

# **CHILDREN AND YOUNG PEOPLE'S DIRECT PAYMENTS POLICY GUIDANCE AND AGREEMENT**

2018

**London Borough of Havering**

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Direct Payments Guidance Policy and Agreement

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## Introduction

A Direct Payment is a form of a Personal Budget. More information on Personal Budgets, and the services that are included, can be found in the Personal Budget policy.

A Direct Payment is a monetary amount paid to a parent, carer, authorised or nominated person, hereafter referred to as the responsible person, on behalf of a young person, from their Personal Budget to be spent on the provision specified in their EHC Plan or any services under section 17 Children Act 1989. This allows the responsible person to choose how and when the young person receives services instead of Havering Council arranging services on their behalf.

This policy has been created to provide guidance to, parents and carers of disabled children and children who are the subjects of EHC Plans and Havering Council staff on the making and receiving of Direct Payments. This policy provides guidance as to the availability and practice and procedure for direct payments under section 49 Children and Families Act 2014, the Special Educational Needs (Personal Budgets) Regulations 2014/1652, section 57 Health and Social Care Act 2001, section 17A Children Act 1989, and the Community Care, Services for Carers and Children's Services (Direct Payments) (England) Regulations 2009/1887.

The provisions arising from the Children and Families Act relate to the needs identified in the Education Health and Care Plan (EHC Plan) whereas the support under s17 Children Act 1989 relate to the assessment of need specified in the Child in Need Plan. It is possible that there may be some overlap.

When the young person reaches 18 years their community care needs will normally be met by Adult Social Services, although the criteria for eligibility for care and support for adults is different and it may be that more or less support is provided.

For young people who have EHC Plans their support may continue from age 18-25 years on the same basis as set out in this policy.

## Section 1 – Receiving a Direct Payment

### 1. Who can receive a Direct Payment?

1.1. Any parent/carer of a child or young person who has been assessed as being eligible for an EHC Plan or services under section 17 Children Act 1989 from Havering Council can apply for a Direct Payment. They may nominate a person in writing to receive direct payments on their behalf.

1.2. The following conditions must be met to receive a Direct Payment:

- The parent/carer requests a Direct Payment;
- Havering Council is satisfied that the person who will be responsible for managing the direct payment is capable of managing a Direct Payment with or without support.
- Havering Council is satisfied the making of a Direct Payment is an appropriate way to meet eligible needs.

1.3. There are cases where a Direct Payment may not be available to meet needs. For example, when the support is being provided as part of a larger budget (for example a contract with the NHS to provide all speech and language therapy or occupational therapy) and the LA can't separate out or 'disaggregate' the Personal Budget from that overall larger budget because it would have an adverse impact on other services for children and young people with EHC Plans or would not be an efficient use of the local authority's resources.

1.4. There are a number of different categories of persons who may not receive direct payments under the Children Act 1989. These are listed at Appendix 1.

## **2. Assessing Mental Capacity to receive payments**

### **Carers with capacity**

2.1. Before a Direct Payment can be set up, Havering Council must be satisfied that the person who will be a recipient of the direct payments (“the responsible person”) has capacity to consent to the making of Direct Payments to cover some or all of the child’s care needs.

2.2. The following conditions must be met:

- The responsible person has capacity to make the request and agrees to receive the payment.
- Havering Council is satisfied that the responsible person is capable of managing Direct Payments either by themselves or with support.
- Havering Council is satisfied that making Direct Payments to the responsible person is an appropriate way to meet the child’s needs.
  - In the case of Children Act support the Council is satisfied that the welfare of the child in respect of whom the service is needed will be safeguarded and promoted by securing the provision of it by means of a direct payment.

- 2.3. The responsible person must be involved in appropriate stages of the care planning journey, which may include playing an active part in agreeing the content of the care plan and/or EHCP, whichever is appropriate.

### **Carers without capacity**

- 2.4. Where a person has been assessed as lacking capacity to request a Direct Payment an “responsible person” can request the Direct Payment on the child’s behalf.
- 2.5. A “responsible person” is someone who agrees to manage a Direct Payment for a person who lacks capacity according to the Mental Capacity Act 2005.
- 2.6. Havering Council must be satisfied that the responsible person meets all the conditions set out in the responsible person agreement.
- 2.7. Havering Council must consider the suitability of the person requesting the Direct Payment and determine whether to provide a Direct Payment by ensuring the following conditions are met:
- Best interests – Havering Council is satisfied that the responsible person will act in the child or young person’s best interests in arranging the provision of care and support.
  - Capability – The responsible person is capable of managing the Direct Payment either by themselves or with support.
  - Appropriate – A Direct Payment is an appropriate way to meet the eligible assessed unmet needs -identified in the care plan and/or EHCP.
- 2.8. The decision should be recorded in the child/young person’s file. If the request is refused, the person should be provided with a written explanation. A person who wishes to make representations about this decision may in the first instance ask the Head of Service for the Children & Adults with Disabilities Service to review its decision.
- 2.9. People who are acting in the capacity of the responsible person for the purpose of the Direct Payment, or who otherwise have formalised control or influence over the recipients financial affairs; for example power of attorney, may not also be employed to provide care and support services that are paid for through the Direct Payment.
- 2.10. If there is no suitable Deputy, Lasting Power of Attorney, other family member or friend, the allocated worker must identify whether there is another appropriate person or organisation that is willing to receive the Direct Payment.
- 2.11. If no responsible person is available then no Direct Payment can be

made.

### **3. Services which cannot be the subject of direct payments.**

- 3.1. The Council may only make direct payments in respect of the special educational provision specified in the EHC plan, and may not make direct payments for the purpose of funding a place at a school or post-16 institution.
- 3.2. The Council may not make direct payments in respect of any goods or services which are to be used or provided in a school, post-16 institution or early years educational setting without the written consent of the head teacher, principal, provider or the person occupying an equivalent position.

### **4. Frequency of Payments**

- 4.1. Payments will be made every four weeks in advance to the young person's pre-paid account.

### **5. Payment method**

- 5.1. Havering Council will pay the Direct Payment amount agreed as the individual's assessed need.

### **6. Pre-paid cards**

- 6.1. Havering Council has a pre-paid account system in place which can be used to receive Direct Payments. The pre-paid system can be used like a basic bank account to make payments and set up standing orders.
- 6.2. Pre-payment cards do not automatically allow cash withdrawals. However, in exceptional circumstances where cash withdrawals are needed, this can be agreed by the relevant manager.
- 6.3. In the event the responsible person loses their pre-payment card, they will be charged a replacement fee of £3.50.
- 6.4. Havering Council is entitled to recover any under spend or misappropriation (theft) of Direct Payment funds from the responsible person (as the case may be). This will result in a review of the young person's eligibility for a Direct Payment. The Council may decide to withdraw direct payment and offer alternative service.

## **7. Contingency and reserves**

- 7.1. The amount that is included in a direct payment must be sufficient to meet the assessed needs that Havering Council has a duty to meet. The assessed needs may include a contingency element that can be used to cover fluctuating needs. The use of the contingency will be monitored by Havering Council to ensure that it is being spent in line with the young person's assessed needs.
- 7.2. Where a direct payment is being used to employ a personal assistant (PA), clear plans should be in place and agreed on how needs will be met in the event of the PA being absent.
- 7.3. Costs incurred in meeting a young person's assessed needs should be met from the Personal Budget and therefore direct payment; this can include recruitment costs, employer's national insurance contribution, employer's pension contributions, employers liability insurance, DBS costs and administrative/support costs.
- 7.4. Following a review of spending in October and February respectively by the Council, if funds exceeding eight (8) weeks are being held within the pre-paid account; these may be recovered at the earliest opportunity except where variation has been agreed.

## **8. Administration Costs**

- 8.1. The management and administration of a large payment, along with organising care and support can be a complex and time consuming task.
- 8.2. Havering Council can provide support to the responsible person to manage the young person's Direct Payments through one of their 3rd Party payroll agencies. The responsible person is also free to identify an alternative provider of their choice as long as costs are reasonable. The costs of this service will be paid for by Children's services.
- 8.3. The payment for administration to a friend/family member is not intended to be income replacement and there may be implications for the recipient in terms of tax and employment and payment may also impact upon other benefits.
- 8.4. The circumstances and payment amount will be decided and agreed with the young person, the family member, Havering Council and any other person (i.e. advocate), with Havering Council taking steps to ensure all



parties agree.

- 8.5. These decisions will be recorded as part of the young person's assessed need and include the amount of the payments, their frequency and the activities that are covered.
- 8.6. The Director may agree for the responsible person to administer a Direct Payment from which another family member is being paid to deliver care. However, the paid carer cannot usually live at the same address as the young person.

## **Section 2 - How to Spend Direct Payments**

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

- 9.1. The responsible person shall only use sums paid by means of a Direct Payment for the sole purpose of achieving the identified outcomes as part of the young person's assessment and support/EHC plan. A failure to adhere to this section shall invoke the right to recover misappropriated funds.
- 9.2. Havering Council cannot draw up an exhaustive list as to how the responsible person can/cannot spend the young person's Direct Payment. Each case must be decided on its own merits and documented as part of the young person's assessed need, based on the following key principles. The service, activity or item proposed should:
  - be clearly linked to the outcomes identified as part of the young person's support/EHC plan and meet the young person's assessed eligible needs.
  - be able to show how it will keep the young person healthy, safe, contribute to their education and be well.
  - be affordable and proportionate to the young person's assessed eligible needs.
- 9.3. Working within the above guiding principles, Direct Payments cannot be used for the following things:
  - Anything illegal
  - Purchase of alcohol, tobacco or gambling • Long term residential care
  - A health care need that should be provided by the NHS or CCG
  - Any spend involving commitments out of the country shall need to be approved by the Director on a case by case basis and cannot be assumed.

- For a placement in a school or post 16 institution

9.4. The Personal Budgets scheme has been designed to apply to a wide range of support in accordance with the Children and Families Act 2014, the Special Educational Needs (Personal Budgets) Regulations 2014/1652, the Children Act 1989, and the Community Care, Services for Carers and Children's Services (Direct Payments) (England) Regulations 2009/1887. These could include:

- A personal assistant or agency care
- Community activities
- Short breaks
- Specialist technology
- Specialist educational support or therapy
- Home to school transportation

9.5. Where a Personal Assistant (PA) has been agreed as part of the assessed need, the Direct Payment will include funds to employ a PA, including recruitment costs (where required), employer's national insurance contributions, income tax, employers' liability insurance, pension and other costs associated. Havering Council will provide information and support on how to begin employing a PA and will provide regular monitoring to ensure payments are being made correctly. Becoming an employer carries with it certain responsibilities and obligations, in particular in relation to paying Tax, National Insurance, minimum / living wage requirements and ensuring that any person employed has the right to work in the UK.

9.6. If for any reason the responsible person would like to spend the young person's Direct Payment on anything other than items outlined as part of their assessed needs they will need to contact the Direct Payment team for agreement prior to purchase. Any change in spend may require a review of the young person's assessed need.

9.7. Direct Payments made under the Children Act for a disabled child cannot be used to pay for a young person to live in long-term residential care placement. They can be made to enable the responsible person to purchase a short break for the young person, provided that the stay does not exceed a period of four consecutive weeks in any 12-month period, or where the period between two stays on a short break is less than four weeks. This could be used to provide a respite break for a parent/carer. Where the period between two short breaks is less than 4 weeks, then the two stays should be added together to make a cumulative total, which should also not exceed four weeks.

## 10. Paying family Members

10.1. Direct Payments cannot be used to secure the services from a family member who lives in the same household as the young person with the exception of administration costs, as outlined in section 9, other than in exceptional circumstances to be agreed in writing by Havering Council.

## 11. Employment Duties

11.1. The responsible person needs to be aware that they are responsible for the day-to-day management of the young person's Direct Payments including that of employing suitably qualified workers where necessary to provide the assistance identified as part of the young person's assessed needs.

11.2. Havering Council will signpost the responsible person to information in regards to their role as an employer. For responsible persons that request or require further help or assistance, Havering Council will arrange face to face advice and guidance.

11.3. When employing any person, the responsible person shall comply with their legal duties and obligations as an employer in the United Kingdom including that which is required by HM Revenue and Customs and the UK Border Agency. The responsible person shall be responsible for making appropriate deductions for tax and national insurance contributions from the remuneration paid to its workers, register as an employer with HMRC and ensure all checks are made of their potential employee, including a DBS check and the right to work in the UK.

11.4. The responsible person will need to have in place Employers Liability Insurance. The Employers Liability Insurance should be taken out with a reputable insurance company or underwriters with a minimum limit for any one claim of £5 million (responsible persons will be notified if this limit is increased or decreased in the future as reasonably required by the Chief Finance Officer of the Council.) The insurance policy and premium receipts must be produced on demand when requested by Havering Council.

11.5. The responsible person must ensure that any person they employ with the use of Direct Payments will not be considered or consider themselves an employee or agent of Havering Council, and that Havering Council will not be responsible for any income tax, National Insurance or any other payments or responsibilities in relation to the employee of the responsible

person. It must be clearly stated in their contract of employment or written statement of work that they are employed solely by the responsible person.

11.6. The responsible person will be expected by Havering Council to ensure that they have made provisions for cover in emergency situations or when the young person's PA is not able or not due to attend to support them, such as in cases of annual leave or sickness.

11.7. In the event that the normal contingency arrangements by the responsible person for the provision of the services breaks down, in an emergency Havering Council shall endeavour to ensure that the young person receives appropriate services to achieve their agreed outcomes for that period until their responsible person is able to resume their usual arrangement. This will result in the need for repayment to Havering Council of monies already paid to the responsible person. The amount will be recovered by Havering Council from the Pre-payment account and the details provided to their responsible person in writing. Havering Council may recover any amount due greater than money in the Pre-payment account from future Direct Payments after conducting a re-assessment of the young person's needs in consultation with the Young person and their parent/carer.

## **12. Safeguarding**

12.1. It is an offence under the Criminal Justice and Court Services Act 2000 and Safeguarding Vulnerable Groups Act 2006 for anyone to knowingly offer work with vulnerable people or children to, or procures work with vulnerable people or children, or allows such an individual in such work without relevant checks.

12.2. The responsible person shall ensure that when employing a person that will have unsupervised access to young or otherwise vulnerable people during the course of their work that the responsible person conducts an enhanced DBS (Disclosure and Baring Service) check to ensure that the person has no relevant criminal convictions that would preclude them from working with children or vulnerable people. Havering Council will meet the cost of the DBS check.

## **13. Direct Payments – Paying for Council Services**

13.1. As a general rule, Direct Payments should not be used to pay for services provided by Havering Council. If a young person wishes to receive a service from Havering Council that has been identified as part of their assessed needs, this will be arranged by the Council and the Direct

Payment will be reduced by the service cost before it reaches the pre-paid card account.

13.2. There may be cases where Havering Council will exercise discretion to provide care and support by receiving a Direct Payment amount, for example this could be where a person who is using Direct Payments wants to make a one-off purchase from Havering Council, such as sensory equipment. In these cases, Havering Council will take into account the wishes of the person requiring care and support when making a decision. In one off cases such as these, it may be less burdensome to accept the Direct Payment amount, rather than providing the service and then reducing the Personal Budget and Direct Payment accordingly.

13.3. This does not preclude the responsible person from using the young person's Direct Payment to purchase care and support from a different local authority. For example, a person may live close to authority boundaries and another local authority could provide a particular service that their 'home' authority does not provide.

## **Section 3 – Audit and Review of Direct Payments**

### **14. Review of Direct Payments**

14.1. As part of the monitoring and review process, an initial light-touch review will take place 4-6 weeks after the Direct Payment has started to ensure that the responsible person is comfortable with using the Direct Payment, and experiencing no initial issues. The review will take place to establish if the Direct Payment is being spent, to ensure unmet assessed eligible needs and outcomes are being met and that the Direct Payment is being used as detailed within the assessed individual needs and within the terms of the Direct Payment agreement. It should ideally be incorporated within the initial review of the young person's assessed needs. However, if the initial review raises concerns or requires actions that affect the detail recorded in the plan, then a full review of the plan will need to be carried out.

14.2. If at the initial review it becomes clear that the responsible person is struggling to understand their responsibilities in operating the Direct Payment, Havering Council shall assist with further information, advice and support.

14.3. Havering Council will review the Direct Payment arrangements six months after the initial payment, and thereafter every 12 months if no further issues arise to enable Havering Council to establish that the Direct Payment is still an appropriate way of meeting the young person's needs and outcomes, and that conditions upon which it is made are being met.

14.4. The monitoring will take place across both the financial aspects of the Direct Payment and to identify risks and issues. For example, if the responsible person is employing people, Havering Council will include in the review, checks to ensure the individual is fulfilling their responsibilities as the employer. In particular that they are submitting PAYE returns to HMRC as well as paying tax and National Insurance deductions made to HMRC.

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- 14.5. Where a Direct Payment is being allocated to a nominated/responsible person, or where there may be a family carer being paid for administrative support, the review should, where possible, incorporate all of these parties as well as the person in need of care and support. This will ensure that Havering Council receives views from everyone involved in the Direct Payment to ensure there are no initial issues that require resolving.
- 14.6. Havering Council has the right to increase, decrease, suspend or terminate the Direct Payment in line with a regular review or reassessment of the young person's assessed eligible needs.
- 14.7. Where Havering Council has identified a change in circumstance that it deems affects the current level of Direct Payments due, and following a new assessment or review, Havering Council will give the responsible person 7 days written notice of the change. This notice period may be extended where a reduction may affect any pre-existing contractual arrangements, such as a Personal Assistant.
- 14.8. The responsible person will ensure that arrangements are in place to notify Havering Council immediately if there are any changes in their circumstances which may affect their entitlement to Direct Payments. Examples of changes are: if the young person is admitted to hospital, is going to be away for periods beyond 4 weeks or no longer requires the service, a change of address or support arrangements. It is the responsibility of the responsible person to check with Havering Council if they are unsure if a change in circumstance will affect the young person's eligibility to continue to receive Direct Payments.
- 14.9. Following a discussion with the responsible person, Havering Council may temporarily reduce or suspend payments if the young person is unable to receive services for a period of time, such as for long stays in hospital. Havering Council shall give consideration to a young person's individual circumstances upon admission to hospital. Direct Payments may continue to be paid for short stays in hospital to facilitate staff retention by the responsible person.
- 14.10. A formal review or reassessment of the young person's circumstances by Havering Council can be requested at any time.

## **15. Audit of Direct Payments**

- 15.1. The responsible person shall keep all documents and/or records generated in connection with the provision of services to which their Direct Payment relates for a period of 6 years following the end of the services. The documents and/or records held by the responsible person may be inspected by Havering Council via its staff, including Havering Council's Internal Audit Service or other person authorised by Havering Council.

- 15.2. The activity on the pre-payment account will be monitored by Havering Council via the pre-payment on-line system. Havering Council will not normally require or request documentation for a transaction that appears on the on-line account that clearly identifies the service and is within the agreed assessed needs.
- 15.3. Havering Council will request information and supporting documentation for an entry on the pre-payment card account that is not easily recognisable, exceeds or is notably lower than the agreed care or service costs. The responsible person shall provide this information within 14 days of the request. Failure to provide such documentation shall result in a reassessment of the young person's eligibility for receipt of Direct Payments.
- 15.4. The responsible person shall contact Havering Council's Direct Payment Team when requested and submit to the periodic monitoring and review of the service.
- 15.5. Havering Council will provide information and advice to the responsible person who opts to receive a young person's care and support through the payment of a Direct Payment. It will be made clear to the responsible person that the Direct Payment account is auditable and the need for good record keeping on expenditure is important.
- 15.6. The Direct Payment account will be subject to regular audits in relation to the use and management of the Direct Payment, the account will be audited initially at 6-8 weeks from it starting and any issues will be addressed.
- 15.7. Thereafter Direct Payment accounts will be audited quarterly. Audits are required to ensure that the Direct Payment is being used for the purposes detailed as part of the young person's assessed needs with accurate receipts and records being kept. Any discrepancies will be investigated and resolved and any debt will be recovered by Havering Council.
- 15.8. Havering Council has the right to suspend or terminate the Direct Payment as a result of the findings of the audit of the Direct Payment account.

## **16. Recovery of Direct Payments**

- 16.1. Havering Council reserves the right, after consultation with the responsible person, to adjust future payments to recover any over-payments or under-spends, after taking into consideration any other expenses the responsible person is required to meet in relation to their Direct Payments, such as statutory holidays and payments due to the HM Revenue and Customs.



## **17. Unspent Direct Payments**

17.1. Where money remains on the Pre-payment account outside the allowed or agreed amount for contingency, HMRC, annual leave, respite, fluctuating needs or one-off payments for example, any overpayment or under-spend will be recovered from this account by Havering Council.

## **18. Wrongful Use of Direct Payments**

18.1. Havering Council has a duty of care to ensure the responsible person is using the Direct Payment to achieve the outcomes agreed in the young person's Support/EHC plan that the charges the young person incurs are reasonable and that public funds are being used effectively. Where requested, the responsible person is required to provide as much information as possible in the time frame given.

18.2. In the event that fraud, abuse or misuse is reasonably suspected, Havering Council may refer the matter to Internal Audit for investigation and offer support to the responsible person to reduce the risk of further loss occurring. Havering Council shall refer any potential criminal activity to the Police for further investigation and reserve the right to prosecute where fraud is suspected to have taken place.

18.3. Havering Council will not be responsible for any losses incurred by the young person or their responsible person, therefore they should ensure that they have adequate content insurance cover in place should losses arise that can be mitigated by home content insurance.

## **19. Direct Payments and Hospital Stays**

19.1. There may often be occasions when the young person requires a stay in hospital. If a young person is in hospital for 4 weeks or more a review will take place. Payments may be reduced in the event that a young person is due to remain in hospital for a long period of time. Consideration to contractual agreements with PAs will be taken into account to ensure a continuity of care when discharged from hospital.

19.2. During the review, consideration will be given to how the Direct Payment may be used in hospital to meet non-health needs or to ensure employment arrangements are maintained. For example, the young person may prefer the PA to visit the hospital to help with personal care matters outside those performed by hospital staff. This may be especially so where there has been a long relationship between the Direct Payment holder and the PA. This should not interfere with the medical duties of hospital personnel, but be tailored to work alongside health provision.

19.3. In some cases, the responsible person managing the Direct Payment may require a hospital stay. In these cases Havering Council must be notified and an urgent review will be conducted to ensure that the young person continues to receive care and support to meet their needs. This may be through a temporary responsible person, or through a short-term care and support arrangement.

19.4. Upon imminent discharge from hospital a review of the care and support needs of the young person will be undertaken by Havering Council to ensure that an appropriate plan is in place before the young person returns home. Direct Payments may be reinstated if these were temporarily ceased or reduced, provided the young person continues to meet the eligibility criteria.

## **20. Direct Payments - Periods Away from Home (excluding Short Breaks)**

20.1. Young person's intending to travel outside their ordinary area of residence for short periods must inform Havering Council of their plans prior to making those arrangements. The responsible person will need to state the period of time from which they will be away and to confirm their arrangements for support during this period.

20.2. Any spend involving commitments out of the country shall need to be approved by the Director of Children Services on a case by case basis and cannot be assumed. If approved, the responsible person must ensure that they comply with the country's employment rules and regulations.

20.3. The responsible person must retain receipts for payment of wages to workers as well as all other documentation related to such employment; this includes copies of receipts and invoices relating to purchases made from their Direct Payment pre-paid account. These should be submitted to Havering Council when asked.

20.4. The responsible person retains responsibility of ensuring that arrangements are in place to pay the wages of their employee/s in the UK if they wish to retain them while they are away from home.

## **Section 4 - Ending Direct Payments**

### **21. Terminating Direct Payments**

21.1. Direct Payment will only be terminated as a last resort. Havering Council will take all reasonable steps to address any situations without the termination of the payment. If terminating a Direct Payment, Havering Council will ensure there is no gap in the provision of care and support.

### **22. Terminating Direct Payments by the Direct Payment Recipient**

22.1. If a responsible person expresses a desire to terminate the Direct Payment, the reasons for the termination should be provided to Havering Council. In these cases Havering Council will then work with the responsible person and the young person to plan how their assessed eligible care needs will be met in an alternative way and Havering Council will ensure there are no outstanding contractual liabilities before the Direct Payment is terminated.

22.2. A Direct Payment may be terminated by the responsible person by providing 4 weeks' notice to enable Havering Council to, if required meet the assessed needs outcomes by alternative means to the Direct Payment.

### **23. Havering Council Terminating Direct Payments**

23.1. Havering Council shall cease making Direct Payments if the responsible person no longer appears to be capable of managing the Direct Payment or of managing the payment with support. Havering Council will make timely arrangements for services to be provided in lieu of the Direct Payments, to ensure continuity of support.

23.2. Direct Payment should be discontinued when a person no longer needs the support for which the Direct Payments are made. This might happen in situations where the Direct Payments are for short-term packages when leaving hospital. Direct Payments for after-care services under section 117 of the Mental Health Act would also cease once the clinical commissioning group and Havering Council are satisfied that the person concerned is no longer in need of such services.

23.3. There may be circumstances in which Havering Council will discontinue Direct Payments temporarily. An example might be when an individual does not require assistance for a short period because their condition improves and they do not require the care and support that the Direct Payments are intended to secure. Havering Council will discuss with the young person, their responsible person, and any other person concerned on how best to manage this.

- 23.4. The responsible person should be allowed to resume responsibility for the appropriate young person's care after the interruption, if that remains their wish, unless there has been a change of circumstances which means that the conditions in the Act and/or Regulations are no longer met. If there is a change of circumstances that affects the identified assessed needs, Havering Council will revise the plan to ensure that it is still meeting all outcomes.
- 23.5. Havering Council might also discontinue payments if the responsible person fails to comply with a condition imposed under regulations to which the Direct Payments are subject or if for some reason Havering Council no longer believes it is appropriate to make the Direct Payments. For example, Havering Council may discontinue the Direct Payment if it is apparent that they have not been used to achieve the outcomes outlined as part of the young person's assessed needs.
- 23.6. Direct Payment must not be provided under certain conditions, such as where the responsible person is placed by the courts under a condition or requirement relating to a drug and/or alcohol dependency. See Appendix 1.
- 23.7. Where Direct Payments are discontinued as a result of criminal justice legislative provisions, Havering Council will make timely arrangements for services to be provided in lieu of the Direct Payments, to ensure continuity of support.

## **24. Discontinuation of Direct Payments**

- 24.1. If the responsible person loses capacity to consent, Havering Council will discontinue Direct Payments to that person and consider either making payments to another responsible person or terminating the Direct Payment and instead providing direct support. In the interim, Havering Council will make alternative arrangements to ensure continuity of support for the young person concerned.
- 24.2. If Havering Council believes the loss of capacity to consent to be temporary, it may continue to make payments if there is someone else who is willing to manage payments on the responsible person's behalf. This situation should be treated as strictly temporary and will be closely monitored to ensure that, once the primary responsible person has regained capacity, they are able to exercise overall control over the Direct Payments as before. If the person's loss of capacity to consent becomes prolonged, Havering Council will consider making more formal arrangements for an alternative responsible person to take over receipt of the Direct Payments on that person's behalf. The arrangement is designed to be temporary, so that the person managing the Direct Payment does not enter into any long-term contractual arrangements.
- 24.3. Havering Council will discontinue Direct Payments if Havering Council is

not satisfied for whatever reason that the responsible person is acting in the best interests of the beneficiary, within the meaning of the 2005 Mental Capacity Act. Havering Council may discontinue the Direct Payments if it has sufficient reason to believe that the conditions imposed under regulations on the responsible person are not being met. Havering Council may wish to consider if someone else can act as a responsible person for the person lacking capacity, or whether there is a need for the Council to arrange services for them in place of the Direct Payments.

- 24.4. Havering Council will discuss as soon as possible with the responsible person managing the Direct Payments if it is considering discontinuing Direct Payments to them, in order to explore all available options before making the final decision to terminate the Direct Payments. For example, if ability to manage is an issue, the individual should be given an opportunity to demonstrate that they can continue to manage Direct Payments, albeit with greater support if appropriate. Havering Council will not automatically assume when problems arise that the only solution is to discontinue or end Direct Payments.
- 24.5. If Havering Council does decide to withdraw Direct Payments, it will need to conduct a review of the plan and agree alternative care and support provision with the young person and their responsible person, unless the withdrawal was following a review after which Havering Council concluded that the services were no longer needed. A 4 week period of notice will normally be given before Direct Payments are discontinued.
- 24.6. It will be extremely unlikely that Havering Council will discontinue Direct Payments without giving notice, although in serious cases this may be warranted (for example, the responsible person is not acting in the best interests of the person). Havering Council should explain to people, before they begin to receive Direct Payments, the exceptional circumstances in which this might occur and discuss with them the implications this has for the arrangements that individuals might make.
- 24.7. Havering Council retains the right to recover Direct Payments in full or in part if it is satisfied that the money had been diverted from the use for which it was originally intended.
- 24.8. If Direct Payments are discontinued, some people may find themselves with ongoing contractual responsibilities or having to terminate contracts for services (including possibly making employees redundant). Contractual obligations will require a notice period for termination such as service paid for in advance and employment contracts. These arrangements will need to be taken into consideration when Direct Payments are discontinued by the responsible person.
- 24.9. There may be circumstances where the responsible person has lost the capacity to manage the Direct Payment and there is no-one else to manage the payment on the young person's behalf, or where a person

needs additional support to terminate arrangements. In these cases Havering Council will provide support to ensure that any contractual arrangements are appropriately terminated to ensure that additional costs are not incurred.

## **25. Transferring Direct Payments to Adult care**

- 25.1. The Direct Payment allowance will be reassessed when the young person becomes 18 years old. For EHC Plans direct payments for education may continue on the same basis until the EHC Plan ceases, which may be up until age 25.. Direct Payments provided under the Children Act 1989 may be transferred to the Adults team at Havering Council.
- 25.2. Transition to adulthood starts at the age of 14, in Year 9 at school, and continues up to the age of 25. A young person who has been deemed eligible for support under adult social care legislation can continue to meet their support needs by way of a direct payment from Havering's adult services from the age of 18.
- 25.3. Havering's Preparation for Adulthood team works with young disabled people with significant needs from the age of 14 - 25 years. Where a young person has significant and continuing needs, a social worker will work with the family to make and/or coordinate assessment from other professionals involved. These assessments will be then used to see whether the young person is eligible for adult services.
- 25.4. Referrals are made through the social care team or by the social worker in the Preparation for Adulthood team.

## **26. Ending Direct Payments – on death**

- 26.1. In the event of the death of the young person any amount of Direct Payment remaining in the young person's pre-payment account will be repayable to Havering Council following a discussion with the family and/or responsible person. There will be funds available to pay for commitments outlined as part of the assessed needs if an agreement is in place for advance payments or notice needs to be given before termination.
- 26.2. Any amount due to the estate of the young person for the fulfilment of contractual and legal obligations relating to any person employed by the young person or to HM Revenue and Customs shall be paid by Havering Council on receipt of supporting documentary evidence or an invoice relating to the services received, this would be limited to the amount of arrears only.

## **27. Disputes**

27.1 Any disputes in relation to the allocation or provision of personal budgets should be addressed to the Head of Service, Children & Adults with Disabilities Service in the first instance.

27.2 If the recipient of a personal budget or direct payment has a complaint about services they have purchased independently, they should address this with the service provider or employee concerned.

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I confirm that I have read and understand the content of the Direct Payments Policy and make the following declaration:

(Please tick each declaration.)

- That I will comply with the Terms and Conditions of the Direct Payment Agreement, and understand that failure to do so may lead to the suspension or possible termination of the Direct Payment.
- To comply with the Council's Anti-money laundering policy I will ensure that all funds remain in the pre-paid account with no transfers to other bank accounts unless paying for care in accordance with the Support/EHC Plan.
- If in exceptional circumstance it is agreed that I will maintain a traditional bank account; I will ensure that all Direct Payments paid by the Council will be paid into a dedicated bank account which is solely for income and expenditure relating to the direct payment.
- That in accordance with the Data Protection Act 2018, I will allow information to be shared for the prevention and detection of fraud.
- That following non-compliance with Direct Payments monitoring requirement, the following consequences may occur: 
  1. The Council will authorise the transfer of Direct Payments to be managed by a Third party.
  2. Service Manager may authorise suspension if not transferred to a third party.
  3. Provision of a directly commissioned service managed by the Council will be arranged by a social worker if suspension is agreed.
- That following a review of spending in October and February respectively by the Council, if funds exceeding eight (8) weeks are being held within the pre-paid account; these may be recovered at the earliest opportunity except where variation has been agreed.
- That the Direct Payment will be used in accordance with the EHC Plan.
- This Authority is under a duty to protect the public funds it administers, and to this end may use the information you have provided on this form for the prevention and detection of fraud. It may also share this information with other bodies responsible for auditing or administering public funds for these purposes. For further information, see <http://www.havering.gov.uk/Pages/ServiceChild/Fair-processing-notice.aspx>
- That if I have knowingly given false information in order to obtain Direct Payments, I may be liable to prosecution or other action.



## **Appendix 1 – PERSONS EXCLUDED FROM DIRECT PAYMENTS**

**This Schedule applies to a person if they are—**

- (a) subject to a drug rehabilitation requirement, as defined by section 209 of the Criminal Justice Act 2003(1), imposed by a community order within the meaning of section 177 of that Act, or by a suspended sentence of imprisonment, within the meaning of section 189 of that Act;**
  
- (b) subject to an alcohol treatment requirement as defined by section 212 of the Criminal Justice Act 2003, imposed by a community order, within the meaning of section 177 of that Act, or by a suspended sentence of imprisonment, within the meaning of section 189 of that Act;**
  
- (c) released on licence under Part 2 of the Criminal Justice Act 1991(2), Chapter 6 of Part 12 of the Criminal Justice Act 2003 or Chapter 2 of the Crime (Sentences) Act 1997(3) subject to a non standard licence condition requiring the offender to undertake offending behaviour work to address drug or alcohol related behaviour;**
  
- (d) required to submit to treatment for their drug or alcohol dependency by virtue of a community rehabilitation order within the meaning of section 41 of the Powers of Criminal Courts (Sentencing) Act 2000 or a community punishment and rehabilitation order within the meaning of section 51 of that Act(4);**
  
- (e) subject to a drug treatment and testing order imposed under section 52 of the Powers of Criminal Courts (Sentencing) Act 2000(5);**
  
- (f) required to submit to treatment for their drug or alcohol dependency by virtue of a requirement of a probation order within the meaning of sections 228 to 230 of the Criminal Procedure (Scotland) Act 1995 or subject to a drug treatment and testing order within the meaning of section 234B of that Act(6); or**
  
- (g) released on licence under section 22 or 26 of the Prisons (Scotland) Act 1989(7) or under section 1 or 1AA of the Prisoners and Criminal Proceedings (Scotland) Act 1993(8) and subject to a condition that they submit to treatment for their drug or alcohol dependency.**

**1. Parties to the Agreement**

This Agreement is between The London Borough of Havering ("the Council") and the young person

|                           |
|---------------------------|
| Name of the young person: |
| Address:                  |
| Postcode                  |

Name of responsible person for the young person.

|                                   |
|-----------------------------------|
| Responsible person's Name:        |
| Address:                          |
| Postcode:                         |
| Relationship to the young person: |

**2. Basis of the Agreement**

- 2.1. This Agreement should be read alongside Havering's Children's Social Care Direct Payment Policy Guidance. The Agreement is made on the basis that:
- 2.2. The young person's needs have been assessed as eligible to receive care and/or support services as identified and agreed as part of the assessed need in the Child in Need Plan or the EHC Plan.
- 2.3. The responsible person is willing and able to secure the service(s) detailed in the young person's assessed needs.
- 2.4. The Council will make payment(s) to the responsible person's direct payment pre-paid account / Third party pre-paid account to enable the responsible person to purchase the services agreed in the young person's assessed needs to achieve the agreed outcomes.

### **3. Start date of the Agreement**

3.1. The Agreement will begin on (insert date). Recurring payments from the Council will generally be made every four weeks in advance into the responsible person's Direct Payment account / Third party pre-paid account. The four weekly amount paid will be in accordance with your signed EHA plan.

### **4. Review**

4.1. The young person's support/EHC plan and direct payment will be reviewed shortly after it has been set up to ensure the young person and the responsible person are happy with the services and they are able to meet the young person's outcomes identified in the assessment. This will normally be within six weeks of the start of the direct payment.

4.2. Reviews after this will be carried out at least annually. Reviews can be carried out more frequently if either you or the Council have any cause for concern or need additional support.

4.3. You must inform the Council immediately if at any time you experience difficulty achieving the agreed outcomes in the young person's support/EHC plan or managing the direct payment pre-paid account.

### **5. General rules about how to use the money**

5.1. Your direct payment is to enable you to buy the services as detailed and agreed in your support/EHC plan.

5.2. You must notify the Council if you wish to change anything in the young person's support/EHC plan and obtain approval in writing from the Council prior to purchase.

5.3. You cannot use the young person's Direct Payments to buy anything other than meeting the outcomes as agreed in the young person's support/EHC plan. In particular, although not an exhaustive list, you cannot spend any Direct Payments on the following items:

- Anything that is illegal
- Alcohol, tobacco, drugs or gambling
- A Stay in a residential home for longer than 8 weeks in a year
- Pay a close relative that lives with you
- A placement in a school or post 16 institution.

### **6. Directly Employing Staff**

- 6.1. If you do choose to employ your own staff, you need to ensure you understand your responsibilities as an employer.

You need to comply with all your legal duties and obligations as an employer in the United Kingdom, including what is required by HM Revenue & Customs and the UK Border Agency.

- 6.2. You will need to have appropriate Employers Liability Insurance in place, taken out with a reputable insurance company or underwriters. The Council can assist you with this.
- 6.3. You shall be responsible for making appropriate deductions for Tax and National Insurance contributions from the remuneration paid to your workers.
- 6.4. Any person you employ with the use of Direct Payments will not be considered an employee or agent of the Council and the Council will not be responsible for any Income Tax, National Insurance, any other payments or responsibilities in relation to that person.

## **7. Records you must keep**

- 7.1. You will need to retain all invoices, correspondence, receipts and statements for any payment made in relation to the services received.
- 7.2. The activity on the Direct Payment account will be monitored by the Council, via the Pre-Paid account on-line system or via the Third Party provider. The Council will not normally require or request documentation for a transaction that appears on the on-line account that clearly identifies the service and is within the agreed support/EHC plan limits.
- 7.3. The Council will request information and supporting documentation for any entry on the on-line account that is not easily recognisable, exceeds or is notably lower than the agreed care hours or service cost. You will be required to provide this information within fourteen (14) days of the Council's request.
- 7.4. Your payments may be suspended if you are unable to provide evidence of spend when required by the Council.

## **8. Inappropriate spending**

- 8.1. The Council retains the right to recover Direct Payments in full or in part if it is satisfied that the money has been diverted from the use for which it was originally intended, as set out in your care and support plan.

## **9. Refund of Unspent Funds**

- 9.1. Unspent money in your Direct Payment account / Third Party Provider

account should not normally exceed the equivalent of eight weeks of your direct payment amount.

This does not include any money that you have put by for outstanding commitments such as tax or annual respite. Any excess money in Direct Payment account / Third Party Provider account will be recovered by the Council following a discussion with you.

## 10. Ending the Agreement

10.1. This Agreement may be terminated by you or the Council by either party giving 4 weeks' notice in writing to the other party.

10.2. The Council may discontinue payments and terminate this Agreement with immediate effect, if:

10.2.1. After investigation, it is found by the Council that you are failing to comply with the terms and conditions of this Agreement and the Council has reason to believe that you are using the money illegally or inappropriately;

10.2.2. The Council is not satisfied that your support needs can be met by a direct payment; or

10.2.3. You no longer need care and support service.

10.3. Before terminating the Agreement, the Council will work with you to find a resolution to the issues wherever possible.

### Pre-paid Account details

|                               |  |                  |  |
|-------------------------------|--|------------------|--|
| <b>Name of account holder</b> |  |                  |  |
| <b>Bank Name</b>              |  |                  |  |
| <b>Account no:</b>            |  | <b>Sort Code</b> |  |

## 11. Agreement & Declaration

Here all parties are signing to indicate that they understand and agree to the terms set out in this Agreement.

I, the Young person realise that I may be committing a criminal offence by giving false or misleading details, or withholding information in order to receive payments from the Council and that if I provide information which I know to be false, I may be liable to prosecution.

Young person Name:

Signature:

Date:

**If the Young person is unable to sign or understand the Agreement** - please complete this section: I confirm that the direct payment will be managed on behalf of the Young person as agreed in the signed care & support plan/ EHC Plan. I agree to act as Representative on behalf of the Young person. I am independent of the Direct Payments Provider and agree to be bound by the terms and conditions of this Agreement.

Representatives Name:

Signature:

Date:

**If the Young person or representative requires services to support them in managing their payments**, such as payroll, help with payment of invoices etc. and they have requested a Third Party Financial Services, please complete the provider's details below

Third Party Provider Name:

Name of Council Representative:

Signature:

Date:

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