



# London Borough of Waltham Forest

## Direct Payments Policy 2021

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## **1.0 Introduction**

- 1.1** This document sets out our policy for Direct Payments for individual eligible for care and support due to their assessed eligible needs under the Care Act 2014 and provides guidance about using Direct Payments to manage support arrangements.
- 1.2** Direct Payments offer people the opportunity to receive money to buy the social care they need to achieve the outcomes on their Support Plan. They give people increased autonomy, inclusion, choice and flexibility to help them live in their own homes, be fully involved in family and community life, and take part in work, education and leisure.
- 1.3** Many people using Direct Payments have experienced the benefits of increased opportunities for independence, social inclusion and enhanced self- esteem.
- 1.4** Direct Payments must be offered to all eligible people. To access Direct Payments, eligible people need an assessment of their care needs and a Support Plan showing the outcomes to be achieved from the applicable service area. However, Councils must not force people to have a Direct Payment or put them in a position where it is the only way to receive personalised care and support

## **2.0 Legal context and regulations**

- 2.1** Direct Payments were introduced for adults through The Community Care (Direct Payments) Act 1996. They are now governed by sections 31, 32 and 33 of the Care Act 2014, Section 117(2C) of the Mental Health Act 1983 and the Care and Support (Direct Payments) Regulations 2014.
- 2.2** The relevant regulations for service users aged 16 to 18 years old are The Community Care, Services for Carers and Children's Services (Direct Payments) (England) Regulations 2009. Also, Special Educational Needs (Personal Budgets & Direct Payments) Regulations 2014.

## **3.0 What are Direct Payments?**

- 3.1** Direct Payments are a way of using a Personal Budget. If a service user is eligible to receive social care services, the choice of Direct Payments gives them money to arrange and purchase their own services to meet their social care needs, instead of London Borough of Waltham Forest (the Council) arranging services for them.
- 3.2** Direct Payments must provide people with the freedom to design services around their specific circumstances and needs. They must also provide the flexibility to look at options which may include employment, education and

leisure activities, as well as personal assistance, to meet assessed un-met eligible needs.

**3.3** Day to day control of the money and support package passes to the person who has the strongest incentive to make sure that it is properly spent on the care and support required, and who is best placed to judge how to use available resources to achieve the outcomes identified in the Support Plan. This person may be the service user, or someone nominated to receive the Direct Payments on their behalf.

**3.4** Social work practitioners will talk to the service user about Direct Payments during an assessment or during a review of care. The Direct Payments Support Service will talk to service users after the assessment or a review. Direct Payments are not a Social Security benefit and do not affect any Social Security benefits that people may receive. Service users can also choose to have a combination of Direct Payments and a council managed service.

#### **4.0 Why choose Direct Payments?**

**4.1** Direct Payments do not have to be used in the same way as if support was being provided directly by the Council. They are intended to give people maximum choice and control over how their eligible needs are met and outcomes are achieved.

**4.2** This means that people can choose to employ their own Personal Assistant so that they control what, when and how tasks will be done, and who will carry them out. If a service user chooses to employ a Personal Assistant, the Direct Payments support advisers can provide advice and support about employment responsibilities.

**4.3** The service user may choose instead to contract with an agency and pay for them to send staff to support them at times that suit them. Service users can also choose to have a mixed package of care, which includes some of their support being commissioned or provided directly by the Council and some being provided by Direct Payments. Service users should consider the advantages and disadvantages of each choice before deciding which one will suit them best.

**4.4** The service user may choose to purchase goods or training that will support them to meet their needs which does not necessarily mean employing staff or using agencies.

#### **5.0 What can Direct Payments be used for?**

**5.1** Direct Payments can be used to buy relevant services or equipment, to meet the un-met eligible needs identified in the service user's Support Plan.

Direct Payments may be used to: (This is not an exhaustive list)

- recruit and employ Personal Assistants
- purchase personal assistance from an agency that is not on the council's preferred provider list
- participate in activities, like outings or exercise classes, if they contribute to meeting the outcomes agreed in the Support Plan
- pay for membership of a club or gym for example as an alternative to attending a day centre, or to give someone a break from their role as a carer, if these are identified needs
- support access to community activities, college courses, and evening classes
- try out independent living
- buy assistive technology or equipment. This can be done if the Council is satisfied that the service user's eligible needs will be met by this arrangement. The service user will need to be supported by a specialist expert, such as an occupational therapist, who will ensure the equipment they choose is safe and appropriate.
- purchase support to maintain contact with family members
- purchase support to learn new skills
- cover the expenses for people to take them out. This is called a legal reward. An individual legal reward should not exceed £30. This is to ensure that Her Majesty's Revenue and Customs (HMRC) deems it to be 'reasonable'.

The upper limit for the amount of legal rewards paid out in any financial year is currently set at £250. Any so-called legal rewards need to be part of the Support Plan and agreed by the relevant social work team.

HMRC set the limit at £250 and if this limit is exceeded, then the whole amount will be treated as taxable income and would have to be declared for tax purposes by the person receiving it. The service user can provide rewards to as many people as they want, but the total limit of £250 has to be kept to.

- purchase residential respite care or a sitting service. They can be used to buy a short stay in residential care, if the stay does not exceed a period of four consecutive weeks in any 12-month period.

## **5.2 Direct Payments cannot be used to:**

- purchase a service that is directly provided by the Council (e.g. day care)

- purchase any services or equipment for which the Council is not responsible, such as services that the NHS should provide (such as dentist, chiropody or physiotherapy appointments)
- purchase items or services that are unrelated to the identified care needs or agreed outcomes
- anything that is not specified in the Support Plan
- pay household bills, such as food and utility bills
- cover housing services, such as rent payments
- pay non-statutory liabilities, such as tips, bonuses or ex gratia payments
- pay for anything which is illegal
- pay for gambling - including lottery, bingo and raffle tickets
- pay for alcohol or cigarettes
- Direct Payments are also not a substitute for Disabled Facilities Grants
- Direct Payments are intended to support independent living and, as such, cannot be used to pay for adults to live long term in residential care.

## **5.2 Personal Assistant Restrictions:**

Direct payments cannot be used to secure care services from the following without the permission/agreement of the council:

- (a) the spouse or civil partner of the service user;
- (b) a person who lives with the service user as if their spouse or civil partner;
- (c) a person living in the same household as the adult who is the service users
  - (i) parent or parent-in-law,
  - (ii) son or daughter,
  - (iii) son-in-law or daughter-in-law,
  - (iv) stepson or stepdaughter,
  - (v) brother or sister,
  - (vi) aunt or uncle, or

(vii) grandparent

(d) the spouse or civil partner of any person specified in (c) above who lives in the same household as the service user; and

(e) a person who lives with any person specified in sub-paragraph (c) as if that person's spouse or civil partner.

All requests for employment of any of the above would be considered by the Social Work practitioner and referred to a senior manager for a decision.

The council would only agree to any of the above being employed if it was satisfied that to do so is necessary to meet the person's need for that service. In any circumstance the council would normally make as a condition of its agreement that where family members are being employed the Direct Payments must be managed by a third party organisation in order to ensure that there is no conflict of interests and all employees are registered to pay tax and national insurance where applicable.

## **6.0 Who can have Direct Payments?**

**6.1** The vast majority of people receiving social care services have a right to Direct Payments. Direct payments may be made to:

- adults who have the mental capacity to make informed decisions about their care and support needs in terms of the Mental Capacity Act 2005 and have been assessed as having eligible needs for community care services
- a nominated person who manages the Direct Payments on behalf of a person with mental capacity provided that:
  - they have capacity to make the request and are prepared to receive the payments
  - the local authority is not prohibited from meeting the adult's needs by making Direct Payments to the adult or nominated person and the Council does not exercise its discretion not to meet the service user's need by Direct Payments
  - the applicant is capable of managing the Direct Payments with any help they are able to access
  - the Council is satisfied that making Direct Payments to the applicant is an appropriate way to meet the needs of the service user

- disabled people aged 16 or over (Direct Payments for individuals aged between 16 and 18 years old are managed under Children's legislation), including those with short as well as long term needs.
- an Authorised Person able to manage the Direct Payments on behalf of a person lacking mental capacity to request Direct Payments, provided that:
  - if they are not authorised in their own right under the Mental Capacity Act 2005, their application is supported by at least one person who is authorised
  - the local authority is not prohibited from meeting the adult's needs by making Direct Payments to the adult or nominated person and the Council does not exercise its discretion not to meet the service users need by a Direct Payment
  - the Council is satisfied that the applicant will act in the best interests of the service user
  - the applicant is capable of managing the Direct Payments with any help they are able to access
  - the Council is satisfied that making Direct Payments to the applicant is an appropriate way to meet the needs of the service user

**6.2** The service user can receive the Direct Payments themselves or nominate a third party to help them manage the payments.

**6.3** In most cases people subject to mental health legislation will have exactly the same rights to Direct Payments as anyone else. The Council has a duty to make Direct Payments available to discharge its duty to patients who are subject to after-care under section 117 of the Mental Health Act 1983.

**6.4 There are only very limited circumstances when Direct Payments cannot be offered. These exceptions are:**

- offenders on a community or rehabilitation order or suspended sentence for alcohol or drug misuse
- offenders released from prison on licence requiring treatment for drug or alcohol related behaviour
- people with drug or alcohol dependency who are subject to compulsory treatment orders or drug testing.

## **7.0 Roles and responsibilities**



## **7.1 The Direct Payments Agreement**

- Direct Payments cannot start until the service user or Authorised Person has signed the Direct Payments Agreement containing the conditions the Council consider are necessary for the payment and, where applicable, returned suitable proof of identity to receive the Waltham Forest Prepaid Card
- The Agreement explains the role and responsibilities of the service user, or the Authorised Person and the role and responsibilities of the Council, and it is important that they understand the agreement before they sign it. If support is needed the Direct Payments Support Service can help.
- If people are in urgent need of care, then Council-commissioned or Council-managed services must be set up until the Direct Payments documents have been completed.

## **7.2 The Council's role**

### **7.2.1 The Council will write to service users and tell them:**

- how much they will receive in Direct Payments
- how much their contribution will be
- what date their Direct Payments will start from
- when the first payment will be paid to their bank account or the Waltham Forest Prepaid Card
- if the Council refuses to provide Direct Payments, they must explain their reasons in writing to the service user

### **7.2.2 The council will**

- pay the Direct Payments 4 weekly in advance
- ensure that spending of the Direct Payments is monitored and that accounts are properly audited as necessary.

### **7.2.3 Regular Review**

- Service users receiving Direct Payments should have at least annual reviews which will look at how Direct Payments are working for them, the quality of the service they are getting, and will discuss if they have achieved the outcomes they had wanted. The reviewer will also check with the DP monitoring team to ensure that the DP is being satisfactorily managed and that any client contributions are being paid to the account. Service users should be encouraged to discuss any problems they are having managing their Direct Payments.

- Some service user' may need only light-touch reviews, perhaps conducted over the telephone. Others, particularly those whose circle of support is limited to a very few people, those who lack mental capacity to consent to Direct Payments, or those where there are relevant safeguarding issues, may be more isolated and vulnerable and will need more frequent, face-to-face reviews to prevent problems arising or early interventions to avoid escalation.

### 7.3 The service user's role

The service user (or Authorised Person) must:

- Only spend the Direct Payments on the needs identified in the support plan, and in accordance with this policy. The Council has the power to reclaim money if it has not been spent to meet the agreed outcomes.
- Make the necessary checks to ensure that all PAs employed are eligible to work in the UK.
- Open or identify a bank account with a cheque book or facility to make bank transfers and have access to bank statements for the **sole** use of the Direct Payments.
- Arrange to make regular payments into the Direct Payments account where assessed as able to pay a client contribution.
- Never make cash payments to employees from Direct Payments.
- Agree to and comply with the monitoring arrangements and to keeping good records as necessary. Direct Payment holders will initially submit monitoring forms every three months. After six months, the future frequency of monitoring arrangements is then agreed.
- Send their bank statements and completed monitoring forms to the Direct Payments representative when asked (if they are using a bank account)
- Keep all the documents explained in the Direct Payments Agreement and as advised by the Direct Payments Support Service
- Send any documents relating to their Direct Payments account which we, or any internal or external auditors, may occasionally request
- The Direct Payments user is responsible for ensuring that Inland Revenue Tax and National Insurance requirements for employees are complied with. They will also be responsible for meeting the following costs from the Direct Payments:
  - employer's national insurance contributions,
  - all other insurances including public liability insurance,

- statutory payments in respect of maternity leave pending reimbursement by the relevant central government agency,
- statutory payments in respect of sickness
- pension contributions where applicable
- staff training costs,
- advertising costs,
- any other costs related to employment of staff and administration of the Direct Payments,
- maintenance and replacement costs of any capital goods as agreed in the support plan.

The service user, or Authorised Person, should also:

- contact the Direct Payments Support Service if they need support to gather any information, they need for their financial review
- tell the Direct Payments Support Service if they have any unspent money in the account, above the agreed limit
- pay back any money left in the account when the Direct Payments end
- not allow the Direct Payments account to become overdrawn, if the account balance is low and is in danger of going overdrawn, they should contact the Direct Payments Support Service without delay
- note that the Council does not pay any bank charges when a Direct Payments account becomes overdrawn
- take advice from the Direct Payments Support Service when they are considering changes to the hourly rate of their agency or PA
- sign and comply with a Direct Payments agreement with the Council in the form provided by the Council from time to time

#### **7.4 Appointing an Authorised Person**

This person may, but not always, have been given a lasting or enduring power of attorney or have been appointed by the Court of Protection as a Finance Deputy under the Mental Capacity Act 2005. In many cases, they may be a family member and/or a friend who the service user trusts.

#### **An appointed Authorised Person must:**

- be willing to take on the responsibility and act as an employer where appropriate
- be aware they are accountable to the Council for the way the money is spent

- sign the Direct Payments Agreement with the Council

## **7.5 The role of the Direct Payments Support Service**

- To provide information and advice on the benefits and responsibilities of Direct Payments
- Advice and support on opening bank accounts
- Formulating a plan for managing the Direct Payments
- Compiling job descriptions
- Recruiting Personal Assistants and liaising with care agencies
- Training and providing support in completing quarterly monitoring returns
- Training and providing ongoing support in employment practices and requirements
- Applying for a DBS (Disclosure & Barring Service) check where necessary
- Complying with recommendations of payroll services to assist in tax and NI payments
- Supporting with setting up Direct Debit mandates to pay the client contribution into the DP Account

**7.5.1** If the Direct payments representative has any concerns, they will write to the service user or they will refer the matter to the Social worker who will make sure that the Direct Payments are working in the correct way.

## **8.0 Who can manage Direct Payments?**

- 8.1** If the service user, (and/or the Authorised Person this to be assumed when using this term), meets all the conditions specified in the Regulations and appears to be able to manage Direct Payments, the Council has a duty or a power, as appropriate, to make Direct Payments.
- 8.2** The Council and the Direct Payments Support Service will provide support and information about receiving and managing Direct Payments early in the process. Practitioners will support the service user with this so that they can make an informed decision. They must understand what is involved when they agree to receive and manage Direct Payments.
- 8.3** Managing Direct Payments is not just about handling money. It also involves people making their own arrangements either alone or with support, and . managing their own staff or contacting the agency they use directly. The person receiving Direct Payments is accountable to the Council for the way

the Direct Payments are spent. Advisers in the Direct Payments Support Service can provide people with advice, information and support with these responsibilities.

#### **8.4 Third party managed accounts**

**8.4.1** If a service user wants the flexibility of a Direct Payment, but does not want to undertake the administration, a third-party managed bank account may be an option. This could be a payroll company which manages staffing costs or a more extensive service which manages anything up to and including the whole support plan. This might also apply if the service user has or might have problems accessing a bank account or prepaid card.

**8.4.2** The Direct Payments Support Service can advise about this option. If a service user would like to have a third-party managed account and it is agreed this is the best way of managing Direct Payments for them, it must be agreed by a team manager or appropriate budget holder.

#### **9.0 Who has capacity to consent to Direct Payments?**

Under the Mental Capacity Act 2005, it is assumed that a person aged 16 or over has the capacity to make a decision, unless it can be established that they lack such capacity. We should not confuse somebody having the capability to manage Direct Payments with whether they have mental capacity within the meaning of the 2005 Act to consent to receiving them. It does not necessarily follow that because a person has capacity to consent to Direct Payments that they are also capable of managing them.

#### **9.1 Mental Capacity Act 2005**

Capacity is issue specific. The Act states that a person is unable to make a decision if they are unable to:

- understand the information relevant to the decision
- retain that information
- use or weigh that information as part of the process of making the decision
- or communicate their decision – whether by talking, using sign language or any other means.

**9.2** Where the service user does not have the mental capacity to consent to Direct Payments, the payments can only be made where there is an Authorised Person who is willing to manage the payments on their behalf. This should not be confused with a third party fundholder.

**The Authorised Person can either:**

- be named as a user of the Waltham Forest Prepaid Card on behalf of the service user
- or
- can support the operation of a dedicated bank account to receive the Direct Payments
  - or can use the services of a third party fundholder so long as they are able to direct the support of the PAs or agency staff on behalf of the service user.

## **10.0 Fluctuating capacity to manage Direct Payments**

- 10.1** If a service user who previously lacked capacity regains capacity long term or on a permanent basis, the Council has a duty to stop Direct Payments to the Authorised Person and pay them to the service user if they wish to receive them. The Council should ensure that there is no gap in the provision of care.
- 10.2** If the Council is satisfied that regained capacity is only temporary, Direct Payments will continue to be made to the Authorised Person. However, the Council and/or the Authorised Person must allow the service user to manage their Direct Payments during any time that they regain capacity to consent.
- 10.3** Where service users have fluctuating conditions, statements of wishes and preferences should be used to help with support and any concerns they may have about their on-going management of Direct Payments during these times. We will review Direct Payments to ensure that the service user has as much control as possible over decisions that affect them and that any risks are identified and addressed.

## **11.0 Safeguarding, choice and risk**

- 11.1** Support planning involves a person making informed decisions – including making decisions about risk. The Direct Payments Support Service will support a service user to minimise any risks and any potential consequences that may arise from the particular choices they may make.
- 11.2** When considering the offer of Direct Payments, service users may be unsure about the experience of being in control. Whether they are considering employing a Personal Assistant, hiring a self-employed assistant or an agency to provide services, it is important that the service user is aware that there is support available from the Direct Payments Support Service to help them.
- 11.3** The Council recognises the importance of regular reviews tailored to a person's specific needs, which will consider the level of risk to which a person may be exposed. Reviews will be undertaken by Care Management practitioners at least annually in partnership with the service user and, where

necessary/requested, next of kin or representative and any employed PAs or agency carers.

- 11.4** Where problems arise, the Council is prepared to consider the reasons for such problems. Rather than assuming that the risks to a person of receiving Direct Payments are too high, the Council is prepared to work with the service user to identify changes which can enable them to continue to manage, perhaps with a greater level of assistance in the short or longer term.

## **12.0 Considerations when deciding to employ someone**

- 12.1** If a service user decides to use a Personal Assistant they can:

- use employed Personal Assistants (via an agency)
- use a Personal Assistant and employ them directly. The service user should be made aware of the responsibilities involved (e.g. employment law, payroll and taxation responsibilities and the workplace pension), so that they can make an informed choice. They should also be advised about the desirability of the person having an up-to-date DBS check (Disclosure and Barring Service, formerly Criminal Records Bureau check)

- 12.2** Agencies providing personal care are required by law to be registered with the Care Quality Commission and service users receiving Direct Payments are encouraged to ask the agency for evidence of this. It is essential that only registered agencies are used.

- 12.3** If the agency's rates increase the service user must let the Council know. It is important to make sure the service user understands that they are dealing directly with the agency, and that the Council may not know about any change to the amount they charge for the service.

## **13.0 The Council's Fairer Contributions Policy for Non-Residential Care Services.**

- 13.1** It is the Direct Payment recipient's responsibility to arrange their services with the agency and to pay invoices when they receive them. This includes the payment of the assessed financial contribution where appropriate.

- 13.2** The Fairer Contributions Financial Assessment is applied to all service users who receive a service from the Council, whether it is for Council-commissioned services or in-house services or ongoing Direct Payments. Please refer to the Policy at:

[https://www.walthamforest.gov.uk/sites/default/files/fairer\\_contributions\\_policy.pdf](https://www.walthamforest.gov.uk/sites/default/files/fairer_contributions_policy.pdf)

- 13.3** The Council's Financial Assessment Unit will undertake a financial assessment and tell the service user the result. The service user or their

Authorised Person should tell the Financial Assessment Unit about circumstances which may affect their calculation.

- 13.4** The service user, or their Authorised Person, must pay the contribution amount into their Direct Payments bank account or onto the prepaid card every 28 days.

#### **14.0 Financial monitoring**

- 14.1** Direct Payments are public funds, so it is necessary that the expenditure is spent appropriately. Monitoring means that Direct Payments expenditure will be checked to make sure that all of their Direct Payments are used to meet agreed outcomes in the Support Plan. It will also alert us if people are not spending all of their Direct Payments. Direct Payments Support Service advisers will give service users advice on what information they should keep and how the monitoring process works.
- 14.2** Where service users are using the Prepaid Card, in most cases they will not need to submit any paperwork because monitoring will be done by the Council via the Internet. However, all transactions must take place using the card and the funds must not be transferred to an alternative account. Where they withdraw cash on the prepaid card, they will be expected to account for it.
- 14.3** For those service users using a bank account there is a simple and easy way to understand the monitoring process. Service users will be supported by the Direct Payments Support Service, to ensure they understand what they need to do.
- 14.4** If service users accumulate Direct Payments in their account, the Council will require that the service user pays back any surplus money. This is normally done after a service user's monitoring review, unless Direct Payments Support Service already knows the reason for the additional funds in the account. If people are saving their Direct Payments to help them achieve an agreed outcome, they should let us know about this.

#### **14.5 Repayments**

The Council can reclaim some, or all, of their Direct Payments when:

- we are not satisfied that the Direct Payments have been used to secure the outcomes defined in the Support Plan
- any money is used for a different purpose or is not used at all
- the service user was receiving the money for a specific reason and it is no longer needed



- the service user receives funds from a third party, for the same purpose and for the same period that their Direct Payment was given.

**14.6** Where an Authorised Person is responsible for managing the Direct Payments on behalf of the service user and they do not arrange the services as agreed or do not meet a condition properly within their role, the Council will seek repayment from them as the Authorised Person and not from the person who lacks mental capacity.

**14.7** When the Council is considering recovering unspent funds, it will take into account any legal liabilities relating to the care, such as a Personal Assistant's wages first, to make sure that these responsibilities can still be met.

### **15.0 Ending or suspending Direct Payments**

**15.1** Service users can ask to end the Direct Payments arrangement and have services commissioned by or provided by the Council at any time. As part of the Direct Payments Agreement, service users agree to give four weeks' notice when they wish to end the Direct Payments arrangement, however we do accept that it is sometimes not possible to do this. When a quicker solution is required, we will make other arrangements to meet their needs.

**15.2** Direct Payments may also be suspended for a short time, for example if the service user goes into hospital or if their condition temporarily improves. We will discuss this with the service user and write to them about the change of circumstance.

**15.3** The Council will take into account the service user's employment responsibilities for notice periods to be served for Personal Assistants. Once all responsibilities are met any outstanding money must be returned by the Council. The service user will receive support to do this.

### **16.0 Moving into or out of London Borough of Waltham Forest**

**16.1** A service user receiving Direct Payments from another local authority and moving to live in Waltham Forest should contact the Waltham Forest Direct Call Centre on 0208 496 3000. If they employ a Personal Assistant, they will need to contact us as early as possible to start the Direct Payments process and ensure they meet their employer responsibilities by providing continuity of service.

**16.2** Any London Borough of Waltham Forest service user moving to another local authority area will be supported to move by an allocated Practitioner who will contact the new local authority to discuss their receipt of Direct Payments and if appropriate try to ensure continuity of service for their personal assistant(s).

### **17.0 Frequently asked questions**

### **17.1 How will Direct Payments be paid?**

Payments will be made four weeks in advance and a schedule of the first four payments is included in the Direct Payments Agreement which every recipient receives. Direct Payments can be paid onto the London Borough of Waltham Forest Prepaid Card. In either case the payment will be made net of the service user's assessed contribution. Service users can load their assessed contribution to their Direct Payment bank account or card by direct debit or standing order

### **17.2 How should I use the Waltham Forest prepaid card for Direct Payments**

- All new service users will be offered their Direct Payments via the prepaid card issued by the Council.
- The Waltham Forest prepaid card is a prepaid debit Mastercard which avoids the need to open a bank account. The Council can monitor payments made against the card via a secure portal through the Internet and so in most cases there is no need to send account statements into the Council unless you withdraw cash or transfer funds to another account. If any or all of the funds are transferred to a personal bank account, the council can request to see evidence of transactions in the personal bank account that relate to the Direct Payments. If funds are withdrawn in this way on more than two occasions you will be reassessed for your ability to manage your Direct Payments.
- There will be a PIN associated with a prepaid card and a facility to view statements and make payments in a variety of ways. Service users can access their accounts via [www.prepaidfinancialservices.com/lbwf/](http://www.prepaidfinancialservices.com/lbwf/)
- The card is issued by, and remains the property of, the Council. It is activated by the Direct Payments Support Service who also provide guidance on how it works.

### **17.3 Using a bank account for Direct Payments**

If a service user is unable to use a Prepaid card, they must open a specific bank account which is only used for Direct Payments money. The service user must receive regular statements or be able to provide online statements to manage the payments. The Council will expect to see account statements, as part of the monitoring process.

### **17.4 How is the prepaid card or bank account set up and managed**

- The Direct Payments Support Service can provide help and assistance to set-up a dedicated bank account for the service user. The bank account should be in the name of the person receiving Direct Payments.

- When someone is appointed as an Authorised Person for a person who lacks mental capacity to consent, the bank account must be in their name.
- If the bank account is held in the name of a nominee, the account must state that it is a Direct Payments care account for the service user (the usual format is “nominee name on behalf of service user name”).

### **17.5 What happens if the service user is away from home?**

- If the service user goes into hospital, they will still need to meet their responsibilities as an employer. They, or their Authorised Person, should let the Council know if this happens so that it can support them to pay their staff.
- The Council will continue to pay for an employed Personal Assistant for four weeks while the service user is in hospital. If the hospital stay is longer than four weeks, we will discuss with the service user whether we can fund Direct Payments for longer and pay a retainer. If we do not agree to pay the full Direct Payments amount, we can discuss paying a lesser amount so that staff can be retained. This must be agreed by the budget holding council officer.
- If the service user intends to be away from the UK for longer than four weeks in any period of 52 weeks, they should notify the Council. Direct Payments while abroad will generally not be paid for more than four weeks in any period of 52 weeks without the Council’s prior written agreement. Failure to return home on the expected date will generally result in the suspension and possible termination of the Direct Payments, requiring a reassessment of need. Any overpaid Direct Payment funds will also generally be reclaimed from the service user.

### **17.6 What happens if a person dies while receiving Direct Payments?**

- When the Council is told that a service user receiving Direct Payments has died, we will make sure that their paperwork and funds are completed, for example, paying any money owed to Personal Assistants which will include any redundancy payments due.
- When told, the Council will close any Direct Payments bank account or prepaid card account. If a bank account has been used to manage the Direct Payments, any money must be returned to London Borough of Waltham Forest Council. In the case of a prepaid card, the Council will be able to do this automatically.
- The person dealing with the service user’s estate will receive support to ensure that the Direct Payments account is closed down and that all tasks are completed.

- Direct Payments paid by the Council do not form part of an estate in the event that someone dies while receiving them. The money remains public funds at all times and belongs to the Council.

### **17.7 What if the services user's circumstances change?**

If a service user's circumstances change in a way which could affect their Direct Payments, they should contact the Direct Payments Support Service for advice.

### **17.8 Review and Appeals Process**

**18.1** All residents have the right to request a review of the Direct Payments and/or right of appeal against the decision if they do not agree with the level of funding that has been allocated to them.

The resident can ask for a review if:

- They believe there has been a mistake in the assessment
- The assessment has not taken full account of their circumstance
- They feel that the assessment is unfair

**18.2** When a request for a review is received the following process will be followed if the resident remains unhappy with the outcome of the decision:

- First review is completed by the Team Manager within 10 working days
- Second review is completed by the Head of Service within 10 working days

**18.3** Resident submits an appeal against the Head of Service decision

- Review of the appeal is completed by the Assistant Director Adults Care and Quality Standards within 10 working days.

**18.4** If the resident is not satisfied with the outcome of the appeal and wishes to make a complaint, they may write to the Complaints Officer. Information regarding the Complaints Procedure can be accessed on the Council's Website Here:

<https://www.walthamforest.gov.uk/content/complaints-compliments-and-comments>

### **18.0 Review of policy**

**19.1** This policy will be reviewed by the Council annually.

Managing your own social care and support – Waltham Forest Personal Budget Direct Payments Scheme

## **Personal Budget Direct Payments Agreement**

This agreement is made between the London Borough of Waltham Forest (“the Council”) and

<b>Name of Service User:</b>	
<b>Address of service User:</b>	
<b>Mosaic ID:</b>	

“**We**” or “**Us**” means the London Borough of Waltham Forest

'**You**' means the Resident (Service user) or representative (as defined in regulation 5 of The Community Care, Services for Carers and Children's Services (Direct Payments) (England) Regulations 2009), or carer under Section 2(1) of the Carers and Disabled Children Act 2000 or eligible under Section 17A of the Children Act 1989.

'**Personal Budget**' means a sum of money which the person's needs ought reasonably to be able to be met within.

### **Your community care needs**

1. We have assessed your community care needs and have agreed that under the Care Act 2014 you are eligible to receive services as outlined in your Support or Care Plan (“the Service”).
2. You have requested that you will receive a Personal Budget in the form of a direct payment and use it to buy services to meet your assessed and identified social care needs. You are willing and able to secure the services detailed in your Support or Care Plan via a direct payment (with assistance if necessary), in accordance with the eligibility criteria as determined by the London Borough of Waltham Forest.

## **Your contribution towards the cost of Community care**

You understand that your assessed financial contribution will be deducted from your Personal Budget before you receive the balance.

### **Terms of this agreement**

1. You agree to pay any assessed contribution to the cost of your community care and that you will pay your assessed contribution into the dedicated Personal Budget account, your London Borough of Waltham Forest prepaid card or to the agent holding your Personal Budget funds.
2. You agree to be directly responsible for the day-to-day management of your Personal Budget or, if necessary, through an agent or nominated person.
3. You recognise that by receiving your money directly, that you are responsible for all employment and contractual arrangements with the staff you employ, or arrangements you choose to enter into. We will not take responsibility for any such arrangements but will ensure continuity of care (in the event of a crisis) by the most appropriate method available at the time. We will provide advice and information as and when needed to support you to continue managing your own care.
4. The payments will be gross for National Insurance and Tax purposes. You will need to deduct Tax and National Insurance payments and make the necessary payments to HMRC in respect of these. You must pay personal assistants' statutory entitlement for holiday pay and you will also need to arrange and pay for alternative care when your personal assistants take up their holiday entitlement. You will not be given additional payments for this.
5. We expect the funds to be utilised to meet your care needs, and misuse of any funds may lead to us withdrawing this agreement and putting in alternative measures to meet your needs.
6. You will need agreement from the Council to employ certain family members, except in exceptional circumstances and as agreed in advance by the Council. If it is agreed that you may employ such a family member you will be required to have your Direct Payment managed by a third-party organisation. The family members that you may not employ without prior agreement are:

Your spouse or civil partner;

A person who lives with you as if your spouse or civil partner;

A person who would normally live in the same household as you which include those who are your:

- Parent or parent in law;
- Son or daughter, stepson or stepdaughter, or son in law or daughter in law;

- Brother or sister;
  - Aunt or uncle;
  - Grandchildren or step grandchildren
  - Grandparent; or
  - The spouse, civil partner or person living as a spouse of civil partner of any of the above.
7. You agree that the Council may vary this agreement by giving you 4 weeks' notice in writing.
  8. You agree that you will inform us if you are going to be or have been away from the UK for more than 4 weeks in any period of 52 weeks and that direct payments while abroad will generally not be paid for more than four weeks in any period of 52 weeks without the Council's prior written agreement. Failure to return home on the expected date will generally result in the suspension and possible termination of the direct payment, requiring a reassessment of need. Any overpaid direct payment funds will also generally be reclaimed from you.
  9. You agree that in the event that fraud, abuse or misuse is reasonably suspected, the Council may refer the matter to the Internal Audit Team for investigation and offer support to you to reduce the risk of further loss occurring.
  10. You agree that where there are minor differences between this agreement and any Direct Payments Policy published by the Council the agreement will be varied so as to be read as compatible with the policy. The latest version of the Direct Payments Policy will be available at <https://www.walthamforest.gov.uk/content/direct-payments-and-personal-budgets>

### **Responsibilities as an Employer**

1. As an employer, you will have legal responsibilities. It is your responsibility to be aware of and comply with any relevant law. Those requirements will be additional to the requirements set out in this agreement with the Council.
2. You must check with HMRC about the status of your employees and your responsibilities regarding Tax and National Insurance payments. There is a tool on the HMRC website to check employment status. [www.gov.uk/guidance/check-employment-status-for-tax](http://www.gov.uk/guidance/check-employment-status-for-tax)
3. The Council requires that you complete a written agreement of terms and conditions and a job description with each employee or agency before they begin working for you. They must be provided with a contract of employment which must be signed by you and the employee or a contract with the agency. The Council can request copies of these documents.

4. The Council recommends that if you employ Personal Assistants (PAs) who are not known to you directly and not through a registered agency, you request a Disclosure and Barring Service check prior to their beginning work with you.
5. You must ask any Personal Assistants for proof of legal entitlement to work in the UK. The government website [www.gov.uk](http://www.gov.uk) provides guidance on the checks you need to make or you can get help from the Direct Payments Support Service.
6. The Council expects that you will provide Equal Opportunities in the employment of staff and treat staff with respect.
7. If you employ staff, you must have appropriate insurance in place. Appropriate insurance for the purpose of this agreement means Employers Liability Insurance and Public Liability Insurance taken out with a reputable insurance company or underwriters with a minimum limit for any one claim of £5 million (individuals will be notified if this limit is increased or decreased by the Council.) The insurance must cover liability to pay redundancy payments to employees.
8. You will pay staff or your agency by cheque or via electronic transfer or, if you have a prepayment card, by using that card. You must never pay your staff in cash. If you are using a prepayment card you will not use that card to make payments other than for your care in accordance with the support plan.
9. You will be responsible for payment of Statutory Sick Pay and payments in relation to the Workplace Pensions Scheme for your PA where they are eligible. You may need to contact the Council for additional funds to manage these payments as and when they happen.
10. At the start and at any point of change you must provide the Council with the name of any PA you are employing, and any agencies being used. Where you are considering changes to the hourly rate of your agency or PA you must refer to the Direct Payment uplifts policy.

### **Finances and record keeping**

You agree to (with support if needed):

1. If you receive your personal budget on a London Borough of Waltham Forest prepaid card, only make payments by using the card and to follow our separate guidance on card use.
2. Ensure that the Personal Budget account does not go overdrawn. Any charges made to the account (other than those arising from any failure by us to make a scheduled payment), must be paid by you.
3. Keep a record of all payments and income on your Personal Budget account. You must ensure that funds are spent only in accordance with the support plan and only on services, equipment or adaptations that are



safe, legal and value for money. These will be checked every 6 months or as appropriate as part of the monitoring process.

4. Keep all the documents/records in connection with the Service for 6 years during which we can inspect at any time. This may include our Internal Audit Service or others authorised by us to review those records.
5. We reserve the right to deduct future Personal Budget payments to recover overpayments or monies paid out in error by us.
6. Existing account holders must continue to submit a reconciliation or bank statement that states what has been spent and the remaining balance in your bank account every 6 months or as determined by your Direct Payments advisor. You will not be required to submit any of the above if you are using a London Borough of Waltham Forest prepaid card, unless you use cash to purchase services or transfer the full amount of the Direct Payment to another account.

### **Our Responsibilities**

We will:

1. Agree a Support plan with you and provide you with a copy of the plan. This will tell you the items and costs which you will pay for from your Personal Budget.
2. Make sure that you have access to the advice and training you need to manage your Personal Budget.
3. Pay your Personal Budget to you 4 weekly in advance.
4. Review your Personal Budget on an annual basis.

### **Ending direct payments**

We will end direct payments to you:

1. If you tell us that you no longer wish to receive them. In such cases you may terminate this contract by giving at least 4 weeks' notice in writing to the Direct Payments Support Service.
2. We may discontinue direct payments and terminate this agreement if you fail to comply with the terms of this agreement. E.g. you do not keep proper records, or you fail to submit information when requested or you deliberately submit incomplete or wrong information. In such cases where possible we will give you 4 weeks' notice in writing and in exceptional circumstances it may be terminated with less notice or with immediate effect.
3. We must discontinue direct payments and terminate this agreement with immediate effect in accordance with section 33 of the Care Act 2014 when conditions necessary to the making of direct payments are not met.

4. Where this agreement is terminated, we will work with you and your agent / chosen decision maker to put in alternative measures to meet your needs, should you need further assistance in order to do so.
5. We retain the right to recover Personal Budget Payments in full or in part if we are satisfied that the money has not been used for items as detailed on your support plan. Any sum due shall be recoverable as a debt owed to us.
6. We will withdraw/withhold funds we have paid into your Personal Budget account or on your London Borough of Waltham Forest prepaid card if more than 4 weeks funds have built up and are unused and you have been unable to provide a reasonable explanation for this.
7. In the event of your death, any amount of Personal Budget remaining in your Personal Budget account/London Borough of Waltham Forest prepaid card may, following the payment of contractual and legal obligations relating to any of your employees, be recovered by us.

### **Fundholding**

We will need to know if you will be responsible for your Personal Budget and its use or whether you will delegate this responsibility to someone else. Therefore, we need for you to complete the following:

#### **Select one by putting an X in the relevant box**

- a)  I will manage my own Personal Budget according to the terms of this agreement
- b)  I will delegate the management of my Personal Budget to the person nominated below. This person understands that they will need to manage, on my behalf, my personal budget and they will administer it in accordance to the terms of this agreement

If you have chosen another person to manage your Personal Budget and have selected statement b) above, please provide us with their name and their relationship to you. The person you have chosen to manage your Personal Budget will have to agree to the terms of this agreement by signing the agreement.

<b>Name of Person nominated to manage the Personal Budget</b>	
<b>Relationship of this person to you</b>	
<b>Address of Person nominated to manage the Personal Budget</b>	

### **Signatures**

I confirm that:

1. This agreement has been explained to me (Resident (Service User) and / or The Resident's representative) using assistance as necessary.
2. This agreement has been understood by me (Resident (Service User) and / or The Resident's representative) using assistance as necessary.
3. I am in agreement with the contents of this agreement (Resident (Service User) and / or The Resident's representative) and will comply with the terms and condition of this agreement.

<b>Signature or mark of Resident (Service User)</b>	
<b>Name</b>	
<b>Mosaic ID</b>	
<b>Signature of the person nominated to manage the Resident's (Service Users) Personal Budget</b>	
<b>Name</b>	
<b>Date</b>	

**Service User Copy**

<b>Name of Person nominated to manage the Personal Budget</b>	
<b>Relationship of this person to you</b>	
<b>Address of Person nominated to manage the Personal Budget</b>	

**Signatures**

I confirm that:

4. This agreement has been explained to me (Resident (Service User) and / or The Resident's representative) using assistance as necessary.
5. This agreement has been understood by me (Resident (Service User) and / or The Resident's representative) using assistance as necessary.
6. I am in agreement with the contents of this agreement (Resident (Service User) and / or The Resident's representative) and will comply with the terms and condition of this agreement.

<b>Signature or mark of Resident (Service User)</b>	
<b>Name</b>	
<b>Mosaic ID</b>	
<b>Signature of the person nominated to manage the Resident's (Service Users) Personal Budget</b>	
<b>Name</b>	
<b>Date</b>	