

Cheshire West & Chester Council

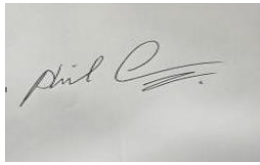


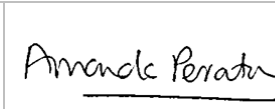
# Direct Payments for All Ages Policy



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Cheshire West  
and Chester

REVIEW SHEET			
<b>Version:</b>	2	<b>Date Reviewed:</b>	01/07/2024
<b>Next Planned Review:</b>	3 yearly, or sooner as required		
<b>Reason for this review:</b>	Scheduled review		
<b>Were changes made:</b>	Yes		
<b>Summary:</b>	Direct payments allow support to be flexed around a person living an independent life. This policy sets out the plan for how we give people control of their care and support needs.		
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<b>Date Approved:</b>	08.01.2025		
<b>Action/s following approval:</b>	<ul style="list-style-type: none"> <li>• Encourage sharing the policy through the use of team meetings and supervisions</li> <li>• Ensure relevant staff are aware of the content of the whole policy</li> </ul>		
<b>Location of Document:</b>	Tri.X   Council Website		

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**CHECK WHAT WORDS MEAN**

Advocate	Someone who supports or speaks up for another person or cause.
Annual Leave	Paid time off work given to employees each year for holidays or personal reasons.
Audit	A thorough examination or inspection of records, accounts, or processes to ensure accuracy or compliance.
Authorised Individual	Someone who has official permission or authority to do certain things.
Best Interest Decision	The process of making decisions on behalf of an individual who lacks the mental capacity to make those decisions themselves
Care Act 2014	Legislation in the UK that sets out the legal framework for social care and support for adults.
Care and Support Needs	The help and assistance required by individuals to maintain their well-being.
Care and Support Plan	A formal document outlining the support and services an individual needs to meet their care requirements.
Carer's Assessment	The Council completes a carer's assessment to identify the needs of unpaid carers. The assessment aims to establish the support the carer needs to continue providing care while maintaining their own health and wellbeing.
Children and Family Assessment	An evaluation process to determine the needs and well-being of children and their families.
Commissioned Service	A service funded or arranged by an organisation or authority for a specific purpose.
Community-Based Care and Support	Services provided within the local community to help individuals with their care needs.
Contingency	Plans or actions taken to prepare for or respond to unexpected events or emergencies.
Court Appointed Deputy	Someone appointed by a court to make decisions for a person who cannot make decisions for themselves.
Direct Payment	Money given directly to individuals to purchase their own care and support services.
Direct Payment Agreement	A formal agreement between the Council and the individual outlining the terms and conditions of the Direct Payment.
Direct Payment Champions Group	A group dedicated to promoting and supporting the use of Direct Payments.
Disclosure and Barring Service	A UK agency that checks criminal records for employment purposes.
Eligible Need	Meeting the requirements for a particular benefit or service.
Employers' Liability Insurance	It is a legal duty for all employers to purchase and maintain appropriate Employer's Liability Insurance which protects employers from claims by employees for work-related injuries and employment related issues i.e., redundancy.
Family Hubs	Centres offering various support services for families.
Financial Assessment	An evaluation of an individual's financial situation to determine their eligibility for financial support.



Financial Management Responsibilities	Duties related to managing finances, such as budgeting and accounting.
HM Revenue and Customs	The UK Government department responsible for taxes and customs.
Learnt Experience	Knowledge gained from personal experiences.
Legislation	A law or a set of laws
Let's Talk	<a href="#">Let's Talk health and wellbeing   Cheshire West and Chester Council</a>
Lived Experience	Personal experiences gained through direct involvement.
Managed Account Framework	A structured system for managing financial accounts.
Managed Services	Services provided and managed by an external entity.
Means Tested	Benefits or services based on financial need.
Mental Capacity Assessment	A mental capacity assessment ensures that individuals who may lack the ability to make certain decisions receive appropriate support and protection, while also respecting their rights and autonomy as much as possible.
Micro Enterprise	A small-scale business.
National Insurance	Social insurance in the UK.
Nominated Individual	A designated representative for a care recipient.
Outcomes	Results or consequences of actions.
Parental Responsibility	Legal obligations and rights of parents towards their children.
Payroll Service	Service managing employee payments.
Payslips	Documents detailing employee earnings and deductions.
Pension	Retirement income.
Personal Assistant	Someone hired to provide personal care or support.
Personal Budget	A Personal Budget is an allocated sum of money provided by the Council to people eligible for care and support services to meet their needs. People use this money in different ways e.g., for a Direct Payment.
Personal Contribution	Amount paid by an individual towards their care.
Person's Estate	Total assets owned by a person at their death.
Pre-Employment Checks	Screening conducted before hiring.
Public Funds	Government-provided money.
Public Liability Insurance	This covers the person from claims for compensation if they or their employee causes injury or damage to someone else or their property.
Recruitment	Process of hiring new employees.
Residential Care	Care provided in a residential setting such as a care home.
Resource Wheel	A tool used by Social Care workers to help understand what a person has and needs to live a great life.
Review	A review of a person's Care and Support Needs to ensure the current plan is meeting their need.
Section 117	Some people who have been kept in hospital under the <u>Mental Health Act</u> can get free help and support after they leave hospital. The law that gives this right is section 117 of the Mental Health Act, and it is often referred to as ' <b>section 117 aftercare</b> '.
Statement of Employment	Document outlining terms of employment.
Strength Based	Focusing on individual strengths rather than weaknesses.
Tax	Mandatory financial contribution to the government.





The Council	Cheshire West and Chester Council.
Timesheets	Records of hours worked.
UK Government	The government of the United Kingdom.
Think Local Act Person has a helpful website which provides meanings to words often used in social care – <a href="http://thinklocalactpersonal.org.uk">TLAP Care and Support Jargon Buster (thinklocalactpersonal.org.uk)</a>	

## WHAT IS A POLICY?

A policy is simply a plan of what to do:

- For people who work for the Council in Cheshire West and Chester, it tells them what to do in a particular situation and is usually written and agreed by the people who work within the Council, often talking to or including people who it will affect.
- For people who a policy will affect it means they know what they should expect.

This policy is about Direct Payments for adults, carers and children in Cheshire West and Chester. This policy will set out the plan for how we will give people in Cheshire West and Chester control of their Care and Support Needs, ensuring we meet the legal requirements set out by the UK Government.

## WHAT IS A PERSONAL BUDGET?

A personal budget specifies what the cost would be to the local authority of meeting someone's assessed eligible support needs for care and support.

Put more simply; to receive a public or paid for service from the Council, a person must be eligible for social care services. The Council will decide if they are eligible in different ways, depending on if they are an adult, child or carer.

- **If they are an adult:**
  - The Council will want to understand the person's Care and Support Needs, they will do this by having a Strength Based conversation or doing a Strength Based assessment. The Council will use the Care Act (2014) to help them make their decision.
  - The Council will look at what money the person has – this is called a Financial Assessment. This lets us know how much the person can afford to pay towards the cost of their support needs.
  - The Council call the total cost of support needed to meet a person's care and support needs, a person's Personal Budget. The person pays the amount they have been assessed to pay and the Council tops up the difference.
    - If a person decides to have less support than the Council has said they need, the Personal Budget will be changed to the correct amount needed.
    - If their financial circumstances change, they will need a new financial assessment.
- **If they are a child:**
  - The Council will want to understand the child's Care and Support Needs. The Council will consider the child's needs but also the needs of the family by doing a Children and Family Assessment. The Council will use the Children Act (2004) to help them make their decision.



- **If they are a carer:**
  - The Council will want to understand the carer's caring responsibilities by undertaking a Carer's Assessment. If needed, the Council will work closely with the carer to decide the best way for the Personal Budget to be used to support them to meet their needs and outcomes as a carer.
  - The Personal Budget can be used to access services, support and resources which can help the carer to maintain their wellbeing in their caring role.
  - No financial assessment is needed for a carers Direct Payment.

If the Council decides that a person is eligible for social care services, the Personal Budget may be given in different ways including:

- As a monetary payment to the Adult, Child / family or Carer which is used by the person to directly buy support to meet their needs and outcomes. This is known as a **Direct Payment**.
- As an amount that the Council uses to arrange services for the Adult, Child/ family or Carer. This is known as a **Managed Service**.
- As a combination of the above

A personal budget is worked out between the Social Care Worker and the person when agreeing the support required to meet the assessed needs and outcomes. The cost of services will be calculated using the council's current rates and the suggested budget is based on information collected by the Council which includes:

- The persons strengths.
- Home and living situation.
- Ability to eat healthily and safely.
- Personal care.
- Moving around.
- Social relationships and activity.

## WHAT IS A DIRECT PAYMENT?

Direct Payments are monetary payments that people can receive to fund their own Care and Support Needs to meet their outcomes in a way that best suits them. That is a simple way of looking at it, as in reality, Direct Payments do so much more.

- To a person who uses Direct Payments, it means they can choose who gives them the care and support they need, in the way that they want.
- To parents of children who use a Direct Payment, it means their child can access a range of non-traditional services which helps them grow.
- To carers it means they can choose how they can get some time to do the things that they need/ enjoy, helping them to continue to ensure their loved one is able to live their best life.
- To everyone, Direct Payments offer choice and control over the way they live their lives.



Direct Payments allow support to be flexed around a person living an independent life. For example, having less support to meet their outcomes one week when their family can help and then having extra support another week when it is needed. Or not having to pay for care when in hospital but being able to have additional support when discharged to help recovery.

Direct Payments can enable outcomes to be met creatively in a way that suits the person and is not restricted to traditional models of care such as home care and day care services.

## WHO CAN HAVE A DIRECT PAYMENT?

Direct Payments must be offered to people who want and are eligible to receive them under the Care Act (2014) or the Children Act (2004) (See the 'what is a Personal Budget' section). Below are examples of people who can have a Direct Payment:

- People with physical or mental impairment or illness aged sixteen and over.
- A person with Parental Responsibility for a child.
  - This may include a parent or others, such as a grandparent, with Parental Responsibility for a disabled child. A carer may get Parental Responsibility for a child, usually because of an order from a court of law, even if they are not one of the child's parents. This may also include a disabled person with Parental Responsibility for a child.
- Carers aged eighteen and over.
  - Direct Payments allow carers to buy the services they need as a carer to support them in their caring role and to support their own health and wellbeing.
  - Carers (except those with Parental Responsibility) cannot use their Direct Payment to buy services to meet the needs of the person they care for which have been found by the Council in their assessment.
  - Carers aged 16 or 17 years old, choosing to take on a significant caring role for a disabled adult can be eligible for a Direct Payment.

## WHO CANNOT HAVE A DIRECT PAYMENT?

- The Care Act 2014 and the Children Act 2004 tells the Council who's care, and support needs cannot be met by a Direct Payment. These include people who are:
  - Subject to a drug rehabilitation requirement.
  - Subject to an alcohol treatment requirement.
  - Released from prison on licence.
  - Required to follow drug testing or a drug appointment requirement.
  - Required to submit to treatment for their drug or alcohol dependency under a community rehabilitation order.
  - Subject to drug treatment and testing.
- If the Council thinks the person (even with help) will not be able to meet the Financial Management Responsibilities of a Direct Payment.
- If the Council thinks the Direct Payment will not be used to promote the person's interests.
- If a person does not want to enter into an agreement with the Council known as the Direct Payment Agreement.





- Those people who have been subject to financial abuse or have been suspected of financial abuse may be exempted from receiving a Direct Payment.

## A DIRECT PAYMENT AT DIFFERENT STAGES OF A PERSON'S LIFE

### Childhood

A Direct Payment can be paid to the following people:

- A person with Parental Responsibility for the child.
- A young person aged sixteen to seventeen. The young person can receive a Direct Payment for their own Eligible Needs or to meet their Eligible Needs as a carer. If the Direct Payment has previously been paid to a person with Parental Responsibility, the young person could start to manage the Direct Payment slowly taking on more responsibility over time.
- Sometimes a young person aged sixteen to seventeen may require a Mental Capacity Assessment to ensure a Direct Payment is the right thing for them.
- Where there is a Court Appointed Deputy, the family can ask that the deputy manage the Direct Payments. A conversation would need to take place between the family and the Council to ensure it is in the best interests of the child.

The Council must make sure:

- The person with Parental Responsibility receiving payment of the Direct Payment for the child's Care and Support Needs agrees to use it for the purpose it is intended.
- The person who is receiving payment of the Direct Payment for the child's care and support can manage the Direct Payment, this could be with help for a Social Care Worker.
- The child's welfare needs will be protected and promoted through the Direct Payment.

### Moving into adulthood

When a young person reaches the age of eighteen, the Council will assess their needs as an Adult. This is because different laws apply to children and adults. At eighteen, the young person will be assessed using the Care Act 2014, rather than the Children Act 2004. At the age of eighteen, a person will also need to be assessed to see if they need to pay towards the cost of their care. A new Direct Payment Agreement should be signed at this point.

The Cheshire West and Chester Council Children and Young People with a Disability Service will support the young person and their family as they move from childhood to adulthood, this is known as a transition.

Where it is right for the person, and the appropriate person with Parental Responsibility wants to continue to manage the Direct Payment, they can do so as either a Nominated Individual or an Authorised Individual.

### Adulthood (adults who are assumed as having mental capacity to manage a direct payment)

A Direct Payment can be paid to an adult who has been assumed as having capacity to manage a Direct Payment if:

- They or a Nominated Individual agrees to receive a Direct Payment.
- They are allowed to have a Direct Payment (see who cannot have a Direct Payment section).
- They or a Nominated Individual can manage the Direct Payment on their own or with help.
- The Direct Payment will meet their Eligible Needs.



**Adulthood (adults who are assessed as not having mental capacity to manage a direct payment)**

A Direct Payment should still be considered for people who are assessed as not having mental capacity in relation to managing a Direct Payment. The Council will:

- Complete a risk assessment to understand the risks.
- Complete a Mental Capacity Assessment and Best Interest Decision to ensure it is the best option for the person. The Mental Capacity Assessment must think about:
  - If the person can understand and manage finances.
  - If the person can understand and manage being an employer (if employing a Personal Assistant).
- Ensure an Authorised Individual has been found to manage the Direct Payment for the person.

A Direct Payment can be paid to an Authorised Individual for an adult who has been assessed as not having capacity to manage a Direct Payment if:

- The Authorised Individual agrees to receive a Direct Payment for the person which is documented in the case management system.
- The Authorised Individual is allowed to manage a Direct Payment for the person (see who cannot have a Direct Payment section).
- The Authorised Individual can manage the Direct Payment on their own or with help.
- The Direct Payment will meet the persons Eligible Needs and having it is in their best interests.

**WHEN A PERSON IS SUPPORTED TO RECEIVE THEIR DIRECT PAYMENT BY A NOMINATED/ AUTHORISED INDIVIDUAL**

**A Nominated Individual**

If a person wants someone to help them manage a Direct Payment, they can choose a Nominated Individual. A Nominated Individual is someone who will manage the Direct Payment for the person and take on the responsibilities which go with it including signing the Direct Payment Agreement.

**An Authorised Individual**

If a person has been assessed as not having capacity to request or manage a Direct Payment, an Authorised Individual can request and manage the Direct Payment for the person.

An Authorised Individual will be someone who:

- Has been appointed as a Lasting Power of Attorney or Deputy appointed by Court, to make health and welfare decisions for the person.
- Another suitable person that a Lasting Power of Attorney or Deputy agree is suitable to be an Authorised Individual.
- If there is no Lasting Power of Attorney or Deputy for health and welfare decisions, another person who the Council considers to be suitable can be an Authorised Individual.
- In most cases the first choice of the Authorised Individual will be a person's representative, family member or close friend who is already involved in some way in the persons care and support.

The Authorised Individual will need to take responsibility for the Direct Payment including managing and checking the account, where relevant acting as an employer, financial auditing, and monitoring. If the



person's mental capacity changes, or the Authorised Individual no longer wants to be the Authorised Individual they must let the Council know.

### WHAT DOES THE LAW SAY?

The Council must make sure it follows the law relating to Direct Payments. There are several pieces of Legislation which are relevant to Direct Payments, these are listed below:

Legislation:	More information can be found here:
The Care Act (2014) – adults only	<a href="http://legislation.gov.uk">Care Act 2014 (legislation.gov.uk)</a>
The Children Act (2004) – children only	<a href="http://legislation.gov.uk">Children Act 2004 (legislation.gov.uk)</a>
The Care and Support (Direct Payments) Regulations 2014	<a href="http://legislation.gov.uk">The Care and Support (Direct Payments) Regulations 2014 (legislation.gov.uk)</a>
Data Protection Act 2018	<a href="http://legislation.gov.uk">Data Protection Act 2018 (legislation.gov.uk)</a>
Employment Rights Act 1996	<a href="http://legislation.gov.uk">Employment Rights Act 1996 (legislation.gov.uk)</a>
Equalities Act 2010	<a href="http://legislation.gov.uk">Equality Act 2010 (legislation.gov.uk)</a>
Human Rights Act 1998	<a href="http://legislation.gov.uk">Human Rights Act 1998 (legislation.gov.uk)</a>
Mental Health Act 1983 - adults and children aged 16-17 years old	<a href="http://legislation.gov.uk">Mental Health Act 1983 (legislation.gov.uk)</a>
Mental Capacity Act 2005	<a href="http://legislation.gov.uk">Mental Capacity Act 2005 (legislation.gov.uk)</a>
National Minimum Wage Act 1998	<a href="http://legislation.gov.uk">National Minimum Wage Act 1998 (legislation.gov.uk)</a>

### WHAT CAN A DIRECT PAYMENT BE USED FOR?

The Council want people to have choice and control over how their Care and Support Needs are met. This means people are given flexibility and freedom. As part of the needs assessment the person, child/ family will have worked with the Council to agree Outcomes which are written in the Care and Support Plan. A Direct Payment must help the person, child/ family reach those Outcomes.

A person should consider these three rules when thinking about how to use a Direct Payment; do no harm (to themselves or others), do not break the law (relevant Legislation), do not overspend (the agreed Direct Payment amount).



A Direct Payment can be used to pay for all or part of a person's Care and Support Needs.



## WHAT CAN'T A DIRECT PAYMENT BE USED FOR?

The Council want people to have as much flexibility and freedom as possible over how they spend their Direct Payment. At the same time, the money we give people to receive a Direct Payment is Public Funds, therefore we have a responsibility to ensure it is spent properly.

The below list gives examples of what a Direct Payment cannot be used for (*please note this list is not exhaustive*):

- Anything that is against the law.
- Household bills
- Housing adaptations or improvements
- Gambling
- Medicines, healthcare, and equipment the NHS would be expected to provide.
- Transport
- Long-term Residential Care
- A carers direct payment must not be used to meet the assessed needs of the cared for.

## THE COUNCILS PROMISE TO ENSURE AS MANY PEOPLE AS POSSIBLE CAN ACCESS A DIRECT PAYMENT.

The Council will:

- Support people to get helpful information and advice in a range of ways including online and in key locations such as Let's Talk and Family Hubs.
- Support the development of markets so that there is a varied range of care and support options available for people who live here.
- Make Direct Payments as easy as possible for everyone.
- Continue to develop the Direct Payment Champions Group.

The people who work in Adult Social Care will:

- Always use the Resource Wheel to help consider how a person's needs can be best met, including what they can do as a person, the people important to them, and what the places and spaces can offer in their community. If a person's needs cannot be met in this way or can only be part met, then a Direct Payment should be encouraged as a way of receiving Community-Based Care and Support.
- When considering a Direct Payment, the Social Care Worker will think about everything a Direct Payment can offer, recognising that not all Direct Payments need to mean a Personal Assistant.
- Take part in Direct Payment training sessions and do online learning.



NDT

The people who work in Children’s Social Care will:

- Always consider the commissioned short break offer which includes community connections, individual payments through Disability Positive and commissioned groups.
- When considering a Direct Payment, the Social Care Worker will think about everything a Direct Payment can offer, recognising that not all Direct Payments need to mean a Personal Assistant.
- Take part in Direct Payment training sessions and do online learning.

## HOW DOES THE MONEY WORK?

Some people may have a regular Direct Payment, while others may just receive a one-off Direct Payment for things such as a membership.

If a person has a regular Direct Payment, they will receive money to cover/ pay towards:

- The cost of care and support (an agreed amount paid each month in advance, based on the persons eligible Care and Support Needs).
- Employment costs for people using a direct payment to employ a Personal Assistant including: (see also ‘Being and Employer’ Section below)

### Start-up cost

- A start-up payment which can be used to cover employing staff e.g., advertising and Disclosure and Barring Service (DBS) checks, Employer’s and Public Liability Insurance, equipment, and training.
- The Council will make a one-off payment of £250.00 to pay for start-up costs.

### Contingency payment

- A Contingency payment which can be used to cover things like staff sickness and other emergency and short-term needs.

The Council will make a one-off payment which will be the same amount as a four-week payment at the start of the Direct Payment Agreement.

### How will the Direct Payment be paid?

There are a few ways the Council can pay a Direct Payment. The most common way is using a pre-payment card, however other options are explained below:

Pre-payment account	Bank account	Supported banking
A Direct Payment could be paid into a pre-payment account which is provided on behalf of the Council.	A Direct Payment must be paid into a separate bank account which is only used to manage the Direct Payment and will be known as the Direct Payment account.	A service which manages a bank account for the person which must be provided by an approved bank.
The Direct Payment is paid into the account by the Council in the	The type of bank account must be a current account.	This includes paying staff, paying invoices and anything else that is part of the persons support plan.





Pre-payment account	Bank account	Supported banking
<p>same way as a normal bank account.</p> <p>Benefits of the pre-payment account include:</p> <ul style="list-style-type: none"> <li>• an easier audit process (where the Council can access audit documents directly, meaning audit documents do not need to be sent to the Council)</li> <li>• a better and quicker way of showing when a vulnerable person may be getting into difficulty managing their Direct Payment.</li> </ul> <p>In cases where the Council need to reclaim excess funds, they can do so directly (however will always inform the person in writing)</p> <p>A pre-payment card does not offer cash withdrawals, a cheque facility or overdraft allowance.</p>	<p>The Council cannot check/ access this account.</p>	<p><b>It is important to note that this is an administrative role, and the person is still the employer of any staff.</b></p> <p><b>The person will also need to ensure there is enough money in the account.</b></p>

If a Direct Payment is being provided as a one-off payment it does not need to be paid into a separate bank account, however a BACS form is needed to set them up as a supplier.

### Paying for care and support

The Direct Payment will be paid by the Council every four weeks in advance. This ensures the person has enough money to be able to pay for their care.

Some adults will need to pay towards the cost of their care, this is known as a Personal Contribution. The person must pay the contribution into the account at least every four weeks. This ensures the person has enough money to be able to pay for their care.

### ENTERING INTO AN AGREEMENT WITH THE COUNCIL

The Council can only give a Direct Payment when the person, or their Nominated or Authorised Individual signs the Direct Payment Agreement. The Direct Payment Agreement outlines how the person and the Council agree the Direct Payment should be spent to achieve their Outcomes.

The agreement explains:

- How the Direct Payment will be paid.
- How the Direct Payment will be managed.
- How the Direct Payment will be reviewed and audited.





### Reviews

The Council will review the Direct Payment with the person to make sure that it is working as well as possible for them and consider if anything could be done to make it better. Reviews will happen at six weeks, six months, and every 12 months; however, this may vary based on a person's individual need.

### Audit

The Council must make sure that the money it gives a person for a Direct Payment is spent properly, which will have been agreed in the Direct Payment Agreement. The Audit will consider if:

- The Direct Payment is being used to meet the persons Outcomes.
- The correct amounts are being paid to the service.
- The person is keeping correct receipts, Timesheets, and records.
- The person is paying their Personal Contribution into the Direct Payment account.

The Council will send a welcome letter to the person and inform them when their first Audit is due.

Pre-payment account	Bank account	Supported banking
The Council will access information in the pre-payment account to complete the Audit	The person receiving the Direct Payment, or the Nominated or Authorised Individual will provide documents to the Council.	The supported banking service will provide the Council with all the documents they need to complete the Audit.
The first Audit will happen at 8 weeks, then at 6 months, then annually.	The first Audit will happen at 6 months, then 12 months, then annually.	The first Audit will happen at 6 months, then 12 months, then annually.

After the Audit has been completed anything that is wrong will be investigated and corrected.

The person receiving the Direct Payment, or the Nominated or Authorised Individual are responsible for providing documentation on expenditure and evidence that the money is being spent as it is meant to be. If documentation is not provided to the Council by the date it is needed, the Direct Payment may be suspended, stopped and or taken back. The Audit team will provide advice and guidance to the person receiving the Direct Payment, or the Nominated or Authorised Individual if needed.

## ENDING A DIRECT PAYMENT

A Direct Payment can be stopped by the person or the Council:

### The person

If the person (or their person with Parental Responsibility/ Nominated/ Authorised Individual) decides they no longer want to have a Direct Payment, they should provide their Social Care Worker with four weeks' notice by telephone or email.

### The Council

The Council may end or temporarily stop a Direct Payment if the person does not follow the Direct Payment Agreement. Before this happens, the Council will do everything it can to support the person to fix any issues.

The Council may end or temporarily stop the Direct Payment if:



- It has been used for things which were not agreed in the Care and Support Plan and when asked, there was not a reasonable explanation for this change.
- The Council is concerned that the person is no longer able to manage a Direct Payment, even with support.
- The Council is no longer allowed to pay a Direct Payment because of the laws mentioned in this policy.
- The Council has tried to resolve some financial concerns and complete check-ups of the account, but the person has not responded to any communications.
- The person has not told the Council about an important change in circumstances which affects the Direct Payment, such as a change in benefits.
- The Council has worked out a contribution that the person needs to pay towards their care and support, but the person has not paid it, even after support and assistance has been provided by the Council or an advocate.
- In some cases where the person has moved out of the Cheshire West and Chester area. (Section 117 of the Mental Health Act and ordinary residence will be taken into account).
- The person has moved into Residential Care permanently.
- For any reason where the Council considers that it is no longer right to make a Direct Payment to the person.

If this happens, the Direct Payment money paid in advance will be recalculated. After this calculation, the person may be asked to return some or all the Direct Payment money to the Council, depending on the reasons for stopping the Direct Payment.

If the Council stops or suspends the Direct Payment, they will arrange another way of making sure the person's Care and Support Needs are met.

If a Direct Payment needs to be repaid to the Council because of any of the reasons described above, the person will be informed why they need to and how they can repay.

## UNUSED DIRECT PAYMENTS

The Council will allow the person to have an agreed amount of money in their account (equal to 4 weeks of Direct Payments) as well as the Contingency payment at any one time. If there is further unused money at the Review/ Audit the person will be told that the unspent money will need to be paid back to the Council.

If the person dies, all unspent money should be returned to the Council after meeting any legal liabilities such as unpaid invoices and wages. If there are redundancy costs, these should be paid through the Employers Liability Insurance. The Council is not responsible for redundancy costs, and it is the employer's responsibility to have insurance/ contingencies in place. The Direct Payment money is not part of the Person's Estate and belongs to the Council.

## BEING AN EMPLOYER

### Employing a Personal Assistant

If a person chooses to have a Personal Assistant, they (or their person with Parental Responsibility/ Nominated/ Authorised Individual) will become an employer. As an employer there are some things which need to be done including:



- Recruitment
  - Advertising
  - Creating a person specification and job description
  - Interviewing
- Pre-Employment Checks
  - Ensuring right to work in UK – the person must have evidence of the Personal Assistant's right to work in the UK and keep a signed dated photocopy (e.g., UK or EEA Passport, visa, work permit)
  - Getting references
  - Ensuring a Disclosure and Barring Service (DBS) check (formerly CRB check) has been done.
- Setting up as an employer
  - Providing a Statement of Employment – the person must offer a contract to the Personal Assistant (employee). This says what they can expect of their Personal Assistant and what the Personal Assistant can expect of them. There must be two copies, one for the person (employer) and one for the Personal Assistant which are signed by both parties.
  - Purchasing Employer's Liability and Public Liability Insurance which includes redundancy cover (as an employer the person is legally required to have Employers Liability Insurance in place).
- Being an employer
  - Registering as an employer with HM Revenue and Customs (HMRC) and making HMRC contributions (Tax and National Insurance) on behalf of the Personal Assistant. The person can register with a Payroll Service who will do this for them. The person can use their Direct Payment to pay for the Payroll Service.
  - Supplying and keeping Timesheets and Payslips.
  - Supplying a Pension to eligible Personal Assistant.
  - Providing paid Annual Leave – all staff, regardless of the hours they work are entitled to paid Annual Leave. Currently this is 5.6 weeks pro rata annually. The person will need to budget for alternative support while their Personal Assistant is on leave.
  - Paying staff through bank transfer or cheque/ cash payments are not allowed.
  - Keeping employment records for seven years.
  - Making health and safety arrangements.
  - Arranging training for the Personal Assistant, as necessary. Training can be accessed through Disability Positive
  - If the Personal Assistant/s the person employs earn less than the HMRC threshold per week over the course of the year, has no second job and is not receiving any taxable benefits, the person may not have to register as an employer with HMRC. The person should seek advice directly from HMRC to check this if they need to.

- If a Personal Assistant needs to be made redundant, the person (or their person with Parental Responsibility/ Nominated/ Authorised individual) is responsible for paying this. If there are redundancy costs, these should be paid through the Employer's Liability Insurance.

Support is available for being an employer through the councils commissioned Direct Payment Support Service.

### **Employing a family member**

The law says that a Direct Payment should not be used to employ a family member as a Personal Assistant if they are living in the same household as the person who the Direct Payment is for. However, sometimes the Council may decide that there are situations which require a family member (living in the same household as the person who the Direct Payment is for) to be employed as a Personal Assistant. This would need to be agreed by a relevant Social Care Senior Manager.

In an exceptional circumstance where a family member (living in the same household as the person who the Direct Payment is for) is employed as a Personal Assistant, they must not also be the employer.

### **Employing a self-employed Personal Assistant or Micro-Enterprise**

If a person (or their person with Parental Responsibility/ Nominated/ Authorised Individual) is using a self-employed Personal Assistant or Micro-Enterprise, they will not be the employer and do not need to meet the employer's responsibilities apart from the Disclosure and Barring Service (DBS) check.

## **IF A PERSON DISAGREES WITH A DECISION MADE BY THE COUNCIL**

The Council may decide that a person cannot have a Direct Payment, if this happens the Council will give the reason for their decision in writing stating:

- Which requirements have not been met.
- Why the requirements have not been met.
- What the person may need to do to get the requirements met.

People can ask for a decision to be looked at again and access advocacy as part of this process. This should initially be discussed with a Social Care Manager who will review the decision. People can also use the Council's complaints procedure, which can be found at

[Adult social care complaint | Cheshire West and Chester Council](#) for adults

OR

[Children's social care complaints | Cheshire West and Chester Council](#) for children.



**RELATED DOCUMENTS / APPENDICES**

The following documents are included as part of this policy:

Title	Area	Created by
Appendix A – Resource Wheel	<a href="#">Direct Payments for All Ages Resource Wheel</a>	CWaC



## Accessing Cheshire West and Chester Council information and services

Council information is also available in audio, Braille, large print or other formats. If you would like information in another format or language, including British Sign Language, please email us at:

**[equalities@cheshirewestandchester.gov.uk](mailto:equalities@cheshirewestandchester.gov.uk)**

إذا أردت المعلومات بلغة أخرى أو بطريقة أخرى، نرجو أن تطلب ذلك منا.

যদি আপনি এই ডকুমেন্ট অন্য ভাষায় বা ফরমেটে চান, তাহলে দয়া করে আমাদেরকে বলুন।

Pokud byste požadovali informace v jiném jazyce nebo formátu, kontaktujte nás

Jeżeli chcieliby Państwo uzyskać informacje w innym języku lub w innym formacie, prosimy dać nam znać.

ਜੇ ਇਹ ਜਾਣਕਾਰੀ ਤੁਹਾਨੂੰ ਕਿਸੇ ਹੋਰ ਭਾਸ਼ਾ ਵਿਚ ਜਾਂ ਕਿਸੇ ਹੋਰ ਰੂਪ ਵਿਚ ਚਾਹੀਦੀ, ਤਾਂ ਇਹ ਸਾਥੋਂ ਮੰਗ ਲਵੋ।

如欲索取以另一語文印製或另一格式製作的資料，請與我們聯絡。

Türkçe bilgi almak istiyorsanız, bize başvurabilirsiniz.

اگر آپ کو معلومات کسی دیگر زبان یا دیگر شکل میں درکار ہوں تو برائے مہربانی ہم سے پوچھیے۔

**Tel:** 0300 123 8 123 **Textphone:** 18001 01606 275757

**email:** [equalities@cheshirewestandchester.gov.uk](mailto:equalities@cheshirewestandchester.gov.uk)

**web:** [www.cheshirewestandchester.gov.uk](http://www.cheshirewestandchester.gov.uk)