



# **Personal Budgets & Direct Payments: Policy, Practice and Guidance**

**December 2015**

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## 1. About this document

The aim of this document is to explain the approach taken by Leeds City Council (LCC) and the Leeds NHS Clinical Commissioning Groups (CCGs) to personal budgets across education, health and social care for children and young people. It also includes detailed guidance regarding direct payments. This includes where there is an Education Health and Care (EHC) Plan and where there may be social care or health needs and not an EHC Plan. Specific guidance in relation to each of these pathways are attached in the annexes.

The requirement arises through implementation of the Children and Families Act 2014 and the rights within it for children and young people with disabilities or learning difficulties and their families to request a personal budget and where chosen a direct payment. In addition from October 2014 children and young people eligible for NHS continuing care acquired a right to have a personal health budget.

This document will inform all staff about personal budgets, the options for self directed support and implementing direct payments; will provide specific guidance for assessor staff to implement personal budget options and understand their responsibilities in doing so. This document can also be shared with recipients of personal budgets.

This policy applies to all direct payments issued by Leeds City Council whether issued in relation to Education, Health and Care (EHC) plans under the Children and Families Act 214 or otherwise.

This document is based on the 'Guidance Document for Personalisation & Personal Budgets (including Direct Payments)' by Wigan Council and WBCCG, a pathfinder for the Special Education Needs and Disability (SEND) reforms. It also draws on 'Direct Payments Policy and Practice, version 2 April 2014' by Leeds Children's Services and the Leeds Adult Social Care personal budgets policy. It acknowledges and supports compliance with the statutory SEND Code of Practice and the associated personal budgets regulations.

This document reflects current NHS policy in relation to personal health budgets (PHB) for children. A NHS Continuing Care Policy and CCG Direct Payment Guidance are in development and will be reflected in a later version of this document. The current NHS policy in relation to personal health budgets can be found at: <https://www.england.nhs.uk/healthbudgets/understanding/child-young-family/>

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## 2. Personalisation

Personalisation is at the heart of the Special Educational Needs and Disability (SEND) reforms. Personalisation is about putting children, young people and their families at the centre of the Education, Health and Care (EHC) decision making process. It means starting with the person as an individual with strengths, preferences and aspirations, identifying their needs and making choices about how and when they are supported to live their lives.

There are a number of ways in which personalisation is being developed. These include:

- Person-centred approaches where disabled children and their families are put at the centre of processes, enabling them to express their views, wishes and feelings and be included in decision making.
- Personalising the support that families receive by working in partnership with services across education, health and social care to ensure it is tailored to individual needs
- Changing funding mechanisms to provide the option and support for families to have a personal budget and direct payments where they choose (i.e.greater control over funding).
- Brokerage support, to support families to develop a personalised and creative co-produced support plan that describes how they will use their budget to meet the agreed outcomes.

## 3. Personal budgets

A personal budget is an amount of money or resources identified by the local authority and / or Leeds CCGs to help support a child and their family to receive the services and achieve the outcomes identified in their assessment of needs (e.g. an EHC needs assessment). It is a sum of funding available for children and young people where it is clear that they need additional provision above that available to most children and young people through local resources, also known as the “local offer”. Thus it is not the sum total of all the resources available to support the child or young person but those resources provided on top of the “local offer”.

The Special Educational Needs (SEN) Code of Practice 2014 provides statutory guidance under section 9 on personal budgets.

Relevant legislation and regulations include:

Section 49 of the Children and Families Act 2014, the Special Educational Needs (Personal Budgets) Regulations 2014, the Community Care, services for Carers and Children’s Services (Direct Payments) Regulations 2009 (the 2009 regulations will be replaced by those made under the Care Act 2014) and The National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) (Amendment) Regulations 2013 and 2014.

Direct payments were introduced in relation to social care services for adults through the Community Care (Direct Payments) Act 1996. This Act was repealed (in relation to England) by the Health and Social Care Act 2001 ('the 2001 Act') and direct payments are now governed for adults and children by the 2001 Act and Section 17A of the Children Act 1989 and associated regulations as follows:

- The Community Care, services for Carers and Children's Services (Direct Payments) Regulations 2009 (the 2009 regulations will be replaced by those made under the Care Act 2014)
- 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

It should be noted that the provisions in the regulations for personal budgets provided by health are similar to those provided by social care but not identical. Further information can be found at:

<https://www.england.nhs.uk/healthbudgets/understanding/child-young-family/>

Feedback from many families nationally shows that personal budgets often provide far greater levels of choice, control and flexibility for families. They allow the parent or young person to decide what care and support they receive, how and when. Examples of how families have used their personal budgets are available by going to the KIDS website. <http://kids.ritdns.com/making-it-personal-case-studies>.

### **3.1. Requesting a personal budget**

Young people and parents of children will be given information on and can request a personal budget once the authority has confirmed that it will prepare a draft EHC plan. Where requested, the authority must prepare a personal budget.

Parents and young people may also request a personal budget if they already have an EHC plan and during a statutory review of an existing EHC plan.

An EHC plan is the product of a jointly co-ordinated assessment which specifies the outcomes sought for the child or young person across education, health and social care. The EHC Plan will clearly state which outcomes will be met by a personal budget (if a personal budget is agreed) and how this will be achieved.

A personal budget may consist of elements of funding from education, health and social care. For example a personal budget may be made up of SEN funding only, in order to meet the child or young person's learning support needs, or it may incorporate funding from social care and/or health depending on the needs of the child.

In Leeds, a personal budget can currently include funding towards:

- Education – Schools are required to put appropriate support in place for children with SEN and disabilities through funding made available to them from local and central government. Where a child or young person is identified as requiring support which is over and above this amount, top-up funding is provided by the local authority to a setting via the Funding For Inclusion (FFI) process. This top-up funding is the amount which can be available for use as part of a personal budget.
- Health – Continuing Care - those children with exceptional health needs whose needs cannot be met through existing universal and targeted services and who meet the threshold for continuing care funding.
- Social Care – Short Breaks for disabled children, young people and their families.
- Transport.

Direct payments (one way of delivering a personal budget) for special educational provision, health care and social care provision are subject to separate regulations which govern the requirements for the payment of direct payments. Regulations governing direct payments for special educational provision place a number of additional requirements on local authorities and parents before a direct payment can be agreed. These include the requirement to consider the impact on other service users and value for money and to seek agreement from educational establishments where a service funded by a direct payment is delivered on their premises. Local Authorities must consider each request for a personal budget on its own individual merits having regard to the requirements which relate to the particular provision being provided. If a local authority is unable to identify a sum of money for the provision they should inform the child's parents or the young person of the reasons. For example the Local Authority may agree that the provision is needed but may be unable at that point in time to identify the exact cost of the provision for that child or young person because it forms part of wider funding that is currently supporting provision of services to a number of children or young people. This may be more likely to arise in relation to the provision of special educational provision.

### Education

It should be noted that a personal budget and in particular a direct payment cannot be made in respect of provision that will take place in a school, post 16 institution or early years setting without the written consent of the head teacher, Principal or the person occupying an equivalent position.

The options for a personal budget within a special school may be more limited than that of a mainstream school as the provision is more integrated.

### Social Care

It is not always appropriate for a child and their family to have an EHC plan. They may have a Child and Family Assessment or Early Help Assessment, where short breaks have been identified as one of the ways to meet identified needs and achieve

agreed outcomes. In this instance, the family or young person may request direct payments as a way of securing their short breaks.

## Health

The family or young person may also have a personal health budget for health related needs. A personal health budget may be requested directly through the Clinical Commissioning Group.

Through joint commissioning, LCC and CCGs will seek to increase choice and control over time through a wider range of budget areas being available.

### **3.2 Mechanisms for delivery of a personal budget**

Personal budgets can be managed in four different ways:

- Direct payments - a direct (cash) payment which is paid into an account for the family or young person to buy and manage services themselves.
- A virtual budget, where the local authority, CCG, school or college holds the personal budget and buys the support identified in the assessment of needs/EHC plan
- A third party budget, where someone independent of the LCC, the CCGs and the recipient of the personal budget for example a service provider, user-led organisation or a broker manages the budget with a family or young person.
- A combination of the above.

### **3.3 A system for determining a personal budget**

The process for determining the funding level for the personal budget will use the existing allocation mechanisms for identifying the amount of support (funding) for each child. These are currently:

- The FFI Handbook for education funding
- Social Care assessment and resource allocation through the Resource Allocation Decision and Review panel (RADAR)
- Early Help Assessment and resource allocation through RADAR
- The Transport Policy and Travel Assessors team for transport
- Leeds Children's Continuing Care Policy

### **3.4 Personal budget pathway for new referrals**

The process for completing an Education, Health and Care (EHC) plan follows six stages as below:

- Stage 1: Referral – Once a request for an EHC needs assessment has been received, LCC will arrange for an SEN Casework Officer to visit the young person or family at home to discuss the assessment process. As part of this visit, initial information will be given on personal budgets.

- Stage 2: Multi-agency Panel (MAP) – Once the home visit has been completed, the young person or family will be invited to a MAP meeting. This multi-agency panel will decide whether it is appropriate for the young person or child to have an EHC needs assessment. This decision should be made within six weeks from the referral. Should the young person or family not be in attendance at the meeting, they should be contacted with the outcome.
- Stage 3: Advice gathering – If a decision has been made to carry out an EHC needs assessment, professionals involved with the young person or family will provide relevant information to help determine whether an EHC plan would be helpful and appropriate.

As part of this process, agencies should identify the level of resourcing required to meet the identified needs of the child or young person. This should involve obtaining the relevant approval.

- Stage 4: Planning and Setting Objectives – Having gathered all of the information, LCC will then decide whether an EHC plan is required. If so the EHC plan is developed and agreed with the family at a ‘Next Steps’ meeting.
- Stage 5: Implementation of EHC plan– Where a personal budget has been agreed, the SEN Casework Officer will discuss the four options for managing it, and agree next steps with the family. This may include referral to a direct payment brokerage and support service
- Stage 6: Annual Reviews and monitoring – EHC plans must be reviewed and monitored at least annually and can be reviewed as required where needs change or the Plan is not achieving outcomes. The personal budget will be reviewed as part of this annual review and monitoring process.

It may be that different elements of the personal budget need to be reviewed more frequently, e.g. through the statutory reviews of a Child in Need Plan, a Child Protection Plan and a Looked After Child Review.

### **3.5 Exclusions**

The option for some or all of a personal budget to be given to families as a direct payment is not appropriate for all aspects of Education, Health or Care. The Regulations prohibit expenditure of direct payments on the following :

- Items or services that are unrelated to the identified needs or agreed outcomes in the EHC plan or other plan.
- Services directly provided by the Local Authority (although a mixed package can be arranged, ie some services arranged and some Direct Payment)
- School placements or post-16 institutions (i.e. fees and cost of a place)
- Placements for children who are looked after
- Long-term residential care, although they can be used for short term (respite) stays in residential care.
- Alcohol or tobacco

- Gambling - including lottery, bingo and raffle tickets
- Repayment of debt except debts relating to services specified in the EHC plan or other plan.
- Anything illegal or unlawful
- Employing close relatives who live in the same household to provide care services (except in exceptional circumstances) See section 4.10
- Housing services, such as rent payments
- Household bills, such as food and utility bills
- Non-statutory liabilities, such as tips, bonuses or ex gratia payments

For exclusions in relation to health, please see

<https://www.england.nhs.uk/healthbudgets/understanding/child-young-family/>

#### **4. Direct payments**

Direct payments are payments of cash to the service user via a separate identified bank account held for this specific purpose by the child, young person or their family.

Service users may use their direct payments to meet their health, education and social care needs in many different ways to help them achieve outcomes agreed in their assessment of need, as long it is approved by LCC or CCGs, is safe, legal and healthy and does in fact meet their assessed needs.

Some examples of how a direct payment may be used are listed below:

- Provision not currently offered as part of our Local Offer, such as additional tutoring in a particular subject area
- Recruiting and employing a specialist in a particular area of need for a child. Employing personal assistants to support in health tasks
- Buying support to enable engagement in activities where the child may need specialist health support to access
- Buying support to spend time with friends
- Purchasing specialist equipment to support health need
- Purchasing of health respite
- Recruiting and employing personal assistants
- Purchasing personal assistance from an agency
- Purchasing residential respite care or a short break
- Participating in activities, like outings or exercise classes, if they contribute to meeting the outcomes agreed in the EHC plan or equivalent plan
- Supporting access to community activities, college courses, and evening classes
- Trying out independent living
- Purchasing support to maintain contact with family members
- Purchasing support to learn new skills
- Purchasing some specialist equipment
- Covering the expenses for people to take them out
- Training for a setting

To be included in the future:

- Buying health elements of EHC plan, including equipment and therapies

Families and young people may choose activities that cost more than the direct payment in any one period. Families or young people can choose to top up direct payments from their own money or money can be saved over time to plan for these events. As long as the overall payments are used to achieve the outcomes agreed in the assessment of need, the actual pattern of support, i.e. on which days of the week support is accessed, can be finalised later.

#### **4.1 Decision to make a direct payment**

LCC and CCGs will only make a direct payment when they are satisfied that:

- There is an up to date assessment of need in place
- The person receiving the direct payment will use them to secure the agreed provision in an appropriate way and where the recipient is a representative or nominee, act in the best interests of the child or young person (see section 4.4)
- The direct payments will not have an adverse impact on other services which LCC or CCGs provide or arrange for children and young people under an EHC Plan
- Securing the proposed agreed provision by direct payments is an efficient use of LCC's or CCG's resources and the benefits present value for money and outweigh any direct additional financial cost
- This will directly benefit the child or young person
- This is consistent with the child or young person's wishes and feelings regarding their care and support (where applicable) and receiving a direct payment
- In the case of a child or a young person who cannot consent to the direct payment or who does not wish to manage this themselves, there is adequate provision of support from a representative (suitable person) or nominee.

Direct payments may be made, as appropriate, to:

- the child's representative (suitable person) who is likely to be a parent;
- the young person's representative (suitable person) where they lack capacity
- the young person (over 16); or
- a person or organisation (e.g. Leeds CIL) nominated in writing by the child's parent or the young person to receive direct payments on their behalf.

#### **4.2 Consent and capacity to consent**

##### **4.2.1 Consent and direct payment agreement**

Direct payments can only be made where appropriate consent has been given by:

- a person aged 16 or over who has the capacity to consent to the making of direct payments to them;
- the **representative** of a person aged 16 or over who lacks the relevant the capacity to consent;
- the **representative** of a child under 16 or a person or organisation **nominated** in writing by the child's parent or the young person aged 16 or over to receive direct payments on their behalf

The person receiving direct payments (the individual themselves if direct payments are made to them, or their nominee or representative) will be responsible for ensuring that the money is spent appropriately. They may also be responsible for using the direct payments to employ staff or entering into contracts for services.

Where an EHC plan is in place, it must be demonstrated that the direct payment is spent to meet the outcomes stated in the plan. If there is no EHC plan, the payments must be in line with the outcomes stated in the relevant assessment, such as the Early Help Assessment, Child and Family Assessment or Leeds Children's Continuing Care Policy.

The person, representative or nominee in receipt of direct payments must be able to give informed consent and understand what is involved. They will be required to sign a direct payments agreement, stating they agree to fulfilling these responsibilities.

#### **4.2.2 Capacity to consent**

Under the Mental Capacity Act 2005 it must be assumed that a person aged 16 or over has the capacity to make a decision unless they have been assessed as lacking capacity to make the decision. 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. All practicable steps should be taken to support a person to make a decision where required. Where there is reasonable belief that a person is unable to make a decision about the making of direct payments to them, LCC and or CCGs will assess the person's capacity to consent, using a two stage test of capacity.

The first stage is a diagnostic test to establish whether the person has an impairment of or disturbance in the functioning of the mind or brain. The second stage is a functional test to consider whether the impairment or disturbance prevents the person from being able to make the decision. The person will be considered able to make a decision if they can understand and information relevant to the decision, weigh this information to reach a decision and communicate the decision.

#### **4.2.3 Fluctuating capacity**

Where a person who has consented to the making of direct payments to them subsequently loses their capacity to consent, LCC and or CCGs may, where it is satisfied that the loss of capacity is temporary, allow a representative to be appointed to receive direct payments on their behalf, or an existing nominee to continue to receive them, until they regain capacity. In these circumstances, the role will be similar to that of a representative for someone who has been assessed to lack

capacity on an ongoing basis. In cases involving people with fluctuating capacity LCC and CCGs will prioritise continuity of care, ensuring that any disruption is as minimal as possible.

### **4.3 Ability to manage direct payments**

When deciding whether or not someone has the ability to manage direct payments (including a representative or nominee), LCC and or CCGs will consider:

- whether they 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

In deciding whether or not someone has the ability to manage direct payments, including a representative or nominee, and whether they are otherwise suitable LCC and/or CCGs may consult with a range of people if they believe those people have information relevant to the decision regarding whether or not to make direct payments. This could include any of the following:

- Anyone identified by the person as someone to be consulted
- If the person is aged between 16 and 18, the person with personal responsibility unless this would not be consistent with their welfare
- An individual primarily involved in the person's care or provision of service
- Anyone else who provides care or services
- An independent mental capacity advocate or independent mental health advocate who may have been appointed for the person
- Any health professional or other professional individual who provides healthcare for the person eg a GP
- Where relevant anyone named by the person for whom direct payments are to be made, when they had capacity, as a person to be consulted

#### **4.3.1 Refusing Direct Payments**

If a decision is made that someone is not suitable to receive direct payments, the person or a representative or nominee will be informed in writing, stating the reasons for that decision. This should be in an appropriate format for the person, nominee or the representative to understand. The person, representative or nominee is entitled to ask for the decision to be reconsidered but the decision need only be reconsidered once in any six month period. If the person, representative or nominee is still dissatisfied they should be referred to the complaints procedure.

There are certain individuals who are excluded by the Regulations from receiving direct payments. In the case of children and young people this will include the following :

- Person subject to a youth rehabilitation order which requires them to submit to treatment pursuant to a drug treatment requirement.
- Person subject to a youth rehabilitation order which requires them to submit to drug testing
- Person subject to a youth rehabilitation order which requires them to submit to treatment pursuant to an intoxicating substance treatment requirement

#### **4.4 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.

##### **4.4.1 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 by LCC or the CCG for the nominee to act. This is because the Safeguarding Vulnerable Groups Act 2006 prohibits a barred person from engaging in the activities of managing the person's money 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 an Independent User Trust established for the purpose of receiving direct payments on behalf of a person) 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. In the case of an Independent User Trust, a trust deed must be drawn up which sets out the purpose of the trust and the roles of the individual trustees. This will relate to use of the direct payments to ensure the person's identified needs are met.

In some cases an organisation will provide financial management or support services to the recipient of the direct payment, including a representative or a nominee, but will not have the status of a nominee and the recipient will remain responsible.

#### **4.4.2 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 must give their consent to receive the direct payment and confirm that they understand the responsibilities of this role. 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 LCC and or CCGs.

An appointed representative could be anyone deemed suitable by the LCC and or CCGs, taking into account previously expressed wishes of the patient, and as far as possible their current wishes and feelings. Where possible, LCC and or CCGs will consider appointing someone with a close relationship to the person, for example a close family member or a friend. If a representative is not a close family member who resides in the same household as the service user or a friend involved in their care, the representative will require the same DBS checks as for a nominee.

A representative can be any of the following:

- 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 service user is a child;
- the person with parental responsibility, if the patient is over 16 and lacks capacity; or
- someone or an organisation such as an independent user trust appointed by LCC and/or CCGs to receive and manage direct payments on behalf of a person, other than a child, who lacks capacity.

#### **4.5 Transition: when a child becomes an adult**

Young people from the age of 16 can consent to receive a direct payment and their wishes and feelings should be ascertained when they reach 16. Where a young person in respect of whom direct payments are being made becomes an adult (on their 18th birthday), the local authority must take reasonable steps to ascertain whether the young person still consents to receive direct payments if they remain eligible. Where the young person has an EHC plan, Children's Services are responsible for providing a personal budget up to the age of 25.

#### **4.6 Receiving a direct payment**

##### **4.6.1 Bank Account**

Direct payments must be made into an approved and separate bank account. It is important that when direct payments are approved, any existing direct payments are

identified. Recipients should not be expected to open multiple direct payment bank accounts.

#### **4.6.2 Managed bank accounts**

Managed bank accounts will be offered via an assessed need such as a parent having mental health issues, learning disabilities or alcohol/substance dependency.

#### **4.6.3 The Direct Payment Agreement**

LCC or CCG will issue a Direct Payments Agreement (see annex E) specifying the following:

- the name of the child or young person in respect of whom direct payments are to be made
- 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 LCC and or CCG

#### **4.6.4 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 condition specified
- notify LCC or CCG of any changes in circumstances which might affect the need for the agreed provision
- use the bank account approved by LCC or CCG solely for the direct payments and ensure it is only accessible by the recipient or any other person approved in writing
- keep a record of money paid in and withdrawn from the approved bank account
- provide LCC or CCG with information and evidence relating to the account and the agreed provision when requested for example receipts, invoices, timesheets.

#### **4.6.5 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 outlining their responsibility as a principle for all contractual arrangements entered into and secured by means of direct payments, for the benefit of the child or young person

#### **4.7 Amount of direct payments (applicable to LCC only)**

LCC will ensure that the amount of direct payments is sufficient to secure the agreed provision to meet assessed need. The amount may increase or reduce if LCC is satisfied that the new amount is sufficient to secure the agreed provision.

A personal budget will be such that it will cover on costs associated with a family or young person employing an individual, including DBS checks, payroll, employers insurance liability and contingency (equivalent to 10% of direct payment for emergencies such as an unpaid carer is ill and a replacement has to be employed; to pay the first period of sickness pay for a personal assistant until it can be reclaimed

from the Inland Revenue; or the recipient dies and there are redundancy costs). This will have been taken into consideration when agreeing the personal budget and whether this represents an efficient use of resources.

Contingency payments will be made for emergencies such as; an unpaid carer is ill and a replacement has to be employed; to pay the first period of sickness pay for a personal assistant until it can be reclaimed from the Inland Revenue; or the recipient dies and there are redundancy costs. The contingency payment will be equivalent to two week's direct payment or 10% of the direct payment.

#### **4.8 Stopping or reducing a direct payment (applicable to LCC only)**

The size of the direct payment may be increased or decreased at any time, if LCC is satisfied that the new amount is sufficient to cover the full cost of the Co-produced support plan. Before making a decision to stop or reduce a direct payment, wherever possible and appropriate, LCC will consult with the person receiving it to enable any misunderstandings or inadvertent errors to be addressed, and enable any alternative arrangements to be made.

Whenever a direct payment is reduced or stopped, LCC will ensure that the person receiving the direct payment is given four weeks notice, and an explanation regarding the reasons for the decision, in writing.

There may be exceptional circumstances where payments would need to be stopped immediately, such as illegal use of funds. In this case, an assessment must be undertaken of the family to determine alternative support and safeguarding needs to ensure the needs of the child or young person continue to be met and they are not put at risk.

Direct payments may be reduced:

- where LCC is satisfied that needs have been met or reduced (e.g. through an EHC plan review) or that costs of support have reduced;
- if a surplus payment has accumulated that has remained unused. A surplus may indicate that the individual is not receiving the care they need or too much money has been allocated.

As part of the review process (e.g. EHC plan review or separate review of direct payments by Social Care or CCG), LCC will establish why the surplus has built up. Under these circumstances, a reduction in direct payment in any given period cannot be more than the amount that would have been paid to them in the same period.

Where direct payments have been reduced, the person receiving care, a representative or nominee may request LCC to reconsider the decision, and may provide evidence or relevant information to be considered as part of that deliberation. Where this happens, LCC will inform the person receiving care and any representative or nominee in writing of the decision after reconsideration, and state the reasons for the decision. LCC would not be required to undertake more than one reconsideration of any such decision and if still dissatisfied the person, nominee or representative should be referred to the complaints procedure.

Direct payments will be stopped if:

- a person, with capacity to consent, withdraws their consent to receiving direct payments;
- a person who has recovered the capacity to consent, does not consent to direct payments continuing;
- the person has died, or;
- a representative withdraws their consent to receive direct payments, and no other representative has been appointed.

Direct payments may be stopped if LCC is satisfied:

- the person no longer needs care;
- direct payments are no longer a suitable way of providing the person with care;
- There is reason to believe that a representative or nominee is no longer suitable to receive direct payments, and no other person has been appointed;
- a nominee withdraws their consent, and the person receiving care or their representative does not wish to receive the direct payment themselves;
- the person has withdrawn their consent to the nominee receiving direct payments on their behalf;
- the direct payment has been used for purposes other than the outcomes and or services agreed in the Co-produced support plan;
- fraud, theft or an abuse in connection with the direct payment has taken place;  
or
- the person has died.

If, for whatever reason, the person receiving care is no longer able or willing to manage the direct payment, LCC and or CCGs will be responsible for fulfilling the contractual obligations the person entered into. After a direct payment is stopped, all rights and liabilities acquired or incurred as a result of a service purchased by direct payments will transfer to LCC and or CCGs.

#### **4.9 Repayment of a direct payment**

In some circumstances, LCC or CCGS may ask for all, or part of, the direct payment to be repaid (the decision to seek repayment, and the amount of money to be reclaimed will be at the discretion of LCC and or CCGs).

Direct payments may be reclaimed if:

- they have been used to purchase a service that does not meet the agreed outcomes as identified in the EHC Plan or other plan;
- theft, fraud or other offences have occurred;
- the person receiving care has died, leaving part of the direct payment unspent;
- the EHC Plan has changed substantially resulting in surplus funds;
- the individual's circumstances have changed substantially, such as admission to hospital resulting in the individual not using the direct payment to purchase their care; or
- a significant proportion of the direct payment has not been used to purchase services to meet the agreed outcomes as specified in the EHC Plan resulting in money being accumulated.

Following the annual audit by the relevant finance team(s), 90% of any unspent direct payments will be clawed back. The remaining 10% will be rolled over to the following year. If the direct payment includes funding from more than one partner, namely Health, Education or Social Care, each partner will receive a straight-forward half or third of the total clawback.

If LCC or CCGs decide to seek repayment, they will give the relevant person 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 LCC and/or CCGs, the person, representative or nominee may request a reconsideration of the decision. They may also provide additional evidence or relevant information to inform that decision. LCC and or CCGs must reconsider their decision in light of any new evidence, and then notify and explain the outcome of their deliberation in writing. LCC and/or CCGs can only be required to reconsider their decision once. If the person, representative or nominee is still dissatisfied they should be referred to the complaints procedure.

#### **4.10 Using a direct payment to employ staff**

People may wish to use their direct payment to employ staff to provide them with care and support for example a personal assistant. A range of advice and support is available for persons seeking to employ staff (see section 5). The additional costs incurred by the person in employing staff must be included in the direct payment.

Employing a family member:

A close family member residing in the same household may only be employed by the recipient of the direct payment in exceptional circumstances where it is necessary to satisfactorily meet the person's needs for a service or to promote the welfare of the child in respect of whom the service is needed. This should be decided on a case by case basis with consideration being given to the :

- Whether there are genuine overwhelming reasons why the family member needs to be employed
- Whether there would be a contractual arrangement for services with the family member and all parties are clear where the potentially blurred boundaries between contractual and informal voluntary services lie.
- Contingency plans are in place to ensure continuity of care and the service users needs are met in the event that the relative is unable to provide the services required through illness or other reasons
- The arrangements for the provision of services by the relative are sustainable.

Examples of when a family member living in the same household may be employed could be when the following exceptional circumstances arise :

- ethnicity or religious belief specific limitations apply regarding who may acceptably be employed to deliver the care, and there is no likelihood of being able to recruit an appropriate carer locally
- delivery of personal care by a third party would cause genuine distress to the service user
- there is a need for live-in care, but no appropriate accommodation available
- care needs are intermittent and unpredictable, and recruitment or use of an agency to meet such needs would be impracticable
- substantial effort at recruitment has been unsuccessful due to exceptional local workforce pressures or geographic isolation and/or this is the only practical way of meeting the care needs during a temporary breakdown of other service arrangements.

Where a family or young person wishes to employ a close family member who lives in the same household the keyworker will need to consider whether there are exceptional circumstances for this and will require permission from the Head of Service for Complex Needs and/or the NHS Commissioner for Children's services.

This does not prevent a service user from employing a family member who does not live in the the same household or from employing a live-in carer who is not a close family member.

#### **4.10.1 Indemnity and direct payments**

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/EC. 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. CCGs 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 Co-produced ELH or support plan.

Where applicable , 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. They must make enquiries to ascertain whether the provider has indemnity or insurance, and if so, whether it is proportionate to the risks involved, and otherwise appropriate. However, the person buying the service can ask LCC or the CCG to undertake these checks on their behalf.

#### **4.10.2 Purchase of regulated activities**

If someone wishes to buy a service which is a regulated activity under the Health and Social Care Act 2008, they can only purchase provision from a provider who is registered with the Care Quality Commission (CQC).

#### **4.10.3 Registration for directly employed workers**

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. An independent usertrust 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 Co-produced support 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.

Where applicable, it will be the responsibility of the person buying the service to check whether the provider they are purchasing from is appropriately registered. However, the person buying the service can ask LCC or the CCG to undertake these checks on their behalf.

## **5. Information, advice and support**

Whoever is responsible for co-ordinating support, for example, the SEN Casework Officer, Health Visitor, Lead Practitioner or Social Worker, will have a detailed discussion with the family to discuss if they are interested in a personal budget.

Independent information, advice and support can also be provided by the Special Educational Needs and Disability Information, Advice and Support Service (SENDIASS). Independent Supporters can also give some support during the transition process to an EHC plan. SENDIASS and Scope have funding to deliver Independent Supporters in Leeds during 2015/16. In addition to this, any young people who have concerns in relation to personal budgets, which cannot be resolved by these services, can be referred to independent mediation or advocacy provision. Advocacy is currently delivered by Barnardo's in Leeds.

A Parent and Carer Handbook, which gives detailed information about requesting and accessing a personal budget can be given to families.

## 5.1 Role of personal budget brokerage and support

If a personal budget is agreed, the young person or in the case of a child or a young person who lacks capacity, the representative will be offered support and assistance to draw up a plan to describe how they will use the indicative budget to meet the agreed outcomes, which aligns with the EHC plan. This support and assistance may be obtained from an independent specialist service or broker.

LCC currently commissions the Actively Seeking Independence Support Team (ASIST) to provide advice and practical assistance, including brokerage support.

ASIST  
Actively Seeking Independence Support Team  
Armley Grange Drive  
Leeds  
LS12 3QH  
W: [www.leedscil.org.uk](http://www.leedscil.org.uk), E: [asist@leedscil.org.uk](mailto:asist@leedscil.org.uk), T: 0113 2311125

More specifically, a broker can:

- Work with families on a holistic basis to develop a co-produced support plan and package which keeps their loved one healthy, safe and well and ensure that they are leading a good life
- Ensure families have access to independent information, advice and support
- Work with individuals and families to promote innovative and creative support planning that gives real choice and control, dignity and respect and ensures that they are kept healthy, safe and well
- Encourage and develop informal support and co-ordinate support and resources
- Support people to make the co-produced support plan happen — seeking out excellent providers and great personal assistants
- Support families to keep strong by providing both practical and emotional support
- Support families to navigate the system by offering the one point of contact to co-ordinate services
- Ensure families have the tools and training to confidently take forward the co-produced support plan and get a better life
- Promote choice, control and empowerment by doing as much as is needed and no more than necessary

When drawing up the support agreement, the broker will discuss with the child / young person and their family existing resources that can be drawn upon. These resources may include:

- **People:** The people they know e.g. close friends, extended family, work colleagues, social friends and neighbours.
- **Access:** The place they live, local resources, shops, health services, schools, leisure facilities and community activities they are part of.
- **Assets:** The money they have control over, their income, benefits, savings, and if they have one, a personal budget.

- **Skills and knowledge:** Their strengths, abilities, knowledge and decision making skills.
- **Resilience:** Their well-being, the inner strength that keeps them going when times get tough, their physical, emotional and mental health, and for some, their faith, belief system or religion.

If families choose to take their personal budget as a direct payment then support will be offered by referring to ASIST.

## **5.2 Direct payment support**

If the recipient of a direct payment needs to employ a personal assistant (PA), support, information and guidance will be provided making it easier for individuals to recruit, select and employ. Practitioners should make a referral to the support and advice service (currently delivered by ASIST) in the first instance. It is important, for example, that 16 and 17 year olds, wishing to undertake a direct payment should visit the ASIST Centre with the practitioner. ASIST have staff that provide independent advice and guidance on all direct payment issues. Advice on employment is the role of the adviser and not the worker. Parent carers and potential service users will be able to receive telephone advice from ASIST.

Individuals will be supported with:

### **5.2.1 Recruitment**

Recruitment tasks will include:-

- Advice and support to draw up a job description
- Advice and support to draw up a person specification
- Advice and support to advertise a post, score applications and shortlist
- Assist the employer to request and evaluate references
- Advice and support on drawing up a contract of employment
- Practical support to act as an addressee for application forms where necessary.
- Assisting the individual to formulate interview questions and sit on interview panels/ provide and organise venues where appropriate

### **5.2.2 Employer support**

Assist in the maintenance of the individuals own workforce in relation to:

- Provision of up to date information on employment law from an employee's/employer's perspective including eligibility to work, DBS (Disclosure and Barring Service) checks, assisting the individual to source and maintain public liability and employers liability insurance, risk assessments, health and safety and reporting of incidents
- Provision of advice relating to benefits and pitfalls of employing PAs
- Provision of advice and guidance on all payment related issues, but not limited to sick pay, holiday pay, maternity pay and other employer related expenses
- Information, advice and support on training, staff appraisals and health and safety issues for PAs
- Information, advice and support concerning probationary periods, inductions and termination of employment

- Information, advice and support in the management of staff and assertive skills, training, coaching and delegation
- Information, advice and support in disciplinary dismissal and grievance procedures in conjunction with the individuals insurance Service Provider
- Support and advice with record keeping
- Advice, information and support around sickness and absence policies

### **5.2.3 Personal assistance support**

- To help people who wish to become PAs make connection with employers by maintaining a register and signposting to advertising opportunities such as the Council's e-market place
- To assist PAs to develop and learn
- To provide an opportunity for employers and PAs to learn and share experiences
- To be responsible for Disclosure and Barring Services

## **6. Safeguarding and managing risk**

There is a delicate balance between empowerment and safeguarding, and providing choice whilst managing risk. During the planning process, LCC and or CCGs will have a detailed discussion with the personal budget holder about potential risks, and how to manage them. This will form part of an ongoing dialogue.

The Co-produced support plan will contain details of any proportionate means of eliminating, reducing or managing the risks, and this should be informed by a discussion about the significant potential risks and their consequences.

## **7. Monitoring and reviewing direct payments**

The direct payment will be reviewed formally within three months of the person receiving a direct payment; and whenever conducting a review or a re-assessment of an EHC Plan which will take place at least annually. This review will be undertaken by the relevant Lead Practitioner / Keyworker. Some individuals will require more frequent reviews of their direct payments depending on their particular circumstances and where particular risks are identified which need more frequent monitoring.

Direct Payments under social care are reviewed every 6 months by the social worker or Lead Professional and taken to the RADAR panel for approval.

The person receiving direct payments, a nominee or representative may request a review. If LCC and or CCGs become aware, or are notified, that the person's circumstances or needs have changed, they will consider whether it is appropriate to carry out a review of the co-produced support plan to ensure the individual's needs are still being met. Similarly, if they become aware, or are notified that the direct payment has been insufficient to purchase the services agreed in the co-produced support plan, a review will be carried out as soon as possible.

### **7.1 Purpose of a review**

The review will be a mechanism to consider whether:

- the agreed provision should continue to be secured by means of a direct payment
- the co-produced support plan adequately addresses the needs of the person and the agreed outcomes are being met
- the direct payments have been used effectively and appropriately
- the amount continues to be sufficient to secure the agreed provision
- the conditions set out at point 4.1 are being met.

The review is also an opportunity to check the condition and circumstances of the person and to consider whether their needs or risks have changed, and if so, whether the co-produced support plan is still appropriate, if the person lacks capacity or is vulnerable, LCC and/or CCGs will consider safeguarding and also whether the person's liberty is being promoted by the co-produced support plan.

## 7.2 Outcomes of a review

Following a review, LCC and or CCGs may:

- amend the co-produced support plan;
- decide to pay the direct payment to the person receiving care, rather than the representative or nominee;
- decide to pay the direct payment to a representative or nominee rather than the person;
- increase, maintain or reduce the size of the direct payment;
- require that a direct payment is not used to purchase a service from a particular individual;
- require that the person, representative or nominee provide additional information; and
- take any other action considered appropriate. This will usually be to ensure the safe and effective running of the direct payment or co-produced support plan, or to protect public money if there is a significant risk of abuse.

## 8. Complaints and appeals

It is expected that in many cases, an immediate informal response by a front-line member of staff or practitioner, will resolve the issue/s as they arise. If the complainant is not satisfied with the response, they may seek to take the complaint to the next stage.

All arrangements in relation to existing LCC or CCGs complaints procedures apply to direct payments just as they apply to a direct service.

Those people entitled to make a complaint include any child who is in need, or is being looked after, anyone with parental responsibility for the child, any foster parent, or anyone else who LCC or CCGs consider has a sufficient interest in the child's welfare. The complaint may be about the assessment of need or the fact that a direct payment has been denied.

**N.B: If the direct payment recipient is not satisfied with the services they have independently purchased, they should address any complaint to the service provider/employee concerned.**

## **Annex A Glossary**

**Act** - a law that has been passed by Parliament

**ADD** - Attention Deficit Disorder

**ADHD** - Attention Deficit Hyperactivity Disorder

**Advocacy** - is a process of supporting and enabling people to express their views and concerns; access information and services; defend and promote their rights and responsibilities.

**Advocate** - a person who supports and speaks on behalf of a parent, child or young person

**ALS (Additional Learning Support)** – a term used by further education colleges to describe the special education needs of young people

**Annual Review** - is the process by which all Education Health and Care Plans (EHCPs) are reviewed. A review must take place at least once a year and will include the family in looking at the progress that the child or young person has made against the outcomes that are recorded in the plan

**Appeal** - an appeal is a process for requesting a formal change to an official decision

**ASC** – Autistic Spectrum Condition

**ASD** – Autistic Spectrum Disorder

**Aspirations** - something you hope to achieve

**Statutory assessment** – the process of documenting advice and evidence of the child or young person's special educational needs and disabilities

**Benchmarking** - this is the process of comparing the quality of one organisation's policies, services and performance with another, to set a best practice standard

**Broker / Nominee** - someone who helps the person to think about, plan and organise support that is tailored to them. This could be someone from an advice and information organisation.

**BSL** - British Sign Language

**BSS** - Behaviour Support Service

**CAMHS – (Child and Adolescent Mental Health Services)** - offers assessment and help to children and young people with significant emotional and behavioural difficulties (e.g. anxiety, depression, eating disorders) and their families

**Careers Personal Adviser** – provides information, advice and guidance to help people make choices about their education, training and work

**Careers Service** – this is a service providing a single point of access for all 13-19 year olds to help them prepare for the transition to work / college and into adult life

**Carer** - A person who is looking after a child but isn't their birth parent.

**CEOP** – Child Exploitation Online Protection

**Children and Families Act 2014** - changes the law to give greater protection to vulnerable children, better support for children whose parents are separating, a new system to help children with special educational needs and disabilities (from birth to 25) and help for parents to balance work and family life

**Collaborative** – to work together to achieve shared goals

**CAF (Common Assessment Framework)** - is a process for gathering and recording information about a child for whom a practitioner has concerns in a standard format, identifying the needs of the child and how the needs can be met. It is a shared assessment and planning framework for use across all children's services and all local areas in the UK. It helps to identify in the early stages the child's additional needs and promote coordinated service provision to meet them

**CLA** – Child Looked After by the Local Authority

**CP** – Care Plan

**DfE (Department for Education)** - is responsible for education and children's services

**Differentiated** - the way in which the early years setting / school's curriculum and teaching methods are adapted to meet the needs of a child

**DP (Direct Payment)** - are payments made to individuals who have been assessed as needing services and who would like to arrange and pay for care and support services themselves instead of receiving them directly from their Local Authority or Health Trust

**Disability Rights Code of Practice for Schools / Disability Rights Code of Practice for Post 16 Provision** – both explain the duties to avoid disability discrimination in education.

**Disagreement Resolution** – arrangements to help prevent or resolve disagreements between parents, whose children have special educational needs, and a local education authority or a school

**DLA** - Disability Living Allowance

**EYFS (Early Years Foundation Stage)** – this framework provides guidance on the standards that school and childcare providers must meet for the learning, development and care of children under five

**Early Years Settings** – this includes all pre-school education provision such as nursery school, day nurseries and play groups

**Educational Psychologist** – is concerned with helping children or young people who are experiencing problems within an educational setting with the aim of enhancing their learning. Challenges may include social or emotional problems or learning difficulties

**EHCP or EHC plan (Education, Health and Care Plan)** - formerly Statement of Special Educational Needs/SEN – a legal document that sets out a child's needs and the specific help he or she must receive.

**ENT** - Ear, nose and throat

**Equitable** - treating everyone fairly and in the same way

**FEED** – Free Early Education Entitlement

**FFI** – Funding for Inclusion

**FIS** – Family Information Services

**FSM** – Free school meals

**HI** – Hearing Impairment

**HM Courts & Tribunal Service: Special Educational Needs and Disability Tribunal** – formerly SENDIST - SEN / Disability Tribunal. This is an independent body that hears appeals of parents objecting to Local Authority decisions

**Holistic** - taking into account all factors contributing to a situation or circumstance, the whole of something, not just part of it

**ICPC** – Initial Child Protection Conference

**Impartial** - is a principle of justice holding that decisions should be based on objective criteria, rather than on the basis of bias, prejudice, or preferring the benefit to one person over another

**Implementation** - Making something that is set out in law happen

**Inclusion** - the practice of educating children with SEN in mainstream schools where it's possible and beneficial

**IS** – Independent support

**Independent Parental Supporter (IPS)** - is a person who can support parents of children with special educational needs in making decisions concerning their children

**Indicative** - the figure / amount you are likely to receive if you take a personal budget

**Individual Education Plan (IEP)** – a document used in schools to record targets, and strategies and resources to help the child/young person meet the targets. It is not a legal requirement to produce an IEP, but schools should ensure that they have

accurate evidence of the SEN support that has been provided and the impact the support has had

**ISW** – Independent support worker

**IRO** – the Local Authority must appoint an Independent Reviewing Officer (IRO) where a child or young person is a 'child looked after'. It is the IRO's job to make sure that decisions taken by the Local Authority are ones that are best for the child, that the child's care plan is being followed and that the child or young person's rights are being respected

**Joined up working** - simply means people from different organisations working together for a common aim eg providing services in the local community

**Key Stages** - The different stages of education that a child passes through:

- Early Years Foundation Stage – age 0-5 (Early years setting, Nursery and Reception)
- Key Stage one – age 5-7 (Years 1 and 2)
- Key Stage two – age 7-11 (Years 3,4, 5 and 6)
- Key Stage three – age 11-14 (Years 7, 8 and 9)
- Key Stage four – age 14-16 (Years 10 and 11)
- Key Stage five – age 16-18 (Sixth form)

**Key Worker** - Someone who works with children and families to access the support that best meets their needs and help services to work together

**Learning Difficulty** - significantly greater difficulty in learning than other children and young people of the same age, or disability which hinders use of general educational facilities

**Learning Disability** - a significant, lifelong condition that starts before adulthood which affects development and leads to help being required to: Understand information; learn skills and cope independently

**Learning Support Assistant (LSA)** – an assistant providing support in school for pupils with special educational needs. An LSA works under the direction of a class teacher as considered appropriate

**Local Authority (LA)** - is responsible for managing public services in your local area such as social care, libraries, housing benefit and complex needs services ie Leeds City Council

**Local Offer** – The local offer provides information on what services children, young people and their families with special education needs and disabilities can expect from a range of local agencies, including education, health and social care

**Mainstream School** - a school that caters for all pupils, including those with SEN

**MAP** – Multi-agency panel meeting

**Mechanisms of delivery** - how you will receive any agreed support

**Mediation** - Mediation is a form of alternative dispute resolution (**ADR**) a way of resolving disputes between two or more parties. Typically, a third party, the mediator assists the parties to negotiate a settlement.

**MLD** – Moderate Learning Difficulty

**MSI** (Multi-sensory Impairment) - children and young people with multi-sensory impairment have impairments of both sight and hearing.

**Multidisciplinary team (MDT)** – is composed of members from different healthcare professions with specialised skills and expertise

**Named worker** – an officer of the local authority who will deal with your child’s case and who will talk to you if you have any enquiry or concern

**National Curriculum** – is the programme of study to be taught in all mainstream schools

**NEET** – Not in education employment or training

**Notional** - an estimated or theoretical amount of money

**OBA** – Outcomes Based Accountability

**OFSTED (Office for Standards in Education)** - The organisation that makes sure schools and social care services are meeting set standards

**Outcome** - an outcome is the benefit or difference made to a child or family as a result of an intervention or service provided.

**CAMHS** - Primary Child and Adolescent Mental Health Service

**PD** – Physical Disability

**PB (Personal Budget)** – a sum of money that may be available for children and young people who need extra help, above that available to most children and young people through universal and targeted services.

**PMLD** – Profound and Multiple Learning Difficulty (or Disability)

**Portage** - home-based educational support for pre-school children with special educational needs

**Provision** - the action of providing a service. The extra or different help given to children with special educational needs

**PSED** - Personal, Social and Emotional Development

**RADAR** – Resource, Allocation, Discision and Review Panel

**SALT** - Speech and Language Therapist

**SCAMHS** - Specialist Child and Adolescent Mental Health Service

**SEMH** – Social Emotional Mental Health

**SEN (Special Educational Need)** - a learning difficulty or disability that makes it harder for a child to learn or access education than it is for most children of the same age

**SENCo** – Special educational needs co-ordinator in school

**SEND** – Special Educational Needs and Disabilities

**SEN Code of Practice** – is guidance on how children with special educational needs and disabilities should be supported. By law, it must be followed by local authorities, schools and a wide range of other bodies unless there are good reasons why not

**SEN and Disability Tribunal** - an independent body which considers appeals by parents (or young people aged 16 or over) against local authority decisions on EHC needs assessments and EHC plans. The Tribunal also hears claims of disability discrimination. Its full title is First-tier Tribunal (Special Educational Needs and Disability)

**SENDIASS** – SEND Information, Advice Support Service (formerly Parent Partnership Service) provides legally based, impartial, confidential and accessible information, advice and support for parents of children and young people with Special Educational Needs or Disabilities about education, health and social care

**SEND Reforms** - The new Children and Families Act came into force on 1st September 2014. The vision for the SEND reforms is that the views of children, young people and parents are at the heart of the system and that education, health and care services are joined up to help them a

**SENIT** – Special Educational Needs Inclusion Team

**SEN Provision** – the additional or different help / support given to children and young people with special educational needs

**SENSAP** – Special Educational Needs Statutory Assessment and Provision

**SEN Support** – under the new legislation all support provided from within the resources of the school / nursery/college (i.e. without an EHC plan) is called SEN support. This could be inclusion in a language group, advice from a speech and language therapist or Teacher of the Deaf, a buddying scheme or a home/school diary. This term replaces School Action and School Action Plus which were used in the 2001 legislation. If a child doesn't make adequate progress over time in spite of SEN support, the next stage is to request an EHC needs assessment

**Settings** – the term usually used for pre-schools or nursery schools

**Short Breaks** - Opportunities for disabled children and young people to spend time away from their family and do something fun. For example a day, evening, overnight or weekend activity

**SILC** – Specialist Inclusive Learning Centre (the term used in Leeds to describe special school provision)

**SLCN** – Speech Language and Communication Need

**SLD** – Severe learning Difficulty

**SMHP** – Senior Mental Health Practitioner

**Special Educational Needs Co-ordinator (SENCO)** – the teacher with responsibility for the planning and monitoring of the special educational provision within your child's school.

**Special Educational Needs Disability Tribunal (SENDIST)** – an independent body that hears appeals against decisions made by Education Bradford on Statutory Assessments and Statements.

**Special School** – a school that caters for children with SEN when education in a mainstream school isn't considered appropriate

**Specialist services** - are for children and young people with complex or specialist needs. This type of need will require a Children and Families Assessment to be undertaken by a social worker following referral to Children's Social Work Services

**SPLD** – Specific Learning Difficulty

**Statement of Special Educational Needs** – a legal document which sets out a child or young person's special educational needs and the provision required to meet those needs. Statements are being phased out and replaced by EHC plans. Any current statements will have been converted to EHCPs by 2018. A process of conversion to an EHCP will be undertaken when the statement is due for a yearly review or earlier

**Statutory Services** – are services that are set up and regulated by central government, for example education, health or social care services

**Targeted services** - are designed to meet the needs of children and young people with a disability where extra support is provided to access a service that is universally provided to all children. An assessment of need may be undertaken using the Common Assessment Framework (CAF)

**Third Party Arrangements** - where a service provider, user-led organisation or a broker manages a personal budget for you

**Transition** – a period of change for your child or young person that could be starting primary school, leaving secondary school to go to college, changing from children's to adult services

**Universal service** - A service that is available to everyone, without assessment

**VI** – Visual Impairment

## Annex B Direct payment agreement - copy



### **Direct Payments Agreement (Children and Young People) Annexe E to Personal Budgets & Direct Payments: Policy, Practice & Guidance 2015**

This is an agreement to meet the outcomes identified and agreed to in \_\_\_\_\_'s \_\_\_\_\_ plan (the Plan).

Direct Payments made by Leeds City Council in respect of Education and Care are made in accordance with Community Care, Services for Carers and Children's Services (Direct Payments) Regulations 2009 and the Special Educational Needs (Personal Budgets and Direct Payments) Regulations 2014

#### **Parties**

1. This Agreement relates to the Direct Payment of some or all of a Personal Budget for \_\_\_\_\_ [insert name of child or young person] (the Child/Young Person).
2. It is between:  
\_\_\_\_\_ [insert name and address] as the Recipient of the Direct Payment provided for the Child/Young Person (referred to as You or Your) and Leeds City Council [and/or Leeds Clinical Commissioning Group]  
\_\_\_\_\_ [insert office address] referred to as Us, We or Our .
3. Your Allocated Officer is \_\_\_\_\_. We will provide an alternative contact if he/she is not available.
4. The Direct Payment will be managed by You, the Child/Young Person/'s parent's/guardian's/ nominated person [delete as appropriate]
5. You confirm you are not a person who is excluded from receiving a Direct Payment as set out in Annex 1 attached.

## Introduction

1. We have carried out an assessment of \_\_\_\_\_'s needs and concluded that he/she is eligible for support services . We have agreed that the services identified in the Plan attached should be provided for \_\_\_\_\_.
2. You confirm that you are willing and able to secure the support services set out in the Plan and have chosen the option of a Direct Payment in order to purchase the service in lieu of the services offered by Leeds City Council.
3. We are satisfied that the Services can be met by the provision of a Direct Payment and that it will safeguard and promote \_\_\_\_\_'s welfare so We agree to pay the Direct Payment to you.

## Direct Payments and Personal Budget Policy

The terms of the Leeds City Council Direct Payments and Personal Budget Policy document (from time to time amended) also applies to the making of and use of the Direct Payments. You can find a copy of the most recent version of the Policy here: [www.leedslocaloffer.org.uk](http://www.leedslocaloffer.org.uk)

## Payment

1. Payments will be made to an account with the following details \_\_\_\_\_ (the Account) which is used solely for this Personal Budget (and any other Personal Budgets relating to the Child/Young Person's Education, Care or Health). Direct Payments can be made by BACS transfer into the Account. The Account is managed by You alone, unless any other users have been expressly approved by Us.
2. The total amount of the Child/Young Person's Personal Budget is set out in their Plan. If they have an EHC Plan, this will be in section J of the Plan. Direct Payments will be made into the Account in accordance with the Funding Schedule attached to this Agreement or from time to time agreed by Us .

## Conditions

Direct Payments are made on the following conditions:

1. Direct Payments are made to meet the outcomes set out in the Child/Young Person's Plan dated \_\_\_\_\_ and may only be used towards the outcomes in the Plan. If they have an EHC Plan, these will be listed in Section E of the Plan.

You agree to secure the following goods and services using the Direct Payments. This is known as the Agreed Provision: \_

- (a)
- (b)
- (c)
- (d)
- (e)

2. The following special conditions apply to how the Direct Payments should be used;

Condition 1:

Condition 2:

- 3. You are responsible for securing the Agreed Provision in an appropriate way and you must always act in the best interest of the Child/Young Person when securing the Appropriate Provision.
- 4. You are also responsible for any contractual agreements entered into using this Direct Payment for the benefit of the Child/Young Person.
- 5. If there are any changes in circumstances which might affect the need for the Agreed Provision, You must contact the Allocated Officer as soon as possible.
- 6. The Amount of the Direct Payment is sufficient to meet the cost of the Agreed Provision in the Plan and You should budget to ensure there is no shortfall over the year. Where appropriate You should liaise with Service Providers to anticipate any planned increase in costs. You should seek support and guidance from ASIST where necessary. They will be able to help you ensure you have the necessary support to spend your Direct Payments properly.
- 7. We will pay you more in the first payment so that you have contingency funds to use against emergencies. You should hold this in reserve as your last payment will be reduced by the same amount.
- 8. All payments to secure the Agreed Provision should be made through the Account and cash should only be used when absolutely unavoidable.
- 9. If there are difficulties in delivering the Agreed Provision, you must contact the Allocated Officer immediately.
- 10. We will reduce the amount of the Direct Payment where payments remain unused and We consider it is reasonable to offset any outstanding payments against the remaining amount to be paid. We will give you at least four weeks' notice of any reduction.

## **Monitoring and Review**

- 1 We will monitor the review and making of the Direct Payment and the way it is used to secure the Approved Provision in line with Section 7 of Leeds City Council's Direct Payment Policy.
- 2 The possible outcomes of the review are set out in the Direct Payments Policy at Sections 4.

## **Stopping or Reducing the Amount of the Direct Payment**

- 1 We will reduce the Amount of the Direct Payment, or stop the Direct Payment in line with Section 7 and 4 of the Direct Payment Policy.
- 2 If You want to stop receiving the Direct Payment, you should let Us know in writing and We will stop making the Direct Payment.

## **Repayment or Recovery of the Direct Payment**

1. We will recover or require the repayment of Direct Payments in line with Section 4 of the Direct Payments Policy.
2. We may only seek repayment of any portion of the Direct Payments which have not already been spent on the Agreed Provision.
- 3 If it becomes apparent that funds will remain at year end (perhaps because some of the Agreed Provision could not be delivered or because of cost savings) 10% of the surplus may be "rolled over" into the next year's budget (90% returned to the LA).

## **Record Keeping**

You are required to keep accounts of expenditure and receipts for all payments connected to securing the Agreed Provision. We can provide a recording template on request.

## **Early Help and Short Breaks**

If funds have been agreed through a Child and Family Assessment or Early Help Assessment, the Lead Professional or Social Worker will review the package of support at 6 month intervals.

## **Disclosure and Barring Service**

Where the Direct Payment is used to secure the Agreed Provision through the use of a third-party provider, employees and self-employed contractors each should undergo checks by the Disclosure and Barring Service (DBS). We will arrange these in conjunction with You.

### **Special Educational Needs (SEN) Code of Practice**

In respect of payments for educational provision, all parties should keep in mind the SEN Code Of Practice (section 9.104), which says that any person employed by the child's parents, but working on school premises, must conform to the policies and procedures of the institution.

### **Information Sharing**

We expect that service providers engaged in providing the Agreed Provision are aware of the need to share any assessments of the Child/Young Person and all tracking information which demonstrate the Child/Young Person's progress.

In signing this agreement, You confirm that you have read, understand and agree with terms on which Direct Payments are provided to You the Recipient to secure the Agreed Provision for the Child/Young Person:

Signed:

Name:

Signature

Date:

The Recipient

Signed:

Name:

Signature

Date:

On behalf of Leeds City Council

Signed:

Name:

Signature

Date:

On behalf of the CCG

## Direct Payments Agreement – Annex 1

### **The following persons may not receive Direct Payments:**

- (a) a person who is subject to a drug rehabilitation or treatment requirement or a drug treatment and/or testing order
- (b) a person who is subject to an alcohol treatment requirement
- (c) a person who is released on licence and subject to a licence condition requiring the person to undertake offending behaviour work or to address drug or alcohol related behaviour

If you have any questions about whether these categories apply to you, please ask the allocated officer.

### **Exclusions**

The option for some or all of a personal budget to be given to families as a Direct Payment is not appropriate for all aspects of Education, Health or Care. The Regulations prohibit expenditure of Direct Payments on the following :

- Items or services that are unrelated to the identified needs or agreed outcomes in the plan.
- Services directly provided by the Local Authority (although a mixed package can be arranged, ie some services arranged and some Direct Payment)
- School placements or post-16 institutions (i.e. fees and cost of a place)
- Primary medical services provided by GPs
- Vaccination or immunisation programmes
- Screening
- National child measurement programme
- NHS Health Checks
- Urgent or emergency treatment services such as unplanned in-patient admissions to hospital or accident and emergency
- Surgical procedures
- NHS charges such as prescription or dental charges
- Placements for children who are looked after
- Long-term residential care, although they can be used for short term (respite) stays in residential care.
- Alcohol or tobacco
- Gambling - including lottery, bingo and raffle tickets
- Repayment of debt except debts relating to services specified in the EHC plan or other plan.
- Anything illegal or unlawful
- Employing close relatives who live in the same household to provide care services (except in exceptional circumstances)
- Housing services, such as rent payments
- Household bills, such as food and utility bills
- Non-statutory liabilities, such as tips, bonuses or ex gratia payments

## Repayment of a Direct Payment

In some circumstances, the funders (LCC or CCGS) may ask for all, or part of, the Direct Payment to be repaid (the decision to seek repayment, and the amount of money to be reclaimed will be at the discretion of LCC and or CCGs).

Direct Payments may be reclaimed if:

- they have been used to purchase a service that does not meet the agreed outcomes as identified in the EHC Plan or other plan;
- theft, fraud or other offences have occurred;
- the person receiving care has died, leaving part of the Direct Payment unspent
- the EHC Plan has changed substantially resulting in surplus funds;
- the individual's circumstances have changed substantially, such as admission to hospital resulting in the individual not using the Direct Payment to purchase their care; or
- a significant proportion of the Direct Payment has not been used to purchase services to meet the agreed outcomes as specified in the EHC Plan resulting in money being accumulated.

## Role of personal budget brokerage and support

If a personal budget is agreed, the young person or in the case of a child or a young persons who lacks capacity, the representative will be offered support and assistance to draw up a plan to describe how they will use the indicative budget to meet the agreed outcomes, which aligns with the EHC plan. This support and assistance may be obtained from an independent specialist service or broker.

LCC currently commissions the Actively Seeking Independence Support Team (ASIST) to provide advice and practical assistance, including brokerage support.

ASIST  
Actively Seeking Independence Support Team  
Armley Grange Drive  
Leeds  
LS12 3QH  
W: [www.leedscil.org.uk](http://www.leedscil.org.uk), E: [asist@leedscil.org.uk](mailto:asist@leedscil.org.uk), T: 0113 2311125

Notes:

Who can be a Recipient?

Providing they meet the criteria below, Recipients can be:

- The Child/Young Person,
- The Child/Young Person's parents
- Or a person nominated in writing by the Child/Young Person's or his/her parents or guardian

The Recipient must be:

- over school age,
- have capacity to manage the DP and make arrangements for the services,
- able to manage the budget without assistance, or any assistance they need is available to them
- not an Excluded Person (annex 1)

Where the Recipient is nominated by the Child/Young Person (if over 16) or the Child/Young Person's parents, the Child/Young Person or their parents must provide written consent to the Local Authority to DP's being used to secure the agreed provision.

