

# Direct Payments Policy and Practice Guidance



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## Introduction

1. This Policy and Practice Guidance sets out how Flintshire County Council will discharge its duties to provide Direct Payments to eligible people from 6<sup>th</sup> April 2016. This policy and practice guidance supports the principles of empowerment and reflects the local authority's powers and duties described within the Direct Payments Regulations and Code of Practice within the Social Services and Well-being (Wales) Act 2014.
2. One of the key aims of the Social Services and Well-being (Wales) Act 2014 is to enable people to exercise their right to a voice, choice and control over the way they live their lives and overcome the barriers to meeting personal well-being outcomes. This aim has, at its heart, the principles of co-production in assessment and support planning, so as to empower people to decide how their personal bespoke outcomes are achieved.
3. In relation to people who have a disability, these principles also extend to the right to Independent Living as guaranteed by the UN Convention of the Rights of Disabled People, and more recently the Welsh Government Framework for Action on Independent Living.
4. Direct Payments offer one way in which eligible people can be empowered to have greater autonomy over the support they have been assessed as needing. Direct Payments form an integral part of the Welsh Governments aim to support people to achieve their well-being outcomes through creative use of available assets and resources to meet their personal well-being outcomes. With this regard Direct Payments **must** not be viewed as a separate, secondary consideration, but an opportunity to help people meet their outcomes in a variety of creative and bespoke ways, and where possible having autonomy and personal responsibility over life decisions.
5. Direct Payments are sums of money made available by Flintshire County Council, to eligible people, or their representatives to help meet their assessed needs and achieve their agreed outcomes. They replace social support provided directly, or commissioned by the Council, either partly, or in full.
6. Throughout this Policy and Practice Guidance a requirement under current legislation is expressed as "**must**" or "**must not**". Guidelines are expressed as "**may**" or "**should/should not**"

## Legislative Context

7. This Policy & Practice Guidance reflects the requirements of the Social Services & Well-Being (Wales) Act 2014 (the Act), and replaces the previous Community Care, Services for Carers and Children's Services (Direct Payments) Wales Guidance 2011. Under the Act the council has powers to provide Direct

Payments to meet the care and support needs of adults (**section 50**), children (**section 51**) and carers (**section 52**).

8. This Policy & Practice Guidance has been written to comply with the Direct Payments Regulations and Codes of Practice which are made under sections 50, 51, 52 and 54 of the Act.

Flintshire County Council recognises that all citizens are individuals with bespoke strengths, assets, networks, aspirations and needs. The Council is committed to enabling people to live their lives in ways of their choosing.

In exercising its powers to provide Direct Payments, the following guiding principles will be used:

- a. What matters to people will be at the heart of everything that we do
- b. We will support people to build upon their strengths, assets and networks, and to make informed choices.
- c. We will be inclusive in our approach to Direct Payments, and where funded support is necessary, will actively promote this as a viable, least restrictive option for people throughout our assessment and reviewing processes.
- d. We will always focus on supporting people to meet their personal well-being outcomes, not on service inputs, or outputs. This means that we will be concerned with what has been achieved for and by people, rather than the Direct Payment and/or service that has been used.
- e. Receiving a Direct Payment will be a straightforward option with appropriate information, support and advice available.
- f. Our approach to administering and monitoring Direct Payments will protect the public purse with as little bureaucracy as possible and processes will be proportionate to the risks to individuals and public finances.

### **Aims of this Policy & Practice Guidance**

9. The Direct Payments Policy & Practice Guidance aims to ensure a consistent approach to the accessibility and implementation of Direct Payments, within the context of supporting people to benefit from greater choice, voice and control.
10. Where it has been agreed that funded support is necessary to help a person achieve their personal well-being outcomes (after natural personal and community solutions have been exhausted), Direct Payments will be the council's preferred option to ensure that the person retains as much choice, control and flexibility over their bespoke solutions as possible.
11. This Policy & practice Guidance will be relevant for all citizens of Flintshire who have eligible care & support needs that cannot be met without the provision of funded solutions; social care practitioners at all levels, third sector organisations,

and care and support providers.

## **12. Policy Objectives:**

- More people have choice and control over the funded support that they need to achieve bespoke outcomes.
- Direct Payments become the preferred and least restrictive method of enabling eligible people to take greater control over their funded support arrangements.
- A culture of enablement, self-determination and personal responsibility is nurtured.
- Strengths based, outcome focussed, person centred practice is facilitated consistently for all people by Flintshire Social Services
- There is a measurable reduction in support commissioned by the local authority.
- More people benefit from increased innovation, creative practice, and efficient use of available funding to meet personal needs and achieve agreed outcomes.
- A co-productive approach will determine the future design and administration of the Flintshire CC Direct Payments scheme.
- There is a measurable reduction on the demand for public services

## **13. Policy Outcomes:**

- More people live independent, fulfilled lives in the ways of their choosing.
- People are able to self-determine the important decisions in their lives.
- People are supported effectively to arrange high quality solutions that help them achieve personal well-being.
- People are able to exercise genuine voice and control.
- FCC employees are well informed, trained and mentored.
- People have the autonomy to make decisions in relation to their support that is right for them and their circumstance.
- People are empowered to take personal responsibility and maintain autonomy over their lives and life decisions.

## **14. Scheme Principles:**

This Policy & Practice Guidance aims to enable Flintshire County Council to develop social care practice that promotes and achieves the following key principles defined within the SSWB Act:

- We will support people who have care and support needs to achieve personal well-being.

- We will support people to have an equal say in the support they receive.
- Partnership and co-operation will drive the delivery of the Direct Payments scheme in Flintshire.
- The service will promote the prevention of the escalation of a person's needs and aim to ensure that the right help, support and advice is available at the right time.

## Eligibility

15. The approach to determining eligibility **must** be an outcome based approach in line with the National eligibility framework
16. Direct Payments support a culture of empowerment, choice and control, and under the requirements of the SSWB Act form an integral part of meeting people's needs through care and support planning, and **must** not be seen as a separate secondary consideration.
17. As set out in the Social Services and Well-being (Wales) Act 2014 Part 2 a Local Authority ... **must** determine whether the provision of care and support, or support in the case of a Carer, will assist the person to meet their personal outcomes within that framework of well-being.
18. Any adult, child or Carer who is eligible, under the Act for support funded by Flintshire Social Services will also be eligible for a Direct Payment under the terms of this Policy.

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*Note: If a person, or their representatives have been effectively empowered and enabled to take greater responsibility for their own care and support by the social care practitioners it is highly likely that a Direct Payment will be the best solution to ensure they remain in control of their life and the support they need.*

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19. All Assessments will begin with a conversation about what matters to that person within the context of their life and personal circumstances. The focus of discussions will be on the person's bespoke well-being outcomes and any barriers there are to the person achieving them. The assessor will draw on the person's strengths, assets, personal relationships and wider community networks and resources to explore all potential natural solutions.
20. If the conversations conclude that funded support is necessary, to meet some, or all the persons identified outcomes, and that the Council is responsible for meeting the costs, there will be eligibility for a Direct Payment.

21. Some people may have difficulty in managing some, or all aspects of their Direct Payment. The Council **must** explore, in partnership with each person, how these difficulties can be overcome, and offer appropriate and proportionate support. The fact that a person lacks the capability to manage their Direct Payment does not make that person ineligible for a Direct Payment.
22. Where a person lacks mental capacity, as defined by the Mental Capacity Act to consent to a Direct Payment, Flintshire County Council **must** nominate a 'Suitable Person', as defined by the Act, to manage the arrangements on the person's behalf

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*Note: A Suitable Person is a person appointed by Flintshire County Council to receive and manage Direct Payments on behalf of an individual who lacks capacity to consent to the making of the Direct Payments (provided that person is willing and meets all the conditions set out in the Regulations). The Suitable Person will often, but not always, have been given a Lasting Power of Attorney or have been appointed by the Court of Protection as a deputy under the 2005 Act. Usually the suitable person will be a family member or friend who may previously have been involved in the care and support of the person.*

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23. The eligibility Regulations within the SSWB Act 2014 provide four separate conditions which **must** all be met:
  - a. The first condition relates to the persons circumstances and is met if the need arises from the kind of circumstances which are specified in the regulations, for example, physical or mental ill health. The regulations specify different kinds of circumstances for adults, children and Carers.
  - b. The second condition is met if the need relates to one or more of the outcomes specified in the regulations, for example, the ability to carry out self-care or domestic routines. The Regulations specify different outcomes for adults, children and carers.
  - c. The third condition is met if the need is such that the person is not able to meet that need alone, with the care and support of others who are able or willing to provide that care and support; or with assistance of resources in the community. This condition is modified in the case of a child such that it is met if the need is one that neither the child, the child's parents nor other persons in a parental role are able to meet either alone or together.
  - d. The fourth condition is met if the person is unlikely to achieve one or more of their personal outcomes unless the local authority provides or arranges care and support to meet the need in accordance with a care

and support plan or it enables the need to be met by making Direct Payments

24. From April 2011, local authorities have been able to make Direct Payments to people who are subject to mental health legislation, therefore enabling people previously excluded to benefit from greater choice and control over their support.
25. The local authority may make Direct Payments available to people subject to requirements imposed in relation to drug and alcohol use as long as the following conditions are applied:
  - That the Direct Payment recipient agrees and remains in agreement that the payments are made to a suitable third party on their behalf.
  - That the suitable third party agrees and continues to agree to receive the payments and manage the payments on behalf of the recipient.
  - The local authority **must** be in agreement that the suitable third party is an appropriate person to receive and manage payments on the person's behalf.
26. Where the Council is under a duty to provide aftercare services for an adult under section 117 of the Mental Health Act 1983 and the conditions in sections 50, 51 and 52 are met, then it may offer Direct Payments as one way to discharge its duties.

### **Putting Policy into Practice**

27. This Policy sets out a framework within which Direct Payments will be offered, managed and administered. It reflects the desired ethos and the expectations of the Social Services & Well-Being (Wales) Act 2014.
28. Flintshire County Council will produce a range of supporting advice and guidance for employee's and citizen's, to assist with the interpretation of this policy, and its implementation in line with the relevant sections of the Act.
29. Flintshire County Council will utilise technology to communicate information to Citizens about the Direct payments Scheme.
30. Flintshire County Council will provide regular, ongoing training for social care practitioners to ensure that the workforce understands the requirements of this Policy and are equipped to put this into practice.
31. Flintshire County Council will provide day to day support and advice for social care practitioners and citizens to ensure that they understand the intentions of the Flintshire Direct Payments Policy within the ethos of the SSWB Act and have

opportunities to explore, challenge and discuss Direct Payments within the context of real lives.

32. Each time a Direct Payment arrangement is agreed, a contract will be drawn up and agreed between the Council and the recipient, or “Suitable Person”, highlighting the expectations from both parties. The contract will focus on the meeting of a person’s well-being outcomes.
33. Any person who wishes to discuss, or make a complaint about the Direct Payments scheme, or how this policy has been implemented can request representation from an advocate and/or the Council’s complaints procedure.

### **Reviewing this Policy**

34. This Policy will be implemented in April 2016 and will be reviewed annually from this date forward in order to take account of arising legislative changes or any issues identified in practice. Flintshire County Council will follow their local consultation process and will engage with local Direct Payments recipients and their representatives to attain their views and suggestions. Necessary updates will be made annually and published on the Council’s website.

### **When to make Direct Payments Available**

35. The SSWB Act 2014 stipulates that where someone wishes to receive a Direct Payment then they **must** be made available in all cases where they enable personal wellbeing outcomes to be achieved. Flintshire County Council must be innovative and creative when working in partnership with recipients or their representatives to explore ways a Direct Payment could be used to achieve the person’s outcomes. This exploration **must** begin with a conversation centred on ‘**What Matters**’ to the person and the outcomes to be achieved. Direct Payments may then become the means to a wide range of bespoke solutions.
36. A person **must** not be refused a Direct Payment purely because they are unable to manage their Direct Payment or may require additional support to administer their arrangements. The Local Authority **must** explore all options for supporting the person to manage and administer their Direct Payment and **must** ensure that where there are difficulties that the person is supported to overcome known barriers.

### **Deciding how the Direct Payments will be used**

37. Flintshire County Council **must** work in partnership with the person or their representatives, to agree how their Direct Payment will be used to secure appropriate solutions, and these will vary according to the person’s individual need, circumstances and outcomes to be achieved. Social care practitioners **must** encourage, enable and support individuals to determine their personal

wellbeing outcomes and the solutions they believe are most appropriate to achieve these. The person's existing strengths, support networks, and community resources **must** be considered along with any additional support that they may require.

38. If Direct Payments are to be used to employ someone, Flintshire County Council **must** ensure the person and/or representatives are fully aware of their legal responsibilities. In addition, Flintshire County Council **must** ensure that the necessary support and resources are provided in order for the person to be able to manage their employment responsibilities appropriately.
39. Beyond the prohibitions set out in the Regulations, the Council has developed an Agreement which is signed by the individual receiving the Direct Payment and a relevant representative of the Council. This agreement forms a basis of understanding and expectations on accepting and managing the Direct Payment and is a legal contract between the Council and the person, or their representative.
40. The person may have ideas about how they would use Direct Payments to meet their agreed well-being outcomes, and may have discussed these during their personal assessment or review. Other people may need advice or advocacy to help them think through the alternatives and this **must** be offered. The Direct Payments Support Service or an appointed advocate may be most appropriately placed to offer this support.
41. In considering whether the persons proposed arrangements will meet their assessed needs and support them to achieve their agreed wellbeing outcomes, limits **must** not be set by existing, or historic patterns of support provision. By exploring innovative and creative options, it may be possible for individuals to identify personal solutions which meet their care, support and aspirations more effectively. Where the individuals needs fluctuate over time, it will be important to discuss in advance how the Direct Payment will be used to secure the necessary support and assistance that varies according to the requirements of the person. These details **must** be agreed and recorded within the person's care and support plan.

### **Appropriate Use of Direct Payments**

42. All Direct Payments recipients, representatives and/or 'Suitable Person' will be responsible for spending public money on support, or other solutions that will help achieve the assessed needs and agreed personal well-being outcomes that the payments are intended to meet. The Council may make suggestions, but will not be prescriptive about the exact nature of the expenditure as long as they are satisfied that the intended well-being outcomes will be achieved.

43. Direct Payments **must** not be used to pay for daily living expenses, except in exceptional circumstances, where such expenditure is intrinsically linked with the achievement of agreed well-being outcomes and has been agreed with the Council.
44. Under no circumstances can Direct Payments be used to fund anything illegal, unethical, or be used in ways that might breach current legislation, such as cash in hand payments to an employee with the intention of avoiding taxation liabilities.
45. Direct Payments can be used to employ relatives where the Direct Payment recipient and Flintshire County Council consider that this arrangement would provide the best solution to help the person achieve their well-being outcomes.
46. The Act does not currently allow the use of Direct Payments to overcome barriers to meet individual healthcare needs, unless doing so would be incidental to achieving a person's well-being outcomes. Such cases should be discussed in partnership with health colleagues to ensure proportionate solutions that meet the individual's best interests are considered.
47. Under the SSWB (Wales) Act Direct Payments may be used to purchase services provided by the person's own local authority.
48. Direct Payments may be used to purchase equipment, goods, or technology that the person has been assessed as needing in order to meet their identified well-being outcomes.
49. Under the Act Direct Payments may be used by people to purchase long term residential care of their choice.

### **Financial Accountability**

50. Direct Payments should support people to have greater choice, flexibility and control over their lives, however, with this autonomy comes varying degrees of responsibility.
51. Anybody receiving a Direct Payment from Flintshire County Council is required to:
  - Make best use of their Direct Payment to achieve agreed well-being outcomes as detailed throughout this Policy, whilst exercising their right to choice, control and flexibility.
  - Be a good employer, and fulfil all employment law requirements with or without as much support as they need to meet their responsibilities.
  - Take appropriate steps to ensure that any support that is purchased is of a good quality and will meet its intended purpose e.g. for domiciliary

care, this would include ensuring that the supplier is registered and inspected by the Care & Social Service Inspectorate (Wales).

- Where necessary, accept responsibility for keeping accurate records of how the Direct Payment has been spent, and provide evidence if asked to do so.
- Contact the council if they have any concerns about the administration of their Direct Payment to discuss issues and agree solutions.

52. Arrange for their assessed financial contribution to be paid into their Direct Payments account on a four weekly basis.

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*Note: People should not be expected to meet their responsibilities alone, but should be provided with as much support as they need. As people become more confident and familiar with the expectations, support should be reduced, and stopped at the point the person is self-managing.*

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### **53. Flintshire County Council will:**

- To the best of their ability ensure that the funding provided as a Direct Payment is adequate to meet the person's agreed well-being outcomes, on the basis of the best possible evidence, or estimation of costs, having firstly taken into account the person's assessed financial contribution.
- Ensure that, where it is known that a person's support requirements may fluctuate over time, there is sufficient flexibility within the funding to manage this effectively.
- Make Direct Payments net, or gross of any assessed financial contribution having firstly taken into account the person's financial circumstances and their preference.
- Ensure that when carrying out Direct Payments financial monitoring responsibilities, the council's responses are proportionate to the financial risks being presented. For example: Actions taken against a person who is believed to have intentionally misappropriated funds, and therefor committed fraud will be different to the actions taken against somebody who is believed to have naively mismanaged their funding due to a genuine misunderstanding, issues around their capability to manage a Direct Payment, or where they are believed to lack mental capacity.
- Ensure that any decision to cancel or suspend payments is made as a last resort having firstly discussed the situation and potential solutions directly with the Direct Payments recipient and/or their representatives.
- Only seek repayment if there is a need to recover money that has been intentionally diverted from its intended purpose, or if it becomes evident that, following discussions with the recipient, or their

representatives, that the money has exceeded requirements over a period of time and can, therefore, be legitimately recovered.

- When recovering funds due to the death of a recipient, or the discontinuation of a Direct Payment for any other legitimate reason, the Council will firstly take into account any outstanding financial liabilities associated with the provision of support via the Direct Payment e.g. outstanding HMRC Bills, redundancy payments, domiciliary care invoices, Employers NI contributions, Pension Liabilities etc.
- If following discussion with the person the social care practitioner believes that they require additional support to be able to manage the financial responsibilities associated with a Direct Payment, they should consider the most appropriate and least restrictive support option for that person, whilst always aiming to maximise the persons control over their arrangements. Options may include:
  - A Direct Payments Account set up by the Council
  - The person asking a trusted friend, or family member to manage the funding on their behalf
  - The person asking their chosen support provider to handle the funding on their behalf (Individual Service Fund)
  - The person asking a third party organisation to administer the funding on their behalf (managed account)
  - The local authority asking a third party organisation to administer the funding on behalf of the person (managed account)
  - Where the person is deemed to lack mental capacity the local authority must nominate a “Suitable Person” who will act, or arrange financial administration on behalf of the person. The person may ask a number of trusted friends, or family members to administer funding within a formal Trust, or user led cooperative.

### **Criminal Record Checks**

54. Flintshire County Council are committed to working in partnership with Direct Payments recipients to ensure that arrangements help empower them to take as much control of their own life whilst safeguarding them from potential abuse.
55. Whenever a Direct Payments recipient chooses to employ their own PA's to undertake regulated activities (*a list of regulated activities can be found on the DBS web site*), the Direct Payments Support Service will support the raising of references and enhanced criminal records bureau checks (now Disclosure & Barring Service DBS).
56. The Direct Payments Support Service will make the application for Disclosure & Barring Service (DBS) checks to be undertaken for prospective employee's prior

to them being employed. A fee is required for each DBS check undertaken and, The Council where appropriate and agreed, will make payment for this fee.

57. A positive disclosure does not necessarily mean that an applicant cannot be employed as a Personal Assistant. However, the council must work in partnership with the Direct Payments recipient to evaluate potential risks before making a decision about the suitability of the applicant to be employed.
58. The council will not agree to fund a Direct Payments arrangement if it has concerns, or knowledge that the Personal Assistant to be employed is unsuitable to work with vulnerable adults and/or children. The council's actions must be determined in the light of its duty to safeguard and promote the welfare of vulnerable adults and/or children in need.

### Positive Risk Management

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*Note: It must be stressed that Flintshire County Council will have the final decision over whether a person is suitable to be employed, having firstly considered the individual circumstances.*

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59. The ethos underpinning the SSWB Act and the aim of the Flintshire Direct Payments Scheme in line with that Act is to enable citizens to take far greater control of their own lives. However, with increased choice and control comes personal responsibility. Therefore, Flintshire County Council **must** work in partnership with individuals and their representatives to identify, monitor and positively manage potential risks, including those that may be associated with people arranging their own support i.e. being a good employer, or commissioner of services.
60. Taking degrees of responsibility for managing reasonable risk is integral to people gaining personal autonomy, self-confidence and increased control over their own independence. However, in order for this to be effective, appropriate training, coaching, mentoring and information **must** be made available. Flintshire County Council will work in partnership with Direct Payments recipients and the dedicated support service to ensure that people have the greatest opportunity to live their lives in the ways they choose, whilst actively taking personal responsibility for their own circumstances, recognising and minimising potential risks, with support that is proportionate to their needs and capabilities.
61. Social care practitioners **must** apply the same positive risk management approaches to people receiving a Direct Payment as those receiving support arranged by the Council.

62. Direct Payments recipients and/or their representatives **must** be provided with appropriate and timely information about managing potential risks, and **must** know how and when to get help if needed.
63. Outcome focussed risk management plans completed with the person and recorded in their care and support plan enable a consistent understanding of risks and solutions. People should be encouraged to take control and know the safeguards they need to put in place and be able to recognise when there is potential risk.
64. The Council has a Direct Payment Support Service who work closely with Direct Payments recipients and their representatives. This additional support can be utilised to identify early concerns and very often issues have been reported via these services.
65. Taking a proactive approach towards risk will help ensure a self-aware fully skilled, empowered and more autonomous individual becoming an employer, potentially reducing individual vulnerability and associated risks.

### Consent, Capacity and Ability to Manage

The person must have met the 4 separate conditions as specified in the code of practice for <b>National Eligibility Criteria in the SSWB Act 2014</b> .	This is about: <b>ELIGIBILITY</b>
The person must be willing and able to manage the Direct Payments with or without as much assistance as is necessary.	This is about: <b>CAPABILITY</b>
The person is able to consent to receiving Direct Payments (as defined under the Mental Capacity Act 2005)	This is about: <b>CAPACITY</b>

## Assessing capacity for someone to consent to a Direct Payment

66. Someone who has eligible care and support needs, but who lacks capacity to consent to Direct Payments can still receive them to meet their assessed needs and achieve their personal well-being outcomes. However, the Council **must** establish whether or not a person has capacity to consent before making Direct Payments available.

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*Note: A Suitable Person is a person appointed to receive and manage Direct Payments on behalf of an individual who lacks capacity to consent to the making of the Direct Payments (provided that person is willing and meets all the conditions set out in the Regulations). The suitable person will often, but not always, have been given a Lasting Power of Attorney (LPA) or have been appointed by the Court of Protection as a deputy under the 2005 Act. Usually the suitable person will be a family member or friend who may previously have been involved in the care and support of the individual. Where the person does not have any close friends, relatives, or LPA the local authority must nominate an appropriate person, or organisation to fulfil the role of a 'Suitable Person' before the Direct Payments can be made.*

67. The Council has a duty to offer Direct Payments to a person with the capacity to consent, as long as they appear to be able to manage them, alone or with as much support as is necessary. However, whilst the Council still have a duty to make Direct Payments in respect of someone who lacks the capacity to consent it is only possible for such a person to receive Direct Payments if there is an appropriate and willing 'Suitable Person' to receive the Direct Payments on their behalf.
68. When assessing capacity to make a decision, the following should be considered:
- Does the person have a general understanding of what decision they need to make and why they need to make it?
  - Does the person have a general understanding of the likely consequences of making, or not making the decision?
  - Is the person able to understand, retain, use and weigh up the information relevant to this decision?
  - Can the person communicate their decision (by talking, sign language or any other means)? Would the services of a professional be helpful? Can anyone else help the person to make choices or express a view?
  - Is there a need for a more thorough assessment (perhaps by involving a doctor or other professional expert)?

### **People who are deemed to have the capacity to consent**

69. A person with mental capacity may be regarded or may indicate themselves that they are incapable of managing a Direct Payment not because they lack mental capacity but because they are not sufficiently responsible to ensure that the payments are properly managed or that they are not financially astute.
70. Social care practitioners need to consider whether the person would be able to manage their Direct Payments alone or with support. In these circumstances consideration **must** be given to what reasonable levels of assistance is available to help them with administering and managing their responsibilities, even if there is an additional cost.
71. When people consent to receiving Direct Payments they take on the responsibility for purchasing the care, support, or assistance to which the payments relate. This involves ensuring that they receive the appropriate support to an acceptable quality and some people may need additional support to do this. It may also involve taking on legal responsibilities (e.g. as an employer, or by contracting with an agency).
72. Direct Payments recipients are also accountable to the local authority for the way in which the funding is spent. There can be clear benefits to people using Direct Payments to arrange bespoke support arrangements, however it also involves commitment in terms of time and energy. Social care practitioners must ensure as far as is possible that the individual understands what is involved, with, or without as much support as they need.
73. There is no pressure to accept a Direct Payment and all individuals have the option of withdrawing their consent to receive Direct Payments at any time. In these circumstances the individual should contact the social care practitioner to agree alternative solutions.

### **Assessing ability to manage a Direct Payment**

74. No blanket assumption can be made that whole groups of people (e.g. individuals with a learning disability, people with fluctuating conditions) will or will not be capable of managing Direct Payments.
75. The Council is not under a duty to make a Direct Payment if it does not appear that the person is capable of managing the payment alone or with assistance. However, many people will be willing and able to do so, especially if they know they have access to appropriate help and support.
76. Where the individual is expressing doubt about their ability to manage Direct Payments this may not mean that they are incapable of administering their arrangements, but merely that they need strong support and advice to enable

them to take on the responsibilities involved.

77. Where the Council is concerned that a person who wishes to receive a Direct Payment may not be able to manage the associated responsibilities, the Council **must** ensure that it takes into account all relevant factors before making a decision not to make a Direct Payment.
78. If after discussion it is concluded that the person would not be able to manage Direct Payments (with, or without support), the social care practitioner should discuss the reasons for the decision with the individual (and where appropriate, with any family or representative). This should be followed up in writing and documented.
79. Where a person does not agree with the social care practitioner's conclusion, they should be advised that they have recourse to the complaints procedure. The social care practitioner should make the individual aware that they can use the Council's complaints procedure to challenge the decision not to offer, or to discontinue Direct Payments.
80. It is imperative that it is established whether the person has an understanding and awareness of what is involved in managing their Direct Payment and all the responsibilities (for example the legal responsibilities) and accountability involved to obtain/purchase the services they need through their own arrangements.
81. Individuals, if employing a Personal Assistant, will need to be able to supervise and direct staff (with support if necessary), and understand that they have legal responsibilities to their staff. Recipients must be fully informed about the staff who will be working with them, following up references having DBS checks completed in order to ensure their safety.

### **People who have episodic / fluctuating conditions**

82. Social care practitioners will need to consider sensitively how to support someone with a fluctuating condition which affects his or her ability to manage their Direct Payments. In many cases, people with such conditions may nevertheless gain positive outcomes via Direct Payments if a friend, relative or some other third party is willing to provide greater assistance at times when their condition worsens. It is recommended that the care plan and management of the Direct Payment may need monitoring more frequently in these circumstances.
83. It is important that the needs of people with fluctuating conditions and their Carers are properly considered.
84. If the person's condition is likely to deteriorate to the point where he or she is unable to manage even with assistance, the initial assessment will need to

consider ways of enabling them to continue receiving Direct Payments and ensuring that support continues to be delivered in the manner preferred by the person. In these circumstances the person may choose to make an advanced statement setting out how their support should be managed when they are unwell.

85. A person with legal capacity can make a Lasting Power of Attorney (LPA). That is, he or she makes the LPA in the expectation that if he or she loses capacity the person appointed as attorney will lawfully be able to deal with his or her property and affairs. There is a distinction between an LPA who has responsibility for financial affairs and an LPA who has responsibility for social and wellbeing affairs.

### **People who lack the mental capacity to consent**

86. The use of Direct Payments extends to adults who lack the capacity to consent to receive them, where it is in their best interests. Direct Payments can be made to an appointed “Suitable Person” who receives and manages the payments on behalf of the person who lacks capacity, provided that there is a willing Suitable Person who meets all the conditions set out in the Regulations.

Someone can be made a representative in one of two ways:

- If the person has been given Lasting Power of Attorney by the person needing services at some point before they lost mental capacity;

Or

- If the person has been appointed a Deputy for the person needing services by the Court of Protection under Section 16 of the Mental Capacity Act 2005.

87. If there is no representative, then the Council itself must make the decision about whether or not someone should act as a ‘Suitable Person’ to manage the payments on behalf of the person who lacks mental capacity.
88. As with all Direct Payments, the Council must be satisfied that the individual's needs can be met by means of the Direct Payments and that the recipient (in this case the Suitable Person) is capable of managing the Direct Payments. The Suitable Person receives and manages the Direct Payments on behalf of the person lacking capacity, on the understanding that in doing so, they must act in the best interests of that person and have legal requirements when doing so.

**Note:** Full guidance with regard to appointing a “Suitable Person” is available on request from the Flintshire Direct Payments Support Service.

## **Young person's moving into adulthood (transition)**

89. Whatever decisions are made on behalf of a child with a disability, people with parental responsibility for a disabled child may not continue to receive Direct Payments to purchase services that meet the needs of that child once the child receives the Direct Payment in his or her own right or turns 18 years of age.
90. Wherever possible the focus of support should be to maximise the young person's independence and enable them to take greater control over the way they live their lives, including any funded support they may need.
91. If people with parental responsibility are going to continue in their caring role, such Carers may be entitled to receive Direct Payments in their own right as an alternative to Carers' services directly provided by the local authority.
92. There may be situations where a parent has been receiving Direct Payments to meet the assessed needs of their child who, on reaching the age of 18, does not have the requisite mental capacity to consent to the making of those Direct Payments. In such cases, it will often be appropriate for the person with parental responsibility to continue to receive the Direct Payments for the young adult lacking capacity, in the role of an appointed 'Suitable Person'.
93. This will ensure continuity of care for the young person, and ensure that the payments are managed by the person who is likely to be best placed to understand the individual's needs and preferences. However, Direct Payments to the person who had parental responsibility can only continue in this way with that person's consent.

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

### **Independence & choice**

- Direct Payments will be used to enable people to achieve a wide range of personal well-being outcomes, and promote independence, choice and self-determination.

The scheme enables the recipient to arrange solutions that meet individual, bespoke outcomes identified during assessments and reviews, and detailed within their Care & Support Plan.

The Direct Payment ultimately enables a person to arrange their support in ways of their choosing, to maximise opportunities to live full and rewarding lives.

- There should be no set limits to how creatively a Direct Payment might be used as long as it meets its intended purpose, supports the ethos of the SSWB Act, this policy and is legal and ethical.
- Direct Payments can facilitate creativity in the development of flexible, person centred solutions to meeting assessed needs and achieving well-being outcomes. When supporting people to consider how their bespoke outcomes may be achieved, the social care practitioner **must** promote self-management and aim to increase independence by enabling people to become actively involved in shaping their care and support.
- In the development of, and provision of a Direct Payment, the social care practitioner **must** support people to determine their own personal outcomes and the care and support they require to achieve these taking into account their strengths, assets and existing support networks.
- People **must** be encouraged to find creative, flexible and innovative ways to achieve personal well-being outcomes and control over their life.
- The social care practitioner, when drawing up the support and care plan with a Direct Payment in mind, should emphasise what care, support, assistance and wellbeing outcomes are to be met, rather than how to meet them. How they are met, will be the choice of the Direct Payments recipient.

**For example**, someone may require support with accessing the community in a way that suits them and when it suits them rather than - *'user is to attend a day centre to relieve isolation'*. This will encourage flexibility and choice for the person; the person can then decide whether to attend a club, a course or visit places of interest or try new experiences.

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*Note: Success will be measured by whether the person's agreed outcomes have been achieved and what difference the solutions purchased have made to the person's life, rather than by the service they attended..*

## Employing Personal Assistants

- A PA is someone who is (usually) employed directly by a person who needs care and support. They can also be employed by a family member or representative when the person they're supporting doesn't have the physical or mental capacity to be the employer.
- Employing a person, or people of choice can often result in highly flexible, person centred and liberating support arrangements. Being an employer can be highly rewarding, but does bring with it certain responsibilities.
- Where a Direct Payment is used to employ somebody, Flintshire County Council **must** ensure that the recipient, or their representatives, are fully aware of their responsibilities as an employer and that they receive the necessary support and resources to manage their employment responsibilities.
- When it has been agreed that funding is available for a person to meet their needs through the use of a Direct Payment the social care practitioner **must** make a referral to the Direct Payments support service.
- An advisor from the Support Service will explain to the recipient (at an appropriate pace, and in the necessary format) all legal, financial and administrative requirements involved to ensure the person is fully aware of their responsibilities as an employer. If the advisor has concerns about the person's ability to understand, or retain the information, they will raise their concerns with the social care practitioner.
- The Direct Payments recipient may have a person in mind that they wish to employ as their PA. If there is no individual ready to step into the role, then the Direct Payment Support Service will give the individual the support to recruit, either through their existing networks, advertisements, social media, PA register, or via another appropriate means.
- Flintshire County Council **must** provide support to Direct Payments recipients to ensure that employees are legally entitled to work in the United Kingdom. The Direct Payments support service will provide professional advice and support to the Direct Payments employer in regard to this.

## Self Employed Workers

- **Guidance from Her Majesty's Revenue and Customs (HMRC) and Advisory, Conciliation and Arbitration Service (ACAS)**

A Personal Assistants employment status is not a matter of choice; it depends on the circumstances. The most likely scenario is that your PA should be employed directly by you; it is very rare that a PA would be considered self-employed by HMRC.

### **A PA is likely to be employed if:**

- The individual decides what work is done, how it's done, when it's done and who does it.
- They can't send someone else to do their work.
- Understanding the employment status of a PA helps to determine both the PA's rights and the individual's responsibilities as an employer.

It also makes sure that the person and their PA pays the right amount of tax and National Insurance Contributions (NIC). If the employment status of your PA is wrong, the PA and employer may have to pay unpaid tax and penalties, or they could lose their entitlement to benefits.

Because the term PA is increasingly being used to mean anyone that could be supporting a person with Social Care needs, and there are now lots of different ways a person could engage a PA, employment status can be a complicated issue.

It's important to make sure the person is supported to carry out their own checks to make sure that the status for the working arrangement between them and their PA is correct.

The following guide published by Skills for Care provides useful information and resources to guide people in their decision making.

<https://www.skillsforcare.org.uk/Employing-your-own-care-and-support/Resources/Information-for-individual-employers/3-Before-your-PA-starts/Understanding-employment-status-of-PAs/Understanding-the-employment-status-of-PAs.pdf>

### Care and Support purchased from an Agency

- Direct Payments can be used to purchase care from an agency. This may be preferable for those individuals who lack confidence in employing someone privately or who wish to avoid the responsibility of directly employing their own staff. Also those individuals who want to employ PA's and agency in order to use the agency as back up contingency arrangements.
- In keeping with the principles of Direct Payments, the Council should not recommend individual agencies as this should be the individuals choice, however they can be provided with appropriate advice in this area about what they should expect from any agency, questions to ask etc. The individual may be offered a list of care agencies that are available in their area and also informed that they may wish to look in their local directory for alternative care agencies, which might better suit their particular needs.
- It should be made clear that individuals are responsible for managing the care and support services received and ensuring that the details of their contract are reasonable and appropriate to meet their needs.
- The Direct Payments Support Service will advise the individual of the hourly rates the Council will fund when purchasing care from an agency. Should the individual wish to employ an agency with a higher hourly rate it must be made clear to them that they **must** pay the difference from their own personal funds. When making such a decision, the individual should consider the long term effects of such a financial commitment and the affordability of future increases that may be expected on an annual basis.

### Employing Family Members

- In promoting a person's personal outcomes, Flintshire County Council may authorise Direct Payments to employ a close relative living in the same household as the recipient. Flintshire County Council **must** consider whether such an arrangement will provide the best possible well-being outcomes for the individual.
- In each case Flintshire County Council, after considering the recipient's views, **must** be satisfied that the employment of a close relative living in the same household is the best way of promoting and delivering their agreed well-being outcomes.

- Further information and guidance is available on request from the Direct Payments Support Service.

### **Equipment**

- Community equipment is normally loaned to eligible persons/children from the local authority equipment service. As such, equipment remains the property of the Council and is serviced and maintained regularly by the equipment service in accordance with relevant Health and Safety Legislation.
- A Direct Payment for equipment may be considered where a need has been identified through a professional assessment process, the local authority has agreed to fund the equipment, the specific piece of equipment cannot easily be provided, or loaned, or the person wishes to contribute personal funds in order to purchase a superior piece of equipment.
- Direct Payments cannot be used to purchase services or equipment that would otherwise be arranged by other authorities (e.g. the NHS or housing authorities). Direct Payments are not a substitute for Disabled Facilities Grants.

### **Ownership and responsibilities**

- Equipment purchased with a Direct Payment will belong to the individual and therefore they will be responsible for its care and maintenance, with or without support.
- When the equipment is no longer useful to the person, it is theirs to dispose of, though it may be possible for the council to support arranging for it to be collected. The Council will not buy the equipment from the individual.
- The Local Authority must offer specialist advice to the person to make sure that the correct equipment is purchased to meet the assessed needs. This advice will be as comprehensive as each individual situation demands. It will include details of the specific piece of equipment that is needed and where the Council would normally purchase it.
- The Council will pay the person the equivalent amount that it would cost the Council to purchase that equipment themselves. To obtain equipment more expensive than this, the person will have to pay the difference in costs between their preferred equipment and that which the Council feels is sufficient to meet the assessed needs.

**There will usually be a single payment made to cover the following:-**

- the cost of the equipment
- The person will be the sole owner of the equipment.
- The person will be responsible for the equipment being serviced and maintained to the required standards.
- Where the Council usually arranges for the use of equipment it provides to be demonstrated by its Stores Department or Occupational Therapist, the use of the same equipment provided via a Direct Payment will be demonstrated by the Occupational Therapist and/or providers of that item.
- This will be arranged by the person purchasing the equipment with a Direct Payment.
- Where necessary, the Council will demonstrate on the use of the equipment to make sure that health and safety requirements have been properly understood by the person.
- The Council can advise but it is the person who has responsibility for implementing health and safety requirements.
- The person will be advised to ensure they have the appropriate insurance to cover any costs incurred by accidental damage, theft etc.
- The person will be responsible for the costs of the insurance.
- The person will be responsible for all service and maintenance costs commensurate with the manufactures warranty periods.
- If the person no longer needs the equipment for any reason, ownership of the equipment will transfer to the Council who will arrange for its recovery from the person.

**Creativity and Innovation**

94. Flintshire County Council are committed to supporting the exploration and emergence of new and effective means for people to meet their assessed care needs, achieve their agreed outcomes, maintain independence and be valued for their unique contributions.

People should be encouraged to consider, but not be limited by the following initiatives when considering how to meet their bespoke needs and outcomes:

**Direct Payments Co-operatives** - This model supports cooperation and creates a legal framework around a person who needs funded care and support. Membership of the co-operative is generally made up of the person, representatives and workers delivering the support. Importantly the person remains at the heart of the arrangement and is involved in all decision making, so rather than replacing the person, it gives a very clear role for the person in planning their own day to day, and longer term strategic decisions.

Under the Regulation & Inspection of Social Care (Wales) Act (RISCA) up to three families can come together to support each other with the process of finding, recruiting and employing PAs, enabling ease of access to employment of another PA in case of sickness, holiday, resignation, etc. and can enable some pooling of any social component of direct payments (or other income) for shared activities where PA support is required. Day-to-day planning of care and support remains under the control of the individual. There is also increased opportunities for mutual support between individuals and families.

**Direct Payments Micro Cooperatives** – RISCA now provides the opportunity for up to 4 Personal Assistants to collaborate and form a micro PA Cooperative.

Whichever way the micro co-operative model is adopted, the key feature that distinguishes it from private domiciliary care agencies is that it *must* have a solid co-operative governance model that ensures direct payments recipients retain control of the organisation.

One of the potential benefits of this model is for individuals and families living in isolated low density communities who face a number of difficulties recruiting and retaining PAs, to receive a consistent high quality of service.

**Pooling Funding** – This option provides people with the opportunity to consider how they might achieve their outcomes alongside other people rather than on their own. Two or more direct payments recipients can choose to pool some, or all of their funding to arrange solutions that meet their collective needs. This could be to buy respite care together, do social activities, or create a new club based on a shared interest. People could even take their ideas and create employment opportunities.

Many people in Flintshire choosing to live together pool their direct payments to pay for shared support in their home as an alternative to support commissioned by the Council.

**Technology, Goods and Services** – A Direct Payment can be used to fund any alternative to traditional care and support as long as it is agreed by the person, their representatives, and Flintshire County Council that the solution will help meet assessed needs and achieve agreed personal well-being outcomes.

For example, sensory equipment within someone's home may be the best way to engage that person, provide mental and sensory stimulation and establish a relaxed atmosphere resulting in a happy person.

## Health and safety

95. Legislation, regulations and codes of practice underpinning the provision of Direct Payments clearly supports greater personal autonomy and control over the support a person requires to meet their needs and identified well-being outcomes. Within such arrangements the Council has less control over the specific delivery of the care plan than it would in the case of direct service provision. The person, and/or their representatives takes greater responsibility for ensuring that their needs and outcomes are met, with, or without agreed support.
96. For Councils to be over-prescriptive about how the Direct Payments is arranged would threaten to undermine the very purpose of the payment and the choice and control intended. However, where specific Manual Handling has been identified training of the required standard must be made available to those concerned.
97. Welsh Government Guidance and the Social Services and Well-being (Wales) Act 2014 advocates an arms-length approach to health and safety:
98. 'As a general principle, local authorities should avoid laying down health and safety policies for Direct Payments recipients. People should be supported to understand and acknowledge that they have a responsibility for their own health and safety, including the assessment and management of risk. They should be encouraged and supported to develop strategies on lifting and handling and other tasks both in and outside the home where lifting equipment may not be available'
99. Support with this is available from the Direct Payments Support Service and the person's liability insurers.
100. As part of the person's assessment and care and support planning process, the Council should take appropriate steps to satisfy themselves that recipients and potential recipients are aware of health and safety and manual handling issues that affect them as individuals and anyone they employ, and anyone else affected by the manner in which their support is delivered.
101. As part of this process, the Council should give the recipient and potential recipients the results of any risk assessments, which were carried out as part of the care assessment.
102. Such risk assessments are necessary and integral to the adult social care assessment process in order for health and safety issues to be taken into account. In doing this, the person can share the outcome of the assessment, and any subsequent plans, or protocols with their employee's, or their commissioned support Agency. The recipient can therefore take reasonable

steps to minimise the risks to health and safety for themselves and/or any workers they employ.

103. The recipient or potential recipient has a common law duty of care towards the person, or people they employ. In any personal injury compensation case taken against an individual or a Council in the context of Direct Payments, the courts would be required to take all of the above into account.
104. The most important issue concerning health and safety is that anyone employed in an individual's home should feel safe and comfortable both with each other, the working environment and any tasks that they are asked to perform in their line of duty.
105. Individuals should always follow and adhere to advice provided by the Support Service and the advice provided by the insurance liability companies. If this is not followed and adhered to it may invalidate the person's insurance and make them solely liable if any claim is made in connection with a health and safety at work issue. Flintshire County Council **must** ensure that appropriate support is available to enable people to access and engage with their Insurer.
106. For further information councils should refer to the published guidance from the Health and Safety Executive (HSE) on lifting and handling entitled Handling Home Care. Councils should note in particular the HSE's advice that "implementation of policy and practice on lifting and handling should not place any unreasonable restrictions on client's rights to autonomy, privacy or dignity".

## Respite care

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**Definition:** *Respite is a short term care arrangement whereby a registered residential care placement, additional care at the home or in alternative accommodation to that of the person's usual residence can be sought to enable informal carers or families members to take a break from their role as primary carers. Respite care may be needed in a range of situations. For example, the carer might have to go into hospital, or might have other important commitments. While respite is not considered to be a holiday for the cared for, Direct Payments is intended to promote a greater choice and flexibility of options to make the respite experience a positive one for both the carer and cared for person.*

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107. Purchase of respite care under the Direct Payments scheme is very clearly defined. Where a need for such support has been identified and detailed in the care and support plan as a solution to achieving identified well-being outcomes, the person and their Carers may use the payment for a short stay in

respite care provided the stay does not exceed a period of four consecutive weeks in any 12 month period.

108. Respite is not to be restricted to registered care homes, recipients can use hotels and other accommodations and support instead, to gain a better value service and achieve bespoke outcomes.
109. Where the Direct Payment has been requested for a single instance of respite care, and this is the only service the individual is receiving, they will be given a lump sum payment for the entire cost of the period of care less any assessed financial charge. This will normally be recorded as a one off Direct Payment.
110. Direct Payments can now be made in relation to the provision of residential accommodation for any single period in excess of four weeks and for more than 120 days in any period of 12 months

### **Support for Carers**

111. Flintshire County Council are committed to ensuring that Direct Payments are used flexibly to promote independence and enhance the quality of life for individuals and their informal Carers.
112. Carers (other than those with parental responsibility for children) may not receive a Direct Payment to purchase services to meet the assessed needs of the person they care for, unless they are an official representative. However, the Direct Payments scheme allows for Carers to purchase the appropriate support to meet their agreed wellbeing outcomes and support them to maintain their own health and well-being.
113. Where a care and support plan has been agreed for a Carer, a Direct Payment may be the most appropriate method of enabling effective, flexible and bespoke support to be arranged. Direct Payments are a convenient means by which to obtain a wide range of services and activities within the community to support the needs of Carers. These solutions might include, but should not be limited to sitting services, access to leisure & therapeutic activities, short breaks, access to education, or pooled with other carers to create bespoke solutions that meet their collective needs etc. etc.

### **Residential Care**

114. From 6th April 2016 a person may use a Direct Payment to pay for a long term residential care placement of their choice.
- 115.

## Local Authority Services

116. From 6<sup>th</sup> April 2016 the Direct Payments Regulations allow for a person to use their Direct Payment to purchase services directly provided by their Local Authority. Flintshire County Council **must** therefore make the costs of their services available to people on request, in order for them to make informed decisions.

## Health Care Services

117. Section 47 of the SSWB (Wales) Act currently prevents local authorities from enabling people to use their Direct Payments to meet their needs through the provision of healthcare, unless doing so would be incidental or ancillary to doing something else to meet a citizen's needs. This also relates to services provided via Continuing Healthcare Funding (CHC).
118. **Admission to Hospital:** When a Direct Payment recipient is admitted to hospital they must inform Flintshire Social Services at the earliest possible time.
119. If the person uses a care agency to meet their assessed needs, FCC will pay two weeks funding at 50%, then stop the direct payment.
120. If the person employs Personal Assistants to meet their assessed needs, FCC will continue to make the payments to for a maximum of four weeks at 100%, to enable a reasonable retainer to be paid to employees.
121. Recognising the important relationship based care provided by Personal Assistants, the council may, following careful consideration of the circumstances decide that this period can be extended to an agreed period. This decision will be made on a case by case basis by the appropriate Service Manager.
122. **Important:** Under no circumstance can funding via direct payments be used to pay Personal Assistants to undertake paid tasks that would ordinarily be the responsibility of and/or provided by the NHS.
123. Under no circumstance can any personal assistants funded via direct payments be allowed to provide paid care and support to a person resident within a hospital environment unless this has been agreed with Flintshire Social Services.
124. If the Direct Payments recipient requires additional care and support whilst in a hospital setting, relevant information must be conveyed to hospital staff. Flintshire Social Services can support discussions with health colleagues as appropriate.

## Mixed Support Arrangements

125. The provision of funded support is made on the basis that this will meet identified needs and help achieve personal well-being outcomes. In order to achieve the very best outcomes a person may choose to receive a mix of Direct Payments, services arranged by the council and/or any other source of support that helps the person achieve their needs and outcomes.
126. The person / Carer may choose to gradually take over managing all their support arrangements via Direct Payments over time. This flexibility and choice should be facilitated, as some Direct Payments recipients may feel unable to take on all of the responsibility involved in managing Direct Payments immediately. For example, a person may decide to continue receiving services directly arranged by the council Monday through Friday, whilst opting to directly employ a personal assistant (via Direct Payments) for the weekend period. This would require the social care practitioner to arrange the support and assistance required from Monday to Friday, whilst also giving the individual autonomy via a Direct Payment for the weekend period.
127. It is vital that this degree of flexibility is available to allow people to gain confidence in managing their Direct Payments and become familiar with the benefits, potential and responsibility associated with taking greater control.

## One off Direct Payments

128. In order to achieve a particular well-being outcome, the council may agree to award a one off Direct Payment to enable the person to purchase the agreed goods and/or service. For example; a person may benefit from attending a short course to refresh key skills, or purchase a piece of software that will promote that person's independence.
129. Following assessment and agreement that a one off purchase would be the be the most appropriate solution to meet identified needs and well-being outcomes, a one off Direct Payment can be arranged.
130. The person may still be required to make a financial contribution following a financial assessment, towards the total cost of the goods, or services. The one off Direct Payment will be issued as a lump sum payment for the exact amount agreed, less any client contribution.

## How much funding will be available?

131. The Council will decide on the amount of a Direct Payments that is needed for a person based on their assessed needs and the agreed well-being outcomes that the funding will help them achieve. The Council **must** make sure that the funding is sufficient, taking into account any contribution that the person

is required to make under the Charging policy and in line with Welsh Government guidelines, to enable the individual to legally secure support and assistance of a standard which the Council considers acceptable.

132. The Council is not obliged to fund the particular costs associated with the person's preferred method of securing their support, if the same assessed needs and agreed outcomes can be met more affectively, (but still to a quality which the Council considers is acceptable) in another way.
133. The Council will only fund the agreed costs specified in the person's care and support plan to meet their identified and agreed eligible outcomes. All rates will be reviewed and set by the Council in line with the annual budget setting process and therefore are subject to change.
134. **Agency rates** – when choosing to use a direct payment to purchase care and support from an agency the direct payments recipient will be given the greatest autonomy possible to negotiate a proportionate rate with their chosen provider. However, Flintshire County Council will only provide funding below or equivalent to the agreed domiciliary care fee. This rate will be agreed and publicised prior to the start of each financial year. Should the person wish to commission an agency with a higher hourly rate it must be made clear to them that they must pay the difference from their own personal funds. When making such a decision, the person should consider the long term effects of such a financial commitment and the affordability of future increases that may be expected on an annual basis.

**Exceptions** – Flintshire County Council may choose to make exceptions where the only alternative provision suitable to meeting the persons assessed needs and outcomes is either inappropriate, disproportionate, or requires them to be supported in a specialist out of County, or residential establishment. The person may require specialist support that can only be purchased at an additional cost to necessitate them being supported within their local community. Decisions will be made on a case by case basis after having taken into consideration personal circumstances, potential benefits to the person and their family and cost.

135. **Personal Assistant rates** – The Council has a set rate for the employment of Personal Assistants. Such rates will comply with relevant minimum wage legislation, regulation and be sufficient to allow the employer to meet their wider employment responsibilities including pension's liabilities.
136. **Travel expenses** - the Council will not generally fund the costs associated with a person's transportation unless there are exceptional circumstances. Such cases will be considered on a case by case basis. The final decision to fund, or not to fund an arrangement will rest with the relevant Service manager.

137. **Redundancy** – There is a recognition that the Council must provide enough funding to enable the employer to meet their employment responsibilities and associated liabilities. Bearing this in mind the Council will consider each claim for redundancy payments on a case by case basis taking relevant individual qualifying circumstances into full account. Public & Employers Liability cover may be utilised to fund all, or part of the redundancy liabilities.
138. **Statutory Sick Pay (SSP)** – Direct Payments employers should utilise accrued funding to pay SSP in the first instance. If there are insufficient funds within the account they should approach Flintshire County Council to fund the shortfall.
139. **Start-up costs** – The Council will provide start-up costs without which the service could not be legally provided. For example, staff training and/or Public/Employers liability insurance, that **must** be provided prior to the commencement of the person's support arrangements. A funding request to cover start-up costs should be made prior to the commencement of the Direct Payment.
140. **Pensions liabilities** – Flintshire County Council will consider each situation on a case by case basis. Where employers' pension contributions exist and cannot be met from existing funding, the Council **must** provide additional funding to enable the employer to meet their legal responsibilities to provide a Pension.
141. **Accrued Funding** - To enable the person to achieve flexibility in their arrangements, the Council allow the equivalent of 8 weeks funding to accrue in the person's account. Any surplus funds not intended to be utilized at a later date to meet assessed needs and/or agreed outcomes will be recovered by the Council, having first discussed this with the person, or their representatives. Flintshire County Council supports the flexible use of available funds, so will always check whether some, or all of the funding is intended for another purpose before withdrawing funds from the account.

### Notification of Direct Payment

142. The Council will endeavour to give people as much notice as possible of the value of their Direct Payment and the contribution they will be expected to make to the cost of their support arrangements, before the payment begins, or its rate is changed. This gives an opportunity for any dispute over the level of funding to be resolved before the payment begins or the change takes effect.
143. If that is not possible, then while any appeal/complaint is being considered, the Council will endeavour to find a solution in the short term that is satisfactory for the person, and/or their representative and the Council.
144. If the Council is satisfied that it would be a proper and cost-effective use of its resources, it may decide to pay a Direct Payment at a higher rate than it had

originally intended, until the dispute is resolved. Any such decision must be agreed and authorised by the relevant Service Manager.

### Financial contributions

145. Part 5 of the SSWB (Wales) Act, provides local authorities with the discretion to charge a person for care and support that is being provided (or support that is being provided to a Carer) who has the financial means to pay such a charge. This includes the provision of homecare and other community based care and support, residential care and support, preventative services and assistance.
146. Sections 50-53 (Direct Payments) of the SSWB (Wales) Act Part 4 COP provide a similar discretion to set a contribution or reimbursement for Direct Payments, where care and support needs are being met through the provision of these.
147. Essentially the new framework introduced under the SSWB (Wales) Act has:
- introduced one set of financial assessment and charging arrangements rather than the differing arrangements for residential and non-residential care and support;
  - introduced greater transparency so that each person required to pay a charge receives a written statement detailing the charge and its calculation;
  - introduced a consistent, universal review process to enable a person to challenge charges made and any form of care and support;
148. The Council **must** ensure that people are made aware that care and support is chargeable and of the need to plan for this.
149. When agreement has been reached that a person will receive a Direct Payment the social care practitioner should make arrangements for a financial assessment to be completed and ensure that the person, their representative and the Direct Payments Support Service is informed of the assessed personal weekly contribution.
150. The person and/or their representative will be afforded advice and assistance where appropriate to enable them to maximise their income through identifying possible state benefit, or employment potential.
151. The person and/or their representative must be advised that their personal contribution towards the cost of care and support will be reviewed on an annual basis and as such may alter.

152. The Council must take into consideration the financial circumstances of the recipient when deciding whether to make a Direct Payment net, or gross of the person's assessed financial contribution.

### Financial monitoring

153. The Financial Assessment Team (FACT) will monitor Direct Payments expenditure regularly in order to comply with the Councils duty to ensure public money is spent appropriately.
154. The Direct Payments recipient and/or representative have a responsibility to ensure that the funding is used to achieve its intended purpose.
155. In carrying out its duty, the Council **must** ensure their financial monitoring arrangements for Direct Payments are proportionate. The financial auditing paperwork completed by a Direct Payments recipient **must** be user friendly and not over burdensome.
156. The Council's financial monitoring arrangements **must** ensure that no decision to cancel or suspend a Direct Payment is taken without the prior involvement of the recipient, their representative, the Direct Payments support service and the social care practitioner.
157. When auditing accounts, due consideration **must** be given to the flexibility inherent in Direct Payments arrangements and the fluctuating weekly expenditure they inspire. Sufficient assets **must** remain in the Direct Payment recipients account to enable them to meet their flexible care and support requirements and any employment commitments they have.

### Making Payments

158. The Council will make regular payments into a dedicated Direct Payments account. Additional payments will only be made in exceptional circumstances, when authorised by a relevant service manager.
159. **Direct Payments Card Account** – The Council is working in partnership with a pre-paid cared provider to offer Direct Payments recipients a trouble free way of managing their funding. The Council considers this system to offer the greatest benefits to both Direct Payments recipients and the Council and aims to offer this solution to all Direct Payments recipients.
160. **Direct Payments Agreement** - Direct Payments will not commence before the Direct Payments recipient/representative and a representative of the Council have read, understood, signed and returned the appropriate Direct Payments Agreement which sets out the terms and conditions related to the

payments.

## **Best Value**

161. Any consideration of cost-effectiveness should consider long-term best value. A preventive strategy may necessitate a slightly higher investment to achieve long-term benefits for the person and efficiency. Provision of Direct Payments that allow a person to remain in their own home may represent long-term benefits if that person does not require hospital or residential care.
162. There may be occasions when the Council considers funding a care and support arrangement at a higher cost than it would cost to arrange, or provide an equivalent service. In funding such an arrangement the Council should consider the potential longer term efficiencies associated with enabling a person to take greater control of their life, and the solutions they require to become as independent as possible.

## **Support Available for Direct Payments Recipients**

### **163. Direct Payments Support Service**

The Council provides a specialist Direct Payments Support Service. They offer information, peer support, training and enabling support, for individuals, Carers, appointed 'Suitable Person', Local Authority staff and third sector organisations.

164. To ensure Direct Payments arrangements meet the desired needs and outcomes, it is essential that social care practitioners involve and maintain communication with the Direct Payment Support Service throughout the set up

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*Note: "One off" non-recurring Direct Payments may be paid directly into the persons existing personal bank account if appropriate. This should also be considered where the Direct Payment(s) are made for short-term needs*

*For ongoing payments Flintshire County Council and the Support Service will help support the person to arrange the best payment options for their particular circumstances*

*How the payment is determined, whether gross or net of any assessed contribution imposed, must be decided in collaboration with the local authority and the recipient, or their representative, taking into account the person's financial circumstances.*

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process.

165. People who receive Direct Payments may need additional support when they first take on the responsibility for managing their own care and support. Direct Payment Support Service will be able to provide practical assistance, for example:

- by holding a list of local agencies, prospective Personal Assistants, or Self Employed Carers.
- helping people to draft advertisements
- job descriptions and contracts
- assistance with interviewing
- act as an address for responses to advertisements
- advice on equal opportunities with regard to the employment of personal assistants
- advice on budget calculations
- holiday pay/sick pay
- Single point of contact for information, advice and support.
- Supporting people to live independently
- Problem solving

#### **Other support available**

166. **Information and Advice** – the Council will ensure that high quality, easily accessible information and advice is made available to any person interested in, or receiving a Direct Payment from Flintshire County Council. Such information and guidelines will aim to inform and enable people to get the very best autonomy and outcomes from the funding available.

The Support Service will put in place a system of information, support and advice that will assist the recipient and/or their representatives with the setting up, management and administration of their Direct Payment. The Support Service will provide a starter pack and information to all individuals who use Direct Payments. Such documents will be given to and discussed with the individual when they commence Direct Payments and will be made available in a format suitable to the needs of the individual. The Support Service will need to assure themselves that the person and/or their representatives have understood their responsibilities and are able to commence with, or without support.

167. **Advocacy** - An independent advocate may be useful in providing support particularly for those people who lack mental capacity, either in terms of deciding who should act as a suitable person on their behalf, or how the Direct Payments should be used to meet their eligible needs and agreed outcome. Advocates may be especially appropriate if:

- the person has no close family or friends to take an interest in their welfare
- family members disagree about the individuals best interests
- the person who lacks capacity has an established relationship with an advocate
- there is a concern about the protection of a vulnerable adult/child.

168. **Other Organisations** - Direct Payment recipients must also be made aware that support is also available through other appropriate organisations. It is often the case that such organisations are best placed to offer advice and guidance on specific issues where required, such as –

- Insurance company
- Payroll services
- Bank/building society
- Care agency
- Health and Safety Executive
- HM Revenue & Customs

169. The Direct Payment Support Service will be able to recommend and sign post individuals to such organisations where appropriate. Some of the topics they can assist and support with are as follows, although this list is not exhaustive.

- **Recruitment** – Direct Payments recipients who employ staff can get support and assistance from the Direct Payments Support Service in the first instance and practical advice from their insurer.
- **Supervision** – When someone employs staff it is good practice to set time aside to give feedback on their performance or give them the opportunity to raise issues with their employer. The Direct Payments Support Service can provide support when someone first has responsibility for staff.
- **Statutory Annual Leave** – All employees are entitled to annual leave and this should be recorded and taken within the year. The Direct Payments Support Service can support a new employer using Direct Payments to calculate and record this.
- **Health and Safety** – Support and information to help direct payments employers comply with their Health and Safety responsibilities can be provided by the Direct Payments Support Service. As the employment is within the home there are different regulations that apply.
- **Disclosure and Barring Service** – Anyone employed in a regulated activity must have a DBS check completed. The Direct Payments

Support Service can support and Assist employers to ensure all their staff have DBS checks completed.

- **HMRC responsibilities** – Any employer has responsibility with regards to Tax and National Insurance contributions. When a person first takes on the responsibility of being an employer the Direct Payments Support Service will support an individual to register with a payroll provider of their choice and ensure they register as an employer with HMRC.
- **Maternity, Adoption and Parental Leave** – Any statutory entitlement can be calculated but the employer with help and support from the Direct Payment Support Service. If additional funding is required this must be bought to the attention of the Social Worker/care Manager.
- **Medication** – This will be in line with internal policy
- **Financial Audits** – There may be a requirement to provide paperwork to the financial section of the Council on a regular basis. This is to ensure that public money provided via the Direct Payments is spent appropriately and all relevant paperwork is maintained and kept in an orderly manner. The Direct Payment Support Service will support and train individuals on how to complete this and will help identify where some individuals may require some additional bookkeeping support. If a Direct Payment recipient or their representative chooses to use a Direct Payments Card from Flintshire County Council, this will not be necessary.
- **Pensions** – If staff are employed there is a requirement by law to register with a Pensions Provider. If staff earn in excess of the pension's threshold they must be enrolled in a pension scheme. An employee has the right to opt out of a pension's scheme, but they must first have been opted in. The Support Service have payroll systems in place to ensure that support is available to assist employers and employees.

### Care and Support Planning, Monitoring & Review

170. The Council **must** provide and keep under review care and support plans for eligible people as defined within section 54 of the SSWB Act 2014
171. The care and support plan **must** be developed in partnership with the Direct Payments recipient to ensure there is an agreed understanding of how their bespoke needs will be met and personal outcomes achieved.
172. In cases where the care and support plan identifies care and support which may require a financial contribution from the person, arrangements **must** be made to ensure the individual is clear about this, and that a financial

assessment is undertaken where this is required under part 5 of the Act.

173. It is the responsibility of the practitioner who has developed the plan with the individual (including any formal or informal advocacy support) to ensure there is a clear and concise confirmation of the agreed informal and formal solutions to meeting identified needs and outcomes, and those that will undertake them within the plan.
174. Care and Support Plans **must** cover the following:
- The outcomes have been identified in relation to the person to whom the plan relates
  - The actions to be taken by the person, friends and relatives, the wider community and the local authority to help the person achieve those outcomes.
  - The needs that will be met through the delivery of care and support solutions
  - How progress towards achieving those outcomes will be monitored and measured – what will success look like?
  - The date of the next review of the care and support plan.
175. In most cases where a Direct Payment is being utilised to achieve aspects of the care and support plan the following should also be set out:
- The roles and responsibilities of the person, representatives, carers, family members and practitioners in supporting the arrangements to be successful
  - The resources (including financial resources) required from each party
176. The Council, with their partners, **must** have in place arrangements to review or re-assess a person's circumstances more promptly whenever it may appear that the current plan is not meeting the person or family's needs.
177. The following selection of guiding principles should be used to underpin the process of preparing care and support plans:
- People centred: Individual and family wishes will shape the form of engagement with services where this is appropriate. This will include the option of individuals receiving Direct Payments to meet their care and support needs, or in the case of carers, their support needs.
  - Promote Well-being: Solutions will build on people's and families' strengths and abilities and enable them to maintain an appropriate level of autonomy with the appropriate level of care and support provided consistent with their well-being
  - Strengths and Assets focussed: Build on personal strengths, resilience, networks and relationships. Enable people to take back, or

maintain as much autonomy and personal responsibility over their life decisions as possible (with, or without support).

- Outcome based: Work with people and families will be based on a comprehensive analysis of needs, personal outcomes, risks, and the strengths and capabilities people and families have available to them.
- Involving wider family, community and carers: Recognise the contribution of the wider community, family and carers and seek to provide support to them whenever possible.

178. Solutions and systems will provide equity of opportunity and will respect diversity of needs.

179. The outcomes of any solutions purchased or arranged via a Direct Payment will be monitored and evaluated in line with legislative requirements, with the first review taking place at 6 weeks, and again at 3 months and 6 months and then ongoing regular reviews undertaken at least annually by the Council. Particular needs and circumstances may warrant additional reviews which can be arranged at the discretion of the social care practitioner and Direct Payment recipient. Where it is deemed necessary the Direct Payments Support Service will attend such reviews where appropriate and on request.

180. The Council **must** keep care and support plans under review to understand whether the provision of that care and support is meeting the identified needs of the individual, and to consider if their needs have changed and if a re-assessment is required. The agreed date for the review of the plan must be set out in the plan.

181. The purpose of the review is to revisit the care and support plan to:

- Monitor progress and changes
- Consider the extent to which the delivery of the plan is meeting assessed needs and how it has helped the person or family achieve their outcomes
- Determine what support is needed in future, and confirm, amend or end support provision.

182. A review that involves the person themselves, family or representatives as active participants is a key part of effective care and support. Good arrangements can ensure that solutions remain appropriate, well targeted and relevant to the individual, and encourages the person to continue to maintain control over their support.

183. If it appears that the care and support plan is not meeting the person's assessed needs the Council must undertake a review irrespective of the agreed review date. This may be at the request of the person themselves, people with

parental responsibility for a child, or any other person authorised to act on their behalf.

184. Any review of the Direct Payments must also include a review of the care and support plan, likewise, any review of the care and support plan must also include a review of the Direct Payments.
185. **Ending a Direct Payment** – At least one months' notice from either party should be given when ending a Direct Payment (however, this should ideally be longer) unless there is a significant event which means the notice is immediate or shorter than a month.
186. In the event of the death of a Direct Payments recipient – Arrangements will need to be made in order to meet all legal responsibilities e.g. any outstanding pay for staff, HMRC obligations, paying accountancy bills and other administrative obligations. The Direct Payments Support Service will work with family members, and/or representative in order to ensure these obligations are met.

### **Responding to difficulties**

187. The Social Care Practitioner **must** discuss with each person, and/or their representative during the Care & Support Planning Process what support arrangements will be put in place in the event of an unplanned breakdown of the usual arrangements. For example; PA sickness.
188. Before agreeing to pay the Direct Payment, the Council require the Direct Payment recipient to have a contingency plan in place. The plan will need to be discussed and agreed with the Social care Practitioner and recorded within the person's care and support plan. The practitioner and the Support Service will support the recipient, and/or their representative to think through the issues that may arise and help plan for them.
189. If for whatever reason the agreed care and support arrangements break down, and it becomes apparent that the person and/or their representative is unable to secure services to achieve the persons agreed needs and personal well-being outcomes, responsibility to respond and arrange services for that person remains with the Council. It may decide to step in and arrange the necessary services, but it will first consider providing assistance to enable the person to continue to manage his or her own care arrangements.

Wherever possible the person should be supported to regain control over their arrangements as soon as it appears appropriate to do so.

190. Examples of contingency plans which people who receive Direct Payments might make, include making arrangements with independent agencies for

emergency cover, or recruiting personal assistants who are prepared to work additional shifts at short notice when necessary.

191. Regardless of the commitment to develop robust contingency plans, it remains possible that difficulties will arise which have not been anticipated and which cannot be covered by the arrangements made. In these instances the person, or their representative should make immediate contact with the Council.
192. If difficulties do arise, the social care practitioner will need to consider with the individual and/or their representative the following issues:
- **Have the person's needs and/or well-being outcomes changed?** If so, the person's needs and outcomes should be reassessed and the proposed solutions to meeting them reviewed accordingly.
  - **Is the amount of money sufficient to enable the person to achieve their bespoke needs and well-being outcomes?** Experience shows that there are other costs, which are sometimes not taken into account within initial calculations, or that anticipated costs have not, in fact, arisen. It may be necessary to review the funding arrangements.
  - **Is the person still able to manage their Direct Payments effectively?** The Council needs to continue to be satisfied that the person, and/or their representative can effectively manage their Direct Payments to meet their needs and achieve agreed well-being outcomes with, or without support. It is important to understand that difficulties do not necessarily mean the person cannot manage. There is inevitably a learning process when individuals begin to receive Direct Payments and people may make mistakes, but still be capable of managing their arrangements in the longer term. Even experienced Direct Payments recipients may have problems at times but with some proportionate support, be capable of overcoming them. Overcoming difficulties is a part of life and can contribute to improved confidence, empowerment and a sense of personal achievement.
  - **Does the person wish to continue receiving Direct Payments?** As long as the Council considers Direct Payments are appropriate, enable the person to remain in control of their life, and will be effective at meeting the person's needs and agreed well-being outcomes every effort will be made to support the person to continue with their arrangements. The Council will view each situation on a case by case basis and enable individuals to overcome difficulties. However, if someone has decided that he or she no longer wishes to receive Direct Payments, then the Council will enable him/her to switch to services arranged by the Council.

- **Has all the money been spent on the services for which it was intended?** If the money has been diverted to other purposes there will be a case for seeking repayment. Social Care Practitioners and the Support Service will explain before the individual begins to receive their Direct Payments the circumstances in which the authority would seek repayment and the term of the Direct Payment Agreement.
- **Have agreed support arrangements been paid for but not received?** If not, then it is the responsibility of the individual to seek a refund from the service provider. If the Council has made further provision for services to meet the same needs or if the services were not received because they were no longer required, then the Council will seek repayment of the funds from the individual
- **Has the money been spent wisely?** If not, consideration must be given by the Council to whether the person has maliciously diverted funds from their intended purpose, or has naively mismanaged funds because of a genuine misunderstanding, confusion, lack of capacity, and/or capability. The outcome of this investigation will determine the actions to be taken. If the person and/or their representative is found to have intentionally misappropriated funds, the Council will consider ending the Direct Payment and arranging an alternative service in line with the person's needs and personal well-being outcomes. The ultimate decision to permanently end a Direct Payments arrangement will rest with the relevant Service manager. However, in any other situation the Council **must** consider how it will support the person and/or their representative to manage their Direct Payment effectively.

193. **Difficulties can be minimised by:**

- The Council being clear from the outset about what the money can and cannot be used for
- Monitoring and timely review
- Effective Direct Payments support arrangements
- Maintaining communication with all parties involved
- Enabling PA's to receive information, advice, training and assistance about their role
- Good initial assessments that include discussing potential areas of difficulty, and how they will be realistically handled with the person and/or their representative before Direct Payments begin.
- When services are engaged for by private arrangement alongside Direct Payments these must be clearly defined and separately invoiced.

### **When to seek repayment**

194. Legislation enables the Council to require some or all of the money it has paid out to be repaid if it is not satisfied that it has been used to secure the provision of the solutions to which it relates.
195. The Council may also require repayment if the person has not met any condition that the Council has properly imposed by way of the Agreement and those imposed by the regulations.
196. The repayment process will be triggered by the Financial Assessment & Charging Team, but will always involve discussion with the person and/or their representative, Social care Practitioner and/or Team Manager and Direct Payments Support Service.
197. Avoiding the necessity for repayments starts with giving appropriate information. Social Care Practitioners will aim to be satisfied that individuals who receive Direct Payments understand all of the conditions they will be required to meet and which are outlined within the Direct Payments Agreement prior to the commencement of payments.
198. The Council must take into account hardship considerations in deciding whether to seek repayments.
199. When considering whether to recover unspent funds, the Council will also bear in mind that there may be legitimate reasons for a Direct Payment recipient to build up an apparent surplus e.g. to pay their employees' quarterly PAYE, or to pay outstanding bills from a care agency, outstanding legal employment liabilities, accrued money for an agreed reason etc.
200. The Council will be mindful that this power is intended to enable them to recover money, which has intentionally been diverted from the purpose for which it was intended, or which has simply not been spent at all. It must not be used to penalise honest mistakes.
201. The Council will also consider how to recover unspent Direct Payments when the recipient dies or can no longer access the account due to loss of capacity. Due consideration will be given to any outstanding employment, or financial liabilities e.g. redundancy payments, HMRC Bills, Agency invoices etc. In such circumstances the Council may be liable for settling such payments.

### **Ending a Direct Payments Arrangement**

202. Both the Council, the Direct Payments recipient and/or their representative may decide at any time that they wish to cease the Direct Payments arrangements. The recipient may feel that their needs and outcomes would be

better met in an alternative way, or the Council having firstly considered the specific circumstances may feel that a Direct Payment will not effectively meet the person's needs, or achieve their well-being outcomes, and/or despite support the funding will not be used for its intended purpose.

203. The Social care Practitioner will inform the Direct Payment recipient and/or their representative as soon as possible if it is considering discontinuing Direct Payments to them, and if appropriate give them an opportunity to demonstrate that they can continue to manage their arrangements, albeit with greater support.
204. The Council will endeavour to give four weeks' notice in writing before Direct Payments are discontinued. It may be necessary in exceptional circumstances to discontinue Direct Payments without giving notice. Such decisions may be taken where a person no longer needs the services for which the Direct Payments are made. This be the case where someone receives support to meet short term or enabling outcomes upon leaving residential care or hospital or there has been a safeguarding issue, misappropriation of funds or criminal matter.
205. If the Council decides to withdraw Direct Payments then it will need to arrange the relevant support instead, unless the withdrawal was following a reassessment after which the authority concluded that the support was no longer appropriate.
206. There may be circumstances in which the Council wishes to discontinue a person's Direct Payments temporarily. For example, if a recipient should lose mental capacity temporarily, or not require the agreed support for some legitimate reason. In these cases, social care practitioners will discuss with the individual how best to manage. The aim will be to enable the person to resume responsibility for his or her own care or support after the interruption, if that remains his or her wish.
207. The Council might decide to take over the management of the person's arrangements in the interim, or explore whether responsibility could be transferred to a trusted third party of the Direct Payment recipient. This decision will be made following discussion with the individual. In considering whether it is practical, desirable and cost-effective to maintain the individuals' arrangements, the Council will be mindful of any contracts into which the individuals has entered.
208. Where Direct Payments are discontinued, some individuals may find themselves with ongoing contractual responsibilities or having to terminate contracts for support (including possibly making employees redundant). Social care practitioners and the Direct Payment Support Service should discuss this with individual and offer appropriate advice and support regarding how this should be handled in the light of employment legislation.

## **Complaints**

209. The Council operates a procedure for considering any representations (including any complaints) which are made to them with respect to the discharge of their statutory duties or about any failure to discharge the functions of the Council. People who receive, or consider receiving Direct Payments are entitled to have access to this procedure in the same way as anyone else for whom the Council has a power or a duty to support.
210. Social care practitioners must ensure that individuals are aware of the complaint procedure, but particularly so when they are informed of a decision they may not welcome. Direct Payments recipients and/or representatives may make complaints about any action, decision or apparent failing of the local authority, but not about services which they have secured from independent providers (including people they employ directly) using Direct Payments. The recipient will need to address any complaints about the services that they receive through Direct Payments to the service providers they have procured or deal with disciplinary matter with paid employees that have been employed. The Direct Payments support provider will assist the person where necessary.

## **Reviewing the Direct Payment scheme**

211. In the spirit of co-production the Council will actively encourage participation from representative users of the Direct Payment scheme, individuals, Carers and Social Care Practitioners in the review, evaluation and future planning of the Flintshire Direct Payments Scheme. All Flintshire recipients of Direct Payments will be given the opportunity to express their views, experiences and opinions about the scheme and how it might be improved.
212. Feedback, information and proposals will be taken forward alongside Direct Payments recipients and representatives to inform the future development of the Flintshire Direct Payments scheme.

## **Data protection & confidentiality**

213. In accordance with the Data Protection Act 1998, information will only be shared with other relevant people and agencies in accordance with the data protection principles or with the written consent of the individual or their legally appointed representative.
214. All those involved within the Direct Payment scheme are required to work within the framework of the agreed information sharing actions and ensure these comply with the Data Protection Act 1998.

**Fraud**

215. In carrying out its functions and responsibilities, the Council adopts a culture of openness and fairness and expects that employees at all levels will adopt the highest standards of propriety and accountability. This is achieved by leading by example and by an understanding of and adherence to rules, procedures and agreed practices. These standards are also expected from organisations that have dealings with the Authority (e.g. suppliers/contractors). It is our policy to conduct all of our dealings in an honest and ethical manner.