Policies and Procedures

Personal budgets and direct payments
Policy: Personal budgets and direct payments

Purpose: To explain the policy which must be adhered to with regards to administering, managing and reviewing personal budgets and direct payments

Scope: Everyone working within the assessment, eligibility and review, support planning, personal budget and direct payment arenas

Contact point: Department of Adult Social Services

Approved by: Mr Graham Hodkinson
Signature:
Version: V9 (ii) – 22nd December 2015

Title: Director of Adult Social Services
Date: June 2016
Review date: June 2017
Overview

In April 2015 new legislation called The Care Act 2014 was introduced in England in order to make care and support services better and more consistent across the country. The focus is firmly on the person rather than the service and the new law empowers people to be involved and in control of their care journey and in turn maximise their potential to live a full and meaningful life. Wellbeing is at the core of the Act and it's aspiration is for local authorities to help prevent, reduce or delay the onset of care and support services to help people stay healthy and independent for as long as possible. Information and advice services are seen as having a vital role in this process. There will also be new systems in place around payments and charging. It was also planned that from April 2016 a cap on care costs would be introduced as well as an extension to the financial limits which determine who receives financial support. However the Government have now postponed these changes until 2020

Care and support is a term used to describe the help which some adults need to live as well as possible with any illness or disability they may have. It can include help with things like getting out of bed, washing, dressing, getting to work, cooking meals, eating, seeing friends, caring for families and being part of the community. Care and support includes the help given by family and friends, as well as any provided by Wirral or other organisations. People who are Carers will be entitled to a Carer’s assessment and, if eligible, their own support plans.

Wirral Metropolitan Borough Council (Wirral Council) has developed a number of policy documents to describe the process which is followed by the Council in relation to the care and support needs of adults in its communities.

Each policy reflects the over-arching commitment to put the person at the centre of all decisions which are made. The focus on personal wellbeing, information, choice and control is at the heart of how care and support is provided by Wirral.

**All Wirral Metropolitan Borough Council Department of Adult Social Services policies and procedures must be read in conjunction with the following:**

**Legislation**
- The Care Act 2014 Chapter 23 Part 1 Care and Support, General responsibilities of Local Authorities.
- Care and Support Statutory Guidance 2016
- Care and Support (Direct Payments) Regulations 2014
- Mental Capacity Act 2005 (MCA) and Section 117 (2c) of the Mental Health Act 1983 (MHA)
- Deprivation of Liberty Safeguards
- Human Rights Act 1998
- Children and Families Act 2014
- Equalities Act 2010
Wirral Policy and Procedures
Overarching values and principles
Referral and First Contact
Support Planning
Personal Budget
Safeguarding
Financial (Deferred payments and Charging)
Carers
Schedule of Fees and Charges

**Primary legislation to be repealed or disapplied**

*Title of legislation to be repealed, in whole or in part*

National Assistance Act 1948
Health Services and Public Health Act 1968
Local Authority Social Services Act 1970
Chronically Sick and Disabled Persons Act 1970
Health and Social Services and Social Security Adjudications Act 1983
Disabled Persons (Services, Consultation and Representation) Act 1986
National Health Service and Community Care Act 1990
Carers (Recognition and Services) Act 1995
Carers and Disabled Children Act 2000
Health and Social Care Act 2001
Community Care (Delayed Discharges etc.) Act 2003
Carers (Equal Opportunities) Act 2004
National Health Service Act 2006

*Secondary legislation to be revoked*  
*Title of instruments to be revoked, in whole or in part*

Approvals and directions under S.21(1) NAA 1948 (LAC (93)10)
National Assistance (Assessment of Resources) Regulations 1992
National Assistance Act 1948 (Choice of Accommodation) Directions 1992
National Assistance (Residential Accommodation) (Relevant Contributions) Regulations 2001
National Assistance (Residential Accommodation) (Additional Payments and Assessment of Resources) Regulations 2001
Delayed Discharges (Mental Health Care) (England) Order 2003
Delayed Discharges (England) Regulations 2003
National Assistance (Sums for Personal Requirements) Regulations 2003
Community Care (Delayed Discharges etc.) Act (Qualifying Services) Regulations 2003
Community Care Assessment Directions 2004
Community Care, Services for Carers and Children’s Services (Direct Payments) (England) Regulations 2009
NHS Continuing Healthcare (Responsibilities) Directions 2009
Ordinary Residence Disputes (National Assistance Act 1948) Directions 2010
Policy name

Personal Budgets and Direct Payments

1.0 Purpose

The purpose of Wirral Borough Council’s Personal Budgets and Direct Payments Policy is to explain the statutory framework under The Care Act 2014 and the Care and Support (Direct Payments) Regulations 2014 which must be adhered to in relation the implementation of adult social care personal budgets and direct payments.

2.0 Introduction

Wirral Council is committed to promoting individual wellbeing and to supporting independence through preventing, reducing or delaying the need for care and support. In addition ‘meeting needs’ is an important concept under the Care Act and moves away from the previous terminology of ‘providing services’. It illustrates the focus on personalisation within the care and support planning process and its purpose is to agree how a person’s needs should be met, and therefore how local authorities will discharge their duty, or their power, to do so. One of the ways of meeting assessed eligible needs is through the provision of a personal budget which can provide more flexibility over how a person’s care and support is arranged and provided. They are given to both people with care and support needs, and also to Carers.

A personal budget or direct payment will be created after a social care assessment. If the council decides that a person needs any kind of support, they will receive a personal budget and can choose a direct payment instead of using council commissioned services.

The Care Act also introduces a new responsibility to councils to treat Carers in the same way as those needing care. Therefore direct payments can be offered to a Carer if assessed as having unmet eligible needs even if the person they care for does not get any help from the Council. In deciding to offer a direct payment to a Carer, Wirral Council will first consider the range of commissioned Carer services which are sufficient to meet those needs.

3.0 Personal Budgets

A Personal Budget is the amount of money identified as being required to meet a person’s care and support needs and achieve the outcomes that are important to them. It is an important tool to give the person clear information regarding the money that has been allocated to meet their eligible needs identified in the assessment and recorded in the Support Plan. If a person wishes to have greater choice and control
in order to choose their own provider then, where possible, they will be able to do this through a direct payment or managed account.

Receiving a Personal Budget

A Personal Budget can be received in three different ways

- A direct payment
- Commissioned services – (services which are arranged and paid for by the Department of Adult Social Services through contracted providers)
- A combination of both
- An Individual Service Fund (ISF) - this is a different way for people to purchase their care from a provider. An ISF gives choice and control over the support they need without having to take on the responsibility of managing the money.

Individual Service Funds

Local authorities have different arrangements for providing support via an ISF including by direct contracts and personal budgets. Wirral Council provides ISFs as a means of enabling people to choose providers who are not on the Council’s contract framework and therefore ISFs are paid as a direct payment.

Wirral Council may offer an ISF when a number of people who are in receipt of a personal budget decide to pool their budgets together in order to receive the services they require from their chosen care provider. For example where a number of people reside in supported living and request a specific provider.

People who choose to combine with others to purchase their care in this way will receive their personal budget as a direct payment. Wirral Council will pay the person’s direct payment to their chosen care provider on their behalf.

Each person must have an individual ISF agreement with Wirral Council stating their individual direct payment. It will confirm which provider a person has requested to provide their services and to whom the Council will make the direct payment on their behalf. The agreement will be signed by the Council, the individual and the chosen provider.

Contents of a Personal Budget

The Personal Budget must:

- always be an amount sufficient to meet the person’s care and support needs
- include the cost to Wirral Council of meeting the person’s needs which Wirral is under a duty to meet or has exercised its power to do so
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• be broken down into the amount the person must pay following the financial assessment and the remainder of the budget that Wirral Council will pay

The Personal Budget should:
• be decided and agreed on in the care and support planning process
• be as straightforward and timely as possible

Use of a Personal Budget

A person may choose to spend their Personal Budget on a range of options as long as:
• It is not illegal
• Will not bring Wirral Council into disrepute
• Is not used for gambling, sex, alcohol or drugs
• It is not used to pay for day to day requirements such as bills

Self-funders

Where Wirral Council is meeting the eligible needs of a person whose financial resources are above the financial limit but who has requested that Wirral meets their needs Wirral may make a charge for putting in place the necessary arrangements. This fee would be additional to the Personal Budget. Please see Wirral Council’s Schedule of Fees and Charges.

Top-Ups

If a person is making an additional payment (top-up) in order to be able to secure the care and support of their choice, where this costs more than Wirral Council would normally pay for such a type of care this does not form part of the Personal Budget. This should be also be recorded in the Support Plan.

Exclusions from a Personal Budget

Reablement and intermediate care services up to a maximum period of 6 weeks will be excluded from the Personal Budget.

Calculating the Personal Budget

Wirral Council will follow the principles below when calculating the personal budget:

• Transparency
• Timeliness
• Sufficiency

This will result that the person, their Carer and their independent advocate (if required) is aware of how the budget was calculated, the amount at a stage which
enabled them to plan their care and support accordingly and the amount includes all relevant costs and is sufficient to meet needs.

**Agreeing final Budget**

This will be agreed at the end of the Support Planning process.

**Personal Budget Review**

Wirral Council will normally review the Personal Budget in conjunction with the Support Plan. This should take place annually unless the person’s circumstances have changed to the extent that they require a new assessment to determine their changed care and support needs.

**Carers Personal Budget**

If a Carer has been identified as having unmet eligible needs they may be entitled to a personal budget.

**Carers Personal Budget where the adult being cared for is not a Personal Budget holder**

Wirral Council may meet the Carer’s needs by providing a service directly to the adult needing care. Please see Wirral Council’s Schedule of Fees and Charges, Charging and Financial Assessment Policy and Carers Policy.

**4.0 Direct Payments**

**What is a direct payment?**

Direct payments are local council payments to enable people who have been assessed as eligible for support to make their own arrangements to meet their care and support needs. Direct payments are the government’s preferred mechanism for personalised care and support as they promote independence, choice and control over how needs are met.

When certain conditions are met, all or part of the Council’s proportion of a personal budget allocated under the Care Act 2014 can be paid direct to the person concerned or in some circumstances to someone acting on their behalf to meet needs as identified in the support plan.

Direct payments may also be used as a way of arranging after care services provided under s117 of the Mental Health Act 1983 (MHA).
4.1 Informing people, promoting choice and advocacy

Wirral Council will make available information about direct payments available to raise awareness of direct payments and how they can be used.

When a support plan to meet needs or discharge section 117 duties is being developed, people will be advised which of their eligible needs, if any, or after care services may be met/provided through direct payments and offered this option. People will be provided with information about direct payment rights and responsibilities and how to use and manage them so that they can make an informed decision.

People may request direct payments and may opt in or out of direct payments arrangements by notifying the Council. Requests for direct payments are usually made at planning stage but may be made at any other time.

People who appear to be unable to understand their rights and responsibilities in relation to direct payments and have no other suitable person to support them may not be eligible to receive a direct payment.

The Mental Capacity Act must be followed where there are any concerns about a person’s capacity to understand direct payment processes.

4.2. Who can receive direct payments?

Wirral Council has a duty (except where an exclusion applies and where the conditions described in 4.2 Conditions for receiving direct payments’ at paragraphs 4.3.1 (in respect of adults with capacity) and 4.3.2 (in respect of adults without capacity) are met) to provide direct payments for people whose needs for care and support have been determined to meet Care Act eligibility criteria and who have been allocated a personal budget to which the Council must contribute.

These include but are not exclusively:

- Disabled people aged 16 or over (with short or long term needs)
- Disabled parents for children’s services
- Carers aged 16 or over (including people with parental responsibility for a disabled child)
- Elderly people who need community care services
- An appropriately appointed suitable person
- People whose needs arise from a mental health condition

The regulations exclude people placed under certain conditions or requirements by the courts in relation to drug and/or alcohol dependencies from receiving direct payments. See Appendix 2 People excluded from direct payments.

Except where exclusion applies, where the conditions described at paragraphs 4.3.1 and 4.3.2 are met the Council may have a duty to provide direct payments for
People to whom after care services are provided under s117 of the MHA.

**4.3 Conditions for receiving direct payments**

**4.3.1 Adults with capacity**

Direct payments will be provided when requested by an adult with capacity when each of four conditions is fully met:-

1. The adult has mental capacity to choose a direct payment or a nominated person agrees to receive direct payments on their behalf.
2. The regulations do not prohibit needs from being met through direct payments. See 4.6 What Direct Payments cannot be used for in respect of restrictions on the use of direct payments.
3. The adult or the nominated person is capable of managing direct payments either independently or with support, and understands and is capable of becoming an employer where appropriate.
4. Making direct payments is an appropriate way of meeting the person’s assessed eligible needs.

**4.3.2 Adults without capacity**

Adults without capacity are not precluded from having direct payments when there is an authorised person to manage them. Direct payments will be provided when requested by an authorised person when each of the conditions at paragraph 4.3.1 is met. A person is assumed to have mental capacity unless it is established through a mental capacity assessor that they lack mental capacity.

**4.3.3 Authorised Person**

An authorised person is someone who:

- Is formally authorised to make appropriate decisions for the adult (i.e. the attorney acting under the authority of a registered Enduring Power of Attorney granted before the end of October 2007 under the Enduring Powers of Attorneys Act 1985; an attorney acting under the authority of a Lasting Power of Attorney made under sections 9 to 14 of the Mental Capacity Act 2005; or a deputy appointed by an order of the Court of Protection), or

- Is not formally authorised as above, but who is acting in the person’s best interests pursuant to sections 4 of the Mental Capacity Act 2005 and who is recognised by the Council as a suitable person to manage a direct payment.

When determining who is a suitable person to be an authorised person, Wirral Council will consider all the relevant circumstances and on a case by case basis.

Direct payments will be provided when requested by an authorised person when each of five conditions is fully met:-
1. Where the person making the request is not authorised under the MCA to make personal welfare decisions for the adult, the Council and any person who is so authorised agree that the person making the request is a suitable person to make decisions about the adult’s care and support.

2. The regulations do not prohibit needs from being met through direct payments. See 4.6 Direct Payments cannot be used for in respect of restrictions on the use of direct payments.

3. The authorised person will act in the adult’s best interest in arranging care and support with direct payments.

4. The authorised person is capable of managing direct payments either independently or with support, and consents to becoming the employer.

5. Making direct payments to the authorised person is an appropriate way of meeting needs.

Wirral Council will take the following steps to assess whether making direct payments to the authorised person is an appropriate way of meeting needs.

1. Conduct a mental capacity assessment and establish it is in the persons’ best interest

2. So far as is reasonably practicable and appropriate, the Council will consult and take into account the views of:

   • anyone named by the adult as someone to be consulted about whether direct payments should be made to the authorised person,
   • anyone engaged in caring for the adult or interested in their welfare,
   • anyone authorised under the MCA to make decisions about the adult’s needs for care and support.

3. So far as is reasonably ascertainable, the Council will consider:

   • the adult’s past and present wishes and feelings, particularly any relevant written statement made by the adult before they lost capacity,
   • the beliefs and values that would be likely to influence the adult’s decision if the adult had capacity, and
   • other relevant factors the adult would be likely to consider if they were able to do so.

The authorised person must:

   • be named as the financial representative on the individuals’ electronic record to enable payments to be made.
   • notify the Council if they reasonably believe that the adult has regained capacity.
   • Comply with audit requirements as set out by the Council

4.4 Declining a request for direct payments

Requests for direct payments will be declined if any condition set out at paragraph
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4.3.1 (for adults with capacity) and 4.3.2 (for adults without capacity) is unmet.

Wirral Council will provide a written explanation of why the request was declined including:

- which conditions are not met,
- why the condition is considered to be unmet
- what the person making the request may need to do to obtain a positive decision.

Information about how to appeal the decision through the complaints process will also be provided.

The Council will continue the planning process to agree with the person whose needs must be met how this can be achieved without the use of direct payments.

4.5 Using direct payments

Direct payments must be used to pay for arrangements to meet the needs specified in the agreed Support Plan.

Direct payments must be used to purchase services which are safe, legal, value for money and which adequately safeguard and promote the person’s welfare and wellbeing.

Direct payments may be subject to conditions imposed by the Council and may be discontinued and/or recovered if the Council has reason to believe that direct payments may have been misspent or accumulated without good reason.

4.6 What direct payments cannot be used for?

Direct payments cannot be used to purchase:

- Care services provided by the adult’s spouse/partner or a close family member (see Appendix 1 definitions) living in the same household as the adult. In exceptional circumstances the Council can agree a direct payment in these circumstances.
- Certain services directly provided by the Council
- Any ordinary cost of living e.g. food
- Services, equipment and/or minor adaptations which are the responsibility of other public bodies.
- Long term residential or nursing care. Direct Payments can be used to pay for: short stays of up to 4 consecutive weeks in any 12 month period. In calculating the period of 4 weeks, a stay of less than 4 weeks is added to any succeeding stay if the two stays are separated by a period of less than 4 weeks but not otherwise.
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.

Carer direct payments are to meet the Carer’s own assessed needs and cannot be used to purchase services for the service user.

4.7 Managing direct payments

Anyone who agrees to be responsible for managing direct payments must be capable of managing direct payments either independently or with help.

Adults with capacity can nominate a third party to assist them to manage direct payments in whatever way they require. The third party is known as the authorised person and is usually a family member or a friend.

If the person chooses, or it is deemed to be in their best interest a direct payment can be paid as a managed account.

Wirral Council’s Payroll and Managed Account services are provided by an independent provider. However should the individual choose to use a different company to provide these services, then this cost will be met from private income and not funded through the Direct Payment. Only where the Council’s contracted provider is unable to provide managed account service will the Council consider paying a managed account fee in addition to the direct payment.

Irrespective of the level and type of assistance provided by a third party including a commissioned direct payment support service or managed account, adults with capacity to consent to direct payments remain responsible and accountable for how direct payments are used. They are also responsible and accountable for employing Personal Assistants as well as for paying Personal Assistants and care agencies (with or without support to do so) for example a managed account service.

An authorised person acting on behalf of an adult without capacity is in a position of trust and is as liable as a direct payment recipient with capacity would be for any misuse of direct payments.
4.8 Direct payment recipients as employers / Disclosure and Barring Service

People may use direct payments to employ staff, or to pay an agency to provide services. The direct payment recipient must:

- be advised that there are legal responsibilities involved in becoming an employer and maintaining good employment practices,
- be urged to seek advice about employer legal responsibilities, including being responsible for all employment related costs, for example redundancy,
- purchase compulsory employers’ liability insurance, and

People with capacity are not obliged to carry out Disclosure and Barring Services (DBS) checks for people they employ through direct payments. However, it is recommended that DBS checks are obtained for all personal assistants.

4.9 Payment of direct payments

Direct payments managed by the individual are paid net of any required contribution from the adult in need of care who must add their contribution, if any, to the direct payments account.

Ongoing weekly payments are made in advance at four weekly intervals. All costs must be met within:

- any agreed direct payment which includes any additional personal contribution required from the person receiving services.
- the amount agreed as sufficient to meet the cost of s117 after care services –
- An initial or one off payment may be made, for example for agreed set up costs, from within the agreed amount.

Where a personal assistant (PA) is employed an annual payment will be made each year to cover the cost of holiday pay and insurance.

Direct payments must be paid into a bank or building society account specifically set up for the purpose of receiving and managing direct payments. They must be used solely for the purposes unless agreed otherwise.

When direct payments are made into an account set up to manage other monies specific to personal assistance, a separate bank account may not be necessary, if agreed by the Council in writing.

Payments of small amounts for one off purchases will not require a separate bank account, however receipts will be required for purchases.
4.10. Integrated direct payments

When an adult is receiving direct payments to meet both social care and health needs, steps will be taken to coordinate processes to minimise administrative and compliance requirements. In this instance both elements of the direct payment may be paid into the same bank account.

4.11. Direct payments agreement

The respective direct payments agreement must be signed and a copy of the signed agreement provided to all signatories and recorded on Liquidlogic. Where a suitable person is identified to receive the direct payment on behalf of the person, the suitable person must sign the contract.

4.12 Individual Service Fund (ISF)

As Individual Service Fund (ISF) provides a different way for people to purchase care from a registered provider. Where a number of people are eligible for a direct payment and wish to join their respective direct payments together in order for a single provider to meet all of their support needs on a flexible and shared basis they may choose for Wirral Council to pay all of their individual direct payments together to the provider. Individual Service Funds may be paid gross to the provider and the individual invoiced for their contribution towards the service.

By agreeing to this joint arrangement the ISF provider will provide support flexibly and to meet each persons assessed needs that have been identified in their own support plan. Each individual will sign their own direct payment agreement and the chosen provider will enter into an over-arching ISF agreement with Wirral Council.

4.13. Monitoring and review of direct payments

Wirral Council and/or Penderels Trust will inform an individual about what records they must retain and what information they will be required to provide at each review before the direct payment agreement is entered into.

All direct payments will be reviewed within the first six months of payment being made. Review will be at 12 monthly intervals, but can be more frequent depending on the individual circumstances.

Reviews will also be carried out at any time when the Council considers that:

- there has been a change in mental capacity, or
- any of the conditions listed at paragraphs 4.3.1 (in respect of adults with capacity) or 4.3.2 (in respect of adults with capacity) above is no longer met, or
- direct payments have not been used as intended, or
- the adult’s safety and welfare have been compromised or
• there has been any change which may adversely affect the effectiveness and intention of the support arrangements.

The review will establish if direct payments are being used to meet needs as intended, conditions are met and that public monies are being used effectively. Direct payment reviews will be undertaken alongside care reviews.

Reviews must involve the adult, any carer the adult has, any authorised person, and anyone else that the individual requests be involved. If the adult lacks capacity to make such a request, anyone who is authorised under the MCA to make personal welfare decisions (if different from the authorised person). If there is no such person anyone who appears to be interested in the adult’s welfare should be involved.

If the direct payment is being used to employ personal assistants the Council / Penderels should, as part of the review consider checking, if appropriate that the individual is fulfilling their responsibilities as an employer. The outcome of the review should be recorded in writing on Liquidlogic and a copy given to all parties.

4.14 Direct payments and hospital stays

If the direct payment is being paid to a nominated or authorised person who requires a hospital stay the Care Act guidance (12.53 and 12.54) states that Wirral must conduct an urgent review. This may be through a temporary nominate / authorised person, or through short term authority / council arranged care and support. If the stay is likely to be more than two weeks the person receiving the direct payments must inform Wirral Council who will suspend the payment.

4.15. Discontinuing Direct Payments / Requiring Repayment

People receiving direct payments, either for themselves or on behalf of another person, may decide at any time that they no longer wish to receive direct payments on giving 4 weeks written notice to the Council. The Council can agree to vary this notice period according to the individual’s circumstances. This will apply even if the direct payments have been suspended.

Four weeks’ notice will be given by Wirral Council before direct payments are discontinued, unless in exceptional circumstances.

The Council will end direct payments if it is satisfied that:

• The person is no longer eligible for or no longer requires the services for which direct payments are made.
• The person becomes excluded from receiving direct payments because they have been placed under a condition or requirement by the Courts in relation to drug and/or alcohol dependencies. See Appendix 2 People excluded from direct payments
• Any of the conditions listed at paragraphs 4.3.1 and 4.3.2 are no longer met.
• Direct payments are not achieving the person’s desired outcomes or eligible needs.

The Council may immediately suspend or end direct payments either permanently or temporarily if:

• The adult does not require assistance because their condition has improved and / or they do not need the services that direct payments were intended to secure.
• Any condition attached by the Council is unmet or the Council has reason to believe that direct payments have been used for purposes other than to meet needs as specified in the plan.
• The adult fails to pay any assessed financial contribution into the direct payments account.
• Given all the circumstances, the Council considers it appropriate to end direct payments.

Where someone with capacity was receiving direct payments but then loses capacity to consent, Wirral will discontinue Direct Payments to that person and consider making payments to a suitable person instead. In the interim alternative arrangements should be made (including directly commissioned services) to ensure continuity of support for the person concerned.

In the case of a person lacking capacity to consent; where Wirral Council is no longer satisfied that the authorised person is acting in their best interests it will discontinue the direct payment. Wirral will consider if someone else can act as an authorised person for the person lacking capacity, or whether it will have to arrange services for them in place of the direct payments.

4.16 Repayment of direct payments

Wirral Council will require full or partial repayment of direct payments if any condition attached by the Council is unmet or the Council has reason to believe that direct payments have been used for purposes other than to meet needs as specified in the support plan.

The Council may require repayment of any unspent direct payment if they are not required to meet needs as set out in the plan.

The Council will require repayment of excess funds accumulated in the dedicated bank account where there is no reasonable explanation for the surplus. Where it is believed that the level of accumulated direct payment is not required to meet assessed needs.
Direct Payments do not form part of an estate in the event that someone dies while receiving them. The money at all times belongs to the Council and remains public funds which should be returned to the department.

ENDS

APPENDIX

Appendix 1 - Glossary
Appendix 2 - People excluded from direct payments
### Appendix 1 Glossary

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Carer</td>
<td>Someone of any age who provides unpaid support to a family or friends who could not manage without this help.</td>
</tr>
<tr>
<td>Close family member</td>
<td>Someone who lives in the same household as the adult who is the adult’s: Parent or parent-in-law, Son or daughter, etc.</td>
</tr>
<tr>
<td>DBS checking</td>
<td>Screening through Disclosure and Barring Services. This checks criminal history and identifies people barred from working with children and vulnerable adults.</td>
</tr>
<tr>
<td>Direct payments</td>
<td>Payment of the Council’s contribution towards a personal budget direct to a dedicated bank account, so that the person or someone authorised to act on their behalf can arrange support services instead of having them arranged by the Council. Direct payments may also be provided in most instances to arrange s117 after care services.</td>
</tr>
<tr>
<td>Direct payments agreement</td>
<td>The written agreement which sets out the terms and conditions applicable to direct payments.</td>
</tr>
<tr>
<td>Duty to make direct payments</td>
<td>Where the Council has a legal obligation to make direct payments to eligible people because all conditions are met.</td>
</tr>
<tr>
<td>ISF</td>
<td>Individual Service Fund</td>
</tr>
<tr>
<td>Managed account</td>
<td>Managed accounts are used in limited circumstances, for example where an adult / authorised person has a poor credit rating or is unable or unwilling to manage the money. Direct payments are made to Penderels Trust which manages the funds on their behalf. The adult/supporter remains responsible for how direct payments are used. For example, if direct payments are used to employ staff, the adult/supporter is the employer, even though the commissioned service may carry out employment activities on a day to day basis.</td>
</tr>
<tr>
<td>MCA</td>
<td>Mental Capacity Act 2005</td>
</tr>
<tr>
<td>MHA</td>
<td>Mental Health Act 1983</td>
</tr>
<tr>
<td><strong>Minor adaptation</strong></td>
<td>An adaptation is defined as minor when the total cost including supply and fitting is less than £1000.</td>
</tr>
<tr>
<td><strong>Nominated person</strong></td>
<td>A person nominated by an adult with capacity to assist with day to day management of services and / or management of direct payment funds. An adult with capacity at all times remains responsible and accountable for how direct payments are used.</td>
</tr>
<tr>
<td><strong>Personal budget</strong></td>
<td>The amount of money allocated to fund the care and support required. The personal budget is means tested and therefore the adult may be required to make a financial contribution towards the total amount of the personal budget.</td>
</tr>
<tr>
<td><strong>Personalised care and support</strong></td>
<td>Tailoring care and support to the needs, wishes and preferences as far as this is possible so that the person concerned has as much choice and control over how their needs are met.</td>
</tr>
<tr>
<td><strong>Support Plan</strong></td>
<td>A plan which summarises how a person’s needs will be met and which includes the details of needs to be met from direct payments.</td>
</tr>
<tr>
<td><strong>Reassessment</strong></td>
<td>A reassessment of needs for social care and/or support.</td>
</tr>
<tr>
<td><strong>Review</strong></td>
<td>Monitoring and review of direct payment arrangements to ensure that they continue to meet the needs. Usually carried out concurrently with a review of the person’s plan.</td>
</tr>
<tr>
<td><strong>Service User</strong></td>
<td>A person assessed by the Council as eligible to receive care and support services.</td>
</tr>
<tr>
<td><strong>S117 after care services</strong></td>
<td>A wide range of services necessary to meet a need arising from a person’s mental disorder when a person ceases to be detained under the MHA.</td>
</tr>
</tbody>
</table>
APPENDIX 2

People excluded from direct payments

Direct payments may not be used to meet the needs of people who are:

(a) **subject to a drug rehabilitation requirement**, as defined by section 209 (drug rehabilitation requirement) of the Criminal Justice Act 2003 ("the 2003 Act"), specified in a community order (as defined by section 177 (community orders) of that Act, or a suspended sentence order (as defined by section 189(c) of that Act);

(b) **subject to an alcohol treatment requirement**, as defined by section 212 of the Criminal Justice Act 2003, specified in a community order (as defined by section 177 of that Act), or a suspended sentence order (as defined by section 189 of that Act);

(c) **released from prison on licence**—

(i) under Chapter 6 of Part 12 (sentencing: release, licenses and recall) of the 2003 Act or Chapter 2 of Part 2 (effect of custodial sentences: life sentences) of the Crime (Sentences) Act 1997 ("the 1997 Act"), subject to a non-standard licence **condition requiring the offender to undertake offending behaviour work to address drug or alcohol related behaviour**; or

(ii) **subject to a drug testing requirement under** section 64 (as amended by the Offender Rehabilitation Act 2014) (release on licence etc: drug testing) or a **drug appointment requirement** under section 64A (release on licence etc: drug appointment) of the Criminal Justice and Courts Services Act 2000;

(d) required to comply with a **drug testing** or a **drug appointment requirement** specified in a notice given under section 256AA (supervision after end of sentence of prisoners serving less than 2 years) of the 2003 Act;

(e) **required to submit to treatment for their drug or alcohol dependency** by virtue of a community rehabilitation order within the meaning of section 41 of the Powers of Criminal Courts (Sentencing) Act 2000 or a community punishment and rehabilitation order within the meaning of section 51 of that Act;

(f) **subject to a drug treatment and testing order** imposed under section 52 of the Powers of Criminal Courts (Sentencing) Act 2000;

(g) **required to submit to treatment for their drug or alcohol dependency** by virtue of a requirement of a community payback or probation order within the meaning of sections 227 to 230 of the Criminal Procedure (Scotland) Act 1995 or **subject to a drug treatment and testing order** within the meaning of section 234B of that Act; or

(h) released on licence under section 22 or section 26 of the Prisons (Scotland) Act 1989 (release on licence etc) or under section 1 (release of short-term, long-term and life prisoners) or 1AA (release of certain sexual offenders) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 and subject to a condition that they **submit to treatment for their drug or alcohol dependency**.