

# Knowsley Metropolitan Borough Council

## Direct Payments Policy

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<b>Portfolio(s):</b>	<b>Adult Social Care Children and Family Services</b>
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## **1. Introduction**

- 1.1 Knowsley Metropolitan Borough Council (KMBC) is committed to promoting individual wellbeing and to supporting independence through preventing, reducing or delaying the need for care and support.
- 1.2 Direct payments are monetary payments to enable people to make their own arrangements to meet eligible care and support needs. Direct payments are the government's preferred mechanism for personalised care and support as they promote independence, choice and control over how needs are met.
- 1.3 When certain conditions are met, all or part of KMBC's proportion of a personal budget can be paid direct to the person concerned or in some circumstances to someone acting on their behalf to meet care and support needs identified in their care and support plan.
- 1.4 This policy will be implemented on 1 April 2018.

## **2. Purpose**

- 2.1 The purpose of this Policy is to achieve consistent practice and approaches in the delivery of direct payments and to set out how KMBC fulfils its statutory duties in administering and monitoring direct payments. This Policy is provided as part of KMBC's role in ensuring that people are given relevant and timely information about direct payments so that they can make a decision whether to request a payment and, if so, are supported to use and manage the payment appropriately.

## **3. Definitions**

- 3.1 Definitions of specific terms used within this policy are set out at Appendix 1.

## **ADULT SOCIAL CARE**

### **4. Legal context**

- 4.1 This Policy derives from the following legislation and government guidance:
  - 4.1.1 The Care Act 2014
  - 4.1.2 Care and Support (Direct Payments) Regulations 2014 (the Regulations)
  - 4.1.3 Care and Support Statutory Guidance August 2017
- 4.2 Other relevant legislation includes but is not limited to:

- 4.2.1 Mental Health Act 1983 (MHA 83)
- 4.2.2 Mental Capacity Act 2005 (MCA 2005)
- 4.2.3 Equalities Act 2010
- 4.2.4 Human Rights Act 1998

## **5. Informing people, promoting choice and advocacy**

- 5.1 KMBC will provide universal information about direct payments to raise awareness of their availability in specified circumstances and how they can be used.
- 5.2 When an aftercare plan to meet needs on discharge from a period of detention under s.3 MHA 83 is being developed, individuals will be advised which of their eligible needs, if any, or aftercare services under s.117 HA 83 can be met or provided through direct payments and offered the option of having them. Service users will be provided with information about direct payment rights and responsibilities and how they would be required to use and manage them in order to make an informed choice.
- 5.3 Service users must request direct payments and may opt in or out of the use of direct payment arrangements by notifying KMBC. Requests for direct payments are usually made at the care and support planning stage but may be made at any other time.
- 5.4 Service users who appear to require support to understand their rights and responsibilities in relation to direct payments and have no other appropriate person to support them will be offered an independent advocate.

## **6. Who can receive direct payments?**

- 6.1 Except where an exclusion applies, where the conditions described at paragraphs 7.1 (in respect of adults with capacity) and 7.5 (in respects of adults who lack mental capacity) are met, KMBC has a duty to provide direct payments for people whose needs for care and support have been determined to meet Care Act 2014 eligibility criteria and who have been allocated a personal budget to which KMBC must contribute.
- 6.2 The Regulations exclude people placed under certain conditions or requirements by the courts in relation to drug and/or alcohol dependency from receiving direct payments. The exclusions are set out in detail in Appendix 2.
- 6.3 Except where an exclusion applies, where the conditions set out in paragraphs 7.1 and 7.5 are met, KMBC may have a duty to provide direct payments for people to whom aftercare services are provided under s.117 MHA 83.

## 7. Conditions for receiving direct payments

- 7.1 Direct payments will be provided where requested by an **adult with capacity** when each of five conditions is fully met:
- 7.1.1 Following an assessment of suitability for a personal budget where the Care and Support Plan identifies a requirement for direct payments as a means to secure provision;
  - 7.1.2 The adult is deemed to have capacity and any nominated person (see paragraph 16.2) agrees to receive the direct payments;
  - 7.1.3 The Regulations do not prohibit needs from being met through direct payments. See paragraph 15 for restrictions on the use of direct payments;
  - 7.1.4 The adult or their nominated person is capable of managing direct payments either independently or with support;
  - 7.1.5 Making a direct payment is an appropriate way of meeting eligible needs.
- 7.2 Adults who **lack mental capacity** within the definition of s.3 MCA 2005 are not precluded from receiving direct payments when there is an authorised person to manage them on their behalf. Direct payments will be provided when requested by an authorised person when each of the conditions at paragraph 7.5 is met.
- 7.3 An authorised person is someone who:
- 7.3.1 Is authorised under MCA 2005 to make personal welfare decisions for the individual (i.e. holds a valid Lasting Power of Attorney granted by the individual before their loss of capacity and registered with the Office of the Public Guardian or a Court of Protection appointed deputy); or
  - 7.3.2 Is not formally authorised under MCA 2005 but KMBC and any person who is authorised under MCA 2005 to make personal welfare decisions for the adult agree they are a suitable person to receive and manage a direct payment on the individual's behalf; or
  - 7.3.3 Is not formally authorised under MCA 2005 and there is no other MCA 2005 authorised person but KMBC determines that they are a suitable person to receive and manage the direct payment on the individual's behalf.
- 7.4 In order to determine who is a suitable person to undertake the role of authorised person, KMBC will consider all relevant circumstances on a case by case basis.
- 7.5 Direct payments will be provided when requested by an authorised person when each of the five conditions below are fully met:
- 7.5.1 When the person is not formally authorised under MCA 2005 to make personal welfare decisions for the adult, KMBC and any person who is so authorised agree that the person making the request is a suitable person to make decisions about the individual's care and support and to receive and manage the direct payment;

- 7.5.2 The Regulations do not prohibit the individual's needs from being met through direct payments. See paragraph 15 for restrictions on the use of direct payments;
  - 7.5.3 It is decided that it is in the best interests of the individual that the authorised person makes arrangements for their care and support through the use of a direct payment and that they will manage the direct payment in the individual's best interests;
  - 7.5.4 The authorised person is capable of managing the direct payment either independently or with support;
  - 7.5.5 Making direct payments to the authorised person is an appropriate way of meeting the individual's needs.
- 7.6 KMBC will take the following steps to assess whether making direct payments to the authorised person is an appropriate way of meeting needs.
- 7.6.1 So far as is reasonably practicable and appropriate, KMBC will consult and take into account the views of:
    - 7.6.1.1 Anyone named by the adult as someone to be consulted about whether direct payments should be made to the authorised person
    - 7.6.1.2 Anyone engaged in caring for the adult or with an interest in their welfare
    - 7.6.1.3 Anyone authorised under MCA 2005 to make decisions about the adult's needs for care and support
  - 7.6.2 So far as is reasonably practicable KMBC will consider:
    - 7.6.2.1 The adults past and present wishes and feelings, particularly any relevant written statement made by the adult before they lost capacity
    - 7.6.2.2 The beliefs and values that would be likely to influence the adult's decision if the adult had capacity to make the decision; and
    - 7.6.2.3 Other relevant factors the adult would be likely to consider if they were able to do so
  - 7.6.3 KMBC will carry out Disclosure and Barring Service (DBS) checking for:
    - 7.6.3.1 Anyone who is not the adult's spouse/partner, a friend of the adult who is involved in providing their care, or a close family member (see Appendix 1 for definitions) who lives in the same household as the adult; and

7.6.3.2 The officer with overall responsibility for the day to day management of direct payments where the authorised person is a body corporate or an unincorporated body of persons/organisation.

7.7 The authorised person must:

- 7.7.1 Be named as the financial representative on the service user's electronic social care record in order that payments can be made;
- 7.7.2 Notify KMBC if they reasonably believe that the adult has regained capacity;
- 7.7.3 DBS check any person from whom a service is secured using direct payments where the conditions specified in 17.3 apply.
- 7.7.4 Participate in an assessment of financial security including levels of personal debt if required by the assessing KMBC officer.
- 7.7.5 Provide a personal reference from an authorised list for example if required by the assessing KMBC officer.

## **CHILDREN'S SOCIAL CARE**

### **8. Promoting independence, choice and inclusion**

- 8.1 Direct payments are a means by which children, young people and their families can direct their own care and support. They are monetary payments that are paid either to a young person, or to the parent or carer of a child or young person up to the age of 18 or to a nominated third party. Direct payments promote independence, choice and inclusion by enabling the purchasing of support that KMBC would otherwise provide. They are made available for those children and young people who have been assessed as eligible or in need of the provision of a service where it is determined for needs to be met by the provision of a direct payment.

### **9. Legal context**

- 9.1 This Policy derives from the following legislation and government guidance:
- 9.1.1 The Children Act 1989 (as amended)
  - 9.1.2 Children and Families Act 2014
  - 9.1.3 Care Act 2014



## **10. Scope**

- 10.1 KMBC has a statutory duty to assess a disabled child or young person who is at risk of significant harm or who requires additional support. Following an assessment it may be appropriate that needs are met via a direct payment.
- 10.2 The power to make direct payments to people with parental responsibility for disabled children and to disabled 16 and 17 year olds was introduced by the Carers and Disabled Children Act 2000.
- 10.3 Section 17A of the Children Act 1989 (CA 89) (as amended by the Health and Social Care Act 2001) placed a duty on local councils to offer a direct payment where there was an assessed need for the provision of children's services.
- 10.4 In making direct payments under s.17A CA 89, councils are subject to the general duty to safeguard and promote the welfare of children in need and to promote their upbringing by their families when making these payments in exactly the same way as when providing direct services.
- 10.5 All councils have had a legal duty since 2003 to offer children, young people and their families, who are eligible for community care services, the choice of receiving a direct payment to manage their assessed eligible community care needs.
- 10.6 Section 49 of the Children and Families Act 2014 makes provision to which direct payments may relate if a local authority maintains and Education, Health and Care Plan (EHCP) for a child or young person.
- 10.7 The Council retains discretion over how long it chooses to provide services under s.17 while an EHCP remains in place. Where the young person no longer has an EHCP, the local authority no longer has the power to extend the provision of these services to young people over 18. However, the Care Act 2014 makes provision when a local authority assesses a young person who is receiving support under legislation relating to children's services, requiring the local authority to continue providing the young person with that support through the assessment process.
- 10.8 This will continue until adult care and support is in place to take over, or until it is clear after the assessment that adult care and support does not need to be provided.
- 10.9 Under the Children and Families Act 2014, KMBC has a duty to offer a Personal Budget to children and young people aged from birth to 25 years to enable them to access services and support where an EHCP is in place or where the council is preparing an EHCP following a full assessment of a child or young person's eligible needs. A direct payment may form part of a child or young person's personal budget, based on their identified, assessed needs.
- 10.10 The Special Educational Needs and Disability Code of Practice 0 – 25 years is the statutory guidance that supports Part 3 of the Children and Families Act 2014. The guidance instructs local authorities, early year's settings, schools, colleges, health and social care providers and others what they must and should do to identify, assess and provide for children and young people with SEN or disabilities.

## **11. Who can receive direct payments?**

### **11.1 Direct payments can be made to:**

- 11.1.1 The parent or carer of a child with a disability or special educational need identified in an EHCP;
- 11.1.2 A person aged 16 or over, with assessed needs who has the capacity to consent to receiving a direct payment and consents to receive one;
- 11.1.3 A person nominated by the individual with assessed needs (where they have capacity and are competent to make that nomination) or (where the individual lacks capacity), an authorised person, whether by formal legal authorisation by order of a relevant court or under MCA 2005, or authorised by KMBC as a person suitable to receive and manage the direct payment on the individual's behalf.

## **12. Conditions for receiving direct payments**

### **12.1 Following an assessment of suitability for a personal budget where the Care Plan specifically identifies a requirement for a direct payment as a means to secure provision, agreement is subject to the following conditions:**

- 12.1.1 The legislation does not prohibit needs from being met by direct payments (see paragraph 15 for restrictions on the use of direct payments);
- 12.1.2 An undertaking is provided by the child's parent, foster, special guardian or young person's representative that they will act in the best interests of the child or young person;
- 12.1.3 Any party listed in paragraph 11.1 is capable of receiving and managing the direct payment;
- 12.1.4 Where a child is subject to a Child Protection Plan, is Looked After by the Council, or is in long term foster care, authorisation of a direct payment must be agreed and authorised at the multi professional Core Group meeting;
- 12.1.5 The Council has obtained written consent from the Head Teacher, Principal or person occupying an equivalent position before authorising a direct payment in relation to any goods or services that are to be used or provided in a school, early years or post 16 education setting.

## **PROVISIONS RELATING TO THE ADMINISTRATION OF DIRECT PAYMENTS APPLICABLE TO ADULT SOCIAL CARE AND CHILDREN AND FAMILY SERVICES**

### **13. Declining a request for direct payments**

- 13.1 Requests for direct payments will be declined if any condition set out at paragraphs 7.1 (for adults with capacity) and 7.5 (for adults without capacity) or paragraph 12.1 in relation to children and young people is unmet.
- 13.2 KMBC will provide a written explanation of why the request was declined including:
  - 13.2.1 Which conditions are not met;
  - 13.2.2 Why the condition is considered to be unmet;
  - 13.2.3 What the person making the request may need to do to obtain a positive decision on eligibility in future.
- 13.3 Information about how to appeal the decision through KMBC's Complaints Procedures will also be provided.
- 13.4 KMBC will continue the planning process to agree with the person whose needs must be met how this can be achieved without the use of direct payments.

### **14. Using direct payments**

- 14.1. Direct payments must be used to pay for arrangements to meet the needs specified in the Care Plan/Care and Support Plan.
- 14.2. Direct payments must be used to purchase services which are safe, legal, value for money and which adequately safeguard and promote the individual's welfare and wellbeing.
- 14.3 Direct payments may be subject to conditions imposed by KMBC and may be discontinued and/or recovered if KMBC has reason to believe that direct payments may have been misspent or accumulated without adequate and justifiable reason.

### **15. Direct payments cannot be used for:**

- 15.1 Direct payments cannot be used to purchase:
  - 15.1.1 Care services or support in managing direct payments provided by the adult's spouse / partner or a close family member (see Appendix 1 definitions) living in the same household as the adult. In exceptional circumstances KMBC can agree a direct payment in these circumstances.
  - 15.1.2 Any service directly provided by KMBC.

- 15.1.3 Services, equipment and / or minor adaptations which are the responsibility of other public bodies.
- 15.1.4 Long term residential or nursing care but can be used to pay for:
  - Short stays of up to 4 consecutive weeks in any 12 month period. In calculating the period of 4 weeks, a stay of less than 4 weeks is added to any succeeding stay if the two stays are separated by a period of less than 4 weeks but not otherwise;
  - Non-residential services, for example to trial independent living or to take part in daytime activities.
- 15.1.5 Any goods, services or support that cannot be shown to meet the individual's assessed needs or would put the individual at risk of abuse.
- 15.1.6 Any service or activity that is so expensive it cannot be justified in relation to an individual's overall resource allocation.
- 15.1.7 Primary medical services provided by General Practitioners as part of their primary medical services contractual terms and conditions or public health services.
- 15.1.8 Any type of service or activity that is illegal.
- 15.1.9 Any goods or services that can be deemed harmful to the health of the individual; this includes gambling, alcohol and tobacco products.
- 15.1.10 Payment of household bills, clothing, or any other costs that are not related to an individual's assessed needs.

15.2 Carer direct payments are to meet the carer's own assessed needs and cannot be used to purchase services for the service user.

15.3 An authorised person must not use direct payments to pay themselves to provide services to an adult without capacity except as expressly authorised in writing by KMBC.

## 16. Managing direct payments

16.1 Anyone who agrees to be responsible for managing direct payments must be capable of managing direct payments either independently or with help.

16.2 Adults with capacity can nominate a third party to assist them to manage direct payments in whatever way they require. The third party is known as the **nominated person** and is usually a family member or a friend.

- 16.3 Adults with capacity and an **authorised person** acting on behalf of a recipient who lacks capacity may purchase assistance, for example record keeping, payroll and other employment related services or a managed account, from a commissioned direct payment support service of their choice.
- 16.4 In some circumstances, for example where the direct payment recipient has a poor credit rating, a managed account may be necessary.
- 16.5 Irrespective of the level and type of assistance provided by a third party including a commissioned direct payment support service, adults with capacity to consent to direct payments remain responsible and accountable for how direct payments are used.

## **17. Direct payment recipients as employers/DBS**

- 17.1 Direct payments recipients may use direct payments to employ staff, or to pay an agency to provide services. The recipient must:
  - 17.1.1 Be advised that there are legal responsibilities involved in becoming an employer and maintaining suitable and compliant employment practices;
  - 17.1.2 Be urged to seek advice about employer legal responsibilities, including being responsible for all employment related costs, for example redundancy;
  - 17.1.3 Be urged to seek advice about compulsory employers liability insurance; and
  - 17.1.4 Be provided with a list of commissioned direct payment support service providers which can provide information, advice and support.
- 17.2 Direct payment recipients with capacity are not obliged to carry out DBS checks for people they employ through direct payments. However, KMBC strongly recommends that DBS checks are obtained for all personal assistants.
- 17.3 An authorised person must carry out DBS checking for verification that DBS checking has returned a satisfactory result for any person for whom they are securing a service through direct payments where the authorised person is:
  - 17.3.1 A body corporate or unincorporated body of persons or organisation;
  - 17.3.2 An individual who is **not** the adults spouse/partner, close family member (as defined in Appendix 1) or a friend of the adult directly involved in their care.
- 17.4 Staff employed to provide services arranged through direct payments to service users who are children must meet the screening requirements of KMBC's Children's Social Care service.

## **18. Calculation and payment of direct payments**

- 18.1 KMBC will determine the amount of the direct payments. The applicable legislation requires that the payment must be equivalent to KMBC's estimate of the reasonable cost of securing the provision of the service, subject to any contribution required to be paid by the recipient. [NB assessed contributions do not apply to direct payments made by Children and Family Services].
- 18.2 The value of the direct payment should be sufficient to enable the recipient lawfully to secure a service of the standard that KMBC considers is reasonable to meet the identified needs.
- 18.3 There is no limit on the minimum or maximum amount of the direct payment, either in the amount of care that it is intended to purchase or the value of the direct payment.
- 18.4 Direct payments must be made in accordance with the requirements of KMBC's financial policies and procedures.
- 18.5 Where a personal budget has been allocated, direct payments are paid net of any required contribution from the adult in need of care who must add their contribution, if any, to the direct payments account.
- 18.6 An initial or one off payment must be made, for example for agreed set up costs, from within the agreed amount. Ongoing payments are made in advance at four weekly intervals. All costs must be met within:
  - 18.6.1 Any agreed personal budget which includes any personal contribution required from the person receiving services;
  - 18.6.2 The amount agreed as sufficient to meet the cost of s.117MHA 83 aftercare services
- 18.7 Direct payments must be paid into a bank or building society account specifically set up for the purpose of receiving direct payments.
- 18.8 When direct payments are made into an account set up to manage other monies specific to personal assistance a separate bank account to this may not be necessary, if agreed by KMBC in writing.
- 18.9 Payments of small amount for one off purchases will not require a separate account.
- 18.10 Recipients have a right to choose if payments are to be delivered via a managed account.
- 18.11 KMBC may require that the direct payment is delivered via a managed account as a condition of receipt of the direct payment if:
  - 18.11.1 The recipient has previously had a direct payment terminated or refused;
  - 18.11.2 The recipient is deemed financially insecure e.g. they are subject to a debt management plan, have unresolved County Court Judgements or are the subject of investigation of financial abuse or fraud.

- 18.12 KMBC will make decisions in relation to the requirement for a managed account on a case by case basis.
- 18.13 Where a managed account is chosen by the recipient or imposed by KMBC, KMBC will provide some or all of the provider's charges up to an agreed amount.

## **19. Direct payments agreements**

- 19.1 Prior to the direct payment being made the respective direct payments agreement must be signed and a copy of the signed agreement provided to all signatories. There are three applicable direct payment agreements:
- 19.1.1 Standard agreement: signed by the adult, where the individual is receiving and managing the direct payment;
  - 19.1.2 Nominated person agreement: countersigned by the individual and the nominated person, where the nominated person is managing the direct payment.
  - 19.1.3 Authorised person agreement: signed by an authorised person managing direct payments for an adult without capacity.

## **20. Monitoring and review of direct payments**

- 20.1 KMBC will inform an individual about what records they must retain and what information they will be required to provide at each review before the direct payment agreement is entered into.
- 20.2 All direct payments will be reviewed within the first six months of being made (the Council aims to do this within the first six weeks). Review will be at twelve monthly intervals thereafter but can be more frequent depending on the circumstances.
- 20.3 Direct payment recipients and managed account providers will provide to KMBC promptly upon request a summary of all income received and expenditure incurred in relation to the administration of the direct payment account.
- 20.4 Direct payment recipients or managed account providers will provide copies of bank statements, if requested and keep all receipts to evidence where and how the direct payments have been spent and make them available to KMBC on a regular basis; all records relating to the direct payment must be kept for 6 years.
- 20.5 It is the responsibility of the assessing officer to ensure that recipients have an understanding of the minimum standard of record keeping and the requirements of the audit process.
- 20.6 Reviews will be carried out at any time when KMBC has reasonable cause to believe that:

- 20.6.1 There has been a change in mental capacity; or any of the conditions listed at paragraphs 7.1 (in respect of adults with capacity) or 7.5 in respect of adults who lack capacity), or 12.1 in relation to children and young people;
  - 20.6.2 Direct payments are not being used as intended; or
  - 20.6.3 The individual's safety and welfare have been compromised; or
  - 20.6.4 There has been any change in presenting needs which may adversely affect the effectiveness and intention of the support arrangements via the direct payment.
- 20.7 The review process will establish if direct payments are being used to meet needs as intended, conditions are met and public monies are being used effectively.
  - 20.8 Following review KMBC may reduce the amount of direct payments provided they are satisfied that the reduced amount is sufficient to secure agreed provision.
  - 20.9 It is reasonable for KMBC to ask recipients or their nominated person or authorised person to account for how they have spent their direct payment monies in achieving their Care Plan/Care and Support Plan outcomes.
  - 20.10 Recipients will have the opportunity to spend the personal budget allocated to meet their needs flexibly and in ways which reflect their own priorities for their care consistent with KMBC's policy on the provision of direct payments.
  - 20.11 Reviews must involve the adult, any nominated person, any carer the adult has, any authorised person, or any family member providing paid support (as specifically approved by KMBC) and any other person that the adult requests to be involved. Any person authorised under MCA 2005 (if different from the authorised person receiving and managing the direct payment) should be involved also.

## **21. Discontinuing direct payments / Requiring repayments**

- 21.1 Any person receiving a direct payment, either for themselves or on behalf of another person, may decide at any time that they no longer wish to receive direct payments on giving four weeks written notice to KMBC. KMBC may agree to vary this notice period depending upon the individual's circumstances.
- 21.2 Written notice will be given to a recipient where direct payments are discontinued, unless there are exceptional circumstances requiring that payments are discontinued without notice.
- 21.3 KMBC will cease to make a direct payment if it is satisfied that:
  - 21.3.1 The individual is no longer eligible for or no longer requires the services for which the direct payments are made;



- 21.3.2 The person becomes excluded from receiving direct payments because they have been placed under a condition or requirement by the Courts in relation to drug and/or alcohol dependencies. (See Appendix 2).
- 21.3.3 Any of the conditions set out in paragraphs 7.1 and 7.5 (adults) or 12.1 (children and young people) are no longer met.
- 21.3.4 There is evidence that direct payments are not safeguarding or promoting the individual's welfare.
- 21.4 KMBC may suspend or terminate direct payments if:
  - 21.4.1 The adult does not require assistance because their condition has improved and/or they do not need the services that direct payments were intended to secure.
  - 21.4.2 Any condition attached by KMBC is unmet or KMBC has reasonable cause to believe that direct payments have been used for purposes other than to meet the needs as specified in the Care Plan/Care and Support Plan.
  - 21.4.3 The individual fails to pay any assessed financial contribution into the direct payments account.
  - 21.4.4 The individual's circumstances are such that on assessment or review of the individual's circumstances it is appropriate that direct payments should cease.
  - 21.4.5 Any or all of the direct payments have not been used to secure services to meet assessed needs.
  - 21.4.6 Any of the terms or conditions of the direct payment agreement have not been met by the recipient or their nominated person or authorised person.
  - 21.4.7 It is found after investigation by KMBC that there is evidence of misuse or fraudulent use of the direct payment.
- 21.5 KMBC will require either full or partial repayment of direct payments made if any condition attached by KMBC is unmet or KMBC has reason to believe that direct payments have been used for purposes other than to meet needs as specified in the Care Plan/Care and Support Plan.
- 21.6 KMBC may require repayment of any unspent direct payments if it can be demonstrated that they are not required to meet the individual's needs as set out in the Care Plan/Care and Support Plan.
- 21.7 KMBC will require repayment of excess funds accumulated in the dedicated direct payments bank account where there is no reasonable explanation for the surplus funds.
- 21.8 Before ceasing payment and terminating a direct payment agreement, KMBC will work with the recipient or their nominated person or authorised person to find a resolution to the issues wherever possible.

- 21.9 Direct payments do not form part of an estate in the event that an individual dies whilst receiving them. Direct payments at all times belong to KMBC and remain public funds.

## **22. Complaints**

- 22.1 Direct payment recipients will be provided with information about how to access KMBC's Complaints Procedures.
- 22.2 Any person may use KMBC's Complaints Procedures if they are dissatisfied with KMBC's decision in relation to a direct payment request or the support they receive in relation to the management of their direct payment. Any individual in receipt of a direct payment has the same rights of access to KMBC's Complaints Procedures as those individuals whose support is either provided directly or commissioned by KMBC.

## **23. Implementation**

- 23.1 This Policy will be implemented on 1 August 2018.
- 23.2 The Policy will be communicated to KMBC's staff and relevant partners through approved processes.
- 23.3 The Policy will be published on KMBC's intranet and external website and made known where relevant to KMBC's partner organisations and commissioned providers through mutually agreed processes.

## **24. Audit and monitoring of compliance with this Policy**

- 24.1 Compliance with this Policy will be monitored through:
- 24.1.1 Service Manager, Team Manager and Senior Practitioner oversight of assessment and care and support planning processes;
  - 24.1.2 Locality Funding Panel processes;
  - 24.1.3 Care supervision
  - 24.1.4 Internal audit procedures

## **25. Review**

This Policy will be reviewed one year from the date of implementation or sooner if advised.

## Appendix 1 - Definitions

<b>Adult with capacity</b>	In the context of this Policy, an adult who has the mental capacity to make decisions about direct payments.
<b>Adult without capacity</b>	People are always assumed to have capacity until there is evidence to the contrary. In the context of this Policy, where there is any doubt about an adult's capacity to make decisions about direct payments mental capacity will be assessed in accordance with s.3 MCA 2005 and KMBC's procedures. An adult will only be determined to lack capacity when it has been established through assessment that the test under s.3 MCA 2005 is satisfied.
<b>Assessment – of needs</b>	An assessment of an individual's needs for social care and support or s117 MHA 83 after care services to enable them to live as independently as possible.
<b>Assessment - financial</b>  <b>Care Plan/ Care and Support Plan</b>	<p>An assessment of an individual's financial circumstances to determine whether or not they must contribute towards the cost of services required to meet eligible needs. No financial assessment is required for s117 MHA 83 after care services as these must be provided free of charge.</p> <p>The plan which summarises how a person's needs will be met and which includes the details of needs to be met from direct payments. This may be either a care plan (children's social care) or a care and support plan for an adult with eligible needs for care and support or a support plan in the case of a carer.</p>
<b>Carer</b>	Someone of any age who provides unpaid support to family or friends who could not manage without this help.
<b>Close family member</b>	Someone who lives in the same household as the adult who is the adult's: <ul style="list-style-type: none"> <li>• Parent or parent-in-law</li> <li>• Son or daughter</li> <li>• Son-in-law/daughter-in-law</li> <li>• Stepson or stepdaughter</li> <li>• Brother or sister</li> <li>• Aunt or uncle</li> <li>• Grandparent, or</li> <li>• The spouse/partner of any of the people listed and living in the same household as the adult.</li> </ul>
<b>DBS checking</b>	Screening through Disclosure and Barring Services. This checks criminal history and identifies people barred from working with children and vulnerable adults.
<b>Direct payments</b>	Payment of the KMBC's contribution towards a personal budget direct to a dedicated bank account, so that the person or someone authorised to act on their behalf can arrange support services instead of having them arranged by KMBC. Direct payments may also be provided in most instances to arrange s117 after care services.

<b>Direct payments agreement</b>	The written agreement which sets out the terms and conditions applicable to direct payments.
<b>Duty to make direct payments</b>	Where KMBC has a legal obligation to make direct payments to eligible people because all conditions are met.
<b>Managed account</b>	Managed accounts are used in circumstances, for example where an adult / authorised person has a poor credit rating or requires additional support in the management of the direct payment. Direct payments are made to a commissioned service which manages the funds on their behalf. The adult /authorised person remains responsible for how direct payments are used. For example, if direct payments are used to employ staff, the adult /authorised person is the employer, even though the commissioned service may carry out employment activities on a day to day basis. Adults who are able to provide consent may also elect to use a managed account.
<b>Minor adaptation</b>	An adaptation is generally defined as minor when the total cost including supply and fitting is less than £1000.
<b>Nominated person</b>	A person nominated by an adult with capacity to assist with day to day management of services and / or management of direct payment funds. An adult with capacity at all times remains responsible and accountable for how direct payments are used. A further progression of the role of the 'Nominated Person' is a 'Suitable Person'. A Suitable Person may be either an individual or an agency able, for example, to act as an employer of PA(s) in order that people who might previously have been excluded from receiving a Direct Payment are supported to do so. The Suitable Person is responsible for all of the responsibilities and duties which a willing DP recipient with capacity would be required to bear.
<b>Personal budget</b>	The amount of money allocated to fund the care and support required. The personal budget is means tested and therefore the adult may be required to make a financial contribution towards the total amount of the personal budget.
<b>Personalised care and support</b>	Tailoring care and support to the needs, wishes and preferences as far as this is possible so that the person concerned has as much choice and control over how their needs are met.
<b>Reassessment</b>	A reassessment of needs for social care and / or support.
<b>Review</b>	Monitoring and review of direct payment arrangements to ensure that they continue to meet the needs. Usually carried out concurrently with a review of the person's Care Plan/Care and Support Plan.
<b>Service User</b>	A person assessed by KMBC as eligible to receive care and support services.
<b>Section117 after care services</b>	A wide range of services necessary to meet a need arising from a person's mental disorder when a person ceases to be detained under the MHA 83.

## Appendix 2 – Persons excluded from direct payments

Direct payments may not be used to meet the needs of people who are:

- (a) **subject to a drug rehabilitation requirement**, as defined by section 2009 (drug rehabilitation requirement) of the Criminal Justice Act 2003 (“the 2003 Act”), specified in a community order (as defined by section 177 (community orders) of that Act, or a suspended sentence order (as defined by section 189(c) of that Act);
- (b) **subject to an alcohol treatment requirement**, as defined by section 212 of the Criminal Justice Act 2003, specified in a community order (as defined by section 177 of that Act), or a suspended sentence order (as defined by section 189 of that Act);
- (c) **released from prison on licence—**
  - (i) under Chapter 6 of Part 12 (sentencing: release, licenses and recall) of the 2003 Act or Chapter 2 of Part 2 (effect of custodial sentences: life sentences) of the Crime (Sentences) Act 1997 (“the 1997 Act”), subject to a non-standard licence **condition requiring the offender to undertake offending behaviour work to address drug or alcohol related behaviour**; or
  - (ii) **subject to a drug testing requirement under** section 64 (as amended by the Offender Rehabilitation Act 2014) (release on licence etc: drug testing) **or a drug appointment requirement** under section 64A (release on licence etc: drug appointment) of the Criminal Justice and Courts Services Act 2000;
- (d) required to comply with a **drug testing or a drug appointment requirement** specified in a notice given under section 256AA (supervision after end of sentence of prisoners serving less than 2 years) of the 2003 Act;
- (e) **required to submit to treatment for their drug or alcohol dependency** by virtue of a community rehabilitation order within the meaning of section 41 of the Powers of Criminal Courts (Sentencing) Act 2000 or a community punishment and rehabilitation order within the meaning of section 51 of that Act;
- (f) **subject to a drug treatment and testing order** imposed under section 52 of the Powers of Criminal Courts (Sentencing) Act 2000;
- (g) **required to submit to treatment for their drug or alcohol dependency** by virtue of a requirement of a community payback or probation order within the meaning of sections 227 to 230 of the Criminal Procedure (Scotland) Act 1995 or **subject to a drug treatment and testing order** within the meaning of section 234B of that Act; or
- (h) released on licence under section 22 or section 26 of the Prisons (Scotland) Act 1989 (release on licence etc) or under section 1 (release of short-term, long-term and life prisoners) or 1AA (release of certain sexual offenders) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 and subject to a condition that they **submit to treatment for their drug or alcohol dependency**.

## **Appendix 3 – Personal Health Budgets (PHB)**

KMBC operates a Pooled Budget arrangement with Knowsley CCG incorporating Health and Local Authority funding streams.

This includes funding for Personal Health Budgets. Separate guidance for Personal Health Budgets is in force and is laid out in the document:

**“Guidance on Direct Payments for Healthcare – understanding the regulations”  
dated 20 March 2014.**

The Council and the CCG will co-operate on PHB and Direct Payments in order to ensure that people’s experience of Health and Social Care services is not subject to unnecessary delays and bureaucratic barriers.