

People's Directorate

Direct Payments Policy

Children's and Adult's Social Care

PROCEDURE APPROVAL			
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Cheshire West & Chester Council Direct Payment policy.

1 Introduction

1.1 Cheshire West & Chester Council (the Council) is committed to promoting individual wellbeing and supporting independence through preventing, reducing or delaying the need for care and support. Personal budgets offer people the opportunity to have control over their services and the care they need to achieve the outcomes on their Support Plan.

1.2 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.

1.3 Under the Care Act 2014, adults whose eligible assessed needs that are to be met by the Council must receive a personal budget as part of the support plan. The personal budget represents the public money that the Council would have to spend in order to meet the person's assessed, eligible needs, where those needs cannot be met from the person's own assets or informal sources of support from within the community.

1.4 This document sets out our policy for Personal Budgets for Adults, Children and Carers, and provides guidance about using Direct Payments to provide and manage support arrangements for people who are ordinarily resident of Cheshire West and Chester. This is a document written for staff and people who use services to use and apply when considering direct payments.

2. Legal context and regulations

2.1 The legal framework - The Community Care (Direct Payments) Act 1996 ('the 1996 Act') first allowed Local Authorities to make a payment directly to adults (from age 18-65 years).

2.2 The Carers and Disabled Children Act 2000 extended eligibility to include 16 and 17 year olds, and those with parental responsibility for disabled children. This was achieved by inserting Section 17A in the Children Act 1989.

2.3 The power to provide direct payments under the 1996 Act and those deriving under the 2000 Act were superseded by the provisions of Health and Social Care Act 2001 ('the 2001 Act').

2.4 The Health and Social Care Act 2008 amended existing legislation to extend the scope of direct payments. This resulted in the Community Care, Services for Carers and Children's Services (Direct Payments) (England) 2009 Regulations which were supplemented by Guidance issued by the Department of Health on Direct Payments for Community Care, Services for Carers and Children's Services: England 2009. The 2009 Guidance sets out how local authorities should develop and administer their direct payment schemes.

2.5 This policy reflects the requirements of Part 1 of the Care Act 2014 which became 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.

2.6 Under the Care Act 2014, adults whose eligible assessed unmet needs that are to be met by the Council must receive a personal budget as part of the support plan. The personal budget represents the public money that the Council would have to spend in order to meet the person's assessed, eligible needs, where those needs cannot be met from the person's own assets or informal sources of support from within the community.

2.7 In addition individual payments (Direct payments) may be used as a way of arranging after care services provided under s117 of the Mental Health Act 1983. 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.

2.8 The initiative for personal health budgets originated from social care, and the drive for people with health and social care needs to have the right for autonomy in their lives and for control over the assistance they needed in order to live independently has led to the launch of Personal Health Budgets;

- NHS (National Health Service) Next Stage Review: High quality care for all (Department of Health 2008) outlined plans for personal health budgets.
- Health Act (2009) Allowed selected Primary Care Trust sites to pilot direct payments
- High quality care for all: The operating framework for the NHS in England 2009/10 outlined NHS priorities such as better access, reduced inequalities, partnership working in delivering personalised care, and supporting service user contributions to improvement and shaping high quality provision.
- Forward View into action: Planning for 2015/16 (NHSE 2015) required the expansion of Personal Health Budgets to all those who may benefit, and highlighted that by April 2016, we expect that personal health budgets or integrated personal budgets across health and social care should be an option for people with learning disabilities.

2.9 On 1 August 2013, the Direct Payment in Healthcare regulations came into force across England, meaning that the NHS can lawfully offer direct payments for healthcare.

2.10 Other relevant legislation includes;

- Human Rights Act [1998] including Article 8 Right to respect for private and family life, and Article 14 Prohibition of discrimination
- The Data Protection Act (2003)
- The Carers (Equal Opportunities) Act (2005) ensures that carers are able to take up opportunities that people without caring responsibilities often take for granted.
- The Mental Capacity Act (2005). The need to apply the Mental Capacity Act features strongly in self-directed support where there may be concerns about

a service user who appears to lack the mental capacity to manage their own money and/or the ability to make decisions about their care.

- The Equality Act 2010 Replaced previous anti-discrimination laws with a single Act.

3. Guiding Principles

3.1 This policy aims to promote the independence, health and wellbeing of service users and carers by providing them with greater choice over how they use their allocated funds and how they choose to control their personal budget to meet agreed social care outcomes.

3.2 This includes knowing how much money will be available to meet a person's eligible assessed unmet needs, both before support planning begins and after the support plan is agreed. This includes how much "the Council" will pay and how much the person will contribute.

3.3 The Council and Clinical Commissioning Group partners are keen to integrate their processes where individuals have a direct payment and also have a Personal Health Budget. We are currently working together to have joined up referral, assessment, budget setting, support planning and administrative process.

4. What is a personal budget?

4.1 A personal budget is the money the council allocates to an individual to meet their eligible support needs following an outcome based assessment. The assessment sets out whether they are eligible for council funded support and establish an approximate figure that the council may need to spend on services that would support the individual. This is known as an indicative budget.

4.2 A user can choose to take their personal budget in a number of ways. These are:

- **Direct Payment** - Cash payments in lieu of services. The person (or their nominated representative) takes the personal budget as a cash payment and arranges their support in line with the agreed support plan. The council pays the agreed budget into an account and the client then purchases support to meet their agreed social care outcomes as outlined in the support or care plan.
- **Managed Services** – Commissioned care, the personal budget is held by the Council with support provided in line with the person's wishes. The council holds the agreed budget and organises support on behalf of the client, using those service providers who have a contract with the council.
- **Individual Service Fund (ISF)** – The personal budget is held by a third party who manages it on the person's behalf and arranges support in line with the person's wishes. E.g.: a trust fund or nominated lead provider. (The Council is currently exploring this option). They will hold the budget and make payments to support providers under the client's instruction. They will also provide monitoring information to the council about how the budget has been spent. If an individual or organisation holds the money as well as providing the support, such as homecare, then they are called a Managed Account Provider

(MAP). If an individual or organisation holds the money as well as providing the support and purchasing additional support from other services, they are known as an Individual Service Fund (ISF)

4.3 Service users must be given as much flexibility and choice as is reasonably practical and be able to choose any of the above or a combination of all three.

5. Who can receive Direct Payments?

5.1 Direct Payments must be made to all individuals who are eligible to receive them and who want them. This might include those people in the groups listed below who have been assessed as needing relevant services:

5.2 Older people and disabled people aged 16 and over - This includes in particular older people who, despite being the largest single group of people using community care services, have been the least likely to access Direct payments. This may also include disabled adults and disabled young people aged 16 or 17.

5.3 A person with parental responsibility for a child - This may include a parent or others, such as a grandparent, with parental responsibility for a disabled child. Not all parents have parental responsibility for their children. Conversely, a carer may acquire parental responsibility for a child, usually as a result of a court order, even if they are not one of the child's parents. This definition may also include a disabled person with parental responsibility for a child.

5.4 Direct payments for disabled children are payments made under section 17 of the Children Act 1989 to parents of disabled children (or disabled children aged 16 or 17) to meet their assessed needs.

5.5 The payments are made in lieu of direct provision of some or all of the service. The council will raise the possibility of electing for, switching to, or combining a package of services and direct payments with disabled children and young people, their parents / carers, at or between their reviews.

5.6 The assessed need may be either the child's needs, or the family's needs (by virtue of their role as carers, assessed through a Carer's Assessment, for the disabled child) or both.

5.7 In meeting assessed need through direct payments, the Council enables the recipient of the direct payment to have independence by choosing the service they require, and by controlling how that service is delivered. The key elements of independence, choice and control are fundamental to recent government policy set out in the green paper, 'Support and aspiration: a new approach to special educational needs and disability' (see link in useful websites at the end of this guidance document).

5.8 To be eligible for a Direct Payment, an individual must be assessed under the Children Act 1989 as needing a service.

5.9 The Council may make direct payments to the following individuals:

- Persons with Parental Responsibility for a disabled children (as defined by the Children Act 1989);
- Some disabled young people aged 16-17 years, following a Mental Capacity Assessment, who meet the threshold for a service
- The 2009 Regulations provide that individuals can insist on a direct payment in certain circumstances. The central criteria are:
 - the recipient consents to the making of a direct payment
 - It appears to the Council that the recipient is able to (with assistance) manage the direct payments.
 - the Council is satisfied that the child's welfare will be safeguarded and promoted by the means of a direct payment.
 - the individual is not excluded from receiving direct payments. See Appendix 1 for a list of excluded individuals.

5.10 Where there is a court appointed deputy, for example to manage a child's compensation financial affairs, a family may request that the deputy also manages the direct payments. The 0-25 Children and Young People with a Disability Team worker will discuss this with the family to determine whether the requested arrangements will be acceptable, taking account of practical and safeguarding considerations.

5.11 A direct payment can be made either for part or for the whole of the total package of care which has been agreed to meet the assessed needs of a disabled child and their family.

5.12 A direct payment can be made to a child aged 16 or 17 either to meet their assessed needs consequent to their disability, or to meet their needs as a carer (a carer's assessment, young carers assessment and/or a mental capacity assessment may be undertaken).

5.13 A recipient of existing directly provided or commissioned services may later opt to receive a direct payment in lieu of part or all of those services.

5.14 Carers aged 18 and over. Direct Payments allow carers to purchase the services they are assessed as needing as carers to support them in their caring role and to maintain their own health and wellbeing. Carers (other than those with parental responsibility caring for children) may not receive a Direct Payment to purchase services to meet the assessed needs of the person they care for.

5.15 There is flexibility in the small number of circumstances where a 16- or 17-year-old is choosing to undertake a substantial caring role for a disabled adult for a period and where the local council supports that decision.

5.16 Transitions to Adulthood. In Cheshire West and Chester the provision of a Direct Payment changes as a young person becomes an adult, and by the age of 18 existing recipients of Direct Payments under Children's Services arrangements will be reassessed as part of their preparation for adulthood to determine their future level of Direct Payment as a young adult under the Care Act, this will include

application of the Councils Charging Policy for Disabled Adults. Families will need to engage with processes in preparation for their child's transition to adult service arrangements, which are managed through the Children and Young People with a Disability Service.

5.17 It is anticipated that young disabled people of 16 or 17 may wish to take control of their direct payment that had previously been managed by their parent, as part of their preparation for adulthood. This could include taking control of just part of the payment, and increasing this gradually over time.

5.18 Direct payments can be made to an individual who has parental responsibility for a disabled child until the child reaches 18. There may be situations where upon reaching 18, the young person lacks the mental capacity to consent to the direct payment. In such cases it will often be appropriate for the person with parental responsibility to act as a Nominee and open a joint bank account, or to continue receiving the direct payment in the role of a Suitable Person if they are willing to do so. You may wish to access further information about money and financial advocacy, your caseworker can support you and there is a helpful website Dosh – Financial Advocacy – Dosh supports people with a learning disability to be able to manage their money - <http://www.dosh.org/get-support-with-money/appointeeship-and-financial-advocacy/>

6. Direct Payments Exclusions

6.1 Direct Payments may not be made in respect of certain people who have been placed under certain conditions or requirements by the courts in relation to drug and/or alcohol dependencies. Further details of these exemptions can be found in **appendix 2**.

A direct payment should not be made to a person who is not willing to enter into an agreement with the Council, or is not able to demonstrate that (with assistance) they can meet the required responsibilities of financial management including expenditure. A direct payment may also be refused on the grounds that it will not be used to promote the child's welfare.

7. Choosing a direct payment

7.1 It is expected that most requests to receive direct payments will occur during the care planning stage and staff must make service users aware that this is an option. People who have eligible care needs, who are currently receiving services are able at any point to request this as a direct payment.

7.2 A person may request a direct payment before a scheduled or anticipated review. In these cases, the social care assessor must assess the request on the same basis as a request made during care planning. In practice, it may be convenient to consider the request at the same time as a review of the care plan. In these cases, the review should be brought forward so as not to delay the consideration of the direct payment request.

7.3 After considering the suitability of the person requesting the direct payment against the appropriate conditions in the Care Act, the Council must make a

determination whether to provide a direct payment. Where accepted, the decision should be recorded in the care plan, or support plan. Where refused, the person or person making the request should be provided with written reasons that explain the decision, and be made aware of how to appeal the decision through the local complaints process.

8. Direct payments for people with capacity

8.1 Direct payments can be provided when requested by an adult with capacity when each of four conditions is fully met:

- The adult has capacity and any nominated person (see paragraph 5.6) agrees to receive direct payments.
- The regulations do not prohibit needs from being met through direct payments. See paragraph 11 for restrictions on the use of direct payments.
- The adult or the nominated person is capable of managing direct payments either independently or with support.
- Making direct payments is an appropriate way of meeting needs.

9. Direct Payments for adults lacking mental capacity to consent

9.1 Adults without capacity are not precluded from having a direct payment when there is an appropriate person to manage this for them. If people are unable to understand a direct payment and what it means to them, a risk assessment along with the capacity assessment is required together with a 'suitable person' to manage the account on their behalf.

9.2 Capacity assessments should be specific to the decision/subject i.e. in this case about the ability to understand and manage financial affairs and the person's responsibilities as a potential employer.

9.3 In most circumstances the first choice for a 'suitable person' will be the direct payment recipient's representative, family member or close friend who is already involved in some way or another in the provision of care for the person. If the identified 'suitable person' has a Lasting Power of Attorney for health and welfare as well as finances they are automatically considered a suitable person and / or can choose who is a suitable person if they do not want to take on this role.

9.4 Direct payments will be provided when requested by a 'suitable' person when each of five conditions is fully met:

- The regulations do not prohibit needs from being met through direct payments. See paragraph 11 for restrictions on the use of direct payments.
- The person will act in the adult's best interest in arranging care and support with direct payments.
- The person is capable of managing direct payments either independently or with support.
- Where the person is not authorised under the Mental Capacity Act, but is willing to support the person requiring direct payments.
- If the Council are satisfied that making direct payments to the suitable person is an appropriate way of meeting needs.

9.5 In all cases the Council will follow the process set out in this policy, to ensure that the best interests of the person lacking capacity are prioritised above all other considerations. This includes, where reasonably practicable and appropriate, consulting and taking into account the views of specific people:

- Anyone named by the direct payment recipient, (before they lost capacity) as someone to be consulted.
- Anyone currently engaged in caring for the person, and who has an interest in their welfare.
- The person who lacks capacity should be consulted (as far as is reasonably practicable / possible.)

9.6 When determining who is a 'suitable person', the Council will consider all the relevant circumstances and make a decision on a case by case basis.

9.7 The suitable person will be required to take all of the responsibility for the direct payment including managing and monitoring the account, where relevant acting as an employer, financial auditing and monitoring etc.

9.8 Where the applicant has been subject to a former safeguarding investigation around financial abuse the Council will make further checks to ensure appropriate safeguards have been put in place.

10. What can Direct Payments be used for?

10.1 Direct payments can be used flexibly and innovatively by the person to achieve the outcomes identified for them in the support plan, however there are some specific exceptions and these are explained in **Section 11**.

10.2 The Council cannot draw up an exhaustive list as to how people can/cannot spend their personal budget. Each case must be decided on its own merits, based on the following key principles and most importantly, the activity has to achieve the outcomes set out in the care or support plan.

The service, activity or item proposed should:

- be used to purchase services which are safe, legal, value for money and which adequately safeguard and promote the person's welfare and wellbeing
- be clearly linked to the outcomes identified in the Support Plan to meet the person's assessed eligible care & support needs.
- be able to show how it will keep the individual healthy, safe and well.
- be affordable and proportionate to the assessed eligible care & support needs of the person.

10.3 Children and Young People - Direct payments must be used to meet an assessed need for a child/or young person. Direct Payments can be used in the following ways:

- Employing a Personal Assistant (PA)
- Contracting with a local service or agency
- Volunteer expenses.

10.4 Services to meet the needs of the family - The direct payment may be used to purchase a service to meet the family's needs with the agreement of the Council. It is important that any services contribute to meeting the outcomes described in the support plan, and that the Direct Payment is only used when there is no other reasonable way of funding this activity. This may include:

- The provision of personal care over and above what can be expected of a parent / carer to provide
- support workers or services, such as play-schemes, organised groups, youth clubs, enabling / outreach services, travel training, behaviour support, overnight breaks, once all free, grant funded schemes have been exhausted and the use of benefits have been considered.
- to pay for beneficial activities such as swimming lessons, guitar lessons, keep fit sessions, attending a social activity etc. in line with the support plan
- to pay for help needed in getting to visit a relative or friend who is going to provide a short break instead of a service, having considered if travel related benefits or a mobility car should be used first.
- reasonable volunteer expenses

The disabled child's sibling(s) may, if appropriate, participate in the activity with the disabled child. Things to consider are the ability of the carer to supervise the number of siblings involved safely and with regard to each of their needs; commonality of interest in and suitability of the activity. There may be occasions where the carer assists a parent to take siblings out together.

More details are provided below.

10.5 Employing a Personal Assistant (PA) - Common ways in which a direct payment is/can be spent include:

- To deliver personal care for a disabled child/ young person;
- To take the young person/child into the community to access an activity, support inclusion, pursue a favoured activity, going to a club, holiday play scheme, meeting up with friends etc;
- To work with the child directly within the home, to give parents and siblings a break and time for other activities;
- To stay overnight to give parents a break, in exceptional circumstances;

It is important to explore whether the prospective carer understands that as a paid carer they will have a contractual agreement and that the direct payment recipient will become their employer, and as such whether the carer is happy to continue to provide this care. It is important to be clear that if the person using services decides to employ a Personal Assistant themselves, that they are responsible for recruiting and for managing them once they start working for them. They will receive support from Cheshire Centre for Independent Living or Age UK but this does mean that they will have all the responsibilities of that person's employer.

It is important that the prospective carer understands that the Council may check its internal information systems when responding to information the Council is or becomes aware of concerning the suitability of a carer. Please see chapter 12 for more information.

10.6 Paid employment will also affect benefits and tax payments if this is a second job.

Employees, including Personal Assistants, have a right to access a workplace pension scheme. Please see the Cheshire Centre for Independent Living or Age UK for more information

10.7 Ofsted Childcare Regulations may apply to the direct payment carer. Further information is provided below. Direct payment recipients should be advised of these regulations, including where registration is compulsory and exemptions. The Local Offer should be consulted for further advice where the application of the regulations to a particular arrangement is not clear. The Childminding page on the Local Offer can be found at <http://www.westcheshirelocaloffer.co.uk/kb5/cheshirewestandchester/directory/results.page?familychannelnew=1-1>

10.8 Contracting with a local service or agency to support Direct payments can be used as follows:

- Personal care
- Access to community resources, pursue a favoured activity, support inclusion, meeting up with friends
- Participation in organised group activities
- Residential care such as in a carer's family home , a residential home or other arrangements (subject to the direct payment regulations – see chapter 12 for some restrictions that apply)

10.9 Direct payments can also be used by young people living in a supported tenancy or care homes to buy support to engage in supported employment, a day service place or engage in alternative day time activity, this can be particularly enabling for young people at transition stage.

10.11 Ofsted Childcare Regulations may apply to the service provider (see 10.16 below). Direct payment recipients should be advised of these regulations, including where registration is compulsory and exemptions.

10.12 Ofsted Childcare Regulations - A carer or childcare provider is required to register with Ofsted where he/she looks after a non-related child under the age of eight in domestic premises (this could be either the carer's home or the child's home) for reward unless any of the exemptions below apply.

10.13 It is important that people with parental responsibility for disabled children have satisfied themselves that the person offering help with the care of their child is an appropriate person. Parents must verify that a Childminder/childcare provider is Ofsted Registered before engaging in the use of their services.

10.14 The difference between childminding and childcare on domestic premises is the number of people involved. If four or more people look after children at any time,

they are providing childcare on domestic premises, if no more than three people are providing care on domestic premises this is childminding.

10.15 As part of its registration process, Ofsted undertake an enhanced DBS check on the individual. Also, if the individual is applying for childcare on domestic premises, Ofsted must also carry out checks on individuals living or working on domestic premises where the childcare is provided who are aged 16 and over.

10.16 The Childcare (Exemptions from Registration) Order 2008 specifies circumstances in which the provision of childcare does not attract the requirement for registration in the early years register or the general childcare register.

A summary of the circumstances specified in Articles 3 – 9 is as follows:

- Article 3 - exempts childminding where it is provided by the childminder for the children of a limited number of parents wholly or mainly in their homes, for a particular child for two hours or less per day between 6pm and 2am or where it is provided in the course of a friendship with the parents of that child and the provision is not made in exchange for payment.
- Article 4 - exempts childcare provision in hotels, guesthouses or similar establishments for children who are staying there, where the person providing it does so only between 6pm and 2am for no more than two clients at the same time.
- Article 5 - exempts childcare provision for children on a temporary basis in specified circumstances. If an individual cares for children under eight for four hours or less each day and the care is for the convenience of parents who plan to stay on the premises where the care is being provided or within the immediate area¹.
- Article 6 - specifies childcare provision where the person providing it does so incidentally to providing other activity for children aged three or older.
- Article 7 - exempts open access scheme for children who are not in the early years age group. However, where an individual offers provision for children in the early years age group who attend for more than two hours in any one day, you must register on the Early Years Register and meet its requirements. Childminders are not allowed to provide an open access scheme for children under eight.
- Article 8 - exempts childcare provision where the person providing it does so incidentally to the provision of education to a child under a home education arrangement.
- Article 9 - If a school or academy that provides education or care for children aged three and over, where at least one child being cared for is a pupil of the school.

10.17 Volunteer expenses - One way that personal budgets are being used is for volunteer expenses. This can be particularly useful, where the individual has someone to provide support on an unpaid basis. The direct payment recipient can feel less dependent and more able to ask for help if they can cover the expenses incurred such as fuel costs or lunch. Regular payments to someone are taxable, however volunteer expenses are not. They are intended to reimburse expenditure in undertaking a voluntary activity.

The volunteer would need to sign a volunteer agreement, Cheshire Centre for Independent Living can help with this. The volunteer will also need to undertake a DBS check as outlined in chapter 12 below. They would also need to complete expense sheets to claim their expenditure. This is essential to show they are not receiving a taxable payment.

10.18 Direct Payment for purchasing Equipment - The Council would not normally consider the option of direct payments for equipment. In the spirit of personalisation the Council would consider this in exceptional circumstances where there is an identified need that cannot be met through the normal routes, i.e. through occupational therapy services and Cheshire West and Chester Equipment Service. Decisions will be taken by the Senior Manager.

11. Direct payments cannot be used to purchase:

11.1 There is some exclusion to what direct payments can be used to pay for,

- Anything that is against the law
- Sexual services
- Gambling (including lottery tickets, bingo, etc)
- Food
- Vets bills
- Utility bills including gas, electric, water, telephone bills
- Credit card/loan payments
- Mortgage, rent payments
- Cigarettes and alcohol
- Gifts
- Any items which fall outside of the agreed support plan and do not directly contribute to meeting your assessed outcomes
- Any service directly provided by Council Services, equipment and / or minor adaptations which are the responsibility of other public bodies.

11.2 Long term residential or nursing care but can be used to pay for: short stays of up to 4 consecutive weeks in any 12 month period. In calculating the period of 4 weeks, a stay of less than 4 weeks is added to any succeeding stay if the two stays are separated by a period of less than 4 weeks but not otherwise. If the need for residential care is more than this the Council will review.

11.3 Where respite is provided informally by a personal assistant then service users will have to assess any risks and ensure there is sufficient monies within the allocated budget.

11.4 Carer direct payments are to meet the carer's own assessed needs and cannot be used to purchase services for the cared for. Staff should consider how to align personal budgets where they are meeting the needs of both the carer and the adult needing care concurrently.

*. Where an adult has eligible needs, has a personal budget and a support plan in their own right, a carer's needs can be met, in part or in full, by the provision of care and support to that person needing care. This should be incorporated into the plan

and personal budget of the person with care needs, as well as being detailed in a support plan for the carer

11.5 An authorised / suitable person must not use direct payments to pay themselves to provide services to the adult without capacity except as expressly authorised by the Council.

11.6 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 any direct payments may have been misspent or accumulated without good reason.

11.7 Direct payments cannot be used to purchase any of the following:

- Services directly from Cheshire West and Chester Council (e.g. Shared Care);
- Services already provided by the Council through commissioned services e.g. residential or outreach support services; holiday play schemes. However direct payments can be used to purchase additional services, outside of Council contracts, from service providers;
- Residential accommodation for the child for any single period of longer than four weeks, or for more than 120 days in any one year²;
- Any activities or purchases for which other statutory agencies (such as the NHS, DWP or Education) are responsible;
- Where funding can be obtained from other sources, for example, the Home Support Grant or the Disabled Facilities Grant, or mobility related benefits which can be used to fund travel;
- Employing relatives who normally live with the individual, except where the Council is satisfied that securing the service from such a person is necessary for promoting the welfare of the child (see below and paragraph 18 below)
- It is inappropriate to use a direct payment to deal with a crisis or emergency including emergency (unplanned) residential care. In this situation the family should contact the 0-25 Children and Young People with a Disability Team if further support is being sought through the Council.

11.8 The 2009 Regulations prohibit local authorities from allowing an individual who has parental responsibility for a disabled child or a 16 or 17 year old disabled child to use direct payments to secure services from the following family members except where the Council is satisfied that securing the service from such a person is necessary for promoting the welfare of the child:

- (a) the spouse or civil partner of the prescribed person;
- (b) a person who lives with the prescribed person as if their spouse or civil partner;
- (c) a person living in the same household as the prescribed person who is the prescribed person'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 sub-paragraph (c) who lives in the same household as the prescribed person;
- and
- (e) a person who lives with any person specified in sub-paragraph (c) as if that person's spouse or civil partner.

11.9 Circumstances where a person above may need to be employed as a carer in order to promote the welfare of the child may include the following, which are given as examples:

- Communication difficulties where only the family member can understand communication of needs.
- Geographical location preventing access to provide care i.e. a remote location
- Unpredictability of times that support is required with consideration for the nature of any night time support
- Cultural or religious factors that cannot be found in the local community
- Mental health considerations such as severe anxiety, etc.

11.10 To ensure that the proposed arrangements are suitable, the Children and Young People with a Disability Team worker will carry out an assessment of the household arrangements with regard to the care to be provided through the direct payments. This will include:

- The child's views
- The impact of being a carer
- Employment matters (see below)
- The ability to provide safe care
- Any safeguarding and protection concerns
- Any other risks or consideration arising from the family's circumstances

11.11 The Children and Young People with a Disability Service will consider the above circumstances and will discuss with the family whether the informal carer is happy to continue with this role paid or voluntarily.

11.12 It is also important to explore whether the prospective carer understands that as a paid carer they will have a contractual agreement and that the cared for person will become their employer, and as such whether the carer is happy to continue to provide this care. Paid employment will also affect benefits and tax payments if this is a second job.

11.13 The Council may not restrict the use of direct payments by (for example) directing that only certain providers may be used. The Council must ensure the proposed services being purchased meet the outcomes set out in the support plan, and be satisfied that the provider has the knowledge, skills and experience required to meet the needs identified in the assessment.

12. Calculating the personal budget amount

12.1 In adult social care (for people 18 years old and over) the personal budget is calculated automatically by the completion of an assessment which produces an indicative budget. The indicative budget is based on information collected by the assessor to make an informed judgement/decision regarding the adults' needs and situation. The assessor will capture the following information:

- The adult's strengths
- Home and living situation
- Ability to eat healthily and safely
- Personal care
- Mobility
- Social relationships and activities

The overall cost of the personal budget should not exceed what the Council would pay for a commissioned service.

12.2 In children's social care (for children and young people under 18 years old) the personal budget is based on the support identified and the cost of the overall personal budget will not exceed what the Council would pay for a commissioned service.

12.3 Through the Cheshire Centre for Independent Living (CCIL) service users (adults and children) can access free independent support and advice to develop their support plan. This is available to people referred by the Council and also self-funders. Once the care and support plan is agreed, the indicative budget is then confirmed as the actual budget. It is the actual budget that equals the personal budget which can be paid as a direct payment.

13. How will Direct Payments be paid?

13.1 Direct Payments will be paid into a separate and appropriately named bank account, which will be used for the purpose of managing Direct Payments. This is to ensure that the individual does not confuse their personal funds with their Direct Payment funds and will allow efficient record keeping, monitoring and auditing, both for the individual themselves, the Council or Partners.

13.2 The Council will pay their contribution four weeks in advance to ensure that the recipient is able to plan their care.

13.3 The only exception to this is service users receiving a one-off purchase, who will not be required to open a separate bank account. In these circumstances it is acceptable for a Direct Payment bank account to be in joint names.

14. Frequency of Payments

14.1 Direct Payments will be paid into the individual's Direct Payments bank account at agreed payment periods as detailed in the Direct Payment Agreement (Appendix 5)

14.2 Payments will be made via the BACS system (an electronic transfer of funds between the Council or Partners and the individual's Direct Payments bank account); alternative arrangements may be made for one-off purchases.

15. Start-up costs

15.1 Where the service user is planning to employ a personal assistant the Council will pay a one off start-up costs of £250. This is to be used for recruitment of staff including advertising and Disclosure & Barring Service checks, public liability insurance, equipment and training.

16. Contingency funding

16.1 The Council will provide service users who use a personal assistant the equivalent of 4 weeks funding as a contingency fund to cover costs such as fluctuating care needs, staff sickness cover and other emergency or temporary needs.

16.2 The use of this fund will be reviewed and assessed annually at the care review meeting and also as part of the Direct Payments annual audit.

17. Managing a Direct Payment

17.1 All recipients and/or suitable persons nominated must sign the Direct Payment Agreement before a Direct Payment can be made. The Direct Payment Agreement sets out the arrangements between the individual, the Council or Partners as to how a Direct Payment will be spent to achieve the outcomes detailed in the Support Plan.

17.2 The agreement covers the payment, management; reviewing and auditing arrangements, which the Council, Partners and individual will need to follow and refers to policies and other documents useful in the management of a Direct Payment.

17.3 If the Direct payment recipient has opted to take an independent service fund (ISF) whereby a third party manages the budget on the persons behalf as well as providing their support. The provider will be required to sign a legally binding agreement with the Council and where appropriate sign up to the managed account framework

17.4 Once a direct payment has been set up, social care staff will review after six weeks, a fuller review of the direct payment and how it is working will take place once the direct payment has been in place for 6 months (or sooner if needed) and will be reviewed/audited every 12 months thereafter (or whatever timescale the care manager and transactional service centre agree is required based on our own risk assessment).

17.5 The Direct Payment account will be subject to regular audits in relation to the use and management of the Direct Payment. This is required to ensure that Council monies are being used to meet the outcomes identified in the support plan, the correct amounts are being used for each service and that accurate receipts, timesheets and records are being kept.

17.6 When a Direct Payment commences the recipient is provided with the date that the first audit is due in writing along with what information is required to be submitted. If the information is not received within 4 weeks of this date then a reminder notice will be sent requesting that the information be submitted. Subsequent audit dates will be provided in writing along with the outcome of the previous audit. If no information is received, despite reminders being issued then the Direct Payment could be suspended until the information is provided and the audit is carried out. (This decision is led by Adult Social Care).

17.7 Following an audit of the Direct Payment account any discrepancies will be investigated and resolved. The audit will determine whether the recipient's Direct Payment account is being managed correctly and that any expenditure is evidenced appropriately and being used to meet the outcomes identified in the support plan, and that the Direct Payment is adequately meeting the assessed eligible care & support needs of the service user.

17.8 It is the responsibility of the direct payment recipient or their 'suitable person' to provide documentation on expenditure and evidence that the money is being used in accordance with the support plan. Failure to provide documentation within the timescale outlined in the audit letter will result in the direct payment being suspended, stopped and or recovered.

18. Employing a family member

18.1 The Council recognises that in some circumstances it may be desirable for a service user to employ a family member as a personal assistant but these will be in exceptional circumstances. Paying a family member should be viewed as a last resort to meet needs successfully.

18.2 The Direct payment should not be used to employ a family member, who is living in the same household, to provide care except where the Council has determined that this is the only way that the eligible needs can be met successfully. It is not possible to list every set of circumstances that may meet the criteria , each set of circumstances would need to be assessed on their own merit but could include for example break down in care and support arrangements

18.3 The Council will permit people to pay a close family member living in the same household to provide management and/or administrative support to the direct payment holder in cases where the Council determines this to be the only way to maintain this administrative support. This is intended to reflect the fact that in some cases, especially where there are multiple complex needs, the direct payment amount may be substantial.

18.4 These decisions must be authorised by a Senior Manager and recorded in the support plan and include the amount of the payments, their frequency and the activities that are covered. This arrangement must also be taken into account during allocation of the personal budget so that the amount remains sufficient to meet the person's needs.

18.5 Sometimes a close family member who is managing and or administering the direct payment may decide that they want to be considered as a personal assistant to the service user and employed as such via the Direct Payment. As well as having

to meet the criteria of exceptional circumstances and being in the best interests of the service user, the family member would have to surrender the function of management and administration of the direct payment to a third party. This is to ensure proper accountability of the management of the direct payment and to reflect the changing role of the family member. An employer cannot be an employee at the same time.

19. Ending or suspending the Personal Budget arrangement

19.1 If the Direct Payment recipient is no longer entitled to and/or an overpayment has occurred due to an error on the part of the Council or Partners, the Direct Payment recipient will be notified that this overpayment will be recovered.

19.2 Where it appears that the Direct Payment recipient has been using their Direct Payment for items or services other than those specified in their support plan, or as set out in the Direct Payment Agreement, or there is evidence of deliberate misuse of funds, the Council or Partners will undertake a full audit to ascertain the exact amount of money that has been inappropriately used and seek to recover it.

19.3 If Direct Payments have been inappropriately used (either intentionally or unintentionally) due to mismanagement of the Direct Payment account, or the Direct Payment recipient has shown themselves incapable or unwilling to manage their Direct Payment correctly, a review and / or social care reassessment will be undertaken by a social care assessor as a matter of urgency. If the outcome is that the Direct Payment monies have been inappropriately used, the monies will be recovered.

19.4 The Council has the right to suspend or terminate the Direct Payment as a result of the findings of the audit of the Direct Payment account. An audit of the individual's account may take place at any time.

19.5 The Council have the right to increase, decrease, suspend or terminate the Direct Payment in line with regular review or reassessment of the recipient's assessed eligible care and support needs. A formal review or reassessment of the individual's circumstances can be requested at any time.

19.6 The Council reserves the right to recover Direct Payments, in line with the Council and partner's debt recovery policy in the following circumstances:

- if the Direct Payment has not been used to meet agreed outcomes, as set out in the support plan,
- if the Direct Payment has not been used due to a temporary change in circumstances,
- if the Direct Payment recipient fails to meet any terms of the Direct Payment Agreement,
- if the Direct Payment recipient has failed to disclose other social care funding that should be taken into account when calculating the Direct Payment,
- if a Direct Payment has been overpaid or paid in error,
- if there is a surplus in the Direct Payment account, which has been accrued above the agreed amount,

- if the Direct Payment recipient has not met any condition which the Council or Partners have properly imposed in the Direct Payment Agreement or agreed letters.
- If the service user has failed to pay their assessed financial contribution

19.7 Where the direct payment recipient is in hospital for more than 4 weeks the direct payment will be suspended. This can be reinstated following hospital discharge. The situation will be reviewed on a regular basis.

19.7 If the council decides, following a review or reassessment, to withdraw or suspend payments then alternative care will need to be arranged immediately. A minimum of 4 weeks' notice needs to be given before the funding is withdrawn to allow sufficient redundancy notice to be given to care providers or employers.

19.8 In the event that someone dies while receiving a direct payment all underspent money should be returned to the Council after meeting any legal liabilities directly resulting from employers mandatory responsibilities, as the Direct Payment monies do not form part of an estate, the money at all times belongs to the Council and remains public funds.

20. Unspent Direct Payments

20.1 The Council will allow the Direct Payment recipient to retain an agreed reserve of the equivalent of 4 weeks payment (plus the contingency payment, if applicable) in their Direct Payment account at any one time. The Direct Payment bank account will be monitored regularly (as detailed in the Support Plan) and any obvious surplus in excess of the agreed reserve will need to be repaid to the Council or Partners.

20.2 If, after allowances for outstanding costs and contingencies, there is found to be a build-up of unused Direct Payment funds in the recipient's Direct Payment account, the recipient will be notified that these unspent monies will be recovered.

21. Contributions to Care

21.1 If identified, following financial assessment by the Council or Partners, the individual must make their personal contribution towards their Direct Payment (if applicable) into their Direct Payment bank account as per the Direct Payment Agreement. A Direct Payment will not be paid if the assessed contribution is equal to or greater than the Direct Payment. If the assessed contribution is less than the Direct Payment, the amount of the contribution will be deducted from the Direct Payment before the payment is made.

21.2 If it is found that the personal contribution has not been paid into the Direct Payment account, the individual will be liable for this amount. The amount of care may vary each week; however, the weekly contribution is a fixed amount and should always be paid into the Direct Payment account. When a contribution is applicable to **a direct payment for respite services**, that contribution should also be paid into the Direct Payment bank account.

22. Declining a request for direct payments

22.1 Requests for direct payments will be declined if any condition set out at paragraphs 8.1 (for adults with capacity) and 9 (for adults without capacity) above is unmet.

22.2 Requests for direct payments will be declined if any condition set out at

22.2 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.

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

22.4 The Council will continue the planning process to agree with the person whose needs must be met, and determine how this can be achieved without the use of a direct payment.

Websites:

Cheshire West & Chester Council Local Offer

www.westcheshirelocaloffer.co.uk

Cheshire Centre for Independent Living

www.cheshirecil.org

North West Personal Assistance

www.nw-pa.org

Skills for Care

www.employingpersonalassistants.co.uk

Care Quality Commission

www.cqc.org.uk

NHS Choices

www.nhs.uk/Service-Search/Care-at-home/LocationSearch/1833

Care Act Guidance:

www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance

'Support and aspiration: a new approach to special educational needs and disability' can be found on the Department for Education website:

<http://webarchive.nationalarchives.gov.uk/20130401151715/https://www.education.gov.uk/publications/standard/publicationdetail/page1/cm%208027>

Leonard Cheshire Disability:

www.directpayments.info

Department for Education

www.education.gov.uk

Financial Advocacy – Dosh supports people with a learning disability to be able to manage their money;

www.dosh.org/get-support-with-money/appointeeship-and-financial-advocacy

Where you are becoming an employer you may need to talk to Her Majesty's Revenue and Customs (HMRC) to clarify the status of the employee;

<https://www.gov.uk/guidance/hmrc-tools-and-calculators>

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Appendix 1

List of Excluded Individuals

Schedule 1 to the 2009 Regulations list those individuals who are prohibited from receiving direct payments. These include;

- offenders on a community order, or serving a suspended prison sentence, under the Criminal Justice Act 2003, which includes a requirement to accept treatment for drug or alcohol dependency;
- an offender on a community rehabilitation order or a community punishment and rehabilitation order under the Powers of Criminal Courts (Sentencing) Act 2000, which includes a requirement to accept treatment for drug or alcohol dependency;
- offenders released from prison on licence under the Criminal Justice Act 1991, the Criminal Justice Act 2003 or the Crime (Sentences) Act 1997 subject to an additional requirement to undergo treatment for drug or alcohol dependency; and
- people subject to equivalent provisions under Scottish criminal justice legislation.

Appendix 2

Appendix 2

2a. List of Offences that rule out a person working with children:

- murder
- manslaughter
- rape
- other sexual offences
- grievous bodily harm and/or
- other serious acts of violence
- serious Class A drug related offences or a recent pattern of possession
- robbery/burglary/theft and/or
- deception/fraud
- drink driving and other driving offences where driving/escorting children or adults is a requirement of the job
- offences relating to ill-treatment, neglect, applications and procedure for registration, or duties of attorney in event of incapacity of donor, specified under the Mental Capacity Act 2005
- an offence under the Safeguarding Vulnerable Groups Act 2006 in respect of regulated activity
- and offences in other territories outside England and Wales which correspond to any of the above.

Or where it is otherwise known that the person is barred from working with children

2b. List of example Low Risk Offences

- Arson (caution/warning or reprimand only)
- Benefit fraud
- Breach of the peace
- Dangerous dog
- Deception
- Driving under the influence
- Drunk/Disorderly behaviour
- Handling stolen goods
- Harassment (caution/warning or reprimand only)
- Low level driving offence
- Obstruction
- One-off possession of class C/B Drugs
- Property damage
- Shoplifting
- Theft

- Criminal damage (caution/warning or reprimand only)

Criteria for determining low risk cases:

- The offence was carried out more than 5 years ago and no offences have occurred since
- The offence must be one of those listed above
- The offence was declared either in the self-declaration, or during the interview. The only exception may be if the offence occurred a considerable length of time ago, and the applicant may not realise the relevance of including this (eg. a reprimand that occurred in 1975).
- The relevance of the offence within the context of the role being appointed to must be given consideration. For example, if someone applied for a driving role and had been convicted of a drink driving offence previously

Example A:

Mr A was convicted on possession of Class B drugs at age 19 and has had no further convictions or other information revealed on the DBS certificate. He is now 34 and has worked since the age of 21.

He has applied for a position of Classroom Assistant and this trace is considered to be low risk.

Example B:

Miss C was convicted of shoplifting at age 22 and again at age 23. She has had no convictions for the last 5 years and is now age 28. She revealed one of the convictions on her self-declaration.

She has applied for a position of Support Worker in HCS where there is considered to be a risk of theft from vulnerable adults. Therefore, the recommendation is that a full risk assessment is carried out before a decision is taken on whether to appoint her.

Appendix 3

Direct Payments Agreement

This Agreement is the document that tells you about your direct payment money, how you will be paid and how it will be monitored and contains details of the following:

1. Basis of the Agreement
2. About the direct payment
3. General rules on how to use the money
4. What records you should keep
5. Review of the direct payment
6. What happens if the arrangement should breakdown?
7. Comments, complaints and compliments
8. Ending the Agreement
9. Signatures

1. Basis of the Agreement

This Agreement is made on the basis that:

1.1 An assessment of your needs has been completed and you are eligible to receive care services as identified/shown in your Care Plan.

1.2 You are willing and able to secure the care/services detailed in your Care Plan yourself or with assistance (this may be through a nominated agent or third party), and the Council is willing to make your direct payment available to you to enable you to buy the care/services you need.

1.3 You agree to adhere to the terms of this Agreement, and understand that failure to do so may result in further action being taken by the Council

2. About the direct payment

Using the money

2.1 The Direct Payment is solely for the purposes outlined in your Care Plan. It cannot be used for any other purpose, therefore when the Direct Payment Agreement ends all of the money in the account must be returned to the Council.

When you will be paid

2.2 Payments will be made in advance, every four weeks.

How you will be paid

2.3 The payment will normally be paid onto your pre-payment card or into your nominated bank account unless it has been agreed to make the payment directly to a Third Party.

2.4 All money you receive for your care needs, in addition to any agreed contribution, must be paid into the same agreed account. . By making this payment into your account you are ensuring that there is enough money to pay for your care.

3 General rules about how to use the money

3.1 You can only use the direct payment to buy the services as detailed in your Care Plan and you must ensure that contingency arrangements are in place in case of any emergencies.

3.2 The law requires that you must use the direct payment in line with the guidance we give you. If you decide to employ a Personal Assistant you must meet the legal requirements of being an employer and also we recommend you carry out a full Disclosure and barring check.

3.3 If you wish to use a care agency we recommend that you purchase care from a provider who is registered with the Care Quality Commission who inspect the standards provided by agencies nationally. You can find details of local providers by contacting the Community Access team on 0300 123 7034.

3.4 If you choose to employ a personal assistant we encourage you to seek advice from the Arrangement of care and support service (previously referred to as Brokerage) on becoming an employer. Contact Cheshire Centre for Independent Living on 0845 340 2777

3.5 Your Personal Assistant cannot assist you with managing your direct payment, i.e. they cannot be a signatory on your bank account and they cannot support you with record-keeping.

3.6 Any third party person helping you to manage your direct payment cannot have any financial interest in, or be a director of any company providing services funded through the direct payments either as a Personal Assistant or through a care agency (unless agreed by the Council).

3.7 If you intend to employ a Personal Assistant, the law says you have to buy Employers Liability insurance before your staff start working for you. The policy should also cover you for Public Liability Insurance Policy.

3.8 You cannot use the direct payment to employ:

- your spouse (husband or wife)
- your civil partner
- your partner whether you are unmarried or part of a same sex couple or
- a close relative who lives with you or the spouse or partner of that close relative
- A close relative means a person that you are related to in one of the following ways: Parent or Parent in law, Aunt or Uncle, Grandparent, Son/Daughter, /Son in law/Daughter in law, Step Son or Daughter, Brother or Sister and Partner of any of the above

We will only agree to this if we feel it is necessary to meet your care needs in this way and we will write to you to inform you of any decision and how it's been made.

3.9 You cannot use the direct payment to buy services from Cheshire West and Chester Council.

3.10 You cannot use the direct payment to pay for long term residential or nursing care.

4. What records you should keep

4.1 You are responsible for using your money wisely with the Care of your agent or third party. Any bank charges, legal charges or HM Revenue and Customs costs will be your responsibility.

4.2 If you are using a prepaid card the information required should be available to us. We will inform you of any additional information you will need to send us.

4.3 If you are not using a prepaid card you will need to keep financial records, e.g. bank statements and invoices of how the money has been spent and complete financial returns forms which will need to be submitted to the Council regularly (as agreed with the Council). These records will help you, (your agent or third party) and the Council to review the services and your direct payment at your annual review. You will need to keep these records for at least seven years.

4.4 If you do not send in your financial information your direct payment could stop.

5 Review of your needs

5.1 The review will be carried out initially in the first 6 to 8 week and at least annually thereafter, and will help you look back over the year at what you have achieved and if your payment will remain the same based on your needs. If your needs have remained the same, the payment will continue at the same rate.

5.2 If anything changes in you circumstances you must let the Council immediately, this includes going into hospital or if your needs change in any way or your need for direct payment ends.

6 If your arrangements break down or your needs change

6.1 If things go wrong you should contact the Community Access Team who will assist you to identify other forms of support to meet your assessed needs. However, if this is unsatisfactory then we will try to provide the necessary services.

7 Data Protection and how your information may be used

7.1 Your data will be held securely at all times by the Council. It will be shared appropriately for the purposes of your welfare and care needs within the Council and also with any external partner organisations.

7.2 We will also share your data within the Council and external partners or agencies as appropriate for the purpose of making financial payments, audits and fraud investigation.

8 Ending the Agreement

8.1 Either you or we may terminate this Agreement by giving four weeks' notice in writing to the other party.

8.2 We may terminate this agreement with immediately effect if, after investigation, it is found you are using the money illegally or not in your best interests or the best interests of the person receiving the direct payment or you are not complying with any part of this Agreement.

8.3 Before terminating the Agreement, we shall work with you (and your agent or third party) to find a solution to the problems wherever possible.

8.4 You will need to complete all outstanding payments to your employees, HM Revenue and Customs and agencies and then provide financial returns forms to the Council to finalise your direct payments account.

8.5 Any money left in the direct payment account will need to be returned to the Council but we will write to you regarding this.

8.6 In the event of death we will take into account your legal or employment responsibilities before finalising the direct payments account.

8.7 We may ask for money to be repaid if it has not been used to buy the Care set out in your Care Plan or you have employed your spouse, partner or close relative as detailed in paragraph 3.8 above.

This agreement is between:
Cheshire West and Chester Borough Council
HQ, 58 Nicholas Street
Chester
CH1 2NB

(Referred to in this document as ("Council" 'we' or 'us')

Signed:

Date:

And

The person(s) receiving the direct payment

Name

P Number:

Address Line 1

Address Line 2

Postcode

(Referred to in this document as ('you')

Signed:

Date:

(Delete as appropriate)

And Your agent/representative (the person supporting you with your direct payment)

Name

P Number:

Address Line 1

Address Line 2

Postcode

(Referred to in this document as (third party)

Signed:

Date: