

Direct Payments guidance

Information sheet C3

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About this guidance

This guidance gives you detailed information about how Direct Payments work. We recommend that you talk with your social care worker and also our Direct Payment advisory service (see section 6).

You should also read our '**Direct Payment policy**', which explains who can have a Direct Payment.

You may be a parent/guardian/carer for someone. Although our style of writing is directed towards the service user, this information is for you as well.

Direct Payments for children and young people under the age of 18

This guidance is for everyone who is thinking about having, or who already receives, a Direct Payment. If you are a younger person, under the age of 18, the charging rules do not apply and you will not be financially assessed or make a contribution towards your care and support.

Section 1 – Personal budgets

If you are eligible for our financial support we will work out what it would normally cost to meet your care needs as if we were making the arrangements, to achieve the things in your care and support plan. This is called a personal budget. We will also work out how much, if anything, you will have to contribute.

We recommend you read our information sheets

- **C5: Help with paying for care and support** (which explains how we work out if you eligible for social care funding)
- **C6: How your personal budget is worked out** (which explains how we work out how much you will contribute, if anything, towards your personal budget).

You can decide to have the money as a Direct Payment or ask us to make your care and support arrangements for you. Your contribution will be the same whichever option you decide on.

We will normally review your care and support needs at least once a year. We will contact you to arrange a convenient date. If you have been achieving the things in your support plan and your needs have

changed following the review, we will agree a new care and support plan with you, and the value of the Direct Payment may change.

If you have been struggling to achieve the things in your care and support plan we may look at other ways to support you, for example assistive technology, and also increasing your Direct Payment, depending on what is agreed (changed) in your care and support plan.

If you refuse to take part in a review, we reserve the right to cancel your Direct Payment, and will make other arrangements to meet your care and support needs.

Section 2 - Bank account

You will need to open a separate bank account, which provides monthly statements. This account can only be used for your Direct Payment. Access to this account will be restricted to you and/or the person (or people) managing the account for you.

When the account is set up:

- You must pay your own weekly contribution into this account (It is recommended you set up a standing order from your personal bank account for this). If you don't, you will not have enough money to pay for your care and support (see section 16).
- We will transfer our contribution into this account four weeks in advance or monthly in advance for people under 18 years old.
- All payments to meet your care and support plan must be paid out of this account.
- You must keep enough money in the account to pay all bills and invoices for your care and support.
- You must keep your bank card and PIN number safe and not share them with anyone. This includes your carer, personal assistant or family members. It is your responsibility to keep your care money safe.

Some things to know:

- You may make payments by cheque, BACS, standing order or Direct Debit.
- If you use a debit card, you should make sure you get receipts for all transactions.

- You should not make cash withdrawals from your account because it is difficult to show what it has been spent on.

Section 14 gives more information about the records you will need to keep.

Some people may need help with setting up bank accounts and managing their money, or, if for some reason you are unable to have a bank account, our Direct Payments Advisory Service will be able to help (please see section 6).

Section 3 - Start-up costs

It is important you have appropriate insurance to cover yourself if you employ someone (see section 9). By taking out employer liability insurance you should be covered for:

- Liability - to cover any legal costs and compensation if someone you employ has an accident while working for you.
- Public Liability - to cover you against damages or injury caused to someone else by you or your personal assistant while they are working for you.

Sometimes your existing house insurance may already cover these sorts of things. You will need to contact your insurance company to check your level of cover and ask them to add it if required.

Your Direct Payments Advisor will be able to advise you about this (see section 6).

At the start of a new Direct Payment, you may have a 'start-up grant' of up to £200 as a one-off payment if you have any additional costs of advertising for staff, liability insurance, interview expenses and other recruitment costs.

You **must not** make any purchases until monies are available in your Direct Payment account. We will not back-date payments. If you decide to make any payments before monies are made available in your account this is at your own risk and expense.

Section 4 - What can Direct Payments be used for?

The Direct Payment can only be used to achieve what was agreed in your care and support plan. This could be care from a care agency, paying for a personal assistant, support to use daytime activities or short breaks, or anything else relevant to meeting your agreed care and support needs.

Section 5 - Is there anything Direct Payments cannot be used for?

There is a significant amount of flexibility on what your Direct Payment can be spent on, but it must only be used to pay for things that have been agreed as part of your care and support plan.

Direct Payments cannot be used for the following things:

- Anything that is against the law
- On-going residential or nursing care (respite care is allowed)
- Gambling
- Repaying debts (including mortgages, fuel arrears, loans)
- Financial investments
- Household bills, for example, rent, gas, electricity, water.
- Day to day food bills, cigarettes and alcohol
- Buying personal care from an unregistered care agency
- Payments to close relatives living in the same household (unless there are agreed very exceptional circumstances which must be agreed by us – see section 10)
- Health care needs, which would be paid for by the National Health Service

Before buying any specialist equipment first consider if it is available from the Integrated Community Equipment and Home Improvement Agency – MyHome MyLife – This can normally be provided free of charge if you have been assessed by an Occupational Therapist as needing the equipment. Please see

www.somersetmyhomemylife.co.uk or ask your Social Worker.

Section 6 - Direct Payment Advisory Service

An independent advisory service is available to support people who have Direct Payments. Everyone new to the scheme should meet, or talk with one of their experienced advisors. They can:

- Visit you at home to explain the help they can provide
- Discuss your responsibilities as a Direct Payment user
- Help you to set up a Direct Payment bank account
- Help you recruit and employ staff
- Help you to set up a system for dealing with tax and National Insurance for someone you employ
- Offer a payroll service if needed
- Help and explain how to keep financial records to show what you have spent
- Be at the end of a phone if you need advice

Section 7 - Your choices

You can use your Direct Payment to employ someone, a personal assistant, yourself (see section 8). This could be a friend, neighbour or sometimes, by agreement with us, a member of your family, as long as they do not live in your home. Or you could advertise to recruit someone. You may decide to pay for a carer from a Care Agency (see section 9). Some people use some of their Direct Payment to employ a carer and buy the rest of their support from an agency.

We expect people who receive a Direct Payment to get value for money. Most people are good at making sure they get the best deals to meet their care needs. However, the best deal shouldn't compromise quality. If we feel that you could get care and support of the same quality for a better value, we will tell you. Also, if we feel the quality of care you are receiving could be better, we will let you know and suggest how you can make changes.

Although we do not monitor the quality of care and services bought using Direct Payments, we have a responsibility to investigate all allegations of abuse of vulnerable adults. Abuse can be lots of things, including physical, sexual, financial or emotional abuse (such as bullying), neglect or harassment. You can speak to your social worker or phone Somerset Direct on 0300 123 2224 if you are in any way concerned about abuse.

If your concern is about poor service quality but abuse is not taking place, we may not be able to intervene directly with the personal

assistant or care provider, but we may be able to suggest other services or arrange different care for you.

If you choose to buy more expensive care than the Direct Payment can cover, then you must either make savings in another part of your budget, or pay the difference from your own money.

Section 8 – Employment agencies and personal assistants

Some companies link people who need personal or nursing care with people who can provide it, without managing or directing the people providing the care. When they do this they are acting as an employment agency. If these agencies are not managing or directing the people providing the care in any way, they do not need to register with the Care Quality Commission (CQC). See section 9. If you choose to use an employment agency you must pay their fees from your own money. Your Direct Payment is only to cover your care and support costs.

We can't tell you how reputable agencies like this are, and if a carer or nurse has been provided by the company this is no guarantee that the person provided is suitable to do the work. Independent advisors offer detailed advice about recruitment, but some things you could do include:

- Having a formal interview.
- Asking for two references, if possible, from people who have recently used services provided by the person. Always ask what the relationship of the referee is with the person, and try to talk to the referee as well as seeing something in writing.
- Checking to see that the person is not barred from working with children or with vulnerable adults. You will need to ask your social care worker to do this for you.

What is a personal assistant?

A personal assistant is a person you choose to employ to help meet your assessed care needs. This could be a person you already know, such as a friend or neighbour, but it cannot be your husband, wife or partner, or someone who lives with you (see section 10). Or, you can choose to recruit somebody else. You can do this with the help of your independent advisor or you can choose to use a recruitment

agency. Service users and carers have told us that they like using personal assistants because they can choose who cares for them, they like the consistency of knowing who will be there each day, and they feel personal assistants are more flexible.

We advise you not to ask your personal assistant to help you to manage your Direct Payment, but to ask someone who is completely independent.

Types of personal assistant

There are two types of personal assistant – self-employed and employed.

Self-employed

The regulations about self-employment are complex, and only Her Majesty's Revenue and Customs (HMRC) can decide on someone's employment status. If a personal assistant describes themselves as 'self-employed', you should first check their employment status with HMRC by phoning 0300 123 2326. Your independent advisor can help you with this.

If the person only works for you, and no one else, HMRC will **not** class them as self-employed

If it is agreed they are self-employed, they will:

- Be able to provide you with references
- Pay their own tax, national insurance and pension contributions
- Decide what work they do and may make arrangements to send someone else to cover for them
- Provide their own equipment
- Invoice you for their services
- Have their own business insurance
- Have their own terms and conditions of business
- Provide a contract for you to sign

Employed

If you employ a personal assistant, you have to provide a contract of employment and take on the employer responsibilities for that person. This means that you must register with HMRC as an employer, follow employment law, take out employer liability insurance, and pay

income tax and national insurance contributions according to the rules set by HMRC.

It is your responsibility to make sure that you know about and can meet your responsibilities as an employer. Your independent advisor can help you with this. You can also find more information here www.gov.uk/browse/employing-people.

You will also have to make arrangements to cover holiday, sickness, maternity and other eventualities, or if you want to change your personal assistant. Your independent advisor can help you with this.

Together, we and your independent advisor will make sure that you are given appropriate information and advice, but it is you (or the person managing the budget on your behalf) who is responsible for complying with employment and tax law.

What can my personal assistant(s) do?

You must write a job description that sets out what, when and how your personal assistant will do the things agreed in your care and support plan. You must agree this with your personal assistant and write this into your contract with them. We also recommend you think about any training needs that may help them, or suggest they undertake, to make sure they are safe to work in your home. Your independent advisor can help you with this.

Money

You must agree how much and when you will pay your personal assistant before they start work. We advise that you pay them using a cheque or by BACS, and not by cash. You must pay at least the National Minimum wage for people under 25 or the National Living Wage for people 25 and over. You are responsible, by deducting it from their pay, for paying their income tax and National Insurance contributions to HMRC.

Making changes

If your needs change, please ask us for another care and support assessment. Then, ask your personal assistant if they can continue to meet your needs. If they cannot you should talk with your independent advisor about your options.

It can be difficult to change personal assistants for other reasons, so we recommend that you always use a trial period to make sure that the personal assistant you employ is suitable. The trial period should be written into their contract of employment. Your independent advisor can help you with this.

Contingency plans

As part of your care planning you will need to consider how your care and support will be met if your personal assistant is unable to help for some reason, for example, if they are sick. This could be provided free from a family member, friend or neighbour on a short-term basis, or, as part of your budgeting, you need to hold some of your Direct Payment to pay for an agency worker on a temporary basis.

Disclosure and Barring Service

Personal assistants are not regulated in the same way as agency care workers, so, if you plan to employ someone and you don't know them, we can arrange, and pay for, a Disclosure and Barring check. Please contact your social care worker to request this.

Section 9 - Buying care from a care agency

Care Agencies are businesses that employ staff who have had a Disclosure and Barring Service (DBS) check and are trained to provide care and support to people living in their own homes.

Your independent advisor can give you contact information for care agencies in Somerset, or you can look on this website:

www.carechoices.co.uk/region/Somerset.

If you decide to buy care from a care agency to provide you with personal care (personal care means helping or prompting a person with eating, toileting, washing and bathing, dressing, oral care or care of skin, hair or nails) they must be registered with the Care Quality Commission (CQC). Care agencies that provide personal care for children must be additionally registered to do this. You can find out if they are registered and how the independent regulators rate them by looking on the CQC website: www.cqc.org.uk, by phoning them on 03000 616161 or by using their on-line 'contact us' form available on their website.

Quality can never be guaranteed, but registration means that the service is inspected regularly, often without an appointment, and that the company has the arrangements in place that we would expect to see in a good quality service. It also means that they have processes to check that staff are suitable when they are recruited, that they have training and supervision, and that there are health and safety, safeguarding and complaints policies.

A company that does not comply with the standards laid down by CQC may have its registration withdrawn and must stop providing personal care.

You should ask the agency what their charges include, because some agencies may charge more, or make additional charges for things like working on bank holidays. You may be able to negotiate a price with the agency or you can make up the extra costs from your personal account. If this is not possible, you should choose another agency. Most agencies send you a bill at the end of the month, but if this is not convenient you can discuss it with them.

With the Care Agency you have chosen, you should discuss how they can match a suitable care worker to meet all your requirements, and then decide what, when and how your care worker will do the things in your care and support plan. This must be worked out and agreed with the agency and written in your plan. This makes it clear to everyone what your preferences and needs are.

If the care worker that the agency sends cannot visit you, they must make sure that someone else comes in their place. If you are unhappy with your care worker, for any reason, you must tell the agency.

Your care provider should have a complaints process, and if they are a good quality provider they will want to hear if things are not as they should be and do something to put them right. The first thing you should do is speak to them.

If you are not confident enough to do this yourself an advocate should be able to help you. (See our information sheet **A2: Getting independent advice and support.**)

Companies and agencies that do not provide personal or nursing care

Some companies and organisations provide services to older people, and to adults with physical or learning disabilities which are not classified as personal care. For example, daytime activities, day care, services preparing people for employment and services that help people to take part in everyday activities.

These organisations do not need to register with CQC. If we know that the standard of care offered by one of these organisations is completely unsatisfactory (for example, if it is dangerous, abusive or neglectful), we will not allow you to use your Direct Payment to buy services from that organisation. But, it is important to remember that in most cases neither CQC nor the Council will be monitoring the quality of care that you or the person you care for receive, and we will not know how good or poor the care is.

So, you will need to do things yourself to make sure that the organisation is suitable, and the care it offers is of good quality. Here are some of the steps that you should take.

- Find out what other people who have used the service think, and why they might have stopped using it.
- Find out how the organisation works and who runs it. Does the organisation have a constitution or a statement of purpose, or some other statement of what it is for and how it is run?
- Find out if the organisation responds to the people who use it. Does it have any consultation groups or relatives' groups?
- Are there arrangements for making sure that its services actually benefit the people who use them, such as care plans and reviews, and do they review care plans?
- Ask how staff are recruited and trained; do they have a recruitment process? How do they make sure staff are suitable?
- Ask to see copies of their policies (you should at least expect to see copies of health and safety policies, complaints and safeguarding)

Making changes

If you want to change or cancel your arrangements you will need to give a period of notice. Let the care agency know as soon as possible so that you can agree what will happen. If you don't, they will probably still charge you.

Section 10 - Employing relatives

The Care Act 2014 prevents people using Direct Payments to pay for services from their partner (married or unmarried) or a close relative living in the same household. A close relative can be a parent, parent-in-law, aunt or uncle, grandparent, son, daughter, son-in-law, daughter-in-law, stepson or daughter, brother, sister, or the spouse or partner of any of these. Direct Payments cannot be used to pay for a service from someone else living in the same household if the relationship is personal rather than contractual.

The law allows Direct Payment users to pay for care from relatives who live outside the household. There is a risk of exploitation or fraud when relatives are employed and it can fundamentally change the personal relationship. If you are considering this option, please talk with us first, so that we can outline the risks involved.

Very rarely a close relative living with the Direct Payment user may be considered to provide the paid care. There must be a very clear exceptional reason for seeking this arrangement and it must be agreed by us.

Section 11 - Day activities, short breaks and support for unpaid carers

We recognise that many unpaid carers need time to themselves – opportunities to take a break or even to get away. For that reason, many people who receive Direct Payments have money allocated so that they can buy in sitting services or short breaks for their unpaid carer to confidently enjoy some free time. This means that the unpaid carer can have a break before continue in their caring role.

You can use your Direct Payment to fund short breaks and day activities, providing they have been agreed as part of your care and support plan.

An unpaid carer may have a Direct Payment in their own right, to meet their own assessed health and well-being needs, as long as the money is not used to buy services for the person they care for. An example of this could be a Direct Payment used to buy domestic care where the unpaid carer's time is taken by providing personal care.

Day activities

We work out the cost of day activities based on what you need each week, and add the amount to your Direct Payment.

Short breaks

Usually the number of short breaks you need will be agreed with you during your needs assessment or with the assessment of your carer. The cost of paying for these breaks, less your contribution, will be added to your Direct Payment.

If you normally have care from a care agency, you must remember to cancel it on the days you don't need it. Your Direct Payment will be adjusted to take this into account.

Common examples of where a Direct Payment has benefited an unpaid carer are:

- Paying a personal assistant to take the Direct Payment user to a venue or place of interest, allowing the unpaid carer to have a break.
- Paying a friend or neighbour to come and sit with the Direct Payment user to allow the unpaid carer to go out. In some circumstances it might be an extended family member doing the sitting role.

Remember: any payments like these examples must be declared and are taxable.

Where the unpaid carer undertakes a significant amount of personal care for the Direct Payment user, we may provide financial help for the unpaid carer to buy domestic care to support them.

To create a longer period of respite for the unpaid carer, Direct Payments may be provided so that the Direct Payment user can go away. This does not necessarily need to be to a care home, but could be to a setting where care is available. For example, staying with a

friend or relative and using the Direct Payment money to buy in care locally.

Couples have often complained that conventional respite care forces them to part for the duration of that care. A Direct Payment could be used to buy support to allow both the Direct Payment user and unpaid carer to go away together, but have care coming in to relieve the unpaid carer of their usual duties.

Section 12 - Managed Direct Payment accounts

If you would like to have a Direct Payment but you feel that you would not be able to manage your Direct Payment account and there is no one who can manage it on your behalf, we may consider asking an independent advisor to manage it for you. This will allow you to continue to have the flexibility and choice to meet your care and support needs. There is an additional cost for this service, which we will add to your Direct Payment if it is agreed.

Section 13 - One-off Direct Payments

Sometimes people would like a one-off Direct Payment to pay for a one-off need, for example a short break. We can arrange this.

Section 14 - How we will monitor what is spent

People who receive Direct Payments do so because they have been assessed as needing care and support. Unless we have evidence to the contrary we will assume Direct Payments are being used in the way they were intended, so:

- We will not impose restrictions (other than those in section 5) on how you use your Direct Payment.
- We will monitor that your needs are being met and that you are achieving the things in your care and support plan, rather than the details of what the Direct Payment is being spent on.
- We will take early steps to identify the few recipients who are unable or unwilling to use Direct Payments responsibly. By doing this we will not need to impose additional and unnecessary administrative requirements on the majority of recipients.
- It is your responsibility to make sure you spend your Direct Payment appropriately and lawfully.

You must:

- Keep all bank statements for the Direct Payment account
- Maintain a simple ledger that is easy to read and understand (unless advised otherwise)
- Keep all receipts and invoices to show what you have spent
- Maintain timesheets and payslips (if you employ someone)
- Keep a record of the things you achieve from your care and support plan (This will help with your care review)

These records must be kept for up to seven years (this is an HMRC requirement).

Checks

For new arrangements we will ask to see all bank statements, invoices (if applicable) and ledgers after the first three months. This is so that we can make sure that you are managing the Direct Payment and that the money is being spent to meet what was agreed in your care and support plan. Your independent advisor can support you to complete this return and will arrange a date with you.

If we are satisfied that you are managing the account well and that you are still willing and able to continue with a Direct Payment, we will agree with you when we will check your accounts next. This could be after twelve months.

We will also randomly sample a small number of people who receive a Direct Payment to carry out more intensive checks, and may ask to see all your records when we do this.

If there are problems

If we discover that there are problems with your Direct Payment, a social care worker, with support from an independent advisor, and our Direct Payments team will look into it with you.

Options could be:

- Re-assessing your needs and changing the Direct Payment value, as a result of increased or decreased needs
- Helping with the administration and management of the account
- Stopping the Direct Payment and changing to a managed account (see below)

If we find that you have spent money on things that haven't been agreed in your care and support plan, or money has been spent illegally, we will ask that you repay some (or all) of the Direct Payment. We may decide that you cannot, even with support, manage a Direct Payment. If this is the case you will still receive the care and support that you have been assessed as needing, but we will arrange it for you.

Section 15 - Unspent money / Accrued Excess

Sometimes you may build up surplus money in your account.

This 'accrued excess' money should be used to cover employment liabilities, such as cover for annual leave, or sickness. You may use some to pay for additional care and support, providing it is to achieve what has been agreed in your plan.

You should hold no more than eight weeks' worth of the Direct Payment amount surplus in your account, unless there are plans agreed with us to use it. If you go over this level, please let us know. If you are achieving what has been agreed in your care and support plan, we will adjust the amount of the Direct Payment accordingly, and arrange for you to repay the surplus to us.

If it is found that your care and support needs are not being met, we may consider talking to you about options to meet those needs and amend or cancel your Direct Payment.

Section 16 - Overdrawn accounts and debts

We will pay the Direct Payment into your account every four weeks (monthly for people under 18 years old), in advance, to make sure there is enough money to pay all bills. It is your responsibility to make sure the account does not go overdrawn.

If you spend more than the agreed value of the Direct Payment you will be responsible for paying any additional costs as well as your own contribution.

If the Direct Payment goes overdrawn, incurring bank charges, you will be responsible for paying them from your personal account.

If you feel that your care needs have increased, contact us to arrange a review. After the review we can adjust the Direct Payment to reflect any changes.

If, after the review, we decide that your care needs have not changed, you will need to find ways of meeting your care needs within the allocated Direct Payment. We can help you with this if you wish, or you can pay the difference from your personal account.

If the account continues to be overdrawn we will stop the Direct Payment.

Debts

We hope that this will not happen, and that the support provided by your independent advisor will help you to avoid such a situation.

However, if your Direct Payment account becomes overdrawn, you must tell us. We will then discuss options with you, and if needed, can agree a suitable repayment plan.

Any debts owed to us without a settlement plan will be referred to our legal department for recovery.

If you owe money to another organisation, the debt is your responsibility.

Section 17 - Temporary care and support arrangements

If you have temporary alternative ways of meeting care needs that mean you don't have to use the Direct Payment, please let us know so that we can adjust the payment. We will need to know if you are away from home or admitted to hospital for more than four weeks.

Section 18 - Hospital discharges

If you are admitted to hospital and need additional care and support to go home, sometimes your existing Direct Payment arrangements cannot easily or quickly support this change. To prevent you from being in hospital for any longer than you need, we may need to make temporary care arrangements on your behalf until you can make your own longer-term arrangements using your Direct Payment.

A reablement service may be able to support you for a short time. This service is designed to help you get back to doing the things you could do before you went into hospital.

This may mean that no longer-term changes to your Direct Payment will be needed.

Section 19 - Direct Payment agreement

People who wish to have a Direct Payment will need to sign a 'Direct Payment agreement'. The agreement tells us that you have read and understood the guidance about how to use a Direct Payment and that you will agree to its terms.

It also shows that we have given you the information you need to make decisions and choices, that support has been offered by us and your independent advisor, and that we believe you will be able to manage a Direct Payment to make your own care and support arrangements.

Ending the agreement

If you decide that you no longer want to have Direct Payments, please contact us and we can arrange support for you again.

When the agreement has finished and all outstanding bills have been settled, you must make sure any money held in the account is repaid to us. This includes your assessed contribution.

If we believe there is misuse of the Direct Payment or you are not following the policy we will immediately suspend your Direct Payment. We have the right to recover payments that have not been spent appropriately.

Section 20 - Your opportunity to feedback

We welcome your comments about the services you receive. If you would like to tell us what you think, please either:

Contact us by going to our website, www.somerset.gov.uk, or

- Speak to your social care worker.
- Phone Somerset Direct on 0300 123 2224, or
- Contact the Adults and Health Customer Experience Officer

Floor B2 East

County Hall

Taunton

TA1 4DY

Email: customerexperience@somerset.gov.uk

This document is also available on request in Braille, larger print, tape, disc and can be translated into different languages.

Where can I go to choose my own care and support?

Go to www.somersetchoices.org.uk



SOMERSETChoices