Sefton Council

Sefton Direct Payments Policy Children and Young Persons'

Sefton Council

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Introduction.

1. Statement of purpose.

1.1 The purpose of this Direct Payment policy is to provide details of Sefton Council's approach to direct payments for Children's Social Care. It also outlines the responsibilities of Sefton Council and the direct payment recipient. It should be read with the Direct Payments Agreement and the direct payment factsheets.

1.2 This policy is to help ensure that members of staff, Sefton residents and relevant parties have the information they need about direct payments.

2. The Legal Framework

2.1 The legislative framework to make direct payments for children is covered by:
(See appendix 2 for links)

- A service which local councils may provide under Section 17 of the Children Act 1989 and Section 2 of the Chronically Sick and Disabled Persons Act 1970 (provision of services for children in need, their families, and others).
- The Care Act 2014 (sections 33)
- Children and Families Act 2014 (section 49)
- Care and Support (Direct Payments) Regulations 2014
- The Carers & Disabled Children's Act 2000.
- The Health & Social Care Act 2022.
- Carers (Equal Opportunities) Act 2004.
- Mental Capacity Act 2005.
- The Special Educational Needs & Disability Code of Practice: 0-25 years
- The Special Educational Needs (Personal Budgets) Regulations 2014
- Equality Act 2010

2.2 Local councils have a duty to provide direct payments.

2.3 Direct payments will be made available to all children and young people who are eligible to receive them and who want them. The council cannot however force someone to have a direct payment against their will.

3. What are direct payments?

3.1 Direct payments are available as a means of providing care and support services to children and young people. They are accessed by an assessment of need carried out by a Social Care professional which identifies any eligible care and support needs that a child or young person has.

3.2 The Child in Need plan and an Education, Health and Care plan shows how the eligible care and support needs will be met, these plans will be referred to as the children and family's assessment for the purpose of this document.

3.3 Direct payments are monetary payments which enable services to be bought to meet the unmet eligible care and support needs of children and young people. This is achieved by using payments from the council to purchase care and support services, rather than the council arranging services on their behalf.

3.4 A direct payment can be used to meet the needs and outcomes that have been agreed with social care, and which are outlined in the children and family's assessment. It is a way for a person to have choice and control over who provides the child or young person's care and support, and how and when it is delivered.

3.5 The council can arrange some services themselves and provide a direct payment at the same time. For example, the council could arrange and buy services from a care agency to provide the assessed personal care needs, but a direct payment could also be used to purchase support for community activities.

3.6 Direct payments are paid into a dedicated bank account. The payments are made to either a young person, or to the parent or carer of a child or young person up to the age of 18 years, or to a nominated representative. The person who the direct payment is paid to is known as the **recipient**.

3.7 The recipient is responsible for:

- Ensuring that the direct payment funds are spent only on the assessed needs that are identified in the children and family's assessment.
- Adhering to legal requirements in the management of the direct payment.
- Organising and managing the child or young person's care and support needs, in line with the agreed children and family's assessment.

The council's duty to offer a direct payment.

4. Who can receive a direct payment?

4.1 Any child or young person assessed under Section 17 of the Children Act as being eligible for care and support can ask for a direct payment. A range of factors will be considered when determining if a direct payment is an appropriate option including the needs of the child or young person.

4.2 The council may pay direct payments to the following:

- A person with parental responsibility for a disabled child or young person
- Some disabled young people aged 16-18 years, following a mental capacity assessment.
- An appropriate nominated person who agrees to receive the payments.

4.3 However, there are some criteria set out in the Care Act 2014 that must first be met:

- The young person or parent or carer must have capacity to make the request.
- There is a nominated person who agrees to receive the payments and consents to the Direct Payments agreement.
- The nominated person is not prohibited from receiving a direct payment under The Direct payment Regulations set out in Section 33 of the Care Act 2014.

- The council is satisfied, that the nominated person can manage the direct payment or manage it with support from others if required.
- The council is satisfied that the use of a direct payment is an appropriate way to meet the child or young person's needs.
- The child or young person's welfare will be safeguarded and promoted by the means of a direct payment.
- The person receiving the direct payment will act in the best interests of the child or young person when securing the agreed provision.

4.4 In some instances a direct payment may not be appropriate as the recipient:

- May want to have the support provided by an organisation that the council already purchase support from.
- May want to spend money that would not meet the assessed eligible needs of the child or young person.
- Does not have the ability or capacity to manage the budget or legal responsibilities, and there is not a suitable person to do this on their behalf.

4.5 If it is decided that a direct payment is not appropriate, the reasons for this will be clearly recorded and shared with the young person, parent or carer.

4.6 The young person, parent or carer does not have to accept a direct payment. If they wish, they can choose instead to receive services that are provided or arranged directly by the council and can still exercise choice over how the support is delivered.

5. Exclusions from receiving a direct payment.

5.1 A direct payment will not be paid in the following circumstances:

- Drug or alcohol dependencies - people who have been placed under certain conditions or requirements by the courts in relation to drug and/or alcohol dependencies as specified in Schedule 1 of the Care and Support (direct payments) Regulations 2014.
- Lacking capacity – the recipient lacks capacity to consent to direct payments.
- No eligible needs - a direct payment will be discontinued once child or young person no longer needs or is no longer eligible to receive the services for which the direct payment was given. This will follow a review or re-assessment of a child or young person's needs by their social care practitioner.

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Use of direct payments.

6. What can a direct payment be used for?

6.1 A direct payment can be used to purchase care support services to meet eligible social care needs as outlined in the children and family's assessment. The children and family's assessment should identify which needs and outcomes are being met by the provision of a direct payment and detail how it will be spent to meet those needs.

6.2 There is no specific list of services, which may be bought using a direct payment. Any services which are identified as meeting the child or young person's needs should be agreed on and must be recorded in the children and family's assessment. The services may be different to how Children's Social Care traditionally provides support, which is often a benefit to families.

6.3 Direct payments may be used for various services that provide additional support and for parents or carers of a disabled child. These services might include:

- Paying for a Personal Assistant to help with personal care, for example, bathing, dressing, eating or help to look after them overnight.
- Helping to access leisure facilities, for instance a direct payment could pay for a personal assistant to accompany the child/young person to go swimming.
- After school care support with a Personal Assistant.
- Making use of necessary facilities or services in the local community, including public transport, and recreational facilities or services.
- Accessing the community, such as going shopping.

6.4 There are some important principles to guide the use of direct payments:

- The proposed use of money must, in the opinion of the social care staff be appropriate to meet assessed eligible needs.
- Where the direct payment is used to pay for support that enables a child or young person to take part in activities such as horse riding or swimming, the cost of the support needed to enable them to take part is allowable, but the cost of the activity itself is not. This would need to be met from the individual's personal money.

7. Restrictions on use of direct payments.

7.1 Under the Care Act 2014, there are restrictions on using direct payments money. Direct payments cannot be used to:

- Buy care from a close relative living in the same household. Unless approval is given by a Senior Manager within Children's Social Care that it is necessary due to exceptional circumstances. **See appendix 4**
- Buy a service for a child or young person whose home is no longer in Sefton other than by prior agreement in writing from Children's Services.
- Look after a child overnight in a personal assistant's home, unless they are a relative. (This is for insurance and DBS clearance purposes).

- Buy equipment or minor adaptions that would be provided by the council or Integrated Care Board.
- Buy long term residential care in a care home. Direct payments can be used to buy short breaks with agreement from social care staff.
- Buy any services that have not been identified in the children and family's assessment.
- Pay everyday living expenses for the child or young person or for their Personal Assistant such as utility bills, mileage.
- Buy a payroll or brokerage service if Sefton Carers Centre's Direct Payment Payroll Service is not used.
- Pay the direct payment recipient a fee for managing the direct payment account or for providing care and support services.

Setting up and managing a direct payment.

8. The Direct Payments Team.

8.1 If a direct payment is considered the most appropriate option to meet the assessed social care needs of the child or young person, social care staff will make a referral to the Direct Payments Team at Sefton Carers Centre. The Direct Payment team will provide support to set up the direct payment account.

8.2 A Direct Payments Advisor will be allocated who can assist with:

- Providing advice and information on the Direct Payment Scheme to ensure that the recipient is aware of their legal responsibilities.
- Issuing and explaining the key terms of the Direct Payment Agreement.
- Setting up and using the direct payment's prepaid card account.
- Providing support in relation to recruiting, training and employing Personal Assistants.
- Providing a payroll service, to support with payslips, tax, pensions and other statutory payments.
- Providing a Disclosure and Barring Service (DBS) check.
- Providing an application form for public and employer liability insurance that is available and meets the requirements of the scheme. The initial cost of the insurance premium and subsequent renewals are paid from the direct payments account.

8.3 The Direct Payments team will contact the recipient within the first 4-6 weeks of the direct payment starting. This is to offer support with any issues that may have arisen with managing the direct payment and prepaid card system. They will provide ongoing support in relation to managing the direct payment.

9 Role of the person receiving a direct payment.

9.1 It is important that the recipient fully understands the terms of the Direct Payment Agreement that they are signing, and their responsibilities.

9.2 The recipient is responsible for making all arrangements for care and support services to meet the agreed eligible needs identified in the children and family's assessment. This can include recruiting staff, employing an agency, maintaining records, managing the direct

payment, and providing evidence to the council that the money is being used to meet their agreed needs.

9.3 They must comply with all legal requirements that may arise in making such arrangements. If Personal Assistants are used to provide the care and support, the recipient becomes the legal employer.

9.4 The recipient must be aware of the legal responsibilities of becoming an employer before agreeing to a direct payment, including:

- Registering as an employer and operating under HM Revenue & Customs (HMRC) regulations.
- Checking that the potential employee has the right to work in the UK.
- Making sure that any employees have undergone Disclosure and Barring Service checks before they start work.
- Making sure that they pay their employees at least the national living wage.
- Following working time directives and adhering to legislation around holiday, sickness, maternity and paternity pay.
- Enrolling eligible employees into a workplace pension scheme.

9.5 The employer is responsible for the health and safety of their employees and must have up to date Employers and Public Liability insurance.

- **Employer's liability insurance** - If an employee is injured whilst carrying out their duties this insurance will provide protection, covering legal costs and any compensation.
- **Public liability insurance** – this will insure an employer against any damages or injury caused to members of the public caused by the personal assistant whilst they are carrying out their duties.

9.6 The council provides a separate factsheet detailing the responsibilities of being an employer and the support available.

9.7 Where the direct payment recipient is not meeting their legal responsibilities as an employer the direct payment may be suspended. During the suspension the persons suitability to act as an employer will be considered and additional support offered.

9.8 Where the child or young person's circumstances change, and their care needs have either increased or decreased, then they should request a social care reassessment.

9.9 Where the recipient employs Personal Assistants to provide the services detailed in the children and family's assessment, they must ensure that they are suitably qualified and experienced for the role.

9.10 The recipient must ensure that employees are competent in carrying out all tasks including health related tasks and have received the appropriate training. The recipient must check that health provision and training is clinically assured and validated by the responsible health practitioner. If the recipient doesn't make sure that Personal Assistants carry out

required training this may invalidate the Employers Insurance. This could lead to the direct payment being suspended until training has been completed.

9.11 The recipient must make sure that services which are bought meet an outcome included in the children and family's assessment. Services that do not meet an outcome may be considered a breach of the direct payment agreement and could result in the direct payment being suspended or withdrawn.

9.12 Evidence of how the direct payment has been spent to meet the outcomes outlined in the children and family's assessment must be provided. This includes providing copies of receipts and invoices to the council on a quarterly basis.

10. Direct Payment Agreement

10.1 The recipient must sign a Direct Payment Agreement, which outlines the terms and conditions of the scheme and sets out the arrangements between the recipient and the council.

10.2 The recipient must sign the agreement before the direct payment can be paid by the council.

10.3 The Direct Payment Agreement is a legal document which details:

- The start date of the direct payment.
- How payments will be made.
- The recipient's and the council's responsibilities.
- Arrangements for monitoring and reviewing the direct payment account.
- Ending the direct payment.
- Data protection legislation.

11. Direct payment account.

11.1 The direct payment must be paid into a nominated account which will be used solely for the purpose of managing the direct payment.

11.2 The council's preferred method is for individuals to receive their direct payment via a prepaid card account. A direct payment paid into a bank account may be available upon request.

11.3 The first payment will be made only after:

- The support plan has been agreed.
- The signed Direct Payment Agreement has been received.
- The completed Bankers Automated Clearing Service (BACS) form has been received.

Direct payments will be made by bank transfer into the recipient's direct payment account every 4 weeks in advance.

Prepaid Card.

11.4 Direct payments will be paid into a prepaid card account, which will be opened by the council on behalf of the recipient.

11.5 The prepaid card is an online banking system which allows the direct payment recipient:

- To make payments.
- Check account balances.
- Upload supporting documents.
- Produce bank statements through an online portal.

11.6 The prepaid card account can only be used to buy services that will meet the eligible needs, as agreed, and as stated in the support plan. The prepaid card account cannot be used for any other purpose.

11.7 The recipient must notify the council immediately if they become aware of any concerns relating to the prepaid card account in respect of the use of the direct payment.

Virtual account.

11.8 A virtual account is where the council hold and manage direct payment monies on behalf of the recipient. The council will make payments for care and support services on their behalf. Responsibility for arranging care support services remains with the recipient.

11.9 Circumstances where the use of a virtual account may be considered are if:

- An individual is unable to manage the direct payment account but can still arrange care and support services.
- There has been previous mismanagement of a direct payment account, and a service directly arranged by the council is not a suitable option.

12. Employing a Personal Assistant.

12.1 Direct payments give the opportunity to employ Personal Assistants. This can provide greater flexibility in relation to arranging care and support. Personal Assistants should not be close relatives of the child or young person who live in the same address, unless this is seen as necessary by a Senior Manager within Children's Social Care.

12.2 Where Personal Assistants are employed to provide care and support the recipient must check that they are suitably trained for the role and has undergone Disclosure and Barring Service checks before they start work.

12.3 Anyone who is employed as a Personal Assistant with the use of a direct payment will not be considered an employee or agent of the council.

12.4 Personal Assistants will have the same legal rights under employment law as any other employee, including the right to:

- A job description.
- A contract of employment.
- 5.6 weeks holiday pay per year.

- Sick pay and other statutory entitlements.
- Enrolment into a workplace pension scheme.
- Compulsory training.

13. Self-employed Personal Assistants.

13.1 In most instances the Personal Assistant will be directly employed by the recipient. However, if a Personal Assistant wants to be classed as self-employed then the recipient must provide the council with proof of their employment status. They can do this by completing an online tool at www.gov.uk/guidance/check-employment-status-for-tax. They will need to provide the Council with a copy of the report confirming that they are self-employed.
In most cases, a personal assistant providing personal care support will not be classed as self-employed when determining the employment status. This due to where, how and when the personal care is undertaken, to give a true reflection on if the personal assistant is employed or self-employed.

13.2 If the Personal Assistant is self-employed, they will be responsible for paying their own tax, national insurance, training, etc. They are only paid for the hours that they work and are not entitled to holiday and sickness payments. Expenses for materials and mileage are not payable from the direct payment.

13.3 The self-employed Personal Assistant should also provide contingency details of how their absences will be covered. A self-employed personal assistant cannot send a substitute worker to provide personal care support, without the council undertaking an enhanced DBS check.

13.4 The council will not accept liability for the self-employed Personal Assistant and is not, under any circumstances, an employer of the individual providing care.

13.5 If the status check has correctly determined that the worker is self-employed, then the recipient is legally responsible for obtaining from the worker:

- A contract of engagement that states that they are not employed by the recipient, the rate that they will be paid and the terms and conditions of their work.
- Evidence that they have professional indemnity and public liability insurance.
- Evidence that they have a Unique Tax Refence Number (UTR) to confirm that they are registered with HM Revenue & Customs (HMRC) as self-employed.
- Evidence that an Enhanced Disclosure and Barring system (DBS) check has been made.

13.6 All the information above must be provided to the council before the worker commences.

13.7 The recipient must provide to the council invoices from the self-employed Personal Assistant in line with HM Revenue & Customs guidelines. This is to evidence how the direct payment is being spent.

14. Disclosure and barring service (DBS) checks.

14.1 The council requires that enhanced DBS checks are carried out on all employees who are acting as Personal Assistants when working with a child or young person, including existing and new employees. The cost of the check will be met from the direct payment funds for employed Personal Assistants only.

How is a direct payment calculated?

15. Calculating the cost of the direct payment.

15.1 The social care staff will work with the child or young person, parent or carer to work out the amount and level of support that is needed when developing the children and family's assessment.

15.2 The direct payment will be calculated using the council's standard rates. The rates will depend on the type of care and support required. This will be recorded within the children and family's assessment.

Personal Assistant rate.

15.3 If a direct payment is to be used to employ a Personal Assistant, then the rate paid by the council will be sufficient to cover the cost of:

- Paying the Personal Assistant the national minimum wage hourly rate.
- Paying an allowance to meet the legal costs of being an employer, known as "employer on-costs".
  Employer on-costs include the cost of paying:
  - Employer's contributions for National Insurance contributions.
  - Employer's contributions for workplace pensions.
  - Holiday Pay.
  - Compulsory Training.
  - Employer's public and liability Insurance.

  If additional costs are paid to your employee, such as travel expenses, the council is not obliged to fund these.

15.4 Direct payments might vary if the child or young person's needs call for the provision of different levels of support at different times, for example, term time and school holidays.

Payments.

15.5 Direct payments are paid 4 weeks in advance by the council. The recipient will receive a remittance advice with details of the payments made.

15.6 The amount of the direct payment may change following a review of the child or young person's assessed needs. If the review leads to:

- An increase in direct payments, the extra money may be paid as a separate payment or included in the next scheduled payment.
- A decrease in direct payments, no further payments will be made until the amount of the overpayment has been recovered.

15.7 If a recipient wants to change how they spend the direct payment after it has been agreed, they must talk to the Direct Payment Team and get agreement before any changes are made. It is essential have this discussion, as payment rates may not be the same or the proposed changes may not meet the care and support needs.

15.8 The council may suspend a direct payment if a child or young person is likely to stay in hospital longer than 4 weeks, the council will ensure the care and support is in place upon discharge.

16. Will parents or carers have to make a financial contribution?

16.1 If a child, or a young person aged below 18, is assessed as eligible for a direct payment, they will not be asked to make a financial contribution.

17. Personal top-up.

17.1 A direct payment recipient may choose to buy services that are more expensive than the direct payment rate paid by the council. In this situation, payments will need to be made from personal funds for the difference in costs, this is known as a **top-up**.

17.2 If the recipient chooses to purchase extra support to that identified in the children and family's assessment, a top-up should also be paid into the direct payment account to pay for this.

17.3 If the recipient chooses extra support from their Personal Assistant, they are responsible for paying the additional employer on-costs incurred. These additional costs must be paid as a top-up into the direct payment account.

17.4 If a Personal Assistant is employed in more than one role only the role relevant to meet the needs identified in the children and family's assessment can be paid from the direct payment. For example, a person is employed as a childminder and as a Personal Assistant to provide personal care. If childminding is not an assessed need in the children and family's assessment, only the employment of the role of Personal Assistant should be paid from the direct payment.

17.5 If there is a shortfall in the direct payment account due to the top-up not being paid, an invoice will be raised by the council for repayment.

Financial reviews and monitoring of direct payments.

18. Reviewing the direct payment.

18.1 The council is accountable for the public money it manages. This includes direct payment funding. Direct payments most follow the council's auditing and accounting rules. The

recipient must keep detailed and accurate records of spending in the direct payment account. This is to check how the direct payment is being used to support the child or young person.

18.2 The council's Self-Directed Support team will monitor the use of the direct payment. This is to check that the direct payment is being used to meet the terms of the direct payment agreement. The team will provide support to the recipient to help them to manage the direct payment account.

18.3 The Self-Directed Support team will review the direct payment account to check:

- That the direct payment is being paid correctly by the council.
- That the direct payment is being managed well.
- The direct payment is being used as agreed in the children and family's assessment.
- That direct payment recipients are safeguarded from financial abuse or lack of care provision through insufficient funds.
- That employers are fulfilling their legal obligations.

18.4 The Self-Directed Support team will:

- Provide support to the recipient to meet the terms of the Direct Payment Agreement.
- Conduct an initial 12 week 'light-touch' review of all new direct payment accounts.
- Provide support to those who are struggling to manage a direct payment by offering a virtual account.
- Undertake annual financial reviews of all direct payment accounts.
- Review monthly spending on the pre-paid card account.
- Highlight any safeguarding concerns to the relevant professionals.

18.5 The outcome of the review is documented in a report, and a copy given to the recipient.

18.6 In order for direct payment accounts to be monitored, recipients will need to:

- Keep copies of all receipts and invoices and supply these to the council on request.
- Keep receipts for payments that have been for care and support services.
- Keep a copy of their Employers and Public Liability Insurance certificate if they employ staff.

18.7 Unresolved issues identified during a review of the direct payment account will be discussed with the recipient and sometimes with social care staff.

18.8 If the individual cannot provide documentary evidence or a transaction has not been authorised in the children and family's assessment, then the council may ask that the money be repaid.

19. Management of direct payment monies.

19.1 If a review of the direct payment account highlights concerns in relation to the management of the account, then the prepaid card account may be locked. Further enquiries will take place and payments for care and support services will then be made on behalf of the recipient by the council.

19.2 If after further enquiries, it has been found that the direct payment is not being managed correctly, the council may review the person's ability to manage the direct payment and offer a virtual account.

19.3 Any direct payment funds that have been inappropriately used will be recovered by the council by issuing an invoice. Should the invoice remain unpaid, the matter will be referred to the council's Debt Recovery Team who will pursue the debt further with the recipient.

20. Recovering direct payments funds.

20.1 A total of eight weeks' direct payment funds can be held in the direct payment account. This is to cover direct payments made in advance, any outstanding invoices for care and support services and any employer's oncosts. If more than eight weeks money has built up in the direct payment account, the council will ask for this to be returned. An invoice will be raised to the recipient to recover the unused/surplus money.

21. Ending Direct Payments.

21.1 Should a recipient no longer choose to receive a direct payment they must inform the council of their decision and discuss alternative arrangements. The recipient must give appropriate notice to the care provider or Personal Assistant as outlined in their contract.

21.2 Direct payments will end when a child or young person no longer needs the support for which the direct payment is made. Where a decision has been made to end a direct payment, the council will conduct a review of the children and family's assessment to ensure that the plan is appropriate to meet current needs.

21.3 If ending a direct payment, the council will ensure there is no gap in care and support services.

21.4 Either the direct payment recipient or the council can give four weeks' notice to terminate the direct payment.

21.5 Should the child or young person receiving the support pass away, the council will only make payment up to and including the date of death. No allowances will be made for any separate agreement that the recipient may have with an agency to pay after this date.

21.6 Should the child or young person receiving care support move out of the Sefton area, the social care professional will support the individual with the transition. They will agree a date for transfer and end the direct payment with Sefton Council.

21.7 When a direct payment ends, the Self-Directed Support Team will complete a final review of the direct payment account. This is to make sure that all outstanding payments relating to the care and support services are made. They will also request that the remaining balance of funds held in the direct payments account are returned to the council.

22. Preparing for Adulthood.

22.1 The provision of a direct payment changes as a young person becomes an adult at the age of 18.

22.2 All recipients of direct payments from Children's Social Care will require a Care Act assessment when they are approaching 18 years of age if there appears to be a need for the direct payment to continue into adulthood. This assessment will be arranged through the Council's transition process and will be completed by a social care practitioner from Adult Social Care.

22.3 The council will continue to provide the direct payment to the young person during the Adult Social Care assessment process. The Care Act 2014 requires the council to make sure that there is no gap in care services while this assessment is undertaken.

22.4 Usually, direct payments will be paid to an individual who has parental responsibility for a disabled child until the child reaches 18 years of age. Following the transition to Adult Social Care, the young person has the choice to receive and manage the direct payment themselves. There may be situations where the young person lacks the capacity to consent to the direct payment. In such cases it will often be appropriate for the person with previous responsibility to remain as the recipient.

22.5 A new Direct Payment Agreement will be issued upon the transition from Children's Social Care to Adults Social Care, and a new prepaid card will be issued if applicable.

22.6 Following the transition to Adult Social Care a financial assessment will take place, and they may be asked to pay a contribution to the cost of their care.

23. Complaints.

23.1 If there is a breach of contract by an employee or service provider, in the first instance this must be dealt with by using the procedure set out within the employment contract or agency contract. If this is not successful, the Direct Payments Team can advise how to resolve this issue.

23.2 If a recipient is unhappy about any action or decision within the direct payment process then they should contact the Senior Self-Directed Support Officer at the council. If they remain unhappy with the outcome, then they can make a formal complaint through the council's complaints procedure:

- By visiting www.sefton.gov.uk/complaints
- In writing to Children's Complaints Officer, FREEPOST LV7340, Bootle, L20 1YX.
- Calling Customer Access on 0345 140 0845

Appendix 1 – Direct Payments Agreement - Children and Young People.

DIRECT PAYMENTS AGREEMENT
Children and Young People

This agreement is between:

Name:	Sefton Council **(Referred to in this agreement as 'the council').**
Address:	Magdalen House 30 Trinity Road Bootle L20 9NJ
The person receiving the direct payment on behalf of the child or young person (Referred to in this agreement as 'you/your').	
Name	
Address:	
Relationship to child or young person	
Telephone number:	
Email address:	
The person receiving care and support. (Referred to in this agreement as 'the child or young person').	
Name:	
Address: If different from above	
Office use only	
Council ID:	

This is a legally binding document, please read carefully before signing.

Direct payments will not be paid until this agreement has been signed and returned to Sefton Council.
If the terms of this agreement are not complied with, the council reserves the right to suspend or terminate the direct payment.

About this agreement.

1. The detail of this agreement is based on Sefton Council's Direct Payments Children's policy. This policy is available to view online at www.sefton.gov.uk/directpayments

2. Social care provision is provided by the council in exercise of its functions under Section 17 of the Children's Act 1989 (Provision of services for children in need, their families and others). The welfare of the child or young person will be safeguarded and promoted by securing the provision of care and support services by means of a direct payment.

3. The person who has been assessed as needing care and support is known as the child or young person.

4. The council will pay a direct payment to any of the person's listed below and for the purpose of this agreement will be known as 'you':

    - The child or young person's parent or guardian who consents to receiving direct payments on their behalf.
    - A person nominated to receive the direct payment, provided that the council is satisfied that they can manage the direct payment.

5. You are agreeing to take responsibility for receiving and managing the direct payment and for buying care and support services.

6. The **Direct Payments Team** will provide support to the set up the direct payment, help with recruitment of staff and provide a payroll service. The Direct Payments Team is based in Sefton Carers Centre, 27-37 South Road, Waterloo L22 5PE.

7. The **Self-Directed Support Team** are employed by Sefton Council, and are responsible for monitoring, reviewing and supporting with all financial aspects of the direct payments account.

Your Direct Payment.

8. When the council has agreed to make a direct payment to buy care and support services, the calculation of the direct payment is based on the level of care and support identified in the support plan and the appropriate standard council rate.

9. The direct payment should be used to buy services as detailed in the children and family's assessment. There must be prior agreement from the council if the direct payment is to be used for any other purpose.

10. The money paid as a direct payment belongs to the council until it has been used to buy the services identified in the children and family's assessment. The council can recover money that is not used or not spent on these services.

11. Should the direct payment be used, without agreement, for services and payments not detailed in the children and family's assessment, then this could result in:
    i. A review of eligible needs by a social care practitioner.

ii. A review of the direct payment, which may lead to the arrangements being suspended or terminated.
iii. The council taking steps to recover any money not used appropriately.

12. The direct payment must be paid into a bank account that can only be used for direct payments.

13. The responsibility for managing the direct payment cannot be given to any other person, without prior agreement from the council.

14. The council will arrange for a prepaid card account to be set up for the direct payment. You are responsible for the security of this account and must not share PIN numbers or online security details with anyone. The council will not accept liability for any incorrect payments and withdrawals due to security information being shared, this could result in the suspension of the direct payment.

15. The bank account for direct payment is

    Bank Name:
    Account name:
    Account number: Sort code: - - -

    Cash cannot be withdrawn from a cashpoint machine or used to make cash payments to anyone without prior agreement from the council.

16. Bank transfers cannot be made from the direct payment account to any other bank account, except to the person or company that has provided the services set out in the children and family's assessment.

17. The council agrees to pay the direct payment into the above account as per the children and family's assessment. Payments will be made in advance every 4 weeks in line with the council's payment schedule.

18. The council will review the rates used to calculate the amount of the direct payment every year and will write to let you know of any changes.

19. Emergency plans must be put in place in case care and support services cannot be provided. If care arrangements breakdown, whether in an emergency or not, the council will offer support if required. This support might include the council arranging support from a care agency.

20. Where care support is unable to be provided, for example the child/young person has an unplanned hospital stay or short-term placement, the council must be told as soon as possible. The direct payment advanced pay can be used to fulfil any contractual obligations in these circumstances. For example, paying a personal assistant a 2 week retainer payment. If the hospital is likely to be longer than 4 weeks, then the Direct Payment may be suspended, and the council will make sure the care and support is in place upon discharge.

Your responsibilities.

21. You are responsible for making all arrangements for care and support, to meet the needs identified in the children and family's assessment. You must comply with all legal requirements that may arise in making such arrangements. If Personal Assistants are used to provide the care and support, you will become the legal employer with the responsibilities involved in this role. The council accepts no responsibility for any matters that arise because of these arrangements. As the child/young person is aged below 18, you will not be asked to make a financial contribution towards the cost of the care and support.

22. If you buy care and support at a rate that is higher than the rate paid by the council or want additional care and support that is not in the children and family's assessment, then this must be paid from personal money. This is known as a top-up. You should consider that this is affordable before you agree to a contract.

23. You are responsible for any charges or fines incurred if the direct payment has not been managed correctly. For example, HM Revenues & Customs (HMRC) charge for late payment of employee contributions. These fines or charges must be paid from personal money.

24. You must tell the council immediately of any changes in circumstances which affect the delivery of care and support services or the management of the direct payment.

Restrictions to Direct Payments.

25. The direct payment cannot be used to buy care and support services from the parent of the child/young person, or from a close relative who is living in their household. However, in some circumstances this may be the only way that services can be adequately provided. This will be considered on a case-by-case basis. Permission must be sought before making any changes to the care and support provided.

26. The direct payment money cannot be used to buy some services that are provided by the Council.

27. If you choose to use a third-party organisation for any payroll service rather than use the Direct Payments Payroll Support, then you will have to pay the cost from personal money.

28. Direct Payments cannot be used to purchase services, equipment and/or minor adaptions which are the responsibility of other public bodies.

29. You cannot be paid from the direct payment account for managing the direct payment, or for providing care and support.

30. Direct payments cannot be used as personal money or be used towards everyday living costs such as household expenses. Direct payments cannot be used to buy items that do not meet the agreed outcomes in the children and family's assessment.

31. Direct Payments cannot be used to buy a service for a child or young person who is no longer an ordinary resident of Sefton other than by prior agreement in writing.

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Employing Personal Assistants.

32. Where personal assistants are employed to provide the care and support services detailed in the children and family's assessment. You must ensure that they are suitably qualified and experienced for the role. This includes checking that they have received appropriate training and are competent in carrying out all tasks. Any health provision and training must be clinically assured and validated by the responsible Health Practitioner, and as such will be annually reviewed in terms of compliance.

33. You are advised to obtain appropriately qualified independent legal advice regarding the legal risks and obligations of becoming an employer including in respect of HM Revenue & Customs and pension liabilities.

34. Anyone employed under the direct payment scheme will not be considered to be an employee of the council. The council will not be responsible for any pay as you earn (PAYE), national insurance contributions or any other payments or responsibilities in relation to the employee. It must be clearly stated in their contract of employment that they are solely employed by you.

35. The Direct Payments Advisor will provide an Employer's Guide which will detail all responsibilities and provide useful information and contact details for support.

36. All employees are legally entitled to 5.6 weeks leave per year. It is your responsibility to ensure that employees use their statutory leave entitlement for the periods 1st April to 31st March each year. As an employer there is a legal responsibility to ensure that employees take their statutory entitlement within this period.

37. You are responsible to arrange alternative support during the period that the employee takes their statutory leave.

38. You are also responsible for notifying the Payroll Support provider of any amendments to your employee's contracted hours worked to reflect that they have taken leave. Further information can be found in the Employer's Guide.

39. The council will provide you with sufficient funds to pay the employee the National Minimum Wage rate and allow for additional funds to meet any costs of your legal responsibilities, for example:
    - Holiday pay.
    - Employer's national insurance contributions.
    - Employer's pension contributions.
    - Redundancy.
    - The purchase of employer's and public liability insurance.

40. Should you choose to pay employee(s) a rate higher than that recommended by the council, then these additional costs may have to be paid from personal money.

41. If there is any additional support required from your personal assistant(s) that has not had prior authorisation, you must make sure that you pay the additional employer on-costs incurred. These additional costs must be paid as a top-up to the direct payment account.

42. Adequate employer's and public liability insurance must be in place; the direct payment can be used to buy this. The Direct Payments Team can supply you with details of insurance providers. A copy of the insurance certificate must be provided within four weeks of employing any personal assistants. Failure to put in place the required insurance cover will be a breach of this agreement and may result in the suspension or termination of the direct payment. It is the employer's responsibility to renew the insurance policy when it expires. The council will not accept liability for any subsequent costs that may occur because you do not have a valid and up-to-date insurance policy.

43. Where driving is part of the employee's duties, you must check that the employee is in possession of a full UK driving licence and that the vehicle being used complies with all government regulations for Tax and MOT. The employee must have appropriate and valid business insurance cover for the vehicle and ensure that any necessary safety equipment is maintained. Any mileage allowance must be paid from your personal money.

44. If, in the opinion of the council, the potential employee you have selected is either unavailable or is unfit to provide a safe and adequate service, the council can request that you find alternative support.

45. The council strongly recommends that you undertake appropriate checks through references and Disclosure and Barring Service (DBS).

    (i) DBS checks are compulsory for anyone who is providing care or support, to a child or an adult that lacks capacity. The employee cannot start employment until clearance has been obtained.

    (ii) You must contact the Direct Payments Team to obtain a DBS check for your employee(s); the costs of the checks will be paid directly by the council.

    (iii) The council will request further details, which could include a face-to-face interview, from the potential employee should the DBS check show they are unsuitable for the post.

    (iv) DBS clearance must be renewed every 3 years in line with current DBS legislation.

46. Personal or sensitive data of all employees must be protected as defined in current data protection legislation:

    (i) Employees' personal information can only be used for the purpose of the employment and must be kept securely or on a system that is password protected.

    (ii) All personal information relating to an employee must be destroyed 6 years after the employment ends, and any information obtained for unsuccessful interviewees must be destroyed within 6 months.

    (iii) If you use the Direct Payments Payroll Support, all information held on your behalf will meet the regulatory requirements or obligations to third parties and be compliant with current Data Protection Legislation.

Self-employed personal assistants.

47. You are responsible for checking the employment status of self-employed workers. They must confirm their employment status by completing the online tool at www.gov.uk/guidance/check-employment-status-for-tax and provide a copy of the report to the council. Expenses for materials and mileage are not payable from the direct payment account and cannot be allowed for the when determining the employment status.

48. The self-employed worker cannot start working until their status has been confirmed in writing to the council. This is to check that you are not liable for paying the self-employed worker's tax and national insurance contributions. Also, this is to prevent at a later date, the HM Revenue & Customs deciding that the person is employed (not self-employed) and backdating any tax or national insurance liability for you to pay. The council will not be held liable for any backdated contributions or penalties that may arise from you not determining the employment status of any employees correctly. If the status check has correctly determined that the worker is self-employed, then you are legally responsible for obtaining from the worker:

    a) A contract of engagement from the worker that states that they are not employed by you, the rate that they will be paid and the terms and conditions of their work.

    b) Evidence that they have professional indemnity and public liability insurance certificate.

    c) Evidence that they have a Unique Tax Refence Number (UTR) to confirm that they are registered with HM Revenue & Customs as self-employed.

    d) Evidence that enhanced checks have been made through the Disclosure and Barring system (DBS).

    All the information above must be provided to the council before the worker starts the contract. The cost of insurance, training and DBS check must be paid for by the self-employed worker.

49. You must provide the council with invoices from the self-employed worker in line with HM Revenue & Customs guidelines, to evidence how the direct payment is being spent.

50. Self-employed workers are only paid for the hours that they work and are not entitled to holiday and sickness payments.

51. If it is deemed that the worker is **employed**, then they must be provided with a contract of employment, job description and be registered for correct deduction and payment of tax, national insurance, and pension contributions. (See **Employing Personal Assistants**).

52. If a worker's self-employed status is **not conclusive**, the council will be unable to accept them as self-employed and they should be paid as an employee.

Monitoring and auditing of the Direct Payment.

53. The council has a duty of care to make sure that the child or young person receiving care and support is achieving the outcomes agreed in the children and family's assessment and that the terms of this direct payment agreement are being met. The council must confirm that public funds are being used as agreed.

54. You must keep invoices and receipts of all payments made from the direct payments account. All paperwork must be sent to the Self-Directed Support Team on a quarterly basis or upon request.

55. If the required paperwork is not provided within the timescales set, then the Self-Directed Support Team will arrange a review with the social care practitioner to check if the direct payment is being managed within the terms of this agreement. The direct payment may be suspended, and alternative care support arrangements made by the council if you are unable to provide evidence for what the direct payment has been spent on.
56. The direct payment account will be reconciled by the Self-Directed Support Team who will send a report highlighting any areas of concern. This may include low account balance/overspending; inappropriate spend, non-compliance with employer responsibilities. The report will outline any action that needs to be taken. The council will regularly assess the balance of funds held in the direct payments account. There should always be enough money in the direct payment account to:

    - Pay for any outstanding employee costs such as wages, tax, insurance.
    - Any outstanding invoices for agencies for care already provided.
    - Allow for 4-weeks payments that have been paid in advance.

    You will be asked to return any unused money to the council by invoice.

Prepaid card account.

57. The council is required by the Money Laundering, Terrorist Financing and Transfer of Funds Regulations 2019, to verify the account holders' details, including confirming the account holder's identity and retaining documented proof of the account holder's name, address, and date of birth.

58. By signing this agreement, you are consenting to the council processing personal data, storing, and sharing the requested information with the council's prepaid card provider. This is in line with current data protection legislation and UK GDPR for assessing, implementing, and monitoring of direct payments, and to comply with any regulatory requirement or obligations to third parties. All personal information will be destroyed within 1 year of the prepayment account closing.

59. The council has administrative access to the prepaid card account and will, if necessary, review the account online, make payments on your behalf and download any stored supporting documentation.

60. The council has the right to lock access to the prepaid card account, if the account is not being managed within the terms of this agreement, for example misuse of card/funds and

sharing of security access to the account. The council will write to you to confirm the reason for locking the account and provide details of alternative ways to pay for support.

Review and repayment of the direct payment.

61. The council will ask you to repay either all or part of the direct payment if it has not been used appropriately in accordance with the terms of this agreement. If money owed is not repaid within 14 days, the council may take steps to recover this debt, in line with its debt recovery policy.

62. If the direct payment allocation is reduced, the council will give at least 4 weeks' notice in writing and give reasons for the change.

63. The council reserves the right to vary these terms and conditions and will confirm in writing any changes giving 4 weeks' notice.

Ending the direct payments agreement.

64. You have the right to end this agreement upon discussion with a social care practitioner.

65. If the requirements of the direct payment agreement are not met, the Council has the right to suspend and ultimately end the direct payment, giving 4 weeks' notice, until the terms of the direct payment agreement have been met.

66. The council may end this agreement immediately if, after investigation, it is found that the direct payment is being used illegally or not in the best interests of the child or young person receiving the support.

67. Before ending the agreement, the council will work with you to find a solution wherever possible. In some circumstances, the payment may be suspended whilst additional support or investigations take place.

68. To enable the council to finalise the direct payment account when the scheme has ended, you must ensure:

    - That any outstanding payments to employees, HM Revenue & Customs and agencies are paid.

    - You must act legally as an employer to ensure that adequate notice has been given to the employee.
    - That adequate notice has been given to the personal assistant as per their contract.

69. Should the child or young person receiving the support pass away, the Council will only make payment up to and including the date of death. No allowances will be made for any separate agreement that you may have after this date.

70. In the event that you pass away the council will need details of your next of kin or executor of the estate, so that arrangements can be made to return monies. The direct payment is not to be included as part the estate for either you or the person receiving support.

71. When the direct payment ends, the council will request the return of any unused money and payments made in advance. The council will consider any outstanding payments in relation to the direct payment, when calculating the balance to be repaid.

72. Should the person receiving care and support move out of the Sefton area, the social care practitioner will support you with the transfer to the new local authority and end the direct payment with Sefton Council.

Transition to adulthood.

73. Transition to Adult Social Care services will be arranged by the council before the young person's 18th birthday. This Direct Payment Agreement (Children and Young People) will end once the social care needs have been assessed by Adult Social Care. A new direct payment agreement will be issued upon the transition from Children's Social Care to Adults Social Care, and a new prepaid card will be issued if applicable.

Safeguarding.

74. You are responsible for notifying the council immediately if there is any risk to the delivery of care and support and report any concerns that you have in relation to safety, abuse, or neglect of the child or young person receiving support.

75. Concerns must be reported to the council to investigate further. You can contact the allocated social care practitioner, the Direct Payment Team, or Self-Directed Support Team or by calling the council on 0345 140 0845.

Complaints

76. If there is a breach of contract by an employee or service provider, in the first instance this must be dealt with by using the procedure set out within the employment contract or agency contract. If this is not successful, the Direct Payments Team can advise who is best to assist in resolving this complaint.

77. Complaints to the council concerning direct payments should be made either online at www.sefton.gov.uk or by contacting Customer Access on 0345 140 0845. A copy of the Council's complaints procedure is also available on the Council's website or the telephone number above.

Data Protection Legislation.

78. Sefton Council are required to participate in the Audit Commission's National Fraud initiative and will share certain limited personal information with other bodies responsible for the auditing or administering if public funds. This is to prevent and detect fraud.

79. The council has a duty to protect the public funds it administers and may use information held about you or the person receiving support for lawful purposes, including but not limited to the prevention and detection of fraud, and matching Council Tax data with Electoral Registration records.

80. The council will also use the information for performing any of its statutory enforcement duties. It will make any disclosures required by law and may also share this information with other bodies responsible for detecting/preventing fraud or auditing/administering public funds.

81. By signing this agreement, you consent to the processing of any personal data or special category data as defined in the current data protection legislation for assessing, implementing and monitoring of direct payments and for complying with any or regulatory requirements or obligations to third parties.

82. All personal information will be destroyed 6 years after the final payment from the council.

Declaration

- I have read the direct payments agreement and understood that I have agreed to be bound by it.
- I understand that failure to comply with this agreement may result in the council ending the direct payment.
- I acknowledge that I have received sufficient information and support relating to the receipt and use of the direct payment and that I am aware of my obligations in receiving the money.
- I understand that I must contact the Direct Payments Team to request DBS checks for employee(s)
- I confirm that I hold an up-to-date copy of the children and family's assessment.

Signed by the person receiving the direct payment and/or managing the direct payment account:	
Start date of agreement:	
Name:	
Address:	
Signature:	Date:
Telephone:	Email:
Name of Child / Young Person:	
Child / Young Person's date of birth:	
Address:	
Executor of Estate / Next of Kin details of Recipient:	
Name:	
Address:	
Telephone:	Email:
Witnessed by:	
Name:	
Address:	
Signature:	Date:
Signed on behalf of Sefton MBC:	
Name:	
Signature:	Date:
Job Title:	

Appendix 2 – Links to Legal Framework.

- Section 17 of the Children Act 1989
  www.legislation.gov.uk/ukpga/1989/41/section/17

- Section 2 of the Chronically Sick and Disabled Persons Act 1970 (provision of services for children in need, their families, and others)
  www.legislation.gov.uk/ukpga/1970/44/enacted

- Section 33 of the Care Act 2014
  www.legislation.gov.uk/ukpga/2014/23/section/33/enacted

- Children and Families Act 2014
  www.legislation.gov.uk/ukpga/2014/6/contents/enacted

- Care and Support (Direct Payments) Regulations 2014
  www.legislation.gov.uk/uksi/2014/2871/regulation/5/made

- The Carers & Disabled Children's Act 2000.
  www.legislation.gov.uk/ukpga/2000/16/enacted

- The Health & Social Care Act 2022.
  www.legislation.gov.uk/ukpga/2022/31/contents/enacted

- The Community Care, Services for Carers & Children's Services (Direct Payments) Regulations 2009.
  www.legislation.gov.uk/uksi/2009/1887/contents/made

- Carers (Equal Opportunities) Act 2004.
  www.legislation.gov.uk/ukpga/2004/15/contents/enacted

- Mental Capacity Act 2005.
  www.legislation.gov.uk/ukpga/2005/9/contents/enacted

- The Special Educational Needs & Disability Code of Practice: 0-25 years
  www.gov.uk/government/publications/send-code-of-practice-0-to-25

- The Special Educational Needs (Personal Budgets) Regulations 2014
  www.legislation.gov.uk/ukdsi/2014/9780111114056

- Equality Act 2010 www.legislation.gov.uk/ukpga/2010/15/contents

Appendix 3 - Glossary

Assessed eligible needs.

The council will not meet every need for care and support that a child or young person has. A child or young person's needs will only be met if they satisfy the eligibility criteria following a children and family's assessment.

Children and Family's assessment.

A Children and Family's assessment decides what help or support a child or young person needs to carry out daily living activities. It is an opportunity to look at a child or young person's strengths and abilities and explore informal and formal support.

Outcomes.

This refers to an aim or objective a child or young person would like to achieve. Agreed outcomes are shown in the children and family's assessment.

Personal Assistant.

A Personal Assistant is chosen and employed to provide the care and support a child or young person needs, which is shown in their children and family's assessment. This may include help with personal care such as washing and dressing, and other help in the support plan such as getting out and about in your community.

Social care practitioner.

This is a professional who works with a child or young person and those close to them to help improve their lives by arranging to put in place the things they need. This includes helping to keep children from harm or abuse and supporting people to live independently In Sefton Council this will usually be a social worker or Family Support Worker.

Appendix 4 – The Care and Support (Direct Payments) Regulations 2014

Conditions which must apply to the making of direct payments

3. Direct payments must be made subject to the condition that they must not be used to pay any person mentioned in paragraph (3) to meet the needs of the adult in respect of whose needs the direct payment is made. The persons referred to in paragraph (1) are
   (a) the spouse or civil partner of the adult.
   (b) a person who lives with the adult as if their spouse or civil partner.
   (c) a person living in the same household as the adult who is the adult's—
      (i) parent or parent-in-law,

      (ii) son or daughter,

      (iii) son-in-law or daughter-in-law,

      (iv) stepson or stepdaughter,

      (v) brother or sister,

      (vi) aunt or uncle, or

      (vii) grandparent.

   (d) the spouse or civil partner of any person specified in sub-paragraph (c) who lives in the same household as the adult; and
   (e) a person who lives with any person specified in sub-paragraph (c) as if that person's spouse or civil partner.