

With the Self Directed Support working group in progress this policy will be updated following the outputs and recommendations from the working group.

Adult Social Care and Health Directorate (ASCH)

Direct Payments: Policy and Practice Guidance

To be read with the Care and Support Statutory [Guidance](#) and regulations issued under the [Care Act \(2014\)](#) by the Department of Health.

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6	12 May 2016	<p>Reaffirms that an enhanced criminal check is not required on an authorised person if that person is listed in Appendix 2 or is a friend involved in the provision of care for the adult. See B.4.2.7</p> <p>If the authorised person is a person listed in Appendix 2 or a friend involved in the provision of care for the adult, they are not required to obtain an enhanced criminal check on any person they employ to provide care for the adult. B.4.2.8 for details.</p> <p>Enhanced criminal checks will be every three years. Checking DPS update service in adult services (see B 4.2).</p> <p>Reminder that a new Direct Payment Agreement required when young person reaches 18th birthday. See A 4.6 and B 4 for details.</p>	Jean Wells
7	07/03/17	C2.1 now includes instruction to make the arrangements to issue any amended Direct Payment Agreement at the time of the direct payment monitoring cycle.	Jean Wells

8	4 May 2018	<p>A new joint Direct Payment Agreement for Disabled Children, Young People and adults introduced from 8th May 2018. To be used for new DP recipients and existing recipients at their Direct Payment review. Excludes Education Direct Payments.</p> <p>Throughout this policy, reference to Pathway Plan replaced with Young Persons Plan.</p> <p>A4 "Scope" includes current practice that KCC in house Direct Payment team support any new referrals for a Direct Payment.</p> <p>18-25-year old's in full time education who already have Direct Payments, are managed by "We are Beams" not the Parents Consortium.</p> <p>B1.1 Assessment and adults supported by KMPT. Specific reference to Primary Care Social and Kent Enablement and Recovery Services support removed- those KCC staff seconded into KMPT have moved back into KCC's direct employment.</p> <p>B 2.4.2 amended. Enhanced DBS not required on the authorised/suitable person receiving the DP when they are a person appointed by the Court of Protection to manage the direct payment.</p> <p>Where reference is made to the Care and Support Plan includes Pathway Plans for disabled Care Leavers, or Young Person's Plan for those aged 18-25</p>	Jean Wells
9	20 July 2018	<p>B2: Information and advice about Direct Payments so a person can decide whether to request a Direct Payment should include plans how needs will be met if PA is absent, planning for redundancy payments due to circumstances such as moving home, a change in care and support needs, or the result of the death of the direct payment holder, or care recipient.</p> <p>C1.7: Adults, who directly employ their PAs, are much more vulnerable, so clear plans need to be in place how needs will be met in the event of the PA being absent, for example due to sickness, maternity or holiday. Planning for such contingencies is an integral part of the adult's Care and Support/Young Person's Plan.</p> <p>C7.7: If insufficient funds available in the deceased estate to fund statutory redundancy payment, KCC may fund the <u>statutory</u> redundancy payment with Assistant Director's agreement.</p>	Jean Wells

10	17 Aug 2018 23 Aug 2018	<p>Amended review cycle for Low Assessed Risk to: After 6 months after setting up and thereafter annually. Bullet point added to C2.1: clear point to issue a Direct Payment Agreement when an adult is receiving a Direct Payment.</p> <p>New Appendix 5 provides guidance when a Personal Assistant is called for Jury Service and the possible effect on a direct payment.</p>	<p>Policy team</p> <p>Jean Wells</p> <p>Jean Wells</p>
11	21 Feb 2019	<p>Appendix 6 Flowchart: Overview Direct Payment irregularities:</p> <p>The finance team will provide advice when a person is not paying their financial contribution.</p> <p>All reference to KMPT removed in line with KCC staff seconded into KMPT who have moved back into KCC's direct employment.</p>	Jean Wells
12	15 Nov 2019	<p>If the decision is to withdraw a direct payment, before ending the payment, the practitioner must firstly conduct a review of the care and support plan and agree alternative care and support provision with the person, their carer and independent advocate (if they have one), taking into consideration personal circumstances. See C5.1 and Appendix 7 updated accordingly.</p> <p>B3.4. Example added to illustrate calculations for a short-term break in a care home.</p> <p>B4.2: New paragraph about ASCH role with supporting Personal Assistants when there are employment issues.</p> <p>C5.3.3: New paragraph when KCC made aware/concerned about, for example, the ability of a "nominated" or "authorised person" to manage the Direct Payment, this details the actions to be followed by the practitioner.</p> <p>New Appendix 6: Concerns about a person's ability to manage the Direct Payment- supplementary notes about associated risks for C5.3.3.</p> <p>Delegated authorisor for division refer to" Authorisation (of funding) levels policy" on KNet.</p>	Jean Wells

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Section A - Policy

The policy and guidance is arranged in 3 sections:

A. Legislative and policy context

Why we offer Direct Payments, who the guidance is for, the law and definitions.

B. Practice guidance

A practical guide to Direct Payments, assessment, care and support planning, paying a family member, employment, monitoring and review.

C. Process guidance

How to access a Direct Payment, what forms to use, how to set up and end a Direct Payment.

Direct Payments for adults **without** mental capacity is referred to as being made to an **“authorised/suitable person.”**

A 1. Definition

Direct Payments are cash payments to an individual (includes carers) who request to receive one to meet some or all their eligible social care needs.

A 2. Key Principles

Local authorities must promote the wellbeing of the adult when carrying out functions under the Care Act 2014.

We will :

- work with adults to ensure that they get the support that meets their assessed needs in a way that suits them and their aspirations in accordance with their care and support plan
- work with families and friends and recognise the unique contribution of carers along with the impact this caring role has on an adult's life
- ensure that the Mental Capacity Act 2005 Code of Practice is applied when assessing an adult's mental capacity
- recognise that adults without mental capacity may be more vulnerable to abuse and less able to tell others if it is happening.
- ensure that payments to either a *“nominated person”* or *“authorised/suitable person”* are made in accordance with current regulations, statutes and this policy and practice guidance
- work closely with the families and friends of adults without mental capacity, to ensure that authorised/suitable person payments are used to meet the needs and outcomes of the adults for whom they are intended

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- make all payments¹ to the “*nominated*” or the authorised/suitable person assuming the role, subject to the condition that the recipient must not:
 - ~ use the money to pay themselves a wage to provide care
 - ~ benefit financially
 - ~ be a director of any company providing services funded through the Direct payment)

unless in exceptional circumstances² is agreed by the delegated authorisor.

A 3. Legislative context

A 3.1 Legislation relevant to Direct Payments is as follows:

- Section 31, 32 and 33 of the Care Act 2014;
- Care and Support (Direct Payments) Regulations 2014;
- Section 117 (2C) of the Mental Health Act 1983;
- s146, Health & Social Care Act 2008, taking account of changes introduced by the Mental Capacity Act 2005; and
- Mental Capacity Act 2005: Direct Payments to “*nominated*” or “*authorised/suitable person*” must comply with the mental capacity and best interest assessments requirement of the Act;
- The Community Care, Services for Carers and Children’s Services (Direct Payment) (England) Regulations 2009.

A 3.2 We have duty under the Care Act to offer (not force against their will) Direct Payments when requested to by:

- a Carer³
- **adult with mental capacity**
 - ~ to consent and manage the Direct Payments;
 - ~ who consent to the Direct Payments but “*nominate*” another person to manage the monies on their behalf;
- **adult without mental capacity**
 - ~ where there is an “*authorised person*” under the Mental Capacity Act 2005 to consent to and manage the Direct Payment on their behalf;
 - ~ where there is not an “*authorised person*” to consent to and manage the Direct Payment on their behalf, but ASCH considers that the person is “*suitable*” to whom to make direct payments;
- adult receiving s117 aftercare services under the Mental Health Act 1983;
- anyone else who meets the conditions in the Care Act and regulations.

A3.3 We will not:

- offer a Direct Payment to anyone listed in SCHEDULE 3 of The Care and Support

¹ Direct Payment only used for what is recorded on the Care and Support Plan).

² For example, a charity that offer support to families is also a limited company and therefore the parent might be a director of that company.

³ Carer in this circumstance is not contracted/paid providing or intending to provide care for another adult (an adult “needing care”) Where it appears that the “carer” may have any level of needs for support, a carers assessment must be carried out.

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(Direct Payments) Regulations 2014.

- stop a Direct Payment, until we have reviewed the care and support plan to agree alternative care and support, taking into consideration personal circumstances.

A 4. Scope

A4.1 This policy and guidance apply to:

- staff working for or acting on behalf of KCC adult social care and health directorate
- adults with care and support needs under the Care Act.
- adults aged 18-25 in full time education who already have Direct Payments, managed by the commissioned Young People Direct Payment Service “(see A4.2 below).
- to carers when carers need ongoing direct payments to meet their assessed eligible needs under the Care Act. (All one-off payments will be administered by the commissioned carers organisations).

A4.2 Transition arrangements for young people aged 18-25.

A4.2.1 For adults aged 18-25 in full time education who already have Direct Payments, managed by the commissioned Young People Direct Payment Service when their transition ends (usually before the age of 25), their Direct Payment support will be transferred to the KCC in house Direct Payment team.

A4.2.2 KCC in house Direct Payment team will support any new referrals for a Direct Payment for adults aged 18 plus.

A 4.2.3 Staff in both divisions who are involved in facilitating the transition of young people to adulthood must give due regard to both policies and to the fact that from their 16th birthday young people are subject to assessment of their mental capacity to manage their own Direct Payment and from their 18th birthday adults are subject to:

- assessment of need and application of the Care Act eligibility criteria;
- financial assessment to determine if they are required to fund part or all their support. This assessment should take place at age 17 in preparation for their transition to adulthood;
- care and support planning;
- a Direct Payment Agreement.

NOTE

Disabled young people aged 16 or 17 may be offered Direct Payments in their own right.

A 4.2.4 Practitioners must commence assessment and care and support planning in sufficient time in accordance with the specific circumstances of the case, to ensure a smooth transition of the young person to adult services, unless they are in the Young People’s teams where the team has ongoing case responsibility from 16 to 25.

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A 4.2.5 Where a Personal Assistant (PA) is involved with supporting the young person, the practitioner must involve the relevant Direct Payment Support Worker as there may be employment issues to resolve as soon as possible.

A 4.2.6 In all circumstances the practitioner must either commence assessment and care and support planning or ensure the existing assessment and plan are updated at a minimum 6 months before the person's 18th birthday (or earlier at a time when it is most appropriate for them). Refer to Transition Policy for further details.

A 4.2.7 Children's Policy requires every young person (16-17 years) employing a PA to obtain an enhanced criminal check on the person. This will change when the young person with eligible care and support needs turns 18⁴ and is subject to Care Act legislation. See section B 4 for more details about enhanced criminal checks.

A4.3 Not in scope:

- disabled children, follow separate Kent Children's Services Procedure Manual : Disabled Children and Young Peoples Direct Payment via Tri.X ([click here](#)).

A 5. Key definitions

A 5.1 Below is an explanation of key words and terms used in the policy and guidance

Practitioner	Generic term for officers and social workers who undertake assessment or coordination functions for ASCH.
Adult	The person aged 18 and above whose assessed eligible needs are met by Direct Payments
Young Person	The young person who is disabled and managed within the Young People's Teams (16-25).

⁴ There may be situations where a parent has been receiving direct payments to meet the assessed needs of their child who, on reaching the age of 18, does not have the mental capacity to consent to the making of those direct payments. In such cases, it will often be appropriate for the person with parental responsibility to continue to receive the direct payments for the young adult lacking capacity, in the role of a suitable person.

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<p>Mental Capacity</p>	<p>The young person (from age 16) or adult has:</p> <ul style="list-style-type: none"> • a general understanding of what decision they need to make and why they need to make it; • a general understanding of the likely consequences of making, or not making this decision; • ability to understand, retain, use and weigh up the information relevant to this decision; • ability to communicate their decision (by talking, sign language or any other means). The services of a professional (such as a speech and language therapist, a family member, carer or advocate) may be required. <p>If required, a Mental Capacity Assessment is undertaken by the practitioner.</p>
<p>Without Mental Capacity</p>	<p>An inability to make a specific decision due to:</p> <ul style="list-style-type: none"> • An impairment or disturbance in the functioning of the mind or brain; and • The impairment or disturbance making it not possible to make the decision at the time it needs to be made because of: <ul style="list-style-type: none"> i An inability to understand the decision to be taken and why it should be made; and/or ii An inability to understand the likely consequences of making or not making the decision; and/or iii An inability to understand, retain, use and weigh up the information relevant for the decision; and/or iv An inability to communicate their decision.
<p>Nominated person See B 2.1 for further details</p>	<p>A term used in the Care Act (2014) when an adult with mental capacity chooses that another person request and/or manages their Direct Payment on their behalf.</p> <p>Definition: “A <i>nominated person</i> is anyone who agrees to manage a Direct Payment on behalf of the person with care needs”. Care and Support (Direct Payments) Regulations apply.</p>
<p>Authorised Person See B 2.2.1 for further details</p>	<p>A term used in the Care Act (2014) when an adult without mental capacity has someone who will act in the adult’s best interests. An authorised person under the Mental Capacity Act 2005 who agrees to support and manage a Direct Payment on behalf of a person who lacks capacity.</p>

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<p>Authorised/ suitable person</p>	<p>A collective term used in this Policy to describe a person or organisation who is authorised under MCA or is a suitable person (see below) to support and manage a Direct Payment on behalf of a person who lacks capacity.</p> <p>An authorised person could be a Surrogate/holder of LPA registered with the Court of Protection/Deputy appointed by the Court of Protection with explicit powers to make decisions about securing community care services.</p>
<p>Suitable Person See Section B, 2.5 for further details</p>	<p>This person identified and considered suitable by ASCH in consultation, where there is not an authorised person to support and manage a Direct Payment on behalf of a person who lacks capacity. This person is most likely to be a family member or friend who is already involved in the care and support of the adult.</p>
<p>Personal Budget</p>	<p>The sum of money that ASCH has confirmed an adult requires (subject to financial assessment and contribution) for the sole purpose of meeting their eligible social care needs based on eligibility criteria (including on-costs when Direct Payment will incur costs)</p> <p>People who must pay the full cost of their service because they either have above the upper capital limit or sufficient weekly income to pay for their own care, will not receive a Personal Budget from ASCH.</p>
<p>Independent Living Trust</p>	<p>A commitment made by three or more people, referred to as Trustees, to:</p> <ul style="list-style-type: none"> • manage the adult's money • help them to make decisions about commissioning support services to meet their needs and outcomes • monitor how well their needs and outcomes are being met.
<p>Kent Card</p>	<p>For new Direct Payment recipients this will be the primary payment method for providing a Direct Payment.</p> <p>A prepaid chip and pin MasterCard payment card through which an adult has chosen to receive the Direct Payment. ASCH contribution is paid into the Kent Card allowing the adult to pay for services</p>
<p>Separate Bank Account</p>	<p>An alternative payment method to the Kent Card when the Direct Payment recipient does not want to use the Kent Card.</p>

Section B - Practice Guidance

B 1. Assessment, Eligibility, Care and Support Planning and Personal Budgets.

B 1.1 Assessment

Before offering a Direct Payment, practitioners must:

- carry out a need's assessment;
- determine if the adult has needs that are eligible for support;
- where appropriate, be financial assessed
- where appropriate, formally assess the adult's mental capacity to request a Direct Payment.

For further details refer to Assessment Policy on KNet.

B 1.2 Eligibility

For details on how to determine eligibility for care and support, refer to Eligibility Criteria Policy and Practice Guidance on KNet.

B1.3 Care and Support Planning

The following must be noted:

- Adults are encouraged to take ownership of their care and support planning and are supported to make their own decisions based on informed choices about how their needs are met.
- Some adults may not be able to make a quick decision and practitioners must allow them enough time and provide information and advice to assist a decision to use Direct Payments, have a mix of Direct Payments and managed support or have their support fully managed by ASCH.
- The ability to meet needs by using Direct Payments must be explained at the time of care and support planning. Information needs to include the need to have adequate insurance for any redundancy payments if the adult's needs could be met by directly employing someone.
- If the employment of a Personal Assistance (PA) is considered, it must be explained the need to have plans in place if person employed is absent, requirements to have plans in place for redundancy payments due to circumstances such as moving home, a change in care and support needs, or the result of the death of the direct payment holder, or care recipient.

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- ASCH satisfied the “authorised/suitable person” is able to manage the Direct Payment by him or herself, and record on the care and support plan the information, advice and support available to assist him or her to manage the payment (see B2.2.1 for more details about suitability and essential criteria).
- The care and support plan and reviews must consider how the “authorised/suitable person” will enable the adult with fluctuating mental capacity to have as much control as possible over decisions that affect them when adult has temporary mental capacity.

Factsheets available on Kent.gov.uk about employing PA's. Also refer to Care and Support Planning Guidance Practice Guidance on KNet.

B 1.4 Personal Budgets

Everyone who has unmet eligible needs has a Personal Budget as part of the Care and Support/Support Plan that identifies the cost of their care.

An adult can either:

- take all their Personal Budget as a Direct Payment and arrange all their support themselves or with assistance from a “*nominated person*” or “*authorised/suitable person*”;
- take some of their Personal Budget as a Direct Payment and arrange some of their support themselves or with assistance from a “*nominated person*” or “*authorised/suitable person*” and have the rest met through arrangements by ASCH.

See Personal Budget and Cost Setting Guidance Practice Guidance on KNet.

B1.4.1 Personal Budget as a Direct Payment

The Direct Payment allocated is after any appropriate charges have been subtracted (Net). The frequency of direct payments is four weekly in advance.

Direct payments are monitored and reviewed regularly to ensure the:

- payment used appropriately in accordance with the care and support plan/young person plan
- adult is paying their financial contribution
- person is still able to manage the direct payment
- the direct payment remains the appropriate method to receive their personal budget.

See section C5 “Managing and Monitoring Direct Payments” for full details.

B 1.5 Mental Capacity

The starting assumption is that an adult can request, consent and receive a Direct Payment themselves, unless it is established that they do not have mental capacity to do this. For details on how to carry out mental capacity assessments please refer to

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Mental Capacity Act & Deprivation of Liberty Safeguards Operational Policy on KNet

B 1.6 Risk Assessment and Management

In accordance with the requirements of the Risk Assessment and Managing Risk Policy and Guidance on KNet, practitioners must ensure that:

- risks to an adult's independence and safety are addressed proportionately;
- where an adult with mental capacity chooses to live with a level of risk to themselves, they can do so provided it is legal and does not affect the safety and wellbeing of others.
- where there are concerns that the adult lacks or appears to lack the mental capacity to understand the risks related to their behaviour, a mental capacity assessment must be considered in relation to their ability to make informed decisions regarding the risks identified.

For further guidance, refer to the Risk Assessment and Managing Risk Policy on KNet.

B 2. Requesting a Direct Payment

The practitioner must provide timely information and advice about Direct Payments to an adult, so they can decide whether to request a Direct Payment. Various factsheets relating to Direct Payments available on KNet ASCH policy area and Kent.gov.uk.

B 2.1 An adult with capacity to request and manage a Direct Payment

When the practitioner is satisfied that an adult has capacity to make a request for a Direct Payment, **all the following FOUR conditions must be met⁵**, otherwise a Direct Payment will be declined.

1. The adult has capacity to request a Direct Payment and where there is a "*nominated person*", that person agrees to receive the payments.
2. That KCC is not prohibited by regulations from meeting needs through a Direct Payment or decided to exercise its discretion to refuse a Direct Payments under section 33 of the [Care Act](#).
3. That the adult (or "*nominated person*") is capable of managing Direct Payments without help, and with KCC providing information and advice about what help can be accessed by the adult or "*nominated person*".
4. That the practitioner is satisfied that making a Direct Payments is an appropriate way to meet the needs in question.

B 2.2 An adult without capacity to request and manage a Direct Payment:

B 2.2.1 Suitability of an "authorised/suitable person"

⁵ Care Act section 31(4)(5)(6)(7)

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If an adult has been assessed as **lacking the mental capacity** to request and manage a Direct Payment, another person (“*authorised or suitable person*”) can request and receive a Direct Payment on the adult’s behalf.

The practitioner and Direct Payment Support Worker must

- be satisfied the *authorised/suitable person* is able to manage the Direct Payment by him or herself
- provide information and advice about organisations that can assist them to manage the Direct Payment
- provide contact details for the ASCH Direct Payment Support Team if there are questions

The “authorised/suitable person” **must be either**⁶:

- authorised under the MCA 2005 to make decisions about the adult’s need for care and support;
- a person approved by an authorised person under the MCA and whom ASCH agrees is suitable; **or**
- if no one is authorised under MCA, a person that ASCH consider to be “*suitable*”⁷ to make a direct payment.

If either of the above criteria is met, the practitioner must also ensure that the proposed “*authorised/ suitable person*” meets **all** the following five conditions, otherwise the request for a Direct Payment will be declined (see B 2.7 below for more details).

These five conditions must be applied in their entirety⁸.

1. If the person is not authorised under MCA 2005, at least one person who is authorised under MCA agrees with the practitioner that the person is suitable⁹.
2. That KCC is not prohibited by regulations from meeting needs through a Direct Payment or decided to exercise its discretion to refuse a Direct Payment under section 33 of the [Care Act](#).
3. That the “authorised/suitable person” will act in the adult’s best interests in arranging care and support for which the Direct Payment is made.
4. That the “authorised/suitable person” can manage Direct Payments by themselves with whatever help or support they will be able to access.
5. That the practitioner is satisfied that making a Direct Payment is an appropriate way to meet the needs in question.

⁶ Care Act section 32(4)(a)(b)(c)

⁷ See section B 2.3 below for further details about what is meant by a “suitable person”.

⁸ Care Act section 32 (5)(6)(7)(8)(9)

⁹ Note: When there is no one authorised under MCA to make decisions about the adult’s needs for care and support, the practitioner will have identified and considered a suitable person, so the practitioner is considered appropriate under section 32(4)(c) to make the decision in relation to Condition 1.

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B 2.2.2 Independent Living Trusts

Where there is fluctuating mental capacity, it may be more appropriate for an Independent Living Trust (ILT) to be established, rather than a Direct Payment to an “authorised/suitable person” or to a “*nominated person*”. During the times when the beneficiary is without mental capacity the other trustees can take a more active role in managing the Trust.

An ILT may also be suitable for someone who can consent to Direct Payments through their actions or behaviours but is not able to manage the Direct Payment.

If the adult regains mental capacity, and the practitioner expects this to be long-term or permanent, then the agreement signed by the authorised/suitable person must be discontinued and replaced with a standard Direct Payments Agreement.

The practitioner needs to make a referral to a Direct Payment Support Worker for advice and support when an ILT is a preferred option.

B 2.3 A “Suitable Person “(also see B 2.2.1)

B 2.3.1 When an adult lacks mental capacity to request a Direct payment, and no one is willing or appropriate to receive the Direct Payment, then the practitioner will need to identify if there is another “*suitable person*” to support and manage a Direct Payment on behalf of the adult.

B 2.3.2 In doing this, the practitioner will, as far as is reasonably practicable and appropriate, consult with, take into account and record the views of:

- the adult;
- anyone who is or has been indicated as relevant by the person who lacks capacity;
- anyone currently engaged in caring for the adult lacking capacity or anyone with an interest in their welfare; **and**
- any surrogate or representative of the adult who lacks capacity.

B 2.3.3 In most cases the person considered suitable by the practitioner is likely to be a family member or friend already involved (unpaid) in the care of the adult concerned, but there may be exceptions- see below.

B 2.4 No family or friend considered suitable

B 2.4.1 When an adult lacks mental capacity to request and manage a Direct Payment, and there is no family member or friend considered suitable by ASCH, practitioners may identify another “suitable person” or organisation that is willing to receive the Direct Payment.

B 2.4.2 An enhanced Disclosure and Barring Service (DBS) check must be carried out on the “authorised/suitable person” receiving the Direct Payment when **they are not** a family member, a person appointed by the Court of protection to manage the

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direct payment or friend of the adult (see Appendix 2 for full list). The Direct Payments Support Worker will arrange the check. See B 4 below for further details about criminal checks.

B 2.4.3 In the case of an organisation, which should not be the provider of care for the adult, the Direct Payments Support Worker will be responsible to obtain a DBS check on the adult with overall responsibility for the day to day management of the Direct Payment (i.e. solicitor within a law firm, or a named person within a voluntary organisation).

B 2.5 Enduring Power of Attorney

Some people were granted Enduring Power of Attorney (EPA) prior to introduction of Lasting Power of Attorney (LPA) in the Mental Capacity Act 2005 (LPA needs to be registered with the Public Guardian Office to be valid). EPAs do not allow for decisions about community care needs and so the holder of an EPA is not an authorised person. ASCH will treat the EPA as a potential “suitable person” while recognising the EPA is a significant indicator of the earlier wishes of the person who lacks capacity.

B 2.6 Court of Protection

It is not expected that there will need to be routine enquiries to the Court of Protection to ascertain if there is a registered LPA or a Deputy. Any such person, who is likely to be considered appropriate by ASCH, is likely to already have an active interest in the adult’s welfare and documents to prove their authority. Where someone appears completely un-befriended consideration should be given to asking the Court if a Deputy or an Attorney exists.

B 2.7 Refusing a Direct Payment request

When a request for a Direct Payment has been declined by ASCH because the conditions in sections 31-33 of the Care Act are not met (see B2.1 and B2.2.1 above), the practitioner must:

- provide written reasons (or in another accessible format) to the adult and any other person involved in the request i.e. “*nominated*” or “*authorised person/suitable person*” (subject to Data Protection requirements) explaining the decision;
- set out which of the conditions have not been met;
- the reasons why not; and
- what the person may need to do to get a positive decision in the future. This must include information about the complaints process.

KCC must meet the adult’s care and support needs whilst the request is being considered. Where a request has been declined, the care and support planning process must continue to seek agreement how best to meet needs without use of a Direct Payment.

Detailed guidance on setting up the Direct Payment provided in Section C

B 3. Using a Direct Payment

B 3.1 Paying a family member not living in the same household

Direct Payments may be used to pay a family member to provide direct care as long as they do not live in the same household as the adult receiving care and support.

B 3.2 Paying a family member living in the same household

B 3.2.1 Direct Payments **cannot** be used to pay a family member living in the same household for direct care to meet an adult's needs (**exceptions apply** see B 3.3 below and Appendix 2 for list of excluded family members).

B 3.2.2 However, a Direct Payment can be used to pay a family member living in the same household to provide “**management and /or administrative support**” (**not care but for exceptions see B3.3 below**) to the Direct Payment holder when, for example, there are multiple complex needs resulting in substantial Direct Payment amounts that need managing.

B 3.2.3 In these circumstances, the payment for management and /or administrative support will be a proportion of the Direct Payment, similar to what adults may have paid to a support organisation/agency. Refer to Cost Setting Calculation Tool.

B 3.2.4 The circumstances and payment must be decided and agreed with the adult receiving the care and support, family member in the household to be paid for management and /or administrative support, ASCH and any other person involved, such as an advocate. The practitioner must take steps to ensure all parties agree.

B 3.2.5 This arrangement must be taken into account during the allocation of the Personal Budget (and recorded on the care and support plan), so that the amount remains enough to meet the adult's needs (see Assessment Policy).

B 3.3 Paying a family member for care living in the same household

B 3.3.1 Only in **exceptional circumstances** should a Direct Payment be agreed to be used to pay a family member living in the same household as the adult to provide care to them as the best way to meet needs and outcomes. Reasons for this might include:

- religious practice;
- geographical location;
- essential communication;
- emergency or other short-term support away from the home.

B 3.3.2 The practitioner must discuss and seek agreement from the delegated authority

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and Head of Purchasing about acceptable exceptional circumstances and confirm the decision in writing to the Direct Payment recipient.

B 3.3.3 All aspects of the Direct Payments Guidance must be followed when paying a relative, including employment status, contract, pay roll set up, HM Revenue & Customs and signposting about any impacts upon other benefits and financial monitoring.

B 3.4 Long-term residential care

Direct Payments cannot currently be used to pay for long term residential care. Adults who are living in care homes may receive a Direct Payment in relation to non-residential care services (e.g. to try out independent living arrangements that inform their decision to move, take part in day-time activities).

An adult can purchase short-term respite or replacement care in a care home using their Direct Payment. The direct payment regulations limit this to four consecutive weeks in a year. See next paragraph for further details.

B 3.5 Short-term break in a care home

The care and support plan will confirm how needs will be met through purchasing short-term breaks. Unless otherwise specified on the care and support plan, including how and when needs will be met through purchasing short-term breaks if appropriate. The adult makes their own decisions about how their needs are going to be met and can choose when and where it is used.

The costs of the short-term break will be calculated as a lump sum for the year to ensure maximum flexibility with how to use their Direct Payment to meet their assessed needs. This will be paid into the separate bank account/Kent Card. (See section C-Process for setting up a Direct Payment).

A short-term break in a care home could be used to provide a respite break¹⁰ for a carer

A Direct Payment can be used to purchase short term stays in a care home provided that the stay does not exceed a period of four consecutive weeks in any 12-month period.

In calculating the period of four weeks, periods of less than four weeks in a care home should be added to any succeeding period if the two periods are separated by a period of less than four weeks. When respite is provided via a Direct Payment, then use the Charging for Homecare and other Non-residential Services Policy to calculate the person's contribution. See example below for Care and Support Statutory Guidance.

Example: Direct Payments for short-term residential care

Mrs. H has one week in a care home every 6 weeks. Because each week in a care home is more than 4 weeks apart, they are not added together. The cumulative total is only one

¹⁰ Respite care means the cared for person is looked after by someone else e.g. a short term break in a care home while the carer takes a break from caring.

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week and the 4-week limit is never reached.

Peter has 3 weeks in a care home, 2 weeks at home and then another week in a care home. The 2 episodes of time in a care home are less than 4 weeks apart and so they are added together making 4 weeks in total. Peter cannot use his direct payments to purchase any more care home services within a 12-month period.

B 3.6 Direct Payments and hospital stays

A stay in a hospital should not mean the Direct Payment is automatically suspended particularly if a PA is employed because this will break the employment contract causing distress and a lack of continuity of care when adult leaves hospital. See example below.

To illustrate when a Direct Payment could be used in hospital:

Peter is deafblind and is required to stay in hospital for an operation. Whilst the hospital pays for an interpreter for the medical interventions, Peter needs additional support to be able to move around the ward, and to communicate informally with staff and his family. The local authority and the NHS Trust agree that Peter's Guide-communicator continues to support him in hospital, and is paid for via the Direct Payment, as it was when Peter was at home. Personal and medical care is provided by NHS staff, but Peter's Guide-communicator is on hand to provide specialist communication and guiding support to make his hospital stay as comfortable as possible.

The practitioner should discuss with the adult, their carer, Direct Payment Support Worker and the NHS the options to ensure that both the health and social care needs continue to be met in the best way possible.

If the "*nominated*" or "*authorised/suitable person*" managing the Direct Payment requires a hospital stay, an urgent review must take place to ensure the adult continues to receive care and support to meet their needs.

B 3.7 Paying for KCC services

Direct Payments should not be used to pay for services provided by KCC. However, the adult could use their Direct Payment to purchase care and support from another local authority.

B 3.8 Equipment and minor adaptations

See Appendix 4 for details about the use, responsibilities, best value, ownership, maintenance, servicing, repairs, insurance and case studies in relation to the purchase of equipment and minor adaptations to a property through the allocation of a Direct Payment.

B 4 Managing personnel and risks

B 4.1 Where an adult **with mental capacity** wishes to employ or has already employed a PA to provide their care and support, the Direct Payment Support Worker must provide the adult with information and advice. This includes having adequate insurance in the event of a dispute in relation to the employment of the PA, including redundancy entitlement, and access to an employment law helpline. The same information must be provided for the adult without capacity (and authorised/suitable person).

Practitioners to seek advice from the Direct Payment Support Worker if there are any concerns.

B4.2 ASCH role with supporting Personal Assistants

The adult /suitable/nominated person who has employed a PA is the employer **not ASCH**. If there are employment issues, the Direct Payment Support Worker must provide the help how to access information¹¹ to sort out the problems.

If requested by the employer, the Direct Payment Support Worker may be part of any meetings the employer must have with the PA so notes can be taken and the employer can use those notes to discuss with their employment specialist, but ASCH does not make decisions.

B 4.3 Enhanced Criminal Checks through the Disclosure and Barring Service

As part of transition planning, a young person with PA support may access an adult social care provider where PA's supporting adults may not have an enhanced criminal check.¹² In these situations, any action will be through a proportionate risk managed approach.

B 4.3.1 Where an adult **with mental** capacity wishes to employ or has already employed a PA, the Direct Payment Support Worker needs to recommend an enhanced criminal check through the Disclosure and Barring Service (DBS) on the PA.

B 4.3.2 The adult with mental capacity is not under a statutory duty to carry out a check for their PA but they should be informed that they may want a check completed as part of their overall risk management plan.

B 4.3.3 Most checks are requested (exception see B 4.3.9 below) and all funded by KCC (exception online DBS update service subscription)¹³. However, under the DBS procedures, the "results" goes back to the person the enquiry is about.

B 4.3.4 Any PA who has subscribed to the DBS update service and has given

¹¹ Direct Payment Factsheet #2 and #2a: Employing Personal Assistants on KNet and Kent.gov.

¹² When an adult with capacity chooses not to obtain an enhanced criminal check on their PA or the authorised person listed in regulations is not required to obtain a check on a PA they have employed to support the adult.

¹³ <https://www.gov.uk/dbs-update-service> KCC will not pay the employee (PA) annual subscription fee for the DBS update service. The PA is responsible to pay their own annual subscription.

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permission for their employer to check their enhanced DBS certificate online, the employer will be required to inform the Senior Direct Payment Officer immediately if the status of the DBS certificate causes concern.

B 4.3.5 If following an enhanced criminal check there is concern about a person's suitability for employment or continued employment, the team manager should:

- carry out a risk assessment;
- decide what information should be shared and with whom;
- seek advice from Information Governance before informing the adult/ nominated person.

B 4.3.6. If there is a concern that a PA has caused or may cause harm to a vulnerable adult or a child, it should be raised under the safeguarding procedures and the local authority can make a referral to the DBS.

B 4.3.7. For an adult **without mental capacity**, regulations state that Direct Payments are made on condition that a local authority **MUST obtain an enhanced criminal check on:**

- the "authorised/suitable person" (exceptions apply, see note below in box*); or
- on an individual with overall responsibility for the management of the direct payment on behalf of a corporate/incorporated body of persons.

The Direct Payment Support Worker will arrange this check every three years through the DBS.

If the "authorised/suitable person" has subscribed to the DBS update service, they will be required to give permission for the Senior Direct Payment Officer to check their enhanced DBS certificate on-line. If permission refused, a DBS check will be requested by the Direct Payment Support Worker.

IMPORTANT TO NOTE:

An enhanced criminal check is not required on the authorised/suitable person if the authorised/suitable person is:

- listed in Appendix 2, **or**
- a person appointed by the Court of Protection to manage the Direct Payment, **or**
- a friend involved (*unpaid*) in the provision of care for the adult

B 4.3.8 If the authorised person is an individual on behalf of a corporate/incorporated body of persons or a person **NOT** listed in Appendix 2 nor a friend involved in the provision of care for the adult; he or she **must:**

- request an enhanced criminal check every three years through the DBS on **any**

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- **person**¹⁴ they have employed to support the adult;
- ensure that the results (a satisfactory certificate) have been obtained;
- inform the adult being supported that the certificate has been obtained; and
- if DBS update service used, inform KCC if the certificate is not satisfactory.

B 4.3.9 The “authorised/suitable person” (not KCC) will request the criminal check for a person they have employed, but KCC will pay the costs where applicable¹⁵.

B 4.3.10 If an “authorised/suitable person” refuses to be subject to the enhanced check (if required see note in 4.2.7 above) or to obtain a criminal check on the person(s) who they have employed, the Direct Payment Agreement terms and conditions have been breached, therefore the Direct Payment will be refused or ended. The practitioner may identify another “suitable person” to support and manage the Direct Payment on behalf of the adult who lacks capacity-see B2.3 and B2.4.

B 4.3.11 If following an enhanced criminal check there are concerns, then a risk assessed approach needs to be applied on a case by case basis and approved by the delegated authorisor.

B 5 Complaints

B 5.1 If an adult or anyone involved in their care and support wishes to complain about any aspect of the Direct Payments policy, procedures or decisions, staff in consultation with their line manager, should try to find a solution within 24 hours but must also inform them that they can make a formal complaint to Customer Complaints if the matter is not resolved.

B 5.2 Staff should follow the complaints policy and should also provide the person with a copy of KCC, leaflet: “Have your say, Comments, Complaints and Compliments” to enable them to make a formal complaint if they choose to do so.

¹⁴ In these circumstances, if the PA is a friend or family member listed in Appendix 2 (regardless where the PA lives), the authorised person still has to obtain a criminal check on them

¹⁵ KCC will not pay the “employee” annual subscription fee for the DBS update service- the employee expected to pay.

Section C: The Process for Setting up a Direct Payment

In the following guidance notes the Direct Payment Support Worker is referred to in most actions, where the practitioner is assisting with the setup of the Direct Payment then it is the practitioner who should undertake these actions.

C 1. Providing the Direct Payment to New Recipients

NOTE: For current recipients who use a separate bank account, the Kent Card should be explained as an alternative option.

C 1.1 For new recipients, the primary method for providing a Direct Payment is through the Kent Card. This offers benefits to both the Direct Payment recipient as financial monitoring and review are much less bureaucratic and to KCC as the financial monitoring can be completed more efficiently and effectively.

C 1.2 For new Direct Payment recipients who do not want to use the Kent Card, a separate bank account will be required. The Direct Payment recipient will need to provide their bank account details which the practitioner will record on the Direct Payment set-up form. See Appendix 3 for further details.

C 1.3 Where the adult has chosen to employ a PA (including self-employed PAs) or where the adult has needs which have a high value, the Direct Payment team should be asked to support the adult. A referral form is sent to: Direct.Payments@kent.gov.uk and this is noted in the case notes on mosaic by the practitioner.

C 1.4 Under section 25 of the Care Act 2014, the adult must have a Care and Support Plan, (in a format accessible to the adult which includes the Young Person's Plan for young people aged 18-25), this provides the agreement with the adult and KCC on the eligible needs and how the adult would like to arrange their care and support to meet their personal outcomes. The document is owned and signed by the adult; however, it is not considered an agreement and valid until it has been signed by the practitioner.

C 1.5 The care and support/young person's plan describes how the estimated Personal Budget will be used to meet the eligible needs it is the role of KCC to decide on the amount of the Direct Payment (actual Personal Budget) and the practitioner must confirm that it is sufficient to enable the adult to 'lawfully secure services of a standard that is reasonable to meet the needs to which the payment relates'.

C 1.6 The care and support/young person's plan is completed following the Care and Support Planning Policy and Operational guidance and where a Direct Payment is used will:

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- describe how the adult would like to commission services which meet their personal outcomes;
- offer the scope to be more creative and identify services which better meet the adult needs and personal outcomes identified during the need's assessment;
- provide enough detail to enable review of how the Direct Payment is being used to meet personal outcomes.

C 1.7 The care and support/young person's plan must be used to provide effective contingency plans for adults in receipt of Direct Payments, who contract with agencies to provide their care and support and how help can be reached via these agencies in the event of emergency situations e.g. heavy and persistent snowfalls; flooding. Adults, who directly employ their PAs, are much more vulnerable, so clear plans need to be in place how needs will be met in the event of the PA being absent, for example due to sickness, maternity or holiday. Planning for such contingencies is an integral part of the adult's care and support/young person's plan.

C 1.8 In addition to the emergency report extracted from mosaic which includes the 'employment of PA' category, it is the responsibility of the practitioner to complete sufficient details on mosaic or LPS for 18-25-year old to enable ASCH to contact potentially vulnerable adults or suitable persons in the event of an emergency.

C 1.9 In line with the Care and Support Planning Policy and operational guidance the Care and Support/Young Person's Plan **MUST** be agreed by both the adult and KCC (see section B.4 of the Care and Support Plan guidance).

The Care and Support/Young person's plan provides authorisation for the agreed Personal Budget so must therefore be agreed by the appropriate budget holder or delegated manager.

C 1.10 If the practitioner or authorising Manager does not agree with the Care and Support/Young Person's Plan the adult should receive an explanation of why the plan has been declined and assistance should be provided to assist with revising the plan.

C 1.11 The Direct Payment set up form and a copy of the up to date, signed and agreed Care and Support/Young Person's Plan are sent to the Direct Payment Team with bank account details where appropriate.

C 2. Direct Payment Agreement

C 2.1 Practitioners and Direct Payment Support Worker must:

- issue a Direct Payment Agreement when a young person is receiving a Direct Payment;
- issue a Direct Payment Agreement when an adult is receiving a Direct Payment;
- ensure the adult/ "*nominated person*", or "*authorised/suitable/person*" with parental responsibility understands and signs the Direct Payments Agreement;

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- if there is an authorised/suitable person/person with parental responsibility supporting the adult/young person without capacity, explain that they will be legally responsible for how the Direct Payments are used;
- if there is a “*nominated person*” supporting the adult/young person with the Direct Payment, explain that the adult/young person with capacity will remain legally responsible for how the Direct Payments are used;
- send a copy of the signed agreement to the adult, or the authorised/suitable person/person with parental responsibility and file the signed original hard copy in the adult’s/young person’s case file
- make arrangements to issue any amended Direct Payment Agreement at the time of the direct payment monitoring cycle. (Note¹⁶: The Direct Payment Agreement may be amended for time to time.

C 2.2 Without discouraging people from taking up the role of “suitable person”, practitioners should make clear to them when discussing the Direct Payment Agreement and their role, the consequences of financial misconduct or other forms of neglect or ill-treatment of the adult.

The Direct Payments Agreement has a section which relates to the authorised/suitable person role

C 3. Payment method-Kent Card

C 3.1. To request a Kent Card, the practitioner or Direct Payment Support Worker must complete the Kent Card section on the Direct Payment set up form. If the adult requires support with managing the Kent Card, they can have a “*nominated person*” (the nominated person cannot be a provider or PA), the “*nominated person’s*” details must be added to the Direct Payment set up form in addition to the adult’s details.

C 3.2 If there is an “authorised/suitable person” the Kent Card must be set up in the authorised/suitable person’s name.

C 3.3 The completed Direct Payment set up form and copy of signed and agreed care and support plan must be sent to: Direct.Payments@kent.gov.uk.

C 3.4 The cardholder will receive a copy of the terms and conditions once they have received the card. The terms and conditions are between the cardholder and card provider.

C 3.5 See Appendix 3 for further details about Direct Payment Bank Accounts.

¹⁶ Exceptions to this re issue will require Head of Purchasing approval.

C 4. Processing the Direct Payment

C 4.1. The Direct Payment Support Team will request the Kent Card by using the card creation batch file.

C 4. 2 The card is sent directly to the adult or “authorised/suitable person” by the appropriate bank.

See Appendix 3 for further details about Direct Payment Bank Accounts

C 5. Monitoring and reviewing Direct Payments

See Appendix 3 for further details about Direct Payment Bank Accounts

C5.1 Ensuring the Direct Payment continues to meet the adult’s needs

This is part of the review of the adult’s care and support/young person’s plan and is covered within the Promoting Independence through Review policy and practice guidance, this is the responsibility of the practitioner.

If for any reason a decision is taken to withdraw a direct payment, before any action is taken to end a direct payment, a review of the care and support /young person’s plan must be undertaken by the practitioner to agree alternative care and support with the person, their carer and independent advocate (if they have one), taking into consideration personal circumstances.

C5.2 Ensuring the Direct Payment is being used appropriately (Review Cycle)

This is the financial monitoring role and will be undertaken by the Direct Payment Support Assistant/Direct Payment Support Worker where involved.

C 5.2.2 Direct Payment financial monitoring will be determined through a risk-based approach, undertaken by the Direct Payment team. See Fig 1 below. If adult circumstances indicate that a more frequent review should take place (e.g. safeguarding) the practitioner must inform the Direct Payment team immediately.

Figure 1

Assessed Risk Category	Review Cycle
High	After 3 months after setting up and thereafter annually
Medium	After 6 months after setting up and thereafter annually
Low	After 6 months after setting up and thereafter annually.

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C 5.2.3 The review and monitoring should include the “*nominated*” or “*authorised/ suitable person*” and any family carer paid for administration support and the outcome of the review written down and given to all parties.

C 5.2.4 Reviews of one-off Direct Payments will concentrate on whether the monies that have been spent were able to meet the adult’s assessed needs and outcomes. In adopting a proportionate approach, the review method can range from a telephone call to a home visit but in all instances the results must be recorded on the Direct Payment Monitoring form and on Mosaic / Liberi/LPS. One off payment will not require a Kent Card.

C 5.2.5 The Direct Payment Assistant will download the Kent Card Statements, for most cases a desk top review of finances will be enough. The Direct Payment Support Worker will check whether any financial, employment or care issues exist by telephone or visit as appropriate. Dealing with issues identified is covered

C 5.2.6 The Direct Payment monitoring activity should be updated on mosaic/ LPS and the next Direct Payment review scheduled following resolution of any issues identified.

For further details see “DP Monitoring Process and Guidance Document” about how to use the mosaic system on KNet. [Click here](#)

C 5.3. Issues identified

C 5.3.1 Financial

- I. Check the adult has been making their contribution, if not then advice should be provided by the finance team.
- II. If there is a surplus in the account or more than 4 weeks accumulation of funds which is not clearly identified within the care and support/young persons plan then follow section C.6 below.
- III. Any interest generated on a surplus Direct Payment is to be used towards services to meet assessed needs. Once the recipient is no longer eligible or receiving services, any surplus plus interest is reclaimed as described in C6 below.
- IV. If there are not enough funds in the account the practitioner should be asked to undertake a review of the care and support/young person’s plan.
- V. If there appears to be a Safeguarding concern the practitioner should be advised immediately, and the Safeguarding policy followed.
- VI. If there is a suspected financial irregularity details should be provided to Internal Audit, for more information see Direct Payments financial procedures.
- VII. If there are concerns that the Direct Payment is not being used as intended, the Direct Payment team will contact the practitioner who will investigate, and a

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decision will be made (e.g. stop the Direct Payment, managed service put in, payroll services etc.). See section C7 Ending a Direct Payment.

The practitioner must be emailed with an update of actions taken.

C 5.3.2 Employment

- I. The Direct Payment Support Worker should work with the adult to try and resolve any issues identified (e.g. payment of Tax, employers' liability insurance etc). This might be by signposting the Direct Payment recipient to an Employment Law helpline, provided by their insurance company or ACAS. Where this is not possible then this should be escalated to the Senior Direct Payment Officer.
- II. If it is not possible to resolve the issues then the practitioner should be informed. Work should continue to try and resolve the issues.

C5.3.3 Concerns about a person's ability to manage the Direct Payment

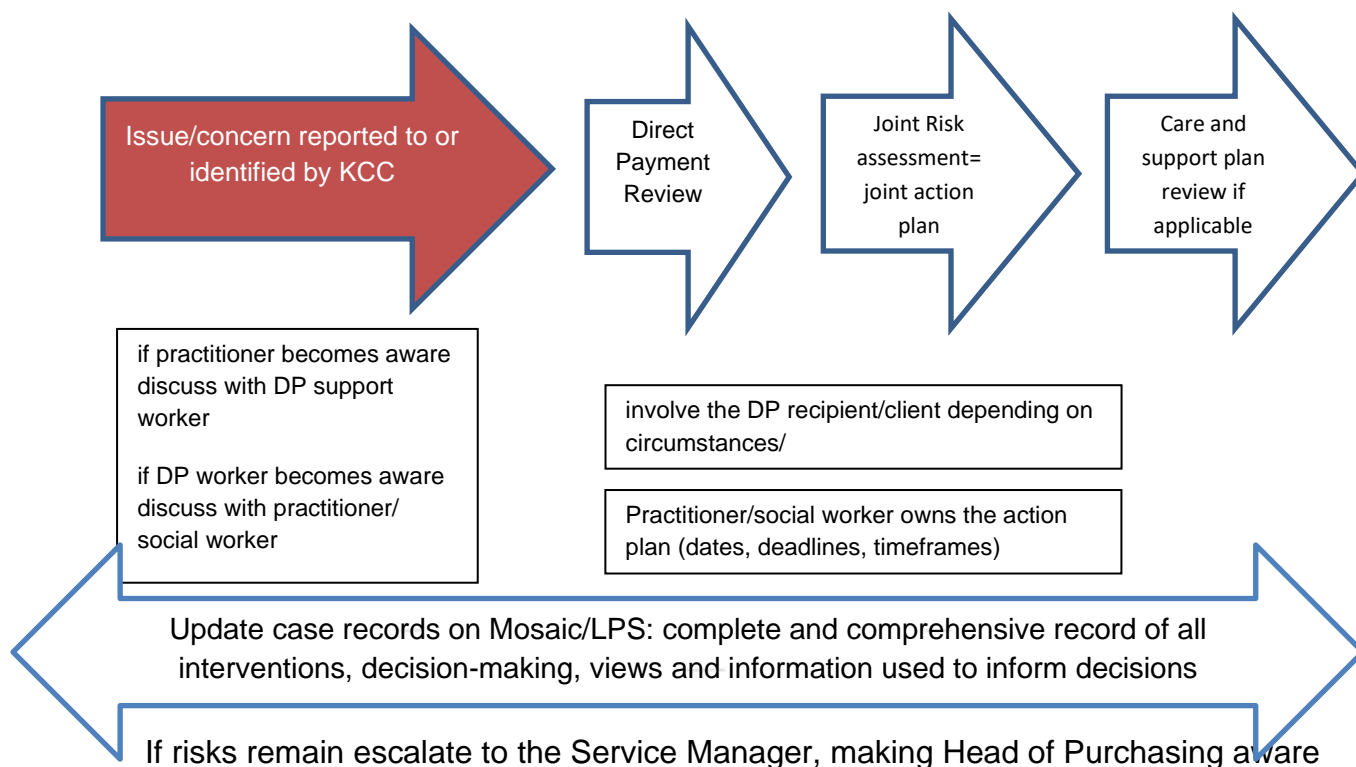
It is essential that any concerns or issues reported to or identified by ASCH are recorded and investigated as soon as possible by the practitioner.

*Examples of issues could be:

- Issues about the suitability of the "*nominated*" or "*authorised person*"
- Complaints by the PA about the employer
- Misuse of direct payment
- Non-payment of contributions

*See Appendix 6 for supplementary notes about associated risks.

Action to be taken:



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C 5.3.4 Care and Support

- I. Issues relating to the care and support should be escalated to the practitioner for action.
- II. The Direct Payment Support Worker should schedule a review for 1 month and check the issues have been resolved, if they have not then a repeat email should be sent to the practitioner and the Team Leader/ Manager.

C 5.4 Making changes to a Direct Payment

C 5.4.1 Following a review of the care and support/young person's plan and/ or reassessment, the practitioner may agree a change to the actual Personal Budget. The practitioner is responsible for ensuring the relevant documentation is updated and that mosaic/LPS is updated as appropriate.

C 5.4.2 The practitioner should complete the Direct Payment change form and submit this, with the updated, agreed and signed care and support/young person's plan, including amended actual Personal Budget, to the Direct Payment Team.

C 5.4.3 The Direct Payment Support Assistant will make the necessary adjustments to the Direct Payment cost record on mosaic/LPS and send the paperwork to the Finance Payments Team to adjust the payment.

C 6. Seeking Repayments

C 6.1 Following a financial monitoring review, KCC will act to recover any monies in excess of 4 weeks accumulation that is not clearly identified in the care and support/young person's plan. The practitioner or Direct Payment Support Worker will discuss the matter with the adult, "*authorised/suitable person*" or "*nominated person*". If there is a reason for the surplus the care and support/young person's plan should be amended to reflect the purpose, e.g. this is a contingency or respite plan.

C 6.2 The Direct Payment Support Worker will make arrangements to reclaim the surplus; the practitioner and adult/nominated/authorised/suitable person must be informed of this in writing (or in another accessible format).

C 6.3 If a reclaim is required because there are excess funds in the account which have not been spent and are not required to pay for future services, then this invoice/debt should be reclaimed from the Kent Card or the Direct Payment bank account as this is money KCC provided for services.

C 6.4 If the adult/nominated/authorised/suitable person is being invoiced for unpaid contribution this invoice/debt should be paid with personal monies and **not from** the Direct Payment bank account/Kent Card.

C 6.5 If the adult/nominated/authorised/suitable person is being invoiced as a result of the Direct Payment funds being spent inappropriately (not in the care and support plan/support/young person's plan) or from them not being able to provide satisfactory

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evidence of their expenditure (either Direct Payment bank account or Kent Card) this invoice/debt should be paid with personal monies and **not from** the Direct Payment bank account/Kent Card.

C 7. Ending Direct Payments

C 7.1 There will be circumstances where a decision has been taken to end Direct Payments based on the circumstances of a case. Other than in exceptional circumstances, this possibility should be discussed with all concerned to ensure that other options are explored, and that consideration is given to any contractual obligations that are being met by the Direct Payment. Where a decision is taken to terminate, the practitioner **must** firstly conduct a revision of the care and support/young person's plan, agree alternative care and support, taking into consideration personal circumstances.

C 7.2 Direct Payments may be discontinued in any of the following circumstances:

- the adult (or "*nominated person*") no longer wants to receive a Direct Payment;
- the Direct Payment is no longer needed for more than 21 days;
- all or part of the Direct Payment has been used inappropriately i.e. not used to commission the care and support agreed within the Care and Support/Young Person's Plan;
- one or more terms and conditions of the Direct Payments agreement has been breached;
- it appears that the adult or "*nominated person*" is no longer capable of managing the Direct Payment by themselves or with assistance;
- the support is restricted by certain mental health or criminal justice legislation (Schedule 3 in Care Act Regulations);
- it appears that the support needs can no longer be met by means of a Direct Payment;
- the Direct Payment has been used illegally e.g. debt repayment; financial investment; gambling;
- ASCH are no longer satisfied for whatever reason the "authorised or suitable person" is acting in the best interests of the adult.

C 7.3 Practitioners must ensure that if an adult continues to have eligible needs following withdrawal of Direct Payments needs must be met by alternative means, in accordance with care and support planning and risk management guidelines.

C 7.4 Where an adult with capacity was receiving Direct Payments, but then loses capacity to consent, the Direct Payment may be discontinued to the adult, but consideration should be given to making payment to an "authorised/suitable person" instead. In the interim, the practitioner must make alternative arrangements to ensure continuity of care and support.

C 7.5 If the loss of capacity to consent is temporary, Direct Payment may continue to someone who is willing to manage the payments on the adult's behalf.

C 7.6 Direct Payment must be discontinued to the "authorised/suitable person" when the adult who lacked capacity then regains on a longer term or permanent basis. ASCH

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must not terminate Direct Payment to the authorised/suitable person before beginning to make Direct Payment to the adult who has regained capacity.

C 7.7 If the Direct Payment recipient dies, unspent payments plus interest will be recovered, but only after all legal liabilities e.g. outstanding redundancy or holiday pay is paid. It will be up to the person administering the estate to make those payments, not KCC, apart from in exceptional circumstances with delegated authoriser discretion, for example, if insufficient funds available in the deceased estate to fund a Personal Assistant statutory redundancy payment.

Appendix 1 Aide Memoire Direct Payment policy and guidance

The Appropriate use of Direct Payments: ASCH must ensure the proper use of the council’s monies taking due regard to Best Value.

The table below is a guide to staff on the appropriate use of Direct Payments, to meet eligible needs identified in the care and support/Young Persons Plan

The Care and Support/Young person’s plan will be signed off if Direct Payments will be used to fund the following:	The Care and Support/Young person’s plan may be signed-off, subject to conditions laid down by ASCH, if Direct Payments will be used to fund the following:	The Care and Support/Young Person’s Plan will not be signed-off if Direct Payments are to be used to fund the following:
<ul style="list-style-type: none"> • Services from a person or private sector agency that is competent to provide it, including equipment and minor adaptations. • Services from Voluntary Sector agencies, other than those services currently being funded under agreements or contracts with ASCH • Other arrangements that will demonstrably achieve the agreed outcomes. 	<ul style="list-style-type: none"> • Short periods of respite and some specialist equipment □ Management and/or administrative support to a family member living in the home □ Services from a spouse, partner or relative living in the same house as the recipient due to: <ul style="list-style-type: none"> - reasons relating to service user’s religious practice or belief, - actual or potential inability to secure services from people in the local area, - communication needs of the service user which cannot be met in the local community, including British Sign Language (BSL), - a family emergency or event e.g. funeral or sickness requiring “one off” stays away from the home. • Non-residential services 	<ul style="list-style-type: none"> • Long term residential care other than short periods of respite and some specialist equipment. • Services that will not meet outcomes agreed with ASCH e.g. a gift for a carer. • Services which district and borough councils currently have a duty to provide. • Services that the NHS has the responsibility for. • Support from someone who might put you or other members of the public at risk. • Anything that is illegal e.g. debt repayment; financial investment; gambling. • Services from a spouse, partner or relative living in the same house as the recipient when there is not an acceptable reason (e.g. religious etc.) • Services that are prohibited within The Care and Support (Direct Payments) Regulations 2014: Regulation 2: Schedule 3 • General Living Costs e.g. Rent, meals, unless agreed with the delegated authorisor • Services directly provided by ASCH, a Personal Budget can fund these, but a Direct Payment cannot.

Appendix 2

2.1 Family Members who cannot be paid a Direct Payment for **CARE** who live in the same household (exceptions apply for reasons described in Section B 3.3)
Reference: The Care and Support (Direct Payment) Regulations 2014(3)

- a. the spouse or civil partner of the adult;
- b. a person who lives with the adult as if their spouse or civil partner;
- c. a person living in the same household as the adult who is the adults: -
 - I. Parent or parent-in-law,
 - II. Son or daughter,
 - III. Son-in-law or daughter-in-law,
 - IV. Stepson or stepdaughter,
 - V. Brother or sister.
 - VI. Aunt or uncle, or
 - VII. Grandparent.
- d. the spouse or civil partner of any person above who lives in the same household as the adult; and
- e. a person who lives with any person above as if that person spouse or civil partner.

2.2 If the authorised/suitable person is a person listed above (no matter if they live in the same household as the adult) or is a friend involved (not paid) in the provision of care for the adult, **they are not required** to obtain an enhanced criminal check on any person they employ to provide care for the adult.

Conversely, if the authorised/suitable person is a person **NOT** listed above, nor a friend involved in the provision of care, they must obtain an enhanced criminal check on **any person** they employ to provide care for the adult.

Appendix 3

1 Separate Direct Payment Bank Accounts

For new Direct Payment recipients who do not want to use the Kent Card, a separate bank account will be required. The Direct Payment recipient will need to provide their bank account details which the practitioner will record on the Direct Payment set-up form.

A copy of this form is retained securely and temporarily by the team and will be destroyed once finance have confirmed first payment.

The individual is informed that they will make their contribution to care costs into the bank account and that they will be asked to provide copies of their bank statement for financial monitoring and review on request.

2 Processing the direct payment- Separate Bank Account

The Finance teams are responsible for processing applications for Direct Payments and will process the direct payment and inform the practitioner when the first payment has been released.

The practitioner will destroy the Direct Payment set up form containing bank details.

To trigger the payments the Direct Payment set up and one off payment form needs to be completed and sent with a copy of the agreed Care and Support Plan to direct.payments@kent.gov.uk .

3 Monitoring and reviewing Direct Payments- Separate Bank Account

The Direct Payment Monitoring Assistant arranges a home visit to review the paperwork for the period up to this review.

The Direct Payment monitoring activity should be updated on mosaic/LPS and the next Direct Payment review scheduled following resolution of any issues identified.

4 Seeking Repayments- Separate Bank Account

If a reclaim is required because there are excess funds in the account which have not been spent and are not required to pay for future services, then this invoice/debt should be reclaimed from the Direct Payment bank account as this is money KCC provided for services.

If the adult is being invoiced for unpaid contribution this invoice/debt should be paid with personal monies and not from the Direct Payment bank account.

If the adult is being invoiced because of the Direct Payment funds being spent

inappropriately (not in the Care and Support Plan/Support Plan) or from them not being able to provide satisfactory evidence of their expenditure this invoice/debt should be paid with personal monies and **not** from the Direct Payment bank account

The Direct Payment Support Team sends the monitoring form to finance and an invoice is sent to the individual, non – payment may result in debt recovery action in line with ASCH debt recovery policy and procedures.

Appendix 4

Direct Payments-Equipment and Minor Adaptations

Minor adaptations refer to work which KCC are responsible for providing. This does not cover major adaptations.

1. Aim

To give people choice and control over their equipment/minor adaptations and on who carries out the work. For example, people may want:

- equipment that matches their home furnishings.
- equipment associated with a minor adaptation to be provided by a contractor who is known to them,
- equipment that includes additional features above the recommended standard.

They will be able to do so with Direct Payments

NB Direct Payments should not be made retrospectively where an adult/"nominated", or "*authorised/suitable person*" has bought the equipment/minor adaptation before the Direct Payments Agreement has been signed.

2. Ability to Manage

Once KCC is satisfied that the person's needs will be met through a Direct Payment the council will no longer be responsible for the purchase or provision of the equipment or minor adaptation.

3. Best Value and cost effectiveness

In pursuit of Best Value, councils are able through bulk purchases to obtain equipment/minor adaptation at reduced prices. In such cases KCC will offer the adult a direct payment that is equivalent to the reduced price.

KCC must ensure that the adults who choose Direct Payments receive an equitable service.

4. Mixed Package

A person might choose to obtain some equipment/minor adaptation via Direct Payments and have other equipment/minor adaptation commissioned by KCC on their behalf.

5. Ownership of equipment/minor adaptation

The adult or their representative who buys equipment through direct payments will be the owner. However, KCC may make it a condition of the Direct Payment Agreement that the council is informed of all equipment no longer required by the adult. KCC will decide if the item(s) need to be returned for re-use. An adult or their representatives may not sell, gift or dispose of any equipment until KCC has

decided in writing that they do not wish to have the item removed for re-use.

6. Maintenance, Servicing and Repairs Manufacturer warranties will initially cover

repairs. **Definitions**

'Recommended item' refers to the most modest and cost-effective solution to meet the assessed need.

'Chosen item' includes the essential features of the recommended item and incorporates the adults or their representative's preferences.

Option 1

If an adult chooses a piece of equipment/minor adaptation that requires regular servicing and maintenance when the recommended item would not have done, it will be the adult's responsibility to arrange and fund all servicing, maintenance and repairs.

e.g. Practitioner recommends a bath board and seat. Adult chooses to purchase a powered bath-lift.

Option 2

If an adult chooses a piece of equipment/minor adaptation that requires regular servicing and maintenance, when the recommended item would also have done, KCC will provide funding equal to the servicing and maintenance of the recommended item (up to 5 years including warranty period). It will be the adult's responsibility to make arrangements for the item to be serviced, maintained and repaired.

e.g. Practitioner recommends a standard riser recliner chair – adult chooses a direct payment to purchase a riser recliner chair with a massager.

7. Role of person receiving Direct Payments

People receiving Direct Payments will be entering into agreements with the council to purchase and manage the equipment/minor adaptation(s). It is therefore important that KCC provides them with information to aid their decision.

The adult or their representative must satisfy themselves that the provider is competent to provide the equipment or minor adaptation at a standard similar to that specified by the practitioner in the Direct Payments Agreement. In the case of electrical wiring to provide a minor adaptation it is essential that the installation complies with the Institute of Electrical Engineers (IEE) Wiring Regulations (BS 7671). (Must be WK/EK approved contractor).

8. Insurance

Insurance cover for equipment/minor adaptation will not be provided by KCC. The adult or their representative should inform their insurance company about additional items in their home. In the case of accidental damage, fire or

theft of the equipment/minor adaptation, the adult or their representative will claim under their policy.

9. Wear and Tear

Where an adult or representative think that their equipment/minor adaptation is worn out and needs to be replaced, a KCC representative will carry out a check. Based on this a decision will be taken on whether or not to replace the equipment/minor adaptation or carry out a reassessment.

10. Ongoing Help and Advice equipment

If the adult or their representatives need help or advice regarding their equipment/minor adaptation they should approach their suppliers. If the supplier is unable or unwilling to help, KCC may step in to offer appropriate assistance.

CASE STUDY (1) Details of Referral

Mr. A – is severely hard of hearing, lives alone in flat within Council complex. He had received harassment and complaints from neighbours due to the volume of his television.

Risk Assessment

Mr. A is in poor health and is often confined to his flat causing him to be isolated and dependent on TV for company.

His tenancy is at risk due to the number of complaints. Stress and isolation put him at risk of depression and mental health problems.

Action Plan

Provide Standard HPI Megaloop system:

However, Mr. A has Sky, Freeview and DVD, all requiring scart connection, therefore standard loop is not his preferred option.

Outcome

Mr. A. chooses Direct Payments to include purchase and installation (if appropriate) of Echo Mega Loop Plus.

Price of standard Mega Loop - £58.50 (incl. Installation) Price of Mega

Loop Plus (advanced) - £95.00

No service or maintenance needed for std Mega Loop

KCC's Direct Payment £58.50

Adult top-up £36.50

CASE STUDY (2)

Details of referral

Mrs. A is 88-year-old and lives with her daughter in a level access bungalow. She has hypertension, diabetes, heart problems and suffered a CVA 6 years ago, leaving her with limited mobility. She is independently mobile with a zimmer frame indoors and requires the use of a wheelchair outdoors.

She has assistance with her personal care and has been provided with a bath lift from Social Services. Mrs. A's daughter manages all domestic activities.

Risk Assessment

Mrs. A is independent sit to stand from high surfaces. Her bed is of an ideal height, but her chair is extremely low, cannot be raised and there is no alternative seating within the property.

Action Plan

She has been provided with a raised toilet seat and free-standing toilet frame. The Occupational Therapist also recommended a standard orthopaedic chair. Mrs. A was unhappy with this and requested a riser recliner chair, however she did not meet the criteria for such a provision. A Direct Payment was then offered towards the cost of purchasing a chair of her choice.

Price of standard chair £65.00

Price of riser/recliner chair £850.00

No service or maintenance needed for standard chair

KCC's Direct Payment £65.00

Adult top-up £785.00

CASE STUDY (3) Details of referral

Mr. M has limb girdle dystrophy. He had a flu and pneumonia jab in Nov. '05 and soon after developed a viral infection which led to him losing a lot of the remaining power in his lower limbs. He lives with his wife in their privately-owned bungalow and walks short distances, slowly with two sticks.

Risk Assessment

Difficulty transferring in/out of the shower-client wishes to pursue other options prior to considering flush floor shower. Mr. M also finds it difficult transferring in/out of bed and mobilizing in the bed.

Action Plan

Trial of pillow lift, bed lever, and leg lifter would all be appropriate, but Mr. M would like to consider privately purchasing a profiling bed as an alternative. He is planning to investigate and try these, as this would be his preferred option.

Outcome

Cost to KCC if Mr. M chooses recommended equip

Pillow lift	= £496
Maintenance cost (top up of warranty)	= £150
Manual Leg lifter	= £ 20 (no maintenance)
Bed lever	= £ 25 (no maintenance)
Price of recommended items	= £691
Price of profiling bed (incl. 5-year warranty) = £2000	
KCC's Direct Payment	£691
Adult top up	£1,309

NB: KCC included maintenance cost in the direct payment for the pillow lift as it would have incurred this cost had Mr. M opted to accept the recommended equipment.

CASE STUDY (4)

Details of Referral

Mrs. B – sight impaired/partially sighted finds sunlight and bright lighting conditions debilitating due to effects of eye condition (Glaucoma). Indoor and outdoor mobility is being limited.

Risk Assessment

Safe independent mobility compromised in bright lighting conditions.

Action Plan

Provide standard overspecs to guard against glare.

However, Mrs. B is very conscious of her appearance and prefers the colours and choice of styles that are offered by Medicare.

Outcome

Mrs. B. chooses Direct Payments to purchase overspecs of her choice from a broader range.

Standard overspecs £6, choice of one style, 3 colours only.

Deluxe overspecs, broad choice of colours and styles at variety of prices from £25 to £40.

Price of standard overspecs £6.00

Price of deluxe overspecs (range £25 - £40)

KCC's Direct Payment £6

Adult top up £19 (if price of overspecs is £25)

Appendix 5: Jury Service for a Personal Assistant.

When someone is called for Jury Service, they must attend, although they can request for this to be postponed for up to 12 months.

The Jury Service can last from 2 weeks to over 3 months.

It is the employer's decision whether they pay or don't pay the personal assistant (PA) wages for the period of the Jury Service but because the employer receives a direct payment (DP) it means their decision affects the funding they receive via a DP.

KCC decisions should be determined on a case by case basis and we should not apply a blanket rule.

These are the possible options:

- the PA can claim a contribution for a loss of earnings from the compensation scheme available from the court. Note this may not cover full loss of wage
- the PA could claim from the compensation scheme first and employer has the right to top up the difference to the regular wage. This would mean KCC "make up" the wage to the average amount the PA would receive on a weekly basis and the replacement PA cover
- the employer could pay the full wage. This would mean KCC would need to provide funding for the PA wages who is on Jury Service and replacement PA cover.

Appendix 6. Concerns about a person's ability to manage the Direct Payment-supplementary noted about associated risks.

Direct Payments – Non-payment of contribution

If arrangements are not made to pay the weekly contribution into the direct payments account, there are several risks to both the DP Recipient and KCC.

The client contribution forms the first part of the personal budget with KCC contributing the balance of the personal budget.

If the contribution isn't paid, employers will be unable to pay the PA wages and other bills such as tax and national insurance payments to HM Revenue and Customs (HMRC) and invoices from the care agency.

This could lead to serious consequences such as:

- Being in breach of the contract of employment they have with their PA's and they could sue the person for any unpaid wages.
- Risk of carer breakdown as PA's could withdraw the support, they receive due to non- payment
- HMRC will impose fines and penalties if people do not pay tax and national insurance payments on time. HMRC can take very serious actions against individuals who are late with, or do not make, their payments
- Risk of breakdown in care, the agency will withdraw their service if the bills are not being paid.
- Debt to care provider which the person is liable for.

Risk to Budget - If the client contribution continues not to be paid into the account, and there is no shortfall in the account, this is an indicator that the agreed support needs to be reviewed,

If they are reducing the number of calls so that the direct payment amount without the contribution covers the cost, this is an indicator that there may require a review of needs.

Ability to manage the responsibility of the Direct Payment

As a local authority, we need to ensure that the person can manage the direct payment and the responsibility of employing.

If the person has capacity to request the DP but not the ability to manage the responsibility that come with it, they may be in the position that they can nominate someone to act on their behalf and support with the management of the DP. If there is no suitable person, we will seek suitable organisations, otherwise the DP will need to be stopped.

The Personal Assistants/ Agency workers providing the support via the DP should not be supporting the person with the management of the DP as in effect they are paying themselves.

These types of scenarios put both the service user and KCC in a vulnerable position.

See examples below

- Breakdown in care - support not provided – Risk to health and wellbeing
- Agency/ PA's holding card details – making the payments to themselves
- Agency/ PA's charging over the agreed DP Amount

- If employment law isn't followed the contract of employment, they have with their PA become invalid and KCC could be at risk of being liable if the person doesn't have the ability to manage the DP.
- Insurance will not cover if employer does not adhere to employment law, KCC could be held accountable.
- Risk of carer breakdown as PA's could withdraw the support, they receive due to non- payment
- HMRC will impose fines and penalties if people do not pay your tax and national insurance payments on time. HMRC can take very serious actions against individuals who are late with, or do not make, their payments
- KCC challenged by the Ombudsman when suitability of a DP is not reviewed by the practitioner.

Appendix 7: Overview: direct payment irregularities approach

