

Childrens' Care & Support Personal Budgets and Direct Payments Policy

Personal education and social care budgets and Direct Payments for children and young people aged 0-25 with special educational needs or disabilities (SEND) and their families.

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Introduction

The Children and Families Act gives parents and carers of children with Education, Health and Care plans and young people over the age of 16, greater choice and control over their support arrangements. If a child or young person receives an Education, Health and Care Plan you will be able to request a personal budget, part of which might be available through a direct payment.

Solihull Metropolitan Borough Council (The Council) must identify those areas of spending which are deemed, 'personal budgets' and the parents of children or young people themselves must be given the opportunity to influence how this funding is used or, in some cases, actually control the receipt and spending of the budget.

Many children and young people who have a special educational need or a disability do not require additional support as their needs are met by existing services.

Special Schools or other specialist settings will, in the majority of cases, be designed, organised and resourced to meet fully the educational needs of their pupils. All educational settings, including Early Years providers, schools, academies, colleges and other learning providers, are focussed on supporting all the children or young people to achieve quality learning outcomes. The teacher or practitioner will be focussed on helping every child or young person to succeed and details of additional support provided must be included in school local offer statements.

Some children and young people with SEND will need additional support to achieve their learning outcomes. This is **targeted support** and providers (Early Years settings, schools, academies and colleges) receive funding from the Local Authority for this. The targeted support might include, for example, focussed literacy support or a behaviour management programme.

A small number of children and young people will require additional and individual support, over and above the targeted support, so that they can participate in learning activities and achieve positive outcomes. Most of these young people will have an Education, Health and Care Plan which may be supported by a personal budget.

Examples of where families may need to access additional support for their child include;

- Additional support from Education to ensure that a child's learning needs are met. This could include specialist equipment or types of therapy and would make up a **personal SEN budget** with a focus on learning outcomes.
- Additional support from the Health Service where a child or young person has a complex, long term and/or life limiting condition. This would make up a **personal health budget** focussed on health outcomes.
- Additional support from Social Care where a child needs additional support at home or where a family need a short break from caring. This would make up a **personal care budget** focussed on outcomes around family life, after school, being safe when

out in the local community and developing independence skills towards transition to adulthood.

Together, these additional Education, Health and Care needs, over and above those that a provider is usually expected to provide for, form the child or young person's overall **personal budget**. The key area of change arising from the SEND reforms is that instead of the provision of services by the Local Authority, school or Health Service, a single budget is identified and work takes place to plan how this can best be used to meet the child or family's needs and to improve learning outcomes.

Solihull MBC recognises the duty placed upon it in carrying out responsibilities under the Children and Families Act 2014, the Care Act 2014 and the SEND Code of Practice 2014, in relation to disabled children and young people and those with special educational needs (SEND)

This policy outlines how to access personal budgets for children in Solihull.

It gives guidance on the use of direct payments, the procedure for accessing the scheme, and the responsibilities of the different people involved.

Solihull Metropolitan Borough Council (the Council) is committed to promoting individual wellbeing and to supporting developing independence through preventing, reducing or delaying the need for care and support. Solihull Metropolitan Borough Council has regard to;

- The views, wishes and feelings of the child, young person and their parent/carer.
- The importance of the child or young person and their parent/carer's participation in decision making.
- The need to support the child or young person and their parent/carer to facilitate the child or young person to develop their skills and help them to achieve the best possible educational and other outcomes, preparing them effectively for transition to adulthood.

Currently in Solihull, children and young people with SEND have separate plans detailing their needs and provision. We aim to have education, health and care provision detailed within one plan, the Education, Health and Care Plan (EHCP) in the future.

Direct Payments may also be used as a way of arranging aftercare services provided under s117 of the Mental Health Act 1983. This Policy has been created to provide guidance in line with the following legislation and guidance relating to Direct Payments:

Care Act 2014: <http://www.legislation.gov.uk/ukpga/2014/23/contents>

Care and Support Statutory Guidance: <https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance>

Care and Support Direct Payment Regulations:
http://www.legislation.gov.uk/uksi/2014/2871/pdfs/uksi_20142871_en.pdf

Mental Health Act 1983: <http://www.legislation.gov.uk/ukpga/1983/20/section/117>

This Policy is effective from the 1st April 2018 and will be reviewed regularly to ensure that it continues to reflect current legislation and guidance.

1. Why do we have this policy?

Solihull Metropolitan Borough Council is committed to supporting children and young people with SEND to achieve their potential and go on to live happy and fulfilled lives, as independently as they are able to, and promotes;

- Co-production, choice and control
- Transparency and openness in all processes and decision making
- Collaboration between education, health and social care within the SEND 0-25 service
- Quality of provision, value for money and range of choice are all considered when agreeing how best to achieve identified outcomes for children and young people with SEND

2. Receiving a Personal Budget

2.1 Who can request a Personal Budget?

- Young people with identified eligible outcomes, between the ages of 16-25 and parents of children with SEND have a right to ask the Local Authority to prepare a personal budget once the authority has completed the Education, Health and Care assessment and confirmed that it will prepare an EHC plan.
- Parents and young people may also request a personal budget when they already have an EHC plan, during a statutory review of an existing plan.
- Solihull Metropolitan Borough Councils policy is, wherever appropriate to offer personal budgets to all children and young people eligible for support for children's social care. Part of the personal budget may be available as a direct payment.
- Individuals with mental health support needs (including people who are entitled to after care in accordance with section 117 of the Mental Health Act 1983) excluding those subject to compulsory measures under the Act.
- Individuals who lack mental capacity but have a person authorised under the Mental Capacity Act 2005 to make decisions about the individual's needs for care and support. An authorised person can nominate another person to receive the Direct Payment on behalf of the individual.

- Individuals who do not have identified eligible needs but the Council decides to use its discretionary powers to meet their needs.
- Individuals who lack mental capacity and have no one authorised under the Mental Capacity Act 2015 to agree to a Direct Payment to meet their needs but have a suitable person as identified by the Council.

2.2 Social Care Personal Budgets

The scope of personal budgets in social care currently extends to;

- Older people and disabled people over the age of 16
- People with physical and/or sensory disabilities, learning disabilities and / or mental health issues. People who do not have the mental capacity to consent to a direct payment can have an appointed person to manage Direct Payments on their behalf.
- A person with parental responsibility for a disabled child aged under 16.
- Parents and others with parental responsibility who are not necessarily the child's parents.

2.3 Personal Health Budgets

Currently the NHS mandate requires Clinical Commissioning Groups to make available a personal health budget to those families eligible for Children's Continuing Care (CCC) or for those over 18 eligible for Continuing Health Care (CHC) It applies to adults over 18 in receipt of CHC funding and children/young people under 18 who are in receipt of CCC and who request a personal budget for domiciliary care (adults and children) and short breaks (children only)

NHS continuing care is support provided for children and young people under 18 who need a tailored package of care because of their disability an accident or an illness.

It is different to NHS continuing healthcare, which can be provided to adults who have very severe or complex health needs.

More information can be found here:

<http://www.nhs.uk/CarersDirect/guide/practicalsupport/Pages/continuing-care-children.aspx>

Those eligible for CCC can request a personal health budget through their key health contact, however as part of the Education, Health and Care plan process a family may request a personal health budget at the point they are informed that an EHC plan will be

prepared or during a statutory review of an existing EHC plan and this request will be made to the CCG via the SEN team.

2.4 Education Personal Budgets

Personal education budgets can be requested within the EHC process or annual review and will be considered on merit. The Council will only consider a personal education budget if:

- The request is linked to achieving clear outcomes in the Education Health and Care plan.
- It meets the child or young person's needs, aspirations or identified outcomes.
- The service required is not already commissioned.
- It achieves value for money.
- The cost of the special educational provision can be disaggregated without an adverse impact on other services and this would be an efficient use of public money.

3 What provision could be included in a personal budget for a child with an EHC plan?

An EHCP personal budget can include funding from education, health and social care, however the level of the budget will vary dependent upon the need of the child or young person. Personal budgets are based upon clear agreed outcomes set out in the EHC plan. The decision making process to establish and agree a budget should be clear and **must** be open to challenge with parents able to request a review of decisions in relation to direct payments.

The provision to be delivered through a personal budget will be set out as part of the provision specified in the EHC plan. Where a personal budget has been agreed the EHC plan **must** also set out the details of the needs and outcomes to be met by the budget and the arrangements for any use of direct payments including the services that they will be used for, the amount and frequency of the payments and arrangements for review. Direct payment provision **must** be set at a level that will deliver the provision specified in the plan.

Where the Local Authority is unable to meet a request to include particular education or social care provision in a personal budget or a direct payment, the reasons will be provided in writing and the parent or young person will be able to request a review of that decision.

Decisions in relation to the health element (personal health budget) remain the responsibility of the CCG and where they decline a request for a health personal budget they **must** set out the reasons in writing and provide the opportunity for a review.

3.1 Education funding

Many children and young people with SEND attend school or post 16 provision, are supported by their funding and do not require any additional support. Schools have, what is called a notional SEN budget to support children and young people with SEND. The school or post 16 provision should make it clear what support they provide. This information should also be available in their, 'local offer.'

There are some children and young people who do need additional support and where this is the case and it is clear within the EHC plan, the school or post 16 provider might require some additional funding. The money used to pay for this provision is referred to as "High Needs Block" funding and is usually paid by the Council to the education provider.

3.2 What is funded through the High Needs Block?

- Additional top up funding to schools, academies, free schools and further education providers. This is used to meet the agreed educational outcomes in the EHC plan. This top up funding could be provided as a direct payment with the agreement of the Head Teacher.
- Additional top up funding is also provided to our special schools and independent providers. Although the cost of support could be included in the personal budget, it would not be available as a direct payment.

3.3 Exclusions from Direct Payments

The regulations about personal budgets state the following;

"The following persons may not receive direct payments:

- A person who is subject to a drug rehabilitation requirement as defined by section 209 of the Criminal Justice Act 2003 (a), imposed by a community order within the meaning of section 177 of that Act or by a community sentence order within the meaning of section 189 of that Act;
- A person who is subject to an alcohol treatment requirement, as defined by section 212 of the Criminal Justice Act 2003. Imposed by a community order within the meaning of section 177 of that Act or by a suspended sentence order within the meaning of that Act;

- A person who is released on license under Part 2 of the Criminal Justice Act 1991 (a), Chapter 6 of Part 12 of the Criminal Justice Act 2003 or Chapter 2 of Part 2 of the Crime (Sentences) Act 1997 (b) subject to a non-standard licence condition requiring the offender to undertake offending behaviour work to address drug related or alcohol related behaviour;
- A person who is required to submit to treatment for their drug or alcohol dependency by virtue of a community rehabilitation order within the meaning of section 41 of the Powers of Criminal Courts (Sentencing) Act 2000 or a community punishment and rehabilitation order within the meaning of section 51 of that Act (c);
- A person who is subject to a drug treatment and testing order imposed under section 52 of the Powers of Criminal Courts (Sentencing) Act 2000 (d).
- subject to a youth rehabilitation order imposed in accordance with paragraph 22 (drug testing requirement) of Schedule 1 to the Criminal Justice and Immigration Act 2008 which requires the person to submit to treatment pursuant to a drug treatment requirement.
- Subject to a youth rehabilitation order imposed in accordance with paragraph 23 (drug testing requirement) of Schedule 1 to the Criminal Justice and Immigration Act 2008 which includes a drug testing requirement.
- Subject to a youth rehabilitation order imposed in accordance with paragraph 24 (intoxicating substance treatment requirement) of Schedule 1 to an intoxicating substance treatment.

In addition, not every child or young person with additional needs will be eligible for a personal budget. The child or young person will need to meet the eligibility criteria following an assessment of their needs.

Individuals who refuse an assessment or review of their needs or who are not an ordinary resident in Solihull will not be eligible for a direct payment.

4 Looked After children

A child is Looked After by a Local Authority if he or she has been provided with accommodation for a continuous period of more than 24 hours, in the circumstances set out in sections 20 and 21 of the Children Act 1989, or if they are placed in the care of the Local Authority by virtue of an order made under part 1V of the Act.

Children or young people with SEND who are Looked After in the short term by the Local Authority are not usually eligible for a personal budget as their needs will be met by Local Authority services.

In exceptional circumstances where there is imminent risk of breakdown of a short term foster placement, then additional support may be offered. This would not be the case for

children and young people in residential care.

Children with additional needs who are placed long term in foster care or are subject of Special Guardianship or similar legal orders are able to access additional services to provide support if they meet the criteria. In exceptional circumstances this can be provided as a direct payment.

In cases where there is a dispute about a decision to provide a direct payment, the matter will be addressed either through mediation or in line with the Councils complaints policy.

5 How the social care direct payment is determined.

The Resource Allocation System (RAS)

Following a Specialist Early Help Assessment, A Single Assessment or an Education, Health and Care assessment that identifies social care needs the Resource Allocation System will be used to determine the Indicative Budget.

The social care Resource Allocation System provides a way of determining what level of support is required, dependent upon the assessment outcomes. The tool does not replace an assessment it merely indicates following assessment the indicative budget.

Once the indicative budget has been determined, the worker who completed the assessment will discuss with their manager how much of the indicative budget is required to meet the identified needs and support the identified outcomes.

The Direct Payment amount will be calculated annually as an equal weekly payment regardless of whether it is term time or school holidays. Additional holiday support will be calculated with the usual payment.

The Direct Payment will be made every four weeks, 13 times each year.

This enables young people and their families to have greater control over their budget and to either spend an equal amount each week or to save some of the budget from the regular payment, to spend on higher levels of support during holidays if they wish.

The recommendation of the level of the Direct Payment will go to the Resource Allocation Panel and the level of Direct Payment will be authorised.

A letter will be sent to the young person and their family confirming the start date and the amount of the Direct Payment available to meet their needs.

All support offers will be based on the most cost-effective care plans, which meet the unmet eligible needs of a young person with regard to risk and personal circumstances. Indicative budgets are based on an annual allocation of funding, which is subject to a review process and may be adjusted. Needs may also change at any point in time for a wide variety of reasons that may trigger a reassessment and result in an

increase or decrease in the funding allocated.

5.1 Exceptions to the indicative budget - Emergency or Crisis Support.

Personal budgets as a planning mechanism assume limited change in the level of support required throughout the year. Where children fall ill, have a family crisis or where additional safeguarding measures are required quickly there needs to be an urgent response to increase short term support.

Circumstances where the indicative budget set may be disregarded and where additional resources can be provided include the following:

- Imminent and significant risk of family breakdown
- Family Bereavement
- Significant illness
- Housing issues leading to a risk of homelessness
- Other emergency situations with the agreement of the Head of Service.

If additional resources are provided by way of a Direct Payment in these exceptional circumstances, the additional budget will be time limited up to six weeks to enable increased short term support and for a review to take place to support the family in returning to a more stable situation.

5.2 Assessing Mental Capacity to receive Direct Payments

Before a Direct Payment is made to a young person aged over 16 years, an assessment of mental capacity will be carried out on a case-by-case basis. Mental capacity is the ability to make a decision. Under the 2005 Mental Capacity Act, an individual lacks capacity in relation to a matter if at the time, they are unable to make a decision in relation to the matter because of impairment of, or a disturbance in the functioning of, the mind or brain.

Where there is any doubt about an individual aged over 16s' ability to consent to a Direct Payment, the Council will assess whether or not the individual has capacity to consent before making a Direct Payment available. Individuals who would otherwise have no one to support them will be offered an advocate. In such cases, staff will refer to the Mental Capacity Act 2005 and its accompanying Code of Practice.

Where an individual aged over 16 and in need of care and support has been assessed as lacking capacity to request the Direct Payment, an authorised person can request the Direct Payment on their behalf. An authorised person is someone who agrees to manage a Direct Payment for an individual who lacks capacity according to the Mental Capacity Act 2005. An authorised/nominated person is anyone the Council deems appropriate who agrees to manage a Direct Payment on behalf of the individual with care needs.

If appropriate, an authorised/nominated person should be involved in the care and support planning process. The authorised/nominated person will be required to sign an agreement to receive and manage the money on behalf of the individual with eligible needs. By doing so they take on the legal responsibility related to employing and managing staff employed through the Direct Payments scheme.

Consideration will be given to cases where capacity is fluctuating or known to fluctuate. This will be covered in the individuals Care & Support Plan and detail the steps to take where capacity fluctuates.

5.3 Spending Direct Payments

The Care & Support Plan will detail the eligible outcomes for an individual for which the Direct Payment can be used.

5.4 What can Social Care Direct Payments be used for?

Depending on circumstances, in agreement with the social worker and when detailed within the plan, individuals can spend their Direct Payment on:

- Employing a personal assistant and related expenditure, i.e. holiday pay, relief cover, etc.
- Contracting with an agency or service provider.
- Paying for activities to help the individual stay well such as play schemes, after school clubs, social activities, gym membership etc.
- Paying for equipment up to a maximum of £100 that reduces an individual's need for support.
- Respite care with a friend or relative, in a residential setting or overnight care delivered at home. In this event the short break carer will need to be managed as a Personal Assistant in respect of suitability and employment conditions. A direct payment will pay for a 14 hour overnight break (e.g. from 7pm to 9am) at the usual hourly rate no less than the National living wage. If two or more overnight breaks are arranged together, the day time hours in between the overnight short break hours will be made up from the usual direct payment day time hours.

In the event that there is no one known to the family available to provide overnight short breaks, and the child / young person's needs can be met within a family setting a referral for Family Link (Family based respite care) will be recommended.

Parents and carers should also be aware that the Council also has an overnight respite service available for those young people with learning difficulties, who meet the criteria and for whom family based respite care would not be appropriate.

5.5 What an individual cannot spend a Direct Payment on:

- Anything that is not outlined in an individuals plan to meet their agreed outcomes.

- Anything illegal.
- Alcohol or tobacco.
- Gambling.
- Services provided by the NHS.
- Ordinary living costs, food, bills, clothing, holidays, etc.
- Telecare and pendant alarm standing charges
- Equipment and adaptations costing over £100 or those that are provided by health or a disabled facilities grant.
- Purchasing services from Solihull MBC or the Health Authority

5.6 Paying anyone who lives in the same household

A Direct Payment cannot be used to employ an individual who lives in the same household as the child or young person who requires care except in circumstances which SMBC considers are exceptional and such care has been assessed as necessary. Agreement will be required in writing by the Council's Head of Service where there are very exceptional circumstances that apply and where there is evidence that there is no other alternative option to meet an individual's eligible needs.

5.7 Holidays

Direct Payments cannot not be used to fund holidays. However, they can be used to meet an individual's eligible needs outlined in the individual's care & support plan whilst they are on holiday. This might for example support the payment of a Personal Assistant to attend a holiday with the child or young person in order to provide necessary support.

Unless this is agreed within the Care and Support plan, prior written confirmation should be sought from the Head of Service.

5.8 Direct Payments for equipment

The value of Direct Payments provided for equipment will reflect the cost of standard items available through the Council's Community Equipment and Wheelchair Service. However, for non-standard provision (equipment not stocked/provided by the Council), a Direct Payment at the 'market value' cost is made.

If an individual chooses to purchase a more expensive option to meet their assessed needs than the Council has agreed to fund, they must pay the difference, known as top up.

Where an individual is assessed as needing equipment as part of their plan the Council will offer a choice of how the equipment can be provided:

- The Council can provide the equipment.
- The Council can pay a Direct Payment to the individual, of an equal cost for direct purchase of that item.
- The Council can pay a Direct Payment to the individual, of an equal cost to the direct provision of that item, and the individual can top up that amount to purchase equipment with additional features.

Where an individual chooses to purchase their own equipment they must receive approval from the Council that the equipment meets their assessed needs as detailed in their Care & Support Plan. The Council will provide written approval to the individual confirming their authority to purchase the specified equipment.

All equipment purchased becomes the property of the individual receiving the Direct Payment who will then be responsible for the maintenance of the equipment. This includes taking all legal and contractual responsibilities that may arise from this.

Maintenance agreements do not need to be set up for standard daily living equipment (perching stools, toilet frames, etc.), as this type of equipment is more likely to need replacing due to wear and tear.

Solihull Council considers maintenance, warranty renewals and service requirements on a case-by-case basis. It assumes all equipment purchased via a Direct Payment has a 1-year manufacturer warranty, but would then look to explore the most cost effective method of providing necessary maintenance/service provision, provided the piece of equipment is still meeting eligible need. So for example in the case of a mobile hoist (expected to last for many years) a 5 year warranty/servicing contract might be provided, but in the case of a toilet seat (low cost/short life) it would not, as it would be cheaper to replace the item than extend the warranty.

The individual will be responsible for obtaining regular checks and maintenance of the equipment in accordance with the manufacturer's instruction.

The Council will not be liable if an accident occurs as a consequence of the equipment not being used in accordance with manufacturer's instructions and/or Occupational Therapy (OT) recommendations.

5.9 Direct Payments – paying for Council services

Direct Payments are not to be used to pay for services provided directly by Solihull Council. If an individual wishes to receive a service from Solihull Council that is included in their Care and Support Plan, the Council will arrange this and any Direct Payment will be reduced accordingly.

Care and Support can be purchased from a different local authority if a particular service included in an individual's Care and Support Plan is not provided by Solihull Council.

5.10 Hospital stays

There may be occasions when a child or young person requires a stay in hospital. If an individual is in hospital for 4 weeks or more, a review will take place and Direct Payments may be reduced or suspended should the individual have to remain in hospital.

Regular personal assistants should continue to be paid in full for up to four weeks for the period whilst a Direct Payment recipient is in hospital. Any additional payments after the four

weeks may be made on a case-by-case basis.

During the review, consideration will be given to how the Direct Payment may be used in hospital to meet non-health needs or to ensure employment arrangements are maintained.

In some cases, the authorised/nominated person managing the Direct Payment may require a hospital stay. In these cases, the Council must be notified and an urgent review will be conducted to ensure that the individual continues to receive care and support to meet their needs.

5.11 Periods away from home

Regular personal assistants should continue to be paid in full for up to four weeks for the period whilst a Direct Payment recipient is away from home for short periods. The Council's Head of Service must agree any additional payments after the four weeks in writing but such approval will only be given where there are very exceptional circumstances.

6 Receiving a Direct Payment

While using Direct Payments the individual responsible for the Direct Payment account will need to manage how they receive money, make payments for the services used, pay personal assistants and make tax or national insurance payments to HMRC.

Direct Payments will only be made where the Council has received a signed Agreement to Pay Form, Direct Payment Agreement and a signed Care & Support Plan from the individual receiving the Direct Payment or their authorised person/representative.

There are three ways to handle a Direct Payment depending on how much responsibility an individual wants:

- Prepayment Card
- Managed Account
- Bank Account

These options will be explained during an individual's social care assessment and the Direct Payment set up process.

6.1 Prepayment Card

The Council Adult Social Services has a pre-paid card system to receive Direct Payments. Childrens Services intends to introduce pre-paid cards during 2018/2019. The pre-paid card system works like a basic bank account and can be used to make payments and set up direct debits or standing orders. The Council will pay an individual's Direct Payment money onto the card to enable the individual to pay their Personal Assistant or any other expenses meeting their assessed care and support needs.

Pre-paid cards do not automatically allow cash withdrawals. In exceptional circumstances where there is an identified need for cash withdrawals the Council's Head of Service must agree this for children and young people.

In the event an individual or their representative loses their pre-payment card three times or more, they may be charged £5 for each subsequent lost card.

6.2 Managed Account

The Council commissions an organisation to manage Direct Payment money on behalf of the individual. The Council will pay the Direct Payment to the organisation to purchase support to meet the eligible needs detailed in the individual's Care & Support Plan.

6.3 Bank Account

A separate bank or building society account **must** be used for the Direct Payment. This has to be in the name of the individual receiving the Direct Payment or may be made to a Third Party/suitable appointed person if agreed by the social worker for the child or young person in receipt of the Direct Payment.

6.4 Direct Payment rates

The amount of the Direct Payment will be determined by the Resource Allocation System. This will equate to an amount that is the reasonable cost of securing the provision of the service concerned, in the local market place to meet the assessed eligible needs of an individual as detailed in their Education Health and Care Plan.

6.5 Frequency of payments

The Council will make 13 equal Direct Payments per year, every four weeks.

6.6 Top Up

If an individual chooses a more expensive support option than the Council has agreed to fund, they must pay the difference, known as a top up. The individual must pay their top up onto their pre-payment card, into their nominated Direct Payment bank account or into their Managed Account every 4 weeks. By making this payment, the individual is ensuring that there is enough money available to pay for their full support as detailed in the Care and Support Plan.

The Council will not issue invoices to the individual for top up payments related to Direct Payments.

Any non-payment of the top up payment could result in the Direct Payment being stopped and where appropriate care and support being arranged directly by the Council.

6.7 Contingency and reserves

An accumulated Direct Payment of up to 8 weeks of the usual Direct Payment amount can be retained as a contingency. This is to enable Direct Payments to be accumulated in order to provide greater choice and control, for example to provide higher levels of support during school holidays.

The Council will monitor the use of the contingency to ensure that it is being spent in line with the individual's plan.

The individual should hold sufficient funds in their Direct Payment account to cover all planned expenditure. Anything held in excess of this amount, which has not been agreed as part of fluctuating needs requirements will be recovered by the Council.

7 Employment Duties

7.1 Personal Assistants

A personal assistant (PA) is defined as a person employed specifically by the child, young person and their family to meet their identified needs.

If an individual uses their Direct Payments to employ a Personal Assistant, they must also take out liability insurance to cover against such issues as:

- Legal costs relating to Health and Safety/unfair dismissal claims
- Damages and other costs.

Relatives of the child or young person with care & support needs, who do not live within the same household, can be employed as Personal Assistants. The Council will assess any risk of vulnerability when considering such an arrangement, i.e. breakdown in relationship between the two or employment law issues.

A personal assistant must have a legal right to work in the UK and it is the responsibility of the individual hiring the Personal Assistant to ensure this. Further responsibilities are outlined in Appendix 1.

Individuals employing a Personal Assistant must ensure that they comply with all legal requirements as an employer.

If an individual person needs to suspend a Personal Assistant on full-pay (for instance if the Personal Assistant is subject to a Safeguarding Enquiry) then the individual should initially fund this using their Direct Payments reserve and contact the Council immediately to agree contingency plans.

7.2 Personal Assistants and the right to a workplace pension

The PA may potentially have a right to a Workplace Pension. (This is dependent on age, the number of hours worked and earnings). Support with Workplace Pensions will be provided by the Direct Payments Support Service providers Payroll service; however anyone taking up Direct Payments and not utilising the Payroll service will need to set up the Workplace Pension themselves, as they are signing a contract stipulating that they are capable of managing the employer's responsibilities.

7.3 Disclosure and Barring Service (DBS) checks

The Council recommends that all Personal Assistants' are asked to give written consent to a DBS check and such a check is undertaken. The individual managing the Direct Payment account must satisfy themselves of the suitability of the Personal Assistant employed.

When employing people via Direct Payments a DBS check is at the discretion of the individual, with the exception of:

- Where they are required by law for staff working with vulnerable adults or
- where there is a child aged 16 or less living in the household or,
- other vulnerable people living in the household may be put at risk if a DBS check is not carried out.

8 Audit and Review of Direct Payments

8.1 Audit of Direct Payments

The Council will provide information and advice to any individual who opts to take their care and support through the payment of a Direct Payment. It will be made clear to individuals that the Direct Payment account is auditable and the need for good record keeping on expenditure is important.

The young person or their authorised/nominated person shall keep all documents and/or records generated in connection with the provision of services to which a Direct Payment agreement relates for a period of 7 years following the end of the services. The documents and/or records held by the individual or their authorised/nominated person may be inspected by any authorised representative of the Council.

Audits are required to ensure that Direct Payments are being used for the purposes laid out in the Care & Support Plan and accurate receipts and records are being kept. Any discrepancies will be investigated and resolved and the Council will recover any excess and/or misused funds.

The Council has the right to suspend or terminate the Direct Payment as a result of the findings of the audit of the Direct Payment account.

8.2 Frequency of audits and information required

All Direct Payment accounts will be subject to quarterly (every 3 months) audits. Individuals shall provide the required information within 14 days of the quarter end request. Failure to provide the required documentation shall result in a reassessment of the individuals' eligibility for receipt of Direct Payments.

Potential inappropriate or fraudulent activity in relation to Direct Payments will not be tolerated, will be escalated to SMBC internal Audit department and may be reported to the police.

Individuals will be required to submit the following information:

Prepayment card:

Individuals who receive their Direct Payment onto a pre-paid card will not have to submit bank statements as the Council will monitor the prepaid account. Individuals will need to submit receipts/invoices/payslips and timesheets.

Individuals must provide this information on a quarterly basis (every 3 months) or at anytime the Council requests them to do so. Failure to do so will affect your Direct Payment.

Nominated bank account:

Individuals who receive their Direct Payment into a nominated bank account you will need to submit bank statements/ receipts/ invoices/ payslips/ and timesheets.

Individuals must provide this information on a quarterly basis (every 3 months) or at anytime the Council requests them to do so. Failure to do so will affect your Direct Payment.

Managed Account:

Individuals who receive their Direct Payment through a managed account will need to submit invoices, receipts, payslips and timesheets directly to the managing agent on an on going basis to enable the support you have chosen to be paid. Failure to do so will affect your Direct Payment.

8.3 Recovery of Direct Payments

The Council reserves the right, after consultation with the individual or their authorised/nominated person, to adjust future payments to recover any over-payments or under-spends amounting to more than 8 weeks accumulated payment, after taking into consideration any other expenses the individual is required to meet. These payment may be in relation to payment for statutory holidays, those due to the HM Revenue and Customs or intended accumulation of funds in order to meet increased levels of support during school holiday periods for example.

9 Ending Direct Payments

9.1 Terminating Direct Payments

Direct Payments will only be terminated as a last resort. The Council will take all reasonable steps to address any situations without the termination of the payment. If terminating a Direct Payment, the Council will ensure that services are provided directly and there is no gap in the provision of care and support.

9.2 Solihull Council terminating Direct Payments

The Council shall cease making Direct Payments if the individual no longer appears to be capable of managing the Direct Payment or of managing the payment with support. The Council will make timely arrangements for the provision of services in lieu of the Direct Payments, to ensure continuity of support.

Direct Payment will be discontinued when an individual no longer needs the support for which the Direct Payments intended. The Council will discuss with the individual, their carer, and any other person concerned on how best to manage this.

The Council might also discontinue payments if the individual fails to comply with a condition imposed under regulations to which the Direct Payments are subject or if for some reason the Council no longer believes it is appropriate to make the Direct Payment. For example, the Council may discontinue the Direct Payments if it is apparent that they have not been used to achieve the outcomes of the Care and Support Plan.

Where Direct Payments are discontinued as a result of criminal justice legislative provisions, the Council will make timely arrangements for services to be provided in lieu of the Direct Payments, to ensure continuity of support.

9.3 Discontinuing Direct Payments where the persons lacks capacity to consent

The Council will discontinue Direct Payments if they are not satisfied for whatever reason that the authorised person is acting in the best interests of the individual, within the meaning of the 2005 Mental Capacity Act. The Council may discontinue the Direct Payments if it has sufficient reason to believe that the conditions imposed under regulations on the authorised person are not being met. The Council may wish to consider if someone else can act as an authorised person for the individual lacking capacity, or whether there is a need for the Council to arrange services for them in place of the Direct Payments.

Direct Payment will be discontinued to an authorised person where the Council has reason to believe that a young person over the age of 16 years who had lacked capacity to consent to Direct Payments has now regained that capacity on a long-term or permanent basis. The Council will not terminate Direct Payments to the authorised person before beginning to

make Direct Payments to the individual themselves or to arrange services for them, according to their wishes.

If the Council is satisfied that the individual's regaining of capacity will only be temporary then it can continue to make Direct Payments to the authorised person.

9.4 How to discontinue Direct Payments

If the Council is considering discontinuing Direct Payments they will discuss as soon as possible with the individual or their authorised person all available options before making the final decision to terminate the Direct Payment. For example, if ability to manage is an issue, the individual or their authorised person should be given an opportunity to demonstrate that they can continue to manage Direct Payments, albeit with greater support if appropriate.

The Council will not automatically assume when problems arise that the only solution is to discontinue or end Direct Payments.

If the Council does decide to withdraw Direct Payments, it will need to conduct a review of the plan and agree alternative care and support provision with the individual, their carer and independent advocate if they have one, unless the withdrawal was following a review that concluded that the services are no longer needed.

The Council will normally provide a 4-week notice period before Direct Payments are discontinued.

It will be extremely unlikely that the Council would discontinue Direct Payments without giving notice, although in serious cases this may be warranted (for example, the authorised person is not acting in the best interests of the individual or there is evidence of fraudulent use of Direct Payment funds).

The Council retains the right to recover Direct Payments in full or in part if it is satisfied that the money has not been used for which it was originally intended.

If Direct Payments are discontinued, some individuals may find themselves with on-going contractual responsibilities or having to terminate contracts for services (including possibly making employees redundant). Contractual obligations will require a notice period for termination such as services paid for in advance and employment contracts. These arrangements will need to be taken into consideration when the individual and/or their authorised/nominated person discontinue Direct Payments.

There may be circumstances where a young person aged 16 or over has lost the capacity to manage the Direct Payment and there is no one else to manage the payment on their behalf, or where an individual needs additional support to terminate arrangements. In these cases, the Council will provide support to ensure that any contractual arrangements are appropriately terminated to ensure that additional costs are not incurred.

9.5 Ending Direct Payments – on death

In the event of death, any amount of Direct Payment remaining in the individual's account will be recovered by the Council following a discussion with the family and/or authorised/nominated person. There will be funds available to pay for commitments outlined in the Care & Support Plan if an agreement is in place for advance payments or notice needs to be given before termination.

Direct Payments cannot be used towards the costs of funeral expenses.

Any amount due to the estate of the individual for the fulfilment of contractual and legal obligations relating to any persons employed by the individual or to HM Revenue and Customs will be paid by the Council on receipt of supporting documentary evidence or an invoice relating to the services received.

Any top up contribution remaining on the pre-payment card account will be paid to the individual's estate within 28 days of termination of the Direct Payment, subject to all records being provided and available to the Council. Any additional amount paid in by the Council and remaining in the individuals account, will need to be returned to the Council.

In the event of an individual's death, their PA will be entitled to a statutory redundancy payment. This will be paid for by the Council on receipt of the agreed contract or written statement of work that must show when their employment commenced.

10 Appeals & Complaints

10.1 Appeals where Direct Payments are refused

In some situations, it may not be possible for the Council to offer or continue to offer a child or young person a Direct Payment. The reasons for the decision must be documented, discussed and clearly communicated in writing to the individual and where appropriate with any family or friends. They must be advised of their rights to appeal against this decision or how to use the Complaints Procedure. The appeal may take the form of a meeting of the parties involved to try to find a solution to the issues raised in the formal rejection. This could include the individual and their representatives.

10.2 Complaints procedure

This is available to all people receiving support from Childrens Social Care and can be used to make a complaint about services or procedures undertaken by the Department. This process may be used to formally complain about the process, the decision-making or the amount offered as a Direct Payment but not about the services an individual has purchased with their Direct Payment.

Complaints e-mail link - candacomplaints@solihull.gov.uk

10.3 Safeguarding

The Council needs to be satisfied that a person providing care to a child or young person under the age of 18 is a suitable person. In making Direct Payments, the Council will need to be satisfied a "relevant individual" (a person who is or has been employed to provide care to a child) is not included on a list established under the Protection of Children Act 1999.

It is the Council's strong recommendation that all personal assistants employed to provide care to a child or young person under the age of 18 should have a background check with the Disclosure and Barring Service (DBS). The DBS helps to do so. Parents and carers are urged to ensure that they have taken suitable steps to safeguard the well-being of their children and young people and to protect them from unsuitable adults.

If the Council receives information that a child may be at risk or harm from a person employed to provide care, personal budgets may be suspended during an investigation into the circumstances and that individual may be referred to the Protection of Children list.

APPENDIX 1 - Documents relating to right to work in the UK

Required:

- A document giving **permanent** NI Number and name i.e. P45/P60/NI card **or**
- A letter from a Government agency (NI Numbers beginning with TN or ending in E to Z not accepted)

Together With One of the Following:

- A full birth certificate issued in the UK, Channel Islands, Isle of Man or Ireland, including the names of parents
- A certificate of registration or naturalisation stating they are a British citizen
- A letter or Immigration Status Document issued by the Home Office to the person stating they can stay indefinitely in the UK (may also state their right to take up employment of the type offered)

Please note that if their name differs on the two documents they will also need to supply a further document explaining the reason e.g. marriage certificate, divorce document, deed poll, adoption certificate or statutory declaration.

Or One of These Documents: (one document required)

- A passport showing you are a British citizen or have the right of abode in the UK
- A passport or national ID card showing you are a national of an EEA country or Switzerland
- A residence permit issued to you by the Home Office as a national of an EEA country or Switzerland
- A passport/other document issued by the Home Office with an endorsement stating you have a current right of residence in the UK as a family member of an EEA/Switzerland national who is resident in the UK
- A passport/other travel document endorsed to show you can stay indefinitely in the UK
- A passport/other travel document endorsed to show you can stay in the UK and endorsed to allow you to do the type of work you are offered
- An Application Registration Card issued by the Home Office stating you are permitted to take up employment

OR

- A work permit or other approval to take employment issued by Work Permits UK

Together with one of the following:

- A letter issued by the Home Office,
- Passport or other travel document endorsed to show you are able to stay in the UK and can take the work permit employment in question

Please note that if your name differs on the 2 documents you will also need to supply a further document explaining the reason e.g. marriage certificate, divorce document, deed poll, adoption certificate or statutory declaration

APPENDIX 2 Support available to children and young people with SEND and their carers regarding Personal Budgets and Direct Payments

a. Personal Budgets Guidance Document

A guidance document is available. This sets out the practicalities and implications of this Policy alongside relevant guidance for service users in a number of areas.

b. Approved Providers List

SMBC is developing a framework of approved providers who have undergone a selection process to ensure they have important policies in place and meet expectations for providing a high quality service. While the Council works to make sure this partnership is relevant to families, choice of provider is *not* limited to the providers in this partnership. This is based on feedback from families that they do not wish to be constrained as this could prevent them from meeting their children's individual needs with flexibility. ***Families who use services not on this list do so at their own risk and remain responsible for delivery of the agreed support plan.***

c. Brokerage

Brokerage is a service provided by an organisation or individual that helps families to manage their personal budget and spend it in the most appropriate manner. For instance, a broker could assist getting a particular service, or could sort out paying a support worker.

Services provided include:

- Initial advice on applying for personal budgets and other help available
- Information about the ways a personal budgets can be received e.g. Direct Payments
- Helping individuals with personal budgets to develop their support plan and put it into action
- Support to review the support plan and make changes if needed
- If Direct Payments are being considered:
- Helping an individual employ a Personal Assistant
- Information on managing a Payroll Service (including administrating wages, National Insurance and Tax) and banking service Information on setting up an Independent Living Trust.

d. In-House Brokerage - Solihull MBC's Personal Budget Support Service

Internal brokerage will be an alternative offer to service users who require assistance managing their personal budget. The primary function of this service is in coordinating support and resources, but will also have some involvement in other areas such as providing advice and planning. Support brokers would work closely with the family's peer support network.

The menu of services will include:

- Ensuring service users are aware of initial set-up activities, such as PA recruitment, Pre-paid card accounts, Payroll, etc.
- On-going support, where required, e.g. financial management, record keeping, etc.

e. Advocacy /Independent Advice

Service users, carers and others may also choose to independently seek support from other organisations such as SENDIAS in particular where they have specialist needs or require an advocate. Advice will be given to individuals about alternative sources of information, guidance, or advocacy services if required.

f. Pooled Budgets

Parents and carers may pool their budgets with other families to jointly provide services. This may allow a group of families to work together to provide a wider mix of services or provide better value for money through shared care. Each family retains individual responsibility for the funds in their child's personal budget.

g. Family Budgets

If different members of the same family are in receipt of Personal Budgets there is scope to pool budgets within the family to provide similar benefits to those identified for Pooled Budgets above.