



# Personal Budget and Direct Payments Guidance.

November 2014

For Children and Young People (0 – 25yrs) who are eligible for  
an EHC plan

  
***Ealing Clinical Commissioning Group***

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## 1. Background

This document is designed to explain Personal Budgets and Direct Payments for children and young people with Education Health and Care Plans.

When Ealing Council is preparing an Education Health and Care Plan for a child or young person with special educational needs we will provide information about the provision for which a personal budget may be available, details of organisations that provide advice and assistance in connection with personal budgets and the conditions which must be met before a personal budget may be made

A 'young person' in this context is a person over compulsory school age and under 25.

People who are eligible for NHS Continuing Healthcare, have had a 'right to ask' for a personal health budget since April 2014 and this becomes a 'right to have' a personal health budget from October 2014.

Ealing Council and Ealing Clinical Commissioning Group have separate arrangements for exercising their respective statutory functions in respect of personal budgets and direct payments.

This guidance is intended to set out in broad terms how those functions are exercised

## 2. A Personal Budget

A child's parent or young person may request a personal budget when an EHC Plan is being prepared or reviewed.

A Personal Budget is an amount of money identified to deliver provision set out in an Education, Health and Care plan (EHC Plan) with a view to a parent or young person being involved in securing that provision.

This sum of money does not include the cost of universal services that are available to all (e.g. hospitals, G.P.s and the schools core funding) or the cost of special educational provision made under contracts between the Local Authority and a third party provider where it would not be an efficient use of resources to identify an amount for a particular child or young person

The introduction of personal budgets does not necessarily mean that children and young people will receive additional funding when they transfer from a Statement of SEN to an EHC Plan. Funding is dependent on an assessment.

### **Mechanisms for delivery of a Personal Budget**

There are a number of ways in which the child's parents and /or the young person can be involved in deciding how the personal budget is used:

- Direct payment – where the child’s parents or young person receive the cash directly to purchase the goods and services set out in their EHC Plan.
- A third party arrangement where direct payments are paid to an organisation which is responsible for the person’s support and direct payments .
- A managed arrangement where Ealing Council/ School/ CCG holds the funds and makes arrangements for the support specified in the plan to be provided either by their own staff of providers with whom they have contracts
- A combination of the above

### 3. Direct Payments

The driving force behind personal budgets and direct payments is the person centred planning process. In Ealing, year on year the Council and Ealing Clinical Commissioning Group hope to increase the number of people who have personal budgets and access to the greater choice and control that direct payments bring.

#### **The Legal Framework**

- Direct payments made by Ealing Council for social care or SEN provision are subject to the requirements of the Community Care, Services for Carers and Children’s Services (Direct Payments) Regulations 2009 and the Special Educational Needs (Personal Budgets and Direct Payments) Regulations 2014.
- Direct Payments made by Ealing Clinical Commissioning Group for health provision are subject to the requirements of the National Health Service (Direct Payments) (England) Regulations 2013

The Regulations make detailed provisions as to the arrangements the Council and Ealing Clinical Commissioning Group are required to make for direct payments. Although the Regulations have common elements the requirements vary depending on the Regulations that are applicable in each case.

### 4. Who can receive a Direct payment

People who are subject to certain criminal justice orders are not entitled to direct payments.

- **Direct payments for social care**

The Council may make direct payments for social care to a person with parental responsibility for a child with disabilities or a young person aged 16 or over provided that the Local Authority is satisfied:

- that the direct payment recipient has capacity to consent to a direct payment and is capable of managing a direct payment by themselves or with assistance
- that the child or young person's needs for services can be met by securing them via a direct payment and
- in the case of a child that the welfare of the child in respect of whom the service is needed will be safeguarded and promoted by securing it via a direct payment

- **Direct payments for SEN provision**

The Council may make direct payments for SEN provision to a child's parent until the child reaches 16 or to the young person once they have reached 16 provided that the Local Authority is satisfied

- that the direct payment recipient has capacity to consent to a direct payment and is capable of managing a direct payment by themselves or with assistance
- that the recipient will secure the agreed provision in an appropriate way
- that if the direct payment is to a parent that they will act in the best interest of the child when securing the agreed provision
- that making a direct payment will not have an adverse impact on other services which the Council provides or arranges for children with EHCP which LA maintains or if securing the proposed provision by direct payment is an inefficient use of LA's resources

- **Direct Payments for health provision**

Ealing Clinical Commissioning Group may make direct payments in respect of anyone who is eligible for NHS care to a person with parental responsibility or to a young person aged 16 and above. This is subject to Ealing Clinical Commissioning Group being satisfied as to a number of factors including capacity to consent, that it is appropriate for a person with that person's condition and that, if the payment is made to a representative such as a parent that the representative will act in the best interests of the person concerned.

- **Direct Payments, representatives, nominees and third party arrangements**

The responsibilities of a person or organisation managing a direct payment on behalf of another person are considerable. It is important that those in this position understand their responsibilities and that those advising them understand the variations arising from the different statutory regimes.

If a person has capacity to receive a direct payment for social care they may nominate a person or organisation to manage direct payments on their behalf. However the original direct payment recipient remains ultimately responsible for the arrangements.

A person who receives a direct payment for SEN provision with capacity to do so may nominate a person or organisation to receive direct payments on their behalf. In this case a nominee is responsible for fulfilling all the responsibilities arising from the management of the direct payment.

A person who receives a direct payment for health provision or their representative with capacity to do so may nominate a person or organisation to receive direct payments on their behalf. In this case the nominee is responsible for fulfilling all the responsibilities arising from the management of the direct payment.

- **Third party arrangements'**

A third party arrangement is when a direct payment is made to an organisation which takes on full responsibility for the person's support and direct payments

However if a direct payment recipient or their nominee chooses to use a 'managed account provider' to provide financial management and support services to help them manage their direct payments this is not treated as a 'third party arrangement'.

- **Transition – when a child becomes a young person**

When a child in respect of whom direct payments are being made becomes a young person [at 16] the young person must determine whether and to whom direct payments are made.

If the young person lacks capacity to make a decision about this the Council/Ealing Clinical Commissioning Group may agree to make direct payments on their behalf to another suitable person or organisation such as a parent or a 'court -appointed deputy'.

## 5. Scope of Direct Payments

Not everything in the Personal Budget will be available as a Direct Payment. For those receiving direct payments through an EHC plan, the following areas will be within scope of direct payments from September 2014.

Where possible Direct Payments will be made available from September 2014 for the purpose of purchasing services to meet:

- NHS Continuing Care needs
- Social care needs including homecare and short breaks
- SEN travel assistance requirements and
- For the purchase of special equipment for use in the home

### **Continuing care**

NHS Continuing Healthcare is a package of care arranged and funded by the NHS to meet the health and clinical needs of children and young people. Anyone assessed as having a certain level of clinical needs may receive NHS Continuing Healthcare. It

is not dependent on a particular disease, diagnosis or condition, or on who provides the care or where that care is provided.

If a child or young person is assessed as having a complex medical need that cannot be met by universal services, then they may be eligible for NHS Continuing Healthcare.

NHS Continuing Healthcare can be provided in a range of settings, including care homes, or a patient's home. Personal health budgets offer a chance to move towards an outcome-focused way of working. This enables people taking up personal health budgets to have flexibility in how to achieve an agreed set of health and wellbeing goals. This has several implications.

- The outcomes agreed in the care and support plan can be broader than the specific health needs identified in an assessment, and may be worded differently.
- The purpose of the budget is to enable the person to achieve a set of outcomes – it is not a budget provided to buy a specified number of hours of support as there may be better – and perhaps cheaper – ways to achieve these outcomes.
- Even if the budget is based on the cost of conventional services, this should not constrain how the budget is used.
- The budget may be used to buy goods and services not previously provided by the NHS

### **Social care**

Direct Payments for social care may be used to purchase goods and service to meet the social care needs of the child and family such as

- Practical assistance for the child in the home e.g. personal care, home based play activities
- community based support e.g. leisure activities, play schemes, after school or school holiday club and travel to community based support

### **Community equipment**

Specialist equipment to support children and young people with special educational needs, disabilities, and complex health needs may be required in a range of settings e.g. school, home or nursery.

Equipment assessed as being clinically needed for home nursing care will not be available as a Direct Payment from Ealing Clinical Commissioning Group at this stage. Ealing Clinical Commissioning Group will only fund clinical equipment for children and young people that meet the Continuing Care criteria.

For children who meet the Continuing Care criteria, Children's Community Nurses or Continuing Care Assessors would normally assess for this type of provision or it will be prescribed by the child's lead hospital and it may include suction units, ventilators and specialist sleep systems for example.

Direct Payments for wheelchairs are not possible at this stage.

### **Assistance with travel to and from place of learning**

Funding and appropriate methods of travelling to school or educational setting will be considered as part of the person centred planning meeting. It will be an integral part of the EHC 'support plan' discussions.

Ealing Council would like to offer as much flexibility as possible through a variety of travel arrangements. We will encourage young people who are able, to view travel as a positive experience that leads to greater independence in preparation for adulthood.

The Council's Home to Place of Learning Travel Policy sets out eligibility and options for travelling for learner's age 0-25 under the Council's responsibilities under the Education Act 1996.

If a child or young person with an EHC Plan is eligible for travel assistance under that Policy the arrangements will be specified in Section J of the EHC Plan including the extent to which any of the costs are to be met via a Direct Payment

## **6. Purchasing Residential Care**

Direct Payments cannot be used to buy long term residential care.

## **7. School, or Post-16 Institution**

Ealing Council will not make a direct payment for provision which will be used or provided in a school or post-16 institution unless the head teacher, principal or the person occupying an equivalent position at the school or that institution agrees. The process

It is the responsibility of the Assessment Coordinators who are involved in the Support Planning or review stages of the process, to make people aware of direct payments and promote their use.

## **8. Requests for a direct payment**

The parent or young person may make a request to the Council or Head of Continuing Care for a Direct Payment at any time during the period in which the draft 'Support Plan' is being prepared or when a 'Plan' is being reviewed or re-assessed.



Decisions by the Council and the Clinical Commissioning Group regarding requests for Direct Payments will be made on a case by case basis as part of the risk assessment that takes place during support planning. We will take into account the particular circumstances of each case, the history of the individual or carer and the views of all relevant parties when making a decision.

Where the Council or Ealing Clinical Commissioning Group decides that a Direct Payment is inappropriate, the reasons for this will be clearly recorded and shared sensitively with the individual. Individuals may ask the Council or Ealing Clinical Commissioning Group to review decisions they make about this.

The Children with Disabilities Social Care Team Manager or Service manager will decide if an individual is eligible for a council direct payment for social care needs. The Head of SEN will decide if an individual is eligible for a council direct payment in respect of SEN provision. The Head of Continuing care at Ealing CCG will decide eligibility for those requesting a direct payment for continuing care.

## 9. Equality and Diversity

The Council/Ealing Clinical Commissioning Group will support people to exercise choice and control using direct payments and decisions made by the Council/Ealing Clinical Commissioning Group will be based on individual circumstances having proper regard to the rights of individuals under the Mental Capacity Act 2005 and the obligations of the Council and Ealing Clinical Commissioning Group under the Equalities Act 2010 and under the Human Rights Act 1998

## 10. Decision to make direct payments

Before deciding to make a direct payment Ealing Council/Ealing Clinical Commissioning Group will ensure that:

- the way in which the person who receives the direct payments proposes to use the money to secure the agreed 'outcomes' is an appropriate way to do so;
- that a person who will receive direct payments on behalf of child or young person will act in the best interests of the child or young person when securing the agreed provision;
- that the making of direct payments for SEN provision will not have an adverse impact on other services which the local authority provides or arranges for children and young people with an EHC plan for which the authority is responsible and,
- that securing the agreed provision by means of direct payment is compatible with the Authority's/NHS efficient use of resources.

## 11. Calculating the amount of a direct payment

The amount of the direct payment will be determined by the cost of purchasing the services required to meet the needs which the Council agrees it should meet. If the

cost of the agreed provision changes the Council will need to review the support plan before any change to the individual budget is agreed, in order to ensure that assessed needs are being met in the most effective way.

Ealing Council/Ealing Clinical Commissioning Group will use a costed services model to help determine how much money a person should get in their personal budget to meet their needs. This provides a consistent process for the allocation of resources, linking money to outcomes while taking into account the different levels of support people need to achieve their goals. It allows people to know how much money is available to support the delivery of agreed outcomes.

## 12. Payment of Funds

Ealing Council/Ealing Clinical Commissioning Group will make arrangements for the parent or the young person to have the following information

- the provision for which a direct payment is available;
- the conditions which must be met before a direct payment may be made; and
- details about advice and assistance to the parent or young person in relation to direct payments.

Any direct payment recipient using their direct payment to employ someone to support them must always ensure that they make the appropriate national insurance and tax contributions, that formal contracts of employment are in place with their employee and that appropriate employer insurance arrangements are made. The Council/Ealing Clinical Commissioning Group is not responsible for meeting any liabilities arising from a direct payment recipient's failure to make any of these arrangements.

## 13. Support services

All Direct payment recipients will have to be offered access to a support service appropriate to their needs.

The Assessment Coordinator will signpost individuals who choose to take all or part of their Personal Budget as a managed Direct Payment to the Direct Payment support service.

Support services can provide:

- Help for people to draft advertisements, job descriptions and contracts;
- Support and advice in setting up and maintaining a direct payment scheme, including financial management;
- Help explaining the safeguards needed in the employment of people to work

- with children or adults;
- An address for responses to advertisements;
- Support and advice about the legal responsibilities of being an employer;
- Support and advice about issues of religion and ethnicity;
- A payroll service;
- Support and advice about being a good manager of staff;
- Information about income tax, PAYE and national insurance;
- Advice on health and safety issues including moving and handling;
- Regular training, for example on assertiveness, budgeting skills;
- Signposting to other services such as welfare benefits and advocacy;
- Support with accessing emergency cover;

#### 14. Conditions

When the Council and/or Ealing Clinical Commissioning Group agree to make Direct Payments there are certain conditions that must or may be imposed. These conditions will be set out in the separate agreements between the direct payment recipient and the Council/Ealing Clinical Commissioning Group (as applicable).

For example direct payment recipients will be required to establish separate bank accounts for the receipt and use of Direct Payments from the Council/Ealing Clinical Commissioning Group in order to assist auditing and review and protect privacy. If a person is receiving direct payments from the Council and Ealing clinical commissioning group, then separate bank accounts for each will be required.

#### 15. Monitoring of Direct Payment Usage

A Direct Payment is a payment of public money to allow a recipient to choose how they meet their assessed needs in accordance with an agreed 'Support Plan'. The Council/Ealing Clinical Commissioning Group will monitor the way in which Direct Payments are spent to ensure that recipients spend their Direct Payment in accordance with their assessed needs and agreed outcomes as identified in the 'Support Plan' and in accordance with the law, whilst retaining as much freedom as possible.

Every Direct Payment is subject to financial monitoring by the Council/ Ealing Clinical commissioning Group. Refusal to co-operate with this financial monitoring could lead the Council/Ealing Clinical Commissioning Group to stop the making of direct payments

The Council/Ealing Clinical Commissioning Group will conduct a 'check-up' monitoring exercise 4 weeks from the initial setup of the Direct Payment. A full monitoring exercise examining the way in which an individual spends their direct payment will be conducted a minimum of once per financial year.

The auditing and monitoring of the deployment of Direct Payments will be proportionate and risk based.

Monitoring will be as unobtrusive as possible in order that recipients using their Direct Payment appropriately are inconvenienced as little as possible. In some situations, monitoring will highlight that an individual is not using their payment in accordance with their agreed 'Support Plan' and / or is not meeting the terms of their Direct Payment Agreement in terms of the way in which they are managing their payment.

In these situations the monitoring process will necessarily become more intensive, until the issues identified have been addressed.

The method for monitoring will be regularly reviewed to ensure that inconvenience to the Direct Payment recipient is minimised. However, the recipient will be asked to provide documentary evidence in the form of receipts and bank statements upon request.

## 16. Changes to Direct Payments

The Council and/or Ealing Clinical Commissioning Group may decide to increase or decrease the amount of direct payments if satisfied that the new amount is sufficient to cover the cost of the relevant provision in the support plan

If a surplus payment has accumulated and remains unused, for example, owing to a period of hospitalisation the Council/Ealing Clinical Commissioning Group may offset the money accumulated against an amount due for payment resulting in reduced payments. A reduction cannot be any more than the amount that would have been paid in the same period.

## 17. Stopping direct payments

The Council/Ealing Clinical Commissioning Group may decide to stop making direct payments

The following are examples of circumstances when the Council/Ealing Clinical Commissioning Group may stop making direct payments

- If the needs of the child / family have changed

- If the direct payment is not being used in an appropriate way
- If a condition imposed by the Council/ Ealing Clinical Commissioning Group is not being complied with
- If the information required for monitoring purposes is not supplied
- As a result of changes to the capacity of an individual on whose behalf direct payments are made to consent to receipt of direct payments.

## 18. Recovery of Direct Payments

Ealing Council/Ealing Clinical Commissioning Group may require that part or all of a direct payment must be repaid in certain circumstances including:

- If the direct payment has not been used to secure the provision for which it was intended as outlined in the EHC / support plan.
- If a condition of the agreement has not been met
- If the persons circumstances have changed in a way which effects the appropriateness of the agreed provision
- If the child or young person has died
- If there is evidence of theft, fraud or another offence

In the event that reclaimed money remains unpaid the Council/Ealing Clinical Commissioning Group may recover sums due by way of a Court Summons

## 19. Notification of changes to Direct Payments by the Council/Ealing Clinical Commissioning Group or by the Direct Payment recipient

The council will give 4-weeks' notice of a decision to reduce or stop the direct payment and provide reasons, unless there are safeguarding or financial management concerns which necessitate immediate action.

- Direct Payment recipients may ask the council to review a decision to vary or stop direct payments by writing to council within 7-days of being notified of the decision by contacting the Children's with Disabilities Team with my request by email at [CWDTduty@ealing.gov.uk](mailto:CWDTduty@ealing.gov.uk) or by telephone on 0208 825 7072
- A direct payment recipient is required to give 4-weeks' notice to the Council if they no longer wish to receive direct payments or wish to nominate another person to receive them on their behalf by contacting the Children with Disabilities Team at [CWDTduty@ealing.gov.uk](mailto:CWDTduty@ealing.gov.uk) or by telephone on 0208 825 7072

The NHS will give between \*4 – 12 weeks written notice of a change or proposed termination of the direct payment arrangement, except in circumstances where there are identified legal or safeguarding concerns' requiring immediate action to be taken on the part of the NHS.

*(\*The actual termination period will be dependent on the type of services purchased)*

An NHS direct payment recipient is required to give 4-weeks' notice to the NHS if they no longer wish to receive direct payments or wish to nominate another person to receive them on their behalf by contacting/advising Ealing's Continuing Healthcare Team

## 20. Moving out of the Borough

Where the recipient of a direct payment moves out of the borough the responsibility of LBE and Ealing Clinical Commissioning Group to make direct payments in respect of social care and health needs will normally cease. The Council and Ealing Clinical Commissioning Group will ensure that the relevant information is passed onto the responsible bodies and, endeavour, subject to the cooperation of the new responsible bodies to ensure that there is a smooth transition.

The responsibility of Ealing Council to make any direct payments for SEN provision will remain with the Council for as long as the EHC Plan is maintained by the Council

## 21. Death

In the event that the recipient of a direct payment dies,  
Any funds held in the direct payment account can be used to:

- Pay any outstanding liabilities and
- Refund the Council/NHS any outstanding balance

Each case will be dealt with on an individual basis. The direct payment will cease on the date of the death.

## 22. Parameters for Utilising Direct Payments

### **Contributions by Service Users**

Recipients of social care services provided by Adults Services, who are over the age of 18, will be financially assessed to determine whether they are able to afford to contribute towards the cost of their care. Where a contribution can be made, this will be reflected in the Direct Payment amount; Direct Payment amounts will be paid net of any contribution by the service user.

The Direct Payment recipient is responsible for ensuring that they pay their contribution into their Direct Payment account and that there is sufficient in their account to pay for the support they purchase

The Council will not meet the costs of support purchased as a result of any deficit in the account arising from a failure to pay in the contribution

There will be no contribution requested for Continuing Healthcare provision.

### 23. Under Spending

If a surplus payment has accumulated that remains unused that may indicate that the individual is not receiving the care they need or their needs have changed on a temporary or permanent basis resulting in too much money having been allocated.

There are several options open to the Council/Ealing Clinical Commissioning Group in these circumstances

1. A decision may be made reduce direct payments i.e. to set off the money accumulated against an amount due for payment. A reduction cannot be any more than the amount that would have been paid in the same period.
2. A decision may be made to recover the excess funds

The Council/Ealing Clinical Commissioning Group will first write to the Direct Payment recipient, notifying them of the intention to either reduce the amount of direct payments by the relevant amount or to recover the relevant amount. And providing a timescale, normally 7 days within which they can contact the Council/NHS to challenge the decision.

At this stage, the Assessment Coordinator will also be notified in order that they can highlight any case-specific issues.

Where the Assessment Coordinator or Direct Payment recipient notifies the Council's Finance Team or Ealing Clinical Commissioning Group (as applicable) about a valid reason for the surplus, no further action will be taken. Where no valid reason for the surplus is present and it is not appropriate to offset the unspent funds against an amount due for payment the Direct Payment recipient will be invoiced for the surplus amount.

In the event that the Council/Ealing Clinical Commissioning Group seeks to recover unspent funds, it must notify the direct payment recipient of the reason for the decision and explain the repayment methods available.

The option chosen to redress unspent funds will be determined on a case by case basis to ensure that the direct payment recipient is able to meet their support needs and to ensure the most appropriate mechanism is utilised.

### 24. Misuse of Funds

It is a requirement that direct payments are used to secure the services specified in the individual's support plan and in accordance with the conditions in the Direct Payment Agreements they sign with the Council and/or NHS Ealing

In the event that misuse of the direct payments occurs the Council/NHS may stop direct payments. If that happens the Council/Ealing Clinical Commissioning Group will make any alternatives arrangements that are necessary to meet their obligations to provide support to the individual concerned,

## 25. Contingency Arrangements

The amount of the Direct Payment will be sufficient to cover the cost of agreed contingency arrangements as set out in the support plan. The Direct Payment recipient will be expected to manage their direct payments to meet those costs.

In the event of an unavoidable need for urgent additional provision (for example: a Personal Assistant employed by a direct payment recipient is unexpectedly unavailable due to illness and no further funds remain in the direct payment account to secure interim personal support), the Council/Ealing Clinical Commissioning Group(as applicable) will ensure that the appropriate care needs are met. The Council/Ealing Clinical Commissioning Group will determine what constitutes an urgent situation and what support it will provide in order to meet the need.

## 26. Employment of Family Members Using a Direct Payment

Direct Payment recipients may not use their direct payments to pay for services provided by certain family members without the approval of Ealing Council/Ealing Clinical Commissioning Group (as applicable)

The statutory restrictions are not the same for direct payments for social care and direct payments for health provision.

## 27. Direct Payments for social care provision

Unless the Council is satisfied that securing services from such a person is necessary for promoting the welfare of a child in respect of whom the service is needed direct payments for social care provision may not be used to pay the parent's

- spouse (husband or wife) or civil partner or a person who lives with the parent as if they were a spouse or civil partner
- *a person living in the same household* as the parent who is their close relative of a specified description or the relative's spouse, civil partner or cohabitee.

## 28. Direct Payments for healthcare provision

Ealing Clinical Commissioning Group may specify in a support plan that a service may only be secured from a person who is an individual living in the same household as the patient, a family member (listed below) or a friend involved in the provision of the patient's care if satisfied that to secure a service from that person is necessary to meet satisfactorily the patient's need for a service or to promote the welfare of a patient who is a child



- A person who is the patient's spouse or civil partner or a person who lives with the patient as if they were a spouse or civil partner
- *Whether or not the person lives in the same household* as the patient a close relative of a specified description or the relative's spouse, civil partner or cohabitee.

These restrictions are not intended to prevent people using their direct payments to employ a live-in personal assistant, provided that that person is not someone who would be usually excluded by the Regulations. The restriction applies where the relationship between the two people is primarily personal rather than contractual, for example, if the people concerned would be living together in any event.

If a person wishes to use their Direct Payment to secure services from a person for whom special approval would be required because they fall into one of the relevant categories the decision to agree on behalf of the Council would be made by the Head of CWD and on behalf of Ealing Clinical Commissioning Group would be Head of Continuing Care at Ealing CCG in relation to payments for continuing care services, and recorded in the relevant plan

## 29. Safeguarding

The relevant Regulations require the Council and Ealing Clinical Commissioning Group to carry out DBS checks before agreeing to make direct payments to an individual or organisation on behalf of an individual in certain circumstances. For example before making a direct payment for social care to an unrelated individual for the benefit of a person who lacks capacity to consent.

### Direct payment recipients as employers

When deciding whether or not to employ someone direct payment recipients should follow best practice in relation to safeguarding, vetting and barring, including satisfying themselves of a person's identity, their qualifications and professional registration if appropriate

A DBS check will identify people who may be unsuitable to undertake care work because they have a criminal record. This reduces the risk of abuse by ensuring that those who are unsuitable are not able to work within the caring professions.

Direct Payment recipients are not obliged to carry out DBS checks before employing a person except in certain circumstances involving direct payments made in relation to people who lack capacity.

However the Council and Ealing Clinical Commissioning Group strongly recommend that checks are carried out where possible.

If a potential employee or contractor has subscribed to the DBS Update Service the direct payment recipient may ask to see the person's original certificate and use the

free online portal to check for up to date information. If the certificate is not up to date the person should be asked to apply for a new certificate

Individuals cannot apply to have a DBS check completed themselves. However a direct payment recipient can ask the Council/Ealing Clinical Commissioning Group to arrange for a prospective employee to apply for an enhanced DBS check with a check of the relevant barred list when employing or contracting with people who are going to provide a regulated activity such as personal care.

### 30. DBS Procedure

The Council/Ealing Clinical Commissioning Group will be assisting the prospective employee to apply for an enhanced DBS check and check on the barred list so that the prospective employee can provide satisfactory information to the DP recipient

The Assessment Coordinator will give the prospective recipient of a Direct Payment the information concerning DBS checks and stress the importance of them, when employing directly or if through an agency.

- A record that this advice was given will be recorded on file.
- The Assessment Coordinator will inform the service user that if they chose to have a DBS check completed then it should be an enhanced check.
- Once the DP employee has completed the application form, then it should be returned to Ealing Councils or Ealing C.C.G. HR department.

The Council/C.C.G., in order to protect Direct Payments recipients, will pay the cost of the DBS check.

### 31. Complaints

If the recipient of a Direct Payment has a complaint about services they have independently purchased, they should address this with the service provider or employee concerned.

Complaints about the process of setting up, administering and monitoring the use of direct payments will be handled under the appropriate Council/NHS Complaints Procedure.