A Guide to Direct Payments

Special Educational Needs and Disability (SEND)

March 2015
## Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Decision to make Direct Payments</td>
<td>3</td>
</tr>
<tr>
<td>2.</td>
<td>Persons to whom Direct Payments can be made</td>
<td>4</td>
</tr>
<tr>
<td>3.</td>
<td>Decision not to make Direct Payments</td>
<td>5</td>
</tr>
<tr>
<td>4.</td>
<td>Ability to manage Direct Payments</td>
<td>5</td>
</tr>
<tr>
<td>5.</td>
<td>Third Party Arrangements</td>
<td>5</td>
</tr>
<tr>
<td>6.</td>
<td>Transition: when a Child becomes a Young Person</td>
<td>6</td>
</tr>
<tr>
<td>7.</td>
<td>Receiving a Direct Payment</td>
<td>6</td>
</tr>
<tr>
<td>8.</td>
<td>Amount of Direct Payment</td>
<td>7</td>
</tr>
<tr>
<td>9.</td>
<td>Permission of an Education Provider</td>
<td>7</td>
</tr>
<tr>
<td>10.</td>
<td>Using Direct Payments to Employ Staff</td>
<td>8</td>
</tr>
<tr>
<td>11.</td>
<td>Indemnity and Direct Payments for Healthcare</td>
<td>8</td>
</tr>
<tr>
<td>12.</td>
<td>Registration and Regulated Activities</td>
<td>9</td>
</tr>
<tr>
<td>13.</td>
<td>Monitoring and Reviewing Direct Payments</td>
<td>10</td>
</tr>
<tr>
<td>13.1</td>
<td>Purpose of Review</td>
<td>10</td>
</tr>
<tr>
<td>13.2</td>
<td>Outcomes of Review</td>
<td>11</td>
</tr>
<tr>
<td>14.</td>
<td>Stopping or Reducing the amount of Direct</td>
<td>11</td>
</tr>
<tr>
<td>15.</td>
<td>Repaying a Direct Payment</td>
<td>13</td>
</tr>
<tr>
<td></td>
<td><strong>Annexe A</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Use of Representatives and Nominees to receive Direct Payments and Consent</td>
<td>14</td>
</tr>
<tr>
<td></td>
<td><strong>Annexe B</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Persons excluded from Direct Payments</td>
<td>16</td>
</tr>
<tr>
<td></td>
<td><strong>Annexe C</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Glossary of Terms</td>
<td>17</td>
</tr>
<tr>
<td></td>
<td><strong>Annexe D</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td>References</td>
<td>19</td>
</tr>
</tbody>
</table>
A Guide to Direct Payments

1 Decision to make Direct Payments

Direct payments are cash payments made directly to the child’s parent, the young person or their nominee, allowing them to arrange provision themselves.

Liverpool City Council (“the Local Authority”) and, where appropriate, Liverpool Clinical Commissioning Group (“Liverpool CCG” / “the CCG”) may only agree to make direct payments in respect of the educational, social care and/or healthcare provision specified in an EHC Plan where a valid request has been made for a Personal Budget, including a request for direct payments, and 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 the young person’s nominee (i.e. their appointed representative), that person will act in the best interests of the child or young person when securing the agreed provision;
• direct payments in respect of any agreed educational provision 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 it maintains;
• securing the agreed educational provision by direct payments is an efficient use of the Local Authority’s resources;
• the child or young person’s need for any agreed social care provision can be met by securing the provision of it by means of a direct payment;
• where any agreed social care provision is provided by the Local Authority in exercise of its functions under section 17 of the Children Act 1989 (provision of services for children in need, their families and others), the welfare of the child will be safeguarded and promoted by securing the provision of it by means of a direct payment; and
• direct payments in respect of any agreed healthcare provision are both appropriate for the child or young person’s medical condition and represent value for money.

N.B. Direct Payments in respect of educational provision cannot be made for the purpose of funding a place at a school place or post 16 institutions and may only be made for the purposes of securing educational provision specified in Section F of the child or young person’s EHC Plan. Direct Payments in respect of healthcare provision cannot be made in respect of certain services including GP services, immunisation and vaccination and planned inpatient hospital care.

It is important to remember that Direct Payments are only one way of utilising a Personal Budget – other options are available where the money is held by someone else on the young person’s or child’s behalf.
2 Persons to whom Direct Payments can be made

The Local Authority and, where appropriate, Liverpool CCG may make direct payments, as appropriate, to:-
- the child’s parent;
- the young person if aged over 16, or
- a person nominated in writing by the child’s parent or the young person to receive direct payments on their behalf (known as a “nominee”).

Direct payments may only be made to an intended recipient if the person:
- appears to the Local Authority and, where appropriate, Liverpool CCG to be capable of managing direct payments without assistance or with such assistance as may be available to them;
- does not lack capacity within the meaning of the Mental Capacity Act 2005 to consent to the making of direct payments to them or to secure the agreed provision with any direct payment; and
- is not a person described in Annexe B to this guide.

Where a child’s parent or a young person lacks capacity to consent to the making of direct payments to them, the payments may be made to their authorised representative 1, provided that they consent to receiving the payment on the parent’s or young person’s behalf. The person receiving direct payments (i.e. the child’s parent or the young person themselves or their nominee or representative) will be responsible for ensuring that the money is used to secure the agreed provision in an appropriate way.

Annexe A to this guide gives further information on capacity to manage a direct payment and nominees and representatives. Where a child’s parent or a young person (or, in either case, their authorised representative) has appointed a nominee and they notify the Local Authority and, where appropriate, Liverpool CCG, in writing that they wish to withdraw or change their nomination:
- the Local Authority must stop making direct payments in respect of the agreed educational and/or social care provision to the nominee as soon as reasonably practicable and, where applicable, consider whether to make direct payments to the alternative nominee; and
- the CCG must stop making direct payments and, as soon as reasonably possibly, carry out a formal review of the making of direct payments to or in respect of the child or young person.

The Local Authority and, where appropriate, Liverpool CCG cannot and will not agree to make direct payments to any person falling within the categories outlined in Annexe B.

In addition, any person who is in receipt of direct payments but subsequently falls within a category outlined in Annexe B will be liable to have the direct payments withdrawn.

The Local Authority and, where appropriate, Liverpool CCG expect any recipient of direct payments to notify them if a change in circumstances means that a person falls within such a category.

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1 For example, a deputy appointed by the Court of Protection under section 16 of the Mental Capacity Act to make decisions on the parent’s or young person’s behalf in relation to matters in respect of which direct payments may be made.
3  Decision not to make Direct Payments

Where the Local Authority and, where appropriate, the CCG decide not to make a direct payment they must:-

- inform in writing the child’s parent or young person of:-
  - its decision;
  - the reasons for its decision; and
  - the right to request a review of its decision;
- where requested to do so, review its decision and in carrying out the review consider any representations made and evidence or relevant information provided by the child’s parent or young person; and
- inform in writing the child’s parent or young person of the outcome of the review, giving reasons.

The Local Authority and, where appropriate, the CCG will reconsider the decision if requested to do so by the child’s parent or the young person but need not reconsider the decision more than once.

4. Ability to Manage Direct Payments

When deciding whether or not a person (including a representative or nominee) has the ability to manage direct payments, the Local Authority and, where appropriate, Liverpool CCG will consider whether the person appears to be capable of managing a direct payment by themselves or with such assistance as may be available to them, including any support and assistance arranged by the Local Authority and/or the CCG for this purpose.

Where direct payments have been requested in respect of any agreed healthcare provision in the child or young person’s EHC Plan, the CCG will also consider:-

- whether the person would be able to make choices about, and manage, the services they wish to purchase;
- whether they have been unable to manage either a health care or social care direct payment in the past, and if their circumstances have changed; and
- whether they are able to take reasonable steps to prevent fraudulent use of the direct payment or identify a safeguarding risk and if they understand what to do and how to report it if necessary.

5. Third Party Arrangements

If direct payments are agreed, the child’s parent or the young person can request the support of a third party Money Management organisation to financially manage their direct payment. The agreement of a third party organisation would only be by providers who are approved by the Local Authority and, where appropriate, Liverpool CCG.
6. Transition: When a Child becomes a Young Person

Where a child in respect of whom direct payments are being made becomes a young person, the Local Authority and, where appropriate, Liverpool CCG will take reasonable steps to ascertain whether the young person consents to receive direct payments.

Where the young person has notified the Local Authority and, where appropriate, the CCG in writing that he or she wishes to receive direct payments, the Local Authority and, where appropriate, the CCG will make direct payments to the young person themselves provided that they are satisfied that the young person is both a person to whom direct payments may be made and able to manage the direct payments (as outlined in the preceding paragraphs of this guide).

Where the young person consents in writing that the Local Authority should continue to make direct payments to the young person’s parent or the parent’s nominee, the Local Authority and, where appropriate, the CCG will continue do so.

Where the young person notifies the Local Authority and, where appropriate, the CCG in writing that they do not consent to the making of direct payments, the Authority and, where appropriate, the CCG will stop making direct payments as soon as reasonably practicable.

7. Receiving a Direct Payment

Once it has been agreed that a child or young person is eligible to receive direct payments, the Local Authority will issue a Direct Payments Information Pack with a Direct Payments Agreement specifying the following:

- 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 by direct payments;
- the proposed amount of direct payments;
- any conditions on how direct payments may be spent;
- the dates for payments into the bank account approved by the Local Authority and, where appropriate, Liverpool CCG.

By signing the Direct Payments Agreement, the person is agreeing to:

- receive the direct payments;
- use the direct payments only to secure the agreed provision;
- comply with any conditions specified in the Direct Payments Agreement;
- notify the Local Authority and, where appropriate, Liverpool CCG of any changes in circumstances which might affect the need for the agreed provision;
- use the bank account approved by the Local Authority and, where appropriate, the CCG solely for the direct payments and ensure that it is only accessible by the recipient or any other person approved in writing by the Local Authority and, where appropriate, the CCG;

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2 For the purposes of the legislation under which direct payments in respect of educational and/or social care provision are made, a child becomes a young person when they cease to be of compulsory school age (i.e. on the last Friday in June in the school year in which their 16th birthday falls). For the purposes of the legislation which governs the making of direct payments in respect of healthcare provision, a child becomes a young person on their 16th birthday.
• keep a record of money paid in and withdrawn from the approved bank account; and
• on request, or at intervals specified by them, provide the Local Authority and, where appropriate, the CCG with information or evidence relating to the account and the agreed provision.

Where the recipient is a nominee:-
• the child’s parent or young person must consent in writing to direct payments being used to secure the agreed provision; and
• the nominee will be required to sign the Direct Payment Agreement confirming that he or she is responsible as a principal for all contractual arrangements entered into and secured by means of direct payments for the benefit of the child or young person.

8. **Amount of Direct Payments**

The Local Authority and, where appropriate, Liverpool CCG will ensure that the amount of the direct payments paid is sufficient to secure the agreed provision specified in the EHC plan. The amount of the direct payments may increase or reduce if the Local Authority and, where appropriate, the CCG are satisfied that the new amount is sufficient to secure the agreed provision.

The Local Authority and, where appropriate, the CCG may reduce the amount of direct payments where payments have been accumulated and remain unused and where they consider it reasonable to offset the unused payments against the outstanding amount to be paid by the Authority and, where appropriate, the CCG.

In some circumstances, the Local Authority and, where appropriate, the CCG can ask for some of the unspent direct payments to be re-paid.

9. **Permission of Education Provider**

The Local Authority and, where appropriate, Liverpool CCG are unable to make direct payments in respect of any goods or services which are to be used or provided in a school or post-16 institution without the written consent of the head teacher, principal or the person occupying an equivalent position.

Similarly, the Local Authority and, where appropriate CCG may not make direct payments in respect of any goods or services which are to be used or provided on premises where relevant early years education is provided without the written consent of the provider of the relevant early years education.
10. Using Direct Payments to Employ Staff

People may wish to use direct payments to employ staff to provide them or the child or young person on whose behalf they receive the payments with care and support; only in exceptional circumstances can direct payments be considered to pay an individual living in the same household. Further guidance on recruitment and employment of staff is available within the Direct Payments information pack.

11. Indemnity and Direct Payments for Healthcare

Direct payments for healthcare can be used to pay for a personal assistant (PA) to carry out certain personal care and health tasks that might otherwise be carried out by qualified healthcare professionals such as nurses, physiotherapists or occupational therapists. In such cases the healthcare professional who is involved in setting the EHC Plan will need to be satisfied that the task is suitable for delegation to a PA, specify this in the EHC Plan and ensure that the PA is provided with the appropriate training and development, assessment of competence and have sufficient indemnity and insurance cover.

Providers of some services may need to conform with prospective legislation which will implement the Finlay Scott Recommendations (June 2010) on indemnity cover and Article 4(2) (d) of Directive 2011/24/EC53. PAs employed via a direct payment do not need to comply with the legislation that will require them to have indemnity cover if practising unless they are a member of a regulated health profession, even if carrying out activities which might otherwise be performed by health professionals. LCCG will consider and discuss with the person, their nominee or representative, the potential risks associated with the clinical tasks being carried by the PAs on a case by case basis and this will form part of the risk assessment and care planning process and outcome recorded in the EHC Plan.

In the first instance, it will be the responsibility of the person buying the service to check the indemnity cover of the provider from which they are buying services. It is essential that enquiries are made to ascertain whether the provider has indemnity or insurance, and discuss if so, whether it is proportionate to the risks involved, and otherwise appropriate. Where uncertainty exists this should be referred to Liverpool CCG enquiries@liverpoolccg.nhs.uk for discussion, support and advice.
12. Registration and Regulated Activities

If a service set out in the EHC Plan is a regulated activity under the Health and Social Care Act 2008, the recipient of the direct payment will need to inquire as to whether their preferred provider is registered with the Care Quality Commission (CQC). A direct payment cannot be used to purchase a regulated activity from a non-registered service provider. Liverpool CCG can offer support and assistance in this regard.

If a person employs a care worker directly, without the involvement of an agency or employer, the employee does not need to register with CQC. CQC guidance makes it clear that where a person, or a related third party on their behalf, makes their own arrangement for nursing care or personal care, and the nurse or carer works directly for them and under their control without an agency or employer involved in managing or directing the care provided, the nurse or carer does not need to register with the CQC for that regulated activity. A related third party means:

a. An individual with parental responsibility for a child to whom personal care services are to be provided.

b. An individual with power of attorney or other lawful authority to make arrangements on behalf of the person to whom personal care services are to be provided.

c. A group or individuals mentioned in a) and b) making arrangements on behalf of one or more persons to whom personal care services are to be provided.

d. A trust established for the purpose of providing services to meet the health or social care needs of a named individual.

This means that individual user trusts, set up to make arrangements for nursing care or personal care on behalf of someone are exempt from the requirement to register with the CQC. Also exempt are organisations that only help people find nurses or carers, such as employment agencies (sometimes known as introductory agencies), but who do not have any role in managing or directing the nursing or personal care that a nurse or carer provides.

In some circumstances, the provider may also need to be a registered member of a professional body affiliated with the Council for Healthcare Regulatory Excellence. If the EHC Plan specifies that a task or tasks require a registered professional to undertake it, only a professional who is thus registered may be employed to perform that task or tasks.

In the first instance it will be the responsibility of the person buying the service to check whether the provider they are purchasing from is appropriately registered and inform the Local Authority and CCG.
13. Monitoring and Reviewing Direct Payments

It is essential to check at appropriate intervals whether direct payments are being used effectively and whether making direct payments remains an appropriate way of securing the agreed provision. To this end, the Local Authority and, where appropriate, the CCG will periodically audit and review the use of direct payments.

The use of direct payments will be reviewed by the Local Authority and, where appropriate, the CCG within the first three months of the first direct payment being made and thereafter on at least an annual basis, usually at the point at which the Local Authority carries out its annual review of the child or young person's EHC Plan. The use of direct payments may also be reviewed in the following circumstances:

- if the Local Authority and, where appropriate, the CCG becomes aware, of concerns that direct payments made to a representative or nominee may not have been used to secure the provision of the services for which the payments were made;
- if the Local Authority and, where appropriate, the CCG become aware that the agreed provision should continue to be secured by means of direct payments;
- if the Local Authority and, where appropriate, the CCG is notified, or becomes aware, that the child or young person’s circumstances or needs have changed, and form the view that it is appropriate to carry out a review of the healthcare provision specified in the EHC Plan to ensure the individual’s needs are still being met;
- if it appears to the Local Authority and, where appropriate, the CCG that the person to whom direct payments are being made (whether that be the child’s parent or the parent's nominee or representative or the young person themselves or their nominee or representative) is not complying with the conditions specified in the Direct Payments Agreement;
- if the recipient of the direct payments requests a review; and
- in any other circumstances in which it appears to the Local Authority and, where appropriate, the CCG that a review is appropriate.

The use of direct payments have not been sufficient to secure the agreed provision;

13.1 Purpose of a Review

The review will consider whether:-

- the agreed provision should continue to be secured by means of direct payments;
- the direct payments have been used effectively and appropriately;
- the amount of direct payments continues to be sufficient to secure the agreed provision;
- the person to whom direct payments are being made remains both a person to whom direct payments may be made and able to manage the direct payments (as outlined in the relevant paragraphs within Point 2 of this guide);
- the person to whom direct payments are being made has complied with the conditions specified in the Direct Payments Agreement;
- where appropriate, the EHC Plan adequately addresses the needs of the person and the agreed outcomes are being met and the content of the EHC Plan remains appropriate and relevant to the needs of the person.

3 The Local Authority will also review the use of direct payments made in respect of educational provision whenever it carries out an interim / emergency review or a re-assessment of a child or young person’s EHC Plan.
13.2 Outcomes of a Review

Following a review, the Local Authority and, where appropriate, Liverpool CCG may:

• replace the person receiving direct payments with a nominee, the child’s parent or the young person, as appropriate, subject to the new recipient having signed and returned a completed Direct Payments Agreement;
• increase, maintain or reduce the amount of the direct payments;
• where appropriate, propose to amend the EHC Plan;
• require the person to whom the direct payments are being made to comply with either or both of the following conditions:
  • the person must not secure a service from a particular person; or
  • the person must provide such information as the Local Authority and, where appropriate, the CCG considers necessary;
• take any other action considered appropriate, including stopping making direct payments.

14. Stopping or reducing the amount of a Direct Payment

The Local Authority and, where appropriate, Liverpool CCG may reduce the amount of direct payments provided that they are satisfied that the reduced amount is sufficient to secure the agreed provision. The Local Authority and, where appropriate, the CCG may stop making direct payments altogether in the specific circumstances described below.

Before making a decision to stop or reduce the amount of direct payments, the Local Authority and, where appropriate, Liverpool CCG will, wherever possible, consult with all relevant parties and the family and young person.

Where the Local Authority and, where appropriate, the CCG decide to stop or reduce the amount of direct payments, the recipient will be given prior written notice of both the decision itself and the reasons why the decision has been taken.

Where direct payments have been stopped or the amount of the payments reduced, the child’s parent (or the parent’s nominee or representative) or the young person (or their nominee or representative) may request a reconsideration of the decision, and may make representations and/or provide evidence or relevant information to be considered as part of the reconsideration by the Local Authority and, where appropriate, the CCG. Where this happens, the Local Authority and, where appropriate, the CCG will inform the relevant parties in writing of the decision following the reconsideration and state the reasons for the decision. The Local Authority and, where appropriate, the CCG are not required to undertake more than one reconsideration of any such decision.

Direct payments may be reduced where payments have been accumulated and remain unused and the Local Authority and, where appropriate, the CCG considers that it is reasonable to offset unused direct payments against the outstanding amount to be paid.
The Local Authority and, where appropriate, the CCG will establish why the surplus has built up. A surplus may, for example, indicate that the child or young person is not receiving the provision which the payments are intended to secure or that the amount of the payments is too high. Whilst the Local Authority and, where appropriate, the CCG may reduce the amount of direct payments in these circumstances, the amount of the reduction cannot exceed the amount that would have been paid to the recipient in respect of the same period. They can, however, request that some or all of the unspent money is returned.

Direct payments made in respect of any agreed provision (educational, health and/or social care) within the child or young person’s EHC Plan will be stopped in the following circumstances:-

- in the case of a young person who has capacity to consent to the making of direct payments, the young person does not, or has withdrawn, consent to receive direct payments;
- in the case of a child or a young person who lacks capacity to consent to the making of direct payments, the child’s parent or the parent’s nominee or representative or the young person themselves or their nominee or representative withdraws their consent to receive direct payments and no other nominee or representative has been appointed;
- the recipient’s circumstances have changed in that it appears to the Local Authority that they now fall within one or more of the categories outlined in Annexe B to this guide;
- the person in respect of whom direct payments have been made has died.

Direct payments made in respect of any agreed educational provision in the child or young person’s EHC Plan will be stopped if the Local Authority is satisfied that:-

- the recipient no longer appears to be capable or managing direct payments, either without assistance or with such assistance as may be available to them;
- 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;
- 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 is no longer compatible with the efficient use of the authority’s resources;
- the recipient has failed to comply with any of the conditions on which the local authority has agreed to make direct payments; or
- the EHC Plan has ceased, in which case the child or young person concerned will cease to be eligible to receive direct payments.

The Local Authority may also stop direct payments in respect of social care provision if any of the statutory conditions on which such payments are made are no longer being complied with or if, in all the circumstances of the case, the Authority considers it appropriate to terminate the making of direct payments.

Direct payments in respect of healthcare provision may be stopped if Liverpool CCG is satisfied that:-

- the child or young person in respect of whom a direct payment is made is no longer a “patient”;
- the child or young person’s representative or nominee is not a suitable person to receive the direct payments;

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4 Set out in regulation 11 of the Community Care, Services for Carers and Children’s Services (Direct Payments) (England) Regulations 2009.
5 As defined by regulation 2(1) of the National Health Service (Direct Payments) Regulations 2013.
• the direct payments have been used otherwise than for a service specified in the EHC Plan;
• theft, fraud or another offence may have occurred in connection with the direct payments;
• the health needs of the child or young person concerned cannot be, or are not being, met by services secured by means of direct payments.

If, for whatever reason, the direct payments are stopped, any legal rights or liabilities acquired or incurred in respect of educational and/or healthcare provision (but not social care provision) secured by means of direct payments will transfer to the Local Authority and, where appropriate, Liverpool CCG. This means that the Local Authority and, where appropriate, the CCG will be responsible for fulfilling any contractual obligations which would otherwise have been the responsibility of the recipient.

15. Repaying a Direct Payment

In some circumstances, the Local Authority and, where appropriate Liverpool CCG may require the recipient to repay part or all of the direct payments (the decision to seek repayment, and the amount of money to be reclaimed will be at the discretion of the Authority and, where appropriate, the CCG).

Direct payments may be reclaimed if:-
• the circumstances of the child or young person have changed in a manner which has an impact on the appropriateness of the agreed provision specified in their EHC Plan;
• all or part of the direct payments have not been used to secure the agreed provision and/or have accumulated;
• they have been used otherwise than to secure the provision specified in the child or young person’s EHC Plan;
• theft, fraud or another offence may have occurred in connection with the direct payments;
• the person in respect of whom direct payments have been made has died, leaving part of the direct payment unspent (unless exceptional circumstances apply).

If the Local Authority and, where appropriate, Liverpool CCG decide to seek repayment, they will give the relevant person(s) reasonable notice in writing, stating:-
• the reasons for their decision;
• the amount to be repaid;
• the time in which the money must be repaid; and
• the name of the person responsible for making the repayment.

On receipt of notice from the Local Authority and, where appropriate, the CCG, the relevant person(s) may request a reconsideration of the decision. They may also make representations and/or provide additional evidence or relevant information for the Authority and, where appropriate, the CCG to consider as part of the reconsideration. The Local Authority and, where appropriate, the CCG must reconsider their decision in the light of any new evidence or relevant information and thereafter notify the relevant persons in writing of the outcome of their reconsideration. The Local Authority and, where appropriate, the CCG can only be required to reconsider their decision once.
Annexe A  Use of Representatives and Nominees to receive Direct Payments and Consent

**Nominees and Representatives**
If a person aged 16 or over who is receiving care has capacity, but does not wish (for whatever reason) to receive direct payments themselves, they may nominate someone else to receive them on their behalf (a nominee). A representative (for a person aged 16 or over who does not have capacity or for a child) may also choose to nominate someone (a nominee) to hold and manage the direct payment on their behalf.

**Nominees for People with Capacity**
The role of nominee for direct payments for healthcare is different from the role of nominee for direct payments for social care. For social care direct payments, a nominee does not have to take on all the responsibilities of someone receiving direct payments, but can simply carry out certain functions such as receiving or managing direct payments on behalf of the person receiving them. In direct payments for healthcare, however, the nominee is responsible for fulfilling all the responsibilities of someone receiving direct payments.

If the proposed nominee is not a close family member of the person, living in the same household as the person, or a friend involved in the person’s care, then the nominee will be required to apply for an enhanced Disclosure and Barring Service (DBS) certificate (formerly a CRB check) with a check of the adults’ barred list. If a proposed nominee in respect of a person aged 18 or over is barred, consent will not be given. This is because the Safeguarding Vulnerable Groups Act 2006 prohibits a barred person from engaging in the activities of managing the person’s cash or paying the person’s bills.

If the proposed nominee is a close family member of the person, living in the same household as the person or a friend involved in the person’s care, there is no legal power to request these checks.

An organisation (including one such as a Trust established for the purpose) may agree to act as nominee. Where this is the case, that organisation must identify the individual who will, on their behalf, have overall responsibility for the day-to-day management of the direct payments.

**Capacity to Consent**
Under the Mental Capacity Act 2005 a person lacks capacity if they are unable to make a decision because of an impairment of, or a disturbance in the functioning of, the mind or brain. Broadly speaking, ‘mental capacity’ means the ability to make a decision in question at the time it needs to be made. Where there is reasonable belief that a person is unable to make a decision about the making of direct payments to them, the Local Authority and, where appropriate Liverpool CCG will assess the person’s capacity to consent, using a two stage test of capacity.

**Fluctuating Capacity**
Where a person who has consented to the making of direct payments to them subsequently loses their capacity to consent, the Local Authority and, where appropriate, Liverpool CCG may, where it is satisfied that the loss of capacity is temporary, allow a
A representative can be:

- a deputy appointed by the Court of Protection to make decisions relevant to healthcare and direct payments ("the relevant decisions");
- a donee of a lasting power of attorney with the power to make the relevant decisions;
- a person vested with an enduring power of attorney with the power to make the relevant decisions;
- the person with parental responsibility, if the patient is a child;
- the person with parental responsibility, if the patient is over 16 and lacks capacity; or
- someone appointed by the Local Authority and, where appropriate Liverpool CCG to receive and manage direct payments on behalf of a person, other than a child, who lacks capacity.

Representatives for People without Capacity

A representative is someone who agrees to act on behalf of someone who is otherwise eligible to receive direct payments but cannot do so because they do not have the capacity to consent to receiving one, or because they are a child. Representatives are responsible for consenting to a direct payment and fulfilling all the responsibilities of someone receiving direct payments (also known as a ‘suitable person’).

A representative may identify a nominee to receive and manage direct payments on their behalf, subject to the nominee’s agreement and the approval of the Local Authority and, where appropriate, Liverpool CCG.

An appointed representative could be anyone deemed suitable by the Local Authority and, where appropriate, Liverpool CCG, taking into account previously expressed wishes of the patient, and as far as possible their current wishes and feelings. Where possible, the Local Authority and, where appropriate, Liverpool CCG will consider appointing someone with a close relationship to the person, for example a close family member or a friend.
Annexe B  Persons excluded from Direct Payments

The Community Care, services for Carers and Children’s Services (Direct Payments) (England) Regulations 2009, National Health Service (Direct Payments) Regulations 2013 as amended by the National Health Service (Direct Payments) (Amendment) Regulations 2013 and the Special Educational Needs (Personal Budgets) Regulations 2014 (as amended by the Special Educational Needs (miscellaneous amendments) regulations 2014) state that a person is unable to receive a direct payment if they are:

a. subject to a drug rehabilitation requirement, as defined by section 209 of the Criminal Justice Act 2003 (drug rehabilitation requirement), imposed by a community order within the meaning of section 177 (community orders) of that Act, or by a suspended sentence of imprisonment within the meaning of section 189 of that Act (suspended sentences of imprisonment);

b. subject to an alcohol treatment requirement as defined by section 212 of the Criminal Justice Act 2003 (alcohol treatment requirement), imposed by a community order, within the meaning of section 177 of that Act, or by a suspended sentence of imprisonment, within the meaning of section 189 of that Act;

c. released on licence under Part 2 of the Criminal Justice Act 1991 (early release of prisoners), Chapter 6 of Part 12 of the Criminal Justice Act 2003 (release on licence) or Chapter 2 of the Crime (Sentences) Act 1997 (life sentences) subject to a non-standard licence condition requiring the offender to undertake offending behaviour work to address drug or alcohol related behaviour;

d. required to submit to treatment for their drug or alcohol dependency by virtue of a community rehabilitation order within the meaning of section 41 of the Powers of Criminal Courts (Sentencing) Act 2000 (community rehabilitation orders) or a community punishment and rehabilitation order within the meaning of section 51 of that Act (community punishment and rehabilitation orders);

e. subject to a drug treatment and testing order imposed under section 52 of the Powers of Criminal Courts (Sentencing) Act 2000 (drug treatment and testing orders);

f. subject to a youth rehabilitation order imposed in accordance with paragraph 22 (drug treatment requirement) of Schedule 1 to the Criminal Justice and Immigration Act 200865 (“the 2008 Act”) which requires the person to submit to treatment pursuant to a drug treatment requirement;

g. subject to a youth rehabilitation order imposed in accordance with paragraph 23 of Schedule 1 to the 2008 Act (drug testing requirement) which includes a drug testing requirement;

h. subject to a youth rehabilitation order imposed in accordance with paragraph 24 of Schedule 1 to the 2008 Act (intoxicating substance treatment requirement) which requires the person to submit to treatment pursuant to an intoxicating substance treatment requirement;

i. required to submit to treatment for their drug or alcohol dependency by virtue of a requirement of a probation order within the meaning of sections 228 to 230 of the Criminal Procedure (Scotland) Act 1995 (probation orders) or subject to a drug treatment and testing order within the meaning of section 234B of that Act (drug treatment and testing order); or released on licence under section 22 (release on licence of persons serving determinate sentences) or section 26 of the Prisons (Scotland) Act 1989 (release on licence of persons sentenced to imprisonment for life, etc.) or under section 1 (release of short-term, long term and life prisoners) or section 1AA of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (release of certain sexual offenders) and subject to a condition that they submit to treatment for their drug or alcohol dependency.
### Glossary of Terms

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<thead>
<tr>
<th><strong>Term</strong></th>
<th><strong>Definition</strong></th>
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<tr>
<td><strong>Annual Review</strong></td>
<td>The yearly review of a Statement of Special Educational Needs or Education Health and Care Plan carried out by the Local Authority.</td>
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<tr>
<td><strong>Assessment</strong></td>
<td>A process that identifies strengths, weaknesses and needs across all areas of a child’s or young person’s life, and involves both parent carers and practitioners.</td>
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| **CC**         | **Continuing Care**  
|               | see Health pages of Local Offer                                                                                                                                                                             |
| **CCG**        | **Clinical Commissioning Group**  
|               | CCGs commission most of the hospital and community NHS services in the local areas for which they are responsible. Commissioning involves deciding what services are needed, and ensuring that they are provided. CCGs are overseen by NHS England, which retains responsibility for commissioning primary care services such as GP and dental services, as well as some specialised hospital services. All GP practices now belong to a CCG, but groups also include other health professionals, such as nurses. See Health pages of Local Offer. |
| **CHC**        | **Continuing Health Care**  
|               | See Health pages of Local Offer                                                                                                                                                                             |
| **CYP**        | **Children and Young People**                                                                                                                                                                               |
| **DP**         | **Direct Payments**  
|               | The aim is to give more flexibility on how services are provided. By giving money instead of providing services, people have greater choice and control over their lives and are able to make their own decisions about how their support is delivered. |
| **EHCP**       | **Education Health and Care Plan**  
<p>|               | A single plan to be used for children and young people from birth to 25 years. The plan replaces Statements of Special Educational Need from September 2014. An EHC Plan is one in which the parent carers and practitioners build on the coordinated assessment process to set out their desired outcomes for the child or young person and their family. The plan will identify the agreed priority of each of these outcomes and set out how they will be achieved. The EHC Plan will cover the contribution of the family |</p>
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<tr>
<th><strong>EHCP</strong></th>
<th>and all relevant agencies and set out clear responsibilities and accountabilities with timescales.</th>
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| **GP**   | **General Practitioner**  
|           | See Health part of LO |
| **LA**   | **Local Authority**  
|           | LAs provide a wide range of services, either directly through their staff or by commissioning services from outside organisations. They also have responsibility for the economic, social and environmental ‘wellbeing’ of their area. Most local authority services are mandatory. |
| **LCC**  | **Liverpool City Council**  
|   | https://www.liverpool.gov.uk/  
|       | Follow the link for more information |
| **LO**   | **Local Offer**  
|           | The local offer will set out, in one place, what support and services are available for children and young people with disabilities and special educational needs. |
| **Outcomes** | Outcomes are where there is a clear, agreed priority for desired outcomes for the child and young person or their family. The focus should be on what will change for the child or young person. These are an important part of an Education, Health and Care Plan.  
|           | See Chapter 9.64 of Code of Practice 2014 |
| **PB**   | **Personal Budget**  
|           | The amount of funding available to meet the desired outcomes set out in the Education, Health and Care Plan for an individual child or young person. It will enable the child and their family to make choices to suit their particular circumstances about the way the outcomes are achieved. The personal budget can be held by the parent carers through a direct payment, held on their behalf by an agency or other organisation or a combination of these. |
| **Planning** | A process which allows parent carers and practitioners to come together to agree how their desired outcomes for the child or young person and their family can be achieved. |
| **SEND** | **Special Educational Needs and Disabilities**  
|           | See Code of Practice 2014 |
| **Third Party Arrangements** | An outside party whose function it is to provide a range of services to support Personal Budgets on behalf the family. |
References

Special Educational Needs and Disability Code of Practice: 0 to 25 years January 2015

The Community Care, services for Carers and Children’s Services (Direct Payments) (England) Regulations 2009

The National Health Service (Direct Payments) Regulations 2013 as amended by the National Health Service (Direct Payments) (Amendment) Regulations 2013

The Special Educational Needs (Personal Budgets) Regulations 2014 as amended by the Special Educational Needs (Miscellaneous Amendments) Regulations 2014