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**CARMARTHENSHIRE
COUNTY COUNCIL**

**DIRECT PAYMENT
SCHEME**

POLICY | Carmarthenshire

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This policy supersedes all previous direct payments policies

1. What are Direct Payments

Direct payments are in essence monetary payments which are provided by the local authority to certain individuals in order that they are able to purchase their own goods or services to meet their care and support needs.

Direct payments allow individuals to purchase the care and support/support that they are assessed as needing to support themselves in meeting their own well-being. Direct Payments can offer more choice, control, and flexibility to people who would traditionally rely on others to arrange their care and assistance.

Individuals who, following an assessment, have care and support needs which can only be met through a care and support plan are in almost all cases likely to be entitled to direct payments, unless the direct payment would not meet their personal outcomes. Similarly, carers who, following an assessment, have support needs which can only be met through a support plan are in almost all cases likely to be entitled to direct payments, unless the direct payment would not meet their personal outcomes. This payment is not a DWP benefit and will not affect the individual's entitlement to such benefits. However, it should be noted that if a person becomes a personal assistant, then any benefits that they receive may be affected. All direct payments are made to the individual or their representative for purchasing their own care and/or support services and can only be used for this purpose.

It is important to note that direct payments can be made to adults with care and support needs, children with care and support needs, and carers with support needs. The term care and support is widely defined in the Social Services and Well-being (Wales) Act 2014. An adult is any person aged 18 or over. A child is a person under the age of 18 years of age. A carer is a person either providing care or intending to provide care for an adult or a disabled child. In light of the fact that direct payments can be made to a wide range of individuals, this policy uses the term 'person or individual' which is intended to cover all of these groups. The term individual or person also covers others acting on their behalf like those with parental responsibility or those acting as a suitable person. Carers with eligible needs have support plans, whereas adults or children with eligible care and support needs have a care and support plan. As a result, reference is made throughout to 'care and support/support plan'. In addition, the term eligible need refers to those needs which meet the national eligibility criteria as defined by the Care and Support (Eligibility) (Wales) Regulations 2015.

Where an individual is entitled to a direct payment the local authority will provide the individual with the following information:

- How it will meet the individual's needs if those needs are not met by a direct payment
- Confirmation that direct payments are an appropriate way to meet the individual's needs.
- Information about the nature of direct payments
- Information about the different ways of managing a direct payment.
- The amount of any direct payment and how it has been calculated.
- Information about the support available to assist people in managing a direct payment.
- Information about the financial assessment process.

Before considering whether a direct payment is an appropriate way of meeting the individual's needs, the local authority will consult with the individual (including taking into account any previous wishes of an individual who lacks mental capacity to consent to a direct payment), anyone named by the individual to be consulted with, persons with parental responsibility, and any suitable person and any person authorised to act on the individual's behalf under the Mental Capacity Act 2005.

2. Legislation and Policy

2.1 The principal legislation which permits Direct Payments is:

- Social Services and Well-being (Wales) Act 2014
- Care and Support (Direct Payments) (Wales) Regulations 2015

2.2 Guidance is provided by

- Part 4 Code of Practice to the Social Services and Well-being (Wales) Act 2014

3. Eligibility for Direct Payments

3.1 Direct Payments must be offered to individuals with eligible care and support needs and carers with eligible support needs, where that individual or their representative is willing to receive one, and where a direct payment will enable the person to achieve their personal outcomes. Where the local authority also chooses to exercise its discretionary statutory powers to meet that individual's needs it must also offer a direct payment to meet those needs.

3.2 To be eligible for Direct Payments a person or a representative must be willing and able to manage direct payments (alone or with assistance). However, individuals must not be refused a direct payment purely because they are unable to manage the direct payments unless all options for supporting the individual to manage the direct payment have been

explored. The local authority will also not make blanket assumptions that whole groups of people will be unable to manage a direct payment.

- 3.3** Direct Payments can be used to purchase services which the local authority provides.
- 3.4** It is necessary for a written record to be kept to show that a direct payment has been offered to eligible individuals. This will usually be indicated in the care and support/support plan. It is also necessary for a written record to be made where it is determined that a direct payment will not meet a person's personal outcomes. Further, it will also be necessary for a written record to be made to show the steps taken to support an individual to manage a direct payment, particularly when all reasonable steps to support a person have been expired. Any recorded reason to refuse a direct payment must be discussed with the individual and if that individual or their representative disagrees with this decision, they should be informed of the right to use the local authority's complaints process.

4. Assessment

- 4.1** Carmarthenshire County Council must assess an individual who appears to have care and support needs and carers who appear to have support needs. It is very important that during the assessment, first consider whether the individual/carer's personal outcomes can be met through either: Information, Advice and Assistance; Preventative Services/Community based services; or by the person alone, or with the willing assistance of others. Where a person's personal outcomes/needs cannot be met in this manner and can only be met through a care and support plan/support plan a direct payment will be offered, unless it is not believed that such a payment will meet the person's outcomes.

The exception to this being where an individual is not necessarily eligible for care and support/support from the local authority, but the local authority has chosen to exercise its discretionary power to meet those needs in any event. (Provided that the direct payment will meet the person's outcomes)

Suitable Person

Where a person is entitled to a direct payment it is also important to consider as part of the assessment process whether that individual has the mental capacity to manage a direct payment. The assessment of a person's mental capacity to manage a direct payment should be undertaken in accordance with the principles of the Mental Capacity Act 2005 and the Mental Capacity Act: Code of Practice. If an individual lacks mental capacity to manage a direct payment or chooses not to manage the direct payment themselves, the direct payment can be paid to, and managed on their behalf by a suitable person.

If a person lacks capacity to manage a direct payment, and a suitable person is willing to receive the direct payment on their behalf, the suitable

person must be able to manage the direct payments either with or without support. Further, in order for the suitable person to receive the direct payment, the local authority must consider them to have the individual's best interests at heart, as the suitable person must act in the individual's best interests. If the suitable person meets these criteria, then the local authority must provide the direct payment to the suitable person.

The Social Services and Well-being (Wales) Act 2014 and Paragraph 152 of the Part 4 Code of Practice thereto provides a list of who should be given priority when considering which person should be an individual's suitable person. [part-4-code-of-practice-meeting-needs.pdf \(gov.wales\)](#)

If a suitable person receives a Direct Payment on behalf of an assessed individual, then they become the employer of the personal assistant and they are the individual to whom the Direct Payment is paid.

It is acknowledged that mental capacity is not always constant and that some people will have fluctuating capacity. Therefore, regular reviews are essential and the need for a suitable person should be considered during these regular reviews. Where the individual is assessed as having fluctuating capacity, a suitable person will need to be identified in order to make the direct payment. At times when the individual regains temporary capacity, enquiries should be made with the individual as to whether the suitable person should still receive the direct payments but allow the assessed person to take control until capacity is lost again. It is also important to make the suitable person aware that where a person temporarily lacking mental capacity to manage direct payments regains that capacity that the suitable person has an obligation to inform the local authority of this change in the individual's status.

For the purposes of clarity, Carmarthenshire County Council expects any suitable person to be at least 18 years of age, given the responsibilities involved in acting as a suitable person. Compelling reasons would need to be provided to justify an arrangement where the suitable person was under 18 years of age. In addition, the maximum number of suitable persons an individual can have is one. This ensures that only one person is accountable for acting on behalf of the individual and as employer.

It is important to note that where the person receiving the direct payment is a child then either the child (if they have sufficient competency if they are under 16 years of age or have mental capacity to manage a direct payment if they are either 16 or 17 years of age) will manage the direct payment or a person with parental responsibility can do so on their behalf. These arrangements are therefore not the same as the suitable person arrangements mentioned above which applies to persons who are adults.

In addition to the above, a direct payment can also be made to persons, subject to certain requirements, related to alcohol and drugs. These requirements are set out in detail in the Schedule to the Care and Support (Direct Payments) (Wales) Regulations 2015. However, in order for a

direct payment to be made in these circumstances, a condition must be attached that the individual agrees that the direct payments are made to another person to manage those payments on the individuals' behalf and that the other person agrees to manage those payments.

5. Services in Lieu of which Direct Payments can be made

5.1 Direct Payments can only be made for those services that are the responsibility of a local authority to provide. This means that direct payments cannot be used for the following:

- To meet needs through the provision of healthcare unless it is incidental or ancillary to other care and support/support needs or it is to meet the local authority's responsibilities for an individual's needs under Section 117 of the Mental Health Act 1983.
- To meet housing services such as rent.
- To someone who does not want a direct payment or someone who requires a suitable person and all options to arrange a suitable person have been expired.
- Adaptations met through a disabled facilities grant.
- The direct payments will not meet the individual's personal outcomes.

5.2 People are allowed to have a combination of services which are arranged by the local authority and a service which is arranged by the individuals themselves using Direct Payments. However, it is important to note that direct payments are an alternative to commissioned services and so if a care and support need is being met by a direct payment then the person cannot also have a commissioned service at the same time and vice versa.

5.3 It is possible for an individual to use a direct payment to employ a relative who is living in the same property, if the local authority considers that such a direct payment is necessary to promote the well-being of the individual. The term relative means 'a spouse or civil partner; person who lives with the person as if a spouse or civil partner; parent, parent-in-law, step parent; son or daughter; son in law or daughter in law; stepson or step daughter; brother or sister; aunt or uncle; grandparent; or spouse or civil partner of any of the aforementioned. In considering whether such an arrangement will promote the well-being of the individual, the local authority will take into account Paragraph 165 of the Part 4 Code of Practice to the Social Services and Well-being (Wales) Act 2014 which says 'Where appropriate safeguards are in place the employment of a relative living in the same household is often the most suitable way of providing care as it enables and support continuity of care, recognition of personal choice and promotes early intervention.' It is important that the person undertaking the assessment process and developing the individual's care and support/support plan record in writing whether or not

providing a direct payment to an individual to employ a relative in the same household will promote that individual's well-being.

- 5.4** Carmarthenshire County Council also discourages individuals from using self-employed personal assistants to meet their care and support needs. This is because the HMRC and Employment Tribunal is likely to interpret most of these arrangements as being an employment arrangement between the direct payment recipient, person with parental responsibility or suitable person and the person purporting to be self-employed. If an individual is considering a self-employed personal assistant arrangement, then it is their responsibility to complete the HMRC Check Employment Status for Tax (CEST) tool which will determine the workers' employment status. If the person decides to enter in a direct payment arrangement with a self-employed personal assistant, then any issues that arise therefrom are solely the responsibility of the person to resolve with either the relevant agencies like HMRC and the person purporting to be self-employed.
- 5.5** In the interests of clarity, where the person employs a personal assistant to meet that person's care and support needs, Carmarthenshire County Council expects that the personal assistant being employed should be at least 16 years of age. Generally, the council would not support a direct payment arrangement where the personal assistant is under 18 years of age if that personal assistant is required to provide personal care. Personal care being defined as washing, and bathing.
- 5.6** Carmarthenshire County Council also reserves the right not to agree to a particular direct payment arrangement where there are safeguarding concerns about the proposed personal assistant or suitable person. The Council will still promote a direct payment arrangement but may ask the person to consider an alternative arrangement with regards to another personal assistant.
- 5.7** Carmarthenshire County Council also reserves the right to undertake risk assessments where it is proposed that the direct payment recipient will receive care in the personal assistant's own home (where that home is not the usual home of the direct payment recipient). When a direct payment recipient does not have mental capacity to decide to receive a care within the personal assistant's home a best interest decision will need to be made in accordance with the Mental Capacity Act 2005. In addition, irrespective of whether the individual has mental capacity to make this decision, Carmarthenshire County Council may place conditions on the direct payment as a result of or as part of any risk assessment, this includes, but is not limited to, asking for family members living in the personal assistant's home to undertake disclosure and barring scheme checks.

Carers Exceptional Circumstances Direct Payments

In most cases an individual will either have a care and support or support plan in order to receive a direct payment. However as mentioned above an exception to this is where the local authority chooses to exercise its discretion to meet an individual's personal outcomes even if those outcomes are not considered an eligible need. Previously, Carmarthenshire County Council offered carers a grant to pay for specific items. However, the Social Services and Well-being (Wales) Act in essence prevents local authorities making such payments to carers other than through a direct payment. Carmarthenshire County Council has therefore developed the carers exceptional circumstances direct payment to replace the grants system that it previously operated. This type of direct payment is considered a community based preventative service which does not require a support plan. However, it is expected that an assessment of the carers support needs will be undertaken prior to this direct payment being offered.

6. Levels of Payment

6.1 For Personal Assistants & Other Services

6.1.1 Local Authorities must ensure that the value of a direct payment is equivalent to the estimated reasonable cost of securing the care and support/support required, subject to any contribution which the individual receiving the direct payment is required to make. In calculating the reasonable cost of securing the care and support/support the local authority will include the inherent costs associated with the individual receiving the direct payment becoming a legal employer.

Hourly rates have been set to enable individuals to pay their personal assistants and to cover extra costs of being an employer. It is acknowledged that such rates will need to ensure that the individual is able to pay the national minimum wage for school leavers and national living wage for those aged 21 years and over to their personal assistants, where the law requires such. Appendix 1 gives full details of the levels of payment.

6.1.2 A payment will be made to cover start-up costs. Appendix 1 gives full details of the levels of payment.

6.1.3 Calculation of the level of payment will be made based upon information concerning the number of hours (or sessions for some services or nights when considering respite care – this may vary according to local authority area) required to meet the assessed need of the individual.

6.1.4 Where a need is identified in an individual's care and support plan for the requirement of a personal assistant who has specialist skills (e.g. specialist communication skills) then the hourly rates may be increased in order to meet such specialist needs. The local authority's lead officer for

Direct Payments should be provided with the individual's assessment and care and support plan/support plan so that a decision can be reached.

6.1.5 Carmarthenshire County Council may also provide a mileage rate in addition to the usual direct payment rate in line with HMRCs approved mileage rate if this is specified in the care and support plan. However, it is important to note that within the direct payment rate an element of mileage has already been accounted for and therefore an additional mileage rate will only be provided in exceptional circumstances.

6.1.6 PA's personal expenses

Although incidental costs are already accounted for in the direct payment rate, generally, Carmarthenshire County Council will not include any additional element in the direct payment rate for any expenses that the personal assistant may incur, for example food and drink. Carmarthenshire County Council will expect the direct payment recipient to explore all avenues to reduce any costs to the personal assistant, including the possibility of the personal assistant having a blue light card/Hynt card etc. in order that they can gain free entry to events when accompanying the direct payment recipient to events identified as a need within the care and support plan. If such costs are assessed as necessary, they will need to be evaluated on a case-by-case basis and will need to be authorised by a team manager or a more senior officer and be specifically referenced in the individual's care and support plan as a need. If such expenses are incurred the personal assistant will need to submit receipts in order to conform with HMRC guidance on expenses.

6.1.7 Whilst the direct payment rate will be sufficient to meet the individuals care and support needs, some individuals may choose to purchase a more expensive service. In such circumstances the individual can choose to use their own money to pay the difference between the direct payment which is sufficient to meet the individuals care and support service and the cost of the more expensive service that they have chosen.

6.2 Purchasing Home Care from an Agency

6.2.1 For reasons of equity, payment levels will be on the same basis as for personal assistants. Appendix 1 gives full details of level of payments.

6.2.2 If an individual opts for home care provision from an agency and the agency fee exceeds the local authority hourly rate (as set out in Appendix 1) the individual will be required to pay the difference between the local authority hourly rate and the agency hourly fee and will be required to purchase the full number of assessed hours from the agency as stated in the care and support/support plan. It is expected that the individual will arrange directly with the agency to pay the difference in what the local authority provides as a direct payment and what the home care agency provides.

6.3 Short Term Breaks, Respite and long-term care

6.3.1 For the purposes of certainty respite and short-term breaks includes overnight stays of any period in a care home for up to 8 weeks which is not for reablement purposes. If any one period of respite exceeds 8 weeks this will be considered long term care. Long term care is defined as any period of care which is not respite, short term or reablement. Other than in exceptional circumstances the level of payment for short term breaks should not exceed the usual rate paid by the local authority for such services.

6.3.1.1 For the purposes of certainty direct payment respite arrangement commences from the 1st period of respite.

6.3.1.2 It is important to note that if a direct payment recipient is assessed as needing to have a certain number of weeks respite, then Carmarthenshire County Council will in principle expect the direct payments received for such to be used for that number of weeks respite. It is generally not considered acceptable to use such provision for a higher cost placement for less weeks than assessed and if this is proposed this will need to be agreed with the social work staff member and confirmed within the care and support plan.

6.4 Going Abroad

Subject to the satisfactory conclusion of any risk assessment, direct payments will be paid to an individual, a suitable person or person with parental responsibility for a child, for a period of 4 weeks whilst the direct payment recipient is outside of the United Kingdom. It is not considered appropriate to fund for any longer period because the local authority is unable to monitor the direct payment in the same manner whilst the person is outside of the United Kingdom.

7. Assistance with Direct Payments

7.1 The key principle of Direct Payments is that it is the individual, the person with parental responsibility or the suitable person who controls the money. The local authority must ensure that the correct level of support is offered to support the individual or the suitable person to manage the direct payment to have support. Carmarthenshire County Council provides a support scheme to support individuals, persons with parental responsibility or the suitable person if required. This scheme includes:

- Support with recruitment, including information about ensuring employees are legally able to work in the United Kingdom.
- Support to set up employer liability insurance to enable the direct payment recipient to manage their personal assistant
- Payroll
- Assistance with auto enrolment in relation to a pension scheme
- Supply the relevant paperwork in order to facilitate the direct payment arrangement. However, it is the direct payment recipient's

responsibility to ensure that paperwork is suitable for their purposes and for them to distribute it as required.

- Information visits to enable the individual or suitable person to make informed decisions about direct payments.

7.1.1 However, such assistance does not include:

- Interviewing prospective personal assistants.
- It also does not include resolving disputes between the individual and the personal assistant.
- Further, it does not include the completion of employment contracts.

7.2 It is important to note that whatever assistance Carmarthenshire County Council provides, it in no way means that they become the employer for the purposes of direct payments. The employment responsibilities remain with the individual, the person with parental responsibility or the suitable person.

7.3 If an individual, person with parental responsibility, or suitable person declines assistance from the support scheme, the assessing officer must ensure that the individual or the suitable person understands all the conditions that they need to meet. This includes conditions of contract and circumstances where repayment may be required. The assessing officer must ensure that the individual or the suitable person is aware that they are wholly accountable the way the Direct Payments are spent, and for meeting all legal and health and safety requirements. This includes the individual's or suitable person's responsibility to find out the necessary taxation rules from the HMRC.

7.4 An individual can also choose a different support scheme. However, personal assistants should not be a support provider as there is a potential for a conflict on interest in being a support provider and personal assistant

8. The Care and Support/Support Plan

8.1 In any assessment, the care and support/support plan is an important document which lays out for the individual the services that will be provided to meet that person's personal outcomes. Any service which is to be provided by direct payments must be specified in the care and support/support plan. It is a condition of the direct payment that any direct payment provided will only be used for services specified in the care and support plan.

8.2 The assessing officer should ensure that the care and support/support plan specifically comments on the following:

- The person's outcomes as identified in the assessment.
- The outcomes which the direct payments relate to.
- The frequency and amount of direct payment (including any details of additional payments required)
- Whether a suitable person is needed and who that suitable person will be
- How the person will secure the appropriate services (this should be decided by the individual. The local authority should not restrict how the services are provided, so long as they meet the assessed outcomes).
- Any variations to the way in which direct payments will be used.
- The support, if any, which the individual needs to manage the direct payments.
- How the local authority and the individual will handle interim service provision prior to Direct Payments being made.
- Emergency and contingency arrangements should be considered in the Support Plan – see 8.5.

8.3 The Social Services and Well-being (Wales) Act and the Regulations made thereunder require a review of a child's care and support plan to be undertaken within 6 months of the plan being prepared. In relation to an adult's care and support plan this timescale is within 12 months. However, there will be a review of the care needs within 6 months after the start of the direct payments and then after 12 months, or as directed by the Assessing Officer. Reviews thereafter will be held on an annual basis unless it is deemed that they will be needed more regularly.

A review should also be undertaken in the following circumstances:

- if the individual or the suitable person request a review
- the local authority believes a review is required because there is concern that the direct payment is not meeting the individuals' personal outcomes, or conditions attached to the direct payment are not being complied with, or there is a change in the individual or suitable persons circumstances.

Individuals or suitable persons should be made aware that they must inform the council if their circumstances change. Examples of changed circumstances can include being in hospital, requiring less care, admission to residential care, requiring more care, or a direct payment is no longer required because the need is met in a different way.

When carrying out a review of direct payments, the local authority must involve the following:

- The individual,
- The suitable person,

- Any carer of the individual,
- Any person who the individual asks the local authority to involve.
- If the individual lacks mental capacity any person authorised under the Mental Capacity Act 2005 to make decisions on that persons' behalf regarding their care and support,
- If the individual is a child who is aged 16-17 years of age and lacks mental capacity, their parents, if consistent with the individual's well-being
- If the individual is a child under 16 years of age, their parents, if consistent with the individual's well-being
- Any other person the local authority considers to have sufficient involvement in the care and support of the individual.

At a review where direct payments have been made, in addition to the usual areas covered, the assessing officers should discuss the following with the individual:

- That the direct payment has been used for services to meet their outcomes as stated in the care and support/support plan
- That the services have been received
- That the money has been spent on a cost-effective service
- Whether they have faced any difficulty in managing direct payments
- Whether they are receiving appropriate advice and assistance
- The adequacy of their records for monitoring expenditure and service delivery
- That the personal assistants have received adequate training to ensure competency at the tasks required of them
- If there is a surplus, what is the reason behind the surplus and what steps are to be taken.

When reviewing a suitable person direct payments arrangement, consideration must be given to evaluating that the direct payments are being managed for the benefit of, and best interests of the individual and not to suit the suitable person's preferences. Care must also be taken to consider safeguarding risks to the individual especially if the individual has difficulty in communicating without the aid of the suitable person.

Following the review, the amount of the direct payments may need to be increased or decreased in which case the assessing officer will complete a revised care and support/support plan which should be forwarded to the Team Manager for approval. A revised agreement will be drawn up by Finance Section and forwarded to the individual or suitable person for signature.

The assessing officer should ensure that information from the review is shared with the person who is doing the financial monitoring for audit purposes.

The individual is obliged to engage with the Assessing Officer in order to enable an informed and comprehensive review.

The care and support review is different to an audit of the direct payment arrangement. However, there will be some overlap between the two processes as for example both will look at the care and support plan to see how the direct payments are being used, with the review looking at whether the direct payments are helping to meet the person's personal outcomes and the audit ensuring that those payments have been appropriately spent in accordance with the care and support plan.

- 8.4** Assessing officers should note that when exploring with the individual the type of service they intend using to meet their outcomes, the focus should be on whether their assessed outcomes will be met, rather than upon whether the service is provided in any particular way. It is appropriate for the assessing officer to advise the individual of where they can purchase services from, but they should not restrict the individual to any particular service provider.
- 8.5** The Assessing officers also should explore emergency and contingency arrangements with the individual, so that they are able to agree how temporary breaks in service will be met. This may include for example, the individual making arrangements with a service provider to provide emergency cover to utilise personal assistants on a flexible basis, where people are willing to provide additional paid support if required.
- 8.6** Assessing officers should encourage individuals to ask for help and advice if, once they are receiving direct payments, they have any difficulties or reservations about the services they are purchasing. Assessing officers should make individuals aware that asking for help in this manner will not be seen as an inability to cope, but rather as a productive way of resolving problems.
- 8.7** If the individual is receiving a mixed package of care (commissioned service and direct payments) then the assessing officer must ensure that services not provided via direct payments are clearly stated on the care and support/support plan.
- 8.8** It is possible that within the care and support plan review that issues are identified which will necessitate an audit of the direct payment arrangement. As a result whenever there are any such issues, assessing officer will liaise with other sections of the authority who undertake such audits, and vice versa.

9 Direct Payment Agreement

- 9.1** A person who receives direct payments will be required to sign a legally binding agreement. That agreement may contain conditions, such as the needs for which the direct payment is provided may not be met by a particular person. The assessing officer and the Direct Payment Advisor should discuss this with the individual. The Direct Payment Advisor must ensure that the Audit and Compliance Team who issue the agreement are informed of any difficulties that the individual may be experiencing in meeting the terms of that agreement. A copy of a sample agreement is attached as Appendix 2. However, the local authority reserves the right to update this agreement from time to time, without updating this appendix. Therefore, individuals should not rely on this agreement as being the most up to date version.
- 9.2** If there is doubt about whether the person understands the nature of the agreement due to lack of capacity, then an assessment of their mental capacity will be undertaken and consideration can be given to appointing a suitable person.
- 9.3** Carmarthenshire County Council may also ask the person who has signed the direct payment agreement to enter into an updated agreement from time to time.

10 Financial Arrangements

10.1 Financial Assessments

- 10.1.1** Direct payments are being made in lieu of services which may be chargeable, therefore individuals may be required to make appropriate contributions towards the cost of their services and a financial assessment is applicable, as it is for those individuals who chose to have their services directly provided by the council.
- 10.1.2** Following completion of the financial assessment, the individual will be informed, in writing, of the assessed contribution, i.e. the amount they will be required to pay towards the service they receive.

10.2 Collection of Individual's Financially Assessed Contribution

- 10.2.1** Where the individual is assessed to contribute a charge for the service, the charge will be deducted from the direct payment, therefore the individual will receive a net payment, unless the person has a managed account.
- 10.2.2** Where the individual is assessed to contribute a charge for the service and there is no managed account, the service user or the suitable person will be expected to pay the charge into the separate direct payments bank account – see 10.3 for further details.

10.2.3 In situations where the individual receives both a direct payment to meet some care requirements and services provided by the local authority to meet other requirements, different arrangements may be agreed to collect the individual's contribution.

Individuals that are entitled to a direct payment who are children will not be expected to make a contribution and neither will their parents.

If the person has a managed account, the local authority will issue an invoice for the person's financially assessed contribution.

10.2.4 If the person has a managed account, the local authority will issue an invoice for the person's financially assessed contribution.

10.3 Bank Accounts

10.3.1 For non-managed accounts it will be necessary for the individual to have a separate current account (from here on referred to as their direct payment account) which must only be used for the money received from the local authority for direct payments, for their own financially assessed contributions and for the payment of services for which the direct payments are made. The local authority must be provided with the details of the direct payment account and be allowed access to all records as required. The direct payment account must only be used to receive income and pay expenses in respect of services covered by the direct payments.

10.3.2 A Bank Details Form must be completed by the individual or suitable person to enable payments to be made via the Banks Automated Clearing System (BACS) directly into the individual's 'Direct Payment account'.

10.4 Managed Accounts

10.4.1 Where an individual or suitable person needs support to manage their personal finances or unable to open a separate current account then consideration can be given to having a managed account.

10.4.2 The Managed Account Service covers all of the tasks involved in setting up a bank account, maintaining a record of the bank account for financial audit, making sure that the Direct Payments are received and are correct, and making all the necessary payments to Personal Assistants, agencies including HMRC and other providers of the Service.

10.4.3 The provision of a managed account does not mean that the local authority becomes the employer of any personal assistant or the commissioner of any agency or organization through the direct payment, it is merely as a means of supporting the individual who remains the employer.

10.4.4 The local authority reserves the right to make it a condition that the direct payment recipient have a managed account if issues with the direct payment recipient managing the account themselves have been identified.

10.5 Method of Payment

10.5.1 Payments will be made net of any contribution for which the individual has been assessed to make if the account is not a managed account.

10.5.2 Payments will be made four weekly in advance to the direct payment recipient or the managed account. For services which are ongoing individuals will normally receive the payment in the first week of each four-week period although this may alter in weeks including bank holidays. One off services will also be paid in advance where possible. All payments will normally be made through BACS. The local authority will decide whether to make net or gross payments depending on the individual's circumstances.

10.5.3 The direct payment recipient is not allowed to pay the personal assistant in advance of receipt of a pay slip or invoice. In the case of managed accounts, the local authority will facilitate the payment on behalf of the direct payment recipient to personal assistant directly. In relation to invoices received in this regard these will be paid within 30 days of receipt of an invoice.

10.5.4 The individual must also pay their own contribution into the Direct Payment account, if the account is to be managed by the direct payment recipient, so that all expenditure is incurred from that account only. If the account is to be managed by the local authority an invoice will be generated for the direct payment recipient's financially assessed contribution.

10.5.5 See also Section 12 for arrangements while Direct Payments are being agreed.

10.6 Funds for Additional Employment Costs

10.6.1 It is permissible for the individual to build up a small amount in their bank account to cover contingency items. This enables individual's flexibility to adjust the amount of the direct payment from week to week. As long as the overall payment is being used to achieve the individual's personal outcomes as identified in the care and support plan, the actual weekly pattern of care and support/support does not need to be pre-determined. These will include such things as:

- Money accrued to pay an outstanding bill from a service provider.
- Money being saved up to pay their employees PAYE.
- An amount equal to the appropriate number of weeks to cover insurance.
- Annual leave

- Sick leave
- Payroll and pensions
- Advertising
- Recruitment
- Maternity pay
- Personal Protective Equipment (where it is not available from other sources)
- Training needs - the individual as an employer is responsible for ensuring that personal assistants are competent and confident in undertaking tasks required. This could include training needs such as:
 - Manual handling, specialist communication skills, behavior management etc.

10.6.2 For the purposes of certainty, Carmarthenshire County Council would not normally allow individuals to accrue a surplus of more than 6 weeks' worth of direct payments. The basis for this is as a result of an English Ombudsman case [17 001 855 – where Local Government and Social Care Ombudsman](#) in England in a case involving Oxfordshire Council said at paragraph 100 '*Council's should keep direct payments accounts under review and it is not normal for councils to allow more than six weeks surplus to accrue before repayment is required.*'

10.7 Accountability

10.7.1 The individual, person with parental responsibility or suitable person is accountable for the manner in which Direct Payments are spent.

10.8 Record Keeping

10.8.1 For a non-managed account the individual, person with parental responsibility or suitable person will need to keep appropriate records. These will include the following:

- **Income and Expenditure Summary**
This must be recorded and completed record sheets must be returned in accordance with the instructions provided (See Appendix 3). Income and Expenditure Summary.
- **Supporting Documents**
All supporting documents must be retained for a minimum of 7 (seven) years and must not be destroyed without the written agreement of the County Council e.g. invoices, receipts, cheque books, paying in books, bank statements, HMRC records, time sheets, expense/mileage sheets etc.

10.8.1.1 For managed accounts the items mentioned in 10.8.1 will be kept by the local authority. However, the individual or suitable person will need to retain any employment records outlined in 10.8.2.

10.8.2 **For those employing Personal Assistants the following must also be retained:**

- Personal Assistant's Weekly Timesheet. The Timesheet must record the days on which work was undertaken and the start and finish time of each shift and the number of hours worked.
- Holiday record
- Sickness record
- Expenses/mileage record

The personal assistant's weekly time sheets/expense/mileage record should be retained by the individual until asked for (they will be required for Audit purposes).

10.9 Insurance and auto enrolment pensions

10.9.1 Information about Insurance Companies offering cover to those employing personal assistants can be obtained through the local authority.

It is a requirement for individual's employing personal assistants through direct payments to have employer's liability insurance. If an individual employs a personal assistant who purports to be self-employed it is that individual's responsibility to ensure that the self-employed person has the relevant arrangements in place.

It is the individual's responsibility to adhere to the exact terms and conditions of the insurer.

10.9.2 The law on workplace pensions has changed. Under the Pensions Act 2008, every employer in the UK must put certain staff into a pension scheme and contribute towards it. This is called 'automatic enrolment'.

If an individual employs a personal assistant, then the individual or their suitable person is an employer and therefore has certain legal duties

10.10 Recovery of Payment

10.10.1 Whilst it is possible for an individual to accumulate a small amount of direct payments as highlighted above, there will be circumstances where the local authority will need to recover direct payment monies which remain unspent.

Circumstances where payment may be recovered will include the following:

- If the local authority is not satisfied that the direct payment is used to secure the provision of services to which the direct payment specifically relates.
- Or if money is left over, because of reduced prices etc., (less any liabilities or contingencies covered in 10.5 above)
- Or if the individual has not met any condition which the local authority has properly imposed (See Appendix 2)
- If there has been an error in processing the payments for any reason
- The individual has died or the service for which the direct payment is made is no longer required due to change of circumstances.

However, it is important that local authorities consider when to seek recovery on an individual case by case basis, including the hardship caused to the individual and whether there are legitimate reasons for unspent monies. The local authority's aim in recovering money is to recoup monies which have been diverted from the purpose for which they were intended or simply not spent. Recovery will not be used by local authorities to penalise honest mistakes, nor will repayment be sought where the individual is the victim of fraud. It is important to note that where a mistake is made, the local authority will expect the individual or suitable person to take all reasonable steps to rectify the mistake, and failure to take such steps will entitle the local authority to recover the monies.

10.11 Use of Individual's Own Resources

10.11.1 It is permissible for individuals to add to direct payments from their own resources either to purchase additional services and/or to purchase services of a better quality or more expensive than have been agreed under the care and support/support plan. However, it is essential that the individual is made aware that they must not use their direct payment account for this payment, and that for non-managed accounts additional services/more expensive/higher quality services are paid for from another account.

10.11.2 Where additional services are sought and the individual has a managed account, Carmarthenshire County Council will provide a direct payment sum equivalent to that which will meet the individual's needs. The provider of the service(s) will be asked to raise an invoice with the individual or their suitable person for any additional cost related to additional services and it is expected that the individual will meet these costs from their own monies.

10.12 V.A.T.

10.12.1 People who receive direct payments may have to pay V.A.T. on some of the services they purchase. However, many services will not incur V.A.T., for example, direct employment of a personal assistant will not incur V.A.T.

10.12.2 If the individual does purchase a service on which V.A.T. is charged, they are not able to recover the V.A.T. from Customs & Excise. Clearly this service will cost them more than other services and will also cost more than the equivalent service would cost the local authority which is able to recover V.A.T. payments.

10.12.3 This is not to say that individuals cannot purchase services on which V.A.T. is charged, but it is the responsibility of the local authority to ensure that the individual is aware that for some services, there will be no V.A.T. and for others, there will be V.A.T. The level of Direct Payment may not meet the cost of the service on which V.A.T. is charged if that service is able to be provided on a more cost-effective basis elsewhere (this being the basis on which payment levels have been set).

10.13 Refund for Services Not Provided

10.13.1 If the individual has paid for a service which has not been provided, it is the individual's responsibility to secure a refund for that service, and that as the employer they should seek whatever recourse is necessary to obtain a refund.

10.14 Relationship between Monitoring and Review

10.14.1 The individual's financial arrangements with direct payments will be subjected to scrutiny, both in the social work review of the care and support/support plan and also through an examination and audit of the income and expenditure by the Finance Officer relating to the direct payments agreement. It is essential that the parties carrying out these different types of scrutiny, co-ordinate with each other and share their information. However local authorities will ensure that the financial monitoring arrangements for direct payments are proportionate, and that no decision to cancel or suspend a direct payment will be taken without prior involvement of the individual, their representative and social worker.

10.15 Monitoring

10.15.1 The individual or suitable person is required to maintain accurate records of all Income and Expenditure. This will identify if there is a surplus in the account (after allowing for the contingency items outlined in 10.6). This monitoring will be done on monthly Income and Expenditure forms which should be forwarded by the individual or suitable person to the Direct

Payments team at the end of each month. In the event that the direct payment recipient has difficulty in completing such monitoring forms sufficiently detailed bank accounts may be accepted. A full audit will also be undertaken periodically.

10.15.2 In cases where there is a surplus in the account, action will be taken to recover the moneys in an appropriate way e.g. a debtor's invoice. Any steps to recover any surplus will be dealt with in accordance with the Part 4 code of practice to Social Services and Well-being (Wales) Act 2014. Surplus monies are never to be used by the direct payment recipient towards anything which not specified in the care and support plan as something which the direct payments are for.

10.15.3 If there is a deficit on the account, then the reasons will be investigated and appropriate action will be implemented e.g. individual or suitable person to make up deficit, direct payments withdrawn etc. In such situations this is likely to necessitate a review of the care and support plan.

10.15.4 It should be noted that the Local Authority will only monitor that part of the direct payment that is made up of money paid by the Council and the individual's contributions.

10.16 Audit

10.16.1 Individuals will be advised that in addition to the record keeping outlined they should retain the following documentation for audit purposes:

- Evidence that anyone they are employing is legally able to work in the UK.
- Bank statements.
- Cheque books
- Any bank/building society paying-in books
- Invoices
- Receipts
- PAYE records
- National Insurance records
- Income Tax records
- Other payroll and pension records
- County Council Financial Transaction records
- Any other documents which can be relied upon to support financial transactions.
- Insurance certificates
- Evidence of a Disclosure and Barring Scheme record if appropriate
- If an individual is considering a self-employed personal assistant arrangement, then it is their responsibility to complete the HMRC Check Employment Status for Tax (CEST) which will determine the workers employment status. Copies of the CEST would need to be retained also.
- Time sheets
- Employment contract (where appropriate)

- Log sheets.
- Expenses/mileage sheet

Records should be kept for a minimum of seven years.

10.17 Payments made by individuals or Suitable Person

10.17.1 Payment for care purchased using Direct Payments should always be paid out of the Direct Payment account. It is expected that all payments will be made by cheque or bank transfer. Under no circumstances should cash payments be made.

11.0 Disclosure and Barring Service

11.1 A Disclosure and Barring Service check will be undertaken at no cost to either the employee or the individual. However, any costs of renewal will need to be borne by the personal assistant and such checks must be renewed every 3 years.

In all cases a Disclosure and Barring Service (DBS) check is compulsory. In all but exceptional circumstances it will be expected that the direct payment recipient obtain the outcome of the Disclosure and Barring Service check before commencing the employment of the personal assistant by means of payment via direct payments. Where a personal assistant is going to commence employment before the DBS check has been obtained, it is essential that a local authority team manager or a more senior manager authorise that arrangement, Carmarthenshire County Council encourages individuals to consider asking their personal assistants to sign up to the DBS update service, which allows authorised individuals to view the DBS check status at any time.

If a prospective personal assistant already has a DBS check in place at the time of starting work, Carmarthenshire County Council can exercise its discretion with the individual and accept this check without requiring a new one. However, the age of the DBS check, and what type of check it is, will be relevant factors in determining whether to accept it as sufficient.

In relation to suitable persons, or persons with parental responsibility who want to manage the direct payment on behalf of the individual, Carmarthenshire County Council reserves the right to require a DBS check of that suitable person or person with parental responsibility to ensure their suitability to act in this regard.

12. Arrangements While Direct Payments Are Being Agreed

- 12.1** Following the assessment of outcomes, there may be a time lapse between direct payments being agreed and their commencement. Direct payments cannot begin until:
- the individual has agreed to any conditions which are necessary for monitoring purposes.
 - the agreement has been signed and returned to the local authority.
 - bank details of the direct payments account have been provided.
 - the appropriate insurance is in place.
 - Disclosure and Barring Scheme checks have been received and considered.
 - the person(s) has been recruited and a start date has been confirmed. (If a personal assistant is to be employed)
- 12.2** The assessing officer and the Finance Officer must ensure that the above conditions are in place before proceeding with a direct payment.
- 12.3** It is likely that an individual will be unable to make arrangements for a service to begin instantly. Therefore, the assessing officer will need to arrange for services to be provided on a temporary basis, while the arrangements for direct payments and services are being made and finalised.

13. Discontinuing Direct Payments

- 13.1** Prior to discontinuing a direct payment, the local authority will explore all feasible options to continue to meet the individuals care and support needs via a direct payment, where this is not possible to achieve the direct payment will be discontinued.

Direct payments may be discontinued in situations where:

- the individual is having difficulty in managing money, services, staff, or direct payment in general after all reasonable alternative options have been explored.
- where direct payments no longer meet the assessed care and support/support needs, or personal outcomes and it is not possible to amend the direct payment provision to meet those outcomes/needs.
- where a review indicates that neither direct payments nor services are necessary
- in situations where there has been misuse of direct payments (see 13.4 below)
- where the individual requests that they be replaced by direct services

- 13.2** The decision to discontinue direct payments may be made at any time by either the local authority or the individual. If the reason for discontinuing direct payments is due to the individual's difficulty in managing the payments, then it is essential that the assessing officer first explores whether there are ways to overcome these difficulties.
- 13.3** If there is a decision to discontinue direct payments, then the assessing officer should give the individual or suitable person a minimum of 1 weeks' notice. The actual period of termination notice should have due regard to the employment conditions of the personal assistant(s) and the service user's / suitable person's circumstances at the time.
- 13.4** In exceptional circumstances, it may be necessary to discontinue direct payments without giving notice. These circumstances include:
- misappropriation of funds
 - serious misconduct on the part of the individual or suitable person
 - contravention of the rules governing direct payments
 - if there is a breach of the agreement between the local authority and the service user/suitable person.
 - Individual no longer requires a direct payment.

The assessing officer should explain the above to the individuals or suitable person before they begin to receive direct payments.

Where an individual decides to discontinue direct payments, the local authority will make alternative arrangements to meet that individual's eligible care and support needs/support needs. The local authority will also make the individual aware of their contractual responsibilities and the consequences of discontinuing the direct payment.

- 13.5** Where an individual dies the direct payments will cease. Such situations will be handled with the utmost sensitivity. The local authority will obtain the details of those responsible for the deceased's estate to close the direct payment account and to make payment for any outstanding responsibilities. Employees will have to have their employment terminated, final returns/income and expenditure sheets will have to be submitted once the final bank statement is received and after due process, the remaining balance in the account will have to be returned to the local authority. Those in receipt of direct payments should advise those potentially handling their estate of this process. direct payments cannot be used to cover costs incurred for periods after the death of the direct payment recipient.

14. Transitional Arrangements – Young Persons into Adulthood

14.1 In some cases, the young person at age 16 or 17 may wish, as part of the transition to adulthood, to take control of parts or all of the direct payment that has to date been managed by the person with parental responsibility.

14.2 A plan to develop a young person's ability to manage the direct payment can be put in place during the transitional arrangements, whereby the young person manages only a proportion of their support with a direct payment. This preparation could increase as the young person matures, with the objective of full management of the direct payment by the age of 18.

14.3 In situations where a person becomes 18 years old and they lack mental capacity to manage their direct payment, if a person with parental responsibility has been managing the direct payment up until now, it is highly likely that that person will continue but in the role as suitable person. However, if that person with parental responsibility no longer wants to continue to manage the direct payment on the other person's behalf an alternative person will need to be sought to be suitable person.

15 Complaints Procedure

15.1 There are some aspects of direct payments that would be subject to the local authority complaints process such as:

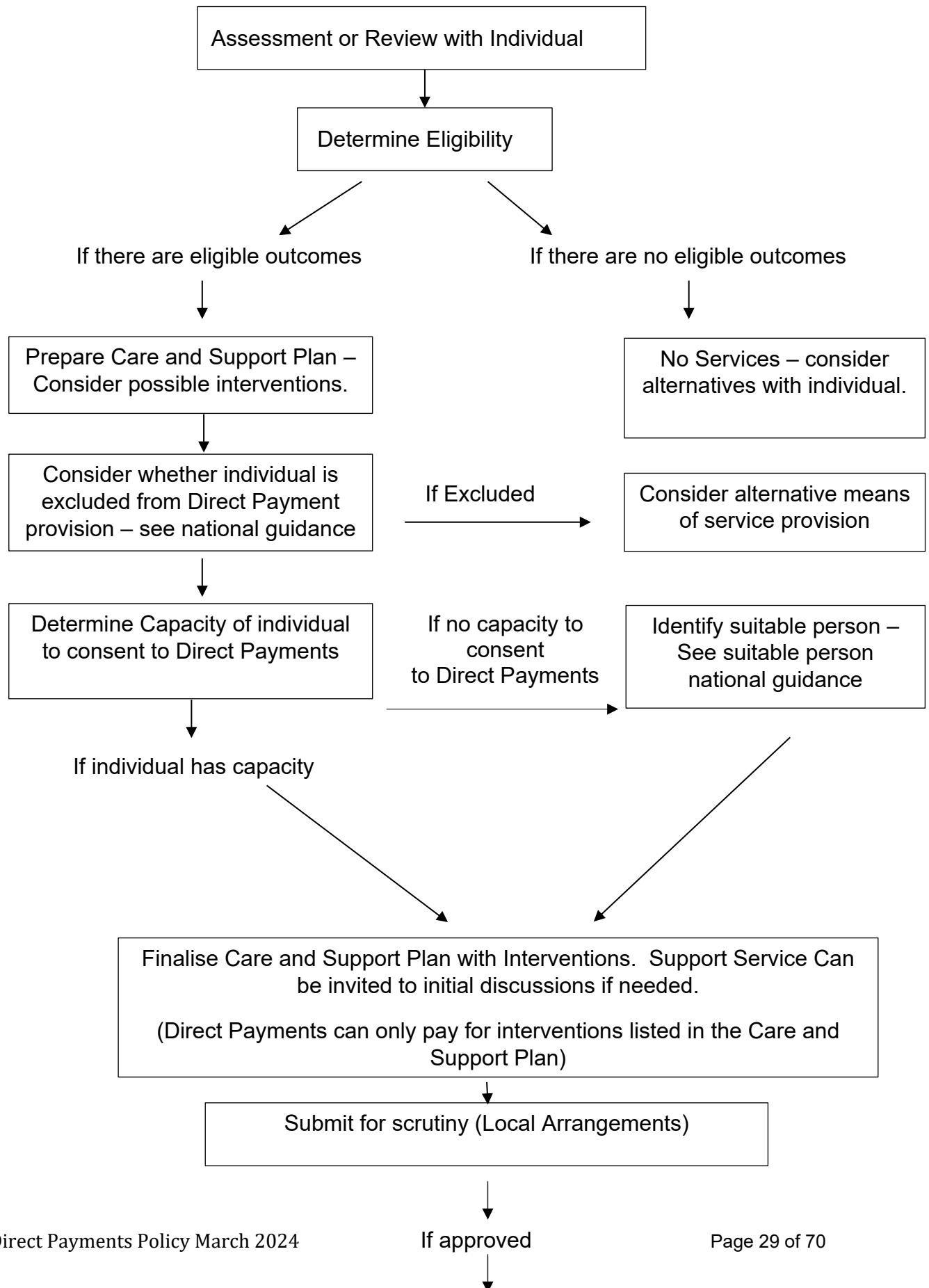
- Direct payment support scheme
- Level of direct payment

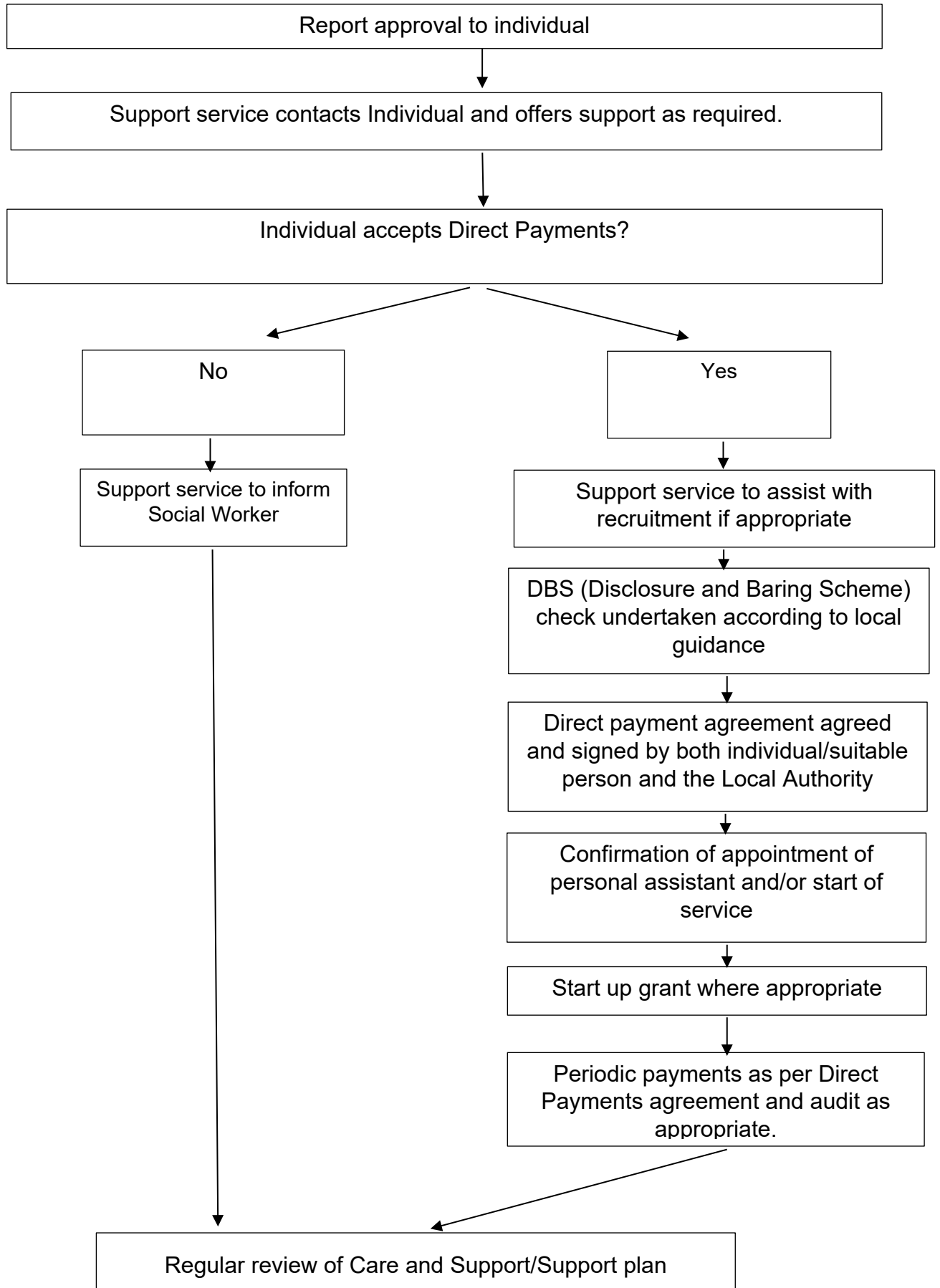
However, contractual agreements between the direct payment recipient and a personal assistant would fall outside of this process as they are private matters.

The Resolution and Complaints Manager will determine whether the complaint is something that can be dealt with under the local authority complaints process and, if not, will provide an explanation as to why not.

However, if the individual has a dispute about the amount of financial contribution that they are required to make towards the direct payment, then the local authority's review of charging process should be used.

The Direct Payment Process for ongoing support





16.2 Discontinuation / Suspension

16.2.1 Any serious matter which may arise and could lead to discontinuation should be discussed with the local authority lead officer for direct payments.

17 Procedure For Administration and Financial Staff

17.1 Payments Procedure

17.1.1 Initial payments and one-off payments will be made in advance where possible.

17.1.2 Regular payments will be made by the Banks Automated Clearing System (BACS). Payments will be made four weekly in advance. Payments would normally be received in the individual's account in the first week of each four-week period, although this may change in weeks which include bank holidays. Before the first payment can be processed, the Direct Payment Team must receive copies of the following:

- Allocation/Approval of Direct Payment
- Support/ Care Plan
- Signed agreement
- Individual/Direct Payments account details
- Confirmation that the personal assistant has been recruited (if a personal assistant is to be employed)
- Confirmation of Disclosure and Barring Service checks (if a personal assistant is to be employed)
- Confirmation of service commencement, or alternative service provision

17.1.3 A payment advice is produced by the creditor payments system and is sent direct to the service user (if an email address has been provided) advising of the amount and weeks covered. The payment details and the period covered appears in the description on the remittance advice sheet.

17.2 Collection of Individuals Contribution

17.2.1 Services which are assessed and met through a direct payment may be chargeable. Where this is the case, and the individual is liable for a charge and does not have a managed account, then the individual's contribution (charge) for their direct payment is deducted from the direct payment amount paid to them so that they receive a net payment. The individual must therefore deposit his/her contribution into their personal direct payment bank account promptly each period. Where there is a mix of direct payments and other chargeable services then the individual will be advised of how to pay their contribution as it may be appropriate to collect the service user's contribution in a different way.

17.3 Recovery Procedures

17.3.1 When there is an overpayment or a surplus in the account, for any reason, then this will be recovered by raising an invoice setting out the amount of the overpayment or surplus, and the individual or suitable person will be advised of this amount, and steps will then be taken to recover the amount owed.

17.3.2 When the individual is required to repay money that has been spent on services which were not included in the direct payments agreement, or where the service user did not meet the conditions for using direct payments which the local authority had properly imposed, then the monies will be recovered as in 17.3.1 above, or ultimately through the usual debt recovery procedures.

17.4 Office Administrative Record Keeping

Administrative staff will need to keep a record of:

- payments,
- individual's contributions and how the contribution is being collected.
- any combination of service and direct payments which the individual is receiving.

18 Cross border protocol

Please see Appendix 5.

19 Equipment for daily Living

19.1 The direct payments legislation allows local authorities to make direct payments available to enable people to purchase for themselves equipment and temporary adaptations, and local authority services which would otherwise have been provided by the local authority.

19.2 Direct payments in this instance cannot be used to purchase services or equipment for which the Authority is not responsible, for example, equipment that the NHS provides unless they are incidental and ancillary to the individuals care and support/support needs. Direct payments are not a substitute for Disabled Facilities Grant for property adaptations. The same principles apply to offering direct payments for equipment, as apply to any other kind of service. The amount given to the individual to purchase an item of equipment must be equal to the amount the local authority would have to spend on providing that item of equipment. In the event that the individual wishes to purchase a more expensive piece of equipment to that which would adequately meet their needs then they

would be responsible for paying the difference between what the local authority would pay and what the individual would like to purchase.

19.3 Direct payments can be awarded for the purchase of equipment in certain circumstances and in such circumstances it is the responsibility of the individual to provide the local authority with a receipt confirming that the equipment has been purchased.

19.4 In considering both the cost that is reasonably needed by the individual and whether it is cost-effective for a direct payment to be used, staff need to bear in mind, the difference in VAT treatment in relation to whether equipment is purchased by the Department or the individual.

19.5 Steps to providing Direct Payments for Equipment

Assessment	Does not change, the process is exactly the same and authorised through the normal channels. If the equipment would normally be provided through existing contracts or is a 'special' item, then cash equivalent could be offered as a Direct Payment.
Choices	Once the assessment has shown the individual is eligible for a service and the equipment has been identified the individual should then be informed of the choices on how the equipment can be provided.
Making Payment	Local guidance applies.
Paperwork	The provision of equipment requires an assessment, (with costs). In Carmarthenshire County Council equipment provided through an Occupational Therapy assessment or an assessment by a sensory impairment officer is considered a preventative service and therefore no care and support plan, or support plan in the case of a carer, is provided.

APPENDICES

Appendix 1 – User Rates of Pay for Carmarthenshire

Please refer to Carmarthenshire County Council's Charging Policy

Appendix 2 – Direct Payments Agreement

DIRECT PAYMENTS AGREEMENT

CONDITIONS OF CONTRACT

THIS AGREEMENT IS MADE ON

BETWEEN:

(1) Carmarthenshire County Council, 3 Spilman Street, Carmarthen SA31 1LE (“The Council”)

&

(2) (“The Individual”)

WHEREAS:

- (i) The Council in exercise of its powers under the Social Services and Well-being (Wales) Act 2014 and Care and Support (Direct Payments) (Wales) Regulations 2015 will make Direct Payments to the individual to enable the individual to purchase services required to meet his or her assessed care and/or support needs, identified in the Care and Support Plan/Support Plan, and
- (ii) The Individual wishes to receive the direct payments from the Council and is willing to purchase and control the services required to meet his or her assessed care and support needs.

The Council and the Individual agree as follows:

1. The Council shall provide the direct payments as stated in this Agreement.
2. The Individual shall (alone or with assistance) manage the direct payments made in accordance with this Agreement.

1. Definitions

“The Council” means Carmarthenshire County Council

“Agreement” means these conditions, appendices and your Care and Support/Support Plan.

“Agreed Sum” means the Council’s contribution to your Direct Payments as stated (condition 7.1).

“Assessed Contribution” means the amount of money that you have been assessed as having to contribute to your care package.

“Care and Support Plan/Support Plan” means a document agreed with you that details your care and support/support needs and how your needs will be met, including the types of services that you may purchase with the Direct Payments. The Care and Support Plan/Support plan is part of this agreement.

“Direct Payments” means the money you use to purchase your services as part of this agreement.

“Direct Payments Bank Account” means a separate cheque account (and in the event that a cheque account is unavailable a separate bank account) set up by you that you will use only for your Direct Payments.

“Individual” means “you”.

“Provider” means someone who directly provides a service for you.

2. Commencement and Duration

2.1 This Agreement shall start on the and shall continue until ended by either you or the Council in accordance with condition 17.

3. Entire Agreement

- 3.1 This agreement is the whole agreement between you and the Council about Direct Payments.
- 3.2 You understand that if you do not comply with the conditions contained in this agreement that the council may review the direct payment arrangement, and this could ultimately lead to the direct payment arrangement ending and the council meeting your care and support needs through alternative means.

4. The Service

- 4.1 You can only purchase services that meet the needs detailed in your care and support/support plan.

5. The Council's Obligations

- 5.1 The Council will pay to you its contribution as stated in condition 7.1.
- 5.2 If you are unable to manage your Direct Payments or you misuse them the Council may end the direct payment arrangement but will still be responsible for providing or arranging appropriate services to meet your assessed needs, providing you remain eligible for those services, according to the Care and Support (Eligibility) (Wales) Regulations 2015.
- 5.3 The Council will review your care and support/support plan initially within 6 months and thereafter at least once every year or more often if either you or the Council thinks it is necessary.

6 Your Obligations

- 6.1 You must manage the direct payments in accordance with this agreement.

- 6.2 You must pay your assessed contribution into your Direct Payments Bank Account. However, where you have a managed account, the Council will invoice separately for this.
- 6.3 The Direct Payments are made to you on condition that you only spend it to purchase the services detailed in your Care and Support/Support Plan.
- 6.4 You must ensure that you receive all the services you have paid for.
- 6.5 You must keep and maintain the records detailed in this agreement.
- 6.6 You must ensure that the services you buy are cost effective.
- 6.7 If you employ staff to provide you with the services listed in your Care and Support/Support Plan you will be responsible for all the duties, liabilities, and obligations of an employer. However, you will allow the local authority to speak to any staff that you employ to ensure compliance with the obligations under this agreement. You also agree to inform the Council if you dismiss an employee and further agree to refer that employee to the disclosure and barring service, where appropriate. For the sake of certainty, you are responsible for ensuring that any employees that are employed in the future are subject to check from the Disclosure and Barring Service. Further you must ensure that you do not use all the direct payments monies as employees' wages. You are expected to retain a proportion of the direct payment to cover costs like pension costs. As a result, you should only pay your employee (personal assistant) the personal assistant rate of the direct payment to your employee as wages. The Council will inform you of the personal assistant rate. If you wish to pay your employee more than the personal assistant rate, you must use your own monies for this purpose.
- 6.8 You must ensure that the required insurance is in place at all times.
- 6.9 You must promptly tell the Council if your care needs change, your financial circumstance change, or if you go into hospital.

7. Contributions to Direct Payments

- 7.1 Your Care and Support Plan will detail the amount of direct payments that you require to meet your assessed and eligible care and support needs.

7.1.1 The Council will assess your financial contribution towards this direct payment in accordance with the Care and Support (Financial Assessment) (Wales) Regulations 2015 and Care and Support (Charging) (Wales) Regulations 2015

7.1.2 The Council will make a direct payment to you net any contribution that you are required to make in accordance with the financial assessment as set out in 7.1.1 However, where you have a managed account the Council will invoice separately for this.

7.2 If at anytime you become hospitalised or are unable to receive services and employ a personal assistant funded from the direct payments either directly or through an agency the following will apply:-

The council will pay the full direct payment for up to eight weeks in any financial year.

If at any point the council concludes that the direct payment arrangement no longer meets your needs, the council will calculate the amount needed to be provided in order that you can lawfully terminate your employment agreement with your personal assistant and will provide you with that amount. The local authority will make no further payment thereafter.

The Council does reserve the right to recover any surplus payments.

8. How the Direct Payments are paid to you

8.1 Upon this Direct Payment agreement being signed by You, the Council will make Payments from the date that it is satisfied the services set out in the individual's care and support/support plan are procured or delivered.

8.2 The Council will pay its contribution directly into your Direct Payments Bank Account (or where you have a managed account the managed account ledger), four weekly in advance for regular payments, and in advance where possible for periods of respite care which are at fixed intervals.

8.3 You must pay your assessed contribution into your Direct Payments Bank Account every four weeks. However, where you have a managed account the Council will invoice separately for this.

9. Administration of Direct Payments

9.1 You must open a separate Direct Payments bank account for all your Direct Payments.

9.2 All payments from your Direct Payments Bank Account should usually be made by cheque or Bank Automated Credit System credit transfer, however you may use cash in **exceptional circumstances** where it is impractical to use a cheque or Bank Automated Credit System credit transfer. If you do use cash, you must ensure that you receive and keep a receipt for every transaction.

9.3 You are responsible for the payment of all bank charges levied on your Direct Payments Bank Account.

10. Additional Costs

10.1 You must keep an amount of funds in your Direct Payments Bank Account to cover additional costs. The level of these funds will be reviewed periodically by Carmarthenshire County Council. Additional costs can include the following:

- i. Employees PAYE and payroll costs
- ii. Insurance costs
- iii. Annual leave costs
- iv. Sick leave costs
- v. Short periods of hospital admission that you cannot arrange to coincide with your staff's leave
- vi. Advertising and recruitment costs
- vii. Support services, which may include training and peer support

- 10.2** If at any time it appears to the Council that the funds in the Direct Payment bank account are over above that which is reasonably necessary, including an element for additional costs as mentioned above, the Council at its discretion will either seek recovery of this amount from You by sending an invoice setting out the amount due or by reducing a subsequent payment to you by the amount of surplus.
- 10.3** Where additional costs to purchase care are incurred or are likely to be incurred in the future, then it is your responsibility to advise Carmarthenshire County Council of these at the earliest possible time. Carmarthenshire County Council will consider each individual case and will determine whether additional direct payments may be made on a temporary basis to cover these.

11. Financial Monitoring and Records

You must maintain a record of all income and expenditure relating to this contract in the record book provided and all supporting documents must be retained for at least seven years and must not be destroyed without written approval from Carmarthenshire County Council. Where applicable (the Council will inform you which are applicable) the following supporting documents must be retained:-

- ◆ bank statements
- ◆ cheque books
- ◆ bank/building society paying in books
- ◆ invoices
- ◆ receipts
- ◆ PAYE records
- ◆ NI records
- ◆ Income Tax records
- ◆ Insurance certificates
- ◆ Timesheets
- ◆ Expenses forms
- ◆ Employment contracts (where appropriate)
- ◆ other payroll and pension records
- ◆ County Council Financial Transaction records
- ◆ any other documents which can be relied upon to support financial transactions.
- ◆ evidence of a Disclosure and Barring Scheme record if appropriate
- ◆ If an individual is considering a self-employed personal assistant arrangement, then it is their responsibility to complete the HMRC Employment Status Indicator tool (CES) which will determine the workers employment status. Copies of the CES would need to be retained also.
- ◆ evidence that anyone who is employed or is being employed as a personal assistant is legally able to work in the UK.

◆ Log sheets.

- 11.1** At the end of each calendar month you must sign and detach the expenditure and income record sheet and forward them to the address shown in the record book.
- 11.2** If you employ a personal assistant then you must ensure that a weekly time sheet is completed showing the times and days that the employee is working. You must retain these timesheets for at least 7 years.
- 11.3** It is important that you have supporting documents for all transactions. It is your responsibility to ensure that these documents are sought and retained.
- 11.4** This agreement only deals with the records the Council requires you to keep. You may be required to keep records by other bodies e.g., Inland Revenue, and you must check to find out what those records are and how long you must keep them for.

12. Monitoring

- 12.1** The Council is entitled to take reasonable steps to monitor how you are using your Direct Payments and to make sure you are receiving the services in your Care and Support/Support Plan.
- 12.2** You must allow Council Officers, or anybody authorised by the Council, to have access to all records that you are responsible for keeping. You must make any changes to your record keeping that the Council asks for and you must co-operate with any monitoring carried out by the Council.
- 12.3** The Council shall have the right to carry out unannounced monitoring visits, and if such a visit is carried out you must allow the Officers who attend to have access to all records that you are responsible for keeping. If the officers make any recommendations about your records and/or your procedures for maintaining them you must implement those recommendations.
- 12.4** You must engage with the Council in any reviews of your care and support plan. This includes attending any appointments for which the Council will give you reasonable notice. If you do not engage in any such reviews, you understand

that the council will proceed with the review, and this may lead to changes in the direct payment arrangement.

13. Insurance

If you employ personal assistants you must ensure that you have relevant insurance cover to meet your responsibilities as an employer.

14. Review

- 14.1** The Council will review your care and support/support plan initially within 6 months and at least once every year or more often if either you or the Council thinks it is necessary. In addition to these reviews the Council will also undertake financial monitoring, the initial financial monitoring will take place within 6 months of the direct payment agreement being signed, and the frequency of the ongoing financial monitoring will thereafter be determined following the completion of a risk assessment. The care and support plan review, in addition to reviewing whether the services continue to meet your assessed needs, the following will also be considered:

The financial monitoring reviews will consider the following:

14.1.1 Whether the Direct Payments have only been used to purchase services to meet the needs detailed in your Care and Support/Support Plan;

14.1.2 Whether the services have been received;

14.1.3 Whether you have taken all reasonable steps to ensure that Direct Payments have been spent on cost effective services;

14.1.4 Whether you have experienced any difficulties in managing direct

payments;

14.1.5 Whether you are receiving appropriate advice and assistance in managing your Direct Payments;

14.1.6 Whether you are maintaining adequate records for monitoring purposes.

14.2 Once the review meeting has taken place the Council will write to you detailing the outcome of the review and shall make any changes to your care plan which were agreed in the review meeting.

15. Excluded Service Providers

15.1 You must not under any circumstances use your Direct Payments to purchase services from the following:

15.1.1 The National Health Service;

15.1.2 A relative living in the same household, where that arrangement does not promote the individual's well-being. For the purpose of this agreement a relative will be: a spouse or civil partner; a person who lives with a person as if a spouse or civil partner; parent, parent in law or step parent; son or daughter; son in law or daughter in law; stepson or stepdaughter; brother or sister; aunt or uncle; grandparent; or the spouse or civil partner of any of the people previously mentioned. For the purposes of this agreement, when considering whether such a relative living in the same household will promote an individual's well-being, Carmarthenshire County Council will take into accounts the individual's views before coming to a decision.

16. Changes to the Agreement

16.1 Carmarthenshire County Council retain the right to vary **this** agreement and you will be notified of any such variations.

17. Termination (Ending the Contract)

17.1 Either you or the Council can end this agreement by giving 5 weeks written notice to the other, or by a shorter period if both agree. Notices should be sent by recorded delivery to the addresses shown on page 1 of the Agreement. If you and the Council agree to end the contract in this way you will be liable to promptly repay to the Council:

17.1.1 Any money in your Direct Payments Bank Account including any accrued interest after all outstanding invoices have been paid.

17.1.2 Any monies paid to a Provider or any other for services which you have not received. You are responsible for recovering any monies paid to the Provider or any other person for services which you have not yet received.

17.1.3 Any direct payment monies which have not been used to meet your care and support needs

17.2 The Council can give written notice to end this agreement with immediate effect if:

17.2.1 You breach any of the conditions of this agreement and/or fail to carry out any action reasonably requested by the Council.

17.2.2 A Council Officer has reasonable grounds to believe you are misusing your Direct Payments.

17.2.3 You become bankrupt or make a composition or arrangement with your creditors or have a proposal in respect of your company for voluntary arrangement for a composition of debts or scheme or arrangements approved in accordance with the Insolvency Act 1986.

17.2.4 Carmarthenshire County Council determine that you are unable to manage your direct payments.

17.3 In the event of your death this Agreement will terminate and the Council is entitled to recover from your Estate the total of any money including accrued interest, in your Direct Payment bank Account after all outstanding invoices for services provided under this Agreement have been paid.

18. Complaints

18.1 If you are unhappy about anything connected with the Direct Payments scheme you are entitled to use the Council's Complaints procedure.

Signed for and on behalf of the Council

Signed by the Individual

Signature:

Signature:

Name: Mrs Tracey Lewis

Name:

Title: Exchequer Manger

Date:

Date:

DIRECT PAYMENTS

CONFIRMATION OF RECRUITMENT:-

Personal Assistant's Name: _____

Individual's Name: _____

Address: _____

I confirm that I have now successfully recruited carers who will be starting work on _____.

I confirm that I have carried out a Disclosure and Barring Service (DBS)

Check on the carer/s that have been appointed YES/NO

I confirm that I have received a copy of the care and support plan

I would like to pay any contributions I am assessed to pay either by:

A) Directly transferring monies into the Direct Payment bank account/Managed bank account

B) Making payments for any contributions I am assessed to pay via a four weekly invoice

I should therefore be grateful if you could commence paying four-weekly Direct Payments into my account the details of which are as follows:

CONFIRMATION OF BANK DETAILS:-

Bank: _____

Address: _____

Account Name: _____

Sort Code: _____ **Account Number:** _____

Signed: _____

Date: _____

**Please return form to: Carmarthenshire County Council. Communities
Directorate, Business Support Section, 3 Spilman Street, Carmarthen SA31
1LE**

DIRECT PAYMENTS AGREEMENT

CONDITIONS OF CONTRACT

THIS AGREEMENT IS MADE ON

BETWEEN:

(3) Carmarthenshire County Council, 3 Spilman Street, Carmarthen SA31 1LE (“The Council”)

&

(4)

(“The Suitable Person” on behalf of the “Individual”)

WHEREAS:

(iii) The Council in exercise of its powers under the Social Services and Well-being (Wales) Act 2014 and Care and Support (Direct Payments) (Wales) Regulations 2015 will make Direct Payments to the Individual. The Individual has been assessed as lacking mental capacity to manage their own direct payments, even with support, or the individual is a child and the person managing their direct payments is a parent or person with parental responsibility. Therefore, a suitable person has been appointed to act on behalf of the Individual to enable the Individual to purchase services required to meet his or her assessed care and/or support needs, identified in the Care and Support Plan/Support Plan, and

(iv) The Suitable Person is willing to receive the direct payments on behalf of the individual from the Council and is willing to purchase and control the services required to meet the individual’s assessed care and support needs.

The Council and the Suitable Person agree as follows:

3. The Council shall provide the direct payments as stated in this Agreement.
4. The Suitable Person shall (alone or with assistance) manage the direct payments made in accordance with this Agreement.

1. **Definitions**

“The Council” means Carmarthenshire County Council

“Agreement” means these conditions, appendices and the Individual’s Care and Support/Support Plan.

“Agreed Sum” means the Council’s contribution to the Individual’s Direct Payments as stated (condition 7.1).

“Assessed Contribution” means the amount of money that the Individual have been assessed as having to contribute to their care package (If the individual is a child there will be no assessed contribution).

“Care and Support Plan/Support Plan” means a document agreed in the Individual’s best interest and that details the care and support/support needs and how the needs will be met, including the types of services that the Suitable Person may purchase with the Direct Payments. The Care and Support Plan/Support plan is part of this agreement.

“Direct Payments” means the money the Suitable Person will use to purchase the Individual’s services as part of this agreement.

“Direct Payments Bank Account” means a separate cheque account (and in the event that a cheque account is unavailable a separate bank account) set up by the Suitable Person that they will use only for the Direct Payments.

“Individual” means “person with care and support needs” as defined by the Social Services and Well-being (Wales) Act 2014, Care and Support (Direct Payments) (Wales) Regulations 2015 and the Part 4 Code of Practice to the Social Services and Well-being (Wales) Act 2014.

“Provider” means someone who directly provides a service for you.

“Suitable Person” means a person as defined in the Part 4 Code of Practice to the Social Services and Well-being (Wales) Act 2014, or the parent or other person with responsibility for a child who is an Individual as defined in this Agreement

3. Commencement and Duration

- 2.2 This Agreement shall start on the and shall continue until ended by either the Suitable person or the Council in accordance with condition 17.

4. Entire Agreement

- 3.3 This agreement is the whole agreement between the Suitable Person and the Council about Direct Payments.
- 3.4 You understand that if you do not comply with the conditions contained in this agreement that the council may review the direct payment arrangement, and this could ultimately lead to the direct payment arrangement ending and the council meeting your care and support needs through alternative means.

5. The Service

- 4.2 The Suitable Person can only use the direct payments to purchase services that meet the needs detailed in the Individual’s care and support/support plan.

6. The Council’s Obligations

- 5.2 The Council will make its contribution as stated in condition 7.1.
- 5.4 If the Suitable Person is unable to manage the Direct Payments or misuse them the Council will be responsible for providing or arranging appropriate services to meet the Individual’s assessed needs, providing they remain eligible for those services, according to the Care and Support (Eligibility)(Wales) Regulations 2015.

- 5.5** The Council will review the Individual's care and support/support plan initially within 6 months and thereafter at least once every year or more often if necessary.

6 The Suitable Person's Obligations

- 6.10** The Suitable Person must manage the direct payments in accordance with this agreement.
- 6.11** The Suitable Person must ensure that arrangements are in place for the Individuals assessed contribution to be paid into the Direct Payments Bank Account. However, where the individual has a managed account, the Council will invoice separately for this.
- 6.12** The Direct Payments are made to the Suitable Person on condition that they only spend it to purchase the services detailed in the Individual's Care and Support/Support Plan.
- 6.13** The Suitable Person must ensure that the Individual receives all the services that have been have paid for.
- 6.14** The Suitable Person must keep and maintain the records detailed in this agreement.
- 6.15** The Suitable Person must ensure that the services they buy are cost effective.
- 6.16** If the Suitable Person employs staff to provide the Individual with the services set out in the Care and Support/Support Plan the Suitable Person will be responsible for all the duties, liabilities, and obligations of an employer. However, the suitable person will allow the local authority to speak to the staff that they employ to ensure compliance with the obligations under this agreement. The Suitable Person also agree to inform the Council if they dismiss an employee and further agree to refer that employee to the disclosure and barring service, where appropriate. For the sake of certainty, they are responsible for ensuring that any employees that are employed in the future are subject to check from the Disclosure and Barring Service. In addition, the suitable person must ensure that they do not use all the direct payments monies as employees' wages. They are expected to retain a proportion of the direct payment to cover costs like pension costs. As a result, they should only pay their employee the personal assistant rate of the direct payment as wages. The Council will inform of the personal assistant rate. If the suitable person wishes to pay their employee more than the personal assistant rate, they must use their own monies (or if they have Lasting Power of Attorney for Property and

Finances or the Equivalent Deputyship, the individual's monies if they consider it to be in the individual's best interest) for this purpose.

- 6.17 The Suitable Person must ensure that the required insurance is in place at all times.
- 6.18 The Suitable Person must promptly tell the Council if the Individual's care and support needs change, the Individual's financial circumstance change or if or if the individual or Suitable Person go into hospital.

9. Contributions to Direct Payments

- 7.2 The Individual's Care and Support Plan will detail the amount of direct payments that the Individual requires to meet their assessed and eligible care and support needs.

7.1.1 The Council will assess the individual's financial contribution towards his direct payment in accordance with the Care and Support (Financial Assessment) (Wales) Regulations 2015 and Care and Support (Charging) (Wales) Regulations 2015. In the case of a child who is the Individual for the purposes of this agreement no contribution will be sought.

7.1.2 The Council will make a direct payment to the Suitable Person net any contribution that the Individual is required to make in accordance with the financial assessment as set out in 7.1.1. However, where the individual has a managed account the Council will invoice separately for this.

- 7.3 **If at any time the Individual becomes hospitalised or is unable to receive services and employ a personal assistant funded from the direct payments either directly or through an agency the following will apply:-**

The council will pay the full direct payment for up to eight weeks in any financial year.

If at any point the council concludes that the direct payment arrangement no longer meets the Individual's needs, the council will calculate the amount needed to be provided in order that the Suitable Person can lawfully terminate their employment agreement with their employee, and will provide the Suitable Person with that amount. The local authority will make no further payment thereafter. The Council does reserve the right to recover any surplus payments.

10. How the Direct Payments are paid to you

- 8.4** Upon this Direct Payment agreement being signed by the Suitable Person, the Council will make payments from the date that it is satisfied the services set out in the individual's care and support/support plan are procured or delivered.
- 8.5** The Council will pay its contribution directly into the Direct Payments Bank Account (where a managed account, Managed Account Ledger), four weekly in advance for regular payments, and in advance where possible for periods of respite care which are at fixed intervals.
- 8.6** The Suitable Person must pay the Individual's assessed contribution into the Direct Payments Bank Account every four weeks. However, where the individual has a managed account, the Council will invoice separately for this.

10. Administration of Direct Payments

- 9.4** All payments from the Direct Payments Bank Account should usually be made by cheque or Bank Automated Credit System credit transfer, however cash may be used in **exceptional circumstances** where it is impractical to use a cheque or Bank Automated Credit System credit transfer. If cash is used the Suitable Person must ensure that they receive and keep a receipt for every transaction.
- 9.5** The Suitable Person is responsible for the payment of all bank charges levied on the Direct Payments Bank Account.

11. Additional Costs

10.2 The Suitable Person must keep an amount of funds in the Direct Payments Bank Account to cover additional costs. The level of these funds will be reviewed periodically by Carmarthenshire County Council. Additional costs can include the following:

- viii. Employees PAYE and payroll costs
- ix. Insurance costs
- x. Annual leave costs
- xi. Sick leave costs
- xii. Short periods of hospital admission that you cannot arrange to coincide with your staff's leave
- xiii. Advertising and recruitment costs
- xiv. Support services, which may include training and peer support

10.4 If at any time it appears to the Council that the funds in the Direct Payments bank account are over and above that which are reasonably necessary, including an element for additional costs as mentioned above, the Council at its discretion will either seek recovery of this amount by sending an invoice setting out the amount due or by reducing a subsequent payment by the amount of surplus.

10.5 Where additional costs to purchase care are incurred or are likely to be incurred in the future, then it is the Suitable Person's responsibility to advise Carmarthenshire County Council of these at the earliest possible time. Carmarthenshire County Council will consider each individual case and will determine whether additional direct payments may be made on a temporary basis to cover these.

12. Financial Monitoring and Records

The Suitable Person must maintain a record of all income and expenditure relating to this contract in the record book provided and all supporting documents must be retained for at least seven years and must not be destroyed without written approval from Carmarthenshire County Council. Where applicable (the Council will inform the Suitable Person which are applicable) the following supporting documents must be retained:-

- ◆ bank statements
- ◆ cheque books
- ◆ bank/building society paying in books
- ◆ invoices
- ◆ receipts

- ◆ PAYE records
- ◆ NI records
- ◆ Income Tax records
- ◆ Insurance certificates
- ◆ Timesheets
- ◆ Expenses forms
- ◆ Employment Contract (where appropriate)
- ◆ Other payroll and pension records
- ◆ County Council Financial Transaction records
- ◆ Any other documents which can be relied on to support financial transactions.
- ◆ Evidence of a Disclosure and Barring Scheme record, if appropriate.
- ◆ If an individual is considering a self-employed personal assistant arrangement, then it is their responsibility to complete the HMRC Employment Status Indicator tool (CES) which will determine the worker's employment status. Copies of the CES would need to be retained also.
- ◆ evidence that anyone who is employed or is being employed as a personal assistant is legally able to work in the UK.
- ◆ Log sheets.

11.1 At the end of each calendar month the Suitable Person must sign and detach the expenditure and income record sheet and forward them to the address shown in the record book.

11.2 If the Suitable Person employs a person to meet the individual's care and support needs (a personal assistant) then they must ensure that a weekly time sheet is completed showing the times and days that the employee is working. They must retain these timesheets for at least 7 years.

11.3 It is important that the Suitable Person has supporting documents for all transactions. It is the Suitable Person's responsibility to ensure that these documents are sought and retained.

11.4 This agreement only deals with the records the Council requires the Suitable Person to keep. The Suitable Person may be required to keep records by other bodies e.g., Inland Revenue, and they must check to find out what those records are and how long you must keep them for.

13. Monitoring

- 12.1** The Council is entitled to take reasonable steps to monitor how the Suitable Person is using the Direct Payments and to make sure the Individual is receiving the services in their Care and Support/Support Plan.
- 12.2** The Suitable Person must allow Council Officers, or anybody authorised by the Council, to have access to all records that you are responsible for keeping. The Suitable Person must make any changes to the record keeping that the Council asks for and the Suitable Person must co-operate with any monitoring carried out by the Council.
- 12.5** The Council shall have the right to carry out unannounced monitoring visits, and if such a visit is carried out the Suitable Person must allow the Officers who attend to have access to all records that the Suitable Person is responsible for keeping. If the officers make any recommendations about the records and/or the procedures for maintaining them the Suitable Person must implement those recommendations.
- 12.6** You must engage with the Council in any reviews of your care and support plan. This includes attending any appointments for which the Council will give you reasonable notice. If you do not engage in any such reviews, you understand that the council will proceed with the review, and this may lead to changes in the direct payment arrangement.

14. Insurance

If the Suitable Person employs personal assistants they must ensure that they have relevant insurance cover to meet their responsibilities as an employer.

14. Review

- 14.1** The Council will review the individual's care and support/support plan initially within 6 months and at least once every year or more often as necessary. In addition to these reviews the Council will also undertake financial monitoring, the initial financial monitoring will take place within 6 months of the direct payment agreement being signed, and the frequency of the ongoing financial monitoring will thereafter be determined following the completion of a risk assessment. The care and support plan review, in addition to reviewing whether the services continue to meet the Individual's assessed needs, the following will also be considered:

The financial monitoring reviews will consider the following:

14.1.1 Whether the Direct Payments have only been used to purchase services to meet the needs detailed in the Care and Support/Support Plan;

14.1.2 Whether the services have been received;

14.1.3 Whether all reasonable steps have been taken to ensure that Direct Payments have been spent on cost effective services;

14.1.4 Whether any difficulties have been experienced in managing Direct Payments;

14.1.5 Whether appropriate advice and assistance was received in Managing the Direct Payments;

14.1.6 Whether the Suitable Person is maintaining adequate records for monitoring purposes.

14.2 Once the review meeting has taken place the Council will write to the Suitable Person detailing the outcome of the review and shall make any changes to the care and support plan which were agreed in the review meeting.

15. Excluded Service Providers

15.1 The Suitable Person must not under any circumstances use Direct Payments to purchase services from the following:

15.1.1 The National Health Service;

15.1.2 A relative living in the same household, where that arrangement does not promote the individual's well-being. For the purpose of this agreement a relative will be: a spouse or civil partner; a person who lives with a person as if a spouse or civil partner; parent, parent in law or step parent; son or daughter; son in law or daughter in law; stepson or stepdaughter; brother or sister; aunt or uncle; grandparent; or the spouse or civil partner of any of the people previously mentioned. For the purposes of this agreement, when considering whether such a relative living in the same household will promote an individual's well-being, Carmarthenshire County Council will take into accounts the individual's views before coming to a decision.

16. Changes to the Agreement

16.1 Carmarthenshire County Council retain the right to vary **this** agreement and the Suitable Person will be notified of any such variations.

17. Termination (Ending the Contract)

17.1 Either the Suitable Person or the Council can end this agreement by giving 5 weeks written notice to the other, or by a shorter period if both agree. Notices should be sent by recorded delivery to the addresses shown on page 1 of the Agreement. If the Suitable Person and the Council agree to end the contract in this way the Suitable Person will be liable to promptly repay to the Council:

17.1.1 Any money in the Direct Payments Bank Account including any accrued interest after all outstanding invoices have been paid.

17.1.2 Any monies paid to a Provider or any other for services which the individual has not received. It is the Suitable Person's responsibility to recover any monies paid to the Provider or any other person for services which the Individual has not yet received.

17.1.3 Any direct payments monies which have not been used to meet the Individual's care and support needs.

17.2 The Council can give written notice to end this agreement with immediate effect if:

- 17.2.1** The Suitable Person breaches any of the conditions of this agreement and/or fails to carry out any action reasonably requested by the Council.
- 17.2.2** A Council Officer has reasonable grounds to believe the Suitable Person is misusing the Direct Payments or not administering them in the Individual's best interest.
- 17.2.3** The Suitable Person becomes bankrupt or makes a composition or arrangement with your creditors or have a proposal in respect of your company for voluntary arrangement for a composition of debts or scheme or arrangements approved in accordance with the Insolvency Act 1986.
- 17.2.4** Carmarthenshire County Council determine that the Suitable Person is unable to manage the direct payments.
- 17.2.5** The individual regains mental capacity to manage the direct payment themselves, either with or without support.
- 17.2.6** The direct payment is no longer meeting the personal outcomes of the Individual, or the Individual no longer has needs for care and support, or it is not considered in the Individual's best interest to continue with such payments.
- 17.3** In the event of the Suitable Person's death or the death of the Individual this Agreement will terminate, and the Council is entitled to recover from the Suitable Person's estate the total of any money including accrued interest, in the Direct Payment bank Account after all outstanding invoices for services provided under this Agreement have been paid.

18. Complaints

- 18.1** If the Suitable Person is dissatisfied about anything connected with the Direct Payments scheme the Suitable Person is entitled to use the Council's Complaints procedure.

Signed for and on behalf of the Council.

Signed by the Suitable Person on behalf of the Individual.

Signature:

Signature:

Name:

Name:

Title:

Date:

Date:

DIRECT PAYMENTS

CONFIRMATION OF RECRUITMENT:-

Personal Assistant's Name: _____

Suitable Person's Name: _____

Address: _____

I confirm that I have now successfully recruited carers who will be starting work on

_____.

I confirm that I have carried out a Disclosure and Barring Service (DBS)

check on the carer/s that have been appointed YES/NO

I confirm that I have received a copy of the care and support plan

I would like to pay any contributions I am assessed to pay either by:

A) Directly transferring monies into the Direct Payment bank account/Managed bank account

B) Making payments for any contributions I am assessed to pay via a four weekly invoice

I should therefore be grateful if you could commence paying four-weekly Direct Payments into my account the details of which are as follows:

CONFIRMATION OF BANK DETAILS:-

Bank: _____

Address: _____

Account Name: _____

SortCode: _____ **Account Number:** _____

Signed: _____

Date: _____

**Please return form to: Carmarthenshire County Council. Communities
Directorate, Business Support Section, 3 Spilman Street, Carmarthen SA31
1LE RFA/DP10**

Appendix 3 – Direct Payments Income and Expenditure

DIRECT PAYMENTS INCOME & EXPENDITURE RECORDS

NAME

MONTH

20

Reference No.

Balance brought forward from previous month

(BOX A)

INCOME

<i>Date</i>	<i>Description</i>	<i>BACS</i>	<i>Cash</i>	<i>Cheque/ Internet</i>	Banked <i>Total Amount</i>
Monthly Income Totals					
Total Monthly Income					

(Box B)

EXPENDITURE

<i>Date</i>	<i>Description</i>	<i>PA Hours</i>	<i>Cash</i>	<i>Cheque/ Internet</i>	<i>Other</i>	<i>Ref.</i>
Monthly Expenditure Totals		hrs				
Total Monthly Expenditure						

(Box C)

A + B – C = Balance carried forward to next month:

I confirm that to the best of my knowledge the above is a true and accurate record.

Signed:

Date:

Appendix 4 – Local DBS Check Procedure

The following sets out Carmarthenshire County Council’s requirements as to when a DBS check is required.

Disclosure and Barring Scheme

Requirements for Direct Payments in Carmarthenshire

Age of Direct Payment Recipient	Direct Payment Type or Situation	Personal Assistant	Suitable Person (where the person is not a relative of the direct payment recipient or is not a friend involved in the provision of their care)	Suitable Person (where the person is a relative of the direct payment recipient or is a friend involved in the provision of their care)	Parent/Guardian (or anyone in a ‘family relationship or personal relationship’ to the direct payment recipient) who will receive the direct payment on behalf of the individual
0-18	Individual under 18 years of age awarded a direct payment	Mandatory	Not applicable	Not applicable	Not required
18+	If individual has capacity and there is a person under 18 years of age present in the household where the personal assistant will work	Mandatory	Not Applicable	Not Applicable	Not Applicable
18 +	Individual has capacity and there are no children in the household	Mandatory	Not Applicable	Not Applicable	Not Applicable
18+	Individual does not have capacity to give informed consent to receiving direct payments	Mandatory	Mandatory	Not Required	Not Applicable

POLICY AND PRACTICE GUIDANCE

18+	Individual has a Deputy appointed through the Court of Protection and the person will act as the suitable person	Mandatory	Mandatory	Not required	Not Applicable
18+	Individual has been appointed Lasting Power of Attorney or appointed Enduring Power of Attorney who will act as the suitable person	Mandatory	Mandatory	Not Required	Not Applicable
When a DBS exists for a Suitable Person or a Personal Assistant because they are working with another individual then the rules above still need to be applied as though no DBS exists. However, if the person with an existing DBS check has applied to the Disclosure and Barring Update service and is applying for a similar job then this service can be accessed free of charge with the consent of the person to see if the DBS certificate is current and up to date.					

A DBS check involves the employee completing the DBS application form provided by the support service and bringing the necessary identification documents with them to the support service office (see below), where the check will be completed by a member of the support service staff team.

Three original forms of identification are required.

Form of Evidence	Example of Evidence
Date of Birth	<ul style="list-style-type: none"> Valid Passport or Biometric Residence Permit (UK) Birth Certificate (UK and Channel Islands) – issued at the time of birth.
Current Address	<ul style="list-style-type: none"> A Current Letter or Bill confirming your current address.
Photo I.D.	<ul style="list-style-type: none"> Valid Passport or Biometric Residence Permit (UK) Driving License Photo card (or paper counterpart as Group 2 option if issued before 1988)

A full list of allowable documents is included in the pack listing alternatives should they not have any of the above.

Carmarthenshire County Council will cover the cost of the first DBS check and subsequent renewals. If an employee opts to utilise the update service, the cost associated is theirs to pay.

DBS Update Service

Personal Assistants can chose to have their DBS Certificate kept up-to-date and transportable from role to role for an annual subscription currently set at £13.

By subscribing to the update service personal assistants could save time and money, particularly if they are employed by more than one direct payment recipient. Accessing the service can be done online at www.gov.uk/dbs-update-service.

The subscription process is quick and simple with basic details required; name, gender, date of birth, email address and application form reference number or DBS certificate number.

Appendix 5 – Cross Border Protocol

Purpose of Protocol

This protocol is designed to assist the continuation of support to users of Direct Payments when they re-locate across the borders between any local authority borders. This protocol reflects paragraph 109 of the Part 4 Code of Practice to the Social Services and Well-being (Wales) Act 2014.

Desired Outcomes

- That Direct Payments users receive continuity of service when moving across Local Authority boundaries.
- That disputes between participating Local Authorities concerning the continuation of Direct Payments in such circumstances are avoided.

Agreement

- The originating authority will not continue the existing Direct Payments once the individual moves across Local Authority Boundaries.
- When an individual informs the originating authority that they intend to move to the receiving authority the originating authority will contact the receiving the authority and share the individuals assessment and care and support plan. Wherever possible it is expected that the receiving authority will assess the individual prior to the move, provided that the receiving authority is satisfied that there is a realistic prospect that such a move will occur. If on the day the person moves no such assessment has been undertaken by the receiving authority then the receiving authority must meet the individual's needs based on the receiving authority's assessment and care and support plan until such time as the receiving authority has an opportunity to assess the individual.