

DIRECT PAYMENTS POLICY

**London Borough of Camden
Adult Social Care**

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1 INTRODUCTION

1.1 What are Direct Payments?

"I am in control of planning my care and support"

Direct Payments are one way for an individual, who has been assessed as eligible to receive support from Adult Social Care (ASC), to receive their personal budget. Direct Payments are monetary payments paid directly to the person or their representative.

Direct Payments are the Government's preferred mechanism for personalised care and support. They provide independence, choice and control by enabling people to commission their own care and support in order to meet the outcomes agreed in their support plan.

1.2 Direct Payments Policy Context & Legislation

The legislative context for Direct Payments is set out in the Care Act 2014, the Care and Support (Direct Payments) Regulations 2014, and Section 117(2C) of the Mental Health Act 1983.

2 ABOUT DIRECT PAYMENTS

2.1 Direct Payments in Camden

"I can decide the kind of support I need and when, where and how to receive it"

The London Borough of Camden (LBC) is committed to ensuring that the option of a Direct Payment is explored with, and understood by, everyone who is eligible to receive one.

All eligible people will be given information about Direct Payments at the point of assessment and review, and will have access to appropriate information, support and advice, in an accessible format, through the whole process.

Decisions on eligibility for a Direct Payment will be made promptly, and where a Direct Payment is not considered appropriate, the decision and reason will be recorded and shared.

2.2 Who may receive a Direct Payment

ASC has a duty to offer Direct Payment's to Camden residents who are both eligible and who consent to receive them. This includes:

- adults with a mental, physical or learning disability
- those who provide unpaid care to adults with a mental, physical or learning disability

- an authorised person who agrees to manage a Direct Payment for a person who lacks capacity according to the Mental Capacity Act 2005
- a nominated person where the eligible person has capacity but does not wish to manage the Direct Payment themselves
- a person living in long-term residential care may receive Direct Payments for non-residential care services for example to try out independent living or for additional day activities.

2.3 Who may not receive a Direct Payment

The regulations specify that Direct Payments may not be offered to certain people as follows:

- Direct Payments cannot currently be used to secure long-term residential care, see Section 3.9 for further details.
- People restricted by certain criminal justice legislation e.g. those subject to alcohol treatment or drug rehabilitation requirements, or those released from prison on licence. See Schedule 1 of the Care and Support (Direct Payments) Regulations 2014, for further details.
- Those who have previously received a Direct Payment but who did not manage it well.

2.4 Assisting People with Direct Payments

LBC will work to support people as far as possible to make decisions for themselves. All eligible individuals wishing to explore the option of a Direct Payment will be referred to the Direct Payments Support Service. Additionally, spouses, other family members and friends are often able to provide support.

Authorised Person

Where an individual lacks the mental capacity to make the decision to manage their own care and support they will be assessed under the Mental Capacity Act 2005. In these cases an “authorised person” can be nominated, following a best interests meeting, in accordance with the Act. This is a meeting held with those relevant to the individual and the Council, to determine whether the decision in question is in the best interests of the individual.

The authorised person will sign an agreement to receive and manage the money on behalf of the individual. By doing so they take on the legal responsibility related to employing and managing paid staff employed through the Direct Payments scheme.

If an authorised person is not a close friend, spouse, partner or a relative of the person receiving support, the authorised person must complete a Disclosure and Barring Service (DBS) check prior to taking on the responsibility of managing the Direct Payment funds.

A court-appointed deputy or a *donee* of Power of Attorney (enduring Power of Attorney, or its replacement, Lasting Power of Attorney) can act as an authorised person to receive a Direct Payment on behalf of an individual who lacks capacity, if that person agrees to this.

Where the Council acts as Deputy for Property & Affairs or Corporate Appointee it will not act as the Authorised Person.

Where someone with capacity was receiving a Direct Payment but then loses capacity to consent, the Council will discontinue the Direct Payment to that person and consider making payments to an authorised person instead. In the interim, the Council will make alternative arrangements to ensure continuity of support for the person concerned. Where an individual loses capacity and there is a nominated person receiving the Direct Payment, then the Council will review the suitability of continuing that arrangement on a temporary basis until the appointment of an authorised person can be considered.

Nominated Person

Individuals who do not wish to take on the responsibility of managing the Direct Payment can choose to nominate another person to administer the money. The purpose of this arrangement is to enable people who receive support to retain control over their support and care, while not having to manage the financial part of this, as the nominated person will do this on their behalf. Often the nominated person will be a family member or spouse.

The nominated person will sign an agreement to receive and manage the money on behalf of the individual. By doing so they take on the legal responsibility related to employing and managing paid staff employed through the Direct Payments scheme.

If a nominated person is not a close friend, spouse, partner or a relative of the person receiving support, the nominated person will be required to have a Disclosure and Barring Service (DBS) check completed prior to taking on the responsibility of managing the allocated funds.

To avoid any potential conflict of interest, the nominated person cannot also be employed as a Personal Assistant by the supported individual.

2.5 What Direct Payments can be used for

Direct Payments can only be used to pay for support that meets the outcomes agreed in the support plan. The support, services and equipment purchased need to be legal, safe and not harm anyone else.

Examples of Direct Payment purchases that would support outcomes are:

- employing a Personal Assistant to provide support with household tasks or personal care
- buying personal care or other services from a private care provider
- accessing social or educational activities in the local community by paying towards support costs
- respite care to provide a break for unpaid carers providing a substantial amount of support to a person with disabilities or an older person
- equipment that the council has assessed the individual as needing and is included in the support plan, such as that used to support and maintain independence at home.

2.6 What Direct Payments cannot be used for

The appropriate use of Direct Payments will vary from person to person, and should always be in line with the outcomes agreed in the support plan. However there are a number of things that Direct Payments cannot be used for:

- anything that is illegal
- pay household bills or other personal expenses such as food or clothes
- anything that should be provided by the NHS or Primary Care Trust (e.g. pressure relieving mattresses). The NHS offers health personal budgets for such support needs
- long term residential care
- local authority provided services
- to employ family members living at the same address (unless specifically agreed in advance with the Council, see 3.7)
- anything that should be provided by other bodies, for example transport

For any item not listed in the support plan, individuals should refer to Camden ASC before purchasing goods or services with Direct Payment funds. Funds used to purchase goods or services outside of the support plan will be reclaimed and may result in suspension or termination of the Direct Payment.

2.7 Information and Advice

"I have access to easy-to-understand information about care and support which is consistent, accurate, accessible and up to date."

Assessment and Care Management:

When an individual is assessed as being eligible for support, Direct Payments will be discussed with them throughout the care and support planning, or review, process. The individual will be informed of both the benefits and responsibilities of receiving a Direct Payment to manage their own care and support.

The care manager will assess the individual's suitability to understand and manage a Direct Payment, considering factors such as:

- do they consent to have their care and support met via a Direct Payment
- do they understand how a Direct Payment differs from commissioned care
- do they understand their responsibilities in managing the funds provided to meet the outcomes identified in the support plan
- do they understand the financial assessment process
- have they the ability to manage a Direct Payment, with support if necessary, including fulfilling employer and contractual responsibilities where appropriate

If the care manager is satisfied that the above criteria are met then the individual will be referred to Support Services to discuss the Direct Payment further and arrange the set-up.

Direct Payment Support Services

All individuals eligible for support who wish to explore a Direct Payment will be referred to Support Services.

Individuals may need support with setting up and managing their Direct Payment and fulfilling their role as an employer. This support is crucial in promoting choice, independence and flexible support.

Two organisations provide Direct Payments information, advice and peer support in Camden: Age UK Camden and Personalisation Support in Camden. This support includes:

- assisting with the set-up of the Direct Payment
- assisting individuals in recruiting a suitable Personal Assistant or provider, and in meeting employer responsibilities.
- helping with budgeting (e.g. to ensure there is enough money put aside for carer's holiday entitlement and liability insurance)
- providing ongoing support with queries from people who receive support, or where issues arise around their Direct Payment

All individuals must have a face to face meeting with a representative from a Camden Support Service if they wish to take up a Direct Payment. This is to ensure that all necessary paperwork is completed and that rights and responsibilities as an employer are explained to the individual or their authorised/nominated person.

Support Services will discuss various options with the individual including ways of managing a Direct Payment, to best achieve chosen outcomes. However, the individual will remain in control of their care, how it is arranged and who it is provided by.

Direct Payments Monitoring Team:

The Direct Payments Monitoring Team (DPMT) within Adult Social Care is responsible for the payment and monitoring of Direct Payments.

Once completed forms are received from Support Services, including the Direct Payment Agreement Form, the DPMT will arrange for payment to be made to the nominated account and will confirm in writing to the Direct Payment recipient that the arrangement is now in place.

The DPMT will then monitor all Direct Payments on an ongoing basis in line with the approach detailed in Section 3.15.

2.8 Safeguarding

People who receive a Direct Payment are entitled to make their own decisions and to take risks in the same way that any other person is entitled to make choices involving risk. It is however essential to put safeguards in place to prevent any potential abuse and to support Direct Payment recipients with making potentially hazardous decisions.

Safeguarding is everybody's responsibility and therefore it is essential that council staff, staff and volunteers of partner organisations, and members of the public remain alert and vigilant to the potential of abuse.

As with other people who receive support, those receiving Direct Payment may be at risk of abuse from family members, friends, carers, neighbours, professionals and strangers. People employing Personal Assistants may be at greater risk of abuse depending on the level of rigour and pre-employment checks undertaken during the recruitment process.

People in receipt of a Direct Payment have a detailed support plan and annual care management review, as do all people who receive support. If needs change during the year they will be reassessed and their Direct Payment allocation may change.

In addition to the annual review there are a number of provisions in place to protect individuals from potential risks. These include:

- *Direct Payment Support Services.* Personalisation in Camden and Age UK Camden are two charitable organisations which have been contracted to provide information and advice to people who receive Direct Payments.
- *Support with the recruitment process.* Direct Payments Support Services will support individuals to identify a suitable Personal Assistant or support worker. They will assist with all stages of the recruitment process; advertising, shortlisting and interviewing.

- *Contract of employment.* Those receiving Direct Payment will sign a contract of employment with their staff. The contract will highlight terms and conditions of the Personal Assistant's work and should include a detailed job description so that the Personal Assistant's role and responsibilities are clear at an early stage of the care provision.
- *CQC registration.* Where an individual chooses to purchase support through a private agency, the agency should hold Care Quality Commission registration where regulated activities are undertaken e.g. personal care. Regulated activities are those listed in Schedule 1 of the Health and Social Care Act 2008.
- *Contingency planning.* Direct Payment Support Services will assist the individual with appropriate contingency planning, including backup care provision and ensuring that there are sufficient funds set aside from the Direct Payment budget to cover expenses and bills related to the provision of Direct Payments.
- *Monitoring.* The monitoring approach undertaken by ASC has safeguarding at the core, with the Direct Payments Monitoring Team, care management and Support Services working closely together to ensure any potential concerns are reviewed promptly.

2.9 Complaints

When a Direct Payment recipient is not satisfied with the service received or decisions made by Camden staff, they are entitled to make a complaint through the Council's published complaints procedure by writing to the Adult Social Care Complaints Unit, London Borough of Camden, 5 Pancras Square c/o Town Hall, Judd Street London WC1H 9JE or online at <http://www.camden.gov.uk/ccm/navigation/council-and-democracy/having-your-say/complaints-and-enquiries/adult-social-care-complaints/>

When a Direct Payment recipient is not satisfied with the service received from a Personal Assistant supplied by an agency, they should contact the agency manager. Where they are still not satisfied and the agency is registered with the Care Quality Commission (CQC), then they can contact CQC via enquiries@cqc.org.uk

When a Direct Payment recipient is not satisfied with the service received from a Personal Assistant directly employed, then as the employer, they are responsible for dealing with any concerns about their performance. Direct Payment Support Services can be contacted for advice in these circumstances.

3 CAMDEN'S OPERATING & FINANCIAL POLICY FOR DIRECT PAYMENTS

"I know the amount of money available to me for care and support needs, and I can determine how this is used (whether it's my own money, direct payment, or a council managed personal budget)"

3.1 Direct Payments and Personal Budgets

The Direct Payment an individual will receive to purchase their support will be confirmed following the calculation of the Personal Budget, provided under the Council's Self Directed Support Policy.

3.2 The Direct Payment Agreement Form

All individuals agreeing to a Direct Payment will be required to sign an Agreement Form before the arrangement will commence. The Agreement Form sets out the summary terms and conditions associated with receiving the Direct Payment, drawn from the detail of this policy.

The Direct Payment Agreement Form will be signed by the person agreeing to manage the funds. This may be the person eligible for support themselves, their identified nominated person, or an authorised person where the supported individual does not have capacity.

A copy of the Direct Payment Agreement Form is attached at Appendix A.

3.3 Payment Methods & Record Keeping

There are three payment methods by which an individual may receive a Direct Payment from ASC, with the prepaid card being the Council's default option. In all cases, Direct Payment recipients must keep appropriate records for six years and along with routine monitoring (see Section 3.15), they may be asked to submit additional information from time to time.

1. *Prepaid Card:* individuals can receive a pre-paid card and pay for support by telephone or internet banking, including standing order and direct debit. The prepaid card works like a debit card, and reduces time spent on completing financial returns. This is ASC's default position for paying Direct Payments.

Some individuals may need to pay for certain providers, as agreed in their support plan, by cash. There are limited reasons for this as most providers take card or bank payments. Where this is identified, individuals and their care manager should discuss and agree how this will be monitored (usually with supplying receipts/details of payees). The proportion of weekly budget agreed to be spent in this way should be recorded for monitoring purposes.

2. *Managed Payroll Service:* If an individual is not able to manage their Direct Payments through the pre-paid card, or would prefer not to take on the full

administrative responsibility associated with making payments, they will be offered an option of managed payroll.

Using a managed payroll, the individual does not hold the Direct Payment funds; payments are made to a separate bank account held by an independent organisation who then make payments on the individual's behalf. Managed payroll providers are only authorised to make payments as per the individual's instructions. The individual retains control over their care and is responsible for managing the funds.

Managed payroll is not a suitable way of providing a Direct Payment for an individual who has been assessed as lacking the mental capacity to make decisions relating to support. In these situations an authorised person would be required, via a best interests meeting as per Section 2.4.

3. *Bank Account:* In some circumstances, individuals may wish to have a separate bank account to manage their Direct Payment. If this is required, individuals and Support Services should discuss the increased responsibilities on the Direct Payment customer for submitting regular, detailed monitoring returns when requested.

3.4 Payment Frequency

Direct Payments will be paid monthly in advance to the nominated account. Where a Direct Payment starts during a month, a part payment will generally be made for the period to the end of the first calendar month. Similarly, where a Direct Payment is increased during the month, the additional funds for the remainder of the month will generally be paid over at the point of increase.

Payments will be made net of any assessed financial contribution, see Section 3.14 for further details.

3.5 Start-up Costs

When a Direct Payment is being set-up Support Services will assist the individual to work out an appropriate budget to ensure funds are set aside for all ongoing expected costs.

Where the individual chooses to employ a Personal Assistant, additional funds will be paid by Camden to cover necessary employer's liability insurance and recruitment advertising costs (where applicable) at the start of the Direct Payment. The costs of renewing insurance policies after the first 12 months should be budgeted for within the Direct Payment funds.

Where Camden pays upfront costs such as employer's liability insurance, this will generally be paid directly to the provider rather than into the Direct Payment account.

3.6 Purchasing support through a Private Agency

Where an individual chooses to purchase support through a private agency, the agency should hold Care Quality Commission registration where regulated activities are being undertaken e.g. personal care. Regulated activities are those listed in Schedule 1 of the Health and Social Care Act 2008.

3.7 Employing a Personal Assistant

Direct Payments give individuals flexibility and choice about who they want to employ and how their support is provided. The individual can employ a worker of their choice, providing the person is eligible to work in the UK. Direct Payment Support Services can provide advice and support when choosing a Personal Assistant or support worker.

The person receiving a Direct Payment is required to:

- Sign a contract with the Personal Assistant, which Support Services can help to draw up
- Purchase employer's liability insurance to protect the individual and the Personal Assistant in case of an accident, and in case of redundancy
- Register with Her Majesty's Revenue and Customs (HMRC) as a new employer
- use the Pensions Regulator's Duties Checker to determine requirements and then ensure that the appropriate employer pension contributions are made
- It is strongly recommended that a Disclosure and Barring Service (DBS) check on potential Personal Assistants is carried out

Employing a Relative

Direct Payments cannot usually be used to pay a person who is living in the same home as the person who needs support.

In exceptional circumstances, it may be considered in the best interests of the person who needs support to employ a person living in the same household to provide care. Specific agreement to this must be given in advance by the care manager, who will consider individual circumstances when making this decision. The details of the agreed arrangement should be detailed in the individual's support plan.

Relatives employed as Personal Assistants will need to consider the effects on any other income such as state benefits (e.g. carers' allowance), private income or pensions. Camden recommends that relatives contact the Department of Work and Pensions to discuss their individual circumstances before entering into a contract.

For some people with multiple, complex needs in receipt of a substantial Direct Payment, payment to a close family member living in the same household to

provide management and/or administrative support to the Direct Payment holder may be made where this is agreed in advance with the Council.

When employing an individual (regardless of the relationship between the individual and the carer) the individual and employee/s are obliged to sign a contract of employment, setting out each other's responsibilities.

Responsibilities as an Employer

The Direct Payment recipient or their authorised/nominated person is responsible as an employer, under employment law, when employing Personal Assistant/s. Responsibilities include wages, statutory entitlements, health and safety etc. The Direct Payment recipient or their authorised/nominated person also retains the financial responsibility for managing the Direct Payment funds and paying bills related to the support provided such as carer's wages, tax, pension and National Insurance contributions, insurance and payroll charges.

Support Services can assist to calculate an hourly rate and ensure sufficient funds are set aside to pay on-costs such as National Insurance, administration costs and payroll charges.

Contract of employment

Direct Payment recipients or their authorised/nominated person employing Personal Assistants are legally obliged to sign a written contract of employment with their Personal Assistant within two months of commencement of employment. The contract will outline the terms and conditions of the Personal Assistant's work including all the statutory entitlements (e.g. maternity leave) and the job description. The employer and employee should both sign the contract and keep copies for future reference.

The essential terms that must be included in the contract include:

- the date when the employment commenced/will commence
- job title
- place of work
- hours of work
- details of remuneration (which must meet the national minimum wage, and is recommended meets the London Living Wage)
- statutory entitlements
- the nature of the job i.e. fixed-term or permanent
- pension scheme provision as applicable
- notice requirements

The employer should notify their employees of any changes to the terms and conditions of their work in line with the legal framework and in writing.

Tax and National Insurance Responsibilities and Employment Status

Where support is being purchased through a contract with an agency, the agency will pay HMRC directly.

Where a Personal Assistant or other worker is engaged directly, the responsibility for paying Income Tax and National Insurance depends on whether the Personal Assistant is self-employed or employed by the individual or their authorised/nominated person.

According to the HMRC guidance in relation to self-employed providers, the vast majority of Personal Assistants employed via Direct Payments do not fall under this category. This is primarily due to the terms and conditions of Personal Assistant work which is agreed in the individual's support plan and cannot be dictated by the self-employed provider.

It might however be acceptable to contract a self-employed person such as a gardener or window cleaner who provides support on a sporadic basis as long as this complies with the HMRC self-employed regulations. More guidance on this can be found on the HMRC website.

The HMRC website also has a useful tool known as The Employment Status Indicator (ESI) tool. This enables checks on the employment status of an individual; that is whether they are employed or self-employed for tax, National Insurance contributions or VAT purposes.

It is essential that confirmation of a worker's employment status is known at the onset of the employment arrangement so that the responsibilities of both parties are clear. It is the responsibility of the Direct Payment recipient or their authorised/nominated person to ensure their self-employed worker's status is checked and confirmed by HMRC and that any relevant responsibilities, particularly in relation to tax and National Insurance contributions, are fulfilled. Failure to do so may result in the Direct Payment recipient or their authorised/nominated person being responsible for the Personal Assistant's unpaid taxes and also be liable to pay a fine.

Where the Direct Payment recipient or their authorised/nominated person employs a worker they are legally responsible for calculating Income Tax and National Insurance contributions and paying regular contributions to HMRC. These payments are known as Pay As You Earn (PAYE) and are deducted from the salary paid to the worker and then paid to HMRC.

If the worker is self-employed, they are responsible for paying their own income tax and National Insurance.

PA Registers and Introductory Agencies

Where an individual does not have a suitable relative or friend to employ as a Personal Assistant, they may need to recruit more widely. In these circumstances Support Services can provide assistance and information on local PA registers.

PA registers allow an individual to view the profile of local carers, or advertise their particular requirements to invite applications.

Where an individual chooses to use a PA register or introductory agency then consideration should be given to the fees charged. Services such as that offered by Camden PAs are available without any ongoing cost following successful recruitment.

Where a PA register or introductory agency has been used, the Direct Payment recipient or their authorised/nominated person should ensure that employer liabilities are fully met. Personal Assistants recruited through a register or introductory agency will be subject to the same employment status considerations under HMRC regulations as those recruited directly.

3.8 Receiving a Direct Payment while in Hospital

Where a person who receives a Direct Payment for their care and support is admitted to hospital, LBC will continue to pay the Direct Payment for up to four weeks after their admission.

Where the individual employs a Personal Assistant and a hospital admission lasts for longer than four weeks, the Direct Payment may be suspended and advice on meeting employer obligations should be sought from Support Services.

3.9 Receiving a Direct Payment while in Residential Care

A Direct Payment cannot be used to fund a long-term stay in a care home, with the exception of those 'trailblazer' local authorities that are currently testing the use of Direct Payments in care homes. LBC is not one of these.

But Direct Payments can be used to fund a short stay in a care home, defined as not exceeding a period of four consecutive weeks in any (rolling) 12 month period; the break between stays in a care home needs to be more than four weeks in order for them not to count as a single stay.

If a stay of more than four weeks in total does occur, then the Direct Payment cannot be used to pay for any more care home services care until 12 months have passed from the start of the four-week period. However, additional weeks in a care home can still be purchased once the four-week maximum has been reached but they cannot be purchased using Direct Payments; if LBC and the individual agree that a longer stay is needed, this should be arranged as a commissioned service.

3.10 Receiving a Direct Payment while away from home (not in Hospital)

Direct Payments are paid up to four weeks while the person who needs support is away from their normal place of residence. The following information is required before the individual has left their home:

- If the individual is taking their Personal Assistant with them they must ensure they are both covered by their liability insurance, particularly while travelling abroad
- Health and safety regulations must be followed to ensure that the environment is safe for the Personal Assistant to work
- The Personal Assistant agrees to travel and support the individual while away from home
- The individual or Personal Assistant is prepared to cover the cost of travel, including flights, accommodation and any other costs related to travelling and supporting the individual while away from home from their own funds
- The individual has supplied ASC with the address they intend to stay at, a contact telephone number, and the dates of departure and return
- The individual has demonstrated how they intend to meet their support needs while they are away

3.11 Care and Support while staying outside of the UK

Direct Payments while abroad will generally not be paid for more than four weeks in any one calendar year. It is the individual's responsibility to advise ASC that they are going abroad. Failure to return home on the expected date will generally result in the suspension and possible termination of the Direct Payment, requiring a reassessment of need. Any overpaid Direct Payment funds will also generally be reclaimed from the individual.

Due to differences in tax and health and safety regulations it is generally not possible to use Direct Payments to pay for support or employ staff based in another country.

For example, an individual who lives abroad in Brazil for part of the year only received their Direct Payment for the first four weeks they lived there; after that it was stopped. They also could not use any of their Direct Payment funds to purchase support at any point whilst living in Brazil; they instead had to use their own personal funds to buy whatever support they needed.

This is a policy and ASC may depart from it in exceptional circumstances. Applications to depart from Section 3.11 of the policy are likely to give rise to the possibility, or claim, that exceptional circumstances exist. If an individual considers that they have exceptional circumstances which may justify a departure from the policy, they should write to ASC explaining why they believe their circumstances justify a departure from the policy. One matter which ASC will take into account is the current support needs assessment, and whether that identifies any care need to spend more than a month per calendar year abroad.

3.12 Legal Rewards

Most individuals use their Direct Payment to pay people or agencies for the support or services they receive. But Direct Payments can also be used to buy something for someone who has helped you, to say thank you or to help them support you, such as a friend, neighbour or acquaintance. This is called a legal reward. Money or wages do not change hands but a small “gift” is given instead.

Some examples of legal rewards given by those receiving an ASC Direct Payment are:

- a gift such as a small bunch of flowers / box of chocolates / payment voucher
- paying for someone’s petrol in exchange for them taking the individual out

Legal rewards are not meant to be used to thank main, informal carers who provide substantive and regular support or who may receive carers’ allowance, or who may be receiving a personal budget in their own right as a carer. This is because Carers’ Legislation gives recognition and support for these carers.

Legal Rewards are more for recognition of ad-hoc types of support. This means that there is no structured timetable of support or set work tasks and no work contract (either explicit or implicit), no regular cash payment takes place and there is no expectation of there being a cash payment of any kind.

HMRC have rules covering payment vouchers. They are seen as a small cash gift in kind and there is a ceiling above which these become taxable. £250 is the total amount that can be paid by one person to another per tax year.

Therefore where an individual uses Direct Payment funds for legal rewards, the receiver needs to be aware that, dependent upon their individual circumstances, they may be liable to taxation and may have to declare any amounts paid to them for tax purposes.

Anyone in receipt of a state benefit, who also receives a legal reward, should take independent advice on the likely impact on their benefits.

3.13 Purchase of Equipment

A Direct Payment may be used to purchase daily living equipment or minor adaptations needed to promote independence that would otherwise be provided directly by ASC. The advantage of this to the individual is that they may wish to purchase equipment from a different supplier to the one that LBC uses, or choose to put the Direct Payment towards a more costly, higher specification, model.

Direct Payments must be spent on meeting agreed outcomes and the purchase of equipment should be agreed in advance and included in the support plan. Funds will only be provided towards equipment that social services would normally have

a responsibility to provide. Direct Payments cannot be used to purchase items that would normally be provided by other organisations (e.g. NHS or Housing).

Where Direct Payment funds are used to purchase equipment, the individual /their authorised or nominated person is responsible for paying the supplier in full, and they are the owner of such goods/equipment upon purchase. Where the funds provided by Camden are more than the cost of the equipment purchased, Camden is entitled to reclaim the overpayment.

Where maintenance costs have been included in the Direct Payment, the individual/their authorised or nominated person is responsible for the insurance, maintenance and upkeep of the goods/equipment. This includes all legal responsibilities that may arise from the ownership or use of the equipment (including health and safety). Any expense relating to goods/equipment which exceeds the Direct Payment funds provided by Camden will be met by the individual's personal funds.

The individual/recipient must not sell or dispose of goods/equipment purchased with Direct Payment funds without Camden's prior written agreement. If sold without Camden's prior agreement, Camden may reclaim the full amount of the goods/equipment from the Direct Payment individual/their authorised or nominated person.

If the individual is assessed as needing new or different goods/equipment, the individual/their authorised or nominated person is responsible for any costs incurred in disposing of existing goods/equipment bought with DP funds. Any income raised by the disposal must be put towards the cost of new goods/equipment and will form part of any new Direct Payment.

3.14 Financial Assessment and Contributions

People in receipt of support funded by ASC may be required to pay a financial contribution towards their care. Individuals need to provide details of their income, expenditure and savings. A financial assessment will then be carried out by the Awards and Contributions Team (ACT) in accordance with the Council's Fairer Contribution Policy. This is the same for all individuals, whether they receive their support through a service commissioned by Camden or through a Direct Payment.

In cases where the individual's savings are above a certain level as set by the Government, the individual will be required to pay the full cost of their care. Under these circumstances the individual can still choose to receive a Direct Payment in respect of their personal budget. Where this has been agreed, the individual must pay the full cost of the support into the Direct Payment account, and spend will be monitored against this as with other Direct Payments.

Camden pays Direct Payment funds net of assessed contributions. People receiving Direct Payments who are assessed to pay a contribution towards their support must arrange to pay this amount into their Direct Payment account or to their managed payroll provider. This can be done in a number of ways: the individual can set up a standing order for the contribution amount to be transferred from their personal account to the Direct Payment account, or they can make a payment by bank transfer.

Individuals must pay their assessed contributions or they will not have enough money available to pay for their support or to meet the costs of the support in place.

Non-Payment of Assessed Contribution

Where monitoring as per Section 3.15 shows that the individual's contribution has not been paid in full the Direct Payments Monitoring team will write to the individual to remind them of their obligations and will liaise with Support Services to provide the individual with assistance in resolving this.

Support Services will work with the individual or their authorised/nominated person to establish any shortfall on the DP account and to ensure that all employer obligations are being met such as HMRC payments, insurance, contractual wage payments, and that appropriate contingency planning is budgeted for.

Where Support Services identify the individual or their authorised/nominated person is off-setting non-payment of assessed contribution by not meeting employer obligations in full, and they are unable to resolve the concerns with the individual or their authorised/nominated person, then the Direct Payment Monitoring Team will refer the individual to care management for review as the individual or their authorised/nominated person may be at risk.

Where the individual or their authorised/nominated person is off-setting non-payment of their assessed contribution by reducing their planned support hours, then the Direct Payment Monitoring Team will refer the individual to care management for review. Care management will then consider the risks to the individual of this reduced support level. Where no significant risks are identified then the Direct Payment amount may be reduced to reflect the lower level of support the individual now requires.

Where all employer obligations are being met without the assessed contribution being paid into the Direct Payment account, then the Direct Payment Monitoring Team will refer the individual to care management for review as they may have been over-provided.

Where the full assessed contribution continues to be unpaid then the suitability of continuation of the Direct Payment will be considered by care management and

the Direct Payment Monitoring Team working together. This may result in suspension or termination of the Direct Payment.

3.15 Monitoring and Reconciliation

The principles underpinning ASC's approach to monitoring are to ensure the Direct Payment is being spent appropriately to support the individual, and to protect and account for public funds.

In signing the Direct Payment Agreement Form, the Direct Payment individual accepts the responsibility of ensuring the recording of all income and expenditure and to keep appropriate records and supporting documentation for a period of six years, even if the Direct Payment has come to an end. The submission of monitoring information when requested is a key element of the Direct Payment Agreement.

Monitoring aims to be proportionate and while the process is different for each of the three payment methods, every Direct Payment is monitored for a number of indicators:

- the support being purchased is in line with that agreed in the support plan
- where a Personal Assistant is employed, there is evidence of appropriate HMRC payments being made
- evidence of employers liability insurance where appropriate
- evidence that a payroll agency or alternative is being used to support pay calculations
- where a care agency is being used, CQC registration is evident where appropriate
- an appropriate level of contingency is being held in the account, generally four to six weeks equivalent of the Direct Payment
- any assessed personal contribution is being paid into the account.

All monitoring activity is undertaken with safeguarding in mind, ensuring that any concerns, financial or otherwise, are reported promptly and appropriately. Where concerns are identified, or where it would appear the individual could benefit from some further support in managing their Direct Payment, then a joint approach will be taken by the Direct Payment Monitoring Team, care management, and Support Services.

Prepaid Cards

A prepaid card operates much the same way as the debit card that most people have for their personal accounts. Bank transfers can be made online or over the telephone, and the card can be used to purchase goods or services wherever card functionality is available.

The ability to withdraw cash is turned off as a default, as card payments or bank transfers are possible in most circumstances. Where it has been agreed in advance with the care manager that cash withdrawals are appropriate in meeting outcomes identified in the support plan, receipts should be kept and may be asked for by the Direct Payment Monitoring Team to verify the purchases made. This approach ensures that funds are being spent appropriately, all employment obligations are being met and that the individual is protected from financial harm.

The Direct Payment Monitoring Team is able to access online, real time transaction information on each prepaid card account, largely removing the need for monitoring information to be requested from the individual.

Monthly exception reporting is run across all accounts, which allows particular transaction categories to be identified and reviewed further by the Direct Payment Monitoring Team. Examples of this could be restaurants, shopping, or cash withdrawals. The occurrence of these transactions may be expected and allowable for some individuals, but often provides the first indicator that a fuller review is needed.

In addition to exception reporting, individual Direct Payments are periodically reviewed in full. While the in-depth detail of some Direct Payments may be monitored annually in line with their care management review, others will be reviewed on a monthly or even weekly basis. The latter scenario may occur where the individual is being supported to improve the management of the account, or while concerns are being investigated.

Bank Accounts

For individuals who hold separate bank accounts for the management of their Direct Payment, monitoring requests are made generally every three to six months; individuals are asked to submit copy bank statements to the Direct Payment Monitoring Team, annotated where transactions are not self-explanatory.

The information received is reviewed by the Direct Payment Monitoring Team and further information may be requested from the individual to support the monitoring review, such as carer payslips or invoices/receipts.

Where individual consistently do not respond to monitoring requests, they may be asked to move to another payment method. If the individual refuses and/or continues to not respond then the suitability of continuation of the Direct Payment will be considered by care management and the Direct Payment Monitoring Team working together. This may result in suspension or termination of the Direct Payment, and repayment as per Section 3.18.

Managed Payroll Service

Where an individual wants the benefits of receiving a Direct Payment but does not wish to take on all the responsibilities of administering the account, then a managed payroll service is an effective solution. The Direct Payment Monitoring Team will pay the Direct Payment funds to the approved service, who will manage the account on behalf of the individual, dealing with payments for wages, HMRC etc and ensuring the account is regularly reconciled. The managed payroll service will also submit the required quarterly monitoring information to the Direct Payment Monitoring Team on behalf of the individual, and act as the first point of contact for many queries that arise.

For some individuals this is an option of choice from the start of their Direct Payment, others may be required to move to this method when they have failed to manage their account appropriately using one of the other payment methods.

Mismanagement & Misuse

Monitoring activity may identify cases that require further review. This may be where concerns exist over how the Direct Payment is being managed, and in these circumstances the Direct Payment Monitoring Team will work jointly with care management and Support Services to resolve the issues.

Where this action does not resolve the concerns satisfactorily, or where Direct Payment funds have been identified as potentially misused, then the case will be referred for review under the Misuse process.

Following referral of a misuse case, the Direct Payment Monitoring Manager will consider the following:

- background to the case provided by the Monitoring Officer
- information available from case notes including any recent care management activity
- the extent of the misuse identified and the corresponding potential risks
- any further information required from the individual or their authorised/nominated person

Contact will be made with the care manager, or a request will be made to have the case allocated where no identified care manager is in place.

A professionals meeting will then be scheduled, attended by the Direct Payment Monitoring Manager and care management. Where appropriate, colleagues from Awards and Contributions, Support Services, Internal Audit and other departments may also attend. This meeting will review the monitoring concerns and information collated to agree actions in going forward, taking into consideration any risks with regard to protecting the wellbeing of the individual.

The next steps will generally involve the care manager meeting with the individual to review the spend identified, and discuss this in relation to the agreed outcomes within the support plan.

A further professionals meeting will then be convened to review the outcome of those discussions. The full circumstances surrounding the account will be reviewed, and where it is clear spend is not in line with the agreed support plan, a reclaim will be actioned. Options for the future management of the Direct Payment will also be considered, and may involve the account being transferred to a managed payroll or commissioned service.

At all points in the process the continued wellbeing of the individual will be considered, and they will be encouraged to access additional advice and assistance through Support Services or independent advocacy services.

Where concerns over fraud are highlighted, including fraud committed against other public bodies, the Direct Payments Monitoring Team and care management have a duty to report this to the Council's Internal Audit Investigation Team.

Privacy and Data Protection

The Direct Payment Terms and Conditions they sign before the Direct Payment starts inform the individual or their authorised/nominated person that the information they supply relating to their Direct Payment:

'may be used by us in connection with the provision of other Council services to you. This authority 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. We may share/check the information provided with other bodies responsible for auditing or administering public funds, such as HM Revenue and Customs and the Department for Work and Pensions, in order to prevent and detect fraud.'

The Data Protection Act gives you the right to see your personal information that we hold about you.

We are also required under Part IIA of the Audit Commission Act 1998 to participate in the National Fraud Initiative (NFI) data matching exercise. Please see our Privacy Statement for further details.'

3.16 Reviews

The Direct Payment is reviewed on a regular basis; it must be reviewed within the first six months and at least every 12 months thereafter. The first review should be incorporated within the initial review of the support plan, and should ensure that:

- the individual or authorised/nominated person is comfortable using the Direct Payment
- the Direct Payment is being managed and used appropriately in line with the support plan
- the individual or authorised/nominated person is meeting their obligations for instance with regards to being an employer, paying assessed client contributions etc.

The annual review of the Direct Payment will aim to coincide with the annual support plan review which people receiving Direct Payments are required to undertake in the same way as people in receipt of council-commissioned services. When planning an annual review, the care manager must contact the Direct Payment Monitoring Team for information about how the Direct Payment is being managed, as per the review checklist. If there are any concerns, then the Direct Payment Monitoring Team and care management will work together through the review process to investigate and address them.

If the individual's needs change before their annual review is due, they are encouraged to contact their care manager to arrange a reassessment. The Direct Payment allocation can increase or decrease, based on the individual's needs, required support and any advances in assistive technology that may be available (e.g. telecare). Any changes to the Direct Payment allocation will be discussed with the individual.

If following an assessment the individual's needs increase they will still be entitled to receive a Direct Payment, and the level of Direct Payments will increase accordingly. The frequency and method of payment should remain the same. The individual will be advised of any changes by their care manager prior to receiving their Direct Payment.

Changes to any payments affecting the Personal Assistant's terms and conditions of work such as wages, hours of work, statutory entitlements etc., should be discussed with the worker/s prior to implementing those changes. It is the individual's responsibility as employer to ensure that employees are fully informed of these changes, relevant contracts are updated and payroll are notified.

If a Personal Assistant or other worker is employed the Council strongly advises the individual or their authorised/nominated person to seek advice from Support Services on any changes to the terms and conditions of work e.g. hours of work or rate of pay. Any contractual changes to the terms and conditions of work may have legal implications for the employer and should be discussed with the employee prior to making these changes.

3.17 Suspending or Ending a Direct Payment

Reasons a Direct Payment may be suspended include:

- how the Direct Payment is being used or managed is under investigation
- the individual or their authorised/nominated person has not responded to requests for information

A decision on suspending a Direct Payment will always be made in conjunction with Care Management and will be communicated to the individual or their authorised/nominated person.

A Direct Payment will end if one of the following occurs:

- the individual is no longer eligible to receive services
- Direct Payments are no longer an appropriate way of delivering their services
- the individual has passed away
- the individual has moved out of Camden or has moved to a residential placement
- the individual has chosen to end the Direct Payment.
- the individual or their authorised/nominated person has misused or mismanaged the Direct Payment and a decision is made by ASC that a Direct Payment is no longer a suitable option

The Care Manager will discuss the end of the Direct Payment with the individual or their authorised/suitable person or next of kin. The individual or their authorised/suitable person or next of kin should then give notice to any employed workers and calculate any outstanding bills. If necessary they can contact Support Service for assistance with settling these matters.

Settling final costs and returning remaining funds

For individuals using a pre-paid card, their card will be frozen following the end of the Direct Payment. Once the individual or their next of kin has calculated the final costs they should inform Support Service or the Direct Payments Monitoring Team. A final reconciliation will be undertaken by the Direct Payments Monitoring Team which will consider factors such as the balance remaining on the account and whether the assessed contribution due has been paid, before any decision is taken on releasing funds for the final costs to be settled.

Where an individual uses a managed payroll service, the service provider will submit a final return to the Direct Payments Monitoring Team and arrange for any remaining funds to be paid by BACS.

Individuals using a bank account must settle their bills and then arrange for any remaining funds to be returned to Camden via the Direct Payments Monitoring Team, either by cheque or bank transfer. Camden will also require a final financial return to be submitted reconciling the final balance on the account.

3.18 Reclaims

Camden may reclaim Direct Payment funds from the individual or their authorised/nominated person in the following circumstances:

- an overpayment has been made – this can occur as funds are generally paid monthly in advance and circumstances may change during the month
- an excess of more than six weeks contingency has built up on the account
- funds have been misused i.e. not spent in line with the agreed support plan

Excess Funds

An individual may build up an excess in their account for a number of reasons. This can be due to a short term change in circumstances, such as a family member staying with the individual resulting in less formal support being required. Other examples are where the support purchased has been sourced at a lower cost than originally planned, or that the individual's outcomes are being successfully met with less than the planned support by finding alternative creative solutions.

Where excess funds are identified on an account, the Direct Payments Monitoring Team will contact the individual or their authorised/nominated person or the managed payroll provider in the first instance to advise that an excess has been identified and ask whether the funds are being held for a particular purpose, for example an upcoming HMRC bill. Following this a figure for reclaim will be agreed and this will be processed by the Direct Payments Monitoring Team. This may be off-set against future payments or the individual or their authorised/nominated person may be asked to pay the funds back to Camden.

Spending patterns will be considered as part of this process to identify any obvious reason why the excess funds have accumulated. Where it is apparent that the support being purchased is considerably lower than that identified in the support plan, then this will be flagged to care management for review to ensure the individual's outcomes are being met and that support is not being over-provided.

Misuse

Where misuse has been substantiated an invoice will be issued for the final reclaim amount. This must be paid from personal funds, not Direct Payment funds.

The individual or their authorised/nominated person can discuss payment arrangements with Credit Control if they are not in a position to settle the invoice in full. If an individual or their authorised/nominated person fails to settle the invoice, or keep within the terms of an agreed repayment arrangement, then Camden may decide to take legal action in line with its standard debt recovery procedures.

4 Direct Payments for Carers

“I have a network of people who support me – carers, family, friends, community and if needed paid support staff.”

4.1 The Care Act and Carer’s Assessments

Following a carer’s assessment, an unpaid carer who is providing regular and substantial care may be eligible for a personal budget in their own right. In Camden this is currently offered as a Direct Payment, which can be paid in two ways:

- as a one-off lump sum
- as an ongoing weekly equivalent (paid monthly in advance)

Where the carer is to receive their Direct Payment as ongoing support, a referral will be made to Support Services to assist them with the set-up process.

Where a paid carer such as a family member is also providing regular, substantial unpaid care to an individual then they may also be eligible for their own personal budget under a carer’s assessment.

Support provided to a carer directly following a carer’s assessment is not chargeable.

4.2 The Use of a Carer’s Direct Payment

A carer’s Direct Payment is designed to support the carer to continue in their caring role through helping to improve their health, well-being and quality of life.

Carers must always use their Direct Payment to meet the specific outcomes agreed in their support plan; depending on the carers specific circumstances examples might be:

- relaxation/stress management
- development of new work skills or refreshing existing skills, to enable the return to or continuation of paid work alongside the caring role
- pursuit of hobbies
- help with household tasks in their own home
- help with staying in touch with family and friends.

A carer’s Direct Payment cannot be used:

- to buy services or pay contributions for the person you care for - for example, help with personal care; the cared for person would need to be assessed for this support separately and this may be a chargeable service
- in exceptional circumstances ASC can agree that a carer’s Direct Payment can be used to pay for a sitting service, in order to give the carer a break if the cared for person refuses an assessment or community care services. The service must not include any intimate or personal care support.

- to employ a close relative (or their spouse or partner) who lives in the same household except where ASC has agreed beforehand that there are exceptional circumstances and it is necessary in order to meet a person's needs
- to pay for everyday living expenses such as food shopping, heating, lighting, council tax, rent or mortgage payments
- for gambling or alcohol
- for anything that is illegal

Where a Carer's Direct Payment is used to purchase therapies such as counselling, massage or acupuncture then it is the DP recipient's responsibility to ensure that the provider is appropriately trained and insured for the services being accessed.

Where a Carer's Direct Payment is used to purchase equipment such as a laptop or washing machine, then Section 3.13 will apply.

4.3 Payment Methods

Where the Direct Payment is awarded in full as a lump sum, this will generally be paid to the carer's bank account. Examples of this may be where a carer plans to use their Direct Payment to purchase equipment such as a laptop or replacement washing machine.

But in the following circumstances payment will be made to the carer via prepaid card:

- for lump sum payments of over £500 and not intended for an immediate one-off purchase
- where the carer wishes to use their Direct Payment for ongoing support, such as gym membership or relaxation classes
- where a carer uses their Direct Payment for a combination of one-off purchase and ongoing support

4.4 Monitoring & Reclaims

The monitoring and reclaims processes for carer's Direct Payments will largely mirror that of other Direct Payments as per Sections 3.15, 3.17 and 3.18, and will remain proportionate and appropriate considering the level of the personal budget and the outcomes agreed in the support plan.

The exception is where Direct Payment funds have been paid into the carer's personal bank account. In these circumstances, carers must submit receipts to the Direct Payments Monitoring Team when requested to demonstrate how the funds have been spent. Failure to submit this information may preclude the individual from receiving future funds via a bank account, and may result in Direct Payments funds being reclaimed from that individual as per Section 3.18.



APPENDIX A: DIRECT PAYMENT AGREEMENT FORM: v1.1 June 2015

Direct Payment Agreement

London Borough of Camden Adult Social Care Direct Payments Service

1. PARTIES

This agreement is between the **London Borough of Camden** of 5 Pancras Square, London, N1C 4AG (referred to as 'LBC') and the person receiving the direct payment

_____ (referred to as 'the recipient')

who lives at _____

The customer is _____

2. THE RECIPIENT OF DIRECT PAYMENTS

LBC will provide support by making Direct Payments (DP) to (please tick the appropriate box):

Customer	Suitable person	Third party	Carer
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

The recipient is eligible to receive (please tick the appropriate box):

Ongoing direct payments	One-off direct payment
<input type="checkbox"/>	<input type="checkbox"/>

Customer – a person in need of support who consents to receiving DPs.

Recipient – the person receiving the DP

Suitable person – a person who consents to receiving DPs on behalf of the customer in need of support who lacks capacity. LBC need to be satisfied that a suitable person is an appropriate representative to manage DPs on the behalf of the customer.

Third Party – a person who consents to receiving DPs on behalf of the customer who requires support with managing their allocated funds.

Carer – a person who consents to receiving DPs to allow them to fulfil their role as a carer looking after the person in need of support.

Please note that only in exceptional circumstances and only with LBCs prior written agreement can a close relative or spouse living in the same household as the customer be employed as a paid carer through the DP scheme. However, DP money may be used to pay for assistance from a relative who lives elsewhere.

3. THE RECIPIENT'S RESPONSIBILITY

Receiving money - The customer/recipient agrees to receive DPs from LBC to arrange and purchase social care support as detailed in the customer's support plan, and will only use the money to meet the outcomes set out in the support plan. The money must not be misused in any way.

Client contributions - LBC will carry out an assessment of the customer's financial circumstances and this may result in the customer being asked to make a financial contribution towards some or all of their social care support. Where the customer is assessed as needing to make a contribution, the DP from LBC will be reduced by the amount of the contribution. The customer must then pay their contribution towards the costs of social care support into the DP account. Please note that carer's services are not subject to any client contribution under the scheme.

Monitoring – The customer/recipient agrees to fully co-operate with LBC in monitoring the use of DPs (see section 8)

Purchasing Goods or Equipment

- If the recipient uses DP funds to purchase goods/equipment, the customer/recipient is responsible for paying the supplier in full, and the customer is the owner of such goods/equipment upon purchase.
- Where maintenance costs have been included in the DP, the customer/recipient is responsible for the insurance, maintenance and upkeep of the goods/equipment. This includes taking all legal responsibilities that may arise (including health and safety). Any expense relating to goods/equipment which exceeds the DP funds provided by LBC will be met by the customer's personal funds.
- The customer/recipient must not sell or dispose of goods/equipment purchased with DP funds without LBC's prior written agreement. If sold without LBC's prior agreement, LBC may reclaim the full amount of the goods/equipment from the DP. If LBC has overpaid, it is entitled to reclaim the overpayment.
- If the customer is assessed as needing new or different goods/equipment, the customer is responsible for any costs incurred in disposing of existing goods/equipment bought with DP funds. Any income raised by the disposal must be put towards the cost of new goods/equipment and will form part of any new DP.

Additional responsibility of a suitable person or third party:

- If the suitable person or third party is not a close relative or friend of the customer they must undertake a Disclosure and Barring Service (DBS) check.
- The suitable person or third party will use the DP funds at all times in the best interests of the customer.
- The suitable person helping you to manage your DP cannot have any financial interest in the DP.

4. LBCs RESPONSIBILITY

Meeting the customer's needs - LBC has agreed that the DP will be used towards meeting the customers social care outcomes as set out in their support plan.

Amount of DP - The amount of the DP will be based on an assessment of the customers need and the outcomes agreed in the support plan.

Payments - LBC will normally make payments monthly, and will write to the customer/recipient at the start of the DP with further details.

LBC will send to the customer/recipient warning letters detailing any concerns in respect of the handling of the DP. LBC will send out warning letters before suspension and stoppage of the DP and will provide advice on what steps should be taken to prevent this from happening.

5. PAYMENT METHODS

The DP will be paid using one of the following methods:

- **Pre-paid card** – The card offers instant, anytime access to the account. Payments can be made by telephone or internet banking, and the card can be used to pay providers who accept MasterCard.
- **Managed payroll** – the DP is paid directly to an independent organisation who manages it on behalf of the customer. The customer still retains full control and responsibility over their DPs.
- **Bank account** - in very exceptional circumstances, and only with LBC's prior agreement, DPs can be paid into a separate bank account if a customer/recipient is not able to manage their DP using the pre-paid card or managed payroll. In those circumstances the customer/recipient must regularly provide LBC with financial monitoring information as per section 8. The customer/recipient will keep the DP bank account in credit and not allow it to become overdrawn. If the account becomes overdrawn the customer will be responsible for paying any charges.

The following will apply to all DP customers/recipients:

- Cash withdrawals can be made only with LBC's prior written agreement, to agreed limits.
- DP funds remain the money of LBC

6. INFORMATION AND ADVICE

LBC has agreements with suitable independent organisations to support customers/recipients in budgeting and using their DPs. LBC wishes to ensure that the customer/recipient is aware of all advice and support available on the use of DPs, so the customer/recipient must demonstrate that they have consulted a support organisation at least once before DP are paid. LBC will provide the customer/recipient with the support organisation's contact details at the start of the DP.

7. USING DIRECT PAYMENTS

LBC wants to ensure that customers find DPs suitable and effective. However there are some limitations on how DPs can be used:

- **Direct Payments are only for social care**
The DP must only be used to achieve the outcomes identified in the support plan. It must not be used for anything else, such as health care services, housing costs, or general living expenses.

- **Unlawful use**

The DP must not be used for unlawful purposes and must only be used for permitted purposes approved by LBC.

- **Legal requirements and other obligations**

The customer/recipient has a duty to make proper disclosure to the revenue authorities and not to attempt to mislead. The customer/recipient agrees to comply with all relevant laws, regulations and guidance, particularly with applicable employment, tax, and insurance requirements and obligations. The customer/recipient agrees to the Local Authority informing the revenue authorities of any tax liabilities. The DP support organisations mentioned above can advise on these subjects.

8. MONITORING THE USE OF DIRECT PAYMENTS

LBC will monitor how DPs are used to ensure that the DP is being managed safely and spent in line with the outcomes identified in the support plan. The customer/recipient is required to cooperate with monitoring by keeping records and providing information as requested. In the exceptional circumstance where the DP is paid into a bank account, this means providing copies of bank statements, receipts and any other relevant documentation on a regular basis. If the customer/recipient does not cooperate with monitoring, LBC reserves the right to suspend the DP or change it to a commissioned service. The customer/recipient must keep monetary records for six years.

To improve the service and to widen the choices available to DP customers, LBC may also request information from the customer, for example about how they chose to use their DP.

9. REASSESSMENT OF NEED

LBC will contact the customer to carry out a reassessment of their needs at an agreed date and time. This will look at:

- Whether the customer's needs or circumstances have changed
- Whether the customer has been able to achieve the agreed outcomes that were discussed when the DPs was started, and whether LBC or the DP support service can do more to assist the customer
- Whether DPs remain the best method of meeting the customer's social care outcomes.
- If there is a change in the customer's needs or circumstances LBC must be informed.
- If the customer goes into hospital or respite LBC must be notified as soon as possible.

10. RETURNING MONEY TO LBC

The customer can retain up to 6 weeks' worth of DP funds. Any surplus funds over this amount must be returned to LBC; LBC will write to the customer/recipient to advise them that the surplus held is being reclaimed. LBC will then reclaim the surplus funds either by adjusting future monthly payments or by invoicing the customer/recipient.

The customer/recipient must also return money to LBC in the following circumstances:

- Where there has been an overpayment by LBC
- The amount in the account is more than is needed to pay for purchased or planned services
- The DP has been used for purposes other than meeting the outcomes agreed in the support plan or otherwise agreed in writing by LBC
- The customer is no longer eligible for DPs
- The termination of this agreement

11. ENDING A DIRECT PAYMENT AGREEMENT

LBC will stop paying DPs to the customer/recipient if:

- The customer no longer agrees to receive them
- The customer is no longer entitled to social care support from LBC
- The customer/recipient has not kept to the terms of this agreement
- LBC believes the customer/recipient can no longer manage the DPs effectively to meet their needs, and no suitable assistance is available to enable them to do so.
- The customer loses the capacity to consent to the payment of DPs, and there is no suitable person who could receive and use the money on their behalf.

Privacy and Data Protection

The information you supply for the purposes of Adult Social Care Direct Payments Service may be used by us in connection with the provision of other Council services to you. This authority 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. We may share/check the information provided with other bodies responsible for auditing or administering public funds, such as HM Revenue and Customs and the Department for Work and Pensions, in order to prevent and detect fraud.

The Data Protection Act gives you the right to see your personal information that we hold about you.

We are also required under Part IIA of the Audit Commission Act 1998 to participate in the National Fraud Initiative (NFI) data matching exercise. Please see our [Privacy Statement](#) for further details.

Confirmation of agreement to the above terms and conditions. Signed on behalf of the London Borough of Camden and the customer/recipient.

Signed: _____ **Date** _____
Customer/Recipient

Signed: _____ **Date** _____
Authorised Officer
For and on behalf of the London Borough of Camden

DP commencement date: _____