



Derby City Council

# People Services

## Direct payments policy for disabled children

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## Introduction

Direct payments enable disabled children and their families to direct their own support. They are cash payments made to the parent/carer of a disabled child up to the age of 18, or to their nominated third-party representative. Direct payments promote independence, choice, and inclusion by enabling the purchasing of support and services that the Council would otherwise provide. Direct payments are available to children who meet the threshold for social care intervention. Parent/carers, or their nominated third-party representative, are responsible for ensuring that direct payment funds are spent only on the assessed needs identified in the disabled child's individual Single Assessment or Education, Health & Care Plan (EHCP)

## Purpose and aim of the policy

This policy is intended to achieve consistent practice and approaches for disabled children and their families accessing direct payments and ensure that Derby City Council meets its statutory obligations in relation to legislation and guidance.

This policy is intended to assist Derby City Council staff undertaking social care needs assessments, reviews, support planning, and in the preparation of Single Assessments for children assessed as eligible and who are receiving direct payment provision.

## Legislation framework

Direct payments were introduced in relation to social care services for adults through the Community Care (Direct Payments) Act 1996. This Act was repealed (in relation to England) by the Health and Social Care Act 2001 ('the 2001 Act') and direct payments are now governed by the 2001 Act and the Children Act 1989 ('the 1989 Act'). From April 2003, councils were required to offer direct payments to certain persons to enable them to obtain for themselves the services that they were assessed as needing.

The power to make direct payments to people with parental responsibility for disabled children and disabled 16 and 17 year olds was created by the Carers and Disabled Children Act 2000 ('the 2000 Act').

Section 17A of the 1989 Act, inserted by the 2001 Act, gave councils a duty to offer direct payments where there was an assessed need with children's services.

In making direct payments under section 17A of the 1989 Act, councils are subject to the general duty provided by Part 3 of that Act to safeguard and promote the welfare of children in need, and to promote their upbringing by their families when making these payments, in exactly the same way as when providing direct services.

Before making any decision about providing direct payments, the Council must ascertain and give due consideration to the child's wishes and feelings (section 17(4A) of the 1989 Act).

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

The Chronically Sick & Disabled Persons Act 1970 s2 provides for services that councils must make available to disabled children and adults.

All councils have had a legal duty, since 2003, to offer disabled children and their families, who are eligible for community care services, the choice of receiving a direct payment to manage their assessed eligible community care needs.

Section 49 of The Children and Families Act 2014 requires that a local authority that maintains a Single Assessment/EHCP for a disabled child must prepare a Personal Budget if asked to by the child's parent or the child.

The local authority retains discretion over how long it chooses to provide services under section 17 while a Single Assessment/EHCP remains in place. Where the child no longer has a Single Assessment/EHCP, the local authority no longer has the power to extend the provision of these services to disabled people over 18. However, the Care Act 2014 provides that when a local authority assesses a child who is receiving support under legislation relating to children's services, it must continue to provide the child with that support through the assessment process. This will continue until adult care and support is in place to take over, or until it is clear after the assessment that adult care and support does not need to be provided.

This policy follows the updated guidance on Direct Payments, for Community Care, Services for Carers and Children's Services 2009 issued by the Department of Health. The guidance can be found on the Department of Health's website. The policy also follows the guidance set out in Direct experience: A guide for councils on the implementation of Direct Payments in Children's Services Carlin, J and Lenehan, C (2004) Council for Disabled Children.

Under the Children and Families Act 2014, the Council has a duty to offer a Personal Budget to children aged from birth to 25 years to enable them to access services and support where an EHCP is in place or where the Council is preparing an EHCP following a full assessment of a disabled child's eligible needs. A direct payment may form part of a disabled child's personal budget, based on their identified, assessed needs.

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

## Scope

Derby City Council has a statutory duty to assess a disabled child who is at risk of significant harm or requires additional support. Following completion of a Single Assessment, where such assessment identifies social care need/s, a direct payment could be used to meet the need of the disabled child alongside other social care services or as a stand-alone piece of support.

Direct payments provide the freedom to tailor support around the needs of disabled children and their families specific circumstances and needs, and they are intended to give the child and their family increased choice and control over how eligible needs are met.

The direct payment (the Funds) will be paid by Derby City Council into the Nominated Person's account, unless there is a request that the Council transfer the Funds to a third-party managed bank account (the Managed Account).

If a disabled child has complex healthcare needs, a social care funded personal assistant cannot deliver any health care task or be in sole charge of the disabled child. In these circumstances, it would be at Principal Service Managers (or above level) discretion if direct payments may be used, and this would require written agreement from the parent/carer/representative to agree to use the direct payment funds within these parameters. Children with complex healthcare needs should be referred through the Continuing Health care pathway <https://joinedupcarederbyshire.co.uk/your-services/children-and-young-people/continuing-health-care-for-children-and-young-people/>

The direct payment should only be used to meet the assessed eligible social care needs identified in the disabled child's Single Assessment/EHCP/Direct Payment Agreement. There should be SMART outcomes identified in the child's social care plan as to how the Funds should be used to provide support.

If a parent/carer chooses to take up direct payments, they assume the responsibility for organising and managing the child's care and support needs in line with the outcomes identified in the Single Assessment/EHCP/Direct Payment Agreement.

Day-to-day control of the Funds and support package passes to the parent/carer who should ensure that it is properly spent on the care and support required. Depending on the circumstances, this person may be the direct beneficiary or someone else may be nominated to receive the direct payments on their behalf.

Derby City Council, as part of the Single Assessment, will make the decision about whether a direct payment is appropriate. A range of factors will be considered, including the individual needs of the disabled child. Where it is assessed that a Direct Payment is the most suitable way of meeting the assessed social care need/s of the child/ren, the Single Assessment must be clear on the rationale for this, whether the family are able to manage these arrangements and specifically how many hours per week are needed, at what times of the day, for how long and what specific social care support/interventions will the Direct Payments be used for. Approval of the Direct Payment package will be made at Vulnerable Children's Meetings (VCMs).

If Derby City Council decides that a direct payment is inappropriate, the reason will be appropriately recorded, and shared with the disabled child and their parent/carer.

A parent/carer does not have to accept direct payments. If they wish, they can choose instead to receive services provided or arranged by Derby City Council.

### **Who is eligible for direct payments?**

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

The Council may make direct payments to the following individuals:



- persons with Parental Responsibility for a disabled child
- some disabled children aged 16-17 years, following a Mental Capacity Assessment, who meet the threshold for a service
- the 2009 Regulations provide that individuals can insist on a direct payment in certain circumstances, the essential criteria are:
  - the recipient consents to the making of a direct payment
  - it appears to Derby City Council that the recipient can (with assistance) manage the direct payment
  - Derby City Council is satisfied that the disabled child's welfare will be safeguarded and promoted by means of a direct payment
  - the individual is not excluded from receiving direct payments (see list of excluded individuals within this Policy).

Direct payments can be made for part, or for the whole, of the total package of care that has been agreed to meet the assessed needs of a disabled child.

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

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

Derby City Council may not make direct payments to a person who is unwilling to enter into an agreement with the Council or who is unable to demonstrate that, with assistance, they

can meet the required responsibilities of financial management, including expenditure. The Council may also refuse a direct payment if it believes it will not promote the child's welfare.

The allocated caseworker will decide whether there is an identified assessed need and, if so, whether direct payment support could meet that need. They will also assess if the parent/carer is capable (with assistance) of managing a direct payment.

The case will continue to be held open within social care; but it may be agreed that the case is passed to another worker, for example, a children's practitioner, to monitor and review. If the case is closed, the direct payment support will cease, and any unspent funds returned to Derby City Council.

### **Approving a direct payment**

The allocated caseworker will request direct payment provision by submitting a referral known as an 'Application for a Resource' to the relevant VCM panel.

Before submitting the Application for a Resource referral, the allocated caseworker should visit the parent/carer/representative to explain in detail how a direct payment works and what their responsibilities will be. The allocated caseworker will explain that the parent/carer/representative will be required to adhere to the terms and conditions laid out in the Direct Payment Agreement which they will be asked to sign. If the parent/carer/representative consents to receive a direct payment, they should sign the consent form called 'Requesting a direct payment' (DP01) - see Appendix 1. This will satisfy Derby City Council that:

- the allocated caseworker has fully explained to the parent/carer what direct payments are
- the allocated caseworker is satisfied that the parent/carer understands the responsibilities associated with receiving a direct payment

- the allocated caseworker is satisfied that the parent/carer appears to be able to manage (with assistance) the direct payment.

If the direct payment is approved the parent/carer or their representative will be required to sign a direct payment Agreement before any Funds are paid to them.

## **Funding**

The person responsible for the direct payments budget may only approve direct payments. This is the Principal Service Manager or above level. If, for any reason, the Principal Service Manager, or above level, is not present at the weekly VCM the decision to approve the direct payment should be deferred. The IDCS management structure means that direct payments can be agreed at their VCM by Team Managers, given the additional budgetary oversight within that service area, but for packages over £5,000 (per child, per annum) these are to be approved at Head of Service level.

## **Rates**

The rate at which direct payments are made are based on the market rate which Derby City Council has determined is reasonable for the local area and is sufficient to meet the needs identified in the Single Assessment/Education, Health & Care Plan. Full details of the current rate structure are set out in Appendix 2 - 'Direct payment rate structure' (DP02).

## **Financial contributions**

If a disabled child or a child aged below 18 years is assessed as eligible and the direct payment is to be used to meet their identified assessed needs, the disabled child and their parent/carer will not be asked to make a financial contribution. However, it is permitted for parent/carers of children who are receiving a direct payment to use their own personal income to buy additional hours, or services, or more expensive care than Derby City Council has assessed is

required. For example, if the parent/carer chooses to secure the services of an agency that does not have a contract with Derby City Council, under these circumstances it would be appropriate for the parent/carer to receive a direct payment and make a payment from their personal funds for the difference in costs.

If a parent/carer wishes to secure the services of an agency that does have a contract with Derby City Council, and the agency charges more than the rate identified, direct payments would not be an appropriate way of securing that provider as this would create a shortfall. In these circumstances, the allocated caseworker would be required to make a business case via VCM to be escalated to the commissioning department.

### **What direct payment funds can be spent on**

Derby City Council cannot draw up an exhaustive list as to how the direct payment can be used - each case must be decided individually on its own merits, and based on the following:

The service, support or activity proposed should be:

- legal; and
- clearly linked to the outcomes identified in the Single Assessment/EHCP and as set out in the direct payment Agreement, to secure provision to meet the disabled child's assessed needs; and
- consistent with keeping the child healthy, safe and well; and
- affordable and proportionate to the assessed eligible needs of the disabled child.

The Funds must be used to meet the needs and outcomes identified in the Single Assessment/EHCP and as set out in the direct payment Agreement.

A direct payment is most often used to employ personal assistants to provide care and support. Below are some examples of how some families use their direct payment:

- employing a personal assistant to support the child to access identified activities; this enables parent/carers to have a short break to spend time with their other children
- employing a personal assistant to assist with the child's personal care.

### **What direct payment funds cannot be spent on**

- anything that is illegal or is illegal to purchase, or that would endanger the disabled child or any other person
- gambling; debt repayment; alcohol; tobacco
- to pay a family member living with the disabled child, except as agreed in exceptional circumstances (by the Principal Service Manager or above level)
- emergency, acute, and most primary healthcare services which are already provided on the NHS
- treatments, such as medication, that the NHS would not normally fund because they are not shown to be cost effective
- purchasing services directly from Derby City Council
- permanent residential care
- equipment
- as a substitute for Disabled Facilities Grants
- living expenses, for example food, rent, utility bills, clothing, etc

- any charges due to the Council.

## **Direct payments to third parties**

In all circumstances, including where the Funds are paid to a representative, the parent/carer will remain in control and is accountable for the way in which the direct payment is used.

The parent/carer may ask a suitable person (their 'representative') to help them manage their direct payment, for example, by helping them to secure the services to which the payments relate, or by receiving and handling the money. The parent/carer may do this if they do not have the desire, capacity or capability to receive and manage a direct payment.

In this case, provided the representative appears to the Council to be able to manage the direct payments, the Council has a duty or a power to make direct payments to that representative.

The representative assumes responsibilities associated with managing the disabled child's support as identified in their Single Assessment/EHCP and as set out in the direct payment Agreement. Where a payment is made to a representative, the representative will take on the responsibility for ensuring that appropriate services are in place and will be accountable to the Council for the way in which the Funds are spent on behalf of the disabled child. However, the parent/carer who has consented to receiving a direct payment should retain overall control and responsibility for the direct payments.

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

If a personal assistant is being employed, then the representative must be able to understand relevant legislation and the responsibilities of being an employer. In these circumstances, the

third party is the employer and is responsible for all elements of the direct payments in relation to this.

## **Managed accounts**

It is possible for the parent/carer to engage with a payroll provider who will provide them with a managed account service. A payroll provider will be chosen by the parent/carer to manage the direct payment account on their behalf.

An agreement should be entered into between Derby City Council and the managed account provider. The direct payment Agreement between Derby City Council and the parent/carer will also reflect that a managed account is used, and that direct payment Funds are paid into an account held by the provider, on behalf of the direct payment recipient.

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

## **Managing direct payments**

The parent/carer/representative should open a separate and appropriately named bank account for the sole purpose of managing the direct payment (the 'Nominated Account') This is to ensure that there is less risk of confusion with the recipient's personal funds and will allow efficient record keeping, monitoring and auditing, for both parent/carer/ representative and Derby City Council.

Derby City Council will pay the Funds in advance, on a four-weekly basis to the Nominated Account via the Banks Automated Clearing System (BACS) by Derby City Council and will be paid directly into the Nominated Account.

Alternative arrangements may be made for one-off payments in certain circumstances.

The intrinsic flexibility of direct payments means that the parent/carer/representative can adjust the amount they use from week to week and 'bank' any spare Funds to use as and when extra needs arise. Some families find it helpful to 'bank' Funds to use for additional support during the school holidays. If overall the payments are being used to achieve the outcomes agreed in the Single Assessment/EHCP and as set out in the direct payment Agreement, the actual pattern of support does not need to be pre-determined.

In circumstances where a personal assistant is made redundant, and they are entitled to a redundancy payment, it is the responsibility of the parent/carer/representative to ensure that redundancy costs are paid from either the insurance company, or from the accrued contingency funds that are held in the direct payment account. See agreed contingency reserves on page 27 of this Policy.

### **Consenting to direct payments**

A direct payment may only be made with the consent or willingness of the parent/carer or where a representative has been identified.

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

The parent/carer/representative is accountable to the Council for the way in which the Funds are spent. If support is made available through a direct payment, they will be asked to sign direct payment Agreement.



## Who is excluded from receiving a direct payment?

Direct payments may not be made in respect of certain people who have been placed under certain conditions or requirements by the courts in relation to drug and/or alcohol dependencies, as listed below:

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

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

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

Derby City Council must assess whether a person has capacity to consent before making direct payments. Reference can be made to the Mental Capacity Act 2005 Code of Practice <https://www.gov.uk/government/collections/mental-capacity-act-making-decisions>

Derby City Council will discontinue direct payments if the disabled child no longer needs the direct payment or, they are no longer eligible to receive the services for which the direct payment was given.

## **How direct payments are paid**

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

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

The Nominated Account will only be used for transactions in relation to the Funds in order to meet the disabled child's assessed needs, as agreed and as stated in the Single Assessment/EHCP and as set out in the direct payment Agreement and for no other purpose.

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

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

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

Derby City Council will give the parent/carer/representative a schedule of payment dates so that they will know when to expect each payment. Depending upon the type of support that is needed it may be more suitable for a single one-off payment to be made available.

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

Upon issue of the direct payment Agreement, the parent/carer/representative should complete a 'New Customer Form' (DP04) - see Appendix 4. This is to acquire and verify the personal details of the parent/carer/representative and details of their nominated bank account.

Where direct payments are already in place and a parent/carer/representative has requested a new NCF due to them wishing to change their bank/building society account, a new NCF form will be sent to the parent/carer/representative for their completion. Once received, an officer from the Council will contact parent/carer/representative to confirm that the completed form has been received and will verify the new details.

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

### **Direct payments to employ personal assistants**

If the parent/carer/representative chooses to use direct payments to employ a personal assistant, the parent/carer/representative must act as a responsible employer and follow and comply with guidance and processes in accordance with current employment legislation.

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

Every employer with at least one member of staff now has a duty to put employees into a workplace pension scheme and to contribute towards it if the employee meets certain criteria. This includes employers who are receiving a direct payment to employ personal assistants. As an employer, the parent/carer/representative will have a duty to offer a pension scheme to eligible employees; however, employees can opt out of this scheme if they do not feel that it meets their requirements.

All personal assistants are employed by the parent/carer/representative and not by Derby City Council. The employer must ensure that they retain adequate funds in their direct payment account to cover all potential employer responsibilities. Derby City Council strongly recommends the parent/carer/representative seek independent advice regarding employment law.

A direct payment cannot usually be used to employ someone that lives in the same household as the disabled child in receipt of a direct payment, however, Derby City Council may agree, at their sole discretion, to make an exception, by written agreement if there are exceptional circumstances. This decision should be made at Principal Service Manager level or above.

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

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

## **Employing family members as personal assistants**

This is to clarify the Council's position in terms of relatives who are paid as personal assistants from direct payment funds to support outcomes identified in the Single Assessment/EHCP. Section 17A of the 1989 Act, gave councils a duty to offer direct payments where there was an assessed need for a disabled child.

In making direct payments under section 17A of the 1989 Act, Councils are subject to the duty to safeguard and promote the welfare of children, and to promote their upbringing by their families when making these payments, in exactly the same way as when providing direct services. The Council wants to be satisfied that the disabled child's assessed needs can and will be met. Direct payments are not intended to replace existing support networks within families and communities.

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

There is discretion for the Council to agree that relatives can support a disabled child, to assist with tasks specified in the Single Assessment/EHCP, which are over and above or specific to the particular needs of a disabled child, as it relates to their disability. Such tasks or activities would not include what relatives would usually do for their family members as part of ordinary, supportive family relationships. For example, it would be usual and ordinary for a grandparent to spend time with their grandchild, taking them to the park, beach, shopping, etc. It would not be ordinary for a grandparent to provide personal care, i.e. supporting with personal hygiene, toileting and getting dressed. As children mature, consideration will be given to the continuing suitability of a personal assistant, to meet the disabled child's changing needs, and how intimate care needs are to be met.

Any agreement for a relative to be employed as a personal assistant and paid from direct payment funds will be dependent upon the individual needs of the disabled child, and the

specific requirements of the carer with skills to meet those needs and activities set out in the Single Assessment/EHCP/Direct payment Agreement.

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

Where families choose to employ a relative as a personal assistant, the social care Team Manager and/or Principal Service Manager will decide, based on the assessment, whether it is appropriate for a relative to provide personal assistant support. Each case will be determined individually. **If a relative is in receipt of Carer's Allowance for the disabled child, they cannot also be paid as a personal assistant.**

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

## **Disclosure & Barring Service checks**

Safeguarding is an integral component of direct payments and is firmly embedded in the Single Assessment/EHCP and support planning processes and subsequent reviews.

Derby City Council require all personal assistants to undertake an Enhanced Disclosure and Barring Service (DBS) check before they commence their employment as a personal assistant paid from direct payment funds. Thereafter, enhanced DBS re-checks should be undertaken every 3 years.

Derby City Council will meet the cost of the initial Disclosure and Barring Service check where personal assistants have employed status.

In some cases, families choose to engage with a self-employed personal assistant. In these circumstances, it is the responsibility of the self-employed personal assistant to arrange to have an up to date DBS check, (the issue date should be within six weeks of commencement of work as a personal assistant for each individual disabled child) and for the self-employed worker to meet the cost of that DBS check.

The personal assistant should not be employed until the DBS check has been seen by the Parent/Carer/Representative. Derby City Council will require written reassurance from the parent/carer/representative that a satisfactory DBS check has been undertaken and that the parent/carer/representative is satisfied that the PA does not pose any significant risk of harm to the child.

## **Reviewing a direct payment**

Derby City Council will undertake regular reviews in relation to the use and management of the direct payment. This is required to ensure public funds are being used appropriately, and for the purposes laid out in the Single Assessment/EHCP and as set out in the direct payment Agreement. The Council will investigate any discrepancies and make attempts to resolve inconsistencies.

An initial review should take place at 3 months after the direct payment has been set up to ensure the direct payment is running in line with the intended purpose and process.

Thereafter, reviews should take place every 12 months and be incorporated into the annual Single Assessment and aligned to existing review meetings (CIN, CP) where the child's plan (including direct payments) should be central to discussion, allowing the multi-agency group supporting the child/family to assess whether an increase/decrease/cessation of the direct payment is required.

Direct payments should be part of the child in need/protection plan and set out the goals related to the direct payment and can be legally reassessed through the child in need/protection reviewing process, so long as there is clarity and transparency in review meetings on any need for increase, reduction or cessation of the direct payment. If an increase, reduction/cessation is assessed as required, this should be reflected in the child's plan.

The regulations underpinning direct payments are clear direct payments can be terminated on the whole or part basis when the conditions of the direct payment are no longer met. There is therefore discretion (so long as there is evidence of a clear rationale) to either increase, reduce or end the direct payment and this should be outlined in CIN/CP review minutes as well as the plan.

Following the review meeting in which a decision is made to either cease, increase or reduce the direct payments, a decision letter to make the family/carer/s aware of the increase, reduction or cessation of the direct payment, alongside sharing the CIN/CP review minutes should be sent as a matter of course.

In circumstances where a parent/s or carer/s challenges decisions on ending or reducing a direct payment, a full Single Assessment to provide an assessed rationale for the decision made should be completed and shared with the parent/s/carer/s.

In circumstances where the family are struggling to find a personal assistant, the Local Authority would only be able to cease the direct payment if there was a continuing assessed need that gave rise to the need for a direct payment and will explore alternative services/approaches to meeting that need.

For children whose Single Assessment identified a social care need but not a need for a Social Worker to be allocated to manage other areas of support and that a direct payment alone could meet assessed need, the direct payment case will be held by the IDCS Service Support Team. These children and families still require an annual direct payment review, which will



be triggered by the IDCS Service Support Team and undertaken by a Children's Practitioner in either the Locality or IDCS Social Care Teams using the annual Direct Payments Review Form.

In these circumstances, where there is a concern, the direct payment is not being used appropriately, the case will be managed by a social worker until such time there is evidence a social worker no longer needs to manage that case.

In either situation, reviews must assess whether Direct Payments remain required to meet assessed social care need/s, whether these need to be increased or decreased with clear rationale for either and specifically how and when additional hours will be used (where increase is assessed as required) , or whether Direct Payments are no longer an appropriate way of meeting that child and family's needs, again, with a clear rationale for the decisions made.

The parent/carer/representative should co-operate fully with each review.

A direct payment review should establish that:

- the direct payment is being managed within the terms of the direct payment Agreement
- the bank account is being managed correctly
- records and receipts are up to date
- the Funds are being used for the services or support for which they were intended as set out in the Single Assessment/EHCP/direct payment Agreement
- the arranged support or services are sufficiently meeting the assessed eligible needs of the disabled child

The Reviewer is required to examine at least the following documentation which can be completed prior to the planned CIN/CP review:

- up-to-date, completed, and signed Spending forms
- copy of bank account statements, showing the most recent balance
- evidence that an employment contract has been issued (if employing a personal assistant)
- evidence that an enhanced DBS check has been undertaken.

The outcome of the review may be to continue, increase, decrease, suspend or discontinue the direct payment in line with regular reviews or re-assessment of the disabled child's assessed needs. The parent/carer/representative may request a review or re-assessment of the disabled child's circumstances at any time.

## **Financial monitoring of direct payments**

Derby City Council needs to fulfil its responsibility to ensure that public funds are spent to produce the intended outcomes. The Council has set up financial monitoring arrangements for audit purposes for direct payments, see 'Financial monitoring guidance' (DP06) - see Appendix 5.

The Council will review the use by the parent/carer/representative of the direct payment on a regular basis. Following a review, any funds accrued and not spent in the nominated account should be returned, unless it can be shown that the funds have been accumulated for a specific purpose.

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

Once direct payments are in place, the parent/carer/representative will be required to keep documentary evidence and details of all transactions relating to the direct payment account. There should be an evidenced audit trail of all financial transactions.

The parent/carer/representative should complete and sign a 'Spending form' (DP06) every 3 months - see Appendix 6. The Spending form details the way in which the Funds have been spent and they should be submitted in time for each review. A copy of the direct payment bank statement covering the 3-month period should be attached to the Spending form.

Evidence of original supporting documents, which may include; personal assistant(s) timesheets; expenses claim forms; payroll invoices; HMRC payments; and any additional invoices or receipts where payment has been made from the direct payment funds will be collected by the allocated caseworker at the time of review.

If any of the abovementioned documentation is not made available for the review process, it may result in the direct payment being suspended.

### **Wrongful use of direct payments**

Where it appears that the parent/carer/representative has been using the Funds for items or services other than those specified in the Single Assessment/EHCP/direct payment Agreement or if there is evidence of deliberate misuse of Funds, Derby City Council will undertake a full review to establish the exact amount of money that has been inappropriately used and will seek to recover it.

If the Funds have been used inappropriately (either intentionally or unintentionally) due to mismanagement of the direct payment account, or the parent/carer/representative has shown they are incapable of or unwilling to manage their direct payment correctly, a review or reassessment will be undertaken as a matter of urgency. If the outcome is that the Funds have been used inappropriately, the Council will seek to recover the Funds and will request

that they be returned on demand. The matter will be referred to the Council's Debt Recovery Team who will pursue the recovery of the Funds.

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

### **Change of circumstances**

Derby City Council will undertake another Single Assessment if there is a change in need or circumstance. If, in-between reviews, the disabled child's needs change, or there is a change in family circumstances, Derby City Council should be informed as soon as possible, and the direct payment may be reviewed.

### **Direct Payment Agreement**

The parent/carer/representative must sign a direct payment Agreement (DP03) before direct payments can be made (see Appendix 3).

The direct payment Agreement sets out the arrangements between the parent/carer/representative and Derby City Council. The Agreement covers the start date of the direct payment; how the payments will be made; the contingency reserves; the monitoring and reviewing arrangements the parent/carer/representative and Derby City Council will follow in the management of the direct payment; and the termination of the direct payment by either the parent/carer/representative or Derby City Council.

### **Agreed contingency reserves**

Derby City Council agrees that 8 weekly payments of direct payment funds may be held in the Nominated Account at any one time, as an agreed reserve. If, at any time, the Funds held in

the Nominated Account exceed a total sum of 8 weekly payments the parent/carer/representative shall, upon request, return these excess monies to the Council.

## **Recovery of direct payments**

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

- if the direct payment has not been used to meet agreed outcomes, as set out in Single Assessment/EHCP/direct payment Agreement
- if the parent/carer/representative fails to meet any terms of the direct payment Agreement, or fails to respond to any correspondence relating to the management of the direct payment
- if a direct payment has been overpaid or paid in error
- if the Funds have accrued and there is a surplus in the direct payment account, which is above the agreed contingency amount (8 weeks of payments in total).
- if, following termination of the direct payment, any direct payment monies remain in the direct payment account.

Direct Payment funds will be recovered in line with Derby City Council's debt recovery policy.

## **Unspent direct payments**

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

## **If the direct payment ends, what happens with the Funds held in the bank account?**

The Council will require the direct payment recipient to make all outstanding payments relating to the care and support received and to return the remaining balance of the funds held in the direct payments account to the Council.

## **Statutory redundancy payments for personal assistants**

If a personal assistant has been employed to provide support and they are being made redundant, the insurers will reimburse the policyholder the cost of statutory redundancy that parent/carer/representative (employer) is required to pay any employee (personal assistant) following their dismissal during the period of insurance, provided they are dismissed as a result of certain circumstances.

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

## **Overpayments**

If the disabled child eligible for and receiving a direct payment is no longer entitled to, or the parent/carer/representative has decided they no longer wish to receive a direct payment, and/or an overpayment has occurred due to an error on the part of Derby City Council, the direct payment recipient will be notified that this overpayment will be recovered. Funds should be returned within 14 days of the receipt of a written request from the Council.

## **Discontinuing direct payments**

The parent/carer/representative may decide at any time that they no longer wish to continue receiving direct payments.

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

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

Derby City Council will stop making direct payments if it is not satisfied that the disabled child's needs can be met by using direct payments or if the direct payments are not safeguarding or promoting the disabled child's welfare.

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

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

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

If Derby City Council decides to cease the direct payments, the parent/carer/representative will be given 4 weeks' written notice. In circumstances where the Council terminates the payment of the Funds for whatever reason, the Council will undertake a final reconciliation of the Funds. When requested the parent/carer/representative must repay to the Council

any monies remaining in the Nominated Account within 14 days of the receipt of a written request from the Council.

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

Derby City Council reserves the right and may discontinue payments if the parent/carer/representative fails to comply with a condition to which the direct payments are subject, or if any of the terms as set out in the direct payment Agreement are breached.

Derby City Council may discontinue the direct payments if it is apparent that the Funds have not been used to achieve the outcomes specified in the Single Assessment/EHCP or as set out in the direct payment Agreement.

If Derby City Council has decided to discontinue direct payments, it will work with the parent/carer/representative to plan how the disabled child's assessed eligible care needs will be met in an alternative way, and will arrange the relevant services instead, unless the payments were discontinued following a reassessment after which the Council concluded that the services were no longer needed.

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

Discontinuation of direct payments will not preclude the disabled child receiving a direct payment in the future, as appropriate.

The Council will follow the terms of the direct payment Agreement signed by the parent/carer/representative and the Council.



## **Performance and risk management**

This policy will be reviewed on an annual basis, or sooner if practitioners identify any risks to disabled children or their parent/carer/representative, or employees.

## **Communicating the policy**

The Head of Service for Specialist Services and the Head of Service for Children's Social Care is responsible for implementing and managing the policy in terms of social care direct payments in their respective areas. This policy document will be circulated to all practitioners and shared with disabled children and their parents, carers, and representatives. It will be stored in Derby City's online library of Social Care Procedures at <https://derbycsc.proceduresonline.com> and available on Derby City Council's website at [www.derby.gov.uk](http://www.derby.gov.uk)

## **Breaches and non-compliance**

If the policy and procedures set out in this document are not followed, the Council will not be able to offer direct payments to disabled children, or their parent/carers/representatives, and it will seek alternate provision to meet their need. The consequences of any breach or not complying with the policy may result in direct payments being suspended or discontinued.

If the recipient of a direct payment has a complaint about services they have independently purchased, they should address this with the service provider, or the employee concerned. Complaints about the process of setting up, administration and monitoring the direct payments will be handled under the appropriate Council complaints procedure.

### Requesting a direct payment

Before you decide to request a Direct Payment, please read Derby City Council's Direct Payment Policy, which your allocated caseworker will provide you with.

In addition, we have selected a few independent websites (below) which you may find useful in helping you to decide if you could manage a direct payment. Please note these are just a small selection and there are many more resources widely available online. Please let your allocated caseworker know if you do not have access to the internet.

#### Employing people

GOV.uk - <https://www.gov.uk/browse/employing-people>

#### Recruiting and employing a personal assistant

Skills for Care - <http://www.employingpersonalassistants.co.uk/>

#### Tax help - Being an employer: a guide

Disability Tax Guide - <https://disabilitytaxguide.org.uk/>

#### Setting up and managing a workplace pension

GOV.uk - <https://www.gov.uk/workplace-pensions-employers>

If you decide to request a direct payment, you must complete and sign this document and return it to your allocated caseworker, who will then process a referral for you. A decision will usually be made within 1 week of receiving the referral from your allocated caseworker. We will write to you and let you know if your request has been approved or declined.

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I have read and understood Derby City Council's Direct Payment Policy, and I understand that:

- if I decide to hire a PA, I understand I will become an employer and I will be responsible for things like:
  - issuing a contract of employment
  - undertaking enhanced DBS checks, where necessary
  - buying Employer's Liability Insurance every year
  - ensuring any NI contributions due are paid to HMRC
  
- if I hire someone to manage my payroll for me, I will remain responsible for the management of the direct payment

- if I ask someone to represent me and manage or receive my direct payment on my behalf, I will remain accountable for the way in which the direct payment is used
- I must regularly complete and submit spending forms and bank account statements in time for each review, even if I use a managed payroll service (unless agreed otherwise by Derby City Council).
- I must undertake an enhanced DBS check for my PA before they start work and undertake DBS re-checks every 3 years.
- I must co-operate fully each time my direct payment is reviewed
- I must manage the funds so that contingency reserves are built up for costs such as employer's liability insurance, NI and pension contributions etc., - see 'Direct payment rate structure' (DP02).

**\*\*\* This is not a complete list of responsibilities. Derby City Council strongly recommends you seek independent advice on employment law before signing a Direct Payment Agreement \*\*\***

I confirm that my allocated caseworker has given me a copy of the Direct Payment Policy and I would like Derby City Council to consider my request to receive a direct payment for the purposes outlined in my child's Single Assessment/Education, Health and Care Plan.

Signature	
Print name	
Relation to child	
Date	
Name of child	
Child's date of birth	

## Direct payment rate structure 2024/25

Direct payment rates		
<b>Standard Rate</b>	£14.88 per hour gross	<b>You can pay your Personal Assistant £11.44 per hour</b> This leaves a surplus to cover on-costs such as employer's national insurance (13.8%); pension contributions (3%) and 4 weeks holiday cover (where necessary) and to accrue enough money to cover recurring annual insurance renewal premium.
<b>Night Rate 1</b>	£17.93 per hour gross	<b>You can pay your Personal Assistant £13.69 per hour</b> This leaves a surplus to cover on-costs such as employer's national insurance (13.8%); pension contributions (3%) and 4 weeks holiday cover (where necessary) and to accrue enough money to cover recurring annual insurance renewal premium.
<b>Night Rate 2</b>	£21.79 per hour gross	<b>You can pay your Personal Assistant £16.63 per hour</b> This leaves a surplus to cover on-costs such as employer's national insurance (13.8%); pension contributions (3%) and 4 weeks holiday cover (where necessary) and to accrue enough money to cover recurring annual insurance renewal premium.

Set up costs (to be paid with the initial payment when the direct payment is first set up)		
Employer's liability insurance	Up to £100.00 per annum	We will pay up to £100 for one year's insurance, when your direct payment is first set up. Thereafter, you must ensure you accrue enough money from the surplus to pay for next year's annual insurance premium.
Enhanced Disclosure and Barring Service check (if applicable)	Up to £70.00 per check	If you are employing a PA who will have regular unsupervised contact with your child, you must ensure they have a satisfactory Enhanced DBS check <b>BEFORE</b> they start work.
Recruitment and employment support	Up to £50 per month until a PA has been appointed	Maximum of 3 months before reassessment if no PA is appointed.

Recurring annual costs (optional)		
Payroll/managed account service	Up to £305 per annum	If you cannot, or do not want to organise payroll yourself, you may pay a company to do it for you. We will pay up to the amount shown here, per annum. You must inform your allocated caseworker if you wish to use a managed payroll service.

Rates commence 1 April 2024  
Review date 31 March 2025

**Direct Payment Agreement**

Between

Derby City Council (“we”/“us”)

and

XXXXX (“you”)

for the provision of a Direct Payment for

**XXXXX**

This Agreement is legally binding on both Derby City Council and XXXXX and states what you must do in agreeing to receive a direct payment and what we will do when agreeing to make the payments to you.

You have informed us that you wish to receive a direct payment as part of the agreed support outlined in the child’s Single Assessment/Education, Health and Care Plan (EHCP) and we have agreed to give you a direct payment subject to the conditions contained within this Agreement. You have agreed that you can manage a direct payment without our assistance.

We have carried out an appropriate assessment and calculated the direct payment that XXXXX is entitled to for the purpose(s) set out in the Single Assessment/EHCP. You will find details of this calculation, plus the purpose of the direct payment, frequency of payments and direct payment review dates set out below:

Purpose (as set out in the Single Assessment/EHCP)	
Number of hours per week	
Gross hourly rate	
PA hourly rate	
Weekly payment	
4 weekly payment	

If required, the initial payment will include additional funds to pay for set-up costs, such as undertaking an enhanced Disclosure and Barring Service (DBS) check and employer’s public liability insurance. We will also pay reasonable costs for you to procure a payroll account service, should you decide to use one. Thereafter, we will pay these reasonable costs annually, where necessary.

Set up costs (to be included with the initial payment)	
DBS check	
Employer's public liability insurance	
Managed account/payroll service	
Other	
Total set up costs	

We will:

- pay the direct payment directly into your nominated bank account
- regularly review the availability and suitability of your direct payment, as well as the amount offered, and the calculation made according to your individual circumstances
- reduce your direct payment if you have accrued a surplus or if we have made an overpayment to you
- reduce your direct payment if we consider that it is reasonable to offset unused direct payments against the outstanding amount to be paid
- reserve the right to receive and request evidence that the money paid to you has been used for the specified purpose only.

You as the parent/carer/representative receiving the direct payment will:

- at all times act in the best interests of the child you are receiving the direct payment for
- at all times adhere to the guidance and procedures as laid out in Derby City Council's Direct Payment Policy
- nominate a specified bank account for the direct payments to be paid in to on a 4-weekly basis, and be responsible for ensuring that the funds are received to this account
- ensure that the bank account approved by the local authority is only accessible by the person receiving the direct payments or any other person approved in writing by the local authority
- be responsible for making all the necessary arrangements to ensure that the child receives the support agreed in their Single Assessment/EHCP

- be responsible for ensuring there are adequate funds in the nominated account to cover all costs relating to the direct payment such as bank charges, DBS checks, employer's liability insurance and managed payroll account fees
- be responsible for ensuring the child's safety and security whilst receiving support funded through the direct payment, including ensuring that they are appropriately accompanied as necessary
- be responsible for the terms and conditions of any agreement made with any other parties for the purpose of arranging the support agreed in the child's Single Assessment/EHCP
- take all reasonable precautions to make sure that all arrangements you make for the child funded by the direct payment will be in accordance with all relevant laws designed to ensure that they are safe
- ensure that any third parties involved in the provision of the support agreed in the child's Single Assessment/EHCP are appropriate individuals to undertake such activities within the meaning of the Safeguarding Vulnerable Groups Act 2006, including ensuring that enhanced Disclosure Barring Service checks have been undertaken where necessary
- make sure the child receives the support as agreed in their Single Assessment/EHCP and as set out in this Agreement
- give written notice to us if the child's needs change on a permanent basis, allowing 20 working days' notice for an interim review to be arranged by us
- inform us if the child moves address
- inform us if the child is unable to receive the support agreed in their Single Assessment/EHCP on a long-term basis so that we can adjust the direct payment
- make your own alternative arrangements utilising the direct payment to overcome any short-term issues (such as occasional illness) which affect the provision of the support agreed in the child's Single Assessment/EHCP
- inform us if you no longer wish to receive the direct payment
- complete and submit Spending forms for every review
- Repay some or all the direct payment money if:
  - for whatever reason, you are temporarily unable to arrange the support agreed in the child's Single Assessment/EHCP, or if the balance of the account exceeds 8 weeks of direct payments

- you have been using the direct payment for items or services other than those agreed in the child's Single Assessment/EHCP
  - the direct payment has been inappropriately used (either intentionally or unintentionally) or you have shown yourself to be incapable or unwilling to manage your direct payment correctly
  - you fail to comply with the review or financial monitoring process
  - we suspect that criminal activity has taken place
  - we decide that another form of assistance is to be offered
- repay any overpayment within 14 days of presentation of an invoice from us
  - understand that if the child is assessed as no longer being eligible the direct payment will end
  - not use money received as a direct payment for any purpose other than what was agreed in the child's Single Assessment/EHCP and which is stated in this Agreement
  - keep clear and accurate records of all spending of the direct payment and be able to show how it has been used to meet the child's needs. You will also be required to keep invoices, payslips and receipts for anything (over £20) that you have purchased with the direct payment, although you may find it easier to keep receipts for all expenditure. You must allow us to look at these records if we ask you
  - keep all relevant paperwork concerning how you have spent the direct payment for a period of at least 7 years, including retaining all receipts for a period of 6 months, in a condition which can be checked by officers authorised by us to ensure that all money received has been utilised for the stated purpose
  - understand that you are responsible for any tax liability that arises because of receiving a direct payment

You agree **not** to use the direct payment for:

- anything that is illegal or is illegal to purchase, or that would endanger the child or any other person
- gambling; debt repayment; alcohol; tobacco
- to pay a family member living with the child, except as agreed in exceptional circumstances



- emergency, acute, and most primary healthcare services which are already provided on the NHS
- treatments, such as medication, that the NHS would not normally fund because they are not shown to be cost effective
- purchasing services directly from Derby City Council or their partner agencies
- permanent residential care
- equipment
- as a substitute for Disabled Facilities Grant
- living expenses, for example food, rent, utility bills, clothing, etc
- any charges due to the Council
- anything else that has not been agreed in the child's Single Assessment/EHCP.

### Employing Staff

If you choose to employ anyone to provide the support agreed in the child's Single Assessment/EHCP, you must have employer's liability insurance before they start work. You must renew this insurance as required, or annually.

You cannot employ anyone who lives in the same household as you or the child without first having written permission from us. We may give permission in exceptional circumstances.

You must act as a responsible employer and make all your arrangements in line with employment legislation and ensure that you have enough funding to cover your potential employer responsibilities.

You must ensure that the person has undertaken an appropriate enhanced Disclosure Barring Service check and be satisfied that the person does not pose any significant risk of harm to the child.

We reserve the right to carry out checks to make sure any PAYE, Income Tax and National Insurance contributions deducted from an employee's pay has been paid over to HMRC, and that employment payments do not breach the national minimum wage and conform to pension requirements if eligible.

We strongly recommend that you obtain independent advice concerning employment law.

### Monitoring by the Council

We must review the making and use of direct payments at least once within the first 3 months of the direct payment being set up. We will undertake a second review 9 months after the initial review. Thereafter, reviews will take place every 6 months or sooner if undertaking a new Single Assessment/EHCP.

At the time of review, we will request to look at your bank statements and other records to establish how you are spending the direct payment. This is to ensure that you are using it for the support that was agreed in the child's Single Assessment/EHCP and within the terms set out in this Agreement. We will do this by contacting you to arrange to visit you in your home, or other mutually agreed venue, at a time that is convenient to both parties.

### Suspending and terminating this agreement

We will give notice in writing, setting out our reasons for any decision to suspend your Direct Payment, or stop it and terminate this Agreement, if:

- you notify the local authority in writing that you no longer consent to receiving direct payments
- you cease to be a person to whom a direct payment may be made
- for whatever reason, you are temporarily unable to arrange the support agreed or the agreed support can no longer be secured by means of a direct payment
- Derby City Council becomes aware that the making of direct payments is:
  - (i) having an adverse impact on other services which the local authority provides or arranges for children with a Single Assessment/EHCP
  - (ii) no longer compatible with the local authority's efficient use of its resources
- you have been using the direct payment for items or services other than those agreed in the child's Single Assessment/EHCP or that specified on Page 1 of this Agreement
- your direct payment has been inappropriately used (either intentionally or unintentionally) or you have shown yourself to be incapable or unwilling to manage your direct payment correctly
- you fail to comply with the review or monitoring process
- we suspect that criminal activity has taken place

- we decide that another form of assistance is to be offered.

We reserve the right to recover payments as necessary in line with the local authority's debt recovery process.

### Complaints

We must reconsider our decision when requested to do so by you, but we are not required to reconsider our decision more than once. You have the right to complain about the operation of this Agreement using our complaints procedure.

### Privacy Notice

How is your information used?

The information we collect will be used for the purpose of completing a financial assessment (if required), for setting up, paying, monitoring and administering a payment to enable you in accordance with the child's support plan.

Who will your information be shared with?

The information provided may be shared with other departments in the Council (such as Commissioning, Finance etc). The amount that you are paid, and details of the financial assessment may be shared with health colleagues, schools or other educational settings, along with any other agencies that are working with the child for the same or similar purposes. The information may also be shared with the Department for Education (DfE), Ofsted, CQC, the Adoption Leadership Board and the HCPC because we have a legal duty to do so.

For further information about how your personal information will be used please visit [www.derby.gov.uk](http://www.derby.gov.uk) where you can see a full copy of our privacy notice. Alternatively, you can request a hard copy by emailing us at [thelighthouse@derby.gov.uk](mailto:thelighthouse@derby.gov.uk)

### Signing this Agreement

***The person in receipt of the Direct Payment named on Page 1 of this Agreement should sign this Agreement below. This person may be the disabled child, their parent, carer or their representative). If signed by the representative, the disabled child or their parent/carer should also sign to give their consent to allow the representative to act on their behalf.***

I, the parent  carer  representative  (please tick appropriately) confirm that I have read, understood and agree to the terms of this Agreement:

Signature:

Print name:

Date:

***Signed on behalf of Derby City Council by:***

Signature:

Print name:

Date:

***To be signed by parent/carer if instructing a representative to act on their behalf***

I consent to NAME OF REPRESENTATIVE to act as my representative to receive and manage direct payments for my child/child.

Signature of Parent/Carer

Print name

Date

Please let us know if your contact details change.

You have the right to know what information we hold about you and we try to make sure it is correct.

If you would like any further information or advice, please contact your allocated caseworker.

Integrated Disabled Children's Service  
Derby City Council  
The Light House  
St Mark's Road  
Derby, DE21 6AL

Telephone: 01332 256959

## Direct Payments - New Customer Form (BACS Payments)

For us to pay your direct payments, we need details of your nominated bank account. Please complete this form and hand it to your allocated caseworker or post it to the address below. As a security measure, when we have received this information, we will telephone you to confirm the details are correct.

***You will not need to complete all sections – please refer to the table below:***

<b>If you are setting up a new direct payment</b>						
<i>complete ticked sections only</i>	<i>1(a)</i>	<i>1(b)</i>	<i>2</i>	<i>3</i>	<i>4</i>	<i>5</i>
If you are setting up a new direct payment and you want to receive funds into your own account	✓	✓	✓			✓
If you are setting up a new direct payment and want to send the funds to a third-party account	✓	✓		✓		✓

<b>If you are already receiving a direct payment</b>						
<i>complete ticked sections only</i>	<i>1(a)</i>	<i>1(b)</i>	<i>2</i>	<i>3</i>	<i>4</i>	<i>5</i>
If you are already receiving a direct payment and you want to change your existing bank details	✓	✓			✓	✓
If you are already receiving a direct payment and want to change to a third-party account	✓	✓		✓		✓

<b>Section 1(a)</b>	<b>Personal details of the child</b>
Full name	
Address	
Date of birth	

<b>Section 1(b)</b>	<b>Personal details of the parent/carer/representative</b>
Full name	
Address	
Date of birth	
Telephone no	
Email	

## Section 2

### Bank details of the parent/carer/representative

*(this account must be setup and used for direct payments only and separate from any other account)*

I confirm that I am the parent/carer/representative named on the Direct Payment Agreement and I instruct Derby City Council to send my direct payment funds to the following account:

Name of bank/building society	
Address of bank/building society	
Account name	
Account number	
Sort code	

## Section 3

### Payments to a third party

*(eg payroll service, accountant etc.)*

I confirm that I am the parent/carer/representative named on the Direct Payment Agreement and I instruct Derby City Council to pay my direct payment funds directly to the third party named below:

Company name	
Address	
Postcode	
Contact name	
Telephone	
Name of bank/building society	
Address of bank/building society	
Account name	
Account number	
Sort code	

**Section 4**

**Change my bank account details**

I confirm that I am the parent/carer/representative named on the Direct Payment Agreement and I instruct Derby City Council to change my existing bank details to the following account:

Name of bank/building society	
Address of bank/building society	
Account name	
Account number	
Sort code	

**Section 5**

**Signature**

I confirm that I am the parent/carer/representative named on the Direct Payment Agreement and that the information I have given is accurate.

Signed:	
Print name:	
Date:	

Please return this form to your allocated caseworker or post it to the address below:

Integrated Disabled Children’s Service  
 Derby City Council  
 The Council House  
 Corporation Street  
 Derby, DE1 2FS

**PRIVACY NOTICE**

**How is your information used?**



The information we collect will be used for the purpose of completing a financial assessment (if required), for setting up, paying, monitoring, and administering a Payment to enable you in accordance with your agreed Support Plan.

### **Who will your information be shared with?**

We may share the information provided with other departments in the Council (such as commissioning, finance etc.) The amount that you are paid and details of the financial assessment, may be shared with health colleagues, schools or other educational settings; along with any other agencies that are working with the child/child for the same or similar purposes. We may also share the information with the Department for Education (DfE), Ofsted, CQC, the Adoption Leadership Board and the HCPC because we have a legal duty to do so.

For further information about how your personal information will be used please visit [www.derby.gov.uk](http://www.derby.gov.uk) where you can see a full copy of our privacy notice. Alternatively, you can request a hard copy from IDCS by phoning 01332 256959 or emailing [thelighthouse@derby.gov.uk](mailto:thelighthouse@derby.gov.uk).

### **Direct Payment: Financial monitoring guidance**

This guidance is designed to assist you with keeping and providing the correct paperwork for the Council, so we can see how you are spending your direct payment. We call this **financial monitoring**. This is so we know you are keeping safe and legal.

It is important to know that by agreeing to have a direct payment, you have a responsibility to provide us with the documents we mention in this guidance. Not many people really enjoy doing paperwork, so we have tried to make our approach as simple as possible. However, we cannot remove all the paperwork that has to be retained. We hope that by providing you with this information, you will be able to successfully complete the paperwork you need to provide.

Here are some frequently asked questions and answers to help you.

#### **1. Why do I need to open a separate bank account for direct payments?**

The direct payments must be paid into a bank account that is only used for direct payments. Having a separate account allows you to send us your bank statements showing how the funds are being used. We do not want to see how you spend your own money and therefore ask that they are kept separate.

#### **2. What paperwork do I need to keep in relation to my direct payment?**

The paperwork that you will need to keep in relation to your direct payment is simple. You must keep all the following:

- ✓ a record of when any staff you employ have worked for you – this may be timesheets or payslips from a company who provide payroll support to you
- ✓ all invoices and receipts for expenses – including any from care providers or agencies
- ✓ bank statements from your direct payments bank account.

All the above paperwork is kept by you so that the Council can see that the money is being spent properly. You will be asked to keep all this paperwork in one place ready for viewing by your allocated caseworker.

You are legally required to keep your documents for a period of **7 years**.

### **3. Who will look at my paperwork records and how often?**

The Council will regularly review your support and your allocated caseworker will ask to see all your documents. At any time, we may write to you requesting you provide copies of your supporting documentation over a sample period. This is in line with the Council's audit process to ensure public monies are being spent properly and in accordance with your Single Assessment/Education, Health & Care Plan/Direct Payment Agreement.

### **4. What information do I need to regularly send into the Council?**

Once every 3 months, you must complete and sign a 'Spending form'. On this form, you will need to record all the expenditure incurred from the account during the relevant month. Along with your completed Spending form, you will need to send us a copy of your bank statement from your direct payment bank account covering the period of the Spending form. **You should always keep your original bank statement and send us a copy.**

### **5. How do I complete the Spending form?**

You will be provided with copies of the Spending form. Each form covers a 3-month period which is shown on the top of each form. The Spending form will tell us how

you have used your direct payment. The Spending form should account for every item of expenditure deducted from the bank account during the relevant month.

This includes all payments in and out of the account from the 1<sup>st</sup> of the month to the end of the month. The payments will also appear on your latest bank statement. Each bank statement should have a statement number. The Council would like you to submit each bank statement in number order. Do not worry if your expenditure on your spending form is not yet shown on your latest bank statement as we will be able to account for this later. If you miss sending a statement, we will write to you or your representative asking for the missing bank statement. Without this, the Council is unable to monitor how you are spending your direct payment. Alternatively, if you use internet banking, we ask that you to send us printed statements which follow on from each other in date order.

The 'details of payments made' column gives you the opportunity to describe how you have spent your direct payment to meet the identified need. A few examples have been given below:

### Direct payment spending form 1 April to 30 June

By signing the direct payment Agreement, you agreed to complete this form every 3 months and submit it to your allocated caseworker before each review. Please remember to attach copies of your bank statements covering the same period.

Child's name	Jane Doe	PIN	123456
+			
Date of spend	Details of expenditure <b>April</b>	Amount spent (£)	
03/04/2021	HMRC – NI contributions (bank transfer)	£25.00	
25/04/2021	Mrs Jones, PA, assisting with personal care for 4 weeks in March 2021 (bank transfer)	£250.00	
28/04/2021	Payroll support – Jan, Feb, March 2021 (cheque No. 45)	£35.00	
TOTAL AMOUNT SPENT		£310.00	

At the bottom of the Spending form, you, or your representative, are asked to sign a declaration.

You, or your representative, are signing to confirm that the direct payment has been used to meet the needs and outcomes described in your child's Single Assessment/Education, Health & Care Plan/Direct Payment Agreement. We will refer to this when checking off your expenditure. If there are any concerns, your allocated caseworker will be informed.

### **6. Why do I need to send you my bank statements?**

The payments we make to you are from public funds, which we must account for. One of the conditions of receiving direct payments is that you must send us information regularly so that we can check that is being used properly.

### **7. How often do I need to send my spending form and bank statements to you?**

To begin with, we need to see your bank statements every 3 months. This is to check things are going well for you. For most people, if you are confident with managing your direct payment and are spending the money properly, this will change to sending them every 6 months. There may be some people, where things are not going so well, who will still have to send in their bank statement every 3 months or even every month. Your allocated caseworker will inform you of this and explain why you need to provide the Council with bank statements more regularly than others.

### **8. Where do I send my spending record and bank statement to?**

Integrated Disabled Children's Service  
The Council House  
Corporation Street  
Derby  
DE1 2FS

### 9. What if I employ a care agency?

When you use an agency, they must give you an invoice when they ask for payment for their services. Check that they are charging you only for the time that they sent staff to work with you. You should keep a copy of the invoice ready for us to inspect at your review. You can decide to pay the agency by cheque or bank transfer.

**It is not advisable to use cash.**

It is recommended that you use your cheque book or arrange bank transfers through online banking or telephone banking when paying for support. This reduces the risk of people claiming payment which has not been received. Using cheques and bank transfers allows you to track the payments out of your account.

If you do need to use cash, this must first be agreed to by Derby City Council, and these amounts must be clearly accounted for your Spending form.

### 10. What records should I complete if I employ my own staff or personal assistant?

If you employ your own staff or personal assistant, it is good practice for you to complete a record or timesheet. If you use a payroll service, they will normally support you with this and can either provide you with timesheets or a record of the hours your staff have worked.

It is advisable you pay your staff 4 weekly to fit in with the payment period. You should try to get your employee to fill in a timesheet each week (or even daily) instead of leaving it all to do at the end of the pay period.

### **11. What if I don't comply with the monitoring requirements?**

You should return your Spending forms and bank statements to us at the end of each quarterly reporting period. If you do not return these documents on either one or several occasions, the team will remind you and inform your allocated caseworker to come and support you.

If you continuously fail to send your documents after being provided with support to complete them, we may suspend your direct payments while any problems are investigated.

If there are any discrepancies in your spending, your allocated caseworker will become involved to discuss any issues with you or your representative.

### **12. What if I need support?**

If you are finding any part of managing a direct payment difficult, or are worried about the financial monitoring, please contact your allocated caseworker who will be able to advise you where to go to get support.

**Direct payment spending form  
1 January to 31 March**

By signing the direct payment Agreement, you agreed to complete this form every 3 months and submit it to your allocated caseworker before each review. Please remember to attach copies of your bank statements covering the same period.

Child's name		PIN	
--------------	--	-----	--

Date of spend	Details of expenditure <b>January</b>	Amount spent (£)
TOTAL AMOUNT SPENT		£

Date of spend	Details of expenditure <b>February</b>	Amount spent (£)
TOTAL AMOUNT SPENT		£



## Appendix 6

Date of spend	Details of expenditure <b>March</b>	Amount spent (£)
TOTAL AMOUNT SPENT		£

I confirm that I have used my direct payment funds to meet the needs described in my Single Assessment/Education, Health & Care Plan/Direct Payment Agreement. I have kept copies of all supporting evidence for the money and will retain this evidence for the next 7 years.

Name of parent/carer/representative	
Signed	
Date	

## Direct Payment Spending Form

1 April to 30 June

By signing the direct payment Agreement, you agreed to complete this form every 3 months and submit it to your allocated caseworker before each review. Please remember to attach copies of your bank statements covering the same period.

Child's name		PIN	
--------------	--	-----	--

Date of spend	Details of expenditure <b>April</b>	Amount spent (£)
TOTAL AMOUNT SPENT		£

Date of spend	Details of expenditure <b>May</b>	Amount spent (£)
TOTAL AMOUNT SPENT		£

## Appendix 6

Date of spend	Details of expenditure <b>June</b>	Amount spent (£)
TOTAL AMOUNT SPENT		£

I confirm that I have used my direct payment funds to meet the needs described in my Single Assessment/Education, Health & Care Plan/Direct Payment Agreement. I have kept copies of all supporting evidence for the money and will retain this evidence for the next 7 years.

Name of parent/carer/representative	
Signed	
Date	

**Direct Payment Spending Form  
1 July to 30 September**

By signing the direct payment Agreement, you agreed to complete this form every 3 months and submit it to your allocated caseworker before each review. Please remember to attach copies of your bank statements covering the same period.

Child's name		PIN	
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Date of spend	Details of expenditure <b>July</b>	Amount spent (£)
<b>TOTAL AMOUNT SPENT</b>		£

Date of spend	Details of expenditure <b>August</b>	Amount spent (£)
<b>TOTAL AMOUNT SPENT</b>		£

## Appendix 6

Date of spend	Details of expenditure <b>September</b>	Amount spent (£)
<b>TOTAL AMOUNT SPENT</b>		£

I confirm that I have used my direct payment funds to meet the needs described in my Single Assessment/Education, Health & Care Plan/Direct Payment Agreement. I have kept copies of all supporting evidence for the money and will retain this evidence for the next 7 years.

Name of parent/carer/representative	
Signed	
Date	

**Direct Payment Spending Form**  
**1 October to 31 December**

By signing the direct payment Agreement, you agreed to complete this form every 3 months and submit it to your allocated caseworker before each review. Please remember to attach copies of your bank statements covering the same period.

Child's name		PIN	
--------------	--	-----	--

Date of spend	Details of expenditure <b>October</b>	Amount spent (£)
TOTAL AMOUNT SPENT		£

Date of spend	Details of expenditure <b>November</b>	Amount spent (£)
TOTAL AMOUNT SPENT		£

## Appendix 6

Date of spend	Details of expenditure <b>December</b>	Amount spent (£)
<b>TOTAL AMOUNT SPENT</b>		£

I confirm that I have used my direct payment funds to meet the needs described in my Single Assessment/Education, Health & Care Plan/Direct Payment Agreement. I have kept copies of all supporting evidence for the money and will retain this evidence for the next 7 years.

Name of parent/carer/representative	
Signed	
Date	