

DIRECT PAYMENTS POLICY GUIDANCE (CHILDREN)

(January 2017)



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Foreword

This is Nottingham City Council's Policy and Guidance for Direct Payments. It aims to provide practical assistance to all Children's Social Care colleagues and managers in the implementation of Direct Payments within the City of Nottingham.

Please note there is separate guidance covering Adult Services. This policy aligns with the Adult version as far as is applicable.

In addition to this guidance you can gain advice and support from:

Children's Personal Budgets & Direct Payments Team:

Email: direct.payments@nottinghamcity.gov.uk

If you have any comments or suggestions in light of using this Guidance please send your comments to: direct.payments@nottinghamcity.gov.uk

Please do not save this document separately as the current version is available on Tri-X.

CONTENTS

SECTION 1

INTRODUCTION

- 1.1 Legislation
- 1.2 National Policy
- 1.3 Nottingham City Council Policy
- 1.4 Eligibility
- 1.5 Receiving a Direct Payment

SECTION 2

ASSESSING THE USER'S ABILITY TO MANAGE

- 2.1 Consent
- 2.2 Ability to manage
- 2.3 Appointing a suitable person

SECTION 3

CALCULATING THE AMOUNT OF A DIRECT PAYMENT

SECTION 4

AUTHORISATION

- 4.1 Authorisation Process
- 4.2 Direct Payments Funding

SECTION 5

METHOD OF PAYMENT

SECTION 6

AGREEMENT WITH FAMILY

SECTION 7

REVIEWING & MONITORING

SECTION 8

RECOVERY OF PAYMENTS

SECTION 9

IN THE EVENT OF DIFFICULTIES

- 9.1 Contingency or emergency plans
- 9.2 Process where the child and its family are unable to manage their Direct Payment or are not complying with the requirements in the DP2
- 9.3 Hospitalisation
- 9.4 Safeguarding

SECTION 10

COMPLAINTS

SECTION 11

GUIDANCE ON CARERS SUPPORT

SECTION 12

SUPPORT SERVICES

- 12.1 Managing an account

12.2 Employment Support

12.3 Payroll Services

SECTION 13

[COMMUNITY EQUIPMENT](#)

SECTION 14

[RESIDENTIAL CARE](#)

SECTION 15

[SERVICE SPECIFIC ISSUES](#)

15.1 Training

15.2 Employing Close Relatives

15.4 Employing Minors

15.5 Health & Safety

15.6 Childminders

15.7 Childcare

SECTION 16

[FURTHER INFORMATION](#)

SECTION 1

INTRODUCTION

1.1 Legislation

1.2 National Policy

1.3 Nottingham City Council Policy

1.4 Eligibility

1.5 Receiving a Direct Payment

1 INTRODUCTION

A Personal Budget¹ is a monetary value placed upon the services required to meet the assessed needs of a child or young person with Special Educational Needs and/or Disabilities (SEND) and their families. The child or young person may have social care, continuing healthcare or educational needs.

A Direct Payment is a 'cash' payment made to children and young people and their families in order to access their Personal Budget so that they can arrange and pay for their own services instead of receiving them directly from the Nottingham City Council (NCC), school or NHS.

1.1 Legislative Framework

- The Children Act 1989 and 2004.
- The Carers & Disabled Children's Act 2000.
- The Health & Social Care Act 2001 and 2008.
- The Community Care, Services for Carers & Children's Services (Direct Payments) Regulations 2009.
- Carers (Equal Opportunities) Act 2004.
- Mental Capacity Act 2005.
- Chronically Sick & Disabled Persons Act 1970
- Children & Families Act 2014
- The Special Educational Needs & Disability Code of Practice
- The Special Educational Needs (Personal Budgets) Regulations 2014

1.1.1 The Children & Families Act 2014 introduced new legal duties relating to children and young people with SEND. The Act requires NCC and the NHS to jointly plan and commission services, introduces a right to a Personal Budget for all children and young people who have an Education Health & Care Plan (EHCP) and assessment and planning is required from age 0 to 25 to help avoid the often difficult experience of transition from children's to adult services.

1.2 National Policy

1.2.1 The power to make Direct Payments to people with parental responsibility for disabled children and to disabled 16 and 17-year-olds was created by the Carers & Disabled Children Act 2000. Section 17A of the Children Act 1989, inserted by the Health & Social Care Act 2001, gave NCC a duty to offer Direct Payments for children's services. In making Direct Payments under section 17A of the 1989 Act, NCC is subject to the general duty, provided by Part 3 of that Act, to safeguard and promote the welfare of children in need;

¹ Please refer to Nottingham City Council's Children & Young People's Personal Budgets Policy for further details on Personal Budgets. Follow this link https://search3.openobjects.com/mediamanager/nottingham/fsd/files/ncc_personal_budgets_policy_september_2014_2.pdf

and to promote their upbringing by their families when making these payments in exactly the same way as when providing direct services.

- 1.2.2 Within Children's Services a Direct Payment may be made to:
- a) Those with parental responsibility for disabled children;
 - b) 16 and 17 year old disabled young people;
 - c) Carers aged 16 and 17 in place of carer's services;
 - d) An authorised person.
- 1.2.3 NCC has a duty, or in some circumstances, a power to provide Direct Payments for:
- a) A community care service within the meaning of section 46 of the National Health Service and Community Care Act 1990;
 - b) A service under section 2 of the Carers & Disabled Children's Act 2000;
 - c) A service, which NCC may provide under section 17 of the Children Act 1989 (provision of services for children in need, their families and others);
 - d) Practical assistance under section 2 of the Chronically Sick & Disabled Persons Act 1970.
 - e) The special educational provision specified in an EHCP.

1.3 Nottingham City Council Policy

- 1.3.1 NCC's policy is to adhere to all relevant legislation to ensure that children and young people with SEND and their families are supported to access Direct Payments if that is their wish or in their best interests.
- 1.3.2 To use the guidance and protocols contained within this document to enable NCC colleagues to implement the use of Direct Payments.
- 1.3.3 To use such forms as are necessary to provide evidence and information that enables a Direct Payment to be made.
- 1.3.4 To ensure the NCC Direct Payments Guidance is congruent with other City Council policies and procedures.

1.4 Eligibility for a Direct Payment

- 1.4.1 In order to receive a Direct Payment the young person or person with parental responsibility must be or be caring for a disabled child who is:
- a) Defined as having an "impairment that is permanent and substantive" under section 17 of the Children Act 1989;
 - b) Assessed as needing a service to promote and safeguard their welfare under section 17(6) or 20 (4) of the Children Act 1989 or section 2 of the Chronically Sick & Disabled Persons Act 1970;
 - c) A child whose health and development would be significantly impaired without support.
- 1.4.2 Where Direct Payments are provided for the purpose of procuring services to meet the special educational provision outlined in the child or young person's

EHCP, the Direct Payments cannot be used for the purpose of funding a place at a school or post-16 institution.

- 1.4.3 The young person or person with parental responsibility must also:
- a) Give consent to a direct payment;
 - b) Be able to manage a direct payment (with or without assistance);
 - c) Be able to ensure that any services purchased meets the child's/their own assessed need and are designed to safeguard and promote their/the child's welfare;
 - d) Not be exempt from receiving a direct payment.

1.5 Receiving a Direct Payment

- 1.5.1 Any child or young person and their family who are in receipt of a Direct Payment must have the services they are procuring detailed and approved in a support plan. A support plan is a summary of the assessed needs, the outcomes and how their Personal Budget, including the Direct Payments, will be used to achieve these outcomes.
- 1.5.2 Typical needs and tasks which can be met via Direct Payments include:
- a) Providing assistance with personal care by employing your own care worker/personal assistants.
 - b) Contracting with an agency, or someone who is self-employed, to provide care services.
 - c) Buying equipment agreed by social care.
 - d) Assistance to purchase short breaks (respite).
 - e) Assistance with essential domestic care tasks, which are essential to meet the assessed needs of the child and is evidenced in your overall support plan.
 - f) Assistance to access facilities to promote social inclusion, including leisure or social activities.
- 1.5.3 Payments **must not** be used for meeting continuing healthcare needs. The NHS may provide Direct Payments via a Personal Health Budget and it is possible to combine the Direct Payment and Personal Health Budget to ensure seamless services.
- 1.5.4 The amount of Direct Payment **must** be sufficient to meet the agreed care or support needs and will include any additional costs such as liability insurance, National Insurance, pension, etc.
- 1.5.5 NCC promotes the use of the NCC DP Payment Card Account and it is offered to all families wishing to receive a Direct Payment; however, it is possible for a parent/carer to open a bank on their own behalf.

Key Benefits of the NCC DP Payment Card Account:

- a) In the past people receiving a Direct Payment had to open a separate bank account to pay for their support, with the NCC DP Payment Card Account, there is no need to open a separate bank account.

- b) It reduces paperwork for the parent/carer as they will not be required to submit regular monitoring about their care spending;
- c) Parents/carers have the option of banking online, paying by direct debit, standing order or by card;
- d) NCC will make all of the arrangements for issuing the card and will assist with activating the account.

1.5.6 NCC expects all families in receipt of Direct Payments to have payroll provision from one of the City Council's Framework providers. A parent/carer may choose a Payroll provider who is not on the Framework, but the City Council will need to be assured that the provider is able to meet the requirements expected of Framework providers.

In exceptional circumstances, the City Council will agree to the parent/carer undertaking their own payroll responsibilities, but requests for this will need to be approved.

SECTION 2

ASSESSING THE CHILD'S AND ITS FAMILY'S ABILITY TO MANAGE

2.1 Consent

2.2 Ability to manage

2.3 Appointing a suitable person

2. ASSESSING THE CHILD'S & ITS FAMILY'S ABILITY TO MANAGE

2.1 Consent

- 2.1.1 Consent should be informed consent; the Lead Professional should ensure that the child or young person and their family have an understanding of what is involved in managing a Direct Payment both practically and in respect of the legal responsibilities. They should also be made aware of what support is available to them. Consent may, therefore, not be a single event but a process of ensuring the individual is fully informed in order to give consent.
- 2.1.2 The ability of individuals to consent to receiving Direct Payments will vary and the Lead Professional should consider what support and information is needed to enable someone to consent within their own abilities, this may require formal or informal advocates and circles of support. The Lead Professional should also remember that consent and the ability to manage are two separate things. Someone who cannot manage without help but can consent should still be given the opportunity to receive Direct Payments with help to manage.
- 2.1.3 The Lead Professional should make it clear that a person is under no obligation to accept a Direct Payment or to continue to receive a Direct Payment once they have accepted it and that this will not affect the arrangement of direct services in the normal way. The Lead Professional should attempt to obtain the wishes and views of the young person when considering support required.
- 2.1.4 Lead Professionals must assume that persons aged 16 and over have the capacity to make a decision. Only when the Lead Professional has taken all practical steps to help a person reach a decision for themselves should they conclude that somebody lacks mental capacity.
- 2.1.5 Section 2 of the Mental Capacity Act 2005 sets the criteria for mental capacity; however, broadly speaking a person lacks mental capacity to make a decision if at the material time, they are unable to make a decision in relation to a matter because of an impairment of, or a disturbance in the functioning of, the mind or brain (section 2(1) Mental Capacity Act 2005).
- 2.1.6 The inability to make a decision as set out in section 3 of the 2005 Act, is when a person is unable to;
- a) Understand information relevant to the decision;
 - b) Retain that information;
 - c) Use that information when weighing up the decision;
 - d) Communicate their decision.
- 2.1.7 The assessment of capacity must be based on the ability to make a decision at a given time. It must not be made on the basis of age, appearance, condition or behaviour, but rather on if a person has an impairment of mind or brain, and if so, is that affecting them making a decision at that time.
- 2.1.8 When capacity fluctuates, regular assessments should be in place to ensure that needs are being met at times when conditions deteriorate. If capacity

returns then councils have a duty to make payments to the recipient of the care and to discontinue payments to the suitable person, making sure that care is maintained throughout this process. If capacity only returns temporarily then councils may continue to make payments to an authorised person, whilst allowing the recipient of the care to manage it.

2.2 Ability to manage

- 2.2.1 NCC has a duty, or in some cases a power, to make Direct Payments to anyone who appears to be able to manage them (either alone or with help), if it is satisfied that a person's needs can be met via Direct Payments. The same principle of being able to manage also applies to those with parental responsibility and authorised persons.
- 2.2.2 A judgement on a person's ability to manage a Direct Payment should be made on an individual basis, taking into account the views of the individual and what support is available to them. Blanket assumptions should not be made about whole groups of people. Information on what receiving Direct Payments will involve and support services in place should be communicated as early as possible. This will help the recipient make an informed decision as to if they can manage.
- 2.2.3 A whole range of support should be considered to enable the person to manage Direct Payments; for example, payroll support and a managed account. Persons worried about their ability to manage should be offered a mixture of Direct Payments and direct services, to enable them to build their confidence in managing Direct Payments whilst still receiving support.
- 2.2.4 If an assessment concludes that a person, even with support cannot manage a Direct Payment this should be discussed fully with the person concerned and if appropriate with any family, friends or advocate. The Lead professional should make it clear that they can use the complaints procedure to challenge the decision not to offer Direct Payments.
- 2.2.5 The Service Manager (Disabled Children's Services) will make the final decision that a person is not able to manage Direct Payments.

2.3 Appointing an authorised person

- 2.3.1 Once a young person turns 18 and is assessed as lacking capacity, adult procedures must be followed, and an authorised person must be appointed. Five conditions must be satisfied in order for the authorised person to be able to request the Direct Payments to continue or to be started.
1. Where the person is not authorised under the Mental Capacity Act 2005 (does not have capacity) but there is at least one person who is so authorised, that person who is authorised supports the person's request.
 2. NCC is not prohibited by the Care & Support (Direct Payments) Regulations 2014 from meeting the adult's needs by making Direct Payments to the Authorised Person.

3. NCC is satisfied that the Authorised Person will act in the adult's best interests in arranging for the provision of the care and support for which the Direct Payments under this section would be used.
 4. NCC is satisfied that the Authorised Person is capable of managing Direct Payment by himself or herself, or with whatever help NCC thinks the Authorised Person will be able to access.
 5. NCC is satisfied that making Direct Payments to the Authorised Person is an appropriate way to meet the needs in question.
- 2.3.2 If one of the conditions is not fully met, this would result in declining or terminating the Direct Payments.
- 2.3.3 A person is authorised for these purposes if;
- (a) the person is authorised under the Mental Capacity Act 2005 to make decisions about the adult's needs for care and support, or
 - (b) where the person is not authorised as mentioned in paragraph (a), a person who is so authorised agrees with NCC that the person is a suitable person to whom to make direct payments, or
 - (c) where the person is not authorised as mentioned in paragraph (a) and there is no person who is so authorised, NCC considers that the person is a suitable person to whom to make direct payments.
- 2.3.4 In the vast majority of cases the authorised person will be the parent/carer of the young person. Appointment of an authorised person will aid the young person's transition into adult services.

SECTION 3

CALCULATING THE AMOUNT OF A DIRECT PAYMENT

3. CALCULATING THE AMOUNT OF A DIRECT PAYMENT

- 3.1 NCC allocates its short breaks and home care services via a pathway approach (please refer to the Short Breaks – Threshold & Access Criteria on Tri-X
http://nottinghamcitychildcare.proceduresonline.com/chapters/p_short_breaks.html)
- 3.2 A budget of up to £1,600 can be accessed through Pathway 1 without an assessment. To be eligible for this route the child or young person must have a diagnosed or identified disability, cannot access mainstream provision without on-going 1:1 support and have support from a professional who knows the child well. Once in place, an annual re-application will be required. The decision maker for all Pathway 1 applications is the Short Breaks Co-ordinator.
- 3.3 For any child and their family which fall within Pathway 2, 3 or 4, Nottingham City Council has developed a Resource Allocation System (RAS) to ensure resources are allocated to meet need in an equitable way, to allow transparency and to give families the option of a Personal Budget allowing greater flexibility in how the family chooses to meet its identified needs. The RAS is not a replacement for a professional assessment of need and should not be used prior to an assessment being undertaken unless agreed by the family.
- 3.4 A budget of up to £6,000 can be accessed through Pathway 2 without an assessment but the RAS should be used to allocate an indicative Personal Budget. The criteria for applying for support under Pathway 2 is the same as Pathway 1 with an additional requirement that the child has an open CAF, an Education Health & Care Plan or other form of multi-disciplinary assessment. Access to support in a regulated overnight setting is not allowed under Pathway 2. Whether the family choose to access Direct Payments or internal or commissioned services, a support plan will be completed. The decision maker for Pathway 2 applications is either the Short Breaks Team Manager or the Team Manager of the Disabled Children's Team.
- 3.5 A budget of up to £9,000 can be accessed through Pathway 3 and a budget of up to £17,000 or beyond can be accessed through pathway 4. An assessment from a social worker in the Disabled Children's Team is required and the assessment will be scored through the RAS to provide an indicative Personal Budget.
- 3.4 If the family chooses to access their budget through a Direct Payment a support plan will need to be completed. If the family choose to utilise only Council services or services commissioned by the Council, the lead professional should complete a costed care plan.
- 3.5 The care plan or support plan is agreed by the decision maker which for Pathway 3 or 4 services is the Service Manager (Disabled Childrens

Services). In cases where there is funding from both NCC and the NHS, the decision maker is the Childrens Continuing Care & Complex Needs Panel.

- 3.6 It is possible for a Personal Budget to be split between a number of payment methods; therefore, a child and their family may have a package that is made up of Direct Payments and commissioned services. Direct Payment costs will be paid directly to the child and their family or to a third party support, whereas commissioned services will be paid directly to the provider by NCC. Therefore, the value of a child's Personal Budget and the value of the child's Direct Payment may not be the same.
- 3.7 If the family are looking to employ a personal assistant to support their child or young person, NCC provides a Direct Payment to do this at a set rate of £10.57 per hour. It is expected that the actual rate payable to the personal assistant will be set to ensure that employee entitlements such as holiday pay and employer's NI contributions can be covered from the budget allocated. Enhanced hourly rates can be paid at the discretion of the Service Manager of the Disabled Children's Service to enable employment of a person with essential skills to meet a child's needs, i.e. specialist health skills or a deaf/blind communicator.
- 3.8 For overnight support, a sleep-in rate of £31.90 is payable. For a period of 24 hours of support a rate of £144.87 can be made available which assumes 14 waking hours, payable at the minimum wage plus holiday pay, and a sleep-in rate for the remaining 10 hours.
- 3.9 Families often request support for the costs of a family holiday. NCC will provide Direct Payments to support the costs of a holiday in the following circumstances;
- a) The family can demonstrate that they have been unsuccessful in obtaining charitable support for a holiday; for instance from the Family Fund or Wish Upon A Star.
 - b) If (a) is satisfied, NCC will provide Direct Payments to cover the additional costs of purchasing an accessible holiday up to a maximum of £600, plus the costs for employing a personal assistant to provide support on the holiday.
 - c) Alternatively, if (a) is satisfied, NCC will provide a Direct Payment to contribute towards the cost of a week's family holiday in the United Kingdom during school holidays. As an example, as of August 2016, the cost of a week's family holiday at Butlins or Haven in Lincolnshire was around £1,100. We will provide 50% of the cost as a Direct Payment up to a maximum of £600.
- 3.10 The principal in providing Direct Payments will be that the amount agreed to purchase services to meet an assessed need will not be more than the reasonable cost to NCC of providing or securing an equivalent service of reasonable quality. Families are free to top-up their Direct Payments as they

see fit, to either purchase additional services or those they consider to be of better quality.

- 3.11 Direct Payments can include one-off or annual costs such as Employment Liability Insurance. These costs will not be used in calculating the value of the weekly Direct Payment.

Where NCC DP Account Cards are lost or stolen the cost for a replacement card will usually be met by NCC, however NCC retain the right to require the replacement cost to be met by the card holder.

- 3.12 When a Direct Payment is used to purchase a service directly from a provider (such as attendance at events provided by a specialist disability service or a gym membership), the value of the Direct Payment will be calculated using the chosen provider's agreed rate at the time of the decision. If the provider increases their rate, it is the responsibility of the Direct Payment recipient or third party support service to inform NCC.
- 3.13 Direct Payment funds can be used flexibly to meet agreed needs but the family or third party support service have a responsibility to ensure that the continued cost of the care can be met by the Direct Payment.
- 3.14 Any set rates will be reviewed annually.
- 3.15 Families are eligible to receive monies from the date when a package of support is approved; however, payments will only be back dated to a specific date beyond this when a family was ready to start using the Direct Payment for support but they were delayed due to council/third party processes. When using agencies e.g. nurseries, families can claim for any services purchased themselves back to the service agreement date or for any lack of services not purchased due to a delay from the council/third party (so long as the agency could provide the service in the interim period).

SECTION 4

AUTHORISATION

4.1 Authorisation Process

4.2 Direct Payments Funding

4 AUTHORISATION

4.1 Authorisation Process

- 4.1.1 All care or support packages must be approved via the Children's Personal Budget Process by the appropriate decision maker in line with the paragraph 274(a) of the NCC Constitution.
- 4.1.2 Temporary care/support via a Direct Payment should not include employment of Personal Assistants as this could have costly employment implications but can be used to buy services directly from a provider so as to meet the child and their family's needs and outcomes until a permanent package of care/support is agreed.
- 4.1.3 After authorisation, the Personal Budgets Officer requires confirmation via a service request form before Direct Payments funding can commence.
- 4.1.4 Until a decision has been made, the child and their family or representative should not be informed of any outcomes regarding the funding level of their care/support package as this can raise expectations that may not be met.
- 4.1.5 The Lead Professional should then liaise with the Personal Budgets Officer regarding the commencement date of the funding (i.e. once personal assistants have been recruited and the child and their family have an agreed start date).
- 4.1.6 A Direct Payment Agreement (DP2) will be required to be completed prior to payments commencing. (see Section 7 Agreement with Citizen)
- 4.1.7 Until approval has been given and a start date agreed no services should be started. NCC will not be responsible for any costs accrued prior to approval.
- 4.1.8 Care/Support Packages may be backdated in exceptional circumstances where approval was sought outside the normal process or where there is a delay in starting a Direct Payment.
- 4.1.9 Where exceptional one-off expenditure is required, e.g. respite care at short notice, e-mailed approval from the approver can be used in place of the official paperwork which must be completed as soon as possible. All approvals will still need to meet the delegated authority levels outlined in paragraph 274(a) of the NCC Constitution.

4.2 Direct Payments Funding

- 4.2.1 Direct Payments funding is simply an alternative means for paying for care services and no additional budget resources are available.
- 4.2.2 The cost of most support service assistance is not to be included as part of the Direct Payment. NCC should receive invoices for these services directly from the provider.

SECTION 5

METHOD OF PAYMENT

5 METHOD OF PAYMENT

- 5.1 The annual cost of the Direct Payments will be converted to a weekly figure and paid to the family on a 4 weekly basis. Annual, quarterly, termly and one-off payments can be made in certain circumstances but it will be presumed that, unless otherwise stated, the Direct Payments should be paid as part of the NCC's 4 weekly payment schedule.
- 5.3 The child and their family will be responsible for ensuring any care/support purchased directly from a provider as part of the Direct Payments package is paid for directly to the provider. NCC should not receive invoices for this care.
- 5.4 Where a child and their family need assistance with managing some or all aspects of their Direct Payments they may engage the service of a third party to do so. This third party may be a Direct Payments support service, a Nominated Person or an Authorised Person.
- 5.5 If a Direct Payments package is mismanaged or the child and their family's capacity to manage changes, NCC may need to move the account to involve a third party. Continued problems may cause the Direct Payments to be stopped and alternative service provision put in place.
- 5.6 Payments are made 4 weeks in advance and cover the agreed level of care. Any additional care requested by the Citizen without approval will not be covered and the Citizen will be responsible for costs over the agreed value of the Direct Payments.
- 5.7 Payments to Personal Assistants (PAs) by the child and their family can only be made by cheque, standing order, or online banking arrangements.
PAYMENTS TO PA's SHOULD NOT BE MADE BY CASH.
- 5.8 A new NCC DP Card Account will be opened on behalf of the child and their family by NCC. All payments will be made into this account. A card will be generated by the card provider and sent directly to the card holder for activation. The child and their family may decide that they wish to retain or maintain their own bank account; in these circumstances a separate bank account must be set up and maintained to receive the Direct Payments by the child and their family.
- 5.9 The Direct Payment is paid directly into the relevant bank account by Bankers Automated Credit System (BACS). In exceptional circumstances, and on production of quotes or invoices, one-off payments may be made into a personal bank account.
- 5.9 No payment can begin without all relevant paperwork having been completed.

SECTION 6

AGREEMENT WITH CITIZEN

6 AGREEMENT WITH CITIZEN

6.1 The child's parent/carer or their Nominated Person or Authorised Person will be required to agree and sign the Direct Payments Agreement (DP2) form, confirming they accept their responsibilities and the conditions under which a Direct Payment is being made. They will have responsibility for:

- ensuring their child's assessed needs are met
- making HMRC payments
- maintaining contingency plans
- where using self-employed Personal Assistants, ensuring they understand HMRC guidance about the appropriateness of self-employment for some jobs <http://www.hmrc.gov.uk/calcs/esi.htm>.
- informing their Personal Assistants that payslips may be shared with NCC for audit and fraud prevention purposes and that this will be confidential and not used for any other purpose than verifying tax and national insurance is being paid.
- employment - families should be offered the choice of using a payroll service to look after tax and National Insurance.
- health and safety of their employees
- employer's liability insurance
- maintaining a separate bank account for Direct Payments
- providing monitoring information
- advising NCC of any changes in your circumstances that lead to an increase or decrease in support, such as;
 - 1) *Care needs either increasing or decreasing*
 - 2) *Having insufficient funds to meet your care needs commitments*
 - 3) *Admission to hospital, where you expect this will be greater than 4 weeks*

6.2 Where the Nominated or Authorised Person is taking on the whole or greater part of the management of the Direct Payment, they are required to sign the DP2 agreeing to comply with the agreement. *(A Managed Account provider will not be the Nominated or Authorised Person)*

The section within the DP2 relating to NCC Card Accounts must be completed by the card holder.

6.3 There will be a responsibility on NCC to make prompt payments, assist with difficulties in managing finances and to review regularly that the person's needs are being met.

6.4 A review of the care package and the provision of Direct Payments may need to be arranged if circumstances change.

- 6.5 The agreement (DP2) will also contain details of the circumstances under which payments may be recovered. (See Section 8).
- 6.6 This agreement can be terminated by either party giving one month's notice. The Department may seek an immediate termination in exceptional circumstances of risk to the child or young person or fraud.
- 6.7 When a Direct Payment is terminated, the Lead Professional will need to arrange for services to be provided to meet the assessed needs of the child and their family.
- 6.8 Any matters arising, which are not covered in the guide will be resolved by reference to **(a)** the policy principles set out in this guidance; and **(b)** applicable Policy and Practice Guidance from national government.
- 6.9 NCC will ensure that adequate advice is given to the parent/carer around becoming an employer, including appropriate advice explaining the difference between a regulated and unregulated provider, so as to help the Citizen make an informed decision.
- 6.10 NCC will provide clear advice as to the parent/carer's responsibilities when managing Direct Payments and whether they need to register with HMRC as an employer.
- 6.11 NCC will fund any on-costs for employing a Personal Assistants and any reasonable costs for providing training as will be necessary for carrying out their caring / support responsibilities. NCC will also meet any set-up costs for using a third-party provider for payroll, employment support or a managed account.

Specific responsibilities as laid out in the DP2

YOUR RESPONSIBILITIES

1. To use the direct payment to employ personal assistants or an independent agency to meet your assessed need as identified in your care/support plan and agreed with your social care practitioner.
(Direct Payments cannot be used to employ relatives living in the same household or anyone else who lives in the same household to provide care unless the local authority are satisfied that securing the service from such a person is necessary)
2. You are strongly advised to make contingency plans in the event that your regular support package breaks down. E.g. Your PA is ill, your PA gives notice.
3. To fulfil your statutory responsibilities as an employer if you are employing personal assistants. These include paying minimum wage, deducting tax and national insurance, taking out employers and public liability insurance, paying holiday and sick pay, pension provision and ensuring a safe working environment. It is your responsibility to gain advice about your obligations as an employer.
5. When you are using self-employed personal assistants you must check government advice on the HMRC website <http://www.hmrc.gov.uk/calcs/esi.htm>
(You can get assistance from either your independent support service or the council's Direct Payments Team)
- 6 NCC will open and provide you with an NCC DP Card Account (bank account) for your Direct Payment; however, where you have opted to open your own nominated bank account this account should be used for the sole purpose of you Direct Payment monies. *(Payments to Personal Assistants must not be made by cash)*
- 7 To keep records of any payments including to personal assistants, agencies, HMRC etc and to provide the council with the appropriate financial monitoring forms when requested.
- 8 To inform personal assistants that payslips may be shared with Nottingham City Council for audit and fraud prevention purposes and that this will be confidential and not used for any other purpose than verifying tax and national insurance is being paid.
- 9 To advise the council of any changes in your circumstances that leads to an increase or decrease in support or eligibility for Direct Payments.
Such as:
 - *Care needs either increasing or decreasing*
 - *Having insufficient funds to meet your care needs commitments*
 - *Admission to hospital, where you expect this will be greater than 4 weeks*

- *Moving out of Nottingham City Council's area*
- 10 You can only spend your Direct Payment on things that are legal, and that meet the outcomes agreed in your support plan.
- If you do not use your Direct Payment for your care and support as agreed in your support plan we may ask you to pay back the money and we may stop you from having a Direct Payment in the future.*
- 11 To use the council's Social Care Complaints Service should you wish to complain about any action of the council in respect of your care or support.
- However the procedure should not be used for complaints you have about the services which you have arranged using your Direct Payment. You would need to address these with your personal assistant or the provider themselves.*

OUR RESPONSIBILITIES

1. To provide you with an NCC Card Account for the sole purpose of managing your Direct Payment or make arrangements for payments to an agreed bank account where this is different to the NCC Card Account.
2. To provide you with the agreed sum of money sufficient for you to employ and manage your own personal assistants (PAs) or to purchase support from an independent agency.
3. To make agreed payments into the nominated bank account four weekly in advance.
4. To provide you with a copy of your care/support plan identifying the needs which will be met by the Direct Payment.
5. To identify and record any moving and handling needs with you and to agree an appropriate way of addressing these.
6. To provide you with information on support services available to assist you in managing the scheme.
7. To assist with difficulties in managing the scheme as appropriate when you have been unable to resolve them yourself. *(It is important that you inform the Direct Payments team as soon as possible when this is the case)*
8. To regularly review the Direct Payments to ensure that your needs are being met and to make any necessary adjustments to the payment if your needs have changed. Consideration will also be given to whether you are still able and wish to continue receiving Direct Payments.
9. The first review will take place within 6-8 weeks, then at least annually or more frequently if necessary.
10. To suspend, terminate or recover payments if monies are

- *Unused for a substantial period (e.g. 8 weeks)*
 - *Spend is not in line with the agreed support plan*
 - *Move out of the authority area*
 - *Funds have been used illegally*
 - *Used whilst an investigation takes place*
12. To meet your assessed needs in other ways, as appropriate, should the above occur. In the event of major or persistent difficulties with your support package your social care practitioner will discuss with you alternative ways of meeting your needs.
13. To monitor use of the Direct Payment via the online portal of the NCC DP Card Account provider website or via financial monitoring returns, bank statements and payslips to ensure you are a 'good employer' including appropriate payments to HMRC.
- As part of the government's National Fraud Initiative we are required to share necessary information for the prevention of fraud. (For further information please visit our website at <http://www.nottinghamcity.gov.uk/nfi>)*
14. To inform you of a change in the amount of payment resulting from a change in circumstances. The Council will give appropriate notice before any changes are made.
15. To inform you of the council's Social Care Complaints Procedure should you wish to complain about any action, decision or apparent failing of the council in respect of your care or support.

SECTION 7

REVIEWING

&

MONITORING

7 REVIEWING & MONITORING

Reviewing the usage of the Direct Payment

- 7.1 NCC must be satisfied that the Direct Payment is being used to meet the child and its family's agreed care and support needs, and in order to be assured of this there are processes and systems in place to monitor Direct Payment usage.
- 7.2 Essentially this will be done via the statutory reviewing process for a child in need or a child looked after and through financial monitoring, with clear procedures where any concerns exist.
- 7.3 For a child receiving Direct Payments through Pathways 1 and 2, there is no statutory reviewing process. For Pathway 1 financial monitoring will be undertaken when the family re-apply for funding on an annual basis. If the family cease their support or do not re-apply, they will be required to provide financial monitoring information on how they have used the Direct Payments and return any monies remaining in their bank account.
- 7.4 For Pathway 2 the use and effectiveness of the Direct Payments will be reviewed on an annual basis by the Lead Professional. The Children's Personal Budgets & Direct Payments Team will provide a written report on the use of the Direct Payments and note any areas of concern. Financial monitoring will be undertaken on either a 3 monthly or 6 monthly basis.
- 7.4 For a child receiving Direct Payments through Pathways 3 or 4, there is a statutory requirement to review their care as either a child in need (CIN) or a child looked after (CLA). The reviewing officer should check that not only are the child/young person's needs being met and outcomes being achieved as set out in the support plan, but also that the Direct Payments are promoting choice and independence. The Children's Personal Budgets & Direct Payments Team will provide a written report to the reviewing officer on the use of the Direct Payments and note any areas of concern.
- 7.5 If a review reveals that a child and their family's needs are not being met, the Lead Professional should explore alternative arrangements with the family. The Lead Professional should consult with the Children's Personal Budgets & Direct Payments Team if there are concerns around the management of the Direct Payments.
- 7.6 In addition to these reviews, financial monitoring will be undertaken by the Children's Personal Budgets & Direct Payments Team on either a 3 or 6 monthly basis.
- 7.7 For those families that operate a bank account opened by them, NCC will provide a monitoring form which needs to be completed and returned plus bank statements, payslips, invoices, receipts and any other documentation relevant to the expenditure detailed on the bank statement.
- 7.8 For those families who use a NCC DP Card Account, NCC will monitor the account on an ongoing basis through the online portal provided by the Card Provider. If NCC are unable to determine what any items of expenditure were used for, NCC may contact the family to seek clarification.

- 7.9 For those families using a managed account facility, NCC will seek monitoring information from your managed account provider.
- 7.9 NCC may, at any time, supplement the monitoring undertaken by arranging a visit by a member of the Children's Personal Budgets & Direct Payments Team.
- 7.10 If a child and their family are employing Personal Assistants, NCC will review as part of the financial monitoring that they are fulfilling their obligations as an employer, in particular, that they are submitting PAYE returns to HMRC as well as paying tax and NI contributions as necessary.
- 7.11 Where there is a build-up of more than 8 weeks' worth of payments in the bank account, and there is a concern, the Children's Personal Budgets & Direct Payments Team will contact the Lead Professional and then the family to enquire if they are aware of any reason for the build-up of funds. If there is no valid reason for the build-up, return of monies in excess of the amount of 8 weeks payments may be requested. Alternatively, a short suspension or reduction of the Direct Payments may be considered to allow the funds to reduce.
- 7.12 Where monitoring forms are not returned the Children's Personal Budgets & Direct Payments Team will send a reminder letter 2 weeks after the due date and then a final reminder 2 weeks after that with a notification of concern to the Lead Professional.
- 7.13 Failure to provide monitoring information could mean suspension or permanent cessation of the Direct Payment.
- 7.14 If there are any changes to the Direct Payment, such as the termination of a contract with a personal assistant, the citizen is required to contact the Children's Personal Budgets & Direct Payments Team to advise them of the change in circumstances.
- 7.15 In cases where a child and their family receive Direct Payments from a Personal Health Budget as well as a social care Personal Budget, NCC has an agreement with the local Clinical Commissioning Group that we will make Direct Payments on their behalf. These will be made into one bank account and NCC will monitor all Direct Payments in line with the procedures outlined above.

National Fraud Initiative

- 7.16 As part of the government's National Fraud Initiative, NCC is required to share necessary information *about the child and their family and their payment* for the prevention of fraud. Please see <http://www.nottinghamcity.gov.uk/nfi> for details.

SECTION 8

RECOVERY OF PAYMENTS

8 RECOVERY OF PAYMENTS

8.1 Where there is more than 8 weeks of funding accumulating in the child and their family's bank account, the Children's Personal Budgets & Direct Payments Team will proceed to recover excess funds via the excess funds recovery process. (letter, reminder letter, involvement of Lead Professional etc) This will be done sensitively and consideration will be given through discussion with the child and their family if there are extenuating circumstances.

8.2 A decision to seek to recover funds can only be taken by the Senior Personal Budgets Officer or by another manager within the Disabled Children's Service. For parent/carers using the NCC DP Card Account, NCC will, after an agreed period from the date of letter confirming the decision, (usually 21 days), arrange for funds to be transferred back. For other accounts the child and their family should be requested to return payments via the agreed payment process e.g. electronic transfer or cheque. Cheques should be made payable to "Nottingham City Council" and should be returned to the Children's Personal Budgets & Direct Payments Team. Bank transfers should be made to the following details;

Account number 01057616
Sort code 30-96-18
Account name NCC – Credits in Suspense

The reference NF09180005208 should be used when returning the funds.

8.3 Where the parent/carer fails to re-pay the money, NCC will take reasonable steps to recover over-payment while maintaining the package of care. Should they fail to repay the money, the normal debt recovery procedure should be followed and Direct Payments may be terminated following review of care/support arrangements.

8.4 Another option available to parent/carer would be to temporarily suspend payments (with agreement from the parent/carer), until the funds have been reduced.

8.5 When a child and their family do not require assistance for a short period (e.g. because the child is in hospital), NCC may discontinue payments temporarily. However, it may be necessary to continue payments or pay a reduced amount in order to retain Personal Assistants and ensure that the child and their family can resume control over their care arrangements as smoothly as possible. Any change in the amount of payment must be discussed and agreed with the family and the Lead Professional, wherever possible.

8.6 If a child or young person under 18 dies, any outstanding liabilities will be recovered from the parent/carer. If a young person aged 18 or 19 dies, any outstanding liabilities will be recovered from their estate.

8.7 A common approach should be agreed where a Personal Health Budget is being paid, if they are also seeking recovery.

ABUSE / MISUSE OF FUNDS

- 8.8 Where it has been determined that the parent/carers have wilfully misused their child's Direct Payments NCC reserves the right to suspend/cease the Direct Payment, recover any misused expenditure and make alternative care/support arrangements, where necessary. NCC reserves the right to undertake an audit where concerns may arise around possible fraud.

Where Lead Professionals have any concerns about possible abuse or misuse of funds they must discuss with their Manager or Senior Practitioner.

The Children's Personal Budgets & Direct Payments Team must also be informed of the concerns and agreement will be made on the necessary course of action. If fraud is suspected this may result in referral to the Counter Fraud Team.

SECTION 9

IN THE EVENT OF DIFFICULTIES

- 9.1 Contingency or Emergency Plans**
- 9.2 Process where the child and its family are unable to manage their Direct Payment or are not complying with the requirements in the DP2**
- 9.3 Hospitalisation**
- 9.4 Safeguarding**

9 IN THE EVENT OF DIFFICULTIES

9.1 Contingency or Emergency Plans

- 9.1.1 The child and their family should be advised to make contingency plans for any breakdown in their care/support arrangements. Families can purchase services temporarily from other agencies; however, they cannot use their Direct Payment to purchase services from NCC so the level of payment will need to be reviewed while they are receiving a direct service from NCC.
- 9.1.2 Such plans should cover what should happen in an emergency such as when a Personal Assistant is suddenly off sick or the parent/carers are involved in an accident. For example, a close relative may be able to provide additional support at short notice for a period of time. They should also detail emergency numbers, insurer's phone numbers, etc.
- 9.1.3 The City Council does, however, retain ultimate responsibility for providing alternative care and support services should the Direct Payment package break down completely.
- 9.1.4 A Direct Payment Support Service, if involved in the ongoing management of the package, should also support the child and their family to prepare a contingency plan and may be able to support the parent/carer to manage in emergencies. These plans could be covered in other plans such as risk management plans.
- 9.1.5 If the Direct Payment recipient repeatedly comes back to the Lead Professional despite appropriate advice and assistance, a review should be undertaken where it might be useful to answer the following questions:
- a) **Have the child and its family's needs changed?** If so there should be a new needs assessment and support plan completed.
 - b) **Is the Direct Payment adequate to enable the family to buy the necessary support?** It may be that the family cannot find a Personal Assistant to work the number of hours required. NCC may fund additional recruitment costs to help identify an employee.
 - c) **Is the parent/carer still able to manage Direct Payments, or do they need some assistance?** Someone new to Direct Payments may make mistakes at the beginning. This does not mean they are not capable of managing a Direct Payment. They may however, need some support to manage or training to manage.

- d) **Does the child and their family wish to continue to receive a Direct Payment?** The child and its family should be helped to overcome difficulties they encounter but ultimately they have a right to choose to receive direct services instead.
- e) **Has all the money been spent on the outcomes and needs identified in the support plan?** If not, why not?
- f) **Has the support for which the individual has paid been received?** If not, why not?
- g) **Has the money been spent wisely?** If not does the parent/carer need support to manage their payment? Or does the evidence indicate they are unable to manage even with support or that they do not co-operate with support, making the package unviable or unsafe? Is a Mental Capacity assessment required?

9.2 **Process where the parent/carer is unable to manage the Direct Payment or is not complying with the requirements in the DP2**

- 9.2.1 The Children's Personal Budgets & Direct Payment Team needs to be notified as soon as any concerns are identified so that a check can be made that everything is okay. This information along with the telephone number for the Children's Personal Budgets & Direct Payment Team should be stated in the child's support plan.
- 9.2.2 In line with the statutory reviewing policy for a child in need (CIN) or a child looked after (CLA), reviews of care/support plans which include Direct Payments should be completed in line with the statutory timelines. Prior to a review the Children's Personal Budgets & Direct Payments Team should be contacted to establish whether they have any concerns about the management of the Direct Payments package.
- 9.2.3 In the event that the parent/carer is not able to manage their Direct Payment then additional support needs to be considered as a first option. If it is considered that the parent/carer will be able to manage with increased support then a revised support plan with possible request for increase in support should be agreed through the decision maker process.
- 9.2.4 Where the parent/carer is not able to manage the Direct Payment with additional support or the level of additional support is disproportionate to meeting their needs then cessation of the Direct Payment must be considered. **The Service Manager of the Disabled Children's Service must be involved in this decision.**
- 9.2.5 Where it is determined that the parent/carer or authorised person is deliberately not complying with their Direct Payment responsibilities or there are significant concerns raised, then NCC may cease the use of Direct Payments.

Examples would include;

- failure to provide monitoring information,

- financial concerns,
- not using the Direct Payment for the support needs agreed or
- Safeguarding:

9.2.6 Where cessation is accepted as the most appropriate way forward there may be implications in respect of redundancy payments for Personal Assistants or other employment responsibilities and will need to be factored in to possible costs.

9.2.7 The process of cessation must ensure continuity of support to ensure the child and its family’s essential needs are met. *(While timescales are given it is recognised that there may be some delays due to access, compliancy, engagement)*

Cessation Process

Timescale	Progress	Action	Additional Actions
Day 1	Concerns identified	Parent/carer is informed of the concerns by the Children’s Personal Budgets & Direct Payment Team by letter or telephone call and asked to address them.	Child’s Lead Professional is informed of the concerns. Save any letters/emails to Castle or Carefirst/Liquid Logic and record actions.
Day 7	Parent/carer does not respond or does not address concerns	2 nd letter sent by Children’s Personal Budgets & Direct Payment Team to parent/carer reminding of concerns and for them to urgently contact the Team.	Copy letter to child’s Lead Professional and they are asked to contact the family.
21 days	No progress of resolving issues.	Parent/carer is warned by letter from Children’s Personal Budgets & Direct Payment Team that we may cease their Direct Payment.	Senior Personal Budgets Officer or child’s Lead Professional arranges a joint meeting to address the issues.
28 Days	Meeting held with parent/carer and or representative.	Solutions identified and actions agreed.	Action Plan saved to Castle. Service Manager informed.



Timescale	Progress	Action	Additional Actions
35 days	Meeting does not resolve the issue/s	Meeting called between Service Manager, Team Manager, Lead Professional and Senior Personal Budgets Officer to discuss issues.	Decision made to cease Direct Payments. Parent/carer informed by letter.
			If relevant, parent/carer advised to inform employees of decision.
			Relevant team or lead professional makes necessary arrangements to have essential needs met via direct or commissioned services.
			Direct Payments Team identifies costs of cessation e.g. redundancy costs, and arranges final payments- such costs need to be presented to Service Manager for financial approval.
42 days	Commissioned services identified and costed.	Lead Professional completes costed care plan and submits to decision maker.	Decision maker approval
Within 7 days after approval	Commissioned services put into place		

9.3 Hospitalisation or Unplanned Short Term Care

- 9.3.1 In these circumstances, Personal Assistants can continue to provide support to the child and their family; however, any social care funding cannot be used to purchase healthcare and all personal and health care needs should be met by health professions working in a hospital. This support cannot be provided by Personal Assistants funded by Direct Payments.
- 9.3.2 Personal Assistants funded by Direct Payments might however still be required to support Direct Payment recipients with other tasks agreed in the support plan that take place outside of hospital, until the continuation of the Direct Payment is reviewed. This will be agreed on a case by case basis.
- 9.3.3 Personal Assistants will continue to be paid in full up to four weeks for the period whilst a Direct Payment recipient is in hospital. Any additional payments will be made on a case by case basis.
- 9.3.4 In some cases the continued support from a Personal Assistant will be relevant to the child's discharge plan and this type of support can continue after four weeks in hospital.

9.4 Safeguarding

- 9.4.1 Research suggests that disabled children and young people are especially vulnerable to abuse. The Lead Professional should advise parents and young people of their right to request NCC's Services to carry out a check under the Protection of Children Act 1999 via the Disclosure and Barring Service (DBS). If such a check is requested the prospective employee will complete the application and the Lead Professional should arrange for a check to be made. Nottingham City Council will cover the costs of such a check. At the time of the request the Lead Professional should advise the parent/carer that should a check find someone unsuitable a Direct Payment will not be made to enable them to employ this person.
- 9.4.2 Such checks are strongly recommended but are not compulsory in a domestic setting and if a parent does not wish for a check to be carried out a test of "reasonableness" shall apply. The Lead Professional should ask the question "is this a reasonable decision?" i.e. does the parent/carer have other reasonable evidence to negate the need for a check?
- 9.4.3 Parents/carers can ask their Direct Payments support service to organise the DBS checks for any prospective Personal Assistants. The City Council will fund the costs of DBS checks **and the parents/carers are required to ascertain the outcome of the DBS check.**
- 9.4.4 If the parents/carers do not wish to carry out a DBS check on a prospective Personal Assistant, a DBS Waiver Form must be completed and presented to the Service Manager of the Disabled Children's Service. **If the Service Manager is not satisfied with the reasons**

given for not carrying out a DBS check and is of the view that the parent/carer has not followed safe recruitment practices, then the offer of Direct Payments will be withdrawn.

- 9.4.5 The Lead Professional should also advise the parents/carers of the limitations of checks and that they do not guarantee that an individual is safe to work with children. The Lead Professional should give advice to the Direct Payment recipients about safe practice when employing someone via Direct Payments i.e. the need to obtain two references.
- 9.4.6 NCC has a duty of care towards the child and their family even when they are organising their own care and support. The Lead Professional will advise the parent/carer of the need to ensure that any services purchased through Direct Payments and detailed within a support plan are from a reputable provider who conducts appropriate checks on staff and has all relevant policies and procedures in place to ensure the safety of the child.
- 9.4.7 If there is any suggestion of abuse to the child in receipt of Direct Payments NCC colleagues should follow the Nottingham City Safeguarding Children Board's procedures which are detailed on Tri-X (<http://nottinghamshirescb.proceduresonline.com/index.htm>).
- 9.4.8 The parent/carer or Nominated or Authorised Person needs to be aware of the policies and procedures for safeguarding and how to make a referral when the service is first set up.
- 9.4.9 Guidance about the role of the parent/carer as an employer needs to be given from the outset, with boundaries regarding the employee / employer relationship to minimise risks
- 9.4.10 Advice regarding clear financial boundaries with the employee / employer relationship needs to be given when arranging a Direct Payment to minimise the risk of financial abuse. The recording of financial arrangements needs to be explicit and monitored within the review process.

SECTION 10

COMPLAINTS

10 COMPLAINTS

- 10.1 The Social Care Representations & Complaints Service manages the social care complaints procedure for complaints made by anyone receiving social care services or who is affected by the department of Children and Adult's actions or decisions

The City Council's aim is to improve the quality of service provision by listening and responding to the views of a child and its family.

- 10.2 The Social Care Representations & Complaints Service operates a statutory complaints procedure and may process or investigate complaints about all aspects of Direct Payments, including, for example, the needs assessment or the Direct Payment support service.
- 10.3 However, children, young people and their families may not use this procedure for complaints about the services which they have purchased from independent sector agencies, by using their Direct Payments. These must be addressed to the providers directly. The Social Care Complaints Service does not investigate complaints about carers employed by the parent/carer, as this would be for them to address as an employer. However, where parents/carers are concerned that the care/support they have purchased is not meeting their needs, they should raise this with the Disabled Children's Team, and where parents/carers continue to be dissatisfied, then they may raise their complaints with the Social Care Representations & Complaints Service.
- 10.4 All relevant legislation has been considered within the Guidance but if an individual is concerned that their rights have not been taken into account they should use the Social Care Representations & Complaints Service procedures in the first instance.
- 10.5 Parents/carers will also be signposted to advocacy services to ensure that they have the opportunity to be supported independently, where it is requested or where the Social Care Representations & Complaints Service believes it may be helpful.
- 10.6 **Children's Social Care Services - complaints procedure**

Stage 1 - Local resolution

We expect to resolve the majority of our complaints at this point. A complaints officer will ensure your complaint is passed to the relevant senior manager for them to consider and provide you with a written response. This should be provided within 10 to 20 working days. If you have not received a response within the timescale, or if you feel that your complaint has not been resolved at stage 1, you can request that your complaint is considered at stage 2.

Stage 2 - Investigation

An investigator (who may be independent) will work with an independent person to investigate your complaint. They will discuss your complaint with you and any desired outcomes you may have. The investigator will interview

the staff involved in your complaint and view the relevant records and documents. The investigator will write a very detailed report to explain their findings. The report will show whether the investigator has upheld or not upheld your complaints, and it will include any recommendations the investigator may have for Children and Families.

The timescale for the investigation is 25 working days, although this may be extended to 65 working days.

Stage 3 - Review panel

If you are not satisfied with how we have handled your complaint at the end of stage 2, you can request that it is considered by a review panel. The panel is comprised of three independent people. Also in attendance at the panel will be the complainant and any advocate they may have, the investigator, the independent person and a senior manager from Children and Families. The panel will review the complaints process and it may make further recommendations.

Local Government Ombudsman

If you are still unhappy after stage 3, you can take your complaint to the Local Government Ombudsman: 0845 602 1983

Contacting the Social Care Complaints Service

Social Care Complaints
Loxley House
Station Street
Nottingham
NG2 3NG

Tel:0115 87 65974

Fax:0115 87 61374

Email: socialcarecomplaints@nottinghamcity.gov.uk

SECTION 11

GUIDANCE ON CARERS SUPPORT

11 GUIDANCE ON CARERS SUPPORT

Parent Carers

- 11.1 Under the Children & Families Act 2014 NCC must, under certain conditions, assess whether a parent carer has needs for support and, if so, what those needs are. A parent carer is defined as a person aged 18 or over who provides or intends to provide care for a disabled child for whom the person has parental responsibility.
- 11.2 The conditions on whether to assess are satisfied if;
- a. It appears to NCC that the parent carer may have needs for support or if NCC receives a request from the parent carer to assess their needs for support.
 - b. NCC is satisfied that the disabled child cared for and the disabled child's family are persons for whom they may provide a Direct Payment to arrange for the provision of services under Section 17 of the Children Act 1989.
- 11.3 Where NCC is required to carry out a parent carer's needs assessment and are required, or have decided to carry out some other assessment of the parent carer or of the disabled child cared for, they may combine the assessments.
- 11.4 If NCC carries out a parent carer's needs assessment it must consider and decide;
- a. Whether the parent carer has needs for support in relation to the care which they provide or intend to provide.
 - b. Whether the disabled child cared for has a need for support.
 - c. If paragraph (a) or (b) applies, whether those needs could be satisfied through services accessed through provision of a Direct Payment.
 - d. If they could be so satisfied, whether to provide those Direct Payments in relation to the parent carer or the disabled child cared for.

Young Carers

- 11.5 Under the Children & Families Act 2014 NCC must, under certain conditions, assess whether a young carer has needs for support and, if so, what those needs are. A young carer is defined as a person under 18 who provides or intends to provide care for another person.
- 11.6 A person is not a young carer if the person provides or intends to provide care under, or by virtue of, a contract or as voluntary work.

- 11.7 The conditions on whether to assess are satisfied if it appears to NCC that the young carer may have needs for support or if NCC receives a request from the young carer or a parent of the young carer to assess their needs for support.
- 11.8 A young carer's needs assessment must include an assessment of whether it is appropriate for the young care to provide care for the person in question in light of the young carer's needs for support, other needs and wishes.
- 11.9 NCC, in carrying out a young carer's needs assessment, must have regard to the extent to which the young carer is participating in education, training or recreation and the extent to which they wish to work.
- 11.3 Where NCC is required to carry out a young carer's needs assessment and are required, or have decided to carry out some other assessment of the young carer or of the person cared for, they may combine the assessments but only with the agreement of the young carer and the person cared for.
- 11.4 If NCC carries out a young carer's needs assessment it must consider and decide;
- a. Whether the young carer has needs for support in relation to the care which they provide or intend to provide.
 - b. If so, whether those needs could be satisfied through services accessed through provision of a Direct Payment provided under Section 17 of the Children Act 1989.
 - c. If they could be so satisfied, whether to provide those Direct Payments in relation to the young carer.

SECTION 12

SUPPORT SERVICES

12.1 Managing an Account

12.2 Employment Support

12.3 Payroll Services

12 SUPPORT SERVICES

Support Service providers are not to be the Nominated or Authorised Person.

12.1 Managing an Account

- 12.1.1 A managed account facility will not be offered to a child and its family if they are accessing Direct Payments through Pathway 1 unless there is an identified need for this service.
- 12.1.2 The Provider will manage the Direct Payment on behalf of a child and their family to enable them to purchase services, as agreed in their support plan.
- 12.1.3 Providers will support the child and their family or their representative to meet their payment responsibilities to their Personal Assistants, HMRC and suppliers. Providers will keep appropriate financial records for each individual and reconcile and report on accounts as agreed with commissioners.
- 12.1.4 The Provider shall be responsible for informing HMRC that they are managing the account on the parent/carer's behalf and complete all necessary paperwork related to HMRC responsibilities
- 12.1.5 The Provider shall be responsible for informing insurance companies and other relevant parties that they are managing the account on the parent/carer's behalf and complete all necessary paperwork relating to these services
- 12.1.6 The child and their family's care/support package details, as assessed by the City Council, will be supplied to the Managed Accounts provider. Managed Accounts will be paid on the basis of the care/support package details which will be monitored by the Provider. The Provider will notify NCC immediately if discrepancies arise.
- 12.1.7 The Provider will complete and return to NCC **six-monthly** returns, and payments due in a timely fashion on behalf of the Citizen.
- 12.1.8 The Provider will retain all paperwork in connection with the service for a minimum of 7 years.
- 12.1.9 The Provider will ensure the parent/carer meets all requirements in respect of supplier invoices
- 12.1.10 The Provider will be able to provide accurate statements in relation to the parent/carer's income and expenditure which are able to be reconciled against bank statements.
- 12.1.11 The Provider will send a monthly statement of income and expenditure to the parent/carer or their representative.
- 12.1.12 The Provider will ensure there are sufficient funds in the child and its family's account to meet expenditure and monitor the risk of potential

debt. If issues around debt arise these should be reported to the parent/carer and NCC immediately.

- 12.1.13 The Provider will not use the child and its family's funds for any purpose other than to purchase agreed care/support services on their behalf and shall not use these funds for any form of personal or professional benefit
- 12.1.14 The Provider will not apply any additional charges other than the agreed managed accounts charges under the Framework Agreement.
- 12.1.15 The Provider will submit a final account for any parent/carer ceasing to use their services for whatever reason.
- 12.1.16 The Provider will set up an account for the parent/carer that enables them to provide, track and monitor individual income and expenditure for that parent/carer.
- 12.1.17 The Provider will notify the parent/carer and NCC immediately of any concerns relating to financial mismanagement.
- 12.1.18 The Provider will return all funds remaining in the child and its family's account and all other information relating to the account to the parent/carer or NCC unless otherwise instructed.

12.2 Employment Support

Support with:

- 12.2.1 Advertising – including draft advertisements and where and how to advertise.
- 12.2.2 Job descriptions and person specifications – including sample job descriptions and person specifications will contain all relevant and appropriate information to ensure the Citizen has all the information required to select for interview.
- 12.2.3 Applications – including draft application forms and other methods of application, such as a CV.
- 12.2.4 Interview guidance – including information and advice on questions which can and cannot be asked and advantages and disadvantages of interviewing in their own homes or in other venues. A support activity can be undertaken as part of the selection process, before a firm decision is made to employ the Personal Assistant. This can be particularly useful where the Citizen does not use words to communicate or wants the Personal Assistant to take part in an activity as part of the selection process.
- 12.2.5 References – including draft reference request forms and guidance on what to ask for and how to verify references.
- 12.2.6 Contracts of employment – including draft contracts and grievance, disciplinary procedures.

- 12.2.7 Employers Liability Insurance Cover – including ensuring a Citizen understands the need for adequate insurance for their Personal Assistants and where to obtain such insurance, which should include Employers and Public Liability Cover, 24 hour employment law and Health & Safety advice lines and access to employment stationery. Where appropriate the supplier will support the Citizen in obtaining insurance.
- 12.2.8 Health & Safety legislation – Every person has a duty of care to all other people to prevent causing harm or injury by negligence. Everyone must take care of their own health & safety and that of others affected by your actions or omissions. (Health & Safety at Work Act 1974 section 7)
- 12.2.9 Risk Assessment – The Health & Safety at Work Act 1974 requires employers to provide whatever instruction, information training and supervision is necessary to ensure, so far as reasonably practicable, the health & safety at work of their employees.
- 12.2.10 Employment legislation – if an individual chooses to use their Personal Budget to employ their own staff they then take on the responsibilities of being an employer. This includes statutory payments, responsibilities to the employee and record keeping.
- 12.2.11 The Provider will advise the employer of sources of training for Personal Assistants. This could include, but is not limited to moving and handling, tissue viability, health interventions, safeguarding etc.

12.3 Payroll Services

- 12.3.1 Support the parent/carer to meet their payment responsibilities to their employee/s, HMRC regarding statutory payments and record keeping, and advise the parent/carer of meeting the Provider's requirements to provide the Service.
- 12.3.2 Undertake all Payroll tasks associated with the Service. This information would be derived by the Personal Assistant completing a time sheet which would record hours worked, sick leave and holiday leave. This would be authorised and signed by the employer.
- 12.3.3 Ensure the parent/carer meets all the requirements in respect of all statutory payments. The national minimum wage is the minimum amount of pay that workers must be paid. (<https://www.gov.uk/national-minimum-wage-rates>)
- 12.3.4 Ensure that all parents/carers have a range of information and advice on all aspects of managing their PAYE responsibilities, monitor to ensure responsibilities are being met, and provide support on all aspects of PAYE, HMRC and related matters.
- 12.3.5 Retain all paperwork in connection with the Service for 7 years.
- 12.3.6 Release information to NCC in regard of financial monitoring (*consent is provided via DP2 agreement*).

- 12.3.7 Produce payslips and a statement to the parent/carer of their representative detailing how much employees have been paid.
- 12.3.8 Advise parents/carers of the appropriate hourly payment rate to their employees, ensuring their Personal Budget is sufficient to meet all statutory payments such as tax, NI and sick leave.
- 12.3.9 Work within NCC's Personal Budget guidelines and ensure all statutory payment duties are met within the agreed Direct Payment.
- 12.3.10 The Provider shall submit a final account for any child and its family ceasing to use their services for whatever reason.

12.4 Payments to Direct Payment Support Services

- 12.4.1 Payments for all of the services detailed above should be invoiced to NCC and marked for the attention of the Senior Personal Budgets Officer. Invoices should not be sent to parents/carers or, if the support service is managing the account, monies should not be taken from the funds in lieu of the charges made for services rendered.

SECTION 13

COMMUNITY EQUIPMENT

13 COMMUNITY EQUIPMENT

- 13.1 A Direct Payment may be made to enable people to purchase equipment that would otherwise have been provided by Nottingham City Children's Services. This may be particularly beneficial where a parent or young person may wish to purchase a more desirable or more expensive model than would be statutorily provided as the parents may then top up the Direct Payment. A Direct Payment may also be made to pay for adaptations, which would have been provided or arranged by Nottingham City Children's Services however a Direct Payment cannot be made for adaptations covered by the Disabled Facilities Grant.
- 13.2 The allocated Occupational Therapist should be satisfied that the individual is receiving adequate advice on the suitability of any equipment and that the user's needs will be met by the proposed piece of equipment. (See the Integrated Community Equipment Loan Service (ICELS) Direct Payments policy).
- 13.3 Occupational Therapist's responsibilities for reviewing equipment and ensuring an individual can safely use equipment remain unchanged by the provision of Direct Payments. A child and its family receiving a Direct Payment to purchase their own equipment/ minor adaptation must understand and agree that they will be the joint owner of that equipment/minor adaptation. This includes taking all legal and contractual responsibilities that may arise from this and this should be made explicit on the agreement form. Although the child and its family purchases the equipment/minor adaptation, ICELS will be responsible for repair and maintenance in the same way as they are for a directly provided piece of equipment/minor adaptation (on behalf of the Department).
- 13.4 This is to ensure that maintenance is managed to the required standard and a full maintenance history is known for any equipment/minor adaptation that may be returned to the service.
- 13.5 It also provides the citizen/carer/staff with security that arrangements are in place for responding to emergency breakdowns for more complex items of equipment.
- 13.6 It is the responsibility of the allocated Occupational Therapist to notify their local ICELS Partnership Manager of all equipment/minor adaptation bought with a Direct Payment so that it is recorded on the service database for tracking, maintenance and review purposes. The allocated Occupational Therapist also needs to provide information on warranties and maintenance where necessary so that the ICELS service provider can complete annual repairs and maintenance.
- 13.7 The allocated Occupational Therapist should make it clear to the Direct Payment recipient in receipt of equipment, where ownership and responsibility belongs. Hired equipment could also be purchased using direct payments however ownership would not fall to the Direct Payment recipient.

SECTION 14

RESIDENTIAL CARE

14 RESIDENTIAL CARE

- 14.1 A Direct Payment cannot be made to provide residential accommodation over a 17 day block-period or 75 days in total in any 12 month period.
- 14.2 A Direct Payment may be made to purchase overnight short breaks. If a child and its family purchases short breaks from a registered provider under Section 20 (4) of the Children Act the child will be regarded as "looked after" and for the period they are away from home the http://nottinghamcitychildcare.proceduresonline.com/chapters/p_short_breaks.html regulations will be applied and an Independent Reviewing Officer appointed. However, if Direct Payments are used to purchase overnight care from a friend or Personal Assistant under Section 17 (6) of the act, the child will not be regarded as looked after and an IRO will not be appointed.

SECTION 15

SERVICE SPECIFIC ISSUES

15 SERVICE SPECIFIC ISSUES

Training

- 15.1 Employers in receipt of Direct Payments can access training opportunities through Nottingham City Council for themselves and their staff. Safeguarding, health and safety, first aid and autism awareness training is provided by Nottingham City Council at no charge. Training from the e-learning website is also provided free of charge and covers a vast amount of relevant topics for parents, employers and personal assistants. Training for specific health care or moving and handling needs can also be provided free of charge. The Lead Professional should advise and arrange this with the family.

All other training that parents, employees and Personal Assistants wish to access must be self-funded or funded through contingency money built up in the Direct Payment account or identified and costed in the child's support plan. The Lead Professional must approve training funded by Direct Payment contingency money to ensure that it meets an assessed need.

Employing Close Relatives

- 15.2 Direct Payments will not be made to allow the employment of a parent or person with parental responsibility to provide care of their own child.
- 15.3 Direct Payments may not be used to secure services from a close relative who lives in the same household as the child or young person receiving Direct Payments, unless the assessment concludes that it is necessary and the only way to satisfactorily meet the child's needs. Should an assessment conclude that providing support in this was the only way to satisfactorily meet a child's needs then the Service Manager must approve this. Direct Payments may be made to secure services from a relative living outside the family home; however, Direct Payments are not designed to replace informal networks of support. Direct Payments can be used to employ a live-in assistant, so long as they are not excluded by the regulations and would not be living in the home in any event.

Employing Minors (under 18)

- 15.4 Direct Payment recipients may employ staff between the age of 16 to 18 in some circumstances. The Lead Professional must undertake a risk assessment to identify specific risks of employing a minor. The assessment must ensure that the employee is suitably mature and that the service provided does not involve any personal/domiciliary care. The risk assessment must also stipulate that the contract of employment/job description clearly states the roles and responsibilities of the employee. Direct Payment recipients cannot employ members of staff under the age of 16. The risk assessment must be completed by a qualified social worker and authorised by the Team Manager/Service Manager to ensure appropriate risks have been considered before recipients begin any employment of staff under the age of 18.

Health & Safety

- 15.5 The assessment process should consider any health and safety implications of Direct Payments. This should be shared with parents/carers and young people so that they can take reasonable steps to minimise the risks to the Health and Safety of any staff they employ and formulate their strategy of how to overcome any health and safety issues (the Direct Payment recipient has a common law duty of care toward the person they employ). Further support around risk assessment can be provided by a Direct Payment support service.

Childminders

- 15.6 Lead Professionals should advise parents that under section 79 of the Children Act 1989 that anyone providing care for a child under 8 for over 2 hours a day in their own home has to be an Ofsted registered childminder. Details of registered childminders can be obtained from [OFSTED](#).

Childcare

- 15.7 Direct Payments cannot be provided to pay for childcare to allow a parent/carer to work. Parents may be eligible for child tax credits and the Lead Professional should advise them of this provision if the assessment identifies a need for childcare. However, childcare may be used as a form of short break which when used flexibly can contribute to a parent's arrangements to undertake paid work.

SECTION 16

FURTHER INFORMATION

16. FURTHER INFORMATION

Section 2 of the Chronically Sick & Disabled Persons Act 1970

<http://www.legislation.gov.uk/ukpga/1970/44/enacted>

Section 17 of the Children Act 1989

<http://www.legislation.gov.uk/ukpga/1989/41/part/III/crossheading/provision-of-services-for-children-and-their-families>

Section 20 of the Children Act 1989

<http://www.legislation.gov.uk/ukpga/1989/41/part/III/crossheading/provision-of-accommodation-for-children>

The Community Care, Services for Carers & Children's Services (Direct Payments) Regulations 2009

<http://www.legislation.gov.uk/uksi/2009/1887/contents/made>

Children & Families Act 2014

<http://www.legislation.gov.uk/ukpga/2014/6/contents/enacted>

SEND Code of Practice

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/398815/SEND_Code_of_Practice_January_2015.pdf

The Special Educational Needs (Personal Budgets) Regulations 2014

<http://www.legislation.gov.uk/ukdsi/2014/9780111114056>