



Information from Counsel and Care: 23

Home Care: using direct payments or a personal budget

If you need care and you are eligible, you should be able to choose who provides that support and control where and when it is provided.

From April 2011, you should have access to a 'personal budget' from your local council. This is a virtual pot of money to meet all your needs. You should be able to take it as a direct cash payment, or as services or as a mixture of cash and services.

Direct payments is a scheme in which you are provided with cash payments instead of services direct from your local council so that you can choose and purchase the care to meet your assessed needs.

Counsel and Care is the national charity working with older people, their families and carers to get the best care and support. If you have found our service helpful, please consider making a donation or leaving a legacy in your Will. You can arrange either by telephoning 020 7241 8555 or using the secure service on our website www.counselandcare.org.uk.

Counsel and Care is a national charity; however the creation of the Scottish Parliament, and the Welsh and Northern Ireland Assemblies means there are differences in the ways each region cares for and supports older people. The information in this guide applies essentially to England although there may be similarities with Scotland (please see the section specific to Scotland later in the guide), Wales and Northern Ireland.

We also produce five separate guides for both Scotland and Wales covering the needs assessment process; paying care home fees, and making a complaint, which are the key areas where the policy and legislation differ significantly to England. All of the guides we publish can be downloaded from www.counselandcare.org.uk/helping-you/guides or posted to you by calling our guide orderline on 020 7241 8522.

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1 ‘Personalisation’

Government has introduced a whole new way of thinking about care and support called ‘personalisation’. It aims to transform social care so people and their needs are at the heart of it.

Personalisation is about people having choice and control over any assistance and support that they need to live their daily life.

It is about looking at the whole of a person’s life, their aspirations as well as their care and support needs.

1.1 What are personal budgets?

Personal budgets are a key part of the personalisation agenda.

A personal budget is the amount of council money available for your care and support, decided in line with your agreed care and support plan. People who are eligible for care and support services should be assessed for a personal budget in order to enable them to direct their own care and support. The goal is for older people to have increased choice and control over the care they receive and who provides it. Pilots are also in progress to test out the benefits of similar personal budgets for people who use healthcare services.

See section 2 of this guide for more details.

1.2 What are direct payments?

Direct payments are one way of using your personal budget.

Direct payments are a cash payment provided as an alternative to receiving services that are provided directly by the council.

See section 3 for more details.

1.3 What is person-centred care?

For older people visiting a day centre or living in a care home, even if they can't make use of a personal budget or direct payment, the care they receive should also be provided according to their wishes and in the way they choose. Some councils are doing innovative work to make sure this happens, such as developing one-page profiles so all staff know what is important to that person or developing communication tools to help staff and professionals understand how someone communicates and expresses themselves.

For further details on person-centred care, see new government guidance entitled 'Personalisation through person-centred planning' available to download from the Department of Health website at:
www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/@dh/@en/@ps/documents/digitalasset/dh_115249.pdf

2 Personal budgets

If you are eligible for a personal budget and willing to accept one, you can use this pot of money in a number of ways (with assistance if required) to purchase the care and support you feel is most appropriate for your needs. You can use it as a direct (cash) payment (see sections 1.2 and 3 of this guide). Alternatively, it can be held and managed as an account by your local council in line with your wishes, or as an account placed with a third party such as a care provider. You can choose to take money out from your personal budget either in the form of a direct payment in cash, as services or a mixture of both.

2.1 When will personal budgets be introduced?

By April 2011 every council is expected to offer personal budgets to every older person who is eligible to receive council-funded adult social care services. By October 2010 personal budgets must be offered to all new people and their carers accessing social care services and those people having a care review. Note, however, you don't have to accept a personal budget if you don't want to. With this new way forward, the role of independent advocacy is crucial in enabling older people to access and buy the right care that meets their needs. If you feel that your wishes about not accepting a personal budget are not being listened to, please see section 8 of this guide, and you may also want to discuss this with an independent advocate. Please see our guide **25: Independent advocacy**.

2.2 How much will I receive in my personal budget?

The total amount you receive in your 'personal budget' will be based on your local council's 'resource allocation system', where a series of questions will be asked and points given to determine the overall size of your budget. The amount of money offered must be negotiable in order to ensure that all your individual assessed needs (including any social, emotional or psychological needs) are met in full. Despite this new resource allocation system, you are still entitled to receive a full assessment of your needs *and* any special assessment, for example for sensory loss or mental health.

Councils are currently using different resource allocation systems. A common resource allocation framework was published in October 2009 for all councils to use if they prefer. However, this is currently a work in progress, and concern has been raised about the consistency of the resource allocation system used by some councils.

If you need more information and advice about personal budgets, please contact your local council adult social care services department, and/or an independent advice service, such as Counsel and Care (tel.: 0845 300 7585; www.counselandcare.org.uk).

3 Direct payments

A direct payment is money given to you to meet your needs in place of getting care and support services arranged and provided directly by your local council adult social care services. The aim of direct payments is to give you greater flexibility, choice and control over the way your care and support are provided, if you are assessed by the council as eligible to receive support. You will be able to use the money to make your own decisions about how your care is delivered. For example, you could employ someone of your choice to give you care at a time that suits you best.

The Direct Payment scheme was made available to people over 65 in April 2000. Since April 2003, local councils have had a duty to offer direct payments to people assessed as needing care services. If a person has dementia they can still benefit from the system, even if they lack mental capacity at the time they take on direct payments. From November 2009 onwards, direct payments are available to people who lack capacity and have a suitable person to receive and manage a direct payment on their behalf.

Direct payments are a good option for many people. If you feel you would like to consider using a direct payment rather than traditional services, ask your local council social care services for details.

If you are not offered direct payments, it is important that you ask your local council social care services what your entitlement is to receive them.

The amount you receive in a direct payment can alter as your needs change. Note that any money you receive from social care services in a direct payment will not affect any welfare benefits that you receive from the Department of Work and Pensions. The direct payments money you receive is not liable for income tax.

4 Self-directed support in Scotland

If you live in Scotland and have been assessed by the social work department as needing community care services to help you remain at home (and these care needs meet the local eligibility criteria for support), you may be able to choose to receive cash rather than services as a way of giving you more control over the way your care needs are met. This is called 'self-directed support' (formerly direct payments).

4.1 Self-directed support payments

The local authority has a duty to offer self-directed support (cash) payments (sometimes still called direct payments) instead of services to anyone who has been assessed as needing help and who is eligible. You can still choose to receive support in the 'traditional' way arranged by social work instead of accessing self-directed support if you would prefer.

4.2 Individual budgets

With self-directed support people also have the option of being given an individual budget (like a personal budget in England). An individual budget, unlike direct payments, does not always have to be in the form of a cash payment. A 'virtual budget' can be allocated to you in your name and held on your behalf by social work. You can choose to take this money out either in the form of a direct payment in cash, in the form of services, or as a mixture of cash and services arranged for you by a 'broker' or social worker.

If you do want to access self-directed support you can choose to have some of your services provided or arranged by social work, and use self-directed support to arrange the rest of the care you require or you can arrange all the care yourself. A social worker or care manager can arrange this budget for you and should inform you as to what you can spend the money on. Self-directed support is designed to meet your care needs in creative and flexible ways. Apart from two or three exceptions which are clarified in the guidance you can use self-directed support in the way you want to meet your needs. Please see section 9.3 of this guide for more information on managing self-direct support in Scotland.

4.3 Financial assessment

To receive any service from your council you will be assessed financially (means tested) to see whether you should contribute some money from your income or savings towards the cost of the care you require. Your local council will charge you in the same way that it charges people who do not access self-directed support. If the council decides you have to pay something towards the cost of your care, they should pay the total amount you need and recover your contribution from you later (they may send you a bill every so often). Do note that if you are aged 65 or over and wish to use self-directed support to buy care at home (free personal care) you will not be asked to pay part of the cost of these services.

Please see Age Scotland's (formerly Age Concern Scotland and Help the Aged Scotland) factsheets "24s – Self-Directed Support (Direct Payments) from Social Work" and "22s – Legal Arrangements for Managing Financial Affairs" at www.ageconcernandhelptheagedscotland.org.uk/helping_you/factsheets for further information and for sources of support with regard to arranging or managing self-directed support in Scotland.

Please also see www.selfdirectedsupportscotland.org.uk which has information as well as a link through the 'directing your own support' option to a guide called 'Directing your own support: a user's guide to self directed support in Scotland'. There is also an option for professional and support organisations looking for more information and guidance.

The guide directs people to support services across Scotland that can help you to manage your self-directed support. It also contains sections on 'setting up your self-directed support package', 'having a contract with a provider' and 'becoming an employer'.

4.1 The pathway to self-directed support

- Information on self-directed support
- Referral to local support service
- Assessment of needs by council (you may already have had this)
- Are you entitled to services?
- Discussion on self-directed support and/or council-arranged services

- Personal care plan agreed
- Agree how services will be arranged and managed (with help if necessary)
- Arrange training where necessary
- Sign paperwork so you can direct your own support
- Plan and arrange services (provider/personal assistant recruitment)
- Start date and review dates agreed
- Person receives money to spend on their own care
- Ongoing monitoring by council
- Ongoing support offered through local support service.

5 Support to help you with direct payments

Ultimately, if you use direct payments from your local council to purchase your care, you will be in control of how and when your care will be provided. However, assistance and advice should still be available in your area to enable you to manage and arrange your direct payments.

5.1 Local council support services

Your local council may provide a support service themselves for people who receive direct payments, or through a local charity, such as Age UK (formerly Age Concern and Help the Aged) (tel.: 0800 00 99 66; www.ageconcern.org.uk) or the Penderels Trust (tel.: 024 7651 1611; www.penderelstrust.org.uk). This may include a payroll service that could take responsibility for administering the wages, tax and National Insurance for your care worker(s) in order to make the process of direct payments easier for you.

5.2 Independent living centres

Independent living centres provide support, advice and information for people with a disability who want to live independently. There may be an independent living centre or user-support group in your local area that can assist you, and give advice on other aspects, such as advertising for staff and getting

references. Some schemes have registers of vetted staff that you can employ.

You may wish to contact the National Centre for Independent Living (tel.: 0845 026 4748; www.ncil.org.uk), which provides information and advice on independent living and support for direct payments' users. A directory of social care services' direct payment support schemes and other local support organisations in the UK can be accessed through their website.

6 The local council's duty to provide direct payments

To receive direct payments, you must first have an assessment of your needs carried out by a social worker from your local council social care services. If you are considered eligible against their criteria, your local council has a legal duty to offer you direct payments instead of providing services to meet your assessed needs.

If you are refused direct payments, the reason for this should be put in writing to you. One reason for this may be that the service you require is not eligible under the scheme – see section 13 of this guide for details of what services cannot be provided with direct payments. If you believe the decision is wrong, you have the right to complain (see section 22 for information).

6.1 When the council can stop your direct payment

The local council can decide to discontinue direct payments if they think your needs are no longer being met, you have not been spending the direct payments money in the correct way or if a suitable person is not managing the money on your behalf in your best interests. If the direct payments are stopped, you will receive a re-assessment of your needs and if your needs continue to meet the local council's eligibility criteria, services will be provided to you.

7 Eligibility to receive direct payments

If you have been assessed as having eligible care needs by your local council social care services, in order to then be eligible to receive direct payments you (or if you lack capacity, a suitable person on your behalf) must firstly be willing to receive the payments, **and** also meet **one** of the following criteria:

- You are an older or disabled person aged 16 or over; **or**
- You have parental responsibility for a child; **or**
- You are a carer aged 16 and over, and you will be using the payments to meet your own assessed needs as a carer;
or
- If you lack capacity but have a suitable person willing to receive them on your behalf, direct payments can be made to the suitable person to manage them on your behalf.

You may want to read more about this on pages 11 and 12 of the new direct payments guidance on the Department of Health website:

http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_104840

You may want to read the updated user guide: 'A guide to receiving direct payments from your local council':

http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_104845

You may want to read more about the new Community Care, Services for Carers and Children's Services (Direct Payments) (England) Regulations 2009:

www.opsi.gov.uk/si/si2009/uksi_20091887_en_1

7.1 Local council eligibility criteria

Your eligibility for direct payments may be affected by your local council's criteria. Each council sets its own eligibility criteria for the services it is able to provide. These should be based on new Government guidance on eligibility criteria for adult social care which is called 'Prioritising need in the context of Putting People First – a whole system approach to eligibility for social care'.

The new guidance aims to ensure that councils prioritise need by recognising the importance of person-centred care and preventative services.

The criteria outline four levels based on the risks to a person's independence:

- Critical
- Substantial
- Moderate
- Low

Provision of services can vary between areas, especially because each council has a different level of resources available. They can decide which categories of need they will meet according to their resources. Currently, many social care services departments only provide services to those people who have substantial or critical needs. This is because there are funding pressures, which mean that councils have to restrict the numbers of people who receive services.

8 Consenting to direct payments

Councils have a duty to offer direct payments to you in the following circumstances:

- If you have eligible needs and you are able to consent to the making of the payments, either to yourself or to a nominee on your behalf (see section 9.1.1).
- If you have eligible needs and you do not have the capacity to consent to the making of the payments, but there is an appointed suitable and appropriate person who can manage the payments on your behalf. (see section 9.1.2)
- If you have eligible needs and you have mental health problems and are subject to mental health and certain criminal justice legislation (see section 8.3).
- If you are a carer to enable you to purchase the services you are assessed as needing as a carer to support you in your caring role and to maintain your own health and well-being (see section 12).

8.1 Accepting direct payments: it is your decision

If you already have care services provided by your local council, you may be eligible to transfer to direct payments so that you can purchase your own care. This possibility should be offered to you at your next review, or you can request a re-assessment in order to discuss the option to use direct payments. You could also have a

combination of care services from the council and through Direct Payment-funded support and care.

If direct payments are offered to you by your local council adult social care services, you are under no obligation to accept. Social care services should state that if you receive direct payments but wish to stop them at any time, you can do so and you are entitled to ask them to provide you with a service instead.

8.2 People who lack capacity to consent

From November 2009, the government extended the benefits of direct payments to those who cannot consent to a direct payment and to those who lack the ability to manage it themselves. This should only be in situations where this is in the best interests of the person lacking capacity, and to encourage a more person-centred approach to their care.

In this way, a person may still benefit from the flexibility and person-centred nature of a direct payment, despite not being able to consent to or manage one. In such cases, councils should consider nominating a 'suitable person' who is willing and able to manage the direct payment on behalf of the person lacking capacity working in their best interests at all times.

In accordance with the Mental Capacity Act 2005, local councils need to support individuals to make their own decisions wherever possible. In those situations where it is not possible for the person to make the decision, they should involve the person and their

carer as much as is possible, even if they do not make the final decision.

8.3 People with mental health problems who are subject to mental health legislation

Councils have a duty to offer direct payments to eligible people who are subject to mental health legislation in the same way as anyone else, with the following exceptions where the council has a power not a duty (so is not required) to offer them:

- If a person is on conditional discharge from hospital under the Mental Health Act 1983 or Mental Health (Care and Treatment) (Scotland) Act 2003
- If a person is obliged to accept a service as a condition of legislation, for example, under guardianship or a community treatment order under the Mental Health Act 1983 or certain aspects of criminal justice legislation.

9 Managing direct payments

If you have consented to receiving direct payments, then your local council social care services has to make sure that you are also capable of managing the direct payments, either alone or with assistance. If a person lacks capacity to consent and a suitable person is willing to receive direct payments on their behalf, then the local council must make sure that the suitable person is capable of managing direct payments, either alone or with assistance (see section 9.1.2 of this guide).

If you have consented to receiving direct payments, and also are capable of managing them (either alone or with assistance) then your council has a duty to make those direct payments to you if they consider that all your needs can be met using direct payments. If a suitable person is able to manage direct payments, the council has a duty to make direct payments to that suitable person.

In order to decide whether you can manage a direct payment, the local council social care services should consider:

- Your understanding of the direct payments scheme, including the actions required on your part
- Whether you understand the implications of accepting or refusing direct payments

- What support is available to help you manage direct payments
- The kind of support you might need to achieve your identified outcomes
- What arrangements you would have to make to obtain this support.

Your council should make the decision that you are or are not able to manage a direct payment on an individual basis. As the guidance states, councils should not make blanket assumptions that whole groups of people will or will not be capable of managing direct payments. The vast majority of people will be able to manage direct payments, especially if they have access to effective help and support. Your council should provide you with support and information about what managing direct payments will involve so you can make an informed decision. In particular, it is important to understand that it is not just about handling money. It is also about making your own arrangements, with assistance if needed, to obtain care and support.

If your ability to manage direct payments is in any doubt, one possibility is for the council to consider offering a time-limited trial period, or direct payments for a small part of the care that you need, to see how you get on.

If you do not agree with your council's decision you should be provided with access to independent advocacy to ensure that your views have been properly considered. You are also entitled to raise

your concerns as a complaint through the local council's complaints process. See section 22 of this guide and also guide **18: Complaints about community care and NHS services** and guide **25: Independent advocacy** for more information.

If once you start using direct payments, the services purchase do not meet your needs satisfactorily, the council should not make the assumption that you cannot manage direct payments. You should be able to express concerns about services purchased without fear that the direct payments will be stopped.

9.1 Who can manage a direct payment on your behalf?

9.1.1 A nominee

If you have capacity to consent, but need some help managing your money, direct payments may be made to a third party or 'nominee' with lasting or enduring power of attorney for the day-to-day management of the finances. You will still have control over how the support is provided. See guide **33: Money and welfare – managing my affairs if I become ill** for more details about lasting or enduring power of attorney.

9.1.2 A 'suitable person'

From November 2009, the role of a 'suitable person' was established to enable a person who lacks capacity to benefit from the direct payments scheme. A willing and appropriate 'suitable person' can now receive and manage direct payments on behalf of

a person lacking capacity. The suitable person must act in the best interests of the person lacking capacity at all times. This includes, as far as is reasonably practicable, making sure that the person lacking capacity is fully involved as possible into decisions affecting their lives. All care, support and services purchased by the 'suitable person' on behalf of the person lacking capacity must meet the assessed needs of that person in full.

The local council must be satisfied that the suitable person is capable of managing the direct payments and ensuring that the person lacking capacity's needs are met in full.

The person appointed by the council as a 'suitable person' is mostly likely to be a family member or close friend already involved in providing care for the person concerned. However, usually the person's 'representative' would be the first choice to be a suitable person. To that end, the local council must establish whether the person offering to act as a suitable person has been given the role of lasting power of attorney by the person needing care before they lost capacity or if they have been appointed as a deputy by the Court of Protection under the Mental Capacity Act 2005.

In all cases, the local council should, as far as reasonably practicable, consult the views of the person lacking capacity, whether by direct or indirect communication, or through a previous indication of their wishes, either written or oral. The

council must also consult with all relevant family members, carers, close friends and people involved in the care and personal welfare of the person lacking capacity, including involved professionals, such as an independent advocate, in order to ensure that the most appropriate person is appointed to manage the direct payment on their behalf.

Where there are no appropriate family or friends, the 'suitable person' could also be a person not personally known by the individual lacking capacity. For example, the suitable person could be an independent care broker or solicitor acting as a professional deputy who was not previously known to the person lacking capacity. In such cases, it will be mandatory for a Criminal Record Bureau check to be carried out before they could assume the role.

The suitable person is required to let the local council know if the person they are managing the direct payment on behalf of has regained their capacity, as soon as the suitable person believes this has happened.

9.2 Independent living trusts (or user-controlled trusts)

Independent living trusts (also known as user-controlled trusts) can be set up to enable a person to live a life of their choosing. The money belongs to you as beneficiary of the trust, and is managed with and for you by three or more trustees. These can be friends, family, a solicitor, an accountant, an independent advocate or

other appropriate person. Legal authority is given to the trustees without taking power away from you, and you should remain at the centre of all decision-making.

Independent living trusts can employ staff, operate a bank account, manage money and ensure contingency arrangements are in place, while ensuring that a person's needs are met in the way they want.

Independent living centres or local support services may be able to provide support with setting up an independent living trust. See section 4 for contact details of your local support service or independent living centre.

9.3 Managing self-directed support in Scotland

Social work in Scotland will assess whether you are able to manage your self-directed support and that your needs will be met by having this funding. They will take your views into account, where you are able to give these views. You can get help to manage self-directed support, but you should have control (where possible) over which services you access to meet your care needs. You may be able to continue to receive self-directed support if you lose the ability to manage your finances. Payments can be paid to an Attorney or Guardian (www.publicguardian-scotland.gov.uk) on your behalf. Local councils can pay direct payments to an attorney or guardian on behalf of someone who is unable to consent to a direct payment themselves.

Self-directed support is only offered for services that the social work department assesses you as needing (so you may need to request a needs assessment from them – see guide **50: Assessment and services from your local council in Scotland**), and only where these care needs fall within the local council eligibility criteria (the level of care needs that they will meet i.e. critical or substantial). Each local council has its own ‘eligibility criteria’ to decide what level of care they will meet and what services they provide and you may want to ask them for a copy of the local criteria.

If you are refused a self-directed support payment on the grounds that the social work department has considered that you could not manage, the reasons should be explained to you. You could use the local council complaints procedure to challenge the decision (guide **54 – Complaints about community care and NHS services in Scotland**).

10 The council's responsibilities

10.1 Provision of services

If it is agreed that you should receive direct payments, the local council will not provide or arrange services for you, but they still have a legal responsibility to make sure your needs are being met.

If you have been assessed by social care services for the first time, you would not have any care and support services in place. If you are eligible for direct payments, your local council may need to provide a service in the interim period until the direct payments have been fully set up for you.

10.2 The care plan

After completing an assessment of your needs, councils must provide a care plan, which is a written statement of your individual needs and how these should be met. If you decide to receive direct payments, rather than council-provided care services, you should still be provided with a written care plan. It is essential for you to know your assessed needs when using direct payments to enable you to purchase the most appropriate care.

10.3 Setting up direct payments

Your local council adult social care services will want to be satisfied that your assessed needs can and will be met using direct payments. Your local council will also want to make sure that the

money will be spent appropriately in securing support to meet your needs.

Your local council may set conditions on the direct payments, but these conditions must be reasonable. The council must bear in mind that the aim of direct payments is to give you more choice and control over your support and how it is delivered. Therefore, the council should not set conditions that are so strict that they prevent flexibility. For example, if you receive direct payments, the council may not stipulate that you can only purchase support from certain providers. Your local council may also not limit direct payments to certain levels of care, such as very high levels of need, or to a particular length of time.

10.4 Monitoring the direct payments

Before you start receiving direct payments, monitoring arrangements should be agreed with your local council in advance to make sure you are managing. This should be more frequent in the early stages to ensure any difficulties are resolved and your local council is assured that you can manage your direct payments successfully.

The council should also monitor the behaviour of any 'suitable person' set up to manage a direct payment on behalf of an older person who lacks capacity to do so themselves. (See section 9.1 for more details of the role and responsibilities of the suitable person.)

11 Before direct payments start

Before direct payments start, you should discuss and agree in writing the following with your local council adult social care services:

- Your care plan (you should receive a copy)
- What needs the direct payments relate to, as stated in your care plan
- What care and support outcomes the direct payments are intended to cover
- How much money you will receive for the direct payments (see section 18 of this guide)
- How much contribution you will be expected to make to the local council towards the cost of your care, if you are assessed as being able to afford a contribution (see section 19 of this guide)
- How you intend to use the money to purchase services to meet your needs
- Whether you need help to manage your direct payments, and where to get help
- What the money may and may not be spent on, and how much flexibility will be allowed
- Back-up arrangements to cover emergencies
- What steps should be undertaken to safeguard the welfare of any children living with you
- How often and in what form payments will be made

- The information you will need to give the local council about the way the money is spent
- The arrangements the local council propose for monitoring
- Any conditions attached to the direct payments
- The date when direct payments will start
- The date when your arrangements will next be reviewed
- The circumstances under which your local council will consider discontinuing direct payments
- The period of notice the council will give if it decides to discontinue the direct payments, and any circumstances under which it would stop payments immediately
- How any outstanding payments will be handled if direct payments are discontinued
- The circumstances under which the council would seek repayment.

12 Direct payments and personal budgets for a carer

Personal budgets and direct payments are also available to those people who care and support another person, known as carers. Carers can purchase the services they are assessed as needing as carers, to support them in their caring role and to maintain their own health and wellbeing. Examples of possible care and support that can be purchased to encourage better outcomes for carers include transport, flexible respite breaks, or sit-in services.

Please see guide **10: Carers: what support is available** for more information about practical and financial help available to carers.

13 What you may not use direct payments for

In England and Wales, you may not use direct payments to pay the following people for the care they provide to you:

- a spouse (husband or wife),
- civil partner,
- partner,
- close relative living in the same household as you;
- or spouse or partner of that close relative,

unless this is the **only** suitable way that your care and support needs can be met. Direct payments are not intended to be used when the relationship is primarily personal rather than contractual, for example, if the person will be living together anyway.

However, an exception may be made if the council decide this is the only satisfactory way to meet your care needs. For example, you have severe dementia and only wish to have support from your spouse or partner. In Scotland, at this time, self-directed support can only be used to purchase care and support from a close relative in exceptional circumstances (although the 2007 guidance did contain an intention to amend this).

By extension, a 'suitable person' may not secure services from a close relative, spouse, civil partner or partner of a close relative of the person lacking capacity who is currently living in the same household as the person lacking capacity. Only in exceptional circumstances when it is in the best interests of the person lacking

capacity can a suitable person use direct payments to secure services in that way.

- Direct payments may not be used to purchase services provided by social services as the local councils in England and Wales are not legally allowed to sell their own services in this way. However, you can use direct payments to purchase council services in Scotland.
- You may not use direct payments for services or equipment that the National Health Service (NHS) has a duty to provide, such as a nursing bed.
- You also cannot use direct payments for services provided by housing authorities if you live in England and Wales (However, you can if you live in Scotland.).
- You may not use direct payments to meet the cost of permanent residential care (see section 13 for more details).
- Direct payments are not a substitute for the Disabled Facilities Grant, which is to enable you to make adaptations to your home.

14 If you have short-term needs

14.1 At home

Direct payments may be used if you have short-term needs, such as to purchase support to enable you to regain or retain independence to live in your home for as long as possible. For example, after a stay in hospital you may require assistance for a short time to help you get washed and dressed, until you have regained your health and strength. Intermediate care (between a period of illness and recovery) can be provided free-of-charge for six weeks once you leave hospital, but if you continue to need assistance after the end of this period, you may wish to organise direct payments through social care services.

If you are eligible after a hospital stay, your local council should find ways to ensure direct payments are implemented quickly, and are flexible enough to be used on discharge from hospital, or as soon as the intermediate care period has elapsed. For more information on hospital discharge procedures and intermediate care on the part of the country you live in, please see **guide 13: Hospital discharge** if you live in England, **guide 51: Hospital discharge** in Scotland or **guide 71: Hospital discharge** in Wales.

14.2 In a care home

Direct Payments **may not be used** to pay for permanent care in a care home, but they may be used for you to purchase a short stay in a care home for a **maximum period of four consecutive weeks** within any twelve-month period.

If you are already living in a care home, direct payments may also be available to you to use for a trial period of independent living before you make a permanent commitment to moving out of the care home.

Direct payments can also be used if you live in a care home in order to help you take part in day-time activities.

15 Your responsibilities

15.1 Accountability

If you receive direct payments, either for yourself or as a suitable person on behalf of someone who lacks capacity (see section 9 for details), you are accountable to the local council for the way you spend the money. You must have a separate bank account for the payments and keep careful records of how you use the money. A local support service may be able to assist you with arranging this (see section 5 for details).

If you spend the money on purchases or services that the payments were not intended for, under the terms of the Health and Social Care Act 2001 and the Community Care, Services for Carers and Children's Services (Direct Payments) (England) Regulations 2009, the council has the power to request that some or all of the money is paid back to them; they may also stop the direct payments. However, the definition of eligible services is quite wide and you should discuss with your social worker if you are being refused direct payments for a service that you believe you are eligible for.

15.2 Making arrangements

When you receive direct payments, you are responsible for arranging and obtaining the services you require to meet your assessed needs, or the assessed needs of the person on whose

behalf you are managing the direct payment. There may be a local support service that can assist you with this process. See section 5 for contact details and information about the type of assistance they can provide.

15.3 Employer responsibilities

If you receive direct payments and employ someone directly to meet your assessed care needs, there are some legal responsibilities you will have to consider as an employer. These can include providing your care workers with terms of employment; a contract; observing the National Minimum Wage; deducting income tax and National Insurance contributions; holiday and sick pay. See section 16 for more information.

Again, local support services run by your council and/or an independent living centre in your area may be able to assist you with these processes or they may be able to take on the responsibility for you. You will still have control over the care services you purchase but someone else will look after the practical side of these employer responsibilities. See section 5 for contact details.

15.4 Health and safety responsibilities

If you employ someone to care for you, you will have a responsibility to provide a healthy and safe place for your care workers to work in. Your care workers also have a responsibility to work in a way that avoids risk to them and to you. Taking a commonsense approach will help to avoid most dangers and

causes of accidents. It is important to talk to your care workers what tasks you need doing and what would be the safest ways of carrying them out.

You should also get advice from your local council social services on health and safety. Part of your needs assessment should also include a health and safety risk assessment, carried out by an experienced risk assessor. They should highlight any possible risks and suggest ways of managing them, such as storing cleaning materials in a safe place. You should be given a written record of this.

If you need help with getting in and out of a bed, chair or bath, it would be important to have an occupational therapist's assessment before these tasks are carried out. The occupational therapist would look at the safest way to assist you and what equipment could be used to reduce the risk to yourself and your care worker, such as the use of a hoist. For more information on the occupational therapist's assessment, please refer to guides **8: Health Difficulties: how to cope with changing needs** and **28: Housing: adapting your home to stay independent**.

If you use your direct payments to employ a care worker through a home care agency, the agency should make sure their care workers have relevant, up-to-date training and you have the necessary equipment, so that they can assist you in a safe way.

To cover you and your care workers against accidents, it is important that you take out **employers' liability insurance** and **public liability insurance**. Employers' liability insurance will cover you in cases where your care worker is injured or becomes ill as a result of an accident in your home. Public liability insurance covers you against injury called to someone else by you or your care worker when employed by you.

It is the employer's responsibility to arrange these two types of insurance, but as it are compulsory employment costs; it should be included in the amount of direct payments given to you by your local council (see section 18). Similar cover may also be available through your household insurance policy. Seek advice from your insurance company or local support service (see section 5 for contact details).

16 Employing someone yourself

When thinking about employing someone yourself it may be useful to consider some of the following:

- What kind of person you want to employ and how many staff you will need (including back-up for holidays and sick leave).
- The tasks you will want them to complete – you may want to make a list.
- What skills and qualities the person will need to be able to do the tasks properly. For example, they may need to be able to drive and have access to a vehicle and the correct car insurance, as you may want to be escorted and driven out.
- Which hours you require them to work and when.
- The rate of pay: rates are usually higher in the evenings and weekends. On bank holidays, people usually expect double pay. You will have to make sure that you have enough money to cover this. All wages must meet the national minimum wage. Contact the national minimum wage helpline (tel.: 0800 917 2368) for the current rates.
- How you will find the staff – perhaps by word-of-mouth, friends or through neighbours, or an advert in a public place – post office, newspaper or jobcentre where it is free to advertise. It would be advisable to set up a Post Office box so you are not giving out your personal details. Ask at your post office about how to do this.

- Always ask for two references and follow them up with a telephone call for confirmation.
- You can consider requesting a check with the Criminal Records Bureau (CRB) (or Disclosure Scotland) and a check against the Independent Safeguarding Authority (ISA) Barred list. Depending on the policy of your local council, you may be able to enlist the support of your social worker to carry out CRB and ISA checks on the person you employ. Alternatively, if you use a home care agency to find a member of staff, they have a legal duty to run these checks.
- Be sure to ask all questions that may be important to you – such as does the person smoke? What are their dietary preferences, for example, if they are vegetarian, are they willing to prepare meat?
- Will they provide their own overalls and rubber gloves, or will you have to provide these?

When the care package begins you could get a friend, or someone you trust, to spend some time with you and your new care worker. If you are unhappy with the person caring for you, as a responsible employer, you will need to give them feedback about what is not working for you and give them an opportunity to improve their performance before you look elsewhere. You may wish to seek advice from a local support service or independent living centre. See section 5 for contact details.

16.1 The importance of timesheets

Independent living centres or local support services may offer administrative services for contracts of employment, timesheets and general record keeping. When you receive care from a care worker (also known as a personal assistant), it is important to check and sign the timesheet, which records the assistance you have been provided with, to ensure that they have claimed and/or you are charged only for the care you receive.

17 Alternative arrangements

If you use direct payments to take on your own care worker (known as a personal assistant) as an employee, it is a good idea to have alternative arrangements in place should the unexpected occur. For example, if you employ your own care worker, they may be sick one day and, therefore, your alternative plans might include making arrangements with a home care agency for emergency cover (see guide **15: Home Care Agencies: what to look for**).

Failing this, the council will have a responsibility to send one of their own care workers, just as it would with any other person using their service. If you have variable needs or require a variable number of hours of support from week to week, some local councils will allow you to 'bank' hours you have not used one week, and to carry them over to the next. (See section 21 of this guide for more details.)

18 Calculating the amount you will receive as a direct payment

It is up to the council to decide on the amount of money they provide for direct payments. However, the direct payments legislation states that the amount the council pays must be equivalent to their estimate of a **reasonable** cost for securing the provision of the services you need. The amount would also be subject to any charges assessed by the council, as a result of the usual financial assessment to establish how much you can afford to pay towards your care.

The amount of payment you receive should be sufficient to enable you to secure a service of a standard that the council considers reasonable to fulfil all your assessed needs, including any sensory, social and psychological needs you may have.

There is no lower or upper limit to the amount of direct payment money paid to you in respect of either the number of hours of care it is intended to purchase or the rate per hour of the direct payment. This means that if the council believe that you will be able to purchase care at a particular rate, they can provide you with that amount. If you believe that the amount offered is too low, and will not be sufficient to allow you to purchase care of an acceptable quality to meet your assessed needs, you can negotiate with your local council to increase the amount.

In estimating a reasonable amount of money for the direct payments, councils must include associated costs of the support which might include recruitment costs, National Insurance contributions, statutory holiday pay, sick pay, maternity pay, employer's liability insurance, public liability insurance and VAT. It could include a one-off start-up fund to meet initial costs, brokerage, payroll services and a check for employees against the Independent Safeguarding Authority-barred list and Criminal Record Bureau.

You may be able to negotiate with your local council about the amount of money they provide for your direct payment or personal budget. Councils should give you as much notice as possible of the value of the direct payment or personal budget, to allow you to make enquiries into what care you can purchase.

If you cannot resolve this through discussion you are entitled to pursue it through the local council's complaints procedure. See **guide 18: Complaints about community care and NHS services** for more details. While the complaint is being considered you may choose to manage on the amount of direct payment or personal budget offered or refuse to accept the direct payment or personal budget until the issue is resolved. If you don't agree to the direct payment or personal budget the local council remains responsible for arranging the care and support you are assessed as needing.

19 Calculating the amount of your personal budget

You should be informed by your local council of the total amount of money you have available to spend in your personal budget (the 'indicative amount') so you have complete choice and control over the way your support can be provided.

You should be informed of the amount in your personal budget following an assessment of your needs by your local council adult social care services.

The total amount you receive in your 'personal budget' will be based on a calculation using your local council's 'resource allocation system' (RAS). A series of questions will be asked and points given to determine the overall size of your budget to meet your needs. The RAS should link money to the particular outcomes you want to achieve. It should be flexible enough to take into account your individual circumstances and the particular level of support you may need in order to achieve your goals when deciding the amount you are to be allocated in your personal budget. The amount of money offered must be negotiable in order to ensure that all your individual needs (including any social, emotional or psychological needs) are met in full.

Councils are currently using different resource allocation systems. A common resource allocation framework was published in October 2009 for all councils to use if they prefer. However, this is

currently a work in progress, and concern has been raised about the consistency of the resource allocation system used by some councils.

20 Financial contributions

Subject to the financial assessment of your capital income, often referred to as the 'means test', your local council adult social care services may charge you for part or all of the services they provide. This is the same for direct payments.

In order to decide how much you should contribute (if anything) your local council adult social care services should undertake a financial assessment of your income and capital savings to determine how much you should pay.

Your financial contribution should be 'reasonable' and are based on national Government guidance called 'Fairer Charging'. The charge should not take you below the level of your Pension Guarantee Credit entitlement, plus a 25% 'buffer' (16.5% in Scotland). You may want to read a copy of the 'Fairer Charging' guidance on the Department of Health website:

www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/@dh/@en/documents/digitalasset/dh_4117931.pdf

If you have a personal budget, the maximum amount (if any) that you contribute to it should be calculated by the council using the 'Fairer Contributions' guidance. You may want to read a copy of the 'Fairer Contributions' guidance on the Department of Health website:

www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/documents/digitalasset/dh_102471.pdf

There are two ways for councils to pay direct payments to you. The council may pay the gross amount to you (their estimate as to the full cost of the service) and then invoice you for the amount they assess you can contribute. Alternatively, the council can pay the net amount to the person receiving the direct payments (or to the suitable person on their behalf), less the amount that they assess you can contribute. The council may have a usual practice but should be flexible depending on your preference and circumstances.

The direct payments regulations states that the amount the council establishes that the amount (if any) you should pay as a contribution towards your care must be reasonable. The council should give you as much notice as possible of the value of direct payment or a personal budget you will receive. If you feel the contribution you are required to make is unreasonable and that you are paying too much, you may wish to contact our advice service to discuss this. You may also wish to raise a complaint with your local council adult social care services department.

For more information about the council's financial assessment and home care charging policy, please see guide **14: Help at Home: what may be available in your local area**. For details about paying a home care agency, see guide **15: Home Care Agencies: what to look for**.

21 Making payments

You will normally be expected to keep a separate bank or building society account for the direct payment to be paid into. If you are receiving a direct payment on behalf of an older person who lacks capacity (as a suitable person), you must set up a separate bank account where the direct payment can be paid into. In both cases, this is to ease the financial monitoring that is necessary to ensure public funds are being properly spent.

Local councils decide how frequently payments should be made. People need to be in a position to pay for the services they receive when payment is due. Local councils should also set up procedures to enable them to make additional payments in an emergency, if, for example, your needs change or a payment goes astray.

Before direct payments begin, your council should let you know how and when the payments will be made and the procedures for receiving any additional payments in an emergency.

Direct payments should be flexible enough to allow you to adjust the amount you spend on your care each week so that you can build up or 'bank' any unused money to use as and when to pay for any increased or extra needs. This is especially important if you have a long-term or fluctuating condition. If payments are being

used to achieve the outcomes agreed in the care plan, then the actual pattern of support does not need to be pre-determined.

22 Your right to complain

You have the right to complain if you disagree with any decision made about your personal budget or direct payment.

If you receive, or consider that you should receive, a personal budget or a direct payment, you are entitled to access the local council's complaints system in the same way as if you were receiving a service provided directly by the council.

See **guide 18: Complaints about community care and NHS services in England** for further details about how to do this. If you live in Scotland, please see **guide 54: Complaints about community care and NHS services in Scotland** and, if you live in Wales, see **guide 74: Complaints about community care and NHS services in Wales**.

Our advice workers can advise on a wide range of issues affecting older people, their families and carers. Counsel and Care produce a range of guides which can be downloaded from our website www.counselandcare.org.uk, or requested by calling our guide orderline on 020 7241 8522.

This guide is not a full explanation of the law and is aimed at people over 60.

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