

Direct Payment Information Guide

For people considering using, or using Direct Payments

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Refs: Care Act Statutory Guidance 2014, Direct Payment Regulations, Luke Clements - Community Care & The Law

Introduction to Direct Payments

When someone is assessed as meeting the eligibility criteria to receive either Social Care or the NHS continuing health care support, a Care & Support Plan is created along with a Personal Budget, or a Personal Health Budget (PHB). The Personal Budget amount offered to someone is a starting point and an estimate until the Care and Support Plan has been completed and final costs of the arrangements identified.

People can request to receive their Personal Budget as a sum of money and commission their own services, this is known as a **Direct Payment**. Many people value the opportunity to tailor their support to their personal preferences, and have greater choice, control, and flexibility with what their care and support looks like, and how and when it's provided to them.

*** Care Act 2014 -12.3 Direct payments** ... provide the platform with which to deliver a modern care and support system. People should be encouraged to take ownership of their care planning and be free to choose how their needs are met, whether through local authority or third-party provision, by direct payments, or a combination of the 3 approaches

To avoid restricting choice and autonomy, there are few restrictions placed onto the use of the Direct Payment. The key ones are below:

- Only used to buy services and support as agreed and set out in the Care & Support Plan
- Buy support and services of the type which will enable the personal outcomes in the plan to be met.
- Ensure services are paid for when due and any employment arrangements are managed legally and appropriately.
- Not overspend the Direct Payment money available

Direct Payments are not treated as 'income' for the person receiving them, they will not affect personal tax or welfare benefit claims.

People who can be paid a Direct Payment can either be:

- aged 16 or over and entitled to a community care service.
- have parental responsibility for a disabled child under 16 who is entitled to a community care service
- are a carer aged 16 and or over and an assessment has decided they are entitled to a carer's service
- someone nominated to manage the money on the persons behalf.
- someone who is viewed as being a suitable person to act in the role of a representative on behalf of a person who lacks capacity.
- a parent or guardian of a child under the age of 16.
- If you have been ordered to receive care services under mental health or criminal justice law, you do not have a **right** to receive direct payment to allow you to arrange the care. The Local Authority may still be willing **to allow** you to have direct payments if felt appropriate.

* Disabled young people aged 16 or 17 may disagree with their parents about whether they or their parents should receive the direct payments. In these cases, the Local Authority will consider if the young person can manage the direct payments themselves and is they feel they can with appropriate support, they will make the payments to the young person.

Representatives and Nominees

A Representative is someone who supports a child (under 18) or an adult who lacks capacity. For a child under 18, this person is usually a parent, and they manage the direct payment account and services set out within the care/support plan subject to the representative conditions*.

***Representative Conditions 1 to 5 within the Care Act 2014** relate to representatives under the mental health act 2005, and agreement from these representatives and the local authority with someone being a suitable representative.

A Nominee is someone acting on behalf of an adult with capacity. Where a nominated person has been requested to receive the direct payment, the authority will involve them in any appropriate stages of the care planning journey.

Where there is a lasting power of attorney, or someone **appointed by the Court of Protection as a deputy** under the Mental Capacity Act 2005, they should be considered first. However, there may be specific circumstances in which a person other than the representative, in particular a close family member or a friend is considered to be the most appropriate choice in respect of the person lacking capacity.

***A Direct Payment Holding Account Service** would not act as either a Nominated Person or Representative of the Direct Payment user. Their role is solely to support with administering the funding and make payments for support services.

Reasons for Local Authorities Refusing to Offer a Direct Payment

The Direct Payment option can be refused by the Local Authority. In these situations, social services or the NHS would continue to have a duty to offer and arrange to put in place services themselves to ensure the care needs can be met and the risks of things getting worse reduced.

Reasons for refusing to give a Direct Payment are:

1. The adult lacks capacity and has no suitable representative to receive the Direct Payment on their behalf.
2. The adult, nominated person or representative is not capable of managing the direct payment responsibilities, including using the Direct Payment and commissioning and managing the chosen services themselves, or with whatever help available.
3. The person is under a court order for drug or alcohol treatment programs or similar schemes.

Receiving a Direct Payment

*People eligible for support from their Local Social Services Authority who have savings above the financial threshold of £23,250 would be viewed as '**self-funders**' and unable to receive Direct Payment funding.

Before releasing a Direct Payment, the Local Authority will need to develop a Care and Support Plan with the person and ensure the chosen services and support will act in achieving the agreed outcomes and not put the person and their care needs at further risk.

The Local Authority would then offer an amount of Direct Payment funding which they feel will be appropriate to enable the person to buy the type of support and services agreed in their plan. Local Authority's usually pay the Direct Payment money every 4 weeks, or fortnightly.

As a Direct Payment user, you can choose how you receive the Direct Payment money:

1. **A Pre-Payment Card** – is an option similar to using an online bank account; the Local Authority puts the Direct Payment money into the account, and you would use the card to pay for services and support. The benefits of the Pre-Payment card are that you would not be required to provide monitoring information to the Local Authority, including receipts and details of expenditure as they also have access to the account.
2. **Self-Managed Bank Account** – with this option you would need to open a bank account in the name of person responsible for managing the Direct Payment and used for the sole purpose of receiving the Direct Payment money and paying for the services and support agreed in the Care and Support Plan. If you go overdrawn in the account, you may become personally liable for fees and charges applied by the bank unless proven to be the fault of the Local Authority.
3. **A Holding Account Service** – with this option the Direct Payment funds are received into your own individual holding account and used to make payments for services on your behalf. The service will also provide monitoring return information to the Local Authority.

*With all the above options, the Direct Payment user would continue to retain receipts/invoices for up to 6 years.

Connection Support Direct Payment Services Available

Connection Support Direct Payment Support Helpline - Tel: 01908 101346 (answer phone facility available) Email: sdshelpline@connectionsupport.org.uk

A Direct Payment Helpline is available and free to anyone. It offers information and advice with using Direct payments and with being an Employer. A range of information resources is also available from our dedicated website: [Direct Payment Resources](#)

An Employer Support Service can assist people with advertising and recruiting for a PA/carer if no one has been already identified to be employed. They can help potential employers get everything setup appropriately and legally, including getting DBS checks undertaken, accessing a Payroll Service, creating job descriptions, risk assessments, grievance and disciplinary policy templates and putting in place appropriate levels of employer liability insurance. The Service can also support Employers implement any actions required by their insurance provider to help resolve employment related issues/disputes as required.

Additional support is offered to people when considering buying the services of a **Self-Employed PA**. Support includes providing advice with employment status checking and helping to consider the risks involved with getting an employment status wrong.

A Payroll Support Service for Employers who require a service to administrate all areas of their PAYE responsibilities, including Pension auto enrolment, creating payslips, providing advice and guidance with completing timesheet information, making payments into a Nest pension scheme and to HMRC. Employers also receive regular email Employer Information updates and are offered *free* online workshops covering Direct Payments, Recruitment, interviewing PA's, and managing employer responsibilities.

A DP Holding Account Service can help administrate the DP funding and make payments to services, including any PA's employed on behalf of the Direct Payment user and submits income and spend monitoring information to the Local Authority every quarter. The service is not able to act as a nominated person or representative, the person responsible for signing the DP Terms and Conditions Agreement continues to be responsible for commissioning services appropriately and managing the day-to-day support arrangements.

PA Register is an online website which allows PA's looking for work to advertise their availability, and for Direct Payment users to promote job adverts for Personal Assistants. Its available to all Direct Payment users in Milton Keynes. Website Link: [PA Register](#)

Key Direct Payment User Responsibilities

By agreeing to provide a Direct Payment, the Local Authority or NHS have legally devolved their responsibilities for commissioning support arrangements to the individual receiving the Direct Payment.

The Local Authority will continue to have a responsibility to review and monitor the arrangements and ensure the Direct Payment is being used as agreed in the person's care plan and is still an appropriate option to use.

Payment, you will take on the following responsibilities:

- Managing how the Direct Payment is being used and ensure it's used in a way which meets the outcomes in their care and support plan.
- Ensuring payments for care invoices, equipment costs, respite arrangements or PA wages are paid when due.
- Managing the day-to-day work of the support arrangements, including any responsibilities involved with being an employer.
- Changing or cancelling services, dealing with disputes, and arranging new services as needed.
- Creating and activating contingency plans when services are unable to provide support as planned and in emergency situations.
- Communicate and engage with the Local Authority as part of reviewing the support arrangements and ensuring they continue to work well and are effective in meeting the care needs.

Using a Direct Payment to Employ a Personal Assistant (PA)

When employing someone to provide support there will be the following associated employer costs included within a Direct Payment budget.

- Enhanced DBS application
- Pension contributions
- Paying for cover when an employee is off sick or taking annual leave and costs of any training agreed as being required.
- Redundancy costs (Employer liability insurance will contribute to this cost if necessary)
- Employers Liability Insurance (this is a legal requirement to have in place)
- Employer National Insurance contributions

In many cases, the associated employer costs are not all used. An employer may not need to pay for alternative care when a PA is taking annual leave and may use informal support to cover, or they may not need to contribute into a pension scheme. Any unused Direct Payment funding above an agreed amount is usually required to be returned to the Local Authority.

- **Paying Family Members to Provide Care** – there are no restrictions with using the Direct Payment to employ a close family member if they are not living in the same household.
- **Paying Family Members Living in the same household** - This arrangement must be agreed to by the local authority. They will consider if it's necessary to use a Direct Payment to employ a close family member living in the same household to enable the person's needs to be met. This type of arrangement may be agreed for a short or longer period.

*The person responsible for managing the Direct Payment and signing the Local Authority's DP Terms and Conditions cannot be employed and receive payment from the Direct Payment funding.

- **Paying a Family Member to Administrate/Manage the Direct Payment** - The Care and Support (Direct Payments) Regulations 2014 includes details for paying a close family member living in the same household to **'administer/manage'** the direct payment. This recognises the fact that people with complex needs who have substantial support in place would need a high amount of administrative support in place to manage the Direct Payment arrangements. **This arrangement is not the same as employing a family member to provide care and support.**

Local Authority Monitoring of Direct Payments

All Local Authorities have a legal responsibility to ensure Direct Payment money is used in a way which is effective in meeting someone's eligible care needs and to do this, they will monitor how r Direct Payment funds are used by individuals.

Monitoring processes should not aim to restrict people's choice and flexibility with meeting their needs, or stifle innovation by requiring people to use a particular provider. People are usually asked to provide information about their use of Direct Payment money every quarter, sometimes more often if the Local Authority feel they have valid concerns with how the Direct Payment is being managed.

*The statutory guidance to the Care Act 2014 advises that (para 12.4): For direct payments to have the maximum impact the processes involved in administering and monitoring the payment should incorporate the minimal elements to allow the local authority to fulfil its statutory responsibilities.

To help the Local Authority monitor the Direct Payment use, they will consult with you to check:

- The objectives of the support plan outcomes are being met, and needs are not being put at further risk from how the DP is being spent and the chosen support arrangements.
- The money has not been used illegally, or in ways which are outside from what has been agreed and set out in the care plan.
- The details and reasons for any surplus of funding in the account are valid.

Moving Area

If someone moves to a different area on a permanent basis their new Local Social Services Authority or CCG (NHS) would be responsible for re-assessing the person and identifying the services which they are eligible for.

Short stays in hospital/residential setting

A Direct Payment can continue if the recipient has a short stay in a hospital or residential setting of up to 4 weeks. This can be longer if employing a PA or when a need to continue to retain services such as a care agency for when they return home. If employing someone, the options are a bit limited as the employee can still be expected to be paid whilst the person is on hospital.

An employer can ask their employee to do other tasks relevant to their job role, this might include preparing the home for the person return or supporting the person in hospital with non-health care tasks. In other situations, the Employer can ask their employee to take some annual leave if they have any remaining to use.

Terminating/Suspending Direct Payments

Before suspending or terminating a Direct Payment the Local Authority will need to establish how the assessed care and support needs of the person will be met when payments stopped (and whether it needs to make any direct provision). Where a decision is taken to cease making payments, the Local Authority will ensure there is no gap in the provision of care support to the person. They will also look to review the care and support plan.

Where someone receiving direct payments loses the capacity to consent, the payments should cease, and the authority would:

- a) consider making payments to an authorised person instead; and
- b) in the interim make alternative arrangements to ensure continuity of support

The statutory guidance to the Care Act 2014 advises that **‘payments should only be terminated as a last resort’** and that ‘authorities should take all reasonable steps to address any situations without the termination of the payment’ (para 12.67).

Repayment of a Direct Payment is aimed at recovering money which has not been used as agreed and for the reason it was intended for or has not been used at all. Local Authorities recognise that people can make errors and try to avoid penalising people for making genuine mistakes.

When a Local Authority has concerns about how a Direct Payment is being used, they will look to contact the DP user quickly and take action to help resolve things. They continue to have a duty of care towards people when a Direct payment is stopped and to ensure there is no gap in the provision of support required to meet the care needs.

Website Links to National Direct Payment Information:

- **Care Act 2014 Statutory Guidance**
<https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance>
- **Luke Clements Community Care Solicitor**
<http://www.lukeclements.co.uk/>
- **Carers UK**
<https://www.carersuk.org/help-and-advice/practical-support/getting-care-and-support/direct-payments>
- **Disability Rights UK**
<https://www.disabilityrightsuk.org/>

