

Title/Status-	GUIDANCE- Direct Payments for Personal Assistants
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Leicestershire Procedure for Direct Payments for Personal Assistants

Applies to- Children in particular circumstances

3.1.2c Direct Payments for Personal Assistants

Scope of the guidance

This document covers the eligibility criteria and what the funding for a Personal Assistant can/cannot pay for.

Statutory Legislation and Guidance

- The Special Educational Needs (Personal Budget and Direct Payments) Regulations (2014)
- The Special Educational Needs (Miscellaneous Amendments) Regulations (2014)
- Care Act 2014
- DHSC, Care and Support Statutory Guidance – issued under the Care Act 2014
- SEN Code of practice (2015)
- Children and Families Act 2014
- Equality Act 2010

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1. What are Direct Payments?

A direct payment within a Short Break context is money given to children aged 16 / 17 years who have a disability and to parents or carers aged 16 or over of children and young people (aged 5 to 17), by the local authority to enable them to buy in support that is assessed as being needed instead of the authority providing that support through their own services. Direct payments do not affect benefits.

Local authorities must offer the option of Direct Payments in place of services currently being received. The local authority must be satisfied that the person who receives the direct payment is able to manage the direct payments either by themselves or with whatever help the authority thinks the applicant or nominated person will be able to access; will use them in an appropriate way to meet the needs in question and that they will act in the best interests of the child or young person.

2. Who can get Direct Payments?

Those who have been assessed as meeting the eligibility criteria for a short break as defined within the Short Break statement aged 5 to 17 years.

3. How often are Direct Payments made?

Direct payments are paid in advance into a bank or building society account specifically set up for this purpose, as a one-off payment or on a monthly basis. If the direct payment is assessed as being needed at key times, e.g. school holidays, then payment will be made accordingly.

4. What is the process?

Direct payments can be awarded through an assessment. The process will assess need and the hours required to meet that need. For an assessment carried out by the allocated worker, a review will be held on an annual basis, unless an early review is required due to a significant change in circumstances.

5. Employing a Personal Assistant (PA)

Through an assessment with an allocated worker, a Personal Assistant is an option. The Personal Assistant can:

- Take the child or young person out of the home into the local community, to help them develop interests and activities outside the home. For teenagers, this is likely to include activities that will help to develop their independence.
- To support the child/young person directly within the home, undertaking activities, games, etc. Again, for teenagers this is likely to include activities that will help to develop a sense of independence.
- To support the child/young person to gain confidence in attending activities. For example, taking a child or young person to an inclusive community activity and supporting them to participate.
- Use of a Personal Assistant, in agreement with a Social Worker for overnight stays.

Tip: The Direct Payment made by Leicestershire County Council only covers the additional costs associated with employing a Personal Assistant. Families need to consider how they pay for any associated costs with going out, e.g. activities, mileage and food costs as these are not covered by the direct payment. Families should consider the use of DLA/PIP payments to help cover these costs.

A Personal Assistant can only be in charge of one child or young person at a time (cannot take on other caring responsibilities, e.g. looking after their own child at the same time).

A Personal Assistant cannot be:

- Someone without a Disclosure and Barring Service and CPR checks or references, or someone subject to a drug or alcohol treatment requirement, youth rehabilitation order or released on licence;
- A parent that does not live in the same household or a spouse, partner or close relative living in the household unless there are exceptional circumstances to do so. Whilst a direct payment can be used to employ a relative if they are not living in the household, our experience suggests that this can sometimes cause difficulties within family relationships and needs to be considered carefully.
- A relative that is already in receipt of Carers Allowance for the child or young person. (see <https://www.gov.uk/carers-allowance/eligibility> for eligibility)

6. Healthcare Tasks

Services that the NHS is required to provide are not to be provided through a direct payment:

- nursing care;
- physiotherapy, dressings;
- medication;
- operations;
- support while in hospital (see also 9. Hospital stays)
- transport to access appointments or equipment/ resources, dental treatment or prescriptions).

The [Diana Childrens Community Service](#) offers basic training on a range of healthcare tasks to enable health care and non-health care carers to safely carry out tasks with children and young people. The parent/carer will be responsible for ensuring that the Personal Assistant is trained by and holds a current certificate, which will be shared with the short breaks review team on an annual basis. An enhanced level of insurance will also be required. Payment for the training will be made by the parent/carer through the direct payment.

7. Hospital Stays

It could well be that those in receipt of Direct Payments require stays in hospital. This would not necessarily mean that the direct Payments should cease. Guidance advises that consideration should be given by the local authority, the carer, the holder and NHS Trust to as to how the payments might be used to meet non-health need.

8. What are the benefits of Direct Payments?

Direct Payments allow parents and young people greater choice, flexibility and control, to employ their own workers at times convenient to them and in the way they wish, to provide an individual service to meet their needs. Payments made do not affect welfare benefits.

9. Decisions not to make Direct Payments

Where the local authority decides not to make Direct Payments it must inform the child's parent or young person of its decision and reasons in a format that is accessible to them and in line with General Data Protection Regulations. It must also advise of their right to request a review of the decision. This can be found in the Short Break Statement.

10. Monitoring and review of Direct Payments

The local authority must monitor and review the use of Direct Payments by the recipient when conducting a review or a re-assessment of an Education, Health and Care plan. In addition, a recipient may make a request for the local authority to review the making and use of Direct Payments and the local authority must then consider whether to carry out a review.

When carrying out a review, the local authority must consider whether:

- It should continue to secure the agreed provision by means of Direct Payments;
- The Direct Payments have been used effectively;
- The amount of direct payments continues to be sufficient to secure the agreed provision;
- The recipient has complied with their obligations on the use of the Direct Payment.

Following a review the local authority may:

- Substitute the person receiving the Direct payments with a nominee, the child's parent or the young person, as appropriate;
- Increase, maintain or reduce the amount of Direct Payments;
- Require the recipient to comply with either or both of the following conditions:
 - Not to secure a service from a particular person;
 - To provide such information as the local authority considers necessary.

- Stop making Direct Payments.

(See also [Hospital Stays](#)).

11.Reducing the amount of Direct Payments

There are a number of occasions when the local authority may decide it is appropriate to reduce the amount of direct payments being received:

- Parent/carer and/or young person choice;
- A move from a special school to mainstream school;
- Move from the current process to self-assessment;
- Additional funding from another organisation, e.g. Continuing Care Budget;
- A review from 14 years to take account of the voice of the young person, alongside the parent/carer.

Where the local authority decides to reduce the amount of Direct Payments, it must provide reasonable notice to the recipient, and must set out in the notice the reasons for its decision.

The local authority must reconsider its decision, where requested to do so by the recipient, but it is not required to undertake more than one reconsideration of a decision. When conducting its reconsideration, the local authority must consider the representations made by the recipient (and where the recipient is a nominee, any representations made by the child's parent or the young person) and must then provide written reasons (includes email) to the recipient (and to the child's parent or young person, where the recipient is a nominee) of its decision following the reconsideration. The local authority may reduce Direct Payments following reasonable notice despite the fact that a request for reconsideration has been made.

12. Repayment and recovery of Direct Payments?

The local authority may require the recipient to repay part or all of the direct payments, where:

- The circumstances of the child or young person have changed in a manner which has impacted on the appropriateness of the agreed provision;
- All or part of the Direct Payments have not been used to secure the agreed provision;
- Theft, fraud or another offence may have occurred in connection with the Direct Payments;
- Payments have continued where a child or young person has died;
- The balance has not been used for up to four payments.

The local authority must give notice in writing (including email) to the recipient, setting out the reasons for the decision, the amount to be repaid and a reasonable timescale within which the amount must be repaid.

The local authority must reconsider its decision when requested to do so by the recipient (but it is not required to undertake more than one reconsideration of a decision). When conducting its reconsideration, the local authority must consider the representations made by the recipient (and where the recipient is a nominee, any representations made by the

child's parent or young person) and must then provide written reasons of its decision following the reconsideration to the recipient (and to the child's parent or young person, where the recipient is a nominee).

The local authority may only seek repayment of any portion of the Direct Payments that has not already been spent on the agreed provision.

13. Ceasing Direct Payments

The local authority must stop making Direct Payments if:

- The recipient has notified the local authority in writing that he or she no longer consents to receive the Direct Payments;
- The recipient ceases to be a person to whom, a Direct Payment may be made;
- Following a review it appears to the local authority that:
 - The recipients not using the payment to secure the agreed provision;
 - The agreed provision can no longer be secured by means of Direct Payments.
- It has taken reasonable steps to ascertain whether the young person consents to Direct Payments and the young person have not notified the local authority of their consent.

Where the local authority decides to stop making Direct Payments, the local authority must first give notice in writing (including email) to the recipient setting out the reasons for its decision.

The local authority must reconsider its decision when requested to do so by the recipient (but it is not required to undertake more than one reconsideration of a decision). When conducting its reconsideration, the local authority must consider the representations made by the recipient (and where the recipient is a nominee, any representations made by the child's parent or young person) and must then provide written reasons of its decision following the reconsideration to the recipient (and to the child's parent or young person, where the recipient is a nominee).

14. Appeals process

If the recipient does not agree with the level of support that has been assessed, or a decision to discontinue direct payments, the recipient is able to ask for more information and discuss needs further with the local authority for consideration. The local authority wants this to be a positive process to ensure all views are considered. The following outlines the guidelines to make decisions about eligibility and plans to meet needs. However, this does not affect the right of the family to use the complaints procedure at any time.

Stage 1: informal resolution

Following assessment and Panel decision you will be notified of the outcome by your allocated worker. If you do not agree with the short break offer we have made to your child, or you feel that you are eligible for a short break but your request was declined, please get in touch with us within 10 working days. Contact the worker who undertook the assessment to

discuss with them or emails us at xxxxx@leics.gov.uk. At this stage, we will try to resolve the concern raised informally by getting information from you about your concern and reviewing all the information provided to us. This may, or may not lead to a change of offer, which would be communicated to you in writing within 20 working days.

Stage 2: Formal Appeal

If you still disagree with the decision and will to appeal, please contact the service manager by email at xxxxx@leics.gov.uk stating that it is formal appeal for the attention of the Short Break panel. The relevant manager will review the assessment, speak to the assessing officer as required, and present the complaint to the Short Breaks Panel for consideration. We will aim to respond to your appeal within 20 working days, or let you know if that is not possible and set a new timescale. You will receive a written response to your appeal.

Stage 3: Leicestershire County Council complaints procedure

If you're not happy with our response to your appeal, you can make a complaint using our complaints procedure <https://www.leicestershire.gov.uk/about-the-council/contact-us/complaints-and-comments>