

Direct Payments Procedure and Guidance

REVISED April 2024



1. BACKGROUND

In Plymouth we work hard to make sure that our commissioned services offer families a high quality service to meet the needs of their children and young people. However, we recognise that all children, young people and their families are unique and this means that there will be times when the commissioned services do not provide the best match, or preferred way to access support.

Following an assessment of need, it may be agreed that a child or young person will need additional services to meet their identified needs. This will be recorded in a care plan. Direct Payments can be chosen by families instead of receiving a commissioned service, which means that families will receive money to buy services for themselves.

Direct Payments are a positive option for many families. They can offer greater choice, control and flexibility to families who will be able to decide who, when and how their services are provided.

Choosing Direct Payments will involve more responsibility for parents who will have to keep track of how the money is spent, perhaps employ a worker directly and therefore will need to keep records as an employer. There is a Direct Payments Service who can offer support with the information needed to be able to use Direct Payments appropriately.

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

This guidance will assist Plymouth City Council staff and partners involved in undertaking social care needs assessments, re-assessments, reviews and support planning, and in the preparation of Education, Health & Care Plans, for children and young people assessed as eligible and who are receiving direct payment provision

2. INTRODUCTION TO DIRECT PAYMENTS

Direct Payments are payments made by the local authority *instead* of providing or arranging for the provision of the services. The local authority makes the payment or payments to the family or young person and they use the payment to secure the chosen relevant services.

Direct Payments are not intended to replace informal care arrangements and in normal circumstance should not be used to employ relatives living in the same household, although relatives can assist users in managing Direct Payments.

If the eligibility conditions are met, a local authority has a duty to make a direct payment if one is requested. Payments may only be made if the person agrees and they have a choice of whether to receive services provided by the local authority. Recipients of services should not be unfairly influenced in their choices one way or the other.

Before a direct payment can be offered an assessment must be undertaken. The involvement of the local authority and complexity of the assessment process should be proportionate to the needs and outcomes of the child and family.

The assessment will take account of the circumstances of both the child and the child's parents or carers and will meet the requirements within the Children and Families Act 2014 and the Care Act 2014.

3. ELIGIBILITY FOR DIRECT PAYMENTS

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

The Council may make direct payments to the following individuals:

- Persons with Parental Responsibility for a disabled child (as defined by the Children Act 1989);
- Some disabled young people aged 16-17 years, following a Mental Capacity Assessment, who meet the threshold for a service.
- Young Carers over the age of sixteen (in exceptional circumstances).

Child who is disabled

For Direct Payments a child is deemed a 'disabled child' if Section 17a of the Children Act [CA 1989] applies:

“a child is disabled if he is blind, deaf or dumb or suffers from mental disorder of any kind or is substantially and permanently handicapped by illness, injury or congenital deformity or such other disability as may be prescribed; and in this Part—

“development” means physical, intellectual, emotional, social or behavioural development; and “health” means physical or mental health.

Children Act 1989

The Children Act definition of when a child who is disabled has been commonly replaced by the definition within the guidance for the Disability Discrimination Act that has been applied since May 2006.

The Disability Discrimination Act defines a disabled person as someone who has:

a physical or mental impairment that has a substantial and long-term adverse effect on his or her ability to carry out normal day-to-day activities.

- *“substantial” means neither minor nor trivial.*
- *“long term” means that the effect of the impairment has lasted or is likely to last for at least 12 months.*
- *“normal day-to-day activities” include everyday things like eating, washing,*
- *walking and going shopping and the impairment must affect mobility, manual dexterity, speech, hearing, seeing or memory.*
- *People with HIV, cancer and multiple sclerosis are deemed to be disabled from the point of diagnosis, rather than from the point when the condition has some adverse effect on their ability to carry out normal day-to-day activities.*

Caring role

For Direct Payments the definition of a carer is found within the Carer's (Recognition & Services) Act 1995.

“someone who provides (or intends to provide) a substantial amount of care on a regular basis for a disabled/ill/elderly person.”

Substantial amount

As a guide to what is a 'substantial caring role' the acquisition of Carers allowance indicates that a carer must spend at least thirty five hours a week regularly caring for a person. This figure of thirty five hours can only apply to carers of adults and does not consider that the person with 'parental responsibility' already has substantial caring role responsibilities for the child.

LAC(96)7 suggests that 'substantial' should be given a wide interpretation and fully take into account the individual circumstances of the carer.

The local authority does not keep strictly to a 'time' criteria when defining whether the person with parental responsibility is a carer as the impact of the caring role is different for individual circumstances.

Regular

'Regular' simply means an event which recurs at uniform intervals (i.e., not necessarily frequent).

[The 2009 Guidance](#)¹ provide that individuals can insist on a direct payment in certain circumstances.

The essential criteria are:

- the recipient consents to the making of a direct payment;
- It appears to the Council that the recipient is able to (with assistance) manage the direct payments;
- The Council is satisfied that the child's welfare will be safeguarded and promoted by the means of a direct payment;
- The individual is not excluded from receiving direct payments. (direct payments cannot be made to anyone who has been ordered by court that they must obey certain conditions in relation to drug or alcohol dependence)
- A direct payment can be made either for part or for the whole of the total package of care which has been agreed to meet the assessed needs of a disabled child and their family.
- A direct payment can be made to a child aged 16 or 17 either to meet their assessed needs consequent to their disability, or to meet their needs as a carer (a carer's assessment, young carers assessment and/or a mental capacity assessment may be undertaken).

4. WHAT DIRECT PAYMENT FUNDS CAN BE SPENT ON:

It is not possible to draw up an exhaustive on how the direct payments can be used. Each case must be decided individually on its own merits, based on the following:

The service, support or activity proposed should be:

- Legal; and
- Clearly linked to the outcomes identified in the Child Plan to secure provision to meet the child or young person's assessed needs; and
- Able to show how it will keep the child or young person healthy, safe and well; and
- Affordable and proportionate to the assessed eligible needs of the child or young person.
- The funds must be used to meet the needs and outcomes identified in the Child Plan. Direct payments are most often used to employ a personal assistant (PA) to provide care and support.

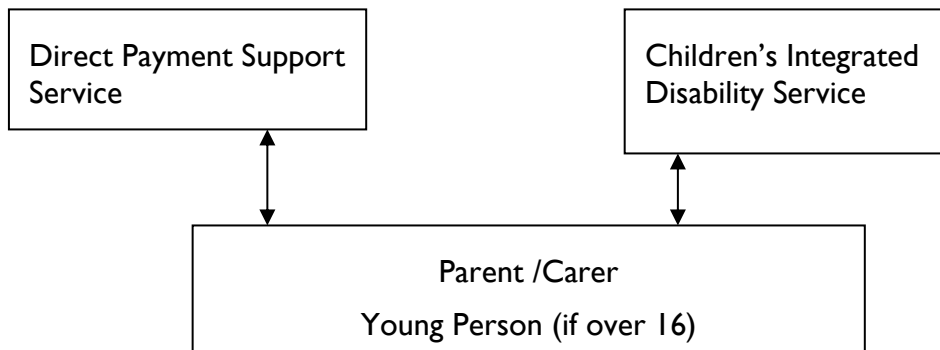
Below are some examples of how some families use their direct payments:

- Employing a personal assistant to support the child or young person to access identified activities; this enables parents to have a short break to spend time with their other children;
- Employing a personal assistant to support the young person with independent living skills, for example, choosing food to buy in the supermarket, and with these ingredients making lunches or dinners;
- Personal assistants supporting the child or young person to enable parent or carer to attend their own or family member's medical appointments;

¹ Guidance on Direct Payments for Healthcare: Understanding the Regulations 2009

- Assistance with domestic tasks to allow a family to spend more time with their child who has complex health care needs;
- Employing a personal assistant to assist with a disabled child or young persons' personal care;
- To employ a personal assistant to provide overnight support to the disabled child or young person, either in the child / young person's own home, or at the home of the personal assistant (if the child is aged eight years or over²). This must be agreed as an assessed need and be identified in the child plan;
- Childminder support;

5. WHO IS INVOLVED IN A DIRECT PAYMENT?



Direct Payment Support Service

If a decision is made to have Direct Payments, the family or young person accept certain responsibilities. These include only spending the money they receive on meeting assessed needs and complying with the local financial and monitoring requirements.

Other responsibilities may arise depending on how the direct payment recipient chooses to spend the direct payment. If they choose to employ Personal Assistants, they will become the employer, with all the responsibilities that entails.

The role of the Direct Payment Support service is to:

- Give information to people who want to know more about Direct Payments so that they can decide as to whether to use a Direct Payment.
- Consider the communication needs of the Direct Payment recipient and provide information in the most appropriate way.
- Establish the level of Direct Payment advice and support that is required for each direct payment recipient.
- Work with the parent (or young person) to determine what they want to do with the Direct Payment and offer a variety of ways that the assessment outcomes can be achieved.
- Give advice on the setting up and managing of bank accounts for the Direct Payment.
- Give advice to recipients to recruit and train their own staff following safe recruitment practice including advice on tax and insurance and payroll (provide support to access a payroll service if required).
- Liaise with professionals and services to ensure that such agencies have the information required.
- Provide information regarding the Direct Payment Support Service [DPSS].

² if the child is under 8 then the Personal assistant must be registered as a foster carer or a child minder or be related to the child.

- Monitor that the Direct Payments continues to meet the defined outcomes of the child's plan – record the outcome of this review.
- Clarify what action should be taken should the direct payment recipient not want to continue with the direct payment.

Children's Integrated Disability Service

The worker will review the package as part of the Child in Need/ Early Support/EHC Review a minimum of every six months. Complex packages, (high cost or intensive packages), may require more frequent monitoring.

The review will establish whether:

- The needs identified within the Carers Assessment are being met by the use of the direct payment. If not is a change to the package required?
- Have the needs changed. If so is a re-assessment required?
- Has managing the direct payment been problematical in any way?
- Are funding arrangements working?
- Are proper records being kept?
- Is the child being adversely affected by the arrangements?
- How is the package of care to continue?

Reviews will monitor the whole package of services rather than focus on an individual service in isolation. The purpose of the review is to establish whether the objectives set in the original care plan are being met.

The personal assistant is an employee of the parents, rather than the local authority and their attendance at the review should be a matter for negotiation between the local authority and the parents at each review. There should be a specific reason for the employee to attend the review to contribute a separate perspective rather than their attendance being a matter of routine.

The worker will record the outcome of the review on the child's CIN/Early Support/EHC Plan

Parent/Carer/ Young Person

The direct payment recipient will:

Enter into an agreement regarding the plan and the associated expenditure.

- Spend the direct payment only to meet the outcomes identified within the plan.
- Provide information as requested so that expenditure can be monitored
- Open a bank account for use with the Direct Payments
- Pay staff using a cheque or bank transfer (not cash)

6. ALLOCATION OF A DIRECT PAYMENT

The Direct Payment is awarded to the main carer who has the legal parental responsibility for the child.

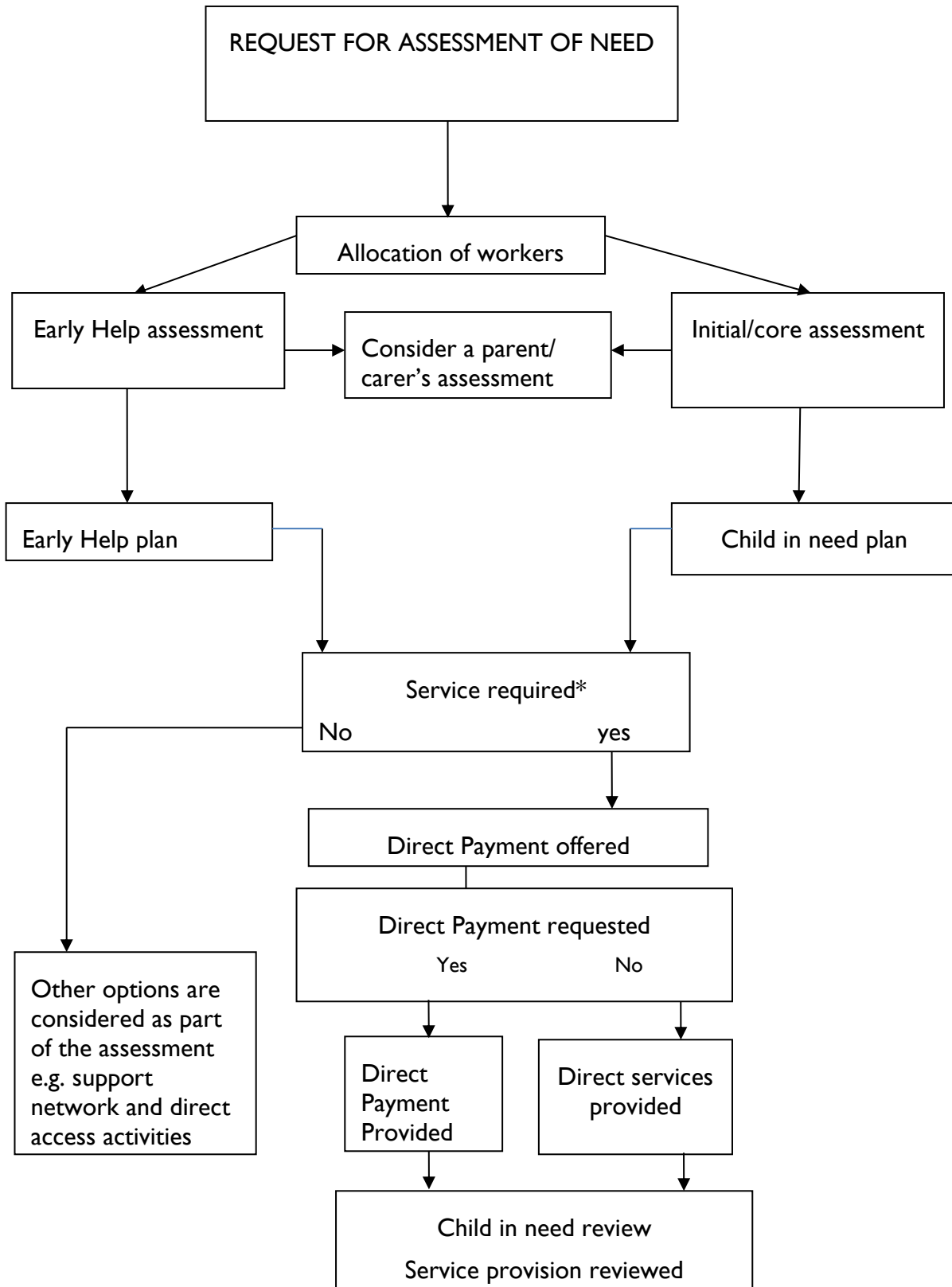
The aim, in promoting Direct Payments, is to increase individuals' independence and choice by giving them control over the way the services they are assessed as needing are delivered.

The direct payment can be awarded to meet all or part of the identified outcomes within the child's plan.

The local authority has to be satisfied that the Direct Payment will 'safeguard and promote' the welfare of the child for whom the service is needed.

The amount of the Direct Payment must be sufficient to cover the full cost of purchasing services that meet the identified needs as well as other costs, for example costs related to employing people.

The process of arranging a direct payment.



*application must be made and agreement given by Short breaks Resource Panel

7. INDIVIDUAL CIRCUMSTANCES AND ISSUES TO BE CONSIDERED

When is a direct payment not suitable?

A direct payment cannot be used to purchase services provided directly by the local authority or used to replace NHS services or services provided by housing departments (such as Disabled Facilities Grants).

Provision of equipment

When an assessment has been undertaken by the Occupational Therapy Team and specialist equipment identified as necessary to meet the assessed needs of a child the equipment can be directly provided by the local authority or a Direct Payment to purchase the equipment can be given to the parent.

Direct Payments and overnight care

If the Direct Payment recipient chooses to use the direct payment to fund overnight care the child is not considered 'looked after' by the local authority.

A Direct Payment cannot be used to fund overnight provision for a single period in excess of four weeks (28 days) in any twelve month period. The Direct Payment recipient should be advised that they need a gap of four weeks between overnight stays otherwise the overnight stays become one single period and the four week rule applies.

A Direct Payment cannot be used in excess of 120 days in any period of twelve months.

Direct Payments and registration as a childminder

Childminding regulations apply to all child care arrangements for children under the age of 8 years. These regulations state the 'anyone caring for a child under eight for over two hours a day in their own home has to be registered as a childminder' (Section 79D, Children Act 1989).

Carers of children aged 7 and over are encouraged to join the Childcare Approval Scheme, a voluntary scheme for approving childcare providers and enabling parents and employers to check if a carer is approved, has a suitable childcare qualification, and has had an enhanced DBS check.

If the recipient of the Direct Payment intends to employ a person to look after a child under 8 years in their own home for more than two hours the worker should advise them that it is a requirement that the employee is registered as a childminder and be regulated by Ofsted.

Direct Payments may not be the best way to support the use of childminder to provide after school assistance. If on a low income the parent may be eligible to claim [Working Family Tax credit](#) and claim her/his child care costs through this method. If the parent wishes to obtain the childcare element of working tax credits, the person caring for the child needs to be either registered as a childminder (if caring for a child under the age of eight in the carer's home) or as a home child carer if the child is cared for in the child's home.

Further information about childminding can be found on the [Family and Childcare Trust](#) website:

Using Direct Payments to look after another child in the household.

Direct Payments can only be used for those assessed needs that the Local Authority has agreed to meet and the local authority must be satisfied that the services bought with Direct Payments safeguard and promote the welfare of the child.

Guidance around Direct Payments states that people should be encouraged to identify alternatives that meet their needs more effectively by exploring innovative and creative options. For example if a family is assessed as needing family support and they feel that the best way of meeting this need is to

employ someone to act as an 'extra pair of hands' at busy times of the day, such as getting ready for school, this may include care for siblings as well.

Furthermore the approach of the Children Act 1989 is to emphasise a child 'in need' as part of their family. The Children Act guidance that refers to children who are disabled states that 'the needs of brothers and sisters should not be overlooked and they should be provided for as part of a package of services for the child with a disability'. Permitting flexibility for Direct Payments recipients to use the money they receive to support the family of a child who is disabled as a whole, is therefore permissible.

It is not lawful in the current legal and regulatory framework to use Direct Payments given in lieu of social care services to routinely provide child care to meet the needs of other siblings. The assessment framework takes a holistic view of a family's needs and the overall aim of Direct Payments is to provide flexibility and choice for service users.

Each case should be considered on an individual basis.

Intimate care for a child using Direct Payments.

Parents may use Direct Payments to purchase services of an intimate nature to meet the assessed needs of their child. However, as children mature parents should be encouraged to give greater weight to the child's views about how their intimate care needs are to be met.

The parent should employ people with the skills and knowledge required to care for their child. If extra or more specialised training is required the cost of this training should be included within the direct payment funding. The worker should encourage the parent to discuss training and should assist the parent in securing the training required.

Other Direct Payment information

Where a child is in a setting in which he or she is receiving, what may be regarded as a package of care, and this can be broken down into clearly identifiable and separate elements, regulation 7(3) does not affect the use of Direct Payments to pay for elements of that package that meet the child's assessed care needs where the other elements are being self-funded.

R (on the application of M) v Suffolk County Council, [2006] All ER (D) 363 (Jul).

There is no limit on the maximum or minimum amount of a Direct Payment either in the amount of care it is intended to purchase or on the value of the Direct Payment.

The responsible manager may decide to discontinue the Direct Payment if the person fails to comply with a condition to which the Direct Payments are subject, for example that the payments must be used to obtain services that the user has been assessed as needing and the council has reasonable reason to fear that further payments may be misspent.

Should the parent/carer choose to purchase a service that is more expensive than the Direct Payment rate then they can 'top-up' this rate from their own funds.

The Direct Payment should not be used to employ a spouse, partner or close relative living in the same household as the Direct Payment recipient.

However, employing someone who falls into this category is permissible, if it is the only effective way to meet a child or young person's needs. For example, if a child has complex communication needs and the Direct Payment is being made for a limited period, (for example over the summer holidays), in which time it would not be possible to train a new employee in the child's communication method,

then it would be acceptable to employ a family member who could meet these needs. The responsible manager will decide whether the criteria above applies.

Families may employ a relative who does not live in their household.

8. PREPARING FOR ADULTHOOD

In some cases the young person at age 16 or 17 may wish, as part of the transition to adulthood, to take control of parts or all of the direct payment that has to date been managed by the person with parental responsibility. This can allow them to gain experience of managing Direct Payments in a gradual way prior to reaching adulthood.

Young people who are disabled aged 16 or 17 are entitled to take advantage of the flexibility of Direct Payments where this will safeguard and promote their welfare. Direct Payments enable them to make more decisions for themselves and to provide opportunities for them to have more control over their lives.

There will be situations where young people who are disabled aged 16 or 17 will express their wish to manage a direct payment but their parents and the local council believe that they are not at the moment capable of managing a direct payment by themselves or with help. When the young person does not agree with the council's judgment, they should have access to advocacy and the opportunity for discussions with the council to ensure that their arguments are properly considered. The council's complaints procedure should also be open to the young person.

The current provider of the Advocacy Service for Young people in the transition process is the Highbury Trust and access to the service is via a lead practitioner. This should be separate from any support/advocacy provided to their parents payment that has to date been managed by the person with parental responsibility.

Where there is a difference of view between young people and their parents over such matters, provided that the children have sufficient understanding to make informed decisions, the local authority should give precedence to the views of the young person.

Carers and Disabled Children Act 2000 and Carers (Equal Opportunities) Act 2004

Combined Policy Guidance

The Special Educational Needs and Disability 0-25 Guidance requires schools to ensure that a transitional plan is drawn up for those with an Education, Health and Care plan in partnership with the young person, his or her parents, and any agencies working with the family. This transition plan is drawn up following the annual review of the child's statement in school year. It is a key document for the agencies involved with the young person and should inform any other assessments of the young person, join up with other plans (such as a pathway plan) and should inform decisions made about Direct Payments to young people who are disabled.

It will be important for local authorities to respect the views of parents who have been managing the delivery of support for their child and take account of those views in setting in place any new arrangements once the young person reaches eighteen. This will be particularly important where the young person is assessed as unable to manage Direct Payments (with or without support) as there will be an additional need to ensure that the impact of the loss of the direct payment option is minimised and that as far as possible continuity in service delivery is achieved.

Direct Payments for children and young people operate according to different criteria than Direct Payments provided by Adult Services. During the transition phase planning should occur regarding the continuation of the care plan. If arrangements are to change the social worker must inform the carers of the changes both to the care plan and the future payment arrangements.

9. MONITORING AND REVIEW

When a person chooses to receive Direct Payments, he or she takes on the responsibility for securing the provision of services to which the Direct Payment relates. Monitoring arrangements should be consistent both with the requirement for the council to be satisfied that the person's needs for the service can and will be met and with the aim of promoting and increasing choice and independence.

The information that the recipient is asked to provide as part of the monitoring process will be as straightforward and the least onerous possible, consistent with monitoring requirements.

The Direct Payment should be formally reviewed within the Child in Need or Early Help Plan Review every six months.

Financial monitoring arrangements for audit purposes are in place. Before people decide to accept Direct Payments, the worker should ensure that the Direct Payment recipient is aware of the information they will be expected to provide and the way in which monitoring will be carried out.

The balance held in the Direct Payment account will be reviewed on an annual basis. Any unspent funds held in the account, in excess of the agreed balance of 10 weeks of payments, may be recouped following the review.

Plymouth City Council reserves the right to recover Direct Payments, in the following circumstances:

- If the Direct Payment has not been used to meet agreed outcomes, as set out in the Child Plan or Education, Health & Care Plan;
- If the Direct Payment recipient fails to meet any terms of the Direct Payments Agreement, or fails to respond to any correspondence relating to the management of the direct payment;
- If a Direct Payment has been overpaid or paid in error;
- If the funds have accrued and there is a surplus in the direct payment account, which is above the agreed contingency amount of between 8 – 10 weeks;
- If, following termination of the Direct Payment, any Direct Payment monies remain in the Direct Payment account

10. DISCONTINUING DIRECT PAYMENTS

There are a number of reasons why Direct Payments might cease. They are :-

- A person for whom Direct Payments are made may decide that they no longer wish to continue with Direct Payments.
- The council can cease making Direct Payments if the person no longer appears to the council to be capable of managing the Direct Payment or of managing it with help.
- The council will stop making Direct Payments if it is not satisfied that the person's needs can be met by using a Direct Payment or if the Direct Payment is not safeguarding or promoting the child's welfare.
- The council might also discontinue payments if the person fails to comply with a condition to which the Direct Payments are subject, for example that the payments must be used to obtain services that the user has been assessed as needing and the council has reasonable reason to fear that further payments may be misspent.

There may be circumstances in which the council discontinues Direct Payments temporarily. An example might be when an individual does not require assistance for a short period because their situation has improved and they do not require the services that the direct payment is intended to secure. Such a change in circumstances will in most circumstances be facilitated alongside a

reassessment. However, there may be short term situations, for example if the child is admitted into hospital, where a reassessment is not required.

The worker or manager should discuss with individuals as soon as possible if they are considering discontinuing Direct Payments to them. They should be given an opportunity to demonstrate that they can continue to manage Direct Payments, albeit with greater support if appropriate.

If Direct Payments are discontinued, some people may find themselves with ongoing contractual responsibilities or having to terminate contracts for services (including possibly making employees redundant). The worker should take reasonable steps to make people aware of the potential consequences if Direct Payments end.

11. COMPLAINTS

Plymouth City Council operates a procedure for considering any representations (including any complaints) which are made to them with respect to the discharge of their social services functions or about any failure to discharge those functions. The making of Direct Payments is a social services function within the meaning of section 1A of the Local Authority Social Services Act 1970.

People who receive, or consider that they should receive, Direct Payments are entitled to have access to this procedure in the same way as someone who receives services provided or arranged by the local authority.

There is also a complaints procedure under section 26 of the Children Act 1989, which may be used to complain about Direct Payments made under section 17A of that Act

12 SAFEGUARDING

It is important to record that:-

- The Direct Payment recipient has had strong advice to request a DBS check for their prospective employees.
- the Direct Payment recipient has been made aware of the risks involved in employing a 'stranger'.
- the Direct Payment recipient has had strong advice regarding the importance to undertake other checks, such as contacting previous employers.
- they are satisfied that the Direct Payment recipient has the resources to adequately induct and train their staff to undertake the tasks identified within the job specification.

The Direct Payment recipient is aware of health and safety issues and consider whether there are costs associated with health and safety training.

- If necessary, ensure that risk assessments specific to the family situation are carried out by the direct payment recipient.
- Clarify what arrangements are being made to cover emergencies.