

Direct Payments (*ref 19*)

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Introduction

This *Factsheet* describes the arrangement that allows Local Authority Social Services to provide cash to disabled people who need a community care service so they can arrange their own services.

This arrangement is called a Direct Payment. You get the money to arrange your own support in the way you want. There is also another type of Direct Payment which is to do with benefits (benefits are paid directly into your bank account instead of using an order book to collect them at the Post Office). This *Factsheet* is about Direct Payments made to you by Social Services.

The *Factsheet* explains:

- who is entitled to Direct Payments
- how to go about applying for Direct Payments
- it gives real examples of how Direct Payments are now being used by disabled people to arrange and buy their own care

There are particular issues for people with learning disabilities about understanding and using Direct Payments to increase choice. The most common problem is that the Local Authority may have decided that Direct Payments are not available for people with learning disabilities only those with physical disabilities.

Below there are details of how you can get more information.

One of the principles behind changes in community care has been to allow disabled people to take more decisions that affect their lives and get greater control over the day to day support they receive. This is the policy behind this initiative. Providing cash rather than a service can help people to generate more flexible arrangements, encourage greater independence and sometimes cost less.

In April 1996 the Government introduced the *Direct Payments Act*. It enabled local Social Services Departments to introduce arrangements for making Direct Payments instead of providing services. Some Local Authorities have been setting up Direct Payment Schemes. Disabled people have taken up this opportunity and are receiving cash payments instead of community care services as Direct Payments Schemes begin to work. More is achieved where disabled people have access to independent support and advice services are being set up by some Social Services Departments.

What is a Direct Payment?

The idea of a Direct Payment is quite simple. It is the term being used to describe when a cash payment is made by a Local Authority instead of them arranging or providing the care service that people can receive under the *Community Care Act 1991*.

This cash payment may be provided instead of arranging a home help, use of a day centre or transport. It is up to each Local Authority to decide whether to offer a Direct Payment and how much it is going to offer. In the 'Receiving a Direct Payment and Using it to Buy Your Care' section of this *factsheet* we have provided real examples of how Direct Payments can be used.

Once you receive a cash payment you can arrange for someone to provide the service in the way you want it at the time that it suits you.

The money you receive is for you to use to arrange the services you need.

You can only receive a Direct Payment if:

- your Local Authority Social Service department has assessed you as needing a community care service
- a scheme is operating in your area
- you are willing and able to manage the Direct Payment
- you meet certain national criteria

It is up to the Local Authority to decide if you meet the criteria.

What You Cannot Use a Direct Payment For

There are a number of things a Direct Payment cannot be used to purchase and you will need to talk to Social Services about how you intend using your Direct Payment.

1. If you have an assessed need the cash must be used to meet this need. It cannot be used in a way that does not help to meet the need like buying clothes, food or leisure goods. There is though scope for you to use it for things other than the service the Local Authority would have provided if you can show it is going to meet the type of need but in a different way. For example you can pay a personal assistant instead of buying a day centre place.
You will not be able to buy the services you need from a Local Authority provider. (There is a difference between the Local Authority paying for a service which is provided by another agency like Mencap and the Local Authority providing the service you need itself).
2. You cannot use a Direct Payment to purchase a place in a residential home. Direct Payments are intended to be used to promote independent living. You may be able to use it to buy short stays in a residential home. Direct Payments may be payable to help you to live at home by having occasional stays away from home.
3. You cannot buy equipment with a Direct Payment. This is assessed and provided through the Occupational Therapy service.
4. Services from the NHS are free and you do not need to receive a Direct Payment.
5. In practice many people use a Direct Payment to pay someone to provide the support they need. This can mean employing a personal assistant, getting someone to work for you on a self-employed basis or using a home care support agency.
6. You normally cannot employ a close relative, a spouse or partner or anyone who lives in the same house as you (unless that person is someone you employ as a live in carer).

Who Can Apply

Not all Local Authorities are as yet operating Direct Payment Schemes. It is possible to work out if you meet basic national criteria. These have to be met irrespective of where you live.

A Direct Payment may be received by someone over 15 years old, and can also be received both by carers and by parents of disabled children. Anyone who has been assessed as needing a community care service by their Local Authority Social Services may receive a Direct Payment instead of a community care service.

It doesn't matter who is currently providing you with a service as long as it is for a need that has been assessed by Social Services. You can apply for a Direct Payment instead of an existing service.

You have to be willing to accept a Direct Payment and able, in the opinion of the Local Authority, to manage a Direct Payment alone or with help. The Health and Social Care Bill going through Parliament in early 2008 will include provisions to make Direct Payments available to people currently excluded. These changes will allow a direct payment to be made to a "suitable person" who can receive and manage the payment on behalf of someone who lacks capacity.

The groups of people entitled to Direct Payments are likely to be people with physical disabilities including; blind, partially sighted, deaf, hard of hearing, people HIV positive, people with learning disabilities and those recovering from or suffering enduring mental illness.

Just because your authority may not be yet operating a scheme you should not assume that you cannot apply. Only by people asking for Direct Payments are policies likely to change. Therefore if you apply and find you are not entitled to a Direct Payment because no scheme exists you can appeal against this decision.

How to Obtain a Direct Payment

As indicated above not all Local Authorities have introduced Direct Payments therefore first it is necessary to find out if a scheme exists in your area.

This can be done by contacting your Care Manager/Social Worker. If you haven't got a Care Manager but you receive a community care service provided or arranged by the Social Services or you just want to know if there is a Direct Payment Scheme in your area contact your local Social Services Department. They should be able to tell you if Direct Payments are in operation or when a scheme is going to be introduced.

If a scheme exists but you don't have a Care Manager you should request one if you would like to be considered for a Direct Payment.

If no scheme exists there will be organisations in your area who will be pressing the authority to introduce such a scheme. If you want to know more about what is going on in your area you should contact your local Council of Disabled People. You can get their address from a local advice centre or the British Council of Disabled People (see contact details below). They will be able to tell you what plans exist for a Direct Payments scheme in your area.

If a Direct Payment Scheme is operated in your area and you are receiving a community care service arranged by your Local Authority you can request that you be considered for a Direct Payment. Your Care Manager will then have to consider your request and if he or she feels a Direct Payment would be appropriate. The Local Authority will then tell you how much money they think your existing care plan costs and whether they consider Direct Payments would be suitable for you.

The amount of money you will have available to buy your own care will be the sum total of your existing or proposed care plan. It is then up to you to decide if you think the money they are offering you is enough to buy the care you need.

Anyone considering accepting a Direct Payment should at this stage carry out their own assessment of personal needs. For example how many hours care do you need to get you up and go to bed. We call this a self assessment. This means sitting down and working out how much you think your care plan is going to cost. There is scope to negotiate if you don't think they have taken all your likely costs into consideration. For example you may need support to pay staff. This is a cost you can apply to have met. You may know what care staff cost. As a rough guide for a budget you may need to pay an agency £9-11 per hour. However, you do not have to use agency staff.

In most areas where Direct Payments are being made Local Authorities have set up independent Information and Advice Services especially to advise people on Direct Payments. Your Care Manager will tell you about these arrangements and how to contact any local advisory service when you apply for a Direct Payment.

These advisory services are independent of the Local Authority and are there to help give you advice. Sometimes they can also help to manage payroll of staff wages, help with budgeting and give employment advice. Some services charge for these extra services although the initial advice is often free. You have to make sure a Direct Payment is enough to cover these costs and that you think the money is going to meet your needs. This is when you may need to negotiate with your Care Manager.

Once a Direct Payment is agreed the cash is paid into a separate bank account that you will have set up to manage your Direct Payment. The Care Manager is then no longer responsible for arranging your day to day care. They are there only to monitor the Direct Payment and make sure it is used responsibly. You will be told about monitoring arrangements when you accept your Direct Payment.

The Local Authority will only offer you a Direct Payment if it is satisfied that you are able and willing to manage the money and you meet the other basic national criteria.

As with any other decisions made by the Local Authority you can appeal against a decision made about Direct Payments, or complain if you think you have not been treated fairly. Your Care Manager can give you information on how to complain.

Because you may be receiving extra help from your family, friend or relatives it may be that you don't understand everything about how your Direct Payment is going to be managed. The Local Authority can still make a Direct Payment. It is up to your Local Authority to decide if they are satisfied you have the support available to help or that you can manage the money responsibly.

To summarise, to be eligible for Direct Payments you must:

- be disabled
- be assessed as needing a service
- be willing to have a Direct Payment
- be able to manage it - either alone or with help
- be over 18 and under 65
- not be subject to certain criminal justice or mental health legislation - because these services are compulsory

Receiving a Direct Payment and Using it to Buy Your Care

By accepting a Direct Payment you take on the responsibility of managing the money and arranging your own care plan in a way that meets your needs.

If necessary you can ask for only a part of your care plan to be provided as a cash payment if this makes things easier to begin with. Then as you grow in confidence so more of the plan can be provided as cash. You can ask for help with managing the money and other aspects of Direct Payment.

There are additional issues for people with learning disabilities. These are covered in the next section of the *Factsheet*.

The help that is available to everyone includes a free *Guide to Receiving Direct Payments* issued by the Department of Health and a guide you will be given by your Care Manager telling you about local conditions and arrangements. Details of how to obtain both are contained at the end of this *Factsheet*.

In buying your own care you have to decide whether to employ your own staff, contract with a care agency or use people who are self employed.

Below are two examples of ways in which Direct Payments are already being used by disabled people to buy their own care.

John - Example 1

John is a wheelchair user. He lives on his own in an adapted bungalow. He runs a car and manages all his own affairs.

He has been receiving help from a Social Services home care service. He has problems with this service. The assistants keep changing. He lives in the country and Social Services have found recruiting staff difficult.

John feels he would be better off employing his own personal assistants. He has agreed his care package with his Care Manager who has calculated his costs as follows:

Care Support		
5 hours x 5 days (Monday to Friday) @ £8.88 =		£220.00
5 hours x 1 (Saturday) @ £11.12	=	£ 55.60
5 hours x 1 (Sunday) @ £13.35	=	£ 66.75
Domestic help 7 days a week	=	£188.00
Total	=	£532.35

John agrees he can operate his own care package on this amount of money. John now receives a weekly Direct Payment of £532.35 per week paid one month in advance to buy his own care minus a financial contribution he makes from his Disability Benefits he receives from the Department of Social Security. A Direct Payment is working for John as he has been able to recruit his own staff.

Example 2 - Alice

Alice has a learning disability. She attends a day centre four days a week. She has a live in support tenant who pays a reduced rent to be in the flat at night because Alice doesn't like being in the flat on her own at night. She gets a small amount of paid help at weekends.

Alice gets on well with her support tenant and would like her to do things with her during the day. Her support tenant works for a care agency part time.

Alice has asked her Care Manager if she can receive a Direct Payment instead of going to the day centre one day a week.

Her Care Manager has assessed her as being entitled to a Direct Payment of - Care Support 5 hours @ £9.50 per hour = £47.50

Alice has accepted this as a Direct Payment and has agreed to pay her support tenant £7.00 per hour for her to spend time with her. They will also now have some money to cover transport if they go out together to do things. Alice's mother is helping her to manage the money through a bank account she has opened.

Her support tenant is now deciding whether to become self employed. If not, Alice will pay her care agency although this means it will cost more but at least then she will only have to pay a monthly invoice which will make paying for care easier.

Employing Staff

Running your own personal assistance using a Direct Payment is not without its headaches. Employing and managing staff may give more control but it also carries responsibilities such as being a good employer. That means handling insurance, tax, complying with health and safety regulations. This also means you have to be good at managing your time and doing jobs like paying NI contributions and taking advice from people who can help.

For those people who find Direct Payments is for them it seems a small price to pay for the benefits it brings.

In managing a Direct Payment you would not be on your own. There are now many simple guides and leaflets on being an employer and different organisations set up to help small employers. You would be given assistance to get access to these.

In particular the *Department of Trade and Industry* and the *Advisory Conciliation and Arbitration Service* publish a number of helpful guides on employing people (see contact details below).

Not everyone however needs to employ staff. It will be up to you to decide how best to use your Direct Payment.

Making Direct Payments Work for People with Learning Disabilities

Many people with learning disabilities are unlikely to find out about Direct Payments because they do not read. This is not a reason for excluding them from access to a scheme.

The Government has made it clear that they expect people with learning disabilities to have access to Direct Payments even if they aren't able to manage all aspects of a Direct Payment.

They have said that it is all right to pay people to help you manage a Direct Payment, as long as it isn't a close relative receiving money to do so. This means that people with learning disabilities are able to manage a Direct Payment with support and use paid help to get support. Family and close friends can still give help but they can't be paid.

The non-availability of an information and advice scheme is not a reason to deny a Direct Payment to a person with a learning disability. Although the research carried out by Values into Actions indicates the value of such services there are people with learning disabilities in receipt of Direct Payments who have made their own arrangements. Most have had the support of a friend, relative or someone else they trust.

The greatest barrier for people with learning disabilities receiving a Direct Payment is the question of whether the disabled person can understand and give consent to participating in the scheme. The decision is often regarded as an all or nothing one.

In reality things are often not that straightforward. Many of us are unable to understand all aspects of a decision or indeed all aspects of managing a Direct Payment.

If someone is deemed not legally able to make a decision, no one is legally able to make it on their behalf.

As a result the Local Authority may choose to say because of the high levels of support some people need to make decisions they will be excluded from Direct Payments.

There is no simple answer to this dilemma. The early evidence indicates people with learning disabilities are managing Direct Payments. If it helps people to have greater control over their care it should be possible to negotiate ways of using a Direct Payment with a Local Authority .

It may be possible to negotiate an arrangement either directly with the Local Authority or by setting up a small trust to manage a cash payment which would be the equivalent to a Direct Payment. Parents can of course help run schemes. Thus under these arrangements payments are made to a Trust or parents who administer a scheme rather than strictly directly to the disabled person.

Each situation is likely to be different and this factsheet cannot cover in detail this area. Values Into Action (VIA) are a campaigning organisation able to offer more detailed advice on setting up trusts through their Direct Payments Information Project (see contact details below). Solicitors can also give advice on legal aspects.

The Health & Social Care Bill going through parliament in early 2008 says that a lack of capacity should not be a bar to getting Direct Payments, and that these payments should be extended to those currently excluded. The Bill says that direct payments will be able to be made to a "suitable person" who can receive and manage the payment on behalf of a person who lacks capacity. This is likely to come into effect in April 2008.

Summary

This is still early days, Direct Payments schemes are still getting established. Direct Payments allow disabled people to recruit and employ their own care staff and give more control to the individual.

Approach your Local Authority to discuss your situation, or your relative's circumstances. If you feel the Local Authority is not treating you fairly you can complain using the complaints procedure that your Local Authority will have in place.

Starting small and developing slowly may be the preferred way for many learning disabled people. There is scope to receive part of a care plan as a cash payment. Consideration should be given to this approach for people who may lack confidence in managing a Direct Payment.

People with learning disabilities should not be unreasonably denied this new way of receiving a service.

Useful Reading

A Guide to Receiving Direct Payments (product code: 31006). A free guide available from -
Department of Health
PO Box 777
London SE1 6XH
Tel: 08701 555 455
Minicom: 08700 102 870
Fax: 01623 724524
Email: dh@prolog.uk.com
Website: www.dh.gov.uk/publications

An Easy Guide to Direct Payments – giving you choice and control (product code: 33291). A free booklet, CD ROM and audio tape available from -
Department of Health
PO Box 777
London SE1 6XH
Tel: 08701 555 455
Minicom: 08700 102 870
Fax: 01623 724524
Email: dh@prolog.uk.com
Website: www.dh.gov.uk/publications

Funding Freedom -What are Direct Payments? A leaflet and audio tape prepared for people with Learning Difficulties available from -
Values Into Action
Oxford House
Derbyshire Street
London E2 6HG.
Tel: 020 7729 5436
Email: general@viauk.org
Website: www.viauk.org

Funding Freedom - A guide to Direct Payments for People with Learning Disabilities. Available from -
Values Into Action
Oxford House
Derbyshire Street
London E2 6HG.
Tel: 020 7729 5436
Email: general@viauk.org
Website: www.viauk.org

Make Your Move. A video guide to Independent living for people with Learning Disabilities available from -

Values Into Action
Oxford House
Derbyshire Street
London E2 6HG.
Tel: 020 7729 5436
Email: general@viauk.org
Website: www.viauk.org

Controlling Your Own Personal Assistance Services. Available from -

The British Council of Disabled People
Litchurch Plaza
Litchurch Lane
Derby
DE24 8AA
Tel: 01332 295551
Minicom: 01332 295581
Fax: 01332 295580
Email: general@bcodp.org.uk
Website: www.bcodp.org.uk

Employing People a Handbook

An Employment Handbook is available from:
Advisory Conciliation and Arbitration Service Publications
Acas Publications
PO Box 235
Hayes
Middlesex
UB3 1DQ
Tel: 08702 42 90 90
Fax: 020 8867 3225
Email: acas@ecgroup.uk.com
Website: www.acas.org.uk

If your Local Authority operates a Direct Payment Scheme they will also be able to provide you with a copy of their own Direct Payments Guidelines. This can be obtained by contacting your local Social Services Department.

Other Sources of Information

National Centre for Independent Living
4th Floor, Hampton House
Albert Embankment London
SE1 7TJ
Tel: 0207 587 1663
Fax: 0207 582 2469
Text: 0207 587 1177
E-mail: info@ncil.org.uk
Website: www.ncil.org.uk

Disablement Income Group
Unit 5, 19-23 Wedmore Street
London N19 4RZ
Tel: 020 7263 3981

ACAS Public Enquiry Points
Birmingham - Tel: 0121 622 5050
Bristol - Tel: 0117 974 4066
Cardiff - Tel: 01222 761126
Fleet - Tel: 01252 811868
Glasgow - Tel: 0141 204 2677
Leeds - Tel: 0113 243 1371
Liverpool - Tel: 0151 427 8881
Manchester - Tel: 0161 228 3222
Newcastle upon Tyne - Tel: 0191 262 2191
Nottingham - Tel: 0115 969 3355

Direct Payments Information Project (Values into Action)

Oxford House
Derbyshire Street
London E2 6HG.
Tel: 020 7729 5436
Email: general@viauk.org
Website: www.viauk.org

If you require further information or have other queries contact Housing Options.

Housing Options, Stanelaw House, Sutton Lane, Sutton, Witney, Oxfordshire, OX29 5RY, United Kingdom
Telephone: +44 (0)845 4561497 E-mail: enquiries@housingoptions.org.uk

Although we try to ensure that statements as to the law and other facts are accurate this report gives general guidance and does not aim to cater for individual cases. Housing Options and our sponsors cannot accept responsibility for any loss incurred as a result of relying on such statements, specific advice should always be obtained on individual cases.

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