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## Introduction

Direct Payments are fundamental to achieving the Government's aim of increasing people's independence, choice, flexibility and control, by providing personalised alternatives to social care services.

Direct Payments are a mainstream service available to disabled children/young people and their families, following an assessment of need, and commissioners (Social Workers) have a **duty** to offer Direct Payments as an option.

Direct Payment money is paid in lieu of directly provided services for disabled children and their families.

The following guidance and procedure explains the processes to be followed for;

- The provision of Direct Payments as a service following the assessment of need under the Children Act 1989
- The clarification of roles and responsibilities underpinning the provision of Direct Payments
- The monitoring, review and outcomes evaluation of the service

## Principles

- The safety and welfare of the child is paramount
- Being within a family is the natural and most appropriate place for children
- Councils work in partnership with parent/carers;
- Recognise that disabled children/young people are individuals with their own wishes and feelings
- Holistic, multi-agency and co-ordinated family assessments must take account of the needs and views of children and parents.

## Legislation

The power to make Direct Payments to people with parental responsibility for disabled children and to disabled 16 and 17-year-olds was created by the Carers and Disabled Children Act 2000 ('the 2000 Act'). Section 17A of the 1989 Act, inserted by the 2001 Act, gave councils a duty to offer Direct Payments for children's services.

In making Direct Payments under the Act, councils are subject to the general duty, to safeguard and promote the welfare of children in need, and to promote their upbringing by their families when making these payments, in exactly the same way as when providing direct services.

Before making any decision about providing Direct Payments, the council must ascertain and give due consideration to the child's wishes and feelings.

## Consent

Councils may make Direct Payments in the following circumstances:

- Where a person has been assessed as having eligible needs, including disabled children aged 16 or 17, provided that the person is able to consent to the making of the payments either to themselves or to their nominee.
- Where the person with eligible needs does not have the capacity to consent to the making of Direct Payments, the payments can be made to an appointed suitable person who will manage the payments on their behalf.
- For disabled children aged under 16 or for children under 16 for whom a disabled person has parental responsibility, Direct Payments can be made to (and with the consent of) a person with parental responsibility, usually a parent.

## Assessment of Needs

Social Workers will complete an assessment (section 17, section 47 or other assessment). Assessments should be conducted under the Assessment Framework. Following the assessment, if there are needs that the local authority have to meet, a plan will be drawn up of possible commissioned services to meet those identified needs.

Parents/carers and young people can then choose to:

- Take all of those commissioned services
- Take part of those commissioned services and part as a direct payment
- Take all as a Direct Payment

Where there is a difference of views between parents and disabled young people aged 16 or 17, the council should make their own assessment of whether the young person has the ability to manage the Direct Payments themselves. If, in the council's opinion, the young person is able to manage the Direct Payments, with appropriate support, and Direct Payments would be consistent with the council's duty to safeguard and promote the welfare of the young person, then it has a duty to make the payments. If the family choose to explore the option of Direct Payments they should be supported in doing so by the allocated worker.

Commissioners (Social Workers) and their managers will need to be satisfied that Direct Payments are able to meet the needs identified in their support plan. There is a duty to offer a Direct Payment if the criteria are met.

The allocated worker will complete necessary paperwork and provide support for participants to access the scheme and set up the payments, in line with the above responsibilities.

Commissioners will then need to raise a support plan, agreed with the potential participant, and provide them with a copy. The family are entitled to make their own support plan with the Direct Payments they receive.

## Direct Payment Utilisation and Support

A Direct Payment may be utilised to purchase a range of services as part of a disabled child/young person's support plan, such as:

- One to one support to access short breaks,
- To provide personal care within the home; or
- Support to access community-based provision

Direct Payments also allow carers to purchase the services they are assessed as needing as carers to support them in their caring role and to maintain their own health and well-being. Making Direct Payments in this way should not affect the carer's entitlement to any welfare benefits.

Parents/carers may use Direct Payments to purchase services of an intimate nature to meet the assessed needs of their disabled children. However, as children mature, parents should be encouraged to give greater weight to the child's views about how their intimate care needs are to be met. Particular care should be taken to ascertain the child's wishes when they have a specific cognitive and/or communication need.

If parent/carers/young people decide to take Direct Payments the council (or a third party) will offer a range of support to help them manage this, such as:

- Support people to decide how they wish to use their payments. i.e. employment/service providers
- Support with working out how to budget the Direct Payments. i.e. how much participants can pay their workers if employing staff
- Support with job descriptions and job advertisements
- Placing adverts, job applications and arranging interviews
- Advice about employment contracts, staff management & employment law
- Finding Employers Liability Insurance
- Advice about Health & Safety Legislation, Tax and National Insurance
- Assisting with Children and Young Peoples Service financial monitoring requirements
- Offering advice on payroll service for participants
- Providing access to DBS checks on personal assistants
- Organising training courses for participants and their personal assistants
- Answering queries about payment

## Exceptions

Direct Payments cannot be made in relation to the provision of residential accommodation for a disabled child or disabled young person for any single period in excess of 17 days, and for more than 75 nights in any period of 12 months. The time limit is imposed to avoid inappropriate use of residential accommodation.

The Children and Young People's service will not, make Direct Payments to enable people to purchase equipment or adaptations that would otherwise have been provided by a disabled facilities grant or by the council.

Direct Payments cannot be used to purchase support for a health care task i.e. A task or service that remains the responsibility of the National Health Service to manage and review.

Direct Payments cannot be used to purchase services or equipment for which the council is not responsible

Unless a council is satisfied that it is necessary to meet a child/ young person's needs, and that it is necessary to promote the child's welfare, a council may not allow people to use Direct Payments to secure services from:

- A spouse (husband or wife);
- A civil partner;
- The other member of the unmarried or same-sex couple of which they are a part; or
- A close relative with whom they live or the spouse or partner of that close relative.

Direct Payments cannot be used to support parent/carers or children/young people to work.

## Payment

Direct Payments are paid in advance direct to the responsible budget holders bank account and must be used to provide services as a part of the child/young person's support plan.

Direct Payment recipients can use their own resources to purchase additional support if they wish to do so. If individuals want a service that is more expensive than another that would adequately meet need then the Direct Payment recipient should meet the short fall in cost.

Individuals should be made aware of their legal responsibilities in terms of providing written details of the main terms of the employment contract within two months of commencement of the employment. Any changes to the terms must also be notified in the same way.

The essential terms that must be provided include:

- The date on which employment commenced;
- Hours of work;
- Particulars of remuneration (which must meet the national minimum wage);
- Place of work;
- Job title;
- Whether the job is fixed term or permanent;

Direct Payments will not be paid without the appropriate authorisation being completed properly and received by a Team Manager.

All payments need to be authorised by the commissioning workers and their managers. Payments for carers above normal limits must be agreed by a service manager or senior manager.

## Rates of pay

Hourly Rate £N is equivalent to 1 hour of commissioned services.

Night Care flat rate £N between 10pm and 7am if the child sleeps if not then the hourly rate will be used.

*(£N to be reviewed annually and published on the contract with recipients of Direct Payments)*

The local authority will fund;

- Public liability insurance
- Annual leave

- Pensions; where applicable

All expenses for any activity for the child/young person are the responsibility of the parent/carer.

All Direct Payments monies will make up a notional budget and should not be seen as a like for like hourly wage.

The council might decide that they are able to increase the amount of the Direct Payments to enable the person to arrange support in a particular way if it is satisfied that the benefits of doing so outweigh the costs and that it still represents best value.

## **Auditing**

Recipients of Direct Payments are required to complete 2 monthly returns confirming that payment has been used and spent as agreed within the child/young person's service plan.

## **Suspension of payments**

Should the Local Authority become aware of any misuse of Direct Payment funds or there are concerns in respect of the health and welfare of a disabled child/young person receiving Direct Payment support, the payments will be suspended pending further enquiries.

## Safeguarding and Welfare

Under the Children Act 1989 the “welfare of the child is paramount” and therefore, covers the provision of services by the Council.

Where a child is assessed as needing services under section 17 of the Children Act 1989, the local authority has to be satisfied that the Direct Payments will ‘safeguard and promote’ the welfare of the child for whom the service is needed.

Safe and Appropriate care arrangement of the Child/Young Person include the requirement that all carers employed to look after the child will complete an enhanced DBS check.

The Children and Young Peoples Service has a duty to satisfy itself that any person being engaged to work with children does not knowingly present a risk to that child. Parents of disabled children should be aware of this requirement, designed to safeguard the welfare of children/young people when purchasing support via Direct Payments.

It is an offence for any barred person to work with children in the areas covered by the scheme, or to seek or offer to do so. Anyone convicted of this offence may be liable for a prison sentence of up to five years and a fine.

The Child Care Act 2006 states that anyone caring for a child under 8 for over two hours a day and for payment in their own home has to be registered with Ofsted as a childminder.

Parents/carers must satisfy themselves that any worker employed under Direct Payments is suitable to provide care for their child and under no circumstances can a worker be engaged to work with a family until appropriate checks have been completed.

Children and Young Peoples Service will consider the health and safety implications of Direct Payments, both for themselves and for recipients. Individuals should accept that they have a responsibility for their own health and safety, including the assessment and management of risk. They should be encouraged to develop strategies on lifting and handling and other tasks, both in the home and outside the home.

## Reviews

The frequency of monitoring will be dictated by the length of time the person has managed Direct Payments (either alone or with help) and their particular circumstances.

Once the local authority service is satisfied that a person is managing the Direct Payments satisfactorily, reviews should be conducted at the same intervals as for other people receiving services provided or arranged directly by the council.

For example, people with fluctuating conditions might need monitoring every few months, rather than once or twice a year.

For children identified as needing services under section 17 of the 1989 Act, reviews may be necessary more often so that the council remains satisfied that the Direct Payments promote and safeguard the welfare of the child. It is good practice to review plans for children in need including financial monitoring in the community at least every six months.

The recommendation for the review process following setting up a new Direct Payment Service is to review:

- within 4 weeks
- then at 3 months
- then 6 monthly

## Glossary

**SEND** – Special Educational Needs and Disabilities

**EHCP** – Education, Health and Care Plan

**Local Offer** – The website that outlines the support and opportunities available to SEND families within the area

**Direct Payment** – Money paid in lieu of directly provided services for disabled children and their families.

**Personal Budget** – Money paid to families in lieu of directly provided services in order to deliver an EHC Plan.

**Registered** – An individual or organisation registered with the Care Quality Commission and/or Ofsted.

## Further queries

If you have any queries about accessing Direct Payments, further information is available via the [SEND Local Offer](#).