

CHILDREN'S SERVICES
DIRECT PAYMENTS POLICY
AUGUST 2021
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To make North Somerset a truly great place for children and young people to thrive; where all have the best possible life and opportunities, including those who are vulnerable, disadvantaged and/or have special educational or additional need

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1.1 What is a Direct Payment?

A Direct Payment is a payment made by the Local Authority to:

- young people aged 16 years or over; or
- to the parents or carers of a child under 16 years old

to enable them to purchase care and support that the child or young person needs to meet the child or young person's assessed needs, instead of the Local Authority providing that support directly through services it runs or commissions.

Direct Payments are not part of a child or family's benefits and receiving a payment will not typically affect benefit entitlements.

The purpose of Direct Payments is to give the recipient choice and control in making decisions how to best meet their own needs or the needs of their children and family, by providing a flexible alternative to directly provided services. Direct Payments also support the co-production of creative solutions with children and young people and their parents and carers.

Direct Payments can be made in connection with special educational provision, health care and social care provision, however there are specific considerations around education and health support which are detailed below.

Local authorities are under a duty to make a direct payment where:

- the person appears to the responsible authority to be capable of managing a direct payment by himself or herself or with such assistance as may be available to the person;
- the person consents to the making of a direct payment (local authorities cannot insist that a person has a direct payment);
- the responsible authority is satisfied that the person's need for the relevant service can be met by securing the provision of it by means of a direct payment; and
- the responsible authority is satisfied that the welfare of the child in respect of whom the service is needed will be safeguarded and promoted by securing the provision of it by means of a direct payment

1.2 Legislative Basis:

- the Children & Families Act 2014, the SEND Code of Practice and the Special Educational Needs (Personal Budget) Regulations 2014.
- section 17A Children Act 1989 and the Community Care, Services for Carers and Children's Services (Direct Payments) (England) Regulations 2009
- Chronically Sick & Disabled Persons Act 1970.

1.3 Direct Payments for Education services

The local authority may only make direct payments where a request has been made for direct payments to be made and the authority is satisfied that the recipient will use them to secure the agreed provision in an appropriate way; where the recipient is the child's parent or a nominee, that person will act in the best interests of the child or the young person when securing the proposed agreed provision; the direct payments will not have an adverse

impact on other services which the local authority provides or arranges for children and young people with an EHC plan which the authority maintains; and securing the proposed agreed provision by direct payments is an efficient use of the authority's resources.

Where a direct payment is proposed for special educational provision, the early years setting, school or college must agree to a direct payment being used before it can go ahead.

A local authority may only make direct payments in respect of the special educational provision specified in an EHC plan, and may not make direct payments for the purpose of funding a place at a school or post-16 institution.

1.4 Direct Payments for NHS and allied health services.

Direct Payments for health services require the agreement of a Care Plan between the Clinical Commissioning Group (CCG) and the recipient and are funded by the NHS rather than the Local Authority.

While we will work closely with NHS colleagues to ensure that services and support are coordinated to secure the best possible outcomes for children and young people, Personal Health Budgets are not the responsibility of the Local Authority.

Further information is available via the NHS England website.

2. Eligibility

Under the provisions of the Children & Families Act 2014, a parent or carer of any child or young person aged 0-25 who has been assessed as requiring support or services relating to their Special Educational Needs or Disability (SEND) may request that support is provided via a Direct Payment.

If the Local Authority maintains an EHC plan, or is securing the preparation of an EHC plan, for a child or young person it must prepare a personal budget for him or her if asked to do so by the child's parent or the young person.

A child's parent or a young person may make a request to a local authority for a personal budget, including a request for direct payments, while a draft EHC plan is being prepared or while an EHC plan is being reviewed or re-assessed.

The [Council for Disabled Children](#) provides useful information on personal budgets for parents and carers, and for young people.

Part or all of a personal budget may be delivered by means of a Direct Payment. No-one can be forced to receive a direct payment, and direct payments may not be suitable where services are not available locally to meet needs.

Direct payments may be made to a child's parents, a young person or a person over compulsory school age nominated in writing by the child's parents or young person ("a nominee"). Nominees may only receive direct payments if the local authority considers them capable of managing the direct payment, and they do not lack mental capacity to consent to receiving direct payments. There are some additional restrictions as to who may be a nominee but these relate primarily to situations where the proposed nominee has been convicted of a criminal offence.

If a nominee has been appointed to receive a direct payment, then the child's parents or young person may notify the local authority in writing if they want to withdraw or change their nomination. In this situation, the local authority must stop making payments to the nominee as soon as reasonably practicable and consider whether to make direct payments to an alternative nominee if one has been proposed.

Where any special educational provision is to be secured by a direct payment, the special educational needs and outcomes to be met by the direct payment must be set out in Section J of the EHCP.

2.1 Who can receive the payment?

A Direct Payment can be paid to:

- young people aged 16 years or over who have a disability; or
- to the parents or carers of a child or young person who has a disability (with appropriate consent if the young person is aged 16 or over)
- a Nominee (see section 2 "Eligibility" above)

Typically, a nominated person who is administering the payment on behalf of a child or young person will:

- Have Parental Responsibility for the child or young person and provide them with a substantial amount of care, or the consent of a person with such responsibility to administer the payment;
- Give consent to the provision of a Direct Payment rather than a direct service to the child or young person;
- Be able to manage the Direct Payment effectively and lawfully (with assistance if necessary)
- If using a Direct Payment to employ a personal assistant, have the capacity and accept the responsibility to effectively and lawfully manage all aspects of being an employer - including managing payroll, taxation, insurance, background checks, training, pensions and other matters (with assistance if necessary).
- Ensure that the use of the Direct Payment safeguards and promotes the child or young person's welfare, and is always used in their best interests.
- Not be subject to certain mental health and criminal justice legislation which limits the choices they can make – more details can be found in the Special Educational Needs (Personal Budget) Regulations 2014.

There may be occasions where we will consider a person outside these "typical qualities"

16/17 year olds who are managing their own direct payment must:

- Consent to receiving a Direct Payment
- Be able to manage direct payments without assistance or with such assistance as may be available to them;

The Local authority will take the necessary steps to ensure appropriate consent is gained and will require a signed agreement with the recipient of the direct payment in order to confirm they understand and agree to the responsibilities outlined above.

Further guidelines on how Direct Payments may and may not be used can be found in Sections 4 and 5 below.

2.2 Assessment

Prior to discussing the possibility of Direct Payment with a child, young person or family, the practitioner should consider the following as part of their assessment and discuss the proposed solution with either a Senior Social Worker or their Team Manager. This is to ensure, as far as is possible that there is a consistent response from the whole team to the provision of Direct Payments.

The decision to make a Direct Payment should be informed by an assessment of need, and the analysis will need to consider:

- The young person, parent or carer's capacity, ability, and willingness to manage a Direct Payment; including consideration of the support available to the intended recipient of the direct payment to help them to manage the direct payment.
- The young person, parent or carer's understanding of safeguarding needs and potential risks in relation to selecting a carer for their child.
- The level and amount of support needed, with a clear and detailed rationale to support any recommendation which would exceed the cost of a directly provided service.
- Any alternative ways to deliver services, in order that the young person, parent or carer can make an informed decision about whether or not to request a Direct Payment.
- The needs of the child or young person's, their parent(s), carers and family.

Where a direct payment is being considered for a 16 or 17-year-old who will manage it themselves, further areas to be considered include:

- Their understanding of their own care and support needs, safety, wellbeing, safeguarding needs, and in appropriate cases education needs
- An analysis of how they will be involved in directing and choosing how the payment is used

The assessment should also consider how the recipient of the direct payment intends to use the funds to meet the child or young person's assessed needs, in line with the following sections of this policy.

Any direct payment must only proceed following the Team Manager authorising the assessment. Following that authorisation, it is possible that, depending on the extent of the proposed Direct Payment, it may also be necessary to seek the approval of a Resource Panel. A signed agreement accepting the terms of the Direct Payment scheme being received from the parent, carer, young person, or nominee is also required prior to the direct payment commencing.

2.3 Calculating payments

An individual assessment of the appropriate level of a Direct Payment will be made and agreed via the appropriate Head of Service or Resource Panel, based on the thresholds currently in place. In doing so, the panel will ensure it considers:

- i. A rate of payment that covers the cost of providing a lawful wage to directly employed personal assistants, as well as associated costs of employment including annual leave, income tax, national insurance payments, pension contributions and a small contingency
- ii. A rate of payment which reflects the local market cost of domiciliary personal care or overnight short breaks provision
- iii. The specific costs of any specialist provision or agreed flexibility in the use of Direct Payments

The rates outlined in (i) and (ii) above will be reviewed regularly and agreed by a formal decision of the Director of Children's Services.

The panel may determine that not all aspects of a personal budget are suitable for provision by way of a Direct Payment based on the sufficiency of services in the local market.

3. How Often are Direct Payments Made?

Direct Payments are usually paid in advance into a Bank or Building Society account specifically set up for the purpose. They are usually made as:

- a school-termly payment, particularly where the support is mostly needed during school holidays
- a four-weekly payment for more regularly occurring needs

The payment frequency should be determined by considering the level of need, the level of the payment, how the payment will be managed, and the type of services which are likely to be purchased. The frequency of direct payments will be specified within the direct payment agreement between the Local Authority and the recipient of the direct payment.

The Local Authority cannot make direct payments unless it has provided written notice to the intended recipient of the direct payments of the name of the service user for whose benefit the direct payment is being made, the goods or services which are to be secured using the direct payment, the proposed amount of direct payments, any conditions attached to how the direct payments may be spent and the dates on which the Local Authority will make the direct payments to the recipient.

The Local Authority may only make the direct payments once the recipient of this notice has provided their written agreement to receive the direct payments, to use them only to secure the agreed provision, to comply with any conditions attached to the direct payment, to notify the local authority of any relevant changes in circumstances, to hold a bank account open for the sole purpose of managing the direct payments, to ensure no person not approved in writing by the local authority may use the bank account, to keep and make available to the local authority records of all monies paid in and withdrawn from the bank account.

4. What can a Direct Payment be used for?

4.1 Employing a personal assistant (PA)

Direct payments are often used to directly employ a PA to:

- take the young person/child into the community to access an activity, support inclusion, go to a club etc
- work with the child directly within the home, to give parents and siblings a break
- stay overnight to give a short break for carers
- act as a registered childminder or child home carer (sometimes referred to as a sitting service) for children aged under 8.

The payment agreed will also include an element for the costs arising from employment, such as tax, national insurance, and pre-employment checks. If additional support to manage payroll services or to act as a payment management service is required, or if insurances related to becoming an employer of a PA are needed, these may also be included.

4.2 Other uses for Direct Payments

A direct payment may also be used to:

- cover part or all of the cost of a service from an approved agency or self-employed person to provide direct care to meet a child, young person, or family's needs
- meet the cost of after school clubs and holiday play schemes
- meet costs of accessing community provision, incurred due to the additional needs of the child or young person
- support the inclusion of the child or young person in activities undertaken by their family
- cover part or all of the cost of residential overnight breaks

With the written prior agreement of the Local Authority, a direct payment may also be used for:

- any service which meets the assessed need for a short break
- special educational provision specified in an Education, Health and Care Plan

4.3 Direct Payments for Care and Support provided under s.17A of the Children Act 1989

If the Local Authority has decided that the needs of a disabled young person (aged 16 or 17), a disabled person with parental responsibility for a child, or a person with parental responsibility for a disabled child call for the Local Authority to provide a service under section 17 of the Children Act 1989 then, with that person's consent, the Local Authority may make direct payments to them to secure the necessary service(s).

In such cases the Local Authority is obliged to make a direct payment if:

- the person appears to the Local Authority to be capable of managing a direct payment by himself or herself or with such assistance as may be available to them;
- the person consents to the making of a direct payment;
- the Local Authority is satisfied that the person's need for the relevant service can be met by securing its provision by means of a direct payment; and
- the Local Authority is satisfied that the person's welfare will be safeguarded and promoted by securing the provision by direct payment.

Regulations place restrictions on the use of direct payments to pay relatives who live in the same household as the person for whose benefit the direct payment will be used (but no restriction if the relative lives elsewhere).

If a relative lives in the same household as the person for whose benefit the direct payment will be made, the presumption is that he or she may not be paid with the direct payment – unless the local authority ‘is satisfied that securing the service from a family member is necessary for promoting the welfare of the child’.

5. What may a Direct Payment not be used for?

A Direct Payment must not be used for:

- Duplication of a service already provided directly to the young person by the Local Authority, NHS, or an education provider
- For a service that the child, young person, or their carer has not been assessed as needing
- To employ a relative living in the same household as the child without written agreement from the Local Authority
- To purchase full-time accommodation – defined as a period of more than 28 days as a block, or more than 120 days in any one year
- To meet a health need that is the responsibility of the NHS, aside from where the NHS is funding this as part of a person’s Personal Budget
- To meet a housing need
- To purchase a package of care that is not sustainable in the community
- To fund childcare costs to enable a parent to work. A range of support is available via the Early Years Funding Team for these needs.
- To purchase any service or goods which would otherwise be unlawful, or which would compromise the reputation of the Local Authority

In addition, where the recipient of a Direct Payment purchases the service of an individual regarded as self-employed, no part of the Direct Payment may be used to fund their Income Tax, National Insurance, pension, redundancy payment or other related costs of employment.

Direct payment agreements made to secure services under s.17 of the Children Act 1989 may attach conditions, including prohibiting the recipient from securing services from particular persons and/or requiring the recipient to provide the local authority with specific information.

5.1 Restrictions on employment

A Direct Payment must not be used to employ someone without undertaking appropriate checks. These include, but are not limited to:

- Disclosure and Barring Service checks
- right to work in the UK checks
- references from previous employers
- qualifications and certification relevant to any specialist care or support to be provided

5.2 Permanent accommodation and short breaks

Direct payments cannot be used to pay for permanent residential accommodation, though they can be used for occasional short breaks, where agreed as part of a care plan, for up to 120 days in any 12-month period.

5.3 Discretionary use

Should a parent, carer or young person wish to use their direct payment in ways which are not explicitly permitted or prohibited above, they should seek the opinion of the Children with Disabilities Team.

The practitioner will consider the impact of the proposed use on the planned outcomes for the child or young person in determining whether this should be permitted, and the Team Manager may approve their response. Any decision will be made on a case by case basis.

6. Hospital Stays

When a child or young person under 16 years of age needs to go into hospital, the parent, carer, or the person managing the Direct Payment should advise the local authority immediately to discuss the continuation of the direct payment.

It is possible that the direct payment will continue for an agreed period, primarily to allow for the person managing the Direct Payment to ensure that any contractual obligations around termination of the support can be met. However, the issue of continuity of care post-discharge may also be considered in some instances.

Consideration will be given by the Local Authority and the CCG as to how continued direct payments might be used to meet non-health needs during an extended hospital stay, or to ensure that the employment arrangements can be maintained. For example, the child or young person may wish to be taken to appointments or activities during their stay. However, it is important that any input from PAs is provided in such a way that it does not interfere with medical treatment.

In instances where the authorised or nominated person receiving the payment on behalf of the child or young person requires hospital treatment, the Local Authority must conduct an urgent review to ensure the child or young person continues to receive the care and support they need. This might include consideration as to whether the duties of the usual recipient of the direct payment can be carried out by someone else, or through provision of short-term local authority arranged care and support.

7. Safeguarding

If the Local Authority considers provision of a Direct Payment may pose a risk to a child or young person's wellbeing or safety, the Local Authority may not agree to meet needs by making a Direct Payment. The rationale for this will be clearly explained and support provided by a social worker to ensure the family understand the worries.

7.1 Employees

This could for example be where a parent or carer wishes to employ someone who has refused to undergo appropriate checks, or where such checks have raised areas of concern.

It may also include situations where a parent or carer wishes to use the payment to purchase domiciliary care services from agencies which are not registered with the Care Quality Commission.

In such circumstances, the practitioner should discuss with the family the important part that checks and references play in ensuring that the person employed is wholly suitable for caring for the individual child/young person. Parents, carers, and young people should be actively encouraged to ensure all such checks are undertaken.

If, following discussion, the parent, carer, or young person does not want to take up a DBS check on an employee, the situation should be discussed with the Children with Disabilities Team Manager.

Use of agencies or self-employed staff to provide personal care.

Any agency used by the family to provide personal care services delivered to a child or young person must be registered with the Care Quality Commission (CQC) to provide domiciliary services to children. In such cases, the agency is fully responsible for undertaking all checks on its employees and should confirm this in its agreement or contract with the Direct Payment recipient.

Where the direct payment recipient purchases a service from a self-employed individual, that individual will be responsible for their own tax, national insurance, and public liability insurance. They should also be prepared to provide any requested evidence of background or status checks to the Direct Payment recipient on request.

8. Additional Considerations

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 services to meet their individual needs. However, there are a range of circumstances which may arise which require further consideration.

8.1 Employing relatives as carers/personal assistants

8.1.1 Relatives who live with the child or young person at home

Where a parent, carer or other relative such as spouse or sibling, is resident at the same address as the child or young person, it is not normally permissible for them to be employed as a PA via a Direct Payment.

In exceptional circumstances, for example to prevent a breakdown in care arrangements for a temporary period, the Local Authority may determine that such an arrangement would be appropriate. This will be confirmed in writing by the Children with Disabilities Team Manager, including any additional arrangements for safeguarding, managing the payment or review of the situation.

Where a parent, carer, or young person over 16 who manages their own payment begins a personal relationship with someone who is currently employed by them as a Personal Assistant it is important that this is disclosed immediately in writing to the Children with Disabilities Team. Further discussion will be required to ensure that the existing arrangement remains suitable, and to explore the potential for change in family dynamics.

Failure to disclose a change of circumstances of this nature could result in a need for urgent review and possible termination of the Direct Payment arrangement.

8.1.2 Relatives who do not live with the child or young person at home

In most cases, other relatives may be employed as PAs via a Direct Payment, but it is important that those administering payments take account of the following points in doing so:

- Relatives must be employed formally as with any other carer, subject to the same checks and issued with a contract of employment
- Payments to relatives will be monitored in exactly the same way and the parent will be expected to keep records as with other employees
- All the responsibilities of a responsible employer still fall to the parent/carers including liability insurance, tax and national insurance etc.

8.2 Transferring between a Direct Payment and a direct service

There may be situations where a parent, carer or young person who currently receives directly provided services wishes to transfer to receipt of a Direct Payment, or vice versa. Assuming there is no request for an increase in the level of services, this transfer should usually be able to take place without the need for re-assessment.

Any such change will need to be agreed at a child in need review meeting, specially convened if necessary. In all cases, the availability and sufficiency of services in the local area which would meet needs should be carefully considered, alongside the need for specifically commissioned services, along with the usual considerations for eligibility for services or Direct Payments.

In cases where an unexpected change of circumstances occurs, it may be necessary for the Local Authority to urgently modify the provision in place to ensure the safety and wellbeing of a child or young person.

8.3 Transfer to Adult Services

When a child in respect of whom direct payments are being made becomes a young person, the local authority must take reasonable steps to ascertain whether the young person consents to receiving direct payments.

If the young person notifies the local authority that they wish to receive direct payments, then subject to the eligibility criteria being met, the local authority must make direct payments. The young person may request to their parent or nominee continuing to receive the direct payment on their behalf.

If the young person notifies the local authority in writing that they do not consent to the making of direct payments, the local authority will stop making direct payments as soon as reasonably practicable.

While the Care Act 2014 provides a similar right to request a Direct Payment, the process of assessing eligible care and support needs differs from that for children and young people, as do many of the arrangements around funding health and further education provision.

Colleagues in schools will begin to consider preparation for adulthood at around age 14, often at the Annual Review in Year 9 for those children with an EHCP. Continued consideration will take place as the transfer approaches, and it may be determined that the Adult Transitions Team needs to assess any ongoing care needs beyond the age of 18. This including consideration of ongoing eligibility for Direct Payments and a new direct payment agreement will need to be signed between the recipient and the local authority.

Parents and carers, or young people receiving a Direct Payment who are concerned about transition to adult services should contact the Children with Disabilities Team.

8.4 Recruiting, training, and employing Personal Assistants

Should a recipient of a Direct Payment wish to directly employ personal assistants, they will need to consider a range of additional factors. The Direct Payment Support Team will support new users of Direct Payments with these matters, which include:

Where to advertise for support?

- local job websites and newspapers are often still the best places to reach people interested in care work.
- You may also wish to consider the Personal Assistant Register operated by North Somerset.
- While social media can reach many people quickly, it is important that privacy and confidentiality are not breached, and that any potential safeguarding concerns are considered carefully.

What training may be required?

- Will your employees need to be trained to manage specific needs, or use equipment in your home?
- Will your employees be aware of their responsibility to keep your personal information secure and confidential, or how to report any safeguarding concerns they have?

Will your employees be safe?

- Have you assessed any potential risks in the work they will undertake, or your home environment?
- Have you got sufficient Employers Liability Insurance cover in case an employee has an accident?
- Have you ensured you have enough staff so they are not working long hours a day and/or many hours a week over and above an average working week.

Are your employment and financial processes robust?

- Are you aware of all potential tax, national insurance, and pension liabilities for your employees?
- Have you provided your employees with a contract of employment?
- Are you paying an hourly rate which allows you to cover these additional costs from your agreed Direct Payment amount?
- Have you a system in place for keeping accurate records of time work, amounts paid and any disciplinary matters which may arise?

Have you planned for contingencies?

- Do you have a plan in place for times that your employees are on holiday or unwell?

9. Roles and responsibilities

9.1 The recipient of the Direct Payment

The Direct Payment recipient, or appointed person will sign a Direct Payment Agreement with the Local Authority prior to payments commencing. This will confirm that they are aware of and fully accept their responsibilities.

The recipient of the payment, or their appointed person, is responsible for:

- Maintaining a separate bank or building society account solely for the use of the Direct Payment
- Keeping records of expenditure, receipts, and time sheets, and providing these to the Local Authority along with statements of account, to facilitate quarterly financial audits
- Providing any directly employed PAs with a contract of employment which is compatible with current employment law
- Paying Income Tax and National Insurance payments, holiday pay and sick pay in line with current employment Law
- Determining employees' entitlement to annual leave, pension enrolment and redundancy payments
- Keeping employment records, including time sheets, disciplinary matters, training received
- Repayment of any excess unused funds on the request of the Local Authority
- Notifying the Local Authority promptly of any change in needs, services provided or their own ability to manage the Direct Payment

9.2 The Children with Disabilities Team

The Local Authority Children with Disabilities Team will:

- Undertake statutory assessments and reviews promptly, including:
 - responding to requests for assessment within 10 working days
 - visiting children, young people, and their families every 12 weeks
 - carrying out reviews of Direct Payment arrangements twice each year
- Notify all children, young people, or parents of their right to request a Direct Payment
- To work with the Direct Payments Support Team to support children, parents, and carers to understand the expectations and responsibilities in receiving a Direct Payment in relation to ensuring the needs of the child or young person are met
- Consider any changes in needs or circumstances and agreeing any changes in the agreement in writing, undertaking a child in need review if necessary
- To work with the Direct Payments Support Team to support the child, young person, or parent with finding appropriate services to purchase, notifying the Children's Commissioning Team of any gaps or insufficiencies noted

9.3 Payroll Services and Brokers

Given the complexities of managing a Direct Payment to employ PAs, the parent, carer, or young person may determine that they wish to employ a Payroll Service or Broker to manage aspects of their Direct Payment. This may include taxation, insurance, time sheet management, annual leave entitlement or pensions for example.

The Direct Payments Support Team can provide advice and support on deciding which service may be suitable during the setup of a new Direct Payment. Should a Payroll provider be required it may be possible to provide the additional costs via the Direct Payment.

9.4 The Direct Payments Support Team

Where a new Direct Payment is agreed for a child or young person, the Direct Payments Support Team (DPST) will provide guidance and assistance to ensure the set-up process runs smoothly, including advice on employing Personal Assistants and financial monitoring. This may include:

- Offering advice and assistance with the recruitment, selection, and retention of personal assistant staff
- Advice and support to ensure understanding of how to keep accurate records to complete the required regular financial returns
- Giving support and guidance with the elements of managing a personal assistant, being an employer, accessing suitable insurance, payroll providers, and personnel records
- Support children, parents, and carers to understand the expectations and their responsibilities in respect of directly employed PAs under current employment law

9.5 The Local Authority Finance Team (Payments)

The Local Authority Finance Team (Payments) will ensure that:

- Agreed payments are made promptly and correctly, at the agreed frequency
- Quarterly audits are undertaken and processed promptly, with outcomes notified to the Direct Payment recipient, the Direct Payments Support Team and the Children with Disabilities Team
- Any excess balances in Direct Payment accounts are recovered promptly, in accordance with the relevant Regulations
- Any issues or irregularities in management of the Direct Payment are notified promptly to the Children with Disabilities Team to facilitate a review of the arrangement

10. Decisions not to make Direct Payments

Where the Local Authority decides not to make Direct Payments it must inform the parent, carer or young person of its decision and rationale in writing. This communication must explain the right to request a review of the decision. If the Local Authority is asked to review its decision then it must consider any representations made by the child's parent or the young person and inform in writing the child's parent or the young person of the outcome of the review, giving reasons.

11. Monitoring and review of Direct Payments

The Local Authority will carefully monitor and review the use of Direct Payments by the recipient to ensure that they are meeting needs effectively, promoting the wellbeing, safety and outcomes of the child or young person, and being used responsibly within the Direct Payment agreement.

11.1 Frequency of reviews

The Direct Payment arrangement will be reviewed:

- By the DPST within the first three months of set-up, to ensure the recipient has all the support necessary to use the payment effectively
- By the Children with Disabilities Team six months after setting up, and twice each year, to ensure the arrangement is meeting the needs of the child or young person and their carers
- As part of the EHCP Annual Review process where applicable

11.2 Scope of reviews

When carrying out a review, the Local Authority must consider whether:

it is appropriate to continue to secure the agreed provision by means of a Direct Payment; or

- the child or young person's needs are being met, or could now be met by universal services, meaning the Direct Payment is no longer required
- the Direct Payments have been used effectively
- there are sufficient local services available for purchase via the Direct Payment to meet the needs of the child or young person, or their carer
- the amount of direct payments continues to be sufficient to secure the agreed provision
- the recipient has complied with their obligations on the use of the Direct Payment, or whether any support may be required to do so

11.3 Outcome of reviews

Following a review, the Local Authority may determine that it is necessary to:

- substitute the person receiving the Direct Payments with a nominee or broker as appropriate to secure correct management of the funds; or
- increase, maintain or reduce the amount of Direct Payments to meet changing needs; or
- require the recipient to comply with either or both of the following conditions:
 - Not to secure a service from a particular person or provider
 - To provide such information as the Local Authority considers necessary; or
- to stop making Direct Payments, and to arrange direct provision of services to meet needs.

11.4 Notification of outcomes

Any decision to alter the Direct Payment agreement will be notified in writing to the parent, carer or young person receiving the payment, along with the reasons for making the change.

If the outcome of a review is that the local authority has decided to reduce the amount of the direct payment, the local authority must give reasonable notice to the recipient setting out its reasons for its decision. If asked to reconsider its decision, the Local Authority must do so. This will require the Local Authority to consider representations made by the recipient

(and where the recipient is a nominee, any representations made by the child's parent or the young person) and must then provide written reasons for its decision.

For each occasion on which the Local Authority decides to reduce the amount of a direct payment it can be asked to reconsider its decision only once.

The Local Authority may reduce direct payments following reasonable notice even if a request for reconsideration has been made.

11.5 Quarterly Financial Audits

All direct payments are subject to a quarterly audit to check that the funds are being used appropriately, that accurate records are being kept, and that the account is being managed effectively and is in good order. These Audits are undertaken by Liberata, on behalf of the Local Authority.

Direct Payment recipients will receive support from DPST with setting up recording processes to enable them to manage the audit process effectively and efficiently.

Should concerns be identified during the audit process, these will initially be flagged with the Direct Payments Support Team who will liaise with the Children with Disabilities Team to ensure a review the direct payment arrangement takes place. Actions which may follow if the situation cannot be rectified are detailed in Section 12 below.

12. Changes to the Direct Payment Agreement

12.1 Reducing the Amount of Direct Payments

Where the Local Authority determines that there is a need to reduce the amount of Direct Payments, it must provide reasonable written notice (where possible this will usually be four weeks) to the recipient and must set out in the notice the reasons for its decision. These reasons will usually be determined by way of a review of the Direct Payment (see section 11) and will carefully balance the impact of reducing the payment on the wellbeing and needs of the child or young person.

The Local Authority may not reduce the Direct Payments in such a way that costs already incurred for services provided cannot be met by the recipient.

A particular instalment of a Direct Payment may be reduced without notice if it is determined that the recipient has a higher than expected balance in their account. For example, if a payment would normally be £500 but the recipient has a current balance of £200, it is appropriate for the next payment to be adjusted to £300 to reflect this, any exceptions to this must be agreed in advance by the Children with Disabilities Team, notified to the Finance team and carefully recorded.

If a Direct Payment recipient holds a high balance which is unlikely to be used in a reasonable period, the Local Authority may recover the full balance.

12.2 Repayment and Recovery of Direct Payments

The Local Authority may require the recipient to repay part or all of the direct payments account balance held, where:

- The circumstances of the child or young person have changed in a manner which has an impact on the appropriateness of the agreed provision
- All or part of the Direct Payments have not been used to secure the agreed provision
- Conditions attached to the direct payment's use have not been complied with
- Theft, fraud, or another offence may have occurred in connection with the Direct Payment
- The capacity or legal standing of the person receiving the Direct Payment on behalf of the child or young person has changed
- The personal relationship between the recipient of the Direct Payment and an employee has changed and following review, it is no longer appropriate to provide support via a Direct Payment
- The child or young person has died, has moved into long-term residential or nursing provision, has moved permanently to another local authority area or has transferred to adult services and will no longer be receiving a Direct Payment
- The balance of the direct payment is considered high, or the service user is not reasonably likely to use the current balance within a reasonable time.

Notice will be provided in writing to the recipient or nominee, setting out the reasons for the decision, the amount to be repaid and a reasonable timescale within which the amount must be repaid.

The Local Authority may only seek repayment of any portion of the Direct Payments that has not already been spent on the agreed provision.

12.3 Ceasing Direct Payments

The Local Authority will stop making Direct Payments if:

- the recipient has notified the Local Authority in writing that they withdraw their consent to receive the Direct Payments, or to the terms of the Direct Payments agreement
- Having taken reasonable steps to ascertain whether the young person consents to Direct Payments the Local Authority has not been able to determine this
- By change of legal status, relationship, or capacity the recipient ceases to be a person to whom a Direct Payments may be made
- Following an appropriate review, it appears to the Local Authority that:
 - The recipient is not using the payment to secure the agreed provision; or
 - The agreed provision can no longer be secured by means of a Direct Payment
- At any point the Local Authority becomes aware that the making of Direct Payments relating to special educational provision is:
 - Having an adverse impact on other services which the Local Authority provides or arranges for children and young people with an education, Health and Care Plan which the authority maintains; or
 - No longer compatible with the authority's efficient use of its resources.

Where the Local Authority decides to stop making Direct Payments, the Local Authority must first give notice in writing to the recipient setting out the reasons for its decision.

The local authority must reconsider its decision where requested to do so by the recipient.

When conducting its reconsideration, the local authority must consider the representations made by the recipient (and where the recipient is a nominee, any representations made by

the child's parent or young person) and must then provide written reasons of its decision following the reconsideration to the recipient (and to the child's parent or young person, where the recipient is a nominee).

The local authority is not required to undertake more than one reconsideration of its decision.

12.4 Funding additional provision from employees or providers

Where a child, young person, parent, or carer wishes to purchase additional services beyond those agreed in the care plan from providers with whom they work, they will be wholly responsible for any additional costs incurred. They should first seek agreement from the Children with Disabilities Team in writing but is acknowledged that in urgent situations this may not be possible e.g “admission to hospital and extra support required and or requested from the Hospital setting”. However, the recipient of the Direct Payment should undertake to inform the team as soon as possible after the event.

For example, should a parent whose child receives 10 hours of personal care from a PA they employ decide to request an additional 5 hours of care beyond that agreed in the care plan and Direct Payment agreement, they should transfer funds to cover the full cost of this additional service, including any tax and insurance liabilities, into their direct payment account.

Careful records should be kept of any such arrangement to prevent issues arising when quarterly audits take place.

The Local Authority will not provide additional funds should direct payment recipients use the balance of their account to purchase additional services without agreement or agree to pay a higher rate of pay to any directly employed staff without prior approval from the Children with Disabilities Team.

12.5 Right to reconsideration

In all of the situations outlined in this section, the Local Authority must provide the opportunity for the recipient to request reconsideration of the decision but is not required to undertake more than one reconsideration of a decision. Any further concerns should be managed via the [Corporate Complaints](#) process.

When conducting its reconsideration, the Local Authority must consider any representations made by the recipient (and where the recipient is a nominee, any representations made by the child's parent, carer or the young person) and must then provide written reasons to the recipient of the decision following the reconsideration. The Local Authority may reduce Direct Payments following reasonable notice even though a request for reconsideration has been made.

Statutory rights of appeal to the First-Tier Tribunal or to complain to the Local Government and Social Care ombudsman are not affected by this policy.

13. Further support, advice, and guidance

We recognise that deciding to receive a Direct Payment and becoming an employer is a huge decision, and that anyone considering this may want to talk to others who have taken the step, or to get further advice. The resource below may help:

- Supportive Parents SENDIAS Service – providing local, independent advice, guidance, support and advocacy for parents and carers navigating the SEN process, included education, health and care matters
- North Somerset Parent Carers Working Together – a local forum for parents and carers of children with SEND which advocates for their rights and needs, and works with the Local Authority and Health services to support improvements
- The Council for Disabled Children – providing high quality training and resources for young people, parents, carers and professionals
- North Somerset Local Offer – a directory of local information, advice and support including short breaks, care services and activities