



**SELF DIRECTED SUPPORT
DIRECT PAYMENTS
OPTION 1**

**POLICY AND PROCEDURAL
GUIDANCE FOR STAFF AND
MANAGERS**

**Part A Argyll and Bute Council
Option 1/Direct Payment Policy**

Part B Argyll and Bute Council Operational Guidance

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PART A

OPTION 1

DIRECT PAYMENT POLICY

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1. INTRODUCTION

DIRECT PAYMENT POLICY AND PROCEDURAL GUIDANCE

- 1.1 The purpose of this policy is to reflect the provisions of The Self-directed Support (Direct Payment) (Scotland) Regulations 2014 which came into force on the 1st April 2014 following the enactment of the Social Care (Self-directed Support) (Scotland) Act 2013. This Act repealed sections 12B and 12C of the Social Work (Scotland) Act 1968. The previous regulations in relation to direct payments have been revoked.
- 1.2 The policy will inform the procedures (Part B) applicable to all Social Work service users (“direct payment user”) and should be adopted by all staff. This document should also be read in conjunction with the Direct Payment procedures (Part B) and all supporting documentation which is available on the Social Work SharePoint site.

INTRODUCTION TO THE SOCIAL CARE (SELF DIRECTED SUPPORT) (SCOTLAND) ACT 2013

- 1.3 The Social Care (Self-directed Support) (Scotland) Act 2013, [https://sharepoint.argyll-bute.gov.uk/sites/swproceduresandtemplates/Personalisation%20Self%20Directed%20Support/Policies,%20Procedures%20and%20Guidance/Statutory%20Guidance%20and%20Procedures/The%20Social%20Care%20\(Self-directed%20Support\)%20\(Scotland\)%20Act%202013.pdf](https://sharepoint.argyll-bute.gov.uk/sites/swproceduresandtemplates/Personalisation%20Self%20Directed%20Support/Policies,%20Procedures%20and%20Guidance/Statutory%20Guidance%20and%20Procedures/The%20Social%20Care%20(Self-directed%20Support)%20(Scotland)%20Act%202013.pdf)

which came into force on 1 April 2014, makes legislative provisions relating to the arrangement of care and support (“community care services” and “children’s services”) in order to provide a range of options to supported person’s as to how they are to be provided with their support. For example:

- Option 1 – Direct Payment;
 - Option 2 – The supported person directs their own support;
 - Option 3 – Services arranged for the supported person by the Local Authority;
 - Option 4 – Mixture of the three above.
- 1.4 This policy refers to Option 1 – Direct Payment. This is a payment which is made to a direct payment user which can be used to buy support. The direct payment user can do this on their own or get help from family, friends and support organisations.
- 1.5 The Self-directed Support (Direct Payments) (Scotland) Regulations 2014 came into force on 1 April 2014. These regulations form the legal basis for this policy and are effective for all new Direct Payments from 1 April 2014. <https://sharepoint.argyll-bute.gov.uk/sites/swproceduresandtemplates/Personalisation%20Self%20Directed%20Support/Policies,%20Procedures%20and%20Guidance/Statutory%20Guidance%20and%20Procedures/Direct%20Payment%20Regulations%202014.pdf>

- 1.6 Any Direct Payments arranged before the 1 April 2014 under the Community Care (Direct Payments) (Scotland) Amendment Regulations 2007 continue to apply (as long as they previously met legal requirements) in respect of that payment despite their repeal .
- 1.7 All existing Direct Payments will continue to be subject to review under Section 12A(1)(b) of the Social Work (Scotland) Act 1968.

Self-directed Support (Direct Payments) (Scotland) Regulations 2014

- 1.8 There are five parts to the Self-directed Support (Direct Payments) (Scotland) Regulations 2014.

Part 1 relates to the introduction of the regulations from 1st April 2014
Part 2 details the calculation, payment and termination of Direct Payments
Part 3 details the position re the provision of support by family members
Part 4 details persons ineligible to receive Direct Payments
Part 5 detailed the circumstances in which local authorities are not required to give the opportunity to a person choose a Direct Payment.

- 1.9 Throughout this document, the policy will be linked to the relevant part of the regulations as noted above.

2. Eligibility Criteria

- 2.1 In terms of Regulation 10 the persons who are ineligible to receive Direct Payments are persons who Argyll and Bute Council are arranging or providing residential accommodation or residential accommodation with nursing care for a period in excess of four consecutive weeks in any period of twelve months.
- 2.2 In terms of Regulation 11, Argyll and Bute Council are not required to give a person the opportunity in certain circumstances to choose a Direct Payment.

These circumstances are where Argyll and Bute Council has

- (a) previously terminated a Direct Payment made to the person or
- (b) where the making of a Direct Payment is likely to put the safety of the person to whom support is to be provided at risk.

- 2.3 The statutory guidance issued by the Scottish Government <https://sharepoint.argyll-bute.gov.uk/sites/swproceduresandtemplates/Personalisation%20Self%20Directed%20Support/Policies.%20Procedures%20and%20Guidance/Statutory%20Guidance%20and%20Procedures/SDS%20-%20Statutory%20Guidance%20-%20April%202014%20-%20V1.0.pdf> states that there may be specific circumstances where in the authority's considered judgement it is simply impossible for the direct payment option to meet the needs of the supported person and at the same time be assured that the person's safety is not being further jeopardised by the direct payment:

Examples where Argyll and Bute Council will use this discretion are as detailed in the guidance namely:

- Where the child's safety will be put at risk by having a Direct Payment because it is clear that the money will not be used to purchase the support the child needs
- Where the assessment is conducted at an acute point of crisis to the extent that the person's safety would be further jeopardised by the provision of a Direct Payment.
- Where the adult is defined as an adult at risk under the Adult Support and Protection (Scotland) Act 2007 with a Protection Order in place and there are specific circumstances that give rise to concerns about the person's safety

Further examples of when the Council will use this discretion are:

- When it is premature to make an assessment about a person's longer term need for support, typically before every attempt has first been made to maximise their capability e.g. through re-ablement.
- When it is necessary to arrange support ahead of more considered planning to meet future needs e.g. to facilitate discharge from hospital.
- When a person's outcomes can best be achieved through a relationship with a practitioner, across to universal services or
- Where appropriate legal powers are not in place.

2.4 Argyll and Bute Council will consider the balance in relation to our duty of care considerations between when it is or is not appropriate to refuse Option 1 due to duty of care concerns, for example:

- It would not be appropriate for Argyll and Bute Council to refuse a Direct Payment simply because the person's disability means that it is a challenge (even a significant challenge) for them to manage the Direct Payment option.
- It would not be appropriate for Argyll and Bute to refuse to provide a Direct Payment simply because the person has dementia, learning disability or any other disability which may require them to need extra support to make the Direct Payment options work; for further guidance please see Part B, Section 9 page 20.

2.5 In the circumstances where it is considered that the supported person is ineligible to receive Direct Payments, Argyll and Bute Council will notify the person/attorney/guardian/parent in writing in line with section 5 (3) (a) & 6 of the 2013 Act of the following:

- The reason why the authority considers that the supported person is ineligible.
- That the decision will be reviewed where a material change in their circumstances has occurred.

- That the supported person can request a review at a later date in order to review the initial decision.
- The authority is required to give the supported person the opportunity to choose one of the other Options under the Social Care (Self-directed Support) (Scotland) Act 2013 with the exception in part of Option 4 in respect of direct payment.

3. USE OF DIRECT PAYMENTS

3.1 Argyll and Bute Council will ensure direct payment users are willing and capable of managing the Direct Payment (with or without support). The direct payment user must agree to use the money to meet their agreed outcomes as identified within their assessment and support plan.

3.4 Direct Payments may be used to:

- Directly employ Personal Assistants;
- Engage an agency to provide support;
- Purchase short term respite (short breaks). If periods in respite care (short breaks) are less than 4 weeks apart they will be added together to make a cumulative total. If the periods are more than 4 weeks apart they will not be added together.
- Purchase aids and adaptations;
- Purchase Children's Services under Section 22(1) 1995 Act;
- Purchase services from any Local Authority.
- Purchase Housing Support Services (for **disabled people including children**)
- Purchase equipment/items to meet agreed outcomes

3.5 Direct Payments **may not** be used to:

- Purchase permanent residential care, or, periods of respite beyond 2 weeks in any 6 week period (this includes adults and children)
- Purchase any alcohol or cigarettes,
- Be used for gambling or
- Be used for any illegal activity.

4. SAFE AND EFFECTIVE RECRUITMENT

4.1 Argyll and Bute Council expect the direct payment user to apply safe and effective recruitment and employment processes Argyll and Bute Council require direct payment users as Personal Assistant employers to have the following arrangements in place:

- A Protection of Vulnerable Groups (PVG) membership statement to be carried out on all Personal Assistants **prior** to their employment start date
- Employers Liability and indemnity Insurance

- References obtained
- Staff induction and appropriate training (if required)
- Probationary periods of employment.
- Holiday entitlement etc.
- Pension Scheme if applicable

Employing Close Relatives/Family Members as Personal Assistants

4.2 Argyll and Bute Council's policy in relation to employment of close family relatives as personal assistant is directed by Regulation 8

4.3 In terms of the regulations a family member may only provide support to which a direct payment relates in the following circumstances namely

- (a) the family member, direct payment user **and local authority** agree to the family member providing the support
- (b) the family member is capable of providing the support, and
- (c) any of the factors detailed below
 - There is a limited choice of providers: "limited choice" refers to instances where the direct payment user's choice is narrowed by specific circumstances such where the direct payment user lives. The choice is limited in that while there may be a very small number of providers who meet the minimum requirements to provide care in the area, the range of choice is not sufficiently wide to meet the direct payment user's needs and their own preferred form of support. For example, due to a direct payment user living in a rural location the choice of provider that can meet their specific range of needs is narrowed to one provider with a presence in the direct payment user's area and the direct payment user is not content to choose that provider.
 - The direct payment user has specific communication needs which make it difficult for another provider to meet their assessed needs
 - The family member will be available to provide support at times when other providers would not reasonably be available
 - The intimate nature of the support makes it preferable to the direct payment user that the support is provided by the family member
 - The direct payment user has religious or cultural beliefs that make the arrangement preferable to the direct payment user.
 - The direct payment user requires palliative care
 - The direct payment user has an emergency or short-term necessity for the support - this refers to instances where the employment of a family member would constitute a bridging solution until another care and support solution is found. An example would be where Argyll and Bute Council conducts an assessment of the direct payment user's needs and the direct payment user also has a relative who provides unpaid care to them from time to time. The direct payment user would prefer to find a third sector provider who will meet their needs. While the relative has been happy to help out up to this point, all parties agree that it would be more appropriate for the relative to

do so on a formal basis until the direct payment user can find a suitable third sector provider who can fit into their life.

- There are any other factors which make it appropriate, in the opinion of Argyll and Bute Council, that the family member provides the support.

Argyll and Bute Council can agree to a direct payment user employing a close relative or family member where appropriate. This flexibility is important as it provides the opportunity for such arrangements where it is the best or only solution to meeting the personal outcomes and needs for the direct payment user. This is in line with the general principles of the 2013 Act and the aims and intentions behind self-directed support which are to provide creative and effective solutions for supported people.

- 4.4 Argyll and Bute Council can agree or disagree to the employment of a family member. This decision will be made on the basis of whether the arrangement will or will not meet the agreed outcomes of the direct payment user and not on the basis of assumptions or a general policy stance against employing family members.
- 4.5 In terms of the Direct Payment Regulations, family member means the spouse or civil partner of the direct payment user, a person who lives with the direct payment user as if their spouse or civil partner, the direct payment user's parent, child, brother or sister, aunt or uncle, nephew or niece, cousin, grandparent, grandchild, the spouse or civil partner of any of the above and a person who lives with any person listed above as if their spouse or civil partner. All other relationships fall out with the scope of the Direct Payment Regulations.
- 4.6 In terms of Regulation 9 a family member is not permitted to provide support if Argyll and Bute Council determines that either the family member or direct payment user is under undue pressure to agree to the arrangement **or** the family member is a guardian, continuing attorney or welfare attorney for the direct payment user. These two inappropriate circumstances apply – regardless of whether any or all of the appropriate circumstances apply.
- 4.7 The key factor is that in all cases Argyll and Bute Council can only fund the formal support arrangement up to the level that they would ordinarily support as per the assessed needs and agreed outcomes for the direct payment user.
- 4.8 Argyll and Bute Council will approach each request to employ a family member on a case by case basis. If Argyll and Bute Council does not agree with the employment of a family member it will explain its reasoning to both the direct payment user and the prospective personal assistant employee. It will inform both parties of additional support and information services and, where appropriate, their right to advocacy with respect to the decision. It will give the direct payment user an opportunity to query their decision with reference to the circumstances set out in the Direct Payment Regulations.
- 4.9 Full details of provision of support by family members can be found in Part 3 of the Self Directed Support (Direct Payments) (Scotland) Regulations 2014

Self Employed Personal Assistants

- 4.10 Argyll and Bute Council will not support the recruitment of self-employed Personal Assistants unless the self-employed Personal Assistant can provide written confirmation from an HMRC Status Inspector that the work they are agreeing to undertake e.g. care and support has been approved as self-employed.

Employing Migrant Workers

- 4.11 Argyll and Bute Council retains no responsibility to ensure the Personal Assistants have the appropriate legal documentation to work in the UK.

PVG Scheme Membership

4.12 The Protection of Vulnerable Groups (Scotland) Act 2007

Argyll and Bute Council will develop effective arrangements to ensure that all prospective personal employers are aware of and able to discharge their responsibilities in relation to safe and effective recruitment under the PVG scheme.

- 4.13 For detailed guidelines on the relationship between the two frameworks Argyll and Bute Council have consulted the Scottish Government's best practice guidance on the interaction between PVG and self-directed support (published 2011). <http://www.scotland.gov.uk/Publications/2011/08/04111811/0>. This statutory guidance draws out some of the key points from the 2011 best practice guidance. Argyll and Bute Council has a range of legal duties and powers in relation to Child and Adult Protection. Argyll and Bute Council will take steps to support their staff to discharge those duties and powers alongside their duty to provide choice, control and flexibility to both adult social care users and children and families.
- 4.14 Argyll and Bute Council will make the direct payment user aware of their responsibility under the PVG scheme to decide whether or not a prospective employee performing a particular role is doing regulated work and should be a member of the PVG scheme. Argyll and Bute Council will identify and implement an effective process that informs local protocols and complies with the Protection of Vulnerable Groups (Scotland) Act 2007 and other relevant statutes.
- 4.15 Argyll and Bute Council will ensure that the direct payment user, along with anyone who may provide additional support to the direct payment user is made aware that the PVG Scheme allows personal employers to satisfy themselves that an individual to whom they are offering regulated work is not barred from doing that type of regulated work.

Argyll and Bute Council will ensure that the direct payment user is made aware that scheme membership on its own does not mean that the individual is suitable to provide support.

Argyll and Bute Council is not entitled and cannot seek access to PVG scheme membership records for personal assistants but will ensure that the personal employer understands the importance of scheme membership, the rules on seeking and sharing information and the risks of employing an unsuitable person.

- 4.16 Argyll and Bute Council will not and cannot refuse a Direct Payment on the grounds that they do not have access to scheme membership statements.
- 4.17 Argyll and Bute Council will ensure that it develops the appropriate detail about PVG and safe and effective recruitment within their direct payment user/user agreements. As a matter of good practice the agreements will require the direct payment user to confirm their knowledge of PVG and their acceptance of the responsibility for managing any risk arising from their failure to access the available information.
- 4.18 Where the direct payment user employs a PA or several PAs through a Direct Payment Argyll and Bute Council will ensure that the direct payment user support plan is reviewed to assess how well their outcomes are being met. If Argyll and Bute Council has doubts about the ability of the direct payment user (or third party such as a guardian) to act as an employer or to manage risk then the Council may consider whether the Direct Payment is the appropriate mechanism to deliver agreed outcomes and can at any time request a review of the person's support needs.
- 4.19 A personal employer cannot make a referral directly to Disclosure Scotland. However, it is important that if a direct payment user has concerns about someone who is working for them, or who has worked for them, then they should raise the issue with Argyll and Bute Council. The Council will make the direct payment user aware of this at the outset, and as part of direct payment user/user agreement. The police can also be notified directly.
- 4.20 Argyll and Bute Council will also make the direct payment user aware of the Disclosure Scotland helpline on 0870 609 6006 and Disclosure Scotland website www.disclosurescotland.co.uk
- 4.21 For further guidance on the interaction between Direct Payments/ employment of personal assistants and PVG Argyll and Bute Council will consult the Scottish Government's document Guidance on the interaction between Self-Directed Support and Protecting Vulnerable Groups Scheme <http://www.scotland.gov.uk/Publications/2011/08/04111811/0>

Purchasing Agency Services

- 4.22 Where a direct payment user wishes to purchase an agency service, Argyll and Bute Council will recommend that they contact the Care Inspectorate to obtain information on the quality of services provided.
- 4.23 Argyll and Bute Council will take steps to promote the availability of the options for Self Directed Support and will take active steps to promote a variety of providers of support.

5. FINANCIAL ARRANGEMENTS

Calculating Direct Payments

Payment Rates

- 5.1 Argyll and Bute Council has approved rates for individuals in receipt of a Direct Payment.
- 5.2 The current approved Personal Assistant Rate is £10.20 per hour. This rate enables the individual to pay the employee up to £8.00 per hour thus leaving sufficient funds within the hourly rate to cover payroll, holiday pay, tax and national insurance.
- 5.3 The rate provided is sufficient to cover the current national living wage of £7.65. This rate is reviewed on annual basis. This rate does not cover Statutory Sick Pay. Argyll and Bute Council will consider any claims for additional funding to cover Statutory Sick Pay on a case by case basis.
- 5.4 Argyll and Bute Council will not advise what rate of pay a Personal Assistant Employer should pay however the Council will ensure the PA employer understands that they are responsible for complying with the National Minimum Wage and all employer obligations such as Tax and National Insurance.
- 5.5 Argyll and Bute Council will confirm the approved Agency rate on a case by case basis taking into consideration the Best Rate Available for the type of support required and location.

Exceptional Circumstances Rates

- 5.6 Argyll and Bute Council will consider on a case by case basis situations where exceptional circumstances which require the approved rate to be varied, these are:
 - 1. In very rural areas of Argyll and Bute where neither option 2 or 3 is available to the direct payment user and
 - 2. The direct payment user has been unable to attract either an agency or employ a personal assistant at the current Council approved rate.

- 5.7 Argyll and Bute Council will only consider such situations where the above criteria has been met and evidence of processes followed i.e. where post advertised, responses (if any) received have been provided.
- 5.8 All requests for exceptional circumstances rates must be authorised by Service/Locality Manager.

6. MONITORING, EVALUATION AND DEVELOPMENT OF DIRECT PAYMENTS

Financial Monitoring

- 6.1 Argyll and Bute Council will take account of the relevant CIPFA guidance on financial monitoring of Direct Payments.
- 6.2 Argyll and Bute Council will be transparent with the direct payment user in relation to the monitoring arrangements for Direct Payments. For example the Council will discuss the information the direct payment user will be expected to provide and the way in which monitoring will be carried out.
- 6.3 Argyll and Bute Council will monitor the take up of Direct Payments and evaluate on an ongoing basis.

Direct payment user's Information

- 6.4 Argyll and Bute Council will provide all supported people considering Option 1 (Direct Payments) with an information pack. Prior to application Argyll and Bute Council will meet with the direct payment user/representative to explore the nature and effect of Option 1.
- 6.5 Argyll and Bute Council will ensure that the direct payment user is provided with a formal direct payment user/user agreement when they set up the Direct Payment. The use of such agreements can provide a safe and proportionate framework. They will demonstrate that a comprehensive explanation of safeguarding responsibilities has been given to the direct payment user in an appropriate format, and they confirm the direct payment user's understanding and acceptance of this.

PART B

OPTION 1

DIRECT PAYMENT PROCEDURAL GUIDANCE

PART B DIRECT PAYMENT PROCEDURAL GUIDANCE

PART B Direct Payment Procedural Guidance

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7. Process Stages

- 7.1 Not all the options available under Self- directed Support will suit everyone as increased choice and control results in increased responsibility. However Direct Payments if constructed and developed on a sound basis carry the greatest level of flexibility as well as responsibility. Therefore, if a direct payment user is thinking about choosing option 1 (Direct Payment) these procedures gives the information needed to ensure the direct payment user understands what a Direct Payment is, how it might be used and help them to decide whether this is the right option for them.
- 7.2 The process of referral, determining eligible needs, support plan agreement and review are as per departmental processes and procedures for assessment, care management and eligibility criteria. <https://sharepoint.argyll-bute.gov.uk/sites/swproceduresandtemplates/Assessment%20and%20Care%20Planning/Policies%20and%20Procedures/Assessment%20and%20Care%20Planning%20-%20V1.doc>
- 7.3 The care planning process is a series of linked activities:
- Setting priorities
 - Emphasising what people can do and their capacity for self-care
 - Defining service requirements (using generic terms)
 - Reviewing existing services or support arrangements
 - Assessing financial means
 - Discussing options / establish preferences for achieving outcomes
 - Exploring the resources of the direct payment user and carer – outlining what family and other carers are willing and able to do, and the needs that carers have in carrying out this role, including the support they need for their own health and well-being
 - Agreeing service objectives in relation to outcomes
 - Requesting that the department considers the request for service against other demand and resources
 - Co-ordinating the plan – have a description of the level and frequency of the help that is to be provided, stating which person or agency is providing that service
 - Setting a review date
- 7.4 Support plans must include as a minimum:
- a note of the assessed needs, associated risks, and how these will be managed;
 - the preferred outcomes of service provision;
 - details of the services to be provided; and
 - a review date.
- 7.5 However, when producing a support plan for a person who has opted to receive Direct Payments, the following additional information should be included:

- which of the assessed needs has the direct payment user opted to receive a Direct Payment for.
- Is there any AWI issues that need to be addressed if so complete Ability to Consent checklist (Appendix 3) and see para 11 for further actions.
- Explanation of the Direct Payment Agreement and that advice can be sought from a lawyer, friend, advocate, support service.
- Confirm that the person's needs for those services be met by means of a Direct Payment.
- How the person will secure the appropriate services.
- Explanation of their requirements set within the 'start up' for their Direct Payment.
- What variations to the way the Direct Payments are used should be notified to the care manager before change.
- What arrangements will be made to cover emergencies?
- Who is providing support?
- The value of the Direct Payment, how often and in what form it will be paid.
- The value of the direct payment user contribution and how this is to be paid into the Direct Payment account.
- What, if any, conditions are attached to the Direct Payment (e.g. if employing a relative who lives in the same house, when will this be reviewed, what attempts at recruiting should continue.)
- Review date.
- What the direct payment user should do if they are not managing or do not want to continue to receive Direct Payments.

7.6 The Care Manager should confirm that the services a direct payment user intends to arrange would meet the assessed needs, without being constrained by existing patterns of service provision. Direct payment users should be encouraged to identify alternative ways of meeting their assessed needs in a way more suited to their own lifestyles and preferences. Assessors will need to be able to translate the assessment into a Direct Payment package without diminishing the flexibility, which allows direct payment users to control their own support arrangements.

7.7 Direct payment users will need to consider how Direct Payments may work for them, to explore the options and set up suitable arrangements.

7.8 If a direct payment user decides not to accept Direct Payments, services will be arranged through the Council's in-house arrangements, (this may involve external providers that have been commissioned to provide services to the council through a block contract or framework agreement). A direct payment user cannot be forced to agree to a Direct Payment.

8. INELIGIBILITY

8.1 In the circumstances where it is considered that the direct payment user is ineligible to receive Direct Payments it is a requirement in terms of section 5 (3) (a) of the 2013 Act that the direct payment user/attorney/guardian/parent should be notified of:

- The reason why the authority considers them to be ineligible.
- That the decision will be reviewed where a material change in their circumstances has occurred.
- That the person can request a review at a later date in order to return to the options.
- The authority must give the person the opportunity to choose one of the other options under self-directed support with the exception in part of Option 4.

Should this situation arise the allocated worker should complete appendix 1 requesting approval from Service Manager/Area Manager. On receipt of appendix 1 the allocated worker should complete and send appendix 2 to the direct payment user/attorney/guardian/parent.

9. ABILITY TO CONSENT

9.1 Within Direct Payments, the ability to consent must be considered. Not everyone will be willing to take on Direct Payments, or able to consent to a Direct Payment.

Prior to any application being made the authority should satisfy themselves that the person has the ability understand and consent to Direct Payments. Please complete Ability to Consent checklist (appendix 3).

9.2 Ability to consent should not be confused with ability to manage.

9.3 Practitioners need to explore the implications of capacity with regards to Direct Payments and a part of this consideration will involve an understanding of the person's natural supports and the level of understanding that the person has about the choices and their implications. Clearly a Direct Payment involves additional responsibilities.

9.4 Under Section 6 and 17 of the 2013 Act the authority must take reasonable steps to facilitate assistance which will help the direct payment user to play a full part in their assessment, to understand the various choices available to them and to decide how and what ways they would like to arrange their support. This is to support reasonable, practicable steps to maximise the choice and control available to the direct payment user. The relevant provisions within the 2013 Act are not intended to impose assistance on the direct payment user. Neither are they intended to create the opportunity to develop alternative proxy decision-making powers.

9.5 Assistance with Understanding and /or Making Decisions

The direct payment user may find it difficult to make a decision on their own. However, with some additional support they may be able to make the necessary decisions regarding the provision of their support. Where Argyll and Bute Council believes the direct payment user would benefit from further assistance, consideration will be given to the full range of decisions that a direct payment user will have to make such as:

- the range of reactive or management decisions that come with the on-going day to day provision of the support; and
- any further decisions about needs, outcomes and plans associated with the review of a direct payment user's needs.

9.6 Argyll and Bute Council will take reasonable steps to enable the direct payment user to make the relevant decisions. The authority should exercise judgement in deciding whether the direct payment user requires such assistance.

9.7 Assistance with communicating decisions

Assistance to make decisions and assistance to communicate decisions are two distinct forms of assistance, and they are treated as such by the 2013 Act.

9.8 Where the person requires assistance to communicate decisions the direct payment user may require some additional support from, for example, an interpreter or a speech and language therapist, or from a family member or friend. Argyll and Bute Council will take all reasonable steps to identify people who can help the direct payment user to communicate their decisions. The direct payment user's agreement will be obtained before assistance is arranged.

9.9 Guidance where the direct payment user lacks capacity

Only guardians or attorneys appointed under the relevant legislation have the power to give consent and make decisions on another direct payment user's behalf. A case manager should request a copy of the POA/guardianship order to confirm they have the relevant powers to allow them to consent to a direct payment.

9.10 Where the direct payment user has a guardian or attorney and where that proxy has the necessary powers Argyll and Bute Council will support the guardian or attorney to make the relevant decisions in relation to the person's assessment, the support plan, the provision of choice in relation to the person's support and the support itself. Argyll and Bute Council will ensure that the proxy is:

- fully involved in the assessment;
- supported to collaborate with the professional; and
- supported to make informed choices about the direct payment user's support.

- 9.11 On certain occasions it may be reasonable to predict that the direct payment user's condition will deteriorate over time such that they will lack capacity to make decisions. Argyll and Bute Council will take steps to make the direct payment user and their family aware of the option to grant a power of attorney in these circumstances.
- 9.12 Argyll and Bute Council may have doubts or questions about a direct payment user's capacity. If so the relevant professional should seek assistance from a Mental Health Officer. Where the authority concludes that an application for guardianship would be appropriate they should discuss this with the direct payment user's family or others who may have an interest in the direct payment user's care and support. The authority can also apply to the court for a guardianship order if no application has been or is likely to be made and a guardianship order is necessary.
- 9.13 Argyll and Bute Council should not make decisions about an individual's capacity to consent to Direct Payment on the basis of the individual's capacity to give consent in other areas of his or her life. If the individual does not have capacity to consent to a Direct Payment then the individual's attorney or guardian, if they have relevant powers, can accept and manage a Direct Payment on their behalf. If no one has relevant powers a Direct Payment cannot be given until someone with relevant powers is appointed by the court.
- 9.14 Argyll and Bute Council will only make payments to an attorney or guardian once it is satisfied that he or she appreciates and accepts the responsibilities they have to the individual receiving the service and also to the local authority.
- 9.15 If a person cannot choose the Direct Payment, or cannot manage their support under the Direct Payment even with additional support, then Argyll and Bute Council retains its duty to provide services under option 3 – local authority selects and arranges services/support required.

Parental Consent

- 9.16 A parent or person with parental rights and responsibilities for a child or young person aged under 16 may give consent to receive Direct Payments to meet the assessed needs of the child or young person. .
- 9.17 At the age of **16**, the young person becomes the responsible person with regards to the Direct Payments arrangements. At the age of 16, Argyll and Bute Council must seek consent from the young person ensuring that he or she has the support required to help him or her make the decision. If they lack capacity to consent to Direct Payments, no-one else can consent on their behalf without obtaining relevant powers through the Adults with Incapacity Act 2000. Parents will only be able to consent on behalf of their child aged **16** or over if they have a guardianship order with the relevant powers.

10. **MANAGING DIRECT PAYMENTS**

- 10.1 Direct payment users may receive as much assistance as they require managing their funds and their support; however they remain accountable for the way money is spent. They may ask carers, family, friends, and their circle of support or other third parties to help them manage. There is no restriction on who may help the recipient.
- 10.1 If they choose, they can delegate financial management to a third party. Both the direct payment user and the third party need to agree to this arrangement and complete a mandate (appendix 4) delegating financial responsibility.
- 10.2 If this is the preferred arrangement, the direct payment user should retain control over how the money is spent and the service secured. They may express a preference about how a service should be provided and leave the details to the third party; however they should always retain the power to overrule any decision made by the third party. Argyll and Bute Council must be satisfied that the relationship between the direct payment user and the third party has been agreed prior to Direct Payments starting.

11. **THIRD PARTY DIRECT PAYMENTS**

- 11.1 The local authority may pay all or part of a Direct Payment to a person other than the Direct Payment user (a “third party”) The Self-directed Support (Direct Payments) (Scotland) Regulations 2014 section 5; if—
- (a) the Direct Payment user asks the local authority to make the payment to the third party; and
 - (b) the local authority is satisfied that the Direct Payment user retains total control over how the Direct Payment is spent.
- In terms of regulation 5, a direct payment user can ask for their Direct Payment to be paid to a third party and administered on their behalf. Under a third party payment Argyll and Bute requires to take reasonable steps to ensure that the direct payment user remains in control of the payment and the direct payment user remains responsible for the Direct Payment.
- 11.2 It is important that the role of both the direct payment user and the third party are made clear to the direct payment user and that there is evidence that all parties understand their responsibilities e.g. signed mandate or user agreement. This can help in the event of problems occurring at a later stage

12. **CONTINGENCY PLANS**

- 12.1 For each application contingency and anticipatory care plans should be agreed in advance of the Direct Payment being made.
- 12.2 Argyll and Bute Council will ensure that it has the necessary systems and processes in place to ensure continuity of funding during times of crisis. For

example, where the person uses their payment to employ their own staff the authority should take steps to fund Personal Assistant (PA) employer packages during short stays in hospital, where appropriate. This will enable the direct payment user to continue to pay employees for the initial four weeks of any hospital stay. The Council will encourage PA employers to include arrangements for hospital admission within the employment contract and terms and conditions. In all circumstances the statutory requirements governed by employment legislation must be applied.

- 12.3 Argyll and Bute Council's Care Manager will discuss what arrangements the direct payment user wishes to make for emergencies. If the Council becomes aware that the person is unable to secure support to meet their needs, then the Council's responsibility to arrange emergency support for that person is the same as if the direct payment user chooses Option 2 or 3 under the 2013 Act. The Council may decide to step in, albeit temporarily, and arrange the necessary services, but it should first consider providing assistance to enable the person to continue to manage their own support. Examples might include making arrangements with independent agencies for emergency cover or recruiting personal assistants who are prepared to work additional shifts at short notice when necessary. Where difficulties arise that were not anticipated it is helpful if the person knows they can contact a named individual in Argyll and Bute Council or a local support service whom they can ask for help. Such contingencies should form part of the user agreement.
- 12.4 Emergencies can occur for example when a PA being unavailable due to sickness, adverse weather conditions etc. However, in the event of the direct payment user becoming unwell and it is not possible in particular circumstances to make such contingency arrangements, then the Council is responsible for arranging services for the service user. This may include home care, or other appropriate service, arranging emergency cover if requested to do so.
- 12.5 Prior to each application being processed, as part of the support plan the Care Manager should discuss with each potential recipient the arrangements he/she will make for emergencies.
- 12.6 Each direct payment user should have a contingency plan however if the usual service breaks down and the contingency plan fails, Social Work and Health will respond as it would with any other service user.
- 12.7 Contingency plans may include:
- Arrangements with an independent agency provider for emergency cover and/or
 - Recruitment of Personal Assistants who are prepared to work additional shifts at short notice if necessary.
- 12.8 **Should difficulties arise, areas of consideration are:**
- Have the person's needs/outcomes changed?
 - Is the amount of money sufficient to secure the relevant services?

- Is the person still able to manage Direct Payments?
- Does the person wish to continue receiving Direct Payments?
- Has all the money been spent on the service for which it was intended?
- Have services for which the person has paid been received?
- Has the money been spent wisely?

13 PURCHASING CRITERIA

13.1 Direct Payments must be used to meet the outcomes identified on the individual's Support Plan.

13.2 Options include:

- Employing a Personal Assistant;
- Purchasing services directly from a private provider or agency;
- Purchasing respite
- Purchasing equipment VAT exempt, ownership, insurance, replacement, client contribution etc.

Employing Personal Assistants

13.3 Employing Personal Assistants can increase choice and flexibility of the support package however the role of employer carries greater responsibilities. It is important that direct payment users have good advice and assistance to enable them to meet their obligations as an employer. Argyll and Bute Council will provide an information pack for all prospective Employers to assist with employing a personal assistant; Scottish Government's Personal Assistant Handbook 2014.

13.4 Payroll services are provided by a variety of sources and the support agency can advise the service user on accessing these or for information on carrying out their own. A small charge is made for payroll services which will be covered in the Direct Payment package costs.

14. FINANCIAL ARRANGEMENTS

14.1 The hourly rate/s for Direct Payments recognises the recipient's responsibilities as an employer to pay National Insurance, tax, payroll, and holiday cover. A contingency fund is also included which allows the service user to provide cover for their Personal Assistant/s annual leave, and other arranged benefits.

14.2 It should be noted that a pension amount will not be included in the gross hourly rate until it has been proven that the employee is paying into a pension scheme. The service user should obtain confirmation of this from their Personal Assistant – mandatory by 2014.

14.3 The direct payment user must enrol into the scheme for all workers who:

- are aged between 22 and the State Pension age (dependant on date of birth)
- earn at least £10,000 a year
- work in the UK.

Payment Arrangements

- 14.4 The direct payment user will require a separate bank account for the sole purpose of Direct Payments, this must be an account that will not be used for personal business and must be a current account with monthly statements and a cheque book.
- 14.5 Payments from Argyll and Bute Council will be made to the account by BACS 4-weekly, in advance as per the payment schedule. A start up payment will be paid with a start date to allow the necessary administration such as insurance etc. to be paid for.

Start Up Payments

- 14.6 Any Direct Payment user who chooses to employ their own Personal Assistant/s will incur administration costs and such costs will be provided as a start-up payment. The list below details the expenses the payment can accommodate.
- Employer Liability Insurance
 - Payroll services
 - Recruitment costs i.e. advertising, and interviewing facilities
 - Training
- 14.7 The start-up payment will be paid to the direct payment user's Direct Payment bank account once the agreement is signed, this will allow the service user to apply and pay for relevant insurance policies for potential Personal Assistants. In exceptional circumstances the Service Manager can authorise the commencement of the Direct Payment with confirmation in writing.
- 14.8 After the initial expenses, the contingency fund will cover the cost of insurance renewals etc, however if further administration monies are required, this will be considered.

Service User Charges

14.9 Means Testing for Direct Payments

- (1) A local authority may assess a Direct Payment user's ability to contribute to the costing of securing the support to which a Direct Payment relates ("a means test")
- (2) If the authority carries out a means test, the authority must carry it out either-
 - (a) Before the Direct Payment is made; or
 - (b) As soon as possible and not later than one year after the Direct Payment has been made.

- (3) Having considered the means test, the authority may require the Direct Payment user to contribute to the Direct Payment
- (4) If the means test happens after the Direct Payment has been made and the authority decides that the Direct Payment user should contribute to the Direct Payment, the authority may require the Direct Payment user to repay either-
 - (a) Part of the Direct Payment to reflect that contribution; or
 - (b) Some lesser amount

Seeking Repayment

- 14.9 Argyll & Bute Council in terms of section 16 of the Act have the right to seek repayment in the following circumstances namely. If the Council is **not** satisfied that some or all money paid out has been used to secure the provision of the support it relates to, or if the recipient has not met the conditions imposed, The Council may require the person to repay a sum equal to the direct payment or such part of the direct payment as the authority considers appropriate
- 14.10 Argyll & Bute Council will consider how to recover unspent budget if the recipient dies. For example, if someone wishes to pay an agency in advance for its services, the Council will bear in mind that it may be difficult to recover money paid for services which were not in fact delivered. Argyll & Bute Council will consider that before their death the direct payment user might have incurred liabilities which should legitimately be paid for using the budget. For example, if they had received services for which payment had not been made at the time of death. There may also be occasions where additional funding is required to settle liabilities in full.

Surplus Funds

- 14.11 The Social Work Finance Team will review bank balances prior to the end of the financial year, or at any reasonable time, and may seek to reclaim excess funds. See Finance.

Changes/Amendments to the Direct Payments

- 14.12 Payments may be amended if the following situations arise:

- The payment rate and/or charging policy is adjusted;
- The agreed outcomes change
- The assessed needs increase and additional funds are agreed;
- The assessed needs decrease resulting in a reduction of funds required.

- 14.13 Any change in provision, requires an authorised Community Based Charging policy and renewed support plan.

15. SAFE AND EFFECTIVE RECRUITMENT

15.1 Safe and effective recruitment and employment processes are expected to be applied. Argyll & Bute Council expect Personal Assistant employers have the following arrangements in place:

- Protection of Vulnerable Groups (PVG) membership statement to be carried out on all Personal Assistants **prior** to their employment start date
- Employers Liability Insurance
- Taking up references
- Staff induction and training (if required)
- Probationary periods of employment.
- Holiday entitlement etc.
- Pension Scheme

Employing Close Relatives/family members as personal assistants

15.2 Argyll and Bute Council's policy in relation to employment of close family relatives as personal assistant is directed by the Regulations.

15.3 Under the Regulations Argyll and Bute Council will agree to a direct payment user employing a close relative or family member where appropriate. This flexibility is important as it provides the opportunity for such arrangements where it is the best or only solution to meeting the personal outcomes and needs for the direct payment user. This is in line with the general principles of the 2013 Act and the aims and intentions behind self-directed support which are to provide creative and effective solutions for supported people.

15.4 The Direct Payment Regulations provide a clear framework for such decisions, providing appropriate and inappropriate circumstances for the employment of family members. This framework involves the Council as a party to any decisions. This means that Argyll and Bute Council retains the power to either agree or disagree to the employment of a family member, though this should be on the basis of whether the arrangement will or will not meet the assessed needs of the direct payment user and not on the basis of assumptions or a general policy stance in opposition to employing family members.

- The direct payment user has specific communication needs which make difficult for another provider to meet their assessed needs
- The family member will be available to provide support at times when other providers would not reasonably be available
- The intimate nature of the support makes it preferable to the direct payment user that the support is provided by the family member
- The direct payment user has religious or cultural beliefs that make the arrangement preferable to the direct payment user

- The direct payment user requires palliative care
- ***The direct payment user has an emergency or short-term necessity for the support*** - this refers to instances where the employment of a family member would constitute a bridging solution until another care and support solution is found. An example would be where Argyll and Bute Council conducts an assessment of a person's needs and the person also has a relative who provides unpaid care to them from time to time. The direct payment user would prefer to find a third sector provider who will meet their needs. While the relative has been happy to help out up to this point, all parties agree that it would be more appropriate for the relative to do so on a formal basis until the direct payment user can find a suitable third sector provider who can fit into the person's life.
- **There are any other factors which make it appropriate, in the opinion of the authority, that the family member provides the support.**

15.5 The creation of an employment relationship results in a formal employer/employee relationship. An important condition underpinning the employment of family members is the requirement for all three parties (the Council, the direct payment user and the carer) to agree to the employment of a family member in order for the arrangements to be put in place.

15.6 In terms of Regulation 9 a family member is **not** permitted to provide support if Argyll and Bute Council determines that either:

- the family member or direct payment user is under undue pressure to agree to the arrangement **or**
- the family member is a guardian, continuing attorney or welfare attorney for the direct payment user.

These two inappropriate circumstances apply – regardless of whether any or all of the appropriate circumstances

Self Employed Personal Assistants

15.6 Argyll and Bute Council will not support the recruitment of self-employed Personal Assistants unless the self-employed Personal Assistant can provide written confirmation from an HMRC Status Inspector that the work they are agreeing to undertake e.g. care and support has been approved as self-employed.

15.7 In the former instance, it is the individual who receives a Direct Payment who takes on the employer's responsibilities for the PA's Tax, National Insurance etc. This is because most individuals will want to decide who the person is that they see, how they work, and when they work. This cannot be guaranteed if a PA is self-employed, as they can send a substitute for themselves to do their work.

- 15.8 There may be instances where a user wishes to have a PA who is already self-employed. A PA cannot be asked to be self-employed to avoid the individual who has a DP taking on employer's responsibility such as paying tax and national insurance. It is essential that self-employed PA's provide proof from the HMRC that they are regarded as self-employed for tax purposes. The minimum required evidence for this is written confirmation from HMRC Status Inspector. Details of the criteria the HMRC apply to determine if a worker should be classed as self-employed are given at the HMRC website. www.hmrc.gov.uk
- 15.9 If a direct payment user decides to contract a self-employed worker, the self-employed worker is responsible for:
- Funding their own training, including ensuring that they are trained to carry out the service they are offering
 - Providing a written statement that they have appropriate insurance indemnity cover, and
 - Undertaking and meeting the costs of a PVG check.
 - Providing equipment to do the contracted work e.g. gloves, hoists etc.
- 15.10 Buying services from a self-employed PA means that the user has some additional responsibilities. For example, they should ensure that the PA's self-employed status relates to performing caring functions, and seek evidence of appropriate training undertaken by the self-employed PA. They must also arrange emergency cover for any periods of absence the self-employed worker may have from the contracted work. The self-employed PA is not able to arrange this cover unless they are registered with the Care Inspectorate (Care Commission) as an agency, otherwise they are effectively sub-contracting. Only registered agencies are able to provide cover as part of their service agreement. If the local authority thinks that someone is acting as agency and is not registered, the Care Manager must report this concern directly to their Line Manager who would have a duty to report this to the Care Inspectorate. If there is any doubt about whether the terms and conditions under which a worker is carrying out their duties are those of a self-employment, then the individual Direct Payment user must seek advice from the HMRC or a professional Employment Lawyer.
- 15.11 Argyll and Bute Council advises **against** contracting with a self-employed PA, except in exceptional circumstances following discussions with your Care Manager. Where Care Managers need further assistance they should seek advice from the SDS Officer.

Employing Migrant Workers

- 15.12 The direct payment user has a responsibility as the employer to ensure the Personal Assistants have the appropriate legal documentation to work in the UK. The support Service should assist service users requiring assistance to do this.

PVG Scheme Membership

- 15.13 Where individuals employ a Personal Assistant directly, the Personal Assistant should obtain/have Protection Vulnerable Groups check. The support service will be able to facilitate this and the cost should be paid initially from the recipient's Direct Payment, and recouped from Personal Assistant's wage at an agreeable amount.
- 15.14 Argyll and Bute Council's Self Directed Support Officer or the Care Manager should also make the direct payment user aware of the Disclosure Scotland helpline on 0870 609 6006 and Disclosure Scotland website www.disclosurescotland.co.uk.

16. HEALTH SERVICES

- 16.1 Direct Payments monies cannot be used to purchase health services, however relevant NHS bodies have the power to delegate making payments to the local authority and funds can be provided for this purpose.
- 16.2 In addition, where a package of support includes jointly commissioned services with health, arrangements with NHS partners to provide a jointly funded package can be considered; Clinical Assessment Tool for People with Complex Needs (CAT-CN) requires to be agreed by all parties and submitted to the NHS Care Funding Allocation Group for approval.

17. RESPITE

- 17.1 Direct Payments cannot be used to purchase long-term residential accommodation.
- 17.2 These are various options available to the direct payment user if they have been assessed as requiring respite.
- 17.3 Not all direct payment users will want to use Direct Payments for residential respite. Some may choose to go on holiday and use their funds to take Personal Assistants with them or arrange for an agency to provide support whilst they are away as per their assessed need. Once PA remuneration has been met along with subsistence, NI etc further funds may be put towards accommodation, receipts must be provided. (if additional funds are required these must be provided by the DP recipient)
- 17.4 If a direct payment user opts to use their Direct Payments to purchase residential respite, they must ensure that respite periods are more than 4 weeks apart, the periods would be added together to make a cumulative total. The cumulative total should not exceed 4 weeks in any 12 month period. If this situation arises, the Direct Payments cannot be used to purchase further respite.

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18. AGREEMENT

- 18.1 The direct payment user and Argyll & Bute Council will enter into a contractual agreement known as a Direct Payment Agreement in relation to Direct Payments. Once the Direct Payments application has been submitted and authorised, Argyll and Bute Council's Finance Department will issue a letter of confirmation to the applicant with a copy of the agreement. This will allow the direct payment user time to seek legal advice if they wish.
- 18.2 The letter of confirmation will confirm the details of the Direct Payments arrangements and financial provisions in place. A meeting will be arranged by the Care Manager to discuss the agreement and providing the direct payment user is satisfied with the arrangements, the contractual agreement will be signed by, the direct payment user and/or person with the relevant powers. The direct payment user will be provided with a copy of the signed document, it will also include information and any other conditions set by Argyll & Bute Council.
- 18.3 If the applicant is refused Direct Payments then a letter will be issued giving reasons for refusal as required in terms of the regulations see 2.5. (Sample letter appendix 2).

19. MONITORING AND REVIEW

Monitoring, Evaluation and Development of Direct Payments

- 19.1 Argyll and Bute Council's Self Directed Support Officer and/or the Care Manager will monitor the take up of Direct Payments and evaluate on an ongoing basis.
- 19.2 The person who receives a Direct Payment is required to sign a legally binding Direct Payment Agreement. The agreement places responsibility and obligations upon the direct payment user and Argyll and Bute Council to ensure that appropriate funding is provided regularly to meet the needs of the direct payment user and that the direct payment user spends the funding he/she receives appropriately.
- 19.3 The direct payment user is accountable to the Council for how the Direct Payment money is spent and will be expected to provide evidence that he/she has spent it as agreed. For "one off" payments this will normally be a copy of the receipt.
- 19.4 A personal assistant is one of the providers who may provide support under Option 1 in the 2013 Act. This section provides guidance on some of the issues that may arise where a supported person chooses a Direct Payment and decides that they wish to employ a personal assistant. Further guidance; Employing Personal Assistants, Sect 15 of Part B.
- 19.5 Argyll and Bute Councils Self Directed Support Officer and the Care Manager should be satisfied that the recipient's needs are met through Direct Payments

arrangement. The direct payment user should be made aware from the outset what the monitoring arrangements are.

Initial Review

19.6 The first review will be arranged and undertaken after 8 weeks, by the Care Manager with the attendance of Argyll and Bute Councils Self Directed Support Officer focusing on the Direct Payments arrangements. Prior to this review, the direct payment user should be asked by the Care Manager to have their financial monitoring paperwork completed to date in order that the Argyll and Bute Council's Finance Team can check that no issues are developing. If no issues are identified, the review schedule detailed in the matrix will be applied thereafter.

Monitoring Matrix

Level of payment	Administrative Ability	Likely risk level	Support package
Less than £50p/wk (£2,600 p/a)	Evidence of competence	Low	Annual financial review (reliance placed on the service review)
Less than £50 p/wk (£2,600 p/a)	Evidence of difficulty	low	4-wkly financial and service monitor for the first 3 months (reliance placed on the service review)
£50 – £300 P/WK (£2,601 - £15,600 p/a)	Evidence of competence	Low/moderate	12-wkly financial monitor and service monitor for the first 6mths. Thereafter, annual financial and service review
£50 - £300 p/wk (£2,601 - £15.600 p/a)	Evidence of difficulty	Moderate/high	12-wkly financial monitor and service monitor for the first 12 months. Thereafter, annual financial and service review
More than £300 p/wk (£15,600 p/a)	Evidence of competence	Moderate	12- Wkly financial monitor and service monitor for the first 12 months. Thereafter, 6 monthly financial and service review
More than £300 p/wk (£15,600 p/a)	Evidence of difficulty	High	4-wkly financial monitor and service monitor for the first 12 months. Thereafter, 12 wkly financial and service review for the first 18 mths

Review

- 19.7 Reviews will be undertaken to ensure that the direct payment user's needs are being met and that the Direct Payments arrangements continues to be appropriate. It is essential the Care Manager communicates directly with the direct payment user where possible to ensure that they are happy with the arrangements, it is also important direct payment users feel they can freely express reservations or discuss any difficulties they may be experiencing without concern that their Direct Payments will be taken away. If a dispute occurs this may not affect ongoing Direct Payments until an agreement is met.
- 19.8 Service monitoring and reviews will be arranged as per the agreement. If it is deemed necessary, an alternative review schedule can be arranged. It should be noted that the direct payment user or Care Manger can request a review at any time if they feel circumstances have changed. With the exception of the initial 8 - week review should be needs/outcomes led, with a secondary focus on Direct Payments arrangements. If the previously identified needs have increased or reduced then a request for financial adjustments may be necessary, accompanied by care plan and Community Based Charging Policy.
- 19.9 The service monitoring can be carried out by the Care Manager along with Argyll and Bute Councils Self Directed Support Officer; however responsibility for the service reviews will be that of the Care Manager.
- 19.10 Ongoing review of needs/outcomes assessment will continue to be the responsibility of the Care Manager and the usual Community Based Charging Policy forms should be used.

Financial Monitoring

- 19.11 The financial monitoring should detail the frequency of both financial and service monitoring and reviews. The Care Manager, in conjunction with the Self Directed Support Officer should initially carry out the assessment of financial risk during the assessment/application process. The Social Work Finance Team will thereafter assess the risk according to paperwork and evidence submitted. The level of monitoring will be adjusted accordingly, if required.
- 19.12 Direct payment users will be required to account for all Direct Payments monies received and spent by submitting financial returns together with receipts, copy of payslips, invoices and bank statements for the period.
- 19.13 Rotas or timesheets should be completed by Personal Assistants and submitted to the direct payment user, their employer. The direct payment user should then submit this with financial monitoring paperwork.
- 19.14 It is important that the Care Manager raises any concerns relating to the Direct Payments arrangements with the finance team or the Personal Assistants Advisor as soon as they arise.

Charges Incurred

- 19.15 Any bank charges incurred are the responsibility of the direct payment recipient / user unless incurred as a result of an error by Argyll & Bute special circumstances, the finance team may agree that the charges should be debited from the Direct Payments account. If this situation arises, the direct payment user should be advised to contact either the Self Directed Support Officer or the finance team as soon as possible to advise them.
- 19.16 It is important that direct payment users are not penalised for honest mistakes. Where issues arise, they should be considered on an individual basis in consultation with the Care Manager, the Personal Assistants Advisor and the Social Work Finance Team.

Retention of Financial Paperwork

- 19.17 All financial records relating to tax and National Insurance must be retained for at least 6 years from the end of the first financial year payments that are received and each subsequent year, whilst receiving Direct Payments. For example, if Direct Payments commenced in October 2008, the paperwork must be retained for 7 years from the end of that financial year (31st March 2009). Therefore, paperwork relating to the period October 2008 to March 2009 could be destroyed in March 2016.

Audit

- 19.18 Direct Payments will be subject to audit and Argyll & Bute Council's Audit Team may request information from Social Work and Health and/or the direct payment user at any time. The Audit Team will not contact the direct payment user directly but will request information via the Social Work.

Health Monitoring

- 19.19 Where a direct payment user has Direct Payments to meet certain health needs as part of their support package, a monitoring arrangement with the appropriate health authority will be required. The Care Manager is responsible for arranging all appropriate persons are included in the monitoring process.

20. DISCONTINUING DIRECT PAYMENTS

22.1 If Argyll & Bute Council's Care Manager/Area Manager and Self Directed Support Officer becomes concerned about the appropriateness of the Direct Payments arrangements then they may consider discontinuing payments. In these circumstances the direct payment user would revert to direct service provision from the local authority.

Circumstances Where Direct Payment May Be Terminated

- (1) A local authority may terminate a Direct Payment if-
 - (a) A Direct Payment user becomes ineligible to receive Direct Payments;
 - (b) The Direct Payment has been used (wholly or partly) for some purposes other than to secure the provision of the support to which it relates;
 - (c) The local authority considers on reasonable grounds that the Direct Payment user has breached the criminal law or a civil law obligation in relation to the support to which the Direct Payment relates; or
 - (d) The Direct Payment has been used (wholly or partly) to secure the provision of support by a family member other than in circumstances where the family member is permitted to provide support by regulation 8 (as read with regulation 9) of the Act
 - (2) Before termination a Direct Payment, the local authority must notify the Direct Payment user of –
 - (a) The reason why it has decided to terminate the Direct Payment; and
 - (b) The date with effect from which the Direct Payment will be terminated
 - (3) In determining the date with effect from which the Direct Payment will be terminated, the local authority must take into account-
 - (a) Any contractual obligations entered into by the Direct Payment user; and
 - (b) The time that will be required to put in place alternative arrangements to provide the support to which the Direct Payment relates.
 - (4) The local authority must give the notification required by paragraph (2) in writing and, if necessary, in such other form as is appropriate to the needs of the person to whom it is given.
- 20.2 It should not be assumed that discontinuing Direct Payments is the solution to problems arising. If there are issues, the direct payment user should be supported to resolve these before consideration is given to withdrawing Direct Payments. Where possible, the decision to discontinue should follow discussion with the direct payment user and any supporter they have.
- 20.3 If Direct Payments are being withdrawn, the Care Manager should arrange relevant services prior to this action being taken.
- 20.4 The direct payment user may choose to terminate the Direct Payments arrangements. The minimum notice period they must give is four weeks. This notice must be given in writing to the Care Manger, who will involve any or all persons involved to ensure the direct payment user is not left vulnerable. Again, the direct payment user will require to consider their contractual responsibilities when giving notice to withdraw.

20.5 Unspent money will be claimed by Argyll & Bute Council if Direct Payments are withdrawn or a direct payment user dies, taking into account financial liabilities such as services received and not yet paid for.

20.6 Termination of Direct Payment Due to Financial Monitoring Paperwork

In terms of regulation 6 (1) a local authority may terminate a direct payment in certain prescribed circumstances. If due to financial monitoring issues Argyll and Bute Councils Self Directed Support Officer or Finance Department considers the direct payment has been used (wholly or partly) for some purpose other than to secure the provision of the support to which it relates or the local authority considers on reasonable grounds that the direct payment user has breached the criminal law or a civil law obligation in relation to the support to which the direct payment relates it may terminate the direct payment.

20.7 Argyll and Bute Council's Finance Team will correspond directly with the direct payment user regarding missing paperwork and/or evidence in the first instance. They will write on two separate occasions and if they do not receive the documentation required, the Finance Team will refer the issue to the Care Manager or Self Directed Support Officer.

20.8 The following steps will be taken before Direct Payments are discontinued on the basis of not fulfilling contractual obligations:

- Care Manager/ Self Directed Support Officer will be notified by the finance team that more than one period of monitoring paperwork is outstanding
- The Self Directed Support Officer will issue a letter to the direct payment user requesting contact within 21 days regarding monitoring paperwork, and copy correspondence will be sent to the Care Manager
- If no response is received, a further letter will be issued advising if contact is not made or paperwork submitted within 7 days the Direct Payment may be terminated.
- The Area Manager will write to the recipient advising of the reason for the termination and the date when Direct Payments will cease giving 4 weeks' notice. During this period the recipient must resolve any issues and demonstrate that they are able to manage Direct Payments effectively. The decision to withdraw may be reviewed as a result and alternative services arranged
- If Direct Payments are withdrawn the Finance Team will issue a letter detailing the monies outstanding as per the last monitoring paperwork reconciled. Notice of 14 days prior to an invoice being raised.

Copy of all correspondence will be sent to the Care Manager.

Suspending Payments

- 20.9 Argyll & Bute Council may wish to suspend Direct Payments under certain circumstances.
- 20.10 The amount of payment may be increased, decreased or suspended to reflect changing outcomes or to recoup overpayment. Following a review, a revised Support Plan and Direct Payment Calculation must also be completed to indicate changes with authorised budget holder approval. This will allow a variation to the direct payment Agreement to be forwarded to the direct payment user for signature.

Hospitalisation

- 20.10 If a direct payment user is admitted to hospital, Direct Payments will continue to be paid for 4 weeks. If the person does not return home during this period then a review should be held to determine if payments should continue. Payments may be reduced or suspended at this point however, each direct payment user's circumstances will be considered on an individual basis.
- 20.11 It is important that payments continue where Personal Assistants are employed to allow contracts to remain in place and continuation of care on the direct payment user's return home.
- 20.12 Where services are purchased from an agency, direct payment user would be advised to notify the agency and suspend arrangements, if possible, taking into account any contractual agreement.
- 20.13 It may be possible for Personal Assistants – agency – to continue to provide care in the hospital setting, depending on the nature of care and treatment being administered. If it is not possible, Personal Assistants may be able to take on different duties temporarily providing support to the direct payment user whilst in hospital for example, visits, shopping, laundry etc.

Redundancy

- 20.14 If a direct payment user employs Personal Assistants and Direct Payments cease for whatever reason, the Personal Assistant may be entitled to a redundancy payment. Argyll & Bute Council will provide the direct payment user with sufficient funds to cover the statutory payment if the **situation arises**.
- 20.15 Statutory redundancy and notice are detailed in the table below.

Age of Employee	Pay Due for Each Completed Year
18 or over, but under 22	0.5 weeks
22 or over, but under 41	1 week
41 or over, but under 65	1.5 weeks

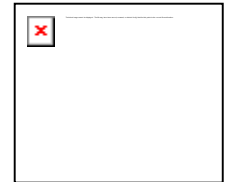
20.16 In addition to the above, the statutory notice period should be applied as follows:

- At least 1 weeks' notice if employed between 1 month and 2 years
- 1 weeks' notice for each year if employed between 2 and 12 years
- 12 weeks' notice if employed for 12 years or more

20.17 Any annual leave due and not taken should be taken into account.

20.18 Direct payment users must notify their Care Manger, the Self Directed Support Officer and the Finance Team of the date notice is given to employees.

DRAFT



Argyll and Bute Council
Comhairle Earra Ghàidheal agus Bhòid

MEMO

COMMUNITY SERVICES

Adult Care

Executive Director: Cleland Sneddon

Date:

Extension:

To: Service Manager/Area Manager

Your Ref:

From:

Our Ref:

INELIGIBILITY FOR SELF SIRECTED SUPPORT OPTION 1 – DIRECT PAYMENT

Name of Direct payment user:

CareFirst ID:

Please find enclosed letter of notification of ineligibility to the above named-individual for receipt of Self Directed Support Option 1 (and part Option 4 – *delete if appropriate*).

If you are in agreement with my decision, can you please sign the undernoted authorisation confirmation.

Care Manager

Name of Direct payment user:

CareFirst ID:

I agree the above-named individual is ineligible for receipt of Self-directed Support - Option 1 Direct Payment.

Service Manager/Area Manager

Date:

Argyll and Bute Council
Telephone: Mobile:
If phoning or calling please ask for:
Our Ref:
Council Website: www.argyll-bute.gov.uk
Date:

Dear

With reference to your recent request for Option 1 (and part Option 4) of Self Directed Support (Direct Payments), Argyll and Bute Council regret to inform you that you are not eligible to receive Direct Payments at this time.

The reason for this decision is ***(insert reason from Eligibility Criteria)***

As part of Self Directed Support the following options are still available to you in order for your outcomes to be met, these options are as follows:

Option 2: The Council or an organisation of your choice holds the budget but you are in charge of how it is spent to meet your agreed outcomes.

Option 3: You ask your council to choose and arrange the support that it thinks is right for you.

Part Option 4: Allows you to choose a mix of options 2 and 3.

Your Care Manager can assist you to explore these options further or if you wish they can sign post you for independent advice or assistance.

As detailed above, this decision has been made on the basis that ***(enter reason for refusal)***. Should your circumstances change you are entitled under the (Self Directed Support) (Scotland) Act 2013 to request a review of this decision.

Should you require any further information please do not hesitate to contact me on either of the above numbers.

Yours sincerely

Care Manager

CAPACITY TO CONSENT

Consider and check all boxes to confirm the individual has consent to be able to manage the responsibility of a Direct Payment.

It should be assumed that every applicant is able to consent with the appropriate support. For some, supported decision-making will be crucial to the assessment/application process. This may be in the form of a Circle of Support or in the more formal setting of an Independent Living Trust. These types of support do not reduce in any way the choice and control the individual has, it is essential that the views and wishes of the individual dictate the decision-making regardless of who actually makes the arrangements.

The applicant has an understanding of Direct Payments; please ✓ the appropriate boxes.

Is there a:

Continuing Power Of Attorney Welfare Guardian Financial Guardian

Please provide details:

Name of POA, Guardian:

Date of POA, Guardian:

- Does the applicant have the ability to make their choices and preferences?
Yes No
- Does the applicant have the ability to overrule decisions made by others?
Yes No
- Is the applicant able to manage most aspects of Direct Payments with help or training if required?
Yes No
- Is the applicant capable of keeping good financial records or instructing another to do this for them?
Yes No
- Is the applicant able to set up good quality services for themselves or are capable of instructing another to do this for them?
Yes No
- Is there a third party involved?
Yes No

Argyll & Bute Council must be satisfied that the relationship between the direct payment user and the third party has been discussed and agreed before the package begins. The authority must also be satisfied that the individual is aware that they can receive the payments direct if they wish. Has this been discussed and agreed?

Yes No

Section 8.37 Statutory Guidance SDS (Scotland) Act 2013

The Direct Payment Regulations 2014 specify that a local authority is not required to offer the option of a direct payment where it is likely that the making of the direct payment will put the safety of the direct payment user at risk.

.....
Care Manager's Signature Date

.....
Direct Payment User's Signature Date

.....
Third Party Signature Date

