
* arranging Employer’s Liability insurance.

If it is agreed that a customer will receive a direct payment to employ a Personal Assistant, the direct payment team will offer to provide guidance and support to the customer, who requires a PA.

The Direct Payments Team will provide an overview of the legal, financial and administrative requirements involved to ensure the customer is fully aware of their rights and responsibilities as an employer. However, this policy makes it clear that it is the customer’s responsibility to ensure that they meet all of their legal duties as an employer.

The customer may have a person in mind that they wish to employ as their PA. If there is no individual ready to step into the role then the Direct Payments Team will give the customer support to recruit a PA, either through Merton’s PA database, advertisement or via an agency. They will also sign post the customer to other sources who can support the customer with the employment of a PA.

Direct payments are not intended to replace existing support networks within the family and community. For this reason you may not normally use direct payments to employ close family members living in the same household:

* a person who lives with you
* spouse or civil partner
* 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
* the spouse or civil partner of any person listed above.

Only in exceptional circumstances will you be allowed to employ someone living in the same house as you and pay them. The exception will be discussed with the Council and only if the Council agrees to this exception can a customer employ a close family member living in the same household through its Outcomes Forum.

**3.2 Care purchased through care agencies**

Direct payments can be used to purchase care from an agency. This may be preferable for those customers who lack confidence in employing someone privately or who wish to avoid the responsibility of directly employing their own staff. The Council has a list of care agencies that are available in their area and that a customer may wish to consider or they can use an agency of their own choice.

However, customers are responsible for engaging agencies and ensuring that services received are reasonable and appropriate to meet their assessed needs.

The Council is not liable for the services set up between an agency and the customer.

**3.3 Equipment**

The Department of Health guidance states that: Councils may make direct payments to enable people to purchase for themselves equipment... adaptations, which would otherwise have been provided or arranged by the social services department. Direct payments cannot be used to purchase services or equipment for which the Council is not responsible, for example, services that the NHS provides.

Direct payments are not a substitute for disabled facilities grants.

Where the Council makes a direct payment for equipment, it will need to clarify with the individual at the outset where ownership lies and that the customer is responsible for any ongoing maintenance of equipment.

**3.4 Respite care**

Respite care via direct payment for adult customers will not exceed more than 4 weeks in a 12 month period.

Where there is an assessed need for respite services as set out in the support plan, the customer and their carers may use the payment for a short stay in respite care provided the stay does not exceed a period of four consecutive weeks in any 12 month period.

Where the interim period between stays in residential care is less than four weeks, then the two stays should be added together to make a cumulative total, which also must not exceed four weeks if it is to be paid for via direct payments in a 12 month period.

Once a direct payment recipient has had a total of four weeks respite care, then they cannot use their direct payments to pay for any more respite care until 12 months have passed from the date of the end of their last respite period.

Direct payments cannot be used to pay for long term residential care.

**3.5 Direct Payments for carers**

Carers (other than those with parental responsibility caring for children) may not receive a direct payment to purchase services to meet the assessed needs of the person they care for, unless they are an official representative (see 2.5).

However, the direct payments scheme allow for carers to purchase the services they are assessed as needing *as carers* to support them in their caring role and to maintain their own health and well-being.

**3.6 In House Services**

Customers cannot use their direct payment to purchase any in-house services from the Council.

**3.7 Mixed Packages of Care**

Customers can receive some services to meet their assessed support needs via services purchased directly by the Council whilst purchasing other services to meet their assessed support needs via direct payments. For example, an individual may decide to continue receiving services from an agency (arranged by the Council) at weekends and bank holidays, whilst opting to directly employ a personal assistant (via direct payments) for the remaining time.

Customers may also use their direct payment to pay for some of their support from an individual and the other half of their support from their chosen agency (for example, day hours of support provided by their chosen care agency and night support is provided by a directly employed carer).

This flexibility and choice should be facilitated.

**3.8 One-off Direct Payments**

The expectation is that the majority of one-off direct payments will be issued to carers or customers for a period of time. There are situations when the Council may agree a one-off direct payment and the Council will determine whether such a direct payment is appropriate.

The legislation, eligibility criteria and general principles and practices of the Council’s standard direct payments scheme still apply.

**3.9 Contingency Plans**

The customer is responsible for ensuring an adequate Contingency Plan is in place. Failure to do so can result in the suspension or termination of the Direct Payment until this is completed.

The Council will support customers to create a Contingency Plan (Back-up Plan) so in the event that their direct payment arrangements are not able to meet their assessed support needs both with planned and unplanned absence.

In particular, the customer should consider what they would do in the eventuality that a worker has an emergency and cannot report for work, and what they would do during times of planned absence or annual leave etc. Also incorporated into the plan should be emergency procedures including a list of emergency contact numbers and emergency access procedures. The Contingency Plan should be clearly written or typed and kept in an accessible place in the customer’s home.

If the Contingency Plan should fail or break down then the council must meet its responsibility to arrange for the provision of services to ensure the customer receives the relevant care and support.

1. **How are Direct Payments set up?**

**4.1 Who assists the customer to set up Direct Payments?**

The Council will make every effort to support and assist eligible customers in managing and administrating direct payments.

Once the customer’s assessed support needs have been agreed at the Council’s Outcomes Forum, the social work practitioner will inform and advise the customer of the outcome of direct payments and make a referral to the Direct Payment Team.

The Direct Payments Team will support and assist the social work practitioner and customer throughout the process of setting up a direct payment and whilst the customer has a direct payment.

**4.2 Offering Direct Payments**

In respect of the services to which direct payments applies, a direct payment should, therefore, always be considered and offered when deciding how to meet a customer/carer or child/young person’s assessed needs.

If the person who is deciding whether to accept direct payments does not have a service in place, for example, if they have been newly assessed, the Council may need to provide a service in the interim. Where the customer is expressing doubt about their ability to manage, this might mean that they are experiencing some difficulties, but does not necessarily mean that they are not able to manage a direct payment and the Council will discuss with the customer other ways to manage their direct payment.

There are some persons to whom the duty to make direct payments does not apply. (Examples of the relatively few exceptions to this are those listed in Paragraph 2.2. *Who is excluded from Direct Payments?)*

**4.2.1 Referrals to the Direct Payments Support Service**

To implement direct payments at least the following needs to be carried out by the social work practitioner and customer before a referral is made:

1. Customer has a financial assessment.
2. An allocation is given of the personal budget amount.
3. A support plan is completed, detailing how the customer intends to spend their direct payment.
4. The support plan is agreed by the Council’s Outcomes Forum.
5. The customer will then choose how they wish for their direct payment to be deployed, to meet their assessed support needs.
6. A Direct Payment Officer will be allocated and visit the customer to define the support plan and arrange the services.

**4.2.2 Assessments for Direct Payments Customers**

Social work practitioners need to consider the following when assessing a customer for a direct payment:

i) Where the customer is expressing doubt about their ability to manage direct payments this may not mean that they are incapable of administering the scheme, but merely that they need a level of support and advice to enable them to take on the responsibilities involved. In such circumstances it may be appropriate to offer a mixed package of direct payments and directly provided services (*see 3.7 for more information*).

ii) The standard community care assessment and care management procedures (including risk assessment) should be followed whether or not the person being assessed is likely to receive services purchased via directly care managed services or direct payments.

iii) When a direct payment is being considered the social work practitioners must be satisfied that the customers’ needs will be met by means of a direct payment. It is important that the outcome-led focus of the assessment is always retained.

**4.2.3 Support Plans for Direct Payments**

When it has been agreed that direct payments are appropriate to meet the customer’s assessed support needs, the support plan must be formulated with due consideration to the following:

i) The support plan must clearly specify which of the customers’ needs the direct payments will meet and which will be met by other non-direct payment services. The services, for which direct payment monies will be used, must be listed in detail (e.g. exact hours, which types of support and hourly cost per week).

ii) The social work practitioner, should give as much detail as possible about the support required. Where possible the support plan should indicate what level of support the customer would need to manage their direct payments (e.g. will they need a third party support arrangement, will they need assistance with writing job descriptions, interviewing PA’s etc.)

iii) Also state whether the customer is subject to Section 117 Mental Health Act 1983.

**4.2.4 Financial Assessments for Direct Payment Customers**

When taking an initial referral for a new customer, the social work practitioner should refer the customer to the Financial Assessment Team for completion of the financial assessment form (FC2A).

A visit will then be arranged for a Financial Assessments Visiting Officer to complete the form with the customer, and carry out a welfare benefit check. The financial assessment form must be completed and returned with all the supporting documentation, as the customer’s contribution must be calculated before a direct payment can commence.

Customers will be asked to provide bank statements, proof of their savings and benefits and also receipts for any service or goods purchased in relation to their disability. All customers assessed for services from the Council who may possibly be liable to pay charges for services are required to complete a financial assessment (FC2A) form. Children under 18, carers and those who come under section 117 of the Mental Health Act are exempt from paying community care charges.

No direct payment will be given before the outcome of a financial assessment is known (unless the customer is a self-funder).

**4.2.5 Collection of Client Contribution**

Once the Financial Assessment Team receives the completed financial assessment form, the customer contribution (the amount the direct payment customer must pay towards their direct payments) is calculated and the customer and/or their representative will be informed in writing of the relevant assessed financial contribution amount and date which it will apply from by the Financial Assessments Team in writing.

The customer contribution will be deducted from the total amount to be paid as a direct payment. This means that the direct payment must be set up for the gross amount with the customer receiving their direct payment minus their financially assessed contribution. The customer will then be responsible for ensuring that their assessed financial contribution is paid into their direct payment account at least every 4 weeks. For example, the customer is due to receive £200 per week as a direct payment. The customer is assessed as having to pay £20 per week as their customer contribution. The Council will pay £180.00 x 4 every 4 weeks in to their direct payment account, with the customer paying at least every 4 weeks, the assessed financial contribution onto their direct payment account.

If customers do not pay their assessed financial contribution into their direct payment account, the council may stop the direct payment and transfer the service to a commissioned service (having followed the steps set out in 4.5.7 of this policy) and pursue the debt for any unpaid assessed financial contribution via the Council’s debt recovery team.

**4.2.6. Use of own resources/Direct Payment top-up**

Direct Payment customers have the choice to top-up their direct payments from their own money if they would like to purchase additional hours or enhanced services, aside from the ones that have been agreed in their support plan. (e.g. if the support plan states they need 3 hours per week but on a particular day the customer would like 5 hours, the customer would have to top up the direct payment to allow for additional hours of adequate support).

**4.3 Direct Payments Support Service (DPSS)**

The Support Service is designed to support both London Borough of Merton and customers to advise and support customers to manage their direct payment effectively (both at the implementation stage and on-going).

Upon referral from the social work practitioner, a member of the Direct Payments Team will contact the customer to make an appointment to visit the customer in their home, unless another venue is preferred (or the customer is agreeable to receiving and returning the completed documents by post).

The relevant officer will be aware of any other issues that need to be considered for the visit, such as communication needs or to arrange for a friend, relative or agent to also attend the visit.

Upon arrival the relevant officer should inform the customer who they are and confirm this with their Merton ID card.

The Support Officer will explain to the customer the purpose of the visit (to set up direct payments and to go through the customer literature and documentation that they need to sign) in a suitable way that the customer and other attendees can understand and answer any questions which they may have.

The Support Officer will explain how direct payments can meet the customers’ assessed needs and what support can be given to purchase a service or equipment or to become an employer to meet their assessed support needs.

The customer will either sign the necessary documentation at the time of the visit or agree with the Support Officer when they will return the documents to the Council. The customer will be informed that until all necessary documents are signed by the customer, the Council will not be able to set up their direct payment.

Once all necessary documentation has been signed and received, the Council will pay the customer’s first direct payment within two weeks.

**4.3.1 Advice and support**

The Direct Payment literature will be given to all new customers on their initial visit with the Support Officer.

This literature will have all the information that a customer needs to start and manage their direct payments and recruit staff (including a list of care agencies, payroll agents, insurers and suitable paperwork to support customers with the management (this includes guidance on recruiting staff and being an employer) of their direct payment.

In addition, the Direct Payments Team is available during office hours to give advice and support to staff and customers.

The Council also has a range of advice and support together with the Direct Payment literature listed on the Council’s website: <https://www.merton.gov.uk/social-care/adult-social-care/direct-payments>

This includes access to a Personal Assistant (PA) database, which has been designed to support customers to find suitable personal assistants quickly, that are suitable for their needs:

<https://www.merton.gov.uk/social-care/adult-social-care/direct-payments/personal-assistant-database>

**4.3.2 Recruitment**

If a customer decides that they would prefer to recruit their own Personal Assistant to support them in meeting their assessed support needs, the Direct Payments Support Officer will be able to guide them using the range of literature and direct them to other relevant information available to the customer through the process, but will not provide formal recruitment advice. It is the responsibility of the customer to ensure that they complete their recruitment in accordance with due process.

**4.3.3 Merton Managed Accounts (MMA)**

A Merton Managed Account (MMA) is a service available from Merton Council for all Adult Social Care customers, if agreed by the Council. A MMA is designed to assist customers who receive a direct payment, but who need or choose to have support managing the financial aspects of their direct payment.

The Council will arrange for the customer’s direct payment to be paid into a Merton Managed Account. The Council will manage these funds and ensure that payments are made for services the customer has arranged in accordance with the customer’s wishes as laid out in their Support Plan.

**4.4 Direct Payment Customers/Carers responsibility**

It is the responsibility of the customer/carer to manage their direct payment to meet their assessed support needs in line with the direct payments agreement and literature.

Once the direct payment has been set up the customer is in control, and must manage their own records, receipts and finances.

The Direct Payments Team will be available to the customer for advice and guidance during normal office hours, but the daily management of the direct payment, the PA staff (including compliance with employer legislation) and agency services must be managed by the customer themselves and/or their carer/support/or nominated person.

**4.4.1 Managing the Direct Payment**

The Council’s preferred method for a customer to receive and manage their direct payment is via a pre-paid card account (which a customer’s direct payment will be paid onto and also onto which the customer will pay their agreed assessed contribution and make payments to providers/employees who support the customer in meeting their assessed support needs). The pre-paid card is designed to allow flexibility to enable customers to make payments according to how they wish to manage their payments for the services they receive through their direct payment and enable the Council to monitor (with minimal input from the customer) that the customer is managing their direct payment to meet their assessed support needs as set out in their support plan, ensuring the effective use of public money. This operates as follows:

1. All direct payment monies issued by the council will be paid directly onto the customer’s pre-paid card account.
2. If the customer is assessed as being required to make an assessed financial contribution towards the cost of their direct payment services then the customer will pay this amount into the pre-paid card account at least 4 weekly intervals.
3. In certain circumstances there may be a named person who can deal with financial matters in relation to the pre-paid card who would be issued with the pre-paid card.
4. Where a guardian or representative (herein after called the nominated Person) manages the direct payments on behalf of the customer then the pre-paid card would be set up using both names.
5. The Council will apply for the card on the customer’s behalf and it will be sent to the customer from the pre-paid card provider with instructions on how to use it to make payments.
6. The first payment will be loaded onto the customer’s pre-paid card to bring customers in line with the Council’s 4 weekly payment cycle and at the agreed 4 weekly amounts thereafter.

NB: The first payment may include any relevant set-up costs such as first year insurance and first payroll where appropriate.

1. Customers will then make payments to any employees and/or providers they have engaged to meet their assessed support needs via their direct payment and will also pay onto the pre-paid card any required assessed financial contribution at least at 4 weekly intervals.
2. Via the pre-paid card provider’s on-line portal the customer and the Council will be able to review any transactions on the card.

* From time to time the Council may ask customers to see any invoices, payslips and receipts for transactions that are on the pre-paid card statement, to satisfy itself that the direct payment is being managed in accordance with the direct payment agreement.
* At the end of the direct payment agreement, for whatever reason it has been terminated, the Council will block all outgoing transactions onto the pre-paid card.
* The Council Officers will check to make sure that all outstanding bills and payments to your PA or agency have been made before closing the pre-paid card and recover the remaining money.

In some exceptional circumstances, it may not be appropriate or possible for a customer to manage their direct payment through a pre-paid card. In these instances, the Council may agree to customers receiving a direct payment paid into a bank account set up for the sole purpose of managing direct payments and no other purpose. The use of a separate and dedicated bank account for direct payment is considered if the Council is satisfied that certain conditions can be met:

* The customer can successfully evidence effective management of their Direct Payment funds on the existing pre-paid card;
* There is evidence the customer is making regular and timely payment of their assessed customer contributions, for their care, onto the pre-paid card;
* The customer maintains bank records and transaction receipts and is able and provides auditable evidence of Direct Payment spend every month as required by the Direct Payments Team;
* Detailed reasons are provided, to the satisfaction of the Council of why an individual is unable to manage a direct payment through a pre-paid card.

If the Council is satisfied that a customer does meet the above criteria, the customer can set up their own bank account for the sole purpose of managing their direct payment. The Council will ensure that the customer’s agreed 8 week direct payment plus any other authorised amounts are transferred to the new account from the pre-paid card. If there are excess funds remaining on the pre-paid card at the point of transfer above the agreed amount, the excess funds will automatically be reimbursed to the Council.

Once it is agreed by the Council that a customer can manage their direct payment via a bank account which they set up, the customer is subject to the same monitoring and compliance checks as those who receive a direct payment through pre-paid cards.

The individual must provide the Council, every 4 weeks, with a copy of the bank statement showing all transactions (and when requested evidence such as invoices to support transactions on the statement). Any surplus balance in excess of 8 weeks direct payment will need to be recouped directly via cheque from the customer to the Council within an agreed time period as is the case for customers via a pre-paid card.

Providing the auditable paper trail is the responsibility of the individual.

If a customer is experiencing difficulties with complying with the management and monitoring required once their own direct payment bank account has been set up, they should contact the Direct Payments Team immediately for support and advice.

If however, a customer is non-compliant at any stage with the Council’s set criteria for managing their own bank account, then their direct payment will be placed at risk and payments may be terminated and the account returned to the Council’s pre-paid card arrangement.

**4.4.2 Lay-offs**

In the event that the direct payment customer is admitted to hospital, residential care or respite on a temporary basis and does not need the PA’s services during this period, they reserve the right to impose a period of lay-off and withhold payment of salary, providing it is in accordance with the PA’s contract of Employment.

The Council would continue to pay customers their direct payment for customers employing a personal assistant whilst they are in hospital in line with the customer direct payment agreement. However, after a period of continuous hospitalisation the Council would discuss with the customer any change to their direct payment and agree any variation and relevant support they may require to ensure customers can continue to comply with their employment obligations.

It is the responsibility of the customer to inform relevant organisations including their payroll company and their insurer when they temporarily do not need PA support.

**4.4.3 Auto Enrolment to Pension Schemes**

Any customer employing a Personal Assistant is legally required to automatically enrol the PA into a workplace pension scheme.

Automatic enrolment means that, rather than having to actively choose to join a pension scheme, all employees must be enrolled into a scheme by their employer. If they don’t want to be in the pension scheme, they must actively choose to opt out.

Most payroll providers can do all the work required, including finding a pension scheme and calculating eligibility. For more information about auto enrolment, customers can contact The Pensions Regulator on 0845 600 1011 or visit [www.thepensionsregulator.gov.uk](http://www.thepensionsregulator.gov.uk)

**4.4.4 HMRC and financial monitoring evidence**

Direct payments customers employing their own staff will need to maintain their own records for tax purposes. It is the responsibility of the customer employing staff to ensure that they comply with all HMRC requirements. The Revenue and Customs (HMRC) (formally Inland Revenue) require that all financial records need be retained for 6 years for auditing purposes. The records that must be retained and made available for viewing include:

* Invoices and receipts for all services purchased.
* PAYE, National Insurance and other payroll records or evidence of self-employed status and payment of money (only if customers are employing someone themselves).
* Records of direct payments receipts and payments.
* Summaries of services purchased and provided and time sheets.
* Personnel records (e.g. holidays and sickness records for employed staff).

All direct payment customers who employ Personal Assistants must be reminded that they are the employer and that all workers should be registered with HMRC.

If an individual states that they are self-employed the responsibility is on that individual to pay HMRC, but it is the customer’s responsibility to ensure that that they have completed the necessary checks regarding the self-employed worker’s compliance to statutory requirements.

**4.4.5 Legal Agreements for Direct Payment Customers**

The Direct Payments Agreement is the overarching agreement between the Council and the customer setting out the responsibilities of the customer and the Council. Customers (or a nominated third party) are required to sign and subsequently comply with the terms of the agreement to ensure the continuation of their direct payment.

A direct payment will not be set up unless the customer (or the nominated third party) sign the Direct Payments Agreement.

If a customer does not comply with the terms of the agreement, it must be noted that the Council reserves the right to terminate the direct payment and meet their assessed support needs via a commissioned service.

**4.5 Direct Payments Finance**

In order for the Direct Payments Team to process an application and start issuing direct payments to a customer the responsible officer will require:

* Details of the direct payments customer’s contribution from the Financial Assessment Team and
* A completed support plan showing a breakdown of all services/hours from the social work practitioner.

**4.5.1 How Direct Payments are calculated**

The level of support required must be established by the social work practitioner and detailed in the support plan.

The weekly direct payment rate must be calculated in accordance with the approved schedule of rates. This will provided in your Direct Payment pack when you are originally signed up and can also be found on our website: <https://www.merton.gov.uk/social-care/adult-social-care/direct-payments/forms-and-leaflets>

**4.5.2 How Direct Payments are made**

Payments will be made every four weeks in advance to all direct payments customers for services. All payments are made via the BACS system (an electronic transfer of funds between the council and the customer’s pre-paid card or bank account).

**4.5.3 Changes to Direct Payments**

When a change in the direct payment arises, the social work practitioner should update the existing support plan to reflect the relevant changes, inform the Direct Payments Team and update Mosaic accordingly.

The customer and/or their third party/nominated person must be given 4 weeks’ notice of any changes to the support plan. This is to allow the customer to give notice of these changes (such as an increase, reduction or termination of services) to their personal assistant/agency, if required.

The new amount will be reflected in the next payment due date and include any backdating or recovery of any unspent monies or overpayments as required.

**4.5.4 V.A.T.**

Most services that direct payments will be used for will not incur V.A.T.

**4.5.5 Employers On-Costs for Personal Assistants**

All direct payments are made 28 days in advance and include employers’ on-costs such as: payroll, sick pay, holiday pay, pension and renewal of insurance, as set out in the schedule of rates.

Employers’ on-costs are an allowance issued to customers to enable them to have sufficient funds in their direct payments pre-paid card accounts to cover certain costs that are incurred when employing a Personal Assistant (PA).

The level of accumulated on-costs in the direct payments customer’s direct payment account will also be checked and if it has exceeded the agreed level, the responsible officer will recover the excess funds directly from the pre-paid card account while still leaving sufficient funds for the direct payments customer to use for the agreed on-costs of employing their PA.

In the first instance the Direct Payment Team will investigate the reason for the excess funds by contacting the customer.

**4.5.6 Reclaiming of surplus money**

The direct payments customer can retain up to eight weeks surplus money in their direct payment account at any one time. Although the money will accumulate in the account, there will be fluctuations throughout the year as annual leave and bank holidays are paid for. The customer’s account will be monitored regularly by the Council and any surplus in excess of the agreed amount will be recouped directly from the pre-paid card (or via a cheque from the customer to the Council within an agreed time period if the customer has a separate bank account for the provision of a direct payment).

* 1. **.7 Monitoring and auditing of Direct Payments**

As part of the Council’s commitment to support customers with the management of their direct payment, the Council will continue to regularly review their direct payment account to ensure that they do not have more than 8 weeks direct payments in the direct payment account at any one time as well as ensuring that the direct payment is being managed in line with the Direct Payments Agreement. Through regular review, if the Council identify any issues they will contact the customer to support them speedily, with support being given by the Council to help customers manage their direct payment effectively.

Customers can of course contact the Direct Payments Team if they require any support regarding the management of their direct payment.

The Council will regularly review a customer’s direct payment to support customers as necessary to continue to manage their direct payment effectively and will advise and support customers as necessary to ensure that they are able to continue to manage their direct payment in accordance with the direct payment agreement and this policy.

Once direct payments have been in place for six weeks the Direct Payments Support Officer will contact the direct payments customer to hold a telephone review to ensure that the customer is managing their direct payment in accordance with this policy and the Direct Payments Agreement (including that the customer is paying their assessed financial contribution into their direct payment account). The Direct Payments Support Officer will offer any support and guidance necessary to ensure the customer is able to effectively manage their direct payment.

Once the Direct Payments Support Officer is satisfied that the customer is appropriately managing their direct payment, further monitoring will be carried out from time to time to ensure customers are still able to manage their direct payment accordingly and to provide any additional support to the customer if required.

The Council will regularly review a customer’s direct payment to support customers as necessary to continue to manage their direct payment effectively and will advise and support customers as necessary to ensure they are able to continue to manage their direct payment effectively.

All direct payment customers’ direct payment accounts will be regularly monitored by the Council to ensure that:

* Records being kept are adequate and accurate;
* The direct payments customer is not accumulating an excessive balance of funds in their account in excess of 8 weeks direct payment (unless otherwise agreed by the Council);
* The direct payments are being used to purchase only those services identified and agreed in the support plan;
* The direct payments customer is making their assessed financial contribution to meet their assessed care needs into the direct payment account at least every 4 weeks as agreed by the Council.

When required the customer must provide to the Council any requested relevant invoices and receipts to support the payment.

If the Council notice any issues with the management of the direct payment they will contact the customer in writing to inform them as to what steps they need to take to ensure that the customer continues to manage the direct payment in line with their direct payment agreement and this policy.

If a customer does not provide the necessary information by the date requested and/or does not implement the necessary steps the Council requires them to implement after the first letter then the following process will be followed:

* The Council will write to the customer a second time informing them that unless they make contact with the Council within two weeks the Council will at the end of this period write to them to inform them that within 28 days the direct payment account will be closed and ask that if the customer still wishes to receive support from the Council to meet their assessed needs that they contact the council so that this can be met by a Council commissioned service.
* In the two week period after the second letter has been sent the Council Officer will make at least two attempts by telephone to call the customer to discuss the steps required in order for the customer to continue to receive a direct payment and that the direct payment will be at risk if they do not implement the agreed steps. Any such steps agreed and dates for implementation will be confirmed in writing to the customer.
* If the Council Officer is unable to speak to the customer over the telephone during two attempts (and the council receives no written communication from the customer) during the two week period above, they will write to the customer informing them that within 28 days the direct payment account will be closed and ask that if the customer still wishes to receive support from the Council to meet their assessed needs that they contact the council so that this can be met by a Council commissioned service.
* If the customer has more than 8 weeks direct payment in their direct payment account at any one time, the Council reserves the right to reclaim these funds without formally writing to them.

In any situation, if a customer does not repay any amounts which the Council has confirmed that they need to, the final method of recovery would be for the Council to raise an invoice to the direct payments customer for the full sum that has been misspent.

This would then lead to the Council’s debt recovery system being followed and the customer would no longer be eligible for direct payments, and they will be considered a bad debtor.

**4.5.8 Reviews of Direct Payments Customers**

Social work practitioners will always follow the Council’s standard practice for reviews as outlined in the Community Care Assessment and Care Management Procedure as with all customers receiving services from the Council, the review of a direct payments customer will ensure that it meets their assessed support needs. As part of this review, the social work practitioner will discuss with the customer whether they have any difficulties in the management of their direct payment and agree with them any additional support they may need to be able to continue to manage their direct payment effectively.

**5. Overpayments and wrongful use of direct payment monies**

**5.1 Overpayments**

If the direct payments customer is no longer entitled to or no longer wants to receive a direct payment and an overpayment has occurred owing to payments being made 4 weeks in advance, the following steps will be taken by the Direct Payments Team:

i) Ascertain the direct payments customer’s current situation from the care manager, including relevant dates when the direct payments should have ceased;

ii) Obtain all relevant documentation relating to the overpayment and written confirmation of the direct payments ceasing;

iii) Calculate the amount of overpayment and confirm this with the direct payments customer, the social work practitioner;

iv) A letter should be sent detailing the reasons for this to the direct payments customer and a copy should go to the care manager explaining how the overpayment must be repaid to the Council.

If an overpayment has been made to someone still receiving direct payments, the responsible officer will adjust future payments until the correct balance is restored, but will inform the customer of this in writing and the adjusted amounts to be made.

**5.2. Wrongful Use of Direct Payment Monies**

Where it appears that the direct payments customer has been using the direct payments for items or services other than those specified in their support plan or listed in the legal agreement, the Direct Payments Team will undertake an investigation into the customer’s account:

1. If it is confirmed that payments have been ‘misspent’, the customer will be contacted in writing and made aware of the investigation to ascertain the facts.
2. A full reconciliation will be carried out and the exact amount of money that has been ‘misspent’ should be ascertained. The direct payments customer will be notified in writing and informed that they need to agree with the Council to repay the full amount and by a mutually agreeable date.
3. If the customer does not contact the council within the agreed date set out in the letter in i) above or does not implement the necessary steps the Council requires them to implement, then the actions as set out in s.4.5.7 of this policy.

In cases where there is evidence of deliberate overspending that appears as though fraud has occurred, it will be passed directly to Internal Audit for further investigation.

In any situation, if a customer does not repay any amounts which the Council has confirmed that they need to, the final method of recovery would be for the Council to raise an invoice to the direct payments customer for the full sum that has been misspent.

This would then lead to the Council’s debt recovery system being followed and the customer would no longer be eligible for direct payments, as they will be considered a bad debtor.

**6. Termination of Services**

**6.1 Customers Terminating Direct Payments**

If a direct payment customer expresses a desire to terminate their services they should notify the Council and this should be discussed with a social work practitioner. Once it has been agreed that the direct payment is ending the social work practitioner should liaise with the customer and any other council staff involved in organising services to co-ordinate the closure of the direct payment support arrangement.

The two most likely scenarios for terminating a direct payment are:

i) The direct payments customer’s circumstances have changed and they no longer need social services intervention to meet their needs.

ii) The customer still requires services but no longer wishes to receive direct payments to purchase those services.

**6.2 Council Terminating Direct Payments Services**

The Direct Payments Team will contact the customer and clearly explain the reasons for terminating the service and confirm this in writing. The customer will be advised that they have a right to appeal using the Council’s Complaints Procedure (<https://www.merton.gov.uk/council-and-local-democracy/complaints-compliments-and-comments>) and should be advised to seek independent advocacy advice if desired.