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| <b>PROCEDURE TITLE</b> | <b>Direct Payment Policy (Appendix C)</b> |
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| <b>PURPOSE</b>          | The purpose of the Direct Payment Policy is to explain the parameters and process applied when the Council allows Adult Social Care customers the opportunity to receive a cash budget for their care as an alternative to commissioned care services to meet eligible unmet needs. |
| <b>SCOPE</b>            | This policy is followed by staff when a customer is found to have eligible unmet needs for care services – the customer (or their legal representatives) should be offered the option of a Direct Payment to meet their needs.  |
| <b>POLICY SUPPORTED</b> | Personal Budget, Charging, Suitable Person, Carers, Debt  |
| <b>RESPONSIBILITIES</b> | Care Manager<br>Financial Coordinator<br>Social Care Business Support and Finance<br>Contracts Team<br>Cheshire Centre for Independent Living Managed Account and Brokerage.  |
| <b>ENQUIRY POINT</b>    | Alison McCudden, Service Manager – Social Care Business Support and Finance<br>Nicola Phillips, Service Manager, Adult Social Care  |
| <b>KEYWORDS</b>         | Direct Payment, Suitable Person,  |

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|---------------------------|----------------------|---------------|--|
| <b>PROCEDURE APPROVAL</b> |                      |               |  |
| APPROVED BY               |                      | POSITION      |  |
| SIGNATURE                 | Version4/23.2.15/amc | DATE APPROVED |  |

## COMMUNICATING WITH CUSTOMERS OR CARERS

When following this policy, if you need to communicate with customers or carers, it is essential that the communication is made in a way that is understandable to them. For example, where people may be from a different ethnic origin, it is essential to find out whether or not their first language is English. If it is not, it will be appropriate and essential to enquire whether written or spoken communications need to be, or would best be, in their first language.

If the customer has a learning disability, you will need to make sure that any written communication is in an appropriate form, for example 'easy read', and consider whether it would be advisable to have an Advocate available for any discussions.

Our Communication and Information Strategy requires that we should make information accessible to all. We have, therefore, contracted with a number of organisations to provide translation and interpretation services, and to transfer information into alternative formats such as large print or Braille. If you are unsure about the conventions which are acceptable to people from other cultures or religions, guidance is available from Communications: [communications@cheshireeast.gov.uk](mailto:communications@cheshireeast.gov.uk).

# Direct Payment Policy

**Document Summary:** This document outlines Cheshire East Council's approach to Direct Payments - the cash element of a Personal Budget and is part of the Personal Budget Policy.

## Direct Payments

### 1. Glossary of terms

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| Best Interests Assessment                   | An assessment to determine and evidence what would be in a person's best interest, in relation to a specific decision, where the person has been determined, using a mental capacity assessment, as lacking the capacity to make that decision themselves.   |
| Direct Payments                             | Money paid (in lieu of a commissioned service) to a person to purchase social care services they are eligible to receive.  |
| Social Care Business Support and Finance    | The team responsible for conducting financial assessments for people receiving services from Cheshire East Council and overseeing payment of the Direct Payment  |
| Mental Capacity Assessment (MCA)            | The assessment used to determine if a person has the capacity to make a particular decision.   |
| Cheshire East Council/the Council           | The organisation that arranges care and Support.   |
| Social Care Services                        | Social Care covers a wide range of services provided by Cheshire East Council, Partners and the independent sector to eligible people either in their own homes or in a care home.   |
| Suitable Person/Representative/Third Person | 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 customer. |

## 1 Policy document

1.1 This is a policy document, and may be amended or changed in accordance with Democratic procedures. Nothing in this policy is intended to fetter the discretion of the Council.

## **2 Scope**

2.1 This policy is intended to assist officers of Cheshire East Council involved in carrying out social care need assessments and financial assessment, reassessments, reviews, support planning, audit or who are otherwise involved in the arrangement and administration of services for people with assessed eligible community care needs and provide a clear framework to the Council's Direct Payment offer.

## **3 Purpose**

3.1 Cheshire East Council is committed to increasing the number of people receiving Direct Payments and to ensure that (where appropriate) people have access to the choice that Direct Payments bring.

3.2 A Direct Payment is funding given by the Council to eligible individuals so that they themselves can pay for the services that will meet their assessed eligible unmet community care needs. This policy outlines the benefits and responsibilities that arranging, managing and paying for services brings to individuals who choose to take up the offer of Direct Payments.

## **4. Introduction to Direct Payments**

4.1 In April 2003, the Government published guidance on Direct Payments. All councils have had (with certain caveats and protections in place) a legal duty, since 2003, to offer people who are eligible for community care services the choice of receiving Direct Payments to manage their assessed eligible unmet community care needs. This policy follows the updated Direct Payment Guidance contained within the Care Act 2014 and the Care and Support (Direct Payments) Regulations 2014 and includes the Council's offer as consulted on during December 2014 and January 2015. Direct Payments promote independence, choice and inclusion by enabling people to purchase the assistance or services that the Council would otherwise provide.

4.2 With the exception of people requiring permanent residential care, Direct Payments should always be considered when deciding how to meet a person's assessed eligible community care needs. However, the Department of Health guidance states that Direct Payments may be offered in permanent residential care to purchase day opportunities, support or activities. However, it is the expectation of Cheshire East Council that, when funding a residential placement, the holistic needs of the individual are met by the service provider unless exceptional circumstances can be demonstrated.

4.3 The principle of Direct Payments is that, once a person has been assessed as having eligible unmet needs for services or equipment from a local authority social care department, then s/he can choose to receive the money to purchase the service or equipment, instead of having it provided or arranged directly by the Council.

4.4 Each individual in receipt of services can use the Direct Payment to secure the services they require to meet their needs, as set out in their support plan. Direct Payments are offered as an alternative to traditional care services or they can be offered for elements of an individual's care while other elements are covered by care packages in another way.

4.5 The Care Act 2014 introduces a new responsibility to Councils to treat Carers in the same way as those requiring care. Direct Payments can be offered to Carers to meet their assessed eligible needs.

4.6 There may be instances where the person being cared for does not have eligible needs but their carer does have eligible needs in his or her own right. 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 replacement care for the cared for adult, if the carer's eligible needs would be met by such provision.

4.7 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.

## **5. Eligibility, Consent and Capacity**

### **5.1 Who is eligible to receive Direct Payments?**

Under the legislation, councils have a power (although not a duty) to make Direct Payments to:

- Older and disabled people aged 16 and over in line with the Council's 'Prioritising Need' policy
- A person with parental responsibility for a child
- Carers aged 16 and over
- An appropriately appointed suitable person.
- People ("restricted patients") who are conditionally discharged under the Mental Health Act 1983. Such people are offenders who have been detained in hospital under the Mental Health Act 1983 and who remain liable to recall to hospital if necessary for their own health and safety or the protection of others.
- People who are compelled to receive a service as a result of any of the following legislative provisions relating to mental disorder:
  - Supervised community treatment, guardianship or on leave of absence from a hospital in which they are detained under the Mental Health Act 1983.
  - Supervision by a social worker or probation service as a result of a supervision order made under the Criminal Procedure (Insanity) Act 1964.
  - An offender released on licence under the Criminal Justice Act 1991, which includes a requirement to accept treatment for a mental health condition.
  - An offender on a community rehabilitation order under the Powers of Criminal Courts (Sentencing) Act 2000, which includes a requirement to accept treatment for a mental health condition; and
  - An offender on a community order or serving a suspended prison sentence under the Criminal Justice Act 2003, which includes a requirement to accept treatment for a mental health condition

### **5.2 Who is excluded from Direct Payments?**

Direct Payments may not be made to certain people whose liberty to arrange their care is restricted by certain mental health or criminal justice legislation as follows:

- offenders on a community order or serving a suspended prison sentence under the Criminal Justice Act 2003, which includes a requirement to accept treatment for drug or alcohol dependency.
- an offender on a community rehabilitation order or a community punishment and rehabilitation order or a community punishment and rehabilitation order under the Powers of Criminal Courts (Sentencing) Act 2000, which includes a requirement to accept treatment for drug or alcohol.
- offenders released from prison on licence under the Criminal Justice Act 1991, the Criminal Justice Act 2003 or the Crime (Sentences) Act 1997 subject to an additional requirement to undergo treatment for drug or alcohol dependency.
- people subject to equivalent restrictions in mental health or criminal justice legislation – in any other UK Jurisdiction.

**5.3 Consent and Capacity** - People who receive direct payments are responsible for arranging and managing their own or another person's care. This may involve legal responsibilities, for example, employing staff. They need to maintain appropriate records and account to the Council for how direct payment monies are spent.

5.4 Before people consent to receive direct payments, they should be fully advised about their rights and responsibilities in relation to direct payments. Consent must be given voluntarily and no one should feel forced or obliged to accept a direct payment if they do not wish to do so.

5.5 Where there is any doubt about a person's ability to consent to direct payments, the Local Authority must assess whether or not the person has capacity to consent before making Direct Payments available. Service users who would otherwise have no-one to support them should be offered an advocate. In such cases, staff must refer to the Mental Capacity Act 2005 and its accompanying Code of Practice.

5.6 Inability to consent to receiving a direct payment does not mean a person with eligible needs cannot receive a direct payment provided that a suitable person is appointed to manage the direct payments on their behalf.

5.7 In the case of people who are unable (including those who lack the requisite mental capacity to consent - please refer to Mental Capacity Act 2005 and Code of Practice) to manage their own Direct Payment, an appointed **Suitable Person** can receive a Direct Payment to secure services to meet the assessed eligible community care needs of the individual. People may also ask carers or others to help or support them in managing their Direct Payment where they have capacity to request this. This may include helping them to secure the services they require.

## **6. Representatives or suitable persons**

6.1 The Council (Care Manager) will make the decision about whether or not someone is considered a suitable person to manage the Direct Payment on behalf of the person who cannot consent or is not able to manage their Direct Payment. Someone may be considered suitable if any of the following applies:

- there are no substantiated allegations of financial abuse or neglect.
- there is no reason to believe they pose a risk to the person in receipt of services.
- they are capable of managing the Direct Payment.

- they will work in accordance with the Children's Acts (1989 and 2004) and Mental Capacity Act (2005).
- they have parental responsibility and there are no substantiated allegations of financial abuse or neglect.
- there is a suitable Trust in place whereby the representative or suitable person acts as trustee holding property for the benefit of the Direct Payment recipient.
- there is a valid registered lasting (or enduring) power of attorney and there are no substantiated allegations of financial abuse or neglect.
- there is a Court Appointed Deputy and there are no substantiated allegations of financial abuse or neglect.

6.2 It would not be considered suitable for someone who is being paid from the Direct Payment account (e.g. as a Personal Assistant or Care Provider) to also act as the representative or Suitable Person.

6.3 If a Personal Assistant is being employed, then the representative must be able to comprehend relevant legislation and the responsibilities of being an employer. In these circumstances, the representative is the employer and is responsible for all elements of the Direct Payments and employment law relating to this.

6.4 Episodic / Fluctuating Conditions - People with an episodic or fluctuating condition, may still be able to manage their Direct Payment. However, some people with these conditions may prefer to nominate an individual (e.g. a relative, friend or professional advisor) to assist them with managing their Direct Payments when their condition becomes acute.

## 7. Using Direct Payments

### 7.1 What a Direct Payment CAN be spent on - Guiding Principles

The Council s cannot draw up an exhaustive list as to how people can/cannot spend their Direct Payment. Each case must be decided on its own merits and documented in the customer's support plan, based on the following key principles. The service, activity or item proposed should:

- be clearly linked to the outcomes identified in the Support Plan to meet the person's assessed eligible community care needs.
- be able to show how it will keep the individual healthy, safe and well.
- be affordable and proportionate to the assessed eligible community care needs of the person.

### 7.2 Examples

The Direct Payments scheme has been designed to apply to a wide range of community care services in accordance with the Care Act 2014 and the Care and Support (Direct Payments) Regulations 2014. These **could** include:

- Employing a Personal Assistant to help the individual with their daily living requirements.
- Support to meet assessed eligible community care needs as identified in the Support Plan. Usually, people will be expected to fund actual activities from their income. However, occasionally, there may be circumstances where the activity itself

meets an assessed critical or substantial need and, in such cases, a Direct Payment may be given for the activity itself as well as for the paid support he or she will need to access that activity.

- In exceptional circumstances, to purchase equipment or an item of the person's choice that would enable them to meet their assessed eligible care need themselves. The person sources their choice of equipment and agrees with the Council that it is suitable to meet their assessed eligible care needs. The Direct Payment awarded is the cost of the item to Cheshire East Council, based on the Catalogue
- The person is expected to make up any shortfall associated with choice either themselves from disregarded income or capital, or seek a third party to support the additional costs.
- Respite care – The purpose of respite is to provide an alternative to regular informal care, usually in order to facilitate carer relief. Direct Payments can be made to an individual who has been assessed as having an eligible need for respite. Direct payments cannot currently be used to pay for long term care home placements. However, they can be used to purchase a short term stay, provided this does not exceed a period of four consecutive weeks in any 12 month period. It may be that respite is taken in a private residential setting, or it may take place within the home with support from a carer. A Direct payment could be made to cover the cost of the support the person will need while they are away from home, or the cost of the care provided in the home, while the main informal carer is away. Alternatively, it might also be possible to use the payment to fund the support to meet assessed eligible community care needs while on holiday (without the main informal carer). There may be exceptional circumstances when the main informal carer will also go on holiday but will not be providing the assessed care. General holiday expenses, such as the hire of a caravan, hotel or travel will need to be funded from the person's own income. How the respite will take place will be agreed with the person and recorded in their support plan.

### **7.3 What a Direct Payment CANNOT be spent on:**

Working within the above guiding principles, the following are things a Direct Payment **cannot** be spent on:

- purchasing services from Cheshire East Council,
- permanent residential care,
- an activity or item that exposes the individual to serious risk from someone else/themselves,
- funding support provided by anyone living in the same house except in exceptional circumstances,
- anything that is not covered by the support plan,
- any type of illegal activity,
- any services provided by the NHS,
- a substitute for Disabled Facilities Grants,
- a self-employed Personal Assistant, or
- Gambling
- Paying off personal loans
- Redundancy pay for a Personal Assistant

- anything else that is not an assessed eligible community care need

## **8. Employment of Personal Assistants**

8.1 Cheshire East Council strongly recommends that a Direct Payment recipient planning to employ anyone (including family members) conducts an Enhanced DBS check. Cheshire East Council insists that a DBS check is conducted where it is intended for a Personal Assistant to be employed in a household where there are children (under 18 years). The Personal Assistant should not be employed until this DBS check is completed. Cheshire Centre for Independent Living maintain a register of Personal Assistants who are DBS checked.

8.2 **Employer's Responsibilities and Legislation** - If a Direct Payment is used to employ a Personal Assistant, the Direct Payment recipient must act as a responsible employer and make arrangements in line with employment legislation. The Council (Care Manager) must ensure there is sufficient allocation of funds to cover requirements such as small contingency for holiday pay/maternity leave/replacement care, Debarring Service Check, Insurance, etc. As an employer, it is the responsibility of the Direct Payment recipient and not the Council to ensure all legislation is adhered to and all necessary insurance is taken out and necessary training completed. Advice and support around costing contingencies can be offered through the Council's contracted Direct Payment and Personal Budget Support Service through Cheshire Centre for Independent Living. The Direct Payment recipient must ensure that they retain sufficient funding from the Direct Payment to cover their potential employer responsibilities. The Direct Payment recipient is strongly urged to obtain their own independent legal advice as to their responsibilities as an employer.

8.3 All employers must register with HM Revenue and Customs, regardless of whether any tax and national insurance contributions are being paid.

8.4 **Employing someone residing in the same household** - The 2009 Direct Payment Regulations excluded the payment from being used to pay for care from a close family member living in the same household, except where the local authority determined this to be necessary. While the Care and Support (Direct Payments) Regulations 2014 maintain this provision regarding paying a family member living in the same household for care, it provides a distinction between 'care' and 'administration/management' of the direct payment. This allows people to pay a close family member living in the same household to provide management and/or administrative support to the direct payment holder in cases where the local authority determines this to be necessary. This is intended to reflect the fact that in some cases, especially where there are multiple complex needs, the direct payment amount may be substantial.

8.5 The management and administration of a large payment, along with organising care and support can be a complex and time consuming task. This allows family members performing this task to be paid a proportion of the direct payment, similar to what many direct payment holders pay to third-party support organisations, as long as the local authority allows this. Care Managers should refer people to Cheshire Centre for Independent Living for advice and guidance.

8.6 The local authority should be satisfied that it is necessary to make the payment to the family member to provide this service and that the direct payment will only be used for administration and management of the payment. The circumstances and payment amount should be decided and agreed with the person requiring care and support, the family member, local authority and any other person (i.e. advocate), with the local authority taking steps to ensure all parties agree.

8.7 These decisions should be recorded in the care and support plan and include the amount of the payments, their frequency and the activities that are covered. This arrangement must also be taken into account during allocation of the personal budget so that the amount remains sufficient to meet the person's needs.

9. **Sourcing Care.** The Council (Care Manager) can provide information on care available in the market to meet the needs of the individual. The individual can be signposted to Cheshire Centre for Independent Living who is able to assist the individual with detailed Support Planning in order to create a package of care from within the allocated budget to meet the individual's needs.

## 10 Managing a Direct Payment

10.1 - **Frequency of Payments.** Direct Payments will be paid into the individual's Direct Payments bank account in line with our billing periods every 4 weeks, in advance.

10.2 - **Payment methods.** Payments will be made via the BACS system (an electronic transfer of funds between the Council's and the individual's Direct Payments bank account). Payment will be made net of the customer's assessed weekly financial contribution.

10.3 - **Bank Accounts.** Direct Payments will only be paid into a separate and appropriately named bank account, which will be used solely for the purpose of managing Direct Payments. This is to ensure that the individual does not confuse their personal funds with their Direct Payment funds and will allow efficient record keeping, monitoring and auditing, both for the individual themselves and the Council for audit purposes.

10.4 - **One-off payments.** In exceptional cases Direct Payments for respite, equipment and carers could be made as one-off payments as documented in the Support Plan.

10.5 - **Managed Accounts.** It is possible for people who have been assessed, under the Mental Capacity Act as lacking the requisite mental capacity to manage a Direct Payment to still receive one. An agreement might be reached with the Council whereby a relative or other carer can manage the person's Direct Payment account on their behalf under the Suitable Person policy. In such circumstances, a person who agrees to manage an account on behalf of someone, will be personally accountable for the individual's personal budget in the same way that the individual would have been had they had mental capacity to do so themselves.

10.6 If none of the above supports exist and a person has the requisite mental capacity to agree to a Direct Payment (or someone to do so on their behalf) the individual may choose a Managed Account offered by Cheshire Centre for Independent Living or any

other provider of such services – the individual will retain responsibility for responding to audit requests and instructing the managed account provider on day to day transactional activity.

**10.7 - Contingency and Reserves.** If the Direct Payment is paid as a weekly allocation, a contingency payment of up to 8 weeks worth of the weekly direct payment in advance can be paid by the Council into the Direct Payment account subject to the assessed eligible need of the customer. This should only be used for care services.

**10.8 - Reserves.** The Council will allow the Direct Payment recipient to retain an agreed reserve of 4 weeks DP monies in their Direct Payment account at any one time. The Direct Payment bank account will be audited regularly (as detailed in the Support Plan) and any obvious surplus in excess of the agreed reserve will need to be repaid to the Council.

**10.9 - Mixed Packages of Care.** Individuals may want to carry on receiving some services purchased via directly provided packages of care (arranged by Cheshire East Council) whilst purchasing their other services via a Direct Payment. In addition, there may be good reasons for the Council agreeing to provide part of a person's care package directly but making a Direct Payment in respect of certain parts of the care package. In such circumstances the customer's financial contribution will always be netted off the direct payment.

**10.10 - Contributions to Care.** All Direct Payments are subject to the Council's Charging policy. Following financial assessment by the Council, the individual must make their personal contribution towards their Direct Payment (if applicable) into their Direct Payment bank account as per the Direct Payment Agreement 4 weekly in advance. A Direct Payment will not be paid if the assessed contribution is greater than the Direct Payment amount. The Assessed Contribution is the first element of payment with the Direct Payment making up the difference to ensure the support needs can be afforded. If the assessed contribution is less than the Direct Payment, the amount of the contribution will be deducted from the Direct Payment before the payment is made. If it is found that the personal contribution has not been paid into the Direct Payment account, the individual will be liable for this amount. The council will follow its usual debt recovery procedure to reclaim unpaid client contributions and misspends.

10.11 The amount of care may vary each week; however, the weekly contribution is a fixed amount and should always to be paid into the Direct Payment account first. When a contribution is applicable to a respite payment, that contribution should also be paid into the Direct Payment bank account, normally charged at the community rate but in some cases where respite is the only service provided through a Direct Payment the respite charge will apply.

**10.12 - Use of own resources.** To purchase additional or enhanced services to those agreed in the support plan, the Direct Payment recipient can add to their Direct Payment from their own disregarded income or capital. Top up amounts to providers must not be paid for out of Direct payment monies or the individual's personal contribution. Top up payments should be funded by the customer (or a nominated third party) from disregarded income or capital only or by a third party.

**10.13 - Self-Funders.** If, after the financial assessment, the individual has to pay the full amount for their services, individuals may still decide to use the Council for support and advice on how to meet their own care needs but they would not be eligible for a Direct Payment.

## **11. Direct Payment Agreement**

11.1 All recipients and/or suitable persons nominated must sign the Direct Payment Agreement before a Direct Payment can be made. The Direct Payment Agreement sets out the arrangements between the individual and the Council as to how a Direct Payment will be spent to achieve the outcomes detailed in the Support Plan. The agreement covers the payment, management; reviewing and auditing arrangements, which the Council, and individual will need to follow and refers to policies and other documents useful in the management of a Direct Payment.

## **12. Monitoring and Review of the Direct Payment**

12.1 The Council will conduct an initial 12 week audit of a direct payment to see how the Direct Payment is being spent, to ensure unmet assessed eligible community care needs and outcomes are being met and that the Direct Payment is being used as detailed in the Support Plan and within the terms of the Direct Payment Agreement.

12.2 If at the initial audit it becomes clear the individual is struggling to understand their responsibilities in operating a direct payment, the Council (Financial Coordinator) can assist with further information, advice and support.

12.3 The Direct Payment recipient will be subject to regular audits in relation to the use and management of the Direct Payment – this may be annual for many cases but may be bi-annual for cases where the direct payment is being managed well. This is required to ensure that Council monies are being used for the purposes laid out in the support plan, the correct amounts are being used for each service and that accurate receipts and records are being kept. Any discrepancies will be investigated and resolved and any debt will be recovered by the Council.

12.4 The Council has the right to suspend or terminate the Direct Payment as a result of the findings of the audit of the Direct Payment account. An audit of the individual's circumstances may take place at anytime.

## **13. Review of care provision in the form of a Direct Payment**

13.1 The Council's standard practice for reviews, as outlined in the Community Care Assessment and Care Management Procedure, should be followed. Consideration will be given to whether the recipient's Direct Payment bank account is being managed correctly, records and receipts are up to date, the monies are being used for the services for which they were intended, and the Direct Payment is adequately meeting the assessed eligible community care needs of the service user.

13.2 The Council has the right to increase, decrease, suspend or terminate the Direct Payment in line with regular review or reassessment of the recipient's assessed eligible community care needs. A formal review or reassessment of the individual's circumstances can be requested at anytime.

## **14. Audit of Direct Payments**

14.1 The Council will provide information and advice to people who opt to take their care and support through the payment of a Direct Payment. It will be made clear to the person that the Direct Payment Account is auditable and the need for good record keeping on expenditure is important.

14.2 The Direct Payment will be audited initially at 12 weeks from it starting and any issues will be addressed by the Care Manager at this point in conjunction with the person and the Financial Coordinator.

14.3 Thereafter Direct Payments are usually audited annually but some accounts may be running well and therefore subject to a longer audit period. Some cases where they are not running smoothly will be subject to earlier audit.

14.4 A care manager or customer can request an audit at any time.

## **15. Recovery of Direct Payments**

15.1 The Council reserves the right to recover Direct Payments, in line with the Council's debt recovery policy in the following circumstances:

- if the Direct Payment has not been used to meet agreed outcomes, as set out in the support plan,
- if the Direct Payment has not been used due to a temporary change in circumstances,
- if the Direct Payment recipient fails to meet any terms of the Direct Payment Agreement,
- if the Direct Payment recipient has failed to disclose other social care funding that should be taken into account when calculating the Direct Payment,
- if a Direct Payment has been overpaid or paid in error,
- if there is a surplus in the Direct Payment account, which has been accrued above the agreed amount,
- if the Direct Payment recipient has not met any condition which the Council has properly imposed in the Direct Payment Agreement or agreed letters.
- If, following termination of the Direct Payment, any Direct Payment monies remain in the Direct Payment account.

**15.2 Unspent Direct Payments** - If, after allowances for outstanding costs and personal assistant payment contingencies, there is found to be a build up of unused Direct Payment funds in the recipient's Direct Payment account, the recipient will be notified that these unspent monies will be recovered leaving 4 weeks payment in place.

**15.3 Overpayments** - If the Direct Payment recipient is no longer entitled to, or no longer wishes to receive a Direct Payment, and/or an overpayment has occurred due to an error on the part of the Council, the Direct Payment recipient will be notified that this overpayment will be recovered.

**15.4 Wrongful Use of Direct Payments** - Where it appears that the Direct Payment recipient has been using their Direct Payment for items or services other than those specified in their support plan, or as set out in the Direct Payment Agreement, or there is evidence of deliberate misuse of funds, the Council will undertake a full reconciliation Audit to ascertain the exact amount of money that has been inappropriately used and seek to recover it.

15.5 If Direct Payments have been inappropriately used (either intentionally or unintentionally) due to mismanagement of the Direct Payment account, or the Direct Payment recipient has shown themselves incapable or unwilling to manage their Direct Payment correctly, a review or reassessment will be undertaken as a matter of urgency. If the outcome is that the Direct Payment monies have been inappropriately used, the monies will be recovered.

## **16 Termination of Direct Payments**

### **16.1 Terminating Direct Payments by the Direct Payment Recipient**

If a Direct Payment recipient expresses a desire to terminate the Direct Payment, the reasons for the termination need to be provided to the Council. They will then work with the individual to plan how their assessed eligible care needs will be met in an alternative way.

### **16.2 Council Terminates Direct Payment**

The Council reserves the right to terminate the Direct Payment if terms of the Direct Payment agreement are breached. If this happens, the recipient will be informed in writing. In such cases, the Council will then work with the individual to plan how their assessed eligible care needs will be met in an alternative way.

## **17. Further Information**

### **17.1 Complaints & Feedback**

The Council operates a Statutory Complaints procedure, which an individual may access should they experience dissatisfaction with their Direct Payment provision.

### **17.2 Social Care Business Support and Finance**

The Council's Business Support and Finance Team are available to discuss any issues regarding the payments and the management of Direct Payments and are able to offer advice and guidance about Direct Payments.

The team can be contacted at:

#### **Social Care Business Support and Finance**

Cheshire East Council

Phone: 0300 123 5102