
Swindon Borough Council Direct Payments Policy April 2015

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1. Introduction

The Care Act 2014 Sections 31, 32 and 33 and the accompanying regulations set out the legal framework for Local Authorities to provide adults with independence, choice and control over how to meet their care and support needs through the use of direct payments. This policy sets out Swindon Borough Council's intentions. It is a combination of statutory requirements of the Care Act and local choices based around the needs of the service and responses to national consultation. The policy has been updated to reflect changing circumstances and business needs, and in particular the requirements of the Care Act 2014. This updated policy comes into effect from 1st April 2015 and replaces all previous policies relating to adults.

Recognising that inequality, disadvantage and discrimination exist in society, in redrafting this policy Swindon Borough Council accepts their responsibility to ensure that all vulnerable adults regardless of their ethnic origin, religion, language, age, sexuality, gender or disability have equal opportunity to access services and information and that the elements of this policy will be applied equitably.

Throughout this policy, the term direct payment is used to mean a monetary payment made to adults who request it in order to meet some or all of their eligible care and support needs. Except where specifically stated, the policy applies equally to both adults with care and support needs and to adult carers'.

This policy should be used in conjunction with the Council's Fairer Charging Policy and www.mycaremysupport.co.uk, which provides a wide range of information in relation to care and sources of support and advice.

2. Implications of the Care Act for Direct Payments

Direct payments, along with personalised care planning, which the Care Act makes mandatory, provide the platform to deliver a care and support system which places adult at the heart of the care and support planning process. They have been in use in adult care and support since the mid 1990's. The Care Act does not make major changes, but sets existing good practice in statute.

The Act requires Local Authorities to respond to requests from adults for direct payments to meet the costs of their eligible care and support /support needs. Subject to specified conditions being met and the personal budget indicating that the Local Authority must fund services, the Local Authority must make the payment. Requests may be made by adults with capacity or by an authorised person where an adult lacks capacity.

Direct payments are designed to be used flexibly and innovatively, so the Act places minimal restrictions on their use as long as the payment is being used to meet an eligible need. These restrictions include a requirement that payments cannot be used to pay for long term care in a care home or for non-chargeable services such as reablement. Schedule One of the regulations sets out that direct payments cannot be made to people subject to a court order for a drug or alcohol treatment programme or similar schemes.

Direct payments cannot be used to pay for care from a close family members living in the same household unless the Local Authority deems it necessary. However, subject to consent from the Local Authority, the Act permits the use of direct payments to pay close family members living in the same household to administer or manage the direct payments.

Although the route to direct payments is through a request, the Local Authority and their representatives are expected to offer direct payments as one of the potential options to receive personalised care and support. Local Authorities should provide clear, timely and accessible information about direct payments and how they can be used.

Local Authorities have a duty to monitor and review direct payments to ensure that they are being used appropriately in order to meet the needs set out in the care and support/ support plan. The systems of monitoring and review must be proportionate, not impose unnecessary burdens of reporting and kept to the minimum necessary to enable the Authority to fulfil its statutory requirements.

3. Making Direct Payments Available

Swindon Borough Council and its representatives will ensure that people are aware of their right to request direct payments and are supported to use and manage the payment.

The availability of direct payments will be included on www.mycaremysupport.co.uk. This will include:

- What direct payments are

- How to request a direct payment including the use of nominated and authorised persons to manage the payment
- Explanation of the direct payment agreement and how the Council will monitor the use of the direct payment
- The responsibilities involved in managing a direct payment and being an employer
- Making arrangements with social care providers
- Signposting to the support service for direct payment holders commissioned by the Council (Currently Developing Health and Independence (DHI)).
- Examples on how direct payments can be used

By providing clear information the Council will ensure that adults are fully aware of what direct payments are and can make informed choices about whether they would like to use them.

In addition to this general information, the Council will ensure that during the care and support planning process, people are made aware of which needs could be met by direct payments. This will start during assessment and will be revisited as part of the care and support planning and support planning process.

Swindon Borough Council recognises that direct payments are not the only way to receive personalised care and support, but are an option to be explored and used if the person wishes. Other options, such as individual service funds, where care and support are arranged by a third party, and directly managed services will also be offered, as will the option to have combinations of different types of service. Our key principle is to support the adult to make the choice which best fits their aspirations and needs and will make the maximum contribution to their wellbeing.

4. Consideration of the Request

The steps Swindon Borough Council will follow after a request for a direct payment will depend on whether the person has capacity to make a decision. Capacity will normally have been established as part of the assessment process (See the Council's Assessment and Eligibility Policy for more details)

i. Adults with Capacity

If the personal budget identifies that Swindon Borough Council must make a payment towards the cost of meeting an adult's care and support/ support needs and the adult requests that the Local Authority meets some or all of the needs by making direct payments either to them or their nominee, then the Council will (subject to regulations and the four conditions below) make the payments.

The Care Act provides a power to enable direct payments to be made to the adult or to a person they have nominated to act on their behalf.

If the Council is satisfied that the person has capacity to make a request for direct payments to cover some or all of their care and support costs, it will consider each of the following four conditions as set out in Section 31 of the Care Act. A direct payment can only be made if all four conditions are met in full.

The adult has capacity to make the request and if there is a nominated person, the nominated person agrees to receive the payments



The regulations do not prohibit the use of direct payments



The Council is satisfied that the adult or nominated person is capable of managing direct payments either by themselves or with support from DHI (See Section 3) or their personal support networks.



The Council is satisfied that making direct payments is an appropriate way to meet the individual's Care and Support needs

When a request for direct payments is made, Swindon Borough Council will work with the adult making the request to establish whether they will receive the payments or whether they are nominating someone to receive the payments on their behalf. If a person has been nominated, then with the adult's consent, the nominee will be involved in the appropriate stages of the planning process. If the adult does not request this, the Council will suggest they consider it. During the process, the adult and/ or their nominated person will be given information regarding the Council's direct payment processes, as well as information and advice on using and managing the direct payment, so that they understand their legal obligations. In the case of a nominated person this will also include emphasising their role is to act in the best interest of the person requiring care and support.

Swindon Borough Council will use the discussions during the care and support/support planning process to establish that the four conditions above are met. After considering the suitability of the person requesting the direct payment against the conditions set out in the Care Act, the Council will make a determination about whether to provide a direct payment.

The Council will consider whether the direct payment is an appropriate way to meet the needs. Direct payments may be used to pay for services which are obligatory, for example service provided under the mental health Act unless regulations specifically prohibit their use e.g. drug or alcohol treatment. Details of circumstances where regulations preclude the use of direct payments are included in Appendix B.

The Council will establish whether the adult or their nominee is able to manage the direct payment. As part of this process we will explain the support available through DHI and ensure that the adult or their nominee is clear about how to access this support. If it is felt to be appropriate, the care manager may contact DHI directly.

If the Council agrees to the request for a direct payment, the decision will be recorded in the care and support / support plan, together with details of which eligible needs will be met by direct payment. If the request is refused, the person making the request will be provided with written reasons to explain that decision and be informed about how to appeal against the decision. The Council will explain which of the conditions have not been met, and what the person should do in the future to obtain a positive decision.

Consideration of the request will be concluded in as timely a manner as possible. The Council would aim to agree requests and confirm the amount of funding within four weeks of the request being made, and complete the process of setting up the direct payment within a further four weeks.

When the request has been declined, Swindon Borough Council will continue the care planning process so that it can seek to agree with the adult how best to meet the needs without the use of direct payments (For more details see Swindon Borough Council's Care and Support Policy).

ii. Adults lacking Capacity

In cases where the person in need of care and support has been assessed as lacking capacity to request a direct payment an authorised person can request a direct payment on the person's behalf. In this case Swindon Borough Council needs to be satisfied that the authorised person meets the five conditions set out in Section 32 of the Care Act. If all five conditions are met and subject to compliance with the regulations, the Council will make the payment.

Swindon Borough Council will ensure that the person is authorised in terms of direct payments. This would mean that either:

- They are authorised under the Mental Capacity Act 2005 to make decisions about the adult's needs for care and support **or**
- They are authorised as being suitable to receive direct payments by someone who is authorised as above **or**
- If neither of the above apply but the Council considers that the person is suitable to receive direct payments

The Council will then check that the authorised person meets the following five conditions

Although the authorised person is not authorised under the Mental Capacity Act 2005 to make decisions about the adult's needs for care and support, there is at least one person who is so authorised and they support the authorised person's request

AND

The regulations do not prohibit the use of direct payments

AND

The Council is satisfied that the authorised person will act in the adult's best interest using in arranging the provision of care and support for them and using the direct payments to pay for it.

AND

The Council is satisfied that the authorised person is capable of managing direct payments either by themselves or with whatever support the LA thinks the authorised person will be able to access.

AND

The Council is satisfied that making direct payments is an appropriate way to meet the needs

As part of assessing whether these five conditions are met, Swindon Borough Council will

- a. So far as it is reasonably practicable and appropriate consult and take into account the views of
 - I. Anyone named by the adult as someone to be consulted on the matter of whether direct payments should be made to the authorised person
 - II. Anyone engaged in caring for the adult or interested in the adult's welfare
 - III. Anyone who is authorised under the Mental Capacity Act 2005 to make decisions about the adult's needs for care support
- b. So far as it is reasonably ascertainable, consider-
 - I. The adult's past and present wishes and feelings and in particular any relevant written statement made by the adult when the adult had capacity to request Swindon Borough Council to meet his /her needs by making direct payments

- II. The beliefs and values that would be likely to influence the adult's decision if the adult had such capacity and
 - III. Other relevant factors that the adult would be likely to consider if he/she were able to do so and
- c. Obtain an enhanced criminal record certificate issued under Section 113B of the Police Act 1997 –
- I. In respect of the authorised person unless he or she is an individual who is neither a close family member or a friend who is acting as a carer
 - II. For bodies corporate or unincorporated a check on the individual who will have overall responsibility for the day to day management of the payments on the body's behalf.

iii. Timing of Requests

It is envisaged that most requests for direct payments will occur during the planning stage; however Swindon Borough Council will consider requests for direct payments made at any time. In all cases the Council will assess the request on the same basis as a request made during care and support planning. It may be practical to consider the request at the same time as a review of the care and support plan. In these cases the review will be brought forward so as not to delay the consideration of the request.

iv. Conditions of Making Direct Payments

Swindon Borough Council will set conditions relating to direct payments. These conditions will be notified in advance and set out in the Council's Direct Payment Agreement.

The conditions will require that the adult or their authorised person

- Sets up a dedicated bank account to receive the payment
- Pays an assessed contribution to care and support cost into the above account
- Uses the direct payment as agreed in the care and support plan in order to meet needs, achieve the outcomes of the plan and improve wellbeing
- Makes contingency arrangements which can be used if the usual care / support arrangements break down
- Notifies the Council of any changes of circumstances or any change in how the payments will be used
- Uses the payment legally and appropriately
- Keeps financial records
- Acts as a responsible employer, complying with all relevant legislation
- Provides information to the Council for the monitoring and review purposes.

At its discretion, the Council may require that care and support is not provided by a particular organisation or individual if the Council deems that organisation or individual is not able or suitable to provide adequate care.

The Council will require repayment of all or part of the direct payment if the conditions are not met.

v. Using the Direct Payment

The direct payment is designed to be used flexibly and innovatively and thus Swindon Borough Council will place no unreasonable restriction on the use of the payment as long as it is being used to meet eligible care and support needs, and what is being proposed is legal and does not bring the Council into disrepute.

vi. Payments to Family Members

In accordance with the provisions of the Care Act, Swindon Borough Council will not permit the use of direct payments to pay for care from a close family member who lives in the same household except where the Council deems this to be necessary.

However, in accordance with the Act, Swindon Borough Council will consider direct payments being used to pay a close family member to provide administrative and management support in order to support the recipient of the direct payment to comply with their legal obligations or to monitor the receipt and expenditure of the direct payment. (A list of what constitutes a close family member is included at Appendix A.)

Swindon Borough Council will require that consent is obtained from the Council before a direct payment is used to pay a close family member to provide administrative and management support.

Before agreeing that a direct payment can be used to pay a close family member to provide administrative and management support, the Council will need to be satisfied that it is necessary to make a payment to provide this service and that it will only be used for administration and management of the direct payment. This payment is not intended as an income supplement. Consideration will be given to the level of the payment, the complexity of the spend and the likely time needed to administer and manager the payment.

The amount to be paid for administration and management of the direct payment will be decided and agreed with the person requiring care and support, the family member, Swindon Borough Council and any advocate. Swindon Borough Council will endeavour to ensure that all parties agree. The decision will be recorded in the care plan, including the amount of the payments, their frequency and the activities that are covered. The sum being paid will be taken into account in setting the personal budget.

Swindon Borough Council will ensure that there is an agreement in place between all parties about what steps to take in case of a dispute about management of a payment by a family member.

Swindon Borough Council will not allow payments to a family member if it has reasonable grounds to believe that there is a conflict of interest or the person is not suitable. In case of any dispute arising from use of the payment, Swindon Borough Council will refer to the above agreement to effect a resolution.

vii. Short term Care in a Care Home

Swindon Borough Council wishes to use direct payments to promote independence. For this reason and in accordance with the Care Act, payments cannot be used to pay for care in a care home except for short periods of no more than 4 consecutive weeks in any 12 month period. The four weeks do not need to be taken together as long as each occurrence is separated by more than 4 weeks.

viii. Long term Care in a Care Home

People who are living in care homes may receive direct payments in relation to non-residential services but not to secure long term stays in a care home.

ix. Becoming an Employer

Swindon Borough Council has commissioned a third party organisation currently Developing Health and Independence (DHI) to ensure that the recipients of direct payments get good quality support to set up and manage the payments and fulfil the full range of employment responsibilities. The free support offered includes

- setting up and managing contracts,
- dealing with payroll, tax and national insurance,
- how to recruit and employ a personal assistant,
- planning for contingencies to ensure that there is cover in the case of the personal assistant being unavailable
- saving to cover any redundancy costs.

DHI also offer a managed account service where the direct payment is paid to DHI who manage it on the adult's behalf. There is a charge for this service.

Where a direct payment is made under Section 32 of the Act to an authorised person, Swindon Borough Council will ensure that the authorised person is aware how to access Disclosure and Barring Service checks on individuals they wish to employ e.g. by ensuring that a check has been made by the agency providing the service, the Council or by another body. As individuals cannot apply for checks on other individuals, the Council will ensure that people are made aware of this and the importance of thorough checks and employment references in the recruitment process.

x. Direct Payments and Hospital Stays

Swindon Borough Council will not normally suspend direct payments whilst the person requiring care and support is in hospital. Consideration will be given as to how the direct payment can be used to meet non health needs or to ensure that employment arrangements are maintained.

If the nominated or authorised person managing the direct payment requires a hospital stay, the Council will conduct an urgent review to ensure that the person continues to receive care and support; this could be through a temporary nominated/authorised person or through short term authority arranged care and support.

xi. Direct Payments for Swindon Borough Council Services

Generally, direct payments should not be used to pay for care provided by Swindon Borough Council or their representatives as it would be less bureaucratic to provide the service directly. However, there may be situations where this is the best option, if for example someone wants to make a one off purchase from the Council but is generally using their direct payment elsewhere

This does not preclude people from using their direct payment to pay for care and support from a different Local Authority.

5. Administering Direct Payments and Monitoring and Reviewing Direct Payments

i. The amount of the payment

Swindon Borough Council will derive the level of the direct payment from the Personal Budget and as such the payment will be set an amount which is sufficient to meet the eligible care and support needs, including employment costs if that is appropriate. Payments will be made net of any costs to the Council and will be based on local market rates. (For more details about how the Council calculates Personal Budgets, please see Swindon Borough Council's Personal Budget Policy.)

ii. Reviewing Payments

Swindon Borough Council is responsible for ensuring that the direct payment is being used to meet the care and support needs set out in the plan. To achieve this, we will review all direct payments regularly. Monitoring will be carried out by the Council within the first three months, and then at least twice a year. Any issues arising from the review may result in more frequent reviews and monitoring.

The Council will always carry out a review in the following circumstances:

In the case of a payment made to an adult who had capacity, when the Council considers on the basis of information given to it the adult no longer has the capacity to request a direct payment

In the case of a payment made to meet the needs of an adult who lacked capacity if any of the following occur:

- The Council has reason to believe that the adult no longer lacks capacity to request a direct payment
- The Council is notified of concerns that the direct payment may not have been used to meet the needs for which the payment was made.
- The Council is no longer satisfied that the authorised person will act in the adult's best interest in arranging the provision of care and support for them and using the direct payments to pay for it.
- The Council is no longer satisfied that the authorised person is capable of managing direct payments either by themselves or with support their own support network or DHI.

Reviews will usually consist of an office based analysis of information which has been submitted, with home visits taking place if additional clarification is necessary. The review will include

managing and using the direct payment and any long term support arrangements in areas such as payroll and insurance.

Swindon Borough Council will ensure that there are robust links between the financial review and the review of the care and support plan. The outcome of the review will be written down, summarised and entered onto Swindon Borough Council's case management system and a copy given to all parties. The Care Manager will be alerted to the fact that a review of the direct payment has taken place through the entry onto the system and thus ensure that the use of direct payments is a key area of focus in the care and support plan reviews. The reviews will consider how the use of the direct payment is achieving the adult's desired outcomes and thus improving their wellbeing. (Please see Swindon Borough Council's Policy on Review of Care and Support Plans for more details)

Any home-based review will involve the nominated/authorised person and any family member who is being paid for administrative support as well as the person in need of care and support.

iii. Terminating Direct Payments

Swindon Borough Council will only terminate direct payments as a last resort or where there is a clear and serious contradiction of the Council's conditions, the Care Act regulations or where the conditions outlined in Sections 4a and 4b are no longer met (except in cases of fluctuating capacity). The Council will take all reasonable steps to address any situations without the termination of the payment. Issues will be dealt with as they arise and specifically through the review process.

If it is necessary to terminate a direct payment, the Council will ensure that there is no gap in the provision of care and support and conduct a revision of the care and support plan/ support plan to ensure that the plan is appropriate to meet the needs in question. Any outstanding balance of the direct payment will be reclaimed by the Council.

iv. Discontinuing Direct Payments

Swindon Borough Council recognises that someone who is in receipt of direct payments, whether to purchase support for themselves or on behalf of someone else may decide at any time that they no longer wish to continue receiving the payments. In these cases the Council will ensure that there are no outstanding contractual liabilities and conduct a review of the care plan to consider other arrangements to meet needs. The Council will normally require four weeks' notice prior to discontinuing the payments

The Council will stop making direct payments if the person no longer appears capable of managing direct payments even with the support available. If a managed account is not applicable the Council will conduct a review of the care plan to consider other arrangements to meet needs

The Council will stop making direct payments if the person no longer needs the support for which the direct payments are made.

Direct payments may be discontinued on a temporary basis. This could be because the individual does not require assistance for a short period because their condition improves. The Council will

discuss with the person, their carer and others as appropriate, how best to manage this. The person will be allowed to resume responsibility for their own care after the interruption, if that remains their wish, unless there has been a change of circumstances which means that the conditions of the Act and/or regulations are no longer met. If there is a change of circumstances that affects the care and support plan the Council will revise the plan to ensure that it is still meeting needs

The Council may discontinue the payments if the person fails to comply with a condition or if for some reason the Council no longer believes it is appropriate to make the direct payments. For example, the Council may discontinue the direct payment if it is apparent that they have not been used to achieve the outcomes of the plan.

Where direct payments are discontinued as a result of criminal justice legislative provisions, the Council will ensure that services are put in place in lieu of the direct payments, to ensure continuity of support.

v. Discontinuing Direct Payments in the case of Persons with Capacity to Consent

Where someone with capacity was receiving direct payments but then loses capacity to consent, the Council will discontinue direct payments to that person and consider making payments to an authorised person instead. In the interim, the Council will make alternative arrangements to ensure continuity of support for the person concerned.

If the Council believes the loss of capacity to consent to be temporary, it may continue to make payments if there is someone else who is willing to manage payments on the person's behalf. When the person has regained capacity, they will be allowed to resume control over their direct payments. If the loss of capacity becomes prolonged, the Council will consider making more formal arrangements for an authorised person to take over receipt of the direct payments on the person's behalf. The Council will make it clear that the arrangement is temporary so that the person managing the direct payment does not enter into any long term contractual arrangements

vi. Discontinuing Direct Payments in the case of Persons lacking Capacity to Consent

Swindon Borough Council will discontinue direct payments without notice if it is no longer satisfied that the authorised person is acting in the best interests of the beneficiary within the meaning of the 2005 Mental Capacity Act.

The Council may discontinue the direct payments if it has sufficient reason to believe that the conditions imposed on the authorised person under regulations are not being met. The Council may consider if someone else can act as an authorised person or whether it will have to arrange services for the adult as an alternative to direct payments.

The Council will discontinue direct payments to an authorised person under section 32 of the Act where the Council has reason to believe that someone who lacked capacity to consent to direct payments has now regained that capacity on a long- term or permanent basis. The Council will give eight weeks' notice of termination of direct payments to the authorised person before beginning to make direct payments to the adult themselves or to arrange services for them according to their wishes. If the Council is satisfied that the regaining of capacity will only be temporary, then it will continue to make direct payments to the authorised person.

vii. The Procedure for Discontinuing Direct Payments

With the exception of cases where there are serious concerns about the use of the payments e.g. the authorised person not acting in the adult's best interests Swindon Borough Council will start discussions early if it is considering discontinuing direct payments. These discussions will involve the adult, their carers' and any person managing the direct payments and will explore all available options before making the final decision to discontinue the payments. For example, if the ability to manage is an issue, the adult will be given support from DHI to demonstrate that they can continue to manage direct payments, with greater support if needed, including the option of a managed account.

If the Council does decide to withdraw direct payments, except in the case of serious concern, the Council will give a minimum of 4 weeks' notice. During this period, except in the case where care and support is no longer needed, the Council will carry out a review of the care and support plan, so that alternative care and support can be arranged. The review will involve the person, their carer and independent advocate if they have one.

If direct payments are discontinued, the Council will ensure that the adult or their nominated/authorised person is supported to discharge any remaining contractual obligations. Any outstanding balance will be reclaimed by the Council.

6. Harmonisation with Payments Under Other Legislation

Some adults will also receive direct payments under Section 12A of the National Health Service Act 2006. In these cases, Swindon Borough Council will take reasonable steps to co-ordinate its systems, processes and requirements relating to the making of direct payments with the relevant NHS procedures, thus keeping the administrative requirement on the adult to the minimum.

Appendix A - Close Family Members

For the purposes of this policy the following will be considered as close family members

- (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 adult's –
 - (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 specified in (c) who lives in the same household as the adult;

(e) a person who lives with any person specified in (c) as if that person's spouse or civil partner.

Appendix B

Adults Whose Needs the Local Authority May Not Meet By Making Direct Payments –

Adults may not receive direct payments if they are

(a) Subject to a drug rehabilitation requirement, as defined by section 209 of the Criminal Justice Act 2003, imposed by a community order within the meaning of section 177 of that Act, or by a suspended sentence or imprisonment, within the meaning of section 189 of that Act;

(b) Subject to an alcohol treatment requirement as defined by section 212 of the Criminal Justice Act 2003, imposed by a community order within the meaning of section 177 of that Act, or by a suspended sentence of imprisonment, within the meaning of section 189 of that Act;

(c) Released on licence under Part 2 of the Criminal Justice Act 1991, Chapter 6 of Part 12 of the Criminal Justice Act 2003 or Chapter 2 of the Crime (Sentences) Act 1997, subject to a non-standard licence condition requiring the offender to undertake offending behaviour work to address drug or alcohol related behaviour;

(d) 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;

(e) Subject to a drug treatment and testing order imposed under section 52 of the Powers of Criminal Courts (Sentencing) Act 2000

(f) Required to submit to treatment for their drug or alcohol dependency by virtue of a requirement of a probation order within the meaning of sections 228 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

(g) Released on licence under section 22 or 26 of the Prisons (Scotland) Act 1989 or under section 1 or 1AA 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.

In addition Swindon Borough Council has discretion not to meet needs by making direct payments if the adult has been placed under

A local authority has the discretion to decide not to meet needs by making direct payments where legislation has imposed obligatory services. These are

(a) Part 1 of Schedule 1A to the Criminal Procedure (Insanity) Act 1964

(b) section 8, 17 or 17B of the 1983 Act or section 40(2) read with section 8 of that Act

- (c) section 57A of or Schedule 4 to the Criminal Procedure (Scotland) Act 1995
- (d) section 41, 53, 127, 179, 221 or 224 of the Mental Health (Care and Treatment) (Scotland) Act 2003 or section 66 read with section 64 or 65 of that Act
- (e) section 177 or 189 of the Criminal Justice Act 2003 in so far as those sections relate to a person who is subject to a mental health treatment requirement as defined by section 207 of that Act
- (f) section 41 or 51 of the Powers of Criminal Courts (Sentencing) Act 2000 insofar as those sections relate to a person who is required to submit to treatment for their mental condition;
- (g) section 227A of the Criminal Procedure (Scotland) Act 1995 insofar as they relate to a person who is required to submit to treatment for their mental condition;
- (h) section 22 or 26 of the Prisons (Scotland) Act 1989 insofar as those sections relate to a person who is subject to a condition that they submit to treatment for their mental condition;
- (i) section 12 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 insofar it relates to a person who is subject to a condition that they submit to treatment for their mental condition;
- (j) section 37(4) of the Criminal Justice Act 1991 insofar as it relates to a person who is subject to a condition that they submit to treatment for their mental condition.