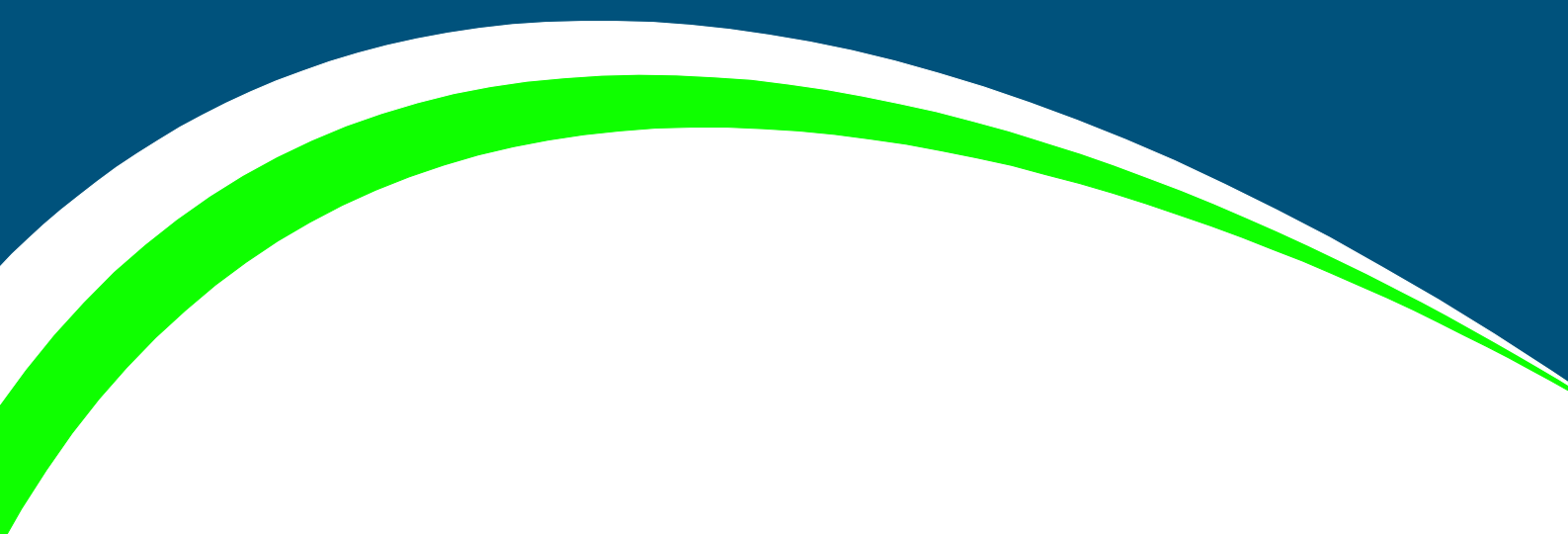




**Health & Community  
Directorate**

A decorative graphic consisting of a thick green curved line with a white outline, arching across the upper half of the page.

**Direct Payments  
Policy, Procedure and Practice**

8th version  
Updated: APRIL 2008

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## INFORMATION SHEET

<b>Service area</b>	Health & Partnerships
<b>Date effective from</b>	1 <sup>st</sup> April 2008
<b>Responsible officer(s)</b>	Hazel Coen - Divisional Manager (Finance & Support) Audrey Fearn- Principal Manager (Client Finance)
<b>Date of review(s)</b>	April 2009
<b>Status:</b> <ul style="list-style-type: none"> <li>• <b>Mandatory (all named staff must adhere to guidance)</b></li> <li>• <b>Optional (procedures and practice can vary between teams)</b></li> </ul>	Mandatory
<b>Target audience</b>	Adults and Older People's Social Care Services staff
<b>Date of committee/SMT decision</b>	<ul style="list-style-type: none"> <li>• Executive Board Sub Committee 20.3.2008</li> <li>• Healthy Halton Policy &amp; Performance Board 10.6.08</li> <li>• Executive Board Sub Committee 25.7.2008</li> </ul>
<b>Related document(s)</b>	Direct Payments Guidance, Community Care Services for Carers and Children's Services (Direct Payments) Guidance England 2003.
<b>Superseded document(s)</b>	1 <sup>st</sup> version dated 6 <sup>th</sup> December 2000 2 <sup>nd</sup> version dated 25 <sup>th</sup> July 2002 3 <sup>rd</sup> version dated December 2003 4 <sup>th</sup> version dated December 2004 5 <sup>th</sup> version dated September 2005 6 <sup>th</sup> version dated November 2005 7 <sup>th</sup> version dated March 2007
<b>File reference</b>	DP/DEC00/1



## ***POLICY***

- 1.1 **Purpose**  
The purpose of this Policy, Procedure and Guidance is to tell staff about their role and responsibility with regard to Direct Payments, which also encompasses the needs of people from diverse communities. A separate guide has been written for people who use our services. The documents complement each other and strive to develop the greatest degree of independence and choice for people who need services in Halton.
- 1.2 **Introduction to Direct Payments**  
The Direct Payments Guidance Community Care Services for Carers and Children's Services Guidance England 2003 requires Social Services to make direct cash payments to enable a person to obtain for themselves the services that they have been assessed as needing, subject to eligibility.
- 1.3 The following groups of people may be eligible for Direct Payments:
- Older and disabled people aged 16 or over
  - People with parental responsibility for disabled children
  - Carers aged 16 or over in respect of carer services
- 1.4 The Direct Payment is made by Social Services instead of providing or arranging for the provision of services. The person then uses the money to purchase services to meet their assessed needs. In the case of disabled children, the parent or person with parental responsibility secures services to meet the needs of the child and their family.
- 1.5 Direct Payments must be made to all individuals who are eligible to receive them and want them. Each eligible individual should be offered the choice of having their needs for a service met through Direct Payments as part of the care planning process.
- 1.6 If a Care Manager feels it is appropriate for a third party to receive the Direct Payment on behalf of the person, the third party must open a separate dedicated bank account to receive the Direct Payment and must adhere to the conditions set out in the Direct Payment Contract.
- 1.7 **Halton's Direct Payment Scheme**  
The Direct Payments Scheme was originally launched as a one-year pilot from January 2001. Since then funding has been agreed to run the scheme on a permanent basis.
- 1.8 The project was developed in partnership with people who use services, statutory, independent, voluntary sector organisations and representative groups and is linked to other local activities for example, carer services and information provision.
- 1.9 The scheme is co-ordinated and managed by a manager and an assistant (telephone number 01928 704436), who are managed by

## ***Practice***

### **Concept of Direct Payments**

"Direct Payments help people who want to manage their own support to improve their quality of life. They promote independence, choice and inclusion by enabling people to purchase the assistance or services that the council would otherwise provide in order to live in their own homes, be fully involved in family and community life and to engage in work, education and leisure"

Department of Health Direct Payments Guidance 2003

### **The Direct Payment Guidance 2003**

Replaces the Community Care (Direct Payments) Act 1996 Policy and Practice Guidance issued in 2000, the Carers and Disabled Children Act 2000 Direct Payments for young disabled people Policy and Practice Guidance issued in 2001 and the passages on Direct Payments contained in the Carers and Disabled Children Act 2000 Carers and people with parental responsibility for disabled children issued in 2001.

### **Relevant services**

The duty to make Direct Payments applies to:

-a community care service within the meaning of section 46 of the National Health Service and Community Care Act 1990

-a service under section 2 of the Carers and Disabled Children Act 2000

-a service which local councils may provide may provide under section 17 of the 1989 Act (provision of services for children in need, their families and others)

### **Government policy guidance**

"The Government wants to see more extensive use made of Direct Payments in particular by those groups that have not made wide use of them up to now. For that reason local councils now have not just a power but a duty to make Direct Payments in certain circumstances." This has important implications for the way that local councils undertake assessment and care planning discussions with individuals and for local councils'

own commissioning procedures and planning.

Department of Health Direct  
Payments Guidance 2003

## ***POLICY CONTINUED***

The Health & Community Directorate and have close links with other local user groups and service providers.

### **1.10 What Direct Payments can be used for**

Direct Payments can be used to buy relevant services/equipment to meet needs identified as part of a person's care plan and may be used in the following ways:

- Employing a Personal Assistant – the person arranges services in a way that suits them. If a person employs personal assistants directly, whether as a sole or secondary employer, they must make adequate arrangements to fulfil their consequent responsibilities as an employer.
- Buying services from an agency.
- For short-term care (respite) in residential care which does not exceed a four week period in any 12 months (see below).
- Purchasing equipment that would otherwise have been provided by Social Services. (A policy and procedure for a pilot scheme for Direct Payments and Equipment is in place).
- [Paying for transport.](#)
- [To fund a carers break.](#)

Any service purchased must be as cost effective or efficient as the Local Authority could arrange or buy.

### **What Direct Payments cannot be used for**

- 1.11
- To relieve the Directorate of its statutory responsibilities towards a service user who is perceived as troublesome or difficult
  - To purchase local authority services.
  - For permanent residential care for adults. Direct Payments may be used to purchase short-term care (respite) in residential care. This is calculated as follows:  
*“Where two periods of residential care are less than 4 weeks apart, they should be added together to make a cumulative total which should not exceed four weeks. If the two periods are more than 4 weeks apart they are not added together.”*  
**Department of Health Direct Payments Guidance 2003.**
  - For residential accommodation for a disabled child or disabled young person for any single period in excess of four weeks and for more than 120 days in any period of 12 months.
  - Personal assistance cannot be purchased from a partner or close relative living in the same household as the Direct Payments recipient other than in exceptional circumstances, which must be agreed by the Council in writing.

### **Who can qualify for a Direct Payment**

1.12 To be eligible for a Direct Payment a person user must:-

- Be ordinarily resident in the Borough of Halton
- Be assessed as eligible to receive services (This includes carer services).
- Agree to receive Direct Payments instead of services (for children under 16 consent must be obtained from a person with

## ***Practice***

When setting up a direct payments scheme, local councils are encouraged to actively consider how to include people with different kinds of impairment, people from different ethnic backgrounds and people of different ages. When considering whether a person's need for a service can be met by means of a direct payment, local councils should consider the provision of direct payments for both intensive packages and lower level services, long and short term provision and they are also encouraged to think about how direct payments can be assimilated into preventive and rehabilitative strategies.

"Department of Health Direct Payments Guidance 2003"

### **What Direct Payments cannot be used for**

"Unless a council is satisfied that it is necessary to meet satisfactorily a person's needs, a council may not allow people to use direct payments to secure services from a spouse, from a partner or from a close relative (or their spouse or partner) who live in the same household as the direct payment recipient." The restrictions given are not intended to prevent people using their direct payments to employ a live-in personal assistant. The restriction applies where the relationship between the two people is primarily personal rather than contractual."

Department of Health Direct Payments Guidance 2003."

## ***POLICY CONTINUED***

parental responsibility, usually a parent).

- Be able to manage Direct Payments with or without support
- Satisfy the Council that financial controls will be adhered to.

### **People who do not qualify for a Direct Payment**

1.13

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

- Patients detained under mental health legislation who are on leave of absence from hospital;
- Conditionally discharged detained patients subject to Home Office restrictions;
- Patients subject to guardianship under mental health legislation and those covered by the new power of supervised discharge introduced by the Mental Health (Patients in the Community) Act 1995;
- People who are receiving any form of aftercare or community care which constitutes part of a care programme initiated under a compulsory court order;
- Offenders serving a probation or combination order subject to an additional requirement to undergo treatment for a mental health condition or for drug or alcohol dependency;
- Offenders released on licence subject to an additional requirement to undergo treatment for a mental health condition or for drug or alcohol dependency; and
- People subject to equivalent Scottish mental health or criminal justice legislation.

### **Direct Payment Rates**

1.14

For all new service users from 1<sup>st</sup> April 2008

Where a service user chooses to employ:

- An agency, a **standard rate of £10.70 per hour** (reduced pro rata for part hours e.g. ¾ hour £8.03, ½ hour £5.35, ¼ hour £2.68) will be paid based on the average agency hourly rate across Runcorn and Widnes.
- A **personal assistant (PA)**, a **standard a rate of £9.35 per hour** will be paid.

The **complex rate of £11.36 per hour** would only paid in exceptional circumstances, for both agency and personal assistants with the direct approval of the respective Operational Director, given the complexity of the service user's needs having met the eligibility criteria (see para. 1.15).

This would introduce consistency across the board in relation to all community care packages arranged by both Care Managers and those purchased via a Direct Payment.

## ***Practice***

### **The final decision**

Whether a direct payment is appropriate or not, the Client Finance Manager must take into consideration whether the person will be able to cope with the responsibilities.

### **Advice on making decisions about the ability to manage**

"The council should ensure it takes into account all relevant factors before making a decision not to make a direct payment:

The person's understanding of direct payments, including the actions required on their part:  
Whether the person understands the implications of taking or not taking on direct payments  
What help is available to the person  
The nature of the services the person is assessed as needing:  
What arrangements the person would make to obtain services."  
Department of Health Direct Payments Guidance 2003.



# ***POLICY CONTINUED***

# ***Practice***

Existing Service Users (to be implemented from 1<sup>st</sup> April 2009)

Respective Social Work teams will review existing Direct Payment packages using the criteria in para. 1.15. All service users will be informed that the new assessed rates for both agency and personal assistants as outlined above will be implemented on 1<sup>st</sup> April 2009.

Direct Payment rates will be kept under review, for further amendments in line with changes to tendering arrangements for domiciliary care agencies.

## **1.15 Eligibility Criteria**

FACS criteria for eligibility must be applied to those individuals who wish to receive a Direct Payment:

Standard Support Criteria: £10.70 per hour Agency rate / £9.35 per hour PA rate

The individual has an assessed need for:

- Assistance to take medication.
- Support with incontinence.
- Physical assistance to use the toilet.
- Assistance with moving and handling.
- Assistance with washing/bathing.
- Support to eat/ drink.
- Specific support and assistance to stimulate development of communication and/or negotiation skills.
- Support to access social activities

**NB:** Supporting People funding and ILF will be used to support other social activities for the service user.

### **And/or**

- Mental Health needs that meet critical/substantial FACS criteria or is demonstrably preventative and requires support.

High Level Need/ Complex Support Criteria: £11.36 per hour (Agency & PA)

In addition to some indicators for standard support:

- The individual has a high level of challenging behaviours (requiring a Level 2 risk assessment and a risk management plan to manage safety).

### **And**

- The individual has complex needs which are eligible for a Social Services/PCT joint funded package.

### **And/or**

- The individual's employed Carers require additional skills as certified by formal training. Certificates will need to be produced.

## ***PROCEDURE***

## ***Practice***

### **2.0 THE 4 STAGES**

The Directorate will undertake a four-stage process in order to make Direct Payments.

#### **2.1 Stage One: Assessment**

Assessment is a crucial process and Direct Payments can only be offered to someone who has been assessed as eligible to receive services. The Directorate's Social Workers and, where equipment is required, Occupational Therapists will work with the person to assess what their needs are.

#### **2.2 Stage Two: Implementation**

At stage two the person has received an assessment and expressed an interest in receiving a Direct Payment. It is the responsibility of the Direct Payments Assistant to tell them about the details of managing a Direct Payment and to set up the Direct Payment for them.

#### **2.3 Stage Three: Monitoring**

At this stage the person is receiving a Direct Payment. It is the responsibility of the Direct Payments Assistant to monitor how the Direct Payment is being used. The Direct Payments Assistant will provide support to the person for up to six weeks or until they are able to manage the monitoring process independently.

#### **2.4 Stage Four: Reviewing**

Reviews take place to ensure that the Direct Payment is being managed satisfactorily. Adults in receipt of Direct Payments review their needs at least annually with the Social Worker and/or Occupational Therapist and Client Finance Manager/Assistant. Children are reviewed at least every six months.

#### **Assessment**

Existing policy and practice guidance on assessment should be followed whether or not the person being assessed is likely to receive service provided by the local council or direct payments. Department of Health Direct Payments Guidance 2003

#### **Implementation**

Councils should give the person information and support as early in the process as possible about what receiving direct payments will involve. In order to make an informed decision, people need to understand what is involved in managing direct payments. Department of Health Direct Payments Guidance 2003

#### **Monitoring**

Monitoring arrangements should be consistent both with the requirement for the council to be satisfied that the person's needs for the service can and will be met and with the aim of promoting and increasing choice and independence.

Department of Health Direct Payments Guidance 2003

#### **Reviewing**

Councils should follow existing guidance on carrying out reviews. The fact that the council is making direct payments rather than arranging services itself does not affect its responsibility to review an individual's care package at regular intervals.

Department of Health Direct Payments Guidance 2003

# PROCEDURE CONTINUED

## Practice

### 3.0 STAGE ONE: ASSESSMENT

#### 3.1 SOCIAL WORKER PROCEDURES

Direct Payments can only be offered to someone who has been assessed as eligible to receive services. There is no difference in the assessment process, which must include an assessment of whether Direct Payments are appropriate and of whether the person is able to manage them. The procedure to be followed is detailed below:

1. Undertake an assessment / review. All eligible individuals should be offered the option of Direct Payments. There is a leaflet (available from the Client Finance Team) that the Social Worker should give to the person.
2. If the person is interested in receiving Direct Payments the Social Worker will need to determine their **willingness** to receive a payment, **ability** to state preferences and make choices, **capability** to manage the Direct Payment and **competence** to take legal responsibility for arranging their own care services. Appendix 1 provides the definition of willing, able, capable and competent [and of capacity under the Mental Health Act 2005](#).
3. The Social Worker will need to ask the person's permission to share a copy of their assessment, care plan and Independent Living Team report (if appropriate), with the Client Finance Team.
4. Following the assessment and funding approval, the Social Worker will complete the Request for Direct Payment Form and send to the Care Arrangers will all necessary documentation. The Care Arrangers will complete a SUISS and pass to the Client Finance Team for set up. The Client Finance Team will arrange to visit the person within 3 weeks. The Direct Payment Assistant will log the request onto the Direct Payments database. A joint visit with the Social Worker is preferred.
5. On the joint visit it is important that the following is carried out:
  - The Direct Payments Assistant will give the person a copy of "Personal Assistants - A Guide to Getting Started". This guide will be used to help the person understand what is involved in managing Direct Payments.
  - As a guide to deciding if Direct Payments is a suitable service for the person the Direct Payments Assistant and Social Worker will use the questions in Appendix 2.
6. After this initial visit the service user will be left to think about the scheme. After several days the Direct Payments Assistant

#### Assessment

"There is no difference in the assessment of a person's need for services although under the Regulations a local council must also be satisfied that the person's need for services can be met by means of a direct payment. It is important that the needs-led focus of the assessment is retained. In order to ensure that the person's assessed need for the relevant service can be met by means of a direct payment, each local council should consider the person's needs and also discuss with anyone to who it proposes to offer direct payments how he or she intends to secure the services. Councils will want to be satisfied that the person's assessed needs can and will be met and that the money is being spent appropriately in securing services to meet those needs."

Department of Health Direct Payments Guidance 2003

#### Carer assessment

The Department of Health policy and practice guidance and the Carers (Recognition and Services) Act 1995 emphasise the importance of considering carers' needs when completing a community care assessment. A carer is someone who has a personal or family relationship with the disabled person, not someone who is being paid to provide care or support to the disabled person using the Direct Payment.

If as a result of a carers' assessment the carer has needs for personal assistance in his or her own right then these needs may be met either through the provision of a service or a Direct Payment.

#### Mixed packages of care

It may be appropriate to offer a mixed package of direct payments and council arranged services. This may be particularly useful for people used to receiving direct services, such as older people, And who may need to increase their confidence.

Department of Health Direct Payments Guidance 2003

## ***PROCEDURE CONTINUED***

will telephone the person. If they wish to proceed the Direct Payments Assistant will arrange a second visit to start the implementation stage.

7. At the end of the implementation stage when the service user has signed a contract and the Direct Payments Assistant has set up the Direct Payment the Social Worker will be informed and sent a copy of the contract. At this stage the Social Worker will need to record information onto CareFirst. The Direct Payments Assistant will check that this has been done.

### **3.2 OCCUPATIONAL THERAPY PROCEDURES**

As part of the assessment the need for Occupational Therapy input may be identified. In this instance the Social Worker usually refers the person to the Independent Living Team for an Occupational Therapy Assessment.

#### **Equipment Assessments:**

Equipment will be supplied with relevant information and/or literature. The person receiving Direct Payments should ensure all personal assistants (employed by them) are competent to use the equipment correctly. The person should also ensure that any new employees are competent to use the issued equipment.

#### **ILT Hoist Assessments:**

1. Following a referral from the Social Worker the Occupational Therapist will carry out a hoist assessment, and recommend the appropriate equipment where necessary (as per standard hoist procedures).
2. When the hoist assessment is completed the Social Worker and the Direct Payments Assistant will be informed of the outcome so it can be included in the care plan.
3. Equipment will be supplied with relevant information and/or literature. The person receiving Direct Payments should ensure that any personal assistant (employed by them) has the relevant skills in order to use any moving & handling equipment. This includes ensuring that any new employees are competent to use the issued equipment.
4. The provision of the equipment will be subject to standard review procedure. The outcome of these reviews will be forwarded to the Social Worker and Direct Payments Assistant.

## ***Practice***

### **Independent Living**

“Independent living is the concept of empowering disabled people to control their own lives as far as possible and to have the freedom to participate fully in the community. It is not the name of a particular service or provision but should be the objective of services and provision.

Support for independent living includes personal assistance, information, housing, education, access to public goods and services, employment and training and access to the environment and the political arena.”  
Social Services Inspectorate “New Directions for Independent Living.”

### **Direct Payments**

“Direct Payment schemes for people aged over 65, became available on 1<sup>st</sup> February 2000, reinforcing the belief that people who have made their own choices throughout their lives should have the right to decide how people arrange their own social care. Direct Payments for older people will enable those who take this option to live for longer in their own homes in the community, in touch with family and friends. Younger people with physical disabilities have often chosen to use their Direct Payment to employ a personal assistant or occasional support, depending on the level of need.”  
Social Services Inspectorate “Modern Social Services”

## 4.0 STAGE TWO: IMPLEMENTATION

4.1 In order to make an informed decision people will need to understand what is involved in managing Direct Payments and be helped through the process. The Direct Payments Assistant is responsible for this stage, but before this process begins, they need to know the following:-

### 4.2 Direct Payment Rates

Contact Direct Payments Section, Client Finance Team for current rates.

### 4.3 Start-up costs

This is a one-off payment to cover start-up costs up to a maximum of £259. For example, this payment could be used for setting up interviews, purchasing insurance, buying protective clothing for personal assistants and placing adverts. An amount is agreed between the Direct Payments Assistant and person up to the maximum of £259. At this stage the Direct Payments Assistant will inform the Team Practice Manager of the agreed amount. The set up costs are paid directly into the recipient's bank account.

The amount paid depends on individual circumstances, e.g. a person wishing to employ personal assistants for their full care needs may be entitled to the full amount of £259. A person who will receive Direct Payments to purchase support from an agency may only be entitled to a proportion of the full amount.

From 1<sup>st</sup> April 2008 start up costs will incorporate an allowance for payroll service costs incurred when a service user employs a Personal Assistant. By including payroll costs, in start up costs if incurred and if required annually thereafter, potential difficulties and debt in relation to tax and national insurance payments by the individual in receipt of the Direct Payment could be avoided.

### 4.4 Contingency

A contingency sum (for use in emergencies) is paid with the first regular Direct Payment and is equivalent to 2 weeks Direct Payment. When a sum of money is used from the contingency the person will need to complete the relevant form giving reasons and proof of expenditure. People should give notice to their Social Worker, wherever possible, prior to using any amount from this fund. If the expenditure is approved, then the contingency is 'topped up'. If the expenditure is not approved then the person should pay back the contingency from private funds.

### 4.5 Example of form used to calculate Direct Payment

See Appendix 3.

### 4.6 Separate bank account

The Local Authority requires evidence that the monies made

### Determination of payment levels

'The guiding principle in determining the level of a Direct Payment should be to set it at a level which reflects as closely and fairly as possible the actual cost at which individual service users can purchase the services which they are assessed to need. Equally there should be equity between those users who participate in such a scheme, and those who are unable or prefer not to participate. Payments to service users under this scheme should, therefore, be made on the basis that the user is given sufficient, but no more than sufficient, funds to purchase the same quantity and same quality of care which would be arranged for a service user of the same Local Authority with the same assessed needs who remains outside the Direct Payments scheme.'

CIPFA 'Accounting and Financial Management Guidelines.'

### Start up costs

These costs are refundable to the authority if the service user decides not to proceed with the Direct Payment scheme, although there may be exceptional circumstances when it is deemed unreasonable to request the full amount to be returned.

### Contingency fund approval

Contingency fund needs to be approved by the relevant Practice Manager and Client Finance Manager.

## **PROCEDURE CONTINUED**

## **Practice**

available are being used to meet the identified and agreed needs as determined by the assessment. It is therefore necessary that recipients of Direct Payments to purchase care services have a separate and exclusive bank account to manage their Direct Payments.

### **4.7 Insurance**

Extra insurance is incurred by the introduction of the Direct Payment scheme, i.e. employer's liability and public liability. The cost of this will be met by the authority within the start-up costs, upon proof of payment. The contingency fund can be used to pay insurance fees and a receipt must be sent to the Local Authority along with a "Request for Reimbursement of Contingency" form, to ensure repayment.

### **4.8 Direct Payments and Trusts**

A Trust may administer the Direct Payment for the person, but that person must retain responsibility for receiving the payment and determining how it is to be used. The important principle, which must be addressed before making a Direct Payment, is that the Local Authority should satisfy itself that the relationship between the person and the Trust/agent/power of attorney, will honour the spirit of independent living, before a Direct Payment is agreed.

### **4.9 Fairer Charging Policy**

Halton Borough Council's Fairer Charging Policy takes account of a person's ability to pay for services they receive. People receiving a service are asked to give details of income and benefits that they receive, details of any savings and investments that they have and details of any disability spending that they have. Any financial contribution the person needs to make towards the cost of their care will be taken out before the Direct Payment is paid into their bank account.

### **4.10 How the money can be spent**

When signing the Direct Payment contract, the service user will be taking responsibility for arranging their services, and spending the cash payment in the way that is shown in the contract. It is essential that the contract is clear that people using Direct Payments have flexibility about how the money is spent.

### **4.11 Buying services from an agency**

Any services purchased by the person must be as cost effective or efficient as the Local Authority could arrange or buy. In discussions with the person receiving the Direct Payment it is important that the Direct Payments Assistant explains that the Local Authority is not liable to pay VAT, and it is not possible for the Local Authority to make extra provision to cover the cost of VAT.

### **4.12 Employing a personal assistant**

Many people will chose to employ a personal assistant. In this case the person becomes an employer and must make adequate

#### **Support groups**

When discussing direct payments with people, local councils will wish, wherever possible, of offer the option for them to be put in touch with a support group or local centre for independent living, or a peer support group of people who already manage direct payments.

Department of Health Direct Payments Guidance 2003.

#### **Rates of pay for personal assistants**

The service user will negotiate the

## **PROCEDURE CONTINUED**

arrangements to fulfil their consequent responsibilities. Halton has seen a growth in the number of personal assistants employed by those in receipt of a Direct Payment since the scheme began.

### 4.13 **Arrangements in emergencies**

It is essential that each person receiving a Direct Payment has made arrangements to cover potential emergencies, for example if a personal assistant is sick. If these arrangements break down and it is not possible for the person to have their needs met, then ultimately the Local Authority is responsible for arranging services for them. This should be done via contacting the person's Social Worker or the Emergency Duty Team.

The Direct Payments Assistant is responsible for implementing the Direct Payment. The procedure is detailed below (taking into account the conditions outlined above):

1. Once the person has confirmed they want to use Direct Payments, the Direct Payments Assistant will arrange to visit them for a second time.
2. The Direct Payments Assistant will contact Income and Assessment for details of how much the person has been assessed to pay and will set up a service user file.
3. The Direct Payments Assistant will agree start up costs with the person and inform the Practice Manager of the relevant team.
4. The Direct Payments Assistant will send the person 2 copies of the Statement Letter, an Offer Letter and a Bank Details Form. The person accepts the offer by:-
  - setting up a bank account
  - completing the 'Bank Details' form
  - Signing both statements, returning 1 to the Direct Payments Assistant and keeping 1 for themselves.
5. The person will then start to look for a suitable provider to meet their assessed needs. This provider can be a personal assistant, an agency or self employed individual. If the person chooses to employ a personal assistant then the Direct Payments Assistant, will if required, assist them with this process.
6. On receipt of the signed statement letter and bank details form, the Direct Payments Assistant will arrange for start up costs to be paid into the person's bank account.
7. Once the person has found a suitable provider the Direct Payments Assistant will prepare a contract for signing (appendix 5). Four copies of this contract are required, one for each of the following:

## **Practice**

rate of pay with their own personal assistant.

### **Emergency contact numbers**

Emergency Duty Team – 01606 76611.

### **Statement of Direct Payment**

In order for this statement to be produced the Social Worker will need to submit a financial assessment. If this has happened the statement can be produced within 5 days of receipt of a copy of care plan and memo from Direct Payment Manager.

### **Contract with service user**

'It is important that the service user fully agrees to managing Direct Payments before the first payment is made. This will allow the user not only to recruit staff or service providers, but also give them time to set up recording and payment systems themselves.'

CIPFA 'Accounting and Financial Management Guidelines.'

If the service user is assessed as eligible for a Direct Payment then an agreement will be reached about the amount of money each recipient will receive on a weekly basis. The calculation of the weekly cost of a Direct Payment package will be the result of an agreement of the number of hours required at a specific time of the day, to meet the care needs identified in the care assessment. If the service users need change then a new contract will be drawn up.

### **Criminal Records Bureau checks**

## ***PROCEDURE CONTINUED***

- The Direct Payments recipient
  - Direct Payments Team
  - Income and Assessment section
  - Social Worker
8. The 'Statement of Direct Payment' letter forms part of the contract and is copied to the above.
  9. A copy of the care plan and Independent Living Team report, if appropriate, also forms part of the contract and is copied only to the service user.
  10. To begin payments the Direct Payments Assistant will raise the first 4 weekly payment, together with the 2 weeks contingency payment. The Direct Payment Assistant will raise a payment every four weeks and will record the details on the financial database. The Direct Payments Assistant will also "flag" on Agresso to stop invoicing the service user for their financial contribution.
  11. The Direct Payments Assistant will supply the person with all the necessary records and advice for keeping quarterly financial records and records of support received and tell them about their responsibilities to retain invoices/receipts and bank statements. These will be supplied in the form of a "start up" stationery pack which will be tailored to the individual. This start-up pack will be provided by the Direct Payments Assistant approximately one week before the Direct Payment is due to start.
  12. At this stage the Direct Payment scheme user will be expected to start making their contributions towards the cost of their support to coincide with the first Direct Payment.
  13. During the initial 6-week period the Direct Payment Assistant will arrange to meet the person on a frequency appropriate to their needs.

## ***Practice***

### **of Personal Assistants**

It is the responsibility of the Client Finance Manager to raise service user awareness about the importance of ensuring CRB checks are carried out on personal assistant.

The service user will be encouraged to ask personal assistants to get a CRB check carried out. If the PA is likely to have access to children then the PA must be checked by the CRB



## 5.0 STAGE THREE: MONITORING

5.1 At this stage the person is receiving Direct Payments and these need to be monitored. All financial records and returns can be subject to auditing at any time.

### 5.2 What if the money is not spent?

There may be a number of reasons why a surplus has accrued in the bank account, for example, there may be outstanding tax or national insurance not yet due or paid. Alternatively, the person may be 'saving care' to cover extra costs that may be incurred when they take personal assistant with them to a special event, although this need must be agreed with their Social Worker. Also the contingency money will be kept in the bank account as a reserve. Any credit balance should be explained to the satisfaction of the Client Finance Manager. If there is a credit balance in the account without a satisfactory reason, the Local Authority will reduce the person's next payment.

### 5.3 What if there is an overspend?

If there is a problem with a person overspending the Direct Payment, then advice and support will be offered and the overspend corrected. If the problem persists, then the Client Finance Manager may need to reassess the ability of the person to manage the scheme or a reassessment of need under the Community Care Act may need to be undertaken by a Social Worker. If a person spends more money than is allowed by the Direct Payment package, then they are liable for this from their private funds. If services paid for have not been received, it is the responsibility of the person to seek a refund from the service provider. Equally the service provider should pursue the recovery of debts from the person, if services have been received and not paid for.

### 5.4 Repayment

The Local Authority can seek repayment if the monies made available have not been used to purchase services identified in the care plan and contract, or were used to purchase services identified as being excluded. It is essential that honest mistakes are seen as such, and repayments should only be sought where monies have been spent inappropriately or not spent at all.

### 5.5 Recovery of Direct Payment

It may be necessary to recover unspent Direct Payments if a service user dies. Contractual responsibilities must be met before determining the amount of Direct Payment to be recovered. See Appendix 5 Direct Payment Contract "Responsibilities of Direct Payment Recipient" (Item 14).

### Responsibility for quarterly audit returns

It is the responsibility of the Direct Payments Assistant to check audit returns and provide quarterly reconciliation. The group accountant in financial services will provide advice and guidance where necessary.

### Checks when monitoring Direct Payment

- Have all necessary records been received?
- Are they fully completed and total correct?
- Does the balance on the financial record agree with the bank balance – bank reconciliation?
- Does the income agree with the office payment record?
- Are payments supported by invoices/wage records and in accordance with identified needs?
- Is the level of Direct Payments reasonable, i.e. no surplus accruing

The account should be in credit but surplus should be represented by amounts owing by service user (wages not yet paid) / contingency funds / payments outstanding to Inland Revenue.

## 5.6 Self Certification

### Small Packages of Care – New Service Users

If the Direct Payment package is on average 15 hours per month or less, regular full financial inspections may not be necessary. These packages could be dealt with under an annual “self certification” scheme.

Established Direct Payment Service Users – those service users who are able to demonstrate they have maintained records as required by the scheme and have had regular monitoring checks, may also be given the option of “self certifying” on an annual basis. This option will be a joint decision between the Direct Payments monitoring service and the service user, and an assessment of risk will take place.

## 5.7 Equipment

The person receiving Direct Payments is responsible for considering manual handling risks. The Direct Payments Assistant will feed back any concerns about use of equipment to the Independent Living Team.

5.8 Each person receiving Direct Payments must provide the Local Authority with audit returns on at least a quarterly frequency, indicating how their Direct Payment has been spent. The aim of this return is to ensure that the person is receiving enough money to pay for services whilst at the same time ensuring the monies are being spent as agreed. Once it has been established that the person is managing their Direct Payment satisfactorily, either alone or with help, the frequency of financial monitoring may be adjusted after discussion with the person.

5.9 During the first 6 weeks the Direct Payments Assistant will monitor that the needs identified on the care plan are being met and the Direct Payment is being managed effectively. Detailed below is a list of the records that need to be kept:

## 5.10 Records to be kept by Client Finance Team

- Direct Payment record of audit checklist (appendix 17)
- Initial offer letter
- Statement letter of Direct Payment/assessed charge
- Copy of care plan and Independent Living Team report (if appropriate)
- Contract
- Start up list for Direct payment (appendix 18)
- Diary notes (appendix 19)
- Direct Payment database
- Self certification form (if appropriate)
- Any other relevant information to the account

## 5.11 Records to be kept by service user

If person employs a personal assistant:

- Copies of all records, i.e.
- Quarterly returns

### Summary of records for employing personal assistant

- Quarterly return
- PAYE/NI records
- Evidence if assistant is self employed
- All receipts for expenditure from Direct Payment fund
- Record of assistants holiday/sickness

### Summary of records for buying from an agency

- Budget statement
- Invoices
- All receipts

## ***PROCEDURE CONTINUED***

- Time sheets
- Income and expenditure record
- Quarterly return to Inland Revenue
- BACS advice slips
- Cheque stubs
- Bank statement
- Service user contribution
- Sickness records
- Holiday records
- Contingency
- Saving care
- Amendment to bank details
- Self certification form (if appropriate)

If person purchases services from an agency:

- Quarterly return to show hours of service purchased during the period, the cheque number and payee and the amount paid out

All invoices and receipts for the quarter

- 5.12 From the onset of Direct Payments, the Direct Payments Team will use the "Diary Notes"/Record of Audit Checklist sheet to log results of visits, any discrepancies and any enquiries or issues relating to their Direct Payment.
- 5.13 A database is kept to record statistical records relating to Direct Payments. This is completed by the Direct Payment Assistant at referral; start of the Direct Payment, six-week review, first audit and quarterly audits and at each payment date.

## ***Practice***

### **Summary of records for all Direct Payment recipients**

- BACS advice slips
- Bank statements
- Cheque books
- Paying in books
- Contingency records
- Time sheets

### **Tax records**

All tax records must be kept for 6 years for Inland Revenue purposes.

The authority is not obliged to fund the actual cost associated with the users preferred method of securing services if the service can be secured more cheaply in another way.

### **Tax Record**

It must be noted that all tax records must be kept for six years for Inland Revenue purposes.

## 6.0 STAGE FOUR: REVIEWING

6.1 Once a person has been set up to receive Direct Payments, the Direct Payments Assistant will offer support for up to six weeks or until the person is able to manage the monitoring process independently. At six weeks the Client Finance Manager/Direct Payments Assistant will co-ordinate a joint review with the Social Worker, Occupational Therapist (if appropriate). The review will cover the following areas:

- Checking and reviewing all financial records to ensure the person is maintaining all the records necessary for the monitoring of expenditure and services
- Ensuring the Direct Payment is being used to meet the person's needs as outlined in the care plan and the Independent Living Team report (if appropriate)
- Ensure the services have been received and the Direct Payment has been used cost effectively
- Identifying and resolving any difficulties the person has in managing Direct Payments
- Confirming there have been no changes in circumstances and the person is still eligible to receive Direct Payments
- Checking that any equipment supplied by the Independent Living Team is being used correctly (where relevant).

6.2 If the outcome of the review is satisfactory, quarterly support visits by the Direct Payment Assistant will start. If there are any concerns about how well the person is managing the scheme they will receive more regular visits and support. For Adults, the Social Worker will continue to review the person's care needs at least annually. For children in need in the community, reviews of the child in need plan should take place at least every 6 months.

### 6.3 What happens if a service user's circumstances change?

It is vitally important that if the circumstances of a person change, the Direct Payment Assistant be notified immediately. It is in everyone's interest to ensure that events such as hospital admissions or long absences from home are properly recorded.

### 6.4 What if difficulties arise?

Direct Payments will not be withdrawn at the first sign of difficulty. The Department of Health guidance suggests that the following questions should be asked:

- Has the person's needs changed?
- Is the amount of money provided sufficient to enable the person to secure the relevant services?
- Is the person able to manage Direct Payments or can they do so with assistance?
- Does the person wish to continue receiving Direct Payments?
- Has all the money been spent towards achieving the outcomes identified in the care plan?
- Have services for which the person has paid been received?

### Reviewing

'Councils should follow existing guidance on carrying out reviews. As with all services, the projected timing of the first review should be set at the outset. The purpose of the review remains to establish whether the objectives set in the original care plan are being met. It should therefore cover whether the person's needs have changed, whether the use of direct payments is meeting assessed needs and how he or she is managing direct payments.'  
Department of Health Direct Payments Guidance 2003

### Frequency of Monitoring

The frequency of monitoring will be dictated by the length of time the person has managed a direct payment either alone or with help and their particular circumstances. Once a council is satisfied a person is managing the direct payments satisfactorily, reviews should be at the same intervals as for other people receiving services.

### Children identified as needing services under section 17 of the 1989 Act

Reviews may be necessary more often so that the council remains satisfied that the direct payment promotes and safeguards the welfare of the child. The Framework for the Assessment of Children in Need and their Families reminds councils that it is good practice to review plans for children in need in the community at least every 6 months.

Department of Health Direct Payments Guidance 2003.

"Whilst the Local Authority is relieved of its responsibilities to arrange services for recipients of direct payments, it still has an obligation to satisfy itself that the services purchased meet the needs of the service user, and that the care needs of the service user are reviewed at regular intervals. These duties should be performed by care staff from the Local Authority."  
CIPFA Accounting and Financial Management Guidelines

# **PROCEDURE CONTINUED**

- Has the money been spent wisely?

# **Practice**

## **Discontinuing Direct Payments**

The council should discuss with individuals as soon as possible if it is considering discontinuing direct payments to them. They should be given an opportunity to demonstrate that they can continue to manage direct payments, albeit with greater support if appropriate..... the council should not automatically assume when problems arise that the only solution is to discontinue or end direct payments.

Department of Health Direct Payments Guidance 2003

## **6.5 When to discontinue Direct Payments**

The person to whom Direct Payments are made may decide at any time that they no longer wish to continue to receive them. The Local Authority may also discontinue Direct Payments temporarily or permanently as outlined in the Direct Payment Contract (Appendix 8). However before a decision is made, full and frank discussions must take place with everyone involved. The Client Finance Manager may consider that it is more appropriate to recoup any overpayment as a result of such circumstances at the quarterly audit rather than disrupt the regular payment system. In all circumstances where Direct Payments are discontinued whether temporarily or permanently, careful consideration should be made about any contractual responsibilities, i.e. terminating employment, redundancy etc. These issues will need to be discussed by the person and the Client Finance Manager/Direct Payments Assistant before the agreement is finalised.

6.6 When signing the Direct Payment contract, the person takes responsibility for arranging their own personal assistance and spending the payment to meet their needs as outlined in the care plan. It is essential that the Direct Payments Assistant makes it clear to them what the money may or may not be spent on and how much flexibility the person has over the way the money is spent.

## **6.7 Complaints**

The person receiving the Direct Payment may invoke the Directorate's complaints procedure if they think that the procedures are unfair or have been unfairly applied to them. Contractual issues between the person, their personal assistant or agency providing the service cannot be dealt with under the complaints procedure.

**Definitions for use in determining whether a person is able to manage a Direct Payment**

**Willing**

Is the person willing (with or without assistance) to receive a Direct Payment and all the responsibilities involved? The person receiving a Direct Payment must understand (with or without assistance) all the conditions they will be required to meet. These conditions include taking day to day control of their personal assistance, payment of bills, managing the bank account, preparation of quarterly audit returns and making arrangements for cover in emergencies.

**Able**

The person receiving the Direct Payment must have the ability to express (with or without assistance) a preference about the way in which they wish to have services provided. This can be illustrated by looking at what the person does now and how much control they are able to exert upon their personal assistance.

**Capable to manage**

The Direct Payments Assistant and the Social Worker will need to agree that the service user understands the nature of the agreement they are entering into. The Direct Payment contract is legally binding upon the Local Authority and the service user. It is essential, therefore, that the service user is either personally able to keep the necessary records, e.g. national insurance and tax, or with the assistance of the Direct Payments Assistant or makes appropriate arrangements for their responsibilities in such areas to be completed on their behalf. Such support in managing a Direct Payment will need to be identified before a Direct Payment contract can be made.

**Competence**

The test of legal competence will vary according to the extent of the support that the recipient of the Direct Payment receives. In circumstances where the support is extensive, e.g. through the creation of a Trust or agent to manage all recruitment and payments, the assessor may judge that the person's ability to express preferences in the way in which they wish to have services provided will be sufficient to fulfil their obligations outlined in the Direct Payments contract. The test of competence in this area must vary according to the individual circumstances, from a high degree when the person is to manage all of the responsibilities of their Direct Payment without assistance, to a low degree when the person's management relates to simple day to day choices and preferences.

**Mental Capacity Act 2005**

A significant factor influencing the assessment will be the answer to the question "Does the person currently take other important decisions for him/herself?"

The Mental Capacity Act 2005 states that a person is unable to make a decision if he/she is unable:

- (a) To understand the information relevant to the decision;
- (b) To retain that information;

- (c) To use or weigh that information as part of the process of making the decision;  
or
- (d) To communicate his decision (whether by talking, using sign language or any other means).

It also states that:

- A person is not to be regarded as unable to understand the information relevant to a decision if he is able to understand an explanation of it given to him in a way that is appropriate to his circumstances (using simple language, visual aids or any other means).
- The fact that a person is able to retain the information relevant to a decision for a short period only does not prevent him from being regarded as able to make the decision.
- The information relevant to a decision includes information about the reasonably foreseeable consequences of
  - Deciding one way or another; or
  - Failing to make the decision.

## **APPENDIX 2**

### **Question to be used by direct payment manager in assessing if a user is suitable to receive a direct payment**

- Does the person understand (with assistance if necessary) the nature of the direct payment scheme?
- Can the person express preferences with assistance to communicate if necessary between different types of service?
- Does the person currently take important decisions for him/her self (with assistance if necessary)?
- Is the person able (with assistance if necessary) to access appropriate support to enable them to manage direct payments?
- Will the person be able to keep the necessary records (with or without assistance)?
- Does the person understand the legal responsibilities that may arise if he or she becomes an employer, and can he or she cope with them (with or without assistance)?
- Will the person be able to ensure that he or she receives the services paid for (with or without assistance)?
- Is the person likely to be able to manage the scheme on an ongoing basis, as opposed to having a fluctuating or deteriorating condition, which may affect his or her ability to manage?
- Will this arrangement secure the greatest degree of independence for the recipient?

It may be that, even if a person scores negatively on some of these questions, with skills training the direct payments scheme can become a suitable option in the future.



Dear

Please find below details of how we have worked out the money that we will pay to you under the Direct Payment scheme. The amount we pay you may change if your circumstances change. You should pay the money you get into your Direct Payment Bank Account.

	£
The total cost for your services is	.....
This was worked out from	
.... Hours at an hourly rate	.....
.... Hours at an hourly rate	.....
.... Hours at an hourly rate	.....
.... Hours at an hourly rate	.....
.... sessions of night sitting at £..per night	.....
Total Direct payment each week	.....
Less your contribution from your income/benefits	.....
= A total direct payment to you of	.....

If you need any more information about how we worked out your direct payment please contact me on

If you are not happy with the service you receive from Social Services then you can complain and I have enclosed a leaflet, which explains the complaints procedure.

If you agree with the amounts shown please sign this form and return it to me in the prepaid envelope supplied.

Yours sincerely

Signed by Direct Payments Assistant .....

Authorised by Principal Manager .....

Service User Signature .....

Dear

**DIRECT PAYMENT SCHEME**

I am pleased to offer you the Direct Payment Scheme and enclose a statement, which details how much we will pay you each week.

Please sign and complete the bank details form and statement enclosed and return them to me in the pre paid envelope supplied. When I receive these forms I will arrange for an initial start up payment of £.....to be paid into your Direct Payment bank account.

When you have employed your provider and agreed a start date with them I will arrange for a contract to be prepared and signed.

We will discuss with you the date that our first payment will be made to you. The first payment will include a contingency payment of £.....(equivalent to 2 weeks payments) which you can use in an emergency.

Direct Payments are made to you every 4 weeks. Your first payment will include enough money to pay for one month's care in advance and the contingency payment.

The Council have to be sure that you are spending your Direct Payment appropriately, therefore, I need to remind you that you need to

- Open a separate bank account for your Direct Payments to be made into
- Keep a record of how you spend the money we give you. These records will be monitored weekly for the first 6 weeks and on a quarterly basis after that.
- Understand that Direct Payments cannot be used to pay close relatives.
- Government regulations prohibit Direct Payments from being used to pay a spouse or partner, or a close relative living in your household. Direct Payments should not be used to pay close relatives living elsewhere, or other people living in the same household. This does not prevent people using the Direct Payment to pay someone who has been specially recruited to be a live-in personal assistant. Direct Payments cannot be used to pay close relatives who live elsewhere, or other people living in the same household. For this purpose the Government defines a close relative as a parent, parent-in-law, aunt, uncle, son, daughter, son-in-law, daughter-in-law, stepson, stepdaughter, brother, sister or the spouse or partner of any of the above.

If you do not want to proceed with the Direct Payments scheme, then the initial payment of £..... will be repayable to the Council immediately. Your current care services provided to you by the Council will continue as at present.

I look forward to receiving the signed statement and confirmation of bank details. If you need any more information please do not hesitate to contact me 01928 500 740.

Yours sincerely  
Direct Payments Assistant  
Enc.

**HALTON BOROUGH COUNCIL  
DIRECT PAYMENTS CONTRACT**

THIS AGREEMENT is made the \_\_\_\_\_ day  
of \_\_\_\_\_ 200

Between **HALTON BOROUGH COUNCIL** (“the Council”) of  
Halton Lea, Runcorn and

(“the recipient”) of

**WHEREAS:**

- (a) the Council has conducted an assessment and subsequently determined that the needs identified in the attached care plan (Schedule 1) should be provided for the Recipient;
- (b) the Recipient is willing, able and has the capacity to arrange for the services marked (\*) in the care plan (Schedule 1) to be met and the Council is willing to make a payment direct to the Recipient to enable him/her to do so; and
- (c) this agreement is made in accordance with the requirements of the Community Care (Direct Payments) Act 1996, and Carers & Disabled Children Act 2000.

The purpose of this agreement is to set out the responsibilities and obligations of Halton Borough Council and \_\_\_\_\_, the Recipient of the Direct Payment.

It is agreed by the parties as follows:

- 1 (a) The Council agrees to pay the Recipient 4 weeks Direct Payment every 28 days in advance starting on \_\_\_\_\_ and in accordance with the arrangements set out in the Direct Payment Statement Letter.
- (b) The equivalent of 2 weeks Direct Payment will be paid starting on \_\_\_\_\_ in accordance with the arrangements set out in the Direct Payment Offer Letter as a contingency fund, which must only be used in accordance with the conditions as detailed in paragraph 20.
- 2 The Council will make the Direct Payment by Banks Automated Clearing System (BACS) into a separate and dedicated Direct Payments account in the Recipient's name. The account number is \_\_\_\_\_ at \_\_\_\_\_ Bank.

### **3-8 USE OF THE DIRECT PAYMENT**

- 3 The Council intends that a Direct Payment is the means by which the individual Recipient independently secures the services that the Council agreed the Recipient needs following assessment.
- 4 The Recipient will use the Direct Payment monies to meet the needs identified in the care plan.
- 5 The Council may increase or decrease the amount of the Direct Payment to the Recipient at any time on account of a change in assessed needs. Before decreasing the amount of the Direct Payment the Council will give the Recipient a minimum of one weeks notice in writing and the reason for such decrease.
- 6.1 A review of the support package and Recipient's record keeping will take place 6 weeks after receipt of the first payment(s) to identify and respond to any problems which

may have arisen and to prepare for the necessary monitoring (see paragraph 10).

- 6.2 The Council will formally review the assessment of the Recipient and the operation of this agreement every 12 months (ie within every 12 month period there should be at least one review). That review will determine whether the Recipient's needs have changed and how the Recipient is coping with the arrangements for ensuring the provision of the services that meet these needs.
7. The Recipient will not use the Direct Payment to employ/pay any partner (married or unmarried) or a close relative living in the same household (close relative means parent, parent-in-law, aunt, uncle, grandparent, son, daughter, son-in-law, daughter-in-law, step-son or daughter, brother, sister or the spouse or partner of any of the preceding) to provide the services, **unless in exceptional circumstances**. This also applies to Direct Payments made to a person who has parental responsibility for a disabled child (Direct Payments paid in accordance with S172(a) Children Act 1989) and to payments made to a child aged 16 or 17 (Direct Payments paid in accordance with S17A (2) (b) Children Act 1989).
8. The Recipient will not use the Direct Payment;
  - (a) to employ/pay for services provided by a local authority, NHS authority or NHS trust.
  - (b) for permanent residential care for adults or for provision of residential accommodation for a disabled child or disabled young person for any single period in excess of 4 weeks and for more than 120 days in any period of twelve months.

## **9-25 RESPONSIBILITIES OF THE DIRECT PAYMENT RECIPIENT**

- 9 The Recipient agrees that it is his/her responsibility to make all appropriate arrangements to meet the identified needs and agrees to comply with all legal requirements that may arise in making such appropriate arrangements including all Inland Revenue requirements and applicable employment legislation, to include Stakeholder Pensions and Redundancy requirements as appropriate.
- 10 In order to enable the Council to monitor the use by the Recipient of the Direct Payment, the Recipient will:-
- (a) use the bank account number and ensure it will be used only for all transactions in respect of the Recipient's care plan.
  - (b) notify the Council as soon as possible of any changes in circumstances and details of the use of any element of the contingency funds (in a form specified by the Council). Failure to comply with this requirement will result in the Direct Payments being suspended.
  - (c) to maintain up to date records, supply these records to the Council when requested to do so, and retain all financial records for the current financial year and the preceding 6 years.
  - (d) Pay for their care by either cheque or a direct debit. Cash transactions are not acceptable.
  - (e) To pay into the above bank account each time a Direct Payment is deposited, monies identified as the service user contribution, where applicable.
  - (f) Small Packages of Care – New Service Users  
If your Direct Payment package is on average 15 hours per month or less, you may not be subject to regular full financial inspections. Instead, the

monitoring of your Direct Payment may be dealt with under an annual “self certification” scheme. This will mean that:

- The Direct Payments team will undertake an initial 6 week check (see 6.1 in this Contract).
- After the first check with you to make sure you are happy using the Direct Payment system and that your financial records have been satisfactorily maintained, you will be asked to submit an annual “self certification” form. This will include a declaration that you have used your Direct Payment monies in accordance with the Direct Payments scheme, acknowledging that the Health & Community Directorate retains the right to audit your records if they want to.
- You should continue to maintain and retain all records as listed in Section 10c of this Contract.

(g) Established Direct Payment Service Users – Those established Direct Payment service users who are able to demonstrate they have maintained records as required by the scheme and have had regular monitoring checks, may also be given the option of “self certifying” on an annual basis. This option will be a joint decision between the Direct Payments monitoring service and the service user, and an assessment of risk will take place. The Health & Community Directorate retains the right to audit service users’ records at any time. You should continue to maintain and retain all records as listed in Section 10c of the Contract.

11 There may be a number of reasons why a surplus has accrued in the bank account. For example, there may be outstanding tax or national insurance not yet due or paid. The contingency money will also be kept in the bank account as a reserve. Alternatively, the Recipient may be ‘saving care’ to cover extra costs that would be incurred

when they take personal assistant(s) with them to a special event. However, this need must be agreed with their Social Worker and identified with relevant details on their care plan. The credit balance should be explained to the satisfaction of the Direct Payment Manager. However, if there is a credit balance in the account without a satisfactory reason, the Local Authority will reduce the Recipient's next payment.

- 12 Without prejudice to its rights (to terminate this agreement, under paragraphs 15 and 24) the Council may require the Recipient to repay to the Council the Direct Payment or any part of it if the Council is satisfied that:-
- (a) the Direct Payment or any part of it has not been used to secure the provision of the Services or some part of the Services, or
  - (b) the Recipient has not met the conditions set out in paragraphs 7 or 8 or any other conditions of this agreement, or
  - (c) the Recipient has received payment from a third party (for example, the Independent Living Fund) for the Services or some part of the Services.
- 13 If the Recipient is admitted to hospital or other full time care, the Council will pay the Direct Payment in full for the first 14 days of any such admittance (subject to a maximum payment of 14 days in any 12 month period) and shall pay half of the Direct Payment for the following 14 days of any such admittance (subject to a maximum of 14 days in any 12 month period). Thereafter, the Direct Payment shall be suspended until the Recipient is discharged from hospital or other care and recommences to receive the Services. In any other circumstances, the Council may make a temporary suspension of the Direct Payment if the Recipient is temporarily unable to receive the Services for any other reason.



- 14 It is the responsibility of the recipient of Direct Payments to name a person to administer closure of the Direct Payment in the event of their death. It is this person's responsibility to ensure that non-committed funds are returned to the Directorate.
- 15 It is the responsibility of the Direct Payment recipient to ensure that legal requirements, common sense and good practice are adhered to and ensure that the people they employ are not put at risk of being injured or infected as a result of the work they do. When a personal assistant comes into a Direct Payment recipient's home both parties take on extra responsibilities.

It is the Direct Payment recipient's responsibility to provide a healthy and safe workplace for people they employ and not to do anything, or ask them to do anything which may cause them injury. It is also the duty of the person being employed not to do anything which might endanger either themselves or the Direct Payment recipient at any time.

(See "Guide to Employing Personal Assistants").

- 16 The service user is responsible for manual handling risk assessments, and the Direct Payments Manager will feed back any concerns regarding the use of equipment to the Independent Living Team.
- 17 The Recipient has the right to complain under the Council's Social Care, Housing and Health Directorate's complaints procedures about the operation of this agreement, but not regarding the service purchased direct from an agency or regarding matters relating to the employment of personal assistants.
- 18 Either party may terminate this agreement by giving the other party 4 weeks notice in writing.

- 19 The Recipient will notify the Council of any changes in circumstances as soon as possible.
- 20 The Recipient will allow a representative of the Council reasonable access to:-
  - (a) their home to enable a review of the care needs, and
  - (b) papers on transactions relating to spending of their Direct Payment monies.
- 21 The Recipient will be liable for payments under the Council's Charging Policy for the Community Care Services and payment will be made in accordance with the standing policy and procedures (see paragraph 10e), if appropriate. The Recipient agrees that such charges may be deducted at source from the Direct Payment.
- 22 Calculation of the Direct Payment will be made in accordance with the Rate of Pay Schedule contained in the statement letter and the Care Plan details. These will both be reviewed annually.
- 23 The Recipient must seek the Social Worker's approval for all expenditure of Contingency Fund monies. Any Contingency Fund may be used:-
  - (a) for covering illness of the Recipient that requires 1-3 days increased support, or
  - (b) in exceptional circumstances as agreed with the Social Worker in advance if possible
  - (c) to pay Statutory Sick Pay to Personal Assistants when they are unable to provide services to the Recipient due to illness in accordance with Statutory Sick Pay Regulations made by the Department of Social Security.
- 24 If there is a problem with the Recipient overspending the Direct Payment, then advice and support should be offered

and the overspend rectified. If the problem persists, then the Direct Payment Manager may need to reassess the ability of the Recipient to manage the scheme, or a reassessment of need may need to be undertaken by a Social Worker. If the Recipient spends more money than is allowed in the Direct Payment package, then they are liable for this extra support from their private funds. If Services paid for have not been received, it is the responsibility of the Recipient to seek a refund from the Service provider. Equally, the Service provider should pursue the recovery of debts from the Recipient, if services have been received and not paid for.

If the Recipient disputes the amount determined by the Council, he/she may appeal against the decision. The Act gives the Local Authority the power to seek a repayment if the monies made available have not been used to purchase services identified in the Care Plan and contract, or were used to purchase a service from any of the people identified as being excluded. It is essential that honest mistakes are seen as such, and repayments should only be sought where monies have been spent inappropriately or not spent at all.

- 25 The Recipient may not assign or otherwise subcontract responsibility of any part of the Agreement without the prior written consent of the Council.
- 26 Neither the Recipient of Direct Payments nor his/her employee(s) shall, in any circumstances, hold themselves out as being:-
  - (a) the servant or agent of the Council, nor
  - (b) authorised to enter into any contract on behalf of the Council in any way to bind to the performance, variation, release or discharge of any obligation.

## **27-29 RESPONSIBILITIES OF THE COUNCIL**

- 27 (a) Any of the terms and conditions of this agreement are not being met by the Recipient after advice and support have been given to assist the Recipient to meet these terms and conditions.
- (b) The Recipient is not spending the Direct Payments, or any part of them on Services to meet the needs identified in the Care Plan after advice and support have been given by the Council.
- (c) In terminating this agreement, the Council will provide up to 4 weeks monies in order to finalise this arrangement.
- 28 In the event that the arrangement by the Recipient for the provision of the Service to him/herself breaks down (including back up arrangements), whether in an emergency or not, the Council undertakes to ensure that the Recipient receives the Services that the person has been assessed to receive to meet their agreed needs. It is the responsibility of the Recipient to notify their Social Worker immediately of any such situation.
- 29 The Council will:-
- (a) provide support and advice to Recipients of Direct Payments to enable them to receive and manage their payments, and to advise of any changes in relevant legislation;
- (b) make payments as detailed in this agreement, for the purchase of services as agreed;
- (c) have no responsibility for the service(s) purchased, beyond the provision of the Direct Payment;
- (d) formally review the assessment every 12 months or more frequently if required by the Recipient or their Social Worker (and subsequently payment may be varied accordingly);

- (e) monitor and audit the spending of Direct Payments.
- 30 The Recipient of the Direct Payment is recommended to, and is responsible for obtaining employer’s liability insurance and public liability insurance.
- 31 The authority is not liable to pay VAT, and it is not possible for the authority to make extra provision to cover the cost of VAT.
- 32 The Recipient of the Direct Payment is required to, and is responsible for obtaining **Enhanced** Criminal Records Bureau Checks of his/her potential employee(s).
- 33 Variations to this Agreement may only be made by the written consent of both parties, other than variations in the assessment.
- 34 The Council and the Recipient agree to comply with all current and future legislation relevant to the provision of this Service.
- 35 Recipients of Direct Payments who choose to adopt this means of meeting their needs are advised to consult the Direct Payments Manager for advice and support.
- 36 *“I agree to information given about myself being used and processed by the Council for the purposes of the administration of the Direct Payments account and other legal purposes of the Council. I also agree that the information may be shared with other agencies on my behalf and that my details will be held on a database”.*

IN WITNESS WHEREOF the parties hereto have signed this agreement the day and year first before written

Signed by  
 For and on behalf of  
 Halton Borough Council

Signature .....

In the presence of:

Signature of Witness .....

Name of Witness .....

Address of Witness .....

.....

Signed by the said

In the presence of: ..... (recipient sign here)

*(service user signature or power of attorney)*

Name of Witness: ..... (witness)

Address of Witness: .....

.....

Signature of Witness: ..... (witness sign here)

Name and .....

Address of Person

Identified to administer .....

Closure of account in

The event of death .....

**DIRECT PAYMENTS SELF CERTIFICATION FORM**

New service users whose Direct Payment packages average 15 hours per month or less may “self certify” in certain circumstances. Established Direct Payment service users who are able to demonstrate they have maintained records as required by the scheme may also be invited to “self certify”. If service users choose this option, then the following declaration must be completed:

I ..... (name of service user) hereby declare that I have received Direct Payments for my support needs.

I confirm that the funds received from Halton Borough Council have been used to provide services to meet the needs detailed in my Care Plan.

I further confirm that I have complied with all Inland Revenue requirements and employment legislation, (where applicable). I also confirm that I have maintained adequate employer’s liability insurance (where applicable), maintained all records and agree to keep all records as per Section 10c in the Contract.

This self-certification covers the period from ..... to .....

Details on last bank statement:

Bank Statement Number .....

Period covered from ..... To .....

Balance .....

I acknowledge that Halton Borough Council retains the right to audit my accounts.

SIGNED ..... PRINT NAME .....

DATE .....