



Policy and Procedure for Direct Payments within Children & Families 2021

Guide for practice

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Summary

This document sets out the policy and procedures which underpin practice in respect of direct payments within the Children & Families Service.

It will:

Outline legislation, guidance and good practice associated with direct payments.

Explain what direct payments are, and what they can and cannot be used for.

It will set out assessment, step-down and review arrangements.

Provide practice guidance to ensure consistency across teams and an equitable response for children & families.

Distribution - who needs to be aware of this policy

Practitioners working within Children & Families Service in the Together for Families Directorate.

Context

Background - why this policy is needed

Overtime the use of direct payments across Children's Social Care has grown, so a need for standardised practice has emerged.

Objectives - what the policy aims to achieve

The aim of this policy is to ensure consistent practice across Children & Families Service; manageable caseloads for social care practitioners, and to clarify practice when direct payments are in place, for example when the support package is "stable", then the work can be "stepped-down" from statutory social work to be managed and reviewed at Tier 2, thereby targeting resources more effectively, and reducing pressure on social work caseloads.

Scope – what the policy covers

This policy covers children and young people up to 18 years of age; for those young people aged 18-25, the policies and procedures within Adult Social Care apply. It does not cover direct payments or personal budgets provided by health or education, although it does make reference to them.

Policy Details

Introduction

Direct payments are cash payments that are paid to either a young person, or to the parent or carer, of a disabled child or young person up to the age of 18, or to a nominated third party, following an assessment of need.

Direct payments promote independence, choice and inclusion by enabling the purchasing of support and services that the Council has assessed a child or young person as needing, when their needs meet the threshold for social care intervention.

Young people and parent(s) / carers are responsible for ensuring that the allocated direct payment funds are spent only on assessed needs as set out in the child's plan. A direct payment agreement will be signed by the parent/ carer to agree to the use of direct payments in this way, before funds are released.

Policy Statement – Legislation and Framework

Originally, Direct Payments were introduced in relation to social care services for adults through the Community Care (Direct Payments) Act 1996. This Act was repealed by the Health and Social Care Act 2001 ('the 2001 Act') and direct payments are now governed by the 2001 Act and the Children Act 1989 ('the 1989 Act'). From April 2003 councils were required to offer direct payments to certain persons in order to enable them to obtain for themselves the services that they were assessed as needing. The Special Educational Needs (Personal Budgets) Regulations 2014 came into force on 1st September 2014.

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 Children Act 1989, inserted by the 2001 Act, gave councils a duty to offer direct payments where there was an assessed need within children's services.

In making direct payments under section 17A of the 1989 Act, councils are subject to the general duty provided by Part 3 of that Act 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 (section 17(4A) of the 1989 Act).

Over time amendments have been made to section 57 of the 2001 Act by section 146 of the Health and Social Care Act 2008, and also changes introduced by the Mental Capacity Act 2005 ('the 2005 Act') and by the Community Care, Services for Carers and Children's Services (Direct Payments) (England) Regulations 2009 ('the Regulations'), as amended by The Community Care, Services for Carers and Children's Services (Direct Payments) (England) (Amendment) Regulations 2010.

Statutory guidance Working Together to Safeguard Children 2018, last updated December 2020, notes that when undertaking an assessment of a disabled child, the local authority must also consider whether it is necessary to provide support under section 2 of the Chronically Sick and Disabled Persons Act (CSDPA) 1970. Where a local authority is satisfied that the identified services and assistance can be provided under section 2 of the CSDPA, and it is necessary in order to meet a disabled child's needs, it **must** arrange to provide that support. It is important when completing an Education Health and Care Plan (EHCP), that section H1 reflects that consideration has been given to provision of services under section 2 of the CSDPA, but if direct payments are provided under section 17 of the Children Act 1989, then details of the child's provision should be included in section H2 of an EHCP.

Part 3 of the Children and Families Act 2014 introduced the need for an **Education, Health and Care Plan (EHCP)** for a child or young person, where support was required to meet their Special Educational Needs or Disability (SEND). (This replaced the education *Statement of Special Educational Needs*).

Under Section 49 of the Children and Families Act 2014 the Council has a duty to **offer** a Personal Budget to children and young people aged from birth to 25 years to enable them to access services and support where an EHCP is in place, or where the Council is preparing an EHCP following a full assessment of a child or young person's eligible needs. A direct payment may form part of a child or young person's personal budget, based on their identified, assessed needs. The legislation is set out in the Special Educational Needs (Personal Budgets)

Regulations 2014, Section 58 of the Health and Social Care Act 2001 and Section 17A Children Act 1989.

The Special Educational Needs and Disability Code of Practice 0 – 25 years is the statutory guidance that supports Part 3 of the Children and Families Act 2014. The guidance instructs local authorities, early year's settings, schools, colleges, health and social care providers and others on what they must and should do to identify, assess and provide for children and young people with SEN or disabilities.

The local authority retains discretion over how long it chooses to provide services under section 17 (e.g. direct payments), while an Education, Health and Care Plan remains in place for young people up to 18 years of age, however, the Care Act 2014 requires the local authority to continue providing the young person with support through the transition process, and until adult support is in place to continue the direct payment provision (which is re-charged to Adult Social Care), or until it is clear after the adults assessment that alternative provision will be arranged, or Adult Social Care have assessed that support is not needed. EHCP's remain in place for young people up to 25 years of age.

Direct payments can only cease if a re-assessment of a child or young person's needs evidences that the need for direct payments is no longer required.

This Policy follows the updated guidance on ***Direct Payments, for Community Care, Services for Carers and Children's Services 2009*** issued by the Department of Health, which still provides the main guidance for all direct payments.

Policy Details

Who is eligible for direct payments?

To be eligible for a direct payment, an individual must be assessed under the Children Act 1989 as needing a service.

The Council may make direct payments to the following individuals:

- Persons with Parental Responsibility for a disabled child (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 Guidance provide that individuals can insist on a direct payment in certain circumstances. The essential 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 list of excluded individuals in this Policy).

A direct payment can be made either for part or for the whole of the total package of care which has been agreed to meet the assessed needs of a disabled child and their family.

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 Council or is not able to demonstrate that (with assistance) they can meet the required responsibilities of financial 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.

Assessment

The allocated social worker will decide whether there is an identified, assessed need, and if so, whether direct payment support could meet those needs.

Where there is an assessed need, an allocated worker will agree DP provision with their team manager in DC&TS or present at Resource & Care Panels in Area Teams for approval by the Head of Service. The amount can be calculated by completing a Direct Payment Tool with the family / young person, but is professional judgement based on assessed need.

The amount allocated is usually a weekly allocation of hours; this will be paid either four weekly, in advance, or as a one-off payment. SMART outcomes for the child or young person are identified in the child plan to explain how the direct payments will be used to provide support and what the expected outcome is for the child or young person.

Once the social worker has decided that direct payments are the best way to meet need (and in Area Teams it has been agreed at Resource and Care Panel), a direct payment referral is completed on MOSAIC by the allocated worker and then approved by their team manager. This will be sent to the Personalisation Support Team (DP Team) and then a Personalisation Support Advisor (PSA) will visit the family and explain how direct payments work.

The role of the Personalisation Support Adviser within the Disabled Children & Therapy Service

A range of information will be provided by the PSA on direct payments, and if the family wish to proceed they will arrange for the PSA to complete a sign-up visit. Once a separate bank account has been set up and an agency identified or Personal Assistants (PAs) employed, and DBS checks have been completed for PAs, and employer public liability insurance is in place the direct payments will be paid into the separate bank account.

The PSA will arrange with the family to visit on a regular basis to check everything is in place, i.e. employers' insurance, PAYE, pension auto-enrolment, and so forth and they will then agree reviews to check bank statements and to check expenditure. The direct payment review will be conducted, either jointly with the allocated worker, or in addition to the review of the Child Plan / Child Support Plan. If the PSA identifies any issues, s/he will raise these with the allocated worker.

Within the direct payments MOSAIC system workflows, the PSA will select the relevant area team manager to enable the DP funds to be coded to the correct team budget. The direct payments are then paid into the separate bank account for the child or young person.

What direct payment funds can be spent on:

Cornwall Council cannot draw up an exhaustive list as to how the direct payments can be used. Each case must be decided individually on its own

merits, based on the following, however, the service, support or activity that is proposed should be:

- Legal; and
- Clearly linked to the outcomes identified in the Child Plan to secure provision to meet the child or young person's assessed needs; and
- Able to show how it will keep the child or young person healthy, safe and well; and
- Affordable and proportionate to the assessed eligible needs of the child or young person.

The Funds must be used to meet the needs and outcomes identified in the Child Plan.

Direct payments are most often used to employ a personal assistant (PA) to provide care and support. Below are some examples of how some families use their direct payments:

- ✓ Employing a personal assistant to support the child or young person to access identified activities; this enables parents to have a short break to spend time with their other children;
- ✓ Employing a personal assistant to support the young person with independent living skills, for example, choosing food to buy in the supermarket, and with these ingredients making lunches or dinners; learn how to travel to school or college, etc.
- ✓ Personal assistants supporting the child or young person to enable parent or carer to attend their own or family member's medical appointments;
- ✓ Assistance with domestic tasks to allow a family to spend more time with their child who has complex health care needs;
- ✓ Employing a personal assistant to assist with a disabled child or young persons' personal care;
- ✓ To employ a personal assistant to provide overnight support to the disabled child or young person, either in the child or young person's own

home, or at the home of the personal assistant (if the child is aged eight years or over). This must be agreed as an assessed need and be identified in the child plan;

- ✓ Childminder support;
- ✓ Agency support.

What direct payment funds cannot be spent on:

Anything that is illegal or is illegal to purchase, or that would endanger the child or young person or any other person;

Gambling; debt repayment; alcohol; tobacco;

To pay a family member living with the child or young person, except as agreed in exceptional circumstances;

Emergency, acute, and most primary healthcare services which are already provided on the NHS;

Treatments, such as medication, that the NHS would not normally fund because they are not shown to be cost effective;

Purchasing services directly from Cornwall Council or their partner agencies;

Permanent residential care;

Equipment;

As a substitute for Disabled Facilities Grants;

Everyday living expenses, for example food, rent, utility bills, clothing, etc.

Any charges due to the Council.

Direct payments to third parties

In all other circumstances, including where direct payments are paid to someone nominated by the young person or family, the young person or family should remain in control, and is accountable for the way in which the direct payments are used. In the case of children who benefit from direct payments,

this control will be shared with their parents or carers, depending on the child's age and understanding.

Young people or families may ask a representative (a suitable person) to help them manage their direct payments, for example by helping them to secure the services to which the payments relate, or by actually receiving and handling the money. This can be done when a young person or parent / carer does not have the desire, capacity or capability to receive and manage a direct payment themselves. In this case, provided that the suitable person meets all conditions specified in the Regulations and appears to the Council to be able to manage the direct payments, the Council has a duty or a power, to make direct payments to that suitable person. The third party assumes responsibilities associated with managing the child or young person's support as identified in their Child Plan.

Where a payment is made to a third party, the third party will take on the responsibility for ensuring that appropriate services are in place and will be accountable to the Council for the way in which The Funds are spent on behalf of the child or young person.

However, the young person or family who have consented to receiving a direct payment should retain overall control and responsibility for the direct payments.

It would not be considered suitable, for someone who is being paid from the direct payment account, for example, who is employed as a Personal Assistant, to also act as the representative.

If a Personal Assistant is being employed, then the representative must be able to understand relevant legislation and the responsibilities of being an employer. In these circumstances, the representative is the employer and is responsible for all elements of the direct payments in relation to this.

Managed Accounts

It is possible for young people and parents / carers to engage with a payroll provider who will provide them with a managed account service. A payroll provider will be chosen by the young person or parent / carer to manage the direct payment account on their behalf. Cornwall Council will pay the Funds, in

advance, on a four-weekly basis to the nominated account of the managed account provider.

An agreement should be entered into, between Cornwall Council and the managed account provider. The Direct Payment Agreement, between Cornwall Council and the young person or parent / carer will also reflect that a managed account is used and that direct payment funds are paid into an account held by the provider, on behalf of the direct payments recipient.

If the young person or parent / carer choose to secure services to meet their assessed eligible needs by a direct payment, the cost of the managed account will be met by the direct payment.

Managing direct payments

Young people, parents / carers, or a representative, will be expected to open a separate and appropriately named bank account, which will be used solely for the purpose of managing the direct payments. This is to ensure that there is less risk of confusion with the recipient's personal funds and will allow efficient record keeping, monitoring and auditing, both for the service user, parent or carer and for Cornwall Council

Payments will be made, in advance, on a four-weekly basis, or as agreed between the young person or parent / carer and with Cornwall Council. Payments will be made via the Banks Automated Clearing System (BACS) by Cornwall Council and will be paid directly into the nominated account.

Alternative arrangements may be made for one-off payments, for example, the young person or parent / carer may prefer to use an existing personal bank or building society account rather than open a separate account for only one payment.

If the young person or parent / carer decides to use an existing account, they should be aware that the Personalisation Support Advisor will need to view the bank statement transactions relating to the direct payment funds, so should be mindful of this.

The intrinsic flexibility of direct payments means that young people and parents / carers can adjust the amount they use from week to week and 'bank' any spare funds to use as and when extra needs arise, some families find it helpful to 'bank' funds to use for additional support during the school or college

holidays. As long as overall the payments are being used to achieve the outcomes agreed in the Child Plan, the actual pattern of support does not need to be predetermined.

In circumstances where a personal assistant is made redundant, and they are entitled to a redundancy payment, it is the responsibility of the parent / carer, to ensure that redundancy costs are paid from either the insurance company, or from the accrued contingency funds that are held in the direct payment account. See agreed contingency reserves in this Policy.

Consenting to direct payments

A direct payment may only be made with the consent or willingness of the service user, or parent / carer, or where a 'suitable person' has been identified.

Anyone consenting to direct payments takes on the responsibility for purchasing the services to which the payment relates. The young person or parent / carer will take on the responsibility to ensure that the child or young person receives the appropriate service to an acceptable quality. Consenting to direct payments may also involve taking on legal responsibilities, for example, in the role of an employer, or by contracting with an agency.

The young person or parent / carer is also accountable to the Council for the way in which the Funds are spent. If support is made available through a direct payment, the service user and / or parent or carer will be asked to sign a Direct Payment Agreement.

Who is excluded from receiving a direct payment:

Direct payments may not be made in respect of certain people who have been placed under certain conditions or requirements by the courts in relation to drug and or alcohol dependencies. Those people who are excluded from receiving a direct payment is set out in The Special Educational Needs (Personal Budgets) Regulations 2014: [Persons to whom direct payments may not be made](#)

In summary:

- a person who is subject to a drug or alcohol treatment rehabilitation requirement, under the Criminal Justice Act 2003;

- a person who is released on licence under the Criminal Justice Act 2003 subject to a licence condition requiring the offender to undertake offending behaviour work to address drug-related or alcohol related behaviour;
- a person who is required to submit to treatment for their drug or alcohol dependency by virtue of a community rehabilitation under the Powers of Criminal Courts (Sentencing) Act 2000 or a community punishment and rehabilitation order;
- a person who is subject to a drug treatment and testing order imposed under the Powers of Criminal Courts (Sentencing) Act 2000;
- a person who is subject to a youth rehabilitation order (drug treatment or intoxicating substance treatment requirement) under the Criminal Justice and Immigration Act 2008;
- a person who is subject to a youth rehabilitation order (drug testing requirement) under the Criminal Justice and Immigration Act 2008;

From November 2009, the introduction of The Community Care, Services for Carers and Children’s Services (Direct Payments) (England) Regulations 2009 meant that someone who has assessed eligible care needs but who lacks capacity to consent to direct payments can still receive them to meet their assessed eligible community care needs.

However, if a person does not have the requisite mental capacity to agree to a direct payment, and there is no one suitable to do so on their behalf, then they will not be eligible to receive a direct payment.

Cornwall Council must assess whether or not a person has capacity to consent before making direct payments. Reference can be made to the Mental Capacity Act 2005 Code of Practice.

A direct payment will be discontinued once a child or young person no longer needs or is no longer eligible to receive the services for which the direct payment was given. This will follow a review or re-assessment of a child or young person’s needs.

“Step down and step up”

Initial assessments for a child or young person who is a Child in Need will be completed by a Social Worker. Once a support package has been put in place, and the package is considered to be “stable” and there is no longer a need for

statutory social work intervention, then the case will “step-down” to a Tier 2 worker, such as a Family Worker or Disabled Children and Family Worker. The Child Plan will be transferred to a Child Support Plan and alongside the PSA the Child’s Support Plan will be regularly reviewed by the allocated worker. If there is a significant change in need which requires re-assessment, the case will step-up to a social worker for re-assessment, and then step down again or close if support is no longer required.

How direct payments are paid

Cornwall Council will pay the Funds allocated to the service user into the Nominated Account by the Banks Automated Clearing System (BACS) the initial payment being made 28 days in advance. Thereafter and unless agreed otherwise, payment will be made in a standard four weekly pay cycle.

The Nominated Account will be for the sole purpose of managing the Funds.

The Funds paid by the Council into the Nominated Account are paid gross, and the payment of any bank charges or other charges related to the Nominated Account will be the responsibility of the service user or parent / carer. The Council will not pay any additional sums in respect thereof.

The Nominated Account will only be used for transactions in relation to The Funds in order to meet the service users identified needs, as agreed and as stated in the Child Plan or Education, Health & Care Plan, and for no other purpose.

All or any changes to the Funds payable will be notified to the service user and /or parent or carer in advance.

The service user or parent / carer should notify the Council as soon as possible of any changes to the Nominated Account.

The service user or parent / carer must notify the Council immediately if they become aware of any conduct relating to the Nominated Account which gives them any cause for concern in respect of the use of the Funds.

Cornwall Council will provide the service user or parent / carer a schedule of payment dates so that they will know when to expect each payment. Depending upon the type of support that is needed, it may be more suitable for a single

one-off payment to be made available. The Personalisation Support Team can discuss this in more detail.

The service user or parent / carer must not permit any cash withdrawals or permit any cash payments from the Nominated Account, unless this has been approved in advance by the Council.

Where a BACS form has been received from a parent / carer new to direct payments, the Personalisation Support Advisor will verify with the parent / carer at the time of the visit, that the BACS form has been completed by the parent / carer and the details are correct.

Where direct payments are already in place, and a parent / carer has requested a new BACS form, due to them wishing to change their bank / building society account, a new BACS form will be sent to parent / carer for their completion. Once received, the Personalisation Support Advisor will make contact with parent / carer to confirm that the completed BACS form has been received and will verify the new details.

In the event of the death of the service user, payment of the Funds will cease, and no further payments will be made by the Council.

Will parents or carers be asked to make a financial contribution?

No. If a child, or a young person aged below 18, is assessed as eligible, the direct payment is to be used to meet their identified assessed needs and the young person or parents / carers will not be asked to make a financial contribution.

If a young person who is 18 or over is assessed as eligible for support from Adult Social Care, a financial assessment will take place, and they may be asked for a contribution to their care package. There is further information available at: [preparing-yourself-for-your-financial-assessment.pdf \(cornwall.gov.uk\)](#) and the Adult Social Care Charging Policy is available at: [Paying for adult social care - Cornwall Council](#)

If the family wish to purchase additional support or services above the costs of the child or young person's identified assessed needs, then they are able to 'top up' the direct payment funds at their own discretion. Any 'top up' funds should

be paid into the direct payments account, so there is an evidenced audit trail of all financial transactions.

Direct payments to employ personal assistants

Most care and support for disabled children and young people is provided by families in their local communities. If a young person or parent / carer chooses to use direct payments to employ a Personal Assistant, the young person or parent / carer, must act as a responsible employer and make arrangements to follow and comply with guidance and processes in accordance with current employment legislation.

All employers must register with Her Majesty's Revenue and Customs (HMRC); regardless of whether any income tax and national insurance contributions are being paid. They must ensure that all employment related legislation is followed and that they hold a current employers' public liability insurance policy, renewed annually (employers can be fined if they do not hold an up to date employers' public liability insurance policy which complies with the law); and that any relevant, required training is completed by all Personal Assistants.

Under the Pensions Act 2008, every employer in the UK must put certain staff into a workplace pension scheme and contribute towards it. This is called 'automatic enrolment'. This includes employers who receive a direct payment to employ personal assistants.

As an employer, the young person or parent / carer will have a duty to offer a pension scheme to eligible employees; however, employees can opt out of this scheme if they do not feel that it meets their requirements.

All personal assistants are employed by the service user or parent / carer, and not by Cornwall Council, however, information and advice is available from Cornwall Council's Personalisation Support Team or ACAS.

The employer must ensure that they retain adequate funds in their direct payments account to cover all potential employer on-costs and associated responsibilities.

The service user or parent / carer as employer will determine the hourly rate of pay to their personal assistant, as a minimum, this must be the current National Minimum Wage, or National Living Wage. Cornwall Council recommends the

rate of pay for employing personal assistants is at the current UK Living Wage set by the Living Wage Foundation and is announced annually.

The direct payment funds will be sufficient to meet the PA hourly rate of pay, and will cover the costs of being an employer, known as “on-costs”.

Cornwall Council will review the direct payment rate each year to ensure it remains sufficient to meet the increase to the UK Living Wage rate and remains enough to meet employers’ on-costs.

At the start of a direct payment, the Council will cover the first year’s employer liability insurance premium from a specialist independent living insurer. Subsequent years insurance costs can be met by the DP funds.

If a service user or parent / carer chooses another insurer and the cost of the policy is higher, the difference should be paid from their own personal funds.

If personal protective equipment (PPE) is supplied to personal assistants, the cost of barrier products, for example, disposable gloves, masks and aprons, can be met by the DP funds.

Occasionally, additional one-off payments may be agreed to cover employer on-costs on a case-by-case basis. Decisions to agree any additional payments will be made by team managers.

A direct payment cannot usually be used to employ someone that lives in the same household as the child or young person in receipt of a direct payment, however, Cornwall Council may agree, at their sole discretion, to make an exception, by written agreement if there are exceptional circumstances.

It is important to ensure that the potential personal assistant understands that as a paid carer they will have a contractual agreement and that the direct payment recipient or their parent / carer will become their employer.

It is also important that the potential personal assistant understands that Cornwall Council may check its internal information systems when responding to information the Council has or becomes aware of concerning the suitability of a carer.

For those children and young people in receipt of direct payments and who are prescribed rescue medications, the service user, parents or carers should follow the guidance set out in the individual Policies:

- Direct payments and the administration of emergency epilepsy medication policy
- Direct payments and the administration of type 1 diabetes medication policy
- Direct payments and the administration of anaphylaxis medication policy

This should help to ensure that personal assistants receive relevant, up to date, annual refresher training, delivered by an accredited provider. Also ensuring parent / carers or personal assistants have the appropriate level of insurance cover as is required, covering personal assistants for the administration of medication, specific to the individual child or young person, prior to them starting work.

Parents and carers should be aware and in agreement that the personal assistant they employ must not undertake any medical interventions with regards to any other medical care needs the child or young person may have. This includes care of tracheostomy, suctioning, gastrostomy care, ventilation, or administration of nebulisers or oxygen.

If the child or young person has a high level of medical need the personal assistant employed must not take sole responsibility for the care of the child or young person, and there will need to be another adult who is able to meet their health needs present at all times.

Employing family members as personal assistants

This is to clarify the Council's position, in terms of relatives who are paid as personal assistants from direct payment funds, to support outcomes identified in the Child Plan.

Section 17A of the 1989 Act, gave councils a duty to offer direct payments where there was an assessed need for a disabled child or young person.

In making direct payments under section 17A of the 1989 Act, Councils are subject to the duty to safeguard and promote the welfare of children and young people, and to promote their upbringing by their families when making these payments, in exactly the same way as when providing direct services. In developing Child Plans, the Council wants to be satisfied that the child or young

person's assessed needs can and will be met. Direct payments are not intended to replace existing support networks within families and communities.

As stated above, a direct payment cannot usually be used to employ someone that lives in the same household as the child or young person receiving a direct payment. However, there may be exceptional circumstances to meet the child or young person's unique needs, where this may be agreed.

There is discretion for the Council to agree that relatives can support a child or young person, to assist with tasks specific in the Child Plan, which are over and above or specific to the particular needs of a child or young person, as it relates to their disability. Such tasks or activities would not include what relatives would usually do for their family members as part of ordinary, supportive family relationships.

For example, it would be usual and ordinary for a grandparent to spend time with their grandchild, taking them to the park, beach, shopping, etc. It would not be ordinary for a grandparent to provide personal care for a child or young person. As children mature, consideration will be given to the continuing suitability of a personal assistant, to meet the child or young person's changing needs, to protect their dignity, and in particular how intimate care needs are to be met.

Any agreement for a relative to be employed as a personal assistant, and paid from direct payment funds, will be dependent upon the individual needs of the child or young person, and the specific requirements of the carer, with skills to meet those needs and activities set out in the Child Plan.

Consideration will also be given to matching the child or young person's needs with outcomes, for example, if the assessed need is to develop social skills within the child or young person's peer group, we would want to encourage the child or young person to attend activities with their peers. Consideration should be given as to whether it would be appropriate for the PA to provide support with such activities. The distance the personal assistant lives to the child or young person will also be considered. For example, it would be unusual for agreement to be given for a personal assistant living outside of Cornwall.

Where families choose to employ a relative as a personal assistant, the Disabled Children & Therapy Service area Team Manager, or other Team Manager, if the referral is from a team outside of DC&TS, will make a decision, based on the

assessment, whether it is appropriate for a relative to provide personal assistant support and be paid from the direct payment funds. Each case will be determined individually. If a relative is in receipt of Carers Allowance for the disabled child or young person, they cannot also be paid as a personal assistant.

These arrangements are in place to ensure that a disabled child or young person's identified needs can continue to be met and the personal support is suitable. All those involved should understand the purpose of direct payments and the role that the Council's monitoring plays in the successful operation of the scheme.

The Community Care, Services for Carers and Children's Services (Direct Payments) (England) Regulations 2009 states that a Council must stop making direct payments if it is not satisfied that the person's needs can be met by using direct payments or if the direct payments are not safeguarding or promoting the child's welfare where the payments relate to services under section 17A of the 1989 Act.

Disclosure & Barring Service Checks

Safeguarding is an integral component of direct payments and is firmly embedded in the assessment and support planning process and subsequent reviews.

Cornwall Council strongly recommends that all personal assistants employed to provide support, paid from direct payment funds, should undertake an enhanced Disclosure and Barring Service check, before they commence their employment as personal assistant and before they can be paid as a personal assistant from direct payment funds.

Cornwall Council require an enhanced Disclosure and Barring Service check to be conducted where it is intended for a personal assistant to be employed in a household where there are children and young people under 18 years. Personal assistants should not be employed until their DBS check is completed, and the Council has received notification of the check from the Disclosure & Barring Service.

If it has been agreed by the allocated worker that a child or young person can spend time at the home of the personal assistant, and that time is 'frequent or

substantial' all other household members aged 18 and over, who resides with the personal assistant must be enhanced DBS checked.

It is a requirement for the employer (this may be either the young person or a parent or carer) to see the original DBS certificate of their personal assistant before they start work and are paid from DP funds.

We also advise the employer it is good practice that they should see the original identity documentation the personal assistant provided to Cornwall Council to evidence their identity.

Where there is a positive disclosure, Cornwall Council will consider the findings and it may be decided that the information does not have a bearing on a person's suitability, or they may find that the person is not suitable to be employed in the role of personal assistant.

Cornwall Council will make the arrangements and will meet the cost of the initial enhanced Disclosure and Barring Service checks where personal assistants are employed by the young person or parent or carer, and for their household members, where agreement has been given.

In some cases, families choose to engage with a self-employed personal assistant. In these circumstances, it is the responsibility of the self-employed personal assistant to arrange to have an up to date enhanced DBS check, (the issue date should be within six weeks of commencement of work as a personal assistant for each individual child or young person) and for the self-employed worker to meet the cost of that DBS check. The self-employed worker should agree to provide evidence to Cornwall Council of their original DBS check.

The information provided by the Disclosure and Barring Service will not be disclosed to anyone other than the person concerned and those involved in the decision making.

Declaration of Criminal Convictions

The Council does not routinely undertake DBS re-checks for personal assistants, or their household members. In circumstances where personal assistants have been employed by a family receiving direct payments for three years or more, and the DBS issue date is more than three years, personal assistants are required to complete a self-declaration, this document is the 'Declaration of Criminal Convictions'.

Likewise, for all other household members, aged 18 and over, who resides with the personal assistant, if a child or young person is spending 'frequent or substantial time' at the home of the personal assistant. The Declaration will be sent by the Council.

Personal assistants and their household members should complete the Declaration and send this to the Personalisation Support Team in the provided pre-paid envelope marked 'strictly private and confidential'.

In some circumstances, personal assistants or household members will be asked to complete another enhanced DBS application.

Preparing for Adulthood

The provision of a direct payment changes as a young person becomes an adult, at the age of 18. All recipients of direct payments from Children and Family Services will be alerted to the relevant transitions worker from the age of 17. A transitions worker will make contact with the young person / their parent or carer to arrange to meet. Families will need to engage with processes in preparation for the young person's transition into Adult Services.

In some cases, a young disabled person of 16 or 17 may wish to take control of their direct payment that had been managed by their parent or carer, as part of their transition to Adult Services. 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.

If a young person has been receiving a direct payment, and they have reached the age of 18, the Council is responsible for continuing to provide that support throughout the assessment process from Adult Services. The Care Act 2014 requires the Council to ensure there is no gap in provision. Support from Children and Family Services will continue until adult support is in place to take

over, or until it is clear after the assessment, that adult support does not need to be provided.

Where direct payment support continues past the young person's 18th birthday, Children and Family Services will make arrangements to recover from Adult Services all funds paid from the date the young person reached 18, up until the time the assessment has been completed from adults, and support has been confirmed to be in place. Team Managers from Childrens and Adults Services will be asked to approve continued funding (Childrens) and then re-charge (Adults). Arrangements for re-charging will be made between the Childrens and Adults accountancy teams.

The Care Act does not say that a young person has to be a certain age to be able to ask for an assessment, it says that the Council must consider, in all cases whether there would be a significant benefit to the individual in doing an assessment. When a young person approaches their 18th birthday, they may decide to ask for an assessment of need, or this can be requested on their behalf.

A transition assessment from Adult Services can be requested on behalf of a young person, for example, from a parent or carer, prior to the young person's 18th birthday, even if they are not in receipt of support from Children and Family Services.

Where a young person is approaching their 18th birthday, and they have not received direct payment support from Children and Family Services, Adult Services may start the assessment process and identify that support is needed before the young person is 18. We recognise that young people, or their family on their behalf, may approach Adult Services directly. Children and Family Services may, on a discretionary basis, agree to fund direct payment support that adults have assessed as needed, whilst that young person is 17, up until their 18th birthday.

In these circumstances, written approval for re-charging (from Children and Family Services to the Adult Services) needs to be given from the Children and Family Services Team Manager. As before, arrangements for re-charging will be made between the Childrens and Adults accountancy teams.

If the adults assessment for weekly support is £100 or over, it would be necessary for Children and Family Services to assess the level of provision was appropriate before approval for funding is given.

As previously noted, if a young person who is 18 plus is assessed as eligible for support from Adult Services, a financial assessment will take place, and they may be asked for a contribution to their care package.

Financial monitoring of direct payments

Cornwall Council needs to fulfil its responsibility to ensure that public funds are spent to meet the intended outcomes. The Council has set up financial monitoring arrangements for audit purposes for direct payments.

The Council will review the use by young people or parents / carers of the direct payments and the nominated account every six months. The service user or parent / carer shall fully co-operate with each review. Following a review, any funds accrued and not spent in the Nominated Account should be returned, unless it can be shown by the service user or parent / carer that such funds have been accumulated for a specific purpose.

Before young people or parent / carers decide to accept direct payments, the Council will discuss with them the information they will be expected to provide and the way in which monitoring will be carried out.

Once direct payments are in place, young people or parents / carers will be required to keep documentary evidence and details of all transactions relating to the direct payment account. There should be an evidenced audit trail of all financial transactions. Young people or parents / carers will also need to complete the direct payment expenditure form, which will detail the way in which the Funds have been spent and send this information to the Council at regular intervals not to exceed three months.

Evidence of original supporting documents which may include bank statements, Personal Assistant(s) timesheets, expenses claim forms, payroll invoices, HMRC payments, and any additional invoices or receipts where payment has been made from the direct payment funds must be kept and will be checked by the Personalisation Support Advisor at the time of the review visit.

If the direct payments expenditure form is not completed and sent to the Council, further attempts will be made to request the information. If the

information is not received, and / or if documentary evidence is not provided at review visits, this will be escalated to a team manager for a decision to be made and may result in the direct payment being temporarily suspended.

Wrongful use of direct payments

Where it appears that the young person or parent / carer has been using the direct payment for items or services other than those specified in the Child Plan, or as set out in the Direct Payment Agreement, or there is evidence of deliberate misuse of funds, Cornwall Council will undertake a full review to establish the exact amount of money that has been inappropriately used and will seek to recover it.

If direct payments have been inappropriately used (either intentionally or unintentionally) due to mismanagement of the direct payment account, or the direct payment recipient has shown they are incapable or unwilling to manage their direct payment correctly, a review or reassessment will be undertaken as a matter of urgency.

If the outcome is that the direct payment funds have been inappropriately used, the Council will seek to recover the Funds and will request that they are returned on demand. The matter will be referred to the Council's Debt Recovery Team who will pursue the recovery of the Funds.

As a result of any findings of financial checking, any discrepancies will be investigated, and may result in the direct payment being suspended. A financial audit may take place at any time.

Review of direct payments

Cornwall Council will review how the direct payment is being managed and is within the terms of the Direct Payment Agreement; check that the bank account is being managed correctly, and records and receipts are up to date, and the monies are being used for the services or support for which they were intended, and as set out in the Child Plan. The Council will check that the direct payment is sufficiently meeting the assessed eligible needs of the child or young person.

The direct payment should be managed to enable support or services to meet the child or young person's needs.

A social care review will be undertaken if there is a change in needs or circumstances. If, in the meantime, the child or young person's needs do change or there is a change in family circumstances, Cornwall Council should be informed as soon as possible, and the direct payment provision may be reviewed.

A member of the Personalisation Support Team will visit the young person or parent / carer for an initial review, which will take place within eight weeks of the setting up of the direct payment.

Thereafter, the Council will review the use of funds and Nominated Account every six months. Services users or parents / carers should co-operate fully with each review. At the review, all evidence of expenditure and transactions from the direct payment account will be checked by a member of the Team.

Cornwall Council will undertake these regular reviews in relation to the use and management of the direct payment. This is required to ensure that Council monies are being used for the purposes laid out in the Child Plan or Education, Health & Care Plan, the correct amounts are being used for each service and those receipts and records are kept. Any discrepancies will be investigated, and attempts made to resolve inconsistencies.

Cornwall Council may increase, decrease, suspend or discontinue the direct payment in line with regular reviews or re-assessment of the child or young person's assessed needs. The young person or parent / carer may request a review or re-assessment of the child or young person's circumstances at any time.

As well as monitoring how well direct payments are meeting the needs of children and young people, the Council will monitor how direct payments are working overall. In doing so, the Council will actively seek the views, comments and suggestions of children, young people and families who receive direct payments or who have considered receiving them. Cornwall Council will pay attention to the views of those who have been discouraged from using them for whatever reason.

The Council will monitor the effectiveness of direct payment support services, based on the views of the people who use them to identify where improvements can be made.

Direct Payments Agreement

All recipients or suitable persons nominated to receive the Funds must sign the Direct Payments Agreement before a direct payment can be made.

The Direct Payments Agreement sets out the arrangements between the service user or parent or carer and Cornwall Council. The Agreement covers the start date of the direct payment; how payments will be made; the contingency reserves; the monitoring and reviewing arrangements which the service user and or parent or carer and Cornwall Council will follow in the management of the direct payment; and the termination of the direct payment by either the service user or parent or carer or Cornwall Council.

Cornwall Council will ask that the eligible young person or parent or carer, or a suitable nominated person, fully understands and agrees to the Direct Payment Agreement, regardless of their age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; sexual orientation.

Agreed contingency reserves

Cornwall Council agrees that a total of eight weekly payments of direct payment funds can be held in the Nominated Account, as an agreed reserve, at any one time.

If at any time the Funds held in the Nominated Account exceed a total of the sum of eight weekly payments paid by the Council to the service user, the service user or parent or carer shall, on request, return to the Council, the excess monies.

The direct payment bank account statements should be made available to the Personalisation Support Team for monitoring at the time of each direct payment review visit.

Recovery of direct payments

Cornwall Council reserves the right to recover direct payments, in the following circumstances:

- If the direct payment has not been used to meet agreed outcomes, as set out in the Child Plan or Education, Health & Care Plan;

- If the direct payment recipient fails to meet any terms of the Direct Payments Agreement, or fails to respond to any correspondence relating to the management of the direct payment;
- If a direct payment has been overpaid or paid in error;
- If the Funds have accrued and there is a surplus in the direct payment account, which is above the agreed contingency amount;
- If, following termination of the direct payment, any direct payment monies remain in the direct payment account;
- Direct payment funds will be recovered in line with Cornwall Council's debt recovery policy and cases may be referred to the Council's Debt Recovery Team for collection of funds.

Unspent direct payments

If, after allowances for outstanding costs and contingencies, there is found to be a build-up of unused direct payment funds in the Nominated Account, the unspent monies will be recovered by Cornwall Council. The Funds can be returned to Cornwall Council, either by sending a cheque or by on-line transfer into Cornwall Council's bank account. The Personalisation Team will support families with this.

If the direct payments end, what happens with the Funds held in the bank account?

The Council will ask the service user or parent / carer or nominated person, to make all outstanding payments relating to the care and support received and the remaining balance of funds held in the direct payments account should be returned to Cornwall Council. The Personalisation Support Team can help with the paperwork.

Statutory redundancy payments for personal assistants

If a personal assistant has been employed to provide support and they are being made redundant, the insurers will reimburse the policy holder the cost of statutory redundancy that parents or carers (employers) are required to pay any employee (personal assistant) following their dismissal during the period of

insurance, provided that they are dismissed as a result of certain circumstances. Further details are included in the individual insurance policy.

If there is a change in policy or decision by the government or the Council, for example, a change to legislation which affects entitlement to direct payment provision, then the insurers would not be liable to cover the redundancy costs. Instead, it would be expected that parents or carers (employers) would meet statutory redundancy costs from any accrued direct payment funds.

Overpayments

If the child or young person eligible for and receiving a direct payment is no longer entitled to, or, they or their family, have decided they no longer wish to receive a direct payment, and / or an overpayment has occurred due to an error on the part of Cornwall Council, the direct payment recipient will be notified that this overpayment will be recovered. Funds should be returned on demand.

Discontinuing direct payments

A young person or parent / carer to whom direct payments are made, whether to purchase support for themselves or on behalf of someone else, may decide at any time that they no longer wish to continue receiving direct payments.

Cornwall Council shall cease making direct payments if the service user or parent / carer requests that the direct payment should cease or if it appears to the Council that they are not capable of managing the direct payment or of managing them with help.

If a young person or parent / carer requests that the direct payment should cease, the reasons for this should be provided to Cornwall Council, who will work with the young person or family to plan how their assessed eligible care needs will be met in an alternative way.

Cornwall Council will stop making direct payments if it is not satisfied that the child or young person's needs can be met by using direct payments or if the direct payments are not safeguarding or promoting the child or young person's welfare where the payments relate to services under section 17 of the 1989 Act.

Direct payments will be discontinued when a child or young person no longer needs the support for which the direct payments are made.

Direct payments might be varied if the child or young person's needs call for the provision of different levels of support at different times.

In circumstances where the Council suspends or terminates the payment of the Funds for whatever reason, the Council will discuss the reasons for the suspension or termination with the young person or parent / carer and will write to them to give notice of the date of suspension or termination of the direct payment.

If a decision is made to cease the direct payments, by Cornwall Council or by the service user or parent / carer, a period of four weeks' written notice will be given.

In circumstances where the Council terminates the payment of the Funds for whatever reason, the Council will undertake a final reconciliation of the Funds and when requested, the service user or parent or carer shall repay to the Council any monies remaining in the Nominated Account within seven days of the receipt of a written request from the Council.

Direct payments may resume if agreed between the young person, or parent / carer and Cornwall Council, unless there has been a change of circumstances which means that there is no duty on the Council to make direct payments, or, in certain exceptional circumstances, the Council decides not to exercise the power to make direct payments.

Cornwall Council reserves the right and may discontinue payments if the young person or parent / carer, fails to comply with a condition to which the direct payments are subject or if any of the terms as set out in the Direct Payments Agreement are breached.

Cornwall Council may discontinue the direct payments if it is apparent that they have not been used to achieve the outcomes specified in the Child Plan.

If Cornwall Council has made a decision to discontinue direct payments, it will work with the young person or family to plan how the child or young person's assessed eligible care needs will be met in an alternative way and will arrange the relevant services instead, unless the withdrawal was following a reassessment after which the Council concluded that the services were no longer needed.

If a direct payment recipient moves out of the county in order to live elsewhere, their direct payments will cease. Any outstanding liabilities must be met from remaining funds held in the direct payment account, and remaining funds held in the account will be recovered by Cornwall Council.

Discontinuation of direct payments will not preclude the child or young person receiving a direct payment in the future as appropriate.

The Council will follow the terms of the Direct Payments Agreement signed by the young person or parent / carer and the Council.

Direct payment funds from education and health

If there is agreement from education or health services that a child or young people up to the age of 18, is eligible for a direct cash payment for education or health provision, it may be sensible for those direct payments to also be paid into the Nominated Account that the service user or parent / carer has already set up for the social care direct payments.

It is likely that the service user or parent / carer will be asked to sign a Direct Payment Agreement from education or health services once they have agreed to receive direct payments and they make arrangements to purchase support or services to meet the identified needs of the child or young person.

As with social care direct payments, the service user or parent / carer or nominated third party, should keep documentary evidence of all items of expenditure paid from the Nominated Account for support or services purchased for education and health provision.

The direct payment expenditure form should be completed by the service user, parent / carer or nominated third party detailing all incoming direct payment funds, clearly separating each funding stream, whether that is education, health or social care.

The service user, parent or carer will be informed of the amount of funds that will be paid into their Nominated Account, and whether this will be at regular four weekly intervals or by other arrangement.

It will be the responsibility of the service user, parent or carer to make sure that social care funds are not used for health or education support or services and

vice versa. Any unspent funds from one service cannot be used to pay for support from another service.

If a personal assistant has undertaken a DBS check from health, and they will now be providing social care support and be paid from social care funding, the potential personal assistant should complete another enhanced DBS application, which will be carried out by Cornwall Council.

If education colleagues ask the Personalisation Support Team to undertake a DBS check for a potential personal assistant, who will be paid from education direct payment funds, this will be arranged, and an internal re-charge will be raised.

Direct Payment Support Service

Cornwall Council employs an in-house team, providing full support for young people, parents or carers who are in receipt of social care direct payments for their disabled child or young person. The Personalisation Support Team will provide advice, information and guidance on the overall management of direct payment provision.

Contact details for the Personalisation Support Team:

Telephone: 01872 323059

Email: cypdirectpayments@cornwall.gov.uk

The Team must be allowed access to relevant documentation upon request as stated in the Direct Payments Agreement.

Consultation and engagement

The need for this policy has been discussed with parents and carers, and the staff of the Children and Family Services.

Performance and risk management

This policy will be reviewed on an annual basis, or sooner if practitioners identify any risks to disabled children and young people or parents / carers, or employees.

Any risks identified will be reported through Social Work Team Managers and may be raised at the Children and Family Services Senior Management Team meetings for discussion and possible inclusion on the directorate risk register via Spa net.

Monitoring and evaluation of the effectiveness of the policy will be through individual child or young person reviews and Direct Payments service user groups. The Children and Family Services action plan includes the monitoring and evaluation of policies and procedures as one of its objectives.

Communicating the Policy

The Children & Family Service is responsible for implementing and managing the policy in terms of social care direct payments.

This policy document will be circulated to all practitioners and shared with young people, parents and carers; it will also be available on the web site at www.cornwall.gov.uk/cypdirectpayments

Breaches and non-compliance

If the policy and procedures set out in this document are not followed then the Council will not be able to offer direct payments to disabled young people, or the parents and carers of disabled children and will seek alternate provision to meet their need.

The consequences of any breach or not complying with the policy may result in direct payments being suspended or discontinued.

If the recipient of a direct payment has a complaint about services they have independently purchased, they should address this with the service provider or the employee concerned.

Complaints about the process of setting up, administration and monitoring the direct payments will be handled under the appropriate Council Complaints Procedure.

Further information

Guidance on direct payments for community care, services for carers and children's services, Department of Health 2009

The Special Educational Needs (Personal Budgets) Regulations 2014

Cornwall and the Isles of Scilly Safeguarding Children Board Threshold Tool – eligibility criteria accessed on the LSCB website

Direct Payment Procedures

Working Together to Safeguard Children, July 2018 (updated December 2020)

Safeguarding disabled children, practice guidance, July 2009

Special Educational Needs Code of Practice: 0 to 25 years June 2014

Contact with named allocated worker or Council representative responsible for the assessment of need or Child Plan or Education, Health & Care Plan

Family Information Services – Local Offer information on support available - www.supportincornwall.org.uk

Direct payments and the administration of emergency epilepsy medication policy - www.cornwall.gov.uk/directpaymentsforms

Direct payments and the administration of type 1 diabetes medication policy - www.cornwall.gov.uk/directpaymentsforms

Direct payments and the administration of anaphylaxis medication policy - www.cornwall.gov.uk/directpaymentsforms

Cornwall's Policy for Personal Budgets. Guide to Personal Budgets & Personal Budget Statements - www.cornwall.gov.uk/cypdirectpayments

Adult Social Care Direct Payments Policy April 2021 –

[Direct payments - Cornwall Council](#)

Management

Policy management

Team Managers, reporting to either Service Managers or Heads of Service will be responsible for the implementation of this policy.

Breaches and non-compliance

Any breaches will be dealt with through supervision and / or Team discussion.

How the impact of the policy will be measured

Regular reports of the numbers of direct payments support packages held outside of DC&TS will be provided for each of the Heads of Service for the Area Teams, including reviews of those packages.

Evaluation and review

This policy will be reviewed in November 2022 by Children & Families Senior Leadership Team (SLT).

Document information

Contacts

Yvette Yates, Head of Disabled Children & Therapy Service, Children & Families,

Further information

Set out where to obtain further information

Alternative formats

If you would like this information in another format please contact: **Cornwall Council, County Hall, Treyew Road, Truro TR1 3AY**

Email: comments@cornwall.gov.uk Telephone: **0300 1234 100**

www.cornwall.gov.uk

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