DIRECT PAYMENT POLICY INC EXCEPTIONAL CIRCUMSTANCES & AUTHORISED PERSON
ADULT SOCIAL CARE
HOUSING & COMMUNITY LIVING

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<tr>
<th>TITLE</th>
<th>Direct Payment Policy inc Exceptional Circumstances and Authorised Person</th>
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<tr>
<td>SERVICE AREA</td>
<td>Adult Social Care – Community Learning Disability and Assessment &amp; Care Management Teams. Community Mental Health Teams.</td>
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<td>TARGET AUDIENCE</td>
<td>All those involved in assessment, planning support, care management or review of adults receiving self-directed support services within Luton.</td>
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<td>VERSION NO.</td>
<td>Final v1</td>
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<tr>
<td>DATE ISSUED</td>
<td>April 2015</td>
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<tr>
<td>REVIEW DATE</td>
<td>April 2016</td>
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<tr>
<td>WRITTEN BY/OWNER</td>
<td>Michelle Bailey – Individual Budgets Development &amp; Support Manager</td>
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<tr>
<td>APPROVED BY</td>
<td>Adult Social Care, DMT, 6/5/15</td>
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<td>REVIEW DATE</td>
<td>April 2016</td>
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BRIEF DESCRIPTION OF POLICY:
To set out the Council’s position in respect of; the way Direct Payments are provided to service users with:
Assessed eligible needs, a validated support plan and an allocated personal budget; and the way that Direct Payments are administered, monitored and reviewed. This policy incorporates Exceptional Circumstances and Authorised Person (previously suitable person) policies.

The policies and procedure database holds the most recent and approved version of this policy or guidance. Staff must ensure they are using the most recent guidance.

RELATED REFERENCE DOCUMENTATION:

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<th>REFERENCE</th>
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<tr>
<td>PERSONAL BUDGET POLICY</td>
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<td>SUPPORT PLANNING &amp; VALIDATION POLICY</td>
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## Document Tracking

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<tr>
<td>Michelle Bailey</td>
<td>Individual Budgets Development &amp; Support Manager</td>
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| Consultation With   | Jacqueline Casson, Ian Ford, Harminder Patel,          | 27/3/15,   |
|                     | DP Finance team, Marcia Richards & Vicky Sowah         | 7/3/15,    |
|                     |                                                        | 17/4/15,   |
|                     |                                                        | 30/4/15,   |
|                     |                                                        | 20/5/15    |

| Approved by         | Adult Social Care, DMT.                                | 6/5/15     |

## Change Record

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Summary of changes made to last approved version:


Equality and Diversity

The Equality Act 2010 seeks equal opportunities in the workplace and in wider society; and prohibits discrimination on the grounds of any of the following protected characteristics in relation to goods, services and employee protection:

- Age
- Disability
- Gender Reassignment
- Race
- Pregnancy/maternity
- Marriage/civil partnership
- Religion and Belief
- Sexual orientation
- Gender

The Equality Act aims, and in particular its General Duties, applies across the council and to any organisation delivering services on a contractual, commissioned or voluntary basis on behalf of the Council. Although our legal duties relate to equality, our approach in Luton extends to the promotion of community cohesion and social inclusion. Our commitment to social justice goes beyond anti-discrimination to include fairness of treatment, dignity and respect.

Feedback:
Our customers expect first class service and we aim to provide it. We therefore welcome feedback about our policies and procedures. If you have any comments about this document please e-mail: RPRComplaints@luton.gov.uk author or other as agreed.
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Appendix 1: Direct Payment Agreement

Appendix 2: Exceptional Circumstances Agreement

Appendix 3: Authorised Person Agreement
Direct Payment Policy

1. Introduction

1.1. Local and national context

1.1 Direct payments are cash payments made by the Council, in lieu of services, to individuals and carers who request to receive one to meet some or all of their eligible care and support needs.

1.2 Direct payments are the government's preferred payment mechanism for personalised care and support and one of the options an individual can choose to receive their personal budget. They provide independence, choice and control by enabling people to purchase their own care and support to meet their eligible needs. The aim is encourage people to take ownership of their care planning and be free to choose how their needs are met.

1.3 The Council, as a Local Authority with responsibility for adult social care, has a duty to assess those who may be eligible for services. The Council will provide social care services to meet the assessed eligible social care needs of eligible service users and carers.

1.4 The legislative context for direct payments is set out in the Care Act, Section 117(2c) of the Mental Health Act 1983 (the 1983 Act) and the Care and Support (Direct Payments) Regulations 2014. Care and Support Statutory Guidance 2014 sets out how the Council should go about performing its care and support responsibilities.

1.5 The challenge for the Council is to balance the principles of individual choice and control, which are reflected in various ways in the requirements set out in the Care Act 2014, with the need to use resources effectively and efficiently and to be accountable for the use of public money.

1.6 Implementing this policy will support the Council to deliver the outcomes of the Adult Health and Wellbeing strategy; Healthier and more independent adults and older people.

1.7 Guiding principles

1.8 Luton Borough Council has demonstrated commitment to personalisation by signing up to Making it Real. Our goal is that people with eligible needs for care and support, both adults and carers have access to personal budgets and direct payments and can determine the support they need and when and how they receive it.

1.9 Direct payments will enable people to experience choice and control over how their care and support needs are met and will represent effective and efficient use of resources.
1.10 The Council will support the right of an individual to request a direct payment by providing relevant and timely information.

2 Availability of direct payments

2.1 Most requests for direct payments will occur during the care planning and assessment stage however requests for direct payments can be made at any time.

2.2 LBC policy is to promote direct payments as the preferred means of delivering the personal budget and meeting individual’s assessed eligible unmet needs. The Council believes that this is the best means to ensure that people have real control over the resources used to secure their care and support and enables them to make best use of the full range of formal and informal support available. Workers are encouraged to prompt people to consider how direct payments could best meet their needs.

2.3 The Council must not force people to take a direct payment or to allow people to be in a situation where a direct payment is the only way to receive personalised care and support.

2.4 A direct payment will only be arranged once the assessment and eligibility process is complete, the individuals support plan has been validated and a personal budget has been set.

2.5 The Council will provide information about direct payments and ensure that service users who choose to receive a direct payment understand their roles and responsibilities.

2.6 Agreement to receive a direct payment

2.6.1 In order to receive a direct payment, service users must sign an agreement with the Council. This agreement sets out the conditions under which direct payments can be made by Luton Borough Council and includes details of what the service users and Council must do. (see Appendix 1 - Direct Payment Agreement)

2.6.2 The agreement reflects the Council’s policy and requires that, although service users will use the direct payment to purchase and contract for services in their own right, they will do so within the parameters set by the Council to ensure that arrangements are legal and safe and that public money is properly accounted for.

2.6.3 In circumstances where the terms and conditions of the agreement are not met, the Council will take reasonable steps to address the situation. In the event that the situation remains unresolved the Council will consider whether the direct payment is still an appropriate way to meet the service users assessed needs. If necessary and subject to appropriate alternative services being put in place, the Council will discontinue the direct payment.
2.7 Adults with capacity

2.7.1 The Council must be satisfied that the person has capacity to make a request for direct payments to cover some or all of their care needs. The following conditions must be met:

- The adult has capacity to make the request and where there is a nominated person that person agrees to receive the payment.
- The Council is satisfied that the adult or nominated person is capable of managing direct payments either by themselves or with support.
- The Council is satisfied that making direct payments to the adult or nominated person is an appropriate way to meet their needs.

2.7.2 A “nominated person” is anyone who agrees to manage a direct payment on behalf of the person with care needs.

2.7.3 The nominated person must be involved in appropriate stages of the care planning journey.

2.8 Adults without capacity

2.8.1 Where a person has been assessed as lacking capacity to request a direct payment an “authorised person” can request the direct payment on the person's behalf.

2.8.2 An “authorised person” is someone who agrees to manage a direct payment for a person who lacks capacity according to the Mental Capacity Act 2005.

2.8.3 The Council must be satisfied that the authorised person meets all the conditions set out in the authorised person agreement. (previously suitable person agreement). (See Appendix 3)

2.8.4 The 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** – The Council is satisfied that the authorised person will act in the adult’s best interests in arranging the provision of care and support.
- **Capability** – The authorised 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 in question.

2.8.5 The decision should be recorded in the care and support plan. If the request is refused, the person should be provided with a written explanation. The decision can be appealed through the Council’s complaints process.
2.8.4 People who are acting in the capacity of nominated or authorised person for the purpose of the direct payment, or who otherwise have formalised control or influence over the recipients financial affairs; for example lasting power of attorney, may not also be employed to provide care and support services that are paid for through the direct payment.

2.8.5 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.

2.8.6 If no authorised person is available and an individual is unable to consent to a direct payment then no direct payment can be made.

2.9 Exclusions

2.9.1 Direct payments cannot be made to people receiving treatment or rehabilitation for drug or alcohol misuse or to prisoners released on licence, as specified under the Direct Payments Regulations.

2.9.2 Direct payments will not be made to people who have been declared bankrupt.

2.9.3 Direct payments will not be made to people who have existing debt with the Council.

2.9.4 If the debt is repaid consideration will be made as to the appropriateness of agreeing a direct payment and the ability of the individual to manage a direct payment.

3 Administering direct payments

3.1 Direct payments will only be used for arrangements that the Council is fully satisfied are legal and safe, on the basis of the full disclosure of any information requested in order to determine this.

3.2 So that direct payments can be audited, direct payments must be easily identified from other money. They must be paid into a bank or building society account specifically set up for the purpose of receiving and managing direct payments.

3.3 Accounts must be in the name of the person receiving the direct payment and where applicable jointly named with the nominated person or authorised person.

3.4 If the direct payment is paid as a one off a separate bank account is not needed.

3.5 Payments

3.5.1 Payments will be made every four weeks and paid 2 weeks in advance and 2 weeks in arrears.
3.5.2 Payments will be paid net of any financial contribution the individual is assessed as being required to make towards the cost of their support.

3.6 Contingency funds

3.6.1 The amount that is included in a direct payment must be sufficient to meet assessed needs that the council has a duty to meet. This may include an amount that is not needed on a week by week basis but is required to meet additional costs that arise periodically.

3.6.2 Where a direct payment is being used to employ a personal assistant (PA) clear plans should be in place and agreed in the support plan of how needs will be met in the event of the PA being absent.

3.6.3 Costs incurred in meeting individual's needs agreed in their support plan should be met from the personal budget and therefore direct payment, this can include recruitment costs, employers national insurance contribution, employers pension contributions, employers liability insurance and administrative/support costs.

3.7 Financial Contributions

3.7.1 Payments for social care needs are means tested. The Council will carry out a financial assessment on every person that is eligible for support.

3.7.2 If an individual’s means are above the established threshold then they must pay a contribution towards the cost of meeting their care.

3.7.3 Direct payments are paid net of any financial contribution the individual is assessed as being required to make towards the cost of support for their eligible unmet needs, any assessed financial contribution therefore needs to be paid by the direct payment recipient into the direct payment account on a weekly or 4 weekly basis.

3.7.4 The assessed financial contribution is a required part of the personal budget and non-payment of contributions should not be used to reduce care and support received.

3.7.5 It is the individual's responsibility to pay any financial contributions regularly to ensure there is enough money in the direct payment account to pay any invoices for care and support or wages to Personal Assistants.

3.8 Direct Payment Reviews

3.8.1 The Council must be satisfied that the direct payment is being used to meet care and support needs set out in the support plan.

3.8.2 The initial direct payment review should be incorporated with the initial review of the care and support plan 6-8 weeks after sign off. A direct payments review should be carried out after 6 months and thereafter every 12 months in line with the care and support plan and personal budget review.
3.8.3. The initial review should ensure the person is comfortable with using the direct payment, and experiencing no initial issues. Elements such as managing and using the direct payment and long term support arrangements and payroll, insurance and financial contributions should be discussed.

3.8.4 Individuals receiving a high level of direct payment, or who are deemed to present a higher risk, may be subject to more frequent reviews.

3.9 Treatment of surplus

3.9.1 The Council will seek to recover money from the individual if they have a surplus of more than 6 weeks funds in their direct payment bank account and this is not part of any contingency fund that has been agreed.

3.9.2 A contingency fund of more than 6 weeks money can be agreed by a Team Manager for any change in circumstance, fluctuating care needs, potential respite and pension contributions or other employment costs that may be due.

3.9.3 Individuals may also plan for savings to make larger one off purchases or to fund more expensive services, as long as this is planned and agreed in the support plan.

3.9.4 If surplus funds have to be recovered by the Council, the personal budget for the following year should be reduced at the review stage. This is not meant to reduce care and support, unless the individuals unmet needs have changed but to encourage creativity and value for money. See Support Planning, Review and Validation policy p17.

3.10 Use of Direct Payment Support Service

3.10.1 The Council has a responsibility to ensure that service users or their nominated or authorised person has access to appropriate support to manage their direct payment.

3.10.2 Support should be made available after an assessment of an individual’s capability to manage various tasks associated with managing the direct payment has been completed and it has been established that help is necessary.

3.10.3 The support that is provided should be the minimum that is required to enable the direct payment to be managed effectively and should be reviewed annually.

3.10.4 The Council has commissioned an independent support service to assist service users and their nominated and authorised persons manage their direct payment.

3.11 Managed Accounts

3.11.1 Payments will be made into either a Self Managed Account or a Managed Account (financial management service). Accounts may only be used for monies relating to direct payments.
3.11.2 The Council will assess the need for a financial management service.  
(See 3.10 above)

3.11.3 The Council's preferred option is the use of Self Managed Accounts.

3.11.4 Managed Accounts are a financial management service provided by The Direct Payment Support Services, they help service users manage the financial processes associated with direct payments such as; paying invoices or paying personal assistants. Service users and authorised persons retain control of decisions relating to care and support.

3.11.5 Temporary Managed Accounts; The Direct Payment Support Service will manage aspects of the account that are difficult in the beginning and support the service user or authorised person until they feel confident in managing the financial process independently.

4 Using direct payments

4.1 Becoming an employer

4.1.1 By opting to receive a direct payment a person takes on the responsibilities of an employer when choosing to employ a personal assistant to provide their support.

4.1.2 Individuals will be responsible for the National Insurance and PAYE of their employees and ensuring appropriate payments are made to HM Revenue & Customs, the Direct Payment Support Service provide a free payroll service to individuals employing Personal Assistants via a direct payment and this should be used in the first instance.

4.1.3 Individuals who employ personal assistants are required to have Employers Liability Insurance. This will be paid direct by the council and the cost taken from the individual's personal budget.

4.1.4 The Council recommends that personal assistants are paid the living wage. Although the legal requirement is that employers ensure that the minimum wage is paid.

4.1.5 The Council will provide a provisional hourly rate to be used as a guide when employing Personal Assistants. The hourly rate includes provision for national insurance and pension contributions, statutory holiday pay and redundancy pay.

4.1.5 Personal assistants can work for multiple employers but they must comply with the European Working Time Directive legislation. This is to safeguard the health and wellbeing of both the employer and employee.

4.2 Right to Work and Disclosure and Barring Service checks for Personal Assistants
4.2.1 For service users intending to use their direct payments to employ a Personal Assistant for the first time, the provision of the direct payment will be subject to:

a) the requirement to carry out a ‘right to work’ check on the prospective employee and an enhanced check with the Disclosure and Barring Service (DBS) if the Personal Assistant is undertaking regulated activities as defined by the Safeguarding Vulnerable Groups Act 2006. For example:
   - Providing Personal care
   - Provide physical assistance with eating or drinking, toileting, washing, bathing, dressing, oral care, care of skin, hair or nails because of the adult’s age, illness or disability
   - Prompting and supervising adults because of their age, illness or disability who cannot make the decision to eat or drink, go to the toilet, wash, bathe, get dressed or care for their mouth, skin, hair or nails without prompting
   - Anyone who trains, instructs or provides advice or guidance which relates to personal care to adults who need it because of their age, illness or disability

b) the sharing of any disclosed information included on certificates issued to the prospective employees by the DBS with nominated Council Officers.

c) completion of a risk assessment and sign off at Team Manager level where disclosed information is included on a DBS certificate issued to a prospective employer

4.2.2 The Council will act as the ‘umbrella organisation’ through which small employers can submit applications for checks.

4.2.3 Where service users are already in receipt of a direct payment and employing a Personal Assistant, the status of any DBS check will be established at review.

4.2.4 Existing service users will be required to undertake DBS checks for Personal Assistants carrying out regulated activities; who do not have a relevant DBS certificate or whose certificate is more than 3 years old.

4.2.5 DBS checks for all Personal Assistants undertaking regulated activities must be renewed after 3 years.

4.3 Employing family members

4.3.1 The Council’s policy is not to use direct payments to replace existing support networks within families and communities.

4.3.2 Direct payments cannot be used to employ family members living in the same household as the person receiving the services.
4.3.3 In exceptional circumstances the Council will consider the use of direct payments for the employment of family members to provide support above and beyond what family carers would be reasonably expected to provide. Exceptional circumstances must have formal agreement from a Service Manager and should clearly identify that this is the only way needs can be met. (see Appendix 2)

4.3.4 The Care Act makes a distinction between paying a family member for providing ‘care’ and ‘administration/management’ of the direct payment. The Council will consider allowing direct payment recipients to pay family members including those living in the same household to provide support to manage and/or administer the direct payments on a case by case basis.

4.3.5 The family member must be aware of tax and employment implications and any impact on benefits. The circumstances and payment amount should be agreed by the service user, family member and the Council and recorded in the care and support plan.

4.3.6 The amount paid should be a proportion of the direct payment and should not exceed £5 per week, the remaining personal budget should be sufficient to meet the person’s needs.

4.3.7 Any family member providing administrative support, nominated person or authorised person cannot also be paid as a Personal Assistant to provide care and support.

4.4 Self-employed personal assistants

4.4.1 The Council recommend that Personal Assistants are employed and have a signed up to date contract of employment and are paid via PAYE using the payroll service at The Direct Payment Support Service.

4.4.2 The Council will not make direct payments available in cases where the prospective recipient proposes to employ an individual who claims to be self-employed without evidence being supplied to demonstrate that the self-employed status is authentic in relation to the specific job role in question.

4.4.3 In order to demonstrate the employment status of the proposed working relationship, the individual must complete the HMRC Employment Status Indicator (ESI) Tool with the Councils assessment worker or Direct Payment support worker. The answers given must accurately reflect the job description and terms and conditions under which it is proposed the services are to be provided at the relevant time of the contract, therefore these must be provided to the assessment or support worker at the time of completing the ESI tool. HMRC will be bound by the ESI outcome where the employer or their authorised representative provides copies of the printer friendly version of the ESI result screen bearing the 14 digit ESI reference number and the enquiry details screen.

4.5 Personal assistant expenses

4.5.1 It is not expected that expenses to a personal assistant would exceed £15 per week and should be proportionate to the amount of hours provided for day
care/social activities; this does not mean they are entitled to £15 per week. Funds to cover expenses will be included within the personal budget allocation and identified and agreed in the support plan.

4.5.2 Any expenses paid must be identified as a reasonable expense by the Council and the service user is responsible for providing evidence of expenditure for these expenses.

4.5.3 Expenses must be claimed and paid within 3 months.

4.6 Equipment

4.6.1 A direct payment can be used to purchase general equipment to meet assessed needs and agreed in the support plan, if:

a) All alternative funding streams have been explored first

b) it has been identified that the equipment will meet an identified outcome in the most cost effective way and reduces the need for long term support.

4.6.2 A direct payment cannot be made to purchase equipment that Health pay for and/or provide.

4.7 Hospital stays

4.7.1 If the direct payment recipient requires a stay in hospital the direct payment should not automatically be suspended.

4.7.2 Agreement should be sought from the team manager, within a week of the hospital admission, as to whether care and support are required in hospital to meet non-health needs for example; support with mobility or communication or to ensure employment arrangements are maintained. Suspending or terminating the direct payment whilst in hospital could result in a break in the employment contract with the personal assistant and lack of continuity of care upon discharge from hospital.

4.7.3 Personal and medical care are provided by NHS staff whilst in hospital and any additional support needs should be discussed with the direct payment recipient, their carer or personal assistant and the NHS to ensure that both the health and care and support needs are met.

4.7.4 Direct payments for sitting service, day care, social activities, transport or respite should be suspended during a hospital stay

4.7.5 Financial contributions should be taken into account during hospital stays as if the direct payment is not suspended the direct payment recipient will still be liable to pay any financial contributions even if care is not being received. In these cases where additional care and support is not required in hospital the direct payment should be suspended during the hospital stay and restarted upon discharge.
4.7.6 If the nominated or authorised person requires a hospital stay an urgent review must be carried out to ensure the individual continues to receive care and support to meet their needs.

4.8 Short term residential

4.8.1 Direct payments can be used to purchase short stays in care homes.

4.8.2 The stay should not exceed a period of four consecutive weeks in any 12 month period.

4.8.3 If the period between two stays is less than four weeks, then the two stays should be added together to make a cumulative total which should not exceed four weeks. If two stays are more than four weeks apart then they are not added together.

4.8.4 Once an individual has had four consecutive weeks in a care home, or two or more periods separated by less than four weeks which added together total four weeks then direct payments cannot be used to pay for anymore home care services.

4.9 Holidays

4.9.1 An individual is entitled to the same level of care provided by their direct payment to enable them to go on holiday and improve their wellbeing.

4.9.2 Agreement should be sought from the team manager 2 weeks before the holiday start date.

4.9.3 Agreement will be made on a case by case basis and be for no more than 2 weeks.

4.9.4 If a personal assistant or agency is employed to provide care abroad they can be paid at the same rate a personal assistant would be paid in the United Kingdom.

4.9.5 All payments for care whilst on holiday and holiday pay or retainer payments to regular personal assistant should be made from the direct payment. No additional payments will be made by the Council.

4.10 Support retainer payments

4.10.1 Retainer payments will be made to personal assistants in the event of the direct payment recipient going into hospital or unplanned respite care. Payments will be made at 4 weeks full pay and 6 weeks half pay.

4.10.2 Retainer payments will be paid for up to two periods of unplanned respite or hospital stays in a financial year.

4.10.3 For planned respite or if the service user goes on holiday the personal assistant will receive a retainer of up to four weeks half pay or take it as part of their annual leave entitlement.
4.11 Exclusions

4.11.1 Direct payments cannot be used to purchase:

- Services provided directly by the Council.
- Intermediate care and reablement
- Long term residential care; although people living in care homes may receive direct payments in relation to non-residential care services. For example day-time activities or trying out independent living arrangements.

5 Audit and monitoring

5.1 Audit and monitoring requirements

5.1.1 The Council must be satisfied that the direct payment is being used to meet the eligible unmet care and support needs set out and agreed in the support plan.

5.1.2 The Council has a responsibility to ensure that public money is spent and accounted for appropriately.

5.1.3 The Council requires a robust and flexible policy of auditing direct payments to give assurance that individuals are achieving best possible outcomes within the available resources and that funds are being spent appropriately.

5.1.4 Where individuals are managing their own budgets through direct payments the Council requires a consistent and thorough approach to record keeping that is proportionate to the needs of the individual.

5.1.5 Individuals will be required to keep records of how they have spent their direct payment and submit these to the Council for monitoring as required. Records may include bank statements, invoices and receipts, payroll records or other relevant documents specified by the Council.

5.1.6 The council will adopt a light touch monitoring approach and individuals with self-managed accounts will forward direct payment returns, invoices and receipts and bank statements to the Direct Payment Finance Team on a quarterly basis.

5.1.7 The Council will review the direct payment within the first six months of making the first payment. Thereafter the Council will review the payment no later than every 12 months.

5.1.8 Individuals receiving a high level of direct payment or who are deemed to present a higher risk, may be subject to enhanced monitoring arrangements.

5.2 Suspension and termination of direct payments

5.2.1 Direct payments may be suspended or terminated as follows:

- By the individual –
- The individual can choose to terminate a direct payment at any time; this may because they no longer wish to receive direct payments; they are no longer able to manage the direct payment or they no longer need the support for which the direct payment is made.

- If the individual chooses to terminate a direct payment and requires Luton Borough Council (LBC) to arrange alternative services, the Council will require a minimum of 4 weeks’ notice to make appropriate arrangements.

- If an individual chooses to terminate a direct payment, the Council will initiate a review to determine how best to meet their eligible unmet needs

  ➢ By Luton Borough Council –

  - If it is apparent that the person is no longer capable of managing the direct payments whether on their own or with support

  - The person no longer needs the support for which the direct payment is made

  - If one or more of the qualifying criteria or terms in agreement are breached by the individual

  - If the recipient is declared bankrupt or involved in any type of corruption

  - If the Council is no longer satisfied that the authorised person is acting in the best interests of the person.

  - For reasons of illegal or fraudulent use or misuse of a direct payment or if the Council are unable to obtain records and information to verify if care and support needs are being met in an appropriate way.

  - As part of a safe guarding investigation or plan under the SOVA Protocol

5.2.2 In such cases the Council will put a managed service in place to ensure that the individual’s assessed eligible unmet needs are met. The Council will also initiate a review to consider revision of the support plan.

5.2.3 Notice required will depend on the individual circumstances of each case and the evaluation of any risks or other relevant factors.

5.2.4 Once a direct payment has been suspended or terminated for the above reasons a new direct payment will not be offered until all outstanding issues from the original direct payment have been resolved, for example all outstanding balances are repaid.
5.3 Misuse and fraud

5.3.1 It is a requirement that direct payments are used to meet the assessed eligible unmet needs of the individual, in accordance with any conditions imposed in the validated support plan.

5.3.2 In cases of misuse or fraud relating to the use if a direct payment, LBC will take action to recover all or part of the monies where appropriate.

5.3.3 The Council may seek repayment from the nominated or authorised person where they have been responsible for managing the direct payment on the service users behalf.

5.3.4 In serious cases, the individual may no longer be eligible for a direct payment in the future.

5.4 Disputes

5.4.1 Any disputes in relation to the allocation of a personal budget or provision of a direct payment will be subject to Luton Borough Council's statutory complaints procedure.

5.4.2 If the recipient of a direct payment or their nominated or authorised person has a complaint about services they have purchased independently, they should address this with the service provider or employee concerned.
Appendix 1: Direct Payment Agreement

LUTON BOROUGH COUNCIL
DIRECT PAYMENT AGREEMENT

This agreement is the document which tells you about your Direct Payment; your responsibilities, your money and how you will be paid.

1. Introduction
2. Luton Borough Council’s Responsibilities
3. Direct Payment Recipient’s Responsibilities
4. Financial and Monitoring Requirements
5. Use of Direct Payments
6. Acting as an Employer and Contracting with a Service Provider
7. Suspension and Termination of the Direct Payment Agreement
8. Data Protection
DIRECT PAYMENT AGREEMENT

This agreement sets out the responsibilities and obligations of:

Luton Borough Council (the Council) and

Name: ________________________________ (the Direct Payment Recipient)
Address: ___________________________________________________________

I consent to receive Direct Payments and confirm that I understand and will comply with the conditions in this agreement.

Signature of recipient:...........................................................................
Name of Direct payment recipient (please print):...........................................
Date:.................................................................................................
Signature of witness:.............................................................................
Name of witness: (please print):.................................................................
Date:.................................................................................................
Agreed on behalf of Luton Borough Council:..............................................
Name and position of officer (please print):.................................................
...............................................................................................................
Date:.................................................................................................

Nominee(s)

It has been agreed that the following person/s will act as nominee(s) to support the Direct Payment recipient to manage their Direct Payment:

1. Name of Nominee:.................................................................
   Relationship to Service User:

Signature of Nominee:.................................................................
Date:........................................
2. Name of Nominee: .................................................................
   Relationship to Service User:
   
   Signature of Nominee: ..............................................
   Date: ...........................................

1 Introduction

   The agreement is made on the basis that:

1.1 You have been assessed as being eligible to receive a social care service and have agreed that the services identified in your support plan should be provided via a direct payment.

1.2 The Council and Direct Payment recipient (you) have agreed that you should take direct responsibility for the provision of the services required to meet your needs and will be responsible for the day to day management of the direct payment.

1.3 You have agreed to make all necessary arrangements to ensure the said services are provided, with support if necessary.

1.4 The Council has agreed to make arrangements to fund the provision of the said services as set out in your support plan.

2 Luton Borough Council will:

2.1 Ensure that you have access to adequate information and/or support to make best use of the direct payment.

2.2 Make Direct Payments into your Direct Payment bank account, at the agreed frequency, in accordance with the details listed in your support plan, in order to meet your assessed eligible needs.

2.3 Carry out and a DBS check (Disclosure and Barring System) for all employees before they commence employment with you, where necessary.

2.4 Review your direct payment and this agreement within 6-8 weeks and at 6 months in the first year, to decide whether the service is meeting the assessed needs and to review how the direct payment is being managed.

2.5 Reassess your needs and review your support plan and the operation of this agreement annually, or more frequently, if there is a change in circumstances or a high level of risk, to determine whether the assessed needs have changed, how arrangements for the provision of services are being managed, whether you remain willing to receive direct payments and whether you remain able to manage the direct payment.

2.6 Following a review, advise of any change in assessed needs and give appropriate notice of any changes (at least two week’s notice in writing)
stating the reasons). Payments may be decreased or increased, if there is a reduction in the direct payment, Luton Borough Council will take into account any employment or contractual responsibilities that are in place.

3 The Direct Payment Recipient will:

3.1 Open a separate bank account for the sole purpose of securing services that meet the care needs identified in the support plan. This account may only be used for monies relating to direct payments.

3.2 Use any interest earned from direct payments towards the cost of services to meet the assessed needs.

3.3 Be liable for any bank charges which arise as a result of mismanagement of direct payments.

3.4 Secure services and comply with all safety and legal requirements that may arise in making such arrangements. (see sections 4.5 and 6)

3.5 Pay all invoices and costs relating to the purchasing of services using the direct payment on time, including employee costs and any services purchased from an agency or organisation.

3.6 Have a contingency plan that can be implemented if the arrangements for the provision of service that meet the assessed needs break down. Which must be recorded in your Support Plan.

3.7 Notify and/or advise next of kin/executor that, the Council must be informed at the earliest opportunity of any changes in circumstances which would affect your assessed needs or entitlement to direct payments. This includes any changes in capacity to consent or ability to manage direct payments or in the event of the death of the Direct Payment recipient.

3.8 Notify or advise next of kin/executor that in the event of death the direct payment account and any funds contained in it will not be regarded as an asset of the estate.

3.9 Following the ending of the direct payment, arrange for the next of kin/executor to provide documents relating to the direct payment in order for a full financial audit to be undertaken and recovery of any money due. If the expected amount is not available to be returned from the direct payment account the Council may claim from the estate.

4 Financial and Monitoring Requirements

4.1 Luton Borough Council will assess your financial contribution to the direct payment under Fair Access to Care Services and send notification of any service user contribution separately.
4.2 If you are assessed to make a financial contribution towards your care this must be paid into your direct payment account either weekly or 4 weekly.

4.3 You will adjust any financial contribution towards the cost of the services assessed in line with annual changes in state benefits following the April review and notification from the Financial Assessment Team.

4.4 You will comply with the financial and monitoring requirements, agreeing to maintain adequate financial records of all direct payments made. (As set out in 4.5 below)

4.5 You will keep your financial and administrative records in a safe place and in an orderly manner and agree to submit these for auditing, when required but at least quarterly. Failure to submit records as requested may lead to suspension or withdrawal of the direct payment. Documents include:

- Completed timesheets, holiday and sickness records – if relevant
- PAYE, national Insurance and any other payroll records, as applicable
- Bank statements relating to the Direct Payment account
- A record of all payments (cheque number, payee, amount)
- Related invoices
- Related receipts
- Items purchased as specified in the support plan
- Insurance documents

4.6 You will inform Luton Borough Council if you have not received a service for more than four weeks, in order for the Council to ensure your assessed needs are being met. The Council may stop your direct payment temporarily so you are not charged for services not being received.

5 Use of Direct Payments

5.1 You will be given a copy of your assessment and support plan, which states your assessed eligible needs. A direct payment is being provided to meet these needs, instead of a service provided by Luton Borough Council.

5.2 You agree to only use the direct payments to meet the assessed needs as described in your support plan.

5.3 You will not:

- Make cash payments from the direct payment account.
- Use the direct payment to secure services from a partner, close relative or anyone else living in the same household as you unless otherwise agreed by the Council in writing.
- Use the direct payment to buy health services, long term residential care, pay household bills, to buy food or other personal expenses.
• Use the direct payment to pay any other charges owed to the Council.

5.4 You agree to repay the direct payment or any part of it if the Council is satisfied that it has not been used appropriately in accordance with this agreement and current direct payment legislation.

5.5 The misuse of direct payments may lead to payments being stopped with immediate effect.

5.6 Luton Borough Council will require you to repay any part of the direct payment that is not spent on meeting your assessed needs.

5.7 You can accrue up to 6 weeks of your weekly direct payment amount. Luton Borough Council will recoup any funds that are in addition to this and have not been agreed as part of a contingency fund.

6 Acting as an Employer and Contracting with a Service Provider

6.1 You understand that the arrangements for employing staff or contracting with a service provider is between you and the employee(s) or service provider and those people you employ or contract with to provide a service is a private arrangement. Luton Borough Council is not involved in the arrangement and bears no responsibility to you or the service user or the personal assistant(s) or service provider that you employ, with regard to the employment relationship or contract.

6.2 You will make any changes with agencies, organisations or employees from which services are obtained, following an increase or decrease in direct payments.

6.3 The Council recommends you purchase care from a provider that is registered with the Care Quality Commission (CQC) who inspect the standards provided by agencies nationally. A list of registered providers can be found on the Council’s Adult Directory on Luton Borough Councils website.

6.4 If in the opinion of Luton Borough Council, the service provider is not able to provide an adequate service or is unfit to provide a service, Luton Borough Council will require you to find an alternative service or Luton Borough Council will suspend the direct payment either temporarily or permanently, if necessary and provide commissioned services to meet your needs.

6.5 If you are employing staff with a direct payment you must ensure that you understand your legal obligations as an employer and agree to:

➢ Social Services carrying out a DBS (Disclosure and Barring Services) check of all personal assistants you employ who carry out a regulatory service, to safeguard you and your family
Ensure that all staff have up to date DBS checks and are renewed every 3 years
Give the personal assistant(s) notice, as outlined in their contract, and redundancy pay when applicable, as per statute
Ensure that tax and National Insurance are paid for all employees
Provide a pension scheme for all entitled personal assistants and ensure that pension contributions are paid.
Ensure that you have an up to date certificate of Employer’s Liability and Public Liability Insurance and supply policy documentation when requested.
Seek advice regarding any employment concerns and issues from this insurance
Provide a safe working environment, ensure safe working practices, provide appropriate staff training and comply with employment legislation
Provide staff with a contract of employment and a job description
Give staff reasonable notice of when they are required to work
Treat staff properly and ensure that they have adequate breaks, refreshment and accommodation if necessary, when working
You will agree not to use the Direct Payment to employ a spouse, partner or close relative living in the same household without explicit written agreement from Luton Borough Council
You will inform the Direct Payment Support Service when an employee leaves and when you wish to recruit a new personal assistant

7 Suspension and termination of the Direct Payment Agreement

7.1 The Council may suspend payment of the Direct Payment temporarily if the Direct Payment recipient is admitted to hospital or are otherwise temporarily unable to receive services. Any decision to suspend payment will take into account any reasonable existing liabilities including periods of notice to service arrangements and retainer payments to personal assistants.

7.2 The Council has the right to suspend or stop the direct payment if it is decided that the arrangements made for purchasing services are not adequate to meet the needs and outcomes of the Support Plan.

7.3 The Council has the right to suspend or stop the Direct Payment if any of the terms and conditions of this agreement has not been met.

7.4 The Council will give 4 weeks notice in writing with reasons for suspension or termination.

7.5 The Council will terminate this agreement with immediate effect if any part of the Direct Payment is used for the following purposes:
- Anything illegal
- Gambling
- Investment

7.6 The Council will consider the Direct Payment recipient’s contractual and statutory responsibilities when determining the balance of the Direct Payment
to be repaid to the Council in the event of the death of the Direct Payment recipient or in the event of them becoming unable to manage the Direct Payment.

7.7 The Council will stop the Direct Payment when the entitlement to Direct Payments has ended or Direct Payments are no longer required.

7.8 Subject to the Council’s right to terminate the agreement with immediate effect under section 7.5 above, in any other circumstances either party may terminate this agreement by giving the other party 4 weeks’ notice in writing. The period of 4 weeks will commence on receipt of the written notice from either party.

7.9 If notice for termination is given, the amount of the payment due for the period in which the date of termination falls shall be adjusted pro rata and any overpayment to the recipient will be reimbursed to the Council, not later than 30 days from Notice of Termination.

7.10 The Direct Payment recipient agrees to repay the Council any overpayments as soon as such overpayment is identified. The Council reserves the right to charge interest on any monies owed, which are not repaid within 30 days of receipt of invoice requesting payment. Interest will be charged at 2% above Bank of England Base Rate.

7.11 If such monies are not repaid upon demand the Council reserves the right to issue County Court proceedings against the recipient, which will include a claim for Costs, Fees and Interest.

8. Data Protection

8.1 The Council will keep the information you give us both on computer and paper records and treat it as confidential and will not pass it on to any unauthorised person however it may pass on some of the information to meet legal or welfare needs.

8.2 The Council is under a duty to protect the public funds it administers, and to this end may use the information you have provided 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.
**Appendix 2: Exceptional Circumstances Agreement**

Luton Borough Council, Adult Social Care, Direct Payments, Exceptional Circumstances Form

**PERSONAL DETAILS**

*Please note: The term ‘direct payment recipient’ is understood to encompass the service user or an authorised person. Please clearly identify if the direct payment recipient is acting as a authorised person*

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<thead>
<tr>
<th>Name of direct payment recipient</th>
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<tr>
<th>LAS number</th>
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<th>Address</th>
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<th>Name of proposed Personal Assistant</th>
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<th>Address</th>
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(If currently different from above)

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<th>Relationship to DP recipient</th>
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<th>Proposed address</th>
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(Where DP recipient & proposed PA will reside)

**CURRENT POSITION**

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<th>Care needs:</th>
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<table>
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<tr>
<th>Care Provisions:</th>
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**FURTHER DETAILS**

Has an independent advocate and/or independent body been involved to provide support and advice with the completion of this application and the issues that it raises? Please provide any relevant details:

**REASON FOR APPLICATION:**

(Include any options that have been considered & tried and the reasons they have been unsuccessful. Please submit evidence of any relevant safeguarding arrangements and risk assessments)

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<th>Review date/End date:</th>
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(In the majority of cases employment of family members should only be on a temporary basis until a permanent PA can be recruited or is only necessary for an interim period ie: end of life care. A review date should be set within 3 months and 6 monthly thereafter)

**NAME OF ALLOCATED KEY WORKER**

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<th>Signature &amp; Date</th>
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**NAME OF TEAM MANAGER**

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<th>Signature &amp; Date</th>
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**APPROVAL**

This application was approved with the following actions/conditions:

This application was not approved for the following reasons:

Further comments:

**DECISION MADE BY RESOURCE ALLOCATION PANEL ON:**

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<th>Name of Service Manager</th>
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<th>Signature</th>
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Appendix 3: Authorised Person Agreement

LUTON BOROUGH COUNCIL: AUTHORISED PERSON AGREEMENT

1. Introduction

1.1 Luton Borough Council has assessed

………………………………………………………………… (Service User)
………………………………………………………………… (LAS Number)

as being eligible to receive a social care service and has agreed that the services identified in their support plan should be provided via a direct payment.

1.2 Luton Borough Council has assessed ……………………………………………
(Service User) as lacking capacity, (or they are reasonably believed to lack capacity), as defined in the Mental Capacity Act 2005.

1.3 Luton Borough Council has assessed and agreed that you

………………………………………………………………… (Authorised Person)
………………………………………………………………… (LAS Number)

will act on behalf of and in the best interests of …………………………………
(Service User) in respect of managing all aspects of the direct payment.

1.4 As the authorised person you will be responsible for the day to day management of the direct payment and will therefore represent the service user, as named above, under the terms of this Authorised Person Agreement and in dealing with providers and employees.

1.5. As the authorised person it is your responsibility to inform Luton Borough Council of any changes in the needs of the service user, in which case, Luton Borough Council may alter the direct payment accordingly.

2. Luton Borough Council will:

2.1. Ensure that you, as the authorised person, have access to adequate information and/or support to make best use of the direct payment.

2.2. Carry out and an enhanced DBS (Disclosure and Barring Services) check for all employees before they commence employment with you, where necessary.

2.3. Review the support plan and this agreement at least twice within the first year of the direct payment being made. Thereafter reviews will be carried out
annually, unless there is a change in circumstances. This may result in payments being decreased or increased. If there is a reduction in the direct payment, Luton Borough Council will take into account any employment or contractual responsibilities that are in place.

3. Financial and Monitoring Requirements

3.1 Luton Borough Council will assess …………………………………………….’s (Service User) financial contribution to the direct payment under Fair Access to Care Services and send notification of any service user contribution separately.

3.2. You will comply with the financial and monitoring requirements, agreeing to maintain adequate financial records of all direct payments made.

3.3. You will keep your financial and administrative records in a safe place and in an orderly manner and agree to submit these for auditing, when required. Failure to submit records as requested may lead to suspension or withdrawal of the direct payment.

3.4. You will inform Luton Borough Council if the service user has not received a service for more than four weeks.

4. Use of Direct Payments

4.1. You should have a copy of …………………………………………….’s assessment and support plan which states their assessed eligible needs. A direct payment is being provided to meet their needs, instead of a service provided by Luton Borough Council.

4.2. You agree to use the direct payments to meet the assessed needs only as described in the support plan.

4.3. The misuse of direct payments may lead to payments being stopped with immediate effect. Luton Borough Council will require you to repay any part of the direct payment that is not spent on meeting the assessed needs of the service user.

5. Acting as an Employer and Contracting with a Service Provider

5.1. As the authorised person you understand that the arrangements for employing staff or contracting with a service provider is between you and the employee(s) or service provider, on behalf of the service user, and those people you employ or contract with to provide a service, on behalf of the service user, is a private arrangement. Luton Borough Council is not involved in the arrangement and bears no responsibility to you or the service user or the personal assistant(s) or service provider that you employ, on behalf of the service user, with regard to the employment relationship or contract.
5.2. If in the opinion of Luton Borough Council, the service provider is not able to provide an adequate service or is unfit to provide a service, Luton Borough Council will require you, as the authorised person, to find an alternative service or Luton Borough Council will suspend the direct payment either temporarily or permanently, if necessary.

5.3. If you are employing staff with a direct payment you must ensure that you understand your legal obligations as an employer and agree to:

- Social Services carrying out an enhanced Disclosure and Barring Services check of all personal assistants you employ to safeguard the service user and their family
- Ensure that all staff have up to date DBS checks
- Give the personal assistant(s) notice, as outlined in their contract, and redundancy pay when applicable, as per statute
- Ensure that tax and National Insurance are paid for all employees
- Ensure that you have an up to date certificate of Employer’s Liability Insurance
- Seek advice regarding any employment concerns and issues from this insurance
- Provide a safe working environment, ensure safe working practices, provide appropriate staff training and comply with employment legislation
- Provide staff with a contract of employment and a job description
- Give staff reasonable notice of when they are required to work
- Treat staff properly and ensure that they have adequate breaks, refreshment and accommodation if necessary, when working
- You will agree not to use the Direct Payment to employ a spouse, partner or close relative living in the same household without explicit written agreement from Luton Borough Council
- You will inform the Direct Payment Support Service when an employee leaves and when you wish to recruit a new personal assistant

6. Agreement

6.1. The Authorised Person Agreement is made between Luton Borough Council and …………………………………………........... (Authorised Person). This agreement and the relevant policy and procedure have been explained to the authorised person who will be in receipt of the direct payment.

6.2. You, as the authorised person, have read and understood this agreement and understand your roles and responsibilities to:

- Follow good practice in making decisions on behalf of the person who lacks capacity and act in their best interests
- Be accountable for the way the direct payment is used
- Involve the person who lacks capacity as far as reasonably practicable and give them as much control and independence as possible, particularly during periods when capacity has been regained
Inform Luton Borough Council of any changes or difficulties, or as soon as you believe the service user has regained capacity

- Keep to the terms of this agreement
- Use the direct payments to purchase or obtain the services necessary to meet the needs of the person who lacks capacity, as agree by Luton Borough Council
- Comply with any legal responsibilities, such as those relating to the employment of staff
- Act lawfully as an employer
- Contact Luton Borough Council as soon as you no longer want to carry out the role of an authorised person
- Not use the direct payment to secure services from a spouse, civil partner or partner of the individual or a close relative, spouse or partner of a close relative of the service user who is currently living in the same household without express permission from Luton Borough Council
- Open a separate direct payments bank account and provide Luton Borough Council with the details on the form given to you

**Authorised Person**
I have read and understood this agreement and agree to receive and manage a direct payment on behalf of .................................................. (Service User) within the terms set out in this agreement.

Signature: ................................................................................................................

Print Name: ...........................................................................................................

Date: .......................................................................................................................

---

**Luton Borough Council**

Allocated Key Worker: ............................................................................................

Signature: ................................................................................................................

Date: .......................................................................................................................