

# PAYMENT CARDS

## as a means of managing a personal budget

### THE PURPOSE OF THIS PAPER

This paper follows research undertaken by In Control and the Independent Living Strategy Group into the use of payment cards in social care. Recommendations in the paper are shaped by this research: they are intended to support the statutory guidance in relation to what a personal budget is and to expand on what the guidance says about the use of such cards. It is important to note that the report identified significant variation in the way payment cards were being used across the country, many examples of good and poor practice were identified. This paper and accompanying recommendations are designed to support best practice and ensure greater consistency in the use of payment cards nationally.

It is hoped that local authorities will use the recommendations in this paper to review their current practice or inform decisions about adopting a new card scheme. The recommendations are also intended to allow people who are being offered a personal budget to assess the card scheme their local authority is offering. If followed, they also provide card providers with guidance that ensures

payment cards develop into a positive technology that supports personalisation and that balances the need for probity with the right of individual privacy.

### WHAT IS A PERSONAL BUDGET?

A personal budget is intended to enable people to have choice and control over how their care needs are met. The Care Act statutory guidance definition of a personal budget stresses the significance of choice and control not only over how the budget is used but importantly over how the budget is managed. It says a personal budget means:<sup>1</sup>

*...being able to choose from a range of options for how the money is managed, including direct payments, the local authority managing the budget and a provider or third party managing the budget on the individual's behalf (an individual service fund), or a combination of these approaches. 11.3*

<sup>1</sup> See Care Act 2014 statutory guidance

## WHAT ARE PAYMENT CARDS?

Payment cards are an account held by the local authority that allow people with personal budgets to manage their personal budget. Payment card accounts are similar to current accounts but are set up by a local authority rather than the disabled person themselves, specifically for the purpose of managing a personal budget. The card acts as a debit card for the person's allocated personal budget. Payment card options have been set up for a number of reasons, not least because they provide direct accounting of payments made for care and support by individuals. This helps councils in relation to the inexorable drive to reduce 'back office' costs, as they can monitor the accounts online in a way they cannot with a personal bank account. Some individuals also prefer them as they save time in accounting for expenditure.

## HOW DO THEY DIFFER FROM TRADITIONAL DIRECT PAYMENTS?

Payment cards are increasingly being adopted by local authorities as a means of providing a supported personal budget account. Often local authorities are offering payment cards as the default choice for self-managed personal budget accounts, but good practice suggest that local authorities should allow people to hold their direct payments in an account set up by individuals themselves. Arrangements for payment cards typically mean they are different from, and not equivalent to, direct payments paid into an individual's own bank account. They differ in a number of important ways.

Direct payment to an individual's own bank account	Payment card account
<b>Responsibility and accountability for money</b>	
Money is transferred to the individual, and is under their sole and full control. The individual is solely responsible and accountable for its use, and usually provides monitoring information.	Money remains with the local authority. Control is shared between the person and the authority. There is usually no requirement for the recipient to provide monthly monitoring information, as monitoring of the account is undertaken remotely online by the local authority.
<b>Privacy and monitoring of financial affairs</b>	
Access to information about transactions on the bank account is under the full control of the person, and disclosed by them as part of an agreed audit process.	Live access to transaction information is available to the local authority.
<b>Retrospective transfer of funds</b>	
Further payments into the account can be stopped by the local authority. Local authorities will usually claw back any unused budget allocation annually	The local authority can without prior notice, and for a range of reasons, unilaterally claw back money previously allocated to the account.

Traditional direct payment to an individual's own bank account	Payment card account
<b>Control of funds</b>	
<p>A separate review process is in place to ensure money is spent on outcomes agreed in the care plan. There is no direct control on the account or money in it by the local authority once it has been paid into the account. The person is entrusted to abide by the agreed support plan.</p>	<p>The local authority may place restrictions on the use of money on the account to ensure outcomes are as agreed in the care plan. They can and limit spend to nominated vendors.</p>
<b>Choice of financial provider</b>	
<p>The individual is able to choose the institution with whom they bank. Individuals can make informed decisions about functionality and accessibility of the account, its services and any associated charges.</p>	<p>The authority selects the financial provider, and functionality of the account. This could easily result in a 'one size fits all approach to accessibility'</p>

The statutory guidance recognises the significant difference between direct payments to an individual's own bank account and direct payment in the form of a payment card account. Guidance is categorical about the importance of choice of the individual.

*Many local authorities have been developing the use of pre-paid cards as a mechanism to allow direct payments without the need for a separate bank account, or to ease the financial management of the payment. Whilst the use of such cards can be a useful step from managed services to direct payments, they should not be provided as the only option to take a direct payment. The offer of a 'traditional' direct payment paid into a bank account should always be available if this is what the person requests and this is appropriate to meet needs. Consideration should be given to the benefit gained from this arrangement as opposed to receiving the payment via a pre-paid card. 12.58*

*It is also important that where a pre-paid card system is used, the person is still free to exercise choice and control. For example, there should not be blanket restrictions on cash withdrawals from pre-paid cards which could limit choice and control. The card must not be linked solely to an online market-place that only contains selected providers in which to choose from. Local authorities should therefore give consideration to how they develop card systems that encourage flexibility and innovation, and consider consulting care and support user groups on any proposed changes to direct payment processes. 12.59*

## POTENTIAL BENEFITS

The use of payment cards may allow individuals who cannot or who choose not to manage a direct payment into their own bank account, some of the benefits of a direct payment. They potentially increase the control of people over council managed budgets and could facilitate individual service funds where previously peoples' support had been part of block contracts.

The disabled person is not required to keep and submit expenditure details.

## POTENTIAL CONCERNS

There is concern from disabled people that payment cards may become the only means of receiving direct payments, thus countering the intent of the Care Act. Poorly implemented, there is a significant risk that payment cards could disrupt rather than support the intention of the Care Act. Rather than empowering citizens they could act to shift the balance of power away from the individual and towards the state.

In particular, if they are overly restrictive they could impact on people in the following areas:

- **Managing the mechanisms of support**

When offered as a default or as the only option for personal budgets or direct payments they fall short of the statutory guidance describing what a personal budget is.

- **Choice and control over support**

If used to restrict an individual's ability to freely conduct transactions, such as the use of restricted vendors, they provide a mechanism for reduction rather than promotion of individual choice and control.

- **Privacy and data management**

The high level of personal data collected on the accounts means local authorities are now routinely collecting large amounts of personal data on the activities of local people where previously they had not, raising profound data management challenges.

## THE WORK AND THE FINDINGS OF THE INDEPENDENT LIVING STRATEGY GROUP

In 2017 the Independent Living Strategy Group (ILSG) undertook research and published a report regarding the use of payment cards in adult social care.

The report published the findings of a freedom of information request issued to all 152 local authorities with social services responsibilities in England.

Key findings from this work showed that at the time the report was published:

- 69 local authorities used payment cards and many others were introducing or considering introducing them
- Over a million pounds a year was spent on fees and costs to operate the cards
- An estimated £1.5 million had been spent by 71 local authorities introducing the schemes
- Two card providers dominate the market, providing services to 78% of all local authorities using payment cards
- Local authorities could view transactions disabled people make on the cards by accessing the client's account online
- Local authorities may suspend the use of a payment card if they do not approve of how disabled people were using the cards
- Some local authorities were imposing the cards on recipients of direct payments contrary to

statutory guidance. In three areas, practically all personal budgets were managed using a payment card

- There were, at the time of the report, at least 32,572 people using payment cards to manage their personal budget, 15% of all personal budgets in the areas using them. This figure is set to increase rapidly, as many authorities are just introducing the schemes and some are making payment cards their default offer.
- Local authorities commonly tightly control the use of money on the cards. In particular, local authorities place blanket restrictions on cardholders using the payment cards to withdraw cash. The Department of Health issued statutory guidance which says local authorities should not place restrictions on cash withdrawals from payment cards. Despite this, a third of local authorities did not permit cash withdrawals.

## RECOMMENDATIONS

These recommendations flow from the research undertaken by the ILSG and are shaped by the statutory guidance in relation to what a personal budget actually is and what the guidance says about the use of such cards. It is important to note that the report identified significant variation in the way payment cards were being used across the country, many examples of good and poor practice were identified. These recommendations are designed to support best practice and ensure greater consistency in the use of payment cards.

They are designed to allow local authorities to review their current practice or inform decisions about adopting a new card scheme. They are also intended to allow people who are being offered a personal budget to assess the card scheme their local authority is offering. If followed they also provide card providers with guidance that ensures payment cards develop into a positive technology

that supports personalisation that balances the need for probity with the right of individual privacy.

Payment cards should be used as a tool to aid financial transaction between equal parties. Their use should be characterised by partnership and trust.

Local authorities should put in place support arrangements to allow individuals and families to manage their resources as effectively and safely as possible, protecting them from scams, and ensuring that the default assumption begins with an individual taking control of funds.

Misappropriation of funds by people in receipt of direct payments is remarkably uncommon and should be seen as such. The Cabinet Office National Fraud Initiative report 2018 reported £500K for 2018 for the whole of England, this is in a context of an expenditure on adult social care by local authorities in the region of £17.5 billion.

Local authorities are charged with ensuring care funds are used appropriately to meet need, and are required to demonstrate through independent audit. Doing so does not require schemes to be structured in ways that are dominated by the assumption that care funds allocated to personal budgets is being placed at undue risk. Payment card schemes should demonstrate accountability and be fit for audit but not involve intrusive monitoring, unreasonable restrictions and lack of redress.

The operation and use of payment card accounts should be under the control of the budget holder. They should offer as many of the benefits of a traditional direct payment into a personal bank account as possible. The best way of achieving this is to mimic the degree of control and privacy offered by a traditional direct payment into a person's bank account.

1. Payment cards should be an active choice made by the person from a range of meaningful options, including a traditional direct payment paid into an account managed by the person or their representative.
  2. In line with statutory guidance, it is important that where a payment card system is used, the person is still free to exercise full choice and control to meet agreed outcomes in the care plan. Payment card systems should seek to enable people to meet their needs in ways they choose. There should be no blanket restrictions on cash withdrawals from payment cards. Due diligence is necessary. Therefore, accounting for cash withdrawals should be subject to the same returns and receipts policies that direct payments are subject to.
  3. There should be no default restrictions on the places in which and services for which the card can be used.
  4. Any restrictions on the use of the care funds associated with payment cards should be individually placed and be proportionate to specific, identified, documented and assessed risk.
  5. Prior to placing individual restrictions on a person's card, it should be considered whether this represents a deprivation of liberty and as such whether due process has been followed.
  6. The information held on the accounts is sensitive personal data. The process for accessing and monitoring of accounts must be open and transparent. Access and monitoring of accounts cannot be unfettered and must be undertaken in a way that respects the individual's dignity. Access should be restricted to named monitoring officers of the council, declared to the personal budget holder. When access is required, the budget holder should grant the monitoring officer access to the account, (unless serious misuse of funds is detected and brought to the attention of the account holder first). Monitoring should be limited and proportionate with the budget holder being notified in advance each time access is to be made to the account. A record should be placed on the account indicating they have been accessed.
  7. Full notice should be given to cardholders setting out what information is held on the account, who has access to it and how long it will be stored for. The cardholder should also be told in writing and in an accessible format under what circumstances and after what process any restrictions might be placed upon the use of the card.
  8. Suspension or closure of accounts and recouping of funds. Changes to the money available in the account are akin to changing a support plan and should thus only be made following appropriate review or reassessment process that the personal budget holder has been central to. Where unused or non-required funds are to be recovered, this should be in line with charging and eligibility rules. Local authorities should seek to ensure such changes are fully understood by the personal budget holder (and their family carers where appropriate), through involvement in the process.
- In the event of the death of the budget holder local authorities will need to close the account and seek to recoup any uncommitted surplus money. They should first communicate their intention to do so to the next of kin or other appropriate person dealing with the estate of the deceased budget holder, so a final account position can be agreed. Unilateral suspension or closure of accounts should happen only in the most exceptional of circumstances

and in order to prevent a known fraudulent misappropriation of funds.

9. In circumstances where the local authority wishes to suspend or place restrictions on the card, they should follow published written procedures that detail the investigation process, timescales and the arrangements in place for sharing findings with the subject of the investigation. People subject to investigation should be provided with a copy along with the procedures followed, in an accessible format. They should also be informed of the arrangements for considering and acting upon findings and the mechanisms for hearing an appeal.
10. Each year the local authority should publish a statement detailing the numbers of people they provide personal budgets to, the proportion who use payment cards, and the fees incurred.

### **Think Local Act Personal**

Think Local Act Personal (TLAP) is a national partnership of over 50 organisations committed to supporting the continued implementation of personalisation and community-based health, care and support. We offer information, web tools and forums to support social care policy and practice. All our events are free to attend and our networks and forums are open to anyone to join.

### **The Independent Living Strategy Group**

The Independent Living Strategy Group is a network of disabled people's organisations and their allies. The group is chaired by Baroness Jane Campbell and includes disabled people who were part of the independent living movement from the 1970s, as well as younger activists, other individuals and organisations concerned with the future of independent living.

### **In Control**

In Control is a national charity working for an inclusive society. It works directly with people who need support, and with their families to take control of their lives. It influences and improves the delivery of self-directed support, and measures the impact of personal budgets.

### **Published by Think Local Act Personal June 2019**

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