

Adult Social Care Direct Payment Policy and Agreement

April 2025

POLICY INFORMATION SHEET

Name of Document:	Adult Social Care Direct Payment Policy and Agreement
Purpose:	The policy aims to explain the guidance, rules and procedure around Direct Payments to people eligible for Adult Social Care Services in Bury
Service area:	Adult Social Care
Target Audience:	Adults eligible for adult social care services under the Care Act 2014
Forum Policy/Procedure/Strategy was approved:	
Date policy is effective from:	April 2025
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Status: <ul style="list-style-type: none"> • Mandatory (all practitioners and managers must adhere to guidance) • Optional (procedures and practice can vary between teams) 	Mandatory
Location of Document	Sharepoint Policy Portal
Related document(s)	Carers Direct Payment Policy Employing Relatives Form
Superseded document(s)	
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Introduction

Direct Payments are monetary payments, made to people who ask to receive one, to meet some or all of their eligible care and support needs. They can provide greater independence, choice and control by enabling people to commission their own care and support in order to meet their eligible needs

Bury Council's Adults Social Care Department can provide Direct Payments for

- People aged 18 or over with eligible support needs under the Care Act 2014.
- Carers aged 18 or over

The Care Act 2014 legislation section 31-33 provides Councils with the power to make Direct Payments to the adult in need of support, or an Authorised Person acting on their behalf.

The legislative context for Direct Payments is set out in

- [Care Act 2014 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2014/22/section/31-33) section 31-33,
- [Section 117\(2C\) of the Mental Health Act 1983](https://www.legislation.gov.uk/ukpga/1983/20/section/117(2C))
- [The Care and Support \(Direct Payments\) Regulations 2014 \(legislation.gov.uk\)](https://www.legislation.gov.uk/uksi/2014/1684/section/2)
- [Care and support statutory guidance - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/publications/care-and-support-statutory-guidance) Chapter 12.

Section 1: Direct Payment Agreement

1. Agreement to Receive a Direct Payment

- 1.1 To receive a Direct Payment, the person must have eligible support needs as defined by the Care Act 2014. The Direct Payment Agreement (Appendix 1) documentation must be completed. This agreement sets out the conditions under which Direct Payments are able to be made and includes important information regarding the responsibilities of Bury Council, the person, and/or their Authorised Person. The agreement reflects this policy and requires people to utilise the Direct Payment to purchase and contract for support as detailed in their Support Plan. The arrangements must be made within the parameters required by Bury Council to ensure they are legal; safe; and that public money is properly accounted for.
- 1.2 In circumstances where the terms and conditions of the agreement are not met, Bury Council will take reasonable and proportionate steps to address the issues arising and support the person whenever possible to maintain the Direct Payment. If the issues remain unresolved, the social worker will conduct a review and consider whether the Direct Payment continues to be an appropriate arrangement to meet the person's assessed needs. If a decision is made to withdraw the Direct Payment, this decision must be confirmed in writing, explaining the rationale for the decision and what will be offered as an alternative to meeting the needs.

Section 2: Considering a Direct Payment

- 2.1 A request for a Direct Payment can be made at any time by an adult who has been assessed as eligible for support from Bury Council
- 2.2 To receive a Direct Payment the following conditions must be met:
- The person requests a Direct Payment
 - Bury Council is not prohibited from making a Direct Payment as outlined in Section 2 and Schedule 1 of The Care and Support (Direct Payments) Regulations 2014
 - The Direct Payment is not used for the purpose of securing long term care in a care home.
 - Bury Council agrees that a Direct Payment is an appropriate way to meet the needs and outcomes set out in the Support Plan
 - Bury Council is satisfied that the eligible person or Authorised Person is capable of managing a Direct Payment with or without support.
 - A person who is acting as a paid carer to meet needs identified in the Support Plan cannot also be the Authorised Person to manage the Direct Payment
- 2.3 Before agreeing to a Direct Payment consideration should be given to the expected outcomes of different delivery options. For example, where the Council would be able to arrange the same support whilst achieving the same outcomes for the individual, there may be cases where it is more appropriate to meet needs via commissioned care and support. A Direct Payment should not be made for an agency that is listed on the Council's Commissioning Framework. Where a Direct Payment is being considered to purchase care from an alternative agency, Bury Council's Commissioning and Brokerage Teams should be approached in the first instance to see if they can arrange a service which will achieve the desired outcomes
- 2.4 Direct Payments cannot be used to employ a relative or a person who lives in the same household. The definition of this is:
- The spouse or civil partner of the adult;
 - a person who lives with the adult as if their spouse or civil partner;
 - a person living in the same household as the adult who is the adult's;
 - parent or parent-in-law,
 - son or daughter,
 - son-in-law or daughter-in-law,
 - stepson or stepdaughter,
 - brother or sister,
 - aunt or uncle, or
 - grandparent;
 - the spouse or civil partner of any person specified in paragraph c) above, who lives in the same household as the adult

- a person who lives with any person specified in c) as if that person's spouse or civil partner.

In cases where the Council cannot identify any other person or service to meet needs as stated in the Support Plan, discretion may be used to employ a relative living in the same household. **An "Employing Relatives" form must be submitted by the Team Manager to the Assistant Director Operations for a decision, together with supporting evidence and clarity around what is natural informal support and what is formal paid support.**

- 2.5 A Direct Payment may be agreed to employ a family member who does not live in the same household, only if the Council agrees it is appropriate as the best option to meet required outcomes.
- 2.6 There are cases where a Direct Payment cannot be made to meet needs, these are set out in Section 2 and Schedule 1 of The Care and Support (Direct Payments) Regulations 2014. For example:
- The person lacks capacity to manage their finances and Bury Council is unable to authorise a suitable person to manage it on their behalf.
 - When a person is subject to drug or alcohol rehabilitation treatment/testing or Orders or released from prison on licence.

3. Who can request and receive payments

- 3.1 Anyone who accepts a Direct Payment is responsible for managing it either independently or with help. People who have capacity to manage their finances may nominate a third party to assist them. The third party is usually a family member or close friend and is known as the Authorised Person. They cannot also be acting as a paid carer to meet needs identified in the Support Plan
- 3.2 Bury Council may decide that a person with capacity is unable to manage a Direct Payment, having taken into consideration the person's views and circumstances. If the person disagrees with the Council's decision, they will be offered access to an advocacy service to ensure their views have been fully considered.
- 3.3 Where there is any doubt about a person's ability to manage a Direct Payment, the social worker will assess whether or not the person has capacity to consent to a Direct Payments Agreement before making a Direct Payment available. People who would otherwise have no one to support them will be offered an advocate during the assessment process who will carry out their duties as outlined in the Mental Capacity Act 2005
- 3.4 Inability to manage a Direct Payment does not mean a person with eligible needs cannot receive a Direct Payment. Where a person has been assessed as lacking capacity to request a Direct Payment, an Authorised Person can request the Direct Payment on their behalf.

- 3.5 An Authorised Person is a suitable person who agrees to manage the Direct Payment for the person who lacks capacity on their behalf or has the power, such as a lasting power of attorney or deputy for welfare, for the person as outlined in the Mental Capacity Act 2005.
- 3.6 The Authorised Person should be party to all the information, advice and guidance that the person in receipt would usually receive in managing the Direct Payment. The Authorised Person will sign the Direct Payment Agreement to manage the payments on behalf of the person and be responsible for paying assessed contributions. By signing the Agreement, they take on the legal responsibility related to employing and managing paid staff employed through the Direct Payments Scheme.
- 3.7 The Authorised Person may not also act as a paid employee through the Direct Payment Scheme. Any person who is being paid to deliver support cannot be the Authorised Person to manage the account or sign agreements and timesheets
- 3.8 Where a family member is being paid to deliver support, the Council will not generally agree for another family member to act as the Authorised Person. An alternative Authorised Person should be sought. In exceptional circumstances a Head of Service may agree an arrangement.
- 3.9 By signing the Council's Direct Payment Agreement, the Authorised Person is accepting their responsibility to fulfil their duties and responsibilities as detailed in the agreement and will be personally responsible if they misuse funds.
- 3.10 In the event that the Authorised Person can no longer act, Bury Council will endeavour to put in place appropriate services to achieve their agreed outcomes for the period until their Authorised Person is able to resume their usual arrangement or a replacement Authorised Person can be identified
- 3.11 Consideration will be given as to whether or not people whose capacity is fluctuating or known to fluctuate are able to manage a Direct Payment with or without assistance from an Authorised Person on a case-by-case basis.
- 3.12 An enhanced criminal record certificate issued under section 113B of the Police Act 1997 will be required where the Authorised Person is
- Someone who is not a relative or civil partner as detailed in section 2, nor a friend of the adult who is involved in the provision of their care
 - A company or body of persons who have overall responsibility for the day-to-day management of the adult's Direct Payments.
- 3.13 Where a Direct Payment is to be used to provide aftercare services under section 117, reference in this policy to meeting needs and achieving outcomes should be substituted with 'discharging its duty under section 117 of the 1983 Act'

4. Calculating the Value of the Direct Payment

- 4.1 The Direct Payment amount is equivalent to the Council's calculation of the reasonable cost of providing the support required. The payment should be sufficient to secure support of a standard and value that the Council considers appropriate to meet the eligible needs and outcomes for the person.
- 4.2 As stated in Section 12 of the Care Act 2014 guidance, any service or items that is funded by the NHS cannot be funded via a Direct Payment. For items that may have alternative sources of funding such as the voluntary sector, these should be explored before the direct payment is initiated.
- 4.3 The Council is not obliged to fund specific costs associated with the person's preferred method of securing their needs and outcomes. The person in receipt of the Direct Payment can top up their Direct Payment budget if the cost of their chosen support exceeds the Council's estimation of reasonable costs to secure it.
- 4.4 The Direct Payment will be paid using the Commissioning Standard Rate that the Council pays for commissioned services, for example agencies and care homes. Any costs higher than this rate will be classed as a top up and must be paid by the Direct Payment recipient or third party. For cases where complex needs are identified a rationale must be provided for an increased Council topped up rate in the Support Plan, subject to approval by a Team Manager.
- 4.5 Direct Payments can be made to people in order to purchase a short term stay in a care homes provided that:
 - The stay does not exceed a period of 4 consecutive weeks in any 12-month period.
 - The care home is not a council provision
 - The period between 2 stays in care homes is less than 4 weeks.
 - If the period between the care home stays is less than 4 weeks, then the 2 stays will be added together to make a cumulative total which should also not exceed 4 weeks.
- 4.6 Bury Council participates in the Real Living Wage Scheme. Personal Assistants will be paid at the Real Living Wage rate. This is announced each year by the Living Wage Foundation around November for implementation by the following financial year. For cases where complex needs are identified a rationale must be provided for an increased Council topped up rate in the Support Plan, subject to approval by Team Manager. The Direct Payment will include funds to employ a PA, including recruitment costs (where required), employers' national insurance contributions, income tax, employers' liability insurance, pension, and other associated costs.
- 4.7 NIGHT TIME SUPPORT: Rates for night time support can vary, Therefore, any payment for night support should be discussed with the Brokerage/Commissioning Service prior to setting up the Direct Payment. Email contact: communitycommissioning@bury.gov.uk

- 4.8 Where the support need is to be met by a one-off payment for a piece of equipment, the direct payment will be sufficient to purchase an item of standard specification appropriate to meet the need. Where the person chooses an item of a higher value or specification than required, they can choose to top up the difference.
- 4.9 The person will be financially responsible for ensuring that the item is adequately maintained, repaired and insured. Replacement items may not be considered in the event they have not been properly maintained or insured, there is accidental damage, or the original item is still suitable to meet the support need. Replacement items will not be considered until the current item no longer meets need or stops working, after the average lifespan of the item.
- 4.10 The Council will not be responsible for arranging or paying for contract agreements, warranties, insurance payments and payment plans associated with a one-off payment.
- 4.11 The Direct Payment will be sufficient to purchase the service or item agreed in a person's Support Plan. The item/service will be of standard specification appropriate to meet the need. Where the person chooses an item or service of a higher value or specification than required, they can choose to top up the difference. The additional cost does not form part of the Direct Payment since the budget must reflect the costs to the Local Authority of meeting the needs. Any top up amounts are required to be paid directly to the service provider.
- 4.12 The Support Plan may include a contingency element that can be used to cover fluctuating needs. The need for a contingency must be detailed in the Support Plan. The use of the contingency will be monitored by Bury Council to ensure that it is being spent in line with the approved Support Plan.
- 4.13 The Council will inform the person of the value of the Direct Payment and any financial contribution and/or top up they are expected to pay towards the cost of their support.
- 4.14 The Direct Payment can only be used to pay for services/goods to support the person who has been assessed as Care Act Eligible and therefore entitled to Adult Social Care Services.

5 Client contribution

- 5.1 Where a Direct Payment or Council service is provided to meet eligible needs the Local Authority is required to undertake a financial assessment in accordance with the Care Act 2014 Statutory Guidance and Bury Council's Charging and Financial Assessment Policy to determine how much the person will need to contribute towards the cost of their care
- 5.2 The Person will be required to pay their contribution payment direct to the Council, four weekly on receipt of an invoice from the Council.

- 5.3 The person's contribution to the cost of a care package will be the first element of the financial package to be used to purchase services. In the case of the person taking a break in support/care (e.g. Hospital stays or holidays), the contribution is still payable.
A refund of any customer contribution should only apply if the total annual customer contribution is less than the total annual expenditure of the care package.
- 5.4 The client contribution may be reassessed for periods spent in accommodation in a care home, based on Bury Council's Charging and Financial Assessment Policy

6 Transition - when a child becomes an adult (Preparing for Adulthood)

- 6.1 A young person in respect of whom a Direct Payment is being made becomes an adult on their 18th birthday. From age 16 all young people in receipt of Children's Social Care Services will move to the Preparing for Adulthood Team where they will be assessed for Adult Social Care Services. At this point the young person and their family will work with the Preparing for Adulthood Team, so they are fully informed of Direct Payments, financial assessments and relevant aspects of adult social care including signposting to universal services.

7 Transfers between Direct Payments and Council provided services

- 7.1 If, for any reason, the person decides to cease the Direct Payment agreement or if they are no longer able to arrange their own services, the Council will put in place arrangements to ensure they receive the care and support needed.
- 7.2 People who are already in receipt of Council provided services may wish to switch to a Direct Payment if they meet the eligibility criteria
- 7.3 It is possible to arrange a mixture of Council provided services and a Direct Payment, if it is appropriate to do so.

Section 3: Using a Direct Payment

- 8.1 Bury Council has a duty of care to people eligible for care services. It also has a duty to protect public funds, ensuring they are being spent appropriately. In delivering this responsibility, Bury Council must be satisfied that the Direct Payment is being used to meet eligible needs as set out in the person's Support Plan.
- 8.2 People or the Authorised Person, can only spend their direct payment on support which meets their eligible needs and outcomes as set out in the Support Plan
- 8.3 Any changes in support should be discussed and agreed with a social worker before they start. The person may be asked to repay any additional

payments made from the Direct Payment account before approval has been given.

8.4 Direct Payments cannot be used for:

- Anything illegal
- Anything that will harm a person's health, safety or wellbeing
- Paying for anything related to regular day to day living expenditure e.g., food, drink, dietary supplements etc.
- Purchase of alcohol, tobacco or gambling
- Paying for anything that other departments or statutory organisations provide, for example the NHS
- Paying any rent or household bills e.g., gas, electricity, TV, Broadband, Insurance.
- Paying for any home equipment, decorating/maintenance, furniture including white goods.
- Clothing
- Payments for subscriptions e.g. mobile phone contracts
- Permanent residential or nursing care
- Paying for services directly from Bury Council
- Paying for services from a spouse, family member or partner who lives in the same household as the person, unless Bury Council has determined it necessary.
- Paying for services without a valid invoice or payslip
- Paying for items/services which have not been agreed on the Support Plan
- Spend involving commitments out of the United Kingdom unless authorise as necessary by the Head of Service
- Paying the assessed client contribution
- Transport costs that are already funded via PIP as part of the mobility allowance.

8.5 In some circumstances, people living in care homes may receive a Direct Payment in relation to non-residential care services if for example: they are trying out independent living arrangements; or require community activities to promote outcomes to live independently. This can be empowering for young people in transition to independent living.

8.6 In the event of a breakdown in the person's arrangements for care, Bury Council will endeavour to put in place appropriate services to achieve their agreed outcomes for the period until their usual or replacement Direct payment arrangement can resume.

9 Payment Method

The preferred payment method for a making a Direct Payments is via a prepayment card There is an option to use a Managed Account company where the person is unable to manage their own Direct Payment and there is no suitable Authorised Person.

9.1 Pre payment cards

The prepayment card gives access to an online account, which operates in a similar way to a normal debit card account. It allows people to manage their Direct Payment without needing a separate bank account. It also simplifies the auditing procedure and reduces the amount of information the person is required to provide to the Council.

- The Council will set up the account and a card will be sent to the person directly from the card provider with their general terms and conditions which should be read in conjunction with the Direct Payment Agreement
- Where a personal assistant is being employed the prepayment card option can only be chosen along with a payroll provider from the approved list. The payroll provider will calculate and advise the person of the correct rates of HMRC liabilities, net pay and pension costs. The Council will insist that the managed account option be used in the event the payroll company is not being used or HMRC regulations are not being complied with

9.2 Managed Account Company

A Managed Account company can be chosen from the Council's approved provider list when a person is unable to manage their own Direct Payment via a prepayment card and there is no suitable Authorised Person. The Managed Account company receives the direct payment and operates a Direct Payment account on the person's behalf in line with the Support Plan

They will provide the required payroll service but there is the additional security that they will ensure HMRC regulations are complied with, and liabilities and pensions costs are paid. They will also ensure that spend is in accordance with the Support Plan

Bury Council will pay the Direct Payment every four weeks in advance in accordance with the amount agreed in the Support Plan.

9.3 Bank Transfer

In exceptional circumstances where the item or service cannot be purchased via a prepayment card, the Direct Payment may be issued via bank transfer into the persons personal bank account. This must be agreed by a Team Manager with reasons for a prepayment card being unsuitable to purchase goods or services. Receipts and invoices for the items agreed in the Support Plan must still be kept as evidence of the Direct Payment spend.

All transactions to meet needs and outcomes must be made via the designated Direct Payment account. Transfers cannot be made to an individual's personal bank account. You must not make any transfers to your own bank account. Please note *there will be no reimbursement of funds if you pay for services/goods with your own money rather than using the Direct Payment account.*

10. Paying for Council Services

- 10.1 As a general rule, Direct Payments should not be used to pay for services provided by Bury Council. If a person wishes to receive a service from Bury Council, the Direct Payment will be reduced by the cost of the commissioned service.

[Adult Social Care fee rates - Bury Council](#)

- 10.2 This does not exclude people from using their Direct Payment to purchase support from a different local authority. For example, a person may live close to a boundary with another local authority and may use their Direct Payment to access a particular service in that area to meet their outcomes.

11 Employing a Personal Assistant

- 11.1 People in receipt of Direct Payments need to be aware that they or their Authorised Person is responsible for the day-to-day management of their Direct Payments including that of employing suitably qualified workers where necessary to provide the assistance identified within their Support Plan.
- 11.2 Becoming an employer carries certain responsibilities and obligations particularly in relation to paying tax, national insurance, Real Living wage requirements, statutory pension, statutory sick pay and annual leave. The payroll or managed account company will register the Direct Payment recipient or Authorised Person as an employer with HMRC. The person or Authorised Person must ensure all checks are made of their potential employee including checks for Disclosure and Barring (DBS) and their right to work in the UK.
- 11.3 All Direct Payment recipients who employ a PA must verify the status of "employment". This status is determined by HMRC not the individual, so it is important the person or Authorised Person ensures that any contract made with a self-employed PA does mean they are genuinely self-employed. Failure to do this could result in the Direct payment recipient incurring financial liability or being subject to prosecution by HMRC.

Employment status can be checked at www.hmrc.gov.uk/calcs/esi.htm

Self-employed PAs must ensure they have provided the Direct Payment recipient with:

- Evidence of their current Public Liability Insurance policy
 - A copy of their terms of service
 - Formal invoices detailing service provided, dates, contact details of the PA and their unique tax reference number
- 11.4 People in receipt of a Direct Payment or the Authorised Person who employ staff must have the appropriate insurance in place. Employers Liability Insurance and Public Liability Insurance should be taken out with a reputable insurance company or underwriters with a minimum limit for any one claim of £10 million (people will be notified if this limit is increased or decreased by the Council) and redundancy cover. The insurance policy and

premium receipts must be produced on demand when requested by Bury Council.

- 11.5 The person or their Authorised Person must ensure that any person they employ through a Direct Payment will not be considered nor consider themselves an employee or agent of Bury Council and that Bury Council will not be responsible for any income tax, National Insurance or any other payments or responsibilities in relation to the employee of the person. It must be clearly stated in their contract of employment or written statement of work that they are employed solely by the person or the Authorised Person.
- 11.6 When employing a PA, time sheets should be completed and submitted to the payroll or Managed Account company as agreed with the provider. If the Direct Payment is via a prepayment card, no payment should be made to the PA until the person is in receipt of their PAs payslip from the payroll company. Any payments that are made without a payslip, that are paid from a source other than the prepayment card or for an amount that differs from the payslip, will be subject to repayment to the Council.
- 11.7 The person or their Authorised Person will be expected by Bury Council to ensure that they make provisions for cover in emergency situations or when their PA is not able to support them, such as annual leave or sickness.
- 11.8 The Council will only pay expenses to PAs where this is identified as part of their role as PA (as detailed in the person's Support Plan)

12 Safeguarding

- 12.1 People in receipt of a Direct Payment are entitled to make their own decisions and to take risks in the same way that any others in the community are entitled to. Where appropriate, safeguards will be put in place to prevent any potential abuse and to support the person in making decisions and managing any associated risk as a result of that decision.
- 12.2 People in receipt of a Direct Payment directly employing a Personal Assistant (PA) can be placed at greater risk of abuse depending on the level of rigor and pre-employment checks undertaken during the PA recruitment process. Bury Council strongly recommends that enhanced Disclosure and Barring Service (DBS) checks are undertaken on PA's working with vulnerable adults. This is particularly important when employing a PA who supports people who lack capacity, as in these situations the person may be unable to verbalise concerns about their care. An enhanced DBS check must be undertaken if the PA has unsupervised access to the person they are caring for and that PA must be able to disclose on request a current enhanced DBS check. The person or their Authorised Person needs to be aware that PAs are not monitored by the Council.
- 12.3 The person or their Authorised Person must ensure that an enhanced DBS check is undertaken when employing a person who will have unsupervised access to children, young people or vulnerable adults during the course of their work. The check is undertaken to ensure that the person has no

relevant criminal convictions that would preclude them from working with children or vulnerable people.

- 12.4 Safeguarding is everybody's business and therefore it is essential that staff working for Bury Council, partnership organisations, agencies, and members of the public remain alert and vigilant to the potential for abuse and are informed of the mechanism for reporting safeguarding concerns.
- 12.5 In the event that Bury Council considers the provider of support to be placing the person at risk, the Direct Payment may be suspended, and alternative provision provided, whilst a safeguarding investigation is undertaken.

13 Health and safety

- 13.1 People eligible for support have a responsibility for their own health and safety and assessment and management of risk to others involved in the provision of care. The Council advises the person or Authorised Person to visit the Health and Safety Executive website at www.hse.gov.uk for further information. The Employers Liability insurer handbook will also be able to give advice about requirements. The person should as a minimum ensure that
- Employers' liability insurance at the correct level is in place.
 - A risk assessment should be undertaken on the home, including pets or any other animals.
 - Any training the Personal Assistant needs takes place
 - The Personal Assistant is informed about health and safety, including fire safety.
 - Any accidents that take place in the home are recorded and reported to their employer liability insurer as required by their policy
- 13.2 If the customer employs five or more people, they will need a health and safety policy. The Health and Safety Executive website and helpline has lots of support and free leaflets, including a model policy.

Section 4: Direct Payment Monitoring (Audit) and Direct Payment Follow up

14.1 Review of Direct Payments

A social work review will be undertaken to ensure that the support is meeting the person's outcomes and needs. Bury Council will review the Direct Payment arrangements every 12 months, unless the Council is required to review following a request from the person or if a change in need is identified.

- 14.2. If the social work review raises concerns or requires actions that affect the detail recorded in the Support Plan, then a full review of the plan will need to be carried out.
- 14.3 Where a Direct Payment is being managed by an Authorised Person, any reviews will seek to involve all relevant parties involved in the care

arrangements. This will ensure that Bury Council receives views from everyone involved in the Direct Payment and seek to resolve any issues

14.4 Bury Council has the right to increase, decrease, suspend or terminate the Direct Payment in line with a review or reassessment of the persons assessed eligible care needs.

14.5 Where Bury Council has identified a change in circumstance that it deems affects the current level of Direct Payments, the Council will undertake a review of the Direct Payment and provide the person or their Authorised Person with written notice. This notice period may be extended where a reduction may affect any pre-existing contractual arrangements, such as with a PA or agency and advice will be sought from the Insurer.

14.6 The person or their Authorised Person will ensure they will notify Bury Council immediately and seek a review if there are any changes in circumstances that may affect their entitlement to a Direct Payment. For example:

- admission to hospital.
- stays away from their home address for periods beyond four weeks.
- no longer requires the service.
- a change of address or support arrangements.

It is the responsibility of the person to check with Bury Council if they are unsure if a change in circumstance will affect their eligibility to receive a Direct Payment.

14.7 Bury Council may temporarily reduce or suspend payments if the person is unable to receive services for a period, such as when a long stay in hospital is required or during exceptional circumstances. Following discussions with the person or their Authorised Person, Bury Council will consider the person's circumstances and appropriate action. Direct Payments may continue to be paid for short stays in hospital for up to 4 weeks to facilitate staff or PA retention by the person.

15 Audit and Monitoring of the Direct Payment

15.1 People in receipt of a Direct Payment or Authorised Person can only spend their Direct Payment on meeting the outcomes as outlined in their Support Plan. Failure to notify the Council of spends unrelated to the agreed outcomes will result in a review of whether a Direct Payment is an appropriate method of delivering support.

15.2 Bury Council has a responsibility to ensure that public money is spent and accounted for appropriately

15.3 An initial light touch audit will take place by the Direct Payment Team within the first 8 – 12 weeks (approx.) after a Direct Payment has first started. This is to ensure the person in receipt of the Direct Payment/ Authorised person is using their Direct Payment and to provide any necessary advice or support.

- 15.4 If at the initial audit it becomes clear that the person or their Authorised Person is struggling to understand their responsibilities in managing the Direct Payment, for example complying with employment rules or keeping appropriate records, advice, and support will be given to enable the Direct Payment to remain in place. If the person, or Authorised Person continues to experience difficulties, the Direct Payment Team may refer the person to the Social Work team to determine if commissioned services are a more appropriate way to deliver support
- 15.5 In addition to the initial audit, all Direct payment spend will be subject to annual audit and monitoring, to ensure that the Direct Payment is being used for the purposes laid out in the Support Plan with accurate receipts and records being kept, such as payslips, receipts and copy invoices. Any discrepancies will be investigated and resolved, and any debt will be recoverable by Bury Council from the Direct Payment recipient or the Authorised Person.
- 15.6 Bury Council will request information and supporting documentation for any entry on a Direct Payment account if the transaction is not easily recognisable or significantly exceeds the approved support costs. This information must be provided within 14 days of the request. Failure to provide such documentation may result in a reassessment of the person's eligibility for a Direct Payment.
- 15.7 The monitoring will look at all aspects of the Direct Payment spend to identify risks and issues. For example, if the Direct Payment recipient is employing someone to provide the care, Bury Council will review and check to ensure the person is fulfilling their responsibilities as the employer in respect of HMRC requirements and proper submission of PA hours
- 15.8 The person or their Authorised Person must keep all documents and records that relate to any Direct Payment expenditure for a period of 6 years. The documents or records held by the person or their Authorised Person may be inspected by Bury Council at any point during this period.
- 15.9 Where a Direct Payment is being managed by an Authorised Person, any audits will seek to involve all relevant parties involved in the administration of the Direct payment account.
- 15.10 Wherever possible the Direct Payment annual audit will link in with the social work review.
- 15.11 Bury Council has the right to suspend (temporarily pause) or terminate (end) the Direct Payment as a result of the findings of the audit of the Direct Payment account; however, such action will not be unreasonably applied.

16 Unspent Direct Payments

- 16.1 When an annual audit is completed, any unused funds will be returned to Bury Council except where it is known that there is committed expenditure due to be paid, particularly in the previous 8 weeks.

16.2 When a Direct Payment is closed any unused funds will be returned to Bury Council except where it is known that there is committed expenditure due to be paid up to the date of closure.

17 Wrongful use of a Direct Payment (misuse and fraud)

17.1 In the event of an allegation or confirmation of misspend, theft or fraud in respect of the Direct Payment, by the person or their Authorised Person, the Direct Payment may be suspended, and a review of the person's care and support needs may be undertaken for example

- If it is appropriate for the Direct Payment to be transferred to a Managed Account company where a prepayment card has been used
- whether the Direct Payment should stop, and support be provided through commissioned services

17.2 In cases of misuse or fraud relating to the use of a Direct Payment, Bury Council will take action to recover all or part of the monies where appropriate and an invoice will be sent to the person or their Authorised Person where they have been responsible for managing the Direct Payment on the person's behalf.

17.3 In the event that fraud, abuse or misuse is reasonably suspected by the person or their Authorised Person, Bury Council may refer the matter to the Council Fraud Team for investigation and offer support to the person to reduce the risk of further loss occurring.

17.4 Bury Council will refer any potential criminal activity to the Police for further investigation and reserve the right to prosecute where fraud is suspected to have taken place.

17.5 Bury Council will not be responsible for any losses incurred by the person or Authorised Person and will not therefore reimburse the person unless or until they have been cleared of any involvement in the loss, save for in exceptional circumstances.

17.6 The person may no longer be eligible for a Direct Payment in the future. However, their support needs would still be met if required by Council Commissioned Services.

18. Stay in Hospital

18.1 There may be occasions when the person requires a stay in hospital. If a person is in hospital, the Direct Payment may cease after 4 weeks unless there is an exceptional circumstance, for example, if the personal assistants are required to continue to provide care whilst the person is admitted. The Council must be alerted to all admissions into hospital, as a review will be required. Consideration as to contractual agreements with PAs will be taken into account to ensure a continuity of care when discharged from hospital.

18.2 During any stay, consideration will be given to how the Direct Payment may be used in hospital to meet non-health needs or to ensure employment arrangements are maintained. This may include

reasonable retainer pay for up to a maximum of 4 weeks as detailed in the PA's contract

18.3 If the Direct Payment is continuing, then any assessed client contributions will be payable.

18.4 If the Direct Payment has been stopped due to a protracted length of stay, upon discharge, a review of the persons support needs should be completed by Bury Council to ensure that an appropriate Support Plan and service provision is in place before the person returns home to ensure payments re-start.

18.5 In some cases, the Authorised Person managing the Direct Payment may require a hospital stay. In these cases, Bury Council must be notified, and an urgent review will be conducted to ensure that the person continues to receive support to meet their needs. This may be provided by a temporary replacement Authorised Person, or by the Council putting in place a short-term support arrangement.

19 Disputes

19.1 Any disputes in relation to the provision of a Direct Payment can be appealed initially via contact with Social Work Team Manager

19.2 Any disputes in relation to the audit of a Direct Payment or a request for funds to be repaid can be appealed initially with the Team Leaders of the Direct Payment Service and then the ASC Financial Support Service Manager.

19.3 Should the Appeal be unsuccessful the person or their Authorised Person submit a formal complaint to Councils Complaints Team, and if unsatisfied they have the right to go to the Local Government Ombudsman to consider the dispute.

19.4 Any disputes with the agency used/provider should be dealt with directly with the agency/provider via their complaints process.

Section 5: Ending a Direct Payment

20.1 Suspension or termination of Direct Payments – by the Council

Where possible, Bury Council will take all reasonable steps to address any situations without the need to suspend or terminate payments. If suspending or terminating a Direct Payment, Bury Council will write to the person or Authorised Person explaining why the Direct Payment is being suspended or terminated and will ensure there is no gap in the provision of support to the person with eligible needs. The Council will also ensure enough notice is given for PA's to be given notice as detailed in their contract.

20.2 Bury Council may suspend or terminate Direct Payments if:

- It is apparent that the person is no longer capable of managing the Direct Payment whether on their own or with support
- The person no longer needs the support for which the Direct Payment is made.
- The person does not require assistance for a short period because their condition improves. Bury Council will discuss with the person, carer, and any other person concerned on how best to manage this.
- If Bury Council is no longer satisfied that the Authorised Person is acting in the best interests of the person in accordance with the Mental Capacity Act 2005.
- There appears to be/is illegal or fraudulent use or misuse of a Direct Payment;
- If Bury Council are unable to obtain records and information to verify if support needs are being met in an appropriate way.
- If the criteria for receipt of Direct Payments is no longer met by the person or their Authorised Person on review.
- If the person or their Authorised Person's circumstances change such as to make them ineligible to receive Direct Payments under Schedule 1 of the Support (Direct Payments) Regulations 2014 – for example, if the person is placed by the court under a condition or requirement relating to a drug and/or alcohol dependency.
- If as part of an investigation or plan under the Safeguarding Adults Procedures.
- If the person or Authorised Person does not engage with the social worker or Direct Payment Team when their Direct Payment is due for review or audit
- If the person moves out of the Borough however 6 weeks funding will be made available during the transition period.

20.3 In such cases, Bury Council will review the Support Plan and:

- Identify an alternative suitable Authorised Person to manage the Direct Payment
- Arrange a transfer from a pre-payment card to a Managed Account service.
- Arrange a commissioned service
- Terminate the Direct Payment

20.4 Notice required will depend on personal circumstances. Bury Council will endeavour to put in place a standard 30-day notice period unless an evaluation of risks or other relevant factors require a speedier resolution. Some cases may require a longer notice period (e.g. 60-90 days), particularly if it involves complex care arrangements.

20.5 If Direct Payments are discontinued, the person or their Authorised Person may have ongoing contractual responsibilities such as terminating a contract with an agency or making employees redundant which may include a notice period. These will need to be taken into consideration when Direct Payments are discontinued.

20.6 Once a Direct Payment has been suspended or terminated for the above reasons a new Direct Payment may not be considered until all outstanding issues from the original Direct Payment have been resolved.

20.7 A closure audit will take place and Bury council will arrange for all unused or misspent funds to be returned to the Council.

20.8 Bury Council retains the right to recover Direct Payments in full or in part if it is satisfied that the money has not been spent in accordance with the approved Support Plan.

21 Suspending or terminating a Direct Payment - By the person

21.1 The person can choose to terminate a Direct Payment at any time. This may be because they no longer wish to receive Direct Payments, they are no longer able to manage the Direct Payment, or they no longer need the support for which the Direct Payment is made.

21.2 A Direct Payment may be terminated by the person or their Authorised Person by providing four weeks' notice to enable Bury Council to provide alternative provision of support if required.

21.3 Where a person still requires support, Bury Council will initiate a review to ensure the persons eligible support needs are met, and may put a commissioned service in place.

21.4 If Direct Payments are discontinued, the person or their Authorised Person may find themselves with ongoing contractual responsibilities or having to terminate contracts for services, including making employees redundant. Contractual obligations will require a notice period for termination, such as for a service paid for in advance or employment contracts. These arrangements will need to be taken into consideration when Direct Payments are discontinued by either the person and or their Authorised Person.

21.5 Bury Council retains the right to recover Direct Payments in full or in part if it is satisfied that the money has not been spent in accordance with the approved Support Plan.

21.6 A closure audit will take place and Bury council will arrange for all unused or misspent funds to be returned to the Council.

21.7 If the person moves out of the Borough, 6 weeks funding will be made available during the transition period.

22 Ending Direct Payments following a death

22.1 In the event of the death of the person any funds remaining in a person's Direct Payment or pre-payment card account will be recovered by Bury Council following a discussion with the next of kin or executor the Will. Providing all expenditure has been in line with the approved Support Plan, funds to pay any outstanding commitments will be retained in the account.

Funeral costs are an estate expense and Direct Payments funds cannot be used for these purposes and do not form part of the persons estate.

- 22.2 If there are any contractual and legal obligations relating to any person employed by the person or to HMRC relating to their employees, payment of these should be covered by the person's employer liability insurance provider. In the event if this is not the case Bury Council may consider approving payments to cover these on a case-by-case basis.

Appendix 1:

Bury Council Adult Social Care

DIRECT PAYMENT AGREEMENT BETWEEN:

BURY COUNCIL

AND

THE PERSON (AS NAMED BELOW)

OR

**THE ASSIGNED PERSON MANAGING THE DIRECT
PAYMENT (AS NAMED BELOW)**

Name:	
Address including Postcode:	
Name of person managing the Direct Payment: (if applicable)	
Address of person managing the Direct Payment: (if applicable)	

Note that this is a legally binding agreement therefore you should read it carefully and seek legal advice should you be unclear regarding any of the terms.

This Agreement outlines your responsibilities and the Council's responsibilities when using your Direct Payment. No payments can begin without this agreement having been signed and received by the Council.

YOUR DIRECT PAYMENT

To receive a Direct Payment, you will have been assessed under the Care Act 2014 and have eligible needs.

- You will have completed an assessment form and had an assessment by a Council representative.
- The Council will have prepared a Support Plan showing how your assessed support needs will be met.
- You have agreed that the support described in the Support Plan is to be provided wholly or partly through a Direct Payment.

NOMINATING AN APPROPRIATE AUTHORISED PERSON

If you are unable to manage the Direct Payment yourself then you can nominate an Appropriate Person to receive the Direct Payment on your behalf.

The Authorised Person must sign this Agreement on your behalf and agree to take on the legal responsibility of managing the Direct Payment.

Should you lack capacity, an Authorised Person can be appointed to act on your behalf.

HOW WILL YOUR DIRECT PAYMENT BE PAID

Your Direct Payment will be paid into your Direct Payment Account.

Your Direct Payment can only be used for the items listed/support services set out and agreed as per your Support Plan. This account must not be used for any purpose other than for receiving the Direct Payments and making payments for your assessed support needs/support needs under your Support Plan. If you wish to use your Direct Payment for an alternative service that meets your needs, you must get agreement from the social care team (contact 0161 253 5151).

You must not make any cash or ATM withdrawals from this account.

You must not make any transfers to your own bank account. Please note ***there will be no reimbursement of funds if you pay for services/goods with your own money rather than using the Direct Payment Account Prepayment Card.***

GENERAL RULES ABOUT HOW TO USE THE DIRECT PAYMENT MONEY

- Your Direct Payment is to enable you to buy the support required to meet the outcomes as detailed and agreed in your Support Plan.
- You must notify Bury Council if you wish to change anything in your Support Plan and obtain approval in writing from Bury Council prior to purchase.
- You must inform Bury Council at the earliest opportunity of any material changes in circumstances which would affect your assessed needs or entitlement to Direct Payments. This will include any changes in capacity to manage Direct Payments or in the event of the death of the person in receipt of the Direct Payment
- You cannot use your Direct Payment to buy anything other than goods/services which meet your outcomes as agreed in your Support Plan.

Although not an exhaustive list, you **cannot** spend your Direct Payments on the following items:

- Anything that is illegal
- Anything that will harm your health, safety or wellbeing
- Alcohol, tobacco, vape, drugs or gambling
- Items relating to regular day to day living expenditure (e.g. food and drink)
- Rent, mortgage payments or household bills (e.g. gas, electricity, TV, Broadband)
- Payments for subscriptions e.g. mobile phone contracts
- Purchase of long term residential or nursing care
- Payment of a close relative/partner/friend that lives with you
- Payment for any health care needs that should be provided by the NHS
- Payment for any other charges owed to Bury Council.
- Services, equipment or minor adaptations that are the responsibility of other public bodies.
- For spend incurred outside of the UK unless authorised by Assistant Director/SLT member within Bury Council.
- Expenses covered by PIP, e.g. travel
- You agree to plan and make contingency arrangements if your support arrangements break down due to unforeseen or planned absences.
- If you have a planned or unplanned stay in hospital you must inform Bury Council as soon as possible.
- Following an increase or decrease in your Direct Payment, you must manage any changes with agencies, organisations or employees from which you obtain services.

SUSPENSION OR TERMINATION OF THE DIRECT PAYMENT

- Bury Council has the right to suspend or terminate the Direct Payment where the need for service is temporarily not required or for any reason in line with the Council's Direct Payments Policy. Bury Council will endeavour to put in place a 30-day notice period unless an evaluation of risks or other relevant factors require a speedier resolution.
- You may suspend or terminate your Direct Payment on 30 days' notice to Bury Council, for any reason as outlined in the Council's Direct Payments Policy.

ARRANGING SERVICES

- It is your responsibility to ensure that you have services to meet your agreed Support Plan.
- You accept that upon receipt of a Direct Payment, the Council has discharged its responsibility to you for the organisation and management of support to meet your assessed needs.
- If the Council withdraws the Direct Payment, it will offer you a service arranged and provided by the Council to meet your eligible support needs.

EMPLOYING YOUR OWN PERSONAL ASSISTANTS/SUPPORT WORKERS

- If you choose to directly employ a personal assistant to provide support to you regularly you

will need to ensure you comply with all your legal duties and obligations as an employer in the United Kingdom, including what is required by HM Revenue & Customs and the UK Border Agency.

- You **must** use a payroll provider from the Bury approved list to calculate your PA/support workers' wages and HMRC liabilities
- You will also need to ensure that you have Employer's Liability Insurance and Third-Party Liability Insurance that provides cover including redundancy pay for all employees (See the Direct Payment Policy for details of requirements).
- As an employer, you agree to take on responsibility for the health and safety of your employees (PA/Support Worker).
- You must not employ your spouse/partner or family member living at the same address unless it has been agreed with the Council. See Direct Payment Policy for full definition.
- It is recommended that you carry out appropriate checks at the Disclosure & Barring Service for all support workers that you employ to reduce any potential risk of harm to you from their employment.
- As an employer, you will also be responsible for any redundancy or dismissal from employment of your employees in line with employment law.

USING AN AGENCY

- If you choose to purchase support from a care agency rather than employing a personal assistant directly, it is recommended that you purchase care from a provider who is registered with the Care Quality Commission (CQC). A list of providers is available on the CQC website.
- Should you choose to purchase support from a care agency that charges more than the rate the Council will fund, you will be responsible for funding the difference.

REVIEWING THE DIRECT PAYMENT

- If there is a change in your circumstances, you must notify the Council.
- You can request a review of your Support Plan at any time.
- The Council's responsibility remains to provide a review of your assessed care needs on a regular basis.
- It is also the Council's responsibility to address any concerns in respect of your safety and welfare should they arise.

WHAT RECORDS YOU SHOULD KEEP

- You must keep accurate financial records (and retain these for a period of at least 6 years).
 - You must keep the following records: -
 - If you employ someone directly, all wages records. These wages records need to show details of the staff employed, the hours and times worked, the payments you make to the employee as well as payments which you make to the Inland Revenue.
 - If you use an agency, then you will need to keep copies of all the invoices you have received from the agency and any receipts.
 - Any other receipts or invoices related to your Support Plan expenditure.

- Where applicable, all bank statements for the Direct Payments bank account
- You must submit all documents requested by the Council for audit purposes promptly. Failure to do so may result in the Direct Payment being suspended or the agreement being terminated.
- If the Council decides that you are not keeping proper financial records it will consider terminating this Direct Payments Agreement or decide that someone else should manage the Direct Payment for you.

ENDING THE DIRECT PAYMENTS AGREEMENT

The Council has the right to stop the Direct Payment to you if it decides that your employee or care provider is not suitable.

You can stop your Direct Payment at any time by giving the Council notice. You will then be required to submit any records requested by the Council and repay any money due back to the Council.

Unless in exceptional circumstances, the Council will give you at least 4 weeks' notice before it suspends or stops your Direct Payment. The Council will also give you advice on what you can do to prevent the Direct Payment from stopping or being suspended.

In the event of your death, those dealing with your affairs need to be aware that any Direct Payments money remaining in the Direct Payments account does not form part of your estate and cannot be used to pay for expenses such as funeral costs. This money will need to be returned to the Council subject to a final audit.

If Direct Payments money is used in an inappropriate or fraudulent way, the Council will take appropriate action to recover any money spent in this way. If an audit identifies there is surplus or unused money left in the Direct Payment account, the Council will arrange for return of surplus money

If you do not keep to the terms and conditions of this Direct Payment Agreement the Council may stop your Direct Payment and you will be required to return all or part of the money you have received.

The Council may take any necessary legal action it deems appropriate if the terms of this agreement are breached.

SIGNATURES**Name of person in receipt of Direct Payment:**

Signature		Date	
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Print name:	
-------------	--

For recipients unable to sign**Name of person/company with power of attorney:**

Signature		Date	
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Print Name/relationship to recipient

Name of person/company managing the Direct Payment on behalf of recipient

Signature		Date	
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Print name/Company name

ON BEHALF OF BURY COUNCIL

Signature		Date	
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Designation

START DATE OF DIRECT PAYMENT

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Bury
Council