



A guide to receiving direct payments from your local council

*A route to
independent living*



This guide contains information
on direct payments updated in 2009,
under the provisions
contained in the
Health and Social Care Act 2001,
as amended by the
Health and Social Care Act 2008.

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A guide to direct payments

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FOREWORD

Every local council must now offer people who need help to stay in their own home money to buy services or equipment, instead of arranging services for them. These are called direct payments. They will enable you to choose how you organise the help you need in a flexible way.

From November 2009 all local councils must also offer direct payments to people who lack mental capacity. This means people who are unable to decide for themselves whether or not to receive direct payments. You may be able to help someone you know in this position by receiving and managing a direct payment on his or her behalf.

Direct payments are an important way of ensuring that more people can continue to live independently in their own homes. Giving you money instead of services will give you greater control over your life, because you make the decisions about how your care is provided.

If you are receiving direct payments on behalf of a friend or family member who lacks mental capacity, then you may well know how to make the arrangements that would suit them best.

We want to see more people using direct payments, particularly older people who, despite being the largest single group of people using community care services, are the least likely to get a direct payment. We also want to see more people who use mental health services make use of direct payments in order to have greater control and flexibility over how they meet their needs. We believe that with the right kind of support, everyone should be able to make choices about how they want to meet their needs.

It is important that people needing support and their families are aware of all the options available to them, including direct payments, and what those options mean for them. This guide provides more details on direct payments to help readers make an informed choice about how they want to arrange their care and support.

1. ABOUT THIS GUIDE

- This guide offers advice to people who are thinking about or who are already getting direct payments from their local council social services department. We have tried to make it as accurate and helpful as possible, but you should still check the information for yourself. This is particularly important for legal issues. The guide contains information on where you can go for extra help.
- The Department for Children, Schools and Families (DCSF) produces an equivalent guide for parents with disabled children. Details of where you can get copies can be found in **Appendix B** of this guide.



- You can find more detailed advice on direct payments in the direct payments guidance which has been issued by the Department of Health. Details of where you can get copies of the guidance can be found in **Appendix C** of this guide.
- For the purpose of this guide, the term 'local council' means any local council in England with social services responsibilities. Telephone numbers for social services departments can be found in the *Yellow Pages* or the local phone directory.

2. INTRODUCTION

What are direct payments?

- Since April 2003, every local council has had to offer those who are eligible money to buy services or equipment, as an alternative to the council arranging services for them. When a council gives someone money in this way, it is known as a **direct payment**. You can now decide whether you want to receive direct payments to make your own arrangements or whether you want the council to make arrangements for you.
- The vast majority of people getting social services from the council have a right to direct payments. Your social worker should discuss this with you when they assess your care needs.
- This guide deals with direct payments as an alternative to social services provision.
- People get this money to arrange services for themselves, or in some cases for someone else, to meet their social care needs. Direct payments will not be taken into account for the purpose of assessing income for social security benefits, and are not liable to income tax. This is explained further on page 48.

Why would I want direct payments?

■ Direct payments allow people to take more of the decisions which affect their lives. They give you more flexibility and choice, by enabling people of all ages to purchase care for themselves that better suits their individual needs.

■ If you receive direct payments, you can decide how your needs will be met, by whom and at what time. You are in control. You may make arrangements directly, so that any staff you employ report directly to you. If you have a contract with an agency, the agency will be accountable to you, not the local council.

■ For example, some older people may not always find social services flexible enough to respond to their needs, or some may feel that services lack continuity. You may find that the home help or care worker arranged by the council cannot come at the time you want. With direct payments, you can arrange for someone to come whenever it suits you.

Who can receive direct payments?

- The vast majority of people getting social services from the council should now be able to receive direct payments. More specifically, they are:
 - older people who have been assessed as needing community care services;
 - disabled people aged 16 and over, including those with short as well as long term needs;
 - carers, in place of receiving carers' services;
 - families with disabled children for children's services;
 - disabled parents for children's services;
 - people receiving a direct payment on behalf of someone else who lacks mental capacity.

There are only very limited circumstances when direct payments would not be offered.

Older people and direct payments

■ Older people are the largest single group of community care service users. And yet older people are less likely to receive direct payments than any other group.

■ It is vital that older people should have the opportunity to benefit from the flexibility that direct payments offer. As an older person, direct payments will give you choices over the services you get, whether for short term help after a hip operation, for example, or in the longer term.

Direct payments for people under mental health law

■ From November 2009 people who are under mental health law will also be able to get direct payments.

■ In some specific cases the council may decide that the conditions placed on someone by mental health law may make it more difficult for direct payments to be used to meet his or her needs. However, in all other cases, being placed under mental health law should not stop you getting direct payments if you want them.

How do direct payments work?

- The vast majority of people who are assessed as needing services have a right to direct payments. Equally, you should not be pressured into having direct payments if you prefer services to be arranged by the council.
- Your council will tell you more about the arrangements and the limited circumstances in which direct payments are not appropriate.
- Having read this guide, you may still have many questions about direct payments. Do not worry. You should not feel that you are the only person asking these questions, and you may receive help from someone else with managing direct payments if you need it. Most local councils have established support services for people wishing to use direct payment schemes. They will be able to tell you about services in your area. You will also find details of useful organisations in **Appendix C**.

■ Many people considering direct payments for the first time find it helpful to talk to people with experience of using direct payments. Your local council or support scheme should be able to put you in touch with other direct payment users.

3. GETTING DIRECT PAYMENTS

What do I have to do to get direct payments?

■ Your social worker should discuss this option with you when they assess your care needs. If they do not, or if you already get services, ask your local council about direct payments. It will probably be best to start by asking the person you usually speak to.

What if the local council has not previously assessed my needs?

■ To get direct payments you need an assessment in the same way as you would for any social care service. Contact your local council to ask them to assess your needs. You will find details of how to contact them in the local *Yellow Pages* under Social Services.

■ You might wish to think about your needs before the assessment. Some people find it helpful to keep a diary for a week before the assessment. This helps them to keep a record of what they do, how long it takes, and what help they receive, as well as what they would like to be able to do if they had the necessary help. If you decide to do this, take care not to miss out things that do not happen every week. You may be asked to complete a form before the assessment to say

what you think you need help with. The local council may not be able to offer you assistance with everything you identify, but this process will help to define your needs in a way you are comfortable with.

■ You might find it helpful to get advice from a friend or relative, or from a local support group, to help you to prepare for your assessment. Your local council may be able to suggest groups for you to contact, or you may wish to contact one of the organisations listed at the back of this guide.

What if I am already receiving social care services arranged by my local council?

■ As already noted, the majority of people who get social services from the council have a right to direct payments. This means your local council is obliged to offer you direct payments in place of the services you currently receive.

What if my local council has assessed my needs before but has not arranged services for me?

■ If your local council concluded that you did not need social care services, then it will not offer

you direct payments. If you think your needs or circumstances have now changed, ask your local council for a new assessment.

■ If your local council offered you services but you turned down what they offered, direct payments may be an alternative. Ask the council about this.

If I am entitled to social care services, am I automatically entitled to direct payments?

■ **Yes**, most people who get social services have a right to direct payments. There are some very limited circumstances where direct payments are not given and your council will be able to tell you about these.



- You will have a discussion about whether you can manage direct payments. You may want to involve family or friends to help you manage, or consider setting up a trust arrangement.

- As the person receiving the direct payments you must have arrangements in place to manage the necessary paperwork, either alone or with help. Help should be available from your local direct payment support service. You will also need to satisfy the council that the services which you intend to buy with the direct payments will meet your assessed needs adequately. For disabled children, the council must be satisfied that the services bought with direct payments will safeguard and promote the welfare of the child. In addition, if you plan to employ staff, you will need to show that you will meet your legal requirements as an employer.

If my local council offers me direct payments, can I refuse?

- **Yes.** Everyone should have the opportunity to refuse direct payments if they prefer to receive services arranged by the council.

- There are pros and cons to direct payments. Clearly they offer much more flexibility, but managing them is also a responsibility. If you get direct payments, then it is your responsibility to arrange the services you need, to sort out any problems with the service and to account for the way you use the money, but you should be able to get help and support to do this. If you use the money to employ your own staff, you will have the legal responsibilities of an employer. These are described in **Appendix A**.
- It is important that you ask questions if you feel you do not have enough information to make your decision. It may be helpful to talk to someone already getting direct payments. Your local council or nearest independent living scheme may be able to put you in touch with someone suitable.
- If you accept direct payments, you can change your mind at any time. You will need to contact your local council to ask them to stop making direct payments and arrange services instead.

Can I receive direct payments on behalf of someone I know who needs support?

■ Sometimes a council might decide that someone should receive social care services but that person is unable to make the necessary decisions needed to agree to or to manage a direct payment. This means they lack mental capacity. If this is the case, another person can be chosen to receive and manage the direct payment on their behalf.

■ In most cases, the person receiving direct payments for someone else would be a family member or friend. However, this does not always have to be the case. If someone receiving direct payments for another person is not a family member or friend, then the council will ask him or her to undergo a Criminal Records Bureau check.

■ If you think that someone you know would benefit from having another person manage his or her direct payment, and either you yourself or someone you know is willing to manage the direct payment for that person, then you should get in touch with your local council to discuss how this might be arranged.

■ If you receive a direct payment for someone else you must be prepared at all times to do what

you consider is best for the person and use the direct payment in the way you agreed with the council.

- You should involve the person in decisions about the direct payment as much as you can.

- You should let the council know if you have reason to think the person is able to make their own decisions again.

What can I spend my direct payments on?

- The money is for you to use to arrange the services (including equipment) which the local council has assessed you as needing. Your local council will explain what the money can



and cannot be spent on. You will need to discuss with the council how you intend to use your direct payments to arrange services. If you prefer to receive local council services to meet some of your needs, the council may agree to offer you a combination of direct payments and services.

Can I purchase services from my local council?

■ You cannot buy services from your local council as it is not allowed to sell its services in this way.

Can I purchase residential care with my direct payments?

■ Direct payments are intended to support adults in independent living, so you cannot use them to pay for permanent residential accommodation. You may be able to use direct payments to secure occasional short periods in residential accommodation, if your local council agrees that is what is needed.

Can I get direct payments if I live in residential care?

■ Direct payments are not intended to support residential care. However, the regulations which permit direct payments to be used to purchase occasional short periods in residential care may also be used to enable people who are living in residential care to have temporary access to direct payments. This will enable them to try out independent living arrangements before deciding to move out of residential care.

Can I use direct payments to employ my relatives?

■ Direct payments are not intended to replace existing support networks within families and communities. For this reason, you may not normally use direct payments to secure a service from:

- your spouse or partner;
- a close relative that you live with.

■ You should discuss your situation with the local council if you think that any person you would like to employ or purchase services from might fall into one of these categories. In exceptional circumstances, your local council may be prepared to consider allowing you to use direct payments to pay a close relative who shares the same household.



Can I change how I spend my direct payments?

■ You will need to discuss with the local council the amount of flexibility you have in how you spend your

direct payments. You need to know what changes to the way you spend the money you have to agree with the council in advance, and what changes you can make without asking.

Will the local council give me enough money to meet my needs?

■ Local councils have to give you enough money to make adequate arrangements to meet your assessed needs, including any legal responsibilities you may have as an employer. You should not find yourself having to do without services that the council has assessed you as needing.

■ The local council also has a responsibility to secure best value. Therefore, it may not be prepared to pay the full cost of the particular method of purchasing services which you choose, if your needs can be met just as well in different ways which cost less. For example, it may not be prepared to cover the charges of the particular agency you prefer if another agency charges less for an adequate service.

Will I have to make a financial contribution if I receive direct payments?

■ Local councils can require you to make a financial contribution to the cost of your care, just as they can already charge you for other services. You should not be charged more than it is reasonably practicable for you to pay. If you are a disabled person and are working or intending to enter work, you will not be charged against your earned income. Ask your local council about its charging policy and how it applies to people who receive direct payments. The council should work out how much to charge you in the same way as it does for people who receive equivalent services.

■ If you think the money you are offered is not enough, you do not have to accept it. You can complain about the amount offered. You will need to discuss with your local council what will happen while your complaint is being considered. You can accept the direct payments if you wish, without affecting your complaint that they are not enough. If you are not prepared to accept the amount that is offered while your complaint is being considered, you can choose to receive services provided by your local council instead.

How will I get the money?

- It is up to your local council to decide how it makes direct payments. However, councils should consult people using direct payments when deciding how such arrangements will work. Ask about the arrangements in your local area. When your direct payments are being set up the council should discuss with you whether payments are to be made net of charges or gross.

If I decide to accept direct payments, where can I get help?

- Direct payments offer great flexibility, but by accepting them you take on the responsibility for managing the money and arranging services which meet your needs.
- You can ask for help from your local council. Most councils either provide help directly or commission a local support service to advise people wishing to use direct payments.
- You can also get help and advice from a friend or relative, or from other people who are receiving direct payments. Ask your local support service to suggest

people to contact. You could also contact one of the organisations listed at the end of this guide.

■ Many people with learning disabilities will benefit from support in managing direct payments. Independent living schemes or more informal circles of support can be utilised to assist with managing paperwork, employing staff, etc. The self-advocacy organisation People First has a lot of experience in helping people with learning difficulties to manage direct payments. Your local council should be able to give you details of branches in your area.



■ If you use mental health services you may wish to set up a support structure to help you manage at times when you are not feeling well. Your local direct payments support scheme or local branch of the mental health charity Mind should be able to assist in setting up the support you need.

■ If you are worried that you might suffer from dementia in the future or some other cognitive impairment, the Alzheimer's Society can provide help. Contact details can be found in **Appendix C**.

What do I need to do before I start receiving direct payments?

■ Before direct payments start, you should discuss and agree the following points with your local council social services department:

- what needs the direct payments relate to;
- what services the direct payments are meant to cover;
- the value of direct payments you will receive;
- how much you will be expected to contribute to the cost of your care;
- how you intend to use the money to secure services to meet your needs;
- whether you need help to manage your direct payments, and where you can get help;
- what the money may and may not be spent on, and how much flexibility will be allowed;

- what changes to the way you secure services the local council would expect to agree in advance;
- back-up arrangements to cover emergencies;
- what steps should be undertaken to safeguard the welfare of children;
- how often and in what form payments will be made;
- the information you will need to give the local council about how the money is spent;
- the arrangements the local council proposes for monitoring;
- any conditions attached to the direct payment;
- the date when your arrangements will next be reviewed;
- the circumstances in which your local council will consider discontinuing direct payments;
- the period of notice the council will give you if it decides to discontinue direct payments, and the circumstances under which it would stop payments immediately;
- how any outstanding commitments will be handled if direct payments are discontinued;
- the circumstances in which the local council would seek repayment.

4. BECOMING AN EMPLOYER

What do I need to know about employing my own staff?

■ If you employ staff to provide care services, either for yourself or someone else, you will have legal responsibilities. It is up to you to ensure that you are aware of, and comply with, these responsibilities. If you are employing an individual to care for a child using direct payments, you should ask your local council to carry out appropriate checks via the Criminal Records Bureau. Your council must carry out the check free of charge if you request them to do so. See also page 33.

■ You may find it helpful to consult a local support organisation or one of the organisations or publications listed at the end of this guide.

How do I find people to employ?

■ First, decide what kind of person you want and how many people you need, drawing on the local council's assessment of your needs. Prepare a list of the tasks you want your employees to do, then ask yourself what skills and personal qualities they will need to do those tasks properly. For example, if part of the job is to enable you to get out and about,

you may need someone who can drive. If you think you will need more than one person, you might also consider whether they all need to have all these skills and qualities. You will also need to think about what hours you would expect them to work. Examples of the type of tasks you might want your 'personal assistant' to carry out can be found in some of the booklets listed in **Appendix C**.

■ When you have decided on the skills and personal qualities you are looking for, you need to decide how to go about finding the right people. You might find someone by word of mouth, by asking around among your friends and neighbours, or you could put a notice in a public place, such as a local post office, shop or college of further education, or advertise in a newspaper or job centre. Advertising in job centres is free, but there is likely to be a charge for placing a notice in a shop window or in a newspaper. Local organisations may also have newsletters in which you can advertise.

■ If you are placing an advertisement, you will need to describe briefly what the job involves, how many hours per week, what kind of person you are

looking for and the rate of pay, and give a contact number or address. You may prefer not to give your own address or telephone number at this stage, for security reasons. Your local council or local organisation of disabled people may allow you to use their address. Alternatively, you could arrange with the post office to set up a PO box, or use an email address.

How do I decide how much to pay people?

■ You may be able to ask someone who is already employing people using direct payments how much they pay, or look at advertisements for similar jobs. You can also discuss rates of pay with your local council. How much you can afford to pay will of course depend on the value of the direct payments you receive, but the amount should be enough to enable you to pay for the services you have been assessed as needing. If you cannot recruit anyone at the pay rates you are able to offer, you should discuss this with your local council.

■ You may need to offer different rates of pay for different bits of the job. For example, you may find that you need to offer higher rates for evenings or weekends than for weekdays. Or you might have to

pay more if you need someone with particular skills (for example, driving) for some parts of the job.

■ You will need to ensure that your rate of pay conforms to the requirements of the National Minimum Wage. You can find more guidance on the National Minimum Wage on Business Link at www.businesslink.gov.uk/nmw HM Revenue and Customs also operates a confidential helpline on the National Minimum Wage on 0845 6000 678.

■ You may need to pay your employee Statutory Payments even when they are not actually working for you – for example, if they are sick and entitled to Statutory Sick Pay or on maternity leave and entitled to Statutory Maternity Pay.

■ In addition, if your employee is off work and is receiving a Statutory Payment from you, you may need to pay for a replacement employee until they return.

■ For guidance on employers' responsibilities to pay Statutory Payments and their entitlement to recover those payments, see www.hmrc.gov.uk/paye/statutorypayments.htm or phone the Employer Helpline on 0845 60 70 143.

Payroll services

■ Many people find it helpful to use a specialised payroll service. Such services will take on responsibility for paying wages, Statutory Payments, tax and National Insurance, based on information supplied by you. However, you should remember that, as the employer, the responsibility for making the correct payments will still be yours. For details of payroll services in your area, ask your local council or direct payment support service.

Do I need to prepare a job description?

■ A job description sets out clearly what the job requires. It will help you to think through what sort of person you are looking for and to explain to applicants what the job involves. It will also serve as a record of what you expect from your employees, which will help if any difficulties arise.

■ The job description should list the tasks your employee will be expected to do, how often they are needed and the likely variations, and anything else you will expect of your employee (for example, punctuality, confidentiality). It may be helpful to start with a brief

overview of the purpose of the job and how you expect your employees to fit into your life. You could use your care plan to help write a list of the main tasks. Try to leave sufficient flexibility to allow you to ask your employees to perform tasks which contribute to the overall purpose of the job, as and when they arise, even if they are not specifically listed in the job description.

What information should I ask applicants to provide?

■ To help you decide whom to invite for interview, you will need to ask for information so you can form a judgement about the applicant. You may decide to ask people to complete an application form, or to write you a letter saying why they want the job, accompanied by an outline of their employment history. If you are short of time, you may prefer to ask a standard set of questions on the telephone. The fuller a picture of the applicant you can obtain at this stage, the easier it will be to decide whom to interview.

You might want to ask:

- for details of experience, training and employment history;

- when the applicant is able to work and when he or she is able to start;
- why the applicant is interested in working for you.

You should always ask:

- if the applicant has any criminal convictions;
- for references, and to check those references before offering anyone a job.

How do I go about interviewing?

■ Go through the applications you receive, comparing them with your list of the skills and personal qualities you are looking for. Decide which of the applicants to interview and arrange dates for the interviews. You might find it useful to ask someone else to help you make this choice and with the interviews.

■ For security reasons you may not want to hold interviews in your own home. Your local council or local disability or carer organisations may be able to give you the use of a room.

■ Before the interviews, think through the questions you will need to ask to find out more about the candidates. It may be helpful to begin the interview

with an explanation of what the job involves, to ensure that the applicant has understood the advertisement and to provide additional information. Aim to give the candidates a chance to talk, so that you can see what they are like. Give them an opportunity to ask any questions they may have.

■ When you come to choose between the candidates, you will need to consider whether they will be able to do the job, and whether you are likely to be able to get along with them.

Will I need a contract with my employee(s)?

■ A contract of employment exists as soon as your employee starts work. By starting work your employee demonstrates that he or she has accepted the terms and conditions you have offered. The contract does not have to be in writing. Its terms can be written, orally agreed, implied, or a mixture of all three.

■ Written details, whether in the form of a contract or statutory written statement, ensure that both you and your employee have the same understanding about the terms on which your employee is employed, and may be helpful if any disagreements arise.

■ Regardless of whether they have been given a written contract, most employees are entitled to a written statement of the main particulars of their employment. You can find further information about statements of employment and other related paperwork on Business Link at www.businesslink.gov.uk/writtenstatement

How can I get the best from my staff?

■ It will help if you establish clearly from the start the standards you expect. Be prepared to discuss with your employees how you like things done, and listen and respond to any difficulties, questions or suggestions they may have. Tell your employees when they are doing well.

■ Tell your employees straight away if you are not satisfied with any aspect of their work. If the problem continues, you may need to consider giving them a formal warning that an improvement must be made. You are the employer, and you have the power to dismiss them if their work is persistently unsatisfactory.

If I employ staff, what legal responsibilities might I have?

■ You will find a summary of the type of legal responsibilities you are likely to have in **Appendix A**. Every effort has been made to ensure that this information is accurate at the time of publication, but you are strongly advised to check it for yourself.

Should I check if the person I want to employ has a criminal record?

■ If you are employing an individual to care for a child using direct payments, you should ask your local council to carry out checks under the Protection of Children Act 1999 via the Home Office agency, the Criminal Records Bureau. Your council must carry out the check free of charge if you request them to do so.

■ If you are a disabled 16 or 17-year-old and are thinking about employing a care worker yourself, you can also request your council to carry out a criminal records check. Again, the council must carry out the check if you ask them to at no charge.

- Disabled adults who want a similar degree of reassurance about the suitability of their personal assistants may wish to think about entering into a contract with an agency instead of being an employer themselves. Your local council or direct payment support service will be able to offer you more advice about vetting potential workers.
- If you are receiving a direct payment on behalf of someone else because they lack capacity, and you are not a family member or friend, you must carry out a criminal records check on anyone you employ.

What can I do to protect my child?

- Parents are understandably cautious about allowing someone to have close contact with a child who is especially vulnerable because of their disability. By carefully following up references, ensuring police checks are done, and being alert to signs of distress in their child, parents can reduce the risk of abuse. For further advice please contact the Department for Children, Schools and Families.

5. CONTRACTING WITH SOMEONE WHO IS SELF-EMPLOYED

- Self-employment is not a matter of choice. It depends on the contractual arrangements originally agreed between you and the worker. A variety of different factors play a part in judging whether or not someone is self-employed, such as the degree of control you have over how and when the work is done.
- If the person you engage says that they are self-employed, you need to be sure that they are. There can be financial consequences for you if you incorrectly engage someone under self-employment, where the reality of the terms of the engagement between you and the person reflects employment.
- HM Revenue and Customs (HMRC) provides detailed advice on employment status, including the factsheet 'Are your workers employed or self-employed for tax and National Insurance contributions'. It is available from the HMRC website at www.hmrc.gov.uk/leaflets/es-fs2.pdf
- Also available from the HMRC website is the 'Employment Status Indicator' (ESI) at www.hmrc.gov.uk/calcs/esi.htm. The ESI is an online tool which HMRC provides to determine a worker's employment status.

Contracting with someone who is self-employed

It is free and easy to use and can help you work out whether workers are employed or self-employed in almost all cases.

■ If the person is not self-employed, you will be regarded as his or her employer, with all the associated obligations such as Pay as You Earn (PAYE). Someone who is genuinely self-employed will make arrangements for paying their own tax and National Insurance contributions. You will have no responsibility for paying these. If you are in doubt about whether someone is employed or self-employed, ask for help as advised above, and operate PAYE and pay National Insurance contributions in the meantime, as if the person was an employee of yours.



6. CONTRACTING WITH AN AGENCY

What do I need to know about contracting with an agency?

- There are many agencies which provide care services. Purchasing services from an agency means that you do not employ directly the people who provide your care, and you do not have the responsibilities of an employer. Instead, you have a contract with the agency.
- Your local council may be able to give you names of agencies in your area which provide the kinds of services you need. You may also be able to find out about agencies from other people who receive direct payments, your GP or district nurse, libraries, local voluntary councils or Citizens' Advice, or by looking in the *Yellow Pages*.
- Before contacting an agency, it is important to be clear in your own mind what help you are looking for. Start by preparing a list of the tasks you are expecting agency staff to do, just as you would if you were recruiting your own staff. Then think about what is most important to you about the way those tasks are done. This will help you prepare questions to ask agencies you are considering to identify the one which best meets your needs.

- Always contact more than one agency before committing yourself. Remember that you are the customer. If one agency is not prepared to meet your requirements, you may be able to find another which will.

- You might find it helpful to ask some of the following questions before making a decision:
 - What services are available?
 - What charges will be made?
 - Is the price all inclusive, or are there any extras, for example VAT, National Insurance or travelling expenses?
 - Is there a minimum service that has to be bought?
 - Can I choose the person who provides my care?
 - Can I expect to see the same person on a regular basis?
 - What if the regular person is sick or on holiday?
 - Can the organisation be contacted at all times when care is being provided?
 - How can I contact the out-of-hours emergency service? Is there an extra charge?
 - How can I complain about the service I receive?
 - What obligations will I have if I cancel the service?

- Does the organisation have full professional and employer's liability insurance?
 - Does the organisation work to a recognised code of practice?
 - How are agency staff recruited? Are they required to give references? What training are they given?
 - What evidence can I see that employees have had police checks?
- Employment agencies are required to meet certain minimum standards designed to protect their workers and those hiring them. Details can be obtained from the Department for Business, Innovation and Skills employment agency standards helpline on 0845 955 5105.

7. NOW YOU ARE RECEIVING DIRECT PAYMENTS

What will happen in emergencies?

■ Whatever arrangements you make, there will be occasions when they break down. For example, your personal assistant may be taken ill. You will need to make back-up arrangements to provide cover for sickness, etc. You might arrange this with an agency, or with off-duty or former employees. You will need to discuss with your local council what arrangements they expect you to make to prepare for emergencies.

■ Your local council may be prepared to give you extra money to enable you to purchase services in an emergency.

■ If your back-up arrangements break down, you should not be left without the services you need. The local council has a responsibility to step in if it is not satisfied that your needs are being met by your own arrangements using direct payments. Contact your local council as soon as you realise you need help.

What if my needs change?

■ Contact your local council social services department as soon as possible and ask for your needs

to be reassessed. If you are managing a direct payment for someone else, you should make sure you contact the council to let them know if you believe the person's needs have changed.

What if I don't need to spend all the money?

■ If you don't need assistance for a short period, for example, if you are in hospital, or if you need less than usual because your condition improves, tell your local council as soon as possible, as they may need



to adjust your direct payments.

■ Do not spend your direct payments on something which does not meet your assessed needs. Your local council has the power to require you to repay any money which you do not spend on meeting your assessed needs.

Will I need to keep records?

■ Yes. The money you receive in direct payments is for services to meet your social care needs. It remains public money; it is not yours to spend as you wish. Your local council will require you to account for the money you receive. You will be told what records you need to keep and what information you will be expected to provide.

■ For example, you may be asked to keep timesheets signed by your personal assistants recording the hours they have worked, or receipts for services purchased from agencies. It is highly recommended that you set up a separate bank account for your direct payments, so that the money you receive from the local council can be identified separately from your own personal finances.

■ You will probably find it easier to keep records as you go along, rather than leaving completion of any forms until they have to be returned.

■ As an employer you will also need to keep records for HM Revenue and Customs – for example, records of wages, Statutory Payments, tax and National Insurance deductions. All records must be kept for at least three years after the end of the tax year to which they relate.

Will the local council check on the services being provided?

- By agreeing to accept direct payments you are taking on responsibility for purchasing services to meet your assessed needs.
- The council will have to satisfy itself that the needs for which it is giving you direct payments are being met. The council should tell you how they will go about this. This may involve someone visiting you in your home.
- The arrangements you make using your direct payments will be reviewed in the same way as if you received services, to establish whether your needs are being met and whether these have changed.
- If you are managing a direct payment on behalf of someone who lacks capacity, the council will need to carry out regular reviews to make sure that you are using the direct payment to meet the person's needs in the way that was agreed. This should be done within three months of the first direct payment being made, and at least once a year after that.

Now you are receiving...

- You must inform the council if you believe that the person lacking capacity has regained the ability to make their own decisions. The council can then review how their care is being provided.
- If the person has permanently regained capacity, this will mean that the person can now manage the direct payment themselves.
- If you and the council agree that the person has only regained the ability to make their own decisions temporarily, and is likely to lose it again in the short term, then the council may continue to make the direct payment to you for them. However, you must make sure that you let the person manage the direct payment at any time when they are able to agree to direct payments themselves and can manage the payments for themselves.

What happens if I get into difficulties with direct payments?

- Inform your local council as soon as possible. If your needs are not being met, the council may have a responsibility to step in and help you. It might do this by arranging services directly, or it might give you

some extra help to enable you to carry on with direct payments.

■ If you do not spend the money on the services for which it has been provided, or if you have spent it in a way which does not meet any conditions the local council has set, then the council could require you to repay some or all of the money. The council can also choose to stop the direct payment.

■ If you decide not to carry on with direct payments, then the local council will arrange services instead. If the council does not think you can manage direct payments any more, it might decide to stop giving you the money and to arrange services instead.

■ The local council should involve you in any decisions that are being made about your care, and ensure that you know what is decided.

Who can I complain to if I am not happy with the service?

■ If you are not happy with any action, decision or apparent failing of the local council, you can use the local council complaints procedure. The council will be able to explain how to make a complaint.

Now you are receiving...

- If you are not happy with the services being provided by an agency or an individual, you should complain to the agency or take it up with the person concerned. You may find that an independent mediator can help to solve the problem.
- Depending on the nature of the complaint, the Department for Business, Innovation and Skills Employment Agency Standards Inspectorate may be able to help. They can be contacted on 08459 555 105.

8. OTHER ISSUES

If I receive direct payments, can I still get payments from the Government's Independent Living Funds?

■ Yes. Your eligibility for payments from either the Independent Living (Extension) Fund or the Independent Living (1993) Fund is not affected by any help you get from your local council in the form of services or direct payments.

If I get direct payments, will the money be regarded as adding to my income?

■ No. Direct payments will be ignored in the calculation of income-related social security benefits.

They will also be ignored when maintenance is assessed under the child support formula. Nor will HMRC regard direct payments as forming part of your taxable income, whether or not you receive the direct payment to arrange services for yourself or for someone who lacks capacity.



9. FURTHER INFORMATION

Where can I get further advice?

■ Each council will implement direct payments in its own way, so the best sources of advice are likely to be local. Start by directing any questions to the council. They should be able to put you in contact with a support service in the area. The National Centre for Independent Living also has a list of organisations helping people use direct payments. The appendices at the end of this guide tell you how to obtain relevant government publications and list other sources of advice.

APPENDIX A

Employing staff

■ The following is a summary of the type of employer responsibilities you are likely to have. Every effort has been made to ensure that this information is accurate at the time of publication, but you are strongly advised to check it yourself. **Appendix B** gives details of how to obtain the booklets mentioned, and how to get in touch with organisations that will be able to give you good advice.

Written statement of employment particulars –

Most employees who are employed for one month or more must receive, within the first two months, a written statement of the main employment particulars, including information about their pay, holidays, notice and disciplinary procedures. More information about employment paperwork can be found on Business Link at www.businesslink.gov.uk/writtenstatement

Unfair dismissal – Employees have the right not to be unfairly dismissed. In most circumstances they must have at least one year's continuous service before they have this right. More information about dismissals and redundancies can be found on Business Link at www.businesslink.gov.uk

Period of notice – Someone who has been employed continuously for one month or more and less than two years is entitled to at least one week's notice of termination of employment. After two years' continuous employment, this rises to two weeks' notice. An additional week's notice is required for each completed year of continuous service after that, up to a maximum of 12 weeks. The contract of employment may specify a longer period of notice than these statutory periods. Again, more information can be found on Business Link at www.businesslink.gov.uk

Tax – By law, you must operate Pay as You Earn (PAYE) on the pay of your employees. When you take on staff for the first time you will need to contact HM Revenue and Customs' (HMRC's) New Employer Helpline (0845 60 70 143) to arrange for a PAYE scheme to be set up. You will be sent a new employer's starter pack which contains the Employer CD-ROM to help you to work out PAYE. It also contains a helpbook called *Paying someone for the first time* which will help you to start operating PAYE.

If your contract is with a person who is self-employed, that person is responsible for meeting his or her own tax obligations; you do not have to operate PAYE on

his or her pay. You will find more information about contracting with someone who is self-employed on page 35 of in this guide.

National Insurance contributions – As an employer, you must pay National Insurance contributions for employees aged 16 years or over whose earnings reach or exceed a prescribed minimum level. You will also have to deduct an employee's contributions from the pay of anyone you take on. The Employer CD-ROM explains how the contributions are calculated and how you should pay them. If your contract is with someone who is self-employed, he or she is responsible for meeting his or her own National Insurance obligations; you do not have to pay contributions on their behalf.

Statutory Sick Pay – If an employee is sick for four consecutive days or more, they may be entitled to Statutory Sick Pay from you. More details are in the *Employer Handbook for Statutory Sick Pay* (E14), available at www.hmrc.gov.uk/employers/employee_sick.htm

You should make sure that you keep records of all dates of employee sickness lasting four or more days and the details of payments made during this period.

The SSP2 Record Sheet is available on the Employer CD-ROM or from the Employer Helpline on 08457 143 143 to help you keep a record of your payments.

Maternity – Your employee has certain rights if she becomes pregnant. For example, she is entitled to take time off work for ante-natal care, up to 52 weeks statutory maternity leave and perhaps may be entitled to receive Statutory Maternity Pay for up to 39 weeks from you. Again, you should make sure you keep records of payments made. The SMP2 Record Sheet, available on the Employer CD-ROM or from the Employer Helpline on 08457 143 143, will help you keep a record of your payments.

More details of maternity provisions can be found on Business Link at www.businesslink.gov.uk/maternity Information about Statutory Maternity Pay is in HMRC's *Employer Helpbook for Statutory Maternity Pay* (E15) which is available on the Employer CD-ROM or from the Employer Helpline on 08457 143 143.

Paternity – Your employee may have some rights if their partner has a baby or adopts a child. More details of paternity provisions can be found on Business Link at www.businesslink.gov.uk HMRC's *Employer Helpbook*

for *Statutory Paternity Pay* (E19) is available on the Employer CD-ROM or from the Employer Helpline on 08457 143 143. This details the records that you will need to keep.

Adoption – Your employee has certain similar rights if adopting a child. They may have entitlements to adoption leave and perhaps to *Statutory Adoption Pay*. Further information can be found on Business Link at www.businesslink.gov.uk/adoption Information can also be found in HMRC's *Employer Helpbook for Statutory Adoption Pay* (E16) which is available on the Employer CD-ROM or from the Employer Helpline on 08457 143 143.

Redundancy – In most circumstances, employees with at least two years' continuous service since the age of 18 are entitled to a redundancy payment. Further information is can be found on Business Link at www.businesslink.gov.uk There is a national helpline for advice about redundancy on 0845 145 0004. Helpline staff will also be able to put you in touch with your local redundancy office for processing claims.

Equal opportunities – Generally jobs must be open to all regardless of colour, race, nationality, ethnic or

national origin, disability, sex, marital status or sexual orientation, unless the reason for discrimination arises from a genuine requirement for the job. The Race Relations Act 1976 does not apply to private households. Codes of Practice giving guidance about equal opportunities in employment can be found on the Equality and Human Rights Commission website – www.equalityhumanrights.com. You can also call the Equality and Human Rights Commission Helpline on 0845 604 6610.

Unions – Employees have the right to belong or not to belong to a trade union. Further information is contained in the Department for Business, Innovation and Skills guidance *Union membership: rights of members and non-members* found at www.berr.gov.uk/whatwedo/employment/employment-legislation/employment-guidance/page20829.html

Insurance – Some household insurance policies include employer's liability as part of the cover provided. As an employer you will be required to obtain employer and public liability insurance to cover you against liability for an employee's injury or disease. Advice may be available from your local support service, the National

Centre for Independent Living or your local council. If you need to purchase this because it is not part of your household insurance then this will be funded by your local authority as part of your direct payments.

Health and safety – If you employ staff, you take on responsibilities for ensuring their health and safety while at work. If you contract with an agency, then the agency, as the employer of the person providing the service, will usually have the main responsibility for safeguarding the health and safety of that person. For further information, contact the Health and Safety Executive Infoline on 0845 345 0055. The National Centre for Independent Living also produces leaflets covering health and safety issues for people employing personal assistants.

APPENDIX B

Further information

The **New Employer Helpline** can help with a range of queries about being an employer and put you in touch with local agencies for more specific queries. Tel: 0845 60 70 143. More experienced employers may wish to use the **Employer Helpline** on 08457 143 143. Both services are open from 8am to 8pm Monday to Friday and from 8am to 5pm on Saturday and Sunday. Calls are charged at the local rate.

A **business support team** can be accessed through your local HMRC office. They provide support to individuals, arrange training and can set up home visits to discuss issues.

If you wish to contact **local support organisations**, your local council should be able to provide you with details. You can also obtain information about local support organisations from the National Centre for Independent Living. A list of local services is published on their website at www.ncil.org.uk

■ The publications mentioned in this guide can be obtained as follows:

Home Office publications can be obtained by calling 0870 000 1585.

The Employer Orderline provides a range of stationery and forms for employers on 08457 646 646.

HM Revenue and Customs guidance is available from their Enquiry Centres or website at www.hmrc.gov.uk

Publications relating to the Disability Discrimination Act 1995 can be obtained by writing to: Equality and Human Rights Commission Helpline, Freepost RRLL-GHUX-CTR, Arndale House, Arndale Centre, Manchester M4 3EQ, or by contacting the EHRC helpline on 0845 604 6610 or textphone on 0845 604 6620.

The Department for Business, Innovation and Skills produces a number of online factsheets aimed at small employers, which give a basic introduction to some aspects of employment law, including fair and unfair dismissal, maternity rights, itemised pay and written statements of employment terms. They are also available free of charge from employment service job centres. Or you can order them from the Publications Orderline on 0845 015 0010, or email publications@bis.gsi.gov.uk.

The Department for Children, Schools and Families guide to direct payments for parents with disabled children is available from their website at www.dcsf.gov.uk/everychildmatters/resources-and-practice/IG00321/ Or you can write to DCSF, Sanctuary Buildings, Great Smith Street, London SW1P 3BT, email info@dcsf.gsi.gov.uk, or call 0870 000 2288.

The Advisory, Conciliation and Arbitration Service (ACAS) also provides information services for employers on a wide range of employment matters, through its public enquiry points (listed under ACAS in local telephone directories). ACAS produces a number of helpful publications, details of which can be obtained by writing to ACAS Publications, PO Box 235, Hayes, Middlesex UB3 1HF or by calling 0870 242 9090, by faxing on 020 8867 3225 or via their website at www.acas.org.uk The ACAS national helpline is available for both employers and employees who are involved in an employment dispute or are seeking information on employment rights and rules – 08457 47 47 47.

Redundancy payments offices

A free helpline is available to answer any of your queries. The helpline can tell you which regional office will be able to deal with your claim. The number to ring is 0845 145 0004. You can also find online redundancy forms and further information at www.berr.gov.uk/whatwedo/employment/redundancy/

The Financial Services Authority (FSA) publishes a range of free guides to give people facts about financial products and services, including advice on budgeting. For more information see the FSA website at www.moneymadeclear.fsa.gov.uk/

APPENDIX C

Other useful publications

Direct payments – direct payments guidance published by the Department of Health can be found on the Department of Health website at www.dh.gov.uk/en/SocialCare/Socialcarereform/Personalisation/Directpayments/DH_076522 Copies are also available from the Department of Health, PO Box 777, London SE1 6XH, or email dh@prolog.uk.com.

Everything you need to know about Getting and Using Direct Payments. Published by the National Centre for Independent Living, whose address is given below.

Independently, the newsletter from the National Centre for Independent Living, is available from www.ncil.org.uk

The Rough Guide to Managing Personal Assistants. Published by the National Centre for Independent Living.

Funding Freedom 2000. Published by Values into Action, whose address is given below.

Plain Facts: Direct Payments for people with learning difficulties. Published by Values into Action.

Making Decisions: Best practice and new ideas for supporting people with high support needs to make decisions. Published by Values into Action.

Other sources of help

The following organisations may be able to give you information or the address of your local branch of their organisation.

Age Concern England

Astral House, 1268 London Road, London SW16 4ER

Free helpline: 0800 00 99 66

Website: www.ageconcern.org.uk

Alzheimer's Society

Devon House, 158 St Katharine's Way, London E1W 1JX

Tel: 020 7423 3500 **Fax:** 020 7423 3501

Website: www.alzheimers.org.uk

Email: enquiries@alzheimers.org.uk

Carers UK

20 Great Dover Street, London SE1 4LX

Tel: 0808 808 7777 **Fax:** 020 7378 9781

Website: www.carersonline.org.uk

Email: info@carersuk.org

Chartered Institute of Personnel and Development

151 The Broadway, London SW19 1JQ

Tel: 020 8612 6200 **Fax:** 020 8612 6201

Website: www.cipd.co.uk

Free factsheets on all aspects of employing people can be obtained by non-members.

Contact a Family

209–211 City Road, London EC1V 1JN

Tel: 020 7608 8700 **Fax:** 020 7608 8701

Helpline 0808 808 3555 **Textphone:** 0808 808 3556

For parents and families with disabled children
(10am–4pm, Mon–Fri)

Website: www.cafamily.org.uk

Email: info@cafamily.org.uk

Council for Disabled Children, National Children's Bureau

8 Wakley Street, London EC1V 7QE

Tel: 020 7843 6000 **Fax:** 020 7278 9512

Website: www.ncb.org.uk **Email:** websupport@ncb.org.uk

Counsel and Care

Twyman House, 16 Bonny Street, London NW1 9PG

Tel: 0845 300 7585

Website: www.counselandcare.org.uk

Email: advice@counselandcare.org.uk

Disability Alliance

Universal House 88–94 Wentworth Street, London E1 7SA

Tel: (voice and minicom): 020 7247 8776

Fax: 020 7247 8765

Website: www.disabilityalliance.org

Information on work permits can be found on the UK Border Agency website: www.bia.homeoffice.gov.uk

Disability, Pregnancy & Parenthood *international*

Unit F9, 89–93 Fonthill Road, London N4 3JH

Tel: 0800 018 4730 **Fax:** 020 7263 6399

Textphone: 0800 018 9949

Website: www.dppi.org.uk **Email:** info@dppi.org.uk

Help the Aged

207–221 Pentonville Road, London N1 9UZ

Tel: 020 7278 1114 **Fax:** 020 7278 1116

Website: www.helptheaged.org.uk

Email: info@helptheaged.org.uk

MIND (The Mental Health Charity)

15–19 Broadway, London E15 4BQ

Tel: 020 8519 2122 **Fax:** 020 8522 1725

Website: www.mind.org.uk **Email:** contact@mind.org.uk

National AIDS Trust

New City Cloisters, 196 Old Street, London EC1V 9FR

Tel: 020 7814 6767 **Fax:** 020 7216 0111

Website: www.nat.org.uk **Email:** info@nat.org.uk

National Centre for Independent Living

Unit 3. 40, Canterbury Court, 1–3 Brixton Road,
London SW9 6DE

Tel: 020 7587 1663 **Fax:** 020 7582 2469

Textphone: 020 7587 1177

Website: www.ncil.org.uk **Email:** info@ncil.org.uk

People First

Unit 3. 46, Canterbury Court, 1–3 Brixton Road,
London SW9 6DE

Tel: 020 7820 6655 **Fax:** 020 7820 6621

Website: www.peoplefirstltd.com

Email: general@peoplefirstltd.com

Rethink (mental health charity)

15th Floor, 89 Albert Embankment, London SE1 7TP

Website: www.rethink.org.uk

Advice service

Tel: 020 7840 3188 **Email:** advice@rethink.org

Values into Action

Oxford House, Derbyshire Street, London E2 6HG

Tel: 020 7729 5436 **Fax:** 020 7729 7797

Website: www.viauk.org **Email:** general@viauk.org



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