

Direct Payments

What are direct payments?

Where it appears to a local authority that an individual may have a need for care, it must carry out an assessment. If the local authority is required to meet the individual's needs as a result of this assessment, it must provide the individual with a statement outlining the cost of providing the necessary services. This statement is known as a personal budget; it allows individuals with care needs to understand the share of local authority resources they have been allocated, maximising transparency and allowing such individuals to take control of the care they require in order to live independently. In some cases, the personal budget may specify an amount the individual is required to contribute towards the cost of his or her care.

Eligible individuals may elect to receive their personal budget in the form of direct payments. This means that instead of the local authority arranging the care services required, the individual (or someone appointed to receive the payment on the individual's behalf) receives the personal budget in the form of a cash payment. It is then up to the individual (or person acting on their behalf) to use these payments to purchase care services of their choice.

Who is eligible?

Direct payments can be made to:

- adults who are entitled to receive care services;
- disabled children aged 16 or 17;
- disabled parents whose children require services;
- carers, which includes people with parental responsibility for a disabled child; and
- individuals appointed to receive and manage direct payments on behalf of someone else (known as “nominated persons”).

Before a local authority can make direct payments to you, it must generally be satisfied that:

- you have capacity to request direct payments, or an “authorised person” has been appointed who has requested direct payments on your behalf;
- you (or a person nominated to receive the payments on your behalf) are capable of managing the payments;
- direct payments to you or a nominated person are an appropriate way to meet your needs;
- the local authority is not prohibited by law from meeting your needs by making direct payments.

Local authorities are not permitted to make direct payments to an individual who is receiving treatment for alcohol or drug dependency.

What is the process for applying?

Before you can apply for direct payments, you must have first been assessed by your local authority as being eligible to receive care services.

If you already receive care services and have not been informed about direct payments, we recommend that you ask your local council for further information.

You can apply for direct payments by contacting your local authority. If you do not know which local authority is responsible for your area, you can find out using [the GOV.UK website](https://www.gov.uk) if you live in England, Wales or Scotland. After inputting your postcode, this page will direct you to the website of your local authority, which should provide guidance as to how to apply

for direct payments in your area.

What can you spend direct payments on?

Direct payments must be used to pay for services required to meet the needs you (or the person you are caring for) were assessed as having by the local authority. Individuals living in England cannot normally use direct payments to pay a spouse, or a family member they live with, to provide them with care services.

Your local authority is under an obligation to carry out a periodic review to ascertain whether the making of direct payments continues to be an appropriate way to meet your needs. If you spend direct payments on goods or services that don't meet your care needs, your local authority could require you to repay the money or prevent you from receiving direct payments in the future.

Are direct payments appropriate for you?

The following information is designed to help you decide whether direct payments are an appropriate way to manage your care and support needs:

Direct payments may be beneficial for you if:

- You want to take control of the care and support services that you receive
- You desire more choice in choosing the care products and services that meet your specific needs
- You are able to manage money and paperwork effectively or have people to help you with this
- You don't mind keeping a record of receipts and invoices for care services, and submitting these to the local authority.

Direct payments are less likely to be suitable if:

- You are already satisfied with the care and support services provided by the local authority and have no desire for these to change
- You are not comfortable with the additional responsibilities associated with employing care workers yourself
- You spend frequent or long periods in hospital
- You have historically found it difficult to manage money or keep a record of important documents.

When deciding whether or not to apply for direct payments, you should consider the extent to which the increased flexibility is offset by the additional responsibilities of managing the payments. For example, you will need to keep careful records of how the direct payments are spent, and submit these to the local authority. Further information about the additional responsibilities involved with receiving direct payments is included under the heading below. The table above is designed to help you decide whether direct payments are an appropriate way to manage your care and support needs.

What responsibilities are involved with managing direct payments?

In order to check that direct payments are being used appropriately, it is likely that the local authority will require you to provide documentary evidence of the care services that you have purchased. The local authority will inform you of the documentation that it requires and the method by which this should be submitted to it for review. In order to comply with this requirement, you should keep all receipts and invoices connected with the purchase of care services using direct payments.

If you hire care workers directly, it is likely that in doing so you will take on the legal role of an employer. Assuming that this is the case, you will have a number of legal and administrative responsibilities to carry out, further details of which are included under the heading below.

If you hire care workers through an agency, then you would not normally be classed as an employer and would not have the responsibilities associated with this role. If you are interested in hiring a care worker through an agency in your area, the Care Quality Commission has published a directory of registered home care agencies which can be found at <http://www.cqc.org.uk/what-we-do/services-we-regulate/services-your-home>. When considering which agency to choose, it is important that you consider the sort of service(s) that you require, and the tasks that you need help with. Agencies offer a varying range of services and specialise in providing support for different types of care needs.

What will you need to consider if you decide to employ care workers directly?

If you choose to hire care workers directly, rather than through an agency, it is likely you will be classed as an employer under the law. The GOV.UK website at <https://www.gov.uk/employing-staff> has a checklist of things that you will need to do when employing staff for the first time. Some of the most important responsibilities that you will be required to undertake as an employer are as follows:

- deciding how much to pay the care worker, which should be no lower than the National Minimum Wage (for more information, visit: <https://www.gov.uk/national-minimum-wage>);
- Setting up a system to pay wages, deduct tax and national insurance, and maintain records for HMRC to review
- Checking whether the care worker has an up-to-date Disclosure and Barring Service (DBS) certificate
- Ensuring that the care worker has the right to work in the UK
- Obtaining suitable employer's liability insurance and public liability insurance
- Registering as an employer with HMRC; and
- Producing an employment contract governing the terms and conditions upon which the care worker is employed.
- Taking responsibility for paying maternity pay where the worker is eligible.

While these responsibilities may appear daunting at first, there are a number of organisations which can provide help and advice. Useful sources of information regarding the employment of care workers are listed below:

- **The Advisory, Conciliation and Arbitration Service (ACAS)**, which provides advice to employers, has published a Q&A guide on employing personal care workers on its website, which can be found at <http://www.acas.org.uk/index.aspx?articleid=3303>.
- **The Money Advice Service** has a useful guide on their website, which provides information about employing carers or personal assistants and the responsibilities that come with this. Visit: <https://www.moneyadviceservice.org.uk/en/articles/using-a-personal-assistant-to-provide-your-care>.
- **BrightCare's** Guide to Employing Private Individuals sets out useful advice on the responsibilities of an employer. Visit: <http://www.brightcare.co.uk/resource/guide-employing-private-individuals-legal-issues/>.
- The **Skills for Care** website has an information hub for individual employers and personal assistants which contains links to a number of guides for individuals employing their own care and support staff (referred to as "personal assistants"). Visit: <http://www.skillsforcare.org.uk/Employing-your-own-care-and-support/Information-for-individual-employers/Information-for-individual-employers.aspx>.
- **Disability Rights UK** has published a factsheet entitled Being in Control: Getting Personal Assistants which gives general guidance on using direct payments to employ personal assistants, recruiting personal assistants and managing employment responsibilities. Visit: <https://www.disabilityrightsuk.org/being-control-getting-personal-assistants-pas>.