

# DIRECT PAYMENT OPERATIONAL POLICY AND TERMS

## ADULT AND CHILDREN'S SERVICES SOCIAL CARE

This document is available in Welsh

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# Section A. Policy & Legal Background

## 1 Overview

- 1.1 The Social Services and Well-being (Wales) Act 2014 gives Local Authorities a duty to make payments for care and support needs direct to individuals who are eligible. Direct Payments mean people can exercise choice, voice and control to decide how to meet their needs for care and support and achieve their personal outcomes.
- 1.2 Wrexham County Borough Council (the Council) recognizes that Direct Payments can bring about improvements in the quality of life of people who would like to manage their own support. Direct Payments promote independence and aid social inclusion by offering opportunities for rehabilitation, education, employment, leisure and family support for people who need services.
- 1.3 Practitioners will work with individuals to provide support and information to enable them to use their Direct Payments to employ staff and/or directly purchase services to meet their assessed need. The Council will need to be satisfied that the Direct Payments can be used to secure personal outcomes for the individual.
- 1.4 If an individual declines Direct Payments, the Council should arrange services on their behalf.
- 1.5 The Social Care Department Complaints Procedure operates in respect of the process for Direct Payments.

## 2 Legislation and Guidance

- 2.1 The following documents together constitute the full Wrexham County Borough Council Policy & Terms for Direct Payments:
  - The Social Services and Well-being (Wales) Act 2014 Part 4 Code of Practice (Meeting Needs) guidance issued by the Welsh Government.
  - The Care and Support (Direct Payments) (Wales) Regulations 2015.
  - Wrexham County Borough Council Assessors Guidance.
  - Wrexham County Borough Council Offer Letter.
  - Wrexham County Borough Council Direct Payment Agreement.

## 3 Equality & Diversity

- 3.1 This policy supports the Council's Strategic Equality Plan and Objectives that set out the Council's priorities and how the Council will address inequalities, discrimination and promote equality and good relations between different groups under the Equality Act 2010.
- 3.2 This policy aims to support equality and diversity in relation to the following equality groups (known as protected characteristics):
  - Age
  - Disability
  - Gender
  - Sexual orientation
  - Gender reassignment
  - Race
  - Religion or belief
  - Pregnancy and maternity
  - Marriage or Civil Partnership

- 3.3 This policy is committed to equality of opportunities, access and services for all. We aim to ensure that individuals who use services, their carers, and their friends and family are treated fairly and with respect.

## **4 Offering Direct Payments (Adult's Services)**

- 4.1 Direct Payments are available to both new and existing individuals, and individuals may switch to Direct Payments at any stage.

- 4.2 Direct Payments can be used:

- to meet the care and support needs of an adult.
- to meet the support needs of a carer.

- 4.3 Direct Payments must be offered if:

- there are eligible care and support needs for an individual, or
- eligible support needs for a carer, and
- the individual or their representative expresses a wish to receive Direct Payments and:
  - has mental capacity to make that decision, and
  - can manage Direct Payments.

- 4.4 Direct Payments **may** be offered to people subject to requirements imposed in relation to drug or alcohol abuse, provided conditions are attached to the Direct Payments agreement.

## **5 Offering Direct Payments (Children's Services)**

- 5.1 Direct Payments are available to both new and existing individuals, and individuals may switch to Direct Payments at any stage.

- 5.2 Direct Payments can be used:

- To meet the care and support needs of a child.
- To meet the care and support needs of a carer.

- 5.3 Direct Payments must be offered if the following conditions are met:

- there are eligible care and support needs for a child, or
- eligible support needs for a carer, and
- where the individual is an adult with parental responsibility, or
- a child aged 16 or 17 and
  - has mental capacity to make that decision, and
  - can manage direct payments, and
- making the payments is an appropriate way of meeting the child's needs, and
- the well-being of the child will be safeguarded and promoted by the making of the payments.

## **6 Use of Direct Payments**

- 6.1 Direct Payments can be a "one off" payment for a specific event or item e.g. a short break, or "on-going" for needs over a short or long period of time. Individuals can have all or part of their needs met via Direct Payments or a mixed package of support.

- 6.2 Where eligible care and support needs, or support needs for carers, have been identified in a care and support plan, Direct Payments can be used to enable personal outcomes to be achieved. For example:

- Purchase services
- Employ staff direct
- Assistance with personal care
- Assistance with social interaction

- Short term breaks
- Permanent residential care
- Local council services
- Equipment
- Shared services in supported living/community settings
- Any other means to achieve personal outcomes identified in the care and support plan

6.3 Direct Payments recipients can also “pool” their payments with other recipients to meet identified needs and achieve agreed outcomes.

6.4 Direct Payments **cannot be used**:

- for the provision of healthcare unless it is incidental or ancillary to doing something else to meet the individual’s needs.
- to purchase services or equipment that would otherwise be arranged by other authorities, for example, the NHS or housing authorities. Direct Payments are not a substitute for Disabled Facilities Grants.

## **7 Mental capacity to give consent, and “Suitable” or “Nominated” Persons.**

7.1 For adults, it must be established whether or not the adult has the mental capacity to consent to a Direct Payment.

### **“Suitable” Person**

7.2 Where the individual lacks mental capacity to consent, or is a child under 16, the Direct Payment can instead be made to a willing and appropriate Suitable Person.

7.3 The Suitable Person must be capable of managing the Direct Payment either on their own or with support.

7.4 The Suitable Person may not, under any circumstances, receive Direct Payments in order to pay themselves for providing care.

7.5 Before considering whether Direct Payments are an appropriate way of meeting an individual’s needs (where the individual is an adult without capacity), the Council must consult:

- Anyone named by the individual as someone to be consulted on the issue.
- Anyone currently engaged in caring for the individual or with a significant interest in the individual’s welfare.
- The person who is proposed as a Suitable Person.
- Anyone authorised under the Mental Capacity Act 2005 (whether in general or specific terms) to make decisions about the individual’s needs for care and support.

7.6 In most cases the Suitable Person will be a close friend or family member who is involved in the care and support of the individual; or if the individual is a child the suitable person must have parental responsibility. The best interests and well-being of the individual must be prioritised above all other considerations.

For Adults Services, priority regarding Suitable Persons must be given to the following:

- A court appointed deputy for welfare decisions.
- A person holding Lasting Power of Attorney for Health and Welfare (not just for Finance).
- Someone who offers to act as the Suitable Person and who the Council considers is acting in the individual's best interests.
- Someone who the Council agree themselves is suitable to act as a Suitable Person.
- Someone employed by an organisation or third party appointed by the Council to act as Suitable Person.

7.7 The Council will try to appoint the person who would be chosen or most likely to be chosen by the individual, taking into account the wishes of the individual where these are known and other significant history or important aspects of an individual's circumstances.

7.8 The Council will normally accept that someone who is one of the above will be a Suitable Person without positively vetting that person. However, if the proposed Suitable Person is not a relative or friend of the individual involved in their care, then the Council will obtain a DBS check on the proposed Suitable Person.

7.9 The arrangements for the Direct Payment will be discussed with the individual's family and other parties concerned, where appropriate.

7.10 The Council needs to be satisfied that the individual's needs and personal outcomes can be met via Direct Payments involving a Suitable Person before this is put in place. The Council need to be satisfied that the proposed Suitable Person is capable of managing the Direct Payment, or if that is not possible, that they can with appropriate support.

7.11 The Suitable Person needs to understand that they are responsible for making arrangements to obtain care and support for the individual and their best interests must be central to the arrangements.

7.12 Once a decision is made as to who will be the Suitable Person, arrangements will be made to make Direct Payments payable to that person.

7.13 All of the normal policy and procedures of the Direct Payments policy will then apply to the Suitable Person, including conditions on Direct Payments.

7.14 Where the individual lacks capacity the Council must impose the following conditions on the Direct Payments:

- a) The Suitable Person acts in the best interests of the individual when securing the provision of care and support, and
- b) The Suitable Person notifies the Council if they believe the individual no longer lacks capacity.

## **“Nominated” Person**

- 7.15 A Nominated Person will manage the Direct Payment on behalf of a person with capacity. A Nominated Person’s role is to support the recipient with the administration of the Direct Payments. A Nominated Person merely undertakes administration on behalf of the recipient and will not be the employer. The responsibility of employing any Personal Assistant(s) will still be with the recipient.

## **8 Using Direct Payments to Pay Relatives**

- 8.1 The Council may agree to the use of Direct Payments to pay a relative living in the same household as the individual if the Council considers that it is necessary to promote the well-being of the individual. In considering the well-being the Council must take into account the views of the individual, any Suitable Person, a parent of a child, a carer of the individual and anyone authorised under the Mental Capacity Act to make decisions about care and support.
- 8.2 Payments may be authorised to pay the relative either:
- for the care and support for the individual, or
  - to help the individual managing the Direct Payments.
- 8.3 If the Council does not consider that it is necessary to promote the individual’s well-being, it must impose a condition that the Direct Payments are not to be used to pay a relative living in the same household.

## **9 Direct Payment Rates**

- 9.1 The Social Care Department review the Direct Payment rates annually and make recommendations for changes to the Chief Officer for Social Care.
- 9.2 Changes to the rates will usually be applied to every Direct Payment from the 1<sup>st</sup> April of the next financial year to allow time to notify individuals of the changes. The Direct Payments Team will be responsible for notifying individuals.

## **10 Monitoring, Evaluation and Development**

- 10.1 The Direct Payments Team will be responsible for monitoring the uptake of Direct Payments within Wrexham, across both adult and children’s services and for reporting to the Welsh Government according to the latest performance monitoring requirements.
- 10.2 The development of the Direct Payment service in Wrexham will be monitored and directed by the Wrexham Direct Payments Forum or equivalent.

## **Section B. The Direct Payment Processes**

### **11 Financial Monitoring and Audit Checks**

- 11.1 The individual is accountable to the Council for how the Direct Payment money is spent, and will be expected to provide evidence that they have spent it as agreed.
- 11.2 For “one off” payments this will normally be a copy of the receipt.
- 11.3 The Direct Payments recipient should maintain and provide for inspection, basic financial accounts, including copies of pay slips. The Council has the right to inspect these records as part of its auditing procedures, when requested.
- 11.4 For ongoing payments the recipient must provide Financial Records and Quarterly Returns to evidence that they have received the payments and the money is being spent as agreed (and detailed in the Care and Support Plan). The recipient should keep all receipts and

details of payments made in relation to insurance or tax deductions. The first return will usually be 3 months after the start of the payments and then every 3 months.

- 11.5 The payments and financial records will be monitored and reviewed on a minimum quarterly basis. Any unspent funds or over payment will be recovered.

## **12 Care and Support Plan Review**

- 12.1 The fact that the Council is making Direct Payments rather than arranging services for the individual does not affect its responsibility to review care packages at regular intervals.
- 12.2 Individuals or appointed Suitable Persons receiving Direct Payments take their own responsibility for ensuring their care package is delivered and appropriate, according to the agreed Care and Support Plan. The Council is more 'at arm's length', although the Council still has the responsibility to ensure that that an individual's care needs are met appropriately and that the Direct Payment is spent to achieve personal outcomes.
- 12.3 The **frequency** of review will reflect the length of time the individual has managed a Direct Payment and their circumstances and will depend on local policy.
- 12.4 The Council is required to review Direct Payments within the first six months and then 12 months following the first review. Reviews will then be at the same frequency as other recipients. This frequency will reflect service standards for Adult and Children's Services.
- 12.5 Reviews may be held more frequently where a situation is unstable or there are concerns over the management of the Direct Payment.
- 12.6 The Council and the individual, or anyone who is helping them with their Direct Payment, may request a review if circumstances change or there are concerns or difficulties.
- 12.7 The **purpose** of the review is to establish:
- Whether the individual's needs have changed.
  - Whether the outcomes of the care and support plan are being met.
  - That the individual's needs are being met and that these needs remain eligible to receive a service.
  - That the payments are being used to secure the personal outcomes identified in the Care and Support Plan.
  - Whether the individual is managing their Direct Payment and requires a change in the level of support they receive.
  - Whether the individual is satisfied with the services they are securing.
- 12.8 Any concerns about an individual's/Suitable Person's ability to manage Direct Payments should be raised directly with them at the earliest opportunity without waiting for a scheduled review.



### **13 Responding to changes in the Level of Need and Emergencies**

- 13.1 The individual has a responsibility to inform the Assessor/Council of any increase or decrease in their level of need that might affect the amount of Direct Payments.
- 13.2 Individuals receiving a Direct Payment must plan for how they will cope with short-term increases in their needs and/or emergencies e.g. staff absences.
- 13.3 If the level of need increases and the cost of meeting this need is above any contingency funds available, there will need to be a reassessment.
- 13.4 The Assessor should ensure that a contingency plan for emergencies is included within the individual's Care and Support Plan.
- 13.5 If contingency plans break down and it is not possible for the individual to have their needs met, then the Council is responsible for arranging services to meet priority needs. In order to meet needs with short notice a reduction in support, or different service may need to be offered e.g. day services or residential services.
- 13.6 When an individual does not need their Direct Payments for a short but significant period, i.e. longer than 4 weeks, the Direct Payment may be suspended for that period.
- 13.7 After 4 weeks in hospital the Direct Payment should be suspended. Any variance to this should be agreed by the Team Manager and clearly documented. The practitioner is responsible for informing finance.

### **14 Changes to the Direct Payment Amount**

- 14.1 Information from reviews and audit should be considered in any decision to change the amount of, suspend, or seek repayment of a Direct Payment.
- 14.2 The amount of payment may be increased, decreased or suspended to reflect changing needs. Care and Support plans must also be updated to reflect changes.

### **15 Conditions on Direct Payments**

- 15.1 The Council can make the Direct Payment subject to conditions, for example:
  - the needs may not be met by a particular person.
  - the recipient of the Direct Payment must provide information reasonably required by the Council to ensure that the Direct Payments are an appropriate way of meeting the individual's needs.

### **16 Non-compliance with financial conditions**

- 16.1 If there is non-compliance with monitoring conditions, the Direct Payments Team will write a reminder letter to the individual requesting the required information with a maximum period of 4 weeks for compliance.
- 16.2 If the individual fails to respond within the specified 4-week period the Direct Payments Team will contact the appropriate Social Care Team Manager for information on any factors that may prevent the individual from responding.
- 16.3 The Direct Payments Team will, in consultation with the relevant Head of Service, determine if reasonable adjustments are necessary and can be made to the monitoring conditions to enable the individual to comply with the Direct Payments conditions.

16.4 If reasonable adjustments cannot be made, notice will be given to the individual that Direct Payments will be withdrawn.

## **17 Non-compliance with any care plan requirements**

17.1 The appropriate Social Care Team Manager will be notified if for example:

- the Direct Payments have not been used to purchase the services identified in the Care and Support Plan.
- the Direct Payments have been used to purchase a service from any of the people identified as being excluded.
- any other evidence suggesting the Direct Payments have not been managed appropriately or effectively.

17.2 If an individual fails to cooperate with a review, the Council may determine its offer of service on the basis of the best information available to it. However, if this is impracticable the Council reserves the right not to make an offer based on refusal to accept services through unreasonable behaviour.

17.3 The Team Manager will write to the individual explaining the concerns about non-compliance and that a review of the Direct Payments support will be carried out.

17.4 A copy of the review will be forwarded to the appropriate Head of Service.

17.5 The Head of Service will determine whether the use of the Direct Payments complies with the Social Care conditions, whether any inappropriate expenditure ought to be repaid or written off, and whether it is appropriate for Direct Payments to continue and feedback to the Direct Payments Team.

17.6 The Direct Payments Team shall write to the individual with the outcome of the review and the Head of Service decision.

17.7 If continued non-compliance is found, the Chief Officer for Social Care will decide whether Direct Payments should be withdrawn.

## **18 Repayment of Direct Payments**

18.1 The Council will seek a repayment if there is:

- Overpayment.
- A significant underspend and a reserve of money not including funds for tax, holidays, and contingencies i.e. staff absence, etc.
- Non-compliance with financial conditions of the Direct Payments service.
- Non-compliance with Social Care conditions.

18.2 Consideration should be given to any on-going contractual responsibilities, e.g. terminating employment, redundancy liability etc.

18.3 The Council may decide to suspend or reduce the Direct Payments for a period of time whilst the individual uses the overpayment/reserve to fund their care.

## **19 Appeals**

19.1 The individual will be advised in writing of their right to make an appeal against a repayment decision through the Social Care Complaints Procedure.

## **20 Discontinuing Direct Payments**

- 20.1 The individual, or suitable person where applicable, may decide that they no longer wish to continue with the Direct Payment.
- 20.2 If either the Direct Payment recipient or the Council wants to stop the Direct Payment a review must be held to discuss further actions. A record of the reasons and when payments will be discontinued must be made and sent to all involved in that arrangement. Wherever possible a 28 days' notice period should be allowed.

## **21 Arranging commissioned services when Direct Payments cease**

- 21.1 When a Direct Payment ends, the recipient may still have obligations to fulfil. A suitable period of notice will need to be given to the Personal Assistant(s), Care Provider, or Micro-enterprise(s).
- 21.2 The Direct Payments Team will ensure funds remain available to fulfil contractual obligations, whether this is to pay Personal Assistant(s), or to pay a final balance to a Care Provider or Micro-enterprise.
- 21.3 The relevant Social Care Team will make alternative arrangements for meeting the individual's community care needs.
- 21.4 Once these arrangements can be put in place confirmation of the date when Direct Payments will end and the commissioned arrangements begin will be sent to the recipient.

## **Section C. Additional Guidance for Children's Services**

### **22 Direct Payments to People with Parental Responsibility**

- 22.1 The Council should only arrange a Direct Payment for a parent of a disabled child when they are satisfied that the parent will make arrangements that are designed to safeguard and promote the welfare of the child and meet their care and support needs.
- 22.2 Staff must make clear the steps that people with parental responsibility for a disabled child ought to take to satisfy themselves that the person offering help with the care of their child is suitable.
- 22.3 The Council expects that a person who is considering employing an individual to care for their child funded by a Direct Payment, asks the Council to carry out checks via the Disclosure and Barring Service (DBS). Parents' insistence upon employing an individual who has been found unsuitable following such a check will be a factor in the Council's decision whether to exercise its discretion in making Direct Payments. This applies equally to 16 and 17 year old disabled people who wish to receive a Direct Payment to meet their assessed needs.
- 22.4 The Council, in exercising its duties under the Social Services and Well-being (Wales) Act 2014, will ensure that the views, wishes and feelings of children and young people in receipt of Direct Payments are ascertained and taken into consideration. The Council will have regard to the importance of providing support to enable the child or young person to participate in the decisions that affect him or her, to the extent that it is appropriate in the circumstances, particularly where the individual's ability to communicate is limited for any reason.

- 22.5 The Council, in accordance with its statutory duties outlined in the Social Services and Well-being (Wales) Act 2014, will ensure that children and young people who have been assessed as requiring care and support services, will be informed of, and offered, access to advocacy services as part of the assessment process.
- 22.6 The Council retains its responsibilities under the Social Services and Well-being (Wales) Act 2014 to assess and, where appropriate, review the needs of disabled children and their families in the normal way.

## **23 Direct Payments for Young Disabled People**

- 23.1 Disabled 16 and 17 year olds are able to use Direct Payments, where this is in their best interests, to purchase services they have been assessed as needing, not services to support other members of the disabled young person's family.
- 23.2 A young disabled person at age 16 or 17 may wish, as part of the transition to adulthood, to take control of part(s) or all of the Direct Payment that has, been managed by the person with parental responsibility.
- 23.3 In making the decision to make a Direct Payment to a disabled 16 or 17 year old, the Council should balance the young person's wishes and feelings with the views of those with parental responsibility.
- 23.4 The Council must be satisfied that the arrangements will safeguard and promote the welfare of the child and meet their assessed needs and personal outcomes.
- 23.5 Whatever decisions are made when the disabled child reaches age 16 or 17, people with parental responsibility for a disabled child may not continue to receive Direct Payments to purchase services that meet the needs of that child once the child reaches 18. If they intend to continue in their caring role, they may be entitled to receive Direct Payments as an alternative to local Council directly provided carers' services under the provisions of the Social Services and Well-being (Wales) Act 2014.

## **Section D. Additional Guidance for Adults' Services**

### **24 Assessment of Eligible Needs**

- 24.1 Any assessment of an individual's needs is undertaken under the Social Services and Well-being (Wales) Act 2014. The criteria for Direct Payments are no different to those for any other service. Individuals should not receive any more or any less service because they have chosen to receive their service by means of a Direct Payment.
- 24.2 The appropriate Practitioner will complete an assessment, which is the same for those wanting Direct Payments as for those wanting the Social Care Department to arrange their support.

### **25 Costing Care Plans, Financial Assessment and Charges**

- 25.1 Services must be agreed and arranged in accordance with the internal Local Authority processes.
- 25.2 The Team Manager can approve small packages of care and care packages for existing individuals where there is no change in need or increase in cost, i.e. where the existing package is paid from the relevant service's external Domiciliary Care Budget.

## **26 Safe Recruitment of Personal Assistants**

- 26.1 Where an individual is considering employing someone to provide support funded by a Direct Payment, the Council recommends that they are asked to complete the safe recruitment process through the Direct Payments Team which includes a Disclosure and Barring Service (DBS) check. For all recipients where there are children in receipt of Direct Payments, or children in the house of the recipient, a DBS Check must be completed on all Personal Assistants. If an individual insists on employing someone who is found to be unsuitable the Council may decide to stop the Direct Payment if they consider the individual to be at significant risk.

## **27 Direct Payment to Carers**

- 27.1 Direct Payments allow carers to purchase services they are assessed as needing as carers to support them in their caring role and to maintain their own health and well-being. Carers (other than those with parental responsibility caring for children) may not receive a Direct Payment to purchase services to meet the assessed needs of the person who is cared for. In this situation the Direct Payment is made to the individual not the carer.
- 27.2 A Carer's Assessment must be undertaken when considering a carer as a recipient of Direct Payments.