Personal Budgets via Direct Payments (Adult Social Care & Health)

Policy & Procedure

May 2024

Policy, Performance and Customer Care Team
Adults Directorate

Contents

Policy Summary

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If you require this policy or any associated documents in another format (e.g. other languages, easy-read or any other format), please email details of your requirements to: ascservicedevelopment@halton.gov.uk.	

1.0 Purpose of this document

The purpose of this document is to inform staff of their roles and responsibilities with regards to Personal Budgets (PBs), both in respect of Social Care and Health, specifically in relation to the process to be followed in the establishment of a Direct Payment (DP).

Direct Payments help people who want to manage their own support to improve their quality of life. They promote independence, choice and inclusion.

2.0 Scope

This policy applies to adults only (aged 18+). There is a separate *Children's and Young People's (0-25) Personalisation & Personal Budgets (including Personal Health Budgets and Direct Payments) Special Educational Needs and Disability (SEND) Policy*, which can be found on the Local Offer (Help, Support & Advice > Personal Budgets and Direct Payments).

For the purposes of equipment provision via a Direct Payment, this policy also applies to children under the age of 18, as the Occupational Therapy Service based within the Adults Directorate is an all-age service. Direct Payments provided for children (aged under 18 years) to purchase equipment will be funded from the Children's Services equipment budget. DPs for adults aged 18 years+ will be funded from Adults' Services budgets.

In relation to health and those who are eligible for NHS Continuing Healthcare (CHC), this policy applies only to packages that are jointly funded by the Council and the Integrated Care Board (ICB). Integrated Care Boards (ICBs) are the statutory bodies with responsibility for NHS Continuing Healthcare. In Halton, this is NHS Cheshire & Merseyside (Halton Place). For fully funded CHC packages, there is a separate *Personal Health Budget Policy* published by the ICB in place. This policy sets out the responsibilities of NHS Cheshire & Merseyside (Halton Place) for ensuring it discharges its functions according to its statutory responsibilities for implementing Personal Health Budgets. At the time of writing this policy, the ICB Personal Health Budgets Policy was in the process of being updated and taken through approval processes. Once published, the Personal Health Budgets Policy will be available via the NHS Cheshire & Merseyside website: NHS Continuing Healthcare - NHS Cheshire and Merseyside

Alternatively, the CHC Team can be contacted for guidance/advice via 01925 944443 or handw.chcadmin@cheshireandmerseyside.nhs.uk.

3.0 Legislation

This document is prepared in the context of all current legislation and guidance, including:

- The Care Act 2014 plus the associated Care & Support Statutory Guidance
- The Care and Support (Direct Payments) Regulations 2014 (plus amendments)
- The NHS (Direct Payments) Regulations 2013 (plus amendments)
- The Mental Health Act 1983
- The Mental Capacity Act 2005

Local Authorities are obliged by law to make DPs available to people who are eligible for them and choose to take the money. Each eligible individual should be offered the choice of having their needs for a service met through DPs as part of the support planning process. The NHS can also offer direct payments for healthcare and people eligible for CHC have the right to ask for a Personal Health Budget, including a DP for healthcare.

The following quote is taken from the Care & Support Statutory Guidance (issued under the Care Act 2014):

> ***"Direct payments are monetary payments made to individuals who request to receive one to meet some or all of their eligible care and support needs. The legislative context for direct payments is set out in the Care Act, Section 117(2C) of the Mental Health Act 1983 (the 1983 Act) and the Care and Support (Direct Payments) Regulations 2014….***
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> ***…Direct payments have been in use in adult care and support since the mid-1990s and they remain the Government's preferred mechanism for personalised care and support. They provide independence, choice and control by enabling people to commission their own care and support in order to meet their eligible needs."***

4.0 What are Personal Budgets and Direct Payments?

PBs form part of the government's wider drive to enable people with long term conditions and disabilities to have more choice and control over how their eligible health and social care needs are met.

A PB is an amount of money identified to support a person's eligible health and social care needs which are planned for and agreed via the appropriate assessment process.

The individual with the PB (or their representative) will:

- Be able to choose the social care or health outcomes they want to achieve, in agreement with a health or social care professional.
- Know how much money they have for their health/social care and support.
- Be enabled to create their own support plan, with support if they want it.
- Be able to choose how their budget is held and managed, including the right to ask for a DP.
- Be able to spend the money in ways and at times that make sense to them, as agreed in their plan.

PBs can be managed in three ways, or a combination of them:

- **Notional Budget**, where the money is held by the NHS or Social Care and the necessary services are be arranged by statutory services.
- **Individual Service Fund**, where the money is paid to a service provider who holds the money on the person's behalf.
- **Direct Payment for Health and/or Social Care**, where the money is paid to the person or their 3rd party representative.

The following groups of people may be eligible to receive DPs:

- Older people and disabled people aged 16 or over.
- People with parental responsibility for disabled children or disabled parents with parental responsibility for a child.
- An appointed suitable person on behalf of someone lacking mental capacity (see 1.11).
- People subject to mental health legislation and those people receiving mental health aftercare services.
- Carers aged 16 or over in respect of their own needs (Social Care).
- People eligible for NHS Continuing Healthcare (CHC), including families with a child receiving CHC.
- People with long term neurological conditions.
- Young people in transition.
- In addition, Integrated Care Boards (ICBs) may also be able to offer PBs to other people who they feel would benefit.

DPs are made by Halton Borough Council (HBC) instead of providing or arranging for the provision of services, or in the case of those eligible for NHS Continuing Healthcare (CHC), on behalf of the ICB – NHS Cheshire & Merseyside (Halton Place)*. The recipient uses the money to purchase services to meet their assessed needs.

In Halton, the DP scheme is co-ordinated and managed on behalf of HBC and the ICB (NHS Cheshire & Merseyside – Halton Place)* – by the HBC Direct Payments Team within the Chief Executive's Directorate. The DP Team can be contacted on 0151 511 7575. Information is also available on HBC's website: https://www3.halton.gov.uk/Pages/adultsocialcare/Budgets.aspx

**The HBC Direct Payments Team co-ordinate and manage joint funded CHC packages only. Fully funded CHC packages are managed by NHS Cheshire & Merseyside (Halton Place) – please see the separate ICB policy as referenced in section 2.0.*

5.0 What Direct Payments can and cannot be used for

Direct Payments **can** be used to buy relevant services/equipment to meet needs identified as part of a person's support plan and may be used in the following ways:

See the Staff Guidance at Appendix 1 for examples of what a DP can and cannot be used for.

- To employ a Personal Assistant (PA) – including recruitment costs (where required), employers national insurance contributions, income tax, employers' liability insurance, pension, and other associated costs. The Direct Payments Team will provide information and support on how to begin employing a PA and ongoing support as necessary. Becoming an employer carries with it certain responsibilities and obligations for the individual, in particular in relation to paying Tax, National Insurance, minimum wage requirements, ensuring that any pension requirements are met, and that any person employed has the right to work in the UK.
- To buy services from an agency.
- To attend day opportunities
- To provide an innovative intervention that meets the individual's outcomes and in so doing prevents, reduces and delays the onset of longer-term care needs.
- To pay for short-term care (respite) in residential/nursing care which does not exceed a four week period in any 12 months **(*see explanatory note 1 below)**.
- To fund a carers break (Adult Social Care).
- In exceptional circumstances, to purchase equipment or an item of the person's choice that would enable them to meet their assessed eligible care need themselves. The person sources their choice of equipment and agrees with the Council that it is suitable to meet their assessed eligible care needs. The DP awarded is the cost of the item to Halton Borough Council (based on the catalogue). The person is expected to make up any shortfall associated

with choice either themselves from disregarded income/capital or seek a third party to support the additional costs. Maintenance of equipment will be the DP recipient's responsibility and must be arranged as required depending on the type of equipment and in line with usual Council provision.

Please note: Any service purchased must be as cost effective or efficient as the Local Authority or Health could arrange or buy.

Direct Payments **cannot** be used to:

- Relieve Social Care or Health of its statutory responsibilities towards a person who is perceived as troublesome or difficult.
- Purchase local authority services or primary medical services provided by GPs e.g. diagnostic tests, basic medical treatment or vaccinations.
- Pay for permanent residential/nursing care for adults **(*see explanatory note 1 below)**.
- Purchase personal assistance from a partner or close relative living in the same household as the DP recipient other than in exceptional circumstances, which must be agreed by HBC or the ICB in writing **(**see explanatory note 2 below)**.
- Purchase alcohol, tobacco or non-prescribed drugs.
- Gamble or repay a debt other than for a service agreed in the support plan.
- Undertake illegal activities.

This is not a definitive list of things that a DP cannot be used for. HBC/the ICB will be required to agree all spend prior to authorising.

Please note: HBC and NHS Cheshire & Merseyside (Halton Place) have a statutory responsibility to deliver best value; therefore, the most cost effective service option will be sought.

**Explanatory note 1:*

Direct Payments may be used to purchase short-term care (respite) in residential/nursing care in line with the Department of Health Guidance on direct payments for community care, services for carers and children's services (2009):

"Direct payments are intended to support independent living and, as such, they cannot be used to pay for adults to live for the long term in residential care. They can be made to enable people to purchase for themselves a short stay in residential care, provided that the stay does not exceed a period of four consecutive weeks in any 12-month period. The Regulations also specify that where the interim period between two stays in residential care is less than four weeks, then the two stays should be added together to make a cumulative total, which should also not exceed four weeks if it is to be paid for with direct payments."

***Explanatory note 2:**

The Care and Support (Direct Payments) Regulations 2014 state that unless a council is satisfied that it is necessary to meet satisfactorily a person's needs, a council may not allow people to use direct payments to secure services from a spouse, from a partner or from a close relative (or their spouse or partner) who live in the same household as the direct payment recipient. The restrictions given are not intended to prevent people using their direct payments to employ a live-in personal assistant. The restriction applies where the relationship between the two people is primarily personal rather than contractual. This also applies in terms of health as outlined in the NHS (Direct Payments) Regulations 2013.

Any request to treat a case as exceptional must be agreed by the Council and confirmed in writing. **In order to agree such requests, the Council must be satisfied that:**

- There are genuine, overwhelming reasons why that specific individual needs to be employed via the Direct Payment.
- There is a contractual arrangement for care-giving with the family member.
- There is no substantial risk of financial abuse.
- In order to actually meet the needs of the service user it is necessary to make this exception.

The following are examples of situations which might constitute exceptional circumstances if satisfactory evidence were to be produced to substantiate the situation and needs:

- Ethnic or religious beliefs impose specific limitations on who may acceptably be employed to deliver the care, and there is no likelihood of being able to recruit an appropriate carer locally.
- Where delivery of personal care by a third party would cause genuine severe distress to the service user. PLEASE NOTE: many service users would prefer to have personal care delivered by family members, but such wishes/feelings would not normally be sufficient to constitute exceptional circumstances.
- There is a need for live-in care, but no appropriate accommodation can be made available for a carer.
- Care needs are intermittent and unpredictable, such that recruitment or use of an agency to meet these needs would be impracticable.
- Substantial recruitment efforts have been unsuccessful due to exceptional local workforce pressures or geographic isolation.
- It is the only practical way of meeting the care needs during a temporary breakdown of other service arrangements.

The final decision: In determining whether a DP is appropriate or not the Social Work Team, in conjunction with the DP Team, must take into consideration whether the person will be able to cope with the responsibilities.

6.0 Eligibility

The Council has a duty to assess the eligible needs of adults (18 years+) across the borough. The thresholds for accessing care and support are set nationally under the Care Act 2014. There are two sets of eligibility criteria which relate to adults with care and support needs and carers.

Eligibility for adult social care service provision is assessed by the Social Work Team in line with the Care Act 2014 and the associated Care and Support Statutory Guidance. In addition, HBC's Social Work Practice Guidance sets out local assessment, eligibility and care planning processes.

For more information on eligibility, see section 2.3 of the **Social Care Guidance**, which is available via the ASC Policy Library.

Additionally, in order to be eligible for a DP, a person must:

- Be ordinarily resident in the Borough of Halton (Social Care).
- Be registered with a Halton GP at the time of eligibility determination (Health).

With regards to joint funded packages, the person needs to be ordinarily resident in the borough of Halton and registered with a Halton GP. However, where an individual is resident within Halton but is registered with a GP outside of the borough or vice versa then negotiation will need to take place between the relevant authorities in line with national guidance to determine eligibility and associated funding requirements.

- Be assessed as eligible to receive services (this includes carer services).
- Agree to receive DPs instead of services (for children under 16, consent must be obtained from a person with parental responsibility, usually a parent).
- Satisfy HBC and/or the ICB that the person who intends to deal with the DP can manage the DP (with support from others if required).
- Satisfy HBC and/or the ICB that financial controls will be adhered to.

NOTE: Local authorities and health services have the same duty to offer DPs to eligible people who are subject to criminal justice legislation as they do to anyone else except those who are covered by the following bullet points.

DPs may not be made in respect of people who have been placed under certain conditions/requirements by the courts in relation to drug and/or alcohol dependencies, as listed in Schedule 1 of The Care and Support (Direct Payments) Regulations 2014 (copied below):

Adults Whose Needs the Local Authority Must Not Meet by Making Direct Payments

This Schedule applies to a person if they 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 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; 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.

NOTE: If someone is subject to certain criminal justice orders for alcohol or drug misuse, then they will not receive a direct payment. However, they might be able to use another form of personal budget to personalise their care.

6.1 Identifying an urgent need

The Care Act 2014 provides the local authority with the power to meet urgent needs without undertaking an assessment or making a determination of eligibility,

regardless of the person's ordinary residence. This enables an urgent need to be identified quickly for those who require immediate care and support and the local authority can then act on such a need without the necessity for assessment or eligibility checks.

There will be instances where it is obvious that immediate action is required, and in such cases it is likely that the assessment will be paused to be resumed later so a fuller assessment can be conducted.

Circumstances under which needs could be classified as urgent include, for example:

- People who are terminally ill.
- Rapid deterioration in the person's condition.
- The occurrence of an accident.
- A specific issue such as a stroke.
- Evidence of a safeguarding issue.
- Unsafe living quarters.

This applies equally to adults with care and support needs and to carers with support needs.

6.2 Eligibility for Continuing Healthcare

Eligibility for Continuing Healthcare (CHC) will be determined in line with principles and processes outlined in the National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care (revised October 2018), where there is a need for a package of ongoing care as an individual has been found to have a 'primary health need' as set out in the guidance.

7.0 Capacity

The Mental Capacity Act (MCA) 2005 says that it must be assumed that a person has capacity to make a specific decision unless it is demonstrated that they are unable to do so. A person's opportunity to make their own decisions should be maximised by giving them all possible support.

For additional guidance, see the **Mental Capacity Act Policy**, which is available via the ASC Policy Library.

There are a number of important decision-making points in setting up and managing self-directed support. Where a person lacks the capacity to make a particular decision, their views must still be sought. Their ability to make decisions on other matters should be assumed. For example, a person may be able to make a decision about who they would like to support them, but not about how to manage a personal budget.

If the eligible person is believed to be unable to make the decision themselves about having a direct payment/ personal budget, this should be confirmed with a mental

capacity assessment. The local authority (e.g. social worker) should then lead the best-interest decision about the most suitable option. It must not be assumed that this will be the local authority continuing to manage the person's care and support.

These decisions must follow the best-interest requirements of the MCA. This includes involving the person as much as possible in the decision and consulting with family, friends and paid carers who know them well. The reasons for the decisions should be recorded.

The Care and Support Statutory Guidance (chapter 12) states that the following considerations should be made when assessing capacity:

- Does the person have a general understanding of what decisions they need to make and how they need to make them?
- Does the person have a general understanding of the consequences of making, or not making the decision?
- Is the person able to understand, retain, use and weigh up all relevant information to support the decision?
- Can the person communicate the decision? (this may involve the use of a specialist or independent advocate)
- Is there need to bring in additional expertise to aid the assessment?

Where the local authority is satisfied that the person has capacity to make a request for direct payments to cover some or all of their care needs, it must consider each of the 4 conditions in section 31 of the Care Act. These conditions need to be met in their entirety; a failure in one would result in the request to receive a direct payment being declined.

In cases where the person in need of care and support has been assessed as lacking capacity to request the direct payment, an authorised person can request the direct payment on the person's behalf. In these cases, the local authority must satisfy itself that the person meets the 5 conditions as set out in section 32 of the Care Act. As with direct payments for people with capacity, each of these conditions must be met in their entirety. Failure to meet any of the conditions would result in the request being declined.

If the Social Work Team/CHC Operational Team feel it is appropriate for a third party to receive the DP on behalf of the individual, the third party must adhere to the conditions set out in the DP Agreement. This can only be done after a full assessment of the person's capacity (including fluctuating capacity) to decide about the use of DPs.

8.0 Consent and managing Direct Payments

The Council has a duty (or in some cases, a power) to offer Direct Payments to a person with the capacity to consent to the Direct Payment, as long as they appear to be able to manage such payments (whether alone or with support) and the Council is

not prevented from making a Direct Payment for other reasons as specified in the Regulations (for example, because the Council is not satisfied that the person's needs can be met using Direct Payments).

It does not necessarily follow that because a person has capacity to consent to Direct Payments that they are also capable of managing them and, therefore, appropriate support mechanisms should be considered to enable such service users to have a Direct Payment if they want one.

Where the service user has capacity to consent but wants someone else to receive Direct Payments for them, the Council can make the payment to a third party (nominee) if it feels this is appropriate. This may be a family member, friend or attorney.

The person who receives the care and support must have overall control over how the support is delivered, not the nominee. When a service user has the capacity to consent, they must keep overall control of any decisions made and be responsible for the way the Direct Payments are used.

The nominee may also receive support from the Direct Payments Team.

Where the service user does not have the capacity to consent to Direct Payments, a Direct Payment can only be made where there is an appointed 'Suitable Person' who is willing to manage the payments on their behalf (see below).

This can only be done after a full assessment of the person's capacity to decide about the use of Direct Payments has been made and documented. If the service user lacks capacity, the Council has a responsibility to ensure that any decision is made in the best interests of the service user.

8.1 Who can manage Direct Payments?

If the service user/Suitable Person, meets all conditions specified in the Regulations and appears to be able to manage Direct Payments, the Council has a duty or, in some cases, a power, to make Direct Payments.

If there are concerns about the ability to manage Direct Payments, the Council will discuss this with the service user/Suitable Person before making a decision. Their views will be taken into account and there will be an opportunity to discuss the help that could be available. The Council cannot make Direct Payments if it is not satisfied that the potential beneficiary is capable of managing the payments by themselves or with assistance which is and will continue to be available to them. In appropriate circumstances the Council may also discuss the reasons for coming to this conclusion with family or friends.

If the service user doesn't agree with the Council's judgement, they may want access to an advocacy service to ensure that their arguments are properly considered. They can also access the Council's complaints procedure (see section 14.0).

The Council will provide support and information about receiving and managing Direct Payments early in the process. The Direct Payments Team will support the service user/Suitable Person with this so that they can make an informed decision. The service user/Suitable Person must understand what is involved when they agree to receive and manage a Direct Payment.

Managing Direct Payments is not just about handling money. It also involves people making their own arrangements, either alone or with support, such as managing their own staff or contracting directly with the agency they use. The person receiving a Direct Payment is accountable to the Council for the way the Direct Payment is spent. The Direct Payments Team can provide people with advice, information and support regarding these responsibilities.

If a service user/Suitable Person thinks they may not be able to manage Direct Payments in the future, they are encouraged to discuss any concerns they may have with the Council. This will ensure that consideration is given to supporting them to manage Direct Payments in the long term.

As long as a person is able to manage with appropriate assistance, their Direct Payment should continue.

8.2 Appointing a Suitable Person

An appointed 'Suitable Person' means a person appointed to receive and manage Direct Payments on behalf of a service user who lacks capacity to consent to the Direct Payments.

The Suitable Person may have been given a relevant Lasting Power of Attorney or have been appointed by the Court of Protection as a Welfare or Finance Deputy under the Mental Capacity Act 2005. In many cases, the Suitable Person may be a family member or friend who the service user trusts, who has not been given any formal authority to act on behalf of the service user.

If the Suitable Person is not a family member, spouse or friend, the council will request an enhanced DBS check must be undertaken on that individual before s/he is appointed as the 'Suitable Person' for the service user lacking capacity.

The Suitable Person must be capable of managing Direct Payments (either on their own or with available help), and the Council must be satisfied that s/he understands what is involved in managing Direct Payments, for example, obtaining support which may involve legal responsibilities, such as becoming an employer.

An appointed Suitable Person must:

- Be willing to take on the responsibility.
- Be aware they are accountable to the Council for the way the money is spent.
- Sign the Direct Payment Agreement with the Council.

- Accept all responsibilities that Direct Payments carry with them, e.g. responsibility for obtaining the support which may involve legal responsibilities such as becoming an employer.
- Not secure services from a spouse, civil partner, partner or close relative who resides in the same household of the service user unless they have requested and obtained the prior agreement of the Council (see section 5.0 regarding exceptional circumstances cases).
- Retain invoices and receipts and adhere to guidance pertaining to the spending of Direct Payments for monitoring purposes. Guidance will be given on how to keep and provide the correct records for monitoring. They must adhere to this guidance otherwise Direct Payments may be suspended or discontinued.

9.0 How much Direct Payment will be paid?

The Care and Support Statutory Guidance (issued under the Care Act 2014) sets out the following information in relation to the DP amount:

> ***"The amount of the direct payment is derived from the personal budget as set out in the care and support plan, or support plan, and thus must be an amount which is sufficient to meet the needs the local authority has a duty or power to meet. The direct payment amount will reflect whether the person is required to make any financial contributions, or is requesting a direct payment for only a part of their care and support requirements."***

Direct Payment Agency Provider Rate - The amount must be equivalent to the Council's contracted provider rate.

Direct Payment Personal Assistant Rate – The amount will be determined by the Council, which will take into account the National Minimum Wage, and all associated on-costs.

If the client chooses to purchase a service from a provider that costs more than the Direct Payment Rates, the client will be required to 'top-up' the cost of their service using their own funds and this would be in addition to any financial assessment charge.

If there is no capacity within the existing domiciliary care market to purchase support, the Council may consider paying the Direct Payment at increased amount on a temporary basis whilst sourcing a more cost-effective alternative.

The Council will write to service users and tell them:

- How much they will receive in Direct Payments.

- How much their contribution will be and what the arrangement is for payment of this contribution.
- What date their Direct Payments will start from.
- When the first payment will be paid to their Direct Payments bank account.
- If a temporary increase has been agreed whilst sourcing a more cost-effective alternative.

9.1 Direct Payment rates

DP rates are subject to change – see the DP Rate Criteria for the current financial year for applicable rates (available from the DP Team).

Direct Payment rates will be kept under review, for amendments in line with changes to procurement arrangements.

If there is a change in DP rates the respective Social Work Team/CHC Operational Team will review existing DP packages against the eligibility criteria and all DP recipients will be informed that the new assessed rates for both agency and PAs will be implemented.

Adult Social Care is not a free service like the NHS. HBC's Adult Social Care Charging Policy (available via the ASC Policy Library) sets out how people will be charged for their care and support in line with the Care Act 2014.

People are asked to give details of income and benefits that they receive, details of any savings and investments that they have and details of any disability related spending. Any financial contribution the person needs to make towards the cost of their care will be taken into account and, depending on the DP delivery method, their DP amount will be adjusted before it is paid or they will be invoiced for their contribution.

Self-funders: if someone is paying the full costs of their care, they are known as a 'self-funder'. Although they pay for their own care, there is still help and support available to them.

Definition of a self-funder: an individual may have approached the Council and, although their needs show that they are eligible for services, their income and assets are above the financial threshold for financial help from the Council:

- The service user may have chosen to fund their own care as they do not want to be financially assessed and want to make their own arrangements for support.
- The service user may have been assessed but they are not currently eligible for care and support services but want to have services in place.
- The service user may have chosen not to approach the Council for help but wish to arrange support themselves.

The Direct Payments Team will still provide guidance and information to self- funders on all aspects of arranging support themselves.

10.0 Direct Payment delivery methods

DP recipients are able to choose one of three payment delivery methods:

1. **Prepaid card**

   HBC's position is that the first option will be the use of a pre-paid card account. A prepaid card is just like a current account debit card; HBC pays the DP funds onto the card, which can then be used to pay for services agreed in the Care and Support Plan. Service users can use the pre-paid card to withdraw cash if it is demonstrated that there are no reasonable alternative ways to purchase an appropriate service. In line with the Care and Support Statutory Guidance, pre-paid cards are not the only option – recipients can still opt to access funds via the traditional bank account route if this is appropriate to meet their needs. Cash withdrawal from the account will not be allowed unless pre-authorised by the Council.

2. **Managed Account**

   This is where HBC pays the DP into the nominated bank account of the Managed Account Provider. The Provider will be notified of all goods/services identified in the Care and Support Plan, so they are aware of the costs of such goods and services. The Managed Account provider takes responsibility for a range of tasks, including:

   - Receiving all your direct payments.
   - Paying Personal Assistant wages, agency fees and various other bills.
   - Paying all amounts due to HM Revenue and Customs (HMRC).
   - Keeping a record of all the income received and payments made.
   - Providing you and Halton Borough Council with statements showing all transactions as and when requested.
   - Dealing with the Council's audit and inspection checks

3. **Separate bank account**

   All individuals, not using the pre-paid card arrangements or Managed Account are required to set up a separate bank account . This account cannot be used for any form of personal banking. HBC/ICB will require the individual tor Authorised Person to provide original bank statements and receipts of all the financial transactions for receipts and maintenance of DP funds. In these instances, HBC/the ICB requires evidence that the monies made available are being used to meet the identified and agreed needs as determined by the assessment. Cash withdrawal from the account will not be allowed unless pre-authorised by the Council.

For more information on DP delivery methods see the DP Agreement.

Direct Payments and Trusts
A Trust may administer the DP for the person, but that person must retain responsibility for receiving the payment and determining how it is to be used. The important principle, which must be addressed before making a DP, is that HBC/the ICB should satisfy them that the relationship between the person and the Trust/agent/power of attorney, will honour the spirit of independent living, before a DP is agreed.

11.0 Additional costs/payments

Start-up costs
This is a one-off payment to cover start-up costs up to a maximum amount. For example, this payment could be used for costs associated with employing a Personal Assistant (PA) such as setting up interviews, purchasing Public Liability insurance, payroll fees, buying protective clothing and placing adverts. An amount is agreed between the DP Team and person up to the maximum amount. At this stage the DP Officer will inform the Social Work Team Practice Manager/CHC Operational Team of the agreed amount.

The amount paid depends on individual circumstances, e.g. a person wishing to employ PAs for their full care needs may be entitled to the full amount. A person who will receive DPs to purchase support from an agency may only be entitled to a proportion of the full amount.

Where applicable, start-up costs incorporate an allowance for payroll service costs incurred when a service user employs a PA. By including payroll costs, in start-up costs if incurred and, if required, annually thereafter, potential difficulties and debt in relation to tax and national insurance payments by the individual in receipt of the DP could be avoided.

These costs are refundable to the authority if the service user decides not to proceed with the Direct Payment scheme, although there may be special circumstances when it is considered unreasonable to request the full amount to be returned.

Contingency funds
Decisions to pay a contingency to cover an emergency situation must be authorised and approved by the Social Work Team/CHC Operational Team. If the contingency payment is approved, the Social Work Team will produce a Support Plan & Summary for the additional payment to be paid to the person.

Contingency payments may be used to pay for training in situations where Skills for Care funding has been approved to cover the costs of the training but the training must take place in advance of the funding being received. Any contingency approved to pay for an element of training in an emergency situation will be repaid by the subsequent Skills for Care funding.

For CHC funded clients, training payments are added to the budget to ensure that the PA is able to undertake health related care tasks.

Insurance

If the person chooses to employ PAs, then employer's liability and public liability must be purchased. The cost of this will be met by HBC/the ICB within the start-up costs and from the hourly rate for subsequent years up to a maximum amount that is reviewed on a regular basis in line with appropriate insurance cover required based on individual circumstances.

Safeguarding

Individuals in receipt of a Direct Payment are entitled to make their own decisions and to take risks in the same way that any others in the community are entitled to. Where appropriate, safeguards will be put in place to prevent any potential abuse and to support the individual in making decisions and managing any associated risk as a result of that decision.

Halton Borough Council strongly recommends that enhanced Disclosure and Barring Service (DBS) checks are undertaken on Personal Assistants working with vulnerable adults. This is particularly important when employing a Personal Assistant (PA) who supports individuals who lack capacity, as in these situations the individual may be unable to verbalise concerns about their care. An enhanced DBS check must be undertaken if the PA has unsupervised access to the person they are caring for and that PA must be able to disclose, on request, a current enhanced DBS check.

The council will offer support, advice and guidance to individuals in receipt of a Direct Payment to minimise risk of abuse from people who are individually employed as a PA, as it is noted that these employees are not monitored by the Council.

The individual or their Authorised Person must ensure that an enhanced DBS check is undertaken when employing a person who will have unsupervised access to children, young people or vulnerable adults during the course of their work. The check is undertaken to ensure that the person has no relevant criminal convictions that would preclude them from working with children or vulnerable people.

In the event that Halton Borough Council considers the provider of support to be placing the individual at risk, the Direct Payment may be suspended, and alternative provision provided, whilst a safeguarding investigation is undertaken.

12.0 The four-stage Direct Payment process

HBC and NHS Cheshire & Merseyside (Halton Place) will undertake a four-stage process in order to establish and deliver DPs:

1. Assessment
2. Implementation
3. Monitoring
4. Review

12.1 Assessment

Assessment is a crucial process, and DPs can only be offered to someone who has been assessed as eligible to receive services (in line with the Care Act or NHS Continuing Healthcare criteria). The Social Work Team and/or CHC Operational Team should discuss how the Personal Budget will be delivered. This should include discussing arranging for the care to be commissioned on behalf of the person or offering the person a Direct Payment or a mixture of the two. The Social Work Team and/or CHC Operational Team (as well as Occupational Therapists where social care related equipment is required) will work with the individual to assess what their needs are. A best-interest assessment will need to take place in cases where the individual is deemed to lack the capacity to consent to the requirements of a DP.

All eligible individuals should be offered a DP. Clients/carers have access to a range of information to help them make an informed decision. Information is available on the Council's website. A leaflet that can be handed out is available from the DP Team. Social Work Teams can contact the DP Team for any additional information that may be required in the course of discussing PBs/DPs with clients.

For more information on assessment, see section 2.4 of the **Social Care Guidance**, which is available via the ASC Policy Library.

The Social Work Team will complete the Supported Assessment Questionnaire (SAQ) and if the individual is eligible for support, the options, including DPs, will be discussed. If the individual opts to receive DPs, the assessed number of hours of support will be identified and calculated by the Social Worker. The Support Plan Summary will then be sent to the DP Team via CareFirst; this will detail the assessed number of hours, the DP amount and how it will be used. The case will then be assigned to a DP Officer who will make initial contact with the individual.

As part of the assessment process the need for certain pieces of equipment may be identified (e.g. hoist). If this forms part of the individual's assessed needs and features within their Support Plan or Occupational Therapy Assessment and the person wishes to receive a DP, then it will be their responsibility to ensure all PAs (employed by them) are competent and have the relevant skills to use the equipment appropriately. This includes ensuring that any new employees are competent to use the issued equipment.

Client responsibilities

It is important that clients are aware of the responsibilities that come along with receiving a Direct Payment. When someone chooses to receive a DP (either directly or via a representative), is their (or their representative's) responsibility to arrange care and support services to meet the person's needs as set out in the Support Plan.

Guidance for staff in relation to client responsibilities is available at appendix 2 and guidance for clients regarding their responsibilities is available at appendix 3. A copy of appendix 3 should be provided to clients and their representatives.

12.2 Implementation

At this stage the individual has received an assessment and expressed an interest in receiving a DP. It is the responsibility of the DP Officers to tell them about the details of managing a DP and to set up the DP for them (or, if the individual lacks capacity, the suitable person who will be managing the DP on their behalf). In order to make an informed decision people will need to understand what is involved in managing DPs and be helped through the process.

During the DP Officer's initial visit, the following actions will take place:

- The DP Officer will use a 'Checklist for Direct Payment Referral Visit' to ensure the person has received all relevant information to make an informed decision as to whether to continue or not.
- A range of useful documents will be provided to the person. The documents will be used to help the person understand what is involved in managing DPs, contracting with agency providers and becoming a legal employer.
- At the end of the implementation stage when the person has signed a DP/PB Agreement and statement letter, the DP Officer will set up the DP and the Social Work Team/CHC Operational Team will be informed. All documentation will be recorded onto CareFirst by the DP Officer.
- The DP Officer will send a copy of the DP/PB Agreement and statement letter to the person to keep for their own records. The Social Work Team /CHC Operational Team will send a copy of the Support Plan to the person.
- The DP Officer will discuss any legal responsibilities that may be applicable if the recipient chooses to employ their own Personal Assistant (PA). The recipient will be provided with a guidance booklet 'Direct Payments: A Guide to Becoming an Employer'.

The DP Officer is responsible for implementing the DP. The implementation steps are outlined below:

- Discuss the DP process with the service user/suitable person.
- Ensure DP Agreement and other relevant paperwork is signed and returned.
- Ensure all external departments are provided with documentation to enable them to process payroll/insurance policy/prepaid card set up.

- Liaise with internal teams e.g. Income & Assessment, Purchase to Pay, Appointees and Care Management to implement the DP.
- Load data onto internal systems to record the DP and commence payment frequency.
- Establishing payment arrangements, which are made on a regular four-weekly payment cycle via one of the delivery methods outlined at section 9.0.

Emergency arrangements

It is essential that each person receiving a DP has made arrangements to cover potential emergencies, for example if a PA is sick. If these arrangements break down and it is not possible for the person to have their needs met, then ultimately HBC/the ICB is responsible for arranging services for them. This should be done via contacting the person's Social Work Team/CHC Operational Team within office hours or out of hours in relation to social care, the Emergency Duty Team (0845 0500 148 or 0345 0500 148).

In relation to health, as part of the contingency planning element of the individual's support plan, specific details will need to be included in the plan as to who to contact with regards to their specific clinical needs etc. in the event of a potential emergency, as different needs may need to be delivered by different areas of the health service.

12.3 Monitoring

At this stage the client is receiving a DP. It is the responsibility of the DP Officers to monitor how the DP is being used and to ensure it is in line with the information on the Support Plan. The DP Team will provide support and guidance to the client throughout the time they are in receipt of a DP.

DPs are public money so the Council has to check that the money has been spent properly. It could be a criminal offence for someone to use DP funds on anything other than what has been agreed as part of their support plan.

When a person chooses to receive a DP, they take on responsibility for securing the necessary support to meet their assessed needs and to achieve the outcomes identified in their Care Plan. Monitoring arrangements should be consistent both with the requirement for social care/health to be satisfied that the person's needs can and will be met and with the aim of promoting and increasing choice and independence.

The DP Officer must undertake the initial audit three months after the commencement of the DP. The aim of this audit is to ensure that enough money is being received to pay for services whilst at the same time ensuring the monies are being spent as agreed in the Support Plan. Once it has been established that the recipient is managing their DP satisfactorily, either alone or with help, the frequency of the financial audit may need to be adjusted after discussion with the client.

The frequency of the audit will be dictated by the length of time the person has managed a DP either alone or with help and their particular circumstances. Once the council is satisfied a person is managing the DP satisfactorily, reviews should be at

the same intervals as for other people receiving services. Ongoing audit frequency will be determined by the Principal DP Officer based on the circumstances of each case.

The recipient is required to keep financial records which are subject to audit at any time.

For those who are managing the DP funds themselves (separate bank account), arrangements will be made for the DP Officer to carry out an audit at the person's home.

Those who are employing a PA must keep the following records:

- Quarterly returns.
- Time sheets.
- Income and expenditure record.
- Quarterly return to Inland Revenue.
- BACS advice slips.
- Cheque stubs.
- Bank statement.
- Service user contribution.
- Sickness records.
- Holiday records.
- Insurance policy document.
- Contingency.
- Saving care.
- Amendment to bank details.

Those purchasing services from an agency must keep the following records:

- Quarterly return to show hours of service purchased during the period, the cheque number and payee and the amount paid out.
- All invoices and receipts for the quarter.

All tax records must be kept for 6 years for Inland Revenue purposes.

For those with a DP Managed Account, documentation to be audited will be requested from the managed account provider and the audit will be undertaken by the DP Officer. For those receiving their DP via a Prepaid Card, the DP Officer will access the back office system in order to access the information required to undertake the audit.

Any concerns arising out of the audit process will be discussed with the individual (and/or their decision-maker) / Social Work Team / service provider / managed account provider as relevant.

If it is apparent that the DP has been misused, the Council will undertake an investigation; if it is found that the DP has been used illegally or not in the recipient's best interests the Council will take appropriate action, which may include ending the agreement and instigating legal proceedings.

What if the money is not spent?

There may be a number of reasons why a surplus has accrued in the bank account, for example, there may be outstanding tax or national insurance not yet due or paid. Alternatively, the person may be 'saving care' to cover extra costs that may be incurred when they take a PA with them to a special event, any 'saving of care' must be agreed with the Social Work Team/CHC Operational Team. Any credit balance

should be explained to the satisfaction of the DP Manager. If there is a credit balance in the account without a satisfactory reason, HBC/the ICB will request that the money be reimbursed.

What if there is an overspend?
Advice and support will be offered to the recipient to plan how any overspend will be rectified in conjunction with support from the relevant Social Work Team/CHC Operational Team if required. If the problem persists, then the DP Principal Officer may need to reassess the ability of the recipient to manage the scheme, or a reassessment of need may need to be undertaken by the Social Work Team/CHC Operational Team. If a person spends more money than is allowed by the DP package, then they are liable for this from their private funds. If services paid for have not been received, it is the responsibility of the person to seek a refund from the service provider. Equally, the service provider should pursue the recovery of debts from the person, if services have been received and not paid for.

Repayment
HBC/the ICB can seek repayment if the monies made available have not been used to purchase services identified in the support plan and agreement or were used to purchase services identified as being excluded. However, it is essential that honest mistakes are seen as such, and repayments should only be sought where monies have been spent inappropriately or not spent at all.

Recovery of Direct Payment
It may be necessary to recover unspent DPs if a client dies. Contractual responsibilities must be met before determining the amount of DP to be recovered. See the DP Agreement for more information.

If it is identified that there is a surplus balance in the DP account and the money is not required for future payment of services, the Council will seek to recover these funds and will request payment by cheque or BACS transfer to the Council.

Once the funds are received by the Council, the DP Officer will notify colleagues in the Income Team so that the returned payments can be allocated to the appropriate originating budget.

Equipment
The DP recipient is responsible for considering manual handling risks and ensuring that equipment is suitably maintained. The DP Officer will feed back any concerns about use/maintenance of equipment to the Social Work Team.

12.4 Review

Social care / health reviews take place at least annually. This is the responsibility of the Social Work Team/CHC Operational Team and will include a review of the DP. Input from an Occupational Therapist and/or the DP Team may also be required.

In addition, DP Team audits of DP recipients take place at a frequency determined to be appropriate according to the clients' needs. If a problem is identified at audit,

future audits will take place every three months until the DP Officer is satisfied that the problem has been fully addressed. At this point, the frequency of reviews will revert back to a suitable interval according to need.

What happens if a client's circumstances change?
It is vitally important that if the circumstances of a client change, the DP Officer be notified immediately. It is in everyone's interest to ensure that events such as hospital admissions or long absences from home are properly recorded.

What if difficulties arise?
DPs will not be withdrawn at the first sign of difficulty. The Department of Health guidance suggests that the following questions should be asked:

- Has the person's needs changed?
- Is the amount of money provided sufficient to enable the person to secure the relevant services?
- Is the person able to manage DPs or can they do so with assistance?
- Does the person wish to continue receiving DPs?
- Has all the money been spent towards achieving the outcomes identified in the Support Plan?
- Have services for which the person has paid been received?
- Has the money been spent wisely?

When can DPs be discontinued?
The DP recipient may decide at any time that they no longer wish to receive DPs. HBC/the ICB may also discontinue DPs temporarily or permanently as detailed in the DP Agreement. Before any decision is made, there must be full consideration of all implications and discussions with all relevant parties.

In all circumstances where DPs are discontinued whether temporarily or permanently, there should be careful consideration of any contractual responsibilities, i.e. terminating employment, redundancy etc. These issues will need to be discussed by the DP recipient and the DP Principal Officer/DP Officer before the agreement is finalised.

13 Carers (Adult Social Care)

The Care Act 2014 gives Carers the same right to an assessment as any other adult.

When a Carer is awarded a Carers Break DP, the DP will be paid directly into his/her existing bank account as the payment made to the Carer is in most cases a one-off payment to be spent over a 12 month period. The procedures outlined in this document apply to Carers in the same way as a Service User but the Carer will receive a Carers Break Direct Payment Agreement to sign.

The Carer will be required to keep all receipts in relation to the amount of the DP awarded to them and produce the receipts to the council if requested to do so.

It is the responsibility of the DP Officer to process Carers DPs.

14 Complaints

If someone has concerns regarding the quality of care they are receiving then in the first instance they should discuss this with the relevant Social Work Team or CHC Operational Team.

A formal complaints procedure for Adult Social Care is also available. If someone feels that the DP procedures are unfair or have been unfairly applied to them they may make a formal complaint through the ASC Customer Care Team – telephone 0151 511 6941 or email ssdcustomercare@halton.gov.uk.

Health complaints will need to be dealt with under the NHS Cheshire & Merseyside complaints procedure and details of the complaint sent to enquiries@cheshireandmerseyside.nhs.uk.

NOTE: Contractual issues between the person, their PA or Agency providing the service cannot be dealt with under the above complaints procedures.

Appendix 1: Self-Directed Support and Personal Budgets Staff Guidance

Appendix%201%20-%20Staff%20Guidance

Appendix 2: Direct Payments Guidance for Staff re Client Responsibilities

Appendix%202%20-%20Direct%20Paymer

Appendix 3: Direct Payments Guidance for Clients re Responsibilities

Appendix%203%20-%20Direct%20Paymer