



**Wrexham County Borough Council  
Social Services**

## **Direct Payments Scheme**

## **PILOT FUNDING MODEL**

### **Policy & Terms**

**For**

**Adult Social Care**

12.04.2010



## CONTENTS

	Page No.
<b>Section A Policy and Legal Background</b>	4 – 10
Overview	4
Legislation and Guidance	4 – 5
Equality and Diversity	5
Offering Direct Payments	5 – 6
Use of Direct Payments	7 – 8
Exceptional Approval to Employ a Person Living in the same Household	8
Direct Payment Rates	8 – 9
Monitoring Evaluation and Development	9 – 10
<b>Section B The Direct Payment Process</b>	10 – 18
Process Stages	10
Assessment Considerations	10 – 11
Resolution of Disputes	11
Care Plan Costs, Financial Assessment and Charges	12
Recording and Information Sharing	12 – 13
Implementation (Making Payments)	13 – 14
Direct Payment Support Arrangements	14 - 15
Financial Monitoring and Audit Checks	15
Care Plan Review	15 – 16
Respond to Changes in Level of Need and Emergencies	16 – 17
Changes to the Payment Amount	17 – 18
Discontinuing the Direct Payment	18
<b>Section C Additional Guidance for Childrens Services</b>	18 - 19
Direct Payments for People with parental Responsibility for Disabled Children	18 – 19
Direct Payments for Young Disabled Adults	19 – 20
Direct Payments for Young Carers	20
<b>Part D Additional Guidance for Adults' Services</b>	20 – 21
Assessment of Eligible Needs	20
Care Packages	20
Safe Recruitment of Personal Assistants	20 – 21
Direct Payments to Adult Carers	21
<b>Part E Development of Direct Payments</b>	21
Further Policy Development	21
<b>Part F Support Documentation</b>	
<i>Appendix 1</i> - Direct Payments Exceptional Circumstances Guidance & Form	23 – 25
<i>Appendix 2</i> - Employing a Friend or Relative Guidance	26 - 27
<i>Appendix 3</i> - Direct Payments Process Flow Chart	28
<i>Appendix 4</i> - Direct Payments Service User Agreement	29 - 35
<i>Appendix 5</i> - Information for Completing Financial Income and Expenditure Records	37 – 39
<i>Appendix 6</i> - Wrexham County Borough Council Vetting Agency Flow Chart	41
<b>Glossary</b>	42 - 44

## **Section A. Policy & Legal Background**

### **1. Overview**

- 1.1 The Health & Social Care Act 2011, and the Carers & Disabled Children Act 2000 gave local authorities a duty to make payments for community care and children in need direct to individuals who are eligible, in lieu of the services they have been assessed as needing, to enable them to secure for themselves the relevant services. The Acts define a Direct Payment as a payment made by a local authority. How such payments can be provided is regulated by the Community Care Services for Carers & Children's Services (Direct Payments) Guidance 2004 under which this Policy & Guidance document is provided.
- 1.2 Wrexham Social Services Department recognises that Direct Payments can bring about improvements in the quality of life of people who would like to manage their own support. Direct Payments promote independence and aid social inclusion by offering opportunities for rehabilitation, education, employment, leisure and family support for people who need services.
- 1.3 If an individual service user declines Direct Payments the Council should arrange services on their behalf.
- 1.4 Providing the Council is satisfied that the individuals assessed eligible needs will be met through the arrangements they make using a Direct Payment, the Council is relieved of its responsibility to arrange those services for the individual.
- 1.5 Practitioners will work with individuals to provide support and information to enable them to use their Direct Payment to employ staff and/or directly purchase services to meet their assessed need.
- 1.6 The Council will need to be satisfied that the service user's assessed needs are being met, and that public funds are being spent appropriately and within best value.
- 1.7 The Adult Social Care Department and the Children and Young Peoples Service Complaints Procedures operate in respect of the process for Direct Payments.

### **2. Legislation & Guidance**

#### **2.1 The following documents together constitute the full Wrexham County Borough Council Policy for Direct Payments:**

- The Welsh Assembly Government issued guidance, under section 7(1) of the Local Council Social Services Act 1970, has been written to reflect the changes introduced by section 57 of

- From 1 August 2004, the broad effect of this legislation ('the Direct Payments legislation') is that instead of a local council providing certain social care services, they are required, in certain circumstances, to make Direct Payments to enable a person to obtain for themselves the services that they are assessed as needing.
- The Community Care Services for Carers and Children's Services (Direct Payments) (Wales) Amendment Regulations 2006 that came into force on 1 November 2006, extended the availability of Direct Payments further by increasing the categories of individuals potentially eligible for Direct Payments to include all people aged 18 to 64 in receipt of community care services and removed the previous disability link.
- Wrexham County Borough Council Direct Payments Service User Guide
- Wrexham County Borough Council Direct Payments Guide for Parents, Carers & Young People.
- The Wrexham County Borough Care Management Manual – Currently being reviewed and amended

## 2.2 **Equality and Diversity**

This policy supports the Council's equality scheme which sets out how the Council will address the race, disability and gender equality duties placed upon public bodies through the introduction of the Race Relations Amendment Act 2000, Disability Discrimination Act 2005 and the Equality Act 2006.

The policy is committed to equality of opportunity for all and through this policy we aim to ensure that service users and their carers are treated fairly and respectfully.

## 3. **Offering Direct Payments**

3.1 Direct Payments are available to both new and existing service users (e.g. service users may switch to Direct Payments at any stage).

3.2 Direct Payments **must be offered** to:

- adult persons receiving community care services (that is, persons to whom section 29 of the National Assistance Act applies)
- community care service within the meaning of section 46 of the National Health Service and Community Care Act 1990; or
- persons receiving carers services under section 2(1) of the Carers and Disabled Children Act 2000.
- a person with parental responsibility for a disabled child
- a disabled person with parental responsibility for a child
- a disabled child aged 16 or 17

### 3.3 Direct Payments **may not be offered** to: (Welsh Assembly Guidance 2004)

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

Reference should be made to the Regulations for full details of the circumstances in which the duty to make a Direct Payment does not apply.

#### 4. Use of Direct Payments

4.1 Direct Payments can be a “one off” payment for a specific event or item i.e. a short break or “on-going” for needs over a short or long period of time. Individuals can have all or part of their needs met via Direct Payments or a “mixed package” of support.

4.2 Direct Payments **can be used** for:

- assistance with personal care
- assistance with social interaction
- as little as 1-2 hours per week
- short term breaks
- Direct Payments can be used to purchase support for the eligible needs of the individual assessed by the Social Worker / Care Manager
- the Regulations & Guidance allow local authorities to make Direct Payments to enable people to purchase themselves equipment. Items of equipment must be part of the Care Plan. (Please note that the process and agreement for purchasing equipment is currently being amended).
- equipment usually provided by an equivalent service (e.g. aprons, disposable gloves)

4.3 As long as the needs identified in an individuals Care Plan are being met, Direct Payments can be used:

- to employ staff directly
- for domiciliary care, day services or short breaks from voluntary and/or private sector organisations
- to contribute towards a care package based on multiple funding streams (Independent Living Fund, Supporting People Grant, etc)

4.4 Direct Payments **cannot be used**:

- to purchase permanent residential care
- to purchase Local Council services

- to employ partners or close relatives living in the same household, to provide the care (this may be reconsidered in exceptional circumstances based on a Service Users Individual needs)
- for services arranged by other authorities such as Health and Housing e.g. Disabled Facility Grants
- Direct Payments cannot be made in relation to the provision of residential accommodation for a disabled child or disabled young person for any single period in excess of 4 weeks, or 120 days in any 12 month period.
- Direct Payments cannot be used to purchase services or equipment that would otherwise be arranged by other authorities (for example, the NHS or housing authorities - Direct Payments are not a substitute for Disabled Facilities Grants).

## **5. Exceptional Approval to Employ a Person Living in the Same Household**

- 5.1 Close relatives living in the same house can only be employed by a Direct Payment recipient in exceptional circumstances. The Council will have to satisfy itself that securing a service from such a person is necessary to satisfactorily meet the individuals needs. Each case will be examined individually and the nominated senior Officer for Adult / Children and Young Peoples Services will make the final decision. (Appendix 1 and 2)
- 5.2 The Council may be persuaded that the employment of a person with whom the relationship with the service user is primarily personal is appropriate, in such instances; there should be greater benefits than risks for the Service User. The Council must be satisfied that it is the most appropriate way of securing the relevant services. e.g. where the complex needs of the individual require very particular support or where there are particular ethnic or cultural issues to be respected. In which case, a case for exceptional circumstances must be made in conjunction with their Practitioner. (Appendix 1 and 2)

## **6. Direct Payments Rates**

- 6.1 The Direct Payments rates for Wrexham will be set and amended by the Council in consultation with the Direct Payments Development Group
- 6.2 The lead Commissioning & Planning Officer & Finance Officer will review the rates, at least on an annual basis and recommendations for changes will be made to the ACSCO CSCO Head of Safeguarding and Support for decision

6.3 Changes to the rates will usually be applied to every Direct Payment from the 1<sup>st</sup> April of the next financial year to allow time to notify service users of the changes. The Finance Officer will be responsible for notifying service users.

## **7. Monitoring, Evaluation and Development**

7.1 The lead Commissioning and Planning Officer will be responsible for monitoring the uptake of Direct Payments within Wrexham, across both Adult's and Children's Services and for reporting to the Welsh Assembly Government

Information collated will include:

- Number of service users joining the Direct Payments Scheme in a financial year
- The type and nature of support being purchased
- Whether recipients access the Third Party Support Services
- Reasons that service users refused Direct Payments
- Reasons the service users discontinued Direct Payments

7.2 The development of the Direct Payment Scheme in Wrexham will be monitored and directed by the Direct Payments Development Group. Members include, Social Care Commissioners and Operational Managers, Children's Disability Services, Third Party Support Agency, Finance Officers, Internal Audit Officers, Service Users, & Voluntary Agencies

7.3 The Development Group will develop an annual action plan aimed at achieving improvements within the scheme.

7.4 The Development Group will be responsible for:

- Responding to local and national consultation requests and feedback through the Commissioning and Planning Officer
- Developing and promoting the Direct Payments Scheme for Wrexham County Borough Council
- Overseeing the implementation of the Wrexham Direct Payments Scheme within Adult Social Care and Children & Young People's Services

- To liaise and maintain links with relevant local and national groups such as the Peer Support Group, and Programme Groups.

## **Section B. The Direct Payments Process**

### **8. Process Stages (Appendix 3)**

- 8.1 The process of referral, assessment, determining eligible needs, care plan agreement and review are standard policies including the Eligibility Criteria, Unified Assessment, Care Programme Approach and the Children's Initial & Core Assessment
- 8.2 Individuals need to be given time, information and support to consider how Direct Payments may work for them, explore the options and set up suitable arrangements; this is the role of Practitioners.
- 8.3 If the individual has immediate care needs and does not already have a service in place, the Council may need to arrange services in the interim, the individual should be aware that this can be a short term arrangement whilst they make a decision and /or their Direct Payment package is set up.
- 8.4 If an individual decides that they do not want Direct Payments, services will be arranged in the normal way.

### **9. Assessment Considerations**

When assessing the use of Direct Payments for a specific individual the assessment **must also consider and agree:**

- 10.1 If the individual is **willing** to arrange their own service via a Direct Payment, Direct Payments can only be made with the **consent** of the individual concerned, or for disabled children, with the consent of a person with parental responsibility. Whilst a Direct Payment can be made to a nominee and someone else can help the person to manage the Direct Payment, the person eligible to receive Direct Payments must be able to consent to the payment.

The ability to consent should always be assessed in accordance with the requirements of the Mental Capacity Act 2005.

*N.B Someone else can help the individual to manage their Direct Payment, but the consent of the eligible individual is essential*

- 10.2 If the individual is able to consent to a Direct Payment, it should be assumed that the individual would (regardless of the amount of assistance required) be able to manage a Direct Payment. Discussions should be held openly with service users and the Practitioners record

10.3 When Direct Payments is the agreed option the assessor and the individual concerned should identify and record the assistance needed, if any, to manage the Direct Payment including from whom. Help with managing Direct Payments maybe received from:

- family friends or carers acting as an agent of the recipient
- advocacy or support groups
- purchased assistance e.g. payroll services
- Third Party Support Service
- Vetting Agency

**Issues to consider are:**

- support to establish a system to help manage the Direct Payment
- whether support is needed on a regular basis
- for an individual with a deteriorating condition, it maybe necessary to increase support in the future

**The individual must remain in control of the arrangements, and remains accountable for the way in which the Direct Payments are used.**

10.5 How will the Direct Payment be used e.g. to directly employ their own personal assistant

10.6 If the assessor has doubts about the individual's long term ability to manage it may be appropriate to set up a formal trial period, or offer a mixed package of Direct Payments and Council-arranged services. Consideration should also be given utilising a Power of Attorney, Appointeeship, User-controlled Trust or Supported Accounts.

**Resolution of disputes**

10.7 Line Managers should review any disagreement about the ability of an individual to manage Direct Payments. Individuals should be given help and support to express their views and to ensure that their arguments are properly considered. A copy of the complaints procedure should be given to all service users in such circumstances.

## **11. Care Plan Costs, Financial Assessment and Charges**

- 11.1 The amount of the Direct Payment to be made will be based on the service users assessed need, the types of service and the number of hours needed to meet those needs. However, the Direct Payments legislation provides that it must be equivalent to the Council's estimate of the reasonable cost of securing the provision of the service concerned, subject to any sum paid by the recipient.
- 11.2 The Care Plan / Children in Need Plan should be sent to the Finance Officer for costing. For mixed packages of care, the cost of the service will be added together to give a total weekly expenditure.
- 11.3 A review of the individuals finances will be undertaken via the Financial Assessment Team to ascertain if the individual will be subject to the Council's Charging Policy - this will be detailed within their care plan. Any contribution or charge that the Council make will be deducted from the payment before it is made. **Please note that for Children's Services there are no charges applied.**
- 11.4 The Practitioner will ensure that funding for the individual maximises access to available funding streams e.g. ILF (Independent Living Fund), Supporting People Grant, Welfare Benefits).
- 11.5 Line Managers should review any dispute regarding the Direct Payment i.e. the service user thinks that the total should be greater than the Council proposes. If this cannot be resolved through discussion, the individual may pursue the matter through the complaints process.
- 11.6 Service users can use their own resources to purchase supplementary services if they wish to do so.

## **12 Recording and Information Sharing**

- 12.1 All recording regarding Direct Payments will, as far as possible, be no different to that which occurs as an integral part of "standard" practice and recording systems within Wrexham Social Care Department and the Children and Young Peoples Services. Responsibility for completing the necessary records will be with the worker responsible for the Community Care Assessment/Children in Need Plan, it may be delegated but there must be a clear agreement regarding the management of the process and ensuring that the payment(s) is set up.
- 12.2 The Practitioner is required to ensure that the Direct Payment recipient signs the Service User Agreement ( Appendix 4), agreeing to the terms and conditions of the Direct Payment Scheme in Wrexham. A copy of which is given to the service user and a copy retained on the service users case file.

12.3 The Council will produce and update when required a Direct Payments User Guide which will set out the process and requirements of Direct Payments for service users. It will be used to support and supplement support records.

12.4 The following recording documents form part of this policy and are attached:

- Direct Payments Service User Agreement
- Direct Payments Flowchart
- Wrexham County Borough Council Employment Agency Flowchart
- Direct Payments Exceptional Circumstances Guidance and Form
- Employing a Friend or Relative Guidance
- Information for Completing Minimum Financial Income and Expenditure Records

12.5 Information regarding the support / services to be purchased and amount(s) of the Direct Payment(s) must be recorded within the Care Plan / Children in Need Plan. This should be signed to show that the service user undertakes to use the money to meet the agreed needs recorded in the care plan and that they have read and understand the information in the Direct Payments Policy & User Guide

12.6 When completing the Direct Payments Documents, a copy of the individuals care plan should be given to the service user or the person assisting them. It is vital that he/she understands all the documents and, where necessary, signs them to show that they are in agreement.

12.7 Sharing of information between Council and partner organisations will only be shared with the service users' agreement.

### **13. Implementation (Making Payments)**

13.1 "One off" non-recurring Direct Payments will usually be paid directly into the service user's existing bank account. This should also be considered where the Direct Payment(s) are made for short term needs

13.2 For "ongoing" payments the service user must have a separate bank account for their Direct Payments. The service user must provide details of this account to the Council. (*There is a standard letter to help service users if they have difficulty in opening a suitable account.*)

- 13.3 "Ongoing" payments will be paid in advance across the financial year on a 4 weekly basis.

#### **14. Direct Payments Support Arrangements**

- 14.1 Making a Direct Payment available to an individual does not relieve the Local Council of its over-riding legal responsibility to support that individual. All available assistance should be offered to enable him/her to succeed with Direct Payments. This may be direct help or through referral to another organisation. They must also be given information about who to contact when they have questions or problems arise.
- 14.2 Practitioners may also need information, assistance and resources to enable them to give this support and carry out the processes related to Direct Payments. This is available from the Commissioning and Planning Officer.
- 14.3 Wrexham County Borough Council has contracted with an external support organisation **The Penderels Trust** which provides support to individuals to manage their responsibilities associated with Direct Payments to achieve the following outcomes:

Outcome 1: The service user will understand the Policy and Terms of the Direct Payment Scheme in Wrexham and is able to make informed decisions

Outcome 2: The service user is able to recruit, select and manage their individual support staff using Good Practice recruitment and staff management procedures

Outcome 3: The service user has access to the relevant information enabling them to meet the legislative employment requirements & be good employers.

Outcome 4: The service user is able to access support to review their care package and make alternative arrangements should additional short term support be needed or they are no longer able to manage their Direct Payment

Outcome 5: Information is readily available and up to date on the Direct Payment Scheme including, Users Guides/promotional packs to be approved by Wrexham County Borough Council; to include a written statement of aims, philosophy, eligibility criteria and services provided.

Outcome 6: The service user will be able to submit the required information for accountability checks as needed for monitoring and auditing

Outcome 7: The provider will provide the required monitoring and reviewing information to meet its contractual requirements.

- 14.5 Support and information is also available from National Organisations and Government produced guides for people who receive Direct Payments. i.e. HM Revenues and Customs and ACAS

## **15. Financial Monitoring and Audit Checks**

The individual is accountable to the Council for how the Direct Payment money is spent and will be expected to provide evidence that he/she has spent it as agreed.

For “one off” payments this will normally be a copy of the receipt.

The Direct Payments recipient should maintain and provide for inspection, basic financial accounts, including copies of payslips. (an example of basic financial accounts are attached to this policy as Appendix 5). The Council has the right to inspect these records as part of its auditing procedures, when requested.

For ongoing payments the service user must provide financial records and quarterly returns to evidence that he/she has received the payments and the money is being spent as agreed (and detailed in the care plan). The service user should keep all receipts and details of payments made in relation to insurance or tax deductions. The first return will usually be 3 months after the start of the payments and then every 3 months.

The payments and financial records will be monitored and reviewed at least on an annual basis. Any unspent funds or over payment will be recovered.

The Direct Payments Development Group will continue to explore options to make monitoring and audit of Direct Payments easier for all concerned.

## **16. Care Plan Review**

The fact that the Council is making Direct Payments rather than arranging services for the individual does not affect its responsibility to review care packages at regular intervals.

Service users receiving Direct Payments take their own responsibility for ensuring their care package is delivered and appropriate, according to the agreed care plan. The Council is more at arms length, although the Council still has the responsibility to ensure that that an individual's care needs are met appropriately and that the Direct Payment is spent to meet those needs.

The **frequency** of review will reflect the length of time the individual has managed a Direct Payment and their circumstances and will depend on local policy.

- Reviews will normally be held 1 month after the commencement of the Direct Payment and then at the same frequency as other service users. This frequency will reflect service standards for Adult and Children's Services.
- Reviews may be held more frequently where a situation is unstable or there are concerns over the management of the Direct Payment.
- the Council and the service user, or anyone who is helping them with their Direct Payment, may request a review if circumstances change or there are concerns or difficulties.

The **purpose** of the review is to:

- establish whether the outcomes of the care plan are being met.
- establish whether the individual's needs have changed
- be clear that the individual's needs are being met and that these needs remain eligible to receive a service.
- ensure that the payments are being used to meet the needs identified in the care plan.
- whether the individual is managing their Direct Payment and requires a change in the level of support they receive
- whether the individual is satisfied with the services they are securing

Any concerns about a service user's ability to manage Direct Payments should be raised directly with them at the earliest opportunity without waiting for a scheduled review and recorded on their case notes.

## **17. Responding to changes in the Level of Need and Emergencies**

The service user has a responsibility to inform the assessor/council of any increase or decrease in his/her level of need that might affect the amount of Direct Payment.

Individuals receiving a Direct Payment must plan for how they will cope with short term increases in their needs and/or emergencies. i.e. staff absences'

If the level of need increases and the cost of meeting this need is above any contingency funds available, there will need to be a reassessment.

The Care Manager/ Social Worker should ensure that a contingency plan for emergencies is included within the individuals Care Plan / Children in Need Plan

If contingency plans break down and it is not possible for the individual to have their needs met then the Council is responsible for arranging services to meet priority needs. In order to meet needs with short notice a reduction in support or different service may need to be offered e.g. day services or residential services.

When an individual does not need their Direct Payments for a short but significant period, i.e. longer than four weeks, the Direct Payment may be suspended for that period.

After 8 weeks in hospital the Direct Payment should be suspended. This is in line with Independent Living Fund (ILF) and other Department of Work and Pension policies. A variance to this should be agreed by the Team Manager and clearly documented within the individuals support file. The Practitioner is responsible for informing finance.

#### **18. Changes to the payment amount (suspension and repayment)**

Information from reviews and audit should be considered in any decision to change the amount of, suspend, or seek repayment of a Direct Payment.

The amount of payment may be increased, decreased or suspended to reflect changing needs or to recoup overpayment. Care plans must also be updated to reflect changes.

The Council can seek a repayment if:

- the Direct Payments have not been used to purchase the services identified in the care plan.
- the Direct Payments have been used to purchase a service from any of the people identified as being excluded
- there is a significant underspend or a reserve of money not including funds for tax, holidays, and contingencies i.e. staff absence etc.
- the individual is not keeping to the agreed arrangements for Direct Payments.

In all circumstances consideration should be made about any on-going contractual responsibilities, i.e. terminating employment, redundancy liability etc.

The Practitioner/Council may consider that it is more appropriate to recoup any overpayment or make changes at the annual audit rather than to disrupt an existing payment system.

## **19. Discontinuing the Direct Payment**

19.1 The service user may decide that they no longer wish to continue with the Direct Payment. The reasons for this may include:

- the individual is no longer able or willing to manage the Direct Payment (even with help)
- the individual's needs for the service cannot be met by using a Direct Payment

19.2 If either the Direct Payment recipient or Wrexham County Borough Council wants to stop the Direct Payment a review must be held to discuss further actions. A record of the reasons and when payments will be discontinued must be made and sent to all involved in that arrangement. Wherever possible 28 days notice period should be allowed.

19.3 If there is evidence that an individual is not keeping to the agreed arrangements, or of serious misuse of the money, the Direct Payment may be stopped immediately, following consultation with the relevant Team Manager / Service Manager. However, the Council will then need to arrange any necessary services instead.

19.4 In the event of a service user's death, when stopping payments the Team Manager will need to consider outstanding commitments to care staff (based on the contract that the individual had with their employees), the tax office etc.

## **Section C: Additional Guidance for Children's Services**

### **20. Direct Payments to people with parental responsibility for disabled children.**

20.1 Councils should only arrange a Direct Payment for a parent of a disabled child when they are satisfied that the parent will make arrangements that are designed to safeguard and promote the welfare of the child and meet their assessed needs.

20.2 Direct Payments may be used by parents to purchase:

- intimate care for a disabled child

- short term breaks. NB: A Direct Payment cannot be made for residential accommodation for a disabled child for a period in excess of 28 days, and in any period of 12 months for periods in excess of 121 days in total.
- 20.3 Workers must make clear the steps that people with parental responsibility for a disabled child ought to take to satisfy themselves that the person offering help with the care of their child is a suitable person.
- 20.4 In Wrexham County Borough Council it is an expectation that a person who is considering employing an individual to care for their child, where that care is funded by a Direct Payment, asks the Council to carry out checks under the Protection of Children Act via the Criminal Records Bureau. Parents' insistence upon employing an individual who has been found unsuitable following such a check will be a factor in the Council's decision whether to exercise its discretion in making Direct Payments. This applies equally to 16 and 17 year old young disabled people who wish to receive a Direct Payment to meet their assessed needs.
- 20.5 Councils retain their responsibilities under the Children Act to assess and, where appropriate, review the needs of disabled children and their families in the normal way.
- 20.6 All proposed Direct Payments must be agreed at the Children's Services Resources Panel.

## **21. Direct Payments for Young Disabled People**

- 21.1 Disabled 16 and 17 year olds are able to use Direct Payments, where this is in their best interests, to purchase services they have been assessed as needing, not services to support other members of the disabled young person's family.
- 21.2 A young disabled person at age 16 or 17 may wish, as part of the transition to adulthood, to take control of part(s) or all of the Direct Payment that has, to date, been managed by the person with parental responsibility.
- 21.3 In making the decision to make a Direct Payment to a disabled 16 or 17 year old, the Council should balance the young person's wishes and feelings with the views of those with parental responsibility.
- 21.4 The Council must be satisfied that the arrangements will safeguard and promote the welfare of the child and meet their assessed needs
- 21.5 Whatever decisions are made when the disabled child reaches age 16 or 17, people with parental responsibility for a disabled child may not

NB: If they intend to continue in their caring role, they may be entitled to receive Direct Payments as an alternative to local Council directly provided Carers' Services under the provisions of the Carers Act.

- 21.6 All proposed Direct Payments must be agreed at the Children's Services Resources Panel.

## **22. Direct Payments for Young Carers**

- 22.1 Policy guidance recommends that Direct Payments to young carers will only be used in **limited** circumstances e.g. where a 16 or 17 year old is choosing to undertake a substantial caring role for a period and that the local Council supports the decision.

## **Part D: Additional Guidance for Adults' Services**

### **23. Adult Social Care - Assessment of Eligible Needs**

- 23.1 Any assessment of an individual's needs for a care service is undertaken using the Fair Access to Care Policy. The criteria for Direct Payments are no different to those for any other service. Individuals should not receive any more or any less service because they have chosen to receive their service by means of a Direct Payment
- 23.2 The appropriate Practitioner will complete an assessment, which is the same for those wanting Direct Payments as for those wanting the Social Care Department to arrange their support.

### **24. Adult Social Care – Costing Care Plans, Financial Assessment and Charges**

- 24.1 Services must be agreed and arranged in accordance with the usual processes set out in the Care Management Manual.
- 24.2 Most service packages for older people and people with a physical or learning disability are agreed and arranged through the **Resource Allocation Panel**.
- 24.3 The Team Manager can approve small packages of care and care packages for existing service users where there is no change in need or increase in cost, i.e. where the existing package is paid from the relevant services external Domiciliary Care Budget.

### **25. Adult Social Care – Safe recruitment of personal assistants**

- 25.1 Where an individual is considering employing someone to provide support, where that support is funded by a Direct Payment, the Council

## **26. Direct Payment to Adult Carers.**

- 26.1 Direct Payments allows carers to purchase services they are assessed as needing **as carers** to support them in their caring role and to maintain their own health and well-being. NB: carers (other than those with parental responsibility caring for children) may not receive a Direct Payment to purchase services to meet the assessed needs of the person who is cared for. In this situation the Direct Payment is made to the disabled person themselves.
- 26.2 A separate Carer's Assessment must be undertaken when considering a carer as a recipient of Direct Payments.

### **Part E: Further Policy Development**

Wrexham County Borough Council is committed to the development of the Direct Payment Scheme and is continually looking for ways to ensure that the scheme is accessible and easy to use by recipients. All policy and practice development within the scheme will be achieved through working in partnership with all stakeholders, through the Direct Payments Development Group.

### **Part F: Supporting Documentation**

- Direct Payments Service User Agreement
- Direct Payments Flowchart
- Wrexham County Borough Council Employment Agency Flowchart
- Direct Payments Exceptional Circumstances Guidance and Form
- Employing a Friend or Relative Guidance
- Information for Completing Financial Income and Expenditure Records





**Direct Payments  
Exceptional Circumstances Form**

Close relatives living the same house can only be employed in exceptional circumstances. Wrexham County Borough Council will have to satisfy itself that securing a service from such a person is necessary to meet satisfactorily the prescribed person’s need for the service. Each case will be examined individually and the Assistant Chief Social Care Officer will make the final decision.

An exceptional circumstance might be considered to be a situation such as:

- Cultural or language – where it would be necessary to employ only a person who is completely knowledgeable about the recipients particular cultural or language needs and where this need cannot be met elsewhere.
- Geographical – where it has proved impossible to find care in any other way
- Specific support needs, whereby there would be a negative impact on the individual’s health and well-being

**Name of Recipient:**

-----

**Address:**

-----  
-----

**Case No:**

-----

**Name of proposed  
Personal Assistant :**

-----

**Address (if different  
from above)**

-----  
-----

**Relationship to service  
user:**

-----

**Brief Description of:**

**Care Needs:**

**Current Care Provision:**

**Reason for application to employ a close relative – include other options tried, and the reasons they have failed**

**Name of Care Manager:** .....

**Signature:** .....

**Name of Line Manager:** .....

**Signature:** .....

**Position:** .....

Please send to the Service Manager who will take the request forward to the Assistant Chief Social Care Officer for authorisation.

Agreed by the Assistant Chief Social Care Officer on (date)

**Date:** .....

**Signed:** .....

**Comments / Conditions:**

**Guidance on Employing a Friend or Relative**

If a recipient wishes to employ a friend or relative who does not live in the same house consideration should be given to the changes that can occur when the relationship changes from father & son or uncle & niece etc. to employer and employee.

All discussions should be clearly documented within the individual file for future reference if required.

In considering whether to employ a close relative/friend the service user should have the following discussions with their Care Co-ordinator / Social Worker and should also discuss if they would like an advocate involved to support them in making this decision:

- Why do I wish to employ a family member / relative?
- How will employing this person make a difference to the relationship we already have?
- Am I willing to discuss / be comfortable with the person dealing with my intimate care needs?
- Will I be able to manage the individual as an employee if they do not adhere to their contract e.g. being late for work, wanting holidays at a time that doesn't suit the recipient, bringing their children with them, not finishing the work within the allocated timescale?
- Would I be able to discipline or serve notice on them if I am not happy with their work?
- What would I do if I found they were talking to other people about me without my permission?
- Would I still feel in control of your life and support?
- How would I feel if the employee decided they no longer wanted to work with me eg: wanted a different job, were not happy with the way I managed them etc?

It should be recognised that these are all situations that Direct Payments recipients have had to deal with and may be more difficult to manage if you have a close relationship with the Personal Assistant.

If the service user decides to employ a close friend or relative the following still applies:

- Employment Law still applies. The recipient will still need to ensure that they have a job description, application form, interview, job offer letter, references/CRB and a contract of employment. Within Wrexham County Borough Council it is the policy that where there are children being supported or children living in the house that Personal Assistants are required to have a CRB check. This includes family members.

The person cannot normally be self-employed unless the Inland Revenue agrees, so the recipient will still need to ensure they use a payroll and process

the time sheets. Employment status can only be decided by HM Revenues and Customs, not the Personal Assistant.

- That laying down of guidelines or 'house rules' at the start will help to prevent problems in the future

The decision to become a Personal Assistant for a close relative can be equally difficult as it essentially changes dynamics of the relationship. It is therefore important that the Care Manager / Social Worker discusses with this person how they feel about being a paid employee, for example:

- If there are difficulties with how the recipient treats them as an employee.
- If they no longer wish to work for the individual how will they terminate their employment?
- How will they deal with other possible conflicts, as described previously.

**NEW FLOWCHART**  
**DISPLAYED SEPERATELY**



**Wrexham County Borough Council  
Social Care**

# **Direct Payments Scheme**

**Agreement with Recipient  
Service Users**

## **1. Purpose & Expectations of the Agreement**

- 1.1 Wrexham Social Care Department agrees to provide the Direct Payment recipient with a sum of money to enable them to arrange and manage their own services.
- 1.2 Wrexham Social Care Department expects any arrangements to be formally made and governed by Contracts of Employment with Personal Assistants or Purchase Agreements with independent agencies or individuals.
- 1.3 The payment is subject to the terms applying to the offer as outlined in the **Care Plan**, including any conditions or restrictions on use.
- 1.4 Direct Payment recipients will need to ensure that records of Income, Expenditure and Personal Assistants' working time are maintained.
- 1.5 The Social Care Department reserves the right to exercise the powers of inspection of service provision at any time, and Recipients will be expected to give reasonable access to duly authorised staff to carry out such monitoring inspection.
- 1.6 Any offer will be subject to all matters relating to decisions about Direct Payments provision applying at all times as outlined in the Scheme's **POLICY**.

## **2. Requirements on the Wrexham Social Care Department**

- 2.1 The Social Care Department will have assessed the need for services with the person concerned and in the light of this assessment provided a Care Plan detailing services to be provided to meet any identified needs. This will be the basis of any Direct Payment offer to recipients.
- 2.2 The Social Care Department will provide the Direct Payment recipient with written confirmation of the costed care package.
- 2.3 The Social Care Department will monitor and evaluate the quality of the support provided, detailed within the individual Care Plan as per the departments normal review policy.
- 2.4 Where the recipient experiences difficulties, or the Care Manager/Social Worker becomes concerned about the quality of care, long-term viability of arrangements, or the administration of the Direct Payments, options for further support including provision of services arranged by the Social Care Department will be proposed.

### **3. Emergency Cover**

- 3.1 The Care Manager / Social Worker and Service are responsible for ensuring that a contingency plan is written within the individuals Care Plan should an emergency arise.
- 3.2 Should these arrangements breakdown the individual will contact the Departmental duty team to provide alternative cover. In these circumstances, the department will aim to match the care services recorded in the Care Plan, if this is not practicable. This may result in only '**priority needs**' being met, this could mean a reduction in hours or access to a different service e.g. Day Services or Residential Care.
- 3.3 The Social Care Department will recover the proportion of the Direct Payment made for the period of cover not provided.

### **4. The Rights of the Direct Payments Recipient**

- 4.1 The Direct Payments recipient has the same right as other service users to request that the Care Manager/Social Worker arrange for a review and/or re-assessment of their care and support needs at any time.
- 4.2 The Direct Payments recipient has the right to elect to return to Council provided services at any time.

### **5. Financial Issues**

- 5.1 The amount of money to be paid over to Direct Payments recipients will be costed on the basis of their Care Plan.
- 5.2 The amount of money to be paid to the Direct Payment recipient will include an element in respect of statutory minimum holiday entitlement, two weeks sick pay, Employers National Insurance Contributions.
- 5.3 In exceptional circumstances the calculations may take into account other additional factors of increasing costs of service delivery to the recipient.
- 5.4 Payments will be made four weekly in advance to the bank account the Direct Payments recipient has set up for the purpose of administering Direct Payments.
- 5.5 The service user will pay their four-weekly contribution in advance to the bank account they have set up for the purpose of administering Direct Payments.
- 5.6 Any unused money identified during the regular audit of expenditure and service pattern will be required to be repaid. Repayment will not be

- 5.7 Charges for the service will be in accordance with Wrexham County Borough Council's Charging Policy for Services. No charges apply to Children and Young People Services.
- 5.8 Any charges due will be deducted from payments made. If charges are deducted from payments to Direct Payments recipients then they must provide evidence of paying an equivalent amount into the Direct Payments bank account.
- 5.9 Direct Payments recipients will have the normal right to request a review of the charges, as set out in the Council's Charging Policy.
- 5.10 As a Direct Payment recipient you will keep basic income and expenditure financial records that mirror your Direct Payments bank account. An example and information are provided as an appendix to the Direct Payments Policy.

## **6. Payment of Personal Assistants**

- 6.1 Direct Payments recipients can choose how to pay their Personal Assistants (BACS or cheque) and the frequency of payment to their staff (weekly, four weekly or monthly).
- 6.2 As an employer, the Direct Payments recipient is responsible for making sure that any Income Tax, National Insurance payments and other payments (i.e. Student Loans) are deducted from wages and duly paid over to the appropriate agency. The use of payroll services will not result in the transfer of responsibility in this regard.

## **7. Liability Insurance.**

- 7.1 The Direct Payments recipient will indemnify Wrexham County Borough Council against all actions, claims, demands, proceedings, damages, costs, charges and expenses, whatsoever in respect of any breach of the statutory and other provisions occurring as a result of the work of the Personal Assistants, employed by themselves, in providing the care and support services.
- 7.2 Such indemnity should be covered by the Direct Payment recipient arranging appropriate insurance. As a minimum, the Direct Payments recipient must take out Employers' Liability and Public Liability insurance policies for the intended purpose.
- 7.3 Evidence of current insurance will be checked as part of the monitoring process.

## **8. Issues - Compliance with Employment Legislation & Practice**

- 8.1 Direct Payments recipients employing Personal Assistants will ensure that all relevant employment legislation is complied with. Information sheets on employment requirements are available for recipients' information, from the Direct Payments Third Party Support Service.
- 8.2 Direct Payments recipients will be required to employ sufficient and appropriate Personal Assistants to ensure that the support, as set out in the Care Plan, is provided at an acceptable standard and provided in a safe way.
- 8.3 Direct Payments recipients will ensure that adequate precautions are taken when recruiting and selecting Personal Assistants to be employed in line with Terms applying to the offer.
- 8.4 Direct Payments recipients may not normally employ close relatives living in the same household or people living in the same household with whom the relationship is primarily personal rather than contractual.

## **9. The Third Party Support Agency**

- 9.1 The Third Party Support Agency will be able to provide Direct Payments recipients with information and support to manage their package independently.
- 9.2 Use of the Third Party Support Service is optional. It must be noted that if the Third Party Support Service is not used, the Social Worker will not be expected to take on that role.

## **10. If Difficulties Arise**

- 10.1 In the event of serious concerns the Social Worker will discuss these concerns with the Direct Payment recipient at the earliest opportunity. The Social Care Department reserves the right to suspend the Direct Payment arrangements. In such an event, the arrangement of Direct Payments will not be resumed until the concerns have been addressed and rectified.
- 10.2 Where there is evidence of fraud or misuse of the funds, entitlements to Direct Payment will cease immediately, and advance payments made to the Direct Payments recipient will be re-payable to Wrexham Social Care Department.
- 10.3 If Direct Payments recipients are dissatisfied they have the right to use the Personal Services Directorate's Representation and Complaints Procedure.

## **11. Termination of the Agreement**

- 11.1 Either party may terminate this agreement in the event of the other party breaching any of the terms set out. If appropriate, consideration will be given to providing the other party with a period of notice of 28 days. However, this may be reduced in circumstances where individuals are at risk or there is found to be a misuse of the Direct Payment terms and agreement.
- 11.2 It is expected that, within 14 days of one party issuing a notice of intention to terminate the agreement, full reasons will be supplied in writing to the other party,
- 11.3 Either party may terminate this agreement where there is no fault by the other party by giving three months notice. A shorter notice period should be agreed between parties in writing.

**This agreement commences on:**

**I HAVE READ THIS AGREEMENT AND I UNDERSTAND THE TERMS AND CONDITIONS. I AGREE TO ABIDE BY THEM.**

**Name:**

**Address:**

**Signed:**

**Date**

**Please delete those that do not apply:**

**On behalf of: / As the Appointee of: /**

**As witness to the approval of the terms by:**

**Name:**

**Signed:**

**Date**

On behalf of Wrexham County Borough Council Social Care Department.



**Notes to Record of Income and Expenditure**

**Expenditure**

1. **Payroll Services:** an invoice should be obtained from your Payroll Services provider, who will prepare payslips based on the information you provide.
2. **Support Plan Actions:** your Support Plan will have identified various areas you need support. Retain receipts / invoices as far as possible (note: it is recognised that it may not always be possible to obtain receipts / invoices, they may be lost etc).
3. **Personal Assistants wages:** your Payroll Services should provide you with two monthly payslips, one for your records and one to be given to your Personal Assistant. The payslip will show the gross wage paid, any Income Tax / National Insurance deductions and the net wage. It is the net wage that you pay your Personal Assistants by cheque.

Example payslip:

Employee name:		Mrs. J Smith	
Pay for month ending:		30 <sup>th</sup> April 2007	
National Insurance ref:		ABC123456CD	
<u>Payments</u>		<u>Deductions</u>	
Basic pay	£650.00	Employees National insurance	
	£50.00	Income Tax	£100.00
Total payments	<u>£650.00</u>	Total deductions	<u>£150.00</u>
		Net pay due	£500.00

4. **Inland Revenue:** As an employer you are responsible for deducting Income Tax and National Insurance from your Personal Assistants wages, paying over these deductions to the Inland Revenue, including your Employers National Insurance contributions. Your Payroll Services provider will inform you of the sums due every three months.

Example notification:

Period 1 <sup>st</sup> April 2007 to 30 <sup>th</sup> June 2007	
Employee:	J Smith
Income Tax deducted	£300.00
Employees National Insurance deducted	£150.00
Employers National Issuance to pay	<u>£200.00</u>
Sum due to the Inland Revenue	<u>£650.00</u>

5. **Bank Reconciliation:** you should reconcile your bank statements to your record of income and expenditure. An example bank statement, based on the record of income and expenditure previously given is shown below. Note that the dates shown may not be the same as your record - they are the date the bank processed the transaction, not the date you raised a cheque (for example). The balance in the bank account at the end of June is £1,477.00 and not £327.00 as per the record, this is because cheque numbers 11 and 12 are not presented until July.

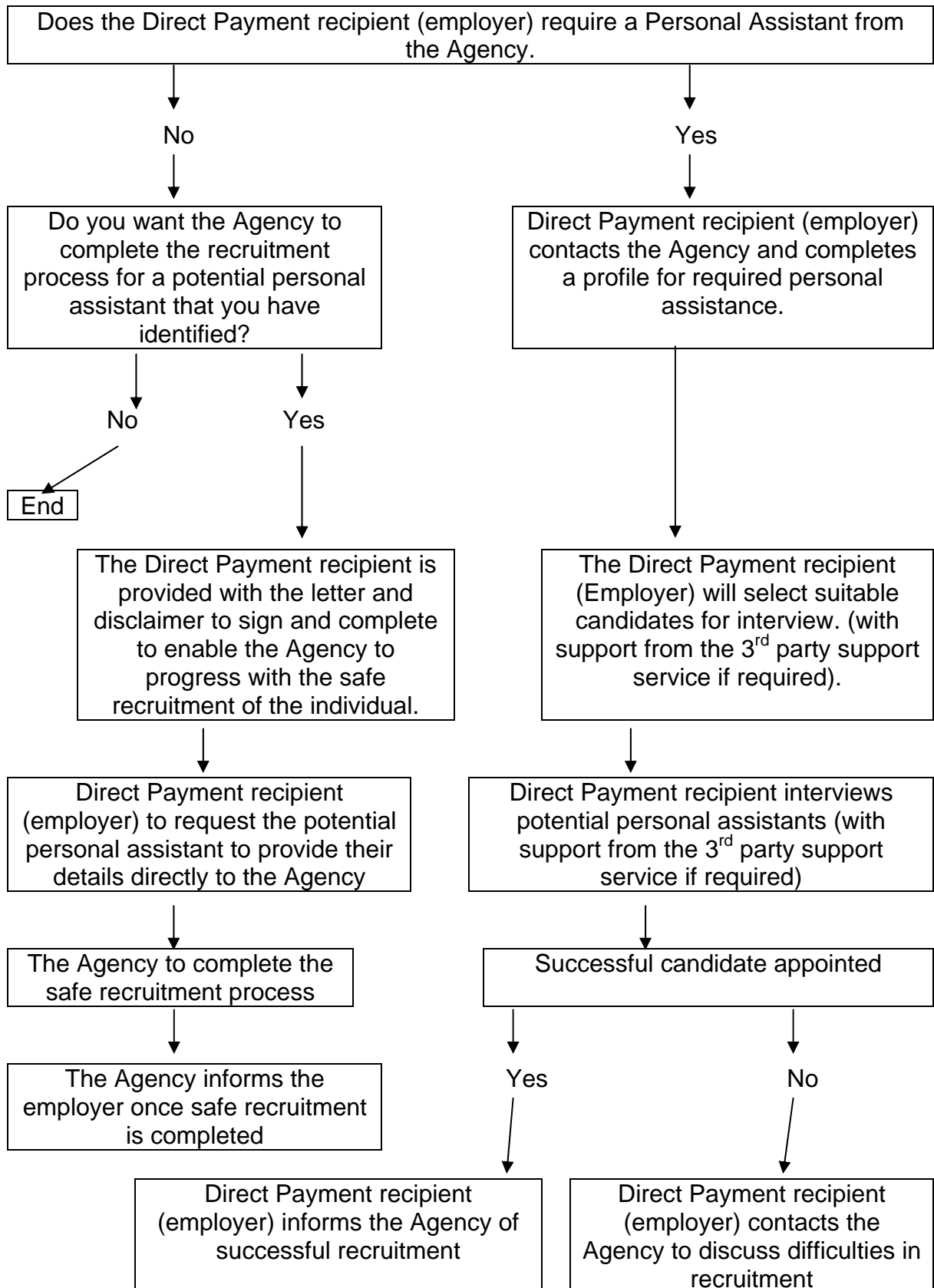
ABC bank			Withdrawn	Paid in	Balance
Bank Account no. 123456					
Sort code: 00-00-00					
	Opening				
01-Apr-07	balance				£0.00
01-Apr-07	Credit	WCBC		£1,000.00	£1,000.00
01-Apr-07	Credit	Service User		£100.00	£1,100.00
20-Apr-07	Cheque	1	£100.00		£1,000.00
24-Apr-07	Cheque	2	£150.00		£850.00
26-Apr-07	Cheque	3	£75.00		£775.00
01-May-07	Credit	WCBC		£1,000.00	£1,775.00
01-Apr-07	Credit	Service User		£100.00	£1,875.00
01-May-07	Cheque	4	£500.00		£1,375.00
10-May-07	Cheque	5	£65.00		£1,310.00
16-May-07	Cheque	6	£68.00		£1,242.00
01-Jun-07	Credit	WCBC		£1,000.00	£2,242.00
01-Jun-07	Credit	Service User			£2,342.00
01-Jun-07	Cheque	7	£95.00		£2,247.00
01-Jun-07	Cheque	8	£500.00		£1,747.00
07-Jun-07	Cheque	9	£120.00		£1,627.00
21-Jun-07	Cheque	10	£150.00		£1,477.00
30-Jun-07	Closing	balance			£1,477.00
01-Jul-07	Cheque	12	£650.00		£827.00
10-Jul-07	Cheque	11	£500.00		£327.00

### Suggested format for simple Record of Income and Expenditure

Expenditure				Income		
Date	Chq. No.	Details	Amount £	Date	Details	Amount £
15-Apr-07	1	Annual payroll services fee	100.00	01-Apr-07	WCBC	1,000.00
17-Apr-07	2	Support Plan action A	150.00	01-Apr-07	Service User	100.00
18-Apr-07	3	Support Plan action B	75.00	01-May-07	WCBC	1,000.00
30-Apr-07	4	Personal Assistants wages – April	500.00	01-May-07	Service User	100.00
01-May-07	5	Support Plan action C	65.00	01-Jun-07	WCBC	1,000.00
06-May-07	6	Support Plan action D	68.00	01-Jun-07	Service User	100.00
25-May-07	7	Support Plan action E	95.00			
31-May-07	8	Personal Assistants wages – May	500.00			
01-Jun-07	9	Support Plan action F	120.00			
14-Jun-07	10	Support Plan action G	150.00			
30-Jun-07	11	Personal Assistants wages – June	500.00			
30-Jun-07	12	Inland Revenue	650.00			
			<u>2,973.00</u>			<u>3,300.00</u>
30-Jun-07		Balance at bank	<u>327.00</u>			
			<u><u>3,300.00</u></u>			<u><u>3,300.00</u></u>



## Employment Agency Flowchart For Employer Accessing Agency



## GLOSSARY

**Ability to Manage** – capacity (with or without support) to arrange a Direct Payment service to meet an assessed need. The ability to ‘direct’ is more important than the ability to ‘manage’.

**Independent Advocacy** - is a service provided by organisations set up for the specific purpose of enabling people who are unable to make their voice heard to clarify their options, make choices and express their wishes and feelings. Advocates take their partner’s side and, when necessary, speak on their behalf so that they feel they’ve been fully heard, understood and included in decision making processes.

Advocacy also helps to ensure that individuals’ human rights are fully respected, that they obtain the services they need and receive their full entitlements.

Independent advocacy supports individuals to self-advocate whenever possible.

**Assessment** – collection and interpretation of data to determine an individual’s need for health, personal and social care and support services, undertaken in partnership with the individual, his/her representative/advocate and relevant professionals.

**Capacity** – ability to make a decision, with support if needed. Common Law incorporates a presumption of capacity – that is, everyone is presumed to be able to make decisions for themselves until proved otherwise. **Incapacity** is defined in *Making Decisions* (Lord Chancellor’s Department, 1997) as ‘unable by reason of mental disability to make a decision on the matter in question; or unable to communicate a decision on that matter because he or she is unconscious or for any other reason’.

**Care Plan** - a written plan of the services that an individual will receive, this includes Community Care Plans.

**Children in Need Plan** – is a written plan of the services that have being identified for the Child in Need.

**Close Relative** – someone related to the Direct Payment recipient in one of the following ways: parent, parent-in law, aunt, uncle, grandparent, son, daughter, son-in-law, daughter-in-law, stepson, stepdaughter, brother or sister.

**Consent** – the legal agreement to a choice or action (i.e. to take on a Direct Payment) freely made by an individual without coercion, as well as acceptance of the responsibilities associated with that choice or action. In a legal context, the individual must be ‘mentally capable’ of giving consent before it is valid.

**Control** – having autonomy and power over your own life and what happens to you, regardless of how much support you need to put your choices into action, having self-determination.

**Decision-making** – the process of making choices which lead to decisions and action. The word ‘decision’ is also used in legal contexts. Some people require support (e.g. communication support or advocacy) to consider and make decisions.

**Individual/Service User** - includes all actual and potential Direct Payment service users (disabled adults, carers, parent carers)

**Mixed Package** – a Direct Payment plus a directly provided social care service.

**Parental Responsibility** – in the Children Act ‘parental responsibility’ means all the rights, duties, powers, responsibilities and authority of parents in relation to the child and his or her property. People other than parents, for example, grandparents or guardians, can have parental responsibility for a child.

**Power of Attorney** – authority given by one person to another to act on his or her behalf. An **enduring power of attorney** (EPA) is entered into by a person with legal capacity and authorises the appointee to continue to act for him or her in business or legal matters if he or she loses capacity.

**Practitioner** – Means the Social Worker, Care Manager

**Third Party Support Agency** - means the organisation that is contracted by Wrexham County Borough Council to provide support for Direct Payment recipients to set up and manage their Direct Payment

**Services** - the services that are arranged for the individual by the Local Authority, which includes community care services, family support services, and services to carers.

**Supported Accounts** – A supported account can be used if a service user has or has had difficulty in managing their funding and spending it in an appropriate way or a service user may have been vulnerable to financial abuse in the past. Funds that would normally be paid to the individual are paid to an organization, which then pay independent agencies or support staff as required. But the user’s choices and preferences direct the decision-making, and the user retains control of and is accountable for the arrangements.

**User-controlled Trust** – a legal arrangement by which a third party/agent helps the Direct Payment recipient to manage their Direct Payment, for example, by receiving and handling the money, but the user’s choices and preferences direct the decision-making, and the user retains control of and is accountable for the arrangements.

**Wrexham Direct Payment Development Group** - means the local Wrexham reference group that has representation from service users, practitioners, commissioners and the support agency. The group is responsible for local and national consultation requests, to develop and promote the Direct Payments Scheme, to oversee the implementation of Direct Payments, to take forward specific areas of development and liaise and maintain links with other nominated groups.

**Wrexham Direct Payment Agreement** - means the contract drawn up between Wrexham Social Services and the individual Direct Payments recipient that details the respective responsibilities and liabilities of the service user and Wrexham Social Services Department.

**Wrexham County Borough Council Vetting Agency** – means the service that carries out safe recruitment checks for Direct Payment Service Users Employees.