

Children's Direct Payments Guidance

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This guidance document explains the detail of a complicated process.

We provide a simplified version which probably meets most people's needs. [View the quick guide online](#) or contact the Children and Young People's SEND Brokerage Team on 01438 844254 for a hard copy.

If you need more detailed information please read this guidance.

Forms and other documents mentioned in this guidance can be obtained from the CYP SEND Brokerage Team.

This information can be made available upon request in other formats, including large print, Braille, audio and other languages.

**Hertfordshire County Council
Children's Services**

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1. Introduction

The Community Care (Direct Payments) Act 1996 ('the 1996 Act') first allowed Local Authorities to make a payment directly to adults (from age 18-65 years).

The Carers and Disabled Children Act 2000 extended eligibility to include 16 and 17 year olds, and those with parental responsibility for disabled children. This was achieved by inserting Section 17A in the Children Act 1989.

The power to provide direct payments under the 1996 Act and those deriving under the 2000 Act were superseded by the provisions of Health and Social Care Act 2001 ('the 2001 Act').

The Health and Social Care Act 2008 amended existing legislation to extend the scope of direct payments. This resulted in the Community Care, Services for Carers and Children's Services (Direct Payments) (England) 2009 Regulations which were supplemented by Guidance issued by the Department of Health on Direct Payments for Community Care, Services for Carers and Children's Services: England 2009. The 2009 Guidance sets out how local authorities should develop and administer their direct payment schemes.

The Children and Families Act, 2014 (section 49), the Statutory Guidance Special Educational Needs and Disability Code of Practice 0 to 25 years (2014), the Special Educational Needs and Disability Regulations 2014 and the Special Educational Needs (Personal Budgets) Regulations 2014 made provision for personal budgets to be available to children and young people with an EHCP.

2. What are direct payments?

Direct payments for disabled children are payments made under section 17 of the Children Act 1989 to parents of disabled children (or disabled children aged 16 or 17) and through the SEND Regulations 2014 to meet their assessed needs.

The payments are made in lieu of direct provision of some or all of the service. For social care, the council will raise the possibility of electing for, switching to, or combining a package of services and direct payments with disabled children and young people, their parents / carers, at or between their reviews. For education, the parent can request direct payments when the EHCP is being drafted or reviewed, for educational provision identified within the EHCP.

For social care, the assessed need may be either the child's needs, or the family's needs (by virtue of their role as carers, assessed through a Carer's Assessment, for the disabled child) or both.

In meeting assessed need through direct payments, the Council enables the recipient of the direct payment to have independence by choosing the service they require, and by controlling how that service is delivered. The key elements of independence, choice and control are fundamental to recent government policy set out in the green paper, 'Support and aspiration: a new approach to special educational needs and disability'.

3. Who is eligible for direct payments?

To be eligible for a Direct Payment, an individual must be assessed under the Children Act 1989 and/or the Children and Families Act, 2014 (section 49), the Statutory Guidance Special Educational Needs and Disability Code of Practice 0 to 25 years (2014) as needing a service.

The Council may make direct payments to the following individuals:

- Persons with Parental Responsibility for a disabled children (as defined by the Children Act 1989);
- Some disabled young people aged 16-17 years, following a Mental Capacity Assessment, who meet the threshold for a service.

The 2009 Regulations provide that individuals can insist on a direct payment in certain circumstances. The central criteria are:

- the recipient consents to the making of a direct payment
- It appears to the Council that the recipient is able to (with assistance) manage the direct payments.
- the Council is satisfied that the child's welfare will be safeguarded and promoted by the means of a direct payment.
- the individual is not excluded from receiving direct payments. See Appendix 1 for a list of excluded individuals.

Where there is a court appointed deputy, for example to manage a child's compensation financial affairs, a family may request that the deputy also manages the direct payments. The relevant¹ worker will discuss this with the family to determine whether the requested arrangements will be acceptable, taking account of practical and safeguarding considerations.

A direct payment can be made either for part or for the whole of the total social care package of care which has been agreed to meet the assessed needs of a disabled child and their family or the education provision agreed to meet the outcomes set out in the EHCP.

A direct payment can be made to a child aged 16 or 17 either to meet their assessed needs consequent to their disability, or to meet their needs as a carer (a carer's assessment, young carers assessment and/or a mental capacity assessment may be undertaken).

A recipient of existing directly provided or commissioned services may later opt to receive a direct payment in lieu of part or all of those services.

A direct payment should not be made to a person who is not willing to enter into an agreement with the County Council, or is not able to demonstrate that (with assistance) they can meet the required responsibilities of financial

¹ 0-25 Together worker for social care or the SEN worker for education

management including expenditure. A direct payment may also be refused on the grounds that it will not be used to promote the child's welfare.

4. Transition into adulthood

In Hertfordshire for social care the provision of a Direct Payment changes as a young person becomes an adult, and by the age of 18. Existing recipients of Direct Payments under Children's Services arrangements will be reassessed as part of their preparation for adulthood to determine their future level of Direct Payment as a young adult, this will include application of the Councils Charging Policy for Disabled Adults. Families will need to engage with processes in preparation for their child's transition to adult service arrangements, which are managed through the 0-25 Together Service.

For education the EHCP may be agreed up to the age of 25 and where direct payments are agreed for education provision within the EHCP beyond the age of 18 these will remain payable through this policy.

It is anticipated that young disabled people of 16 or 17 may wish to take control of their direct payment that had previously been managed by their parent, as part of their preparation for adulthood. This could include taking control of just part of the payment, and increasing this gradually over time.

Direct payments can be made to an individual who has parental responsibility for a disabled child until the child reaches 18. There may be situations where upon reaching 18, the young person lacks the mental capacity to consent to the direct payment. In such cases it will often be appropriate for the person with parental responsibility to act as a Nominee and open a joint bank account, or to continue receiving the direct payment in the role of a Suitable Person if they are willing to do so. You may wish to access further information about money and financial advocacy, your caseworker can support you and there is a helpful website [Dosh – Financial Advocacy – Dosh supports people with a learning disability to be able to manage their money.](#)

5. What direct payments can be used for

Direct payments must be used to meet an assessed need for a child/or young person.

Direct Payments can be used in the following ways:

- Employing a Personal Assistant (PA), and for education provision other professionals may be employed
- Contracting with a local service or agency
- Volunteer expenses.

Services to meet the needs of the family – social care

The direct payment may be used to purchase goods or services to meet the family's needs and identified outcomes which are set out in Plans that you have agreed with the Council. This may include:

- The provision of personal care
- support workers or services in the community, such as play-schemes, organised groups, youth clubs, enabling / outreach services, travel training, behaviour support, overnight breaks
- to pay for beneficial activities such as swimming lessons, guitar lessons, keep fit sessions, attending a social activity etc
- to pay for help needed in getting to visit a relative or friend who is going to provide a short break instead of a service
- volunteer expenses

The disabled child's sibling(s) may, if appropriate, participate in the activity with the disabled child. Things to consider are the ability of the carer to supervise the number of siblings involved safely and with regard to each of their needs; commonality of interest in and suitability of the activity. There may be occasions where the carer assists a parent to take siblings out together.

More details are provided below.

Services to meet the needs of the child – education

The direct payment may be used to purchase provision to meet the child's needs or outcomes identified in the EHCP with the agreement of the Council. This is in exceptional circumstances where releasing a personal budget will not be detrimental to other children, and only with the approval of the head teacher or principal of the education setting. This may include:

- The provision of support
- Educational resources
- Therapeutic interventions and beneficial activities

The detail of the support agreed will be explained in the EHCP. Some of the guidance below is relevant for educational use of direct payments.

Employing a Personal Assistant (PA)

Common ways in which a direct payment is/can be spent include:

- To deliver personal care for a disabled child/ young person;
- To take the young person/child into the community to access an activity, support inclusion, pursue a favoured activity, going to a club, holiday play scheme, meeting up with friends etc;
- To work with the child directly within the home, to give parents and siblings a break and time for other activities;
- To stay overnight to give parents a break, in exceptional circumstances;
- To undertake domestic work like cleaning and laundry

Employment matters for PAs and other support workers

It is important to explore whether the prospective PA understands that as a paid employee they will have a contractual agreement and that the direct payment recipient will become their employer, and as such whether the PA is happy to continue to provide this care / support.

It is important that the prospective PA understands that the Council may check its internal information systems when responding to information the Council is or becomes aware of concerning the suitability of a carer / PA. Please see chapter 12 for more information.

Paid employment will also affect benefits and tax payments if this is a second job.

Employees, including Personal Assistants, have a right to access a workplace pension scheme. Please see the Employing a PA Factsheet for more information.

Ofsted Childcare Regulations may apply to the employee. Further information is provided below. Direct payment recipients should be advised of these regulations, including where registration is compulsory and exemptions. The Children and Young People's SEND Brokerage Team should be consulted for further advice where the application of the regulations to a particular arrangement is not clear. The Children and Young People's SEND Brokerage Team can be contacted on 01438 844254.

Contracting with a local service or agency to support

Direct payments can be used as follows:

- Personal care
- Access to community resources, pursue a favoured activity, support inclusion, meeting up with friends
- Participation in organised group activities
- Residential care such as in a carer's family home, a residential home or other arrangements for example going to a holiday park (subject to the direct payment regulations – see chapter 12 for some restrictions that apply)
- To undertake domestic work like cleaning and laundry
- For education direct payments for educational provision

When managing payments to service providers please consider whether you want to check the accuracy of what you are being charged prior to payments being made from your account. If so, it is advisable not to authorise payment transfers to organisations you want to pay where the organisation can collect varying amounts on each occasion. You may prefer to arrange a payment for each invoice upon receipt; one-time only payments can be made through online or telephone banking.

Direct payments can also be used by young people living in care homes to buy a day service place or engage in alternative day time activity, this can be particularly enabling for young people at transition stage.

Ofsted Childcare Regulations may apply to the service provider. Further information is provided below. Direct payment recipients should be advised of these regulations, including where registration is compulsory and exemptions. The Children and Young People's SEND Brokerage Team should be consulted for further advice where the application of the regulations to a particular arrangement is not clear. The Children and Young People's SEND Brokerage Team can be contacted on 01438 844254.

Direct Payment Carer Finder Services

Direct payment recipients may wish to use organisations that offer a finding service for carers. The services offered may vary between agency so it is important to clarify what is and isn't provided as recipients will be responsible for the cost.

Ofsted Childcare Regulations

A carer or childcare provider is required to register with Ofsted where he/she looks after a non-related child under the age of eight in domestic premises (this could be either the carer's home or the child's home) for reward unless any of the exemptions below apply.

It is important that people with parental responsibility for disabled children have satisfied themselves that the person offering help with the care of their child is an appropriate person. Parents must verify that a Childminder/childcare provider is Ofsted Registered before engaging in the use of their services.

The difference between childminding and childcare on domestic premises is the number of people involved. If four or more people look after children at any time, they are providing childcare on domestic premises, if no more than three people are providing care on domestic premises this is childminding.

As part of its registration process, Ofsted undertake an enhanced DBS check on the individual. Also, if the individual is applying for childcare on domestic premises, Ofsted must also carry out checks on individuals living or working on domestic premises where the childcare is provided who are aged 16 and over. Please refer to Ofsted guidance or contact the Children and Young People's SEND Brokerage Team for more information. The Children and Young People's SEND Brokerage Team can be contacted on 01438 844254.

The Childcare (Exemptions from Registration) Order 2008 specifies circumstances in which the provision of childcare does not attract the requirement for registration in the early years register or the general childcare register.

A summary of the circumstances specified in Articles 3 – 9 is as follows:

- Article 3 - exempts childminding where it is provided by the childminder for the children of a limited number of parents wholly or mainly in their homes, for a particular child for two hours or less per day between 6pm and 2am **or** where it is provided in the course of a friendship with the parents of that child and the provision is not made in exchange for payment.
- Article 4 - exempts childcare provision in hotels, guesthouses or similar establishments for children who are staying there, where the person providing it does so only between 6pm and 2am for no more than two clients at the same time.
- Article 5 - exempts childcare provision for children on a temporary basis in specified circumstances. If an individual cares for children under eight for four hours or less each day and the care is for the convenience of parents who plan to stay on the premises where the care is being provided or within the immediate area².
- Article 6 - specifies childcare provision where the person providing it does so incidentally to providing other activity for children aged three or older.
- Article 7 - exempts open access scheme for children who are not in the early years age group. However, where an individual offers provision for

² The Ofsted guidance (Registration not Required) provides that this type of provision has no long-term commitment to provide care for children – for example, a shoppers' crèche, a crèche attached to a sports centre or adult learning centre, or an exhibition – and covers services where children do not necessarily attend every day.

children in the early years age group who attend for more than two hours in any one day, you must register on the Early Years Register and meet its requirements. Childminders are not allowed to provide an open access scheme for children under eight.

- Article 8 - exempts childcare provision where the person providing it does so incidentally to the provision of education to a child under a home education arrangement.
- Article 9 - If a school or academy that provides education or care for children aged three and over, where at least one child being cared for is a pupil of the school.

Volunteer expenses

One way that personal budgets are being used is for volunteer expenses. This can be particularly useful, where the individual has someone to provide support on an unpaid basis. The direct payment recipient can feel less dependent and more able to ask for help if they can cover the expenses incurred such as fuel costs or lunch. Regular payments to someone are taxable, however volunteer expenses are not. They are intended to reimburse expenditure in undertaking a voluntary activity.

The volunteer would need to sign a volunteer agreement, there is a template in the Employing a PA Factsheet. The volunteer will also need to undertake a DBS check as outlined in chapter 12 below. They would also need to complete expense sheets to claim their expenditure. This is essential to show they are not receiving a taxable payment.

Direct Payment for purchasing Equipment

The Council would not normally consider the option of direct payments for equipment. In the spirit of personalisation the Council would consider this in exceptional circumstances where there is an identified need that cannot be met through the normal routes, i.e. through occupational therapy services and Hertfordshire Equipment Service. Decisions will be taken by the Head of Service.

6. What Direct Payments cannot be used for

Direct payments cannot be used to purchase any of the following:

- Services directly from Hertfordshire County Council (e.g. Shared Care);
- Services already provided by the Council through commissioned services e.g. residential or outreach support services; holiday play schemes. However direct payments can be used to purchase additional services, outside of Council contracts, from service providers;
- School or college places
- Residential accommodation for the child for any single period of longer than four weeks, or for more than 120 days in any one year³;
- Any activities or purchases that are illegal;
- Any form of gambling such as horse racing, lottery or bingo;
- everyday costs such as bills, rent / mortgage, council tax, or to repay debts;
- Alcohol, drugs or cigarettes;
- Any activities or purchases for which other statutory agencies (such as the NHS, DWP or Education) are responsible;
- Where funding can be obtained from other sources, for example, the Home Support Grant or the Disabled Facilities Grant;
- Employing relatives who normally live with the individual, except where the County Council is satisfied that securing the service from such a person is necessary for promoting the welfare of the child. See chapter 8 'Employing Relatives'.
- Fuel cannot be purchased, mileage or travel expenses can be reimbursed

It is inappropriate to use a direct payment to deal with a crisis or emergency including emergency (unplanned) residential care. In this situation the family should contact the 0-25 Together Team if further support is being sought through the Council.

The Council may not restrict the use of direct payments by (for example) directing that only certain providers may be used.

³ Children can receive additional weeks in a care home once they have reached the four week maximum however this cannot be purchased using direct payments, but if the Council considers that a longer stay is needed, it can arrange and fund stays for the child itself.

7. Flexibility in use

Direct payments allow parents and young people greater choice flexibility and control, to employ their own workers at times convenient to them and in the way they wish, to provide an individual service to meet their needs.

The support required by a disabled child or young person may follow a pattern if it is needed at regular times and for the same number of hours each week. For example: an hour each morning during the week to help with getting up and ready for school or college; three hours each week to support attendance and participation in a social activity. In these circumstances the number of hours of direct payments will be expressed as a weekly allocation.

Other children and young people may have more variable needs requiring flexible use of support packages. Direct payment hours can be annualised or weekly hours can be banked and agreement reached about the time period in which any under-spend is adjusted ('clawed back'), for example within a month, a quarter or annually, to give the recipient maximum flexibility.

The use of direct payments is monitored quarterly by the Council's Brokerage Support Team to ensure that the package is working. A large unspent balance may indicate a problem in managing the payment or securing services to meet assessed needs. The monitoring information informs the discussion about the care package in the child's review meeting.

A direct payment lump sum can be made for occasional or fluctuating use. This can be appropriate for education provision which may vary term by term.

Direct payment recipients are permitted to pool their social care payments to enable several disabled children or young people to participate in shared activities. Further details about this flexibility are provided in chapter 14.

Direct payments do not affect benefits for the recipient.

8. Employing Relatives

The 2009 Regulations prohibit local authorities from allowing an individual who has parental responsibility for a disabled child or a 16 or 17 year old disabled child to use direct payments to secure services from the following family members except where the County Council is satisfied that securing the service from such a person is necessary for promoting the welfare of the child:

- (a) the spouse or civil partner of the prescribed person;
- (b) a person who lives with the prescribed person as if their spouse or civil partner;
- (c) a person living in the same household as the prescribed person who is the prescribed person'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 prescribed person;

and

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

Circumstances where a person above may need to be employed as a carer in order to promote the welfare of the child may include the following, which are given as examples:

- Communication difficulties where only the family member can understand communication of needs.
- Geographical location preventing access to provide care i.e. a remote location
- Unpredictability of times that support is required with consideration for the nature of any night-time support
- Cultural or religious factors that cannot be found in the local community
- Mental health considerations such as severe anxiety, etc.

To ensure that the proposed arrangements are suitable, the 0-25 Together Team worker will carry out an assessment of the household arrangements with regard to the care to be provided through the direct payments. This will include:

- The impact of being a carer
- Employment matters (see below)
- The ability to provide safe care
- Any safeguarding and protection concerns
- Any other risks or consideration arising from the family's circumstances

Please refer to chapter 12 for further information about how the Council will check any safeguarding and protection concerns.

The 0-25 Together Service will consider the above circumstances and will discuss with the family whether the informal carer is happy to continue with this role paid or voluntarily.

It is also important to explore whether the prospective carer understands that as a paid carer they will have a contractual agreement and that the cared for person will become their employer, and as such whether the carer is happy to continue to provide this care. Paid employment will also affect benefits and tax payments if this is a second job.

9. What is the process for setting up a Direct Payment?

The child and/or family's needs are first assessed by a member of the 0-25 Together Team or Integrated Services for Learning (ISL). The term 'worker' below will apply to either depending on whether the direct payments are for social care or educational use.

It is important that all options for receiving services are discussed, including commissioned services, and that the parent and/or young person understands that opting for direct payments is a choice.

The worker will explain the Direct Payment policy to the parent and/or young person and the implications and responsibilities of receiving a direct payment.

Where an individual wishes to consider direct payments the worker will:

- Discuss the proposed plan for how direct payments will be used to meet the needs and outcomes identified in the care plan or EHCP, including the flexibility of the arrangements, and regularity of monitoring requirements and
- make an assessment as to whether the parent/carer or young person is willing and able to administer direct payments, with appropriate support being provided.

Decision Making

If the worker is satisfied that the child's welfare will be safeguarded and promoted by the means of a direct payment, and that other children will not be adversely affected by this use of funding where it is proposed to be taken out of specialist provision that meets the needs of several children, he/she will then present a request to the appropriate decision maker for decision on the level of allocation and whether direct payments are the most appropriate option to meet the need and how the funds should be allocated.

Once agreed, the Children and Young People's SEND Brokerage Team will send a direct payment pack to the direct payment recipient including the Direct Payment Legal Agreement, DBS information and Declaration of Criminal Records form, a leaflet about the Leonard Cheshire Direct Payment Support Scheme and bank details form.

Financial Arrangements

The direct payment recipient will be required to:

- Set up a separate current bank account with a UK clearing bank or building society, which must be used for direct payments only. This is to ensure

money received for the direct payment can be separately identified from their own personal finances.

- Sign and return a Direct Payment Legal Agreement. A copy of the legal agreement is kept with the Council's Brokerage Support Team;
- Direct payments will start from the date when the DBS check / Declaration has been completed and all the completed paperwork is received by the Children and Young People's SEND Brokerage Team.
- If a decision is made to increase your payments, the increase will take effect from the date the amended Direct Payment Legal Agreement is received by the Children and Young People's SEND Brokerage Team
- Payments are made by BACS.

Monitoring Requirements

Once direct payments have started the recipient is required to submit bank statements on a quarterly basis to the Council's Brokerage Support Team. These will clearly identify the income and full details of their expenditure on the direct payments account. The recipient submits copies of the direct payment account bank statements together with a cover sheet, this can be done electronically by email where preferred.

The Brokerage Support Team will write to each recipient at the beginning of each year with the dates for payments and monitoring returns. These dates are set quarterly. When a direct payment is initially set up, the first return is likely to be required sooner than the period required to correspond with the relevant return date.

Quarterly periods applying each year are available from the Brokerage Support Team. As a guide, an initial return will be requested when the Direct Payment has been in place for between one and three months.

The Council will routinely request further information to supplement the information provided on bank statements for up to 10% of returns each year. Direct payment packages to be checked will be selected randomly and we would not expect the same package to be checked the following year unless there was a specific need to check something as outlined in the next paragraph.

In addition, the Council will carry out spot checks with individual direct payment recipients including when there is a need for further explanation or clarification of the bank statements returned and how the direct payments are being used.

Further checks will involve looking details of expenditure including invoices and receipts. It is important that records of receipts and invoices for all expenditure are held by direct payment recipients for a period of six years.

Children's review meetings will include a focus on how the direct payments are being spent. Please see chapter 16 for further information.

10. Direct payment rates

The amount of direct payment an individual will receive is based on the outcome of their assessed needs.

The 2020/21 social care £14.03 per hour from 1st July 2020. Rates for education vary depending on the type of provision to be funded.

The direct payment rate includes an element for expenses and contingencies; support is available to help direct payment recipients with budgeting.

Where the assessment of the child/young person's needs, indicates that there is a requirement for a higher level of support than the one to one support usually provided; consideration for additional funding will be awarded. Where the support required is a two adults to one child basis, the hours allocated will be doubled.

National guidance provides that the Council is not obliged to fund the particular costs associated with the individual's preferred method of securing a service if the costs exceed the Council's estimate of the reasonable cost of securing it and the service can in fact be secured more cost effectively (to the required standard) in another way. The Council may increase payments if it is satisfied that the benefits of doing so outweigh the costs and it still represents best value.

Direct payment recipients can use their own resources to purchase additional or better quality, services if they wish to do so.

If providing access to a pension scheme for your personal assistant has an impact on the amount of your direct payment, Hertfordshire County Council will adjust your direct payment to cover this. Once you've contacted Leonard Cheshire, and have identified how much additional funds you may need, please let your Brokerage Support contact know and they will take you through the next steps.

Brokerage Support East: csfeastarea.directpayments@hertfordshire.gov.uk

Brokerage Support West: csfwestarea.directpayments@hertfordshire.gov.uk

In cases where individuals disagree with the total value of the direct payment, where this cannot be resolved through informal discussion, the individual should be advised of their option to pursue this through the Children's Complaints Procedure. The 0-25 Together or SEN Team worker should provide further information about the complaints process at this point and refer the individual to the procedure.

11. How often are direct payments made?

Direct payments are paid in advance into a bank or building society account specifically set up for this purpose.

Payments are made in advance, for a four-week period. There are therefore 13 four week payments in any year.

The calculation is based upon the assessed number of hours per week, or averaged per week for more flexible support packages. For the purposes of calculation the week starts on a Sunday.

Where payments increase, in line with the assessment, for part of the year (e.g. school holidays) the family should be offered a choice of enhancing their payment for those periods, or of increasing the amount of the four-weekly payment so as to cover the additional cost of the holidays.

The Council will endeavour to work with families to implement arrangements which need additional flexibility such as one-off payments. See chapter 7 above.

An example of a calculation for fixed hours throughout the year:

A (Hours agreed per week): 10

B (Hourly rate 2020): £14.03

$A \times B = C$ (Weekly payment): £140.30

$C \times 4 =$ Four weekly payment: £561.20

An example where hours are increased during the school holidays:

A (Term time hours per week): 5

B (Term time weeks per year): 38

C (Holiday hours per week): 8

D (Holiday weeks per year): 14

$(A \times B) + (C \times D) = E$ (Total hours per year): 302

F (Hourly rate 2020): £14.03

$E \times F = G$ (Total payable per year): £4237.06

$G / 13 =$ Four weekly payment: £325.93

One-off start-up costs

In addition to the agreed hourly rate, one-off start-up costs of up to £500 may be paid to cover recruitment costs, insurance and other up-front costs. Where a direct payment recipient uses the support provided by Leonard Cheshire Disability Direct Payment Support Scheme (see chapter 17 below), Leonard Cheshire will invoice the council directly for the costs incurred. Over the course of the first year receiving direct payments the recipient will need to budget and save for future costs e.g. insurance, re-recruitment.

It is also possible for the Council to advance direct payments, (in effect lending to the recipient), so as to ensure that the recipient has sufficient funds to meet larger one-off costs. This is particularly likely to be appropriate for smaller payments.

Remittance Advice

Remittance advices will be sent to direct payment recipients via email using the email address provided at the time the bank details are set up. Paper remittances are no longer available.

12. Disclosure and Barring Service (DBS) checks

[Disclosure and Barring Service](#) (DBS) checks (previously CRB checks) are a crucial part of a safe recruitment process to employ a suitable person.

Guidance issued by the Department of Health states that parents, as the employers, retain the choice as to whether or not they carry out a DBS check on an employee. The Department of Health has clarified that councils should work in partnership with parents to help them make arrangements that are designed to safeguard and promote the welfare of the child.

The Council strongly recommends that any prospective employee working with children should have an enhanced DBS check. The importance of DBS checks will be discussed with all families by the 0-25 Together or SEN Team worker, the reasons for carrying out the check and the risks of not doing so will be explained.

A copy of the prospective employee's DBS check certificate and the Declaration of Criminal Records Form can be retained on the child's social care or education record.

The Direct Payment recipient agrees to obtain a DBS check from a prospective employee:

The Council will carry out DBS checks where requested to do so by the direct payment recipient. The Council meets the costs of this check directly.

Prospective employees are also required to complete a Declaration of Criminal Records Form and return this to the Council.

The Direct Payment recipient has declined to obtain a DBS check from the prospective employee:

The Council will only offer a direct payment when it is satisfied that the arrangements are designed to safeguard and promote the welfare of the child. Therefore, if there are significant concerns about a proposed employee, or the parent/carer's ability to assess suitability, the Council may refuse to offer a direct payment. Please refer to the sub-section below on page 26: Suitability of direct payment employees and prospective employees.

A decision not to obtain a DBS check will not result in an automatic refusal of direct payments. However, the direct payment recipient will be required to undertake a risk assessment. The Council will provide support and attend the risk assessment interview. A copy of the prospective employee's risk assessment be retained on the child's social care or education record.

Once the risk assessment has being undertaken, the Council will decide whether the proposed arrangements safeguard and promote the welfare of the

child. Where this is agreed the direct payment recipient is required to sign a Declaration. By signing the Declaration, the direct payment recipient accepts that the 0-25 Together or ISL worker may undertake further reviews and unannounced visits.

If the direct payment recipient does not sign a Declaration, direct payments will be refused on the ground that the recipient is not willing to enter into agreement with the Council.

Direct payment recipients should be aware of the offence under the Safeguarding and Vulnerable Groups Act 2006 (as amended by the Protection of Freedoms Act 2012) if any person permits an individual to engage in regulated activity if he knows or has reason to believe that the individual is barred from that activity and the person engages in the activity.

In all cases prospective carers are required to complete a Declaration of Criminal Records Form and return this to the Council.

Process of obtaining a DBS check

The Children and Young People's SEND Brokerage Team will include information about DBS checks and the Declaration of Criminal Records Form in the direct payment pack which is issued when direct payments are being considered.

The DBS check will be initiated by the Children and Young People's SEND Brokerage Team or by the Leonard Cheshire Direct Payment Support Scheme. The aim is to initiate the process within 2 weeks of the direct payment recipient requesting a DBS check for their prospective employee. If a prospective employee has had an enhanced DBS check for the Children's Workforce and has maintained registration with the Update Service, a new check may not be required.

When submitting the details for a DBS check it is strongly recommended that the home based care option is selected, even where the direct payment recipient does not envisage that the child / young person will receive care/support in the prospective employee's home. Experience tells us that over time the nature of the care/support provided can change. By selecting this option at the outset, the DBS check will include a check of others living at the prospective employee's address with whom the child / young person may come into contact. This prevents the need for a re-check at a later stage.

The direct payment recipient can request a re-check.

Pending the outcome of the DBS check where the need for support is immediate, the direct payment recipient may want the prospective employee to commence employment. In such circumstances the risks of proceeding will be explained by the Council and the direct payment recipient is required to sign a Declaration.

Where the prospective employee is unwilling to disclose the results of the DBS check, the Council strongly recommends that the direct payment recipient does not employ that individual. In cases where the recipient insists upon employing a person who is unwilling to provide evidence of the DBS check outcome, the Council will consider the risks and any concerns and will either refuse the direct payment or require a Declaration to be signed.

The Council will be notified by the DBS if there is adverse information on the outcome of a DBS check. The Council will notify the direct payment recipient where there is a trace. Please see below for information about what to do if there is a trace.

Appendix 2 provides a list of offences (a) where a person is barred from working with children, and a further list of offences (b) which do not automatically mean that a prospective employee is restricted from working as a direct payment carer with children. The Council will provide support to the Direct Payment recipient to carry out a risk assessment.

Where there is no trace

It is important to ensure that direct payment recipients are aware that if a DBS check reveals no offences on the prospective employee's record this does not necessarily mean that the employee is suitable to work with children. A safe recruitment process will ensure that there is evidence of a person's suitability to work with the child / young person through appropriate interview questions, references and maybe a trial period. Please request the sample Professional Reference Template if this would be useful to you.

Even where there is no trace on a DBS check, a direct payment recipient may decide that the prospective employee is unsuitable to provide the care/support. This may be based on the outcomes of interview, references, induction or trial period.

Where there is a trace

If there is a trace on the DBS check, the direct payment recipient is required to:

- Engage in a risk assessment with the prospective employee to discuss the offence/information and the circumstances relating to it; the Council will provide support to the direct payment recipient to carry out a risk assessment;
- If the information in the DBS search result is disputed by the prospective employee, seek confirmation as to whether they intend to make representations to the DBS within 28 days;
- If yes, the risk assessment will need to stop and resume once the dispute has been fully investigated by the DBS;

- Agree not to employ the prospective employee pending the outcome of the investigation. In this situation, the Council will arrange alternative services to meet the identified needs of the individual;
- Resume the Risk Assessment once the DBS has investigated and decide whether to employ the prospective employee;
- Agree not to employ the prospective employee where the DBS results reveal that they are barred from working with children;
- Disclose the outcome of the Risk Assessment to the Council where the offences outlined in Appendix 2 (a) have been committed;
- Obtain a copy of the prospective employee's DBS Certificate and their consent for this to be sent to the Council's Human Resources Safe Staffing Team.

The Council will then consider the risk assessment. The Council's main aim is to review the risk assessment that has been undertaken to satisfy ourselves that:

- a) the risk assessment has been thoroughly carried out and appropriate questioning has been used
- b) the decision that has been made is in line with good practice and mitigates any identified risk to the child / young person.

If the Council is not satisfied with the above, this will be discussed with the direct payment recipient and the next steps agreed.

If the Council is not satisfied that the prospective employee is suitable, it will require an alternative employee to be employed or refuse to offer a direct payment.

If the direct payment recipient refuses/fails to disclose the outcome of the Risk Assessment to the Council, it may refuse to offer a direct payment.

In these circumstances, the Direct Payment recipient will be required to identify an alternative employee. Alternatively, the Council will provide services directly.

Suitability of direct payment employees and prospective employees

The Council will only offer a direct payment when it is satisfied that the arrangements are designed to safeguard and promote the welfare of the child.

Therefore, the Council has a role to respond to information it is, or becomes, aware of, regarding significant concerns about an employee / proposed employee. The concerns may be current or retrospective.

The Council will clarify the evidence for any concerns, including checking its own internal information systems, and will assess the relevance of the information to the proposed activities to be undertaken through carrying out a risk assessment. It is therefore important that prospective employees are made aware of this.

The Council would speak with the employee / proposed employee about any concerns. The Council will not share the information with the direct payment recipient / employer unless such sharing of information has been approved by the Improving Outcomes Board which is part of the Safeguarding Children's Board.

Risk Assessment

The Children and Young People's SEND Brokerage Team and 0-25 Together or SEN Team will provide support to those carrying out a risk assessment with a template for the risk assessment, guidance about carrying this out with the employee / proposed employee and being present at the meeting in a non-advisory supportive capacity. The direct payment recipient should make a record of the risk assessment interview with the prospective employee.

Power to make a referral to the DBS

Pursuant to the Safeguarding Vulnerable Groups Act 2006, the Council has the power to refer an individual (who is, has or may in the future engage in a regulated activity) to the DBS Barring Service if it considers he/she is guilty of a misconduct that harmed a child or placed a child at risk of harm.

Previous DBS checks

Where Hertfordshire County Council has carried out a CRB / DBS check for the prospective employee within the previous 3 years, and they have worked without a gap of more than 3 months, in a similar role within the same workforce (i.e. children's) for example as a PA for another family, for a role within a Hertfordshire school, youth club etc, the outcome of this check can be used to inform whether or not a further check is required. Where an individual has registered with the DBS Update Service and has the right level of check, the Council will carry out a Status Check rather than needing to carry out a new check.

Direct Payment Recipient has concerns about or makes allegations against an employee or service provider

Direct payment recipients must speak to their 0-25 Together or SEN worker where they have any concerns about the welfare of their child or the suitability of the Personal Assistant / employee or organisation providing support. HCC will refer to the Local Authority Designated Officer (LADO) and/or to the DBS Barring Service if applicable.

13. When might direct payments be suspended or stopped?

The Council may suspend or cease direct payments, if any of the following circumstances arise:

- the Council believes that the welfare of the child is not being safeguarded through the direct payment arrangement
- the young person reaches 18⁴, at which point they must be assessed in their own right as a potential recipient.
- the child dies
- the child comes into the care of the Local Authority – please see chapter 18 ‘Differing Family Arrangements’ in line with the care plan
- there is a significant build up of unused direct payments
- the direct payments are not being used for the purpose agreed
- the direct payment recipient has not maintained accurate records
- the direct payment recipient wishes to cease the arrangement
- the direct payment recipient has moved out of the county – please see chapter 18 ‘Differing Family Arrangements’

If a decision is made to terminate the direct payment, this could result in the individual having unmet needs. The Council has a duty of care to the individual and will need to arrange alternative solutions including direct provision, where required.

If any of the above circumstances arise the 0-25 Together or SEN Team worker will contact the family to agree next steps.

⁴ Except where the direct payment relates to education provision in a current EHCP

14. Pooling direct payments for social care support

What do we mean by pooling direct payments?

This is where two or more direct payment recipients combine some or all of their direct payment in a joint venture.

Who can pool their direct payments?

Any two people in receipt of direct payments with a common interest can pool their direct payments. The recipient should first discuss this with their 0-25 Together Team worker who will confirm that this arrangement is appropriate in their particular circumstances.

What can families pool their direct payments for?

Below are some ideas but anything that is a shared interest and meets the outcomes of all individual's support plan.

- Activities including room hire, transport
- A group holiday
- Renting an allotment and buying appropriate tools, etc
- Employing a Personal Assistant to provide support in the home and/ or to go out, i.e. cinema, days out, etc
- Form or join a social or friendship group

What are the benefits for families?

- Sharing costs of an activity or holiday
- More value for the direct payment
- More control over how direct payments are spent
- Making friends
- Developing skills, knowledge and experience

How do direct payment recipients find people to pool their direct payment with?

Some ways that people can identify others to pool their direct payment with include:

- They may already know somebody who might be interested?
- They could try friends at school, college, short breaks activity, or who they live with
- Networking through support organisations such as the Disabled Children's HUBs, parent support organisations

0-25 Together Team workers and Brokerage Service Provision officers can make introductions between families, as long as confidentiality is observed and the individual is consenting to have their details passed on to another family who may share an interest.

Setting up a pooled direct payment

Each family should have their own direct payment to meet the outcomes on their child's support plan.

To set up a pooled direct payment:

Arrange a meeting to include all interested parties, this should be:

- The direct payment recipients
- Chosen family members, supporters or advocates
- Brokerage service provision officer
- The families are encouraged to invite the Leonard Cheshire Direct Payment Support Scheme to support the practical arrangements benefitting from their expertise in this field

The Children and Young People's SEND Brokerage Team and Leonard Cheshire will provide a facilitative role to support direct payment recipients to work through their arrangements and this will include taking the Pooled Direct Payment Agreement Template to the meeting to capture the decisions made. The Council becomes a party to the agreement as the Council controls the funding and sets expectations for the management of the arrangement. A copy of this agreement will be held on each child's LCS record.

The meeting should be to an agenda and should concentrate on what the direct payment recipients want to achieve and setting an action plan.

Things to consider

Be clear what the recipients want to do with the direct payments.

Consider carefully the care and supervision needs of all the children / young people and ensure that the arrangements promote their health, safety and wellbeing. The needs will be clarified through discussion and undertaking a risk assessment process which would include:

- Carers contact arrangements (phone numbers etc)
- What to do in an emergency
- Travel arrangements
- The activity to be undertaken
- The environment
- The young people's needs and risk factors
- Personal care including use of public toilets
- Medication

- Behavioural needs
- This will include agreeing the ratio of carers to children.

In addition to the points above which will promote the safeguarding of children, those wishing to set up a pooled arrangement should ensure the discussion considers all aspects of safeguarding including any risks to/from members of the public or other young people that may exist and any risks pertaining employed carers in line with the previous sections of this policy.

This includes considering any risks and protective measures identified through the process of recruiting carers:

- Confirmation that the Self Declaration of Criminal Records Form was completed
- whether a DBS check has been carried out and if so:
 - whether the DBS check included the care taking place in the prospective carer's home?
 - was there a trace?
 - had the carer declared these?
 - was a risk assessment carried out?
- if a DBS check was not carried out:
 - was a risk assessment carried out?
- whether references were sought
 - whether there were any concerns raised regarding the carer's suitability to work with children that the Council investigated and undertook a risk assessment

and for all the above:

- any risks or concerns identified through the risk assessment
- the details of actions in place to minimise any risks
- the outcome of the risk assessment

Discussions should have regard to direct payment recipient's employment responsibilities including those arising from the Data Protection Act 1998. Support is available from the Leonard Cheshire Disability Direct Payment Support Scheme.

These employers responsibilities related to Data Protection include the following:

- the responsibility to seek the written consent of the employee before sharing personal information with third parties except where other responsibilities to share information apply in accordance with the law, as explained in the Employing a PA Factsheet
- ensuring that appropriate measures are in place to ensure that employee information is kept confidential
- ensuring the safe and secure storage of personal information

Individuals wishing to pool their direct payment must sign a written agreement. The following must be considered:

- Ensure that the agreement will meet the outcomes of individuals' support plans.
- Ensure budgets are clearly defined – this will reduce the risk of any misunderstanding over the budget.
- If employing personal assistants clarify who is to take employment responsibilities for the personal assistant, i.e. who signs their timesheets, arranges their rota's, makes sure they are paid properly, DBS checks, etc.
- Where personal assistants / direct payment carers are to be employed, the arrangements for the supervision of the carers. For example whether one party is responsible, whether one party takes the lead with occasional group supervision, etc
- Where a service is bought from an agency or organisation, arrangements for periodic review of how things are going and how responsibility for this is managed
- Ending the arrangement and ensuring the Children and Young People's SEND Brokerage Team is informed. This team will notify the Brokerage Support Team and the 0-25 Together Team Worker.
- Consents for sharing information.

Money matters

Financial arrangements will need to be considered. In particular:

1. The recipients will need to open a separate bank account just for the pooled direct payment and will be responsible for making payments into that account from their individual direct payment account, except in certain circumstances as illustrated in point 3 below.
 - a. The account should be named in such a way to identify it as the pooled account
 - b. Consider how payments from the account will be authorised e.g. remote banking, number of signatories etc
 - c. Which direct payment recipient will be responsible for the account, employing the carer(s) and submitting quarterly ~~or six monthly~~ bank statement returns to the Council (NB having one account and one employer will simplify the tax, national insurance and payroll arrangements)
2. What type of bank account is going to be used, i.e. current bank Account or managed bank account? (NB payroll services or an independent broker may be able to offer or signpost to managed bank account services)
3. A separate bank account is not necessary to cover payment for one-off ventures such as sharing a holiday, whereby there are no employment issues and an invoice would be payable which would be proportionately

split between the relevant parties. Each direct payment recipient would retain a copy of the invoice and the agreement setting out their share of this, with their record of expenditure from their individual direct payment bank account.

4. How to ensure each recipient only uses what is in their own direct payment i.e. the appropriate amount of service from the pooled arrangement?
5. Keeping a clear record of how the money has been used, including invoices and receipts, and to send the Council's Brokerage Support Team the relevant bank statements every quarter ~~or six months~~.
6. Each direct payment recipient will need to have their own insurance.

The above issues will need to be considered when starting a pooled direct payment to ensure everyone's interests are protected.

Record of Agreement

The direct payment recipients entering into an agreement to pool their direct payments must share the written agreement with the Council. The Children and Young People's SEND Brokerage Team worker in attendance must record the outcome of discussions and the decisions made and provide all relevant individuals with copies. A Pooled Direct Payment Agreement Template for this purpose is available.

As stated above, a copy of this agreement will be held on each child's LCS record. 0-25 Together Team workers for each child will need to be satisfied that the arrangements are appropriate to meet the identified needs; the arrangements are adequate to safeguard children involved and are an appropriate use of public funds.

Once all the requirements are satisfied, including banking paperwork and DBS checks if applicable, the signed Pooled Direct Payment Agreement will be returned to each recipient as confirmation that the pooled arrangement can proceed.

Reviews

The agreement, including budgets, should be reviewed at set intervals, which initially should be more frequently.

The direct payment recipients will be responsible for organising and holding reviews of the pooled arrangement. The direct payment recipients may request the involvement of the Children and Young People's SEND Brokerage Team and Leonard Cheshire if required. The Children and Young People's SEND Brokerage Team will attend where requested to do so by the parties involved, and where the Council has identified risks to the arrangement or the need for support or scrutiny to be provided to any particular arrangement.

The Council does not require a copy of any notes of review meetings except where:

- the Children and Young People's SEND Brokerage Team has attended when the team member may take their own notes,
- the direct payment recipients have agreed to make changes to the Agreement.

Any notes taken by Children and Young People's SEND Brokerage Team will be shared with all direct payment recipients involved in the particular arrangement and a copy will be held on each child's LCS record.

Any changes to the Agreement should be sent to Children and Young People's SEND Brokerage Team and these will be held on each child's LCS record.

The Council will be involved in individual Child In Need review meetings which are separate to the reviews of pooled direct payment arrangements. Further information about Child In Need review meetings is provided in chapter 16 of this guidance.

15. Quality assurance

When using direct payments to recruit a Personal Assistant / other employee or to contract with a local service or agency the recipient must ensure the suitability of the prospective employee or provider to undertake the duties required competently, safely and ensuring the child/young person's needs and welfare are safeguarded, as well as consideration of the fee.

Where a direct payment recipient is purchasing services from an organisation or agency, it is advisable to seek confirmation that safer recruitment processes have been followed including:

- A face to face interview
- Identity document checks
- A satisfactory enhanced DBS check
- Full education and employment history and any gaps explored
- Taking up of at least two references
- Letter of good conduct from relevant bodies where a person has lived abroad for more than six months
- Confirmation of the right to work in the UK

The Council recommends that the direct payment recipient should ask the agency or service provider whether a trace had come back with the DBS check(s) for staff / carers and if so whether the organisation had carried out a risk assessment in line with the DBS Trace Risk Assessment Form.

There should also be consideration of health and safety matters, risk assessment, registration with any regulatory bodies such as CQC and Ofsted, taking up of references, insurance etc. A Quality Checklist is available as a guide.

Direct payment recipients need not restrict themselves to registered domiciliary care providers but an awareness of this scheme of regulation is important.

Ofsted Childcare Regulations may apply to the direct payment carer or service provider. Further information is provided in chapter 5 above. Direct payment recipients should be advised of these regulations, including where registration is compulsory and exemptions. The Children and Young People's SEND Brokerage Team should be consulted for further advice where the application of the regulations to a particular arrangement is not clear. The Children and Young People's SEND Brokerage Team can be contacted on 01438 844254.

It is important to ensure that the relationship and agreement entered into is clear from the outset. The [government Department for Education website](#) includes a guide on Direct Payments which covers choosing a service.

16. Care planning, reviewing and monitoring direct payments

Child In Need and EHCP review meetings will consider how the direct payments are being used to provide for the child's needs and outcomes as agreed in the relevant plan, and any specific requirement in the plan for the type of service or support required.

In preparation for these meetings the Council will produce a report from the direct payment quarterly returns to ensure that the direct payments are being used and that the way they are used is meeting the identified needs and outcomes.

The direct payment employee or service provider will be asked to provide a report regarding how the care /support package is working, the outcomes being achieved and any proposed changes.

Both reports will be discussed in the Child in Need / EHCP review meeting.

Reviews will also include discussion around the employment / recruitment of carers / PAs, training / support needs and if any new carers / PAs have been employed ensuring that the DBS and employment checks have been carried out correctly.

Where the direct payment is being used for educational provision through an EHCP the first review of the direct payments must be held within 3 months. Subsequent review periods will be confirmed through the Agreement / EHCP.

17. What support is available?

Health and safety support

The 0-25 Together or SEN Team worker will provide the results of any risk assessments which were carried out as part of the assessment of need so that health and safety issues can be taken into account as part of the direct payment arrangement. This enables the individual to share the assessment with the care provider or personal assistant who provides the service, enabling them to take reasonable steps to minimise the risks to the health and safety of any staff they employ with regard to the common law duty of care towards employees.

Employment support

A direct payments advisor from Leonard Cheshire will visit, if requested, to explain in detail a direct payment recipient's responsibilities as an employer and will continue to give on-going support and advice as required. Leonard Cheshire Disability Direct Payment Support Scheme works in partnership with Hertfordshire County Council to provide free support and advice to individuals who are in receipt of a Direct Payment. The contact details are:

Leonard Cheshire Disability Direct Payment Support Scheme
21a Churchyard, Hitchin Herts SG5 1HP
Tel: 01462 439000
Text/Voicemail: 07738328207
E-mail: direct.payment@LCDisability.org
This link is for [Leonard Cheshire's Direct Payments website](#)

Leonard Cheshire Disability Direct Payment Support Scheme provides the following support for direct payment recipients:

- how to recruit a Personal Assistant
- advertising and taking up references
- interviewing
- job descriptions and contracts
- what and how to pay your employees including payroll services
- Employers Liability Insurance
- DBS (Disclosure and Barring Services) assisting in verifying documents for personal assistants and initiating the online DBS check
- Assisting to resolve employment issues

Leonard Cheshire do not charge recipients for this service as this is funded by the Council. As explained in chapter 4 above, Leonard Cheshire will be reimbursed by the Council for any expenses they have incurred payment for, on behalf of the direct payment recipient, which are covered by the one-off set up allowance, for example recruitment costs.

The following websites contain useful guidance for direct payment recipients:

[Contact A Family](#)

[Council for Disabled Children](#)

[Leonard Cheshire Direct Payment Support Service](#)

[Skills for Care booklet on Employing Personal Assistants](#)

DBS checks

The Council provides Disclosure and Barring Services (DBS) checks for prospective employees to be employed via direct payments, at the request of the direct payment recipient, and will provide support, if requested, to direct payment recipients where there is a need to conduct a risk assessment meeting with a prospective employee following the DBS check. The support available includes providing a template for conducting a risk assessment, guidance and attending the meeting.

Follow up support from Children and Young People's SEND Brokerage Team

The Children and Young People's SEND Brokerage Team will telephone the direct payment recipient after one month if the paperwork has not been returned within that time to see how the recipient is getting on with setting up arrangements and identifying any support needed.

For social care, after seven weeks from the service commencing, the Children and Young People's SEND Brokerage Team will telephone the direct payment recipient to see how this is working. A child in need review meeting will be planned for six months.

In between these times, direct payment recipients may contact the Children and Young People's SEND Brokerage Team if they are experiencing any difficulties in meeting the child / young person's needs through these arrangements and require an alternative service to be explored, or with any other related queries.

For education, an initial review of the direct payment will be held within 3 months.

18. Differing Family Arrangements

In the event that a child is looked after or subject to an interim or final Care Order, or if a disabled child moves out of the county, there may be implications for direct payments if these are in place or being requested. In these circumstances the allocated 0-25 Together Team worker will inform the family following receipt of advice pertaining to the individual circumstances.

19. Consent and Capacity

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

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

In most cases parents/carers with Parental Responsibility will have responsibility for managing the Direct Payment.

If parents/carers lack capacity to manage the Direct Payment themselves or with assistance then a representative of the parent will ordinarily have control instead.

Parents/carers with capacity to manage Direct Payments themselves or with assistance will ordinarily have control of a Direct Payment up to the end of the child's school year 11 (post compulsory school age).

At age 16 / from the end of year 11 the young person has responsibility, if they have capacity, unless they elect for their parent/carer to manage their Direct Payment.

Alternatively a representative of the young person can be appointed. A child's parent/carer or the young person can also nominate in writing an individual to manage the Direct Payment.

This is explained in more detail below.

The Direct Payment can be received and managed by the person who gives their consent, or that person can identify a nominee to receive and manage it for them.

Where a person lacks the capacity to consent, Direct Payments can be given to their authorised representative, if they consent to receiving the payment on the person's behalf. In the case of children, Direct Payments can be received by their parents or those with parental responsibility for that child.

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

Capacity to Consent

Under the Mental Capacity Act 2005 a person lacks capacity if they are unable to make a decision because of an impairment of, or a disturbance in the functioning of, the mind or brain. Broadly speaking, 'mental capacity' means the ability to make a decision in question at the time it needs to be made. Where there is reasonable belief that a person is unable to make a decision about receiving DP, HCC and / or CCG will assess the person's capacity to consent.

Ability to Manage Direct Payments

When deciding whether or not someone has the ability to manage Direct Payments (including a representative or nominee), HCC will consider:-

- whether they would be able to make choices about, and manage, the services they wish to purchase
- whether, with support, they would be able to take responsibility for decisions in relation to spending and managing the Direct Payment
- whether they have sufficient understanding of safeguarding and health and safety to ensure the well-being of the child / young person through the proposed Direct Payment arrangements and can take the relevant steps to promote this including safer recruitment, training, supervision, setting boundaries, seeking support, having difficult conversations, terminating employment.
- whether they have been unable to manage either an education, health care or social care Direct Payment in the past, and if their circumstances have changed and
- whether they are able to take reasonable steps to prevent fraudulent use of the Direct Payment or identify a safeguarding risk and if they understand what to do and how to report it if necessary.

Parents must provide written consent to HCC to DPs being used to secure the provision.

If a decision is made that someone is not suitable for Direct Payments, the person will be informed in writing, stating the reasons for that decision and the decision recorded. An individual can ask for that decision to be reviewed.

Nominees and Representatives

If a person aged 16 or over who is receiving care has capacity, but does not wish (for whatever reason) to receive Direct Payments themselves, they may nominate someone else to receive them on their behalf (a nominee).

A representative (for a person aged 16 or over who does not have capacity or for a child) may also choose to nominate someone (a nominee) to hold and manage the Direct Payment on their behalf.

The role of the nominee is to carry out all of the responsibilities of someone receiving Direct Payment. If any costs would be incurred by such an arrangement, this would need to be agreed by HCC.

The nominee is acting on behalf of the young person or their representative. The young person or representative will retain overall responsibility for actions taken by the nominee and therefore will need to ensure effective communication, supervision and safeguarding arrangements as well as access to support around legal and employment responsibilities.

The parent / carer / young person or their representative must confirm the details of the nominee in writing to HCC.

Parents / carers must provide written consent to HCC to Direct Payments being used to secure the provision. A nominee must provide written confirmation to HCC that he/she is responsible as a principle for all contractual arrangements entered into for the benefit of the child / young person and secured via Direct Payments.

To comply with the safeguarding Vulnerable Groups Act 2006 the usual safeguarding processes and procedures will be followed including 'willing and able' assessments, DBS certification, checks on personal assistants, nominees or representatives (except where the representative is a person with Parental Responsibility).

A nominee who is managing the Direct Payment should not be employed as a personal assistant⁵ as this could lead to a conflict of interest.

The responsible service must confirm in writing the agreement for a named nominee to manage direct payments.

Representatives for People without Capacity

Representatives are available for people without capacity to consent to receiving a Direct Payment, or because they are a child.

A representative is someone:-

- Who agrees to act on behalf of someone who is otherwise eligible to receive Direct Payments but cannot do so because they do not have the capacity to consent to receiving one, or because they are a child;
- Who is responsible for consenting to a Direct Payment and fulfilling all the responsibilities of someone receiving Direct Payments (also known as a 'suitable person');

⁵ Or any role through the direct payments

- Who may identify a nominee to receive and manage Direct Payments on their behalf, subject to the nominee's agreement and the approval of HCC.

An appointed representative could be anyone deemed suitable by HCC, taking into account previously expressed wishes of the recipient and as far as possible their current wishes and feelings.

A representative can be:-

- A person with parental responsibility, if the recipient is a child;
- The person with parental responsibility if the recipient is over 16 and under 18 and lacks capacity or
- Someone appointed by HCC to receive and manage Direct Payments on behalf of a child/young person to secure the agreed provision.

Representatives or nominees must act in the child/young person's interests at all times. A representative or nominee who is managing the Direct Payment should not be employed as a personal assistant as this could lead to a conflict of interest.

Nominees and representatives will require a DBS check (except where the representative is a person with Parental Responsibility) and to enter into a written agreement with HCC.

Websites

['Support and aspiration: a new approach to special educational needs and disability' on the Department for Education website.](#)

[Leonard Cheshire Direct Payment Support Service](#)

[Skills for Care booklet on Employing Personal Assistants](#)

[Department for Education](#)

Appendices

Appendix 1: List of Excluded Individuals

Schedule 1 to the 2009 Regulations list those individuals who are prohibited from receiving direct payments. These include;

- offenders on a community order, or serving a suspended prison sentence, under the Criminal Justice Act 2003, which includes a requirement to accept treatment for drug or alcohol dependency;
- an offender on a community rehabilitation order or a community punishment and rehabilitation order under the Powers of Criminal Courts (Sentencing) Act 2000, which includes a requirement to accept treatment for drug or alcohol dependency;
- offenders released from prison on licence under the Criminal Justice Act 1991, the Criminal Justice Act 2003 or the Crime (Sentences) Act 1997 subject to an additional requirement to undergo treatment for drug or alcohol dependency; and
- people subject to equivalent provisions under Scottish criminal justice legislation.

Appendix 2

Appendix 2a. List of Offences that rule out a person working with children:

- murder
- manslaughter
- rape
- other sexual offences
- grievous bodily harm and/or
- other serious acts of violence
- serious Class A drug related offences or a recent pattern of possession
- robbery/burglary/theft and/or
- deception/fraud
- drink driving and other driving offences where driving/escorting children or adults is a requirement of the job
- offences relating to ill-treatment, neglect, applications and procedure for registration, or duties of attorney in event of incapacity of donor, specified under the Mental Capacity Act 2005
- an offence under the Safeguarding Vulnerable Groups Act 2006 in respect of regulated activity

and offences in other territories outside England and Wales which correspond to any of the above.

Or where it is otherwise known that the person is barred from working with children

Appendix 2b. List of example Low Risk Offences

- Arson (caution/warning or reprimand **ONLY**)
- Benefit fraud
- Breach of the peace
- Dangerous dog
- Deception
- Driving under the influence
- Drunk/Disorderly behaviour
- Handling stolen goods
- Harassment (caution/warning or reprimand **ONLY**)
- Low level driving offence
- Obstruction
- One-off possession of class C/B Drugs
- Property damage
- Shoplifting
- Theft
- Criminal damage (caution/warning or reprimand **ONLY**)

Criteria for determining low risk cases:

- The offence was carried out more than 5 years ago and no offences have occurred since
- The offence must be one of those listed above
- The offence was declared either in the self-declaration, or during the interview. The only exception may be if the offence occurred a considerable length of time ago, and the applicant may not realise the relevance of including this (eg. a reprimand that occurred in 1975).
- The relevance of the offence within the context of the role being appointed to must be given consideration. For example, if someone applied for a driving role and had been convicted of a drink driving offence previously

Example A:

MR A was convicted on possession of Class B drugs at age 19 and has had no further convictions or other information revealed on the DBS certificate. He is now 34 and has worked since the age of 21.

He has applied for a position of Classroom Assistant and this trace is considered to be low risk.

Example B:

MISS C was convicted of shoplifting at age 22 and again at age 23. She has had no convictions for the last 5 years and is now age 28. She revealed one of the convictions on her self-declaration.

She has applied for a position of Support Worker in HCS where there is considered to be a risk of theft from vulnerable adults. Therefore, the recommendation is that a full risk assessment is carried out before a decision is taken on whether to appoint her.