

INTERNAL AUDIT REPORT

# DIRECT PAYMENTS

## MIDDLESBROUGH COUNCIL

	Critical	Significant	Moderate	Opportunity
Findings	2	1	1	0
Overall audit opinion	<b>Limited Assurance</b>			

Status: Final

Date issued: 27 November 2024

Responsible officer: Director of Adult Social Care and Health Integration

## INTRODUCTION

Direct payments are local health and social care payments for people who have been assessed as needing help from social services and who would prefer to arrange and pay for their own care and support rather than to receive services directly from the local authority. The aim of direct payments is to allow the service user greater choice and control through the flexibility of being able to purchase their own care package. The Care Act (2014) mandated direct payments for the first time in April 2015.

The Council's direct payments guidance defines direct payments and under what conditions direct payments can be made. In the year 2023/24, £9,690,242.40 were made to adults and carers and £318,735.83 were made to children. At the start of the audit, December 2023, there were 832 active customers currently in receipt of direct payments; 555 adults on a managed account, and 217 adults who have their direct payment made directly into their account. There are also 59 children who receive direct payments.

The managed accounts are the responsibility of Penderels Trust, who work in partnership with the Council to support adults and children who receive a direct payment. The support offered includes payroll services and helping with money management and maintaining accurate records.

## OBJECTIVES AND SCOPE

The purpose of this audit was to provide assurance to management that procedures and controls within the system will ensure that:

- ▲ Up to date guidance notes are available for customers wishing to apply for direct payments, and also for Council staff involved in administering the scheme.
- ▲ Payments are made to customers accurately in line with an agreed timetable.
- ▲ Direct payments accounts are monitored, reviewed and reconciled on a reasonable basis, and in line with Council Policy.

The audit reviewed the period December 2022 to December 2023. Testing took place between February and June 2024.

At the request of management, we included in the audit a review of direct payments paid to family members employed as personal assistants and a review of the use of direct payments to establish if they are being used to purchase services from agencies that are already included on the Council's provider framework. However, this was not possible as the relevant records were not logged by social workers.

## KEY FINDINGS

For customers wishing to apply for direct payments, the Council's website provides guidance (last reviewed in 2020 and due to be reviewed following a recent update to guidance to staff) on what a direct payment is, how they can get an assessment and how to act on behalf of a person requiring support. Further information regarding how direct payments will be monitored and the customer's responsibility regarding procuring service providers and managing payments is given in the direct payment agreement that is produced for each customer. Guidance has been provided to staff (last reviewed in March 2024) which covers the relevant elements of the Care Act (2014), detailing the social worker's responsibility in assessing and making decisions regarding direct payments.

We noted that direct payment application forms and agreement documents do not inform the customers of the potential legal consequences of intentionally mispending the funds provided for their support plans, which could constitute fraud. As a result, the Council may encounter difficulties in any attempt to take robust action and recoup monies if any such instances were to occur.

Processes are in place to ensure that payments are made accurately and on time and that, if care provision changes, then the payment is changed without interrupting the payment schedule. A direct payment will not be set up without a referral from the social worker in charge of the case, and subsequent authorisation from the team manager. Controls are in place to reconcile direct payments against the general ledger system. Testing confirmed that timely action is taken by social workers to cease payments once direct payment provision has been ended. Performance monitoring over third-party direct payment account managers is carried out using quarterly updates reports and regular meetings with the third party. The finance team monitor their performance internally in 1-2-1 meetings and appraisals.

We confirmed that there is a process in place for monitoring monthly spend by service users and there is a regular system of oversight for accounts managed by third party suppliers. There are processes in place for identifying and recouping excess balances both from accounts managed by the service user and from accounts managed by third party suppliers.

The Council's internal guidance document states that direct payments should be monitored once every 12 months by the Adult Social Care Finance Team. Monitoring ensures that surplus balances are removed from the accounts where funds have accumulated and that any indication that the provision is no longer required or suitable to the customer is flagged to the relevant social worker. Monitoring does take place but current resources do not allow for monitoring to happen in accordance with the 12 month requirement.

While the costs detailed on support plans are not always in line with current direct payments, the discrepancy is due to the change in costing amounts rising in line with inflation. The agreed provision is still up to date, and we confirmed that spending is in line with requirements.

The Council currently delegates assessments and preventative services to five external providers. Each contract contains a clause allowing access to records for the purposes of monitoring and audit as required by the Care Act (2014).

The Care and Support (Direct Payments) Regulations 2014 set out that the local authority must review the making of direct payments initially within 6 months, and thereafter every 12 months and must not require information to be provided more often and in more detail than is reasonably necessary for the purpose of enabling the authority to know that making direct payment is still an appropriate way of meeting the needs. Testing has shown that the Council is not complying with either of these legislative requirements.

Cases of fraud have been uncovered at other local authorities where family members employed as personal assistants have claimed money through direct payments where care was not required or not provided. To properly assess this fraud risk, the Council should understand the prevalence of family members employed as PA's among its direct payment recipients. The Council does not currently record this information in a central location that would enable it to monitor the potential for fraud.

## **Overall Conclusions**

Significant gaps, weaknesses or non-compliance were identified. Improvement is required to the system of governance, risk management and control to effectively manage risks to the achievement of objectives in the area audited. Our overall opinion of the controls within the system at the time of the audit was that they provided Limited Assurance.

## 1 Annual review of direct payment provision by Social Care staff

Critical

### Control weakness

The Council is failing to comply with legislative requirements.

### What is the risk?

Care needs are not met.

Inappropriate use of direct payments is not identified due to insufficient monitoring.

### Findings

The Care and Support (Direct Payments) Regulations 2014 set out that the local authority must review the making of direct payments initially within 6 months, and thereafter every 12 months and must not require information to be provided more often and in more detail than is reasonably necessary for the purpose of enabling the authority to know that making direct payment is still an appropriate way of meeting the needs.

Our testing has confirmed that the Council is not complying with these legislative requirements. Of the 217 current adult direct payment customers, 102 (47%) had not been reviewed in the last 12 months and, of those, 35 (16%) had not been reviewed in the last 24 months.

Additional sampling found that, for 8 out of 10 cases reviewed, there was no evidence of a six-monthly review record available. Four out of the 10 did not have any review available (6 month or 12 monthly review).

This situation was discussed with the Principal Social Worker for Adults, who confirmed that social workers are behind with reviews and stated that this is due to resourcing challenges. Monitoring records exist which detail the date of the last review to be undertaken for all direct payment customers. However, the data is not analysed by management in terms of prioritising the most overdue reviews, or for any trends that may highlight where the resourcing pressures are most acute.

As well as not complying with legislative requirements in relation to the reviewing of direct payments, there is a risk that fraudulent use of direct payment money could go undetected.

**Agreed action**

Additional agency social work staff will be recruited to assist established teams to complete overdue reviews.

**Responsible officer:** Head of Specialist and Lifelong Services

**Timescale:** 31 December 2024

**Agreed action**

An implementation plan will be put in place to address the backlog of 102 overdue reviews.

**Responsible officer:** Head of Specialist and Lifelong Services

**Timescale:** Implemented

**Agreed action**

The outstanding 102 annual reviews will be completed.

**Responsible officer:** Head of Specialist and Lifelong Services

**Timescale:** 31 May 2025

**Agreed action**

A plan will be put in place to ensure that all new direct payment cases going forward have an initial 6 month review and all new and ongoing cases have a 12 month review thereafter.

**Responsible officer:** Head of Specialist and Lifelong Services

**Timescale:** 31 January 2025

**Agreed action**

A dip sample of 10% of new direct payment cases will be audited by the service each month over the 12 month period to check the process is being followed.

**Responsible officer:** Head of Specialist and Lifelong Services

**Timescale:** 30 November 2025

## 2 Monitoring of direct payment spend by the Adult Social Care Finance Team

Critical

### Control weakness

Direct payments are not being regularly monitored to ensure that payments are being spent appropriately and that the provision is still required.

### What is the risk?

Council funds are misspent on provisions that are not appropriate/required.

### Findings

The Council's internal guidance documentation states that direct payments should be monitored once every 12 months by the Adult Social Care Finance Team in order to ensure that surplus balances are recovered from the accounts where funds have accumulated and that any indication that the provision is no longer required or suitable to the customer is flagged to the relevant social worker.

Whilst monitoring does take place, current resources do not allow for monitoring to happen according to the 12-month schedule as set out in the procedural requirements. From a sample of 10, only 1 had been monitored according to the annual schedule and three had been monitored after the date the sample was requested, suggesting that they had not had a completed monitoring record before that. Each direct payment account has its own individual monitoring document.

Each account should have no more than 8 weeks' worth of funds available though sometimes exceptions are made at the Council's discretion. There may be some instances when credit balances are slightly above 8 weeks' worth of direct payments. This could be for a variety of reasons, such as the resident having a known bill or invoices due for tax or national insurance contributions. In addition, the resident may also be saving monthly for an agreed holiday which is to be taken at a later date. From our sample, we found that 6 out of 10 had a surplus that was redeemed by staff (i.e., was not legitimate) of at least £1,000 and the highest had a surplus of £5,000 over the 8 weeks required funds. Without a spreadsheet providing an overview of all the current surpluses on direct payment accounts, it is not possible to establish the current level of surplus funds outstanding.

The monitoring record is not fully completed with fields left vacant such as the customer's LAS number, the full details of when the record was last monitored and the total expenditure between monitoring periods. When queried, we were informed that a process to review direct payment policies had been started and the completion of monitoring forms would be added to the task list.

**Agreed action**

A rectification plan has been put in place to look at the outstanding cases, which has significantly reduced in volume since the audit. All cases will be reviewed within 12 months moving forward.

**Responsible officer:** Head of Resident and Business Support

**Timescale:** Implemented

**Agreed action**

In respect of direct payments, any such awards are paid 4 weekly, in advance. Revisions to working practices will be made in order to more easily identify accounts with large balances and action taken as necessary.

**Responsible officer:** Head of Resident and Business Support

**Timescale:** Implemented

**Agreed action**

Refresher training has been delivered in respect of direct payment monitoring and the agreed standards. Monthly manager checks will be undertaken to ensure the quality of such monitoring and that this has improved to the required standards. Work will also be undertaken to identify if it is an option to auto populate some fields or alternatively, make such fields a mandatory requirement when carrying out these checks.

**Responsible officer:** Head of Resident and Business Support

**Timescale:** Implemented





### 3 The Council does not record the prevalence of family members employed as personal assistants.

Significant

#### Control weakness

The Council does not monitor direct payment cases where family members are employed as personal assistants for fraud.

#### What is the risk?

Fraudulent activity is not detected, leading to reputational damage to the Council.

#### Findings

A number of large value direct payment fraud cases have been discovered at local authorities where family members have been employed as personal assistants for direct payment recipients. Investigations found that in some cases, care was not required whereas in other the family member did not provide adequate care.

Guidance recently issued by the Council (May 2024) states that:

- *A DP cannot be used to pay someone living in the same household unless there are exceptional circumstances. An exceptions form needs to be completed and sent to the Head of Service for agreement before the DP can go ahead.*
- *A direct payment can be used to pay a friend or relative who is not living in the same household if it is to meet an eligible need, and it is appropriate to do so.*

We found that the Council does not log all the direct payment cases where a family member or friend is employed as a personal assistant. This impairs the Council's ability to effectively monitor whether family members are provided adequate care and to mitigate the risk of fraud.

#### Agreed action

Direct payment guidance has been updated to reflect current legislation and amended to reflect that family members living in the same house cannot be employed as a personal assistant unless in exceptional circumstances.

An exceptions form has been developed that must be completed if the request is to pay someone living in the same household.

**Responsible officer:** Head of Specialist and Lifelong Services

**Timescale:** Implemented

## 4 DP applicants are not informed of the legal requirements relating to misspending DP funds

Moderate

### Control weakness

Direct payments application forms and agreement documents do not inform the legal consequences of misspending the funds provided for their support plans.

### What is the risk?

Fraudulent activity is not robustly addressed, leading to reputational damage to the Council.

### Findings

The Council sets up an agreed support plan with each direct payment customer which ensures that the conditions relating to the payments are fully understood by both parties.

If direct payment customers were to wilfully misspend the money provided for their care, i.e., by spending it on something other than the agreed upon services in their support plan, they could be committing fraud. The Council will therefore have recourse to the courts to recoup the money if the customers refuse to pay it back. However, if the customer is not advised beforehand that they may be pursued for fraud if they misspend the direct payments, then effectively prosecuting the case may be difficult. A review of the guidance and direct payment agreements made with customers has shown that they do not mention fraud and the legal repercussions of misspending the direct payments.

### Agreed action

Direct payment guidance will be amended so that staff are aware of their duty to inform the person of the legal implication of mis-using their Direct Payment.

A paragraph will also be added to the Direct Payment Agreement document informing the person of their legal responsibilities.

**Responsible officer:** Head of Specialist and Lifelong Services

**Timescale:** Implemented

Audit opinions

Audit work is based on sampling transactions to test the operation of systems. It cannot guarantee the elimination of fraud or error. Our opinion is based on the risks we identify at the time of the audit. Our overall audit opinion is based on four grades of opinion, as set out below.

Opinion	Assessment of internal control
Substantial assurance	Overall, good management of risk with few weaknesses identified. An effective control environment is in operation but there is scope for further improvement in the areas identified.
Reasonable assurance	Overall, satisfactory management of risk with a number of weaknesses identified. An acceptable control environment is in operation but there are a number of improvements that could be made.
Limited assurance	Overall, poor management of risk with significant control weaknesses in key areas and major improvements required before an effective control environment will be in operation.
No assurance	Overall, there is a fundamental failure in control and risks are not being effectively managed. A number of key areas require substantial improvement to protect the system from error and abuse.

Finding ratings

Critical	A fundamental system weakness, which presents unacceptable risk to the system objectives and requires urgent attention by management.
Significant	A significant system weakness, whose impact or frequency presents risks to the system objectives, which needs to be addressed by management.
Moderate	The system objectives are not exposed to significant risk, but the issue merits attention by management.
Opportunity	There is an opportunity for improvement in efficiency or outcomes but the system objectives are not exposed to risk.

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