

2018/2019

Direct Payments

A Guide to support you and your child

Introduction

If your local authority agrees that your child needs care services, you can choose to get money to buy these services yourself. This is called direct payments. Direct payments should give you more control over how your child's needs are met but it also involves more responsibility for you. This guide explains how to go about getting direct payments and how they work in practice

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1) Direct Payments and Personal Budgets

A personal budget is an amount of money your local authority has assessed as being sufficient to meet all of your child's care and support needs. Once the amount of the personal budget has been agreed, you will be asked to help develop a support plan setting out how this money will be spent to meet your child's needs. In principle having a personal budget should provide your family with a lot more choice, flexibility and control over how your child's needs are met.

You decide how to make best use of your child's personal budget. You might choose to organise your child's care yourself, taking your child's personal budget in the form of direct payments which you use to buy support for your child.

However, not everyone wants the extra responsibility involved in using direct payments. If you prefer you can ask someone else (like a friend, a local organisation, such as the Deafness Resource Centre, or your local authority) to manage the budget on your child's behalf.

As long as social services assess that there is a need for services to support your child, they are under a legal obligation to offer you the choice of direct payments.

From September 2014 families in England can also get a personal budget as part of an Education, Health and Care plan. This guide provides detailed advice on using direct payments to buy social care for your child. Personal Budgets can also be requested for Education but only include the funds needed to buy more specialist or individual support than the school or college is expected to provide. It does not cover the funding for the placement itself, or for the extra help the school, college or local authority is expected to provide for all children with special educational needs as part of the local offer.

Every local authority must include information about personal budgets in its local offer, including information about the different services that lend themselves to personal budgets and how to ask for a personal budget.

2) What are direct payments?

A direct payment is money from your local authority allowing you to buy the care your child needs instead of having services organised by them. Direct payments can be used by a whole range of people including disabled adults and older people, but this guide specifically looks at using direct payments to support families looking after a child with a disability

Control and flexibility

Parents using direct payments often find they have more control over the services they receive, with care being provided in a more convenient and flexible way. Using direct payments means you should be able to:

- Decide who is going to provide services
- Arrange how and when any service is provided.

Using direct payments

You can use direct payments to buy services from an organisation / service provider that provides care, such as a private agency, a voluntary organisation such as the **Deafness Resource Centre** or a nursery. Alternatively you can employ someone yourself (known as a Personal Assistant – PA). You can't use your direct payments to buy services from a local authority.

Using direct payments can mean extra responsibilities for you, since you will be more involved in arranging services. This is particularly true if you employ a PA to help meet your child's needs. If like

the idea of having more control over services for your family, then direct payments are an option worth exploring.

Direct payments may be particularly attractive if:

- The services you currently receive don't meet the needs of your family or if you feel you have little say over how those services are provided.
- You live in an area where no suitable services exist – employing someone local as a PA may be the only realistic method of support.
- Your child has cultural or language needs that your current service providers cannot meet.
- Your child has been assessed as needing services but you have been waiting a long time for help to become available – you may be able to organise your own services straightaway.

3) How can I get direct payments?

You have the right to choose direct payments rather than getting support organised by your local authority. If you are already getting help from the local authority, you can ask for direct payments instead. If you don't currently get help, you will first need to ask social services to assess your child's care needs.

Once the local authority has carried out an assessment, they must decide whether there is a need for support. If they agree that services are needed, they should set out a 'care plan', which outlines the support required. At this point you should have the option of:

- asking the local authority to provide care that will meet all of the needs identified in the care plan; or
- asking for direct payments so that you can buy services to meet the assessed needs; or
- opting for a 'mixed package', where social services provides some of the care and you use direct payments to buy the rest.

If the local authority doesn't accept that your child needs support, they will not offer you direct payments. If you disagree with their assessment, you can challenge it via their complaints procedure which will be detailed on their website

4) What can I use direct payments for?

Some of the ways direct payments can be used include:

- getting help with your child's personal care, for example bathing, dressing, eating or helping look after them
- a sitter service to look after your child when you are out
- helping your child use leisure facilities
- help with household tasks to free up your time to look after your child
- a place at a day nursery or after-school care
- someone to accompany your child on holiday
- housing support services (for young disabled people aged 16 or over)
- equipment
- short breaks

You will need to discuss your plans with your social worker and they will want to draw up an agreement spelling out what care needs will be met by direct payments, how the services will be provided and how they will be monitored.

RESTRICTIONS

- **Employing close relatives using direct payments**
The general rule is that you cannot normally use direct payments to employ a close relative that shares your household. However, the local authority can agree to make an exception to this rule, if they believe that this is the only effective way of meeting your child's needs. The rules do not prevent you from using direct payments to buy care from a close relative who lives elsewhere.
- **Anyone who is paid to look after a child under eight years of age in their home, for more than two hours a day, must be registered as a child-minder with OFSTED.** This does not apply where you pay someone to look after your child in your own home.
- **Direct payments cannot be used to pay for permanent residential accommodation, other than limited amounts of short breaks**

5) How much money should I get in direct payments?

The amount of your direct payments should be enough to cover the costs of buying a service of the same quality and quantity as social services would otherwise have provided.

Paying a personal assistant

There is no national set rate of hourly pay for personal assistants (PA) although you must at least pay the national minimum wage. Your local authority may have a 'standard' pay rate which it generally uses in calculating direct payments. However, if your child has complex needs, your direct payments should cover the cost of purchasing appropriate care for him or her, even if this is above the rate being paid to meet the needs of other children. The rate of pay allowed for should also take into account the range of different hourly rates that would need to be paid for, such as day, night, weekends, bank and local holidays as well as emergency cover.

Covering additional costs

If you want to employ a PA, your direct payments must also include enough to cover any other costs without which the service could not be legally provided. This may include such costs as:

- employers national insurance • employers liability insurance

PA's expenses

When social services calculate the amount of your direct payments, you should discuss how you will cover your PA's expenses if they take your child out. For example, admission fees or a meal and refreshments when they are out with your child. If you don't cover the expenses of the PA, this is likely to limit the activities they do with your child outdoors.

What can I do if I don't think the direct payments are enough?

6) What happens, as my child gets older?

If you have parental responsibility for a child, you can manage direct payments for them so long as they are under 16 years of age. However, as far as possible, you will be expected to take into account the views of your child in decisions affecting them, particularly about how intimate care needs are met.

When a young person reaches 16 years they can choose if they want to take control of part or all of their direct payments. Alternatively their parent can continue to receive direct payments on their behalf. If there is a disagreement between a 16/17 year old and their parent about who should manage the direct payments, guidance makes clear that the local authority is obliged to make the direct payments to the young person. This must be done – as long as the local authority provide advice on how to choose a suitable provider.

When a young person reaches 18 years

Once your son or daughter turns 18, direct payments will normally be made to them rather than you. You can only carry on receiving direct payments on their behalf if they lack the mental capacity to 'consent' to direct payments. This does not mean that they have to be able to manage direct payments independently. Someone can still be treated as being able to consent to direct payments, even though they may need help to manage them. However, they must have ability to at least make choices about how their care needs are met.

If your son or daughter lacks the mental capacity to consent to direct payments, you can ask the local authority to appoint you to manage direct payments on their behalf as a 'suitable person'.

7) Should I use a service provider (such as the Deafness Resource Centre) or employ a PA?

Deciding whether to use a service provider or employ a PA is not always clear-cut and there are a number of issues you will have to weigh up.

Using a service provider

- You will have no responsibility for employment issues as staff will be employees of the service provider.
- You may have less say in who works with your child.
- It may be more expensive than employing someone directly.

Employing a personal assistant

- You will have all the responsibilities of an employer. Paying tax, national insurance etc.
- You will have more control over who provides care to your child and how this care is provided.
- You may be able to employ someone who knows your child already.

It is possible to use a service provider to meet some of your child's needs and to employ a PA to meet the rest.

8) Using your direct payments to buy care from a service provider

There are many organisations providing care services including the Deafness Resource Centre who provide activities and care for D/deaf children.

You might also want to ask your social services department for a list of 'approved' service providers it does business with itself. You should also be able to get lists of registered and approved childcare providers in your area from your local authority.

Care providers are registered and inspected by either OFSTED or the Care Quality Commission in England (see 'Useful contacts' for more details). Many types of care provider need to be registered. Whether this is a requirement depends on the type of care provided and where it takes place. Contact your local direct payments support service for more advice.

If you use a service provider, they will be responsible for employing; managing and paying the care workers they send to support your child. You will become their 'customer' paying them for the care services supplied.

Before talking to service providers, it is a good idea to have a clear idea of what type of service you are looking for. Your care plan should make clear the types of help needed but think about whether there are particular ways you would like these tasks carried out.

Useful questions to ask service providers

Some of the following questions may be useful:

- Can they provide the type of care your child needs in the way that you want?
- What are the costs of the service?
- Does this price cover everything or are there extra costs (for example travelling expenses, VAT)?
- Do you have to buy a minimum amount of care?
- Do you have any choice over the worker(s) who cares for your child?
- Will the same care staff work with your child?
- Can the service provider be contacted at all times when a service is being provided?
- Is there an out of hour's emergency service? Does this cost more?
- Is the provider registered?
- Does it have full professional and employers liability insurance?
- How does it recruit its staff?
- What training is given?
- What police checks are undertaken?
- What is the complaints procedure in the event you are unhappy with the service?

Your child's views

It is a good idea to involve your child as far as possible in the decision about which services are used to meet their care needs. Depending on your child's age and understanding, they could either accompany you on visits to the various service providers, or perhaps visit your first and second choices. As far as possible, you should try and get your child's opinions of (or gauge their reaction to) the adults who will be supporting them.

Agreeing a contract with the service provider

Once you have identified a service provider that you want to use, you will need to agree with them a written contract setting out:

- the service to be provided, for example the number of hours required and where and when this is to be provided
- the terms and conditions for receiving the service, including the costs and how and when these are to be paid
- arrangements for changing the agreement
- Arrangements for terminating the agreement.

9) Using your direct payments to employ a personal assistant (PA)

If you decide to employ a PA yourself, you will be responsible for recruiting and for managing them once they start working for you. This means that you will have all the responsibilities of that person's employer – doing DBS checks, paying tax & NI. Will be responsible for deducting tax and NI and passing this onto Her Majesty's Revenue and Customs (the Revenue).

If this all seems very daunting, you can get expert advice about every step of recruiting and employing someone from a local direct payments support scheme and HMRC

When you take on your first PA, you must contact the Revenue's New Employers Helpline to let them know (see 'Useful contacts'). They will send you information, which includes a link to their *New Employer – Getting Started* guide. They will also arrange for a 'pay as you earn' (PAYE) scheme to be set up so that you

10) Using direct payments to buy equipment

If your child's assessment identifies a need for equipment or temporary adaptations to your home, you should have the option of buying this with direct payments. When deciding how much money is needed, the local authority should bear in mind the expertise needed to ensure the equipment is safe and appropriate, and whether extra funds are needed to provide training in its use.

Please note that equipment that has been designed for disabled people or adapted for their use may be exempt from VAT. For further details on VAT exemption see the Revenue's website at www.hmrc.gov.uk/vat/sectors/consumers/disabled.htm

Costs of maintaining equipment

You will need to be clear whether ownership of the equipment will lie with you or the local authority. If you own the equipment, then you will also be responsible for its service and repair, costs that should be included in the direct payments. Alternatively, the local authority should arrange for the maintenance of the equipment.

Choosing more expensive equipment

You can top up your direct payments in order to buy a more expensive piece of equipment, so long as it still meets your child's needs.

Funding permanent adaptations

Please note that direct payments can only fund equipment and temporary adaptations that would be otherwise provided by social services. They don't fund permanent adaptations to your property.

11) Using direct payments to buy short term breaks

Direct payments can be used to buy short-term breaks. This can include a child going into a residential unit, or more flexible breaks, like a child going to stay with a care worker, or a PA accompanying a child on holiday. The maximum amount of residential care that you can buy for a child using direct payments is a single period of four weeks, and 120 days in any 12-month period.

12) What to do if you start receiving direct payments

Keeping a record of how your direct payments have been spent before direct payments start, social services are likely to ask you to sign an agreement stating that you will only use the money provided to meet your child's assessed needs. After this you are likely to be asked to give them information about how you have spent your direct payments. This means you will be expected to keep receipts for anything you use the direct payments for.

The local authority will tell you what other records you need to keep and what information you will be expected to provide.

Using a bank account to administer the payments

You will need a separate bank or building society account to keep track of how your direct payments have been spent. You can use this account to deposit the direct payments you receive and to pay your PA or service provider.

Keeping social services informed

If the local authority is unhappy about how you have spent your direct payments, for instance, if it wasn't used to meet the needs they agreed to, they can ask for the money to be repaid. Given this, you should make sure you always

let your social worker know if you intend to make any changes to the services you buy. The direct payments agreement may allow for some small changes to be made without notifying them. However, substantial changes should always be discussed with your social worker first.

Dealing with emergencies

There may be times when the care arrangements funded by your direct payments break down, for example, because your PA is ill. When you first set up your direct payments, you should speak to social work about what will happen if you need emergency cover. For example, you may be able to arrange for cover with an agency.

If your emergency plan does not work for any reason, social services should step in and provide care during any period when your normal services are unavailable.

Reviewing your direct payments

The local authority is still responsible for reviewing the services purchased with the direct payments. This is to check that needs in the care plan are still being met and that the quality of the service is adequate. The local authority should arrange for regular reviews to take place but you can request a review if circumstances change suddenly. Following a review, the amount of direct payments may need to be increased or reduced.

Who can I complain to if I am not happy with the service I receive via direct payments?

If you are buying care from a service provider and you are unhappy with the service being provided, then you should raise this with them directly. You should have a written agreement with the provider setting out what they are supposed to do. A local support service may be able to help in this process by advocating on your behalf. Alternatively, you may be able to complain to the agency responsible for registering that provider. Ultimately, if you are not happy with the provider, you can stop the service and use another. It is a good idea to keep the local authority informed, because if you struggle to find an alternative service, they may need to step in temporarily to make alternative arrangements.

If you are not happy with the services provided by a PA, then you will have to discuss the matter with them as soon as possible, preferably before the initial probationary period ends. As an employer you will need to follow the correct procedures when disciplining staff – you cannot just automatically dismiss staff if you are not happy. Failure to follow the correct disciplinary procedures could result in an employment tribunal, so always seek advice from your local direct payments support scheme.

What if I decide that direct payments are not right for me?

If you decide you no longer wish to use direct payments, the local authority should arrange the support your child needs instead. However, you will need to take into account any commitments you have made to the existing service provider/PA, for example, you will probably need to give a specific amount of notice.

13) Useful contacts

Department of Health : Web: www.hpft.nhs.uk

Provides detailed guidance on the use of direct payments in England.

Her Majesty's Revenue and Customs New Employers Helpline: Provides advice on a whole range of issues related to becoming an employer, but particularly in relation to pay, national insurance and leave

Tel: 0300 200 3211

Textphone: 0300 200 3212

Web: <http://www.hmrc.gov.uk> .

OFSTED: Regulates and inspects providers of childcare in England including child-minders, nurseries and after-school care.

Tel: 0300 123 1231

Typetalk: 18001 0300 123 1231 Web: <http://www.ofsted.gov.uk>

ACAS Advice and information on employment law and good practice for employers.

Tel: 0300 123 1100

Typetalk: 18001 0300 123 1100 Web: <http://www.acas.org.uk>

DEAFNESS RESOURCE CENTRE: Support for you and your family on all issues relating to Childhood Deafness

Tel: 01744 23887 (voice or text)

Email: enquiries@deafnessresourcecentre.org

Web: <http://www.deafnessresourcecentre.org>