# Cheshire East Council

# Direct Payment Policy

# Adults, Children and Young People

# 2024

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**Definition**

| Term | Definition |
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| Advocacy | Advocacy is support from another person to help an individual to express their views and wishes to enable them to make decisions available to them. |
| Allocated Worker | A member of staff employed by the Council or by a delegated service provider to provide professional support to the person, to undertake care and support assessments and reviews. Ordinarily this would be a qualified professional – Family Support Worker, Social Worker, Occupational Therapist or Social Care Assessor. |
| Assessment | An assessment considers how an individual is managing everyday activities such as looking after themselves, household tasks and getting out and about. Individuals are entitled to an assessment if they have social care needs and the individuals' views are central to this process.<br><br>An assessment for a child or young person is undertaken to consider what is working well and what is not working well, to identify unmet Education or Social Care needs and support and services that may be required to meet them. |
| Benefits and means tested 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 whereas other benefits may be means tested. |
| Capacity to consent | 'Consent' is when an individual gives their permission for someone to do something to you or for you.<br><br>'Capacity' is an individual's ability to understand what they are being asked to decide, to make a decision and to communicate that decision to people around them. Mental capacity can vary over time. If an individual has capacity to consent, then they understand what they are being asked to agree to, and they are able to let people know whether they agree. |
| Carer | Can be a child, young person or an adult who provides or intends to provide unpaid care for a child or young person or another adult (needing care). |
| Child or Young Person | For the purposes of this Policy the definition of a child is taken from the Children Act 1989. A child is anyone below the age of 18 years. Increasing consideration is given through European legislation and British case law that from the age of 16, a child should be considered to be a Young Person. |

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| Child in Need | All disabled children who meet the eligibility as defined within Section 17 of the Children Act, Section 6 of the Equality Act 2010 and or Section 2 of the Chronically Sick and Disabled Persons Act 1970 are legally considered to be **Children in Need.** |
| Client Contribution | The amount an individual may need to pay towards the cost of the social care services they receive**.** The amount that the individual needs to pay depends on the Cheshire East Charging policy. The Council receives guidance from Government on how much they can charge.<br><br>Anyone below the age of 18 will not be expected to make contributions towards their social care services. |
| Council or local authority | Cheshire East Council |
| Direct Payment | Monetary payments made by the Council for the purpose of meeting some or all of an individual's eligible care and support needs. |
| Direct Payment Client | A Direct Payment client is the person receiving the Direct Payments and who has the legal obligations to manage this appropriately. This may be the individual in need of care and support, or the responsible person managing the Direct Payment. |
| Delegated Responsibility / Associated Partners | Delegation is the assignment of any responsibility or authority to another organisation to carry out specific activities or services, such as providing Mental Health Services. Associated Partners are organisations which may be charities or businesses, or other public service providers, the Police and the NHS. The Council may commission Associated Partners to provide services on their behalf, which may include the delegation of the undertaking of some statutory functions. |
| Eligibility | Eligibility is the level at which an individual's needs are assessed for care and support and is based upon that individual's level of need. Decisions will focus on the individual's ability to achieve relevant outcomes and whether, therefore this may have a significant impact on their wellbeing. If the Council undertakes an assessment and determines an individual is below this eligibility threshold, they may not qualify for Council funded care.<br><br>Eligibility determines who may receive an assessment. A disabled child may have a physical impairment such as being blind, deaf or British Sign Language (BSL) user or someone with a hearing impairment or a mental disorder of any kind which is substantial and permanent or is substantially and permanently disabled by illness, injury or congenital |

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| | deformity or such other disability as may be prescribed and are automatically Children in Need. |
| Family (Close Family) | a. the spouse or civil partner of the adult;<br>b. a person who lives with the adult as if their spouse or partner;<br>c. a person living in the same household as the adult who is the adult's<br>i. parent or parent-in-law<br>ii. son or daughter<br>iii. son in law or daughter-in-law<br>iv. stepson or stepdaughter<br>v. brother or sister<br>vi. aunt or uncle<br>vii. grandparent<br>d. the spouse or civic partner of any person identified in sub-paragraph (c) above who lives in the same household as the adult and<br>e. a person who lives with any person specified in sub-paragraph (c) as if that person's spouse or civil partner<br>f. a person living in the same household as the child / young person who is the child / young person's<br>i. parent or stepparent<br>ii. sister or brother<br>iii. step/half-sister or step/half-brother<br>iv. aunt or uncle<br>v. grandparent<br>vi. anyone else who lives in the same household as the child/young person |
| Financial Assessment | For adults the Council will discuss with the individual and assess how much they can afford to pay towards their care and support needs. This will involve looking at the individuals' income, savings and individual circumstances. The financial assessment would take place after an assessment of the individuals care and support needs |
| Individual(s) or Person(s) | Individuals or persons eligible for support include residents of Cheshire East and/or their carers. |
| Means Tested Benefit | Means tested benefits are awarded based upon an individual's income and capital. |
| Mental Capacity Act | The Mental Capacity Act 2005 is designed to protect and empower people who may lack the mental capacity to make their own decisions about their care and treatment. It applies to people aged 16 years and over. The Mental Capacity Act allows people to express their preferences and to appoint a trusted person to make a decision on their behalf should they lack capacity in the future. |

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| Outcomes | An 'outcome' is an aim or objective which an individual would like to achieve. This may include for example having friends, building independence skills, maintaining links with family and friends, living in their own home, and/or managing their own support and are in control of what, how and when support is delivered to meet their needs. |
| Personal Assistant (PA) | An individual 'employed' by the Direct Payment client to provide care and support services to meet their eligible needs identified within their support plan. |
| Personal Budget | A personal budget is an amount of money that is allocated to an individual following an assessment of needs and for adults' financial assessment. This is the amount of money that is required to meet the assessed social care needs. |
| Personal Health Budget | A personal health budget is an amount of money to support an individual's health and wellbeing needs, that is planned and agreed between the individual (or someone who represents them) and the local NHS team. |
| Respite Care | In adult services - is planned or emergency care which is provided on a temporary basis to ensure an individual's main carer can have a break from their caring role.<br><br>In children's services respite care is often referred to as overnight short breaks and is an assessed and agreed package of support to meet overnight support needs. |
| Responsible Person referred to in this policy includes an authorised, nominated or suitable person | A responsible person refers to the following:<br>**Authorised:**<br>If someone has been found as lacking the capacity to consent to receive a Direct Payment, and yet Direct Payments would be beneficial a Direct Payment can be made if there is someone who is willing and able to fulfil the role of an "authorised person". Section 9 of this policy outlines who can act as this authorised person. This is either:<br>a. A Court appointed deputy for personal welfare or an Attorney under a Lasting Power of Attorney for personal welfare<br>b. Where the person is not authorised as mentioned in paragraph (a), 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, or<br>c. Where no one fills a) or b) above the authorised person can be someone who the local authority considers to be a suitable person for Direct Payment purposes |

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| | **Nominated person**:<br>A nominated person is someone an adult with capacity has chosen to help with on-going management of the money or receive and manage the Direct Payments on behalf of the person. Any help given can vary depending on the individual's needs.<br>**Suitable person:**<br>A person who has been legally nominated as being suitable to receive a Direct Payment to purchase services for someone who has been determined as lacking the capacity to consent to a Direct Payment, or who doesn't want to manage it themselves. The suitable person becomes responsible for the on-going management of the Direct Payment in the best interests of the individual. |
| Safeguarding | Means protecting the health, wellbeing and human rights of adults, children and young people and refers to the process of protecting children and adults to provide safe and effective care. |
| Self Employed | An individual who runs their own business, and is therefore liable to pay their own contributions, such as tax, and national insurance. |
| Short Breaks for Disabled Children and their families | This is referred to as our Short Breaks Local Offer. This consists of a set of services that we commissioned for assessed disabled children, free of cost. |
| Strengths Based Approach | Considers an individual's own strengths and capabilities and what support may be available to them from their wider support network (friends/family) or community. This is a collaborative process between the person supported by services and the services supporting them. |
| Support plan | In adult services a support plan will be developed with the individual and will focus on how you can utilise the Direct Payment to meet your assessed needs and the outcomes you wish to achieve.<br><br>In children's services the way the direct payments will be used to meet needs and outcomes is determined as part of the child/young person's agreed care plan and direct payments can only be spent on what is agreed as part of that plan. |
| Transition | Until the age of 18, services for children and young people with long-term health conditions and /or disabilities are provided by child health and social care services. Between the ages of 16 and 18, the young person will start a "transition" to adult services. |

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| | This should involve all the services that support areas like health and social care. |
| Wellbeing | A term used to refer to an individual's physical and mental health, in terms of the individual being comfortable, healthy and happy. |

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## 1. Introduction

### Policy Overview

1.1. This policy applies equally to adults with care and support needs, their carers and for those with parental responsibility for a child who has an Education, Health & Care Plan (EHCP), or is eligible as a disabled child under Section 17 (Child in Need) of the Children Act 1989, and Section 2 Chronically Sick and Disabled Persons Act 1970.

1.2. The purpose of this policy is to make clear the Council's approach to Direct Payments, and the responsibilities for the Direct Payment client. It should be read in conjunction with other Direct Payment documentation e.g. factsheets and the Direct Payment agreement.

1.3. Following an eligibility for need assessment every adult, child, or carer who is eligible following an assessment for care and support will have a personal budget identified. This is the amount of money that the Council believes is reasonable to purchase services to meet those eligible support needs. Individuals who have eligible needs should have choice and control over how their outcomes are achieved.

1.4. Therefore, the Council wishes to promote Direct Payments as a fully accessible way of paying for care and support, whilst recognising that Direct Payments may not be appropriate for some people, or some people may not want to have a Direct Payment. The adult who requires the support can then choose how that budget is spent, as long as the person's identified needs are met. This policy only covers education and social care needs, in the case of a child/young person the carer will work with their child/young person's allocated worker through the assessment process to determine how to use the direct payments to meet identified needs and outcomes.

1.5. The Council embraces a strengths-based approach and will embed this into what we do. This approach involves promoting inclusion and supporting individuals to identify their own skills and resources and how the relationships that they have with people around them can help, and to support the person to identify strengths and assets available in the community.

1.6. The Council believes that a person needs to be seen as more than just their care needs – we want individuals and families/carers to feel confident about using Direct Payments by:

- By assisting and supporting individuals to achieve their outcomes within their community
- Supporting individuals to access Direct Payments and to work within the Direct Payment Policy and procedures
- Offering guidance and support to individuals where difficulties arise
- Ensuring that where direct payments are being received that they are included as part of a child or young person's Education, Health and Care Plan (EHCP)

1.7. This policy also applies to all the Council allocated workers and those who carry out the role of allocated worker or administrator under a delegated responsibility where social care assessments, reviews, care and support planning arrangements and administration of services are undertaken.

## 2. Direct Payment Equal Opportunities

### Statement

2.1. The Council aims to ensure equality of treatment and access to services for all members, staff and customers:

- No person or group of persons applying for services or contracts with the Council will be treated less favourably than any other person or group of persons on grounds of gender, sexual orientation, race, nationality, ethnic origin, disability, marital status, age, religion or belief.
- The Council will consult with an individual about the planning and delivery of services and take account of the specific needs of those groups who may experience discrimination or be disadvantaged.
- Information about the Council's services will be accessible and, where necessary, targeted to those who may otherwise have trouble in accessing information or services.
- So far as is reasonably practicable the Council's buildings will be accessible to an individual with disabilities; the Council will scrutinise policies and procedures to ensure non-discriminatory practice is at the core of planning.

## 3. Equality and Diversity

3.1. The Council will strive to ensure equity in the access, support, and delivery of Direct Payments regardless of:

- An individual's socio-economic status or protected characteristic; age, disability, race, religion or belief, sex, sexual orientation, gender reassignment, marriage and civil partnership and pregnancy and maternity

3.2. The Council will also work to ensure individuals are treated equally when choosing to have services arranged and purchased on their behalf to meet their needs rather than accepting a Direct Payment.

## 4. Legislative Framework

### Adults, children and young people

4.1. Direct Payments along with personal budgets and personalised care planning, has been mandated for the first time and is set out in the Care Act 2014, Section 117 (2C) of the Mental Health Act 1983 and the Care and Support (Direct Payments) Regulations 2014 and Section 17A of the Children Act 1989.

4.2. This Policy along with the procedures and practice guidance is based on the Council's understanding of the relevant legislation, government guidance, and sets out how the Council should go about performing its care and support responsibilities and ensures that the Council are able to meet their statutory obligations in relation to:

- The Care Act 2014
- Care and Support (Direct Payments) Regulations 2014
- Care and Support Statutory Guidance issued with the Care Act 2014
- Carers and Disabled Children Act 2000
- Section 117(2C) of the Mental Health Act 1983
- Children and Families Act 2014
- Mental Capacity Act 2005
- Special Educational Needs (Personal Budgets & Direct Payments) Regulations 2014
- Chronically Sick and Disabled Persons Act 1970
- Children Act 1989
- Equality Act 2010
- Working Together to Safeguard Children 2018

4.3. 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)

- Statutory special educational needs and disability code of practice paragraph 3.38 incorporates the regulations from the Children and Family Act 2014 and describes the right of parent and carers to request a personal budget including a Direct Payment.

## 5. What are Direct Payments

5.1. A personal budget is a sum of money allocated to an individual as a result of an assessment of need. This can be taken in the form of a Direct Payment, which is defined as 'monetary payments to individuals who request to receive one to meet some or all of their eligible care and support needs'.

5.2. A Direct Payment may offer an individual more flexibility, choice and control than support being commissioned by the Council or the NHS to meet their needs. A Direct Payment can help an individual to live in their own home, be fully involved in family and community life and to take part in work, education, and leisure in order to achieve their individual outcomes.

5.3. These payments are made directly to the individual (or someone on their behalf) who has been assessed as having eligible needs for social care support and can form all or part of their Personal Budget. Direct Payments may be combined, by agreement, with other funds such as a Personal Health Budget or an Education, Health and Care Plan (EHCP). Direct Payments can also be made by Health under Section 12A of the National Health Service Act 2006.

5.4. Individuals accessing Direct Payments must be able to manage the Direct Payments with or without assistance, allocated workers must guard against assumptions and decisions must not be made about a person's ability to manage based upon the person's religion, sex, disability or age.

5.5. All adult Direct Payments will be subject to a financial assessment. However, if an individual is assessed and is expected to meet the full cost of the care and support, they require then they will not be eligible to receive a Direct Payment. More information on charging for adult social care services can be found by following the link as detailed: https://www.cheshireeast.gov.uk/livewell/care-and-support-for-adults/paying-for-care/will-i-have-to-pay-for-my-care.aspx

5.6. All Direct Payment clients or their responsible person that agree to receive a Direct Payment including carers will need to sign a Direct Payment Agreement.

## 6. Personal Health Budget

6.1. 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 joint 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/

## 7. Who can access a Direct Payment

### Overview

7.1. The Council has a duty to make Direct Payments available to anyone with assessed needs, this 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 the community.
- People with parental responsibility for a child with disabilities, a disabled child themselves if over 16 or a nominee who has been nominated in writing by someone with parental responsibility.
- Disabled people with parental responsibility for child(ren)
- Carers aged 16 and over, for their own assessed needs for example for services to support their caring role and to maintain their own health and wellbeing.

7.2. Where a child or young people 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 or young person for whom the service is needed.

### Adult

7.3. The Council will consider all requests for a Direct Payment. At the outset of the process allocated workers will ascertain whether or not the individual has capacity to request and receive Direct Payments. Decisions about an individual's capacity under the Mental Capacity Act is decision specific (for example the ability to make a decision about Direct Payments) and time specific (at the time the decision has to be made).

7.4. There may be individual conditions and/or circumstances whereby an individual can be excluded from accessing a Direct Payment (refer to section 10).

7.5. The Council has a key role in ensuring that individuals are given relevant and timely information about Direct Payments, so that an individual can make an informed decision about the suitability and use of a Direct Payment and, if doing so, is supported to understand their responsibility in how to use and manage the payment appropriately to meet their eligible needs. *A range of information on the council website can be accessed by the following link:* Direct Payments and Personal Assistants (cheshireeast.gov.uk)

7.6. Direct Payments are not seen as income and have no effect on tax or benefits.

**Children and Young People**

7.7. The Council may make a Direct Payment to assist with meeting a child or young person's social care or educational needs. Where a child or young person has an assessed educational or social care need, Direct Payments can be made to:

- A person who is the parent of a child with parental responsibility;
- The young person if they are over 16;
- A responsible person who has been nominated in writing by the child's parent or young person to receive the Direct Payments on their behalf

7.8. In each case Direct Payments may only be made to a person if the Council determines they are capable of managing Direct Payments without assistance or with support available to them. The person who supports the Direct Payment Client needs to be over school age (over 18 years) and have the capacity to support them.

7.9. Where a child has social care needs, a person who has parental responsibility for them may take a Direct Payment. The payments can then be used in a number of ways to provide care and support services for the disabled child or young person. The system may provide added flexibility for the parent or carer to choose and arrange the services or support they feel is most appropriate, at home or when out and about. Direct Payments cannot be used to pay for services that have already been commissioned by the Council as part of the 'Short Break Local Offer' as these services are already available free at point of access to assessed and eligible disabled children; in this regard only, additional support not assessed to meet a need cannot be used to purchase additional respite and that must be funded outside of a Direct Payment.

7.10. Where Direct Payments are made to a person with parental responsibility to pay for services under an Education, Health and Care Plan (EHCP), the

client will be solely responsible for meeting the terms and conditions of receiving a Direct Payment, to deliver specified elements included in writing within their EHCP.

7.11. Once a young person 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 regardless of whether the help comes from parents, a user-controlled trust or local support service. This enables a young person to take control of their Direct Payment. Alternatively, their parent may continue to receive the Direct Payment on their behalf.

7.12. As a young person approaches the age of 18, they will start to 'transition' to adult services and the Council will consider the person's eligible needs and how they will be met as an adult, pending closing of children services. A needs assessment will be undertaken by adult services to consider eligible care and support needs. This process should start in advance of their 18th birthday, however, in the event of an adult need assessment not being undertaken the person will continue with the arrangements that they have in place so that their care and support needs continue to be met. An audit of the direct payment made by children service will be undertaken. Once a need assessment has been completed a new direct payment agreement will be entered into and completed if appropriate (see also sections 29.24 – 29.26 inclusive). The local authority will consider the person's needs and how they will be met as an adult. This process should start in advance of their 18th birthday and ideally commenced at the latest by the age of 17 ½.

7.13. Having a Direct Payment does not mean a person will have 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 via a support provider.

7.14. Families and/or carers will only continue to receive a Direct Payment 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.

7.15. To allow 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 if the young carer receives 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 disruption to their education.

## 8. Direct Payments for Adults with Capacity

8.1. Where the Council concludes that an individual has capacity to make a decision to request a Direct Payment, it must consider the conditions set out in section 31 of the Care Act 2014. These conditions must be met in their entirety. A failure in one would result in the request to receive Direct Payments being declined.

8.2. Individuals who have capacity may choose to manage their Direct Payments themselves and/or with support available to them, or they may wish to nominate somebody to manage their Direct Payment on their behalf. Where an individual chooses to nominate someone that person is referred to as a nominated person.

8.3. These four conditions, as set out in Care Act 2014 are as follows:

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| Condition 1 | the adult has capacity to make the request, and where there is a nominated person to make the payments to that person agrees to receive the payments. |
| Condition 2 | the local authority 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 local authority is satisfied that the adult or nominated person is capable of managing Direct Payments either by himself or herself, or with whatever help the authority thinks the adult or nominated person will be able to access. |
| Condition 4 | the local authority is satisfied that making Direct Payments to the adult or nominated person is an appropriate way to meet the needs in question. |

8.4. If the Council decides that it is not appropriate to make Direct Payments, the reasons for the decision will be made in writing and the Council will 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.

## 9. Direct Payments for Adults lacking Capacity

9.1. Where an individual lacks the capacity to make a decision to request Direct Payments an "authorised person" or a "suitable person" may request Direct Payments on the individual's behalf. A person is authorised for the purposes of Direct Payments if:

a. The person is authorised under the Mental Capacity Act 2005 to make decisions about the adults needs for care and support
b. Where a person is not authorised under the Mental Capacity Act 2005 as mentioned in a). above, a person who is so authorised agrees with the local authority that the person is a suitable person to whom to make the Direct Payments

A person is a suitable person who falls within paragraph a) and b) above.

c. Where there is no such person authorised under a). and b). above, the Council considers that the person is a suitable person.

Where the individual lacks capacity to request Direct Payments the following conditions, as set out in the Care Act 2014, must be met in their entirety:

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| Condition 1 | 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. |
| Condition 2 | 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 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 | 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 | the local authority is satisfied that the authorised person is capable of managing direct payment by himself or herself, or with whatever help the authority thinks the authorised person will be able to access. |

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

## 10. Who is excluded from a Direct Payment – adults and children

### Adults

10.1. There are some adults for whom Direct Payments cannot be made whether or not they have capacity. These are set out in Schedule 1 of the Care and Support (Direct Payments) Regulations 2014. These are individuals who are subject to a court order for a drug and/or alcohol treatment programme or similar schemes.

10.2. There may be occasions whereby the Council considers that an adult may no longer be appropriate to receive a Direct Payment due to their financial circumstances. These instances will be reviewed on an individual basis and may include debt which has accrued with the Council for other services.

### Children

10.3. Someone without Parental Responsibility for the child.

10.4. The parent where the child is over 16, has requested the payment is made to them.

10.5. A nominee where such nomination has been revoked.

## 11. Direct Payment for Carers

11.1. 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. In relation to carers the Care Act refers to adult carers (people over 18 years who are caring for another adult, young carers (aged under 18 years) which are also covered by section 17ZA-C Children Act 1989 and adults who care for disabled children can be assessed and supported under section 17ZD.

11.2. A Local Authority must assess whether a young carer of a disabled adult or another child or adult carer of a disabled child has needs for support on the appearance of need or following a request (S17ZA(1) and S172ZD(1) Care Act 1989.

11.3. Carers are entitled and can request an assessment. In the first instance an adult carer's assessment will be conducted by the Carers Hub who will consider the carers caring responsibilities, and the physical, mental and

emotional wellbeing of the carer. However, there may be occasions whereby the allocated worker will conduct a carers assessment where there is an urgent requirement to meet a carers needs. Any joint assessments will be carried out by the Council.

11.4. There may be instances where the person being cared for may or may not have assessed needs, but their carer does have eligible, assessed support needs in his or her own right. However, the carer must be providing necessary care of which the adult is not capable of meeting themselves or care for a disabled child under S17ZA(d). The carer would receive an assessment in their own right, and the social care representative would reflect their needs which would be captured in their support plan. The carer in this circumstance can request a Direct Payment and use it to pay for services that are identified within their support plan if the carer's assessed needs would be met by such provision. The carer would therefore receive a support plan that covers their needs. The carer in this circumstance can request a Direct Payment and use it to pay for services that are identified within the support plan if the carer's assessed needs would be met by such provision.

11.5. As a result of an assessment the carer may be eligible for a Direct Payment where there is or likely to be a significant impact on a carer's wellbeing. In these circumstances this will be dealt with by Adult Social Care. The Direct Payment enables the carer to purchase a service to support them in their caring role and enable them to maintain their own health and wellbeing. In relation to carers Direct Payment a number of eligibility criteria may apply such as:

- The carers need must arise from providing 'necessary' care to an adult
- The carer's physical or mental health is, or is at risk of deteriorating
- The carer is unable to achieve one or more outcomes specified in the carers assessment

11.6. A carer's Direct Payment enables the carer to have a fulfilling life outside of their caring responsibilities. This is not means tested and the amount will be dependent upon the carer's assessed needs and the outcomes they wish to achieve.

11.7. However, if the cared for adult has eligible needs of his or her own, then the carer cannot use their direct payment for replacement care because such care would form part of the cared for adult's own needs.

11.8. The assessment process for children and young people includes Early Help Assessment and Children and Family Assessment (Child in Need / Child Protection) which will consider the needs of the carers and any other children of the family living in the same household. An initial assessment will be undertaken to consider the carer's individual needs (please refer to section 11.2).

11.9. The Early Help Team within Children Services will assess the needs of young carers. The Young Carers Assessment Team will liaise closely with Cheshire East Carers Hub.

11.10. Additional guidance and support can be accessed for children and adults via the Carers Hub, which is a service commissioned by the Council and delivered and hosted by Making Space www.cheshireeastcarershub.co.uk

## 12. Responsible Person

### Definition and requirement – adult social care

12.1. Individuals who are not able to manage Direct Payments themselves can still access Direct Payments via a nominee. Where the person has the capacity to request a Direct Payment, they may nominate a responsible person to manage Direct Payments on their behalf. In this situation the responsible person will be required to sign a Direct Payments agreement and they will become legally responsible for its administration and the requirements set out in the agreement and they are expected to act in the best interests of the person the Direct Payments are for.

12.2. The responsible person who manages the account should not be paid for delivering services to the Direct Payment client for example care services, administration, and management of the Direct Payment.

12.3. The Council can make a Direct Payment to a responsible person following a request, if all 4 conditions under section 32 of the Care Act are met (as outlined in section 7). The Council will need to be satisfied that the responsible person will act in the adult's best interests in arranging for the provision of the care and support for which the Direct Payments will be used. The responsible person must be capable of managing Direct Payments by himself or herself, or with whatever help the authority thinks the responsible person may require and will be able to access.

12.4. Where a responsible person is acting on the behalf of an individual and where it is agreed by the person with care and support needs and they have capacity, the responsible person will be solely responsible for meeting the terms and conditions of receiving Direct Payments.

12.5. Where the person with care and support needs has been assessed as lacking the capacity to manage Direct Payments and a responsible person is appointed to manage the account and purchase care and support services on behalf of the customer, the responsible person is responsible for meeting the terms and conditions of receiving Direct Payments.

12.6. Where the responsible person is not a close family member or friend, they must have a satisfactory Disclosure and Barring Service (DBS) check. Additional funding can be provided in Direct Payments to cover the cost to the individual for the DBS application.

12.7. Once Direct Payments have started, the responsible person, will have to organise care to meet eligible care and support 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 (timesheets and invoices) 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.

12.8. Where there appears to be a change of need and/or the support plan appears to no longer meet the needs, the Direct Payment client and/or the responsible person, must ask for a reassessment and a new support plan to be agreed.

12.9. The person receiving the Direct Payment must ensure (if appropriate) those 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. 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.

12.10. The Council will work to ensure that the support plan or Education, Health and Care Plan is not overly prescriptive in the description of the ways in which need can be met in achieving an individual's outcomes.

12.11. Where the Council is appointed as the Corporate Appointee or Deputy for the individual the Council cannot also be named as a responsible person to manage the Direct Payment.

**Definition and requirement – children social care**

12.12. If a child is under 8 and care is to be provided in the employee's home, they will need to be a registered childminder. Anyone caring for at least one

child under the age of 8 for pay or gain and for more than two hours cumulatively must register with OFSTED or a Childcare Agency.

12.13. For children subject to Early Help Assessment or Child in Need Plans their plans will be to define the outcomes sought from the use of the Direct Payments and which specific services will be purchased with the Direct Payment.

## 13. Use of Direct Payments

13.1. Direct Payments are designed to be used flexibly and innovatively and there should be no unreasonable restriction placed on the use of the payment, as long as it is being used to meet eligible care and support needs as identified in the support plan or Education, Health and Care Plan or the Child in Need Plan.

13.2. Allocated workers will make individuals aware of and how to gain access to information and advice support services during assessment of needs, support planning and reviews.

## 14. What can Direct Payments be spent on?

### Types of services

14.1. Direct Payments can only be used to meet the individuals assessed need as identified in the Direct Payment Agreement and support plan. Examples of the type of services that may be purchased (this list is not exhaustive or intended to be definitive):

- Personal care
- Day care / Day Opportunities
- Supported living
- Short-term breaks, such as respite care
- Community care services for disabled parents to assist with parenting tasks
- Supporting residents with their social and cognitive development, and building the skills for independence

14.2. The Direct Payment recipient may contract with an agency to provide services or become an employer and recruit their own personal assistant. Please refer to section 17 and section 18 for further information.

14.3. The Direct Payment client may choose to use their Direct Payment to purchase services from another organisation, such as a care agency or day care provider. It is important to be aware that the contract and agreed price

is a private contractual arrangement between you and that care provider. Therefore, it is really important to review the care providers terms and conditions about price increases and notice periods before deciding where to buy from. Should the care provider increase its prices in the future above the agreed payment rate or charge notice periods, the Council will not automatically be responsible for meeting any additional costs.

## 15. Restrictions on the use of Direct Payments

### Overview

15.1. There are some restrictions on the use of Direct Payments that ordinarily Direct Payments **cannot** be used for.

- To purchase services for the Direct Payment client from The Council or the NHS. However, the Council will exercise discretion and consider individual circumstances.
    - For example, a person can purchase services from another council, if the person lives near the border of another area and wishes to use services in that area, or as part of the Short Break Local Offer to disabled children and their families.
- Adult short-term residential care for periods of more than four consecutive weeks in a 12 month period. (Periods of short-term care less than four weeks apart will be combined for this purpose and will add to the total period).
- As at the date of this policy, Direct Payments in Cheshire East cannot be used to purchase long term care in a care home.
- To purchase a service for someone who is no longer an ordinary resident of Cheshire East other than by prior agreement in writing with the Council adult and children's services and the persons funding authority.
- Childcare costs will not be covered by a Direct Payment if they are not to meet an assessed social care or educational need of the child.
- 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 client. This does not include close family members who live elsewhere. This includes:
    - 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
- To pay the person who is responsible for managing the Direct Payment account.

- Anything which does not achieve an outcome identified in the need assessment, support plan or Education, Health and Care Plan, Early Help Assessment or Child in Need Plan.
- For adult social care any personal contributions resulting from a financial assessment, such as the person's financial contribution towards their care and support, telecare charges, contribution to a Disabled Facilities Grant or personal contribution for short term care in a residential home.
- Making cash payments – payments to care or service providers should be made by card payment, bank transfer, standing order or direct debit. Unless this is agreed in an individual's support plan.
- Any bank charges, legal charges or HM Revenue and Customs fines because of mismanagement of the direct payment will be your responsibility.
- 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 fund. (please refer to section 17.14)
- **Daily living costs / debt repayment and investments** such as personal or household expenses including essential household goods, personal loans, utility and household bills, rent or mortgage repayments.
- **Transport Costs** including purchasing fuel unless transport is part of meeting an assessed eligible need and other options for meeting such needs have been explored. Consideration needs to be given to the Council's Adult Social Care Charging Policy.
- **Personal Protective Equipment** unless it is part of meeting an assessed eligible need. Consequently, this will be reviewed at the point of a financial assessment for adults and an appropriate allowance will be made. Direct Payments should not be used for health supplies such as continence pads.
- **Gambling** Direct Payments should not be used to fund gambling or access to gambling establishments for the adult.
- **Alcoholic and Non Alcoholic drinks and food** Direct Payments should not be used to purchase these items.
- **Sex workers** for the avoidance of any ambiguity Direct Payments should not be used to procure the services of a sex worker.
- **Illegal goods or activities** e.g. drugs
- **Entrance/Admission Costs** Direct Payments should not be used to pay for admission and/or entrance costs to establishments, i.e. Theme Parks, Cinema, and Theatre. They can be used to pay for the PA's/Support Workers admission to such establishments where the child, young person or adult requires their presence. Attempts should be made to clarify whether the establishment in question allows PA's/Support Workers free

admission when accompanying a child, young person or adult before any spending on such activities is agreed.

  - For example, the CEA Card is a national card scheme developed for UK cinemas by the UK Cinema Association. This enables a guest to receive a complimentary ticket for someone to go with them when they visit a participating cinema.

- **Holiday Direct Payments** should not be used to fund 'holidays'. However, it can be used to meet assessed needs whilst on 'holiday'. (please refer to Section 22).

However, there may be exceptional circumstances, which would require discussion and approval. Therefore, discretion will be applied based on individual circumstances, as identified in the adult need assessment, Early Help Assessment or Children and Families Assessment care and support plan or child in need plan:

## 16. Direct Payment client responsibilities

### Level of understanding

16.1. Direct Payment clients will be informed of their level of responsibility in respect of accessing a Direct Payment. In particular when accessing a Direct Payment to meet eligible support needs via a care agency or employing a personal assistant or a combination of approaches.

16.2. The person in receipt of Direct Payments must understand the responsibilities linked to having and managing Direct Payments and agree to have their personal budget as a Direct Payment. All reasonable steps should be taken to support the person to understand the nature of the decision to request Direct Payments and to ensure that they can make an informed choice.

16.3. As part of the condition of accessing a Direct Payment a Direct Payment client will need to understand their level of responsibility and what is required. As part of the process of accessing a Direct Payment, the client will need to confirm their level of understanding and sign confirming this, by way of a Direct Payment Agreement. However, there may be instances whereby assistance is required from their responsible person acting on their behalf to ensure that they have understood and agree to the conditions of the Direct Payment. The Direct Payment agreement will be signed in advance of payments being administered by the Council.

16.4. Individuals should not be coerced into accepting Direct Payments. Allocated workers must be satisfied that there are no safeguarding concerns which could be exacerbated by the provision of Direct Payments.

## 17. Personal Assistant Definition and responsibilities

17.1. A personal assistant is defined as a person employed by the Direct Payment client to meet individual identified eligible support needs.

17.2. If an individual decides to use their Direct Payment to hire a personal assistant there are significant and legal responsibilities associated with becoming an employer. These include:

- Recruitment – advertising / job description / job specification
    - Shortlisting and interviewing staff
    - Job references and appointing staff
    - Criminal record check (DBS)
    - Right to work checks
- associated contract of employment,
- terms and conditions including hourly rate,
- Entitlements such as holiday pay, sickness benefit, maternity pay, paternity pay and pension contributions if applicable,
- Managing risk / health and safety
- Accessing training opportunities
- Appropriate supervision

17.3. The individual must ensure that they take out the most appropriate level of liability insurance such as:

- Employers' liability insurance – legal costs relating to health and safety, unfair dismissal claims
- Public liability insurance – damages and other costs

17.4. 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
- Calculating holiday entitlement, notice, redundancy pay etc., for employees
- Easily accessible advice and support about payroll issues
    - Providing a payroll service and payslips
- Managed account

- Support to process Disclosure Baring Services (DBS) checks

17.5. The Council commissions a Direct Payment Support Service for adult residents of the borough which will be able to offer support and guidance, further information can be found by visiting the following website https://peopleplus.co.uk/independent-living-service/cheshire-east

17.6. There are dedicated Council employees who can assist with children and young people's Direct Payments and provide the same range of support (as noted in 17.4). These Direct Payment Advisers are bas within the Family Help Service. Email childrensdirectpayments@cheshireeast.gov.uk

17.7. The Council will pay a Direct Payment Personal Assistant rate when an individual employs a personal assistant which takes into account the associated costs that are necessarily incurred in securing provision, without which the service could not be provided, or could not lawfully be provided. Such costs may include payroll fees, liability insurance, DBS, and advertisement costs.

17.8. The individual or the responsible person has responsibility for making contingency arrangements; to provide cover if their staff member is absent and when necessary, will be able to make arrangements for alternative cover. The need for plans to cover emergency and unplanned situations will be discussed by the allocated worker with the Direct Payment client or their responsible person and outlined in the individual's support plan.

17.9. If the responsible person employs a personal assistant, they must ensure they have signed a 'contract of employment' and that they carry out the necessary pre-employment checks. The responsible person will also need to ensure that all legal requirements for being an employer are met.

17.10. It is the responsibility of the employer to operate PAYE and to account for National Insurance Contributions unless the personal assistant is engaged through an agency.

17.11. Personal Assistants employed through Direct Payments should have access to appropriate training, which can often be sourced free of charge via appropriate organisations, for example, Skills for Care. There may be occasions where additional training is required to meet the needs of the individual, in such cases this will be documented, recorded, and agreed in the individuals support plan and clearly identify training needs and associated costs.

17.12. Relatives of individuals employing a spouse, partner or other close relative, if that person lives in the same household as the Direct Payments client, may be agreed by the Council in exceptional circumstances if it can be satisfied that it is necessary to meet the person's needs, or, if the person needing care is a child and it is necessary to promote the child's welfare. The details and amounts will be agreed and recorded in the individual's support plan.

17.13. Adult or children's services are not obliged to fund additional costs associated with the persons preferred method of securing a 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.

**Self employed**

17.14. A direct payment can be used to pay for the services of a self-employed personal assistant. However, proof of their self-employed status along with their public liability insurance certificate will need to be evidenced.

17.15. It is your responsibility to check the employment status of any self-employed Personal Assistant before they commence work. Employment status can be checked via the HMRC website: www.gov.uk/employment-status/employee or by using the HMRC online status tool: http://tools.hmrc.gov.uk/esi/screen/ESI/en-GB/summary?user=guest

17.16. If a personal assistant's status is not conclusive the Council will be unable to accept them as self-employed, and they will have to be paid through PAYE.

17.17. When paying a self-employed personal assistant, you do not need to deduct any liabilities such as; National Insurance, Pension contributions or Tax as the Personal Assistant is responsible for making these payments.

17.18. You are not responsible for providing holiday pay, however the self-employed Personal Assistant should organise cover for when they are not able to provide support.

17.19. A self-employed Personal Assistant would be responsible for providing the equipment they need to do their role, along with arranging and paying for any training they may require.

17.20. A self-employed Personal Assistant would be responsible for providing a contract of work, setting out their terms and conditions – not a contract of

employment. The contract of work would be agreed to and signed by both parties, inclusive of details of their fees.

17.21. A self-employed Personal Assistant would be required to invoice you for their fees in a timely manner.

17.22. A self-employed Personal Assistant would still be required to provide a satisfactory Disclosure and Barring Service check before providing any services, along with evidence of liability insurance.

17.23. If HMRC rule at a later date that the personal assistant is employed then the Direct Payment client will be responsible for paying any penalties and additional costs.

17.24. Further guidance on employment status can be found GOV.UK website

## 18. Role and responsibility of the person receiving a Direct Payment

### Agreement, documentation

18.1. A condition of accessing a Direct Payment is such that the person receiving the Direct Payment, or their responsible person is entering into 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. It is a requirement that they sign the Direct Payment.

18.2. It is essential that all documentation and supporting evidence is provided to the Council to demonstrate that the money is being used to meet an individual's agreed needs and that the person is central to the management of the Direct Payment.

18.3. Once Direct Payments have started, the individual or the responsible person, will have to organise care to meet the assessed needs as set out in the support plan. This can include for example recruiting staff, employing an agency, maintaining records, and managing the Direct Payment.

18.4. For adult Direct Payments the Council can signpost to the commissioned Direct Payment Support Service, which will provide guidance on the roles and responsibilities of becoming an employer. For more information please visit the following website https://peopleplus.co.uk/independent-living-service/cheshire-east

The range of guidance and support includes:

- The Direct Payment client will be supported to ensure that they understand their responsibility in terms of client contributions, financial management etc.,
- Help with insurance, recruitment, employment, training, contracts of employment, HMRC responsibilities, workplace pension and national insurance
- Support and advice in relation to employment law, employee issues / concerns or difficulties
- Calculating holiday entitlement, notice periods, redundancy pay, pension contributions
- Advice, guidance and support in relation to managed bank accounts prepaid cards, and payroll services

18.5. In the case of Children and Young People, the Council has Direct Payment Advisers based within the Family Help Service who are to provide information, advice, and support families in relation to their direct payment role and responsibilities (as outlined in section 17.6).

18.6. It should be noted that it is the Direct Payment clients and/or their responsible representatives' responsibility to ensure all obligations such as HMRC requirements are met and individuals must be aware of this before agreeing to take up a Direct Payment, as they are accepting responsibility to act legally as an employer.

18.7. The range of responsibilities include the following:

- Registering as an employer (HMRC)
- Operating PAYE
- Checking that the potential employee has the right to work in the UK, for further information please refer to https://www.gov.uk/check-job-applicant-right-to-work
- Support to process appropriate checks such as Disclosure and Barring Service (DBS) ensuring that any employees have undergone the necessary checks (personal assistant) before they start to work
- Ensuring that they pay their employees at least the national living wage
- Complying with working time directives and adhering to legislation in respect of holiday, sickness, maternity and paternity pay
- Enrolling eligible employees into a workplace pension scheme
- Ensuring appropriate level of liability insurance is in place before a person works in their home

## 19. Pooled Budget Direct Payments

19.1. Clients of Direct Payments may wish to join with others to pool their Direct Payment on a regular basis. This means using all or part of their Direct Payment with others to purchase a service, contract with an agency or employ a personal assistant, which will be shared to help achieve better outcomes, meet common needs, goals and aspirations, more effectively and efficiently for all participating individuals.

19.2. It is a requirement that an agreement for pooled Direct Payments will be understood and agreed by all parties and that individuals or their responsible representative sign to agree to share the collective arrangement. Such arrangements need to consider responsibilities and contingency measures should one or more parties wish to end or change the agreement.

19.3. Any pooled budget arrangements would be documented and reflected in the individuals support plan, and Direct Payment pooled budget agreement. This will need to include who will take responsibility for those arrangements and what the group will do if things were to change.

## 20. Emergency and contingency arrangements

### Planning and Contacts

20.1. 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 where appropriate.

20.2. For adults the Direct Payment Support Service would be able to offer advice, guidance and support in accessing alternative care when carer failure / breakdown has occurred. The service also assists with contingency and emergency planning. Please visit https://peopleplus.co.uk/independent-living-service/cheshire-east

20.3. There are dedicated Council employees who can assist with children and young people's Direct Payments and provide the same range of support (as noted in 17.4). These Direct Payment Advisers are based within the Family Help Service. Email childrensdirectpayments@cheshireeast.gov.uk

20.4. 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. The appropriate Adult or Children Social Care Team or Emergency Out of Hours contact details will be given to the Direct Payment client.

20.5. If planned cover arrangements breakdown an allocated worker may be able to provide support to make alternative arrangements.

## 21. Ordinary residence

### Travelling or moving out of area

21.1. If a person goes away temporarily (e.g. on holiday) then their Direct Payment should continue as they are still ordinary resident in the borough of Cheshire East and will still have eligible needs requiring our support. The rules of ordinary residence should be applied in deciding whether to cease the Direct Payment.

21.2. If a person moves out of the borough of Cheshire East permanently, then our (The Council) responsibility ends but we can choose to continue the Direct Payments for up to 6 weeks (following negotiation with the receiving authority). This would be to ensure continuity of care for the person.

21.3. Where the Council supports a carer via Direct Payments and the cared for person moves out of the borough of Cheshire East on a permanent basis the same rules as above will be applied.

## 22. Other uses of a Direct Payment

### Informal carers

22.1. Direct Payments can be used to replace care provided by informal carers on a short-term basis. Informal carers are defined as not being employed or paid to provide the support. Such short-term support could include time away from the home or additional formal support in the home whilst the informal carer is absent.

### Eligible needs on holiday

22.2. Direct Payments should not be used to fund 'holidays'. However, it can be used to meet eligible needs whilst on 'holiday'. This could include the Personal Assistants expenses or the care provision whilst away. Consequently, costs incurred by the Individual or informal carer should not be claimed.

## 23. Equipment

### Community Equipment

23.1. The Council in partnership with key stakeholders have commissioned an integrated community equipment service which provides equipment to meet the health and social care needs of the local population.

23.2. There may be exceptional circumstances where equipment may be sourced via an alternative route rather than the traditional integrated community equipment service. Where an individual has an identified need

and may require equipment to support them with their daily living to optimise their level of independence and wellbeing this would be considered as part of the assessment process.

23.3. There may be other circumstances where equipment is sourced to support the individual such as through individual funding requests for Continuing Health Care or Children's Continuing Care. You may wish to seek further advice from the allocated worker.

## 24. Information and advice

24.1. All individuals that are eligible for social care or have an Education, Health and Care Plan, Early Help Assessment will be provided with information about Direct Payments, and what support is available to enable them to manage the Direct Payment.

24.2. Information, advice and support relating to adult Direct Payments will also be available to the public through the Council commissioned Direct Payments Support Service. This service provides support to individuals to consider if they wish to receive all or part of their personal budget as a Direct Payment, offer additional support to understand their responsibilities of managing a Direct Payment and being an employer. For more information please visit https://peopleplus.co.uk/independent-living-service/cheshire-east

24.3. There are dedicated Council employees who can assist with children and young people's Direct Payments and provide the same range of support (as noted in 17.4). These Direct Payment Advisers are based within the Family Help Service. Email childrensdirectpayments@cheshireeast.gov.uk

24.4. Information and advice and what other support may be available can be requested by contacting the Council Adult Contact Team by telephone on 0300 1235010 or email: AdultContactTeamSouth@cheshireeast.gov.uk or FirstPointofContacteast@Cheshireeast.gov.uk

24.5. Further useful information and advice can be accessed on Live Well Cheshire East, which contains a directory of services and activities available in Cheshire East. https://www.cheshireeast.gov.uk/livewell

## 25. Complaints

25.1. Where there are difficulties around setting up Direct Payments these can be resolved locally between the allocated worker and Direct Payment client. If the individual/s remains unhappy about any action or decision within this process, they have the right to complain and they can make a formal

complaint. Please refer to Cheshire East website – social care comments and complaints www.cheshireeast.gov.uk

25.2. Once the client has received their Direct Payment and they have arranged their care and support they are encouraged to resolve any issue, should any arise with their employee/agency. If issues persist and the Direct Payment client wishes to contact Adult or Children's Social Care for support/advice, they can contact the allocated worker.

25.3. Advice/guidance can be offered in relation to resolving the issues / complaints where the Council has no contractual relationship with the employee/agency employed. At this stage the Council may not deal with this matter under the complaint procedure, help and/or signposting should be provided.

25.4. If an individual in receipt of Direct Payments needs support to appeal or complain they should be referred to the appropriate advocacy service.

## 26. Direct Payment Support Service

### Adults, and transition

26.1. The Council has commissioned an independent Direct Payment Support service which will provide impartial, independent information and advice to the adult residents of the borough. The service will also support those young people who are at 'transition' stage into adulthood in respect of Direct Payment support. The service also provides a brokerage function for those individuals who wish to receive their personalised budget as a Direct Payment. The Direct Payment Support Service can be accessed via https://peopleplus.co.uk/independent-living-service/cheshire-east

### Children and young people

26.2. There are dedicated Council employees who can assist with children and young people's Direct Payments and provide the same range of support (as noted in 17.4). These Direct Payment Advisers are based within the Family Help Service. Email childrensdirectpayments@cheshireeast.gov.uk

## 27. Direct Payments Procedures - Safeguarding and Disclosure and Barring Service (DBS) Checks

### Safeguarding

27.1. Individuals accessing Direct Payments must be able to manage the Direct Payment with or without assistance, though assumptions will not be made about a client's ability to manage. Once the person has made a request to receive their personal budget as a Direct Payment, the allocated worker

must be satisfied there are no safeguarding concerns which could be exacerbated by the provision of a Direct Payment.

27.2. Where safeguarding concerns are raised at the initial set up of making a Direct Payment, a review should be carried out to determine the individual's ability to manage the Direct Payment. Safeguarding concerns would be investigated under the appropriate safeguarding process for example, concerns in respect of children may result in child protection processes being initiated to ensure the safety of the child.

**Disclosure Barring Service (DBS)**

27.3. Supporting children - An enhanced Disclosure and Barring Service (DBS) check must be obtained for anyone, prior to commencing work, who is involved in the provision of the support where this is regulated care, working with a child or there are children in the house. Sight of the satisfactory enhanced DBS with a children's barred list check should be recorded in the client's electronic social care record. If in doubt, the DBS eligibility tool on which check is required can be found here: DBS eligibility guidance – Gov.uk (www.gov.uk). Only an employer can apply for an EDBS. A DBS check is not portable meaning a employer cannot rely on a historic DBS check the prospective employee has in their possession. Further advice can be sought from the Direct Payment Advisers in the Family Help Service. We require sight of the EDBS check with a copy for our records. If advice is needed on matters to review, advice can be sought from the Direct Payment Advisers in the Family Help Service. Email childrensdirectpayments@cheshireeast.gov.uk

27.4. Supporting adults - Where the responsible person is not a close family member, they must have a satisfactory Disclosure and Barring Service (DBS) check. Regulation 3(4) of the Care and Support (Direct Payments) Regulations 2014 provides that certain types of responsible persons must obtain DBS checks in order to support the Direct Payment recipient. The person who is nominated as a responsible person and who is listed in Regulation 3(3) or a friend of the client who is involved in the provision of care, does not have to obtain a DBS certificate for anyone he or she employs to do the actual care. Additional funding can be provided in the Direct Payment to cover the cost to the individual for the DBS application.

## 28. What happens when circumstances change?

28.1. Where there appears to be a change of need and/or the support plan appears to no longer meet the individuals' needs, the Direct Payment client and/or responsible person must ask for a reassessment and a new support plan to be agreed.

28.2. For example, where a person's needs change from support at home to the need for respite breaks; this must be identified as part of the re-assessment and agreed by the Council in advance.

28.3. The person receiving the Direct Payment must ensure 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.

28.4. If the Direct Payment client being cared for is placed in a permanent residential setting or dies, the Direct Payment will be terminated. Any funds remaining in the account must be returned to the Council. It should be noted that the Council Direct Payment provisions are paid in advance; therefore, it is likely that an overpayment may occur due to the payment schedule. It would be appropriate at this point for the Council to recover any overpayment of funds.

28.5. If the direct payment child/young person's main carer becomes unwell or requires a hospital stay they must contact their allocated worker to discuss how this would be managed. If they are unable to do so due to being incapacitated in an unplanned or emergency way, another close family member is asked to do this.

## 29. Finance and Monitoring

### Payment of the Direct Payment

29.1. Direct Payments will be made by the Council or its delegated representatives on a 4 weekly basis. One off payments can also be made if they are appropriate to meet a person's needs.

29.2. 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 from adult or children's services. The account cannot have an overdraft facility as the budget should be managed to avoid overspending.

29.3. The Direct Payment client and/or their responsible person, should not financially benefit from money held in their bank account or from the direct payment itself.

29.4. The Council will introduce a prepaid card account for residents who choose to receive their personal budget as a Direct Payment. This is a separate bank account, with a debit card set up for the person by The Council. However, where this is not appropriate for the individual alternative arrangements will be considered by the Council in consultation with person.

29.5. The Council will allow a reserve for adults equivalent to 4 weeks (10 weeks for children) but for those with fluctuating health needs, this will be considered on a case by case basis. Direct Payment funds are to be held as a contingency in the nominated account, unless otherwise agreed. However, the Council reserves the right to reclaim funds in excess of this amount. It is a responsibility of the Direct Payment client to notify and return any funds above this amount held in the nominated account.

29.6. If an individual requires any information, advice and support, they will need to contact their allocated worker and/or contact the independent Direct Payment Support Service https://peopleplus.co.uk/independent-living-service/cheshire-east

**Client contribution**

29.7. All adult Direct Payments are subject to a financial assessment that will be carried out by the Council, with the exception of Carers Direct Payments, these are not subject to a financial assessment. However, a carers need assessment will be carried out by the Carers Hub. Cheshire East Carers Hub (All Age Carers Hub) | CheshireEast MarketPlace

29.8. As part of the support planning process an adult with eligible care and support needs will be referred on for a financial assessment to determine their ability to pay for the care and support that they receive. A requirement of the financial assessment is to share information in relation to income, capital and expenditure. This will determine if a client contribution is applicable.

29.9. Should a Direct Payment client be liable to contribute towards the costs of the care and support they receive, the Council will ensure that payments are made NET of any applicable assessed client contribution as noted in the Council Charging Policy.

29.10. If someone wishes to access short-term 24-hour care services using a Direct Payment – they can be allocated up to 4 weeks direct payment funding. Their allocation will be paid in appropriate lump sum payments, separate to any other allocations that may be paid weekly to ensure they have appropriate funds to access respite services. Their residential charge

will apply to the direct payment and will be netted off the allocated amount for respite.

29.11. The client contribution must be used first to pay for support prior to the Direct Payment being used.

29.12. If an individual decides to use less support, their care needs will be reassessed to determine the correct level of support and a financial reassessment to determine the contribution for the individual.

**What if you disagree with the amount of client contribution?**

29.13. The Direct Payment Agreement outlines the terms and conditions for managing a Direct Payment. Individuals sign an undertaking that they have read, understood, and agree to these conditions. One of which is that the individual will undertake the payment of their assessed level of contribution which is paid into their dedicated Direct Payment account.

29.14. If an individual is unhappy with their financial assessment, they must contact Social Care Business Support and Finance as soon as possible. The individual must continue to pay their assessed level of contribution as this is the first part of the money spent on the individuals care and support. If this is not paid the individual will not be able to cover the full cost of their care and support and may be considered to be in breach of the terms and conditions of the agreement.

29.15. A financial reassessment will be undertaken to determine the level of contribution. The individual will be notified of any changes resulting from the reassessment.

**Amount of Direct Payment**

29.16. The Council will provide an indicative budget based on the individual's level of assessed need. This budget should be utilised in a way which meets their assessed and eligible needs as documented in the individuals support plan. Any additional on-costs associated with becoming an employer such as advertising, DBS, initial insurance liability will be included in the set up costs of the Direct Payment which will be met on an individual basis by the Council.

29.17. Consideration to local market intelligence, such as costs of local quality provision will be taken into account to ensure that the indicative budget reflects local market conditions and that appropriate care to meet an individual's needs can be obtained.

**Personal top up**

29.18. A personal budget must be sufficient to meet the assessed needs of the individual in receipt of the Direct Payment. If, however, the individual wishes to commission a service that is more expensive than the Direct Payment, and the Council is satisfied that the amount of Direct Payment is sufficient to meet their assessed needs, then this can only be done if the Direct Payment client or third party is willing to pay an additional amount towards the Direct Payment. At this point reference should be made to the Council's Top Up Policy.

29.19. For the avoidance of doubt Cheshire East Council will not be liable to the individual or organisation in the event that you do not pay for the services that you commission. Top up payments will not be recognised in your financial assessment.

**Audit and Review**

29.20. Monitoring of Direct Payments is essential and enables the Council to account for public funding within the guidelines lay down by The Chartered Institute of Public Finance and Accountancy (CIPFA).

29.21. The Council must be satisfied that Direct Payments are being used to achieve the outcomes identified in the support plan and that Direct Payments is still an appropriate way to meet eligible needs.

29.22. To give this assurance, Direct Payments will be monitored through the Council 'audit' process and a review of the individual's support plan. The audit process will support any reviews related to the person's care and support to ensure that Direct Payments are still the most appropriate way of ensuring a person's outcomes are met.

29.23. The Council will audit the use of Direct Payments in an efficient and proportionate way. The aims of the audit will be to provide early support and assurance to all new Direct Payment clients. This will enable identification of:

- Any problems at an early stage and enabling access to appropriate support.
- Monitor the use of Direct Payments and to provide assurance to the Council that Direct Payments are being spent to achieve outcomes identified in support plans
- Highlight excess balances to be returned (as noted in section 30.4) to the Council and identify fraudulent use of funds

- Confirm that contributions are correct and being paid into the Direct Payment account
- Ensure that employer responsibilities are being met e.g. tax, NI, pension contributions
- Essential records are being kept and made available at the point of audit i.e. receipts and bank statements.

29.24. The Council will audit Direct Payments accounts using a risk based approach. This will take account of factors such as the annual Direct Payments amount, complexity of the personal budget, the person's ability to manage and the level of support they have (such as managed account or pre-paid card). This will mean that some individuals who use Direct Payments are audited more frequently than others.

29.25. Persons identified as responsible for managing a Direct Payment (as outlined in section 17) will manage the Direct Payment funding provided and services they purchase with it, with support if necessary. This will include planning funds to pay for additional costs such as employer's liability insurance, employer's national insurance contributions, contributions to pension schemes and staff training time and evidence of the support purchased. Audit and allocated worker will carry out a basic check with the Direct Payments client in the initial 6-8 weeks from allocated worker perspective and within 12 weeks from an audit perspective to ensure that the account is setup and being managed appropriately.

29.26. Allocated workers will review Direct Payments on an annual basis unless there was a change in circumstances. Allocated workers will utilise any information available about Direct Payment usage through audit, as part of their review of how needs are met. This will include monitoring of the payment of contribution amounts.

29.27. Transition to adulthood. The provision of Direct Payments change as a young person becomes an adult and by the age of 18 years. Existing receipts of Direct Payments under children services arrangements will need to be reassessed as part of the young person preparing for adulthood to determine their future level of Direct Payments as a young adult under the Care Act. This is completed by way of an adult needs' assessment by the allocated social worker / transition worker, prior to the young person's 18th birthday.

29.28. As part of this transition a leavers audit is conducted by children services, to review the paperwork and ensure that this is correct. This audit will commence in advance of the young person's 18th birthday, and support is

transferred / provided to the young person/carer post 18 years by adult social care. During the period of audit if further information is required the auditor will contact the person managing the direct payment.

29.29. It is therefore vitally important that the young person has a robust and agreed transition plan post 18 years, in order to promote a seamless transition agreed by the adult worker and their manager.

**Audit documentation**

29.30. At the point of audit, it is the Council expectation that the Direct Payment client is able to provide documentation that supports how their personal budget has been utilised. This may include timesheets, wage slips, bank statements, invoices and receipts. Therefore, it is essential that the Direct Payment client is aware and understands that record keeping is maintained to an appropriate level which supports the audit process.

29.31. For those Direct Payments who access a managed account / payroll service the appropriate documentation would be held by the 3rd party.

29.32. If an individual does not comply and provide the required level of audit documentation, this will be reviewed on a case by case basis and the direct payment may be suspended or terminated.

**Suspending a Direct Payment**

29.33. Direct Payments may be suspended for example if a client is temporarily unable to receive support for any reason (has a stay in hospital).

29.34. There may be occasions when Direct Payment clients 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.

29.35. 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.

29.36. In some cases, the responsible person managing the Direct Payment may require a hospital stay. In these cases, the Council 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 responsible person, or through short-term authority arranged care and support.

29.37. A Direct Payment may be suspended if there is a break down in support and alternative support cannot be organised. The Council will ensure that

the needs of the individual will be met in the intervening period whilst the break down in support is investigated.

29.38. If it is considered that the support the person is receiving is not of an adequate standard or does not meet the assessed support needs following further investigation; the Council will provide support in the intervening period so that the individual is not left without support.

29.39. If audit documentation has been requested from the carer and this request has not been responded to within 28 days the direct payments will be suspended until the audit process is complete.

**Direct Payments may be ended if**

29.40. The Council is not satisfied that the support the person receives is of an adequate standard or meets the person's support needs (we will give 21 days written notice prior to ending a Direct Payment).

29.41. Direct Payments has been spent on anything other than meeting the assessed support needs (we will give 21 days' written notice prior to ending a Direct Payment). In these circumstances the Council will recover Direct Payments monies from the client.

29.42. The person has not complied with the terms and conditions of the Direct Payment Agreement, and they have failed to rectify this within four weeks of being notified by the Council (the agreement will end with immediate effect).

29.43. The person has become unable to manage their Direct Payment. Where appropriate, we will make alternative arrangements to ensure the person continues to receive support.

29.44. The person no longer wants or is no longer eligible for Direct Payments.

29.45. For Adults with an eligible care need, the Direct Payment will end if there is evidence that the client contribution to the cost of care is not being paid into a Direct Payment account.

29.46. Where individuals continue to require care and support to meet their assessed need alternative support will be arranged.

29.47. Direct Payments that are ended will require an audit to be undertaken to finalise the account. This will determine if Direct Payment liabilities have been discharged and if there are any funds to be repaid to the Council.

**Redundancy Payments**

29.48. If a Direct Payment is used to employ a personal assistant, the Direct Payment client must act as a responsible employer and make arrangements in line with employment legislation. All employees have certain rights and may be entitled to redundancy pay if they are made redundant.

29.49. The Direct Payment client must ensure that sufficient funds from the Direct Payment are retained to cover their employer responsibilities. The Direct Payment client is strongly urged to obtain their own legal advice as to their responsibilities as an employer.

29.50. The Direct Payment client will be responsible for employment costs incurred such as holiday pay, national insurance contributions, employers national insurance, pension contributions and redundancy payments if applicable. The Direct Payment client should ensure they obtain a sufficient level of insurance to cover any potential redundancy costs.

29.51. The Council reserves the right to recover excess balances (refer to section 29.54). If, however, a redundancy situation occurs then it may be appropriate for the Council to support redundancy costs where funds have previously been reclaimed. This will be reviewed on an individual basis.

29.52. It is the employers (Direct Payment client) responsibility and not the Council to ensure that all legislation is adhered to. Advice and support around costing contingencies can be offered through the Direct Payment Support Service https://peopleplus.co.uk/independent-living-service/cheshire-east and for children and young people there are dedicated Council employees who can assist with children and young people's Direct Payments and provide the same range of support (as noted in 17.4). These Direct Payment Advisers are based within the Family Help Service. Email childrensdirectpayments@cheshireeast.gov.uk

**Transport Costs**

29.53. For adults, please refer to the Adult Social Care Charging Policy.

29.54. Children's services do not fund transport or mileage costs as part of a direct payment package.

**Reclaiming / Recovering of Direct Payment Funds**

29.55. The Council will recover Direct Payments if they have not been used for the intended purpose as agreed in their assessment of needs and identified outcomes or if they have been paid to a person excluded from receiving Direct Payments.

29.56. Where a balance remains following ending of a Direct Payments account and the discharge of all liabilities, the Council will request the repayment of the entire remaining balance. It is a responsibility of the Direct Payment client to return any funds following termination of the Direct Payment.

29.57. Where an account is terminated due to the death of a Direct Payments user, it will be the responsibility of the executors of the deceased's estate to discharge any liabilities. This may include payment of outstanding invoices, wages, tax, pensions and any other liabilities relating to the Direct Payment. The entire remaining balance must be repaid to the Council.

## 30. Using a vehicle

30.1. If a personal assistant is providing transport to the Direct Payment client they will need to ensure that they take out appropriate insurance cover e.g. business cover. The Direct Payment Support Service will offer support and guidance, https://peopleplus.co.uk/independent-living-service/cheshire-east and For children and young people in the first instance please contact either the family social worker or social worker or alternatively there are dedicated Council employees who can assist with children and young people's Direct Payments and provide the same range of support (as noted in 17.4). These Direct Payment Advisers are based within the Family Help Service. Email childrensdirectpayments@cheshireeast.gov.uk

## 31. Social Care Fraud

31.1. 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
- 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
- Failing to notify 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

31.2. 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.

31.3. 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.

31.4. For adults report social care fraud contact the Council's First Point of Contact Team by telephone on 0300 123 5010 or email eastfpoc@cheshireeast.gov.uk or adultcontactteamsouth@cheshireeast.gov.uk

31.5. For childrens social care fraud contact the Council's Placement Service by telephone on 01260 375446 or email Placementserviceeast@cheshireeast.gov.uk

## 32. The UK GDPR (General Data Protection Regulation) 2018

32.1. To find out how the Council will store and use data about you please refer to our Adult and Health Care Privacy Notice and/or Children and Families Privacy Notice can be found at the following link: https://www.cheshireeast.gov.uk/council_and_democracy/council_information/website_information/privacy-notices/adult-social-care-privacy-notice.aspx

https://www.cheshireeast.gov.uk/council_and_democracy/council_information/website_information/privacy-notices/children-and-families-privacy-notice.aspx

### UK GDPR for an employer

32.2. As an employer it is important that you ensure the privacy of data is taken seriously. The UK GDPR 2018 was introduced which is a regulation on data protection and privacy. To ensure that you are compliant with UK GDPR, Cheshire East Council recommends that you provide your employees with a record of how you will comply with data processing activities.

32.3. To ensure you comply with this you must confidentially destroy any personal information regarding employees 7 years (It doesn't have to be 7 years, personal data can be kept until it is no longer needed. It can be kept longer for things like a pending court action etc.,) after their contract comes to an end, and you should also dispose of any unsuccessful applicant's information after 12 weeks for example, application forms.

32.4. It is really important that as an employer that you have the appropriate level of employer liability insurance (please refer to section 17), your insurance provider will be able to provide you with a privacy notice statement.

## 33. Further information

33.1 For further information on adult Direct Payments including easy read documents and factsheets please visit Cheshire East Council LiveWell website via:

Direct Payments and Personal Assistants (cheshireeast.gov.uk)

33.2 For further information regarding children's direct payments please visit:

Support for children with disabilities (cheshireeast.gov.uk)

Personal Budgets for Social Care (cheshireeast.gov.uk)