



  
*Halton Clinical Commissioning Group*

**Children's & Young People's (0-25)  
Personalisation & Personal Budgets Policy (*including Personal Health Budgets and  
Direct Payments*)**

**Special Educational Needs and Disability (SEND)**

**Halton** Local Offer



Updated August 2017

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## 1.0 About this Policy

- 1.1 The aim of this document is to explain the approach taken by Halton Borough Council and NHS Halton Clinical Commissioning Group (CCG) to Personal Budgets across **education, health** and **social care**.

## 2.0 What is a Personal Budget?

- 2.1 A Personal Budget for Special Educational Needs (SEN) is money set aside to fund support as part of an **Education, Health and Care plan** (EHC plan) for a child or young person with special educational needs. A personal budget must support the outcomes specified in the EHC Plan.
- 2.2 A personal budget enables parents and young people who want more choice and control over the services they receive to have it. Parents and/or the young person must always be involved in planning the personal budget.
- 2.3 A personal budget can include funds from Education, Health and Social Care. However the budget would not be the total resources that are available to support a child or young person, just the amount that can be used flexibly by the family or young person to support additional needs identified within the EHC Plan.
- 2.4 A personal budget **is not new money**, but is money that would have normally have been spent on a child and young person's care and needs, which will now be used more creatively and flexibly to meet the child's identified needs and outcomes in an EHC plan.

Personal budgets can be provided in the following ways:

- 2.5 The local authority, NHS Halton CCG, school or college will look after the Personal Budget for the parents or young person. This is called an **Arrangement** or a **Notional Budget**.
- 2.6 Young people may request that their family or carer manage the funding on their behalf. If the young person is aged 16 plus with the mental capacity to do so, they can choose to manage all or part of the Personal Budget themselves. The money to do this will come from a **Direct Payment**.
- 2.7 Someone else could manage the Personal Budget for the parents or young person, such as a family friend, agent, trust fund, finance company or voluntary sector organisation. This is called a **Third Party Arrangement**.
- 2.8 Depending on the circumstances there could be a mixture of some or all of these arrangements.

The Education, Health and Care (EHC) Plan will offer a Personal Budget for aspects of the provision outlined if parents or young people wish it and are eligible. The request can be made at any time during the assessment or review.

- 2.9 A Personal Budget shows the money that may be available for some of the provision specified in an EHC plan, and who provides it.
- 2.10 With a **Direct Payment** the parent or young person is given the money for some services and manages the funds themselves. The parent or young person is responsible for buying the service and paying for it.
- 2.11 A Personal Budget can include a Direct Payment if it is agreed that this is the best way to manage part of the Personal Budget.
- 2.12 Direct payments can be used for special educational provision to be used within an educational setting but **only if the school or college agree**.

### 3.0 Who is eligible for a personal budget?

- 3.1 Parents of a child with an EHC plan, or a young person who has an EHC plan, can ask for a Personal Budget. However you do not have to have a Personal Budget.
- 3.2 A Personal Budget may be requested where a child or young person requires individual tailored support that goes beyond universal and targeted services.
  - **A personal SEN Education budget:** This funding is a sum of money made available by a local authority because it is clear that without this additional (*top-up*) funding it will not be possible to meet the child's learning support needs. In some circumstances the head teacher/principal and school or college/learning provider may choose to offer some funding towards a personal SEN budget; this will always be the decision of the head teacher. In Halton for education this is known as the [High Needs Assessment Framework 2015/16](#)
  - **A personal SEN social care budget:** This money will be available if a child or young person is assessed as needing additional and individual support at home and when out and about in the local and wider community. Currently the funding available is through [Short Breaks](#).
  - **A personal health budget:** This refers to the budget that will be made available should a young person or child have complex, long-term and/or a life-limiting condition/s. A personal health budget may also be made available to help with equipment costs or other health services. Children, who are supported through 'Continuing Care' funding, have the right to have a personal health budget since October 2014. From August 2013, the NHS has had the legal power to give direct payments. It would also apply to long term health needs from April 2015. The

process for a specific personal health budget would mirror the process currently in place for adults to ensure a smooth transition into adult services.

- 3.3 A Personal Budget does not cover payment for a place at a maintained or specialist, school, college or setting.
- 3.4 Direct payments will not be appropriate for all aspects of Education, Health or Care. (See Exemptions table in **Appendix 1**)
- 3.5 In time, Halton intends to offer access to a wider range of services/provision where a personal budget may be used and information will be made available through the [Local Offer](#) and amendments to this policy.
- 3.6 To determine whether a child or young person is eligible for an EHC Plan and for one or all of the funding streams described above, a referral to the SEN Assessment Team should be made, see [Local Offer](#). They will work with the family to develop an EHC Plan where appropriate. If an EHC Plan is put in place then they will also discuss with the family and young person the option of a personal budget to meet the EHC Plan outcomes.

#### **4.0 Personal Budget Process and Options**

- 4.1 Personal Budgets will be discussed as part of the EHC assessment of the child/young person. Some families may already be accessing Personal Budgets in terms of care or health and this will be included in the final EHC Plan. Not all families will choose to access a Personal Budget and each case will be considered individually.
- 4.2 At the stage when the EHC assessment is completed the views of the parent and child/young person will be taken into account alongside professional reports detailing the provision required.
- 4.3 When a school/college is named the aspects of a Personal Budget available will be outlined, if the parents/young person have expressed a wish to have a Personal Budget.
- 4.4 A Personal Budget will be recorded as part of an EHC Plan and will be signed off by the appropriate budget manager or for a person with complex needs it will be the Complex Needs Panel. The EHC Plan will provide a detailed explanation of how a child or young person's Personal Budget will be used. It will detail the needs, agreed outcomes and how the resources will be allocated. It will also state how the money will be used and managed including arrangements in relation to any direct payments.

- 4.5 If a personal budget is delivered as a Direct Payment parents and/or the young person will be expected to sign a Direct Payment Agreement before any payment is made (**Appendix 2**). This will provide the guidelines of receiving the payments and how they should be managed, for examples employed support staff requiring an enhanced Disclosure Barring Service (criminal record) check.
- 4.6 Local Authority provides settings and schools with High Needs Top Up funding which may be made available for use as a Personal Budget. This can only be included with the agreement of the school or college. It is not always possible for a school or college to release funding into a Personal Budget because it may be part of an existing overall provision. In some limited circumstances, the head teacher/college principal may also agree to include all/parts of element 2 funding.
- 4.7 Any staff employed by parents/young people to work within a school or college would need the school or college's permission. This arrangement would need to be carefully planned and agreed. If permission is not given by the educational setting then it may not be possible to proceed with a Personal Budget for that assessed need. However, alternative options will be considered where appropriate.
- 4.8 For a child/young person attending **Specialist Provision**, parents/young people will be informed that it is likely that most if not all of the child/young person's funding will be included in the overall budget of the school and therefore may not be available to be taken as a Personal Budget.
- 4.9 A personal budget may consist of regular and/or one off payments, for instance around specific equipment needs. Equipment including maintenance must meet professional specifications and must be over and above that which should be provided as part of the school's 'reasonable adjustments'.

## 5.0 Personal Health Budgets

The following costs will normally be paid as part of the PHB:

- The direct cost of providing the service, including support service costs
- Start-up costs such as initial staff training
- Refresher training
- Equipment costs (where equipment specifically forms part of the PHB and is not provided via the CCG's community equipment contract)
- Funding to cover the contingency plan (such as using an agency if a PA is off sick)
- Equipment contingency (e.g. hire fee to cover breakdown not covered by insurance or by the CCG's community equipment contract)

PA's are most beneficial when they can undertake the full range of care tasks required. Accountability for nursing tasks cannot be delegated. The CCG

recognises that for some (mostly CHC funded) service users it may prove difficult to access suitable training and supervision for complex tasks. The CCG will continue to work together to identify suitable resources.

## Principles

There are six key principles for personal health budgets and personalisation in health

### **1 Upholding NHS principles and values.**

The personalised approach must support the principles and values of the NHS as a comprehensive service, free at the point of use, as set out in the NHS Constitution, and should remain consistent with existing NHS policy:

- Fully involve service users and their carers in discussions and decisions about their care using easily accessible, reliable and relevant information in a format that can be clearly understood
- There should be clear accountability for the choices made.
- No one will ever be denied essential treatment as a result of having a personal health budget.
- Having a personal health budget does not entitle someone to additional or more expensive services, or to preferential access to NHS services.
- There should be good and appropriate use of current NHS resources.

**2 Quality – safety, effectiveness and experience should be central.** The wellbeing of the individual is paramount. Access to a personal health budget will be dependent on professionals and the individual agreeing a care plan that is safe and will meet agreed health and wellbeing outcomes. There should be transparent arrangements for continued clinical oversight, proportionate to the needs of the individual and the risks associated with the care package.

**3 Tackling inequalities and protecting equality.** Personal health budgets and the overall movement to personalise services could be a powerful tool to address inequalities in the health service. A personal health budget must not exacerbate inequalities or endanger equality. Lack of mental capacity<sup>1</sup> should not be a factor. The decision to set up a PHB for an individual must be based on their needs, irrespective of race, age, gender, disability, sexual orientation, marital or civil partnership status, transgender, religion or beliefs.

**4 Personal health budgets are purely voluntary.** No one will ever be forced to take more control than they want.

**5 Making decisions as close to the individual as possible.** Appropriate support should be available to help all those who might benefit from a more personalised approach, particularly those who may feel least well served by existing services / access, and who might benefit from managing their budget.

**6 Partnership.** Personalisation of healthcare embodies co production. This means individuals working in partnership with their family, carers and professionals to plan, develop and procure the services and support that are appropriate for them. It also means CCGs, local authorities and healthcare providers working together utilise personal health budgets so that health and social care work together as effectively as possible.

## 6.0 What are Direct Payments?

As outlined in paragraph 2.6, direct payments are just one form of personal budget. Direct payments allow individuals to receive cash to contract, purchase and manage services themselves.

### 6.1 How can Direct Payments be used?

6.1.1 Direct Payments can be used to buy relevant services/equipment to meet needs identified as part of a child/young person EHC Plan and may be used to:

- Employ a Personal Assistant (PA). Services are arranged in a way that suits the child/young person. If the parent/young person employs a PA directly, whether as a sole or secondary employer, they must make adequate arrangements to fulfil their responsibilities as an employer;
- Buy services from an agency;
- Pay for short-term care (respite) in residential/nursing care which does not exceed a four week period in any 12 months (see 5.2 below);
- Purchase equipment that would otherwise have been provided by the Local Authority (Equipment purchased through Direct Payments will require maintenance contracts to be in place); and/or
- Fund a short break.
- Fund a Teaching Assistant/ Personal Assistant for a specified activity to enable the child/young person to participate in the curriculum.

**NOTE: Any service purchased must be as cost effective or efficient as the Local Authority or Health could arrange or buy.**

### 6.2 Direct Payments restrictions

6.2.1 Direct Payments cannot be used to:



- Relieve Education, Social Care or Health of its statutory responsibilities towards a child/young person;
- Purchase local authority services or primary medical services provided by GPs e.g. Diagnostics tests, basic medical treatment or vaccinations;
- Pay for residential accommodation for a disabled child/young person for any single period in excess of four weeks and for more than 120 days in any period of 12 months;
- Purchase personal assistance from a partner or close relative living in the same household as the DP recipient other than in exceptional circumstances, which must be agreed by Halton Borough Council or NHS Halton CCG in writing;
- Purchase alcohol or tobacco;
- Gamble or repay a debt other than for a service a
- Where the value of the PHB forms part of an existing contract, and to provide a PHB would result in significant double funding, and create financial risk to the CCG or provider, or set a precedent which could destabilise the service

**NOTE: HBC and NHS Halton CCG has a statutory responsibility to deliver best value, therefore the most cost effective service option will be sought.**

### **6.3 Who can qualify for a Direct Payment?**

6.3.1 To be eligible for a Direct Payment a young person/parent must be:

- Assessed as having Special Educational needs which require the provision of an EHC Plan or assessed as eligible under Halton's criteria for a disabled child
- Assessed as eligible to receive services (for example following a Social Care Assessment );
- Agree to receive direct payments instead of services (for children under 16, consent must be obtained from a person with parental responsibility, usually a parent);
- Able to manage direct payments with or without support; and
- Able to satisfy Halton Borough Council and/or NHS Halton CCG that financial controls will be adhered to.

For information regarding who does not qualify for a Direct Payment [The SEN \(Personal Budgets Regulations 2014, Schedule 5\(2\)\(d\) Persons to whom a Direct payment may not be made\).](#)

#### **6.4 Decision to make a Direct Payment**

6.4.1 Halton Borough Council and NHS Halton CCG will only make a direct payment when they are satisfied that:

- The person receiving the direct payment will use them to secure the agreed provision in an appropriate way and where the recipient is a representative or nominee, act in the best interests of the child or young person;
- The direct payments will not have an adverse impact on other services which Halton Borough Council or NHS Halton CCG provides or arranges for children and young people with an EHC Plan;
- Securing the proposed agreed provision by direct payments is an efficient use of Halton Borough Council's or NHS Halton CCG's resources.

#### **6.5 Decision not to make a Direct Payment**

- If a direct payment is not approved the family will be informed of the decision in writing which will include the reasons for this decision and a copy of the resource decision.

If any dispute cannot be resolved, an appeal can be made - see section 12 of this policy which explains the process.

#### **6.6 Prepaid Card Accounts**

6.6.1 From August 2017 all new Direct Payment users will be offered the prepaid card as the default method of managing their Direct Payment. A Prepaid Card Account is just like a current account from the bank with a debit card. Halton Borough Council pays the Personal Budget onto the card so that funds can be used to pay for services agreed. See **Appendix 3** for Halton Borough Council Direct Payment Agreement Pre-Paid Card.

6.6.2 Existing Direct Payment users may also transfer over to a Prepaid Card Account if they wish to do so.

## 6.7 The use of Pre-Paid Card Accounts to manage the Direct Payment

6.7.1 Halton Borough Council's position is that the first option will be the use of a Pre-Paid Card Account. An opportunity will be available to request that the payment is made into a conventional bank account. The Pre-Paid Card can be used to withdraw cash if it is demonstrated that there are no reasonable alternative ways to purchase an appropriate service.

## 6.8 Separate Bank Account

6.8.1 All individuals, not using the Council's Pre-Paid Card arrangements but receiving Direct Payments are required to set up a separate bank account for receipts and maintenance of these funds. In these instances Halton Borough Council/NHS Halton CCG requires evidence that the monies made available are being used to meet the identified and agreed needs. A bank details form will be given to the person to complete and return to the Direct Payments Team as soon as the account has been opened so that payment arrangements can be made.

## 6.9 Contingency

6.9.1 Decisions to pay a contingency payment to cover an emergency situation must be authorised and approved by the Care Manager/CHC Operational Team Divisional Manager Inclusion. If the contingency payment is approved, then the Care Manager will produce a Support Plan & Summary for the additional payment to be paid the person.

6.9.2 Contingency payments may be used to pay for training in situations where it must take place prior to receipt of the Skills for Care funding which will cover the cost of such training but must be authorised and approved by the Care Manager/CHC Operational Team.

## 7.0 Consent and Capacity to Consent

### 7.1 Consent

7.1.1 Direct payments can only be made where appropriate consent has been given by:

- a person aged 16 or over who has the capacity to consent to the making of direct payments to them;
- a person **nominated** in writing by the child's parent or the young person to receive direct payments on their behalf;
- the **representative** of a person aged 16 or over who lacks the relevant capacity to consent;
- the **representative** of a child under 16

- 7.1.2 The direct payment can be received and managed by the person who gives their consent, or that person can identify a nominee to receive and manage it for them.
- 7.1.3 Where a person lacks the capacity to consent, direct payments can be given to their authorised representative, if they consent to receiving the payment on the person's behalf. In the case of children, direct payments can be received by their parents or those with parental responsibility for that child.

Further information regarding the capacity to consent is available in **Appendix 4**.

## **8.0 Transition: When a Child becomes an Adult**

- 8.1 Where a child in respect of whom direct payments are being made becomes an adult (on their 18<sup>th</sup> birthday), the local authority must take reasonable steps to ascertain whether the young person consents to receive direct payments.
- 8.2 For a young person about to go through transition to Adult services, please refer to the Personal Health Budgets Policy for Adults. Halton Borough Council Children's Services/NHS Halton CCG will continue to support children young people and families through this transition and plan for adulthood.

## **8.0 Managing and Using a Personal Budget**

- 9.1 Information about services available in the area that could be used with a Personal Budget will be available via the [Halton SEND Local Offer](#) this will be updated on a regular basis.
- 9.2 Each agency will monitor and plan to ensure that outcomes and provision in the Education, Health and Care Plan are being met. The financial review for Direct Payments is undertaken by the Council's Direct Payments section at 3 months and then every 6 months.
- 9.3 If Personal Budgets are not used to meet the provision/outcomes outlined in the EHC Plan it will be withdrawn in accordance with the terms of the direct payment agreement and services will be commissioned by the health authority/local authority.

For further information regarding managing personal budgets see **Appendix 5**.

## 10.0 Information, Advice and Support

Assessment Co-ordinators will have a detailed discussion with the family to determine if they are interested in a Personal Budget.

### 10.1 SEN Assessment Co-ordinators Support

10.1.1 If an EHC Plan is agreed, the family will be offered support from the Assessment Co-ordinators as part of the development of the EHC Plan. The EHC Plan describes how they will use their indicative budget to meet the agreed outcomes.

10.1.2 More specifically, during the assessment period, the Assessment Co-ordinator will:

- Ensure families have access to independent information, advice and support
- Work with families and professionals through a Person Centred Planning meeting.
- Bring everyone together to identify the outcomes which will keep the child/young person healthy, safe and well and ensure that they make good academic progress
- Encourage and develop informal support and co-ordinate support and resources during the assessment period
- Support families to keep strong by providing both practical and emotional support during the assessment process.
- Support families to navigate the system by offering the one point of contact to co-ordinate services
- Promote choice, control, empowerment and independence for children, young people and their families

If families choose to take their Personal Budget as a direct payment then support will be offered.

### 10.2 Direct Payment Support

If a Personal Assistant (PA) is required, support, information and guidance will be provided by an independent third sector organisation making it easier for individuals to recruit, select and employ people. Individuals will be supported with recruitment, employer support and personal assistants support. For further information on what support will be provided please see **Appendix 6**

### 10.3 A Managed Account for Direct Payments/Personal Budgets

A Managed Account is available when someone needs a Third Party to manage the entire Direct Payment or Personal Budget on their behalf. It helps people manage their budget and reduces the amount of paperwork they will need to complete themselves.

The Direct Payments Team will support you to get the Managed Account set up. The Third Party that will manage your Direct Payment money on your behalf will take the

responsibility for paying wages to your Personal Assistants if you employ your own staff, completing information on tax for the Inland Revenue and putting together financial information for the Local Authority.

If you are in receipt of services from an Agency you can use a managed account to pay for the care/support you receive from them.

## **11.0 Safeguarding and Managing Risk**

- 11.1 There is a delicate balance between empowerment and providing choice whilst also ensuring children and young people are safeguarded and risks are managed appropriately. During the planning process, Halton Borough Council and/or NHS Halton CCG will have a detailed discussion with the Personal Budget holder about potential risks and how to manage them. This will form part of an on-going discussion.
- 11.2 The EHC Plan will contain details of any proportionate means of eliminating, reducing or managing the risks which should be informed by a discussion about the significant potential risks and their consequences.
- 11.3 When an individual responsible for the use of the direct payment is deciding whether or not to employ someone, the employer will be expected to follow best practice in relation to safeguarding which includes confirming identification, qualifications, professional registration, check references and undertake DBS checks. As DBS is essential Halton Borough Council will facilitate DBS checks on behalf of potential employees.

## **12.0 Monitoring and Review**

### **12.1 Personal Budgets**

- 12.1.1 The financial review for Direct Payments will be undertaken by the Council's Direct Payments section at 3 months and then every 6 months.
- 12.1.2 The EHC Plan review will take place at least annually and will focus on the child or young person's progress towards achieving the outcomes specified in the EHC Plan and if the arrangements made in the form of a Personal Budget continue to meet those outcomes.
- 12.1.3 If the needs of the child or young person change, and the personal budget is no longer meeting their needs, the person responsible for the budget (budget holder) is required to contact the Statutory Assessment Team to action a review of the personal budget.

12.1.4 If Halton Borough Council and or NHS Halton CCG become aware, or are notified, that the person's circumstances or needs have changed, they will consider whether it is appropriate to carry out a review of the EHC Plan to ensure the individual's needs are still being met.

## **12.2 Purpose of a Review**

12.2.1 The EHC Plan review will consider whether the:

- Agreed provision should continue to be secured by means of a direct payment;
- EHC Plan adequately addresses the needs of the person and the agreed outcomes are being met;
- Direct payments have been used effectively and appropriately;
- Amount continues to be sufficient to secure the agreed provision.

## **12.3 Outcomes of a Review**

12.3.1 Following a review, Halton Borough Council and or NHS Halton CCG may:

- Amend the EHC Plan and change the personal budget in terms of how payments are made or services provided to deliver outcomes within the Plan.
- Take any other action considered appropriate. This will usually be to ensure the safe and effective running of the direct payment, or to protect public money if there is a significant risk of abuse or when the decision is made that the direct payment is no longer viable due to the impact on resources available to meet the needs of the wider community.

## **13.0 Complaints and Appeals**

### **13.1 Overview**

13.1.1 In line with the Code of Practice and Children's and Families Act 2014, Halton Borough Council will consider each request for a Personal Budget on its individual merits.

13.1.2 A Personal Budget will be prepared in each case, unless the sum is part of a larger amount and disaggregation of the funds for the Personal Budget:

- would have an adverse impact on services provided or arranged by the local authority for other EHC plan holders, or

- where it would not be an efficient use of the local authority's resources.

13.1.2 In these circumstances, Halton Borough Council will inform the child's parent or the young person of the reasons it is unable to identify a sum of money and work with them to ensure that services are personalised through other means.

## **13.2 Eligibility Criteria to Appeal**

13.2.1 Parents, carers, and Young People may at times disagree with the decisions made as part of the personal budget process and will have the right of appeal against the decision where:

- 1. a Personal Budget has not been offered.**
- 2. the amount of money in the Budget is not felt sufficient to cover the needs of the child/young person.**
- 3. Limitation of choice in how a Personal Budget can be spent**
- 4. Decision to refuse, stop or reduce a Direct Payment -** *If the Local Authority refuses, stops or reduces a Direct Payment the explanation of this decision will have been sent in writing. This decision can be challenged through this appeal procedure. (If the refusal concerns the personal health part of the plan, then the explanation concerning the refusal must be sent out by the Clinical Commissioning Group (who are the health organisation responsible for the decision.) or a combination of both Local Authority and NHS Halton CCG.*

13.2.2 However, it would be best to avoid an appeal process if the issue can be easily resolved and the SEND Assessment Co-ordinators will be required to apply their existing knowledge and experience to resolve any issues as they arise.

13.2.3 However before proceeding through an appeals process it should be clear if it is a complaint or an appeal, see below. Where it is a complaint the Halton Borough Council Complaints Procedure must be followed (see 12.4) or the NHS [Halton Clinical Commissioning Group Complaints Procedure](#).

## **13.3 Appeal Process – Negotiation and disputes**

13.3.1 As part of the Appeal Process the Council will actively seek to resolve disagreements about the:

- Budget;
- Management of funding
- Use of the Personal Budget.

13.3.2 Disagreements can occur under the following circumstances:



- An aspect of provision listed in the Education, Health and Care Plan has not been offered in a Personal Budget.
- A Personal Budget has not been offered.
- The funding identified is felt not to be sufficient to cover the needs of the young person.

13.3.3 An appeal would initially go to the appropriate manager to respond in writing. If the parent/young person still disagrees with the decision they would then take the appeal to the next stage. For more information on further rights of appeal and/or review please visit the [Halton SEND Local Offer](#)

13.3.4 The first-tier Tribunal does not hear appeals about Personal Budgets, but will hear appeals about the special educational provision to which a Personal Budget may apply.

13.3.5 Due legal process regarding any appeals will be followed as laid out in the Children and Families Act 2014 and/or the Code of Practice relating to the Personal Budgets for SEN and disability aspects of this legislation.

#### **13.4 Complaint Process**

13.4.1 Halton Borough Council are committed to providing a high quality service and we strive to achieve the best for children, young people and families in Halton. However we appreciate that there may be occasions when you have concerns about the services that you receive. If such a situation arises, we would ask you to follow the procedure outlined below.

13.4.2 The Children and Families Act 2014 places a duty on local authorities and other responsible bodies to develop and engage in a process for resolving these disagreements.

13.4.3 Responsible Bodies include:

- Local authority;
- Schools;
- Early years providers;
- 16+ education providers;
- NHS services;
- Social care services.

13.4.4 We would always encourage you to speak to the service manager you have the dispute or disagreement with first. Most issues and concerns can be resolved quickly through informal discussion with the worker involved with your family. This gives everyone the opportunity to discuss something that might have been misunderstood or miscommunicated and allows that organisation or responsible body to put it right where necessary. If it can't be resolved there are a number of more formal ways to deal with this.

13.4.5 If families remain unsatisfied with the response from the service manager, please contact the [Customer Care Manager](#) Tel: 0151 511 8624, in order to engage the relevant complaints process, which is dependent on the nature of the complaint. For further information, please see the **Halton SEND Local Offer**.

## APPENDIX 1: Exclusions from Direct Payments

Direct payments will not be appropriate for all aspects of Education, Health or Care. See table below:-

<b>Education</b>	<b>Health</b>	<b>Care</b>
School Placements or post -16 institutions	<ul style="list-style-type: none"> <li>-Primary medical services provided by GPs</li> <li>-Vaccination or immunisation, including population-wide immunisation programmes</li> <li>-Screening</li> <li>- National child measurement programme</li> <li>-NHS Health Checks</li> <li>-Urgent or emergency treatment services, such as unplanned in-patient admissions to hospital or accident and emergency</li> <li>- Surgical procedures</li> <li>-Specialist nursing care/therapy</li> <li>-Community/ Clinic/School based health services</li> <li>-Consultant led Paediatric services</li> <li>-Specialist Paediatrics</li> <li>-Some Specialist Medical Equipment</li> <li>-Prescription or dental charges</li> </ul>	Child Looked After Placements To purchase services directly from the LA (although a mixed package can be arranged, i.e. some services arranged and some Direct Payment) To purchase long-term residential care, including nursing care. As a payment to carers to purchase personal care for the person they care for.
<p>Alcohol or tobacco, Gambling, to repay debt, anything illegal or unlawful, to employ close relatives who live in the same household (except for exceptional circumstances) Families in receipt of a Personal Budget cannot use the direct payment to purchase a service from the Local Authority or Health Authority, as the payments are made in lieu of services that would otherwise be arranged by the relevant Authority. Alternative services and/or provision not arranged by the relevant Authority must be identified.</p>		
<p>A personal budget and in particular a direct payment cannot be made in respect of provision which will take place in a school, post 16 institution or early years setting without the written consent of the head teacher, principal or the person occupying an equivalent position.            The options for a personal budget within a special school maybe more limited than that of a mainstream school as the provision is more integrated.</p>		

## APPENDIX 2: Personal Budget/ Personal Health Budget Direct Payment Agreement



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### Personal Budget/Personal Health Budget Direct Payment Agreement

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Between: Halton Borough Council (NHS HCCG) and NAME CAREFIRST  
NO.

#### INTRODUCTION

The purpose of this Agreement is to set out the responsibilities and obligations of the Council and/or the NHS HCCG and you, the Chosen Decision Maker/Third Party Person and any family member who signs this Agreement.

It creates legal duties for the Council/NHS HCCG and for you and for each of the persons who sign this Agreement so you may want to take independent advice before you sign it.

#### CONTENTS

1. Information about you and Halton Borough Council (HBC)/NHS HCCG
2. Basis of the Agreement
3. About the Direct Payment / Personal Budget Payment
4. General rules on how to use the money
5. What records you should keep
6. Responsibilities of the Direct Payment recipient/Agent/Managed Account/Chosen decision maker
7. Review of the Direct Payment / Personal Budget Payment
8. If the arrangement should break down
9. Comments, complaints and compliments
10. Ending the Agreement
11. Rights of Third Parties
12. Recovery of Sums Due
13. Signatures

**The People and organisations entering this Agreement agree as follows:-**

**1. Information about you and Social Services**

This Agreement is between: (again does there need to be a version for NHS HCCG?)

HALTON BOROUGH COUNCIL (HBC), Municipal Building, Kingsway, Widnes, Cheshire, WA8 7QF
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**(referred to in this Agreement as 'we' or 'us') AND**

Name of parent/young person receiving the Personal Budget	
Address	
Postcode	

**Name of person receiving the Personal Budget/Personal Health Budget via Direct Payment (Referred to in this Agreement as 'you')**

Name of Chosen Decision Maker	
Address	
Postcode	

**Name and address of Chosen Decision Maker (eg, suitable person) appointed by young person/parent to assist with the managing of the Personal Budget/Personal Health Budget (if relevant).**

Name of Managed Account Provider	
Address	
Postcode	

**Name and address of Managed Account/Holding Account Provider (if relevant).**

**2. Basis of the Agreement**

This Agreement is made on the basis of your EHC Plan and that assessment of your needs has been completed and that you are eligible to receive support services as shown in your care/support plan.

You are willing and able to meet the needs detailed in your EHC /care/support plan yourself or with support, (this may be through a nominated agent or chosen decision-maker) and we are willing to make your Direct Payment / Personal Budget Payment available to you to enable you to buy the support which has been agreed in your EHC/support/care plan.

HBC will also be administering any payments made by NHS Halton Clinical Commissioning Group that you are entitled to for the provision of your health care needs ("Health Care Element") that have been assessed in accordance with your support/care plan. Please note that HBC does not accept liability for any loss that you may suffer as

result of any shortfall, deduction or non-payment of the Health Care Element by the NHS Halton Clinical Commissioning Group. A separate Service Level Agreement has been developed which outlines the arrangements between the Local Authority and the CCG in relation to the administration of payments for health care needs.

This Agreement is made in accordance with the requirements of the Children and Families act 2014, SEN Personal Budgets Regulations 2014, Care Act 2014, The Care and Support (Direct Payment) Regulations 2014 and Children Act 1989, and the Mandate published by the Department of Health 2014, 0 to 25 SEND code of practice: a guide for health professional Department of Education 2016, National Framework for Children and Young People's Continuing Care, Department of Health 2016

### **3. About the Direct Payment / Personal Budget Payment**

The amount of money you will be paid as your Direct Payment / Personal Budget Payment is

- £ **GROSS 4 weekly.**
- £ **Lump sum/s**
- £ **Respite payments**

HBC will take into account and deduct any applicable charges through the Fairer Charging financial assessment if you are receiving Social Care element of support and are over 18. . You will be informed in writing of your assessed charge via HBC Income & Assessment Team.

If you are in receipt of care services provided under the Care Act 2014. You will be required to pay any identified contribution into your designated Direct Payment account on a 4 weekly basis if client is over 18.

#### **When you will be paid**

#### **Direct Payment / Personal Budget Start Date: T.B.A**

The payments from HBC will be made every 28 days in advance, then following the standard 4-weekly cycle and in accordance with the arrangements set out in the Direct Payment Statement Letter.

If agreed by the parties (that means all the people who sign) to be in your best interest the frequency of the payments may be altered. This can be discussed with your care manager/agent/chosen decision-maker.

#### **Contingency**

Your Chosen Decision Maker must seek the approval from your Divisional Manager for Inclusion for a contingency payment to be paid for any additional support that may be required in an emergency situation. Decisions to pay contingency payments will be made on a case by case basis and may only be used for:-

- Covering illness of the Recipient that requires 1-3 days increased support
- To pay Statutory Sick Pay to Personal Assistants when they are unable to provide services to the Recipient due to illness in accordance with Statutory Sick Pay Regulation made by the Department of Work and Pensions.
- To pay for an element of training in an emergency situation which will be 'topped up' by the subsequent Skills for Care funding which would need to be applied for.
- In exceptional circumstances as agreed with HBC in advance.

#### **How you will be paid**

HBC will make the Direct Payment by Banks Automated Clearing System (BACS) in the recipient's name or Agent/Chosen decision- maker's name as agreed by the parties.

**To enable HBC to monitor the spend of the Direct Payment/Personal Budget payments, your nominated bank account must be for the sole use of your Direct Payment/Personal Budget and must not be used for personal purpose.**

All money you receive for your support needs can be paid into this account If you choose to use an Agent your money can, by Agreement be paid directly to them for your services.

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

**The Direct Payment / Personal Budget Payment is to buy the services as detailed in your individual EHC Plan. This Plan is flexible and you should contact a member of the Statutory Team in consultation with the Audit team if you feel that your needs have changed and you want to request further assessment.**

If you wish to use a care agency we strongly recommend that you purchase care from a provider who is registered with the Care Quality Commission (CQC) who inspect the standards provided by agencies nationally. There is a list of registered providers available from the HBC Direct Payments Team.

You may also use your payment to purchase a service from an agency, which does not need to be accredited, for example a cleaning or ironing agency (if this is agreed in your support plan).

This does not stop you from purchasing the services directly from your own employed staff. If you do choose to employ your own staff we have a set of guidance booklets, which give some guidance on becoming an employer. You should however take advice independently and bear in mind that personal liabilities will be created for yourself whether you employ someone or use them as a contractor or casual service provider. You should take care of your own interests in choosing and working with a carer whether employed or not. We cannot give you any guarantees as to quality or reliability of any contractor or employee you may choose whether suggested to you by us or not.

Be careful that you do not enter into contracts with service providers that would leave you personally liable despite withdrawal, reduction or other change to your Direct Payment /

Personal Budget Payment.

HBC/NHS HCCG cannot advise you on entering into any of the above relationships and to this extent you should seek independent legal advice. Halton Borough Council will provide access to an agency who can offer employment advice.

If the child/young person is admitted to hospital, the Council will consider on a case by case basis whether the Direct Payment should be suspended or terminated.

**You cannot use your Direct Payment/Personal Budget to: -**

- Employ/pay any partner (married or unmarried) or a close relative living in the same household (close relative means parent, parent-in-law, aunt, uncle, grandparent, son, daughter, son-in-law, daughter-in-law, step-son or daughter, brother, sister or the spouse or partner of any of the preceding) to provide the services, unless in exceptional circumstances approved in writing and in advance by Care Management Team Principal Manager. This also applies to Direct Payments made to a person who has parental responsibility for a disabled child (Direct Payments paid in accordance with S17A 2(a) and (b) Children Act 1989) and to payments made to a child aged 16 or 17 (Direct Payments paid in accordance with S17A(2) (c) Children Act 1989).
- Employ/pay for services provided by a local authority, NHS authority or NHS Trust.
- For permanent residential care for adults or for provision of residential accommodation for a disabled child or disabled young person for any single period in excess of 4 weeks and for more than 120 days in any period of twelve months.

**5. What records you should keep**

You are responsible for using your allocated money wisely. Any bank charges/legal charges/Inland Revenue costs will be your responsibility.

You will be required to use the Direct Payment / Personal Budget Payment legally.

You will need to keep up to date records (bank statements/invoices of what the money is spent on) and supply these records to the Council/Health when requested to do so. This will help to review the services and your direct payment/Personal Budget at your annual review. The Direct Payments Team will audit your Direct Payment account and you must retain all financial records for the current financial year and the preceding 6 years.

**6. Responsibilities of the Direct Payment recipient**

It is your responsibility as recipient of the Direct Payment to make all appropriate arrangements to meet the identified needs/outcomes and you agree to comply with all legal arrangements including all Inland Revenue requirements and applicable employment legislation, to include Stakeholder Pensions and Redundancy requirements as appropriate

You will be responsible for taking out references and obtaining enhanced Disclosure Barring Service Check (DBS). The council will facilitate the DBS check.



You must notify HBC as soon as possible of any changes in circumstances and details of the use of any element of the contingency funds (see information re: Contingency funds above) Failure to comply with this requirement may result in the Direct Payments being suspended.

If there is a credit balance that has accrued in the account, HBC may ask to be reimbursed.

You must agree to information given about yourself being used and processed by the Council/Health Service for the purposes of the administration of the Direct Payment and other legal purposes of the Council/Health. You must agree that information may be shared with other agencies on your behalf and that your details will be held on a database

### **7. Annual Review of the Direct Payment / Personal Budget Payment**

This will help you to look back over the year at what you have achieved and if your Direct Payment / Personal Budget Payment will remain the same based on your needs. The review will determine whether your needs have changed and how you are coping with the arrangements for ensuring the provision of the services that meet your needs. This review will include HBC and where appropriate a representative from NHS HCCG.

### **8. If arrangements break down or your needs change**

If things go wrong or your needs change you should contact the lead professional/case worker.

HBC/NHS HCCG may increase or decrease your payments at any time on account of a change in your needs/circumstances. A re-assessment will be carried out where necessary before changing payments. Before decreasing your payments, HBC/NHS HCCG will give you 1 week notice in writing.

### **9. Comments, complaints and compliments**

You have the right to comment, complain and compliment under the Complaints Procedure about the operation of this Agreement. A copy of the complaints procedure can be obtained from HBC Customer Care Team, Runcorn Town Hall, Halton Borough Council, Freepost WIP4, Widnes, WA8 7BR or for NHS Halton CCG [haltonccg.complaints@nhgs.net](mailto:haltonccg.complaints@nhgs.net) or 0800 2182333

### **10. Ending the Agreement and Liabilities of Parties signing this Agreement**

This Agreement may be terminated by either party and your needs met through the direct provision of service by HBC/NHS HCCG on receipt of four weeks' notice in writing to the other parties.

HBC/NHS HCCG retains the right to suspend the Agreement with immediate effect should there be evidence of misuse, fraudulent use of the monies or use that is not in the best interests of the person receiving the Direct Payment/Personal Budget Payment. In such cases, you and the other parties who signed this Agreement may be liable to repay all or some of the direct payments received from HBC/NHS HCCG.

HBC/NHS HCCG may terminate this Agreement with immediate effect if, after investigation, it is found you are using the money illegally or not in the best interests of the person receiving the Direct Payment / Personal Budget Payment or otherwise in breach of the terms of this Agreement.

Before terminating the Agreement HBC/NHS HCCG will wherever possible work with you and your agent/chosen decision-maker to find a resolution to the issues.

In the event of death or other termination of this Agreement, the Third Party (family member) needs to ensure that the Direct Payment Bank Account is closed and the balance forwarded to HBC including monies due to NHS HCCG. HBC will return any monies due to NHS HCCG under the SLA. They will also formally notify HBC within 7 days. The Third Party shall inform the Bank that the funds in the account belong to HBC.

Upon death or illness of the Third Party, HBC/NHS HCCG may suspend the direct payment Agreement pending an Agreement being entered into with HBC/NHS HCCG by an alternative Third Party.

**11. Rights of Third Parties**

This Contract is enforceable by the original parties to it, by their successors in title and permitted assignees. Any rights of any person to enforce the terms of this Contract pursuant to The Contracts (Rights of Third Parties) Act 1999 are excluded.

**12.Recovery of Sums Due**

If any sum of money shall be due to HBC/NHS HCCG from any of the Parties whether under the present Agreement or otherwise the same may be deducted by HBC/NHS HCCG from any sum then due or which at any time thereafter may become due to any of the Parties under this Agreement or any other Agreement with HBC/NHS HCCG.

**13.Signatures**

Signatures of all parties to confirm that I/we understand the Agreement and will comply with the terms and conditions, duties and restrictions contained within Agreement. We understand and agree that in signing this Agreement we are accepting personal liability for compliance with its terms.

**1st Party** Halton Borough Council (HBC) Signature on behalf of Halton Borough Council / NHS Halton CCG or Signature on behalf of NHS Halton CCG for Personal Health Budgets alone

Signed: ..... Date:  
.....

**2nd Party** You - the person receiving the Direct Payment / Personal Budget Payment

Signed: ..... Date:  
.....

**3rd Party (Chosen Decision Maker)**(state relationship to recipient):

.....

Signed: ..... Date:

.....

**4<sup>th</sup> Party** Agent/Managed Account

Signed: ..... Date:

.....

## **APPENDIX 3: Halton Borough Council Direct Payment Agreement Pre-Paid Card**

### **INTRODUCTION**

The agreement sets out the rights and responsibilities of all parties when a Personal Budget is delivered as a Direct Payment to pay for a customer's choice of social care and support services.

The agreement creates legal duties for each of the parties that are covered by this agreement. You are required to sign this agreement to show that you have understood and will comply with the terms and conditions of receiving a Direct Payment. You may therefore wish to take independent advice before signing the agreement.

### **THIS AGREEMENT IS BETWEEN:**

1. **Halton Borough Council (including NHS Halton Clinical Commissioning Group, where applicable)**  
**AND**

2.

<b>Name of person who is receiving the Direct Payment (referred to in this agreement as 'you'):</b>	<b>Address &amp; Postcode:</b>

**And – If applicable**

3.

<b>Name of person supporting the Direct Payment recipient with managing the Direct Payment (e.g. Chosen Decision Maker or Suitable Person):</b>	<b>Address &amp; Postcode:</b>

### **CONTENTS**

14. Basis of the Agreement
15. About the Direct Payment
16. Method of Payment
17. Contingency
18. General rules and guidance on how to use your Direct Payment

19. Monitoring requirements
20. Responsibilities of the Direct Payment recipient/Chosen decision maker/Agent
21. Review of the Direct Payment / Personal Budget Payment
22. If the arrangement should break down
23. Comments, complaints and compliments
24. Ending the Agreement
25. Rights of Third Parties
26. Recovery of Sums Due
27. Signatures

## **1. Basis of the Agreement**

- 1.1 This Agreement is made on the basis of your Support Plan or Education Health Care (EHC) Plan and the assessment of your needs. You are eligible to receive support services as shown in your support plan / EHC plan.
- 1.2 You are willing and able to meet the needs detailed in your Support Plan / EHC Plan yourself or with support. Support may be provided through a nominated agent or chosen decision-maker. The Council is willing to make your Direct Payment available to you to enable you to buy the support which has been agreed in your Support Plan/or EHC plan.
- 1.3 The Council will also administer any payments made by NHS Halton Clinical Commissioning Group to which you are entitled for the provision of your health care needs ("Health Care Element") that have been assessed in accordance with your support plan.
- 1.4 The Council does not accept liability for any loss that you may suffer as result of any shortfall, deduction or non-payment of the Health Care Element by the NHS Halton Clinical Commissioning Group. A separate Service Level Agreement has been developed which outlines the arrangements between the Council and the CCG in relation to the administration of payments for health care needs.
- 1.5 This Agreement is made in accordance with the requirements of:
  - The Children and Families act 2014,
  - SEN Personal Budgets Regulations 2014,
  - The Care Act 2014,
  - The Care and Support (Direct Payment) Regulations 2014
  - The Children Act 1989,
  - The NHS Mandate published in 2014
  - 0 to 25 SEND code of practice: a guide for health professional Department of

Education 2016,

- National Framework for Children and Young People's Continuing Care, Department of Health 2016

## **2. About the Direct Payment**

2.1 The amount of money you will be paid as your Direct Payment is:

**£ per week starting on:**

This will be paid NET of any financially assessed contribution. The Council will issue you with a payment card (the 'Direct Payment Card') in your name and will make Direct Payments only onto your Direct Payment Card. The details of the Direct Payment Card are as follows:

**Card Holder's Name:**

**Account Number:**

**Sort Code:**

2.2 If you are in receipt of care services provided under the Care Act 2014 the Council will make arrangements for a financial assessment to be carried out. If you need to make a financial contribution towards the cost of your support, you will need to do this using your own financial resources. You will be informed in writing of your assessed charge via the Council's Income & Assessment Team. Any assessed contribution must be paid onto your Direct Payment Card (in accordance with Section 3 – Method of Payment).

## **3. Method of Payment**

3.1 The payments from the Council will be made every 28 days in advance and follow a standard four weekly cycle in accordance with the arrangements set out in the Direct Payment Statement Letter.

3.2 The frequency of the payments may be altered if it is agreed by all parties (i.e. all the parties who sign this agreement) that this would be in your best interest. This can be discussed with your care manager /agent / chosen decision-maker.

## **4. Contingency**

4.1 You must seek the approval from the Council for a contingency payment to be paid for any additional support that may be required in an emergency situation. Decisions to pay contingency payments will be made on a case by case basis and may only be used in the following circumstances:

- To covering illness of the recipient that requires one to three days increased support.
- To pay Statutory Sick Pay to Personal Assistants when they are unable to provide services to the Recipient due to illness in accordance with Statutory Sick Pay Regulation made by the Department of Work and Pensions.

- To pay for an element of training in an emergency situation. This will be 'topped up' by the subsequent Skills for Care funding for which you would need to apply.
- In other exceptional circumstances as agreed with the Council.

## **5. General rules and guidance about how to use your Direct Payment**

- 5.1 The Direct Payment is to buy the services as detailed in your individual support plan / EHC Plan. This Plan is flexible and you should contact a member of the Care Management Team in consultation with the Direct Payment Team if you feel that your needs have changed and you want to request further assessment.
- 5.2 If you wish to use a care agency the Council strongly recommends that you purchase care from a provider who is registered with the Care Quality Commission (CQC) who inspect the standards provided by agencies nationally. There is a list of registered providers available from the Council's Direct Payments Team.
- 5.3 You may also use your payment to purchase a service from an agency, which does not need to be accredited. For example, this could be for social support only or for cleaning or ironing (if this is agreed in your support plan).
- 5.4 If you wish to employ your own staff the Council has a set of guidance booklets, which may assist you in becoming an employer.
- 5.5 It should be noted that the Council is unable to provide any assurance over the quality or reliability of any agency, contractor or employee with which you wish to engage.
- 5.6.1 You are advised not to enter into contracts with service providers that would leave you personally liable for any ongoing commitments should your Direct Payment cease or reduce in value.
- 5.6.2 Be responsible for negotiating the terms of the contract when buying a service from an individual or organisation. This includes, but is not limited to the rates the individual or organisation charges, the days and times that care will be provided, charges if the service is not provided (for example because of a holiday or a hospital stay), and the process/penalties for terminating the contract.
- 5.6.3 The Council / NHS Halton CCG cannot advise you on entering relationships with service providers. You may therefore wish to seek independent legal advice before doing so.
- 5.6.4 If required, the Council can provide access to an agency who can offer employment advice.
- 5.6.5 If you are admitted to hospital, the Council will consider on a case by case basis whether or not the Direct Payment should be suspended or terminated.

**You cannot use your Direct Payment / Personal Budget to:**

- Employ or pay any partner (married or unmarried) or a close relative living in the same household (close relative means parent, parent-in-law, aunt, uncle, grandparent, son, daughter, son-in-law, daughter-in-law, step-son or daughter, brother, sister or the spouse or partner of any of the preceding) to provide the services, unless in exceptional circumstances approved in writing and in advance by Care Management Team Principal Manager. This also applies to Direct Payments made to a person who has parental responsibility for a disabled child (Direct Payments paid in accordance with S17A 2(a) and (b) Children Act 1989) and to payments made to a child aged 16 or 17 (Direct Payments paid in accordance with S17A (2) (c) Children Act 1989).
- Employ or pay for services provided by a local authority, NHS authority or NHS Trust.
- Pay for permanent residential care for adults, or for provision of residential accommodation for a disabled child or disabled young person, for any single period in excess of 4 weeks and for more than 120 days in any period of twelve months.

**6. Monitoring Requirements**

6.1 To enable the Council to monitor the use of the Direct Payment you will:

- a) Use the Direct Payment card provided to pay for all goods or services purchased in relation to your support plan;
- b) Keep and make available to the Council on request, records relating to your Direct Payment, including bank statements, invoices, receipts, any timesheets (if relevant) in order for financial audits to be carried out on expenditure. Records must be retained for the current financial year and the preceding six years;
- c) Acknowledge and accept that the Council reserves the right to suspend the Direct Payment if the required information is not received within an agreed timescale;
- d) Allow a representative of the Council reasonable access to your home to facilitate any review of your Direct Payment and care / health needs

**7. Responsibilities of the Direct Payment Recipient (or Chosen Decision Maker / Agent)**

- a) You or the Chosen Decision Maker / Agent acting on your behalf are responsible for managing the Direct

Payment to meet the identified needs / outcomes set out in your support plan;



- b) You will ensure that you can fully account for all funds provided under this Direct Payment Agreement;
- c) You will ensure that all the legal obligations and requirements are met which relate to the purchase of services and people employed using the Direct Payment. Where you choose to employ people directly, this includes making the necessary arrangements for tax and national insurance deductions, stakeholder pensions, employers liability insurance, DBS checks and redundancy payments as appropriate;
- d) You will be responsible for the arrangements for employment between you and any people that you employ to provide a service. You acknowledge that the Council has no involvement in any such arrangement and therefore accepts no responsibility to you or any of your employees with regard to that employment relationship;
- e) You will be responsible for the health and safety of any people that you employ. You will ensure that any equipment used is regularly maintained and that the environment in which your employees work does not compromise their health and safety;
- f) You will cooperate with a financial assessment to determine if you are required to pay for or make any financial contributions towards meeting the cost of your eligible care and support needs;
- g) You will deposit your assessed financial contributions onto your Direct Payment Card on a regular basis. You acknowledge that if you do not pay your contributions you will become ineligible to receive a Direct Payment and alternative arrangements for meeting your care and support needs will be put in place;
- h) You will notify the Council as soon as possible of any changes in circumstances that are relevant to your Direct Payment;
- i) You acknowledge and understand that any funds held on your Direct Payment Card remain the property of the Council;
- j) You agree to the Council recovering any surplus funds or monies that have been misspent from your Direct Payment. In such instances the Council will provide you with one week's notice of its intention to recover funds;
- k) You acknowledge and consent to the personal information you have provided to the Council being used and processed by the Council for the purposes of the administration of the Direct Payment and for any other legal purposes, including the prevention and detection of fraud. The information may also be shared with other

relevant agencies for the same purposes;

- l) You will ensure that your Direct Payments card is kept secure and managed appropriately;
- m) You agree to seek and obtain prior consent from the Council prior to assigning or otherwise sub-contracting responsibility for any part of this agreement;
- n) You acknowledge that a failure to adhere to any of the conditions contained within this agreement may result in the Council terminating your Direct Payment.

**9. Annual Review of the Direct Payment / Personal Budget Payment**

An annual review of your Direct Payment will be undertaken, which will include the Council and, where appropriate, a representative from NHS HCCG. This will help you to look back over the year at what you have achieved and if your Direct Payment / Personal Budget Payment will remain the same based on your needs. The review will also determine whether your needs have changed and how you are coping with the arrangements for ensuring the provision of the services that meet your needs.

**10. If arrangements break down or your needs change**

If things go wrong or your needs change you should contact the lead professional/case worker.

The Council / NHS HCCG may increase or decrease your payments at any time on account of a change in your needs / circumstances or change in policy.

A re-assessment will be carried out where necessary before changing payments. Before decreasing your payments, HBC/NHS HCCG will give you one week's notice in writing.

**11. Comments, complaints and compliments**

You have the right to comment, complain and compliment under the Complaints Procedure about the operation of this Agreement. A copy of the complaints procedure can be obtained from HBC Customer Care Team, Runcorn Town Hall, Halton Borough Council, Freepost WIP4, Widnes, WA8 7BR  
[SSD.Complaints@halton.gov.uk](mailto:SSD.Complaints@halton.gov.uk) for Adults, NHS Halton CCG  
[haltonccg.complaints@nhgs.net](mailto:haltonccg.complaints@nhgs.net) for Health Funded Support or  
[Dorothy.roberts@halton.gov.uk](mailto:Dorothy.roberts@halton.gov.uk) for Children/Young People.

**12. Ending the Agreement and Liabilities of Parties signing this Agreement**

This Agreement may be terminated by either party and your needs met through the direct provision of service by the Council / NHS HCCG on receipt of four weeks' notice in writing to the other parties.

The Council / NHS HCCG retains the right to suspend the Agreement with immediate effect should there be evidence of misuse, fraudulent use of the monies or use that is not in the best interests of the person receiving the Direct

Payment/Personal Budget Payment. In such cases, you and the other parties who signed this Agreement may be liable to repay all or some of the direct payments received from the Council / NHS HCCG.

The Council / NHS HCCG may terminate this Agreement with immediate effect if, after investigation, it is found you are using the money illegally or not in the best interests of the person receiving the Direct Payment / Personal Budget Payment or otherwise in breach of the terms of this Agreement.

Before terminating the Agreement the Council / NHS HCCG will wherever possible work with you and your chosen decision maker/agent to find a resolution to the issues.

Following termination of this Agreement for any reason, the Direct Payment Card account will be closed and any unused funds (from the date of termination) recovered by the Council.

In the event of death, any unused funds will be recovered by the Council from the Direct Payment Card. The Council will return any monies due to NHS HCCG under the SLA

Upon death or illness of the Third Party, the Council / NHS HCCG may suspend the direct payment Agreement pending an Agreement being entered into with an alternative Third Party.

**13. Rights of Third Parties**

This Contract is enforceable by the original parties to it, by their successors in title and permitted assignees. Any rights of any person to enforce the terms of this Contract pursuant to The Contracts (Rights of Third Parties) Act 1999 are excluded.

**14. Recovery of Sums Due**

If any sum of money shall be due to the Council / NHS HCCG from any of the Parties whether under the present Agreement or otherwise the same may be deducted by the Council / NHS HCCG from any sum then due or which at any time thereafter may become due to any of the Parties under this Agreement or any other Agreement with the Council / NHS HCCG.

**15. Signatures**

Signatures of all parties to confirm understanding of the Agreement and the terms and conditions, duties and restrictions contained within the Agreement. You understand and agree that in signing this Agreement you are accepting personal liability for compliance with its terms.

<b>1st Party</b>	<b>Halton Borough Council (HBC)</b>	<b>Date</b>
Signature on behalf of Halton Borough Council / NHS Halton CCG		
<b>2nd Party</b>	<b>You - the person receiving the Direct Payment</b>	<b>Date</b>
Signature		
<b>3rd Party</b>	<b>Chosen Decision Maker</b>	<b>Date</b>
Signature Relationship to recipient		

## APPENDIX 4: Capacity to Consent

The person receiving direct payments (the individual themselves if direct payments are made to them, or their nominee or representative) will be responsible for ensuring that the money is spent in line with the Personal Budget/Personal Health Budget Direct Payment Agreement

### Capacity to Consent

Under the Mental Capacity Act 2005 a person lacks capacity if they are unable to make a decision because of an impairment of, or a disturbance in the functioning of, the mind or brain. Broadly speaking, 'mental capacity' means the ability to make a decision in question at the time it needs to be made. Where there is reasonable belief that a person is unable to make a decision about the making of direct payments to them, Halton Borough Council and or NHS Halton CCG will assess the person's capacity to consent as part of the EHC Assessment Process.

### Fluctuating Capacity

Where a person who has consented to the making of direct payments to them subsequently loses their capacity to consent, Halton Borough Council and or NHS Halton CCG may, where it is satisfied that the loss of capacity is temporary, allow a representative to be appointed to receive direct payments on their behalf, or an existing nominee to continue to receive them, until they regain capacity. In these circumstances, the role will be similar to that of a representative for someone who has been assessed to lack capacity on an ongoing basis. Halton Borough Council and NHS Halton CCG will prioritise continuity of care, ensuring that any disruption is as minimal as possible.

### Managing the Money

When deciding whether or not someone has the ability to manage direct payments (including a representative or nominee), Halton Borough Council and or NHS Halton CCG will consider:-

- their **willingness** to receive a payment,
- **ability** to state preferences and make choices,
- **capacity** to manage the DP
- **competence** to take legal responsibility for arranging their own education, health and care services. ;
- whether they are able to take reasonable steps to prevent fraudulent use of the direct payment or identify a safeguarding risk and if they understand what to do and how to report it if necessary

If a decision is made that someone is not suitable to manage direct payments, the person will be informed in writing, stating the reasons for that decision.

## **Nominees and Representatives**

If a person aged 16 or over who is receiving care has capacity, but does not wish (for whatever reason) to receive direct payments themselves, they may nominate someone else to receive them on their behalf (a nominee). A representative (for a person aged 16 or over who does not have capacity or for a child) may also choose to nominate someone (a nominee) to hold and manage the direct payment on their behalf.

### **Nominees for People with Capacity**

The role of nominee for direct payments for healthcare is different from the role of nominee for direct payments for social care and education. For social care direct payments, a nominee does not have to take on all the responsibilities of someone receiving direct payments, but can simply carry out certain functions such as receiving or managing direct payments on behalf of the person receiving them. In direct payments for healthcare, however, the nominee is responsible for fulfilling all the responsibilities of someone receiving direct payments.

If the proposed nominee is not a close family member of the person, living in the same household as the person, or a friend involved in the person's care, then the nominee will be required to apply for an enhanced Disclosure and Barring Service (DBS) certificate (formerly a CRB check) with a check of the adults' barred list. If a proposed nominee in respect of a person aged 18 or over is barred, consent will not be given. This is because the Safeguarding Vulnerable Groups Act 2006 prohibits a barred person from engaging in the activities of managing the person's cash or paying the person's bills.

If the proposed nominee is a close family member of the person, living in the same household as the person or a friend involved in the person's care, there is no legal power to request these checks.

An organisation (including one such as a Trust established for the purpose) may agree to act as nominee. Where this is the case, that organisation must identify the individual who will, on their behalf, have overall responsibility for the day-to-day management of the direct payments.

### **Representatives for People without Capacity**

A representative is someone who agrees to act on behalf of someone who is otherwise eligible to receive direct payments but cannot do so because they do not have the capacity to consent to receiving one, or because they are a child. Representatives are responsible for consenting to a direct payment and fulfilling all the responsibilities of someone receiving direct payments (also known as a 'suitable person').

A representative may identify a nominee to receive and manage direct payments on their behalf, subject to the nominee's agreement and the approval of Halton Borough Council and or NHS Halton CCG.

An appointed representative could be anyone deemed suitable by the Halton Borough Council and or NHS Halton CCG, taking into account previously expressed wishes of the recipient, and as far as possible their current wishes and feelings. Where possible, Halton Borough Council and or NHS Halton CCG will consider appointing someone with a close relationship to the person, for example a close family member or a friend.

A representative can be:

- a deputy appointed by the Court of Protection to make decisions relevant to welfare and/or healthcare and direct payments (“the relevant decisions”);
- a donee of a lasting power of attorney with the power to make the relevant decisions;
- a person vested with an enduring power of attorney with the power to make the relevant decisions;
- the person with parental responsibility, if the recipient is a child;
- the person with parental responsibility, if the recipient is over 16 and lacks capacity; or
- someone appointed by Halton Borough Council and or NHS Halton CCG to receive and manage direct payments on behalf of a person, other than a child, who lacks capacity.

The statutory regulations state “*Direct Payments may only be made if the person*  
*(a) appears to the local authority to be capable of managing direct payments without assistance or with such assistance as may be available to them;*  
*(b) the recipient is an individual , is over compulsory school age;*  
*(c) does not lack capacity within the meaning of the 2005 Act to consent to the making of direct payments to them or to secure the agreed provision with any direct payment ; (this means the person must have the mental capacity to manage a budget) and,*  
*(d) is not a person described in the Schedule.”(see part 6 of this policy, to say who this applies to)*

## **APPENDIX 5: Managing and Using a Personal Budget**

### **Receiving a Direct Payment**

Once it has been agreed that a person can have a direct payment, Halton Borough Council will issue a Personal Budget/Personal Health Budget Direct Payment Agreement specifying the following:

- the name of the child or young person in respect of whom direct payments are to be made;
- the proposed amount of direct payments;
- any conditions on how direct payments may be spent;
- the dates for payments into the bank account approved by Halton Borough Council.

By signing the Personal Budget/Personal Health Budget Direct Payment Agreement, the person is agreeing to:

- receive the direct payments
- use the direct payments only to secure the agreed provision
- comply with any conditions specified
- notify Halton Borough Council of any changes in circumstances which might affect the need for the agreed provision
- use the bank account approved by Halton Borough Council solely for the direct payments and ensure it is only accessible by the recipient or any other person approved in writing
- keep a record of money paid in and withdrawn from the approved bank account
- provide Halton Borough Council with information or evidence relating to the account and the agreed provision when requested

Where the recipient is a nominee

- the child's parent or the young person must consent in writing to direct payments being used to secure the agreed provision and
- the nominee will be required to sign the Personal Budget/Personal Health Budget Direct Payment Agreement, outlining their responsibility as a principle for all contractual arrangements entered into and secured by means of direct payments, for the benefit of the child or young person

### **Amount of Direct Payments**

Halton Borough Council and NHS Halton CCG will ensure that the amount of direct payments is sufficient to secure the agreed provision. The amount may increase or reduce if Halton Borough Council and NHS Halton CCG are satisfied that the new amount is sufficient to secure the agreed provision.



## **Stopping or Reducing a Direct Payment**

The size of the direct payment maybe increased or decreased at any time, if Halton Borough Council and or NHS Halton CCG are satisfied that the new amount is sufficient to cover the full cost of the Personal Budget/Personal Health Budget Direct Payment Agreement or on account of a change in your needs/circumstances. Before making a decision to stop or reduce a direct payment, wherever possible and appropriate, Halton Borough Council and or NHS Halton CCG will carry out assessment where appropriate and consult with the person receiving it to enable any misunderstandings or inadvertent errors to be addressed, and enable any alternative arrangements to be made. Before decreasing/increasing/stopping your payments, HBC will give you 1 weeks' notice in writing. An explanation regarding the reasons for the decision will be given in writing

Direct payments may be reduced:

- where following an interim review/ re-assessment alternative provision and/or needs are identified.
- where Halton Borough Council and or NHS Halton CCG are satisfied that a reduced amount is sufficient to cover the full cost of the current Personal Budget/Personal Health Budget Direct Payment Agreement;
- if a surplus payment has accumulated that has remained unused. A surplus may indicate that the individual is not receiving the care they need or too much money has been allocated. As part of the review process, Halton Borough Council and or NHS Halton CCG will establish why the surplus has built up. Under these circumstances, a reduction in direct payment in any given period cannot be more than the amount that would have been paid to them in the same period;
- Where direct payments have been reduced, the person receiving care, a representative or nominee may request Halton Borough Council and or NHS Halton CCG to reconsider the decision, and may provide evidence or relevant information to be considered as part of that deliberation. Where this happens, Halton Borough Council and or NHS Halton CCG will inform the person receiving care and any representative or nominee in writing of the decision after reconsideration, and state the reasons for the decision.

Direct payments will be stopped if:

- a person, with capacity to consent, withdraws their consent to receiving direct payments;
- Inappropriate use of the direct payment
- a person who has recovered the capacity to consent, does not consent to direct payments continuing; or
- a representative withdraws their consent to receive direct payments, and no other representative has been appointed.

Direct payments may be stopped if Halton Borough Council and or NHS Halton CCG are satisfied:

- the person no longer needs care or provision as set out in the EHC Plan following re-assessment;
- direct payments are no longer a suitable way of providing the person with care or provision under the EHC plan following re-assessment;
- There is reason to believe that a representative or nominee is no longer suitable to receive direct payments, and no other person has been appointed;
- a nominee withdraws their consent, and the person receiving care or their representative does not wish to receive the direct payment themselves;
- the person has withdrawn their consent to the nominee receiving direct payments on their behalf;
- the direct payment has been used for purposes other than the outcomes and services agreed in the Personal Budget/Personal Health Budget Direct Payment Agreement.;
- fraud, theft or an abuse in connection with the direct payment has taken place; or
- the person has died.

If, for whatever reason, the person receiving care/provision or an identified agent/nominee is no longer able or willing to manage the direct payment, then the agreement will be terminated and Halton Borough Council/NHS Halton CCG will resume responsibility for the provision of services. Accordingly, any contract entered into by the individual or their agent/nominee should have provision to cease immediately upon the direct payment no longer being payable. Halton Borough Council/NHS Halton CCG would then arrange for alternative provision to be made that meets the assessed needs of the child/young person.

### **Managing Changes in Circumstances**

If family circumstances change, these will be taken into account as part of the regular review of needs and the personal budget. A request can be made for a review if there has been a significant change of circumstances but the Local Authority will determine whether an earlier review is appropriate if this is within 6 months of the last review. There should also be feedback from the family/young person to say how a personal budget is working for them.

If there are fluctuating circumstances, for instance a child who has different care and health needs dependent upon a health condition, then this will be taken into account in the plan and will be built into the ongoing discussions between the family/ young person and lead worker.

### **Ceasing Direct Payments**

Direct payments may cease if:

- The person is in the categories referred to in section 5.3 of this policy document.
- Payments are found not to be used for the specific purpose outlined in the EHCP.

- If the recipient no longer wishes to receive a direct payment. In those circumstances they will cease as soon as a request is received in writing and alternatives can be arranged.
- There has been no consent from a young person post statutory school age.

### **Using a Direct Payment to Employ Staff**

People may wish to use their direct payment to employ staff to provide them with care and support.

#### **You cannot use your Direct Payment/Personal Budget to:**

- Employ/pay any close relative living in the same household (close relative means parent, parent-in-law, aunt, uncle, grandparent, brother, sister or the spouse or partner of any of the preceding) to provide the services, unless in exceptional circumstances approved in writing and in advance by the relevant Principal Manager. This also applies to Direct Payments made to a person who has parental responsibility for a disabled child (Direct Payments paid in accordance with S17A(2) (a) and (b) Children Act 1989) and to payments made to a child aged 16 or 17 (Direct Payments paid in accordance with S17A(2) (c) Children Act 1989).
- Employ/pay for services provided by a local authority, NHS authority or NHS Trust.
- For permanent residential care for children/young people or for provision of residential accommodation for a disabled child or disabled young person for any single period in excess of 4 weeks and for more than 120 days in any period of twelve months.

### **Indemnity and Direct Payments for Healthcare**

Direct payments for healthcare can be used to pay for a personal assistant (PA) to carry out certain personal care and health tasks that might otherwise be carried out by qualified healthcare professionals such as nurses, physiotherapists or occupational therapists. In such cases the healthcare professional will need to be satisfied that the task is suitable for delegation, specify this in the Individual Care/Support plan and ensure that the PA is provided with the appropriate training and development, assessment of competence and have sufficient indemnity and insurance cover.

### **Registration and Regulated Activities**

A person can buy a service which is a regulated activity under the Health and Social Care Act 2008, registered with the Care Quality Commission (CQC). A direct payment can be used to purchase a regulated activity from a non-registered service provider, however if someone wishes to do so, this would be at their own risk.

## **Hospital Admissions**

- If the child or young person is admitted to hospital or other full time respite care the Council will make a decision regarding the payment of the Direct Payment on a case by case basis.
- Thereafter, the direct payment shall be suspended until the individual is released from hospital or other respite care and recommences to receive the services.
- During such time payments will be made to cover any statutory entitlement due to the employees of the recipient, if applicable. In any other circumstances, the Council may make temporary suspension of the Direct Payments if the recipient is temporarily unable to receive the services for any other reason.

## **APPENDIX 6: Halton Direct Payment Support**

If a Personal Assistant (PA) is required, Halton Borough Council is currently exploring a pilot with an independent third sector organisation to provide support, information and guidance making it easier for individuals to recruit, select and employ. Individuals will be supported with recruitment, employer support and personal assistants support.

### **Recruitment**

Recruitment tasks will include:

- Advice and support to draw up a job description
- Advice and support to draw up a person specification
- Advice and support to advertise a post, score applications and shortlist
- Assist the employer to request and evaluate references
- Advice and support on drawing up a contract of employment
- Practical support to act as an addressee for application forms where necessary.
- Assisting the individual to formulate interview questions and sit on interview panels/ provide and organise venues where appropriate

### **Employer Support**

Assist in the maintenance of the individuals own workforce in relation to:

- Provision of up to date information on employment law from an employees/employers perspective including eligibility to work, DBS (Disclosure and Barring Service) checks, assisting individuals to source and maintain public liability and employers liability insurance, risk assessments, health and safety and reporting of incidents
- Provision of advice relating to benefits and pitfalls of employing PAs
- Provision of advice and guidance on all payment related issues, but not limited to sick pay, holiday pay, maternity pay and other employer related expenses
- Information, advice and support on training, staff appraisals and health and safety issues for PAs
- Information, advice and support concerning probationary periods, inductions and termination of employment
- Information, advice and support in the management of staff and assertive skills, training, coaching and delegation
- Information, advice and support in disciplinary dismissal and grievance procedures in conjunction with the individuals insurance provider
- Support and advice with record keeping
- Advice, information and support around sickness and absence policies

## **Personal Assistance Support**

- To help people who wish to become PAs make connections with employers by maintaining a register and signposting to advertising opportunities such as the Council's e-market place
- To assist PAs to develop and learn
- To provide an opportunity for employers and PAs to learn and share experiences
- To be responsible for Disclosure and Barring Services