



Devon County Council

Social Care Personal Budget and Direct Payments for Children Policy

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www.devon.gov.uk/childrenfamilies

1. Background

The Children and Families Act 2014 requires local authorities to offer families Personal Budgets where a Social Care Plan or an Education Health and Care Plan (EHCP) is in place. This policy is intended to provide families, young people and professionals with clarity about the resources that are available to meet an individual child or young person's needs and the opportunity to have more control over how that support is provided. Where a child or young person is in receipt a Social Care support plan or EHCP, the parent, carer or young person may request the option of Direct Payments, but are not compelled to do so.

Personalisation is a key feature of the Special Educational Needs and Disability (SEND) reforms, and is about putting children, young people and their families at the centre of the process and focusing on delivering better outcomes for children and young people with Special Educational Needs and Disabilities (SEND). It means starting with the person as an individual with strengths, preferences and aspirations, identifying their needs and making choices about how and when they are supported to live their lives through the use of the Resource Allocation System (RAS) and personalised support planning.

Personalisation working practice is being enhanced and further developed in Devon. This is being done in a number of ways including:

- **Involving** children and young people with SEND and their families in developing their own support services rather than being directed into services that may not meet their individual needs.
- **Personalising** the support that families receive by working with families in partnership with services across education, health and social care.

2. Introduction

Understanding the difference between Personal Budget and Direct Payments

- **Personal Budget** - Local authorities **must** consider each request for a Personal Budget on its individual merits. A Personal Budget is an amount of money identified by the local authority to deliver provision set out in a Social Care Support Plan where the parent or young person needs help above that provided by universal or targeted services. A Personal Budget is not all the resources that are available to support a child or young person, but is the 'cashable' amount which can be used flexibly. This can be for example as a direct payment, to support the additional needs of the child or young person. Personal budgets are designed to help families of eligible children and young people with Special Education Needs and disabilities (SEND) to have more control over their lives. Person centred planning approaches ensure the child's and family's needs are central to identifying the outcomes that will most effectively support the family.

Families can if they choose to, top up their child's allocated budget with their own funds to create a support plan with greater flexibility.

- **Direct Payments** – is one way of managing a personal budget i.e. families receiving the money via a card and organising support themselves. Families are not compelled to use direct payments and may choose other options such as the Local Authority commissioning services on their behalf, if that is more appropriate. The Support Plan will set out the arrangements in relation to direct payments as required by education, health and social care regulations and the special educational needs and outcomes that are to be met by any direct payment will be specified.

The overall purpose of the Personal budgets and direct payments is to increase:

- **Choice and control:** Increased choice and control is achieved by supporting families as far as they are able to manage their own social care budgets and other income streams (e.g. Disability Living Allowance).

- **Flexibility:** The intention is that families can vary their support arrangements to suit their children's individual requirements. It can be used for services from both statutory and independent sector providers, mixing and matching what is available from different organisations.
- **Social inclusion:** Easier for individuals to identify support which enables them to use a wider range of activities in the community and better meet their eligible needs and support plan.

3. Who Is Eligible for A Personal Budget?

3.1 Eligibility

A child or young person may be eligible for a personal budget where they have complex learning difficulties and disability which calls for special provision to be made for him or her. If you have a Social Care support plan or EHCP, you can request that an assessment for a Personal Budget is carried out. This may include elements of support from Education, Health and Social Care. Where a social care need is identified a social worker will, after assessing the child and family's needs, decide whether the child's needs can be met through using mainstream services/activities or whether they need to access additional targeted services. If a family is thought to need targeted support they could, if they wish apply for a social care personal budget, which may be taken as a direct payment.

3.2 Exclusions

3.2.1 Children/Families who do not have eligible needs

If a child or young person's needs do not meet the eligibility criteria they will not be entitled to Social Care funding. Assistance will be provided to these families to consider their children's needs and how to go about meeting these by providing information e.g. signposting to appropriate services in the community, including suitable mainstream activities. If a family's circumstances change then a child's needs can be reassessed.

3.2.2 Exclusions based on Safeguarding Considerations

If there are considered to be safeguarding considerations that have the potential to negatively impact on the child or young person, or where there are identified risks based on an assessment of the parent's or carer's ability to effectively manage the budget to the benefit of the child or young person then the option of direct payments may be deemed to be unsuitable in preference to Council-managed services.

3.2.3 Looked After Children (Children in Care)

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 is placed in the care of a local authority by virtue of an order made under part IV of the Act. Personal Budgets are not available for these children as their needs are being addressed through the placement provided by the local authority.

Under Statutory Regulations a child is considered to be a Child in Care if they receive more than 75 nights of short break provision. This does not have to be taken consecutively, but is 75 nights in any one year. A child would also become a child in care if they have 17 consecutive nights of short break provision. Under these circumstances, parents and carers may still receive a direct payment alongside the short break provision. It is likely under these circumstances that the direct payment amount will be minimal.

4. How a Personal Budget be used?

A Personal Budget can be used for:

- Assistance to promote social inclusion, including leisure or social activities. For example training for staff; providing additional staff member; volunteer's expenses or equipment to ensure that the child can take part in activities in the community.
- Assistance in promoting independence particularly for young people preparing for adulthood
- Employing personal assistants to provide care services.

- Short Breaks to provide children and young people with SEND with an opportunity to spend time away from their parents, relaxing with friends and having fun; or provide families with a break from their caring responsibilities, giving parents a chance to unwind rest or spend time with other children.
- The additional cost of helping a child to participate in a family holiday, i.e. without this support the child would be excluded. These costs may include
 - An additional carer
 - The cost of adapted holiday accommodation
 - Specialized centre's offering respite for disabled children (e.g Calvert Trust)

If service users wish to make larger single purchases or to acquire more expensive types of services, this *may* be permissible as long as this expenditure is agreed and recorded at the support planning stage.

Personal Budgets can be used for any expenditure that meets outcomes defined in the agreed support plan as long as expenditure is lawful, effective and affordable.

- **Lawful:** The expenditure identified as part of the Social Care support plan or EHCP is legitimate and does not contravene any national guidance on how funds can be used.
- **Effective:** the proposals in the support plan relate to the agreed outcomes which will meet the assessed eligible needs
- **Affordable:** the total planned expenditure identified can be met within the personal budget. The budget can be used for a wide range of activities that support the outcomes in the child's support plan as approved by the Council. These are for the benefit of the child.

4.2 What a Personal Budget or Direct Payment cannot be spent on

Distinctions should be made between eligible personal care and short breaks which are for the benefit of the child, and childcare which is principally provided to enable the parents to work and may not be eligible. Funds should not be used simply to subsidise the cost of childcare, but may be used to ensure the child has equal access to activities with their peers.

It is recognised that such distinctions between different categories of activity are not straightforward and therefore such issues need to be negotiated at the support planning stage and clearly agreed and recorded to ensure clarity for all parties.

In addition a personal budget cannot be used for:

- Anything that is illegal or is illegal to purchase, or that would endanger the child or young person or any other person;
- Family holidays – with the exception of providing additional support for the child to participate in family holidays as set out above.
- Specialised equipment - something that should be paid for as part of existing funding arrangements
- Gambling;
- Debt repayment;
- Alcohol;
- Tobacco;
- Clothing;
- Anything that is considered normal family expenditure i.e. theme park passes, meals out, beach huts, cinema, mobile phone contracts etc.
- To pay the people who live with the child or young person to provide care for them.
- Funding for non-disabled siblings

If a Personal Budget is managed through direct payments then services which are contracted directly through Devon County Council) would not normally be included in the direct payment allocation as it would be difficult to disaggregate individual cost without affecting service provision for other users and efficient running of the service.

5. How are resources calculated to meet individual children's needs?

5.1 The Resource Allocation System (RAS)

How much funding a family is allocated depends on the needs that are agreed in the child's assessment. The RAS questionnaire is only ever a tool that will calculate an indicative budget but this cannot on its own decide the level of funding, it is always considered alongside the child's social work assessment to ensure that the child's needs are fully identified in order to budget allocate appropriately to individual needs. The RAS is based on the 'Every Child Matters' principles and aims to consider all elements of needs in a holistic child centred manner. The RAS process is designed to:

- Provide every family eligible for funded support with sufficient funding to meet assessed need.
- Ensure the fair and robust system of allocating personal budgets
- Ensure the Council does not overspend the funding allocated
- Produce transparency in the way the Council allocates funding.
- The results of the RAS questionnaire are scored between 0-324 points and this identifies which of the following five 'bands of need' the child or young person's needs are best described as:
 - No support (under 100 points)
 - Low Support (100-149 points)
 - Some support (150-185 points)
 - High support (186 – 210 points)
 - Exceptional support (211-324 points)

For example if a child age 2 years is allocated 119 points at a rate of £6 per point, this equates to an indicative annual budget of £714. The higher the band of support the higher the indicative funding allocation, the bands and the allocation table that supports this are age related so that it reflects the needs and demands of different age groups and clearly shows how each score area translates to budget value. The budget value will cover the cost of all needs identified.

Information from the assessment will be used with the individual to identify options to meet eligible needs. These options will be calculated using a standard set of market rates for the range and levels of service provision that will meet that person's individual support needs. The RAS is intended to provide guidance as to the level of financial support a family may require; decisions about actual levels of funding required for each service user will be based on the most cost-effective way to meet the unmet eligible needs of that individual taking into account assessed risks and personal circumstances. The RAS does not include any assessment of the family's financial circumstances nor the level of support the child may already have access to.

There may be other factors that affect the level of support offered including peer review between social workers, moderation, or quality control processes related to the scoring of the RAS process to ensure the system remains as equitable and consistent as possible. This means individual cases may not be offered the full indicative budget initially identified by the RAS and this is **not** an automatic entitlement. The Council will ensure a fair and equitable allocation and that the reasons for any variations are clearly communicated to individuals concerned.

Indicative budgets are based on an annual allocation of funding, which is subject to an annual review process and may be adjusted at this stage. Budgets may be allocated as Council Managed and Commissioned services, where agreed with the family or child/young person, and as a direct payment. 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. Particular care will be taken to ascertain the child's wishes and views about how their needs should be met. Where there is a difference of views between parents and disabled children from aged 15 yrs the young person's views will be given appropriate consideration. It follows that there may be situations where it would be right for a young person to receive a

personal budget whether the parents agree or not. This should always follow a comprehensive assessment of need and risk with the young person and their family.

5.2 Agreeing a Personal Budget offer

The final decision about whether a personal budget is appropriate will be made on a case-by-case basis by the Council's resource panel. As part of the risk assessment that occurs as part of the assessing and support planning work done in co-production with the family. The assessor will take into account a range of factors, In particular, the ability of the family to safely manage the budget through direct payments. If the Council decides that direct payments are inappropriate, the reasons for this will be clearly recorded and shared sensitively with the family. In cases where there is a dispute about a decision, the matter will be addressed either through Mediation or in line with the Council's complaints policy.

Not every family that is eligible will want to take on the responsibility of managing their child's personal budget. In such cases the indicative budget will still be calculated using the Resource Allocation System (RAS) but support will be provided in the form of a Council-managed budget.

5.3 Exceptions to the RAS Indicative Budget - Emergency or Crisis Support

Personal budgets as a planning mechanism assume limited change in the level of support required throughout the year. However, where additional resources are required outside the Personal Budget and RAS system to support rapid response, the RAS may be disregarded and additional funding can be provided in the following circumstances:

- Significant risk of family breakdown
- Family Bereavement
- Significant illness
- Housing issues leading to a risk of homelessness

Funding or resources provided in such exceptions will **not** be provided as a direct payment for the following reasons:

- Generally such exceptions will be time limited and would require frequent review to support the family in returning to a more stable situation. Direct payments are not designed to support such fast-changing situations.
- The provision required to accommodate such emergencies would become unsustainable if the resources providing it were subject to withdrawal
- The perceived benefits for individual families in managing their own resources must be weighed against the well-being of all Devon's residents
- Given the need for this emergency support it is in the interests of Devon to ensure such provision remains available

6. How resources and support will be provided?

Personal budgets may be provided in a number of ways listed below, including through direct payments. It must be noted that in individual circumstances the Council may decide that any of these options are not considered appropriate and may be refused; the availability of any of the options describe below is not an entitlement but is at the discretion of the local authority.

6.1 Direct Payments:

a. Direct Payments (Via Prepaid Cards – The Devon Card)

The parent/carer receive payments and manage the budget to meet the identified needs of their child. Devon County Council's Policy is for Direct Payments to be provided through the Devon Card, which is a bank card with a pre-determined credit limit set by the Council that can be spent in delivery of the support plan. These simplify the process of monitoring spending both for the Council and the recipient of the budget.

6.2 Council Managed Budget

The parent / carer ask the Council to manage all the arrangements for service provision. This means the Local Authority is coordinating the support that is provided or may be providing the brokerage role where there is a mix of Council and external services

6.3 Mixed Model - A Combination of The Above

The parent / carer may takes a combination of the above approaches, e.g. Direct Payments for some of their child's support, and asks the Council to manage other areas of need on their behalf. Other than 6.2 above, the Council will no longer be responsible for the arrangement, direction, management or day to day organisation of those services; once a parent or carer agrees to receive direct payments; they assume the responsibilities associated with managing their child's support. In the case of payments to third parties (e.g. Brokers, Individual Service Funds), the third party assumes responsibilities associated with managing the support of the service user or carer.

6.4 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/direct payment.

6.5 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.

7 Direct Payments Process

7.1 Payments

How will Direct Payments be paid?

Payments will be made four weeks in advance and a schedule of the first four payments is included in the Direct Payments Agreement which every recipient receives.

Devon County Council will advise families about how much they will receive and when the first payment will be paid.

7.2 The Direct Payments Agreement

The Agreement explains the role and responsibilities of the family and of Children with Disabilities Service, it is important that the parent/carer understands the agreement before they sign it.

Devon County Council will ask the family to read and sign the terms and conditions of the Direct Payments Agreement if they are in agreement.

Direct Payments cannot start until the family member has signed the Direct Payments Agreement

7.3 Contingency payments

Families receiving ongoing Direct Payments will receive a contingency payment with the first payment – this will be the same as one week's Direct Payment. This payment should be kept in the Direct Payment account to use in emergency situations, such as:

- If an unpaid carer is ill and a replacement has to be employed
- To pay the first period of sickness pay for an employee until it can be reclaimed from the Inland Revenue.

If some or all of the contingency payment has to be used, the family should contact us and we will arrange for the amount spent to be replaced.

7.4 Travel expenses

It is reasonable for an enabler/carer to request expenses which will be incurred whilst they assist the family i.e. public transport or mileage for essential journeys to support the child

7.5 Legitimate expenses

Reasonable costs can be met out of the Direct Payment, this could include receipt books, photocopying, stamps, disposable gloves or aprons (if not supplied by health). It is also permissible to pay someone to process payroll transactions, but this does not include members of the same household.

7.6 What happens if Direct Payments are not received?

Families will receive an information slip once every four weeks regarding their payment. If they do not receive this, they should check their account first and if Direct Payments have not been paid they should contact Devon County Council

7.7 Ending or suspending Direct Payments

Families can ask to end Direct Payments and have services provided directly by Devon County Council at any time.

As part of the Direct Payments Agreement, families agree to give four weeks notice when they wish to end Direct Payments, however we do accept that it is not always possible to do this. When a quicker solution is required we will make other arrangements to meet needs.

Devon County Council may suspend or terminate Direct Payments if it considers they have been misused. Families will be notified in writing of an intention to suspend or terminate direct payments. Opportunity will be given for the family to provide requested evidence. Failure to do so will result in suspension or termination of direct payments.

7.8 What happens if a family deviates from their Support Plan?

Direct Payments are intended to increase flexibility and it may be necessary to make legitimate changes to the plan e.g. choice of changes in support, extra short-term support or one-off purchases. This flexibility needs to remain within agreed constraints so service users or their representatives must only use their direct payment allocation to pay for support which has been approved in their Social Care Support Plan/EHCP. In these instances whoever initiates these changes must seek approval from the Council so that the changes can be updated on the service user's file held by Children with Disabilities Team. Regular checks will be carried out to ensure funds are being spent appropriately in line with the child's support plan and to ensure you are able to manage the budget.

If there are any problems or evidence of misuse identified, the family's budget management will be checked more often. If the budget is consistently being used other than as agreed, the decision making panel will be notified and a decision will be made as to whether payments will continue. Other potential consequences may include insisting that a broker (a person or organisation that will manage the budget on the family's behalf) acts on the service user's behalf or, to arrange a budget managed by the local authority. In certain circumstances the Council may require the recipient to repay part or all of the funding, including where:

- the circumstances of the child or young person have changed in a manner which has an impact 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;

the child or young person has died.

8. What support is available to families?

The Direct Payment Co-ordinators can help with;

- Help understanding the differences between employing someone directly and using an agency
- Job descriptions, advertising, liaising with care agencies and recruiting staff
- Advice on rates of pay, national minimum wage.
- Identifying risks to the family or employee
- Support in all aspects of employment legislation including paying wages, tax and national insurance liabilities, and employers liability insurance, holiday and Sick Pay responsibilities
- Contingency arrangements
- Disclosure and Barring Service checks.
- Any other related issues to ensure the success of the support plan.

9. 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 barred list held by the Disclosure and Barring Service (DBS). 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 DBS. The DBS helps employers make safer recruitment decisions and prevent unsuitable people from working with vulnerable groups, including children. It replaces the Criminal Records Bureau (CRB) and Independent Safeguarding Authority (ISA).

The Council is not legally permitted to insist on DBS checks being completed before personal budgets/direct payments can be granted, but cannot emphasise strongly enough the need to ensure that all staff employed to work with children and young people are appropriate 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 LADO and the DBS list. More information can be found at <https://www.gov.uk/disclosure---barring---service---check/overview>

Parent/carers can arrange this with the Direct Payments Co-ordinator who will be able to process the DBS check through Devon County Council's own internal system. There will be no charge for this service.

When using Direct payments parent/carers must tell us who they are employing and of any changes they make to the people who help care for their child.

Devon County Council will follow up any positive DBS reports and will advise families whether the person is deemed to be suitable to work with children. Direct Payments will not be made to parents if the person they intend to employ has been deemed to be unsuitable.

10. Audit & Monitoring Requirements

Devon County Council has a responsibility to ensure that public money is spent and accounted for appropriately and therefore requires a robust and flexible policy of auditing cash payments to provide confidence that children and young people are achieving the best possible outcomes within the available resources, and that funds are being spent appropriately. The audit process is dependent on how the personal budget has been allocated. In circumstances where families manage their own budgets the Council requires a consistent and thorough approach to record-keeping that is proportionate to the needs of the family and to the level of risk. All parents and carers receiving direct payments from the Council will do so in the form of the Devon Card. This will link to a bank account separate from their own personal finances to avoid any distortion resulting from personal and social care finances being mixed. Service

users are required to keep receipts for possible monitoring by the Council, to enable spending to be reviewed. During the first year of a family receiving payments, the Council will perform a basic check of the pre-paid card account when they carry out reviews at the six-week period. Wherever possible it is the Council's intention that operational and financial reviews will be carried out at the same time.

As part of this review Finance will complete a Financial Risk Matrix. This will measure the possible risk of financial abuse by scoring the data. A detailed audit will be completed for those families who are perceived as a higher risk. The matrix will also produce an audit timescale. Where an audit finds evidence of financial abuse or misuse of funds, appropriate measures will be taken to reduce the risk of further abuse or misuse. This may include broker involvement or a virtual budget being arranged. Brokers/Providers are not required to forward financial monitoring documentation to the Council on a regular basis. However providers/brokers are required to retain all documentation in accordance with the CIPFA Accounting Guidance. These documents must be available for inspection by the Council or its agent at intervals determined by the Council.

11. Negotiation and disputes- Working through disagreements about personal budgets

The purpose of this dispute process is to provide information to families about how the council will work to resolve disagreements about how much funding the child receives through a personal budget.

Council staff will follow these guidelines to make decisions about eligibility, support plans and funding. The following process is intended to promote a positive approach to listening to families, ensuring all their views are considered and seeking to work through disagreements. This process does not affect the right of the family to use the complaints procedure at any time or at the end of this process set out below. A process to resolve disagreements

- The family may challenge the indicative personal budget allocation once it is approved by the resource panel, because either they do not believe that the RAS was scored correctly or that there was a reduction in score following peer review and they do not feel this was justified or fair.
- If this is the case the family will be invited to show where they have been under or over scored and suggest a different score and a clear rationale. This will be considered by the Lead Officers.
- Following the review of the contested scores by the Lead Officers the council will write to the family stating the score and the clear rationale.
- Where the dispute is not about the scoring the family will be encouraged to plan with the allocated budget amount. The council can re-evaluate their position best after a support plan has been completed. The support plan process will provide a good test whether assessed need can be met at the indicative budget amount offered by the council.
- If the family remains unhappy after planning then they will be offered a meeting with the Lead Officers who will consider their point of view.
- If the family wishes after this meeting to challenge the allocation or after submitting their plan seek a higher allocation which children's services feel they cannot agree then they may present their points of disagreement to the Head of Service.
- The Head of Service will confirm the outcome of the discussion to the family in writing
- The family can be supported in this process by anyone or any organization they choose.

12. Advocacy / Independent Advice

Families may also choose to independently seek support from other organisations, 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.

13. Transitions

There are changes around legal status and entitlements that impact on a young person when they reach the age of 18 and these consequently impact on the calculations involved in the Resource Allocation System and the Personal Budget processes. To continue to qualify for social care provision from the local authority a national set of eligibility criteria must be met by all adults aged 18 and over. An assessment is undertaken to understand the needs of the individual and three conditions must be met for someone to be eligible for care and support as an adult:

1. the needs must arise from or be related to a physical or mental impairment or illness **and**
2. the adult must be unable to achieve two or more outcomes from a specific list e.g. manage and maintain nutrition, make use of necessary services in the community, access and engage in work or training **and**
3. as a consequence of being unable to achieve those outcomes, there is (or is likely to be) a significant impact on the adult's wellbeing. There are 9 areas of wellbeing which are considered e.g. physical and mental health and wellbeing, protection from abuse or neglect, social and economic wellbeing

A young person can become entitled to benefits in their own right from the age of 16 years but many families choose to delay this until the young person is older at age 18 or 19 years depending on the benefit involved and individual circumstances. Effective person-centred transition planning is essential to help young people and their families prepare for adulthood. Transition to adult care and support comes at a time when a lot of change can take place in a young person's life. It can be changes to the care and support they receive from education, health and care services, and may involve them with new agencies who might provide housing, employment of further education opportunities.

The purpose of carrying out transition assessments is to provide young people and their families with information so they know what to expect in the future and can effectively prepare for adulthood. Transition assessments should take place at a point when the local authority can be reasonably confident about what the young person's needs for care and support will look like once they turn 18 and/or where there is significant benefit to the young person in carrying out the assessment. The intention of children's services would be to ensure no young person experiences a significant loss in their support post 18 years of age. In order to achieve this children's services will work with Adults Services between the age of 16-18 years of age to ensure the package of support mirrors (or is as close to) what will be provided post 18.

Both the Children and Families Act 2014 and the Care Act 2014 require that planning for the transition to adulthood for young people with special educational needs who have an Education, Health and Care (EHC) Plan should start to take place from year 9, when the young person is aged 14 years old. The transition assessment should be undertaken as part of annual reviews of the EHC Plan and should inform a plan for the transition from children's to adult's care and support.

One further difference from children's to adult's care and support services is that the individual's financial circumstances will be assessed to determine how much (if anything) they can contribute towards the cost of their care and support. There is a national set of financial assessment criteria which must be followed, but some local flexibilities are allowed.

Devon County Council reserve the right to change or amend this Policy at any time

Appendix 1

Employing Someone Suitable

Families will need to decide whether to employ someone directly or use an agency. By law, families cannot pay someone 'cash in hand' for looking after or caring for their child so it is important that they know their responsibilities, how to properly employ someone and the rights of the person they have chosen to employ.

Employing someone through an Agency

If families chose to use an Agency to supply care and support for their child:

- They will not have responsibility for employment issues as the person will be an employee of the agency
- They may have less say in who works with their child
- They may find it is more expensive than employing someone directly

Agencies providing personal care are required by law to be registered with the Care Quality Commission (CQC) and ensure all staff are DBS checked, families receiving Direct Payments are encouraged to ask the agency for evidence of this and we strongly recommend that they only use a registered agency with fully DBS checked staff. We would also recommend that families ask to see a copy of the agencies insurance and references from people who have used the service

If families are considering using an unregistered agency they must first discuss this with Devon County Council who may not agree to support paying them via Direct Payments.

It is the families responsibility to arrange the services with the agency and to pay invoices when they receive them via direct payments

Employing Someone Directly

If families choose to become an employer and find someone to help with their child directly;

- they will be able to choose who they want to help care for their child, which could be a person the family already knows
- they will have greater flexibility between employer and employee
- they will have all the responsibilities of an employer including arranging insurance, holiday pay, pension contributions and tax.

If families are considering using someone who is self-employed, they should contact HM Revenue and Customs to advise them. Families should ensure the person they are employing has the necessary experience and qualifications to look after their child e.g. a first aid qualification. Any employee who is self employed should have their own liability insurance

If a child is under 8 and goes to a carer's house for respite then parents must also check that the carer is registered as a child minder by OFSTED

When families become an employer, this means that they will hold sensitive information about the employee which they cannot disclose without the employee's permission under the Data Protection Act.

Further advice on employer responsibilities can be found on Her Majesty's Revenue and Customs website: www.gov.uk/government/organisations/hm-revenue-customs

Illegal working

Legislation which came into force in February 2008 means that an employer must make basic checks with every employee. Failure to do these document checks may result in a fine. It is essential that if a potential employee is not permitted to work in the United Kingdom, families should not employ them. Further information can be found at: <http://www.ukba.homeoffice.gov.uk/visas-immigration/working/>.

Health and safety

Families have a legal duty for the people they employ, this includes being responsible for health and safety. Direct Payment coordinators will provide advice, support and information on how to adopt good health and safety practice.

Devon County Council will avoid setting health and safety policies for individual families, as they must accept responsibility for their own health and safety, including the assessment and management of risk. Families are encouraged to develop strategies on lifting and handling and other relevant tasks, both in the home and outside it where lifting equipment may not be available.

Devon County Council will take appropriate steps to satisfy ourselves that families are aware of the health and safety issues that affect them as individuals, anyone they employ, and anyone else affected by the manner in which the support is delivered.

The Health and Safety Executive has published guidance on health and safety for employers and employees entitled 'Homeworking'. This can be downloaded from www.hse.gov.uk/pubns/indg226.pdf. See also Section 1(3) of the ***Employment Rights Act 1996***.