Fa

Children’s Services Direct Payments Policy for Disabled Children and Young People

**Version FINAL v.1.1 Approved by Tina Benjamin**

**Date: 31/03/23**

# About this document

|  |  |
| --- | --- |
|  |  |
| **Title** | **Direct Payments Policy for Children and Young People** |
| **Purpose** | **This Policy focuses on the provision of Direct Payments to children and young people up to the age of 18 and their families.**  |
| **Updated by** | **Jenny Brickell** |
| **Approved by** | **Matt Ansell**  |
| **Date** | **30.05.2024** |
| **Version number** | **v.1.1** |
| **Status** | **Final** |
| **Review frequency** | **12 months** |
| **Next review date** | **30.05.2025** |

Version Control

**Document Location:** The [Surrey County Council Children’s Services Procedures Manual.](https://www.proceduresonline.com/surrey/cs/) This document is only valid on the day it is printed

|  |  |  |  |
| --- | --- | --- | --- |
| **Date Issued:** | **Version** | **Summary of Changes** | **Created by** |
|  31 March 2023 | Final v 1 | First Issued | Jenny Brickell |
| 30 May 2024 | Final v1.1 | Fully reviewed |  Jenny Brickell |
|  |  |  |  |

#### Intended Audience

This document has been issued to the following people for Review (R) Information (I) and Review and Sign off (S). The Child in Need procedure is mandatory and must be shared with all staff and partners working with Children in Need and their families.

|  |  |  |
| --- | --- | --- |
| **Name** | **Position** | **S/R/I** |
|  Matt Antsell | Director | S/R |
| All staff |  | I |

Contents

Contents

[About this document 2](#_Toc131416166)

[1. Introduction 5](#_Toc131416167)

[2. Purpose and Aim of Policy 6](#_Toc131416168)

[3. Key Legislation and Guidance 6](#_Toc131416169)

[4. Key Principles 7](#_Toc131416170)

[5. A Partnership Approach 8](#_Toc131416171)

[6. Information and Support 9](#_Toc131416172)

[7. How Can Direct Payments Be Used? 10](#_Toc131416173)

[8. The Process 12](#_Toc131416174)

[9. Discontinuance 16](#_Toc131416175)

[10. Contingency and Emergency Payments 17](#_Toc131416176)

[11. One-off Direct Payments 18](#_Toc131416177)

[12. Useful Contacts Links 19](#_Toc131416178)

[13. Appendix A – Direct Payments Support Services 21](#_Toc131416179)

[14. Appendix B – Miscellaneous 22](#_Toc131416182)

[15. Appendix C – Safe Recruitment 25](#_Toc131416183)

[16. Appendix D – Direct Payment Agreement 28](#_Toc131416184)

[17. Appendix E – Direct Payment Agreement (Education) 33](#_Toc131416186)

[18. Appendix F – Direct Payment Agreement (Health) 42](#_Toc131416188)

## Introduction

A Personal Budget is defined as the total amount of funding available by the Local Authority to meet the needs of a child and support them in achieving good outcomes. Direct Payments are one way of delivering some or all of this agreed funding in which children, young people and their families can direct their own support.

Direct Payments are payments that are paid to either a young person, aged 16 years and above, or to the parent or carer, of a child or young person up to the age of 18, or to a nominated third party. Direct payments promote independence, choice and inclusion by enabling the purchasing of support and services. They are made available to those children and young people who have been assessed as meeting the threshold for social care support as per the Local Authority’s statutory duty.

Young people and parents/carers are responsible for ensuring that the direct payment funds are spent only on the assessed needs to meet identified outcomes in their child’s plan. In the event that a parent carer or young person is having difficulty recruiting a personal assistant, alternative options can be explored to meet identified needs and agreed with social worker /family support worker.

When personal assistant cannot be recruited and or a decision is made with a social worker or family support worker that alternative provision can be identified this needs to be planned so that the funds in the account appropriately cover these alternatives .

Personal budgets can be made for special educational needs (SEN), health care and social care provision:

NB please see the [SEND personal budgets policy | Surrey Local Offer](https://www.surreylocaloffer.org.uk/practitioners/resources/send-personal-budgets-policy) for the specific SEND policy

* **A personal social care budget** refers to the budget that will be made available if following an assessment it is clear that a child or young person needs additional and individual support at home or when out and about in the local and wider community. A personal social care budget may also be offered to purchase equipment recommended by Social Care Occupational Therapists following an Occupational Therapy Assessment in the home.
* **A personal health budget** can be used for Children/Young People who have complex, long term and/or life limiting conditions and meet criteria for NHS Continuing Care. A personal health budget may be used to fund care or to purchase equipment or other services. A personal health budget may also be available if a child/young person has Special Education Needs, is Looked After, or in line with the Transforming Care agenda. Personal Health Budgets in Surrey are awarded through Guildford and Waverley Clinical Commissioning Groups (CCG) and are subject to individual assessment and review.
* **A** **personal SEN budget** is the amount of money required to meet the needs of a child or young person with an [education, health and care (EHC) plan](https://www.surreylocaloffer.org.uk/parents-and-carers/ehcp). It can help give parents more control over what the money is spent on and who spends it. It might include things like a [personal transport budget](https://www.surreylocaloffer.org.uk/practitioners/resources/send-personal-budgets-policy).

## Purpose and Aim of Policy

This Policy focuses on the provision of Direct payments to children and young people up to the age of 18, and their families. The target audience of this policy is staff from Social Care, Education and Health, who are responsible for assessment and planning to improve outcomes for disabled children. This policy has been developed in partnership with Family Voice.

This policy is intended:

* To ensure that direct payments promote individual choice to meet agreed identified needs.
* To achieve consistent practice and approaches for children, young people who have a disability and families accessing direct payments.
* To standardise processes across the service.
* To ensure that Surrey County Council meets their statutory obligations in relation to legislation and guidance including the Local Authority audit requirement ensuring that public money is spent appropriately.
* To assist Surrey County Council staff and partners involved in undertaking social care needs assessments, re-assessments, reviews and care planning.
* To enable the process of Education, Health and Care Plans having the option of personal support budgets in the joint delivery of the outcomes.
* To demonstrate that if parents or carers are not in agreement with a decision made by children’s social care, and all options available via the Local Offer have been explored, they do have the right of appeal. This can be via their allocated social worker or family support worker for discussion with the supervising manager

## Key Legislation and Guidance

**The Community Care (Direct Payments) Act 1996** first allowed Local Authorities to make a payment directly to adults (from age 18-65 years). **The Carers and Disabled Children Act 2000** extended eligibility to include 16 and 17-year olds and those with responsibility for disabled children. This was achieved by inserting **Section 17A in the Children Act 1989** and **Community Care, Services for Carers and Children’s Services (Direct Payments) (England) Regulations 2009** made thereunder. The regulations mean that Surrey County is under a duty to offer direct payments as a way of meeting any duty it has to disabled children provide services under Section 17 of the Children Act 1989. However, it is not possible to compel someone to accept services by way of direct payments if they do not want this. If they refuse direct payments, any services for which they are eligible must be provided by the local authority either directly or indirectly.

In making direct payments, Surrey County Council is subject to the general duty to safeguard and promote the welfare of children in need **(Children Act 1989)** and to promote their upbringing by and within their families when making these payments in exactly the same way as when providing direct services.

The power to provide **Direct Payments under the 1996 Act** and those deriving under the **2000 Act** were superseded by the provisions of **Health and Social Care Act 2001.**

**The Health and Social Care Act 2008** amended existing legislation to extend the scope of Direct Payments. This resulted in the Community Care services for carers and Children's Services (Direct payments) 2009 regulations.

 **The Care Act 2014**

 **The Children and Families Act 2014**

**The Care Act 2014 and the Children and Families Act 2014 (Consequential amendments) Order 2015**

**Special Educational Needs (Personal Budget) Regulations 2014**

## Key Principles

4.1All Direct Payments must be made based on an assessment which has established that the child/young person has an eligible need i.e. is a disabled child in line with the Children’s Act 1989 definition (which says that a child will be considered disabled if :they are blind, deaf or dumb (unable to speak because of a verbal impairment), or they suffer from a mental disorder of any kind or is substantially and permanently handicapped by illness, injury or congenital deformity or such other disability as may be prescribed) or as set out in [SCC Children with Disabilities Eligibility Criteria](https://proceduresonline.com/trixcms2/surreycs/doc-library/#collapse3_1) (Dec 2020).

4.2 The key factor is whether the proposed plan will help that individual achieve the outcomes for the child or young person as laid out in his or her support plan. It is therefore essential that the allocated worker is clear about what the agreed outcomes are for the child or young person, and that this information is clearly recorded in the support plan and communicated to parents/caregivers as payments must be used to pay for arrangements to meet the needs specified in the plan. Where a plan has identified the need for personal assistant support and a parent/carer is having difficulty recruiting a PA there will be a flexible approach to considering alternative options to meeting the child or young persons agreed outcomes while the parent/carer recruits a PA . Alternative options to meet assessed outcomes will need to be agreed by the child’s social worker with appropriate management oversight.

4.3 The council must be satisfied that the child’s welfare will be safeguarded and promoted by the means of a direct payment. This will be determined as part of the assessment process. The allocated worker therefore should ensure that the making of a Direct Payment is an appropriate and safe way of meeting eligible needs.

4.4 As part of the assessment the allocated worker needs to ensure that the recipient of Direct Payments (this is the person who the money is actually paid to) also meets the following criteria:

* The person has parental responsibility for a disabled child (as defined by the Children Act 1989). Parents who are under 16 years of age cannot receive a Direct Payment.
* Disabled young people aged 16 and 17 years, following a mental capacity assessment, who meet the threshold for the service and has the mental capacity to consent to receive a Direct Payment and have given that consent.
* Persons able to make choices and to select how the Direct Payment is used in accordance with the agreed outcome.
* Persons capable of managing a Direct Payment by themselves or with such assistance as is available.
* The recipient (parent or young person) is not subject to certain mental health or criminal justice legislation.

4.5 Individuals who cannot receive a Direct Payment from Children’s Services:

* Direct Payments may not be made in respect of people who have been placed under certain conditions or requirements by the courts in relation to drug and or alcohol dependencies (Compulsory Treatment Programs or similar schemes).
* Disabled children and young people who are under the age of 16.
* Carers of disabled children, who do not have parental responsibility for that child, where the payment is made in respect of services for that child.

## A Partnership Approach

A joint approach in providing a direct payment by all agencies notably education and health is supported by the legislation and guidance:

 Young people and parents of children who have EHC plans have the right to request a Personal Budget, which may contain elements of education, social care and health funding. Partners **must** set out in their joint commissioning arrangements their arrangements for agreeing Personal Budgets. They should develop and agree a formal approach to making fair and equitable allocations of funding and should set out a local policy for Personal Budgets that includes:

1. a description of the services across education, health and social care that currently lend themselves to the use of Personal Budgets.
2. the mechanisms of control for funding available to parents and young people including direct payments - where individuals receive the cash to contract, purchase and manage services themselves.
3. an arrangement - whereby the local authority, school or college holds the funds and commissions the support specified in the EHC plan (these are sometimes called notional budgets).
4. third party arrangements - where funds (direct payments) are paid to and managed by an individual or organisation on behalf of the child’s parent or the young person.
5. a combination of the above.
6. clear and simple statements of eligibility criteria and the decision-making processes that underpin them.

To do this, partners should:

• identify and agree the funding streams and services for inclusion and develop the necessary infrastructure to support their inclusion.

* identify the links to be made locally between the SEN offer and Personal Health Budgets for children and adults.

• identify and establish the information, advice and support necessary at an area and individual level to help families consider options for, and to take up and manage, Personal Budgets.

• develop a pathway for Personal Budgets within the process of EHC needs assessment and EHC plan development and the workforce and cultural changes necessary for a person-centred approach.

• identify how the new joint commissioning strategies will support greater choice and control year on year, as the market is developed, and funding streams are freed from existing contractual arrangements.

• as an integral part of this, partners should ensure children, young people and families are involved in the decision-making processes at both an individual and a strategic level.

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

The council may not make direct payments in respect of any goods or services which are to be used or provided in a school on a normal day to day basis for educational purposes.

## Information and Support

6.1 It is important that anyone interested in direct payments receives information from the outset to enable them to understand all the responsibilities involved, such as administering the payments, arranging the services needed and the responsibilities of being an employer if they are considering employing their own staff. Parents should be directed to the SILC (Surrey Independent Living Council) website: <https://www.surreyilc.org.uk/home> before they make a choice, so their ultimate decision is an informed one.

6.2 Surrey County Council commission SILC (Surrey Independent Living Council) to provide information and support with recruitment and training in the employment of Personal Assistants. SILC can provide support & advice on payroll and pension. All new recipients of direct payments need to be referred to SILC for advice and support by the allocated worker. Please use the SILC referral form (attached as appendix).

6.3 Peer support to help people considering the use of a direct payment so they understand the benefits in terms of choice and control over their lives and therefore achieve greater independence; the act of sharing knowledge, experience and practical help by an actual direct payment recipient is known as ‘peer support’. This is provided by SILC.

6.4 A personal assistant support service that connects those seeking a personal assistant (PA) with someone working as, or wishing to work as, a PA. This is provided by SILC.

6.5 The following information will be provided: -

 Local offer website link *:*www.surreysendlo.gov.uk

 SILC Website - <http://www.surreyilc.org.uk/>

## How Can Direct Payments Be Used?

7.1 It is not in the spirit of direct payments to draw up an exhaustive list of how direct payments can be used. Each decision must be based on the child/young person’s assessed needs with regards to outcomes and must be proportionate to the need. The payment must be used lawfully to meet the child’s assessed needs and support them to achieve outcomes as agreed between the recipient and allocated worker. This arrangement will be documented in the direct payment agreement form signed by the recipient and the allocated worker.

 These are possible options of how direct payments can be used to meet assessed needs:

* Play and leisure opportunities in both universal and specialist provider settings can be purchased if identified as an assessed need.
* Where play, youth and leisure services are commissioned by SCC it has been agreed that DP’s may be used to fund the parental contribution element only where the assessment identifies the need for such support.
* To employ people directly in line with the legal requirements of an employer including staff recruitment practices which would include a DBS checks, employment contract and compliance with tax, NI and pension regulations. These are usually referred to as **personal assistants.**

* Equipment can be considered for purchase using direct payments provided that an Occupational Therapist (OT) assessment has been carried out and the equipment is in line with the recommendation of the occupational therapist.

Please note SCC have an arrangement with a third-party organisation to provide equipment at the best possible price. Therefore, staff are encouraged to explore making the purchase from the specialist equipment provider rather than arranging a direct payment which may be a less cost-effective option. Where a decision is made to purchase the equipment from an alternative source, the direct payment from SCC will equate to the price as charged by the third party.

Parents may choose to “top up” should they wish to do so. However if a direct payment is provided for equipment and parents choose to top up, the OT still has an obligation to ensure the equipment meets the child’s needs. If the parents choose to purchase outside of the third party organisation they may be responsible for ongoing servicing and maintenance.

* For the purchase of overnight short breaks within the parameters of the short breaks regulations. Direct Payments cannot be made in relation to the provision of residential accommodation for a disabled child for, any single period in excess of 17 nights, nor for any more than 75 days in any 12-month period. This would have LAC (looked after child) status implications. In addition, if a child has overnight breaks in two different settings again this would mean that child is considered to be looked after. (Please refer [to short break regulations policy document](https://www.surreycc.gov.uk/children/support-and-advice/children-with-disabilities/surrey-short-breaks-for-disabled-children)).

7.2 Direct Payments are designed as an alternative way of meeting assessed needs therefore some types of purchases are not permitted. It is not to be used as an additional income and/or benefit for the family. The following is a list of items that cannot be purchased via direct payments.This list is not exhaustive.

* Services that the NHS is required to provide (nursing care, physiotherapy, dressings, medication, operations) dental treatment or prescriptions.
* Purchase of services provided by Surrey County Council or any other Local Authority or from the NHS.
* Substitute for Disabled Facilities Grants.
* Therapeutic services.
* Purchase of Education – e.g. private schooling or home tuition fees if the assessment is for social care.
* Residential costs (except if used for agreed short breaks which are within the limits),
* Payments made outside of tax, NI or pension - for example, that they cannot pay “cash in hand wages.
* Housing costs such as rent, mortgage and council tax bills.
* General household, grocery or utility bills.
* General household and garden equipment and furniture.
* Warranties, upkeep and maintenance of equipment.
* Purchase of pets or the ongoing costs of keeping an animal, including veterinary bills.
* Direct Payments should not be used in order to employ relatives living in the same household as the disabled child.
* Purchases which couldn’t reasonably be used in the best interests of the child are also prohibited by Surrey County Council. Examples of which include purchase of alcohol, cigarettes or DVDs/computer games intended for an older audience.
* Repayment of debts.
* Any form of gambling.
* Goods or services that are obtained unlawfully or which are illegal (e.g. drugs).
* An item/activity that does not meet the needs as assessed by Surrey County Council.

Please note:-

* A Direct Payment one off lump sum can be agreed.
* A Direct Payment one off lump sum can be used for occasional or fluctuating use.
* Direct Payment recipients are permitted to pool their payments to enable several disabled children/young people to participate in shared activities.

* Please note that if the family wish to purchase additional support or services above the costs of the identified assessed needs then they are able to “top up” the direct payments funds at their own discretion.
* Direct payments do not affect benefits for the recipient.

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

## The Process

**8.1 Agreement of Direct Payments**

1. Following assessment, the allocated worker presents the request to the Disability Resource Panel clearly outlining how the direct payment is to be used and the outcome to be achieved, as per the panel procedures.
2. If the request is for OT equipment only then it will be presented to the OT decision making panel and not the Disability Resource Panel.
3. A direct payment schedule must be attached to the panel application. The direct payment schedule is a document which details the total cost of the entire payment including on costs for the entire year, prepared by the Finance Team.
4. Once the direct payment is agreed by the panel, the allocated worker informs the parent. In the event that there is not an agreement to the decision of the disability resource panel a parent carer or young person has the right of appeal to their allocated social worker /family support worker and this will be responded to within 14 days .
5. The Finance Team prepares to process the request through to payment.

**8.2 Money Matters**

**Frequency of Payments**

Payments will be made to the recipients at the end of every calendar month, a month in advance.

All recipients of Direct Payments (except for recipients of one-off payments) are required to have a separate and suitable bank account before any payment is made because:

* The money remains the property of Surrey County Council until the recipient has spent the money on agreed services.
* HM Revenue and Customs can more easily identify this money as “ring fenced” in order to discount it as income for tax purposes.
* Benefits Agency can more easily “disregard” this money as income for means tested benefits if it is clearly separated. Direct Payment is the same term used by the Department for Work and Pensions and therefore could be confused as income.
* Direct Payments recipients are required to allow Surrey County Council access to their bank account/statements to enable Surrey County Council to adequately audit the payments and purchases which are made. Surrey County Council Monitoring Team has no need to see the personal and private banking transactions of families and families are understandably reluctant to send in copies of their own bank accounts which results in them being reluctant or unwilling to comply fully with the monitoring requirements.
* It is difficult or sometimes impossible for the Childrens Finance Team to follow an audit trail of payments into and out of non-dedicated or unsuitable accounts.

**8.3. Direct Payment Account Options**

There are three types of accounts to which payments can be made.

a) **Prepaid Account (PPA)** is a current account commissioned and funded by
Surrey County Council by a third-party supplier. It is managed exactly like a traditional bank account to pay for services that meet the child’s needs and outcomes, as agreed in their support plan. Full employment records need to be kept for HMRC purposes.

 **The benefits of using a PPA:**

* No need to open a separate bank account
* No quarterly reconciliation forms, Surrey County Council will complete these for you.
* Nominate someone to help run your account.

b) **Dedicated Bank Account** opened by the parent/carer for the sole use of the
Surrey County Council Child’s Direct Payment which is used to pay for services that meet the child’s needs and outcomes, as agreed in their support plan.

 Responsibilities of the parent/carer

* The parent/carer will need to open a dedicated current bank account.
* The parent/carer will need to complete and submit quarterly financial reconciliations which detail their spends. Direct Payment recipients are required to keep and provide adequate records of how they spend their Direct Payment money, submitting receipts to evidence spends.
* Payment receipts must be kept for a period of 6 years in case HMRC requires a more detailed audit.
* Full employment records need to be kept for HMRC purposes.

c) **Surrey County Council’s Supported Account (SPA):** This option is available when the two above options are not applicableand/orwhere it is recognised that there are difficulties in managing finances. For example, where a parent/carer has learning difficulties.

 The Supported Account (SPA) is a Prepaid Account currently managed by the children's finance team. Invoices, payslips and other expenses will be paid by the team in accordance with the support plan and the team will carry out quarterly reconciliations.

 Following an assessment of need, where it has been highlighted that the individual needs support with making decisions and managing money, the option of a Supported Prepaid Account (SPA) for managing a Direct Payment should be discussed with them. These are only to be considered in exceptional circumstances and should be authorised by a Team Manager.

**8.4. Monitoring of Direct Payments**

**Late or Missing Returns**

If parents/carers fail to send the appropriate paperwork to the children's finance team by the due date they will be sent one reminder by the Childrens Finance Team giving one whole month as a final deadline.

If the returns are not received by the deadline future payments will be suspended with immediate effect. Payments will not be reinstated until the parent/carer is set up with a prepaid account or alternative care plan. The allocated worker is copied in on all correspondence.

Where families are unable to comply with the monitoring requirements on a temporary basis, perhaps due to short term difficult circumstances, they should let the children's finance team or their allocated worker know and alternatives can be explored.

 **Surplus and High Balances**

Surrey County Council complete quarterly reconciliations on all accounts. There is an allowable excess of one month plus six weeks. If funds are in excess of this at the quarterly reconciliation, Surrey County Council will seek to recover any underspend. The parent/carer and the child's allocated worker will be advised of this in advance of any recovery.

 **Misuse of funds**

When the direct payment is used for purchases other than those specified in the child's plan, or as set out in the direct payment agreement, this will be considered a misuse and Surrey County Council will seek to recover the misspent amount from the parent/carer immediately. Misuse could result in a review of the child’s eligibility for a direct payment, Surrey County Council will aim to resolve the issue working with those involved. The Council may decide to withdraw direct payment and offer alternative service.

**8.5 Direct Payment Agreement**

Individuals opting to receive a Direct Payment are required to sign a Direct Payment agreement. (Appendix D)

Good practice requires that the allocated worker discuss the Direct Payment Agreement with parents and young people in person so that the potential recipient has adequate opportunity to ask any questions about the clauses.

In Children’s Services the agreement will be signed by the allocated worker on behalf of Surrey County Council and the recipient of the direct payment.

No payments should be made until a Direct Payment Agreement has been completed and signed by the Surrey County Council Employee and the Direct Payment recipient. A copy of the signed agreement is kept on the child’s file with a copy being sent to the Direct Payment recipient.

**8.6 Review**

Families in receipt of a Direct Payment will remain allocated to a team and the allocated worker remains responsible for the support provided. The allocated worker is responsible for decisions relating to the Direct Payment although children's finance team supports the allocated worker by sharing financial monitoring information and can provide advice and guidance as to Direct Payment regulations.

An initial direct payment review will take place 3 months after the commencement of the support by the allocated worker.Thereafter the Direct Payments will be reviewed in line with the child’s reviewing pattern, as agreed with a manager.

The direct payment together with the overall package of support will be reviewed at least once per year through a formal assessment by the allocated worker. This is to ensure that the care needs, outcomes and conditions of the direct payment agreement are being met, and to double check that all the required set up processes have been completed (refer to guidance).

The processes for review of direct payments and the overall package of support must be in line with the team’s practice guidance.

The direct payment agreement must be renewed each year and an updated copy placed on the child's file. (Wisdom).

**8.7 Direct payment rates**

Direct payment rates will be reviewed taking a one council approach across both adults and children’s services. It is expected that there will be annual review of direct payment rates which will be made in line with the financial year and that rates will be considered in light of legislation of the national minimum wage and national benchmarking. There is no expectation that there will be an annual increase.

**8.8 The purpose of financial monitoring is to:**

* Collate information about how the recipient is using the money to guide decisions about whether the spending is appropriate to meet the assessed needs.
* Obtain “a picture” of how well the family are managing the Direct Payment.
* Audit the use of payments to meet Surrey County Council’s own internal audit requirements.
* Provide information about surplus funds or lack of funds in the account and suggest possible reasons for this.

**8.9 Repayment of misused direct payments & fraud**

Such payments may be recovered if the council has reason to believe that they have been misspent or accumulated without good reason. When deciding if recovering money is a suitable course of action allocated workers and managers should consider if the money was diverted from the purpose for which it was intended, or not spent at all.

The allocated worker must advise Direct Payment recipients at the outset that the Council might require some or all of the Direct Payment to be repaid if the council is not satisfied that the money has been used to meet the outcomes identified in the support plan or the individual has breached any of the terms and conditions of the Direct Payment agreement.

Financial Regulations require all suspected financial irregularities to be reported (verbally or in writing) to the Head of Audit and Risk Assurance so that an internal audit investigation of the allegations may be undertaken. If you suspect that there may be a fraudulent misuse of a Direct Payment you must alert your Team Manager, who will involve SCC Internal Audit.

Allocated workers should not be tempted to withdraw the Direct Payment option at the first sign of difficulty. If it is deemed appropriate by the SCC officer, the Direct Payment could be moved to an alternative method of managing the account. The allocated worker should liaise with the children's finance team to arrange this.

If a decision to discontinue Direct Payments is to be made, a full and frank discussion with everyone involved should take place prior to the decision being confirmed. The allocated worker should explain the rationale for the decision very clearly to all parties and record this on the case file including the date that the Direct Payment will be discontinued. The allocated worker must notify children's finance team to stop the payments in writing.

Councils have found that instances of fraud are rare and fears of fraud should not deter staff from promoting Direct Payments.

Surrey County Council has a duty to protect public funds and wishes to conduct its affairs in a spirit of honesty, integrity and openness. Therefore, repayment will not be sought from a Direct Payment recipient if they have been the victim of fraud; however, the council retains the right to take necessary action against the perpetrator of such fraud.

## Discontinuance

**9.1 By choice**

A decision to discontinue a Direct Payment can be made by either the Social Work team or the Direct Payment recipient. The normal notice period for termination in either direction should be at least four weeks. In coming to a decision or accepting a request to end a Direct Payment, the allocated worker should consider the following:

* Have the child’s needs changed?
* Was the funding provided sufficient to enable the parent to secure the relevant support?
* Was the person able and willing to manage the Direct Payment?
* Does the person wish to continue to receive a Direct Payment?
* Would a SPA (The Supported Account) be a suitable alternative?
* Has the support paid for been received?
* Has all the money been spent on the support for which it was intended?
* Has the money been spent appropriately?
* Has the person been adequately supported to manage the Direct Payment?
* Has the parent acted in the “best Interest” of the child or young person?

Details of this discussion and the reasons for the decision should be recorded.

Where it is necessary to discontinue a Direct Payment either temporarily or permanently consideration should be given to any on-going contractual responsibilities which may need to be met.

In the event of a dispute with Surrey County Council regarding use of a Direct Payment, individuals may wish to get advice from SILC or to use the [Children’s Services Complaints Procedure](https://proceduresonline.com/trixcms2/surreycs/doc-library/#collapse8)

Direct payment recipients must be informed, in writing, of any changes to their anticipated payments with a copy sent to the children's finance team.

The allocated worker is responsible for altering payments via an amended requisition. The children's finance team can send a new payment schedule to the family on request from the allocated officer.

If there are concerns that an individual’s support provider or employee is unsuitable for the child, stopping the Direct Payment can be considered in accordance with the guidelines above.

When the recipient would prefer to use an agency, Surrey County Council would make the necessary and payments directly to the identified agency.

**9.2 Discontinuance – at 18 years**

Payments from Children’s Services automatically come to an end when the young person reaches their 18th birthday.

It is the expectation that transition planning will have taken place by the allocated worker in partnership with the transition team. This will allow for ongoing appropriate support to be coordinated. Should the young person not meet the criteria for adult services all funding will stop on the 18th birthday.

The children's finance team will write to the family to ask for a final quarterly return 4 weeks after the young person’s 18th birthday. After considering the return the children's finance team will contact the family to ask for any outstanding balance in the account to be returned to children’s services.

Social Workers/Senior Family Support Workers may consider reducing payments to the family in the lead up to the young person’s 18th birthday if there is known to be a large surplus in the account.

**9.3 Temporary discontinuation of Direct Payments**

Some children may not use or need their Direct Payment for a short period as a result of hospital admission, loss of their Personal Assistant or some other unforeseen eventuality. If this period is longer than four weeks, a review should be carried out and consideration given to whether there are grounds for reducing, suspending or discontinuing the payment for that period. The allocated worker must notify the children's finance team of their decision.

## Contingency and Emergency Payments

If the local authority becomes aware that someone is or will be unable to secure the services to meet their child’s needs through their own arrangements, either temporarily or in the longer term, then the council will need to take steps to meet its responsibility which may include to provide or arrange alternative provision of services for that child.

Allocated workers should discuss the need to have contingency arrangements in place with Direct Payment recipients at the outset and at reviews to ensure that the child is more likely to receive the care they need should the usual arrangements break down.

The Local Authority will also need to be prepared to respond in these circumstances just as it would with any other person receiving support. It may decide to step in and arrange the services where this is necessary to meet its responsibilities. If this happens a pro-rata amount of payments would usually be recouped at a later stage.

Alternatively, the Local Authority could also discuss other ways of the family continuing to manage their own care by using the Direct Payment. For example, use of agency staff if their own personal assistant is unavailable particularly if the difficulty is temporary or unforeseen.

## One-off Direct Payments

One-off arrangements should be used where an on-going agreement is not suitable or necessary. For example:

* To cover a short-term need where the child or young person isn’t already receiving a Direct Payment,
* To facilitate the purchase of a piece of equipment,
* To stabilise an emergency or crisis.

The allocated worker can apply for one off direct payments by application to their Team Manager.

Occupational Therapists apply for one off funding in the usual way following the OT approval process.

Note - allocated workers should avoid making repeated “one-off” payments where it is reasonable to presume that the need for support is likely to be on-going.

One-off agreements are available and are intended to be simpler to administer and proportionate to the value of the payment made whilst still allowing the council to audit its payments.

If the application for a one-off payment is approved the finance team writes to the family to confirm the decision. A one-off Direct Payment Agreement Letter must be sent which explains to the family in general terms the “assessed outcomes” that the one-off direct payment is intended to meet and may include any reasonable limitations to the choices that the family can make with regard their purchases.

The Direct Payment recipient agrees to purchase goods or services of the type outlined in the letter within a specified period of time. They also agree to send in brief details of their purchases to the children's finance team within an agreed time limit.
The “return” used for one off payments is much shorter and easier to complete so that it is proportional to the payment made. In effect the family just write it to say how they’ve spent their money for Surrey Audit purposes.

Allocated workers or Occupational Therapists should send a copy of the one-off Agreement to the children's finance team so that they may subsequently:

* Write to family to ask for the “one-off return” to be completed for Surrey audit purposes. (Usually about 4 months after payment is made).
* Keep a record of one-off Direct Payments made by Surrey Children’s Services per annum.

N.B. If the payment is a one-off payment to meet a temporary change of circumstances for a child where the parent is already receiving Direct Payments no new agreement is required as the existing on-going Direct Payment agreement is still applicable.

**11.1 Variations to the banking requirements:**

A separate “dedicated bank account” is not required to be opened for a one-off direct payment. Direct Payment recipients would be required to provide details of a bank account in order to receive an electronic BACS payment.

If the family already has a dedicated bank account for use with their child’s on-going Direct Payments they can choose to receive their own one-off direct Payment into that account or they can give details of their own bank account.

NB: However, if a one-off payment is made to families who are already in receipt of on-going direct payments and this one-off payment will be made into their DP account.

**11.2 Variations to monitoring and audit requirements**:

If the one-off payment was made into the usual dedicated account the allocated worker should notify the children's finance team of the payment so that this payment can be monitored using the usual quarterly returns.

If the payment has been made into a non-dedicated account a one-off return would be required. The allocated worker must advise parents of this requirement. A sample one-off return is attached to the one-off agreement that the allocated worker must use when making the payment . After a pre-agreed period the children's finance team will write to the family asking for a one-off return to be sent back to Surrey County Council confirming how the money was used, with copy receipt(s) if available.

If the payment was made into a personal bank account (as opposed to a dedicated account) copy bank statements are not required by the children's finance team but copy receipts, if available, do help with our audit requirements.

This return is normally requested 4-6 months after the payment was made but families can send it in earlier if they have spent the money. Social Workers/Senior Family Support Workers can request that families are given longer to use the funds if required.

## Useful Contacts Links

**Surrey Independent Living Council - SILC**

Astolat, Coniers Way, Burpham, Guildford, GU4 7HL

Website: www.surreysilc.org.uk

Tel: 01483 458111

General e-mail: admin@surreyilc.org.uk (not secure)

Internal email: SILC Children/CSFR/SCC (secure)

**Children’s Direct Payment Support and Monitoring Team -** the children's finance team

Telephone - 01372 833 679 (both offices, East & West)

East:Woodhatch Place, 11 Cockshot Hill, Reigate, Surrey RH2 8EF

Tel: 01372 833 679

E-mail: childrensfinance.CWDeast@Surreycc.gov.uk

West:Quadrant Court, 35 Guildford Road, Woking GU22 7QQ

E-mail: childrensfinance.CWDwest@Surreycc.gov.uk

**Surrey short breaks commissioning:**

Emial: shortbreaks.commissioning@surreycc.gov.uk

**Family Information Service** (The Local Offer)

More information can be found at*:*www.surreysendlo.gov.uk

**Links to useful agencies – websites**

**Inland Revenue**

<http://www.hmrc.gov.uk/newemployers/>

**Insurance – FISH**

[http://www.fishinsurance.co.uk](http://www.fishinsurance.co.uk/)

N.B. Families can use other companies

**Payroll – David Howard**

<http://www.davidhoward.co.uk/services/business/payroll>

(N.B. other Payroll Services may be used)

## Appendix A – Direct Payments Support Services

**Independent Direct Payment support commissioned from Surrey Independent Living Council (SILC)**

Our partner organisation is SILC and Surrey County Council has a contract with them to provide essential set up guidance and support to families and staff. All families must be referred to SILC using the SILC referral form.

Ultimately the family may choose not to use SILC’s support or to take their advice, but a referral to SILC is always required at the outset as this forms a crucial part of the “set up process” which the council has a duty to provide. If families choose not to accept contact with SILC, Social Workers/Senior Family Support Workers should seek guidance from their line manager.

From 01 September 2017, SILC were commissioned by Surrey County Council to deliver the following Direct Payment support services:

### **(1) Peer Support**

This is intended to help individuals who are considering the use of a Direct Payment to understand the benefits in terms of choice and control over their lives and therefore achieve greater independence. It involves individuals in receipt of Direct Payments sharing their knowledge, experience and practical help which is known as ‘peer support’.

Please note it is **not** a support service that manages the direct payment on behalf of the DP recipient.

### **(2)** **Personal Assistant (PA) Support Service**

The Personal Assistant Support Service connects individuals seeking to employ a personal assistant (PA) with someone working as, or wishing to work as, a PA. The key aspect of this arrangement is that the Direct Payment recipient becomes an employer. There are a number of responsibilities that come with this. SILC offer advice around employment covering, employers liability, liability insurance, contracts of employment and a payroll service.

SILC’s independent living advisors can offer individuals a specialist advice on all aspects of employing a personal assistant - specifically support with employment, advertising, recruitment, payroll, training and monitoring.

## Appendix B – Miscellaneous

**Responsibilities of the Individual in receipt of the Direct Payment**

* To meet the Terms and Conditions set out in the Direct Payment agreement.
* To use the Direct Payment to meet their child’s assessed needs, as outlined in their care plan and/or support plan, to a standard which is agreed by the allocated case worker.
* To arrange their support as this is no longer the direct responsibility of Surrey County Council.
* If staff are employed using the Direct Payment individuals must ensure all legal obligations are met. SILC can provide advice and information. These obligations include, HM Revenue and Customs regulations and Employers responsibilities & laws; those set out in the Race Relations, Sex Discrimination, Disability, Employment and Health and Safety Legislation.
* If parents employ staff they must ensure that a sufficient amount of the Direct Payment is kept aside to ensure they can meet all future obligations including payment of Income Tax, National Insurance and pension contributions.
* To keep their child’s allocated worker informed of any significant changes in circumstances which may affect their eligibility to receive Direct Payments or which may call for a review or reassessment.
* To take responsibility for and as far as is possible have a contingency plan in place to deal with emergency or unforeseen situations.
* To take out adequate insurance cover including Employers and Public Liability Insurance if using the Direct Payment to employ staff.
* To contact their child’s allocated worker if they experience any significant change in circumstances i.e. they are unable to receive the support that they purchase for a period of more than 4 weeks (for example if their child is admitted to hospital).
* To register with a pension scheme when instructed to do so by the Pension Regulator and to offer pension contributions to eligible Personal Assistants. SILC can provide more information on this.

 **EMPLOYING STAFF**

Direct Payments are frequently used to enable families to employ the services of staff. This section gives guidance for when parents intend to hire staff.

Staff can be hired via a suitable agency or the parent can opt to employ their own staff direct. When an individual receives a Direct Payment the decision about who to buy support from is theirs but some restrictions apply.

**Age Restrictions**

Department of Health Guidance stipulates that parents should not employ someone younger than 16 years of age.

Children’s Services recommend that Social Workers/Senior Family Support Worker advise parents to employ workers who are over 18. However it is recognised that there are instances where a suitable 16 or 17 year-old would meet the child’s needs and in these instances it is permitted.

No upper age restrictions apply.

**Employing Relatives**

There are restrictions about employing close relatives who live in the same household. Exceptions can be made, where this is deemed to be necessary for promoting the welfare of the child, but guidance and permission needs to be sought in each case and that decision recorded. Permission can be given at Team Manager Level.

The legislation relating to employment of relatives says that unless a council is satisfied that it is necessary to meet a person’s needs, a council may not allow individuals to use Direct Payments to secure services from:

A spouse (husband or wife) or civil partner, a partner (the other member of an unmarried couple with whom they live), or from a close relative (or their spouse or partner) who live in the same household as the Direct Payment recipient.

**A close relative** is defined as a person living in the same household as the user who is a:

* Parent or Parent-in-Law
* Son or Daughter
* Son-in-law or Daughter-in-Law
* Stepson or Stepdaughter
* Brother or Sister
* Aunt or Uncle
* Grandparent
* Or the spouse or civil partner of any of the above who lives in the same household
* A person who lives with any of the above as if that person's spouse or civil partner

Department of Health Guidance states that 'This restriction is not intended to prevent people using their Direct Payments to employ a live-in personal assistant, provided that person isn’t a close relative. (i.e. those people in the list above). The restriction applies where the relationship between the two people is primarily personal rather than contractual, for example, if the people concerned would be living together in any event.'

There is no restriction on using Direct Payment to purchase care from a close relative (except a spouse) who does not live in the same household as the user. However, the person must be officially employed and paid via an agency, PAYE system or be self-employed. A DBS check is normally required even for family members.

**Potential options:**

The Manager should bear in mind the following when considering allowing the employment of a partner or close relative in the same household:

1) Under what circumstances the Local Authority would be satisfied that it was necessary for a user to use a direct payment to purchase services from their spouse or close relative that lives in the same household?

 Generally we would have to find exceptional circumstances. Exceptional circumstances would require that the LA is satisfied that it is necessary to meet satisfactorily a person’s needs by securing services from a close relative i.e. where there is no other option or where the other option would seriously compromise the person’s needs or best interests of the person receiving the care.

 Such circumstances may include:-

* Where there are specific cultural or religious needs that could not be met otherwise.
* Where there are severe communication difficulties such that the person’s needs would be seriously compromised if an independent paid personal assistant provided services.
* Where the user and parent/carer live in an isolated location and it has proved impossible to secure services from an independent paid personal assistant.
* In terms of rural and cultural isolation the question must always be asked (sensitively but firmly) what steps have been taken to secure services from Personal Assistants/Independent providers.

2) Are there legitimate concerns we should have where the user chooses to use their Direct Payment to purchase services from a close relative whether or not they live in the same household?

There is the potential for a conflict of interest when employing family members as the
nature of the relationship changes from a personal one to a contractual one. Two key issues are:

* Firstly that the parent and/or child are expressing a genuine choice to have the relative provide their care i.e. there is no pressure on them to make a particular decision.
* Secondly that the relative will be legally employed to provide that care i.e. there is a proper employment contract in place and they pay Tax, National Insurance.

 In addition whilst not unlawful, good practice indicates that it would be inappropriate for a close relative employed as a Personal Assistant to also be a person who is assisting the Direct Payment recipient to manage their Direct Payment. This could result in the Personal Assistant checking their own timesheets and writing a salary cheque to themselves for example.

## Appendix C – Safe Recruitment

**SAFE RECRUITMENT**

Social Workers/Senior Family Support Worker should re-enforce the advice given by SILC regards advertising and interviewing for staff e.g. limiting the identifying information given to potential applicants about their home and their child.

**Disclosure and Barring Service (DBS) checks and Vetting Requirements**

Surrey requires that staff employed to work directly with children are thoroughly vetted and DBS checked. Parents agree to this condition when they sign the Direct Payment Agreement. It is hoped that parents will understand the requirement for this and as there is no charge to them for the DBS it is hoped that they will accept this additional safeguarding facility without concern.

SILC process the DBS applications for all families wishing to employ their own staff. DBS checks should be carried out for all potential staff including family friends, family members and individuals who already have a current valid DBS through some other employment. If parents are unwilling to comply with this, and this refusal seems unreasonable in the circumstances advice should be sought from the line manager and decisions about suitability of the Direct Payment under those circumstances should be recorded.

SILC are authorised by Surrey County Council to apply for enhanced DBS checks for potential staff. They check the applicant’s identity, verify their documents and apply for the DBS. Social Workers/Senior Family Support Workers do not need to involve themselves in this application process other than confirming that an adequate DBS check has been obtained for any staff that the parents intend to employ. However Social Workers/Senior Family Support Workers have a responsibility to talk to parents about this and to assist when delays occur, either by helping the family to find out at what stage the DBS is at and/or by arranging an interim care plan until the DBS comes through.

Parents should be advised not to make firm offers of employment to staff prior to obtaining a satisfactory DBS check. In other words parents should make the offer of employment dependant on obtaining a clear DBS and the employee should not start working with the child until a satisfactory DBS is obtained.

Families can use their Direct Payment flexibly to purchase alternative support while they wait for their potential Personal Assistant’s DBS.

DBS reports should not be photocopied and kept on children’s files. If parents choose to show Social Workers/Senior Family Support Workers an employee’s DBS they should just record that it has been seen, with expiry date on the child’s file.

If potential Personal Assistants receive an unsuitable DBS check they should not be permitted to work for the parent/ young person.

**“Portability” of DBS Checks**

Families often select potential staff because they already know their child. For example they work as a Learning Support Assistant in the child’s school, or work with them at a play scheme. This method for finding potential staff offers good continuity for the child or young person.

Parents have expressed frustration over delays in getting up and running with Direct Payments while they wait for a new DBS for potential employees who already work with their child in an official capacity. Surrey has agreed that it is possible to consider DBSs as portable in some instances so long as all of the following criteria apply.

* The Direct Payment Recipient understands the potential risk and wishes to use this portability arrangement.
* The potential employee works for Surrey County Council and has a valid (less than 3 years-old) suitable enhanced DBS check or works for a neighbouring local authority or a voluntary organisation and has a valid (less than 1 year-old) suitable enhanced DBS.
* The DBS is shown to SILC in order that they can verify its authenticity and link it to the person’s identification.
* This arrangement is temporary while the new DBS is being processed.

Where this “portability” is used the SILC manager or ILA will notify the Social Worker/Senior Family Support Worker that the current DBS has been seen and is suitable. Suitable DBSs will have no adverse disclosures recorded on them - they will be clear.

**References**

The allocated worker should make it clear to parents that a DBS check which reveals no criminal convictions does not guarantee that the potential employee is suitable to work with their child. Other checks and vetting procedures should also be carried out such as checking details on CVs and obtaining detailed references.

While the parent is waiting for their potential employee’s DBS to arrive they may choose to use a suitable agency to provide staff or purchase other services that would meet the agreed outcomes, or the council can provide directly commissioned services until the suitable DBS is obtained for the employee. Some children find change difficult to cope with and families will have to decide whether waiting a short while is better or worse than having to introduce too many workers.

**Casual Staff**

If SCC officers are aware that parents are using casual staff without adequate vetting or DBS’s being in place they should discuss their concerns with the family and their line manager. Direct Payments can be temporarily or permanently stopped if the allocated worker has concerns about the parent’s ability to manage a Direct Payment whilst safeguarding their child. The parent should be advised of this decision.

**Training Requirements**

Families should consider any training their staff might need and where it can be sourced. They may use some of their Direct Payment funding to purchase training for their staff. Families may purchase training, according to need, using their lump sum set up amount.

Parents know their child well but a new employee may benefit from a period of familiarisation. A child profile can be helpful once the employee has passed the vetting checks. It may be appropriate for the parent to work with the child and Personal Assistant for the first few sessions so that the child has a chance to become familiar with the worker and vice versa.

**Transporting children safely**

If the parent requires their Personal Assistant to transport their child by car the parent is responsible for checking the Personal Assistant’s:-

* Driving Licence.
* Insurance.
* Car - including suitability of care seats and seat belts where applicable.

## Appendix D – Direct Payment Agreement

## Direct Payment Agreement

|  |
| --- |
| **Disabled Children and Young People****Direct Payments Agreement when using a dedicated bank account.**  |
| This Agreement is between:[ ]  Surrey County Council - Childrens Services, Woodhatch Place, 11 Cockshot Hill, Reigate, Surrey RH2 8EF [ ]  Surrey County Council - Education Services, County Hall, Penrhyn Road, Kingston Upon Thames KT1 2DN [ ]  NHS Guildford and Waverley Clinical Commissioning Group, Dominion House, Woodbridge Road, Guildford GU1 4PU&Name of Parent/Carer/Direct Payment Recipient: Regarding (Name of Child): ………………………………..……………. Child’s LCS ID: …………....…….. Address………………………………………………………………………………………………………...……………………………………………………………………………………………………………..…….…………………………………………………………………………………………………………………… |
| **Background**1. Surrey County Council (SCC) agrees to provide you with Direct Payments to enable you to purchase services and/or support in order to meet your child’s care needs, as agreed in the Assessment and Care Plan.

 **As per the Disability Resource Panel decision the specific details are:**1. The provision of Direct Payments by SCC to meet your child’s care needs is subject to SCC’s rights and obligations under the Children Act 1989, Children Act 2004 and any associated legislation which requires SCC to safeguard and promote the welfare of your child.
2. To preserve the nature and status of these payments certain conditions and responsibilities need to be met. By signing this Agreement you agree to these terms and conditions.
3. The payments will be made into a nominated bank account, which you have opened for this purpose only. The payments will be made one month in advance with the funds available in your account by the last working day of the previous month.
4. You will be given a breakdown of the Direct Payments in writing, which will be based on an assessment of your child’s care needs as agreed and outlined in your child’s care plan.
5. SCC is making these Direct Payments to you following a full assessment of your child’s care needs. The Direct Payments are made on the basis that you are able to understand the purpose of the Direct Payments and that you accept the responsibilities set out in this Agreement.
6. A Direct Payment for the employment of a Personal Asssistant (PA) will be set up following agreement at Panel. The spending will commence once a suitable PA has been employed.
 |
| **Use of the Direct Payments** 1. You agree that you will only use the Direct Payments as specified above Section 1 to pay for services or equipment that are in the best interest of your child and meet their care needs and outcomes as detailed in their Care Plan. The use of Direct Payments must ensure your child is kept safe, protected from harm and abuse.
2. You agree it is your responsibility to make arrangements to secure the support set out in your child’s care plan.
3. A Direct Payment for the employment of a Personal Assistant (PA) will not commence until a suitable PA has been employed and a start date agreed.
 |
| **Review of your child’s Direct Payments**1. The Direct Payments will be reviewed annually in line with your child’s care plan. You may contact your Allocated Case Worker if your child’s care needs change.
2. You must notify SCC of any significant changes to your family circumstances that may have a bearing on your child’s care needs or your eligibility to continue to receive Direct Payments as soon as possible and no later than 4 weeks after the change of circumstances.
 |
| **Surrey County Council Monitoring Requirements:** 1. You are required to:
* Under the terms of this agreement hold an account for this purpose only.

 * Make all payments, including payments for wages and service provision, through the nominated bank account. You must retain all receipts for transactions, which you will need to produce to Surrey County Council, at least quarterly.
* Submit the paper bank statements of the account no later than 28 days after the end of each quarter.
1. SCC are required to:
* Review the outstanding balance in the account and any outstanding commitments at the end of each quarter.
* Recover balances in excess of thirteen weeks’ funding at any time during the financial year - with 2 weeks’ notice.
 |
| **Advice and Support for Direct Payments**1. SCC contracts with an external agency who can provide information, advice and support with your child’s Direct Payments, recruiting staff, understanding your responsibility as an employer, and complying with this Direct Payments Agreement.
2. As a condition of receiving your Direct Payments, you agree that SCC will refer you to this agency for advice and support.
3. The advice and support service will advise you regarding
* Ensuring you do not unlawfully discriminate in recruitment.
* Taking up adequate written references and carrying out Disclosure and Barring Service (DBS) checks, which SCC will have a right to inspect on demand.
* Providing a safe working environment and facilities to cater for your child’s care need.
 |
| **Recruitment** 1. SCC will include a one off recruitment cost when you are initially awarded a Direct Payment.
2. As a recipient of a Direct Payment you will need to comply with the restriction on employing close relatives who live in the same household.
 |
| **Employing Staff with your Direct Payments - Making arrangements to pay your staff.**1. If you are using your child’s Direct Payments to employ staff you will need to know that you are responsible for:
* Wages should be no less than National Minimum Wage.
* Wages must be made via a payroll company and not be made in cash.
* You must comply with Income Tax, National Insurance (employers & employees),
* holiday pay, maternity/paternity pay and pension in line with employment legislation.
* Arranging relevant Employer’s and Public Liability Insurance required for your child’s care needs and to show SCC the Policy Documentation on demand. SCC include an amount to assist in payment of such costs at its discretion in your Direct Payment.
 |
| **Ending Direct Payments**1. This Direct Payments Agreement is valid until it is ended by either SCC or yourself notifying the other in writing of termination. It will be reviewed annually in line with your child’s annual review process.
2. SCC may stop or suspend your child’s Direct Payments for any of the following reasons:
* If there is a change in your child’s needs or circumstances and SCC no longer considers that Direct Payments are appropriate.
* If you do not comply with the terms and conditions of this Agreement.
* If you misuse the Direct Payments or fail to comply with the law.
* If the care provision arranged by you does not meet your child’s needs as detailed in your child’s Assessment and Care Plan.
1. In the event that you wish to or are required to stop receiving Direct Payments, any outstanding funds must be repaid to SCC within 28 days of the Direct Payments being stopped.
 |
| **Details required by Surrey County Council:**

|  |  |
| --- | --- |
| **LCS no** |  |
| **Payees Full Name –****(Title, First Name and Surname)**  |  |
| Address & Postcode |  |
| Phone Number |  |
| Email Address |  |
| Bank  |  |
| Sort Code |  |
| Account Number |  |
| Name as it appears on bank account  |  |

 |
| \*NB. No one can sign this Agreement other than the parent, or other carer with parental responsibility or (where applicable) the beneficiary, who is actually going to receive the Direct Payments to meet his or her Child’s care needs.Direct Payments cannot be paid to Foster Parents.

|  |  |
| --- | --- |
| Direct Payments Recipient’s Name 1 |  |
| Direct Payments Recipient’s signed 1 |  |
| Direct Payments Recipient’s Name 2 |  |
| Direct Payments Recipient’s signed 2 |  |
| Date |  |

On behalf of Surrey County Council:

|  |  |
| --- | --- |
| Allocated Case Workers Name |  |
| Allocated Case Workers Signature |  |
| Date |  |

 |
| **Direct Payments Policy**LINK TO DIRECT PAYMENTS POLICY |
| GDPR Surrey County Council Corporate Privacy Notice - how we use your personal data<https://www.surreycc.gov.uk/council-and-democracy/your-privacy/corporate-privacy-notice>Prepaid Financial Services Privacy Policy <https://prepaidfinancialservices.com/en/privacy-policy> |

## Appendix E – Direct Payment Agreement (Education)

**Direct Payment Agreement (Education)**

**1) SEN Personal Budget - Supported Prepaid Account Agreement**

|  |  |
| --- | --- |
| **Agreement between Surrey County Council (SCC) and:** |  |
| **Name of Recipient of Direct Payments (Adult with parental responsibility or Young Person):**  |   |
| **These Direct Payments are to meet the identified eligible needs, defined in their EHC plan, of:****Name of Child or Young Person:****EMS Reference:****Home Address:**   |  |
| **Telephone Number:**   |  |

**About our service**

* You have agreed (by separate agreement) with Surrey County Council (SCC) to receive your Direct Payments into a Prepaid Account.
* You are being offered a Supported Prepaid Account(SPA) so that SCC can manage your Direct Payments on your behalf. The Supported Prepaid Account does not have the facility for cash withdrawals or cheques.
* SCC will complete regular reconciliations of your account. Balances in excess of thirteen weeks’ funding at any time during the financial year will be reviewed and Surrey County Council (SCC) will decide at its discretion whether to require repayment of some or all of the excess, or to deduct the relevant amount from future payments.

**Agreement**

1. I understand that I have agreed for my Direct Payments, a SEN Personal Budget under the Children and Families Act 2014 and The Special Educational Needs (Personal Budgets) Regulations 2014, to be administered by Surrey County Council and they will be responsible for managing it.
2. I understand that to make this agreement work, I will work with SCC so that my Direct Payments are used to buy the services which meet the assessed needs and outcomes as set out in the Education, Health and Care (EHC) plan for the child/young person named in this Agreement.
3. I understand that I must be in control of the decisions that are made about the support for the child or young person named in this Agreement. No one else can make these decisions for me. I understand that I am responsible for ensuring compliance with the Terms and Conditions of the Direct Payments Agreement (DPA) between myself (“Recipient”) and Surrey County Council.
4. I understand that I should raise any concerns about how my money is being managed. I should tell the Direct Payments Support Team first if I am not happy with the service. I should then tell my SEND Case Worker or Area SEN Manager. If this is not resolved in the way I would like, I can use SCC’s complaints process.
5. I understand that to end this Agreement I must give 4 weeks’ notice to Surrey County Council in writing.

|  |  |
| --- | --- |
| **Direct Payments Recipient’s Name** |   |
| **Direct Payments Recipient’s Signature** |    |
| **Address** |   |
| **Email address** |   |
| **Contact telephone number** |   |
| **Date** |    |

If the individual cannot read and/or sign this agreement themselves then a representative can sign on their behalf as long as they agree with the following statement:

*I agree that I have conveyed the information in this agreement to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and they understand it although they may not be able to read and sign this agreement themselves.*

|  |  |
| --- | --- |
| **Recipient’s representative’s name**  |  |
| **Recipient’s representative’s signature** |  |
| **Address** |  |
| **Email address** |  |
| **Contact telephone number** |  |
| **Date** |  |

I confirm that SCC will provide a Supported Managed Account service on behalf of the Direct Payments Recipient named in this Agreement in a manner that remains within the Terms and Conditions of the Direct Payments Agreement (DPA) between the Recipient and Surrey County Council

On behalf of Surrey County Council:

|  |  |
| --- | --- |
| **SEN Staff name** |   |
| **SEN Staff signature** |   |
| **Name of Area SEN Team** |   |
| **SEN Team address** |   |
| **SEN Team email address** |   |
| **SEN Team telephone number** |   |
| **Date** |   |

On behalf of SCC SEN Supported Prepaid Account (SPA) Team:

|  |  |
| --- | --- |
| **SPA Representative name** |   |
| **SPA Representative signature** |   |
| **Contact telephone number** |   |
| **SPA Team address** |   |
| **Date** |   |

**Direct Payment Agreement (Education)**

**2) SEN Personal Budget - Prepaid Account Agreement**

|  |
| --- |
| **SEN Personal Budget - Direct Payments Agreement – Prepaid Account**  (This version not to be used for one-off Direct Payments) |
|  This Agreement is between: **Surrey County Council of County Hall, Penrhyn Road, Kingston Upon Thames KT1 2DN (SCC)** And Name of Direct Payments Recipient: ............................................................................................ (Parent; Young Person over 16 years; Nominee) Address of Recipient ……………………………………………………………………………… Name of EHC plan holder (Child; Young Person).....................................................................  Child or Young Person EMS ID: ………………………………………………………………… EHC plan Issue Date and Reference………………………………………………                 |
|  Summary of provision, services and/or support to be delivered by Direct Payments and covered by this Agreement.

|  |  |  |  |
| --- | --- | --- | --- |
| Education/Health/ Social Care | What will be provided? | Cost (£) | Funding Arrangement |
|   |   |   |   |
|   |   |   |   |
|   |   |   |   |
|   |   |   |   |

 Details of all provision funded by a Personal Budget are described in Section J of the holder’s EHC plan. Funding arrangement key:DP - Direct paymentsTPA - Third Party Agreement  |
|  **Schedule of Direct payments**

|  |  |
| --- | --- |
| Frequency (monthly/quarterly/termly) |  |
| Payment (£) |  |
| Date of first payment |  |
| Normal payment date (day of month) |  |
| Other payment details |  |

 |
|  |
|  **Background:** 1. Surrey County Council (SCC) agrees to provide you with Direct Payments to enable you to purchase services and/or support in order to meet the special educational needs of the Education, Health and Care (EHC) plan holder, as set out in the EHC plan referenced above.  2. The provision of Direct Payments by SCC to meet the special educational needs of the EHC plan holder is subject to SCC’s rights and obligations under the Children and Families Act 2014, The Special Educational Needs (Personal Budgets) Regulations 2014 and associated legislation.3. To preserve the nature and status of these payments certain conditions and responsibilities need to be met. **By signing this agreement you agree to these terms and conditions, and give permission for SCC to share your personal data with a third party Pre-Paid Account Provider for the purpose of setting up a Pre-Paid Account.**4. The payments will be made into a Prepaid Account, which will be set up in your name by SCC with a Prepaid Account Provider appointed by SCC. The payments will be made one month in advance with the funds available in your prepaid account by the last working day of the previous month. Your first payment can be paid in any month of the year but will be on a pro-rata basis for the month in which your payments start. 5. If you are also entering into a separate Supported PPA Agreement with SCC, you will not have direct access to the funds within your Prepaid Account because your Prepaid Account will be managed by SCC.6. Your Direct Payments are explained in the section above (“Summary of provision, services and/or support covered by this Agreement”), which are based on an agreed assessment of the EHC plan holder’s special educational needs and described in the EHC Plan. 7. SCC is making these Direct Payments to you following a full assessment of the EHC Plan holder’s special educational needs. The Direct Payments are made on the basis that you are able to understand the purpose of the Direct Payments and that you accept the responsibilities set out in this agreement.   |
| **Use of the Direct Payment:**  8. You agree that you will only use the Direct Payments to pay for goods or services that are in the best interest of the EHC Plan holder and that meet the special educational needs and outcomes as detailed in the EHC Plan, and any other related expenses that have been agreed with SCC. The use of Direct Payments must ensure that the EHC Plan holder is kept safe, protected from harm and abuse.9. You agree it is your responsibility to make arrangements to secure the support set out in the EHC Plan and to make contingency arrangements in the event of emergency.  10. If the support arrangements you have made break down, whether in an emergency or otherwise, SCC will use its reasonable endeavours to offer support for you to arrange alternative services or the temporary provision of an arranged service. If SCC provides an alternative service the amount paid to you as Direct Payments may be adjusted accordingly.  |
| **Review of your Direct Payments:** 11. The Direct Payments will be reviewed by SCC 12 (twelve) weeks after the Direct Payments have begun and then at least annually or at such other times as SCC decides. The Direct Payments may be reviewed at the sole discretion of SCC, at the beginning of each financial year, taking into account inflation and any new circumstances. SCC agrees to tell you of any such changes. You may contact the child’s or young person’s SEND Case Worker if their special educational needs change in order to ask for a review of the EHC plan at any time.12. You must notify SCC of any significant changes to your family circumstances that may have a bearing on your Child’s Special Educational Needs or your eligibility to continue to receive Direct Payments as soon as possible and no later than 4 weeks after the change of circumstances.13. If your Direct Payments need to change because of a change in your needs/circumstances, we will discuss this with you and decide whether changes should be made and, if so, when they will begin. 14. You must inform SCC if you receive payments from any third party for any special educational needs support services and if so SCC reserves the right to change your Direct Payments.  |
| **Surrey County Council Monitoring Requirements:**  15. The Prepaid Account will be audited regularly (monthly/quarterly/termly) by Surrey County Council staff. 16. If you have access to funds within the Account, you are required to: * Keep in the account any money that is not spent at the end of each quarter.

 * Agree that money paid to you under the terms of this agreement will only be held in this account and not moved to any other account in your name, or that of your partner/spouse without SCC’s written permission.

 * Make all payments, including payments for wages and service provision, through bank transfer or chip and pin, unless you have permission from SCC to make cash payment. You must retain all receipts for any cash payments made and for other transactions where more information about the transaction may be required, which you will need to produce if requested by Surrey County Council.

 17. The financial year for your Direct Payment will be from the beginning of April to the end of March each year.  18. SCC will review the outstanding balance in your account and your outstandingcommitments at the end of each quarter and at the end of the financial year. 19. A maximum amount equivalent to 6 weeks’ funding can be carried forward at the end of the financial year at the discretion of your SEND Case Worker. 20. Balances in excess of thirteen weeks’ funding at any time during the financial year will be reviewed and SCC will decide at its discretion whether to require repayment of some or all of the excess, or to deduct the relevant amount from future payments.   |
|  **Financial Arrangements:** 21. Payment will be made monthly/quarterly/termly to your **Pre-Paid Account**(referred to above) prior to the beginning of each month/quarter/term. In the case of quarterly payments, the four quarters start at the beginning of April, July, October and January. 22. You will be notified of the date of your first payment. Your first payment can be paid in any month of the year but will be on a pro-rata basis for the quarter/month/term in which your payments start.  |
|  **Ending Direct Payments** 23. This Direct Payment Agreement is valid for the delivery of provision in a valid EHC Plan, and can be ended by either SCC or yourself notifying the other in writing of termination, but otherwise will continue until a child’s 16th birthday or a young person’s 25th birthday. 24. SCC may stop or suspend your direct payment for any of the following reasons:* If there is a change in the EHC plan holder’s special educational needs or circumstances and SCC no longer considers that direct payments are appropriate
* If you do not comply with the terms and conditions of this agreement
* If you misuse the Direct Payment or fail to comply with the law.
* If special educational provision arranged by you does not meet the EHC plan holder’s special educational needs as detailed in their EHC plan.

 25. In the event that you wish or are required to stop receiving Direct Payments, any outstanding funds must be reimbursed to SCC within 28 days of the Direct Payments being stopped. 26. In event of a change of circumstances resulting in the EHC Plan holder not needing Direct Payments the payments will be stopped within such time as SCC considers reasonable, taking into account all the circumstances. |

**Summary of Provision (Education)**

|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Summary of provision, services and/or support to be delivered by Direct Payments and covered by this Agreement

|  |  |  |  |
| --- | --- | --- | --- |
| Education/Health/ Social Care | What will be provided? | Cost (£) | Funding Arrangement |
| Education | Tutor – 3 days a week as per transitional period from 4 days a week. | £ TBC | SPA |
|   |   |   |   |
|   |   |   |   |
|   |   |   |   |

 Details of all provision funded by a Personal Budget are described in Section J of the holder’s EHC plan. Funding arrangement key:DP - Direct paymentsTPA - Third Party Agreement  |
|  **Schedule of Direct payments**

|  |  |
| --- | --- |
| Frequency (monthly/quarterly/termly) |  |
| Payment (£) |  |
| Date of first payment |  |
| Normal payment date (day of month) |  |
| Other payment details |  |

 |

## Appendix F – Direct Payment Agreement (Health)

# **Direct Payment Agreement (Health)**

# NHS Guildford and Waverley Clinical Commissioning Group

# Direct Payment Agreement (Individual)

|  |  |
| --- | --- |
| **Agreement between NHS Guildford and Waverley Clinical Commissioning Group (G&W CCG) and:** |  |
| **Name of recipient:****On behalf of (child/young person):**  |   |
| **Address:**    |  |
| **Telephone Number:**  |  |

**Agreement**

NHS Guildford and Waverley Clinical Commissioning Group (G&W CCG) acting on behalf of all six Surrey CCGs has arranged with you to make payments, in accordance with the Guidance on Direct Payments for Healthcare - Understanding the Regulations March 2014, to enable you to arrange services for your child’s agreed health and wellbeing needs. To preserve the nature and status of these payments, certain conditions and responsibilities must be met. By signing this agreement, you agree to the terms and conditions contained in it.

G&W CCG can recommend a third-party support agency, which are available to assist with setting up and managing Direct Payments. Alternatively, you can choose a different support agency, or manage the contract yourself. By agreeing to receive these payments your contact details and other details relating to these payments will be shared with your chosen agency.

It is your responsibility to make arrangements to secure appropriate care support for your child, to ensure that the appropriate training has been put in place to meet their clinical needs and to make routine contingency plans. If these arrangements break down, however, G&W CCG will discuss what alternative provision can be made available to support your child.

Please sign both copies of the Agreement and return one copy to NHS Guildford and Waverley Clinical Commissioning Group and retain one for your records.

**Terms and Conditions**

1. I will only use my Direct Payment to meet my child’s agreed needs and outcomes as identified in my child’s agreed Care Support Plan.
2. I understand it is my responsibility to make arrangements for appropriate care support for my child, to ensure appropriate training has taken place to meet their clinical needs and to make routine contingency plans. If these arrangements break down however, G&W CCG will discuss what alternative provision can be made available.
3. If I am employing staff I agree:
* To take out Employers and Public Liability Insurance and supply policy documentation if asked to;
* To ensure that all wages will be paid lawfully and not in cash;
* To comply with all legal requirements relating to employment (including any HMRC and National Insurance requirements) and to keep receipts and payroll documents for six years,
* To ensure that all Personal Assistants are trained in, agreed competent, and agree to carry out any clinical tasks as set out in the agreed care support plan (I will provide documentation to support this when asked),
* To consider getting a Disclosure and Barring Service (DBS) check on employees as G&W CCG strongly recommends that these be carried out.
1. I will not use my Direct Payment to purchase a service from a close relative living in the same household (or their spouse/partner) without the knowledge and permission of G&W CCG.
2. Receipts must be kept for any payments made in cash.
3. I understand that G&W CCG will review my child’s support arrangements 6 -12 weeks after my Direct Payment has begun and then at regular intervals as arranged, however, reviews may be arranged sooner at the request of G&W CCG or me.
4. If I am unable to receive the services I purchase, (as a result of, for example, admission of my child to hospital) I will inform the third-party support agency and G&WCCG Children’s Commissioning team, as soon as practicable. I understand that G&W CCG may decide, if necessary, to put my payments on hold for that period of time, and reclaim any related unused monies as agreed, taking into account any contractual arrangements that may be in place.
5. I understand that G&W CCG has agreed to make a payment to me on behalf of my child for the amount agreed within their Care Support Plan. These payments will normally be made by the 16th of the month in which services are to be provided and paid for. G&W CCG will notify me regarding details of the start date.
6. I agree to provide details of a separate bank account, to be used solely for my child’s Personal Health Budget for G&W CCG to pay these payments into. I will not move these payments to any other bank account except for the purposes of making payments as agreed in my child’s Care Support Plan. I understand that this nominated bank account will be audited by the third party support agency supporting me and/or by G&W CCG.
7. I understand that if I am receiving Direct Payments via a Supported Managed Account (SMA), these will be paid directly to the agreed third party support provider, into an individual account. They will write cheques or otherwise make payments on my behalf from this account and also assist with Financial Reconciliation Forms. The preferred third party support agency will organise a separate agreement to be sent to me between them and myself for this specific account.
8. G&W CCG is required to undertake financial monitoring of Direct Payments through a Financial Reconciliation Form, which will be sent to me within three weeks of the period end (if I am receiving an ongoing Direct Payment) or with my starter pack letter (if I am receiving a one-off payment). I agree to return these with copies of relevant bank statements/invoices and receipts on a quarterly basis or on request. Non-receipt of Financial Monitoring Forms may lead my payments to be suspended or ceased. Third party support agencies are available to help complete the Financial Monitoring Forms if required.
9. I agree that after receipt of my financial monitoring reconciliation form and consultation with me, G&W CCG may adjust future Direct Payments. I agree to return any unspent monies or surplus to G&W CCG when they request me to do so.
10. I understand that G&W CCG may increase, decrease, temporarily suspend or cease my child’s Direct Payment as a result of changes to my child’s assessed health needs. This would normally be following a change in circumstances and in agreement with myself and will take into account any contractual obligations that may be in place.
11. I agree to repay the Direct Payment or part of it if it is not spent appropriately in line with this agreement and current Direct Payment legislation.
12. I will only spend my Direct Payment on things that are legal, and that meet the outcomes agreed in my child’s Care Support Plan. If I misuse my child’s Direct Payment, G&W CCG will ask me to pay back the money, and G&W CCG may stop me receiving my child’s Personal Health Budget as a Direct Payment in the future. If G&W CCG pay me more than they should, due to misinformation provided by me, G&W CCG will ask me to pay back the money and may also ask the Police to investigate the matter.
13. In the event of my child’s death this agreement will immediately come to an end and any unspent money will be recoverable by G&W CCG.
14. G&W CCG and I have the right to cancel this Agreement by giving the other party four weeks' notice in writing (or a shorter period in exceptional circumstances) and stating the reasons for this.

# **Direct Payment Schedule (Health)**

# I understand that Direct Payments will normally be made monthly by the 16th of the month in which care is to be provided and paid for.

# I understand that in month one, I will also be paid a contingency payment equivalent to one month of care to be used to cover any fluctuating care needs throughout the year. It is expected that the contingency payment will be returned to G&W CCG at the end of the financial year unless otherwise agreed with G&W CCG.

# Any agreed one-off payments will be added to the next available monthly payment; and any agreed deductions will be deducted from the next monthly payment (or payments, should the deduction be more than the monthly payment).

# **Supported Managed Account (SMA)**

A separate agreement is required for a Supported Managed Account which is between the preferred third-party support provider and the individual.

|  |  |
| --- | --- |
| **Direct Payment Recipients Name**  |    |
| **Direct Payment Recipients Signature** |    |
| **Date** |   |

On behalf of NHS Guildford and Waverley Clinical Commissioning Group

|  |  |
| --- | --- |
|  **Karen McDowell** | Deputy Chief Officer/Chief Finance Officer |
| **Signature** |   |
| **Date** |   |

**Direct Payment Bank Account Details**

Please complete and return this as soon as possible. If we receive your completed Direct Payment Agreement by 23rd of the month, we should be able to make your first Direct Payment by 16th of the following month.

|  |  |
| --- | --- |
| Account in the name of: |  |
| Name of bank: |  |
| Sort code (6 digits) |  |
| Account Number (8 digits) |   |
| Name of signatory (please print): |   |
| Signature: |   |
| Date: |   |

#  Please return one signed copy of this form to:

# NHS Guildford and Waverley Clinical Commissioning Group,

# Surrey Children’s Commissioning Team,

# Dominion House, Woodbridge Road, Guildford, Surrey, GU1 4PU

# In case of queries, please call or email:

# Tel: 01483 405461

# Email: GWCCG.SurreyChildrensContinuingCare@nhs.net

#