

## Thurrock Coalition



### Supporting and informing the refresh of the Thurrock Council Direct Payments Policy

#### The Objective of this Report

This Report will provide an evidence base upon which Thurrock Council can refresh and update the Direct Payments Policy for 2018 onwards that takes account of and acts upon the lived experiences, views, feedback and needs of individuals, family members and carers who use Direct Payments as well as the Social Workers, Support Planners and Officers who support them.

#### About Thurrock Coalition

As the formally recognised User-Led Organisation for Thurrock, Thurrock Coalition has been set up to ensure that individuals get all the information they may require to get the support and care that they or their families /relatives need. We link to a whole range of groups and individuals in the borough. We know about the rights and entitlements of residents of Thurrock. We provide advice and information on a range of issues affecting disabled and older people. One of our main aims is to consult and engage with residents of Thurrock to help shape and influence Thurrock Council policies and strategies around Adult Social Care. We provide and deliver:

- Advice, Information and Guidance on a range of Disability-related issues
- Consultation & Engagement with Disabled people, older people, their families & carers
- Co-ordinating events to raise awareness of contemporary issues of concern to Thurrock residents.
- Specialised training to promote the Social Model of Disability, equality, diversity and inclusion - raising awareness of peoples' rights, responsibilities, duties and entitlements and to remove physical, environmental and attitudinal barriers that disable people.

#### Co-production - The Theory & Practice

Co-production means “delivering public services in an equal and reciprocal relationship between professionals, people using services, their families and their neighbours. Where activities are co-produced in this way, both services and neighbourhoods become far more effective agents of change.”<sup>1</sup>

Co-Production is about enabling the current ‘passive recipients of service’ to fulfil their desire as ‘active citizens in control’ to design and align the services they need to meet their own outcomes through positively working together with the commissioners to influence and change attitudes and

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<sup>1</sup> NESTA - The Challenge of Co-production – 12/2009

processes. In practice, Co-Production is simply involving those people of Thurrock who need or benefit from services, in defining, commissioning, and monitoring the services they require.

### **Responsibilities & Suggested Actions**

Following the Direct Payment Policy Co-production and Engagement Workshops, Thurrock Council officers need to draw up an Action Plan based on their understanding of the issues raised and the Report and Recommendations submitted to them by Thurrock Coalition.

We have collated the headline findings along with suggested actions from page 6 onwards.

### **The Direct Payments Policy - Background and Context**

The current Direct Payments Policy was updated in July 2015 so as to comply with the Care Act 2014. The Direct Payments Project Manager approached Thurrock Coalition with a view to increasing interest, uptake and engagement in Direct Payments and the related policies and procedures and co-producing an updated version of the Thurrock Direct Payments Policy.

Thurrock Coalition has a key role in ensuring that people who use services and carers in Thurrock have an active voice in shaping and co-producing policies and influencing decisions that affect disabled people, older people and carers in Thurrock.

### **The Direct Payments Engagement Group**

To this end, Thurrock Coalition worked in partnership with Thurrock Council officers to contact everyone in receipt of a Direct Payment and to provide an opportunity for individuals, family members and carers to come together in a forum, to share ideas and experiences and to discuss current issues of import and to put forward suggestions for service improvements relating to Direct Payments in Thurrock. The current Aim of the group is stipulated as follows:

- To regularly engage with Direct Payment Stakeholders.
- To address key concerns and issues that impact Direct Payment Users and the Authority.
- To identify gaps in applied practice or in the marketplace as a whole that relate to the use of Direct Payments.
- To highlight external pressures or issues to Direct Payment users.

The Group began meeting in September 2017 on a bi-monthly basis, looking at a number of different topics.

### **The Direct Payments Policy Co-Production workshops – July 2018**

Around June 2018 Thurrock Council and Thurrock Coalition drafted a joint letter to individuals inviting every Direct Payments User in Thurrock to attend up to three workshops to help to influence and shape the new DP policy. The relevant extract from the mailshot letter appears below:

In order to address key points of policy and to help gather views for people to shape this, Thurrock Coalition will be co-ordinating 3 presentations / workshops. Each session will be run twice and will address specific topics.

**All sessions will be held at the Beehive Resource Centre, West Street, Grays, Essex RM17 6XP between 1:00 pm to 3:30pm:**

- Direct Payments Session 1 - 5<sup>th</sup> & 20<sup>th</sup> July 2018 covering the following topics:
  - Direct Payment Principles.
  - What They Can /Can't Be Used For.
  - Subsistence Claims.
  - Employing Relatives.
  
- Direct Payments Session 2 - 13<sup>th</sup> & 24<sup>th</sup> July 2018 covering the following topics:
  - Potential Misuse.
  - Suspension of Direct Payments.
  - Discontinuing Direct Payments.
  
- Direct Payments Session 3 - 17<sup>th</sup> & 26<sup>th</sup> July 2018 covering the following topics:
  - Financial Monitoring.
  - Submission & Non Submission of Direct Payment Returns.
  - Underspends of Direct Payments.

### **The Direct Payments National Guidance**

Direct Payments are “the Government’s preferred mechanism for personalised care and support”<sup>2</sup> but they cannot be the sole mechanism because a request from an individual with capacity is required before the Local Authority can be relieved of its statutory duty with regard to meeting needs.

In addition, the importance of meaningful and effective choice and control cannot be understated in this context, the guidance states, at paragraph 12.5: “People must not be forced to take a direct payment against their will, but instead be informed of the choices available to them.”

### **Statutory Context**

Direct payments were first introduced in 1997 under the Community Care (Direct Payments) Act 1996. Initially, local authorities were given a power, rather than a duty, to make payments for working age disabled adults. The Government indicated that the user group for direct payments could be expanded without the need for further legislation, should the system prove successful.

In 2000, the discretion under the 1996 Act was extended to include older people. Further legislation was introduced in 2001 to include parents of disabled children and also carers.

A duty to provide direct payments was introduced in 2003 when regulations made under section 57 of the Health and Social Care Act 2001 made it mandatory for councils to make direct

<sup>2</sup> Care Act Statutory Guidance para. 12.2. Available at: <https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance>

payments to individuals who consented to and were able to manage them with or without assistance.

In 2009, provision was extended to persons appointed to receive direct payments on behalf of individuals who lack mental capacity and to persons' subject to mental health legislation.<sup>3</sup>

The contemporary legal basis for Direct Payments can be found under sections 31 to 33 of the Care Act 2014 – with the Care and Support (Direct Payments) Regulations 2014 (SI 2014/2871) providing the details of policy implementation for local authorities – and also section 117(2C) of the Mental Health Act 1983. Section 31 of the Care Act 2014<sup>4</sup> sets out a number of conditions that must be met before a Direct Payment can be made. If all 4 conditions contained within the primary legislation, along with those set out in relevant Regulations<sup>5</sup> are met, then a Local authority must make a Direct Payment.

Broadly speaking, the 4 conditions relate to:

- i) The issue of capacity to request a Direct Payment
- ii) Whether the person is formally prohibited from receiving a Direct Payment.
- iii) The *capability to manage* the payment, with whatever help is available

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<sup>3</sup> Social Care – Direct Payments from a Local Authority – Parliament UK Research Briefing 2015. Available at: [https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=2ahUKEwjCOJOixdjcAhUHL8AKHZsVDDcQFjAAegQIARAC&url=http%3A%2F%2Fresearchbriefings.files.parliament.uk%2Fdocuments%2FSN03735%2FSN03735.pdf&usg=AOvVaw3OEew9CLT\\_5oxxi0WabET](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=2ahUKEwjCOJOixdjcAhUHL8AKHZsVDDcQFjAAegQIARAC&url=http%3A%2F%2Fresearchbriefings.files.parliament.uk%2Fdocuments%2FSN03735%2FSN03735.pdf&usg=AOvVaw3OEew9CLT_5oxxi0WabET)

<sup>4</sup> Direct payments: 31 Adults with capacity to request direct payments

(1) This section applies where—

(a) a personal budget for an adult specifies an amount which the local authority must pay towards the cost of meeting the needs to which the personal budget relates, and

(b) the adult requests the local authority to meet some or all of those needs by making payments to the adult or a person nominated by the adult.

(2) If conditions 1 to 4 are met, the local authority must, subject to regulations under section 33, make the payments to which the request relates to the adult or nominated person.

(3) A payment under this section is referred to in this Part as a “direct payment”.

(4) Condition 1 is that—

(a) the adult has capacity to make the request, and

(b) where there is a nominated person, that person agrees to receive the payments.

(5) Condition 2 is that—

(a) the local authority is not prohibited by regulations under section 33 from meeting the adult’s needs by making direct payments to the adult or nominated person, and

(b) if regulations under that section give the local authority discretion to decide not to meet the adult’s needs by making direct payments to the adult or nominated person, it does not exercise that discretion.

(6) Condition 3 is that the local authority is satisfied that the adult or nominated person is capable of managing direct payments—

(a) by himself or herself, or

(b) with whatever help the authority thinks the adult or nominated person will be able to access.

(7) Condition 4 is that the local authority is satisfied that making direct payments to the adult or nominated person is an appropriate way to meet the needs in question.

<sup>5</sup> The Care and Support (Direct Payments) Regulations 2014 available at:

<http://www.legislation.gov.uk/ukxi/2014/2871/contents/made>

- iv) The *appropriateness* of paying the money to the user or to their nominee, as a means of meeting the needs.

Satisfying the first two conditions can be reasonably straightforward. However, despite the focus upon flexibility, innovation, choice and control of the Direct Payments framework, the third and fourth conditions allow for much scope and range in professional judgement and thus provide two aspects of residual control by the Local Authority over the 'right' to a direct payment.

Having said this, where a person is refused a Direct Payment the guidance states (paragraph 12.18):

“Where refused, the person or person making the request 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.”

At paragraph 12.22 it says that the written reasons “should set out which of the conditions in the Care Act have not been met, the reasons as to why they have not been met, and what the person may need to do in the future to obtain a positive decision. The consideration stage should be performed as quickly as is reasonably practicable, and the local authority must provide interim arrangements to meet care and support needs to cover the period in question.”

We have taken into account the Statutory basis, secondary legislation and Guidance relating to Direct Payments when collating the findings from this initiative.

## **Collated findings from the Direct Payments Policy Workshops**

### **Workshops 1 & 4**

#### **Topic: Principles of Direct Payments**

##### **Headline findings:**

- Both groups recognised the importance of flexibility and corresponding responsibilities, and the potential to enhance peoples' quality of life, but felt that more needed to be done to encourage and support Service Users to be innovative and creative in practice and recognising that the principles should not be prescriptive in nature.
- Clarity is needed at the outset around what the commissioned DP Support organisation does and doesn't provide.
- Explicit reference should be made to the whole philosophy / spectrum of what Direct Payments are and what they encompass, in a jargon free, plain English explanation, including the offer of Advocacy support for anyone with the "appearance of need."
- The list of Domains contained in the DP (Eligibility) Regulations should be expressly included in the Policy to provide clarity and increase understanding for individuals and practitioners alike.
- The wording of the Policy should be modified to keep it straightforward and simple for everyone to understand. The Wording should also be reflected in the support plans and assessment paperwork to ensure parity. This could include details of, for example what is meant by "cost-effectiveness."

#### **Topic: What can and can't a Direct Payment be used for?**

##### **Headline findings:**

- The current wording of the policy is clear concise and sensible.
- A DP Practice Manual and information leaflet should be developed, (similar to the Skills for Care Direct Payments Workbook).<sup>6</sup> This should include real life illustrative examples from actual DP users, ideally in Thurrock. This should also include examples of issues and solutions to dispel any apprehensions and should also detail wider offers around support, community solutions and assets as well as services including respite and the wider offer – not just "Breakaway."

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<sup>6</sup> Skills For Care Direct Payments Workbook available at:

<https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=2ahUKEwi2up7qtM7cAhUpJcAKHeStB0UQFjAAegQIABAC&url=https%3A%2F%2Fwww.skillsforcare.org.uk%2FDocument-library%2Fstandards%2FCare-Act%2Flearning-and-development%2Fperson-centred-care-and-support-planning%2Fdirect-payments-workbook.docx&usg=AOvVaw3Ms6QLxbVJN7iVqC2Dvh-Q>

- Attendees felt that there should be better consistency across ASC Teams when providing reasoning for limiting the use of DP and when refusing requests.
- There should be better staff training around the actual legal limitations of DP, as opposed to those implemented as organisational policy or localised practice, which in fact the Local Authority have no power to enforce. For example, having an organisational policy that excludes housework under a DP, arguably contradicts The Care Act 2014 and the provisions relating to maintaining wellbeing and a habitable home environment. It may be useful for the new policy to make express reference to the 10 domains in the Regulations so that the DP can be tailored to the individual and their home environment.

### **Topic: Agreed rates of subsistence claims**

#### **Headline findings:**

- Some attendees were of the view that the current rates are acceptable, others suggested that a “whole day” allowance should be used, rather than being “meal specific”, especially as individual daily routines differ, and so the policy should reflect this.
- The need for subsistence claims to be discussed and stated on the assessment form and associated plans was highlighted, further that there should be better guidance for contingency arrangements (state in the policy that additional funds may be available to support these additional expenses, subject to approval), along with a “Justification” space/box on the DP Returns paperwork.
- Costs are often dependent upon geographic location and environment – the policy should reflect this potential flexibility.

### **Topic: Employing relatives**

#### **Headline findings:**

- Attendees felt that perhaps more frequent reviews should be in place if family members living in the same household are involved in care.
- However, that it is also important to take into account the specific individual circumstances, impairment(s) and family situation. And that it could be permitted if the correct and appropriate training is provided. The Local Authority should also consider who the individual feels comfortable with and whether this person is able and willing to undertake the caring role. It was felt that any decision should be jointly made by the individual, the Social Worker and Manager.
- The workshops discussed the issue of complex family relationships and the potential for conflicts to arise in this area. Individuals highlighted the importance of establishing a mechanism for conflict resolution and the need for a decision maker to adjudicate where necessary.

## **Workshops 2 & 5**

### **Topic: Potential Misuse of Direct Payment Monies**

#### **Headline findings:**

- Regarding the current wording of the policy: Paragraph 5 should go before paragraph 3. Paragraphs 3, 4, 6, 7, 8 all read fine.
- There followed some discussion around the “14 days for information to be supplied” with some attendees taking the view that it is sufficient, with the majority disagreeing, on the basis that 14 days may not be sufficient due to holidays, sickness etc. and suggested waiting 28 days before triggering next steps.
- Social Workers should take all reasonable steps to continually communicate with the individual and the DP Finance Officer to investigate and support the individual through the process, and to consider multiple approaches to pathways to regain control over DP, particularly if the misuse has arisen from a genuine misunderstanding.
- If concerns remain after 14 days or there is no response, the DPFO should pass concern(s)/issues to finance team as it is financial matter.
- A simple telephone call could be undertaken in the first instance; this will minimise bureaucracy instead of sending a letter.
- In terms of repayment the policy should clearly include definitions of “misuse” and “validity” and state the various available repayment methods, and that court action is an issue of last resort. The policy should include reference to the availability of Advocacy Support.
- A pictorial/infographic step-by-step flow chart of the process for recovery should also be included. It is important to strike the balance in language to make it simpler and easier to read and understand, without being overly long.

### **Topic: Suspension of Direct Payments**

#### **Headline findings:**

- Attendees took the view that a care review should take place to ascertain the reasons that the individual has misused the Direct Payment, for example, due to changes in need and/or outcomes.
- In terms of the DP Agreement itself, an explanatory leaflet should be produced in EasyRead detailing the background and implications of it.
- The Policy should be hosted online and individuals should be signposted to it.
- In terms of the Policy, reference to specific types of letters and corresponding numbers should include the title and subject/topic for clarity. The policy should also avoid cross referencing as this can be confusing, for example, to what does “section 14.1” refer?



- The Policy would benefit from including an infographic with details of the arrangement, relationship and responsibilities between the Local Authority, individuals and the Commissioned DP Support provider.
- When looking at lifting a suspension, the suggestion that the Local Authority consider individual circumstances and overall compliance, severity (of any breaches) and if ongoing in nature when making a decision. A flow chart to explain the process would be helpful in this regard.
- A glossary of terms e.g. “reablement”, “directly commissioned service” etc. could be developed.
- A mechanism should be put in place to monitor DP arrangement from time of initiation to the first 6 months of returns. To act as a check.
- Support service users to understand the policy **and** the DP agreement.
- DP forms be sent to service users to enable them understand DP agreement before they sign DP (offer referral to advocacy every time). In addition, individuals should be provided with EasyRead information on Direct payment to enable them to understand.
- Emphasis should be placed on the relationship of trust and confidence between all involved. The policy could include a “3 strikes and you’re out” approach to suspension (This would be dealt with on a “case-by-case” basis and would depend upon stipulated factors, including, for example, the amount of monies involved and the severity of the breach – with any illegal activity resulting in instant suspension. It was suggested that the policy could include a timeline if the Local Authority is looking to suspend or remove DP. All parties could consider alternative ways to manage funds, advocacy Support must be offered and any reasonable restrictions to be discussed [with individuals]. The group attendees took the view that all involved should be using all available support avenues to ensure that the individual is able to continue to use DP wherever possible in the circumstances (e.g. Reviews/Advocate/Advice/Information)

## **Workshops 3 & 6**

### **Topic: Discontinuing Direct Payments**

#### **Headline findings:**

- Attendees were of the view that any discontinuation should only be used as a last resort and that individuals should be offered “a way back” on to Direct Payments, but with a range of restrictions in place (perhaps for an agreed, limited time). Social Work practitioner should be involved at the start (and throughout) the process when implementing a suspension.
- Procedures for discontinuation of DP and punitive action should be clear. Individuals should be given the option to pay in instalments before punitive measures are put in place. It will be important however, to ascertain the reason for any misuse. Was there a conscious breach of the Rules or was there an honest mistake?
- If possible restrictions are discussed but not agreed, other available options need to be stipulated.
- Individuals should be offered support and intervention, signposted to advice, information and Advocacy services when encountering restrictions, to avoid potential conflicts of interest. A process/flow chart contained within the Policy would be beneficial here. Real life examples/scenarios should be included in the policy to illustrate this.
- Existing capacity should be increased for a member of the DP Officer Team to deal specifically with managing DP arrangements, misuse, restrictions, suspensions and discontinuations.

### **Topic: Financial Monitoring of Direct Payments**

#### **Headline findings:**

- Attendees discussed the importance of choice and control and that individuals are able to make (un)wise decisions, everyone is different and has different needs. Thus, the process of returns needs to be flexible and straightforward and where there has been a proven record of reliable returns and care and support is in place then the return period could be increased. For example, following 3 reviews / returns with no issues – go to annual returns.
- The terminology of the policy should be reviewed so as to enable all DP Users to understand the whole process. This could be achieved through the use of more infographics/flow charts or process maps.
- Attendees discussed the fact that the initial 3-month review does not currently happen due to capacity issues.
- In addition, attendees felt that there needs to be more effective communication between the DP Officer and practitioners in relation to individual DP reviews, there would be mutual benefit if there was more contact earlier on.

- Attendees also raised the possibility that frequency of returns could be linked to the financial value of the DP and any individual circumstances.
- For new DP Users, consider identifying resources to increase capacity for a DP officer who will review individuals on DP. The review/return should be within a 6-month period. This would be helpful to minimise risk of misuse.
- Attendees suggested that a section should be included in the policy that covers procedures for flagging a concern, due to not utilising funds.

### **Topic: Non submission of Direct Payments**

#### **Headline findings:**

- Attendees discussed whether there should be an exemption/option to defer period in certain circumstances, for example health issues, bereavement etc.
- It was felt that the current paragraphs in this section of the policy need to be re-drafted as they are “too wordy”, and do not flow.
- Contact should be raised at 28 days for allocation and joint working. This currently does not happen due to capacity. Potential options raised by the workshop participants include: A dedicated “call back” DP Support, or alternatively have this element picked up by Thurrock First.
- Individuals who have not submitted returns and have not given reasons should be offered support through the commissioned DP support provider of the time, and offered an advocacy support. A payment plan should be instigated before debt recovery; (recovery should be a last resort).

### **Topic: Underspend of Direct Payments**

#### **Headline findings:**

- The workshop attendees discussed how redundancy and SSP could affect the tolerance level and issues affecting directly employed/self-employed or agency support staff, as well as how to pay for emergency care and support if your P.A. is off sick.
- Attendees also highlighted the need for information and clarity around one-off payments for respite.
- The suggestion was made whereby if an individual’s DP is suspended due to a non-return of an underspend, the DP should be restarted, once the 8-week tolerance is reached.
- The “Children with Disabilities” (CWD) policy in this area needs to be looked at as well.
- The reference to reablement should be removed and replaced with a Directly commissioned service.

- Alternative methods of payment should be explored, including BACS, Card, Cheque etc.

## **Conclusion**

In terms of responsibilities & suggested actions following the Direct Payments Policy Co-Production Engagement initiative, Thurrock Council officers need to draw up an Action Plan and subsequent new DP Policy & Guidance (alongside a Practice Manual) based on their understanding of the issues raised and the Report and Recommendations submitted to them by Thurrock Coalition.

We recommend that the Headline Findings from each section of the Policy be considered as a starting point and the suggested changes, alterations and new elements for inclusion be taken on board and wherever possible, implemented in a new and refreshed policy that is accessible, understandable and practical for daily use and reference by individuals, family members, carers and practitioners alike.

We recommend that any drafts of the new policy be shared with everyone who attended and participated in the workshops to ensure that it accurately reflects the views, feedback and suggestions for improvements that were provided. Thurrock Coalition would welcome the opportunity for continued involvement and facilitation of this co-production initiative and the period review of the policy going forward.

The full verbatim feedback from each of the workshops appears in the Appendix to this Report

**Thurrock Coalition – August 2018**

**Direct Payments Policy Workshops – Verbatim feedback from all 6 Workshops held throughout July 2018**

| Policy Heading and Extract   | What would you keep? And why?  | What would you change? And why?  |
|--|--|--|
| <p><b>Principles of Direct Payments</b></p> <p>Direct Payments are a way to encourage innovation and creativity in ways service users can meet their outcomes and this must be encouraged. The Direct Payment must be used to meet identified outcomes, but how this outcome is met does not need to be prescriptive. However, there needs to be some agreement about what is an appropriate way to spend public money.</p> <p>Employees of the Council and recipients of a direct payment have a responsibility to obtain value for money when negotiating solutions to meet eligible needs. Any spending guidelines that apply to directly provided or commissioned services also apply to direct payments i.e. the direct payment must be at least as cost effective as other appropriate services that could otherwise be arranged by the Council to meet the person’s assessed needs. In order for the Direct Payment to operate in a more flexible manner service user engagement is vital to its success.</p> | <ul style="list-style-type: none"> <li>• Be aware of family needs and dynamics<br/>Not prescriptive<br/>Yes, value for money is important.<br/>Agreed rules<br/>Keep outcomes.</li> <li>• DP payment should be flexible as long as SU meet specified outcomes.</li> <li>• Agree to encourage direct payment.</li> <li>• Agree to more appropriate spending.</li> <li>• Agree with council staff, direct payment users have a responsibility.</li> <li>• Good to be flexible</li> <li>• Good that the Principles aren’t prescriptive.</li> <li>• SU encouragement is vital for living life and making life fulfilling.</li> </ul> | <ul style="list-style-type: none"> <li>• Creativity does not happen in practice</li> <li>• Should be customised to specific needs</li> <li>• Need clarity at outset about what “Purple” does and does not provide.</li> <li>• Use plain words - skip the Jargon<br/>It needs to be more than just outcomes; it needs to encompass the whole spectrum of what DP is.</li> <li>• Better quality of Life.<br/>Make it more simplistic.<br/>A simple explanation of value for money!<br/>It’s still too “jargonistic”.</li> <li>• Clearer about people being offered an advocate in the assessment stage.</li> <li>• Enhance quality of life.</li> <li>• Include the list of Domains contained in the Care Act. So, people understand the outcomes.</li> <li>• Limit/change the wording to make more specific – keep the wording simple. i.e. value for money, get best deal.</li> </ul> |

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|  |  | <ul style="list-style-type: none"><li>• Some people need more money.</li><li>• I feel the direct payment should be prescriptive.</li><li>• To establish what the commissioning plan involves.</li><li>• Agree none encouraging safety. None comfortable to use direct payment money.</li><li>• Describe what “cost-effective” means in layman’s terms</li><li>• 1 agree however wording needs to be modified.</li><li>• Wording of the support plan is important to reflect flexibility.</li><li>• Spending guidelines and cost effectiveness references need to be modified and/or reworded</li><li>• The worded principles are still complicated</li></ul> |
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| Policy Heading and Extract  | What would you keep? And why?   | What would you change? And why?  |
|---|---|--|
| <p><b>What can and can't a Direct Payment be used for?</b></p> <p>A Direct Payment can be used to purchase innovative and creative solutions to meet identified outcomes. Direct Payments must be used to meet the outcomes agreed as evidenced through the completion of a support plan. The care practitioner and direct payment recipient/suitable person will agree in general the ways the direct payment will be used. Outcomes should be achievable and clear. They may be time limited as some outcomes are to achieve short term goals.</p> <p>Restrictions on what a Direct Payment can be used for (unless written exception agreed by Service Manager or Strategic Lead)</p> <p>Gambling (including lottery tickets, bingo etc.)<br/> Health care needs that should be paid for by Health Services<br/> Food shopping<br/> Utility bills, including gas, electric, water and telephone bills<br/> Mortgage and rent payments<br/> Maintenance for a property<br/> Cigarettes and alcohol<br/> Gifts or presents for others<br/> The cost of food/eating out for Direct Payment recipients</p> | <ul style="list-style-type: none"> <li>• Practise manual and info leaflet for individuals and practitioners</li> <li>• Clear, concise, sensible.</li> </ul> | <ul style="list-style-type: none"> <li>• Better professional consistency and reasoning for limiting Direct Payments and saying “no”</li> <li>• Better staff training and awareness of personalised Direct Payment approaches.</li> <li>• Reference to the 10 domains – tailor the DP to the individual and their home environment.</li> <li>• Include real life illustrative examples</li> <li>• “Maintenance for...” be more specific, to include basic tasks, e.g. cutting grass and exclude home improvement.</li> <li>• Excluding housework under DP contradicts The Care Act 2014 and the provisions relating to maintaining wellbeing and a habitable home environment</li> <li>• Not prescriptive but descriptive.</li> <li>• Do not need any items or services which fall outside of your agreed support plan.</li> <li>• Clear description of Health Services and what health budgets would cover.</li> </ul> |

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| <p>Any items and services which fall outside of your agreed support plan.</p> |  | <ul style="list-style-type: none"> <li>• By removing the direct payment before CHC funding.</li> <li>• Could jeopardise the service user.</li> <li>• Should include examples of outcomes, problems and solutions.</li> <li>• It would be useful to have a plain English guide to Direct Payments at the outset.</li> <li>• The wording of support plans is vital.</li> <li>• Fear of a new service. What you can/can't do.</li> <li>• Wider respite offer definitions of "Respite" not just "Breakaways."</li> <li>• "Maintenance of a property" – what about Home improvements?</li> </ul> |
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| Policy Heading and Extract  | What would you keep? And why?  | What would you change? And why?   |
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| <p><b>Agreed rates of subsistence claims</b></p> <p>Many people use their Direct Payment to access the community. The person in receipt of the Direct Payment should fund their access to the community resource and their own meals and drinks from their own funds. The Direct Payment can be used to fund the personal assistant (if required). The suggested amounts that can be claimed in these situations will be in accordance with Thurrock Council subsistence levels.</p> <p>Breakfast: £6.75<br/>Lunch: £9.25<br/>Evening Meal: £12.00<br/>Accommodation Allowance: £77.50 (maximum per night)<br/>Any exceptions should be agreed with a team manager.</p> | <ul style="list-style-type: none"> <li>• I feel subsistence rates are acceptable.</li> </ul> | <ul style="list-style-type: none"> <li>• Recording it to match up with assessment.</li> <li>• Lunch £13</li> <li>• Evening £25</li> <li>• Prices vary on location so it is difficult to cap.</li> <li>• An allowance for the whole day as opposed to being “meal specific”.</li> <li>• Breakfast max £10</li> <li>• Peoples days start differently. So, there should be no time restrictions on subsistence</li> <li>• Rates depend upon geography.</li> <li>• Contingency reasoning for higher spend e-g lunch at a hospital café.</li> <li>• If in Employment contract – clarity, useful. Trust and fair usage</li> <li>• Better guidance for contingency agreements.</li> <li>• Justification space in the return.</li> <li>• Adopt personalised approach in Care Plan.</li> </ul> |

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|  |  | <ul style="list-style-type: none"><li>• Add in that additional funds may be available to support with. These additional expenses.</li><li>• Do we need to specify the environment [in which the claim is being made]?</li><li>• We need to specify how many hours [spent] in the community before lunch can be claimed.</li><li>• If [working] long hours should be able claim for meals? Dependent on needs?</li><li>• Will the rates be on the new policy maybe they should be?</li><li>• When were the rates reviewed plus how often</li><li>• Are the rates generic or can this be excluded in the plan?</li><li>• Needs a bit more flexibility, it depends on the situation.</li></ul> |
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| Policy Heading and Extract  | What would you keep? And why?   | What would you change? And why?  |
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| <p><b>Employing Relatives</b></p> <p>Direct Payment regulations prevent people from using direct payments to secure services from a spouse (husband or wife), from a partner (the other member of an unmarried couple with whom they live), or from a close relative (or their spouse or partner) who live in the same household as the direct payment recipient. However, there are exceptions in certain circumstances but these must be agreed by a Service Manager or Strategic Lead.</p> | <ul style="list-style-type: none"> <li>• Speedy review periods if family members are involved in care.</li> </ul> | <ul style="list-style-type: none"> <li>• Cultural, social and language considerations.</li> <li>• Where no alternative.</li> <li>• Able and willing carer/spouse.</li> <li>• Decision maker SW/SP more able to advocate?</li> <li>• Health, Condition, effect, recognition, e.g. dementia.</li> <li>• Potential family hardship if spouse not employed.</li> <li>• Review annually unless there is a change in circumstance.</li> <li>• If married, and partner already gives support going away will require extra support.</li> <li>• Decision to be made by service user, practitioner and service manager.</li> <li>• Be allowed to do it with correct training. What should be provided?</li> <li>• Personal Care should be allowed e.g. husband/wife/partner - when needed.</li> <li>• Standard risk tool in place when employing relatives.</li> <li>• Do we need to include any person living in home in environment?</li> <li>• Family to be used if no other options.</li> </ul> |

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|  |  | <ul style="list-style-type: none"><li>• Should family be allowed to be a paid carer?</li><li>• Individuals choice or joint decision risks?</li><li>• Not appropriate wording.</li><li>• What about consideration of who the service user feels comfortable with?</li><li>• One off respite payment to be used throughout the year as an exception.</li><li>• What about who the service user feels comfortable with?</li><li>• So therefore, this is not time restrictive.</li><li>• Communication problems may prevent this.</li></ul> |
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## Direct Payments Policy Workshop 2

| Policy Heading and Extract   | What would you keep? And why?  | What would you change? And why?   |
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| <p><b>Potential misuse of Direct Payment monies</b></p> <p>If there is a question over the validity of the expenditure in a Direct Payment return, the DPFO will check against the client’s support plan on the Integrated Adult System (IAS) to confirm if this meets their agreed outcomes. Also on IAS, the new Direct Payment agreement will be uploaded to help confirm this. If the expenditure does meet the agreed outcomes, then the returns are agreed.</p> <p>If the spending does not appear to correspond with the agreed outcomes between the service user and Thurrock Council, the DPFO will send Letter 6 stating what the concerns are and giving 14 days for information to be supplied. If concerns remain after 14 days or there is no response the DPFO will inform the appropriate care practitioner/team in order for a worker to be allocated to discuss the matter with the service user/nominee/suitable person within 4 weeks.</p> <p>The Council will require repayment of any Direct Payment that has been made that has not been used to secure the provision of the service to which it relates or if certain conditions have not been met. In these cases, if</p> | <ul style="list-style-type: none"> <li>• Paragraph 3 to stay paragraph 4 to stay.</li> <li>• Paragraph 5 to go before 3, paragraph 6, 7 and 8 ok.</li> <li>• What can we use direct payment on?</li> <li>• Can it be used for Care while on holidays?</li> </ul> | <ul style="list-style-type: none"> <li>• Direct Payment agreement from does not help with this - include care plan.</li> <li>• I feel, as a social worker, 14 days is okay to address it asap.</li> <li>• Initial 14 days may not be sufficient due to holidays, sickness. Maybe [wait] 28 [days] before triggering next steps.</li> <li>• SW to take all reasonable steps to investigate and support the individual through the process.</li> <li>• Update payment options – cheque preferred – electronic payments – adjust payments</li> <li>• Problems with policing especially if family member is a PA and a friend manages finances.</li> <li>• The option is to consider multiple approaches to pathways to regain control over DP.</li> <li>• Potential of DP used at part of household income.</li> </ul> |

repayment is not made, the Council has a legal duty to recover the monies as a debt due to it.

The Council will also recover any monies it has paid that have been obtained or misappropriated fraudulently via the County Court if necessary, and will ensure that all such cases are referred to its Anti-Fraud Team and the Police.

In consenting to receive Direct Payments, individuals also take on responsibility for obtaining the support they need through their own arrangements, which may involve legal responsibilities.

If after discussion/review the expenditure with the social care practitioner is deemed appropriate, no further action is required. IAS and ContrOCC must be updated to reflect this new information to prevent any future questioning. In these instances, Letter 8 will be sent.

If the spending is deemed inappropriate, then the social worker/DPFO should inform the Service Manager or Strategic Lead. If a decision is made to suspend or stop the Direct Payment a letter will be sent to the service user/nominee/suitable person with the offer of a Reablement service in the meantime. In these instances, Letter 7 will be sent.

- There must be a pathway basic to direct payment to enhance service user regain control.
- If concerns remain after 14 days or there is no response, the DPFO should pass concern(s)/issues to finance team as it is financial matter.
- A simple telephone call will minimise bureaucracy instead of sending a letter
- Options to repay funds, how?
- Include a step or steps before taking court action
- Include reference to the availability of Advocacy Support
- DPFO to offer support if this is a genuine misunderstanding
- All other options exhausted. Issue of last resort
- Need more definitions – “mis use”, “validity”
- Repayment options – a) b) c) In discussion and agreement with Representative/DPO

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| <p>If the Service Manager / Strategic Lead is satisfied that spend meets outcomes, then Letter 8 will be sent.</p> <p>Depending on the circumstances involved it will be decided whether it is appropriate to ask the client to pay the monies back which will lead to debt recovery action if the service user is not forthcoming.</p> <p>Once the DP monies have been paid the service user can be given the following options if the Direct Payment has been suspended:</p> <p>Will go through a reablement process to ascertain the service user's care needs and which service can best meet these requirements; and</p> <p>having the Direct Payment reinstated but only via PURPLE's PASS account for a probationary period following a new review and referral.</p> |  | <ul style="list-style-type: none"> <li>• Examples of pre-court actions</li> <li>• Striking the balance in language to make it simpler to read but not long</li> <li>• Put in a flow chart of process for recovery – pictorial?</li> </ul> |
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| Policy Heading and Extract  | What would you keep? And why?  | What would you change? And why?  |
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| <p><b>Suspension of Direct Payments</b></p> <p>If there is evidence that Direct Payments are being used inappropriately and not in accordance with the Agreement the matter will be discussed with the service user/nominee/suitable person and the process that will be followed is in Section 14.1. If returns are not submitted to evidence how the Direct Payment has been spent (in accordance with the Agreement) this matter will also be discussed with the service user/nominee/suitable person and dealt with in accordance with Section 14.1. If either of the above matters cannot be resolved, suspension of the Direct Payment may occur. If the service user requires care to meet ongoing needs the Council’s Reablement service will be offered.</p> | <ul style="list-style-type: none"> <li>• Paragraph 3 okay</li> <li>• Care review to remain if service user misuses DP due to changes to need and/or outcomes</li> <li>• What types restrictions of the money?</li> </ul> | <ul style="list-style-type: none"> <li>• Produce a leaflet in straightforward language explaining the DP Agreement form.</li> <li>• SW/SP to be part of the process and involve advocate.</li> <li>• Host the Policy and signpost individuals to it.</li> <li>• Reference to letters and corresponding numbers within the policy - More info regarding letter contents is required – e.g. include the title.</li> <li>• Should avoid cross referencing as can be confusing - What does section “14.1” relate to? Is it the Care Act 2014 or the TBC DP Policy?</li> <li>• DP → Purple → Commissioned provider – Please explain the arrangement and the process in an infographic.</li> <li>• When looking at lifting a suspension - Considerer individual circumstances and overall compliance, severity (of any breaches) and if ongoing in nature</li> <li>• Flow chart for service user purposes to explain the process.</li> </ul> |



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|  |  | <ul style="list-style-type: none"><li>• Is it in the agreement or support plan?</li><li>• Include definition of e.g. Reablement service/direct commissions</li><li>• Policy and procedures to be in simple English which is easy to understand.</li><li>• Mechanism to be put in place to monitor DP arrangement from time of initiation to the first 6 months of returns. To act as a check.</li><li>• Support service users to understand the policy <b>and</b> the DP agreement.</li><li>• Capacity for a DP officer who will review individuals on DP every 4 months. Would be helpful to minimise risk of misuse.</li><li>• DP forms be sent to service users to enable them understand DP agreement before they sign DP (offer referral to advocacy every time)</li><li>• Easy read information on Direct payment for Service Users to enable them to understand.</li><li>• Emphasise the relationship of trust and confidence</li></ul> |
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|  |  | <ul style="list-style-type: none"><li>• What support is there?</li><li>• Suggest 3 strikes and you're out? Any illegal activity – instant suspension?</li><li>• Add a timeline if looking to suspend or remove</li><li>• Depends upon the amount of monies involved and the severity of the breach</li><li>• Need → Process cannot be prescriptive → Outcome</li><li>• Consider alternative ways to manage funds</li><li>• Advocacy Support must be offered</li><li>• Reasonable restrictions to be discussed [with individuals]</li><li>• Should be using all support to ensure able to continue to use DP (e.g. Reviews/Advocate/Advice/Info)</li></ul> |
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| Policy Heading and Extract   | What would you keep? And why? | What would you change? And why?  |
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| <p><b>Discontinuing Direct Payments</b></p> <p>Thurrock Council will only seek to discontinue Direct Payments in the last resort or in instances where clear and serious breaches to the Agreement have taken place. Should this situation present itself, alternative services will be offered to meet the identified needs and a review of the Service User’s care assessment will take place. Thurrock Council will try to ensure that there is no gap in care provision as a result of the ending of this payment. In these instances, Thurrock Council will complete a care review and seek to balance the needs of the individual, the reasons why these payments were discontinued and look at way to support in the management of the Direct Payment before they could be re-instated.</p> <p>When discontinuing a Direct Payment is being considered, Thurrock Council will:</p> <p>Attempt to contact the Service User or Representative to discuss the issues raised or apparent breach of agreement;</p> |                               | <ul style="list-style-type: none"> <li>• Discontinuation of DP should only be when the suspension has been tried and not succeeded.</li> <li>• Creating a way back to DP – Always check at review and if possible include restrictions to help?</li> <li>• Ensuring capacity going forward to be clear on how to manage the process</li> <li>• Changing services when discontinuing – How do SW discuss/assess and how to provide another service if accepted?</li> <li>• If restrictions refused – discuss available options – what happens if refused? Need process/guidelines.</li> <li>• Contractual obligations – What individuals need to do when ending DP</li> <li>• When looking at suspension and restrictions, should ASC include a way back?</li> <li>• Service user to be signposted to ensure appropriate support and intervention when encountering restrictions on DP</li> </ul> |

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| <p>Explore options that may be appropriate to address the concerns or issues (if appropriate);</p> <p>Provide notice of the termination (4 weeks) if the situations cannot be resolved; and</p> <p>Consider the contractual obligations the Service User may have in the termination of the payment (including redundancy).</p> |  | <ul style="list-style-type: none"> <li>• Conflict of interest</li> <li>• Informing service user about actions to be taken and advice and information on their rights. Signposting to advice agencies.</li> <li>• Service user to have an independent support and not social worker to avoid conflict of interest</li> <li>• Individual service user to have independent support/ voluntary support when in conflict with the council regarding DP restrictions.</li> <li>• Service users need a neutral person, not a social worker to support them during the restriction of DP.</li> <li>• A new role should be created for DP officers who will follow through with issues related to DP</li> <li>• I don't think it is appropriate to dump the task of investigating misused DP on social workers.</li> </ul> |
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|  |  | <ul style="list-style-type: none"><li>• Service user to be given the option to pay in instalments before punitive measures are put in place.</li><li>• Creating a new role for DP officer to manage DP arrangements for service users.</li><li>• Include real life scenarios in the policy to illustrate it</li><li>• Involve an SW at the beginning when suspending</li><li>• Who was to blame?<br/>Individual/carer/appointee? – Need to ascertain this.</li><li>• Procedures for discontinuing and punitive action should be clear and defined</li></ul> |
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### Direct Payments Policy Workshop 3

| Policy Heading and Extract   | What would you keep? And why?   | What would you change? And why?  |
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| <p><b>Financial Monitoring of Direct Payments</b></p> <p>At present the main responsibility of monitoring the use of Direct Payment monies is shared between Customer Finance and the Service user's assessor. The monitoring takes the form of:</p> <p>Returns on client accounts administered by Customer Finance.</p> <p>Social Worker Reviews (can be set at 1, 3, 6, or 12 monthly intervals).</p> <p>Financial Assessment (per annum).</p> <p>Returns are required for Direct Payments in order to establish if the money being issued is being used appropriately and to reduce the potential risk of the Service user being exploited. For all new Direct Payments there will be a check after 3 months and thereafter between 3 and 12 months. The period of review will be agreed with assessor and Direct Payment officer. The review period set will be determined by taking into proportionate risk, financial risk, compliance with monitoring to date, level of care needed and ability to manage money. These returns are carried out on a 3 or 6 monthly basis in which all</p> | <ul style="list-style-type: none"> <li>• Individuals are able to make (un) wise choices.</li> <li>• Needs to be flexible, straightforward, provision of support, leave for longer.</li> <li>• Home visits useful to discuss returns.</li> </ul> | <ul style="list-style-type: none"> <li>• Difficult to categorise completely. - Everyone is different and has different needs. Defining Complexity category of care need-e.g. Care and access to the community.</li> <li>• Initial 3 months' review does not currently happen. Capacity issues.</li> <li>• Tolerance build over time. If left – could lead to issues.</li> <li>• Need more DPO staff – knowledge, skills</li> <li>• Link to £ (financial) Value of DP when debating frequency of returns?</li> <li>• Need more effective communication between DP Officer and practitioners in relation to Service User DP Reviews</li> <li>• Purple to liaise with DP Officer re: issues with accounts</li> <li>• [Following] 3 Reviews / Returns with no issues – go to annual returns</li> </ul> |

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| <p>Service user in receipt of a Direct Payment must provide accounts for monies spent in the specified period. The frequency of these returns can be subject to change at any point by Thurrock Council and will not cause any additional monitoring burden to the Service user as these records will already be kept as a part of their normal record keeping process.</p> |  | <ul style="list-style-type: none"> <li>• New DP: within a 6-month period</li> <li>• Should we have a [section] with regards flagging a concern due to not utilising funds</li> <li>• Monitoring of DP should be done on the basis of risks and size of the package</li> <li>• The terminology of the policy should be reviewed so as to enable all DP Users to understand the whole process and document</li> <li>• Use more infographics/flow charts/process maps</li> <li>• Having a conversation with individual SU if their DP return is late so as to tackle anything needed before considering anything else i.e. suspension</li> <li>• <b><i>“For all new Direct Payments there will be a check after 3 months”</i></b> – Doesn’t currently happen. There would be mutual benefit if there was more contact earlier on.</li> </ul> |
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| Policy Heading and Extract  | What would you keep? And why?  | What would you change? And why?  |
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| <p><b>Non-submitting of Direct Payment returns</b></p> <p>Failure to submit a return within 28 days will result in contact by phone from the Direct Payment Finance Officer (DPFO) asking for a reason for this delay and if the service user requires any assistance. The client will also be provided with a letter at the same time giving an additional 14 days’ notice. (Refer to flow chart in the Policy)</p> <p>If no response is forthcoming the DPFO will inform the appropriate team to undertaking a review. The review must take place within 4 weeks.</p> <p>The social care practitioner involved must contact the service user to arrange an urgent review. After the review the matter is to be discussed with the team manager and a decision to be made. If ‘No Further Action’ then Letter 4 is to be sent. If there are still concerns and no engagement, then the Service Manager / Strategic Lead will decide whether to suspend and refer the care to the Reablement team for urgent care needs or to stop the Direct Payment. Letter 7 will be sent if this is the case. If no contact can be made with the service user, the Service Manager / Strategic Lead will make a decision on the best way forward.</p> | <ul style="list-style-type: none"> <li>• Should there be an exemptions period if who/why?</li> <li>• Tolerance level or on a Rate to allow for a “top slice”?</li> </ul> | <ul style="list-style-type: none"> <li>• Further letter sent giving 7 days or has possible consequences</li> <li>• Health issues and bereavement</li> <li>• Money management Purple Pass or additional support, family member or advocate.</li> <li>• Payment plan instigated before Debt Recovery (recovery should be a last resort).</li> <li>• Screw it up and start again, it’s too wordy and doesn’t flow</li> <li>• <b>“Failure to submit a return within 28 days will result in contact by phone from the Direct Payment Finance Officer (DPFO)”</b> – This does not happen – due to capacity</li> <li>• Raise contact at 28 days for allocation and joint working</li> <li>• Thurrock first – is it something they can pick up?</li> <li>• Resource allocation for dedicated “Call back” DP Support</li> </ul> |



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| <p>Depending on the circumstances involved it will be decided whether it is appropriate to ask the client to pay the monies back which have not been accounted for which will lead to debt recovery action if the service user is not forthcoming.</p> <p>At any point the option of having the Direct Payment reinstated but only via PURPLE's PASS account for a probationary period following a new review and referral can be considered.</p> |  | <ul style="list-style-type: none"> <li>• Second letter to be changed to reflect third letter</li> <li>• Need to have a phone call at the end of the 28 days</li> <li>• Capacity of DPFO team needed</li> <li>• Phone call – whose responsibility?</li> </ul> |
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| Policy Heading and Extract  | What would you keep? And why?   | What would you change? And why?   |
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| <p><b>Under spend of Direct Payment monies</b></p> <p>When a return is submitted and the service user is holding more than the permitted 8 weeks' tolerance in their account, the DPFO will issue a letter (Letter 5) to request the return of all monies which are above their respective 8-week tolerance in the form of a cheque which can be returned in a freepost envelope within 28 days.</p> <p>If the under spend is returned within the time allowed, then no further action is required.</p> <p>If the service user has informed Thurrock Council that they are saving the money for a particular reason this needs to be evidenced in writing which will be checked by the appropriate worker</p> | <ul style="list-style-type: none"> <li>• Redundancy and SSP will affect tolerance level.</li> <li>• Tolerance level on a rate to allow for a "top slice."</li> <li>• How to pay for emergency support if your PA is ill?</li> </ul> | <ul style="list-style-type: none"> <li>• Expectations regarding one off payments for respite.</li> <li>• For adults - tolerance for agency/self-employed, not for employees.</li> <li>• CWD - 14 days to Purple to challenge.</li> <li>• Children with Disabilities policy (CWD) needs to be looked at.</li> <li>• Provide alternative methods to pay back</li> <li>• PA Rate – look at net, not gross</li> <li>• Agency Rate – 8-week tolerance</li> </ul> |

/ locality team to assess if this meets their identified needs.

If the service user is unwilling to provide this documentation, the DPFO will be required to notify the Service Manager / Strategic Lead. Thurrock Council can suspend these payments to prevent further monetary build up in a service user's account and to protect public funds (Letter 7).

In order for the payment to be reinstated the service user will be required to evidence how the money was spent (e.g. invoices and receipts) and provide an up to date statement showing what monies are left in the account.

If the monies are below the 8 weeks' tolerance or once the under spend has been received and processed the service user can be given the following options if the Direct Payment has been suspended:

Will go through a reablement process to ascertain the service user's care needs and which service can best meet these requirements;

having the Direct Payment reinstated but only via PURPLE's PASS account for a probationary period following a new review and referral; and have a reduction in hours if under spend is reoccurring.

- If suspended due to non-return of underspend, once 8-week tolerance is reached then restart the DP
- Should care review coincide with tolerance level time for self-managed accounts? i.e. not a six-week review?
- Not reablement – implement a commissioned service instead
- ***“...tolerance in the form of a cheque which can be returned”*** – Include alternatives [and] reference. Pausing – make adjustments.