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DIRECT PAYMENTS POLICY

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Introduction

1. Statement of purpose

- 1.1 This policy is intended to cover direct payments for adults, children and carers.
- 1.2 **The purpose of this policy is to make clear the council's approach to direct payments, and the responsibilities of the direct payment recipient. It should be read in conjunction with the direct payment factsheets and the direct payment agreement.**
- 1.3 The Care Act 2014 requires local authorities to 'consider the person's own strengths and capabilities, and what support might be available from their wider support network or within the community to help' in considering 'what else, other than the provision of care and support, might assist the person in meeting the outcomes they want to achieve'. This is done by taking an approach that looks at a person's life holistically, considering their needs in the context of their skills, ambitions, and priorities. Similarly, the Children's and Families assessment seeks to capture the strengths and needs of each family.
- 1.4 Herefordshire Council is committed to this approach (i.e. identify the individual's personal, community and social networks, and maximise those strengths to enable them to achieve their desired outcomes), thereby meeting their needs and improving or maintaining their wellbeing.
- 1.5 Any suggestion that support could be available from family and friends should be considered in the light of their appropriateness, willingness and ability to provide any additional support and the impact on them of doing so. This is also subject to the agreement of the adult or carer in question (see 6.64 of the Care Act guidance).
- 1.6 Supporting the person's strengths can help address needs, whether or not they are eligible for support in a way that allows the person to lead, and be in control of, an ordinary and independent day-to-day life as much as possible. It may also help delay the development of further needs.
- 1.7 Every adult or child, or carer who is eligible for care and support will have a personal budget identified. This is equivalent to the amount of money that the council believes is reasonable to buy services to meet those eligible needs. The person who requires the support (or their parent/carer in the case of children under 16) can then choose how that budget is spent. In the case of a child/young person the carer may decide how to use the budget to support the child.
- 1.8 They can request that the council makes all the arrangements for meeting those needs and manage the budget on their behalf; or they can ask for a direct payment to be paid to themselves or to a nominated person or a 3rd party.
- 1.9 A direct payment is the mechanism for personalised care and support and is one of the available options offered by Herefordshire Council when there is assessed but *unmet* eligible needs stated within an individual's support plan. A direct payment has to be used to meet the needs and outcomes that have been agreed with an

adult or child's social care practitioner, in a way which they can exercise choice and control over who provides their support, and when and how it's provided. The direct payment should be used to support the strengths-based approach; to protect and enhance the individual's wellbeing, independence, resilience, and ability to make choices.

- 1.10 Young people and parents/carers of children who have Education, Health, and Care, have the right to request a personal budget, which may contain elements of education, social care (children's or adults) and health funding. Direct payments in lieu of services from children's or adults social care will form part of these personal budget arrangements. Details of the arrangements for children to receive personal education budgets (top-up tariffs allocated to the school) and personal health budgets will be published separately as part of the Herefordshire Local Offer.

2. Legislative framework

- 2.1 The legislative framework to make adult direct payments is contained within Sections 31, 32, and 33 of the Care Act 2014, the Care and Support (Direct Payments) Regulations 2014, s117 (2c) of the Mental Health Act 1983, and the Care and Support Statutory Guidance..
- 2.2 The legislative framework to make direct payments for children is covered by the Community Care, Services for Carers and Children's Services (Direct Payments) (England) Regulations 2009. The regulations provide that the duty to make direct payments applies to:
- A community care service within the meaning of Section 46 of the National Health Service and Community Care Act 1990, or
 - A service which local councils may provide under Section 17 of the Children Act 1989 and Section 2 of the Chronically Sick and Disabled Persons Act 1970 (provision of services for children in need, their families and others).
- 2.3 Paragraph 3.38 of the statutory special educational needs and disability code of practice: 0-25 years, which incorporates the regulations from the Children and Families Act 2014 describes the right of parents and carers to request a personal budget including a direct payment. This policy does not cover personal education budgets for SEN or personal health budgets.
- 2.4 Local councils have a duty to provide direct payments.
- 2.5 Direct payments will be made to all individuals who are eligible to receive them and who want them. The council cannot however force someone to have a direct payment against their will.
- 2.6 The person in receipt of the direct payment does not have to manage the direct payment themselves (either the financial aspects or the organisation of the service) – this can be undertaken by a third party – as an individual, a formal network or a trust.

3. What are direct payments?

- 3.1 A personal budget is a sum of money allocated to a person as a result of an assessment of needs. This can be taken in the form of a direct payment for the recipient to arrange and pay for their own care and support or in the form of a service provided by the council (or a combination of both)
- 3.2 There are other forms of personal budgets, for example, a personal health budget. The council will work with individuals who are, or will be, in receipt of a personal health budget and a council direct payment to ensure that a joined health and social care budget works in the best way for them. For information about personal health budgets visit the NHS website <https://www.england.nhs.uk/personal-health-budgets/>
- 3.3 The council cannot compel anyone to accept a direct payment, but can encourage and support as many people as possible to take control over their own care support by use of a direct payment. If individuals wish, councils can arrange mixed packages with some directly provided services and direct payments for other needs. This can, for example, give somebody the opportunity to familiarise themselves with managing direct payments before taking on responsibility for arranging support to meet all their needs.
- 3.4 As a general principle, the council will aim to leave choice in the hands of the person by allowing them to meet their own needs as they consider best, whilst satisfying itself that the agreed outcomes are being achieved.

Who does the council have a duty to offer direct payments to?

4. Overview

- 4.1 The council has a duty to make direct payments available to anyone with eligible needs that is capable of managing direct payments and would like to receive them. This group includes:
- Adults who have been assessed as eligible to receive help from the council in arranging care and support to meet their unmet needs in a setting other than a long term stay in a care home.
 - People with parental responsibility for a child with disabilities.
 - Disabled people with parental responsibility for a child(ren)
 - Carers aged 16 and over, for their own assessed needs, i.e. for services to support their caring role and to maintain their own health and wellbeing.
 - An appointed authorised person for someone who lacks capacity
- 4.2 Where a child is assessed as needing services under Section 17 of the Children's Act 1989, children's social care services (and adult social care where appropriate) need to be satisfied that the direct payment will 'safeguard and promote' the welfare of the child for whom the service is needed.

5. Direct payments for adults with capacity

5.1 The Council must offer direct payments where:

- a personal budget for an adult specifies an amount which the council will pay towards the cost of meeting the person's needs, and
- a person requests the council to meet some or all of their needs by making payments to them or to a person nominated by them, and the following conditions are met:

Condition 1	the adult has the capacity to make the request and, where they have nominated a person to make the payments to, that person agrees to receive the payments
Condition 2	the council is not prohibited by regulations under section 33 of the Care Act 2014 from meeting the adult's needs by making direct payments to the adult or nominated person
Condition 3	The council is satisfied that the adult or nominated person is capable of managing direct payments either by himself or with whatever help the council thinks the person or nominated person will be able to access
Condition 4	The council is satisfied that making direct payments to the adult or nominated person is an appropriate way to meet the adult's needs.

- 5.2 If the council decides that it is not appropriate to make direct payments, it will put the reasons for the decision in writing and make a written record available to the individual. It will also inform the individual about how to complain if they are not satisfied with the decision of the council.

6. Direct payments for adults lacking capacity to consent

- 6.1 In cases where a person in need of care and support has been assessed as lacking capacity to request direct payments, an authorised person can request the direct payment on the persons behalf, if that person satisfies all of the following five conditions:

- Where the person is not authorised under the Mental Capacity Act 2005 but there is at least one person who is so authorised, that person who is authorised supports the person's request.
- The council is not prohibited by regulations under the Care Act 2014 section 33 from meeting the adult's needs by making direct payments.
- The council is satisfied that the authorised person will act in the adult's best interests in arranging for the provision of care and support for which the direct payments under this section would be used.
- The council is satisfied that the authorised person is capable of managing direct payments by himself or herself, or with whatever help the authority thinks the authorised person will be able to access
- The council is satisfied that making direct payments to the authorised person is an appropriate way to meet the needs in question.

- 6.2 The authorised person is managing the direct payment on behalf of the person lacking capacity on the understanding that they must act in their best interests.
- 6.3 The authorised person cannot receive the direct payment and also be paid from it for providing care and support for the person lacking capacity.
- 6.4 For further information about appointing an authorised person, please refer to Appendix 1.

7. Direct payments for carers

- 7.1 In relation to carers, the Care Act relates mostly to adult carers (people over 18 who are caring for another adult). This is because young carer's (aged under 18) and adults who care for disabled children can be assessed and supported under children's law.
- 7.2 A carer is someone who helps another person, usually a relative or friend, in their day to day life. This is not the same as someone who provides care professionally, or through a voluntary organisation.
- 7.3 Using a strength based approach to carer assessments, carers unmet needs can be met in a number of ways. Following a carer's assessment it may be agreed that the best way to help a carer is by providing:
- access to a range of universal services, including community support
 - a direct payment to purchase services and or equipment for themselves
 - services to the person they are looking after
 - a combination of the above.

Example

Mary lives with her Husband Paul who has Multiple Sclerosis, he is unable to mobilise around the home or in the community without a wheelchair and therefore relies on Mary to push him around and to help him to get in and out of bed, dressed and for all other transfers. Mary is not feeling as strong as she used to and worries about the future. Paul needs her to support him more than ever and she worries that she won't be physically able to cope. The assessor has talked in depth with Paul and with Mary to establish both Mary's needs as a carer, and Paul's care and support needs. Paul knows that Mary worries about the future and while he is increasingly dependent on Mary he worries about Mary too, he does not feel helpless and still has many interests of his own.

Options explored

Paul has been referred for a powered wheelchair.

Paul has personal care needs and Mary has been providing all of this care but she doesn't have the strength to do some of this anymore, so Paul is provided with a direct payment to enable him to purchase care and support to meet some of his personal care needs.

The couple are having difficulty maintaining their home and much loved garden. The assessor finds out that there is a thriving good neighbour scheme available, and Paul and Mary agree to be 'connected' to the scheme, as some light maintenance and gardening is part of the schemes offer.

The assessor lets Mary know that there is a local community centre support group offering a range of activities (keep fit, walking etc.) Mary decided she would like to take advantage of this and as it is so local she would not worry about leaving Paul alone for a short time they agree this would be positive for them both.

- 7.4 Direct payments may be awarded to carers where the providing the care is having a significant impact on the carer's wellbeing and the care the carer is giving is necessary and appropriate (i.e. the care being given is not disempowering the care recipient because the care is not needed). Direct payments for carers allow the carer to purchase the services they are assessed as needing to support them

in their caring role and to maintain their own health and wellbeing. The Care Act 2014 outlines that a carer's need for support can be met by providing care to the person they care for, but decisions about who is being provided with the service may affect whether the service is chargeable.

- 7.5 It is important for all those involved to understand whose needs are intended to be met by a particular type of support, and to whom the support will be provided directly, and therefore who may pay any charges due. However the council will ensure that the person requiring care is involved in the decision making process and agrees with the course of action.
- 7.6 Where a service is provided directly to an adult needing care, even though it is to meet the carer's needs, then the adult would be liable to pay any charge. The council will take steps to ensure that the wishes of the person requiring care are taken into account during these decisions, including obtaining the persons agreement to pay for any charges due.
- 7.7 Decisions about which services are provided to meet carer's needs and which are provided to meet the needs of the person they care for will be decided as part of the support planning process, in discussion with the individuals concerned. As part of this process the council will consider whether joint plans will be of benefit.
- 7.8 The direct payment will be terminated, if the person being cared for is placed in a permanent residential setting or dies. Any funds remaining in the account must be returned to the council.
- 7.9 For information on the children's with disabilities assessment, including carers assessments please refer to the link below.
[Disabled children's social care – Herefordshire Council](#)

8. Carer's direct payments where the adult being cared for has no eligible needs

- 8.1 The council is able to meet the carer's needs by providing a service directly to the adult needing care. However, there may be instances where the adult being cared for does not have eligible needs, so does not have their own personal budget or care plan. In these cases the carer will have their own support plan specifying how their needs will be met (for example, via replacement care to the adult needing care) and the personal budget would be for the costs of meeting the carer's needs. The adult needing care would not receive a direct payment because the service is designed to meet the carer's needs. The person that requires care must be involved in the decision making process and agree with the intended course of action. In these circumstances the carer can use the direct payment to commission their own replacement care because they are the direct recipient of the service.

9. Direct payments for children and young persons

- 9.1 Once a young person with a disability reaches 16 it is possible for direct payments to be transferred to them in their own right, so long as the council believes that they have the ability to manage direct payments with help. This is regardless of

whether that help comes from parents, a user controlled trust or a local support service.

- 9.2 This allows a young person to choose if they want to take control of part or all of their direct payments. Alternatively their parent can continue to receive direct payments on their behalf.
- 9.3 If there is a disagreement between the young person and their parent about who should manage the direct payment, the council will provide the direct payment to the young person, where it believes that the young person is able to manage the direct payments with appropriate support and the arrangement of safeguards and promotes their welfare themselves.
- 9.4 Once a young person reaches the age of 18, direct payments will be made to them rather than the person with caring responsibility. A new direct payment agreement will be entered into and completed.
- 9.5 Having a direct payment does not mean that a person has to be able to manage direct payments independently. Someone can still be treated as being able to consent to direct payments even though they need help to manage them. They may choose to nominate a family member or more formal support from a direct payment support provider.
- 9.6 Families and/or carers will only continue to receive direct payments on behalf of the young person if the young person lacks mental capacity to 'consent' to direct payments, or chooses to nominate them to help with the direct payment. The person authorised to receive the direct payment will be asked to sign a new agreement accepting the terms and conditions of the direct payment.
- 9.7 To allow for flexibility in the circumstances where a 16 or 17 year old is choosing to undertake a substantial caring role for a disabled adult for a period, and where the council supports that decision, it can, in some circumstances, be more helpful for the young carer to receive a direct payment through adult social care, for example to allow them to arrange carer services to be delivered in such a way as to minimise any disruption to their education.

10. Who is excluded from receiving direct payments?

- 10.1 Direct payments cannot be made in respect of people who have been placed under certain conditions or requirements by the courts in relation to drug and/or alcohol dependencies as specified in Schedule 1 of the Care and Support (direct payments) Regulations 2014. These include:
- Offenders on a community order, or serving a suspended sentence under the Criminal Justice Act 2003 which includes a requirement to accept treatment for drug or alcohol dependency;
 - An offender on a community rehabilitation order under the Powers of Criminal Courts (Sentencing) Act 2000, which includes a requirement to accept treatment for drug or alcohol dependency;

- Offenders released from prison on license under the Criminal Justice Act 1991, the Criminal justice act 2003 or the Crime (Sentences) Act 1987 subject to an additional requirement to undergo treatment for drug or alcohol dependency; and
- People subject to equivalent provisions under Scottish criminal justice legislation.
- Where the recipient is placed by the courts under a condition or requirement relating to a drug and/or alcohol dependency.

Use of direct payments

11. What can direct payments be used for?

- 11.1 Where a person is eligible to receive services from the council they may be eligible to receive direct payments in order that they can organise their own care and support either as an on-going provision or as a one off direct payment for such things as respite care.

12. What can an adult spend their direct payment on?

- 12.1 Direct payments can be used to purchase most services for persons who are ordinarily resident in Herefordshire that meet the needs and outcomes agreed in their support plan. For example, the types of services that can be purchased, can include:
- Personal care
 - Purchasing equipment
 - Community activities or day care
 - Short-term breaks, such as respite care
 - Help with maintaining a hygienic and habitable home where they are incapable of doing it themselves.
 - Community care services for disabled parents to assist with parenting tasks.
- 12.2 This may involve a person contracting with an agency to provide services or becoming an employer and recruiting their own personal assistant.
For more examples of what direct payments can be used for see Appendix 2.

13. What can a carer spend their direct payment on?

- 13.1 Direct payments can be used to provide a carer with practical help and support in their caring role to meet their physical, mental and emotional wellbeing. The test for ordinary residence determines which local authority would be responsible for meeting the needs of a carer. For carers, the responsible local authority will be the one where the adult for whom they care for is ordinarily resident.
- 13.2 There may be some cases where the carer provides care for more than one person in different local authority areas. In these circumstances, the council will consider how best to cooperate on and share the provision of support. It may have an agreement to jointly fund the support for the carer, or it may that overall

responsibility for certain aspects. For example, it may lead on reviews because it is geographically closer to the carer's home.

- 13.3 The types of practical help and support for a carer may include enabling them to:
- develop and maintain family and other personal relationships
 - engage in recreational activities
 - maintain a habitable home environment
 - manage and maintain nutrition for themselves and their family
 - engage in work training and education

For further information about how a carers needs can be met refer to the care and support meeting needs policy. For more examples see Appendix 2.

14. What can I spend direct payments on for my child?

- 14.1 Direct payments are designed to give flexibility in purchasing support. Ideas on how a direct payment could be used to support a child can be discussed with a social care practitioner. The important thing to remember is that the direct payment must be used to meet the assessed needs of a child. In general a direct payment can be used for:

- Providing assistance with personal care by employing your own personal assistants
- Assistance with employment costs such as payroll and pension auto enrolment and initial start-up costs, such as advertising and Disclosure and Barring Service (DBS) checks
- Contracting with an agency to provide care services
- Assistance to purchase short breaks (respite), other than those already purchased (commissioned) by the council
- Assistance to access facilities to promote social inclusion, including leisure or social activities

15. What can direct payments not be used for?

- 15.1 Direct payments cannot be used for any of the following purposes:-

- To purchase services for the direct payment recipient from a provider that Herefordshire Council or the NHS, has already directly commissioned for them, however a person can purchase services from another council, for example if the person lives near the border of another area and wishes to use services in that area.
- To purchase items that do not meet the agreed outcomes in a person's support plan.
- To pay for personal or household expenses, such as personal loans, utility and household bills, rent or mortgage payments.
- As at the date of this policy, direct payments in Herefordshire cannot be used to purchase long term care in a care home.

- To purchase services or equipment that should be funded by other types of financial support, such as health services the NHS provides, or disabled facilities grants.
- To purchase a service for someone who is no longer an ordinary resident of Herefordshire other than by prior agreement in writing with Herefordshire's adult and children's services and the persons funding authority.
- To secure services from a spouse or a partner with whom they live, or from a close relative or their spouse or partner who live in the same household as the direct payment recipient. This does not include close family members who live elsewhere. Examples of personal relationships include:
 - your spouse (husband or wife)
 - your civil partner
 - your partner whether you are unmarried or part of a same sex couple or
 - a close relative who lives with you or the spouse or partner of that close relative

A close relative is a person that you are related to including one of the following:

parent or parent in law, aunt or uncle, grandparent, son/daughter, /son law/daughter in law, step son or daughter, brother or sister and partner of any of the above.

This restriction does not apply where a close family member is providing management and/or administration support to the direct payments holder in cases where the council deems this to be necessary. If a family member is being paid for administration services any payment made to them must comply with HMRC regulations.

In 'exceptional circumstances' where the council is satisfied that it is necessary to meet a person's needs satisfactorily, the council will allow people to use direct payments to secure services from a family member or partner living in the same household. For details of what may constitute exceptional circumstances please see Appendix 3.

- The direct payment cannot be used to pay for the services of a self-employed assistant unless proof of their self-employed status has been evidenced. If their status is not conclusive the council will be unable to accept them as self-employed and they will have to be paid through PAYE.
- A carer cannot use a direct payment to pay themselves for care and support provided to the person they care for.
- A carer cannot purchase support from an agency or employ a personal assistant to provide personal care or a sitting service for the person they care for unless the person they care for has no eligible needs.

Setting up and managing a direct payment.

16. Information about setting up a direct payment.

- 16.1 The availability of direct payments will be included in universal information services that the council provides. This will allow people to be fully aware of what direct payments are and what they can be used for. In addition to this general information the council will explain to people what needs could be met by a direct payment during the care and support planning process.
- 16.2 It is expected that most requests to receive direct payments will occur during the assessment or support planning stage; however the council will consider requests for direct payments made at any time and will have processes in place to respond to requests, for example when the support plan is being reviewed.
- 16.3 Direct payments will be an integral part of the support plan/child in need plan option when looking at ways of meeting the persons assessed and eligible needs.
- 16.4 If a person is interested in direct payments they will receive advice and guidance about direct payments and how to manage them. This includes being provided with a range of [Direct payments factsheets](#) and being informed about;
- what direct payments are
 - how to request one, including the use of nominated and authorised persons to manage the payment
 - the responsibilities involved in managing a direct payment and being an employer
 - explanation of the direct payment agreement
 - where to get support from the council, and details of what support and information is available from local providers
- 16.5 A social care practitioner or direct payment officer will be the initial source of information and advice during the assessment and support planning process for adults. The social care practitioner will be the initial source of information for children's and families.

17. Managing a direct payment.

- 17.1 Most recipients of direct payments will be able to take full and complete responsibility for the management of the services they require and others may need to get help to get started. Some people may need support on an ongoing basis. Support and advice can come from a wide variety of sources.
- 17.2 Where someone needs assistance to manage direct payments, ways can be of delivering this so that adequate help is available over a sustained period, not just for the set-up period. Recipients may choose to ask family or friends, or advocacy or support groups to help them. They may also choose to buy in assistance, for example, with keeping records, management of day-to-day relationships with staff or using a payroll service.

- 17.3 In certain circumstances a trust may take on the employment of staff and the financial management of the payment, In such cases, the council will seek to establish that there is an understanding by those appointed to manage the administration of the payment of what is involved before making direct payments.

18. Direct payment support

- 18.1 The council has a team of direct payment officers who can help adults with direct payment queries, including information on the services and support available. There are also fact sheets on the council's website or from a direct payment officer, providing information on: using an agency; employing a personal assistant; acting as an authorised person; carer's direct payments as well as general advice and information. The social care practitioner will be the initial source of information for children's and families.
- 18.2 There are organisations that can provide independent and impartial advice, and support to people who are interested in learning more about direct payments as well as providing support and specialist advice such as:
- Help with insurance, recruitment, training, employment, contracts of employment, HMRC responsibilities, pension auto-enrolment, and national insurance.
 - Support and advice about employment law, providing advice and support to sort out difficulties with employees
 - Calculating holiday entitlement, notice, redundancy pay etc. for employees
 - Providing a payroll service and payslips
 - Easily accessible advice and support about payroll issues
 - Managed accounts
 - Support to process Disclosure and Barring Service checks (DBS)
- 18.3 Information about 'Approved Providers' and the services they offer is available

[Approved providers for direct payment support](#)

19. Disclosure and barring service (DBS) checks

- 19.1 Herefordshire Council recommends that DBS checks are carried out on all employees, including existing and new employees. The cost of the check should be met from the direct payment funds.
- 19.2 At present, when employing people via direct payments a DBS check is at the discretion of the employer, with the exceptions of the following where a DBS must be undertaken:
- where they are required by law for staff working with vulnerable adults
 - where there is a child aged 16 or less living in the household
 - where the social care practitioner has assessed that a person may be vulnerable or other vulnerable people living in the household may be putting themselves at risk if a DBS check is not carried out

- where there is an authorised person appointed the regulations specify that if the authorised person is not the spouse, civil partner, partner, close relative (or spouse or partner of a close relative) or friend involved in the provision of care of the person lacking capacity, then the council will obtain a DBS check for that authorised person, as a further protective measure for the person lacking capacity. For example, the authorised person may be an independent care broker or a solicitor acting as a professional deputy, who may not previously have been personally known to the service recipient.

20. Role of the person receiving a direct payment.

- 20.1 The person receiving the direct payment, their nominated, or authorised appointed person is entering in to a contractual agreement with adult or children's services so it is important that they make sure they fully understand the terms of the agreement and what is involved. A copy of the agreement can be found at Appendix 4
- 20.2 The council can give advice to the recipients on the responsibilities of managing a payment and whether the person in receipt of a direct payment needs to register with HM Revenue & Customs (HMRC) as an employer. Becoming an employer carries responsibilities and obligations, in particular to HMRC, and people must be aware of this before agreeing to take up a direct payment, as they are accepting responsibility to act legally as an employer including:
- registering as an employer
 - operating PAYE
 - checking that the potential employee has the right to work in the uk
 - ensuring that any employees have undergone DBS checks before they start work
 - ensuring that they pay their employees at least the national living wage
 - complying with working time directives and adhering to legislation around holiday, sickness, maternity and paternity pay
 - enrolling eligible employees into a workplace pension scheme
 - putting personal liability insurance in place before a person works in their home.
- 20.3 The council's direct payment officers can give access to information and advice on the support available for employers. There is also a separate fact sheet detailing the responsibilities of being an employer and the support available. The social care practitioner will be the initial source of information for children's and families.
- 20.4 Once direct payments have started, the individual or the Nominated/Authorised Appointed Person, will have to organise care to meet the agreed needs as set out in the support plan. This can include recruiting staff, employing an agency maintaining records, managing the direct payment and providing evidence to the council that the money is being used to meet their agreed needs and that the person is central to the management of the direct payment.
- 20.5 Where there appears to be a change of need and/or the support plan appears to no longer meet the needs, the direct payment recipient and/or the Nominated/Authorised Appointed Person, must ask for a reassessment and a new support plan to be agreed.

For example where a person's needs change from support at home to the need for respite breaks, this must be agreed by the council in advance.

- 20.6 The person receiving the direct payment must ensure (if appropriate) that services purchased meet an outcome specified in the support plan. Services that do not meet an outcome may be considered a breach of the direct payment agreement and could result in the direct payment being suspended or withdrawn.

21. Lasting power of attorney

- 21.1 An adult with mental capacity can make a Lasting Power of Attorney (LPA) for Health and Welfare decisions. He or she makes the LPA in the expectation that if they lose capacity, the person appointed as their Attorney will lawfully be able to continue to deal with his or her health and welfare once the power is registered with the office of the public guardian.
- 21.2 An LPA for property and finance can also be made, however the Care Act states that a person has to be authorised under the Mental Capacity Act to make decisions about the adult's needs for care and support in order to qualify as an authorised person in relation to direct payments, therefore an LPA for Property and Finance would not suffice for this purpose. If a person receives direct payments, then the attorney under the LPA could continue to receive payments on his or her behalf. The LPA will be asked to sign a direct payment agreement as the authorised person.
- 21.3 An attorney acting under an enduring power cannot give consent on the person's behalf, as an Enduring Power of Attorney only covers property and finance.
- 21.4 If a person, to the knowledge of Adult and Children's Services, becomes permanently incapable of managing a direct payment, whether alone or with help, Adult and Children's services are required to review the situation and agree whether the direct payment can continue or whether the direct payment may have to cease and the Council commission for the provision of services instead. Currently, such an attorney cannot make decisions about a person's health care or personal welfare.

22. Dealing with emergencies/contingency arrangements.

- 22.1 The council expects each person receiving a direct payment to make arrangements or contingency plans to cope with emergencies and this responsibility is included in the direct payment agreement.
- 22.2 The council will ensure that support and advice on how to prepare appropriate arrangements is offered as part of the support planning process.
- 22.3 The duty of care rests with the council, so in the event of an emergency, if the individual cannot organise care as detailed in their support plan, they should request assistance from the council. Contact details for adults can be found [here](#) Contact details for children's Social Care and be found [here](#)

23. Direct payments and hospital stays

- 23.1 There may be occasions when direct payment recipients require a stay in hospital. Consideration should be given to how the direct payment may be used in hospital to meet non-health needs or to ensure employment arrangements are maintained. Suspending or even terminating the payment could result in the recipient having to break/terminate the employment contract with an employee, potentially causing distress and a lack of continuity of care when discharged from hospital.
- 23.2 The employee's contract of employment should detail whether they will be retained in these circumstances, and any arrangements for paying retainers should be taken account of as part of support planning process.
- 23.3 In these cases, the council will explore with the person, their carer and the NHS the options to ensure that both the health and care and support needs of the person are being fully met in the best way possible. For example, the person may prefer the personal assistant to visit hospital to help with personal care matters. This may be especially so where there has been a long relationship between the direct payment holder and the personal assistant. This should not interfere with the medical duties of hospital personnel, but be tailored to work alongside health provision.
- 23.4 In some cases, the nominated or authorised person managing the direct payment may require a hospital stay. In these cases, the authority will conduct an urgent review to ensure that the person continues to receive care and support to meet their needs. This may be through a temporary nominated/ authorised person, or through short-term authority arranged care and support.

Example of using a direct payment whilst in hospital

Peter is deaf-blind and is required to stay in hospital for an operation. Whilst the hospital pays for an interpreter for the medical interventions, Peter needs additional support to be able to move around the ward, and to communicate informally with staff and his family. The council and the NHS Trust agree that Peter's communicator guide continues to support him in hospital, and is paid for via the direct payment, as it was when Peter was at home. Personal and medical care is provided by NHS staff but Peter's communicator guide is on hand to provide specialist communication and guiding support to make his hospital stay as comfortable as possible.

24. What if a bankrupt person requests direct payments?

- 24.1 If a person requesting a direct payment has been made bankrupt they must ensure that this is made clear to the council at the time they apply.
- 24.2 The person can nominate someone else to manage their direct payment, by an account in the name of a third party, or managed account provider.
- 24.3 If there is any doubt as to the security of a direct payment account, the direct payment may be refused.

25. What if someone is already using direct payments and is declared bankrupt?

- 25.1 The council will seek immediate advice from the Official Receiver/Trustee as to the security of the direct payment account. In the event of the account being subject to the terms of the bankruptcy, the direct payment monitoring team must be informed immediately. Payments to the account will be suspended until alternative arrangements can be made for another account holder or arrange a directly commissioned service.
- 25.2 The council will ensure that any money paid into a direct payment account is safe and will not be included in any bankruptcy proceedings. The customer will have bankruptcy papers, which will determine which assets are included; they will also have a named Official Receiver/Trustee to oversee the bankruptcy. The council will obtain copies of the bankruptcy papers and also telephone the Official Receiver/Trustee for advice as to the security of the direct payment account.

How direct payments are calculated and paid

26. Calculating the cost of the direct payment

- 26.1 Whether in adult's or children's services the direct payment will be an amount that is sufficient to meet the needs the council has a duty to provide.
- For adult services, the direct payment amount is derived from the personal budget as set out in the care and support plan
 - For carer's the assessing officer will determine an amount sufficient to achieve the unmet outcomes identified in the support plan.
 - For children's services the assessing officer will decide the direct payment amount based on a reasonable amount needed to purchase the eligible service(s).
- 26.2 This means that the direct payment should be sufficient to enable the recipient to lawfully secure a service of a standard that adult or children's services considers is reasonable to fulfil the outcomes to which the payment relates.
- 26.3 The council will consider whether the needs to be met via a direct payment will result in any on-costs, such as those associated with being an employer. Costs, such as employer's national insurance, tax, holiday pay, pension, and employers liability insurance, and the cost of providing support with payroll and management of the account will be incorporated into the personal budget amount where it is clear that the use of a direct payment to meet needs will incur these costs.
- 26.4 Under the Pensions Act 2008 every employer must put eligible employees into a pension scheme and contribute towards it. This is called auto-enrolment. The Government has set minimum levels of contributions that must be paid to the workplace pension scheme by the employer and employee. The council will only fund the minimum employer contribution from the direct payment. This will be based on qualifying earnings between the lower earnings threshold and the upper earnings threshold. The Secretary of State will review these amounts each tax year.

- 26.5 Adult or children's services are not obliged to fund additional costs associated with the persons preferred method of securing the service, or costs incurred by the person at their discretion, for example, non-statutory liabilities such as an ex-gratia bonus or overtime payments to a personal assistant.
- 26.6 Adult or children's services may however decide that they are able to increase the amount to enable the person to secure his or her preferred service if it satisfied that the benefits of doing so outweigh the costs and that it still represents the best value for money.
- 26.7 Direct payments recipients can use their own resources to purchase additional services if they wish to do so.
- 26.8 A preventative strategy may necessitate a higher investment to achieve long-term benefits and savings. Provision of direct payments that allow a person to remain in their own home may represent long term savings if that person does not then require hospital or residential care. Similarly the provision of direct payments to a person in need of rehabilitated care may result in a more sensitive and individualised service, which may in turn ease a person's recovery.

27. How and when will the direct payment be made?

- 27.1 A separate current account or payment card account must be used for a direct payment. This has to be in the name of the person receiving the direct payment or may be a third party if agreed by the person in receipt of the direct payment and adult or children's services. The account cannot have an overdraft facility as the budget should be managed to avoid overspending.
- 27.2 The first payment will only be made once the support plan has been agreed and the signed direct payment agreement and BACS form (if not chosen a payment card account) have been received.
- 27.3 Direct payments will be made by Bankers Automated Clearing Service (BACS), into the recipients direct payment account every 4 weeks in advance, or every 13 weeks in advance for children. Carers direct payments are usually made as a one off payment.
- 27.4 The amount of the direct payment may change following a review of assessed needs. If the review results in an increase in direct payments the additional funds may be made as a separate payment, or included in the next scheduled payment. Direct payments are paid in advance, so if the review results in a decrease in direct payments, no further payments will be made until the amount of the overpayment has been recovered. The recipient or the person managing the direct payment will receive remittance advices with details of payments made. The council may also make changes to the direct payments at any time, giving service users at least 4 weeks' notice in writing.

28. Payment for goods and services from the direct payment account

- 28.1 All payments for goods and services to meet assessed needs identified in the care and support plan must be paid from the direct payment account. Suitable methods of payment for variable payments are cheque, bank transfer or direct debit. A standing order should only be used for regular payments for items such as payroll fees, or gym membership. It is more difficult to control payments that are made by standing order, because if the cost of goods or services change or end you may under or over pay. The direct payment recipient is responsible for chasing the recovery of any overpayments made.
- 28.2 Payments for goods and services for which a person has been given a direct payment to meet assessed needs should not be paid for from the person's personal account. Funds can only be transferred from the direct payment account to reimburse costs paid from personal funds on the agreement of a direct payment officer and only in exceptional circumstances.
- 28.3 Cash payments cannot be made unless in exceptional circumstances and agreed with adult or, children's services, or a direct payment officer. A petty cash recording system will be set up to record and account for the cash withdrawn.

29. Payment card accounts

- 29.1 Payments can be paid into a payment card account, which the council will open for the recipient. A debit card will be issued which can be used for chip and pin transactions. The recipient will also be able to access an online portal to manage the payment of their care and support by bank transfer, standing order or direct debit.
- 29.2 If the option of a payment card is chosen, receipts for support and services to meet assessed needs will need to be retained by the recipient as the council may ask to see them. The council will be able to monitor how the direct payment is being spent so it will not be necessary for monthly bank statements and expenditure records to be kept and submitted to the council.
- 29.3 The use of a payment card account has benefits for the direct payment recipient and the council but a 'traditional' direct payment paid into a bank account will be available if this is what the person requests and this is appropriate to meet needs.

30. Temporary and short term residential care arrangements.

- 30.1 Direct payments cannot currently be used to pay for people to live in long-term care placements. They can be made to enable people to purchase a short stay care home for themselves provided that the stay does not exceed a period of four consecutive weeks in any 12-month period. This could be used for example to provide a respite break for a carer.

- 30.2 The Regulations specify that where the interim period between two stays in care homes 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. On the other hand, if two stays in care homes are more than four weeks apart then they are not added together.
- 30.3 Once a direct payment recipient has had four consecutive weeks in care homes, or two or more periods separated by less than four weeks which added together total four weeks, then they cannot use their direct payments to pay for any more services in a care home setting until 12 months have passed from the start of the four-week period. On the other hand, as long as each stay is less than four weeks and there is an interim period of at least four weeks between two or more stays which added together exceeds four weeks, then the service recipient may use their direct payments to pay for residential breaks throughout the year.
- 30.4 People can receive additional weeks in a care home once they have reached the four-week maximum. They cannot purchase the stay using their direct payments, but if the council and the person are in agreement that a longer stay is needed, it can still be arranged through a directly commissioned service.
- 30.5 The time limit is imposed to promote people's independence and to encourage them to remain at home rather than moving into long-term home placement. Where a person is constantly using the direct payment to pay for a short-term care home stays, the council will consider whether to conduct a review to ensure that the support plan is still meeting needs.

Example – Direct Payments for short-term residential care

Joan has one week in a care home every six weeks. Because each week in a care home is more than four weeks apart, they are not added together. The cumulative total is only one week and the four-week limit is never reached.

Peter has three weeks in a care home, two weeks at home and then another week in a care home. The two episodes of time in a care home are less than four weeks apart and so they are added together making four weeks in total. Peter cannot use his direct payments to purchase any more care home services within a 12-month period.

- 30.6 Where someone is discharged from hospital and requires support after being through reablement or where a regular carer is not able to offer their support for a short period and it is assessed that the person needs help at home, this could be offered via a direct payment.
- 30.7 In these situations it is important to ensure that the assessment process is completed quickly to enable a direct payment to be offered in time for the care services to be engaged.

31. Additional sources of funding

- 31.1 To enable people to maximise their life choices there is a range of funding available other than social care funding.

- 31.2 It is important to ensure that all individuals maximise their income through the welfare benefit system. Welfare benefit checks will be undertaken when a financial assessment is carried out to establish any client contributions towards the direct payment that must be paid. If it is identified that an individual may have an entitlement to welfare benefits the financial assessment officer will make them aware of how to claim, and where appropriate refer them to the relevant benefits provider for assistance with making a claim.
- 31.3 The council will cost packages of care on the assumption that a person will claim all the benefits and additional sources of funding to which they are entitled.
- 31.4 Health services will fund a wide range of health products, aids and adaptations and enter into joint funding arrangements with the council where there are significant health implications.

32 Client Contributions – Adults only

- 32.1 The council will carry out a financial assessment with the person or their financial representative to establish how much, if any, a person has to contribute towards their direct payment.
- 32.2 The client contribution will be deducted from the direct payment. For further information about financial assessments and charges please read the Care and Support Charging Policy.
- 32.3 The assessed client contribution must be paid into the direct payment account so there are sufficient funds to pay for the care and support required to meet assessed needs, as outlined in the support plan. It is sometimes necessary to pay the direct payment without deducting the assessed client contribution, known as a gross payment, and to invoice for the contribution instead.

Example – Direct payment paid gross

Jane receives care from an agency arranged by the council which costs £150 per week. She also receives a direct payment to pay for attendance at community activities. The amount of her direct payment is £50 per week, but her assessed client contribution is £56.20 per week. As her assessed contribution is more than the amount of her direct payment it is not possible to deduct it. Instead the direct payment will be paid gross and she will be invoiced by the council for her client contribution.

- 32.4 Any arrears in client contribution will be highlighted in the direct payment monitoring report and should be paid into the account within 14 days. If there is a change in circumstance that affects a person's ability to pay the assessed charge the welfare and financial assessment team should be notified immediately. If the arrears are not repaid into the direct payment account an invoice for the amount of the debt will be raised. The council will consider an arrangement to pay the debt in instalments, if it considers it is appropriate.

33. Personal top-up

- 33.1 If the direct payment recipient chooses to secure the services of an agency that does not have a contract with the council, the cost of care may be more expensive than the

amount received as a direct payment. In this situation, the individual will need to make a payment from their personal funds for the difference in costs, this is known as a top-up. If the invoice is being paid in total from the direct payment account the top up must be paid in before any additional costs are paid for.

- 33.2 If a person chooses to purchase extra support from an agency, in addition to that identified in the support plan to meet their assessed needs, a top-up should also be paid into the direct payment account to pay for this. The person may prefer the agency to invoice them separately for any personal top up.
- 33.3 If a person chooses to arrange extra support from their personal assistant/s they are also responsible for additional employment costs incurred, such as accrued holiday, national insurance contributions, employers national insurance, pension contributions, and redundancy payments, if appropriate. These additional costs must be paid as a top-up to the direct payment account
- 33.4 If a personal assistant is employed in more than one role only the role/s relevant to meet the needs identified in the care and support plan can be paid from the direct payment. For example if a person is employed as a gardener and as a personal assistant to provide personal care, but gardening is not an assessed need in the care and support plan, only the employment of the role of personal assistant should be paid from the direct payment. HMRC or a payroll provider can advise on the administration of payroll in these circumstances.
- 33.5 Any non-payment of personal top-up will be highlighted in a report when the direct payment is financially monitored. The direct payment recipient will be asked to repay any shortfall in the account due to overspending of direct payment funds, as a result of not paying in their personal top-up. If the top-up funds are not repaid, an invoice will be raised.

Terminating Direct Payments

34. Discontinuing direct payments.

- 34.1 A person to whom direct payments are made, whether to purchase support for themselves or on behalf of someone else, may decide at any time that they no longer wish to continue receiving direct payments. In these cases, the council will ensure there are no outstanding contractual liabilities, and conduct a review of the support plan to consider alternate arrangements to meet needs.
- 34.2 If terminating a direct payment, the council will ensure there is no gap in the care and support. Where a decision has been made to terminate a direct payment, the council will conduct a revision of the support plan to ensure that the plan is appropriate to meet the needs in question. Either the direct payment recipient or the council can give four weeks' notice to terminate the direct payment.
- 34.3 Where the direct payments are used to employ personal assistants the council give sufficient notice of termination to ensure the direct payment recipient/employer is able to give the employee appropriate notice under their contract of employment.

- 34.4 Direct payments will be discontinued when a person no longer needs the support for which the direct payments are made. This might happen in situations where the direct payments are for short-term packages when leaving a care home or hospital. Direct payments for after-care services under section 117 of the Mental Health Act would also cease once the clinical commissioning group and council are satisfied that the person concerned is no longer in need of such services.
- 34.5 There may be circumstances in which the council discontinues direct payments temporarily. An example might be where there are safeguarding concerns or when an individual does not require assistance for a short period because their condition improves and they do not require the care and support that the direct payments are intended to secure. The council will need to discuss this with the person, their carer, and any other person how best to manage this. The person should be allowed to resume responsibility for their own care after the interruption, if that remains their wish, unless there has been a change of circumstances, which means that the conditions in the Act and/or Regulations are no longer met. If there is a change of circumstances that affects the support plan the council will revise the plan to ensure that it is still meeting needs.
- 34.6 The Care and Support (Direct Payments) Regulations 2014 set out that a direct payment must not be provided under certain conditions, such as where the recipient is placed by the courts under a condition or requirement relating to a drug and/or alcohol dependency.
- 34.6 Where direct payments are discontinued as a result of criminal justice legislative provisions, the council will make timely arrangements for services to be provided in lieu of the direct payments, to ensure continuity of support.
- 34.7 Where the direct payment is made to a payment card account the council may put a deposit only marker on the account where there is inappropriate spend pending investigations.
- 34.8 The council may suspend the direct payment pending investigation of inappropriate spend, where funds have been spent on goods or services which do not meet the person's assessed needs identified in the support plan/child in need plan. We will write to you advising you of this course of action and seek to remedy any issues and explore whether additional support in the management of the direct payment is appropriate.
- 34.9 Where a direct payment is used to employ a personal assistant a direct payment may be suspended when there is evidence that the employer is not acting legally by complying with HMRC regulations or working time directives, whilst the options of the persons suitability to act an employer is considered and additional support explored.
- 34.10 The council will only terminate a direct payment as a last resort, unless there is clear and serious contradiction of the Regulations or where the conditions in sections 31 or 32 of the Care Act are no longer met (except in cases of fluctuating capacity). Herefordshire will take all reasonable steps to address any situations without the termination of the payment. This may include exploring additional support with management of the account and employer responsibilities.
- 34.11 The council will discontinue payments if the person fails to comply with a condition imposed under regulations to which the direct payments are subject, or if the council

no longer believes it is appropriate to make the direct payments. For example, the council might discontinue the direct payment if it is apparent that they have not been used to achieve the outcomes of the support plan, or when a person fails to comply with the financial monitoring requirements.

- 34.12 Direct payments will cease if the person no longer appears to be capable of managing the direct payments or of managing them with whatever support is necessary.

35. Recovering direct payments

- 35.1 Direct payment recipients will be asked to repay funds into the direct payment account if it has been used to pay for goods or services which do not meet the agreed assessed outcomes in the support plan.
- 35.2 When the direct payment ends the closing balance, of the direct payment must be returned to the council.
- 35.3 The council will arrange an invoice for any funds that are not repaid to the direct payment account or directly back to the council. Non-payment of the invoice may be pursued through the council's debt recovery process.

36. Discontinuing direct payments in the case of persons who lose capacity to consent

- 36.1 Where someone with capacity was receiving direct payments but then loses capacity to consent, the council will discontinue direct payments to that person and consider making payments to an authorised person instead. In the interim, the council will make alternative arrangements to ensure continuity of support for the person concerned.
- 36.2 If the council believes the loss of capacity to consent to be temporary, it may continue to make payments if there is someone else who is willing to manage payments on the person's behalf. This situation should be treated as strictly temporary and closely monitored to ensure that, once the person has regained capacity, they are able to exercise overall control over the direct payments as before. If the person's loss of capacity to consent becomes prolonged, then the council should consider making more formal arrangements for an authorised person to take over receipt of the direct payments on that person's behalf. The council should make clear that the arrangement is designed to be temporary, so that the person managing the direct payment does not enter into any long-term contractual arrangements.

37. Discontinuing direct payments in the case of persons lacking capacity to consent

- 37.1 Direct payments will be discontinued if the council is no longer satisfied for reason that the authorised person is acting in the best interests of the beneficiary, within the meaning of the Mental Capacity Act 2005. The council might also wish to discontinue the direct payments if it has sufficient reason to believe that the conditions imposed under regulations on the authorised person are not being met. The authority may wish to consider if someone else can act as an authorised person for the person

lacking capacity, or whether it will have to arrange services for them in place of the direct payments.

- 37.2 Section 32 of the Care Act 2014 direct payments will be discontinued where the local authority has reason to believe that someone who had lacked capacity to consent to direct payments has now regained that capacity on a long-term or permanent basis. The authority should not terminate direct payments to the authorised person before beginning to make direct payments to the service recipient themselves or to arrange services for them, according to their wishes. If the local authority is satisfied that the regaining of capacity will only be temporary, then it can continue to make direct payments to the authorised person if during the period that the adult has the capacity to make the request and is capable of managing the direct payment, the adult will manage the payments for him or herself.

Reviews and Monitoring

38. Reviewing the direct payment

- 38.1 It is necessary as with any new package of care to monitor and review direct payments closely in the first few months. The direct payment review should be incorporated into the initial review of the support plan 6-8 weeks after the direct payment agreement has been signed and will include discussions, such as managing the direct payment, and long term support arrangements that may be appropriate, such as payroll, insurance cover, use of support services.
- 38.2 If there are concerns about stability of the care package or the ability of the person to manage their care it will be necessary to undertake a risk assessment. This will weigh the relative gains for the person and risks involved.
- 38.3 If the direct payment recipient is employing people, the council will within the first 6 months check to ensure that the individual is fulfilling their responsibilities as an employer, in particular that they submitting PAYE returns to HMRC as well as paying tax and national insurance contributions.
- 38.4 A change in needs is identified as part of a care assessment, alternative ways of those needs may be identified which result in a change to the amount or use of direct payment, including the ending of the direct payment.

39. Financial Monitoring

- 39.1 The council is accountable for the public money it manages. This includes direct payments funding. Direct payments are part of the accounting process and as such accurate records are required to identify how this money is used to provide services to individuals.
- 39.2 In addition to ensuring that the persons care and support needs are being met by the direct payment, financial monitoring will be undertaken to assess the person's ability to manage the financial responsibility for purchasing services. All new direct payments will be monitored within the first 3 months of starting to ensure that all legal obligations such as submissions to HMRC are being met and to identify if any additional support is needed.

- 39.3 The monitoring review will include reviewing spend to ensure there is sufficient money to pay for employment related responsibilities (where applicable) and to check the client contributions that are being paid into the account.
- 39.4 Financial monitoring is also carried out to safeguard direct payment recipients from financial abuse or lack of care provision through insufficient funds.
- 39.5 If a direct payment is made to a payment card account the council will have access to all transactions made and regular submission of spending returns will not be required. However, all documents should be retained as the council will ask to see samples of these, and where inappropriate spend has been identified will ask to see all evidence of spending. If this information is not provided to verify expenditure the council may consider transferring the payment to a managed account.
- 39.6 If a payment card has not been chosen and the payments are made to the individuals direct payment account, there will be two levels of monitoring:
- **Standard-** The direct payment recipient will be required to submit regular returns of their spending, including receipts and bank statements to the direct payment officer upon request. Accounts will then be submitted every six months. If it is identified that additional support is needed or there are concerns about the management of the direct payment, such as non-payment of client contribution; non-payment of PAYE, the accounts will continue to be submitted on a 3 monthly basis.
 - **Light-Touch-** Where the direct payment is being well managed, without support. The direct payment recipient will need to keep spending receipts and bank statements but will be asked to submit an annual spending return.
- 39.7 The monitoring team will contact the direct payment recipient to remind them to submit this information, if overdue. If accounts are not submitted following reminders, arrangements may be made for future direct payments to be paid to a payment card or managed account, so that expenditure from the direct payment can be verified.
- 39.8 The direct payment recipient will be placed on the 'Standard' financial monitoring once the direct payment has been put in place. The timetable for providing information will be discussed at the direct payment set-up meeting.
- 39.9 A risk based approach will be used to assess whether the person's suitability for moving on to a 'Light Touch' monitoring is appropriate.
- 39.10 People will not be forced on to light touch monitoring if they express a preference to submit regular returns.
- 39.11 When the direct payment has been monitored a report will be sent to the direct recipient if areas of concern have been identified. This might include; non-payment of contribution or top-up; low balance/overspending; inappropriate spend or excess funds. The report will outline any action that needs to be taken.
- 39.12 If the direct payment monitoring identifies funds in excess of that needed to meet the agreed outcomes in the support plan, this will be shown in a monitoring report. A

breakdown of how the surplus has been calculated will also be provided. The calculation will take into account any known liabilities and will leave an additional 4 weeks payment as a contingency. The social care team will confirm whether the surplus funds are to be returned and a full review of the care and support may be needed.

40. When a direct payment is refused

- 40.1 In some circumstances it may not be possible for adult and children's services to agree a direct payment for an individual. This may be because they become exempt under legislation, where there is evidence of inability to manage the budget, or where there are concerns that a person isn't able or willing to act legally as an employer.
- 40.2 The reason for the decision will be clearly documented, discussed and communicated in writing to the person and where appropriate with any family or friends.
- 40.3 The person will also be advised of their rights to challenge the decision and how to use the complaints procedure to do this.
- 40.4 This may involve a meeting of the parties involved to try to find a solution to the issues raised in the formal rejection. This could include the person and their representatives, and representatives from the relevant council department.

41. Complaints procedure

- 41.1 This is available to all direct payment recipients and can be used to make a complaint about services or procedures undertaken by the council.
- 41.2 A person who is considering direct payments may use this procedure to formally complain about the process, the decision making or the amount offered as a direct payment but not about the services they have purchased.
- 41.3 Individuals, their families or carers who wish to make a complaint, comment or compliment should contact the Complaints Team based at:

Herefordshire Council
Plough Lane,
PO Box 4
Hereford
HR4 0XH

- 41.4 A complaint can be made in writing to the above address or on line using the link below.

[Make a complaint about health and social care services | Make a complaint about health and social care services | Herefordshire Council](#)

42. Social Care Fraud

42.1 This type of fraud is when a person who receives social care services:

- Is dishonest about their financial status or care and support needs
- Misuses direct payments provided to pay their care
- Uses the direct payment account for money laundering

42.2 Some types of social care fraud include;

- Using money that has been claimed from the council to pay for care for their own personal use.
- Submitting false evidence that a direct payment is being used on care
- Being dishonest about financial circumstances or care and support needs when asking for social care funding.
- Not telling the council when a service user has died, and keeping their direct payment money.
- A person abusing their position of care to take money from a vulnerable person.
- Paying money into the direct payment account that has been gained from criminal conduct.

42.3 The council has a duty to protect the public purse and has a zero tolerance approach to fraud and corruption. Action will be taken against any attempted or actual fraudulent acts relating to direct payments.

42.4 Everyone has a duty to report any concerns of fraud, or misuse of direct payments funds, and any report of fraud against the council will be taken seriously.

42.5 To report social care fraud contact the council's advice and referral team on 01432 260101 or e-mail. : ASCAdviceandReferralTeam@herefordshire.gov.uk

43. Auditing of processes

43.1 The council's internal audit department will periodically review direct payments and associated processes, to ensure compliance with this policy and with the agreed terms and conditions in the direct payment agreement.

Appendix 1

Appointing an authorised/ appropriate person

Appointing an authorised/suitable person

Chapter 23 sub section 32 of the Care Act 2014 Statutory Guidance sets out clearly who can be considered an authorised person in terms of receiving a direct payment on behalf of a person who lacks mental capacity to manage one themselves. It outlines what conditions have to be met before the local authority must make payments to the authorised person if requested.

A person is authorised to receive payments if:-

- a) The person is authorised under the Mental Capacity Act 2005 to make decisions about the adult's needs for care and support (this would be a person who holds a valid Lasting Power of Attorney for Health and Welfare, or who has been appointed as a deputy for Health and Welfare decisions by the Court of Protection).
- b) Where the person is not authorised as above, but a person who is so authorised agrees with the local authority that the person is a suitable person to whom to make direct payments.
- c) Where the person is not authorised as mentioned in Paragraph (a) and there is no person who is so authorised, the local authority considers that the person is a suitable person to whom to make direct payments.

The conditions outlined in the Care Act are as follows:-

Condition 1 is that, where the authorised person is not authorised as mentioned in subsection [\(4\)\(a\)](#) but there is at least one person who is so authorised, a person who is so authorised supports the authorised person's request.

Condition 2 is that—

- (a) the local authority is not prohibited by regulations under section 33 from meeting the adult's needs by making direct payments to the authorised person, and
- (b) if regulations under that section give the local authority discretion to decide not to meet the adult's needs by making direct payments to the authorised person, it does not exercise that discretion.

Condition 3 is that the local authority is satisfied that the authorised person will act in the adult's best interests in arranging for the provision of the care and support for which the direct payments under this section would be used.

Condition 4 is that the local authority is satisfied that the authorised person is capable of managing direct payments—

- (a) by himself or herself, or

- (b) with whatever help the authority thinks the authorised person will be able to access.

Condition 5 is that the local authority is satisfied that making direct payments to the authorised person is an appropriate way to meet the needs in question.

Conditions to be met by the authorised person

As with all direct payments, the council must be satisfied that the beneficiary's needs are met by means of the direct payments and that the recipient (in this case the suitable person) is capable of managing the direct payments.

To help ensure that the authorised person does not mismanage or misuse the direct payments, the Regulations set out a number of conditions that the council should require of the authorised person before it makes direct payments to that person on someone else's behalf.

- Unless the council is satisfied that it is necessary to satisfactorily meet the person's needs, direct payments may not be used to secure services from the spouse, civil partner or partner of a person lacking capacity. Neither can they be used to secure services from a close relative, spouse or partner of a close relative of the person lacking capacity who is currently living in the same household as the person lacking capacity. There may be occasions when the council decides that it is necessary for the authorised person to use the direct payments to secure services from a member of the family of the person lacking capacity. However, such situations are likely to be exceptional and the council should be satisfied at all times that arrangements are made in the best interests of the person lacking capacity.
- The authorised person manages the direct payments on behalf of the person lacking capacity, on the understanding that in doing so, they must act in the best interests of that person. This includes, as far as is reasonably practicable, encouraging and permitting the person lacking capacity to have the fullest input possible into decisions affecting them.
- The authorised person should be required to take all practical steps to ensure that decisions are taken in the best interests of the person who lacks capacity. This may involve consulting other people close to the person lacking capacity, or health and social care professionals where appropriate. To ensure that the service recipient can maintain as much control and independence as possible, the authorised person should be required to notify the council as soon as they believe the person has regained capacity.

Principles of best interest

A person trying to act in the best interests of someone lacking capacity should:

- do whatever is possible to permit and encourage the person to participate, or to
- improve their ability to participate, as fully as possible, in acts and decisions;
- try to identify and take into account all the things that the person who lacks capacity would take into account if they were acting for themselves, including their past and present wishes and feelings and any beliefs and values which would be likely to influence their decisions;

- not make assumptions about what might be in the interests of the person lacking capacity simply on the basis of the person's age, appearance, condition or behaviour;
- assess the likelihood of the person regaining capacity;
- consult others when making decisions, including anyone previously named by the person as someone to be consulted, anyone engaged in caring for the person, family members, close relatives, friends or others who take an interest in the person's welfare, any attorney appointed under a lasting power of attorney made by the person and any deputy appointed by the Court of Protection to make decisions for the person; and
- for any major decisions, make sure a record is kept of the process of working out the best interests of that person.

Where disputes arise

The authorised person may face disagreements with others involved in or concerned for the welfare of the person lacking capacity to consent. Family members, partners and carers may disagree between themselves about how direct payments should be spent, or they may have different memories about what views the person expressed in the past. Carers and family might disagree with a professional's view about the person's care or treatment needs.

The council will support the authorised person to balance these concerns and decide between them. The council will include the person who lacks capacity (as much as they are able to take part) and anyone who has been involved in earlier discussions. It may or may not be possible to reach an agreement at a meeting to air everyone's concerns, but any decision will always be in the person's best interests, following the best interests' principles in the 2005 act.

Advocacy

An advocate may be useful in providing support for the person who lacks capacity to consent either in terms of deciding who should act as an authorised person on their behalf or, subsequent to that decision being made, how the direct payments should be used to meet the assessed needs. Advocates may be especially appropriate if:

- the person who lacks capacity has no close family or friends to take an interest in their welfare;
- family members disagree about the person's best interests;
- family members and professionals disagree about the person's best interests;
- the person who lacks capacity has already been in contact with an advocate; or
- there is a concern about the protection of a vulnerable adult.

Approaches to risk

People lacking mental capacity may not be able to exercise the same level of choice and control as other direct payment recipients. However, direct payments can still provide a vital means of ensuring that choices about the persons care and support can be made by those who are best placed to understand their needs and preferences and who know how to involve them as much as possible in decisions to support their best interest.

The council will take steps to develop a comprehensive risk management strategy, to ensure that where a person is lacking capacity, and may not only be more vulnerable to abuse, but also less able to tell people when it is happening that such circumstances inform the support plan and subsequent arrangements for monitoring and review. It is likely that reviews may need to be conducted more frequently and in person rather than on the telephone, particularly in the early stages of the direct payments being made. The council can consider involving other people known to the person lacking capacity, particularly those consulted when the authorised person was first appointed, as well as independent advocates where appropriate.

The Care Act 2014 and the mental capacity act code of practise specify that independent mental capacity advocates (IMCA's) can be used in care reviews where the person concerned has no one else to be consulted.

Safeguarding

There are various legislative provisions that have been put in place to support safeguarding measures for adults lacking mental capacity. The regulations specify that if the authorised person is not the spouse, civil partner, partner, close relative (or spouse or partner of a close relative) or friend involved in the provision of care of the person lacking capacity, then the council will obtain a DBS check for that authorised person, as a further protective measure for the person lacking capacity.

For example, the authorised person may be an independent care broker or a solicitor acting as a professional deputy, who may not previously have been personally known to the service recipient.

Anyone caring for a person who lacks capacity for the purpose of the Mental Capacity Act 2005 who wilfully neglects or ill-treats that person can be found guilty of a criminal offence under the act punishable by up to five years in prison, or a fine, or both.

In addition, the Fraud Act 2006 created a new offence of 'fraud by abuse of position'. This may apply to a range of people including attorneys under a lasting power of attorney (LPA) or enduring power of attorney (EPA) or deputies appointed by the court of Protection to make financial decisions on behalf of a person who lacks capacity.

Someone acting as an authorised person receiving direct payments may be guilty of fraud if they dishonestly abuse their position, intend to benefit themselves or others, and cause loss or expose that person to the risk of loss.

Without discouraging people from taking up the role of authorised person, councils should also make clear to anyone considering the role the consequences of financial misconduct or other forms of neglect or ill treatment.

The independent mental capacity advocate service was set up as a consequence of the 2005 act to support and represent the views of particularly vulnerable people who lack the capacity to make important decisions about serious medical treatment and changes of accommodation, and who have no family or friends that it would be appropriate to consult about those decisions.

For more information; see department of health, making decisions: the independent mental capacity advocate (IMCA) service (2007), Section 44 of the Mental Capacity Act 2005, and Section 4 of the Fraud Act 2006 guidance on direct payments.

The regulations also provide councils with the power to impose other directions on the authorised person if councils believe that it is necessary to ensure the best interests of the person requiring services to impose other conditions, then this should be done.

Appendix 2 – Examples of what direct payments can be used for

The following are examples only of what direct payments can be used for:

Adults

- (a) A direct payment can be used to pay an independent care agency (the council would expect them to be registered with the care quality commission (CQC) or OFSTED for some children's services), or to employ anyone with the exception of a close relative living in the same household – except where adult's and children's services have agreed that in exceptional circumstances it is the only way a service can be secured to meet the person's needs.
- (b) Direct payments may also be used to enable people who are living in care homes to have temporary access to direct payments to try out independent living arrangements before making a commitment to moving out of their care home.
- (c) Direct payments can be used by people living in care homes to buy a day service place, or engage in an alternative daytime activity. This can be particularly enabling for young people at transition stage as long as it is an agreed and eligible need as identified in the support plan/child in need plan.
- (e) The council may provide direct payments to enable people to purchase for themselves equipment that would otherwise have been provided by adult and children's services.
- (f) Direct payments may also be made to enable people to pay for adaptations, which would otherwise have been provided or arranged by adult and children's services.
- (g) The council may make direct payments for equipment to enable carers to purchase, as a carers service, specific items of equipment that are not provided by adult and children's wellbeing services or the NHS.
- (h) Direct payments cannot currently be used to pay for long term residential care but they can be made to purchase short stays in a care home. Once a direct payment recipient has had four consecutive weeks in care homes or two or more periods separated by less than four weeks, which added together total four weeks, they will not be permitted to use their direct payments to pay for any more care home fees until 12 months have passed since the start of the four week period. Where each stay is for less than four weeks and there is an interim period of at least four weeks between two or more stays, which added together exceed four week, the service user may use their direct payments to pay for residential breaks throughout the year.
- (i) Direct payments can be used flexibly by the service users to purchase alternatives to traditional care, for example gym memberships as an alternative to attending day care. These services should only be included as an alternative, not an addition, to traditional care services. Any such costs need to be **defined** in the support plan/child in need plan and the service users made aware that they will get confirmation from the social worker or direct payment monitoring officer before paying for anything that is not mentioned in the support plan/child in need plan.

Direct Payments for persons in supported living arrangements

Currently, it is not possible to purchase permanent residential care with a direct payment, however direct payments can be used by people living in supported living services to purchase part or all of their care. This can pose a range of issues where the person has a tenancy in a group living arrangement and the whole group is supported by one care agency, in which case the following provisions will apply:-

- (a) Each tenant should have an individual arrangement and support plan and the option to have some or all of their needs met via a direct payment. When setting up supported living in a group situation it is important to commission each service individually.
- (b) Direct payments can be made for equipment assessed as aiding independence by adult and children's services staff; usually an occupational therapist.
- (c) When making a direct payment for the purchase of items of equipment, staff will need to satisfy themselves that the person's needs are met by their own arrangements and they are adequately supported by specialist expertise. This is particularly true in the case of major items, when advice may be needed to ensure that equipment purchased is safe and appropriate.

Direct Payments for Carers

The following are examples only of what a carers direct payments can be used for:

Example 1

Clive lives at home with his son 24 year David who has a learning disability and autism, David is doubly incontinent and at times can become agitated and very vocal. Clive has to provide continence care to David both day and night and has to provide David with emotional support at times when David becomes agitated and is calling out. Clive often has disturbed nights and can become very tired and stressed. David receives a care package including supported activities in the day time when Clive is at work. However the impact on Clive as his main carer when not in his part time job is significant and there is concern that the strain of caring is affecting both Clive and David adversely.

Clive takes the opportunity to say during his carer assessment that he needs some time outside of his current caring/ work balance.

It is decided that David could use his direct payment more flexibly to enable enough replacement care for Clive to take up yoga lessons.

Clive has limited funds and a one off direct payment is awarded for taster Yoga sessions. It is hoped that this direct payment will enable Clive to start yoga activity again. He prefers to practice with others rather than just as a solitary activity and knows that it reduces his levels of stress and will sustain him in his caring role by enhancing his well-being.

Clive is eligible for a direct payment in this scenario because the care he provides his son with is necessary and appropriate and because providing that care has a significant impact on his wellbeing.

Example 2

Anne is her husband's John main carer - they receive one call per day from an agency to assist John in the mornings to get out of bed, washed and dressed and ready for the day. John is increasingly doubly incontinent and will remove or sometimes refuse to wear incontinence pads.

Anne is acutely aware that her house is smelling of urine. Anne wants to replace her carpets down stairs and one of her chairs to assist with maintaining a clean and hygienic environment. The problems are exacerbated by not having a downstairs toilet.

Anne has requested a one off direct payment to assist with flooring that can be easily wiped clean/disinfected. She has been informed that she is not eligible for a grant.

A one off direct payment towards the cost of flooring is provided to Anne as this will reduce the stress and time spent cleaning, as well as providing a more pleasant and hygienic environment.

Anne is eligible for a direct payment in this scenario because the care she provides her husband with is necessary and appropriate and because providing that care has a significant impact on her wellbeing.

A referral for an OT assessment is also made to consider aids and adaptations specifically to consider having a downstairs toilet installed.

Direct Payments for Children

Example 1 - Rachel is a 10-year old girl with severe autism. She requires support in all her personal care and constant supervision. Rachel can often become anxious and present with some difficult behaviors, which means it is better that she has two adults with her at all times. Through direct payments, parents are able to employ personal assistants that can support mother at home to look after her safely whilst Rachel's father is at work. Thus; this has enabled parents to be able to care for Rachel as well as her 2 siblings within the family.

Example 2 - Lisa is a 12-year old girl with significant learning difficulties and epilepsy, which means she requires a lot of attention and supervision from her parents, in particular her mother who is her main carer. Lisa also has a younger sister who often has to take second place in terms of her parents' attention. Direct payment has meant that the family was able to employ a Personal Assistant who is trained in managing epilepsy and who will take Lisa out for a few hours a week. Lisa enjoys being able to do normal things like going swimming, to the cinema or going for a meal and it helps her gaining a sense of independence from her family. At the same time, parents are able to spend some quality time with Lisa's sister.

Appendix 3 “EXCEPTIONAL CIRCUMSTANCES” Employment of co-resident family members.**Background:**

Government guidance states that the local authority may at its discretion agree to the employment of a family member, or partner living in the same household as the direct payment recipient ‘in exceptional circumstances’ (family members living elsewhere are permitted to be employed through direct payments).

Such agreements will not be agreed by the council, unless as the funding authority we can be certain that:

- There are genuine, overwhelming reasons why the family member needs to be employed,
- There is a contractual arrangement for the care-giving by the family member,
- There is no substantial risk of financial or other abuse.

Example – Direct payment paid to a family member where necessary

James has severe learning difficulties as well as various physical disabilities. He has serious trust issues and a unique way of communicating that only his family, through years of care as a child, can understand. The council agrees that using a direct payment to pay for care from his parents is necessary as it is the best way to meet James’s needs and outcomes.

The following may be accepted as exceptional circumstances as long as adequate evidence can be furnished to substantiate the situation:

- For reason of ethnicity or religious beliefs, specific limitations apply to who may acceptably be employed to deliver the care, and there is no likelihood of being able to recruit an appropriate carer locally.
- That delivery of personal care by a third party would cause genuine distress to the cared for person.
- There is a need for live-in care but no appropriate accommodation available.
- Care needs are intermittent and unpredictable, and recruitment or use of an agency to meet such needs is impracticable.
- This was the only practicable way of meeting the care needs during a temporary breakdown of other service arrangements.

How do I substantiate and record exceptional circumstances?

Any decision to follow the employment of a co-resident family member will be fully documented on the service user's case file, the support plan and relayed to the monitoring officer for when monitoring the accounts. The following information will need to be recorded on the Direct Payment in exceptional circumstances form and submitted for authorisation.

- The reason for the application of "exceptional circumstances" (this should be one or more of the reasons listed above).
- The name/s of co-resident family member to be employed
- Actions agreed by service user (where appropriate) to overcome the needs for exceptional circumstances arrangements.
- A date for review of the exceptional circumstances arrangements.
- Authorisation from head of service to apply "exceptional circumstances" and for how long.
- For children authorisation is needed from the Team Manager, Children with a Disability Team.

Review:

It is expected that's cases that have exceptional circumstances applied will be reviewed at least every 6 months. Where the reason is short-term in nature and the service user has agreed actions to overcome the problem the review may be held within a shorter time period. In all cases the review will not exceed 6 months. At each review the information listed 1-5 should be verified and if necessary the arrangement renewed for a defined period pending further review in consultation and agreement with team manager and head of service.

All situations where "exceptional circumstances" have been applied should be subject to regular reviews to ensure that the circumstances and delivery of care remain appropriate. Any concerns will be documented and immediately addressed by the allocated social worker.

Appendix 4 – Direct Payment Agreement

DIRECT PAYMENTS AGREEMENT

This agreement is between:

Herefordshire Council
Plough Lane
HR4 0LE

(Referred to in this document as ('we' or 'us'))

and

The person(s) receiving the direct payment

Name:

Person ID Number:

Address Line 1

Address Line 2

Herefordshire

Postcode

Email address:

Telephone number:

Mobile number:

(Referred to in this document as ('you'))

Please provide your mobile number if you have a payment card and need to make online purchases.

and

Your agent/representative (the person supporting you with your direct payment)

Name:

Person ID Number:

Address Line 1

Address Line 2

Herefordshire

Postcode

Email address:

Telephone number:

Mobile number:

(Referred to in this document as (third party))

Please provide your mobile number if you have a payment card and need to make online purchases.

You will have received a series of factsheets during the process of setting up your direct payment giving you a range of information about the direct payments scheme. This agreement is the document that tells you about your direct payment – your money, how you will be paid and how it will be monitored. It needs to be read with the factsheets and it contains details of the following:

- 1. Basis of the agreement**
- 2. About the direct payment**
- 3. General rules on how to use the money**
- 4. What records you should keep**
- 5. Review of your needs and direct payment**
- 6. If the arrangement should break down**
- 7. Comments, complaints and compliments**
- 8. Ending the agreement**
- 9. Additional terms for an authorised person**
- 10. How your information may be used**
- 11. Herefordshire Council contact details**
- 12. Signatures**

1. Basis of the Agreement

This agreement is made on the basis that:

- 1.1 An assessment of your needs has been completed and you are eligible to receive support services as identified/shown in your Support Plan/Child in Need Plan.
- 1.2 You are willing and able to secure the support/services detailed in your Support Plan/Child in Need plan yourself or with assistance (this may be through your chosen agent or third party), and we are willing to make your direct payment available to you to enable you to buy the support/services you need and as identified in your Plan.

2. About the Direct Payment

When you will be paid

- 2.1 The community wellbeing directorate will make payments every four weeks in advance, on set payment dates. You will receive a payment schedule confirming the payment dates.
- 2.2 The children's and families directorate will make payments every thirteen weeks in advance on set payment dates. You will receive a payment schedule confirming the payment dates.

How you will be paid

- 2.3 Direct payments have to be paid into a separate bank account for ongoing receipt of the payments and management of the funds, so that the council can monitor that they are being used to meet the assessed needs agreed in your support plan. The council can open a payment card account, or you can open your own current account. A 'know your customer' check will be done to verify your identity and address. If the direct payment is being paid to a managed account your chosen provider will open an account on your behalf.
- 2.4 Your direct payment is paid in advance to ensure you have funds to pay for the services you have purchased. Your direct payment account must not have an overdraft facility, as the budget should be managed to ensure that you do not overspend.
- 2.5 The type of bank account will vary depending on who is receiving the payment. Please see the list below.

Direct Payment Recipient	Type of Bank Account Required
A person receiving services who has consented to receiving direct payments.	A dedicated direct payments account in the name of the person only.
A person receiving services who has consented to receive direct payments and has nominated a third party to assist with the on-going management of funds.	A dedicated direct payment account in the name of the person with a third party mandate.
An authorised person who has consented to receive a direct payment to purchase care for a person who lacks capacity.	A dedicated direct payment account in the name of the authorised person only.

- 2.6 One-off direct payments do not require a separate bank account and should be paid directly into the persons existing account, unless they are in addition to an ongoing direct payment.
- 2.7 If you are opening your own current account, you will provide the bank details by completing the bank form provided to you as part of the setting up process. If the payment is being made to a managed account provider, they will provide this information, once you have signed up to their service.

What do I need to pay into the account?

- 2.8 All money you receive for your support needs **must** be paid into this account. This includes your contribution, if you have been assessed as needing to make one, as well as any additional personal top up.
- 2.9 The amount of an adults direct payments we pay you will be reduced by the amount that we have assessed you can afford to pay towards your support. This amount is known as your assessed client contribution. You must pay your assessed client contribution into the direct payment account, so that you have enough money to pay for the care and support in your plan. If your assessed client contribution changes you will need to alter the amount that you pay into the direct payment account.
- 2.10 If you have chosen to use an agency that the council does not contract with and will be meeting the additional costs from your personal funds; or if have chosen to pay for additional hours of support, you will need to pay what is known as a top-up. If the total cost of the care and support is being paid in full from the direct payment account you must pay your top-up into the account before making payment to the agency. This is to ensure that the balance of your account is sufficient to pay for services to meet your assessed needs. The agency may invoice you separately for your top-up. A personal top is in addition to any assessed client contribution. Before agreeing to pay a top-up, you should consider whether you can afford and keep up the payments.
- 2.11 The correct payment of your assessed client contribution and any top up will be calculated during the monitoring of your direct payment. You will be asked to pay any arrears into the account and adjust your payment if it is incorrect.
- 2.12 You are responsible for using your money wisely with the support of your agent or third party. Any bank charges, legal charges or HM Revenue and Customs fines because of mismanagement of the direct payment will be your responsibility.

3 General rules about how to use the money

- 3.1 The direct payment is to buy the services that meet the outcomes detailed in your support plan; you must ensure that arrangements are in place in case of any emergencies. The support plan will be regularly reviewed; you should contact us if you wish to change anything.
- 3.2 If you wish to use a care agency, we recommend that you purchase care from a provider who is registered with the Care Quality Commission who inspect the standards provided by agencies nationally. You can get a list of providers from the council or your chosen direct payment support services provider.

- 3.3 You must use the direct payment legally. If you decide to employ a personal assistant, you are responsible for meeting the legal requirements of being an employer. Herefordshire council does not recommend using self-employed personal assistants. Proof of self-employed status will be required before the personal assistant can be paid from the direct payment, together with their public liability insurance certificate. If a person's self-employed status is not conclusive, the council will be unable to accept them as self-employed and they should be paid through PAYE. If HMRC rule at a later date that the PA is employed you will be responsible for paying any penalties and additional costs.
- 3.4 The council recommends that DBS checks are carried out on all new and existing employees. This is at the discretion of the employer except where there is a child aged 16 or less living in the household or where the social care practitioner has assessed that a person may be vulnerable or other vulnerable people living in the household may be at risk if a DBS check is not carried out.
- 3.5 Please refer to the fact sheets and to HMRC guidance for more information
- 3.6 If you choose to employ a personal assistant, we strongly recommend that you seek advice from an independent support provider on becoming an employer.
- 3.7 Your personal assistant cannot assist you with managing your direct payment, for example, they cannot be a signatory on your bank account and they cannot support you with record keeping.
- 3.8 Any third party person helping you to manage your direct payment cannot have any financial interest in, or be a director of any company providing services funded through the direct payments either as a personal assistant or through a care agency (unless agreed by the council).
- 3.9 If you intend to employ a personal assistant the law says you have to buy Employers Liability insurance before your staff start working for you. The policy will also cover you for Public Liability Insurance.
- 3.10 You **cannot** use the direct payment to employ a close relative or persons living in the same house as you, where the relationship is personal. This restriction does not apply where a close family member is providing management and/or administration support to the direct payments holder in cases where the council deems this to be necessary.

Examples of personal relationships:

- your spouse (husband or wife)
 - your civil partner
 - your partner whether you are unmarried or part of a same sex couple or
 - a close relative who lives with you or the spouse or partner of that close relative
- 3.11 A close relative is a person that you are related to in one of the following ways: parent or parent in law, aunt or uncle, grandparent, son/daughter, /son in law/daughter in law, stepson or daughter, brother or sister and partner of any of the above.

- 3.12 However, in some circumstances this may be the only way that services can be adequately provided. This will be considered on a case by case basis.
- 3.13 The council will only agree to this in exceptional circumstances if the council considers it is necessary to meet your care needs in this way. We will write to you to confirm this, and detail the terms of the payment in exceptional circumstances in your support plan.
- 3.14 You cannot use the direct payment to pay for:
- long term residential or nursing care.
 - purchasing services from Herefordshire Council.
 - purchasing items that do not meet the agreed outcomes in your support plan/child in need plan
 - purchasing services or equipment for which the council is not responsible for example, health services funded by the NHS.
- 3.15 The Direct Payment Policy contains more information on how the direct payment can be used to meet your assessed needs.
- 3.16 We may ask for money to be repaid if it has not been used to buy the support set out in your support plan, or you have employed your spouse, partner or close relative as detailed in paragraph 3.10 and 3.11 above.

4 What records you should keep

- 4.1 If a direct payment is made to a payment card account the council will have access to all transactions made, and regular submission of spending returns will not be required. However, all documents should be retained as the council will ask to see samples of these, and where inappropriate spend has been identified will ask to see all evidence of spending.
- 4.2 If you have opened your own current account for the management of the direct payment, you will need to complete and submit financial returns of how the direct payment has been spent, including bank statements, invoices and payslips. The details must be submitted regularly, as agreed with us. These records will help you, (your agent or third party) and us to review the services and your direct payment at your review. You will need to keep these records for at least seven years.
- 4.3 If you do not send in your financial information, as requested, your direct payment could stop or be suspended, but first the council will consider whether making your payments to a payment card or managed account is more appropriate. Please refer to the direct payment policy for more information.

5 Review of your needs and direct payment

- 5.1 Your care and support review will be carried out annually and will help you look back over the year at what you have achieved and if your payment will remain the same based on your needs.

- 5.2 Your Direct Payment will be monitored to make sure you are spending it in line with your support plan.
- 5.3 The balance of the account will be checked. If a surplus has built up, we will calculate the amount and send you a copy. We will make sure there is enough money to pay for your assessed care and support, any outstanding payments and allow a 4 week contingency. The social care team will contact you to discuss the surplus and may arrange a review to ensure your assessed needs are being met and that your budget is appropriate. You will be asked to return any surplus funds to the council. If the balance is low, the reasons will be investigated. If it is due to non-payment of contribution, top-up or inappropriate spending, we will work with you to resolve this.
- 5.4 When the direct payment has been monitored, we will send you a report if areas of concern have been identified. This might include; non-payment of contribution or top-up; low balance/overspending; in-appropriate spend or excess funds; non-compliance with HMRC regulations. The report will outline any action that needs to be taken. A breakdown of any monies to be repaid will be detailed in the report.
- 5.5 When you receive the report, you should contact your direct payment officer if you have any queries, so that they can offer support and advice.

6 If your arrangements break down or your needs change

- 6.1 If something breaks down with your care, or if your needs or circumstances change you should contact the council's advice and referral team (ART) at the earliest opportunity so they can help you to find other support to meet your assessed needs. If a change in needs is identified as part of a care assessment, alternative ways of meeting those needs may be identified which result in a change to the amount or use of direct payment, including the ending of the direct payment
- 6.2 If you go into hospital or respite care please ensure you or someone close to you notifies us as soon as possible. The Direct Payment factsheets have more information about what happens when you go into hospital.
- 6.3 Where a direct payment is being used to employ a personal assistant, plans should be in place of how needs will be met if they are absent.

7 Comments, Complaints And Compliments

- 7.1 You have the right to comment, complain and compliment about the operation of this agreement using our complaints procedure. However, this procedure cannot be used for problems you may have with staff employed directly by you or agencies that you contract with. Contact details for the complaints team are: Phone 01432 260535 or email complaints@herefordshire.gov.uk or write to:

Herefordshire Council
Plough Lane,
PO Box 4
Hereford
HR4 0XH

8 Ending the Agreement

- 8.1 Either you or the council may terminate this agreement by giving a minimum of 4 weeks' notice in writing to the other party.
- 8.2 The council may terminate this agreement immediately if, after investigation, it is found you are using the money illegally or not in your best interests or the best interests of the person receiving the direct payment, or you are not complying with any part of this agreement.
- 8.3 Before terminating the agreement, we will work with you (and your agent or third party) to find a solution to the problems wherever possible. In some circumstances, the payment may be suspended whilst additional support or investigations are taking place:
- Non-submission of accounts** – we will arrange for payments to be made to a payment card where accounts are not submitted, as requested.
- Budgeting difficulties** – where there has been overspending we will consider making the payment to a managed account provider if the additional support would be of benefit
- Arrears in contribution/personal top up** – where a person refuses to pay an assessed client contribution resulting in insufficient funds to meet cost of assessed needs, and therefore cannot demonstrate the ability to manage the direct payment budget, the direct payment will be terminated and alternative arrangements made to meet assessed needs
- Inappropriate spending** – where a direct payment continues to be spent on goods or services that do not meet assessed needs the person's suitability to receive direct payments will be explored and, if appropriate, we will terminate the direct payment.
- 8.4 You will need to complete all outstanding payments to your employees, HM Revenue and Customs and agencies and then provide financial returns forms (which we will provide) to us to finalise your direct payments account, or confirm that your final payments have been made if you have a payment card account.
- 8.5 If you use your direct payment to employ a personal assistant, you must act legally and ensure that you give them adequate notice. You should refer to your employment support provider or check with HMRC/ACAS if you are unsure.
- 8.6 If you use the direct payment to buy services from an agency, please ensure that you give them adequate notice if you change provider, to ensure that you are not expected to pay both agencies for the same period. The council may ask you to repay any shortfall due to double funding in this way.
- 8.7 If the direct payment ends, any money left in the direct payment account will need to be returned to the council. The council will seek repayment for any services received and paid for from the direct payment after the end date.
- 8.8 In the event of death, we will take into account your legal or employment responsibilities before finalising the direct payments account. Your direct payment is not part of your estate.

9 Additional conditions if you are acting as an authorised person

- 9.1 You are agreeing to receive the direct payment and to the terms and conditions set out in Herefordshire Council's Direct Payment Policy and in this agreement, which will apply as if you are the Service User.
- 9.2 You must always ensure you are acting and making any relevant decisions in the best interests of the individual. This may mean involving other health and social care professionals as and when appropriate.
- 9.3 You must involve the individual as fully as is possible in all areas of managing their direct payments and their provision care.
- 9.4 You must inform Herefordshire Council as soon as possible, if you or any other relevant professional, believe there to be a change to capacity of the individual.
- 9.5 Any alleged abuse of your position as an authorised person, may result in Herefordshire Council taking any appropriate action that it deems is necessary.
- 9.6 Necessary steps will be taken to obtain a DBS, if required, in line with the Direct Payments Policy.

10. How your information is used

- 10.1 Herefordshire Council is the Data Controller under data protection law and will use the information you provide on this form in order to provide you with a direct payment service. The legal basis for processing this data is your consent to do so. You can withdraw your consent at any time by notifying us. Our contact details to do so, or for any other queries, are directpaymentadvice@herefordshire.gov.uk (01432) 260060.

We will keep your data for as long as we hold your social care record. Your information will be shared with the appropriate adults and/or children teams, your direct payment support provider and your payment card provider in order to provide you with the service.

Individuals have a number of rights under data protection law, including the right to request their information. You also have a right to make a complaint about our handling of your personal data to the Information Commissioner's Office <https://ico.org.uk/>

Information you provide will only be used for the stated purpose. Further information about the processing of your data can be found on our website at <https://www.herefordshire.gov.uk/council/access-information/9>

You can also contact the Data Protection Officer at Herefordshire Council, Plough Lane, Hereford HR4 0LE, email: informationgovernance@herefordshire.gov.uk

Short Privacy Notice

The personal information we have collected from you will be shared with fraud prevention agencies who will use it to prevent fraud and money-laundering and to verify your identity. If fraud is detected, you could be refused certain services, finance, or employment. Further details of how your information will be used by us

and these fraud prevention agencies, and your data protection rights, can be found on the Herefordshire Council website here: www.herefordshire.gov.uk/fraudprivacy

- 10.2 We are under a duty to protect public funds. We may use any of the information you have provided on this form for the prevention and detection of fraud. We may also share this information with other bodies that are responsible for auditing or administering public funds.

Some types of social care fraud include:

- Using money that has been claimed from the council to pay for care for your own personal use
- Submitting false evidence that a direct payment is being used on care
- Being dishonest about financial circumstances or care and support needs when asking for social care funding.
- Not telling the council when a service user has died, and keeping their direct payment money.
- A person abusing their position of care to take money from a vulnerable person.
- Paying money into the direct payment account that has been gained from criminal conduct.

Please let us know when any of your contact details change.

11. Herefordshire Council Contact Details

Adults:

Advice and referral team (ART)

Telephone: 01432 260101

E-mail: ASCAdviceandReferralTeam@herefordshire.gov.uk

Direct payment officers

Telephone 01432 260060

E-mail: directpaymentadvice@herefordshire.gov.uk

Direct payment officers are based within the adult social care locality teams.

Children:

Telephone: 01432 260857

Email: DutyChildrenwithDisabilitiesTeam@herefordshire.gov.uk

12 Signatures

Here, all parties are signing up to the agreement. This confirms that the council has provided information and fact sheets about the direct payments and the persons entitled to, and or receiving the direct payment understand their rights and responsibilities and agree to the terms of this agreement.

1st Party	
Us – Herefordshire Council	
I confirm that I have explained to the persons below their rights and duties under this agreement as shown above and confirmed with them that they have received the relevant information and fact sheets.	
Signature on behalf of Herefordshire Council:	
Print name:	
Date:	

2nd Party	
You – The person receiving the direct payment (including authorised person)	
I confirm that I understand my rights and responsibilities and agree to the terms and conditions within this agreement.	
Signature:	
Print name:	
Date:	

3rd Party	
Your agent or third party	
I confirm that I understand my rights and responsibilities and agree to the terms and conditions within this agreement.	
Signature:	
Print name:	
Date:	

If you would like help to understand this document, or would like it in another format or language, please call a direct payment officer on 01432 260060 or e-mail directpaymentadvice@herefordshire.gov.uk

Please tick if direct payment to be paid to payment card account:

Please tick if direct payment to be paid to managed account

APPENDIX 5 - Glossary

Abuse - *Harm that is caused by anyone who has power over another person.* This may include family members, friends, unpaid carers and health or social care workers. It can take various forms, including physical harm or neglect, and verbal, emotional or sexual abuse. Adults at risk can also be the victim of financial abuse from people they trust. Abuse may be carried out by individuals or by the organisation that employs them.

Advocacy - *Help to enable you to get the care and support you need that is independent of your local council.* An advocate can help you express your needs and wishes, and weigh up and take decisions about the options available to you. They can help you find services, make sure correct procedures are followed and challenge decisions made by councils or other organisations.

The advocate is there to represent your interests, which they can do by supporting you to speak, or by speaking on your behalf. They do not speak for the council or any other organisation. If you wish to speak up for yourself to make your needs and wishes heard, this is known as **self-advocacy**.

Assessment - *The process of working out what your needs are.* A care assessment looks at how you are managing everyday activities such as looking after yourself, household tasks and getting out and about. You are entitled to an assessment if you have social care needs, and your views are central to this process.

Benefits - *Payments from the Government that you may receive because of your age, disability, income or caring responsibilities.* Some benefits are universal - paid to everyone regardless of their income. Others are paid to people who have particular types of needs, regardless of their income. And others are means-tested - only paid to people whose income or savings fall below a certain level. Benefits in England are paid by the Department of Work and Pensions, not your local council.

Client contributions - *The amount you may need to pay towards the cost of the social care services you receive.* Whether you need to pay, and the amount you need to pay, depends on your local council's charging policy, although residential care charges are set nationally. Councils receive guidance from the Government on how much they can charge.

Capacity to consent - *'Consent' is when you give your permission to someone to do something to you or for you.* 'Capacity' is your ability to understand what you are being asked to decide, to make a decision and to communicate that decision to people around you. Mental capacity can vary over time. If you have capacity to consent, then you understand what you are being asked to agree to, and you are able to let people know whether you agree.

Eligibility - *When your needs meet your council's criteria for council-funded care and support.* Your local council decides who should get support, based on your level of need and the resources available in your area. The **eligibility threshold** is the level at which your needs reach the point that your council will provide funding. If the council assesses your needs and decides they are below this threshold, you will not qualify for council-funded care.

Financial assessment - *A discussion that your council may have with you to work out how much you can afford to pay towards the care and support you need.* It involves looking at

your income, savings and individual circumstances. This will take place after an **assessment** of your care and support needs.

IMCA - *An independent person who is knowledgeable about the Mental Capacity Act and people's rights.* An IMCA represents someone who does not have **capacity to consent** to specific decisions, such as whether they should move to a new home or agree to medical treatment. The law says that people over the age of 16 have the right to receive support from an IMCA, if they lack capacity and have no-one else to support or represent them.

Mental Capacity Act - *A law that is designed to protect people who are unable to make decisions about their own care and support, property or finances,* because of a mental health condition, learning disability, brain injury or illness. 'Mental capacity' is the ability to make decisions for you. The law says that people may lose the right to make decisions if this is in their best interests.

Outcomes - *In social care, an 'outcome' refers to an aim or objective you would like to achieve or need to happen - for example, continuing to live in your own home, or being able to go out and about.* You should be able to say which outcomes are the most important to you, and receive support to achieve them.

Personal Assistant - *Someone you choose and employ to provide the support you need, as identified in your support plan in the way that suits you best.* This may include help with personal care such as washing and dressing, and other things identified in your support plan such as getting out and about in your community.

Power of attorney - *A legal decision you make to allow a specific person to act on your behalf, or to make decisions on your behalf, if you are unable to do so.* There are two types. Ordinary power of attorney is where you give someone the power to handle your financial affairs for you, but you continue to make decisions about your money. This depends on you continuing to have **mental capacity** to make these decisions. Lasting power of attorney is where you allow someone to make decisions on your behalf about your property and finances or health and welfare, if the time comes when you are unable to make these decisions for yourself.

Reablement - *A way of helping you remain independent, by giving you the opportunity to relearn or regain some of the skills for daily living that may have been lost as a result of illness, accident or disability.* It is similar to rehabilitation, which helps people recover from physical or mental illness. In Herefordshire the council may offer reablement through its Homefirst service for a limited period in your own home that includes personal care; help with activities of daily living, and practical tasks around the home.

Respite care - *A service giving carers a break, by providing short-term care for the person with care needs in their own home or in a residential setting.* It can mean a few hours during the day or evening, or a longer-term break. It can also benefit the person with care needs by giving them the chance to try new activities and meet new people. Where it is provided as replacement care for the cared for person the care for person may be charged

Risk assessment - *An assessment of your health, safety, wellbeing and ability to manage your essential daily routines.* You might also hear the term **risk enablement**, which means finding a way of managing any risks effectively so that you can still do the things you want to do.

Safeguarding - *The process of ensuring that adults at risk are not being abused, neglected or exploited, and ensuring that people who are deemed 'unsuitable' do not work with them. If you believe that you or someone you know is being abused, you should let the adult social care department at your local council know. They should carry out an investigation and put a protection plan in place if abuse is happening. Councils have a duty to work with other organisations to protect adults from abuse and neglect. They do this through local safeguarding boards.*

Social Worker/Social Care Practitioner - *A professional who works with individual people and families to help improve their lives by arranging to put in place the things they need. This includes helping to protect adults and children from harm or abuse, and supporting people to live independently. Social workers support people and help them find the services they need. They may have a role as a **care manager**, arranging care for **service users**. Many are employed by councils in adult social care teams; others work in the NHS or independent organisations.*

Support Plan - *A plan you develop that says how you will spend your personal budget to meet your assessed needs. You need to map out your week, define the **outcomes** you hope to achieve, and show how the money will be used to make these happen. The council must agree the plan before it makes money available to you.*

Supported living - *An alternative to residential care or living with family that enables adults with disabilities to live in their own home, with the help they need to be independent. It allows people to choose where they want to live, who they want to live with, how they want to be supported, and what happens in their home.*

Wellbeing - *Being in a position where you have good physical and mental health, control over your day-to-day life, good relationships, enough money, and the opportunity to take part in the activities that interest you.*

APPENDIX 6 – Assessing the impact of policies and procedures

Introduction

All Council policies and procedures that affect people's lives or communities are to be subjected to the following initial assessment.

Where this shows that there are likely to be significant effects and/or costs a further more in-depth assessment of the policy or procedure should be made. This judgement should be made by the relevant JMT member.

Section 1 – background information

Title of policy or procedure:	Direct Payment Policy
Date of Assessment:	January 2015
Completed by:	Liam Waldron

What outcomes is the policy or procedure designed to achieve?	To make clear the councils approach to direct payments
What group or groups (if any) is the policy or procedure intended to affect?	Existing and future direct payment recipients
What geographic area or areas is the policy or procedure intended to affect?	County-wide
Who has been consulted in designing this policy or procedure?	<ul style="list-style-type: none"> • Relevant council teams – finance, welfare and benefits, contracts, commissioning and legal. • Social work teams and managers – adults and children. • Making it Real board • Direct payment support providers

Section 2 – Impact on health and wellbeing

How will the policy or procedure impact upon the following factors that affect health and wellbeing?	<u>Positively</u> Evidence how it will have a positive impact. Disclose sources and cite them. Indicate whether the impact will be high, medium or low	<u>Negatively</u> Evidence how it will have a negative impact. Disclose sources and cite them. Indicate whether the impact will be high, medium or low	Not expected to make an impact
<ul style="list-style-type: none"> ● Personal lifestyle (e.g. diet, smoking, drugs, exercise such as walking and cycling, personal choices, sense of control, access to green space) 	Ensure some greater freedom of choice and control for service users care and support		
<ul style="list-style-type: none"> ● Social and community (E.g. social isolation, peer pressure, cultural beliefs, crime or anti-social behaviour. How will it influence engagement, empowerment or participation in decision-making?) 	Empowering service users by promoting choice and control over how their needs are met		
<ul style="list-style-type: none"> ● Home, education, work (e.g. housing, services, amenities, school, jobs, use of local and ethical goods and services) 	Empowering service users by promoting choice and control over how their needs are met		
<ul style="list-style-type: none"> ● The environment (e.g. climate change, pollution, air quality, hazardous waste, neighbourhood, protecting the environment, promoting biodiversity) 			x
<ul style="list-style-type: none"> ● The Economy What is the impact on the local / regional / national economy (e.g. incomes, benefits, skills, jobs, cost of energy & food) 	Improving the local offer through service users micro-commissioning unique support		

Section 3 – Geographical impact

How will the policy or procedure impact upon different geographical areas?	<u>Positively</u> Evidence how it will have a positive impact. Indicate whether the impact will be high, medium or low	<u>Negatively</u> Evidence how it will have a positive impact. Indicate whether the impact will be high, medium or low	Not expected to make an impact
Rural areas			X
Market towns			X
Hereford city			X
Natural systems & resources:			X

Section 4 – impact on specific target groups

How will the policy or procedure impact upon the following potentially marginalised groups?	<u>Positively</u> Evidence how it will have a positive impact. Indicate whether the impact will be high, medium or low	<u>Negatively</u> Evidence how it will have a negative impact. Indicate whether the impact will be high, medium or low	Not expected to make an impact
● People on low incomes	By giving people on low incomes similar choice and control over their support as those with independent financial means. High		
● People from a minority cultural or ethnic group	By giving people the choice to purchase support unique and specific to their cultural and ethnic group. High		
● Families with children	By enabling parents of disabled children to buy tailor made support with the flexibility to fit with other family priorities. High		
● Disabled people (E.g. people with learning difficulties, older people with impairments, people with mental health problems, people with physical disabilities)	By giving those marginalised through disability the option of joining mainstream activities, maintain social networks and contribute to communities.		

<ul style="list-style-type: none"> ● Gender or sexual orientation 	<p>By giving people the choice and control to purchase appropriate support unique and specific to their gender or sexual orientation.</p> <p>High</p>		
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Section 5 – monitoring the policy or procedure – How will you know whether you are on track to meet your targets?

<p>How will the policy or procedure be monitored?</p>	<p>The effectiveness of this policy will be determined by the consistency in direct payments are arranged. The main channels through which this will be ascertained are:</p> <p>Feedback from social work teams through direct payment advisors; from welfare and financial teams; from direct payment support providers; and from direct payment monitoring officers</p> <p>Increased uptake of direct payment</p> <p>Feedback through complaints</p>
<p>How often will this take place?</p>	<p>Ongoing</p>
<p>Who will be responsible for monitoring the policy or procedure?</p>	<p>As above</p>

Section 6 – evaluating the policy – How will know how successful the policy has been?

<p>How will the policy or procedure be evaluated?</p>	<p>On-going monitoring of the application of this policy through the channels identified above will provide the basis for evaluation of the effectiveness of this policy</p>
<p>Who will be responsible for evaluating the policy or procedure?</p>	
<p>When is the evaluation expected to be completed?</p>	<p>January 2016</p>
<p>When and to whom will the evaluation of this policy or procedure be reported?</p>	<p>Adult Wellbeing Directorate Leadership Team – March 2016</p>