

## Appendix 1.

# Children, Schools & Families

## CHILDCARE POLICIES AND PROCEDURES DIRECT PAYMENTS POLICY

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PUBLICATION DATE: MARCH 2003	ISSUE No: 1
REVIEW DATE: MARCH 2004	
PUBLISHED BY Hertfordshire Children, Schools and Families	



Children, Schools & Families

# **DIRECT PAYMENTS POLICY**

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## SECTION 6 SUPPORT

### 6.1 How we support people

The references for this document lies in:

- i. The Community Care (Direct Payments) Act 1996
- ii. The Community Care (Direct Payment) Regulations 1997
- iii. The Carers and Disabled Children Act 2000
- iv. The Children Act 1989
- v. The Framework for Assessment of Children in Need and Their Families
- vi. The Health and Social Care Act 2001

This document should be read in conjunction with:

- i. Working Together to Safeguard Children
- ii. Eligibility criteria for disabled children and their families.
- iii. Direct Payment Policy and Practice Guidance- Adult Care Services- SSBN 98D292

## SECTION 1 POLICY STATEMENT

- 1.1 The legislative framework for local councils in England to make Direct Payments is contained in the Health and Social Care Act 2001. It gave Local Authorities the power to make cash payments for community care provision directly to individuals who met a certain criteria. This Act at the time was limited to a specific age group. The Community Care (Direct Payments ) Act 1996 has subsequently been amended.

The Carers and Disabled Children Act 2000, which came into force on the 1<sup>st</sup> April 2001, has enabled Direct Payments to be made available to a wider group of people. These being

- Parent carers can receive Direct Payments in lieu of services for the child as well as in lieu of services for themselves as part of the family.
- Disabled young people (16-17) can receive Direct Payments in lieu of services to them.
- All carers will be eligible for Direct Payments in lieu of carer's services

In addition, the Department of Health also issued further guidance which are detailed below:

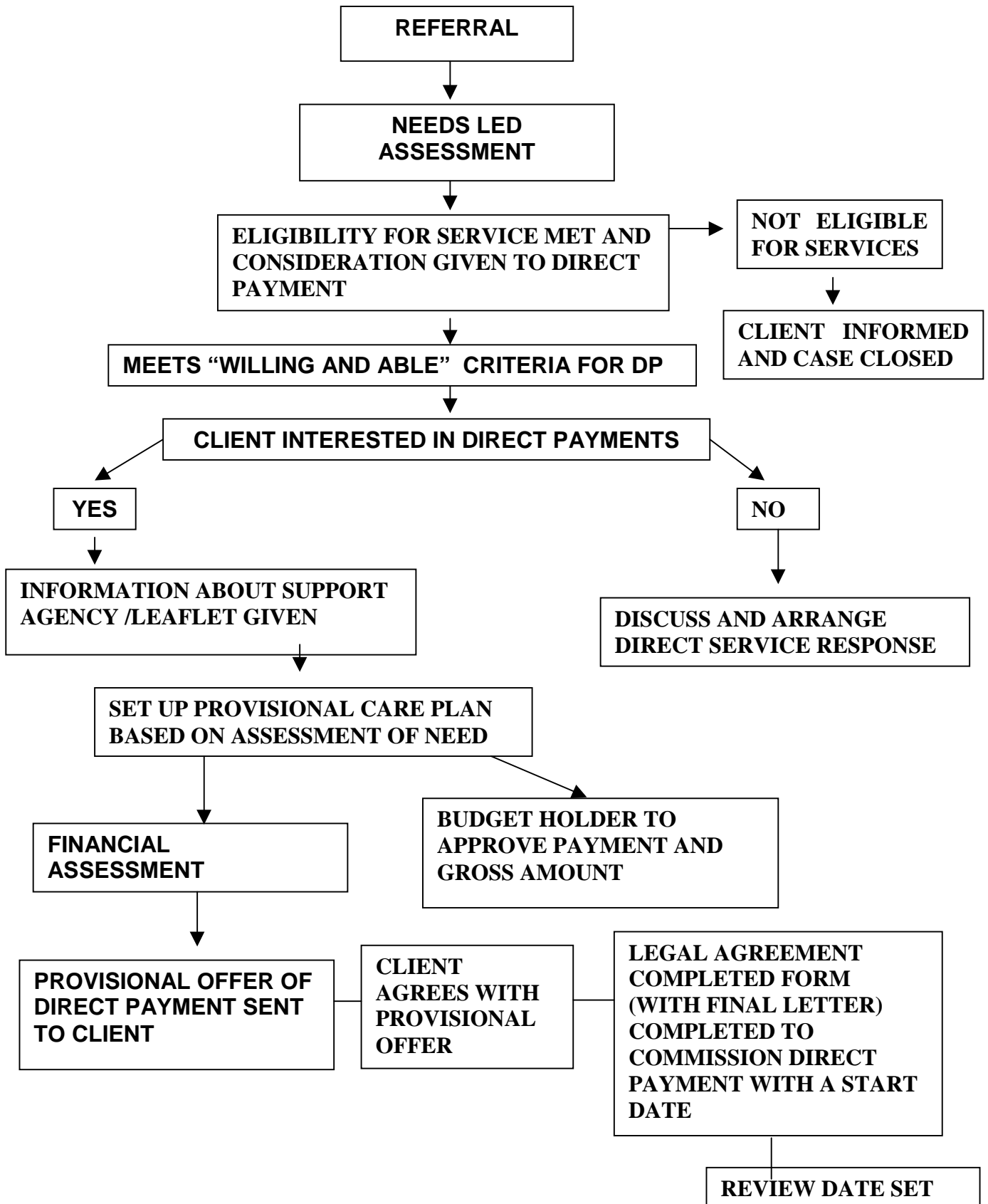
- ❖ The Community Care (Direct Payments) Act 1996 Policy and Practice Guidance issued in 2000
- ❖ The Carers and Disabled Children Act 2000 – Direct Payments for young disabled people
- ❖ The passage on Direct Payments contained in the carers and Disabled Children Act and people with parental responsibility for disabled children Policy and Practice issued in 2001.

The Government wishes to see more extensive use of Direct Payments. Their aim is that the use of Direct Payments will always be considered when deciding how to meet a person's care needs. Thus, it is drafted S57 and S58 and Schedule 6 of the Health and Social Care Act 2001. When these sections came into force the majority of the Community Care (Direct Payments) Act 1996 will be repealed, as will be the sections within the Carers and Disabled Children Act 2000, which relates to Direct Payments. The 2001 Act allows the making of regulations which will COMPEL the Local Authority to consider whether or not to make a Direct Payment in lieu of Community Care provision in certain circumstances. The procedures have been drafted as though regulations were in force.

The Department of Health produced a draft Policy and Practice Guidance Consultation paper in August 2002. It was drafted on the presumption that the relevant sections of the Health and Social Care Act 2001 would be in force by the time the guidance was published in its final form. It is expected that the final version of the Policy and Practice Guidance will be published in April 2003. It is also understood that the regulations under the Health and Social Care Act 2001 will be published at the same time.

- 1.2 The County Council will fully support the introduction of Direct Payments in a flexible and creative way, fully encompassing the legislation, whose intention is to enhance independence, self-determination and User control. The creation of innovative and flexible care provision will therefore be actively encouraged and supported.
- 1.3 The County Council will listen to the views of Users and their Carers in deciding upon the most appropriate arrangements for the delivery of Direct Payments, including consultation around the policy and procedure guidance.
- 1.4 Through clear assessment procedures and practice, the County Council will ensure that the User's eligibility *for* and consent *to* Direct Payments is carried out in an enabling manner, ensuring that the User remains in control of services.
- 1.5 The County Council will work to ensure that wherever possible and practical, Direct Payments can be used to purchase the social care element of a joint Health and Social Care package. This will be done in an integrated and co-ordinated way on a case by case basis.
- 1.6 A Direct Payment made to a recipient must be able to meet the assessed need of the disabled child and cost no more than it would cost the County Council to provide an equivalent service. It will need to demonstrate 'Value for Money'. However there are circumstances where the County Council may wish to provide a Direct Payment notwithstanding that it costs no more than the equivalent service, if it is in the clients best interests i.e. a preventative strategy which may have longer term benefits for the clients.
- 1.7 The County Council will ensure, in line with the Children Act 1989 (Schedule 2 paragraph 1), that families have information about the full range of services available when considering the option of Direct Payments, including the procedures followed in appointing care staff and in enquiring into allegations of child maltreatment.

**FLOW CHART ON ASSESSMENT AND CARE MANAGEMENT PROCESS**



## **SECTION 2 ELIGIBILITY CRITERIA**

### **2.1 Direct Payments to people with parental responsibility**

**As a result of the changes in legislation as detailed in the previous section, the provision for offering Direct Payments to clients has widened and now under Section 57 and 58 of the Health and Social Care Act 2001 and draft guidance the County Council now takes it's lead from the following:**

- ❖ Under Section 57 – Where a Local Authority has decided following a Section 47 NHSCC Act 1990 assessment, that a person's needs call for the provision of a particular community care service**

**OR**

- ❖ Under Section 2(1) Carers and Disabled Children Act 2000, a Local Authority has decided to provide him with a particular service under the Act**

**OR**

- ❖ Under Section 58 – where the Local Authority has decided for the purposes of Section 17 of Children Act 1989, that a child's needs, or if he/she is such a disabled child, his needs call for provision under the powers conferred under that Section. This being:**

- ❖ A person with parental responsibility for a disabled child**
- ❖ A disabled person with parental responsibility for a child, OR**
- ❖ A disabled child aged 16 or 17**

**2.1.1** Parental responsibility' for a disabled child is defined to include all the rights, powers and authority which by law a parent has in relation to the child and his property. Parental responsibility for a child can be obtained in a number of ways.

**2.1.2** The Children Act 1989, Section 17, sets out the responsibilities of councils to provide services to children in need and their families to safeguard and promote their welfare. Under this legislation, a child is deemed to be a child in need ' if he is disabled'

**2.1.3** The Community Care (Direct Payments ) Act 1996 states that Direct Payments may be paid to people with parental responsibility for a disabled child who provide or intend to provide a substantial amount of care on a regular basis for the child. The County Council assumes that any disabled child will require such care from the person(s) exercising parental responsibility. The level of support required will be determined in line with the County Council's eligibility criteria for services to disabled children and assessment processes(for more details see Hertfordshire's Disabled Children and their Families leaflet).

2.1.4 Direct Payments to person(s) with parental responsibility for a disabled child will be provided within the framework of Part 111 of the Children Act 1989 which requires local council to provide a range of services to promote and safeguard the welfare of children in need. All person(s) with parental responsibility for a disabled child who have been assessed for Children Act support for the disabled child and his family will be eligible for Direct Payments.

2.1.5 The County Council will work in partnership with parents, but will not arrange a Direct Payment for a person with parental responsibility unless they are satisfied that the support purchased with the money is designed to meet to safeguard and promote the welfare of the child in meeting assessed needs.

## **2.2 Direct Payments for young people aged 16 and 17**

2.2.1 Disabled 16 and 17 years olds who have been assessed as needing support under the provisions of the Children Act 1989 may benefit from the provision of a Direct Payment to provide services.

2.2.2 A Direct Payment can only be offered to such a young person whom the County Council considers will be able to manage it either alone or with assistance. This judgement can only be made on a case by case basis, taking into account the views of the young person him or herself, *as well as* the views of those persons with parental responsibility. The County Council may make transitional arrangements whereby initially the User only manages a small proportion of the assessed support with a Direct Payment.

## **2.3 Restrictions on the provision of Direct Payments**

2.3.1 The County Council should only offer Direct Payments to people whom it considers will be able to manage them, alone or with assistance. The County Council has the discretion to refuse Direct Payments to anyone whom they judge would not be able to manage them. Any such judgement will be arrived at on a case by case basis.

2.3.2 Regulations prevent people with parental responsibility for a disabled child from using Direct Payments to secure services from their partner (whether married or not), or from a relative in the same household. This would include grandparents, aunts, uncles, and siblings, parents/daughters/sons in-law or spouse or partner of any of these. There are no exceptions to this.

- 2.3.3 The regulations also exclude a close relative living elsewhere and any person living in the same household as the Recipient of the Direct Payment who is not related but whose relationship is primarily personal rather than contractual is also excluded, **except** where the County Council decides that an exception to the general rule is justified and if it is satisfied that that is the most appropriate way of securing the relevant services. This is likely to be only in very exceptional cases which should be clearly recorded.
- 2.3.4 The Community Care (Direct Payments) Act excludes some people from being considered for the provision of Direct Payments. These are:
- Patients detained under Mental Health legislation who are on leave of absence from hospital
  - Conditionally discharged detained patients subject to Home Office restrictions
  - Patients subject to guardianship under Mental Health legislation and those covered by the power of supervised discharge under the Mental Health (Patients in the Community) Act 1995
  - People who are receiving any form of after care or community care which constitutes part of a care programme initiated under a compulsory court order
  - Offenders serving a probation or combination order subject to an additional requirement to undergo treatment for a mental health condition or for drug or alcohol dependency
  - Offenders released on licence subject to an additional requirement to undergo treatment for a mental health condition or for drug or alcohol dependency, and
  - People subject to equivalent Scottish Mental Health or Criminal Justice legislation
- 2.3.5 The Act does not allow Direct Payments to be used to pay for services provided directly by the County Council
- 2.3.6 Direct Payments will not be able to be used by the recipient to purchase overnight respite care, where the child or young person stays without his or her parent, if the provider and staff have not undergone appropriate CRB checks.
- 2.3.7 Parents/young people who are not eligible for Direct Payments will still continue to receive services to meet the assessed need arranged through the County Council

## **SECTION 3      ASSESSMENT**

### **3.1      Assessment of need (general)**

**The regulations which will be made under The Health and Social Care Act 2001 require Councils to make Direct Payments to people who HAVE BEEN ASSESSED as needing services, who consent to receiving Direct Payments, who are able (with assistance, if necessary) to manage Direct Payments and who do not come into the category of people excluded by the regulations.**

- 3.1.1      The starting point for the provision of a Direct Payment is an assessment of need by the local council, which must be carried out in accordance with the guidance set out in the Framework for the Assessment of Children in Need and their Families' This framework emphasises the importance of a holistic assessment of family needs and avoiding piecemeal, repetitive or parallel assessments. It also provides a systematic approach to assessing the child or young person's needs and the capacities of their parents respond to those needs appropriately within the wider family and environmental context.
- 3.1.2      The format of the assessment will be the same whether it is thought likely that the outcome will be a service provided by the County Council or a Direct Payment. The assessment should, however, clarify the additional support and advice which may be necessary to ensure that any direct payment will be appropriate and whether the person with parent or the young person is able to manage them.
- 3.1.3      The difference in relation to Direct Payments from direct service provision does not take place in the assessment process. It happens in the delivery of services after the needs of the child/young person and/or their family have been identified.
- 3.1.4      It may be useful to consider the following in formulating an assessment: needs to be met ; objective to be achieved ; how services will be provided.
- 3.1.5      The provision of a Direct Payment is a big undertaking for all concerned, not least the family or young person involved. An assessment for Direct Payments will, therefore, be carried out in a planned, responsive way and not as an initial response to a crisis situation. The payments cannot be made to provide services for crisis intervention.
- 3.1.6      The Social Worker must ensure that any person considering Direct Payments is aware of the implications of taking on this responsibility i.e. with increased freedom comes increased responsibility. They take on the responsibility for:

- purchasing the services to which payments relate
- ensuring that they receive services to an acceptable quality
- ensuring the safety of the child or young person as far as possible at all times
- ensuring they have in place appropriate arrangements in place to cover emergencies such as staff sickness
- fulfilling the responsibilities of an employer e.g they are responsible for their employee's tax and national insurance liabilities.

3.1.7 Any person being considered for Direct Payments must give their 'informed' consent and be 'willing and able' to be able to manage the direct payment.

3.1.8 A crucial element to the assessment of a User for a Direct Payment is their ability to consent to the Scheme and the procedures and responsibility that go with it, even if this is with support from a third party. Any contract for the provision of services involves legal responsibilities and if any person contracts with another person directly; they may become an employer.

3.1.9 All Users interested in Direct Payments will need to have the mental capacity and ability to understand and be able to make decisions about their own care. Either they or an identified third party will need to understand the responsibility and the systems involved.

3.1.10 Where a User has expressed interest and another person needs to be involved in assisting them in directing their care, then a Direct Payment can be made. So long as the individual is capable of indicating their wishes, and can indicate clearly whether he/she is satisfied with the level and frequency of the care provided for them. The presumption should be that a person will (with assistance if necessary) be able to manage direct payments unless there are compelling reasons to conclude that they are not.

3.1.11 In borderline cases, the opinions of other professionals/carers (who know the User well) should be sought as part of the assessment process. There should be a clear decision making process, involving the User, Carer, Social Worker/Assessor, and Group Manager in consultation with the Lead Officer for Direct Payments at County Hall. Medical advice can be sought about the User, if appropriate, and should be considered in conjunction with the views and opinions of those who know the User well.

- 3.1.12 The assessment process should ensure that people understand what is involved in managing Direct Payments. Users cannot make an informed decision without appropriate information in a range of different formats and it may also be appropriate to refer people to specific organisations for such assistance.
- 3.1.13 The Local Authority should only offer Direct Payments to people whom it considers would be able to manage them, (alone or with assistance).
- 3.1.14 Users may receive assistance with managing the money. The payment may be made to a third party as agent for the User and detailed management of finances may be delegated to an agent.
- 3.1.15 However, the person for whom the Direct Payment is made must have control over how the support is delivered to meet their assessed need.
- 3.1.16 If a person could only manage Direct Payments with help, then the assessor should ensure that adequate help is available over a sustained period before deciding to offer Direct Payments.

## **3.2 Young disabled people aged 16 and 17**

- 3.2.1 Direct payments can play a useful part in preparing a disabled 16 or 17 year old for adulthood. Prior to the young person's 18<sup>th</sup> birthday, arrangements will need to be in place to ensure a smooth transition from Children's Services to Adult Care Services. Transitional arrangements that include a Direct Payment under the Children Act 1989 may be beneficial to help them in making their decision as to whether they wish to receive a Direct Payment as an adult. This will also apply to young disabled people leaving care who require some assistance in managing their care.
- 3.2.2 The Framework for the Assessment of Children in Need and their Families should be used.
- 3.2.3 A Direct Payment need not be provided for all the support the young disabled person is assessed as needing. The young disabled person may want part of their support package to be provided direct by in house services or may want their parent to manage part of the support package via a Direct Payment. The Act allows for a parent carer to continue to receive Direct Payments to meet the needs of the disabled child and his or her family up until the child's eighteenth birthday. This means that part of the support package can continue to be managed by the parent, whilst the young person manages other elements.

- 3.2.4 Where the young disabled person is the recipient of the Direct Payment they will need to understand what is involved. For example notwithstanding that that they are a minor if they enter into a contract for “necessaries” i.e for shelter food etc, it will be binding on them. It is ultimately for the courts to decide but it is likely that services purchased by disabled 16 or 17 year olds to meet their assessed needs are likely to become “necessaries” and contracts of employment entered into by them using a direct payment would therefore be enforceable in the same way as any others.
- 3.2.5 The Direct Payment may be made to a third party as agent for the User. Detailed management of finances may be delegated to an agent, but the young person for whom the direct payment is made must have control over how support is delivered in line with his or her assessed needs.
- 3.2.6 Direct Payments may also be used through a User controlled trust, for example in certain cases where the young person has a cognitive impairment or mental health difficulty.
- 3.2.7 Such arrangements should be made in the knowledge of the views of those with parental responsibility, the exercise of which should not be undermined by any third party.

### **Suitability**

- 3.2.8 There may be cases where the County Council has doubts about a young person’s ongoing ability to manage Direct Payments, although s/he appears to understand what is involved and is willing to take it on. The final decision rests with the County Council, but it may be appropriate to set up a formal trial period to give the person the opportunity to demonstrate his or her ability to manage. Below are some options which might be considered:
- A trial period of 3 months could be set up with the User, using a Direct Payment for this fixed term. This would need to be closely monitored with objectives clearly set, reviewed and monitored
  - A longer trial period could be agreed, if individual circumstances mean that 3 months is not long enough to enable the User to make a preferred choice of services.
  - A combination of Direct Payments (trial period) and services provided in-house or from the Independent Sector arranged by the County Council, with only a small part of the care package as a Direct Payment could be set up and closely reviewed. However, if a person appears not to have the capacity to understand and manage the Direct Payments Scheme, it should not be entered into, unless a further assessment clearly clarifies the capacity issue.

- 3.2.9 The issues in relation to Direct Payments in relation to 16 and 17 year olds can be complex. Where necessary Social Workers should seek guidance from the Principal Officer for Disabled Children, who is the lead officer for this provision.
- 3.2.10 The transition from children's to adult services require close collaboration and clear understanding between Children, Schools and Families and Adult Care Services. The Social Worker should ensure that parents understand the changes that will take place in the way services are delivered to them as carers once the young person reaches the age of 18.
- 3.2.11 Social Workers should, therefore, ensure that formal contact is made with Adult Care Services during the transition process and any issues highlighted as soon as possible in the process.

### **3.3 Value for money**

**Where a person can demonstrate that the costs of their proposed package will meet their assessed needs adequately and will not cost more than it would cost the Local Authority to provide an equivalent service, the value for money criteria is met. The cost comparison applied must include the full and usual costs to the Local Authority for providing and administering a service. This should be calculated at the beginning of the process before a final offer of Direct Payments is made.**

- 3.3.1 Where a person cannot show the above, they should be allowed to present a case in writing, or orally, to the Manager of the Quadrant Team. They will need to demonstrate how their proposed package offers significant benefits to the person and/or the County Council, over the equivalent service than if it were provided directly.
- 3.3.2 Consideration should be given to evidence showing the County Council provision does not meet the User's needs adequately.
- 3.3.3 The full costs of a care package must be taken into account when considering Value for Money. In particular, for people planning to employ personal assistants directly, such things as payroll costs, holiday and sick pay need to be considered.
- 3.3.4 There are circumstances where a Direct Payment may be made even though it apparently does not appear to be Value for Money and this could include significant quality of life improvement to the User (e.g. greater User control over care package, more flexibility and/or significantly more continuity of care).

- 3.3.5 Any potential recipient should be reminded that the County Council is under no obligation to agree to packages, which do not transparently meet the value for money requirements. However, any consideration of cost-effectiveness should consider long-term best value.
- 3.3.6 A 'Direct Payments' Panel will be set up to consider all proposed packages in the first year of operation (from April 2003) and thereafter all proposed packages in excess of £30,000 per annum. This panel will consider the 'Value for Money' criteria, along with the appropriateness of the package.

#### **3.4 Setting up a Care Plan using Direct Payments**

- 3.4.1 The assessment of need will determine the appropriate level of service
- 3.4.2 This will be agreed in the usual way with the Disability Team Manager
- 3.4.3 The Social Worker ensures the person is eligible for a Direct Payment
- 3.4.4 If a Direct Payment is refused, then a Refusal Form will be sent.
- 3.4.5 The parent/ young person agrees to be considered for a Direct Payment.
- 3.4.6 The Social Worker will present the case at the Direct Payments Panel for consultation and agreement to the care plan. This will be set up to consider all packages from April 2003 to April 2004. If agreed the Social Worker advises the potential recipient verbally 'in principle' of the decision and this is recorded on the file.
- 3.4.7 The Social Worker sends 'Provisional Offer' letter to the User with details of the amount of the Direct Payment and what it is to be used for. This must relate to the assessed needs of the individual and the restrictions placed on the use of Direct Payments.
- 3.4.8 The potential recipient has 28 days to consider the provisional offer.
- 3.4.9 If the potential recipient accepts the proposal, the Social Worker should send a Final Offer letter
- 3.4.10 The Social Worker will then ask the potential recipient to complete a CSF Direct Payment Legal Agreement. This must be signed by both the potential recipient and the budget holder. A signed copy of the agreement should be given to the potential recipient with the care plan attached. Another will be kept on the file, and another sent to the CSF Operations Finance Section. NB where the potential recipient is a parent s/he will have his or her own file.

- 3.4.11 The potential recipient will need to let the Social Worker know the arrangements and proposed start date. The Social Worker will enter details of the care package onto SSIS using the Assessment and Care Plan and inform the CSF Operations Finance Section so that the package can be set up on their system. If there is a trial period, then a start and end date will need to be entered on the care plan.
- 3.4.12 The Social Worker in consultation with the Disability Manager must ensure that the potential recipient is receiving a service directly until the Direct Payment can be put in place.
- 3.4.13 See Financial Procedures, Section 4 for the relevant process.
- 3.4.14 It is vital that all verbal communications are recorded accurately on the child's file to avoid misunderstandings.

### **3.5 Employing a suitable person**

- 3.5.1 The Act enables either a parent or a young disabled person considering employing an individual to provide support to meet the assessed need through Direct Payments, to ask the County Council to carry out checks on that individual under the Protection of Children Act (PoCA) via the Criminal Records Bureau (CRB) When the parent or young person requests such a check, the County Council has a duty to comply.
- 3.5.2 The Social Worker should emphasise the importance of employing a suitable person and provide information, support and advice to do so.
- 3.5.3 Information should be clear and straightforward about the risk of child maltreatment without raising undue anxieties. This must be done sensitively especially as many parents and young disabled people may wish to employ a person known to them already.
- 3.5.4 If a potential recipient decides, having had all the appropriate information, not to request a CRB check, then they should be asked to sign a disclaimer form. This does not absolve the County Council from its responsibilities towards children in need.
- 3.5.5 The Social Worker should arrange for the person who is to be employed to apply for a CRB check using the Disclosure Application Form. The Disability Manager must ensure that the form is completed and the appropriate documents seen. The form will be countersigned by the Disability Manager and forwarded to the Human Resource (HR) Section at County Hall. (NB The applicant receives a copy of the check as well as the County Council).
- 3.5.6 The County Council will pay the fee required for making the CRB check.

- 3.5.7 The HR Section will forward all completed Disclosures to the Principal Officer for Disabled Children who will make a decision on the suitability of the person and whether on that basis a Direct Payment should be made. The Social Worker is able only to tell the parent or young disabled person whether as a result of the check the local authority is willing to commence making the Direct Payment. It will not be possible to provide an details of the Disclosure. The parent or young person therefore should be encouraged to ask the person who they wish to employ to have sight of their copy of the check.
- 3.5.8 The Social Worker should ensure the parent or young disabled person aware that a clear CRB check does not necessarily make a person suitable to work with children. They should be given appropriate advice to ensure safe caring as far as is possible.
- 3.5.9 The County Council has a duty to safeguard and promote the welfare of children in need, and this could in some circumstances be in conflict with a potential recipient's right to arrange services using a Direct Payment. A potential recipient's insistence on employing an individual deemed to be unsuitable will be a factor in the County Council's decision whether to exercise its discretion to refuse a Direct Payment in that particular case. When a potential recipient has asked for a CRB check to be carried out, s/he should be advised to continue to receive services directly from the County Council or their current provider, as appropriate, until the check has been received.

### **3.6 What can the money be used for**

- 3.6.1 It is anticipated that some Users will choose to use the Direct Payment to directly employ their own personal assistant (s) rather than to approach an Agency to provide staff. Where this applies, the individual user will normally become an employer. The hourly rate agreed in the care plan will usually be expected to cover:

- Basic salary of employee (s)
- Enhancements for evening/weekend/bank holiday work
- Employer's national insurance contributions
- Holiday pay
- Sick pay
- Maternity/Paternity leave
- Alternative cover during holidays/sickness
- Employer's liability insurance and other insurance costs
- Severance Pay
- Recruitment costs
- Payroll services/accountancy fees
- Reasonable expenses associated with the employment of personal assistants such as:
  - Fuel costs, travel costs and additional food.

3.6.2 If a potential recipient is considering directly employing his or her own personal assistant or carer then advice about this from a support agency or their own legal advisors.

3.6.3 In most situations, an individual will not become an employer, as they will tend to go to an agency that will provide staff. Thus, the Agency will normally be the employer in these instances. In addition, the Local Authority needs to be careful in its dealings with an Agency and its workers, so as not to create the presumption that they are the employer.

3.6.4 If a potential recipient requests financial assistance in order to meet recruitment costs (e.g. to meet the cost of advertising for staff) because they cannot afford to meet these costs, then he/she should be asked to submit evidence in writing of what these costs will be. A reasonable calculation can be made on the basis of recruiting staff, details of which can be found within the Human Resources Section at County Hall. The cost of recruitment is not likely to be more than £200. The Disability Manager can agree for a one off payment to be made via a cheque to cover the actual recruitment cost.

## **SECTION 4 FINANCE**

### **4.1 Financial Procedures**

- 4.1.1 The County Council, for legal reasons, is obliged to monitor how people are spending the Direct Payment. It is important that the person's assessed needs are being met, and that the money is being spent appropriately.
- 4.1.2 It is important that the amount that has been calculated is sufficient to ensure that the recipient can secure services of a standard, which Children, Schools and Families considers adequate to meet the assessed needs.
- 4.1.3 The Disability Manager/Social Worker should ensure that the recipient is provided with the appropriate information in order to understand what is expected of them in relation to keeping records and details and their expenditure. In addition, the Disability Manager should pay heed to the review and monitoring arrangements, so that any issues can be dealt with immediately.
- 4.1.4 The Disability Manager should calculate the total number of hours of care required each week based on the assessment of need, not costs.
- 4.1.5 There is no hourly rate for the provision of care through Direct Payments, and potential recipient will need, in consultation with the Disability Manager/Social Worker, to arrive at a decision about the likely cost of the care package using Direct Payments. The agreed amount must be sufficient to meet the assessed needs and promote and safeguard the welfare of the child. The Disability Manager must then apply the 'Value for Money' criteria ensuring that the package cost no more than it would cost the County Council to provide the service. It may be necessary to refuse the Direct Payment on the grounds that it is not more cost effective than services arranged directly by Children, Schools and Families.
- 4.1.6 If more than one team is funding the Direct Payment package, then these arrangements should be clarified and agreed before the final offer letter is sent.
- 4.1.7 The potential recipient will be required to open a bank account for all transactions relating to the Direct Payment. The bank's system must be compatible with IT Net Systems to allow BACS transfers to take place. The potential recipient should be advised to avoid bank accounts which incur bank charges. They should also ensure that the bank is willing to supply 2 monthly statements, some banks are willing to supply 2 copies of bank statements so that one can be forwarded to Children, Schools and Families, and one retained by the User. A list of acceptable Banks and Building Societies is available from CSF.

- 4.1.8 Once the potential recipient has opened a bank account, details should be entered on the Direct Payment Bank Details Form and forwarded to CSF Finance Section without delay.
- 4.1.9 The Direct Payment Bank Details Form grants the County Council the authority to make payments to the potential recipient via the BACS system. The completed form must be returned to CSF Finance Section at County Hall, Hertford so that details can be entered on to the Direct Payments Database and then passed to IT Net Accounts Payable.
- 4.1.10 All payments made by the potential recipient should be by cheque or direct debit from the specified bank account, and supported by receipts, invoices and payslips.
- 4.1.11 A petty cash amount can be retained by the recipient for stamps and other small items to the value of £15 per week, which must be accounted for by receipts or invoices.
- 4.1.12 On receipt of the Direct Payment Bank Details Form, CSF Finance will arrange for payments to be made on a four weekly basis, paid in advance i.e. for the following 28 days. BACS transfers are processed twice weekly, on a Wednesday and a Friday. ITNet will need to receive the payment schedule at least 5 working days in advance of the processing date in order to ensure payments are received by the appropriate date. (The first payment will be made by cheque if there is insufficient time to set up a BACS payment. Payments will also be made by cheque rather than by BACS if the Direct Payment is only up to a period of three months. The form needs to be authorised by the Disability Manger and the Group Manager.
- 4.1.13 The potential recipient will now become a Direct Payment Recipient.

## **4.2 Financial Reviews**

- 4.2.1 On a quarterly basis, the Direct Payment Recipient will be required to complete and return a CSF Direct Payment Quarterly Return and a copy of all bank statements received since the last quarterly review. A supply of CSF Quarterly Returns for the year should be given to the Recipient by the Social Worker and should be returned direct to CSF Finance Section by the Recipient by the due date.
- 4.2.2 If the CSF Quarterly Return is not sent back by the due date, the Finance Section will contact the Social Worker/Disability Manager and ask for this to be pursued with the Recipient. Direct Payments may be stopped if the Social Worker/Disability Manager do not confirm that they should continue.

4.2.3 The purpose of the financial review is to ensure that Direct Payments are being received and spent as intended. The focus being on whether a person's needs are being met rather than the services being delivered in a certain way.

4.2.4 There may be a number of reasons why the Direct Payment returns show a balance in credit. There may be outstanding tax or National Insurance contributions not paid or due. The Recipient may be saving to pay for additional cover when the usual personal assistants go on holiday, or there could be a sum set aside for emergency cover. This needs to be clearly recorded on the returns. A copy needs to be sent to the CSF Finance Section.

### **4.3 Change of Circumstances - permanent and temporary changes**

4.3.1 The Recipient is expected to notify the CSF Department of any changes in their circumstances, which may affect the amount of the Direct Payment they require. This includes temporary admission to hospital. In such circumstances it may be appropriate to suspend payment on a temporary basis.

4.3.2 If a Recipient moves out of the County, leaves the country or goes into hospital or permanent residential care, the Social Worker must inform CSF Finance Section immediately. A service variation form must be completed and a copy sent to Finance and one copy kept on the Recipient's file. Direct Payments will cease to be paid. If an overpayment has been made then this will be discussed between the Quadrant Budget holder and Finance and the amount of any repayment required agreed.

4.3.3 If a Recipient goes into hospital a Direct Payment will remain unaffected during the first three days, CSF Finance Section need to be informed immediately and adjustments may be made to the next Direct Payment, but in exceptional circumstances Direct Payments may continue to be paid in full during the first four weeks of a hospital admission, in order to enable the Recipient to continue to receive assistance while in hospital and/or to retain the same assistants when they are discharged. After four weeks, the Direct Payment should be suspended until the person is discharged home, with a retainer paid of 25% per week of a personal assistants wage for a maximum of a four week period. (The retainer would be the equivalent of a full week's personal assistant wage.) In very exceptional circumstances this may be extended, and would need the agreement of the Quadrant Budget holder.

4.3.4 If Direct Payments are suspended, this must be notified immediately to the CSF Finance Section using a service cessation Form. Suspensions can only be effected from the next available date on the Schedule.

#### **4.4 Accrued Direct Payments**

4.4.1 The Act gives the Local Authority the power to seek a repayment if the monies made available have not been used to purchase the services identified in the care plan or in the written legal agreement. The local authority can also seek a repayment if the person has not met any condition that the Council has properly imposed by Regulations. There may be a number of reasons why the Direct Payment returns show a balance in credit. It is important that this information is conveyed in a letter to finance section as soon as possible. Repayments will only be sought where the monies have been spent inappropriately or not at all, without an explanation.

4.4.2 As repayment of accrued Direct Payment is a requirement of acceptance of the Scheme, if the repayment is not made within one month, then the Finance Section will contact the Quadrant Budget Holder and ask them to discuss the financial management of the Scheme with the Direct Payment Recipient. This could be with a view to deduction from continuing payments and/or removal from the Scheme, if after discussions, the Recipient is not prepared to co-operate with the County Council.

#### **4.5 Misuse of Direct Payments**

4.5.1 If the Local Authority finds that all or some of the Direct Payment made to the Recipient has been used for purposes other than the purchase of assessed services, the Recipient will be required to repay the Direct Payment to the County Council immediately. The Disability Manager/Quadrant Budget Holder is required to report the overpayment immediately to the CSF Finance Section at County Hall. It may also mean that the Recipient is removed from the Direct Payment Scheme.

#### **4.6 Cessation of Direct Payments**

4.6.1 If either the Recipient or Local Authority decide to discontinue Direct Payments, it is usual to give a period of four weeks notice. However, in exceptional circumstances it may be necessary to discontinue Direct Payments without giving notice, but this needs to be discussed within the Quadrant and on the advice of the Lead Officer for Direct Payments at County Hall. (This four-week period covers the cost of a Personal Assistant's wages in the event of a Direct Payment Recipient who has deceased).

## **4.7 Seeking repayments of Direct Payments**

- 4.7.1 Within the legal context, the County Council can require that all or some of the Direct Payment is repaid, if they are not satisfied that it has been used to secure the provision of services to which it relates. The County Council will also require repayment if the Recipient has breached any of the terms and conditions specified in the Direct Payment Agreement.
- 4.7.2 Repayment will be considered where the Direct Payment has been spent on services other than those for which it was intended or where the money or part of it has simply not been spent at all.
- 4.7.3 If the Direct Payment has been misspent, the Social Worker/Disability Manager needs to establish the reasons for this and should attempt to find out whether it was a genuine mistake or a deliberate misuse of public funds. The issue of repayment will need to be discussed with the Group Manager and the CSF Finance Section at County Hall.
- 4.7.4 Where there is evidence of deliberate misuse of Direct Payments, no further Direct Payments will be made and the matter will be brought to the attention of the Legal Section in response to not complying with the Legal Agreement and the appropriate course of action. The Social Worker/Group Manager should also seek advice and information from the Direct Payments Lead Officer at County Hall.
- 4.7.5 If it is considered that a genuine mistake has been made, then a repayment arrangement should be negotiated with the Recipient, following the debt recovery procedures in the CSF Financial Procedures. If Direct Payments are to continue, the amount may be reduced by a reasonable amount to recover the cost of misspent Direct Payments, if the Recipient agrees to this form of recovery and the Group Manager is satisfied that they will be able to secure the services they have been assessed as needing.
- 4.7.6 Any plans to recover overpayment by deductions of future Direct Payments should be discussed with the CSF Finance Section at County Hall as a matter of urgency.
- 4.7.7 If a satisfactory repayment arrangement cannot be agreed with the Recipient, then the matter should be brought to the attention of the lead officer on Direct Payments at County Hall.

## **SECTION 5      REVIEWING AND MONITORING**

### **5.1      Care Review**

- 5.1.1      A review is aimed at ensuring the needs of the disabled child /young person are being met and delivering the objectives and outcomes sought. It is a planned approach and is there to support children and young people and their families in their care needs, with a flexible care package.
- 5.1.2      A care review should take place alongside the first financial review. However, as Direct Payments is not a decision to be taken lightly, it is suggested that the first review should take place in three months from the commencement of the Direct Payment. This will ensure that if there are any teething problems from either CSF perspective or the Recipient, these will be addressed earlier in the process and ensure a successful outcome. This can then be followed by an annual review linked to the financial review, which can be completed at the same time. If there are issues which need to be monitored then it is recommended that a review take place at six months, then annually. The purpose of the care review is to ensure that the Recipient's assessed needs have not changed and to ensure that a Direct Payment is being used appropriately to secure the services that person has been assessed as needing and are in accordance with the care plan.
- 5.1.3      The aims and objectives of the review will be to ensure that each person is receiving good quality care that is meeting their needs and wherever possible there is Recipient choice and independence. It will also check that a person is not being charged an exorbitant amount for their care needs and will assist with any queries that may arise during the course of the review. A review will be held on a regular basis and will aim to respect privacy, dignity, cultural and religious needs whilst obtaining all the information necessary to ensure that a Direct Payment should continue with an individual. Finance will need to be informed of the review date to give them the opportunity of contributing to the process.
- 5.1.4      The Finance Section of the County Council may also wish to carry out separate checks from time to time, or notify the Group Manager and Disability Manager of any concerns regarding the amount or use of Direct Payments. These should be discussed at the review meeting.
- 5.1.5      The Recipient will be expected to attend all review meetings that are arranged, as this is part of the Legal Agreement when undertaking Direct Payments.

- 5.1.6 The review will involve the Recipient, Reviewing Officer from CSF and other people who could be the Carer, family members, friends or anyone else whom the Recipient would like to involve. It may also be necessary to involve an Interpreter or Communicator if the Recipient has another first language; this will need to be arranged in advance.
- 5.1.7 The review will follow the format laid down within CSF, with additional questions if the Recipient or Reviewing Officer needs to clarify any areas of concern or make any comments about the quality of care.
- 5.1.8 The Recipient will be expected to supply the appropriate paperwork required in order for the review to take place. This will include the care plan, recording forms, receipts and invoices.
- 5.1.9 The review will attempt to assist with and resolve any queries and agree a clear decision at the end of the review meeting, in particular whether a Direct Payment needs to be reduced or increased if there has been a change in the child or young person's assessed needs since the last assessment or review. It will also include a review of costs and value for money.
- 5.1.10 All decisions taken and agreed or disagreed at the review meeting will be clearly recorded, so it is important that each Recipient makes their views known and that the reviews are conducted in such a manner that individual who is receiving the care has the opportunity to contribute wherever possible. This will need to be well planned. No assumptions should be made about a child or young person's ability to contribute because of the level of disability.
- 5.1.11 Any adjustments to the amount of the Direct Payment will need to be discussed with the Quadrant Budget Holder and must be notified to the CSF Finance Section at County Hall, using a service variation Form and an amended Direct Payment Bank Details Form. Changes to the amount of the Direct Payment can only be effective from the next available date on the schedule.
- 5.1.12 The Recipient should be made aware that they could contact the Social Worker/Quadrant Team if at any time, they are unable to secure the services they have been assessed as needing. CSF remain responsible for meeting the assessed needs if there is a breakdown in their usual arrangements and any contingency plans that the recipient may have set up, during which time payment will cease.

## **5.2 Withdrawing Direct Payments Permanently**

- 5.2.1 The Disability Manager should consider withdrawing Direct Payments following circumstances:

- Where there are serious concerns that a Recipient is unable to manage the care in this way and so may need to revert to the County Council taking responsibility for the care package
- Where the arrangements made by the Recipient do not appear to be meeting the assessed needs adequately, for example, the provider being inadequate or inappropriate, putting the child or young person in a vulnerable position
- Any of the terms or conditions of the Direct Payment agreement are not being met by the Recipient
- The Recipient is not spending the Direct Payment on the services identified in the Care Plan.
- The Recipient is no longer willing or no longer able to manage Direct Payments.
- Direct Payments no longer offer a cost effective option in the delivery of services.
- The child/ young person no longer meets the Eligibility Criteria for services

5.2.2 Before withdrawing the Direct Payment, the social worker should consider:

- Have the person's needs changed?
- Is the amount of money sufficient to enable the person to secure the relevant services?
- Is the person still able to manage Direct Payments?
- Could they continue to receive Direct Payments with support
- Does the person wish to continue receiving Direct Payments?
- Has all the money been spent on the services for which it was intended?
- Have services for which the User has paid been received?

- 5.2.3 If Direct Payments are to be withdrawn, the Recipient should be notified in writing by the Quadrant Team, that withdrawal of Direct Payments is being considered and the reasons outlined. The Recipient should be given 14 days to challenge the recommendation and to provide their views on the proposals. If there is no action from the Recipient after 14 days, a further letter will be sent to the recipient advising them that the Direct Payments and a date given involving a period of notice of 4 weeks as stated within the Direct Payment Agreement. If a Recipient provides a response this should be considered by the Team Manager and a decision made on this basis and written reasons given in the light of these. They should also be advised of the CSF Complaints Procedures.
- 5.2.4 Where Direct Payments are to be withdrawn, the Team Manager will need to establish if the Recipient has any ongoing contractual responsibilities to existing employees and should assist Recipients in meeting these legal obligations in as far as possible, whilst promoting and safeguarding the welfare of the child.
- 5.2.5 Where Direct Payments are to be withdrawn, the Recipient must receive this in writing, stating the reasons for the withdrawal. Copies of these letters will need to be kept on the Recipients file and one sent to CSF Finance Section at County Hall, alongside completion of the Service Cessation Form. Terminations will be effected immediately. It may be useful to involve the Lead Officer for Direct Payments, based at County Hall for any advice or guidance. It may be useful to attend the Direct Payments Panel in particularly contentious circumstances.

## **SECTION 6      SUPPORT**

### **6.1      How we support people**

- 6.1.1      The Act encourages Local Authorities to seek the services of an independent agency to offer advice, support and advocacy to and for recipients of Direct Payments. These organisations provide recipients with a variety of services, which will generally include advice on employing personal assistants and carers, as well as offering Payroll Services.
  
- 6.1.2      CSF have recognised that the support service required for Children's Services will demand particular skills to deal with the complex issues involved to best meet the needs of disabled children, young people and their families.
  
- 6.1.3      In the absence of a supporting agency Social Workers should contact the Principal Officer for Disabled Children who is Lead Officer for Direct Payments and based at County Hall.