Adult Social Care

Policies and Procedures

Personal Budgets and Direct Payments Policy (Adults)

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Personal Budgets and Direct Payments Policy (Adults)

1. What is this Policy for?

1.1 Wirral Council is committed to promoting individual wellbeing and to supporting independence through preventing, reducing or delaying the need for care and support. Personal Budgets allow people to take control over the services they receive in order to achieve the outcomes identified in their care and support plans in accordance with the Care Act 2014. A Direct Payment is one way of managing this personal budget which this Policy will explain. (Note - we have a separate policy for children and young people, (who have eligible care and support needs, their carers, and for those with parental responsibility for a child who has a disability or an Education, Health and Care Plan.)

1.2 This policy covers a range of topics including:

- What is a Personal Budget
- Ways to spend the Personal Budget
- What Direct Payments are and who can get them
- How they are calculated and paid
- What they can and cannot be used for
- How they are monitored
- When a Direct Payment may be cancelled or suspended

1.3 The policy has been written to provide a source of information for council staff, people already in receipt of a Personal Budget and Direct Payment or who may be interested in having one (An easy read leaflet is available on the council's webpage)**.**

2. The scope of this Policy

2.1 This Policy sets out the responsibilities of Wirral Council and the responsibilities of people receiving support and their Carers to ensure appropriate management of the Personal Budget and Direct Payment scheme in order to maintain adequate levels of care and support which meets eligible needs and intended outcomes.

3. The Legal Framework

3.1 The main legislation, regulations and guidance that apply to this policy are:

- The Care Act 2014
- Care and Support (Direct Payments) Regulations 2014
- Care and Support Statutory Guidance issued with the Care Act 2014
- Section 117(2C) of the Mental Health Act
- Children and Families Act 2014
- Mental Capacity Act 2005
- Special Educational Needs (Personal Budgets & Direct Payments) Regulations 2014
- Chronically Sick and Disabled Persons Act 1970
- Children Act 1989
- Equality Act 2010

3.2 These acts and guidance are available on the Government website, www.gov.uk. Allocated Workers will provide further information at the point of assessment or review to ensure the person is actively involved in the planning of their care and support to meet individual outcomes.

4. What is a Personal Budget

4.1 A personal budget represents the public money that the Council would have to spend in order to meet a person's assessed eligible needs, where those needs cannot be met from the person's own assets or informal sources of support from within the community. This Personal Budget is then free to be spent by the person in ways that allow them to achieve their desired outcomes.

4.2 It is important to give the person clear information regarding the money that has been allocated to meet their eligible needs identified in the assessment and recorded in the Support Plan if a person wishes to have greater choice and control.

4.3 Calculating the Personal Budget – Wirral Council will follow the principles of transparency, timeliness and sufficiency when calculating a Personal Budget. A Personal Budget must:

- always be an amount sufficient to meet the person's care and support needs
- include the cost to Wirral Council of meeting the person's needs which Wirral is under a duty to meet or has exercised its power to do so
- be broken down into the amount the person must pay (if anything) following the financial assessment and the remainder of the budget that Wirral Council will pay
- be as straightforward and timely as possible
- be decided and agreed on in the care and support planning process
- be reviewed on an annual basis unless circumstances have changed and a new assessment to determine care and support needs is required

4.4 **Carers -** If a Carer has been identified as having unmet eligible needs they may be entitled to a personal budget. Wirral Council may meet the carer's needs by providing a service directly to the adult needing care, or the carer may use their personal budget for health and wellbeing activities. *Please see Wirral Council's Schedule of Fees and Charges, Charging and Financial Assessment Policy and Carers Policy.*

4.5 **Ways to spend a Personal Budget** - A Personal Budget can be spent on a range of options as long as:

- It is not illegal
- Will not bring the Council into disrepute
- It is not used for gambling, sex, alcohol or drugs
- It is not used to pay for day-to-day living such as bills

4.6 **Self-funders** - Where Wirral Council meets the eligible needs of a person whose financial resources are above the financial limit, but who has requested that Wirral meets their needs, Wirral will make a charge for putting in place the necessary arrangements. This fee would not be part of the Personal Budget. *Please see Wirral Council's Schedule of Fees and Charges.*

4.7 **Top-Ups** - If a person is making an additional payment (top-up) in order to be able to secure the care and support of their choice, where this costs more than Wirral Council would normally pay for such a type of care, this will not form part of the Personal Budget. This should be recorded in the Support Plan.

4.8 A Personal Budget can be received in a number of ways

- A direct payment
- Commissioned services – (services which are arranged and paid for by the Department of Adult Social Services through contracted providers)
- A combination of both
- An Individual Service Fund (ISF) - this is a different way for people to purchase their care from a provider. An ISF gives choice and control over the support they need without having to take on the responsibility of managing the money.

5. What is a direct Payment

5.1 A Direct Payment is one of the ways the person can choose to use their personal budget to buy the care and support themselves, rather than have the council doing this for them.

5.2 The Council supports the use of Direct Payments to help people achieve greater independence, choice and control in meeting their eligible needs. A person who has eligible care and support needs – which cannot be met through their own assets and support networks – has an amount of money the council set aside to pay for their care and support, this is their personal budget.

5.3 If a person is eligible to have a Direct Payment and wants one, the council will ensure that the personal budget is enough to buy the assessed support they need.

5.4 Direct Payments may also be used as a way of arranging after care services provided under section 117 of the Mental Health Act 1983 (MHA).

6. Eligibility for a Direct Payment

6.1 In principle, any person assessed as being eligible for care and support (see section 8), from the Council, can ask for a Direct Payment, including children, young people, adults and adult carers. However, there are some criteria set out in the Care Act 2014 that must first be met:

- The person or their authorised representative has capacity to make the request
- The Council is not prohibited from offering a Direct Payment under The Direct Payment Regulations (Please see glossary below)
- The Council is satisfied, that the person who intends to deal with the Direct Payment can manage one (with support from others if required); and
- The Council is satisfied that the use of a Direct Payment is an appropriate way to meet the person's assessed needs and support outcomes.
- Where there is a nominated person, that person agrees to receive the payments

6.2 Direct Payments may not be suitable for everyone. The person may decide to have a service arranged for them by the council. This will normally be the case if the person wants to have their support provided by an organisation that the council already buys support from.

6.3 The Allocated Worker will offer the option of a Direct Payment to the person who has eligible needs, or the person who represents them, and will work with the most appropriate person to find an option to use a Direct Payment if that is what has been requested.

7. Exclusions

7.1 There will be times where a person wants a Direct Payment, but it may be concluded that this is not suitable. Reasons for this could be;

- The person wants to spend money on things that would not meet assessed needs
- the person does not have the ability or capacity to manage the budget and there is not a suitable person to do this on their behalf. When becoming an employer, a person needs the right understanding and approach to manage a Direct Payment.
- The regulations exclude people from receiving Direct Payments where they have been placed under certain conditions or requirements by the courts in relation to drug and/or alcohol dependencies (Appendix 1).

8. Eligible needs

8.1 If the person is new to services or unsure if they are eligible, the Allocated Worker will have a conversation with them or their representative and assess if they have eligible care and support needs as defined by the Care Act (2014).

8.2 If the person or, in the case of a carer, the adult they care for already has an Allocated Worker and has support from the Council – they will discuss their eligibility for a Direct Payment. This will include

- What is important to the person
- Their personal assets (what they can do for themselves).
- Where they have difficulties and what they are.
- Any care and support needs, and the impact of those needs on the person's wellbeing
- Any formal or informal support received, and if this will continue
- What outcomes they want to achieve
- If any of the exclusion criteria apply, (6.0).

9. More information on eligibility for support to meet care and support needs

9.1 The Care Act 2014 sets out national eligibility to ensure that all Councils meet the same minimum level of social care needs for adults. The Care Act 2014 states that the Council must provide for needs that meet the following three conditions.

i. The needs arise from or are related to a physical or cognitive impairment or illness;

ii. As a result of those needs the person is unable to achieve two or more of the specified outcomes:

- Managing and maintaining nutrition
- Managing personal care
- Being able to make use of the home safely
- Maintaining a habitable home environment
- Developing and maintaining family or other personal relationships
- Accessing and engaging in work, training, education or volunteering
- Making use of necessary facilities or services in the local community, including public transport, and recreational facilities or services
- Carrying out any caring responsibilities the adult has for a child

iii. As a result of not being able to achieve these outcomes there is, or there is likely to be, a significant impact on the person's wellbeing. This includes where the person can achieve the outcome, but it takes them significantly longer than would normally be expected, it causes them significant pain, distress or anxiety, or it risks health or safety.

10. Carers eligibility for support

10.1 The Council must provide support to carers for needs that meet the following two conditions:

i. The needs arise because of providing necessary care for an adult

ii. The effect of the needs is that the carer's physical or mental health is, or is at risk of, deteriorating or, the carer is unable to achieve any of the following outcomes:

- Providing care and support to other adults
- Maintaining a habitable home environment in their home, whether or not this is also the home of the adult needing care
- Managing and maintaining nutrition
- Developing and maintaining family or other personal relationships
- Engaging in work, training, education or volunteering
- Making use of necessary facilities or services in the local community, including recreational facilities or services
- Engaging in recreational activities

10.2 As a result of not being able to achieve these outcomes there is, or there is likely to be, a significant impact on the carer's wellbeing. This includes where the carer can achieve the outcome, but it takes them significantly longer than would normally be expected, it causes them significant pain, distress or anxiety or it risks health or safety to them or others.

10.3 Support from the council may be available for carers regardless of whether the person they care for has eligible care and support needs themselves.

10.4 The Council does not carry out financial assessments on Carers. This means Carers do not contribute to the Direct Payments they receive. A Carer may however choose to purchase support in addition to what is being provided to meet their needs.

11. Available support with Direct Payments

11.1 The Allocated Worker has a key role in ensuring that people are given relevant and timely information about Direct Payments, to help them decide if a Direct Payment is the best option for them and they are supported to receive and use it.

11.2 The Allocated Worker will help people understand their responsibilities and what support is available to them. This will include contact information for the Direct Payment Support Service.

11.3 Direct Payment Support Service (DPSS) is a free service which will give people advice and support in using Direct Payments. Support provided by DPSS includes:

- Support and advice in setting up and maintaining Direct Payment (agency or Personal Assistants), including financial records, time sheet recording, budgeting skills
- Provision of resources, tools and paperwork to help the effective management of a Direct payment.
- Maintaining a list of locally available Personal Assistants (PAs).
- A support and signposting service to other organisations and departments such as a care agency or HMRC.
- Setting out the option of accessing care through a reputable agency and support for contacting and finding an agency that can best meet eligible care and support needs
- Making the person or their representative aware of the advantages of the use of a care agency in terms of not taking on employer responsibilities and cover when the usual carer(s) is on leave or ill etc.
- Offer the option of using a care agency and paying invoices on the person's behalf
- Managing direct payment on behalf of the person, this is referred to as a managed account

11.4 When a recipient of a direct payment is employing a PA, it is important for the Council to:

- Support the person/or representative with contingency cover planning including emergency and holiday replacement cover when regular carers are not available
- Provide support and advice about the legal responsibilities of being an Employer
- Operate an online PA finder Register
- Support individuals to draft advertisements including where and how to advertise, job descriptions and person specifications for PAs
- Provide standard documents such as contracts of employment (including disciplinary procedures) and induction forms.
- Provide support for conducting interviews including providing information and advice on questions, advantages and disadvantages of interviewing in your home or in other venues
- Provide support and advice on the safeguards needed when employing people including undertaking Disclosure and Barring Service (DBS) checks to an appropriate level

- Ensure the person understands the need for adequate insurance for their PAs and where to obtain such insurance
- Provide a payroll service. Providing information on PAYE, Income Tax and National Insurance
- Facilitating where to access training for Carers/ PAs including minimum standards of care
- Signpost to other services such as welfare benefits and advocacy
- Provide advice and support on employment related matters which include induction, supervision, training, good employment practices, disciplinary matters and managing sickness

12. Who pays for social care support?

12.1 Support from Social Care (unlike most health care) is not free. Adults who have care and support needs will make a financial contribution based on the outcome of a financial assessment. Many people will pay some or all of these costs. This does not apply to children, young people and carers.

12.2 The amount a person will pay will depend on their financial circumstances. Some people may get some help towards the cost of their care and support, while others will have to pay for their care from their savings and income. The financial assessment will consider a person's ability to contribute towards their care costs.

12.3 To calculate how much someone may need to pay, the assessment takes into account income, any savings or investments, and expenses (e.g. rent, mortgage, household bills). The Adult Care Charging Policy sets out the financial assessment rules, how charges are calculated, financial assessments, reviews and appeals processes. For detailed information on the financial assessment, please see the link below:

Charging and paying for adult care and support services in Wirral | wirral.gov.uk.

13. Assessing Needs and How the Direct Payment is calculated

13.1 The Allocated Worker will spend time with the person or their representative to establish the amount and level of support they need.

13.2 In some cases, there are things a person can do for themselves or with help from family/friends or community organisations. Where this needs to be supplemented by support that needs to be paid for, the Council will agree with the person how much support is required.

13.3 This is then set out in a care and support plan. The plan should be written with the person and be clear about what has been agreed. This will provide clarity on what the Direct Payment can be used for and avoid any confusion.

13.4 The Allocated Worker will talk to the person and understand how they would like to arrange their care and support. People may wish to manage their own Direct Payment or to use the Direct payment Support Service commissioned by the Council. The personal budget will be based on the Council's standard rates which are reviewed on an annual basis.

13.5 The amount of the Direct Payment is derived from the personal budget as set out in the Support Plan and will be an amount which is sufficient to meet the needs unless the person is requesting a Direct Payment for only a part of their care and support.

13.6 In addition, an allowance will be included that gives the person enough money to meet the costs of being an employer, known as “on-costs”. This includes National Insurance, Pension Costs, Holiday Pay, Mandatory Training, Statutory Sick Pay, Payroll costs, and Employer’s Liability Insurance.

13.7 The allowance will meet these costs for most care packages. The Council considers reviewing the rates of pay for PAs based on the National Living Wage each year. They also consider reviewing the on-cost allowance to ensure it remains enough to meet employers’ costs.

13.8 If the person chooses to buy services that are more expensive than the rates used to calculate the Direct Payment, they have the option of “topping up”. This means meeting the cost difference from their own money. The person should be informed that if they do choose to pay more (for example a higher cost provider/ PA) and their income reduces and they can no longer afford it, the Council will not be responsible for paying for a more expensive service and would normally offer an alternative, less expensive option or advise the person to seek an alternative cheaper provision.

13.9 The Council are required to and will take into account their responsibility for fair treatment of people with care and support needs and their responsibility for managing public money, when making any decision to agree a budget in excess of standard rates.

14. How is the Direct Payment paid

14.1 Direct Payments can be paid to the person – if they are assessed as needing support, someone the person chooses (a nominated person) or, it can be paid to someone managing this on the person’s behalf (an authorised person). The DP Support service can also manage a person’s account.

14.2 There are several ways that a person can receive and manage their Direct Payment. They will be offered support from the Direct Payment Support service to help them understand each of the options. It is the person’s choice as to how you are supported with the payment:

14.3 **Dedicated bank account** – the person will need to open a bank account in their name (or the name of the nominated/authorised person) and manage the Direct Payment themselves. This account should only be used for the Direct Payment. Having a separate account for Direct Payments means all support needs can be paid from one account without the council having to see the person’s personal bank account statements when undertaking the annual compliance checks.

14.4 Whichever method is chosen, Direct Payments will be paid into that account either annually or every 4 weeks, in advance. The person will need to pay any expenses they are responsible for from the Direct Payment account.

14.5 **Managed account** –the Direct Payment Support Service acts as a third party and manages the Direct Payment monies on the person’s behalf, ensuring care providers / PAs are paid, checking contributions are paid, that the account doesn't go overdrawn, and highlighting any unexpected income or outgoings. If the person employs PAs, they remain the employer and will retain associated responsibilities.

14.6 **Pre-paid Card** –this is a virtual bank account that is set up by the Council. It is pre-loaded with money from the Council and will include any financial contribution, following a financial assessment, the person is required to make. The process is set out below

- The person signs and returns their Direct Payment Agreement.
- The financial assessment is completed, and the personal contribution identified

- Financial assessment referral is made by the Allocated Worker. The financial assessment form is forwarded to the person to complete and return.
- The care and support plan is completed, and a Direct Payment is identified as the right option.

15. Spending Direct Payment

15.1 Direct Payments are an excellent way for people to choose how to arrange their care and support. However, they can only be spent on things agreed as meeting the needs and achieving the outcomes in the care and support plan.

15.2 Most people who have Direct Payments choose to use them to employ PAs. They can be used in other ways, examples include using:

- A care agency
- Day services
- Support to be able to access activities
- A respite break for carers.

15.3 This includes and is not limited to providing care in the person's home, accessing day opportunities, short stays in care homes (up to 4 weeks in a 12-month period) or supported holidays for the carer and cared for person.

15.4 A one-off payment for a service or goods or items to meet needs – an example could be a laptop to enable people to keep in contact with friends and family The Council encourages people to be creative in how they use their Direct Payment to meet their eligible needs.

15.5 The Council will support the creative use of Direct Payments to meet needs through the assessment and audit processes. The Allocated Worker will discuss with the person what they want to spend the money on. There are some important principles to guide those decisions:

- The proposed use of money must, in the opinion of the Allocated Worker, be appropriate to meet assessed needs
- The amount of money spent cannot exceed the Direct Payment budget. However, if the person wants to "top up" to buy something more expensive, they can do this with their own money. If they do this, they must pay from a separate account to avoid any confusion on use of the Direct Payment account
- Where the Direct Payment is used to pay for support that enables the person to take part in activities such as sports or other leisure activities, the cost of the support needed to enable them to take part is acceptable, but the cost of the activity itself is not. This would need to be met from their own money The use of Direct Payments for children and young people is more specific and is detailed in the Children's Direct Payments Policy.

15.6 There are restrictions on what Direct Payments can be spent on, for example, it must not be used for: anything illegal, cigarettes, alcohol, drugs, gambling. However, if the Direct Payment is being used to meet eligible care and support needs identified in the care and support plan, there should be no unreasonable restriction placed on the use of Direct Payments.

16. Employing a Family member

16.1 Under the Care and Support (Direct Payment) Regulations 2014, Direct Payments must not be used to pay a family member living in the same household to meet the care needs of the person except where the Council considers it necessary to do so. Examples could include:

- Care needs are intermittent and unpredictable to an extent that recruiting someone else to meet needs is not possible
- The person is unable to cope with unfamiliar people and there is professional evidence to support this
- Significant effort has been made to find alternative means which has been unsuccessful, and this is the only way the person can receive support

17.2 However, the regulations allow people to pay a close family member living in the same household to provide management and/or administrative support to the direct payment holder in cases where the local authority determines this to be necessary. This is intended to reflect the fact that in some cases, especially where there are multiple complex needs, the direct payment amount may be substantial.

17.3 The management and administration of a large payment, along with organising care and support can be a complex and time-consuming task. This allows family members performing this task to be paid a proportion of the direct payment, similar to what many direct payment holders pay to third-party support organisations, if the local authority allows this.

17.4 This is not intended to be income replacement, and people interested in requesting this option should be informed of tax and employment implications, any impacts upon other benefits and given (or signposted to) information and advice to help them decide.

17.5 The local authority should be satisfied that it is necessary to make the payment to the family member to provide this service and that the direct payment will only be used for administration and management of the payment. The circumstances and payment amount should be decided and agreed with the person requiring care and support, the family member, local authority and any other person (for example, advocate), with the local authority taking steps to ensure all parties agree.

17.6 These decisions should be recorded in the care plan and include the amount of the payments, their frequency and the activities that are covered. This arrangement must also be considered during allocation of the personal budget so that the amount remains sufficient to meet the person’s needs.

17.7 Local authorities will need to have in place an agreement between all parties about what steps to take in case of a dispute regarding the management of the payment by a household family member. This will be especially relevant where the person providing administrative and management support is also the nominated or authorised direct payment recipient. It would not be appropriate to allow this where there is a risk that the direct payment may be abused, or there are other sensitivities such as potential safeguarding issues.

18. Making Changes to a Direct payment

18.1 If the person wants to change how they spend their Direct Payment after it has been agreed, they must talk to the Council and get agreement before any changes are made.

18.2 This could include stopping an agency service to employ a PA. It is essential the person has a discussion with the Council as payment rates may not be the same, or the proposed changes may not meet their care and support needs.

18.3 The person may wish to join with others to pool their Direct Payments – for example, where support may be expensive, it is possible to join with other people who use Direct Payments to form a group and combine Direct Payments. The pooled budget could be used to buy support and services that would not normally be accessible to the people individually and it could help achieve better outcomes for everyone. An agreement for pooled Direct Payments needs to be signed by, or on behalf of, everyone sharing the collective arrangement.

19. Employing a Personal Assistant (PA)

19.1 Direct Payments give people the opportunity to employ PAs. They can support the person to live more independently in their own home, in the community, at leisure or at work.

19.2 If a person decides to employ a PA, they need to be fully aware of their responsibilities. These include, but are not limited to:

- Advertising and recruitment, to employ the PA.
- Legal responsibilities the person will have as an employer, including but not limited to:
- Contract of employment
- Employers Liability Insurance
- Pensions
- Keeping employee information safe, secure, and up to date
- Maintaining records of hours worked, payments made, training undertaken etc.
- Health and Safety policy and risk assessment if more than 5 PAs are employed
- Accident records
- Redundancy payments – the person may be eligible for financial assistance.
- The Council recommend Disclosure and Barring Scheme (DBS) checks to be completed when a person employs PAs and will insist on it if there is a child living in the household. These responsibilities remain if it has been agreed that the person may employ a family member. Further information can be obtained here: Help and Support | Disclosure and Barring Service

20. Self-employed Personal Assistants

20.1 If the person chooses not to employ their own PA and instead use a self-employed PA, they will be responsible for dealing with their own tax and National Insurance (NI). The person will need to ask the PA for copies of the following documents as proof of their status:

- Self-assessment registration number
- A signed document from Revenue & Customs saying that the PA is self-employed for care work If this proof is not obtained, they could be liable for back pay in tax and National Insurance Contributions. If, at a later date it becomes evident the PA should have been employed rather than self-employed, the person needs to obtain these documents. This remains the case if the PA is self-employed via a care agency. If the person uses the services of a self-employed PA they must check the below are provided:
- Public Liability Insurance (up to £5 million)
- Invoices for payment of work

20.2 The Direct Payment Support Service can provide guidance with any of the above and there is detailed information about responsibilities when employing a PA available through Skills for Care www.employingpersonalassistants.co.uk. information and advice on workplace rights, rules and best practice www.acas.org.uk.

21. How is the Direct Payment monitored

21.1 The Council is required to monitor the Direct Payment to make sure:

- Enough money is available to meet eligible care and support needs
- That the Direct Payment is being managed well
- An initial review takes place in first 6-8 weeks by the social work teams to ensure the account is set up and that appropriate support is in place.
- Further reviews will happen at least every 12 months in accordance with section 27 of the Care Act. Reviews will be proportionate and should be a face-to-face meeting.
- The Direct Payments Team will audit Direct Payment usage and monitor the payment of contribution amounts.
- If a face-to-face review cannot be completed due to circumstances beyond the Council's control, a risk assessment is needed if a telephone review is deemed sufficient.
- The person who is managing the Direct Payment, may invite anyone they wish to be present at the review but, it is requested that this is notified to the Allocated Worker.
- Some people's needs or situations might be more likely to change than others. For these people the Council may plan more regular reviews. This will be discussed with the person and recorded in their care and support plan.
- A review can be requested if the person's needs or circumstances change. If the changes are significant, this may require a new assessment to be completed.
- If the Council decide that needs are not being met through using a Direct Payment, it may be suspended, and the person would be offered an alternative way of having their care and support needs met.

21.2 The person will need to:

- Provide proof of a direct debit for any personal contribution they have been assessed as needing to pay towards their care and support
- Keep copies of all receipts and invoices and supply these on request

- Keep bank statements for the Direct Payments account
- Keep timesheets and summary slips if staff are employed. Blank copies of timesheets are available from your payroll provider or can be downloaded from the LCC website
- Receipts for payments made must be kept. The person can use a duplicate receipt book if no receipt is available from the provider. The receipt should state the name and address of the provider, what has been purchased or provided, the date and amount paid. The provider should sign to say they have been paid
- Keep a copy of the Employers Liability Insurance certificate if staff are employed.
- Complete a Summary Form for the weeks that a payment covers as this will show the person what monies are left at the end of these weeks. The person must be advised that monies are paid in advance of the period that they cover as detailed on the Direct Payments calendar.
- If the person's needs change, they need to get in touch with the Council to ensure the right amount of money is being paid.
- If the Direct Payment money starts to build up because it is not being used, the Council will contact the person to find out why. There may be good reasons for this such as unspent contingency or training funds, or because they are awaiting an invoice from a care provider. But if it is not going to be used to meet care and support needs and the outcomes as specified in the care and support plan, the money must be returned to the Council.

22. Can the Direct Payment be suspended or taken away?

20.1 If, after speaking with the person and considering the evidence, it is found that the Direct Payment is being misused, the Council can suspend or stop the Direct Payment and will offer an alternative way of meeting the person's care and support needs. This will usually be through a service commissioned by the Council. The person will have to pay back any money that has been misused and return any unspent money from the Direct Payment account.

22.2 The Council can decide to stop a Direct Payment, for example if:

- If the care arrangements in place are not considered to be meeting the persons assessed need
- The Council that the person is no longer able to manage it
- The person does not keep to the terms of the Direct Payment Agreement
- The person does not respond to communications from the Council within time limits set
- The person does not pay any personal contributions that they have been assessed as needing to make towards the cost of your care and support
- If Safeguarding concerns are raised which could be affected by the provision of a Direct Payment
- The person has been placed under a condition or requirement by the Courts in relation to drug and/or alcohol dependencies.
- The person leaves their place of ordinary residence. This includes temporary or long-term absence from the original residence e.g. extended periods at another location or travelling abroad.
- Direct payments while abroad will generally not be paid for more than four weeks in any one calendar year except under exceptional circumstances.
- Long term hospital stays will be considered on a case-by-case basis.

23. Wirral Council Duties

23.1 Wirral Council has a duty to protect the public funds that it administers. 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.

23.2 This may lead to: information sharing between Wirral Council and other bodies responsible for auditing or administering public funds such as HMRC and the Department for Work and Pensions, and/or criminal prosecution

24. Death of Direct Payment recipient

24.1 In the event of the death of a Direct Payments recipient, Direct Payments do not form part of that person's estate. The money always belongs to Wirral Council and remains public funds.

24.2 Any fees due to HMRC are to be resolved between the Deceased Estate and HMRC.

25. Ending Direct Payments (The person)

25.1 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. They must then inform the Council either in writing or electronic communication of this decision.

25.2 On receipt of this communication the Council will have a discussion with the person or their Authorized person to establish why this decision has been made. Discussion will need to consider options for allowing the Direct Payments to continue and if the decision is confirmed, to make sure that the care and financial consequences of ending the Direct Payments are understood including all employment and support costs.

26. Ending Direct Payments (The Council)

26.1 See section 22.

27. Complaints

27.1 Where there are difficulties around setting up Direct Payments every attempt should be made to resolve them. If the person remains unhappy about any action or decision within this process, they have the right to complain and can make a formal complaint.

27.2 Any complaints should be referred to the Complaints Resolution and Information Team (Adult Social Care). Full details on how to do this and how complaints are managed can be found on the Council's website using the following link:

https://www.wirral.gov.uk/about-council/complaints/complaints-about-adult-social-services

27.3. The Complaints Resolution and Information Team (Adult Social Care) can be contacted:

- By email - ASCfeedback@wirral.gov.uk
- By telephone – 0151 666 4810
- In person
- By letter to the Complaints Resolution and Information Team (Adult Social Care), Wirral Council, PO Box 290, Brighton Street, Wallasey, Wirral, CH27 9F

27.4 If the person needs support to appeal or complain they should be referred to the appropriate advocacy service.

Further information: Further information about Direct Payments and general information about all adult care can be found on the Wirral Council website.

Appendix 1 - Glossary

The person – the individual who is in receipt of the direct payment

Adult with capacity - In the context of this policy, an adult who has the mental capacity to request and manage a direct payment.

Adult 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 Wirral Council's Mental Capacity Act 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

An assessment of an individual's financial circumstances to determine whether they must pay a personal contribution towards the cost of services required to meet eligible needs.

A financial assessment is not required for s117 after care services as these must be provided free of charge.

Authorised Person

An Authorised person is authorised to receive and manage a direct payment on behalf of a person who lacks capacity to do so. This can be someone who:

- 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 Mental Capacity Act.

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, Wirral 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.

Wirral Council Pre-Paid card.

A card, linked to a bank account, where funds are preloaded and used in a similar way to a banking debit card. The account cannot become overdrawn because there is no credit facility.

Carer In the context of this Policy a Carer is defined as someone over the age of 18 who provides unpaid support to family or friends.

Close family member

Someone who lives in the same household as the adult and who is the adult's:

• 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
• The spouse/partner/civil partner of any of the people listed and living in the same household as the adult.

The 2009 Direct Payment Regulations excluded the payment from being used to pay for care from a close family member living in the same household, except where the local authority determined this to be necessary. While the Care and Support (Direct Payments) Regulations 2014 maintain this provision regarding paying a family member living in the same household for care, it provides a distinction between 'care' and 'administration/management' of the direct payment. This allows people to pay a close family member living in the same household to provide management and/or administrative support to the direct payment holder in cases where the local authority determines this to be necessary. This is intended to reflect the fact that in some cases, especially where there are multiple complex needs, the direct payment amount may be substantial.

DBS checking - Screening through Disclosure and Barring Services. This checks a person's criminal history and identifies people barred from working with children and vulnerable adults.

Direct Payments - Payment of Wirral 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 Wirral Council.

Direct Payments Agreement -The written agreement which sets out the terms and conditions applicable to Direct Payments, which must be signed by both parties.

Duty to make Direct Payments - Where Wirral Council has a legal obligation to make Direct Payments to eligible people when all conditions are met.

Nominated Person - A nominated person is someone a person chooses to help manage the direct payment. The Care Act provides a power to enable direct payments to be made to the person in need of care and support, or a nominated person acting on their behalf if agreed by the person with care needs and that person has capacity. The nominated person can take on the role and responsibilities of the legal employer at the request of the Service User.

Personal Budget - The amount of money allocated to fund the care and support required. The Personal Budget is means-tested and therefore the adult may be required to make a financial contribution towards the total amount of the Personal Budget.

Personal Assistant (PA) – is a support worker who helps with daily needs to help make life easier.

Review and Monitoring of Direct Payment -Arrangements to ensure that they continue to meet the eligible needs. Usually carried out concurrently with a review of the person's support plan.

Section 117 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 (Care and Support (Direct Payments) Regulations 2014 – Regulation 2)

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: (i) 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 (ii) 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.