Managing a Direct Payment

This factsheet explains what local authority direct payments are and how to manage them.

These factsheets are aimed at people who are newly disabled and/or dealing with an unexpected change in circumstance or planning for future change or managing changing physical or mental capacity. All these circumstances — and more — can have major implications for how you manage your money.

Because the factsheet is designed to be accessible to us all, it may include details that you personally don’t need. Like all the publications in the Doing Life Differently family, it uses a question and answer format which enables you to read only the sections you wish to.

What are direct payments?

Direct payments (DPs) are made by the local authority/council to individuals who have been assessed as needing help from social services. The individual then uses the money to pay for their own care and support services rather than receiving them directly from the council’s social services department.

Direct payments to pay for ‘continuing healthcare’ costs made through the NHS/GPs are managed in a similar way to local authority direct payments.

How much are direct payments?

There is no set amount. The amount depends on the assessment the council has made of your needs.

If the assessment is costed out beyond the authority’s own upper limit, they may encourage you make an application to the Independent Living Fund (ILF) for a top-up payment. If your application is successful, money you receive from the ILF must be accounted for separately from the local authority’s direct payment.

What are the pros and cons of direct payments?

This factsheet will help you decide for yourself but for most people, the main benefit is flexibility. You may feel that council social services are not always appropriate for you or available at a time to suit you. With DPs, you have complete control over what care services you receive and when and how you receive them.

The main con is that you need to manage the process and the paperwork yourself (although you can get help). This factsheet outlines what is involved.

You don’t have to choose one or the other for everything. You can choose to receive some services from the council and receive direct payments for others. You can also change your mind.

You will be reassessed every year to make sure the arrangements are still right for you. If things change during the year, you can also ask for a more urgent reassessment.
Who can get direct payments?

Anyone aged 16 and over who is eligible for social services. This includes older people, people with physical impairments, people with learning disabilities and people with mental health care needs. You do not need to be able to manage DPs yourself.

It’s your choice. If you already have social services, the council must tell you about direct payments. If you haven’t yet had an assessment, ask the council for one. (You will find contact details in the local Yellow Pages under Social Services). Guidance to councils on assessment is provided by the Department of Health.

If you’re interested in direct payments, ask your social worker or the council. Most councils have all the information on their websites. If you have any problems, see Who can Help below.

Direct payments can also made to parents and carers to pay for the social services needed by disabled people under 16.

There are carers direct payment too – see ‘Can carers get direct payments?’ below.

I’ve heard terms like personal budget and individual budget. Are these the same thing as direct payments?

No, they’re different things which are sometimes confused.

Usually personal budget refers to the money that comes to an individual from social services not to the way it is actually paid.

Usually individual budget refers to all the monies that come to an individual from a number of support sources including the independent living fund, access to work, disabled facilities grants and other sources as well as social services. Again it has nothing to do with the way the money is paid.

Some or all of a personal budget or an individual budget may be paid to the individual as a direct payment.

What can you use direct payments for?

You can use the money only to meet the needs that social services have assessed you as having. If you spend it on something else, the council can ask you to pay it back.

Usually the council will permit you a small additional monthly payment for administration (such as stamps, stationery and the use of a payroll scheme).

You’ll need to show to them that what you’re doing meets your needs but in general it is up to you how best to do it. There are two major exceptions.

- You cannot use the money to pay for long-term residential accommodation (although with the council’s agreement you may be able to use it for a short stay or during the transition if you’re trying to move out of a care home to live independently).
Unless the council agrees there are exceptional circumstances, you cannot use the money to employ a close relative with whom you live or your husband, wife or civil partner. This may seem against common sense but drawing lines between money and emotions as clearly as possible protects everybody. It may work well while the relationship is going well but problems can arise if an emotional relationship with someone who is also a personal assistant breaks down.

However, if you think employing a close relative or partner is best for you in your circumstances, the council has the right to make an exception and sometimes will if you make a good, solid, logical case for it.

The rule on employing close relatives or partners does not mean you cannot have a live-in personal assistant but it does become complicated if you then develop a more personal relationship with them. If you do choose to have a live-in PA and you claim housing benefit, housing benefit rules may be more advantageous when you have two bedrooms - this is worth checking with your council or Housing Association.

**Are there direct payments for all social services?**

Virtually all. There are some, very rare circumstances where you cannot choose direct payments. Your council will tell you about these.

**What do I do before I start?**

Before you start, you need to discuss all the following with your council’s DPs team:

- What assessed needs of yours the DPs are for.
- What specific services the DPs are to be used to pay for - if, for example, the DP enables you to employ a PA, you need to ensure the council is giving you complete control over who you employ
- How much you’ll get
- When and how the DPs will be made
- How much, if anything, you’ll have to pay yourself
- What you can and cannot spend the money on
- What changes you can and cannot make to the arrangements without the council’s permission
- What records you need to keep
- The circumstances and the notice period if DPs are to be stopped
- When your DPs will next be reviewed
- What you should do in an emergency

You will also want to think about (and probably discuss with the council and others):

- Where and how you’ll get the specific services you need
- Who, if anyone, will help you manage the DPs.

The payments will be made into your bank or building society or, if you need someone to collect the money for you, can be made by cheque. It is recommended that you set up a separate bank account to manage your direct payments.
Some banks may be difficult about this and you may need to explain your circumstances and provide evidence from the council about their intention to pay a DP. Your council’s direct payments team should also be able to supply a letter backed by the British Bankers Association and Department of Health explaining this audit requirement to the bank.

If someone holds Enduring or Lasting Power of Attorney on your behalf, they will be the DP administrator and need access to the account. Again, the bank will want evidence of the EPA or LPA.

So, what records do I need to keep?

Officially, it is public money not yours so you need to keep the records necessary to show to the council that you have spent the money properly such as receipts and timesheets. The council will tell you what records they want to see.

It’s easiest to keep all records as you go along not just when the council asks you to fill in a form. All records must be kept for at least three years after the end of the tax year to which they relate.

Many people use DPs to employ a personal assistant. If you choose to employ someone as a personal assistant (PA), you also have all the usual responsibilities of an employer.

What are my responsibilities as an employer?

The same as other employers. You have responsibilities around:

- **pay** - for example, concerning the minimum wage, sick pay and maternity pay.

- **conditions** - for example, concerning holidays, leave for maternity or paternity, notice periods, dismissal and redundancy.

- **tax and national insurance**

- **employer and public liability insurance** - in case an employee is injured or made ill at work

- **health and safety** – the Department of Health says local councils should not lay down health and safety policies for DPs recipients so this is more about common sense: making sure PAs know about your needs (eg how lifting equipment works) and about your house (eg dangerous stairs or electrics) since it is also their place of work

Employees also have the right to join a trade union.

This can look very complicated but don’t worry, thousands of people all over the country are employing PAs right now using DPs. It’s not so difficult. You can get advice from the council and from many other agencies. See Who Can Help.

The best, independent source of advice and toolkits is the National Centre for Independent Living (NCIL) or, if you have one, your local Centre for Independent Living (CIL). NCIL and CILs can provide you with things like model employment contracts, signposts to affordable employer liability insurance etc.

Some people use a payroll service to pay staff and handle the ‘paperwork’ such as national insurance and tax/PAYE. Your local CIL might run one.

A contract of employment exists as soon as your employee starts work so you need to understand what is involved in being an employer before you recruit a PA.
By starting work your PA demonstrates that he or she has accepted the terms and conditions offered.

It is very unwise to employ a PA without having a signed employment contract in place. The contract will set out all the terms of the arrangement - pay, leave, disciplinary process etc. So, if issues arise, both you and your PA can turn to the contract for the specific terms.

Make a list of what you want your PA to do, how often and how long it will take. This will give you a better idea of what sort of PA you want and how much they’ll cost. It will also help you to prepare a job description. Do this in advance and use it as part of the recruitment process. Every PA job is different so it makes sense to include as much detail about what you need as possible.

A job description also covers your requirement to provide anyone who is employed for more than a month with a written statement of their ‘employment particulars’ including hours, pay, holidays, notice and disciplinary procedures.

Generally all jobs including those as a PA must be open to all regardless of race, nationality, ethnic or national origin, disability, gender, marital status, belief or sexual orientation, unless the reason for discrimination arises from a genuine requirement for the job. If, for example, your PA will be required to provide intimate care, the Sex Discrimination Act allows you to exempt yourself from its recruitment requirements and advertise specifically for a man or a woman.

You should also ensure that anyone you choose to work for you (excepting an agency) has the right to work in the UK - ask to see their passport.

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**Do I need to do a criminal records check of my PA?**

The best advice is to always ask for an enhanced Criminal Records Bureau (CRB) check before you recruit someone. This does build in some delay prior to your PA starting, but it is in your best interests and helps to minimise any risk.

The process can be bureaucratic and the National Centre for Independent Living advise that it’s best to go through your council. If you are employing someone to care for a child or vulnerable adult, your local council must do this for you free of charge.

Before you employ them, it’s also a good idea to take up references from your intended PA’s previous job.

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**Do I have to become an employer?**

No. You can contract with someone who is self-employed or with an agency. Although this reduces the paperwork, it’s just as important to be very clear from the start exactly what you want so going through the process of drawing up a job description is a good idea whether you are an employer or not.

If you have a contract with someone who is self-employed, it is your responsibility to check that they really are self-employed. This can be a complicated area so get advice as a mistake may be expensive. HM Revenue and Customs, as well as some of the other organisations listed in Who Can Help, can help you determine whether someone is self-employed or in fact employed by you.

It’s best to see several agencies before deciding which you’ll work with.
You’re the customer, remember, so ask questions. Will you see the same person regularly, for example? If this is not possible with a particular agency and continuity of care is important for you, the agency may not be the best option.

Make sure the agency has the full professional and employer’s liability insurance. Ask to see their code of practice and evidence that their employees have had Criminal Records Bureau checks. It is also worth asking to see references from existing customers.

Remember, it is against the law for agencies or anybody else who provides social services to treat disabled people less well than non-disabled people. This means that they must make ‘reasonable adjustments’ to their services to make them accessible to us all.

**How do I find the right PA?**

This is beyond the scope of this leaflet which is about the financial management of DPs. Talking to other people in your area and/or with similar needs is the best place to start. See Who Can Help.

When budgeting, think about the costs of recruiting someone. Most people use the free services provided by the local Job Centre Plus. Some Centres for Independent Living will also advertise your post for free. But you may need to pay to advertise a PA post in a newspaper, website or shop window.

**Can someone receive direct payments on my behalf?**

Yes. If you do not have the ‘mental capacity’ to manage DPs, the council may choose someone else to manage them on your behalf. This is usually a family member or friend, quite often someone who holds Enduring or Lasting Power of Attorney on your behalf. The designated person may need to have a Criminal Records Bureau check.

However, it is important to note that the council must, by law, assume you have the capacity to manage DPs unless they can prove clearly otherwise, or if you say that you cannot manage DPs. Control should not be taken away from you unless it’s absolutely necessary or it is what you want.

The designated person should involve you in decisions about your DPs as much as possible and let the council know if circumstances change, for example, they think you do have the ‘mental capacity’ to decide for yourself.

To ensure the money is being spent properly on your behalf, the council will need to carry out a review with your designated person within three months of the first DP being made, and at least once a year after that.

**What if I haven’t enough money?**

Under DPs, the council should give you enough money to meet your needs and the legal responsibilities that go with it. But they have to get best value for public money so they may choose not to pay for your preferred method of purchasing a particular service if there is a cheaper one available that still meets your needs. If your council does this, you must make sure that the cheaper alternative is not of poorer quality. If it is, you have the right to object to the council’s view and give evidence as to why the more expensive alternative is right for you.
Local councils can also ask people who receive social services, including those on DPs, to make a payment towards their own care needs. You should be able to choose whether this charge (sometimes called an assessed charge for services) is collected before or after the DP is made. Charges vary from region to region - a few councils choose not to charge at all.

If you cannot recruit PAs or other staff at the pay rates you are able to offer, you should discuss this with your local council. You may need to pay higher rates at certain times — for example, at evenings or weekends — and for different skills — for example, for driving.

Most councils will encourage you to build up an emergency fund. Let’s say your council pays you £10 an hour to employ a PA. You must choose how much of this £10 you will pay as the hourly wage. For example, you might choose to pay £7/hour.

After National Insurance etc, that will leave, at current rates, just over £2 which you may choose to save for sick leave and other emergencies. Being too generous and paying the most you possibly can means you’re not building up an emergency fund.

If after discussion you still don’t think you’re getting enough money under DPs, you can complain through the council complaints procedure and/or choose to receive the services direct from the council.

If you’re still not happy you may need to speak to a specialist community care lawyer. See Who Can Help.

If you get into any sort of difficulty tell the council immediately. If some of your needs are not being met, they may be obliged to meet them. They can also help you deal with the problem.

**Can carers get direct payments?**

Yes. Carers DPs operate in a similar way but they are for the carer — for a holiday break, for example, or for driving lessons to help in their caring activities. The carer must use their DPs to buy services for themselves not the person they care for. (They can pay for PA cover to enable themselves to have a break.).

Carers who think they might be entitled to DPs should contact the council for more information and, if appropriate, ask for an assessment.

The local authority must provide this if requested, but whether they will actually provide services or direct payments to meet any revealed needs depends on local financial circumstances.

**Will direct payments affect my other benefits and income?**

No. Direct payments are not income. They are for additional needs arising from your disability. Therefore they are not taxed or used in means-testing nor do they affect any state benefits or money you may be receiving from bodies like the Independent Living Fund.
Because each council handles direct payments in its own way, the best sources of advice are likely to be local. Ask the council first. They will have a team set up to help everybody in their area who receives direct payments.

Ask local organisations for disabled people. There may be a local Centre for Independent Living or a group of service-users who can provide support and advice. Trusted family and friends may also be able to help on the paperwork side.

Other useful sources of help include:

- **DirectGov** – [www.direct.gov.uk](http://www.direct.gov.uk)
  Includes a basic introduction to the direct payments and a search tool for finding out who to apply for direct payments from locally. It also includes links to the latest Department of Health guide on direct payments: A guide to receiving direct payments from your local council.

- **National Centre for Independent Living** - [www.ncil.org.uk](http://www.ncil.org.uk)
  The NCIL is a national support and advice organisation for people receiving direct payments. It also has a list of other organisations helping people use direct payments, many of them very good local sources of advice.

- **People First** - [www.peoplefirstltd.com](http://www.peoplefirstltd.com)
  Organisation run by and for people with learning difficulties.

- **Mind** - [www.mind.org.uk](http://www.mind.org.uk)
  Can advise people with mental health problems on personal budgets and direct payments

- **HM Revenue and Customs (HMRC)** - [www.hmrc.gov.uk](http://www.hmrc.gov.uk)
  Tax, national insurance and other information both as an individual and as an employer. HMRC also runs the new employer helpline on 0845 60 70 143 or textphone 0845 602 1380 (Mon-Fri 8am-8pm; Sat-Sun 8am-5pm)

- **CIPFA** - [www.cipfa.org.uk](http://www.cipfa.org.uk)
  The Chartered Institute of Public Finance and Accounting provide guidance to councils on good practice in direct payments schemes.

- **In Control** - [www.in-control.org.uk](http://www.in-control.org.uk)
  In Control is a social enterprise working to give the user more control over their social care by pioneering a system they call self-directed support. Very useful information and factsheets.

- **Citizens Advice** - [www.adviceguide.org.uk](http://www.adviceguide.org.uk)
  General and legal advice – just click on the link for England, Scotland, Wales or Northern Ireland.

- **Community Legal Advice** - [www.communitylegaladvice.org.uk](http://www.communitylegaladvice.org.uk)
  Free, confidential and independent legal advice for residents of England and Wales.

This is not legal advice. None of the information in RADAR’s Doing Life Differently series is legal advice.