



Walsall Council

DIRECT PAYMENTS POLICY

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Contents

1. Introduction	1
2. Purpose	1
3. Definitions	1
4. Legal context	1
5. Informing people, promoting choice and advocacy	2
6. Who can receive direct payments?	2
7. Conditions for receiving direct payments	3
8. Declining a request for direct payments	5
9. Using direct payments	5
10. Direct payments cannot be used for	6
11. Managing direct payments	8
12. Payments	8
13. Direct payment recipients as employers / Disclosure and Barring Service	9
14. Payment of direct payments	11
15. Direct payments agreement	12
16. Monitoring and review of direct payments	12
17. Duty to protect public funds	13
18. Discontinuing Direct Payments / Requiring Repayment	13
19. Complaints	16
20. Implementation	16
21. Audit and Monitoring compliance	17
22. Review	17

1. Introduction

- 1.1. Walsall Council 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 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 the Council's proportion of a personal budget allocated under the Care Act 2014 can be paid direct to the person concerned or in some circumstances to someone acting on their behalf to meet needs as identified in the plan.
- 1.4. Direct payments may also be used as a way of arranging after care services provided under s117 of the Mental Health Act 1983 (MHA).
- 1.5. This policy is intended to assist officers of Walsall Council involved in carrying out social care needs assessments (including administrative finance staff), reassessments, reviews, support planning, or who are otherwise involved in the arrangement and administration of services for people with eligible care and support needs.

2. Purpose

The purpose of this policy is to reflect the requirements of Part 1 of the Care Act 2014 effective from 1 April 2015, the Care and Support (Direct Payments) Regulations 2014 and the guidance found in the Care and Support Statutory Guidance issued under the Care Act 2014 by the Department of **Health in October 2014 (as amended)**.

3. Definitions

Definitions of specific terms used within this policy are defined at Appendix 1.

4. Legal context

- 4.1. Policy derives from the following legislation and government guidance:
 - The Care Act 2014
 - Care and Support (Direct Payments) Regulations 2014

- Care and Support Statutory Guidance issued under the Care Act 2014 by the Department of Health in **October 2014 (as amended)**.

4.2. Other relevant legislation includes but is not limited to:

- Mental Health Act 1983 (MHA)
- Mental Capacity Act 2005 (MCA)
- Equalities Act 2010 Human Rights Act 1998
- Human Rights Act 1998
- Children Act 1989

5. Informing people, promoting choice and advocacy

5.1. The Council will provide universal information about direct payments to raise awareness of direct payments and how they can be used.

5.2. When a plan to meet needs or discharge s117 duties is being developed, people will be advised which of their eligible needs, if any, or after care services may be met / provided through direct payments and offered the option of having them. People will be provided with accessible information about direct payment rights and responsibilities and how to use and manage them so that they can make an informed decision.

5.3. People must request direct payments and may opt in or out of direct payment arrangements by notifying the Council. Requests for direct payments are usually made at planning stage but may be made at any other time.

5.4. People who are likely to experience substantial difficulty in being involved in planning their support and have no appropriate person to support their involvement 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 respect of adults without capacity) are met the Council has a duty to provide direct payments for people whose needs for care and support have been determined to meet Care Act or Childrens Act eligibility criteria and who have been allocated a personal budget to which the Council must contribute.

6.2. Except where an exclusion applies, where the conditions described at paragraphs 7.1 and 7.5 are met the Council may have a duty to provide direct payments for people to whom after care services are provided under s117 of the MHA.

6.3. The regulations exclude people placed under certain conditions or requirements by the courts in relation to drug and /or alcohol dependencies from receiving direct payments. See appendix 2 for details.

- 6.4. Regardless of whether the person intending to administer the direct payment is the person who needs care or their authorised or nominated person or parent, the Council will ask the person to declare any convictions involving dishonesty.
- 6.5. Where a dishonesty conviction is declared, the Council will assess whether or not it is appropriate for that person to administer the direct payment. See also section 17 Duty to Protect Public Funds.

7. Conditions for receiving direct payments

7.1. Direct payments will be provided when requested by an adult with capacity or on behalf of a child when each of four conditions is fully met:

1. The adult has capacity and any nominated person (see paragraph 11.2) agrees to receive direct payments or on behalf of a child.
2. The regulations do not prohibit needs from being met through direct payments. See section 10 for restrictions on the use of direct payments.
3. The adult or the nominated person is capable of managing direct payments either independently or with support.
4. Making direct payments is an appropriate way of meeting needs. Where a conviction for dishonesty has been declared by the person who intends to administer the direct payment, the Council will assess whether or not it is appropriate for that person to administer the direct payment.

7.2. Adults or children without capacity are not precluded from having direct payments when there is an authorised person to manage them. 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:

- Is authorised under the MCA to make personal welfare decisions for the adult (i.e. the holder of a lasting power of attorney given to them by the adult before they lost capacity or a Court appointed deputy), or
- Is not MCA authorised, but the Council and any person authorised under the MCA to make personal welfare decisions for the adult agree is a suitable person to whom to make direct payments, or
- Is not MCA authorised and there is no MCA authorised person, but the Council considers that the person is a suitable person to whom to make direct payments.
- Is a legal parent or guardian of a child

7.4. When determining who is a suitable person to be an authorised person, the Council will consider all the relevant circumstances and on a case-by-case basis.

7.5. Direct payments will be provided when requested by an authorised person when each of five conditions is fully met:

1. Where the person making the request is not authorised under the MCA to make personal welfare decisions for the adult, the Council and any person who is so authorised agree that the person making the request is a suitable person to make decisions about the adult's care and support.
2. The regulations do not prohibit needs from being met through direct payments. See section 10 for restrictions on the use of direct payments.
3. The authorised person will act in the adult's / child's best interest in arranging care and support with direct payments.
4. The authorised person is capable of managing direct payments either independently or with support.
5. Making direct payments to the authorised person is an appropriate way of meeting needs.

7.6. The Council will take the following steps to assess whether making direct payments to the authorised person is an appropriate way of meeting needs.

1. So far as is reasonably practicable and appropriate, the Council will consult and take into account the views of:
 - anyone named by the adult / parent as someone to be consulted about whether direct payments should be made to the authorised person,
 - anyone engaged in caring for the adult / child or interested in their welfare,
 - anyone authorised under the MCA to make decisions about the adult's / child's needs for care and support.
2. So far as is reasonably ascertainable, the Council will consider:
 - the adult's past and present wishes and feelings, particularly any relevant written statement made by the adult/ child's before they lost capacity,
 - the beliefs and values that would be likely to influence the adult's / child's decision if the adult had capacity, and
 - other relevant factors the adult / child would be likely to consider if they were able to do so.
3. Where the authorised person has declared a conviction for dishonesty, the Council will assess whether or not it is appropriate for that person to administer the direct payment.

The Council will carry out DBS checking for:

- anyone who is not the adult's spouse / partner, parent or a friend of the adult / child's who is involved in providing their care, or a close family

member (see Appendix 1 definitions) who lives in the same household as the adult / child's, and

- the person with overall responsibility for the day to day management of direct payments where the authorised person is a corporate body or an unincorporated body of persons.

7.7. The authorised person must:

- Notify the Council if they reasonably believe that the adult / child's has regained capacity.
- DBS check any person from whom a service is secured using direct payments where the conditions specified in paragraph 13.11 apply.

7.8. If a person does not have the requisite mental capacity to agree to a direct payment (and there is no one authorised to do so on their behalf) then they will not be eligible to receive a direct payment.

7.9. People with an episodic or fluctuating condition, may still be able to manage their direct payment. However some people with these conditions may prefer to nominate an individual to assist them with managing their direct payment when their condition becomes acute.

8. Declining a request for direct payments

8.1. Requests for direct payments will be declined if any condition set out at paragraphs 7.1 (for adults / child's with capacity) and 7.5 (for adults / child's without capacity) above is unmet.

8.2. The Council will provide a written explanation of why the request was declined including:

- which conditions are not met,
- why the condition is considered to be unmet
- what the person making the request may need to do to obtain a positive decision.

8.3. Information about how to appeal the decision through the complaints process will also be provided.

8.4. The Council 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.

9. Using direct payments

9.1. Direct payments must be used only to pay for arrangements to meet the needs specified in the plan. Each case must be decided on its own merits, based on the following key principles. The service, delivery or item proposed should:

- Be clearly linked to the outcomes identified in the care and support plan to meet the persons assessed eligible care and support needs.
- Be able to show how it will keep the individual health, safe and well.
- Be affordable and proportionate to the assessed eligible care and support needs of the person.

9.2. Direct payments must be used to purchase services, which are safe, legal, value for money and which adequately safeguard and promote the person's welfare and wellbeing.

9.3. Direct payments may be subject to conditions imposed by the Council and may be discontinued and / or recovered if the Council has reason to believe that direct payments may have been misspent or accumulated without good reason. See also section 17 Duty to Protect Public Funds.

10. Direct payments cannot be used for

10.1. Direct payments must not be used to purchase:

- Care services or support in managing direct payments provided by the adult's spouse / partner/ child's parent or guardian or a close family member (see Appendix 1 definitions) living in the same household as the adult. In exceptional circumstances, the Council can agree a direct payment in these circumstances.
 - Services, equipment and / or minor adaptations, which are the responsibility of other public bodies.
 - Anything that is not covered by the care and support plan
 - Anything that is not an assessed eligible need
 - An activity or item that exposes the individual to serious risk from someone else/themselves
 - Long-term residential or nursing care but may be used to pay for: - Short stays of up to four 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.

- More hours from a Personal Assistant or Agency than we have assessed the Service User as needing by paying a lower hourly rate than we have used as the basis for calculating your Direct Payment;
- Any service from Personal assistant by making cash payment. (Cash payments will only be allowed at the Council's sole discretion and in exceptional circumstances);
- Service for higher rate than we have used as the basis for calculating your Direct Payment unless you are willing to pay a top up for the price of the care out of your own resources. If the care cannot be sourced at the rate provided, then you should contact the allocated worker for a review;
- Any health related services – such as dentist, chiropody, physiotherapy appointments;
- Any services provided by the NHS
- For household expenses, such as food, personal items, utility bill or clothing (this does not include protective clothing);
- Accommodation - rent, mortgage payments;
- Non-statutory liabilities such as tips, bonuses, ex gratia payments (The Council is not obliged to fund particular costs that are incurred on a discretionary basis);
- Anything that is illegal;
- Any gambling or gain. This includes lottery, bingo tickets, raffle tickets, horseracing and all other forms of gambling.
- Drugs, alcohol, cigarettes;
- Any services from the Council;
- Any long-term residential care;
- Any support provided by anyone living in the same house except where permitted by law and following agreement with Walsall Council;
- A substitute for Disabled Facilities Grants.

- Carer direct payments are to meet the carer's own assessed needs and must not be used to purchase services for the service user.
- An authorised or nominated person must not use direct payments to pay himself or herself to provide services to the person who needs care except as expressly authorised in writing by the Council.

11. Managing direct payments

- 11.1. Anyone who agrees to be responsible for managing direct payments must be capable of managing direct payments either independently or with help.
- 11.2. Adults / child's with capacity can nominate a third party to manage direct payments for them. The nominated person is usually a family member or a friend. The Council must agree that the nominated person may manage direct payments on behalf of the person who needs care.
- 11.3. Anyone responsible for managing direct payments may purchase assistance, for example record keeping, payroll and other employment related services or a nominated account, from a commissioned direct payment support service of their choice.
- 11.4. In some circumstances, a managed account may be necessary.
- 11.5. An authorised or nominated person acting on behalf of a person who needs care is in a position of trust, is responsible and accountable for how direct payments are used and will be held liable for any misuse of direct payments. See also section 16 Duty to Protect Public Funds.

12. Payments

- 12.1. **Frequency of payments:** Direct payments will be paid into the individual's direct payments bank account at agreed payment periods as detailed in the direct payment Agreement.
- 12.2. **Bank accounts:** Direct payments will be paid into a separate and appropriately named bank account, which will be used solely for the purpose of managing direct payments. This is to ensure that there is clear transparency with direct payment funds and will allow efficient

record keeping, monitoring and auditing, both for the individual themselves and Walsall Council.

- 12.3. The only exception to this is direct payment recipients receiving a one-off purchase, who will not be required to open a separate bank account (unless it is for a one-off respite payment).
- 12.4. It is acceptable for a direct payment bank account to be in joint names. The bank account must be a current account with the facility to make payments from the account, e.g. with a chequebook. Standard cash or savings accounts will not be sufficient.
- 12.5. **One-off payments:** Direct payments for respite, set up costs, equipment and carers could be made as one-off payments as documented in the Support Plan. One-off payments will be paid via an agreed payment method.

13. Direct payment recipients as employers / Disclosure and Barring Service

- 13.1. People may use direct payments to employ staff, to engage self-employed personal assistants or to pay an agency to provide services. It is not Walsall Council's preferred option for a direct payment recipient to employ their own Personal Assistants. However if this route is chosen then the payment recipient must:
- be advised that there are legal responsibilities involved in becoming an employer and maintaining good employment practices,
 - be urged to seek advice about employer legal responsibilities, including being responsible for all employment related costs, for example workplace pensions, redundancy,
 - ensure all employers are registered with HM Revenue and Customs, regardless of whether any tax and national insurance contributions are being paid.
 - Self-employed P.A.'s should evidence that they have a unique tax reference number and public liability in place.
 - D.P. recipient needs to be advised that if a self-employed P.A. is not available to complete tasks they may ask someone else to do this on their behalf.
 - be urged to seek advice about compulsory employers' liability insurance, and
 - be provided with a list of commissioned direct payment support service providers, which can provide information, advice and support.
 - To check your bank account regularly to ensure that the payments have been received and that there are sufficient monies in the account to meet expected bills.

- 13.2. If you choose to use a care agency, we strongly recommend that you purchase care from a provider who is registered with the Care Quality Commission who inspect the standards provided by agencies nationally.
- 13.3. If you contract with a Home Care Provider, it is your responsibility to negotiate the terms of your contract with them (for example: the rates they charge you). Your Allocated Worker may provide you with information regarding the Home Care Providers that operate in the area you live, and the rates charged for care purchased directly by the Council.
- 13.4. You can also secure the services directly from your own employed personal assistance. If you do choose to employ your own staff, we will signpost you to organisations that can offer support and advice about becoming an employer.
- 13.5. The direct payment recipient is strongly urged to obtain their own independent legal advice as to their responsibilities as an employer, including redundancy, in line with appropriate provisions of the Care and Support Statutory Guidance. Redundancy payment is usually paid from the D.P. account, if a D.P. recipient dies part of the redundancy payment can be claimed from the Public Liability insurance providing the claim is within eight weeks. DPSS's are aware of this and will support family.
- 13.6. You agree to comply with all safety and legal requirements, which arise from any arrangements you make using the Direct Payment.
- 13.7. You must get written Agreement (from the Council) if you want to use your Direct Payment to pay for services from anyone who is living in the Direct Payment Recipient's household.
- 13.8. You agree to keep accurate and clear records of how you spend your individual budget - bank statements, invoices, cheque, standing order, direct debit, telephonic transfer, internet banking or internet transaction etc. Whatever method is used please ensure that you retain some evidence of purchase or payment. Cash withdrawal is allowable provided that the withdrawal is matched with a corresponding invoice, timesheet or other proof of payment. A small cash float may be kept

for the purchase of stationery and other small expenditure items. Receipts for these purchases will need to be kept.

13.9. To ensure that all the legal obligations and requirements which relate to the purchase of services and employment of people are met and kept up to date. This includes taking on the full responsibilities of being the employer of any PA's and may include:

- Appropriate recruitment procedures,
- Disclosure & Barring Service checks,
- Purchase of Public and Employer's Liability Insurance,
- Arrangement of relevant training, to provide employees with a safe working environment.
- To manage any changes with agencies, organisations or employees from which services are obtained, following an increase or decrease in Direct Payments.
- To have a contingency plan that can be implemented if the arrangements for the provision of service that meet the assessed care needs break down.

13.10. People with capacity and those acting on their behalf are not obliged to carry out Disclosure and Barring Services (DBS) checks for people they employ through direct payments. However, the Council strongly recommends that DBS checks are obtained for all personal assistants.

13.11. A DBS check with barring list is compulsory for adults employed to undertake any work defined as regulated activity relating to adults (within the meaning of Schedule 4 Part 2 of the Safeguarding Groups ACT 2006) where there is a child under 18 living in the household.

13.12. All employers must register with HM Revenue and Customs, regardless of whether any tax and national insurance contributions are being paid.

14. Payment of direct payments

14.1. Direct payments will be made in accordance with the requirements of the Council's financial policies and procedures.

14.2. Where a personal budget has been allocated, direct payments will be paid net of any required contribution from the adult / child in need of care into the direct payment account. The adult in need of care must pay

any assessed contribution into the direct payment account at not less than four weekly intervals.

14.3. The Council will pay ongoing direct payment contributions in advance at agreed intervals. All costs must be met within:

- Any agreed personal budget, which includes any personal contribution required from the person receiving services.
- the amount agreed as sufficient to meet the cost of s117 after care services.

14.4. The Council may make an initial or one off payment for example for agreed set up costs, from within the agreed amount.

15. Direct payments agreement

The respective direct payments agreement must be signed and a copy of the signed agreement provided to all signatories. There are two direct payment agreements:

- Standard agreement – signed by the Council and the person who needs care where the person is managing their own direct payment.
- Authorised and nominated person agreement – signed by the Council and an authorised / nominated person managing direct payments on behalf of the person who needs care.

16. Monitoring and review of direct payments

16.1. The Council will inform direct payment recipients 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.

16.2. All direct payments will be reviewed within the first six months (usually at the 6 to 8 week review) of the direct payment being made. Review will be at 12 monthly intervals, but can be more frequent depending on the circumstances.

16.3. Reviews will also be carried out at any time when the Council considers that:

- there has been a change in capacity, or
- any of the conditions listed at paragraphs 7.1 (in respect of adults with capacity) or 7.5 (in respect of adults/ child with capacity) above is no longer met, or

- direct payments have not been used as intended, or
 - the adult's / child's safety and welfare have been compromised or
 - There has been any change, which may adversely affect the effectiveness and intention of the support arrangements.
- 16.4. The review will establish if direct payments are being used to meet needs as intended, conditions are met and public monies are being used effectively. See also section 16 Duty to Protect Public Funds.
- 16.5. Reviews may be a 'light touch' review or a more detailed review depending on the circumstances and the complexity of the direct payment.
- 16.6. Following an annual audit, the Council will provide the direct payment recipient with written advice that the account has been reviewed and will raise any identified concerns.
- 16.7. More detailed reviews will involve the adult/ child, any carer the adult / child's has, any authorised / nominated person, any family member providing paid administrative or management support (as specifically approved by the Council – see paragraph 10.1 above) and anyone else that the adult requests be involved. If the adult lacks capacity to make such a request, anyone who is authorised under the MCA to make personal welfare decisions (if different from the authorised person) or if there is no such person anyone who appears to be interested in the adult's welfare should be involved. The outcome of the review will be confirmed in writing.

17. Duty to protect public funds

- 17.1. Like all local authorities, the Council has a duty to protect the public funds that it administers.
- 17.2. All suspected concerns about fraud, including fraud committed against other public bodies, will be reported to the Council's Internal Audit Investigation Team for investigation which may lead to:
- information sharing between the Council and other bodies responsible for auditing or administering public funds such as H.M. Revenue and Customs and the Department for Work and Pensions, and / or
 - criminal prosecution.

18. Discontinuing Direct Payments / Requiring Repayment

- 18.1. People receiving direct payments, 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 4 weeks written notice to the Council. The Council can agree to vary this notice period according to the individual's circumstances.

- 18.2. Notice will be given before direct payments are discontinued except in exceptional circumstances when direct payments may be discontinued without notice.
- 18.3. The Council will end direct payments if it is satisfied that:
 - The person is no longer eligible for or no longer requires the services for which direct payments are made.
 - 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.
 - Any of the conditions listed at paragraphs 7.1 and 7.5 are no longer met.
 - Direct payments are not safeguarding or promoting the person's welfare.
- 18.4. The Council may suspend or end direct payments either permanently or temporarily if:
 - The adult / child does not require assistance because their condition has improved and / or they do not need the services that direct payments were intended to secure.
 - Any condition attached by the Council is unmet or the Council has reason to believe that direct payments have been used for purposes other than to meet needs as specified in the plan.
 - The adult fails to pay any assessed financial contribution into the direct payments account.
 - Given all the circumstances, the Council considers it appropriate to end direct payments.
- 18.5. The Council will require full or partial repayment of direct payments if any condition attached by the Council is unmet or the Council has reason to believe that direct payments have been used for purposes other than to meet needs as specified in the plan.
- 18.6. The Council may require repayment of any unspent direct payment if they are not required to meet needs as set out in the plan.
- 18.7. The Council will require repayment of excess funds accumulated in the dedicated bank account where there is no reasonable explanation for the surplus.

- 18.8. Direct Payments do not form part of an estate in the event that someone dies while receiving them. The money at all times belongs to the Council and remains public funds.
- 18.9. The Council may suspend payment of Direct Payments temporarily if you are admitted to hospital, extended respite care or are otherwise temporarily unable to receive services. Any decision to suspend payment will take account of any reasonable existing liabilities including periods of notice relating to service arrangements.
- 18.10. If you employ a Personal Assistant and you go into hospital, we may suspend your Direct Payment. However, the Council will pay the Direct Payment to enable you to pay your Personal Assistant for 4 weeks at full pay, plus 2 weeks at half pay. Following that period, we will discuss with you the best way of retaining the Personal Assistant. You must let the Council know if you go into hospital. We advise that you make any Personal Assistant aware of this condition.
- 18.11. If you purchase your services from an Agency or other means, the Direct Payment will be suspended if you go into hospital. In these circumstances, you must let the Council know. It is your responsibility to cancel the provider or person providing the support, in line with the terms of your Agreement with them. We advise that you make any Agency aware of this condition.
- 18.12. The Council has the right to suspend or stop the Direct Payment if it is decided that the arrangements made for purchasing services are not adequate to meet the needs and outcomes of the Support Plan or if there are concerns for the safety of the Service User.
- 18.13. We may suspend the Direct Payment, or stop them and terminate this Agreement with immediate effect, and recover payments as necessary. If payments owing are not repaid, we will take legal advice on further action, which may lead to court action (in line with the Council's debt recovery process). Reasons for this may include, but not be limited to, the following:
- If, for whatever reason, you temporarily unable to receive services;
 - You are no longer eligible for care and support under the Care Act 2014 or other services for which direct payments may be made by Walsall Council. Depending on the circumstances and need we will give you written notice of the termination of this Agreement (up to a maximum period of four weeks);
 - If you have been using the Direct Payment for items or services other than those specified in the Care and Support Plan, or there is evidence of deliberate misuse of funds;

- After investigation, it is found you are using the money illegally or not in the best interests of the person receiving the Care and Support;
- If the Direct Payment has been inappropriately used (either intentionally or unintentionally), or you have shown yourself to be incapable or unwilling to manage your Direct payment correctly;
- If you fail to comply with the review or monitoring process;
- If the Service User is admitted into permanent residential care.
- If you go into Hospital.
- If you have failed to disclose other social care, funding that should have been taken into account when calculating the Direct Payment.
- If the Council suspect that criminal activity has taken place, we may refer the matter to the police for further investigation.

18.14. In the event of your death, this Agreement will end with immediate effect. The Council will consider what contractual responsibilities existed at the time of death when determining what sum is to be repaid to the Council. P.A.'s are entitled to redundancy if employed over two years.

18.15. Subject to the Council's right to terminate the agreement with immediate effect under point 6.5 above, either party may terminate this agreement by giving to the other party four weeks' notice in writing. The period of 4 weeks will commence on receipt of the written notice.

19. Complaints

19.1. People will be provided with information about how to use the Council's complaints procedure, including their right to access advocacy as part of the appeals process.

19.2. Any person may use the Council's complaints procedure if they are dissatisfied with a Council decision or the support they receive. People who receive, or consider that they should receive, direct payments have the same rights to access the Council's complaints procedure as people whose support is provided directly or arranged by the Council.

20. Implementation

- 20.1. Policy will be communicated to staff via line managers through approved processes.
- 20.2. Policy will be published on the Council's intranet and external website and made known where relevant to commissioned providers through mutually agreed processes.

21. Audit and Monitoring compliance

Compliance with this policy will be monitored through:

- Manager / supervisor oversight of assessment and support planning processes
- Case supervision
- Case record audit procedures
- Internal audit procedures

22. Review

This policy will be reviewed by the end of April 2020.

Appendix 1- Definitions

Adult / child with capacity	In the context of this policy, an adult who has the mental capacity to make decisions about direct payments
Adult / child without capacity	People are always assumed to have capacity until established otherwise. 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 the Council's MCA policy. An adult will only be deemed to be without capacity when it has been established through assessment that this is the case.
Assessment – of needs	An assessment of an individual's needs for social care, support or s117 after care services to enable them to live as independently as possible.
Assessment - financial	

	<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. This includes where there has been any assessed need for transport.</p> <p>No financial assessment is required for s117 after care services as these must be provided free of charge.</p>
<p>Authorised person</p>	<p>Someone who is authorised under the MCA to make personal welfare decisions about an adult without capacity, i.e. someone who:</p> <ul style="list-style-type: none"> • Holds a lasting power of attorney given to them by the adult before they lost capacity, or • Was appointed as a deputy for the adult by the Court of Protection under section 16 of the MCA. <p>Where the person making the request for direct payments on behalf of an adult without capacity is not authorised to make personal welfare decisions as described above, the County Council and any person who is authorised to make personal welfare decisions must agree that the person making the request is a suitable person to act as the authorised person. See section 7 of this policy.</p>
<p>Carer</p>	<p>Someone of any age who provides unpaid support to family or friends who could not manage without this help.</p>
<p>Close family member</p>	<p>Someone who lives in the same household as the adult who is the adult's:</p> <ul style="list-style-type: none"> • Parent or parent-in-law • Son or daughter • Son-in-law/daughter-in-law • Stepson or stepdaughter • Brother or sister • Aunt or uncle • Grandparent, or

	<ul style="list-style-type: none"> The spouse/partner of any of the people listed and living in the same household as the adult.
DBS checking	Screening through Disclosure and Barring Services. This checks criminal history and identifies people barred from working with children and vulnerable adults.
Direct payments	<p>Payment of the Council'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 the Council.</p> <p>Direct payments may also be provided in most instances to arrange s117 after care services.</p>
Direct payments agreement	The written agreement that sets out the terms and conditions applicable to direct payments.
Duty to make direct payments	Where the Council has a legal obligation to make direct payments to eligible people because all conditions are met.
Managed account	<p>Direct payments are made to a commissioned service, which manages the funds on their behalf. The direct payments recipient remains responsible for how direct payments are used. For example, if direct payments are used to employ staff, the direct payments recipient 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.</p>
MCA	Mental Capacity Act 2005
MHA	Mental Health Act 1983

Minor adaptation	An adaptation is defined as minor when the total cost including supply and fitting is less than £1000.
Nett amount	The amount of Direct Payment, after the DP client contribution has been deducted from the Gross.
Nominated person	A nominated person is someone selected by an adult with capacity to manage direct payments on their behalf. The nominated person takes full responsibility for managing the direct payments so the Council has to agree to the arrangement.
People	People refers to both adult and child recipients
Personal budget	The amount of money allocated to fund the care and support required. The personal budget is means tested and therefore the adult / child may be required to make a financial contribution towards the total amount of the personal budget.
Personal Assistants	Is someone who provides care or support to an individual (or group of people) in the home and/or in the community. This support may involve assistance (or prompting) with daily living requirements such as getting in and out of bed, bathing, dressing, toileting, food preparation etc. It may also involve providing support to access activities in the community, such as shopping, pursuing a hobby or attending a support group.
Personalised care and support	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.
Plan	A 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 and support plan for an adult in need of care, or a support plan in the case of a carer.
Reassessment	A reassessment of needs for social care and / or support.
Review	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 plan.
Service User	A person (adult or child) assessed by the Council as eligible to receive care and support services.
S117 after care services	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.

Appendix 2 - People 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 209 (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—

- 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
- 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.

Source: Care and Support (Direct Payments) Regulations 2014 – Regulation 2, Schedule 1