

## Factsheet #19: Direct Payments

A direct payment is a mechanism for delivery of a personal budget.

A direct payment is a cash payment made directly to the child's parent, the young person or their nominee, allowing them to arrange provision themselves. As such, a direct payment is the mechanism by which funds identified for the child or young person in a personal budget can be transferred to the parents or young person.

Direct Payments must be set in every case at a level that will secure the provision specified in the EHC plan. If a direct payment is not set at a suitable level, it must be reviewed and adjusted. Detailed arrangements for direct payments should be set out in section J of the EHC plan.

In addition to the right to request a personal budget, a child's parent or a young person may make a request to a local authority for direct payments at any time during the period in which:

- (a) the draft EHC plan is being prepared;
- (b) the EHC plan is being reviewed.

Where a request for direct payments has been made, a local authority must consider that request.

Direct payments for special educational provision, health care and social care provision are subject to separate regulations. These are:

- The Community Care, Services for Carers and Children's Services (Direct Payments) Regulations 2009 (social care – these will be replaced by those made under the Care Act 2014)
- The National Health Service (Direct Payments) Regulations 2013 (health)
- The Special Educational Needs (Personal Budgets and Direct Payments) Regulations 2014 (education)

Local authorities must offer direct payments for social care services, subject to minimum requirements generally concerning the ability of the parent or young person to manage the funds effectively. See below for circumstances in which education direct payments must be offered. For both education and social care the local authority must be satisfied that the person who receives the direct payments will use them in an appropriate way and that they will act in the best interests of the child or young person.

There is currently a power but not a duty to make direct payments for certain health provision. Direct payments for health require the agreement of a Care Plan between the CCG and the recipient. This requirement can be fulfilled by sections G and J of the EHC plan as long as it includes the following information:

- the health needs to be met and the outcomes to be achieved through the provision in the plan
- the things that the direct payment will be used to purchase, the size of the direct payment, and how often it will be paid
- the name of the care co-ordinator responsible for managing the Care Plan
- who will be responsible for monitoring the health condition of the person receiving care
- the anticipated date of the first review, and how it is to be carried out
- the period of notice that will apply if the CCG decides to reduce the amount of the direct payment
- where necessary, an agreed procedure for discussing and managing any significant risk, and
- where people lack capacity or are more vulnerable, the plan should consider safeguarding, promoting liberty and where appropriate set out any restraint procedures

### Direct Payments for SEN provision

Specific duties and requirements relating to direct payments for education are set out in the Special Educational Needs (Personal Budgets and Direct Payments) Regulations 2014 and are summarised below.

- **Who can direct payments be made to?** A local authority may make direct payments to the child's parent, young person or a person nominated in writing by the child's parent or the young person to receive direct payments on their behalf provided that the intended recipient:

- Appears capable of managing direct payments without assistance or with such assistance as may be available to them;
  - is over compulsory school age;
  - does not lack capacity within the meaning of the 2005 Act to consent to the making of direct payments to them or to secure the agreed provision with any direct payment; and
  - is not an excluded person.
- **When can local authorities make direct payments?** A local authority may only make direct payments where they are satisfied that:
    - the recipient will use them to secure the agreed provision in an appropriate way;
    - where the recipient is the child's parent or a nominee, that person will act in the best interests of the child or the young person when securing the proposed agreed provision;
    - the direct payments will not have an adverse impact on other services which the local authority provides or arranges for children and young people with an EHC plan which the authority maintains; and
    - securing the proposed agreed provision by direct payments is an efficient use of the authority's resources.
  - **What if a local authority decides not to make a direct payment?** The local authority must inform the child's parent or the young person of its decision, the reasons for the decision, and the right to request a review of the decision. Where requested to do so, the local authority must review its decision, considering any representations made by the child's parents or the young person. They must then inform in writing the outcome of the review, giving reasons.
  - **Will there be any conditions on making direct payments?** A local authority must not make direct payments unless the local authority has provided written notice to the recipient, specifying:
    - the name of the child or young person in respect of whom direct payments are to be made;
    - the goods or services which are to be secured;
    - the proposed amount;
    - any conditions on how direct payments may be spent
    - the dates for payments into the bank account approved by the local authority.

Upon receipt of the written notice, the direct payments recipient must confirm in writing that they agree to receive the direct payments in accordance with any condition and that they will notify the local authority of any changes in circumstances which might affect the need for the agreed provision. They must also agree to use the bank account solely for the purposes of managing direct payments (including for health and social care). The recipient must keep a record of the money paid in and withdrawn and provide information to the local authority regarding the account and agreed provision on request.

- **Is permission of the school required?** A local authority may not make direct payments in respect of any goods or services which are to be used or provided in an early years setting, school or post-16 institution without the written consent of the head teacher, principal or the person occupying an equivalent position.
- **How is the amount of direct payments calculated?** The local authority must ensure that the amount of direct payments is sufficient to secure the agreed provision. The local authority may increase or reduce the amount of direct payments provided that the authority is satisfied that the new amount is sufficient to secure the agreed provision.
- **What happens if the direct payments are not used?** The local authority may reduce the amount of direct payments where payments remain unused and the local authority considers that it is reasonable to offset unused direct payments against the outstanding amount to be paid.
- **How will direct payments be monitored and reviewed?** The local authority must monitor the use of direct payments by the recipient and must review the making and use of direct payments—

- at least once within the first three months of direct payments being made; and
  - when conducting a review or a re-assessment of an EHC plan under section 44 of the 2014 Act.
- **What if the local authority wants to reduce the amount of direct payments?** Where a local authority decides to reduce the amount of direct payments it must provide reasonable notice to the recipient, and must set out in the notice the reasons for its decision. The local authority must reconsider its decision, where requested to do so by the recipient. When conducting its reconsideration, the local authority must consider the representations made by the recipient (and where the recipient is a nominee, any representations made by the child's parent or the young person) and must then provide written reasons of its decision following the reconsideration.
  - **Can a local authority stop making direct payments?** A local authority **must** stop making direct payments if:
    - the recipient has notified the local authority in writing that he or she no longer consents to receive the direct payments;
    - the recipient ceases to be a person to whom a direct payments may be made;
    - following a review, it appears to the local authority that—
      - the recipient is not using the payment to secure the agreed provision;
      - the agreed provision can no longer be secured by means of direct payments;
    - at any point the local authority becomes aware that the making of direct payments is—
      - having an adverse impact on other services which the local authority provides or arranges for children and young people with an EHC plan which the authority maintains; or
      - no longer compatible with the authority's efficient use of its resources;

A local authority **may** stop making direct payments if the recipient has failed to comply with any of the conditions set out above.

Where a local authority decides to stop making direct payments, the local authority must first give notice in writing to the recipient setting out the reasons for its decision. The local authority must reconsider its decision where requested to do so by the recipient. When conducting its reconsideration, the local authority must consider the representations made by the recipient and must then provide written reasons of its decision following the reconsideration to the recipient. The local authority may not be required to undertake more than one reconsideration of its decision following the reconsideration.

Any right or liability of the recipient to a third party acquired or incurred in respect of a service secured by means of direct payments transfers to the local authority when the local authority stops making direct payments.

- **What happens on transition?** When a child in respect of whom direct payments are being made becomes a young person, the local authority must take reasonable steps to ascertain whether the young person has capacity to consent to receive direct payments and if so, whether they consent. Where the young person notifies the local authority in writing that they do not consent to the making of direct payments, the authority must stop direct payments as soon as reasonably practicable.

Further information in relation to direct payments is set out in Chapter 9 of the SEND Code of Practice.