

Direct Payments Policy

For

**Children and Young People
With Disabilities
Living in Worcestershire**

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Legislation

Legislative Framework

- The Children Act 1989.
- The Health & Social Care Act 2001
- The Community Care, Services for Carers & Children's Services (Direct Payments) Regulations 2009.

This policy deals with Direct Payments for children with disabilities or their parents and focuses on the practicalities of using Direct Payments to directly employ workers.

The power to make Direct Payments to people with parental responsibility for disabled children and to disabled 16 and 17 year olds is contained in section 17A of the Children Act 1989 and the 2009 Regulations made thereunder. The Regulations mean that WCC is under a duty to offer Direct Payments as a way of meeting any duty it has to disabled children to provide services under section 17 of the 1989 Act. However, it is not possible to compel someone to accept services by way of Direct Payments if they do not want this. If they refuse Direct Payments, any services for which they are eligible must be provided by the local authority, either directly or indirectly.

In making Direct Payments, WCC is subject to the general duty to safeguard and promote the welfare of children in need and to promote their upbringing by their families when making these payments in exactly the same way as when providing direct services.

In Worcestershire this service is offered via Children with Disabilities Team 0-16 years, and the Young Adults Team 16-25 Years.

Most frequently, a Direct Payment forms part of Worcestershire's short break offer. The purpose of a Direct Payment provided to Children with a Disability is to enable a child or young person to engage in activities outside of the home, increasing independence from family members, and to offer a break from caring roles. The Direct Payment is intended to support the parent, guardian or other authorised person (referred to in this document as the 'Parent') in continuing to care for him/her at home. This is offered via a worker chosen by the child and Parent, and is employed directly by them, following an assessment of need.

Eligibility

Direct Payments are available as a means of providing services to children and young people via a social work assessment of need, by the Children with Disabilities (CWD) team (0 to 16 years) and the Young Adults Team (16 to 18 years). The social work assessment is accessed via the Family Front Door. The criteria for the CWD team or the Young Adults team can be found on the Your Life, Your Choice website.

All children who meet the criteria for the Children with Disabilities Team will receive a social work assessment of their need for services. The assessment will be carried out in consultation with the family, using information from other professionals as appropriate. It is the impact the disability has on daily living that is a key part of the assessment.

The Children Act 1989 Section 17(11) defines disability for these purposes as follows:

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.

Additional specialist assessments will be commissioned as necessary from other professionals involved with the child or family, for example:

- Occupational Therapy;
- Sensory Impairment;
- Speech and Language Therapy;
- Physiotherapy;
- School or pre-school provision.

The assessment may identify that needs arise due to a child's disability or as a result of a parent's health or disability or a child may be in need of protection from abuse or neglect.

Once an assessment has taken place, a decision will be made in consultation with the allocated Children with Disabilities team Social Worker as to whether their needs could be met by a Direct Payment.

The conditions for providing Direct Payments to Children with Disabilities:

- The person to whom the payment will be made (usually the Parent) appears to WCC to be capable of managing a direct payment by themselves or with available assistance
- The person consents to the making of the direct payment
- WCC is satisfied the Direct Payment will meet the need for the service being provided
- The welfare of the child with disabilities will be safeguarded and promoted by the provision of the required service by means of Direct Payment.

Management of Direct Payment

A judgement on a Parent's ability to manage a Direct Payment should be made on an individual basis. Information on what receiving Direct Payments will involve and support services in place should be communicated as early as possible. This will help the recipient make an informed decision as to if they can manage. A Direct Payment support service is available, currently via the Penderels Trust, which can include a managed account should the Parent or the council deem this necessary.

Employing Close Relatives

The 2009 Direct Payment Regulations exclude Direct Payments from being used to pay for care from a close family member living in the same household, except where the Council determined this to be necessary, due to a child/young person's complex, health, social or emotional needs. This will only be agreed after full consideration of the circumstances that it is the only and necessary option in order to adequately meet the individual's needs. Where the employment of

a close relative is agreed the Council will still require the employer to follow all steps to ensure they meet all their legal duties as an employer of the resident relative.

The Council will record an agreed amount of the Direct Payment that can only be used for administration and management of the Direct Payment. The agreed amount will need to be cost effective, similar and not exceed to what many Direct Payment recipients pay to a Direct Payment support service. Lawful employment is an essential requirement.

Method of Payment

The child and their family will be responsible for ensuring any care/support purchased directly from a provider as part of the Direct Payments package is paid for directly to the provider. WCC should not receive invoices for this care.

Where a child and their family need assistance with managing some or all aspects of their Direct Payments they may engage the service of a third party to do so. This third party may be a Direct Payments support service, or other authorised person.

Payments are made quarterly in advance and cover the agreed level of care. Any additional care requested without approval will not be covered and the individual will be responsible for costs over the agreed value of the Direct Payments.

The Direct Payment is paid directly into the relevant bank account by Bankers Automated Credit System (BACS). No payment can begin without a Disclosure and Barring Service check (DBS) completed for the worker, signed Direct Payment Agreement and Direct Payment bank account details.

Payments to Direct Payment workers by the child and their family can only be made by cheque, standing order, or online banking arrangements. Payments to PAs should not be made by cash. WCC plan to implement a pre-payment card system for all Direct Payments by December 2018, to assist with administering the scheme.

Direct Payment Agreement

Your Responsibilities

In return for receiving Direct Payments the Parent will:-

- Notify WCC in writing that you agree to receive direct payments and to all the responsibilities outlined below
- Arrange for the provision of care services in accordance with the current Child and Young Person Assessment and Child & Young Person's Plan.
- Agree to use the Direct Payments worker to provide suitable activities or personal care within your own family home or for activities within the local community, as agreed in the child and young person's plan. Any changes to this arrangement should be discussed

with your child's social worker to ensure that your child is protected under legal and insurance frameworks.

- Ensure that carers employed by the Parent are appropriately trained to meet the Service User's needs. All Direct Payment workers will be required to complete Safeguarding ELearning prior to starting to work with child/young person.
- Ensure that Direct Payments are spent only on services for the Service User's needs as detailed in the Child and Young Person Assessment and Child & Young Person's Plan.
- Open a separate bank account into which the Council will pay Direct Payments and from which all payments will be made.
- Keep appropriate bank records and receipts to demonstrate that Direct Payments are used appropriately in meeting the child/young person's care needs and make these available for review/audit purposes.
- Access support of Penderels Trust or any future organisation commissioned by the Council to provide such support as necessary.
- Co-operate with the Council in reviewing the service provided to the Service User.
- Advise the Council if further assistance in managing Direct Payments is required or if the Service User's needs change.
- Ensure that any Direct Payment monies that have not been spent in meeting the Service User's needs are repaid to the Council at the point of the annual audit linked to the Child in Need Review.
- Notify the County Council as soon as your Direct Payment worker ends their contract with you and ceases working with your child.
- It is the responsibility of the Parent to notify the Business Support Officer when the Direct Payment carer has received their Disclosure and Barring Certificate. Workers cannot start with the child until the Certificate has been seen and checked by a social worker on the Children with Disabilities Team.
- Repay to the Council any Direct Payments or any part of them if the Parent is in breach of a Direct Payment agreement.
- Where appropriate support arrangements such as third party support, insurance cover and payroll will be discussed to ensure the individual is fulfilling their responsibilities as the employer, in particular that they are submitting PAYE returns to HMRC as well as paying tax and National Insurance deductions made to HMRC.

Safeguarding Duties

If you have concerns about an adult working with a child under the age of 18 then please report this to the Local Area Designated Officer (LADO).

Give consideration to the following:

- A child is anyone under the age of 18.
- An employee (person) is anyone working with children, be it in an employed (all sectors and settings), self-employed or voluntary capacity.
- An employer is anyone working with or providing services to children (all sectors and settings). In the case of Direct Payments, the employer is the Parent.
- Working Together to Safeguard Children (2015) places duties on employers to safeguard and promote the welfare of children.

An allegation may relate to a person who works with children who has:

- behaved in a way that has harmed a child, or may have harmed a child:
- possibly committed a criminal offence against or related to a child:
- behaved towards a child or children in a way that indicates they may pose a risk of harm to children.

Timescales:

- The Local Authority Designated Officer (LADO) should be informed within one working day of all allegations that come to an employer's attention or that are made directly to the police.

Contact Information:

LADO - 01905 846383

Family Front Door - 01905 822666

Our Responsibilities

Worcestershire County Council will make Direct Payments to the Parent to enable them to arrange care services in accordance with the current Child and Young Person Assessment and Child & Young Person's Plan. In making Direct Payments the Council will:-

- Pay Direct Payments to the Parent on a quarterly basis. Direct Payments shall be paid at least three months in advance.
- Pay Direct Payments into a separate bank account opened by the Parent.
- Help the Parent to manage Direct Payments by giving advice and support via Penderels Trust.
- Review the needs of the Service User and the Child & Young Person's Plan at least annually.
- Review the Parent's management of Direct Payments at least once a year. This will be an official audit.
- Review the arrangements made by the Parent to ensure that the quality of services arranged is appropriate to meet the needs of the Service User.
- Arrange for appropriate checks to be undertaken on behalf of the Parent on prospective carers.

Reviewing and Monitoring

The Council reviews the making of Direct Payments every 12 months.

The initial review may not be a full review but is intended to be light-touch to ensure that the person is comfortable with using the Direct Payment, and experiencing no initial issues. In most cases the first Direct Payment review will be incorporated within the initial Child in Need Review. The discussion will include elements of managing and using the Direct Payment and if this review raises concerns then a full review of the plan will need to be carried out.

Following the first review the Council then reviews every 12 months aligning the annual review of the Direct Payment with the Child in Need Review.

Recovery of Payments

A month's notice should be given by either party to terminate the direct payment agreement. The Council may terminate this agreement forthwith by notice in writing to the Parent if the Parent is in material breach of the agreement, which in the reasonable opinion of the Council, has seriously prejudiced the interests of the Council or the Service User. In such a case the Council will investigate the matter and advise the Parent of the outcome of the investigation within one month. Examples of material breach include where the Council is satisfied that the Service User's needs are not being met or where Direct Payments have been misspent.

Surplus, deficits or misuse of a Direct Payment

The Council will look at this during reviews and any significant under or overspend may trigger a reassessment to ensure that the funding being received is being used appropriately to meet the current identified eligible needs. The Council will arrange for an identified surplus amount to be returned to the Council if at the end of a review period an individual has not allocated or used all of their Direct Payment in line with the Child in Need Review.

Should the Council have concerns that the Direct Payment funding has been misused it will work with those involved to try to resolve the issues but will retain the right to request that any misused monies are refunded to the Council.

Ending a Direct Payment

There are circumstances where the Parent or other authorised person or the Council considers it is appropriate to temporarily cease, suspend or terminate the Direct Payment.

For example, where the Service User is no longer eligible for Council support, the Service User has an extended period away from their main residence, problems with the management of the Direct Payment, including misspending, breaching the Direct Payment Agreement, Terms and Conditions and/or safeguarding concerns.

If there are issues or concerns the Council will work with the Parent, authorised person, or the third party managing the Direct Payments in order to explore all available options.

Should there be a decision to suspend or terminate the Direct Payment this will be confirmed and the Child in Need plan will be revised to include what arrangements are to be made for alternative support should this be appropriate and how outstanding commitments will be resolved including repayments of any outstanding monies.

If it is decided that it will be necessary to suspend or terminate the Direct Payment and the individual continues to have eligible social care needs then the Council has a legal duty to meet those needs.

Contingency Planning

The Parent should be advised to make contingency plans for any breakdown in their care/support arrangements. Should there be a breakdown in care/support arrangements the individual must inform the Children with Disabilities Team.

A Direct Payment Support Service, if involved in the ongoing management of the package, should also support the child and their family to prepare a contingency plan and may be able to support the Parent to manage in emergencies.

Safeguarding

The social worker should advise parents and young people of their right to request WCC's Services to carry out a check under the Protection of Children Act 1999 via the Disclosure and Barring Service (DBS).

When a DBS is requested, the prospective employee will complete the application and the social worker should arrange for a check to be made. This will be funded by the council once all relevant documents have been presented by the individual. If the check finds someone unsuitable a Direct Payment will not be made to enable them to employ this person. The Parent should also be advised of the limitations of checks and that they do not guarantee that an individual is safe to work with children. Advice about safe practice when employing someone via Direct Payments should be given (e.g. the need to obtain two references). All prospective employees need to undergo a DBS check prior to payment being made.

WCC has a duty of care towards the child and their family even when they are organising their own care and support.

The Parent needs to be aware of the policies and procedures for safeguarding and how to make a referral when the service is first set up. Guidance about the role of the parent/carer as an employer needs to be given from the outset, with boundaries regarding the employee / employer relationship to minimise risks. Advice regarding clear financial boundaries with the employee / employer relationship needs to be given when arranging a Direct Payment to minimise the risk of financial abuse. The recording of financial arrangements needs to be explicit and monitored within the review process. If there is any suggestion of abuse to the child in receipt of Direct Payments WCC colleagues should follow the Worcestershire Safeguarding Children Board's procedures.

Complaints

Worcestershire County Council's aim is to improve the quality of service provision by listening and responding to the views of a child and their family.

The Children Act 1989 Representations Procedure (England) Regulations 2006 requires the County Council to have a procedure for resolving complaints made by the children and young people it looks after or who are in need, and children leaving care, regarding the services provided to them under The Children Act 1989. Representations and complaints can also be made on behalf of such a child or young person by a parent, a person with responsibility, foster

carer, Special Guardian or other person that the authority considers has a sufficient interest in the child's welfare to warrant his representations being considered by them.

The Consumer Relations Unit manages the social care complaints procedure within the Children Families and Communities Directorate. Complaints will be considered under these procedures when made by children and young people with regard to the services they receive from Worcestershire's Social Care Services, including complaints relating to all aspects of Direct Payments. Complaints will also be considered when made by parents, Local Authority foster carers and other appropriate adults making a complaint on behalf of a child or young person.

There is a duty on local authorities to enable children/young people who wish to make a complaint on their own behalf to access advocacy services. Onside advocacy provide this service for Worcestershire but people can also choose their own advocate should they wish to do so. In addition, there is a contract within the county with NYAS (National Youth Advocacy Service) for advocacy support.

Useful External Resources

- Penderels Trust website: www.penderelstrust.org.uk
- Becoming a new employer: www.gov.uk/pay-for-employers
- Direct Payments Support: www.thinklocalactpersonal.org.uk/assets/BPDPS.pdf
- Direct Payments in Healthcare: www.england.nhs.uk/healthbudgets/wp-content/uploads/sites/26/2015/04/guid-direct-paymnt.pdf
- Direct payment employer registration: www.gov.uk/register-employer
- HMRC employment status check: www.gov.uk/new-employee/employee-information
- Information on taking on a new employee:- www.gov.uk/new-employee
- Your Life, Your Choice – www.worcestershire.gov.uk/ylyc
<https://ylyc.worcestershire.gov.uk/care-and-support/disabilities/social-care-support-for-children-with-disabilities/>
- Consumer Relations Unit -
http://www.worcestershire.gov.uk/info/20326/care_and_support/929/childrens_social_care_-_complaints_procedure
- Nyas (National Youth Advocacy Service) – www.nyas.net, email: main@nyas.net, phone (general enquiries): 0808 808 1001, phone (buying services for children and young people): 0151 649 8700
- Onside (Worcestershire advocacy charity) – www.onside-advocacy.org.uk, email: info@onside-advocacy.org.uk, phone: 01905 27525