

FREQUENTLY ASKED QUESTIONS ON DIRECT PAYMENTS

Q. What are direct payments?

A Direct payments are cash payments made in lieu of social service provisions, to individuals who have been assessed as needing services. The Government recognises that most people prefer to live independently in their own homes and direct payments are a good way to help support them to do so. The aim of a direct payment is to give more flexibility in how services are provided to many individuals who are assessed eligible for social services support. By giving individuals money in lieu of social care services people have greater choice and control over their lives, and are able to make their own decisions about how their care is delivered.

Q. Who can receive direct payments?

A They can be made to any older or disabled person age 16 or over, to people with parental responsibility for disabled children, and to carers aged 16 or over in respect of carer services.

Direct payments can be made available to everyone eligible. Councils should not have blanket policies excluding, for example, people who need 24 hour care, or from particular client groups such as older people etc.

Q. Once an individual has been assessed as needing support, how long does he/she then have to decide whether to receive a direct payment?

A There is no mandatory time limit set for individuals to decide. People can change their minds at any time to opt in or out of receiving direct payments. All people receiving a service or direct payment should have regular reviews. The possibility of a direct payment should be discussed at every review, but can also be discussed in the intervening periods. It is vital that individuals are fully informed of all of the responsibilities and duties (paperwork, employment rules etc) that are associated with receiving a direct payment. This should not be done however in order to try and put people off receiving a direct payment. All councils should ensure adequate support is available to individuals so they are able to address any concerns they may have.

Q. If they do take up the offer, how is the money given to them - through a bank account? As a cheque? What help is provided to help the person make the decision and then to manage the cash?

A Chartered Institute of Public Finance and Accountancy (CIPFA) guidance (endorsed by the Department) recommends that a separate bank account is set-up in order to manage the direct payment money. This way it is easy for both the individual and the council to monitor any debits and credits. It is for each local council to establish a monitoring system and this can vary from council to council.

Individuals can have one single bank account for direct payment and Independent Living Fund money. For a short-term need or a one off direct payment, opening a bank account should not be necessary. One of the common roles of a support service is in assisting individuals in completing their monitoring returns.

For people who are not able to manage their direct payment alone, they have two options available to them. They can appoint an “agent” who will receive and manage the direct payment on their behalf. Secondly, if it is not possible to find someone suitable to take the role of the agent, they can create a “trust” that would involve 3-4 people who would become trustees and share the responsibility (often used with people with a learning disability).

Q Can you receive both direct payments and Independent Living Fund (ILF) money?

A Yes, if you meet the eligibility criteria for the ILF and have had an assessment to receive direct payments from your social services. For more information on the ILF please see: www.ilf.org.uk or call 0845 6018815.

Q. How does the council monitor whether the direct payment is being used for the right purpose?

A Again, each council is responsible for making suitable arrangements. CIPFA has produced a booklet that contains more detailed information about the financial arrangements that local councils should adhere to as well as processing repayment of the money if there are discrepancies in respect of direct payments. More information can be obtained from their website www.cipfa.org.uk.

Some councils monitor very closely (say once per month) at the beginning and then extend the periods between checks, as the person becomes more familiar with managing the payment. Others continue to monitor closely. In addition staff working with the individual or indeed families can express concerns either within or outside the review process. People’s needs do vary and change, direct payments can be a much more flexible way of responding to this than traditional services.

Q. How will direct payments fit with the benefits system?

A: Direct payments are not taken into account for the purpose of assessing income or social security benefits and are not liable to income tax.

Q. Is it possible to employ a relative with a direct payment?

A Direct payments cannot be used routinely by individuals to pay spouses, or close relatives who live in the same household. The Regulations were changed in April 2003 to give local councils some discretion in this matter. They can allow payments to be made in this way, but only where they are satisfied that securing the service from such a person is necessary to meet satisfactorily that individual’s need for that service.

Regulations have never specified that close relatives living outside the household could not be paid using a direct payment and there is no legal restriction on individuals using their direct payment in this way. Councils are

however able to make conditions about who can be employed in individual circumstances. There may be legitimate reasons for doing so but a decision should be taken according to the merits of each individual case.

Q. Many people are excluded from taking up direct payments because of their lack of capacity. Are you planning to change the rules to allow them to have a direct payment?

A: The Government is currently exploring ways to extend direct payments to those currently excluded, by using an agent for those without capacity to consent, or unable to manage even with assistance. In the meantime, we want councils to involve the individual as much as possible in the decision making process and to support them wherever possible to make decisions for themselves.

We envisage extending the availability of direct payments will benefit:

- young disabled people whose parents have managed a direct payment on their behalf and whose payments may have to stop when they reach the age of 18;
- people with dementia where the use of direct payments is not set out in a power of attorney agreement;
- people with more profound learning disabilities

There will need to be legislative changes to enable this to happen and this will depend on Parliamentary time. We are currently seeking to identify a suitable legislative vehicle which will enable us to make the necessary changes. Following this, and subject to Parliament we will issue revised Regulations and Guidance on the operation of direct payments following any extension and these would take account of the interface with the Mental Capacity Act 2005.

Q. Can direct payments be means tested?

A No. In considering whether, individuals are asked to make a financial contribution to the cost of their care package, local councils should treat people who receive direct payments as they would treat them under the local councils' charging policy as if they were receiving the equivalent service. Refer to Fairer Charging for Home Care and other non-residential Social Services guidance, if necessary
<http://www.doh.gov.uk/scg/homecarecharges/lac200132.pdf>.

Q. Can direct payments be made for residential care?

A Direct payments cannot be used to buy long term residential care. However, they can be used by recipients to purchase for themselves short stays in care homes, but this cannot exceed more than four weeks in any twelve-month period.

Q. Can direct payments be made to 16 and 17 year olds?

A Yes, 16 and 17 year olds can receive direct payments, it is important that due regard is given to safeguarding and promoting their welfare. Where this is not the case, parents may continue to receive a direct payment on the young person's behalf until they are 18. To ease the transition, the young person may take on part of a direct payment, with a parent managing the rest.

Q. Can a person under Section 117 of the Mental Health Act receive a direct payment?

A Yes, direct payments can be made to people who are assessed as requiring services under Section 117 of the Mental Health Act.

Q. Can direct payments can be used to buy services from your local council or another local council?

A No, a recipient of direct payment can not buy services from their own council or another council. Direct payments offers an **alternative** choice of provider to recipients. Individuals retain the choice to have all or some of their care directly provided by their councils.

Q. How does a council decide if someone can consent a direct payment?

A Direct payments can only be made with the consent of the person involved. This is to ensure that no one is forced to accept a direct payment that they do not want.

Consent can be expressed in different ways, and people who can indicate choices about how they want their care to be delivered or the shape of their lives should be considered for a direct payment. People might express dissatisfaction about existing services and options open to them. Consent might be someone indicating through their behaviour that they would choose one course of action over another. In some cases, it might be their communicating such a course through significant others who know and care about them, or through an independent advocate.

An assessment of whether someone consents to a direct payment must be done on an individual basis, blanket policies restrict a council's discretion. It should be presumed that an individual is able to make their own decisions until proven otherwise.

Q. How does a council decide if someone is able to manage a direct payment?

A Department of Health guidance is clear that the ability to 'direct' is more important than the ability to 'manage'.

Individuals should be given the help they need to manage their direct payments - both in securing the services and support they want the direct payment to provide and in dealing with the finances. There is no restriction on the amount or type of help a person may receive.

Values into Action are currently producing for the Department of Health a guide for local councils to implementing direct payments for people with learning disabilities. This will provide further information on how to think about both consent and the ability to manage. You may also wish to refer to VIA existing publication *Who's In Control*.

Q. Can Supporting People payments be translated into Direct Payments?

A. The grant conditions under which the Supporting People programme grant is paid sets out which services may and may not be supported by this grant. For those Administering Authorities that are not rated as “excellent” by the Audit Commission, the grant must be used on housing related support services for vulnerable people. The full grant conditions may be found on the Supporting People website (www.spkweb.org.uk).

Supporting People money cannot be used to make a direct payment, as Supporting People money must not be used to provide community care services covered by the direct payments legislation.

However, if an individual is already receiving a direct payment for their community care service, the council may make a similar, mirror payment to that individual for the housing related support services they receive under the Supporting People programme, using Supporting People grant monies. In addition, the Supporting People grant conditions allow payments to be made directly to an individual where the payment is made in respect of service charges payable as a condition of a lease.

We would encourage social services and Supporting People teams to work closely together to ensure that vulnerable people receive the care and housing related support that they need in order to live independently in their homes.

For more information on Supporting People, please contact:
Supporting People Helpline: 020 7944 2556
Email: supporting.people@odpm.gsi.gov.uk
Supporting People website: www.spkweb.org.uk.

Q. Can an individual employing someone with a direct payment request a Criminal Records Bureau (CRB) check?

A. A direct payment recipient cannot directly approach the CRB for a background check against someone they wish to employ. However, a vetting organisation can do so on behalf of the individual. Any Registered Body (RB) could act as a Vetting Agency. This could be a local authority or a voluntary organisation. The basic procedure is the same as for other CRB Disclosures.

The potential employee must initiate the application. The resulting Disclosure will be sent to the applicant and a copy to the RB (to act as the Vetting Agency). The RB must then assess the individual’s suitability for the position and advise the employer accordingly. The employer has no right of access to view the Disclosure. Indeed, it would be an offence for the Registered Body to disclose the information. However, the applicant may voluntarily show the Disclosure to the employer should he/she wish to. This could help resolve disputes.

Q. Do parents of disabled children have to have a Criminal Records Bureau (CRB) check for anyone they employ to look after their child?

A. Parents, as the employers, retain the choice as to whether or not they carry out a CRB check on an employee. If they do, and ask the council to undertake the check, the council has a duty to comply. Councils should work in partnership with parents to help them make arrangements that are designed to safeguard and

promote the welfare of the child. It is for the local council to decide in each case whether a CRB check is necessary to achieve that.

Q Is it possible that direct payments could be re-named to avoid confusion with the direct payments system of benefits payment?

A: In 2003 the Department for Work and Pensions (DWP) began its campaign to get people to have their benefits and pensions paid directly into a bank. Account, using the name 'Direct Payment – Giving it to you straight'. This has caused confusion for people using services and receiving direct payments, so we have decided to consult on a new name for the Department of Health's direct payments. This will be included in the Green Paper, looking at the future of adult social care as a whole, to be published in this Parliamentary session. Stephen Ladyman first announced his intention to change the name of direct payments at the launch Valuing People: Moving Forward Together, the Government's second annual report on learning disability services on 28 April 2004.

Q: Can Direct payments be used to pay for health care?

A: No. Direct payments are a replacement for social care services that would otherwise been provided or arranged by social services following a community care assessment.

Q. Are there any ways that a person who can't give their consent to a direct payment can have one?

A: Although individuals are able to have direct payments even if they need help to manage them, they nevertheless have to be able to give their consent to have them in the first place.

We recognise that some people, who could benefit from the flexible and person centred approach of a direct payment, are currently excluded from receiving one because they are not able to consent to have one, or are not able to manage, even with help. We are currently taking looking into the best way to do this, and will be consulting on our proposals shortly.