

Cabinet – 18 December 2019

Direct Payments Policy

Portfolio: Councillor Rose Martin, Adult social care

Related portfolios: Councillor Timothy Wilson

Service: Adult Social Care Directorate & Children's Directorate

Wards: All

Key decision: Yes

Forward plan: No

1. Aim

- 1.1 The purpose of this policy is to reflect the requirements of Part 1 of the Care Act 2014 effective from 1 April 2015 and the Care and Support (Direct Payments) Regulations 2014. Direct payments are cash payments given to individuals in lieu of community services they have been assessed as needing. The payment must be sufficient to enable the person to purchase services to meet their eligible needs and must be spent on services that meet those eligible needs

2. Summary

- 2.1 For Cabinet to approve the draft policy for Direct Payments in order for this to ensure that Walsall Council is acting within the Legislation set out within the Care Act, 2014 and Children & Families Act, 2014.

3. Recommendations

- 3.1 That Cabinet approve the Direct Payments policy as set out in appendix 4.
- 3.2 That the Direct Payments Policy be introduced into the business offer for all customers with presenting needs around health and social care.

4. Report detail - know

Context

- 4.1 The Direct payments offer has greatly increased in terms of take up across both Adult and Children Social Care Directorate. The introduction of Care Act, 2014 and the Children & Families Act, 2014 has also helped citizens to recognise the benefits of self- directed support as opposed to relying on traditional commissioned only offers of receiving care and support.

- 4.2 Walsall are improving the opportunities for both customer and council to embed the self-directed support model and this includes the introduction of the Direct payments Policy and supporting guidance. The successful and increased take up of direct payments across the Borough also evidences good practice and a more effective way of supporting citizens who require the Council's ongoing support in relation to social care. The improved Policy, Guidance and agreements that will be introduced across Walsall, will also help to improve cost effective and sustainable outcomes for the Council, whilst ensuring that customers remain at the heart of everything we do with them as part of promoting outcomes as opposed to services, for day to day life.

Council Corporate Plan priorities

- 4.3 The Direct Payments Policy promotes a sense of wellness and improved aspirations for the person who requires ongoing support. It encourages independence and helps the customer take control of their own support. The opportunities available to new and existing business and care sector provision as a result of people choosing where they want to spend their money in order to remain safe and well, means that there opportunities for more innovation locally across the market place. There is a need to improve the customer experience, engagement and focus on improving outcomes that promotes independence, and improved health and wellbeing. Direct payments will encourage this from a real early age and also encourage families of younger people to use a direct payment in order to promote independence choice and control on a very local level. The ability for Direct payments to assist Walsall to monitor the effectiveness and efficiency of its service delivery to a range of customers, is evident. By maximising the use of the policy, its underpinning documents and approach towards Direct payments, there is also a shared ownership across the customer and council relationship to promote the improved use of taxpayers money.
- 4.4 The policy for Direct Payments and its approach towards delivering a robust and sustainable process for meeting the outcomes for people, also helps to promote many of the Organisation's initiatives for change, thus putting the customer at the centre of everything we do. Direct Payments and the opportunities that this brings to local people of Walsall, is increasing independence and improving the real outcomes for people day to day. The take up of Direct Payments in the Borough is increasing and they are becoming a very popular way of delivering support to people who require it, enabling people to decide for themselves how they wish to use the payment to support their assessed care and support needs.

Risk management

- 4.5 At the time of the report, any risks identified are likely to be historical ones, none linked to the Policy and supporting documents.

Financial implications

- 4.6 The annual spend in relation to Direct Payments for Walsall Council is in the region of £13.5m. The continuous improvements being made in relation to the Policy and its' supporting operational guidance, means that the stewardship, more robustly lends itself to an improved set of outcomes for the Council and the customers it serves. The introduction of the Policy helps the council to monitor

activity around the account and also ensures that any unspent monies are collected back in by the contract monitoring and customer review process. To date, this financial year, due to the improved process for monitoring the Direct Payments, £1m has been recovered in unspent funds.

Legal implications

- 4.7 There are no legal implications.

Procurement Implications/Social Value

- 4.8 The added social value in relation to the policy and operational guidance means that they are ensuring value for money from a contractual perspective. Benefit to customers and taxpayers is in terms of being able to receive timely support and resolution if the Direct Payments arrangements are no longer most appropriate for them as individuals. Direct Payments offer customers opportunities to choose how they wish their care and support to be delivered, hence offering more choice, control and independence, whilst being supported by the Direct Payment support service as a part of their formal agreement when taking on the payment option over a commissioned service.

Property implications

- 4.9 None identified

Health and wellbeing implications

- 4.10 By offering a Direct Payment to a person, rather than a rigid service offer, this will provide the person with more control, choice and freedom. This enhances a person's overall wellbeing and the wellbeing of their carers and network of support.

Staffing implications

- 4.11 None identified.

Reducing Inequalities

- 4.12 Everyone, with the exception to any individual assessed as not being eligible to receive their support in monetary terms, will be encouraged and supported to access a direct payment. Even people, who lack capacity, will be considered for receipt of a direct payment, with the relevant nominated person being appointed to manage the finances on the person's behalf – via the Direct Payments Support service (DPSS).

Consultation

- 4.13 Engagement commenced with a range of internal professionals in July 2019 and the policy is based on national, regional and local good practice initiatives and opportunities introduced over several years because of changing Legislation, offering the opportunity for Walsall Council to continue to develop and transform its offers to meet local need and changing customer demand.

5. Decide

- 5.1 Since the introduction of Direct Payments several years ago, the interest and successful take up from customers in choosing a Direct Payments has noticeably increased. Following the introduction of the Care Act 2015, it has become clear that there is a need to continually review and improve the internal policy and operational guidance for staff involved in the delivery of the Direct Payment offers, whilst also ensuring customers continue to receive a good service from the local council. The contractual agreements that customers or their financial representatives enter into, offer reassurance and an equal customer and council relationship. It promotes financial accountability and a seamless transactional arrangement that adds value to the customer experience. Cabinet are asked to approve the recommendations set out on page one, section (2) of the report and approve the Direct Payments policy and guidance.

6. Respond

- 6.1 If Cabinet approve the recommendations, the Direct Payments policy, guidance and agreements will be progressed, rolled out across Children and Adult Social Care Directorates and embedded as part of day-to-day practice. A series of Training and Good practice will be shared across teams.

7. Review

- 7.1 Governance arrangements for the policy will be through Adult Directorate Management Team and Transformation Board.

Background papers

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.

Appendix 1: Procedure and Guidance draft v5:

Appendix 2: Direct payment Agreement-Standard v2:

Appendix 3: Direct Payment for authorised or nominated Person v4

Appendix 4: Direct Payments Policy v7

Appendix 5: EQIA

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4 December 2019



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Walsall Council

DIRECT PAYMENTS PROCEDURE & GUIDANCE

Document reference:	
Version:	Draft v0.5
Ratified by:	Adult Senior Management Team
Date ratified	
Originator/author:	
Responsible committee/individual	
Executive lead:	
Date issued:	
Review due date:	

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1 Introduction

This guidance will:

- Ensure that Walsall Council staff are able to meet the council's statutory obligations in relation to The Care Act 2014, Mental Capacity Act 2005, Care and Support Statutory Guidance issued with the Care Act 2014, DH Guidance on Direct Payments 2009, Care and Support (Direct payments) Regulations 2014. Think Local Act Personal (TLAP): Improving Direct Payment Delivery 2011.
- Achieve consistent approaches for individuals accessing direct payments.
- Provide procedure for supporting people to access direct payments.
- Provide procedure to support individuals where difficulties arise.
- Support social workers, occupational therapists, social care facilitators and Managers to facilitate the offer and making of a direct payment.
- Support situations where an EHC (Education, Health and Care) plan is in place and may be combined with the direct payment.

Direct payments and personal budgets are central to implementing the government's personalisation and self-directed support policies. These are aimed at giving social care service users more independence, choice and control over how their support needs are met.

Every service user who is assessed as being eligible for support receives an allocation of funding which we consider is sufficient to meet their needs. This is called a personal budget. It is means tested so the service user may have to contribute towards the total amount of the personal budget.

The personal budget can be spent in one of three ways:

- We can make all arrangements for the service user's support,
- We can pay our portion of the personal budget to the service user so that they can make their own arrangements, or
- The service user can choose to have a combination of the two – where we make some support arrangements and they make the rest.

When we pay our portion of the personal budget to the service user, this is called direct payments.

You must be familiar with and follow the Direct Payments policy. Always consult the Direct Payments policy first.

If you are uncertain about what to do, need support in decision-making or are dealing with something unusual, always seek advice from your supervisor or manager.

1.1 Terminology:

Individuals, persons, service user eligible for support include adults or carers with eligible social care needs.

A direct payment recipient is the person receiving the direct payment and who has the legal obligations to manage this appropriately. This may be the individual in need of social care and support, a nominee, a carer or an authorised person.

A direct payment is monetary payments in lieu of services. In Walsall, direct payments are paid net of personal contribution.

An Authorised person is someone who is authorised to act on behalf of an adult who lacks mental capacity to make a decision to request a direct payment. An authorised person takes on the legal responsibilities and the management of the direct payment, with or without support.

A Nominee is someone an adult with capacity nominates to manage and take over control, including any legal responsibilities of the direct payment on their behalf, with or without support.

The Allocated worker is a representative of Walsall Council who will provide professional support to the adult or carer, which will include assessment, helping to identify needs and proportionate help and advice around support planning. Ordinarily this would be an Advanced Practitioner, Occupational therapist, Social Worker or Social care facilitator.

Support Plan refers to the individuals Care and Support plan or a Carers Support plan

Direct payments Support Services (DPSS) are organisations commissioned by Walsall Council to provide administrative support, advice, information, signposting, payroll services and nominated accounts to direct payment recipients. Further information about DPSS can be found on the <http://int.walsall.gov.uk>

2 Direct Payments Overview

Who is eligible to receive a direct payment?

Under the legislation, councils have a duty to offer a Direct Payment (where appropriate) to:

- Older and disabled people aged 16 and over in line with the eligibility criteria
- A person with parental responsibility for a child
- Carers aged 16 and over
- An appointed authorised or nominated person

- People (“restricted patients”) who are conditionally discharged under the Mental Health Act 1983.

Direct payments are monetary payments made by local authorities – in this case by Walsall Council Adult Social Care – to help promote independence, wellbeing, choice and control. These payments are made directly to people (or someone on their behalf) who have been assessed as having eligible needs for social care support and form all or part of their Personal Budget.

All direct payments will be paid net of personal contribution in accordance with Walsall Charging Policy for Community Based Social Care.

A range of information relating to direct payments will be available to the public through the www.wcld.co.uk or at the first point of contact with Walsall Adult Social Care who will provide information and advice on direct payments including the completion of paperwork, roles and responsibilities. This will enable people to consider if direct payments are something, which may be a way they wish to receive their personal budget.

Once an adult social care support assessment is completed and eligibility is confirmed a request to take it in the form of a direct payment should be made by the person or their representative to their allocated worker. Following this request, we will consider the request for the individual to receive their personal budget as a direct payment.

The allocated worker should provide information regarding a direct payment as part of the support planning process undertaken with the adult or carer and their representative to enable them to make informed decision about the suitability and use of a direct payment.

Direct payments give people more choice but they come with responsibilities. When we are providing information on direct payments, we should explain how direct payments work so that people can provide informed consent, e.g.

- They will have to meet all their support costs from within the personal budget.
- They will have to open a new bank account – unless they already have one that is used for support purposes - so that we can monitor how direct payments are used.
- Payments cannot be made in cash. Only cheque or electronic bank transfers must be used.
- There are some conditions. Direct payments have to be used to meet the service user’s support needs, they can only be spent on services / equipment / adaptations that are safe, legal and value for money.
- They will have to keep records - their agreement and support plan, as well as bank statements, receipts, invoices, timesheets. We will want to see these records when we review direct payment arrangements.

- If they use direct payments to employ staff, they will have responsibilities as an employer.
- They will be responsible for paying their client contribution towards the total amount of personal budget where applicable.

We should always encourage people to seek independent advice about direct payments from our commissioned direct payments support services and other reputable sources.

It is particularly important that service users or a suitable person seek advice if they intend to use direct payments to employ staff. They, not Council, will be the employer. They will become responsible for meeting legislative (e.g. employment and health and safety laws) and contractual (the employment contract) requirements. They will be liable if requirements are not met. For example if they discipline or dismiss a staff member, they must be fair and operate within the law. Otherwise, they may face legal proceedings or have to pay out on an unfair dismissal and/or redundancy claim.

The law requires that employers have compulsory Employers' Liability insurance. The service user or suitable person is responsible for taking out the insurance and for ensuring that premiums are paid when due.

We cannot provide employment advice – this is not our area of expertise - but we have an obligation to make sure that people are aware that they will have to meet legal requirements. We must urge people to seek advice from a reputable source about the legal responsibilities of becoming an employer. Commissioned direct payment support services can provide employment and other advice about requirements (for example, the minimum wage, leave, statutory sick pay, tax, national insurance, health and safety, employers' liability insurance, terminating employment, redundancy). They can also provide employment and other services on their behalf. For example payroll, DBS screening, day to day staff management, record keeping and other services.

2.1 Adults with Capacity

We have a duty to make a direct payment where the following conditions are met:

- The person requests a direct payment.
- We are not prohibited from making a direct payment outlined in Schedule 3, Care and Support (Direct payments) Regulations 2014 or where discretion is allowed as part of Schedule 3, chooses not to exercise that discretion. Prisoners are excluded from direct payments.
- We are satisfied that the individual is capable of managing a direct payment with or without support.
- We are satisfied that the making of a direct payment is an appropriate way to meet eligible needs.

Direct payment recipients must understand the responsibilities linked to having and managing a direct payment and agree to have their personal budget as a direct payment. Individuals should not be directed to accept a direct payment. All reasonable steps should be taken to support the service users to understand the nature of the decision to request a direct payment and to ensure that they can make an informed choice. All service users with capacity who request a direct payment must sign the direct payment agreement and understand what they have agreed (TLAP: Improving direct payment delivery. p4/5). All direct payment recipients will be provided with further information about the direct payment agreement from the allocated practitioner.

Service users accessing direct payments must be able to manage the direct payment with or without assistance, though assumptions must not be made. The individual's ability to manage the direct payment should be identified through the assessment and support planning process. The level of assistance agreed for the person to manage the direct payment should minimise any financial management risks to the recipient and Walsall Council. Mitigation of risk may include the use of a nominated bank account or support from family or friends. Allocated workers must be satisfied there are no safeguarding concerns which could be exacerbated by the provision of a direct payment (i.e. no suspicion of financial abuse).

Service users will have to keep records when in receipt of direct payments this will include their agreement, support plan as well as bank statements, receipts, invoices and timesheets. When an allocated worker undertakes a review they will ask to see these records as part of reviewing the direct payments arrangements.

Service users who are not able to manage a direct payment without support, can still access a direct payment, via a nominee or via an authorised person. Where the service user has the capacity to request a direct payment they may nominate someone to manage the direct payment on their behalf, the nominee must meet the same conditions set out above. In this situation, the nominee signs the direct payment agreement and becomes legally responsible for its administration and the compliance requirements set out in the agreement.

Direct Payments recipients can access training via to Skills For Care.

2.2 Changes in capacity

Changes in capacity should also be referred to a manager or supervisor. This includes:

- Loss of capacity in a service user who has been receiving direct payments.
- Service user regaining capacity where they were previously assessed as not having capacity.

- Fluctuating capacity. For example, a service user may have a condition which deteriorates occasionally affecting decision-making ability but at other times has capacity.

Key information should be documented, particularly:

- why changes in capacity were suspected / evidence of change,
- who was consulted during assessment and decision making processes,
- what conclusions were reached,
- what arrangements have been made for interim or ongoing care and support, who was consulted and who approved the decision(s).

A. Loss of capacity: Where a service user receiving direct payments is assessed following MCA processes as having lost capacity, direct payments should be discontinued and alternative support arrangements made. The 2009 DH Guidance on Direct Payments (p 92-93) states 'If the council believes the loss of capacity to consent to be temporary, it may continue to make payments if there is someone else who is willing to manage payments on the person's behalf and the service provider (e.g. a personal assistant) agrees to accept payment from this person instead. This situation should be treated as strictly temporary and closely monitored to ensure that, once the person has regained capacity, they are able to exercise overall control over the direct payments as before. If the person's loss of capacity to consent becomes prolonged, then the council should consider making more formal arrangements for a suitable person to take over receipt of the direct payments on that person's behalf.'

B. Regaining capacity - permanent: If we are satisfied that someone who previously lacked capacity has regained capacity on a permanent or long-term basis, we have 'a duty to discontinue the direct payments to the suitable person and instead to make payment to the person requiring care and support. However, before it does so, the council must consult with the person about whether they wish to receive direct payments.

Most importantly, councils should not terminate direct payments to the suitable person before beginning to make direct payments to the service recipient themselves (except where councils have decided to refuse direct payments) or arrange services for them, according to their wishes and subject to their entitlement. This will ensure that there is no period when they are not receiving care and support and therefore that there is no gap in the provision of their care.' 2009 DH Guidance on Direct Payments p25.

C. Fluctuating capacity: Where we reasonably believe that capacity will fluctuate, direct payments should be subject to the condition that the suitable person will allow the service user to manage direct payments themselves during any period when we are satisfied that the service user has the capacity to consent to direct payments, is capable of managing them and wishes to do so.

‘In this way, arrangements for the making of someone’s direct payments do not have to be continually revisited as they lose or regain capacity. This makes things easier in practical terms for the suitable person and the council, and provides continuity of arrangements for the person requiring care and support.’ 2009 DH Guidance on Direct Payments, p25

2.3 Adults who lack capacity

Mental capacity is the ability to make a specific decision. Under the 2005 Mental Capacity Act, a person lacks capacity in relation to a matter if, at that moment in time, they are unable to make a decision in relation to the matter because of a temporary or permanent impairment of, or a disturbance in the functioning of, the mind or brain.

Where there is no impairment or disturbance in the functioning of the mind or brain, adults must be assumed to have capacity to request a direct payment.

Where there is an impairment or disturbance in the functioning of the mind or brain, which appears to impact on a person’s capacity to make a decision regarding the direct payment, you must carry out a mental capacity assessment, specific to the decision to take the personal budget as a direct payment.

Where the person is assessed as lacking capacity to request a direct payment, an authorised person can make a request to receive a direct payment on behalf of the person who lacks capacity.

We have a duty to make a direct payment to the authorised person, following a request, if the following conditions are met:

- Anyone who legally acts on the persons behalf in regard to legal financial matters, such as a lasting power of attorney or a court appointed deputy, must agree to another person becoming the authorised person for the individual without capacity.
- We are not prohibited from making a direct payment outlined in Schedule 3, Care and Support (Direct payments) Regulations 2014
- We are satisfied that the authorised person will act in the adult’s best interests in arranging for the provision of the care and support for which the direct payments will be used.
- We are satisfied that the authorised person is capable of managing direct payments by himself or herself, or with whatever help the authority thinks the authorised person may require and will be able to access.
- We are satisfied that making direct payments to the authorised person is an appropriate way to meet the needs in question.
- There are no substantiated allegations of financial abuse or neglect.

Where the authorised person is not a close family member, they must have a satisfactory Enhanced Disclosure and barring list (DBS) check.

The authorised person will be required to sign a direct payment agreement and they will be legally responsible for administering the direct payment on behalf of the person who needs care and support and in compliance with the conditions set out in the agreement.

The authorised person requesting a direct payment must be able to manage the direct payments with or without assistance. The authorised person's details must be documented in the support plan.

Allocated workers must be satisfied there are no safeguarding concerns which could be exacerbated by the provision of a direct payment.

Direct payments will be used to meet a service user's eligible social care outcomes. Authorised persons, with involvement and in regard to the individual requiring support should be encouraged to take ownership of support planning and be flexible in choosing how needs are met. The outcomes will be directly linked to the eligible need allowing the direct payment recipient flexibility in how they achieve the outcomes within the agreed budget. Direct payment recipients should not have unnecessary restrictions built in around the use of their direct payment. They should be allowed and encouraged to find preferred and effective ways of meeting their outcomes using the money available to them (TLAP: Improving Direct Payment delivery. p1). The support plan should enable the authorised person to understand how they can use their direct payment.

2.4 What direct payments can be used for

Direct payments can be used to purchase support, which is healthy, safe and legal and meets the eligible needs and outcomes detailed within the assessment and the support plan. It is not possible to draw up an exhaustive list as to how people can/cannot spend their Direct Payment. Ultimately, it is down to you, as the practitioner to look at each case on its own merits, to see that the service, activity or item proposed is clearly linked to outcomes identified in the Care and Support plan. These outcomes should clearly be shown as meeting the service users assessed care and support needs and should be proportionate and affordable way of doing so, i.e. you should not be assessing solely for a particular service.

A direct payment cannot be used to fund:

- Long-term residential care.
- Short-term residential care for periods of more than 4 weeks. Periods of short-term care less than 4 weeks apart will be combined for this purpose and may add to the total period.
- In house adult social care services, unless there are exceptional circumstances or they are purchasing from a neighbouring local authority.

- Employing family members living in the same household as the direct payment recipient this includes: parent or parent-in-law, son, daughter, son-in-law or daughter-in-law, stepson or stepdaughter, brother or sister, aunt or uncle, grandparent, the husband, wife or partner of any of the relatives in this list, a person who lives with any of the relatives in this list as if they were that relative's spouse or civil partner. However, this may be agreed in exceptional circumstances or to provide administrative support for the direct payment. (Please see section 4 for further information)
- Anything, which does not achieve eligible outcomes, documented on the support plan.
- Any personal contributions resulting from a financial assessment.
- Any third party top up's for care received in a residential or nursing placement.
- Direct payments cannot be used to fund personal daily living costs, debt repayment, gambling or any illegal purpose.

Direct payments can be used to purchase equipment with prior approval from the allocated worker. In such instances, the direct payment recipient will be required to sign a direct payment agreement for equipment, prior to purchase and needs to have clear agreement on any maintenance costs or schedules. Equipment approved will usually be equipment, which is not available through existing Walsall Council contracts and/or where it enables the person to substantially increase their independence and reduces the need for support. The direct payment recipient must consider any health and safety requirements especially if others are using the equipment as part of their caring duties.

Recipients of direct payments may wish to join with others to pool their direct payment for example to help access social or day opportunities or for shared living arrangements to help achieve better outcomes for participating individuals. Such arrangements need to consider responsibilities and contingency measures should one or more parties wish to end or change the agreement.

The making of a direct payment will undergo a light touch review within 6 to 8 weeks of set up then a 12-month review alongside the social care review. Where concerns are raised in making a direct payment, an unplanned care and support review should also be carried out. The making of a direct payment will then be reviewed annually alongside the planned social care review (or more often if necessary) to ensure the support arrangements are meeting the outcomes identified in the support plan. Reviews should be carried out more frequently where there are concerns regarding safeguarding, ability to manage the direct payment or a change in the persons circumstances.

Direct payment recipients are responsible for managing the money provided and services they purchase with it, with support if necessary. This will include payment for additional costs such as employer's liability insurance and staff training time if appropriate.

2.5 Support for Direct payment recipients

All direct payment recipients will be provided with information and support to enable them to manage the direct payment. They each will be provided with the direct payments information pack, in a format, which is accessible to them (TLAP: Improving direct payment delivery. p4).

All direct payment recipients will continue to have a named allocated worker to support them and carry out the councils statutory obligations. If at any time the allocated worker changes the direct payment the recipient must be notified.

A person's level of support for the administration and management of a direct payment will be determined through the assessment and support planning process by the allocated worker. The fees for support from a DPSS will be paid directly by the Council to the provider. Walsall Council will not fund a direct payment support service or payroll service that has not been commissioned by Walsall Council.

The DPSS's will provide support and assistance to recipients, this includes the selection and recruitment of staff, employment contract templates, payroll services, completion of risk assessments and support with DBS checks. The DPSS's cannot be an authorised person for a direct payment recipient that lacks capacity or a nominated person for an individual with capacity.

All direct payment recipients must choose a DPSS who will monitor the financial use of direct payments on behalf of us. The DPSS will undertake a financial audit on an annual basis or at the request of us for all recipients.

The brokerage team will provide the DPSS's with copies of the persons approved support plan, a signed DP agreement and risk assessment if applicable.

Personal assistants employed by a direct payment recipient can access training appropriate for their role free of charge from Walsall Council; direct payment recipients can also access this training free of charge. In some cases, funding will be agreed by us to cover specific training requirements that are deemed necessary by the allocated worker.

Funding is available from additional costs for Enhanced Disclosure and barring list (DBS) checks. Where the personal assistant will be working with a child or where there are children in the house as the recipient, a satisfactory Enhanced DBS check with a children barring list is mandatory before the direct payment commences. The allocated worker must have sight of the satisfactory DBS check, which will be recorded on Mosaic.

Skills For Care training is available for the direct payment recipient to apply for in order for their P.A. to go on training and allowing another P.A. to cover.

DBS check outcomes are issued directly to the PA and not the potential employer or the DPSS. Employers will need to ask their PA to advise them of the DBS outcome and make necessary decisions based on this information. A copy of the DBS outcome must be shared with the DPSS for auditing purposes.

Personal Assistant must be given four weeks' notice if a direct payment changes.

3 Requests for direct payments

As part of the assessment for adult social care services, a person's eligible outcomes will be identified. Where these outcomes cannot be achieved through personal strengths and resources or through universal services, we will provide information regarding direct payments.

Where a person requests a direct payment, we will consider their request against the conditions set out in the Care and Support (Direct Payments) Regulations 2014.

Where there is impairment in the function of mind or brain, a Mental Capacity Assessment must be carried out to establish whether the person is able to request a direct payment.

3.1 Adults with capacity

A service user's ability to manage the direct payment scheme will be assessed and documented through the assessment and support planning process. The support plan should identify the type of provision that is being secured, the level of support required and the chosen DPSS. The allocated worker should consider safeguarding issues as part of the person's ability to manage their own support and wellbeing.

We will provide information and sign posting to enable the service user to manage their own direct payment. This should include contact information for the DPSS's, Skills for Care, other appropriate voluntary sector agencies, independent sector agencies, care providers and any other information relevant to the individual.(TLAP: Improving Direct Payment delivery p6).

The service user will be encouraged to complete their own support plan, with whatever support is necessary, including being completed by the allocated workers if required. The person receiving the direct payment should be supported to take full responsibility for managing his or her own care.

A service user who has capacity to consent to the making of a direct payment can choose to nominate someone with their agreement, to manage the direct payment on their behalf this includes taking on any legal responsibilities.

The support plan should document how the eligible outcomes will be achieved but the level of detail required need actually only be proportionate to the complexity of a

person's needs and the risks being dealt with (TLAP: Improving Direct Payment Delivery. p4).

The amount of the direct payment paid to the service user will be sufficient for them to achieve their eligible outcomes and any associated costs as deemed appropriate by Walsall Council.

The recipient will sign a direct payment agreement, which will outline what support they can expect from Walsall Council and what their responsibilities will be. The allocated worker on behalf of Walsall Council will also sign the direct payment agreement.

3.2 Adults who lack capacity

Where there is impairment of function in the mind or brain of the person requiring care, leading to concerns about the person's capacity to request a direct payment, a decision specific mental capacity assessment will be completed. This will document the service user's capacity to request a direct payment and what that means.

Where a service user lacks mental capacity to request a direct payment, an 'authorised person' can request a direct payment on their behalf.

In the first instance, we will look to any person who has been granted Lasting Power of Attorney or appointed by the Courts to act as a deputy for the person who lacks capacity, for health and welfare, to ensure they support the request. Any person who has been granted Lasting Power of Attorney or appointed by the Courts to act as a deputy for the person who lacks capacity, for property and Affairs must be involved in this decision due to any applicable personal contribution that may be associated with the persons support.

Where we have approved an authorised person, they cannot also become the personal assistant employed to provide care, on an employed or self-employed basis to the person for whom they are an authorised person. Neither can the authorised person be paid as an agency carer or be financially linked to the agency providing the care.

Walsall Council, or any employee of the council, cannot act as an authorised Person on behalf of a person who lacks capacity even where Walsall Council are Court appointed deputy for their finances and property. Where there is no request for a direct payment, direct payments cannot be provided.

The authorised person must be subject to a satisfactory Enhanced DBS check with a check against the adult barred list, if they are not the recipients spouse, civil partner, partner or close relative.

We will provide information and sign posting to enable the authorised person to manage the direct payment. This will include contact information for the DPSS's, Skills for Care, other appropriate voluntary sector agencies, independent sector agencies,

care providers and any other information relevant to the client. (TLAP: Improving Direct Payment delivery p6).

The authorised person should complete a support plan, with whatever support is necessary, including the allocated worker if required. The support plan should document how the authorised person intends to use the direct payment to meet the person's eligible needs and achieve their agreed outcomes.

The support plan should document how the eligible outcomes will be achieved but the level of detail required need actually only be proportionate to the complexity of a person's needs and the risks being dealt with (TLAP: Improving Direct Payment delivery. p4).

The amount of the direct payment paid to the authorised person will be sufficient for them to achieve the person's eligible outcomes and any associated costs.

The authorised person will sign a direct payment agreement, which will outline what support and requests they can expect from Walsall Council and what their responsibilities will be along with the allocated worker on behalf of Walsall Council.

3.3 Suitable Person

A suitable person or authorised person is someone appointed to receive and manage direct payments for a service user assessed as lacking capacity to consent to receive direct payments.

Decisions about appointing a suitable person must be made with care. A suitable person is in a position of trust. Service users who do not have capacity to consent to direct payments may be more vulnerable to physical / financial and other abuse than other service users. They may be less able to clearly communicate what they want or tell us if something is happening that they do not like or frightens them. We must make sure that our decisions ensure that their needs are met and that they are not put at risk.

We must take care not to inadvertently pressure anyone into acting as a suitable person. The role comes with considerable responsibility. The suitable person is as liable as a service user would be for any misuse of direct payments. Without discouraging people from taking up the role of suitable person, we should explain the consequences of neglect or ill treatment and of financial misconduct. For example, a suitable person may be found guilty of fraud if they dishonestly abuse their position or use direct payments to benefit themselves or people other than the service user.

The suitable person must make decisions, which are in the service user's best interests. This includes encouraging and enabling the service user to be as involved as they can be in decisions that affect them. Service users often have the capacity to make some decisions even if they have been assessed as lacking capacity to make decisions about receiving direct payments. They should be encouraged to maintain as much control and independence as possible.

The suitable person may need to consult other people close to the service user or interested in their welfare, health and social care professionals where necessary, and anyone appointed as deputy (a deputy appointed by the Court of Protection) or LPA (holder of a lasting power of attorney).

The suitable person may have to manage family or other disagreements about how direct payments should be spent. We may have to provide support from time to time.

Decisions about making direct payments rest with the Council unless there is a surrogate for the service user, i.e. a deputy or LPA whose authority includes making personal welfare decisions. (Note: a deputy / LPA is a representative but not a surrogate if powers do not extend to making personal welfare decisions).

Consultation and in some instances DBS checking are required before decisions can be made about appointing a suitable person. Whether or not there is a surrogate to help with decision-making, and whether or not the proposed suitable person is a representative, we have to consult before making a decision about direct payments.

We must be satisfied that:

- The service user's needs can be met through direct payments.
- The suitable person understands what is involved in direct payments; is willing to receive them; and appears to be capable of managing direct payments either alone or with help. This includes checking with Care Services Finance that there are no outstanding dom. care debts.
- The suitable person will act in the service user's best interests at all times.
- Given all the circumstances, it is appropriate to make direct payments to the suitable person.

An LPA / deputy should be our first choice of suitable person if they are willing, appear to be capable of managing them and are not an inappropriate choice for any reason. We should always seek the views of a representative or surrogate even if they do not want to act as the suitable person. They may have information about the service user's wishes and feelings that should be taken into account.

If there is no LPA / deputy, or they do not wish to act as suitable person, we may explore other options. A family member or friend already involved in the service user's care may be an appropriate choice as might a professional person, like a solicitor or independent care broker.

Every effort should be made to establish who the service user would like to act on their behalf and how their care should be arranged. An advocate might be useful in supporting the service user to make these decisions, especially if:

- The service user has no family or friends to take an interest in their welfare.
- Family members and professionals, cannot agree about what is in the service user's best interests.

- The service user has already had contact with an advocate.
- There is any concern about the protection of a vulnerable adult.

If after taking all of the steps required in and we are satisfied that it is in the service user's best interests then, provided that any surrogate agrees, a suitable person can be appointed.

The suitable person must be made aware that:

- They must act in the service user's best interests at all times when arranging services with direct payments.
- They must use direct payments only to arrange services that will meet the service user's eligible needs.
- Direct payments cannot be used to pay themselves.
- Direct payments cannot be used to pay for services provided by the service user's spouse, civil partner or partner, or a close relative who lives in the same household as the service user, unless we agree that this is absolutely necessary (see Exceptions - Using Direct Payments to Pay Family Members).
- Unless they are a close relative of the service user or a friend involved in the service user's care, they will have to arrange DBS checking for people providing services through direct payments.
- They must maintain records which we will want to see when direct payment arrangements are reviewed.
- They must provide us with any information we consider necessary in connection with direct payments.
- They must let us know if they think that the service user has regained capacity.

We may make direct payments subject to additional conditions if we think this is in the service user's best interests.

3.4 Ability to manage direct payments (service users with capacity and appointed suitable person)

We must be satisfied that service users who can provide consent, and any suitable person acting for a service user without capacity, are capable of managing direct payments either on their own or with help. We must make sure that:

- Service users with capacity understand that they remain responsible for how direct payments are used even when arrangements are made by someone else on their behalf.
- An appointed suitable person understands that they are as responsible as a service user would be for managing direct payments.

Most people will be able to self-identify whether or not they need or want support in managing direct payments.

'If a council is concerned that a person who wishes to receive direct payments may not be able to manage the payments, the council should ensure that it takes into account and subsequently records all relevant factors before making a decision not to make direct payments. These decisions may need to involve professional staff who are trained to assess capability and help people make decisions, and who should consider:

- the person's understanding of direct payments, including the actions required on their part; whether the person understands the implications of taking or not taking on direct payments; what help is available to the person;
- what kind of support the person might need to achieve their identified outcomes; and
- what arrangements the person would make to obtain this support.'

2009 DH Guidance on Direct Payments (p27)

People responsible for direct payment arrangements should be capable of making care arrangements and of managing the direct payment funds. During the assessment, the assessor might ask the person whether they feel in control of their current finances to get a feel for whether they may require support. Basic money management skills may need to be explored. For example, do they have a poor credit rating / history of debt; trouble keeping up with household bills; are they likely to experience problems in opening a bank account? The assessor should check with Care Services Finance to see if the person has any outstanding debts related to dom. care services.

If there are concerns about money management skills and there is no one to assist, direct payments might be made conditional on the service user having a managed account.

With a managed account, direct payments are made to a DPSS rather than to the service user. The DPSS receives the direct payments as well as managing and accounting for day-to-day arrangements.

4 Initiating payments

The recipient receiving the direct payment will be expected to open a separate bank account in their name solely for direct payment use. The bank account should be in the name of the recipient who has signed the direct payment agreement. If the direct payment recipient chooses to have a management account, the DPSS will arrange for a bank account to be opened.

Allocated workers are required to request the recipient receiving the direct payment to complete the Bankers Automated Clearing Services (BACS) form and return to the Brokerage team.

Requests can be made for additional costs, previously known as start-up costs, on the support plan; this may include employer's liability insurance, DBS checks, protective clothing and stationary. All additional costs must be recorded on the support plan.

The direct payment agreement must be attached to the support plan.

On receipt of the completed forms, the Brokerage team will initiate making the payment.

Once the relevant documentation is submitted payment will be made in accordance with the payment schedule. Direct payments are paid on a 4/4/5 weekly basis further information on the payments schedule can be found on <http://int.walsall.gov.uk>

Care should be taken when determining a start date for the care arrangements as a direct payment can only be backdated up to 31 days from receipt of the completed documentation without specific agreement and approval from a Group Manager/Team manager. It is important that all documentary evidence required at the start of and during the course of a direct payment is submitted in a timely manner as failure to do so could put the direct payment at risk.

The recipient is responsible for their own recruitment and selection. We will not have any influence or involvement over the selection of staff employed under the direct payment. Where there are concerns that securing services from an individual known to the Council will place the direct payment recipient at risk, we may make a condition that they shall not secure the relevant service from a particular person.

The direct payment recipient is responsible for making contingency arrangements; they must ensure they save enough money to provide cover if their staff are absent, and when necessary will be able to make arrangements for alternative cover. Allocated Workers must ensure that they have discussed with direct payment recipients the need for covering emergency and unplanned situations and have plans in place to cover such arrangements, in advance of them being required. All contingency arrangements must be recorded on the support plan.

Walsall Council still maintains a "Duty of Care" and where all emergency cover arrangements have been exhausted Walsall Adult Social Care details must be given to the direct payment recipient. If planned cover arrangements breakdown, the allocated worker will provide support to make alternative arrangements.

The direct payment recipient should also have robust contingency plans in place if they were unable to take responsibility and or administer the direct payment on a temporary or permanent basis. This could be due to hospital admission, loss of mental Capacity or death. Direct payment recipients should consider who would meet their statutory responsibilities if they were not able to do so, and where possible agree with a family member who could deal with the direct payment in these circumstances. All contingency arrangements must be recorded on the support plan and reviewed at least annually.

Direct payment recipients who choose to employ their own staff are responsible for all aspects of being an employer. Recipients should seek advice and support from their chosen DPSS.

Further information about the employment of personal assistants can be found on the Walsall Community Living Directory (WCLD), this includes sample forms, contracts and letters relating to employing staff. Further information on direct payments can be found on <http://int.walsall.gov.uk>

Allocated workers are responsible for signposting recipients to DPSS's for information, advice and signposting in respect of the management of their employees and effective administration systems. Such support may be around the need to consider and take disciplinary action: for example; employment advisory service, such as their insurance provider if applicable or ACAS.

As employers, direct payment recipients are responsible for the health and safety of their staff, including all risk assessments required to be undertaken by an employer. Support with carrying out risk assessments can be obtained from DPSS's.

Where the allocated worker has concerns that a recipient is carrying out an activity, which presents unmanaged risk, they will carry out a review of the use of direct payments. This may involve joint work with an occupational therapist where appropriate. Following any recommendations, the allocated worker will then notify the recipient that they should ensure that the activity is carried out in a safer way by minimising the risk. If the recipient is unwilling to follow the guidance from Walsall Council and where the risks cannot be minimised, Walsall Council retains the right to withdraw the direct payment.

If the direct payment is terminated alternative services will be offered. The direct payment recipients must be advised to contact their chosen DPSS for advice on terminating employee's contracts and any potential TUPE Transfer of Undertakings (Protection of Employment) issues. The direct payment recipient remains responsible for implementing the recommendations of the risk assessment and being a safe employer. They cannot require staff employed by them to carry out activities that would damage the reputation of the Council, or put their employee or themselves at risk.

Personal assistants employed through direct payments are eligible to attend training courses provided by Walsall Council without charge. Employees can attend the relevant Skills for Care short courses. The payment of wages during this time must be paid by the recipient from the direct payment. If there are insufficient funds in the direct payment account, we can allocate additional hours for training costs that are essential to meet the individual's needs. If P.A.s do not attend the booked training they will be asked to be charged for none attendance.

5 Paying a family member

Direct payment recipients are able to employ family members to provide support to achieve eligible outcomes, where these family members do not live in the same house as themselves or the person receiving support.

Family members are still legally employed and the recipient has a responsibility to ensure their legal obligations are fulfilled. These include ensuring any tax or national insurance contributions are paid, there is insurance in place, the employee is given written terms and conditions of employment and receives a wage slip detailing their wages and deductions.

Employing close family members who normally live within the same house is not allowed via a direct payment unless Walsall Council is satisfied that such an exception is necessary in order to meet the person's assessed eligible needs and achieve their outcomes. An exceptional circumstance may be where there is no other way of meeting the person's needs such as where there are specific requirements due to communication, cultural, geographical or mental health issues.

A full consideration and exploration of other options to meet the person's needs must be explored along with the impact of employing close family members of the person and their family.

Where an authorised person or nominee is managing the direct payment, they become the direct payment recipient so cannot employ or contract with a family member living in their house in any capacity, whether as a Personal Assistant, or as an agency carer in an agency in which the suitable person has a vested interest. Neither can an authorised person be paid as a personal assistant via direct payments. Furthermore, the authorised person cannot pay volunteer expenses to a family member living in their own house or the person receiving care and support.

The relevant team manager must submit the application for exceptional circumstances for approval. The Group Manager has final decision over exceptional circumstances.

Once approved the exceptional circumstance should be reviewed at each social care review, to ensure suitability and continued relevance.

A direct payment recipient can make payments to a family member living in the same house for the administration of the direct payments, where they have prior agreement with the allocated worker. This would normally be a similar payment to the cost of procuring a DPSS.

Payments can also be made to an authorised person or nominee for administration and management of the direct payment.

Any payments for administrative work in managing the direct payments must be agreed with the allocated worker and included in the support plan and budgeting calculation. Such payments will need to be proportionate and recorded clearly on the

direct payments financial monitoring sheet, and will be subject to normal tax and national insurance regulations.

Payments made to a family member for administrative support must not impact on the ability to secure services to achieve the eligible outcomes identified in the assessment. This will be reviewed as part of the review of the making of a direct payment to ensure it contributes positively to meeting the outcomes identified in the support plan.

6 Purchasing Local authorities services

Ordinarily a direct payment cannot be used to purchase local authority services.

Where a person with eligible needs wishes to receive, a service provided by the local authority, this would normally be arranged and managed by Walsall Council on behalf of the person.

Where a person is receiving a direct payment and wishes to purchase a service from a local authority other than Walsall Council, they will be able to use their direct payment where the providing local authority is able to provide its services to 'self-funders' and agrees to provide the service for a fee. Such examples might be where an individual wishes to purchase services from a neighbouring local authority.

7 Equipment

The need for equipment should be considered as part of an assessment. The Allocated worker will identify appropriate equipment and the person will be given advice as to how the equipment can be sourced.

People choosing to receive a direct payment may have an assessed eligible need for specific equipment to promote their safety or to promote the safety of staff working with them. This type of equipment would ordinarily be provided through the usual Integrated Community Equipment Service (ICES) contract.

Other equipment may be identified that would specifically assist with the person's independence and prevent or reduce the level of care support/ hours required e.g. a talking microwave. This type of unique equipment may be available through a "one off" direct payment or purchased from an on-going direct payment with prior agreement.

The support plan will identify what equipment is required and which outcomes for the individual (if any) could be met by a unique piece of equipment.

The recipient should sign a direct payment for equipment agreement and allocated worker before the item is purchased, even if the equipment is part of an overall personal budget. This is important if the equipment belongs to the direct payment recipient. They must be able to understand and accept their ownership responsibilities

such as warranty cover, servicing and any health and safety requirements for both themselves and their employees.

The process for assessing for equipment does not change because a personal budget direct payment is being considered. Assessors will carry out an assessment of need and then decide eligibility. Authorisation goes through the normal channels.

Equipment requiring a major adaptation to the home, e.g. stair lifts; shower rooms etc. are required to be assessed under the Disabled Facilities Grant (DFG) process for all individuals. Further information on Disabled Facilities Grant (DFG) can be found on www.walsall.gov.uk

Equipment that Walsall Council is not responsible for e.g. health equipment, pressure care mattresses etc. must be provided via the usual ICES route that requires a health professional assessment and authorisation.

Equipment that is needed to meet Health and Safety requirements, i.e. protective clothing, may be funded as an integral part of the direct payment. The funding for this is part of the additional costs. The need for personal protective clothing or equipment should be included in the support plan.

8 Safeguarding and Disclosure and Barring Service Checks

Where it appears that there are safeguarding concerns, the individual will not be excluded from receiving a direct payment but will ensure that there is full consideration of how the direct payment will be made, who will manage the expenditure and monitor on-going compliance with any requirements detailed in the direct payment agreement. It may be that the allocated worker decides that a direct payment cannot be justifiably made and if this is the case then this will need to be recorded on the service user's electronic care record. The allocated worker will need to write to the person explaining the reasons for this decision. Where a safeguarding concern has been identified, the Safeguarding Procedure and process must be followed.

Where safeguarding procedures are initiated to protect an adult in receipt of a direct payment, the individual should be involved in the procedures as an employer where relevant. Where there are safeguarding concerns, employees' rights to the correct disciplinary procedures should be considered as part of any safeguarding plan. The employer is responsible for taking advice regarding their employees. Direct payment recipients should be advised to contact their DPSS for employment advice. The allocated worker will attend any safeguarding meeting held where a direct payment recipient is involved.

Where there are concerns about the welfare of a child the Children's safeguarding procedures must be initiated. Risk to the child must be considered in relation to the continuance of direct payments.

Safeguarding Other Direct Payment recipients

Where there are, safeguarding concerns regarding a personal assistant who the Council is aware is working with other direct payment recipients, a Group Manager will consider if the risks warrant further safeguarding enquires for the other direct payment recipients and alert other allocated workers.

Where safeguarding concerns relate to a personal assistant (PA), who is employed by a direct payment recipient, a risk assessment must be completed, considering the severity and likelihood of abuse for each of the other direct payment recipients for whom the personal assistant works. This may include a safe and well review with each of the other direct payment recipients to ensure their safety and clarify the potential of any risks.

Where a risk is identified to other direct payment recipients the group manager responsible for the safeguarding enquiry is to send a letter to the direct payment recipient informing them Walsall Adult Social Care are investigating their PA in relation to their work as a PA and recommend they take advice from their DPSS regarding the employment of the PA.

Where a significant risk that has a substantial and severe impact exists, the direct payment should be immediately suspended and alternative services arranged pending the outcome of the enquiry. If the risk is in respect of the PA then the individual should be informed that the PA is under investigation for a serious allegation and that the direct payment recipient needs to take advice from their DPSS in relation to the worker's employment rights. The direct payment would then be reviewed when the planning meeting was held and the enquiry was concluded.

Disclosure and Barring

The Disclosure and Barring Service (DBS) helps employers make safer recruitment decisions and prevent unsuitable people from working with vulnerable groups, including children. It replaces the Criminal Records Bureau (CRB) and Independent Safeguarding Authority (ISA). Walsall Council provide funds as part of the additional costs to secure DBS checks for direct payment recipients employing or wishing to employ Personal Assistants. The recipients DPSS will support recipients to obtain these checks.

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 Vulnerable Groups Act 2006) where there is a child under 18 living in the household.

For work with adults DBS checks for Personal Assistants are not mandatory but are encouraged as good practice and play an important part in safeguarding vulnerable adults.

The DPSS's will provide application forms for an enhanced DBS check with a barring list. This should be completed by the potential employee; the identification is verified by the DPSS who will process the completed DBS form. Only the personal assistants will receive the outcome of the DBS and should show this to their employer and the DPSS.

Employers will have responsibility to ensure that the personal assistants they employ are suitable. A risk assessment should include consideration of the person's ability to safely employ staff. Recipient will also need to understand that they are recommended to take all checks on a new employee including references and a DBS check. If there are concerns about a person's ability to safely choose staff, this should be explored prior to the direct payment commencing.

9 Finance and monitoring requirements

The Direct Payment will be paid on a 4, 4, 5 weekly basis. A direct payment schedule is available on the Walsall Council website.

The allocated worker will inform the direct payment recipient when payments will be made into the nominated bank account at the start of the direct payment.

The DPSS will provide a guide to completing the financial monitoring forms. Information can also be found within the direct payment information pack.

Monitoring of direct payments is crucial and enables Walsall Council to account for public funding within the guidelines laid down by The Chartered Institute of Public Finance and Accountancy (CIPFA)

All direct payment recipients are required to submit bank statements and documentation relating to the expenditure from the direct payment account when requested by their DPSS: This will include timesheets, invoices, and receipts, along with a completed financial monitoring form.

Anyone who receives a one off direct payment will have this paid into any bank account, and needs to submit receipts and invoices to the allocated worker within three months of receiving payment. Any monies that are not spent within this period must be returned to Walsall Council.

All direct payments are paid net and the recipient must ensure that any personal contributions are paid into the direct payment account. If personal contributions are not paid this could jeopardise the continuation of the direct payment.

The recipients DPSS will monitor the use of the direct payment, which will include checking that employer responsibilities have been fulfilled such as Tax and National Insurance contributions, employer liability insurance and self-employment status. These legal obligations remain the responsibility of the direct payment recipient. The DPSS will have responsibility to alert the recipient and Walsall Council if they find any cause for concern. If, after they have alerted the direct payment recipient, there

continues to be concerns, the DPSS will inform the allocated worker, who will further assess the direct payment recipient's ability to manage the direct payment.

The DPSS will work with the allocated worker to resolve concerns relating to the ability to manage a direct payment. Walsall Council may suspend or terminate a direct payment where legal obligations as an employer are not being fulfilled and work with the individual to arrange alternative services.

A surplus check (meaning a check to see if there are excess funds in the Direct Payment account); will be carried out at least annually. Ordinarily there should be no more than 6 week's direct payment in the account unless the recipient is saving towards a high cost service as identified in the support plan. This may be for respite or contingency arrangements for example.

Where there is an under spend of the direct payment, leading to more funds than necessary in the direct payment account (6 weeks), Walsall Council will reclaim the excess amount. This will either be done, following notification to the recipient by requesting a cheque or an online bank transfer of the surplus amount.

The recipient may contact their DPSS or allocated worker if they are accumulating surplus funds for a particular reason, such as fluctuating care needs or respite cover, and this will be taken into consideration when reclaiming excess.

If the recipient has received DP funds into an appropriate bank account and they correspond with the current support plan.

10 Setting up the Direct payment, reviews and DPSS audit.

Following the making of a direct payment, a light touch follow up call/review will take place within 6 to 8 weeks of the first payment and recorded on Mosaic. This will be to ensure that the direct payment is set up correctly.

A follow up conversation should then take place by a nominated officer/team of Walsall Council, to the recipient, again to check that the recipient is still managing the Direct payment. The conversation should be logged on Mosaic.

The annual statutory review will then follow and as part of this, the allocated worker should ensure that as part of the review, they ensure that the following points are checked out:-

- If the recipient is still able to manage the direct payment.
- If the direct payment spend is being recorded on the financial monitoring sheets.
- Appropriate deductions for tax and national insurance and pensions are being made.
- Valid employer's liability insurance.
- Invoices are being paid on time.
- If personal contributions are being paid into the designated direct payment bank account

- If the current expenditure is within the allocated, budget and highlight any under or over spending concerns.
- If there appears to be, anyone employed who lives within the same household (without prior approval).
- If the chosen direct payments, support service is providing the appropriate level of support.
- DBS checks have been obtained and the outcome of the check, if applicable.
- If where relevant, protective clothing has been purchased
- Identify if there are concerns regarding use of the direct payment, such as cash withdrawals or unaccounted for transactions.

DPSS will support the recipient to set up the direct payment and carry out the necessary in order to ensure the Direct payments and any issue relating to employment, insurance etc is in place. They will ensure all of the points that are identified as part of the bullet pointed areas within **section 10** of this document are considered./checked.

DPSS will continue to support the DP recipient and as part of the role, will undertake an annual audit of accounts. The outcomes are reported into Mosaic and can be discussed with the allocated worker as part of the annual reviews.

Any Direct Payment review must be documented on Mosaic. The outcome of the review should be shared with all parties involved. The direct payment review should include the areas bullet pointed in **section 10** of this document:

- If the recipient is still able to manage the direct payment.
- If the direct payment spend is being recorded on the financial monitoring sheets.
- Appropriate deductions for tax and national insurance and pensions are being made.
- Valid employer's liability insurance.
- Invoices are being paid on time.
- If personal contributions are being paid into the designated direct payment bank account
- If the current expenditure is within the allocated budget and highlight any under or over spending concerns.
- If there appears to be anyone employed who lives within the same household (without prior approval).
- If the chosen direct payments support service is providing the appropriate level of support.
- DBS checks have been obtained and the outcome of the check, if applicable.
- If where relevant, protective clothing has been purchased
- Identify if there are concerns regarding use of the direct payment, such as cash withdrawals or unaccounted for transactions.

The direct payment review should look to address any highlighted concerns and provide any required support. The allocated worker should look to involve the DPSS with all reviews.

Changes to direct payment amounts

If the personal budget is reduced or increased following a reassessment of needs, a new support plan should be negotiated.

If subsequent changes to direct payments require alterations to staff working hours, particularly where hours must be reduced, adequate notice should be given so that the service user can comply with contractual or other obligations.

The DPSS must be notified of any changes to the amount of direct payments.

11 Suspension conditions and termination

Suspension

The direct payment agreement with Walsall Council may be suspended temporarily.

A temporary suspension may be placed on the direct payment where:

- The recipient's circumstances change.
- If the recipient is at risk of being abused or is being abused.
- If the direct payment recipient is in hospital for a period longer than 4 weeks and is not expected to return home in the very near future.
- The direct payment recipient has asked for a temporary suspension.
- There has been failure to submit direct payments paperwork when requested by a DPSS or Walsall Council, without an exceptional reason.
- There is suspected significant misappropriation of the funds in the direct payment account.

If the direct payment is suspended alternative services will be arranged to meet assessed needs and agreed outcomes as in the support plan.

Where the allocated worker has concerns regarding the management of the direct payment within the first 6 months they will initiate the direct payment review.

If direct payment paperwork is not submitted to a DPSS at their request, the DPSS will notify the allocated worker who will write to the direct payment recipient requesting the required direct payments paperwork be submitted to their DPSS.

The allocated worker should contact the direct payment recipient and discuss any concerns. Where there are difficulties in completing the paperwork, it will be the allocated worker's responsibility to explore ways of supporting them, and assess if direct payments are still appropriate. The allocated worker should work jointly with the recipient and the DPSS in these circumstances.

When the direct payments paperwork is not submitted to the DPSS following the initial request from the allocated worker a further letter will be sent by the allocated worker giving 4 week's notice of suspension.

The recipients chosen DPSS's will be copied into the correspondence. Four weeks is given for the direct payment recipient and allocated worker to rectify the situation or arrange alternative care. Once the 4 weeks have passed without resolution, the direct payment will be suspended until the direct payment account is in order, alternative services arranged.

Imposed Nominated Account

As an alternative to suspension or termination, Walsall Council may impose a condition of receiving the direct payment via a nominated account with the person's consent, where it is appropriate.

Where suspension is required, direct payment recipients will be offered the option of a nominated account as an alternative to suspension.

Direct payment recipients will need to discuss the options available with their allocated worker on selecting a nominated account provider if they wish to continue their direct payment via a nominated account.

Termination

Walsall Council or the direct payment recipient can terminate the Direct Payment by providing four week's notice in writing.

Walsall Council will only terminate a direct payment after there has been opportunity for the direct payment recipient to explore options for managing the direct payment and the support available to them.

Despite the normal four weeks' notice period, there may be occasions when direct payments are terminated sooner by any of the parties.

If the direct payment recipient is still eligible for social care services and the assessment of need has not changed, Walsall Adult Social Care still has a duty of care. The allocated worker will therefore need to ensure services are provided when the direct payment has ceased.

If the direct payment recipient has a contract with a provider, this maybe a domiciliary care agency for example, the allocated worker will need to ensure the direct payment recipient can fulfil the terms and conditions of such a contract, for example, four week's notice in writing.

Where the direct payment recipient employed personal assistants, they will need to be advised to take appropriate action in relation to their employment rights. Recipients should take advice from their DPSS.

The recipient of the direct payment should ensure that their insurance policy will cover any redundancy costs if applicable.

12 Recovery of monies

Unspent money within the direct payment account remains the property of Walsall Council.

Any unused funding will be repaid to Walsall Council. There will be regular checks on the balance of the account and accumulated amounts in excess of funding required to achieve the outcomes will be recouped by Walsall Council.

At the end of the direct payment scheme, other than where the individual receiving support becomes liable for the full cost of meeting their own care, the remaining funds may be used to fulfil any legal obligations such as statutory redundancy payments. The final financial audit will provide information for reconciliation. This will provide an amount owing to Walsall Council, which will need to be repaid minus any personal contribution.

Where a person becomes liable for the full cost of meeting their own care in the community, and chooses to terminate or reduce the support they currently arrange, rather than funding this themselves, they will be liable for any legal obligations associated in reducing or terminating the support, such as redundancy costs.

In the event of the service user, nominated person or authorised person's death the remaining funding in the account may be used by the person's representative to fulfil any legal obligations such as statutory redundancy payments. However any unused direct payment, minus personal contribution, is money owed to Walsall Council and must be repaid.

Where the person or persons have used the direct payment to fund items or costs which have not met eligible needs, this will be unauthorised expenditure. Walsall Council will ask for repayment of any unauthorised expenditure.

At the end of a direct payment, final paperwork will be requested by a DPSS and a final financial audit of the direct payment account will be carried out, the final balance of the direct payment account, including any unauthorised spending or unpaid personal contribution should be repaid to Walsall Council.



Walsall Council

DIRECT PAYMENT AGREEMENT- STANDARD

Document reference:	
Version:	Draft v0.2
Ratified by:	Adult Senior Management Team
Date ratified	
Originator/author:	
Responsible committee/individual	
Executive lead:	
Date issued:	
Review due date:	

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This agreement set out the responsibilities and obligations of:

Walsall Council and

Name	
Address	
Phone No	

I consent to Walsall Council for sharing and obtaining information relevant to my Direct Payment from other professionals and/or organisations e.g. Direct Payment Support Service Provider

I consent to receive Direct Payments and confirm that I understand and will comply with the conditions contained in the attached agreement

Signature: _____ Date: _____

Agreed on behalf of Walsall Council: _____

Name and position of officer (please print): _____

Date: _____

1. Introduction

- 1.1. The Council has carried out an assessment of needs and determined that the Direct Payment Recipient's needs as identified in the attached Support Plan should be met.
- 1.2. The Council and the Direct Payment Recipient have agreed that the Direct Payment Recipient should take direct responsibility for the provision of the services required to meet the Direct Payment Recipient's needs.
- 1.3. The Direct Payment Recipient has agreed to make all necessary arrangements to ensure the said services are provided, with support if required.
- 1.4. The Council has agreed to arrange to fund the provision of the said services as set out in this agreement.
- 1.5. You agree to the terms and conditions in this Agreement.
- 1.6. Reference in this agreement to the use of the Direct Payment by the Direct Payment Recipient shall include the Direct Payment Recipient's assessed financial contribution.

This is a legal Agreement; it includes the rules about your Direct Payment

2. The Direct Payment and the Service Users Assessed Contribution

- 2.1. You will receive the Service Users annual individual budget payment as a Direct Payment this excludes Commissioned Services costs paid by Walsall Council.
- 2.2. The Council is required to have a policy, which sets out the basis on which people receiving care services may be required to contribute towards their cost. Personal contributions that the Service User is required to make towards the cost of his/her individual budget will be calculated in accordance with Walsall Council charging policy. By signing this agreement, you are agreeing to ensure that the Service User pays his/her "contribution" into your direct payments bank account in order to ensure there are sufficient funds in your direct payments bank account to meet the Service Users support needs. Direct payment Na
- 2.3. The Direct Payment is as stated in the Care and Support Plan. This may be a one off payment (for a one-off purchase) or regular payments from WMBC will be made in advance, following the 4/4/5 weekly cycle.
- 2.4. This amount may go up or down if; there is a change in the Service Users assessed eligible care needs. If it does, we will write and tell you.
- 2.5. If the Service Users assessed contribution is less than your Direct Payment, the amount of the Service Users assessed contribution will be deducted from the Direct Payment before we pay it to you. The Service User will be expected to pay their assessed contribution into your direct payments bank account, preferably weekly, or on a fortnightly or four-weekly basis.
- 2.6. If it is found that the Service Users assessed contribution has not been paid into your direct payments bank account, this will result having insufficient funds to pay for the support, which the

Service User will be liable for. Failure to pay the assessed contribution may result in an invoice being raised in respect of the arrears and a review of whether you are able to manage a direct payment.

3. Responsibilities of the Council:

- 3.1. To make Direct Payments into the Direct Payment Recipient's account in accordance with the details listed in the Direct Payments Schedule, in order to meet the Service User's assessed eligible needs outlined in the Care and Support Plan.
- 3.2. To make Direct Payments at the agreed frequency.
- 3.3. To provide information in relation to the use of Direct Payments.
- 3.4. To review the Direct Payment Recipients situation within 6 to 8 weeks, to decide whether the service is meeting the assessed needs.
- 3.5. Provided that we are not aware of any change in circumstances, we will review your Care and Support Plan and the operation of the Direct Payment annually to review whether needs have changed. We will also review how arrangements for the provision of the services are being managed, whether the Direct Payment Recipient remains willing to receive Direct Payments, and whether the Direct Payment Recipient remains able to manage the Direct Payments.
- 3.6. To increase or decrease the amount of Direct Payments paid at any time following a reassessment of needs, which results in the revision of the Care and Support Plan, and to give appropriate notice of any changes. (At least 2 weeks' notice).
- 3.7. To review the amount of the Direct Payment on 1st April each year in respect of contracted rates for replacement care, domiciliary care and Personal Assistants.
- 3.8. If the Direct Payment is to fund Replacement care and you have not used it in the current financial year we may deduct the money from your payments, or we will ask you to repay it.
- 3.9. To meet the agreed priority needs of the Direct Payment Recipient as set out in the Support Plan if the arrangements made by the Direct Payment Recipient break down for any reason. If necessary Walsall Council will commission alternative services to ensure that, your needs are met.
- 3.10. To ensure that regular checks are undertaken on the management of Direct Payments and provide advice and support or take corrective action where issues are identified.
- 3.11. To undertake a financial audit annually or more regularly if the Council deems it appropriate and take appropriate action for the recovery of any money due because of ending the Direct Payment.
- 3.12. In the event of the Direct Payment Recipients death, the Council will consider what contractual responsibilities existed at the time of death when determining what sum is to be repaid to the Council. Any monies held in the Direct Payment Recipients account will not form part of the Service Users estate. If expected monies are unpaid, the Council may make a claim against the Direct Payment Recipients estate.

4. Responsibilities of the Direct Payment Recipient:

The Direct Payment Recipient agrees:

- 4.1. To manage the bank account for the sole purpose of securing services that meet the care needs identified in the Care and Support Plan. This account may only be used for monies relating to Direct Payments (including the Direct Payment Recipient's assessed financial contributions and any additional voluntary payments that they may make to procure increased services).
- 4.2. To use the Direct Payment for the purchase of only those services that meet the assessed needs identified in the Care and Support Plan.
- 4.3. To ensure the necessary arrangements are made to pay for any financial contribution into your direct payments bank account, towards the cost of the services assessed in accordance with the Council's charging policy.
- 4.4. To ensure adjust any financial contribution towards the cost of the services assessed in line with annual changes in state benefits following the April review.
- 4.5. 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.
- 4.6. 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.
- 4.7. 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.
- 4.8. 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.
- 4.9. You agree to comply with all safety and legal requirements, which arise from any arrangements you make using the Direct Payment.
- 4.10. 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.
- 4.11. 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.
- 4.12. You are responsible for using the allocated money wisely. Any bank charges/legal charges/Inland Revenue costs will be your responsibility.
- 4.13. You must ensure that your Direct Payments bank account does not become overdrawn. If this should occur, any charges incurred will be the responsibility of the Direct Payments user, unless

the authority is at fault, for example late payment.

- 4.14. You must ensure that you, your bank or any other person transfer no monies to either another account or person.
- 4.15. You must ensure that your "Direct Payments" account is used only for Direct Payments income and expenditure and not used for any other purpose e.g. to clear an overdraft or credit card balance or to pay for other non-support plan related expenditure.
- 4.16. You are advised to keep a record of all income and expenditure that you make from your Direct Payments account so that you know how much money you have left to spend at any point in time. This record is for your own purposes.
- 4.17. Any bank interest or other miscellaneous income to the account is deemed to form part of the Direct Payments amount and shall be used for direct payment purposes.
- 4.18. 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.
- 4.19. To keep for a period of 6 years (plus the current year) and make available to the Council on request, documents relating to the Direct Payment in order for financial audits to be carried out on expenditure. Documents include:
 - Completed timesheets including start and end times of shifts worked, holiday and sickness records – if relevant
 - PAYE, National Insurance and any other payroll records, as applicable
 - Related invoices
 - Related receipts
 - Items purchased as specified in the support plan
 - Items purchased using funds from the Direct Payment Account
 - Insurance documents
- 4.20. Reviews will be agreed between you and the allocated worker; the review will help you to look at the outcomes you have achieved and if the allocation will remain the same based on your agreed needs and individual outcomes. If there is any change in your circumstances, it is your responsibility to inform Walsall Adult Social Care.
- 4.21. To manage any changes with agencies, organisations or employees from which services are obtained, following an increase or decrease in Direct Payments.
- 4.22. To notify, and/or advise next of kin/executor that, the Council must be informed at the earliest opportunity of any changes in circumstances, which would affect your assessed needs or entitlement to Direct Payments. This will include any changes in capacity to consent or ability to manage Direct Payments or in the event of the death of the Direct Payment Recipient.
- 4.23. To notify next of kin/executor that, in the event of death, the Direct Payment account and any funds contained in it will not be regarded as an asset of the estate.

- 4.24. To notify the Council if you find yourself unable to continue with the responsibilities of being a Direct Payment Recipient.
- 4.25. 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.
- 4.26. You agree to use the Direct Payment to meet your assessed eligible needs and the agreed outcomes in the Care and Support Plan. By way of example this would not include using the Direct Payment:

- To pay for 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;
- To make cash payments for a Personal assistant. (Cash payments will only be allowed at the Council's sole discretion and in exceptional circumstances);
- To pay a higher rate for a service 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;
- For health related services – such as dentist, chiropody, physiotherapy appointments;
- For household expenses, such as food, personal items, utility bill or clothing (this does not include protective clothing);
- For accommodation - rent, mortgage payments;
- For 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);
- For anything that is illegal;
- For gambling or gain. This includes lottery, bingo tickets, raffle tickets, horseracing and all other forms of gambling.
- Drugs, alcohol, cigarettes;
- To buy services from the Council;
- To pay for long-term residential care;
- To fund support provided by anyone living in the same house except where permitted by law and following agreement with Walsall Council;
- As a substitute for Disabled Facilities Grants.

4.27 To let us know if any of your contact details, name, address, telephone number etc. change.

5. Return of any requested Direct Payment monies

You may be asked to repay or we may deduct some or all of the Direct Payment money to us if:

- a) You have not used the Direct Payment to meet assessed eligible needs and/or agreed outcomes as set out in your Care and Support Plan;
- b) You have not used your Direct Payment because of a temporary change in circumstances (e.g. hospital or short term respite, or rehabilitation);
- c) Your Direct Payment has been overpaid or paid in error;
- d) There is a surplus in direct payments bank account, which has been accrued above the agreed amount;
- e) You fail to meet any terms of the Direct Payment Agreement, or meet any condition which the Council and Partners have properly imposed in agreed letters;
- f) Your Direct Payment is terminated.

6. Suspension and Termination of Direct Payments

- 6.1. 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.
- 6.2. 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.
- 6.3. 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.
- 6.4. 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.
- 6.5. 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.

6.6. 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.

6.7. 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.

7. Employing staff - Personal Assistants

The general definition of a Personal Assistant is someone who provides care or support to a citizen (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.

If you choose to employ staff, you must fulfil your legal obligations to them and must act as a responsible employer and make all your arrangements in line with employment legislation, including those connected with tax, National Insurance, employer's liability insurance and Pensions. You must be registered with HM Revenue and Customs as an employer, regardless of whether any tax and national insurance contributions are being paid. You are also responsible for health and safety and to ensure a safe working environment, proper working practices and appropriate staff training. You will need to learn how to provide this training yourself or obtain it from a recognised source. Your Direct Payment Support Service Provider will do this for you.

If you employ a Personal Assistant, you must have employer's liability insurance (ELI) before the Personal

Assistant starts working for you. You can purchase this from specialist Insurance provider for people like you that employ a Personal assistant. Walsall Council have negotiated some preferential rates for our Walsall citizens; further information about employing a personal assistant and employer's liability insurance is available on our website <https://go.walsall.gov.uk/directpayments>.

You must renew this insurance as required, or annually. You must leave enough money in the direct payments bank account to purchase your insurance as the payments made to you have taken into account this expenditure.

You cannot employ anyone who lives in the same household without first having permission from us.

Please ask your social worker for the "special circumstances form".

You must retain sufficient funding from your Direct Payment each week to cover your potential employer responsibilities.

We strongly recommend that you carry out criminal record checks with the Disclosure and Barring Service on any staff you are intending to employ; a Direct Payment Support Service Provider will undertake the checks on your behalf. Walsall Council will provide funding for the DBS check to be carried out. If children under 18 years of age will be present when the PA will be at work, the DBS check is a mandatory requirement of Walsall Council to ensure that children are safeguarded. In addition, if no DBS Check is carried out at all in relation to any Personal Assistant, (whether or not children under 18 years will be present) and/or if any relevant DBS Check comes back and there are criminal offences listed on it, then you must notify us as soon as possible.

If you employ new Personal Assistants at a later date, the same checks must be undertaken and again if no DBS Check is carried out in relation to any Personal Assistant (whether or not children under 18 years will be present when care is provided) and/or if any relevant DBS Check comes back and there are criminal offences listed on it, then you must notify us as soon as possible. You can find out more information about DBS checks on the Gov.uk website <https://www.gov.uk/guidance/dbs-check-requests-guidance-for-employers>

If you engage a self-employed Personal Assistant, there is a risk that such person might be construed as being your employee. If they are, in fact, an employee then there is a risk that you might be responsible for providing and paying for employee benefits (e.g. sick pay, National Insurance contributions etc.). It is your responsibility to ascertain what the nature of that relationship is. We strongly advise that you obtain advice on this before engaging anyone to provide you with care and support. In addition, you (and/or PA) might be responsible for different tax arrangements/liabilities and we again strongly advise that you consult with HMRC in terms of any arrangement you make.

You should attend any compulsory information sessions on Direct Payments or employment law.

We would not recommend paying a Personal Assistant in cash under any circumstances - cash payments will only be allowed at the Council's sole discretion and in exceptional circumstances, (payment could be made via your direct payments bank account telephone banking, internet banking or the bank can make a payment).

8. Comments, complaints and compliments

The Council is committed to making the Personal Budget Direct Payments Scheme work. You have the right to make a complaint under the Adult Social Care Complaints Procedure about the operation of this Agreement. A copy of the leaflet is provided with this agreement for the complaint Procedure. At any points you wish to raise a concern you should where possible discuss first with the Service Users allocated worker.



Walsall Council

DIRECT PAYMENT AGREEMENT FOR AUTHORISED OR NOMINATED PERSON

Document reference:	
Version:	Draft v4.0
Ratified by:	Adult Senior Management Team
Date ratified	
Originator/author:	
Responsible committee/individual	
Executive lead:	
Date issued:	
Review due date:	

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This agreement set out the responsibilities and obligations of:

Walsall Council and

Name (the Authorised or Nominated Person, referred to in this agreement as the “Direct Payment Recipient”)	
Address	
Phone No	

In relation to the provision of Direct Payments for:

Name (the Service User)	
Mosaic ID	
Address	

I consent to Walsall Council for sharing and obtaining information relevant to my Direct Payment from other professionals and/or organisations e.g. Direct Payment Support Service Provider

I consent to receive Direct Payments on behalf of the above named Service User and confirm that I understand and will comply with the conditions contained in the attached agreement.

Signature: _____ Date: _____

(Authorised or Nominated Person)

Relationship of Authorised Person to Service User: _____

Agreed on behalf of Walsall Council: _____

Name and position of officer (please print): _____

Date: _____

Authorised or Nominated Person?

The responsibilities of the Authorised and Nominated Persons are identical but they are appointed differently depending on whether the Service User themselves has capacity to manage a Direct Payment.

An Authorised Person is appointed by the council to operate and take full management responsibility for a Direct Payment for a Service User who LACKS capacity to manage it themselves. You must tell the Council if you think that the Service User you receive the Direct Payment for is able to make their own decisions again.

A Nominated Person is selected by a Service User with capacity to manage a Direct Payment for them because they wish the Nominated Person to take on the full responsibility of managing and operating the Direct Payment on their behalf.

In both cases, the Authorised or Nominated person is required to act in the Service Users 'best interests' within the meaning of the Mental Capacity Act 2005 which requires that they should consult with the service user and involve them as far as they are able in any decisions about their care.

1. Introduction

- 1.1 An assessment of the Service Users needs for community care services has been completed under the Care Act 2014 and that they are eligible to receive support from Adult Social Care and that the Service Users' needs as identified in the attached Support Plan should be met.
- 1.2 The Council and the Direct Payment Recipient have agreed that the Direct Payment Recipient should take direct responsibility for the provision of the services required to meet the Service User's needs.
- 1.3 The Direct Payment Recipient has agreed to make all necessary arrangements to ensure the said services are provided, with support if required.
- 1.4 The Council has agreed to arrange to fund the provision of the said services as set out in this agreement.
- 1.5 You agree to the terms and conditions in this Agreement.
- 1.6 If you have been given a Direct Payment and the outcome of the financial assessment confirms that the Service User is responsible for the full cost of their care, any associated care costs and monies paid to you should be returned to Walsall Council. No further monies will be put into your direct payments bank account. Any amounts not paid back to the Walsall Council will be passed through to the Walsall Council's Debt Recovery Team.

This is a legal Agreement; it includes the rules about your Direct Payment

2. The Direct Payment and the Service Users Assessed Contribution

- 2.1 You will receive the Service Users annual individual budget payment as a Direct Payment this excludes Commissioned Services costs paid by Walsall Council.

- 2.2 The Council is required to have a policy, which sets out the basis on which people receiving care services may be required to contribute towards their cost. Personal contributions that the Service User is required to make towards the cost of his/her individual budget will be calculated in accordance with Walsall Council charging policy. By signing this agreement, you are agreeing to ensure that the Service User pays his/her "contribution" into your direct payments bank account in order to ensure there are sufficient funds in your direct payments bank account to meet the Service Users support needs.
- 2.3 The Direct Payment is as stated in the Care and Support Plan. This may be a one off payment (for a one-off purchase) or regular payments from WMBC will be made in advance, following the 4/4/5 weekly cycle.
- 2.4 This amount may go up or down if; there is a change in the Service Users assessed eligible care needs. If it does, we will write and tell you.
- 2.5 If the Service Users assessed contribution is less than your Direct Payment, the amount of the Service Users assessed contribution will be deducted from the Direct Payment before we pay it to you. The Service User will be expected to pay their assessed contribution into your direct payments bank account, preferably weekly, or on a fortnightly or four-weekly basis.
- 2.6 If it is found that the Service Users assessed contribution has not been paid into your direct payments bank account, this will result having insufficient funds to pay for the support, which the Service User will be liable for. Failure to pay the assessed contribution may result in an invoice being raised in respect of the arrears and a review of whether you are able to manage a direct payment.

3. Responsibilities of the Council:

- 3.1 To make Direct Payments into the Direct Payment Recipient's account in accordance with the details listed in the Direct Payments Schedule, in order to meet the Service User's assessed eligible needs outlined in the Care and Support Plan.
- 3.2 To make Direct Payments at the agreed frequency.
- 3.3 To provide information in relation to the use of Direct Payments.
- 3.4 To review the Service User's situation within 6 to 8 weeks, to decide whether the service is meeting the assessed needs.
- 3.5 Provided that we are not aware of any change in circumstances, we will review the Service Users Care and Support Plan and the operation of the Direct Payment annually to review whether needs have changed. We will also review how arrangements for the provision of the services are being managed, whether the Direct Payment Recipient remains willing to receive Direct Payments, and whether the Direct Payment Recipient remains able to manage the Direct Payments.
- 3.6 To increase or decrease the amount of Direct Payments paid at any time following a reassessment of needs, which results in the revision of the Care and Support Plan, and to give appropriate notice of any changes. (At least 2 weeks' notice).

- 3.7 To review the amount of the Direct Payment on 1st April each year in respect of contracted rates for replacement care, domiciliary care and Personal Assistants.
- 3.8 If the Direct Payment is to fund Replacement care and you have not used it in the current financial year we may deduct the money from your payments, or we will ask you to repay it.
- 3.9 To meet the agreed priority needs of the Service User as set out in the Support Plan if the arrangements made by the Direct Payment Recipient break down for any reason. If necessary Walsall Council will commission alternative services to ensure that, the Service User's needs are met.
- 3.10 To ensure that regular checks are undertaken on the management of Direct Payments and provide advice and support or take corrective action where issues are identified.
- 3.11 To undertake a financial audit annually or more regularly if the Council deems it appropriate and take appropriate action for the recovery of any money due because of ending the Direct Payment.
- 3.12 In the event of the Service Users death, the Council will consider what contractual responsibilities existed at the time of death when determining what sum is to be repaid to the Council. Any monies held in the Direct Payment Recipients account will not form part of the Service Users estate.

4. Responsibilities of the Direct Payment Recipient:

- 4.1 To manage the bank account for the sole purpose of securing services that meet the care needs identified in the Care and Support Plan. This account may only be used for monies relating to Direct Payments (including the Service User's assessed financial contributions and any additional voluntary payments that they may make to procure increased services).
- 4.2 To use the Direct Payment for the purchase of only those services that meet the assessed needs identified in the Care and Support Plan.
- 4.3 To ensure the necessary arrangements are made to pay for any financial contribution into your direct payments bank account, towards the cost of the services assessed in accordance with the Council's charging policy.
- 4.4 To ensure the necessary arrangements are made to adjust any financial contribution towards the cost of the services assessed in line with annual changes in state benefits following the April review. A new Schedule of Payments may be issued because of any such changes but a new Direct Payment Agreements will not be issued in this situation.
- 4.5 To check your direct payments bank account regularly to ensure that the payments have been received and that there are sufficient monies in the account to meet expected bills.
- 4.6 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.
- 4.7 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.

- 4.8 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.
- 4.9 You agree to comply with all safety and legal requirements, which arise from any arrangements you make using the Direct Payment.
- 4.10 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 Service Users household.
- 4.11 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.
- 4.12 You are responsible for using the allocated money wisely. Any bank charges/legal charges/Inland Revenue costs will be your responsibility.
- 4.13 You must ensure that your direct payments bank account does not become overdrawn. If this should occur, any charges incurred will be the responsibility of the Direct Payments user, unless the authority is at fault, for example late payment.
- 4.14 You must ensure that you, your bank or any other person transfer no monies to either another account or person.
- 4.15 You must ensure that your "Direct Payments" account is used only for Direct Payments income and expenditure and not used for any other purpose e.g. to clear an overdraft or credit card balance or to pay for other non-support plan related expenditure.
- 4.16 You are advised to keep a record of all income and expenditure that you make from your Direct Payments account so that you know how much money you have left to spend at any point in time. This record is for your own purposes.
- 4.17 Any bank interest or other miscellaneous income to the account is deemed to form part of the Direct Payments amount and shall be used for direct payment purposes.
- 4.18 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.

- 4.19 To keep for a period of 6 years (plus the current year) and make available to the Council on request, documents relating to the Direct Payment in order for financial audits to be carried out on expenditure. Documents include:
- Completed timesheets including start and end times of shifts worked, holiday and sickness records – if relevant
 - PAYE, National Insurance and any other payroll records, as applicable
 - Related invoices
 - Related receipts
 - Items purchased as specified in the support plan
 - Items purchased using funds from the Direct Payment Account
 - Insurance documents
- 4.20 Reviews will be agreed between you, the Service User and the allocated worker; the review will help you and the Service User to look at the outcomes the Service User has achieved and if the allocation will remain the same based on the Service Users agreed needs and individual outcomes. If there is any change in the Service Users circumstances, it is your responsibility to inform Walsall Adult Social Care.
- 4.21 To notify, and/or advise next of kin/executor that, the Council must be informed at the earliest opportunity of any changes in circumstances, which would affect the Service User's, assessed needs or entitlement to Direct Payments. This will include any changes in capacity to consent or ability to manage Direct Payments or in the event of the death or permanent admission to care of the Service User.
- 4.22 To notify next of kin/executor that, in the event of death, the Direct Payment account will not be regarded as an asset of the estate and that they will be required to co-operate with the Council to pay any outstanding bills relating to the Service Users assessed care and support plan. In addition, if the expected amount is not available to be reclaimed from your nominated account, the Council will have the right to claim the amount from the estate.
- 4.23 To notify the Council if they find themselves unable to continue with the responsibilities of being an Authorised or Nominated Person.
- 4.24 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.
- 4.25 You agree to use the Direct Payment to meet the Service Users assessed eligible needs and the agreed outcomes in the Care and Support Plan. By way of example this would not include using the Direct Payment:
- To pay for 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;
 - To make cash payments for a Personal assistant. (Cash payments will only be allowed at the Council's sole discretion and in exceptional circumstances);
 - To pay a higher rate for a service 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;

- For health related services – such as dentist, chiropody, physiotherapy appointments;
- For household expenses, such as food, personal items, utility bill or clothing (this does not include protective clothing);
- For accommodation - rent, mortgage payments;
- For 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);
- For anything that is illegal;
- For gambling or gain. This includes lottery, bingo tickets, raffle tickets, horseracing and all other forms of gambling.
- Drugs, alcohol, cigarettes;
- To buy services from the Council;
- To pay for long-term residential care;
- To fund support provided by anyone living in the same house except where permitted by law and following agreement with Walsall Council;
- As a substitute for Disabled Facilities Grants.

4.26 To let us know if any of your contact details, name, address, telephone number etc. change.

5. Return of any requested Direct Payment monies

5.1 You may be asked to repay or we may deduct some or all of the Direct Payment money to us if:

- a) You have not used the Direct Payment to meet assessed eligible needs and/or agreed outcomes as set out in your Care and Support Plan;
- b) You have not used your Direct Payment because of a temporary change in circumstances (e.g. hospital or short term respite, or rehabilitation);
- c) Your Direct Payment has been overpaid or paid in error;
- d) There is a surplus in your direct payments bank account, which has been accrued above the agreed amount;

- e) You fail to meet any terms of the Direct Payment Agreement, or meet any condition which the Council and Partners have properly imposed in agreed letters;
- f) Your Direct Payment is terminated.

6. Suspension and Termination of Direct Payments

- 6.1 The Council may suspend payment of Direct Payments temporarily if the Service User is 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.
- 6.2 If you employ a Personal Assistant and the Service User goes 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 the Service User goes into hospital. We advise that you make any Personal Assistant aware of this condition.
- 6.3 If you purchase your services from an Agency or other means, the Direct Payment will be suspended if the Service User goes 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.
- 6.4 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.
- 6.5 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, the Service User is temporarily unable to receive services;
 - The Service User is 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.

6.6 In the event of the Service Users 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.

6.7 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 four weeks will commence on receipt of the written notice.

7. Employing staff - Personal Assistants

The general definition of a Personal Assistant is someone who provides care or support to a citizen (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.

If you choose to employ staff, you must fulfil your legal obligations to them and must act as a responsible employer and make all your arrangements in line with employment legislation, including those connected with tax, National Insurance, employer's liability insurance and Pensions. You must be registered with HM Revenue and Customs as an employer, regardless of whether any tax and national insurance contributions are being paid. You are also responsible for health and safety and to ensure a safe working environment, proper working practices and appropriate staff training. You will need to learn how to provide this training yourself or obtain it from a recognised source. Your Direct Payment Support Service Provider will do this for you.

If you employ a Personal Assistant, you must have employer's liability insurance (ELI) before the Personal Assistant starts working for you. You can purchase this from specialist Insurance provider for people like you that employ a Personal assistant. Walsall Council have negotiated some preferential rates for our Walsall citizens; further information about employing a personal assistant and employer's liability insurance is available on our website <https://go.walsall.gov.uk/directpayments>.

You must renew this insurance as required, or annually. You must leave enough money in the direct payments bank account to purchase your insurance as the payments made to you have taken into account this expenditure.

You cannot employ anyone who lives in the same household without first having permission from us. Please ask your social worker for the “special circumstances form”.

You must retain sufficient funding from your Direct Payment each week to cover your potential employer responsibilities.

We strongly recommend that you carry out criminal record checks with the Disclosure and Barring Service on any staff you are intending to employ; a Direct Payment Support Service Provider will undertake the checks on your behalf. Walsall Council will provide funding for the DBS check to be carried out. If children under 18 years of age will be present when the PA will be at work, the DBS check is a mandatory requirement of Walsall Council to ensure that children are safeguarded. In addition, if no DBS Check is carried out at all in relation to any Personal Assistant, (whether or not children under 18 years will be present) and/or if any relevant DBS Check comes back and there are criminal offences listed on it, then you must notify us as soon as possible.

If you employ new Personal Assistants at a later date, the same checks must be undertaken and again if no DBS Check is carried out in relation to any Personal Assistant (whether or not children under 18 years will be present when care is provided) and/or if any relevant DBS Check comes back and there are criminal offences listed on it, then you must notify us as soon as possible. You can find out more information about DBS checks on the Gov.uk website <https://www.gov.uk/guidance/dbs-check-requests-guidance-for-employers>

If you engage a self-employed Personal Assistant, there is a risk that such person might be construed as being your employee. If they are, in fact, an employee then there is a risk that you might be responsible for providing and paying for employee benefits (e.g. sick pay, National Insurance contributions etc.). It is your responsibility to ascertain what the nature of that relationship is. We strongly advise that you obtain advice on this before engaging anyone to provide you with care and support. In addition, you (and/or PA) might be responsible for different tax arrangements/liabilities and we again strongly advise that you consult with HMRC in terms of any arrangement you make.

You should attend any compulsory information sessions on Direct Payments or employment law.

We would not recommend paying a Personal Assistant in cash under any circumstances - cash payments will only be allowed at the Council’s sole discretion and in exceptional circumstances, **(payment could be made via your nominated bank account telephone banking, internet banking or the bank can make a payment)**.

8. Comments, complaints and compliments

The Council is committed to making the Personal Budget Direct Payments Scheme work. You have the right to make a complaint under the Adult Social Care Complaints Procedure about the operation of this Agreement. A copy of the leaflet is provided with this agreement for the complaint Procedure. At any points you wish to raise a concern you should where possible discuss first with the Service Users allocated worker.

DECLARATION- Please sign (a), (b) or (c) below

I have read the above terms and conditions of appointment as an ‘**Authorised or Nominated person**’ and consent to receive and manage the Direct Payment in accordance with these terms and conditions on behalf of the named Service User.

(a) I am the legal representative of the above named Service User as either a Lasting Power of Attorney, Enduring Power of Attorney or a court appointed Deputy under section 16 of the mental capacity Act.

Signed (Authorised/Nominated Person).....

Date

Relationship of Authorised/Nominated Person to Service User

(b) I am not the legal representative but there is a legal representative who has powers relating to decisions about securing community care services to meet the Service User’s needs. I have the consent of this legal representative to act as the ‘authorised person’.

The legal representative is

Name:

Address.....

.....

Tel No:

Signed (Legal Representative).....

Date.....

Signed (Authorised/Nominated Person).....

Date.....

Relationship of Authorised/Nominated Person to Service User

(c) There is no legal representative and I am willing to receive and manage a Direct Payment to purchase services or activities that will meet the assessed eligible social care needs of the above named service user.

Signed (Authorised/Nominated Person).....

Date



Walsall Council

DIRECT PAYMENTS POLICY

Document reference:	
Version:	Draft v0.7
Ratified by:	
Date ratified	
Originator/author:	
Responsible committee/individual	
Executive lead:	Paula Furnival
Date issued:	
Review due date:	

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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 healthy, 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>
Authorised person	<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>
Carer	<p>Someone of any age who provides unpaid support to family or friends who could not manage without this help.</p>
Close family member	<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

Equality Impact Assessment (EqIA) for Policies, Procedures and Services

Proposal name	Direct Payments Policy Guidance and agreements		
Directorate	Adult Social care Directorate		
Service	Adult and Children Directorate Policy		
Responsible Officer	Jennie Pugh/Ian Staples		
Proposal planning start	July 2019	Proposal start date (due or actual date)	January 2020

1	What is the purpose of the proposal?	Yes / No	New / revision
	Develop and improve the information, advice and policy related information when supporting the use of Direct payments		
	Policy	Y	N
	Procedure	Y	R
	Guidance	Y	R
	Is this a service to customers/staff/public?	Y	R
	If yes, is it contracted or commissioned?	Y	R
	Other - give details		
2	What is the business case for this proposal? Please provide the main purpose of the service, intended outcomes and reasons for change?		
	<p>The Directorates are already delivering their duties to offer Direct payments to customers as part of the personalisation agenda and requirements of Care Act, 2014, Children & Families Act 2014. It is offering and promoting the offers of choice and promoting a model of delivery that also brings in line sound financial stewardship.</p> <p>This will also ensure that customers have a full range of information that assists them in understanding DPs, as well as giving the Commissioner reassurance that the Providers assigned to oversee and gate keep/manage DP's have an open and transparent process that supports and reinforces the Policies and supporting guidance.</p> <p>The informal engagement commenced with staff across Adult Social care, June/July 2019, this was in preparation for developing the documents for wider distribution across teams</p> <p>Formal Briefings and feedback sessions were arranged and held in the Council Chamber on July 24th. Staff shared their ideas, observations and need for clarity around the documents. Feedback was also sought from commissioners Brokerage teams, Mosaic team and finance colleagues. Amendments made to the documentation and a proposal to present the policy in draft, to CMT on 14th November for approval to proceed to cabinet.</p>		



3	Who is the proposal likely to affect?		
	People in Walsall	Yes / No	Detail
	All	N	The policy and its associated guidance and Agreements will only affect customers who are in need of ongoing care and support via Social care across Walsall Council. It maximises transparency and openness across the council and its customers. It is a very pro- active and person centred way of supporting people to make choices about the way they wish to purchase their care and receive the outcomes via the payments in lieu of services ..
	Specific group/s	Y	
	Council employees	Y	
Other (identify)			
4	Please provide service data relating to this proposal on your customer's protected characteristics.		
	<p>The Policy formalises the relationships between customer and council and it also ensures that everyone has the same level of information available them when taking on a Direct payment. If you are a member of staff supporting the assessment process, the Policy and guidance helps to ensure that staff are following the standardised process and clear pathways for delivering this set of outcomes to all customers who choose this route.</p> <ul style="list-style-type: none"> • Direct payments have been an offer open to Customers of Walsall for several years and since the introduction of the Care Act 2014,(2015) and the Children & families Act (2014), Walsall council have continued to offer Direct payments to customers by way of promoting choice, empowerment and flexibility. All things that are promoted within legislation and in the hope that everything that people receive is actually person centred, least restrictive and helps to encourage a way of life for the individual and their network of support, that is ordinary, least restrictive and fulfilled. • Direct payments enable a person to establish a rally bespoke way of receiving care and support. • Alternative options are still available for customers, some of which are in respect of Block contracted commissioned services. This may still be the preferred option for some customers, but take up of Direct payments in Walsall is increasing significantly. • The expenditure for the current financial year to date is £13.5m for adults and £251,351 for children. • Direct payments can be used when the person requires them. In a climate that is maximising expenditure, Walsall have received £1m in unspent Direct payments from adults in the past year. By ensuring that policy, guidance and formal agreements for customers continue to evolve, there is also becoming an increased awareness across customers and the council, of the importance of returning monies, in order that support to individuals is proportionate and that all unspent monies are returned and re invested in the service delivery, across an increasingly growing demand. 		
5	Please provide details of all engagement and consultation undertaken for this proposal. (Please use a separate box for each engagement/consultation).		

As this is an introduction to a policy that is being underpinned by existing guidance, the engagement has been across the Adults internal customer base, commissioners; Brokerage Business support and finance colleagues.

Engagement commenced around June 2019. This was once the work to improve processes and procedures already in place, had commenced.

In July a selection of engagement continued with internal statutory assessors. This occurred on 24th July

Draft documents were distributed and feedback was received in order to re inform/amend or update .

The internal Organisation colleagues were also engaged in response to the need for a robust end to end Pathway to be developed. There have been a range of colleagues included in workshops to develop the end to end process work, that the draft policy, Procedures and guidance will work and be embedded across.

Commissioners also able to monitor the progress and success of the Direct payments offers across the customer base by ensuring that the regular audits are carried out across the third party providers that support the customers who are in receipt of the DP from the council

Internal colleagues from Children Directorate inclusive of commissioners finance and legal have been involved in the work at various stages since June.

	Consultation Activity			
	Type of engagement/consultation	Internal workforce engagement and awareness raising	Date	24.7.19
	Who attended/participated?	Front line staff employed as part of the statutory assessment process Commissioners: Brokerage:Finance and Business support		
	Protected characteristics of participants			
	Feedback <ul style="list-style-type: none">Positive feedback from front line assessment staff and also good feedback for the authors to ensure that clarity and further amendments could be made			
6	Concise overview of all evidence, engagement and consultation			
	<p>The engagement across all relevant internal agencies in order to further develop the policy, guidance and agreements has meant that there has been a clear piece of work undertaken in order to improve the customer experience and continue to offer direct payments as an open and transparent offer and that these offers promote a none discriminatory approach to most Customer needs or for those who have financial representatives</p> <p>Even a person who lacks capacity can be supported to receive a Direct payment</p>			
7	How may the proposal affect each protected characteristic or group? The effect may be positive, negative, neutral or not known. Give reasons and if action is needed.			
	Characteristic	Affect	Reason	Action needed Yes / No
	Age	<p>The direct payments are available to any person in Walsall Borough Council who has an assessed need for social care and support.</p> <p>Direct payments are a very positive way of empowering people. The fact that the payments are made to people in lieu of services, means that their package of care and support can be arranged in a really flexible and person centred way and is the least restrictive way of supporting a person who has a need for ongoing support</p>		
	Disability			
	Gender reassignment			
	Marriage and civil partnership			
	Pregnancy and maternity			
	Race			
	Religion or belief			
	Sex			

	Sexual orientation	
	Other (give detail)	
	Further information	
8	Does your proposal link with other proposals to have a cumulative effect on particular equality groups? If yes, give details.	(Delete one) Yes / No
	Direct payments are a really positive offer across Walsall and one which is fully promoting National Regional and local drivers in terms of putting the customer at the centre of everything	
9	Which justifiable action does the evidence, engagement and consultation feedback suggest you take?	
	A	No major change required
	B	Adjustments needed to remove barriers or to better promote equality
	C	Continue despite possible adverse impact
	D	Stop and rethink your proposal

Action and monitoring plan				
Action Date	Action	Responsibility	Outcome Date	Outcome

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Update to EqIA	
Date	Detail

Use this section for updates following the commencement of your proposal.

Contact us

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Inside Walsall: [http://int.walsall.gov.uk/Service information/Equality and diversity](http://int.walsall.gov.uk/Service_information/Equality_and_diversity)