

# **KNOWSLEY METROPOLITAN BOROUGH COUNCIL**

## **CHILDREN'S PERSONAL BUDGET/DIRECT PAYMENT POLICY**

## 1. Introduction

This Children's social care Personal Budget Policy outlines how the Council will provide support following an assessment of need. It will identify the option to a personal budget and guidance and procedure for accessing the scheme and the responsibilities of different people involved.

The Children & Families Act 2014 gives parent and carers of children with additional needs and Education, Health and Care plans, greater choice and control over their support arrangements. If a child and 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 social care personal budget.

Many children and young people who have a special educational need or a disability do not require additional support as their needs are or can be met by existing services. The children with Disability Team are working closely with Early Help services, to look at early intervention services and reducing the reliance on social care interventions.

Special schools and other specialist settings will, in the majority of cases, be designed, organised, and resourced to fully meet the educational needs of pupils. All educational settings, including Early Years providers, schools, academies, colleges and other learning providers, are focussed on supporting all the children and 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 or young person can 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 Social Care budget** focussed on outcomes around family life, after school, being

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

Together these additional Education, Health and Care needs, over and above those that a parent or provider is usually expected to provide for, for the child and young person overall **Personal budget**.

Knowsley MBC recognises the duty placed upon it in carrying out responsibilities under the Children & Families Act 2014, The Care Act 2014, The Chronically Sick and Disabled Person Act 1970 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 Social Care personal Budgets for children and young people in Knowsley.

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

Knowsley Metropolitan Borough Council is committed to promoting individual wellbeing and to supporting developing independence through preventing, reducing or delaying the need for care and support. The 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 parents/carers 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 outcomes, preparing them effectively for transition to adulthood.

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

Care & Support Direct Payment Regulations:  
[http://www.legislation.gov.uk/uksi/2014/2871/pdfs/uksi\\_20142871\\_en.pdf](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 1<sup>st</sup> November 2023 and will be reviewed regularly to ensure that it continues to reflect current legislation and guidance

## Why do we have this policy?

Knowsley 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 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 Social Care Personal Budget

### a. Who can request a Personal Budget?

- Young people with identified eligible outcomes, between the ages of 0-18 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 and have identified unmet social care needs.
- The 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 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 2005 to agree to a Direct Payment to meet their needs but have a suitable person as identified by the Council.

### b. Social Care Personal Budgets

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

- Older and Disabled people over the age of 16 years
- 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 under the age of 16 years
- Parents and others with parental responsibility who are not necessarily the child's parents

### 3. What provision could be included in a personal budget for a child or young person 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 decision in relation to direct payments.

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

Where the Council is unable to meet the 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 ICB 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.

### **a. 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.

### **b. 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 a 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 license 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 with the meaning of section 51 of that Act.
- 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.
- Subject to a youth rehabilitation order imposed in accordance with paragraphs 22, 23 & 24 (drug testing requirement) of schedule 1 of the Criminal Justice and Immigration Act 2008 which requires the person to submit treatment pursuant to a drug treatment requirement.

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

Individuals who refuse an assessment or review of their needs or who are not an ordinary resident of Knowsley will not be eligible for a direct payments/personal budget.

All whom are in receipt of a direct payment will be expected to engage with social care to complete their assessment reviews. Should the parent/carer/young person decline the review assessment of need then all ongoing funding will cease until reassessment of the individual's eligibility for receipt of Direct Payments be completed.

#### **4. Children and Young People Looked After**

A child is Looked After by a Local Authority if he or she has been provided with continuous 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 and 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 a case for children and young people in residential care.

Children with additional needs who are placed in long term 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 through mediation or in line with the council's complaints policy.

#### **5. How the Social Care Direct Payment/Personal Budget is Determined**

##### **a. The Resource Allocation Forum**

The Resource Allocation Forum will have a number of functions relating to the allocation of resources for Disabled Children and Young People.

The first of these is to allocate specialist short break care resources to families of children and young people with a disability, who have been assessed by the Children's Disability Team. These will be children and young people who require significant higher level of short break care services over and above the Local Offer or those provided by universal and mainstream provision, and who are disabled.

This will include:

Children with Autistic Spectrum Disorders and associated significant behavioural difficulties

Children with multiple and complex needs

Children whose challenging behaviours are associated with other impairments such as learning Disability.

The multi-agency decision making forum will be a key driver for achieving good outcomes for children and young people who have been assessed by the Children with Disabilities Team as vulnerable and having long term complex needs.

### **b. The Purpose of the Forum**

- Address areas of unmet need as identified through a Child and Family Social Worker Assessment, Early Support Assessment or Education, Health & Care Social Care Assessment of Needs.
- Prevent Escalation of difficulties and family breakdown
- Prevent children and young people being accommodated by the Local Authority
- Support Parents/Carers

On the basis of a Social worker/Support worker assessment of need the forum will agree in principle the allocation of the following resources:

1. Direct Payments to support with short breaks for the child/young person.
2. Short breaks overnight respite provision within the child/young person's home
3. Short Break Overnight respite provision at Fullerton
4. Short break/overnight provision using the short breaks framework through independent fostering/residential services.
5. Short break overnight respite provision through Knowsley Fostering Services
6. Domiciliary support in the child's home through an independent agency

In addition, any spot purchase requirements for additional resources where required, to meet the assessed needs of the child or young person

### **6.3 The Resource Allocation Panel will not consider:**

- Applications for Day Care Services such as childminder or Nursery
- Applications for sponsored play schemes
- Cases where the plan is for the child or young person to become Looked After

The forum will maintain an overview of short break care resources, and co-ordinate referrals to the most appropriate service to secure the best outcomes for the child or young person. Needs will be prioritised to ensure services are allocated appropriately. Any shortfalls in provision will inform service commissioning.

## **7. Direct Payment Calculations**

The Direct Payment amount will be calculated annually as an equal weekly payment for both term time and non term time hours.

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

This enables young people and their families to have greater control over their budget and to spend an equal amount each week.

The recommendation of the level of the Direct payment support will be determined following the assessment of need/review of the individual's needs. In the first instance this will be agreed by the Team Manager up to 5 hours of support per week, should higher levels or overnight support be required this will be overseen at the Resource Allocation Forum 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/personal budget available to meet their assessed needs.

All support offers will be based on the most cost-effective support and care plans, which meet the unmet eligible needs of a child or young person with regard to risk and personal circumstances. Budgets are based on 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.

### **7.1. Review of Social Care or Direct Payment Budgets**

Where specialist short break resources or a Direct Payment has been allocated to a family the care and support plan will be subject to formal reviews, This will be annually assessed as part of an Education, Health and Care Plan, or if a child or young person is open to the Children with Disability Team under Child in Need planning, Child Protection or Child Looked After, the support will be reviewed as part of the necessary statutory reviews of their plan. If there are any changes to the family circumstances in the meantime, it will be the social workers/lead professional's responsibility to inform the Resource Allocation Forum, so that the case can be reconsidered. This will usually lead to a reassessment of need and the multi-agency response and provision.

All packages of support will require formal reviews and monitoring as outlined above, should there be a failure to comply with the necessary reviews/reassessment of need this will lead to the termination or suspension of funding until a new assessment of need is completed, and the child or young person is seen.

### **7.2 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 or young people fall ill, there is 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 circumstances, the additional budget will be time limited up to 6 weeks to enable increased short term support and for a review at the resource Allocation Forum to take place to support the family in returning to a more stable situation.

### **7.3 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 that an individual aged over 15 years 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 a 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. 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 authorise/nominate 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 the Direct Payments scheme.

Consideration will be given to cases where capacity is fluctuating or know to fluctuate. This will be covered in the individuals care and support plan and detail the steps to take where capacity fluctuates.

## **8. Spending Direct Payments**

The Care and Support Plan will detail the assessed needs and eligible outcomes for an individual for which the Direct Payment can be used following an assessment of need.

### **8.1 What can Children’s Social Care Direct Payments be used for?**

Depending on circumstances, and in agreement with the allocated social worker/support worker/Team Manager and when detailed within the care and Support plan, individuals can spend their Direct Payments on meeting the assessed needs in the following ways:

- Employing a Personal Assistant and related expenditure, i.e. holiday pay, relief cover, sick pay, HMRC contributions
- Contracting with an agency or service provider for Personal Assistants
- Paying for activities to help the individual stay well such as social activities if assessed as an unmet need within the care and support plan and that the community local offer is unable to meet this need.
- Paying for equipment up to a maximum of £500 that reduces an individuals need for support or an ongoing personal budget if agreed/assessed and detailed within the care and support plan.
- Respite care with a friend or relative, in a residential setting or overnight care delivered in the child or young person’s home. In this event the short break will need to be managed as a personal Assistant in respect of suitability and employment conditions. A Direct Payment will pay for a 10 hour overnight break (e.g. 9pm to 7am) at the usual hourly rate no less than the National Minimum 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.
- Transport costs for PA’s or services being sourced are not funded through direct payments, mobility allowances of DLA (Disability Living Allowance) or PIP (Personal Independent Payments) should be used. Should the individual choose to use their personal budget for transport costs, and this is detailed within the care and support plan, once the budget is exhausted there will be no further money provided for support services or transport.
- Direct payments may be subject to conditions imposed by the Council and may be discontinued and/or recovered if the Council has reason to believe that direct payments may have been misspent or accumulated without adequate and justifiable reason.

### **8.2 What an individual cannot spend a Direct Payment/personal budget on:**

- Anything that is not outlined in an individuals care and support plan to meet their agreed outcomes and assessed need
- Anything Illegal
- Alcohol or tobacco
- Gambling
- Services provided by other public bodies such as NHS
- Ordinary living costs, food bills, clothing, holidays etc
- Telecare and pendant alarm charges

- Equipment and adaptations costing over £100 or those that are provided by health or through a disabled facilities grant
- Purchasing services already funded by the Council or the Health Authority (e.g. Short break groups – parental contributions)
- Childminding/Nursery provision

### **8.3 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 the Council considers are exceptional and such care has been assessed as necessary. Agreement will be required in writing by the Councils 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 the individuals assessed and eligible needs.

### **8.4 Holidays**

Direct Payments cannot be used to fund holidays. However, they can be used to meet an individuals eligible needs outlined in the individuals care and 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 the necessary support.

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

### **8.5 Direct Payments – Paying for Council Services**

Direct payments are not to be used to pay for services provided directly by or funded by the Council. If an individual wishes to receive a service from the Council that is included in their care and support plan, the council will arrange this.

Care and support can be purchased from a different Local Authority if a particular service included in an individuals care, and support plan is not provided by Knowsley council.

### **8.6 Hospital Stays**

There may be occasions when a child or young person requires a stay in hospital. If an individual is in hospital for four weeks or more, a review will take place, and the Direct payment/personal budget may be reduced or suspended should the individual have to remain in hospital. The individual responsible for managing the direct payment account will need to inform the Council should a child or young person be admitted to hospital longer than four weeks.

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 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 related needs or to ensure employment arrangements are maintained.

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

### **8.7 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 Councils' 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.

### **8.8. Receiving a Direct Payment/Personal Budget**

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, make tax or national insurance payments to HMRC.

Direct Payments will only be made where the Council has received a signed Direct Payment Agreement and a signed Care and Support plan from the individual receiving the Direct Payment or their authorised/nominated person/representative.

There are currently three ways to handle a Direct Payment/personal budget depending upon on how much responsibility an individual wants:

- Managed Account
- Self Managed Account
- Direct Invoicing through the Council – (Agency providers/services only)

These options will be explained during an individual's social care assessment of need and the referral through to KDC (Knowsley Disability Concern), who are contracted to provide advice and support for Direct Payments.

### **8.9 Managed Account**

The Council have a number of providers available to support with managing the Direct Payment Account. Knowsley Disability Concern are contracted to provide advice, support and the options of a providers to be able to support. The council will pay the Direct Payment into the agreed organisation who will manage the Direct Payment on your behalf to enable the purchase of support to meet the eligible and assessed needs in the individual care and support plan.

The Council may require that the direct payment is delivered via a managed account as a condition of receipt of the direct payment if:

- The recipient has previously had a direct payment terminated or refused;
- The recipient is deemed financially insecure e.g. they are subject to a debt management plan, have unresolved County Court Judgements or are the subject of investigation of financial abuse or fraud.

- The Council will make decisions in relation to the requirement for a managed account on a case-by-case basis.
- Where a managed account is chosen by the recipient or imposed by the Council, the Council will provide some or all of the provider's charges up to an agreed amount.

### **8.10 Self Managed 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/suitably appointed person if agreed by the social worker for the child or young person in receipt of the Direct Payment.

### **8.11 Direct Invoicing**

Where the support as identified within the care and support plan will be arranged by the Council.

### **8.12 Direct payment Rates**

The amount of the Direct Payment/personal budget will be determined following assessment/review of the individuals needs. 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 care and support plan.

### **8.13 Frequency of payments**

The council will make 13 equal Direct Payments per year, 4 weekly in advance to the nominated Bank Account

### **8.14 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 top up. The individual must pay their top up 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 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 Direct Payments being stopped and where appropriate care and support being arranged directly by the Council.

### **8.15 Contingency and reserves**

An accumulated Direct Payment of up to 8 weeks of the usual Direct Payment amount can be retained as a contingency in any of the methods of direct payment/personal budgets identified above. 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 on a quarterly basis the use of the contingency to ensure that it is being spent in line with the individuals care and support plan.

The individual should hold sufficient funds in their Direct Payment account to cover all planned expenditure including HMRC costs. Anything held in excess of this amount, which has not been agreed as part of the fluctuating needs requirements within the care and support plan will be recovered by the Council on a quarterly basis.

## **9. Employment Duties**

### **9.1 Personal Assistants**

A Personal Assistant (PA) is defined as a person employed specifically by the child or young person and their family to meet their identified needs within the care and support plan.

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

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

Relatives of the child or young person with care and support needs, who do not live within the same household, can be employed as PA's. The council will assess any risks 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 PA to ensure this..

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

If an individual person needs to suspend a PA on full-pay (for instance if the PA 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.

### **9.2 Personal Assistants and the right to a workplace Pension**

The Personal Assistant may potentially have a right to a Workplace Pension. (This is dependent upon age, the number of hours worked and earnings). Support with Workplace Pensions will be provided by the Direct Payments Support Service providers (KDC), however anyone taking up a Direct Payment and not utilising a payroll service will need to set up a workplace pension themselves, as they are signing a contract stipulating that they are capable of managing employers responsibilities (Self Managed Direct Payment Accounts).

### **9.3 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. All DBS checks are carried out by KDC on behalf of families in receipt of a Direct Payment and should be undertaken annually. The funding is provided as part of the Direct Payment by KMBC.

Should a DBS be returned with a concern this will be shared with the individual in receipt of the Direct Payment and with the Local Authority to allow further discussions/risk assessments to be undertaken should the individual still request the PA continue to be employed.

When employing people via Direct Payment 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 under is living in the household or
- The Support is required for a child under the age of 16 years or
- Other vulnerable people living in the household may be put at risk if a DBS check is not carried out

## 9.4 Direct payments agreements

Prior to the direct payment being made the respective direct payments agreement must be signed and a copy of the signed agreement provided to all signatories.

There are three applicable direct payment agreements:

- Standard agreement: signed by the adult, where the individual is receiving and managing the direct payment;
- Nominated person agreement: countersigned by the individual and the nominated person, where the nominated person is managing the direct payment.
- Authorised person agreement: signed by an authorised person managing the direct payments on behalf of the assessed individual.

## 10. Audit and review of Direct Payments

### 10.1 Audit of Direct Payments

The council will provide information and advice (via KDC) 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 and essential.

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 Direct Payments are being used for the purposes laid out in the Care and support plan and accurate receipts and records are being kept. Any discrepancies will be investigated, and the Council will recover any excess and/or missed 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.

## **10.2 Frequency of audits and Information required**

All Direct Payment accounts will be subject to a quarterly (every 3 months) audit. 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 the Council Internal Audit department and may be reported to the police.

Individuals will be required to submit the following information:

### **Managed Account:**

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

### **Self Managed Account:**

Individuals who receive their Direct Payment into a nominated bank account will need to submit bank statements/receipts/invoices/payslips/timesheets and Direct Payment return form to the Council Children with Disabilities Finance Officer..

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

## **10.3 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-payment or under-spends amounting to more than 8 weeks accumulated payment, after taking into consideration any other expenses the individuals is required to meet. These payments may be in relation to those payments due to HM Revenue and Customs or intended accumulation of funds in order to meet increased levels of support during school holiday periods for example.

## **10.4 Duty to Protect Public Funds**

Like all Local Authorities, the Council has a duty to protect public funds that it administers. All suspected concerns about fraud, including fraud committed against other public bodies, will be reported to the Councils Internal Audit Investigation Team for investigation which may lead to information sharing between the Council and other bodies responsible for auditing or administering public funds such as HM revenue and Customs, the Department for Work & Pensions and/or criminal prosecution.

## 11 Ending Direct Payments

### 11.1 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 where reasonably possible that services are provided and there is no gap in the provision of care and support.

- Any person receiving a direct payment, either for themselves or on behalf of another person, may decide at any time that they no longer wish to receive direct payments on giving four weeks written notice to the Council. The Council may agree to vary this notice period depending upon the individual's circumstances.
- Written notice will be given to a recipient where direct payments are discontinued, unless there are exceptional circumstances requiring that payments are discontinued without notice.
- The Council will cease to make a direct payment if it is satisfied that:
  - i) The individual is no longer eligible for or no longer requires the services for which the direct payments are made;
  - ii) The person becomes excluded from receiving direct payments because they have been placed under a condition or requirement by the Courts in relation to drug and/or alcohol dependencies. (See Appendix 2).
  - iii) Any of the conditions set out in paragraphs 2 (b) (children and young people) are no longer met.
  - iv) There is evidence that direct payments are not safeguarding or promoting the individual's welfare.
- The Council may suspend or terminate direct payments if:
  - (i) Any condition attached by the Council is unmet or the Council has reasonable cause to believe that direct payments have been used for purposes other than to meet the needs as specified in the individuals Care Plan/Care and Support Plan.
  - (ii) The individual's circumstances are such that on assessment or review of the individual's circumstances it is appropriate that direct payments should cease.
  - (iii) Any of the terms or conditions of the direct payment agreement have not been met by the recipient or their nominated person or authorised person. It is found after investigation by the Council that there is evidence of misuse or fraudulent use of the direct payment.
- The Council will require either full or partial repayment of direct payments made if any condition attached by the Council is unmet or the Council has reason to believe that direct payments have been used for purposes other than to meet needs as specified in the Care and Support Plan.

- The Council may require repayment of any unspent direct payments if it can be demonstrated that they are not required to meet the individual's needs as set out in the Care and Support Plan.
- Direct payments do not form part of an estate in the event that an individual dies whilst receiving them. Direct payments at all times belong to the Council and remain public funds.

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 or independent advocate if they have one, unless withdrawal was following review/assessment that concluded that the service is no longer required.

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

## **11.2 Ending Direct Payments on Death**

In the event of death, any amount of Direct Payment remaining in the individuals account will be recovered by the Council following a discussion with the family and/or authorised/nominated person. There will be funds available for commitments outlined in the Care and Support plan if an agreement is in place for advance payments or notice periods 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 person 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.

## **12. Appeals and Complaints**

### **12.1 Appeals where Direct Payments are refused**

In some situations, it may not be possible for Children's Social Care to offer or continue to offer a child or young person a Direct Payment following a review or assessment. The reason for the decision will be documented following management decision or following Resource Allocation Forum. This will clearly be recorded in writing to the individual and/or their representative. They will be advised of their rights to appeal against the decision. Should an individual or representative wish to appeal the decision, this should be done in writing setting out the reason for the appeal. The appeal will be heard by the Resource Allocation Forum to try and find a solution to the issued raised in the formal rejection. Should the decision remain unsatisfactory the individual or their representative will be signposted to the council complaints procedure.

## 12.2 Complaints Procedure

This is available to all people receiving support from Children's Social Care and can be used to make a complaint or compliment about services or procedures undertaken by the department. This process may be used to formally complain about the process or the decision-making but not about the services an individual has purchased with their Direct Payment

[haveyoursay@knowsley.gov.uk](mailto:haveyoursay@knowsley.gov.uk)

## 12.3 Safeguarding

The Council should be contact immediately on 0151 443 2600 (Outside office hours in an emergency 0151 443 2600) where there are concerns in relation to personal Assistants, carers or agencies involved in providing care and support to a child/young person receiving a Direct Payment.

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

If the Council receives information that a child may be at risk of 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.