

Direct payments factsheet - 2

Direct payment: What are your rights?

This factsheet explains your rights in terms of direct payments and what to do if you have any problems. For information on your general rights to social care, please see the Sense factsheets on deafblind people's rights and entitlements.

Department of Health guidance on direct payments

It is important to be sure of your rights when you are thinking about receiving direct payments. There is Department of Health guidance on how direct payments should be offered by councils in England. This guidance is statutory. This means that councils have a legal duty to offer direct payments in a way that meets the requirements of this guidance.

However, the guidance does allow for some decisions to be made by councils about how they offer direct payments. This means that there is some regional variation. However, there are some important entitlements that all councils must observe. This factsheet contains information and quotes from the guidance to help you understand how direct payments should work.

Councils have a duty to offer you a real choice between direct payments and a service provided directly by the council

Councils must offer you a choice of how your needs will be met. The guidance states:

'[Direct] payments may only be made if the person agrees, and they have a choice of whether to receive services provided by the council. Recipients of services should not be unfairly influenced in their choices one way or the other.'¹

You are also entitled to ask for a description of the service that social services would provide if you want them to provide a service. The kind of services provided directly by social services is changing so it is important to check what could be available. However, remember that if you have eligible needs, you are entitled to choose between a service, direct payments or a combination of both.

You are also entitled to receive a combination of both direct payments and services provided by your council

This is another option when you are deciding how your needs can be met. Receiving a combination like this may be useful if you are not sure how much you want to take on at first. The guidance says:

‘If individuals wish, local councils can arrange mixed packages for individuals with some directly provided services and direct payments for other needs. This can, for example, give somebody the opportunity to familiarise him/herself with the business of using a direct payment before taking on responsibility for arranging services to meet all their needs.’²

If you decide to receive direct payments, your council still has responsibilities

If you decide to receive direct payments, your council still has a role in ensuring that services you purchase with direct payments meet your needs. The council should also monitor and review your services.³

The amount of direct payment should be sufficient to meet your needs and cover associated costs.

It is essential that the amount of direct payments you are given is enough to cover the costs of receiving the support you need, as well as any other associated costs. For more information on this see Sense’s factsheet ‘Direct payments: making sure you receive the right amount of direct payment’.

You should be able to spend your direct payments with a certain amount of flexibility

Your council should let you spend your direct payments in a flexible manner. This should mean that you can vary the amount of direct payment you spend each week and you shouldn’t have to decide in advance the exact timing of when you receive services. Some councils may try to impose quite strict conditions on the pattern for how you spend your direct payments. You should ask your council what conditions they have and question them if they seem too restrictive. The guidance states that:

‘The flexibility inherent in direct payments means that individuals can adjust the amount they use week to week and ‘bank’ any spare money to use as and when extra needs arise. So long as overall the payments are being used to secure the services they are for and the care plan objectives are met, the actual pattern of ‘service’ does not need to be predetermined.’⁴

Using direct payments to receive support from family members

There is some confusion about whether people who use direct payments are allowed to employ spouses, partners or close relatives⁵ who live in the same household. The Department of Health guidance states that that councils may let you employ someone from this group if they are the person who is able to fully meet your assessed needs. So it is still possible to employ this group of people if they are best placed to meet your needs.⁶

You may be told that it is impossible to use family members in this way. This is not true; it should be decided in relation to each individual and the best way to meet their needs. This may be relevant to deafblind people who have specific support needs, such as with communication, as well as some people from Black and Minority Ethnic communities who may have specific cultural needs.

Your capacity to consent to receive direct payments

Currently individuals must be able to consent (agree) to receive direct payments. Parents can give consent to receive direct payments on behalf of their children.⁷ It is possible for the actual direct payment to be paid to a 'nominee'. The nominee is someone that manages the direct payments. The guidance allows for times where it may take more than one occasion to understand if someone is consenting to direct payments. The guidance states:

'Obtaining consent might be a process involving continuing discussion, rather than a single event.'⁸

This means that allowances can be made for individuals who may need more time to decide about whether they want to receive direct payments.

Your capacity to manage your direct payments

Capacity means your ability to do something. Currently, if you consent to direct payments, you are entitled to receive them as long as you are able to make decisions about how the direct payments are used. If you would like support to manage your direct payments, you are entitled to receive it. The guidance states:

'If the person consents, local councils are under a duty to make direct payments to anyone who appears to the council to be able to manage them (either alone or with help).'⁹

You should be allowed to take extra time to allow for advocacy support if required

Some individuals may need some extra time to decide on whether to receive direct payments and may want to receive some support from an advocate. An advocate is someone who can help you to ensure that your views are heard. The guidance states:

'Extra time may be needed to set up the direct payment to ensure the advocate fully understands the individual's wishes.'¹⁰

You may want to ask social services to allow for more time while you make this decision.

There is no difference between the assessment of your needs whether you want to receive a council service or direct payments

There should be no difference between the assessment of your needs whether you later decide to receive a service or direct payments. If you are thinking about accepting direct payments, you should firstly make sure that your assessment identifies your needs and the kind of support you need, including the number of hours of support. You can then decide how you would like to meet those needs. The guidance states:

'Detailed policy and practice guidance on assessment (including risk assessment) already exists, and should be followed whether or not the person being assessed is likely to receive services provided by the local council or direct payments. There is no difference in the assessment of a person's needs for services, although under the Regulations a local council must also be satisfied that the person's needs for services can be met by means of a direct payment.'¹¹

Following your assessment a care plan should be written up

However you decide to meet your needs, a care plan should always be written following your assessment. The guidance says:

‘Councils are reminded that there should always be a care plan, a written copy of which should be given to the individual. This advice applies equally where direct payments are provided in place of services provided or arranged by the local council.’¹²

The Deafblind Guidance

The Deafblind Guidance gives rights to deafblind people and places duties on councils, including providing a specialist assessment and appropriate services, including one-to-one support. Services paid for with direct payments are still covered by the Deafblind Guidance. Councils must ensure that the services you receive through direct payments meet the requirements under the guidance. For more information on your rights under the Deafblind Guidance, see the Sense factsheet ‘The Deafblind Guidance – a summary’.

Changes to how councils assess needs

Some councils are starting to use new ways of assessing people’s needs. Some councils are starting to use a system of self-assessment. Self-assessment allows people to assess their own needs. For more information on this see Sense’s factsheet ‘Personalisation, self-directed support and self-assessment’.

Interim service

While you prepare to use direct payments, you may be able to receive an interim service from the council. This means that you could receive a service provided by the council while you wait to organise your direct payments and think about how you will purchase the support you need.¹³ Ask your social worker what they can provide over this period. The guidance states:

‘If the person who is deciding whether to accept direct payments does not already have a service in place, for example, if they have been newly assessed, the council may need to provide a service in the interim.’¹⁴

What should you do if direct payments are not working?

At some point while you are receiving direct payments, you may encounter some difficulties. These may include not being able to recruit the right staff, your direct payment not being sufficient to meet your needs or having difficulty managing the direct payments. You may decide that you want some support to help make the direct payments work or you may decide that you do not want to receive direct payments any more. You may want to try to recruit staff in a different way, for example instead of employing people yourself you may prefer to use self-employed or agency workers.

Further information about these issues can be found in other Sense factsheets. For information on the amount of direct payments see ‘Direct payments: Making sure you receive the right amount of direct payment’. For information on different ways to find staff, see ‘Purchasing your own support: deciding on your needs and finding support’

and 'Purchasing your own support: employing people, using self-employed workers, using an agency or organisation'.

The difficulties you are having may relate to your social services assessment. Contact the Sense Information Service if you would like information on this.

Councils should provide you with a service if you are unable to meet your needs through direct payments

Your council should provide you with a service if you are unable to meet your needs through direct payments. The guidance states:

'If a council becomes aware that someone is or will be unable to secure the services to meet his or her needs through their own arrangements, either temporarily or in the longer term, then the council will need to take steps to meet its responsibility to provide or arrange for the provision of services for that person.'¹⁵

Councils also must have plans in place to prepare for the unexpected (such as emergency situations) as they would if they were providing you with a service themselves.¹⁶

What to do if you think that social services are not following the Department of Health direct payments guidance

Ask for advice from your local direct payments support service

They should have a good idea of how your council offers direct payments. They might be able to put you in touch with other people who use direct payments.

Make a complaint

Make a formal complaint using your local council's official complaints procedure. If you receive direct payments, you should be able to use the council's complaints procedure in the same way you would if you were receiving a service from the council.¹⁷

Go to the Local Government Ombudsman

If you are not happy with the outcome of your complaint to the council, you can contact the Local Government Ombudsman. The job of the ombudsman is to look at complaints in a fair and independent way and take action to look into complaints where they think it is appropriate.

Take legal action

In extreme cases, you may need to take legal action to challenge your council. This may just involve sending a solicitor's letter, rather than having to take the council to court. The cost and time taken will depend on individual situations.

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Resources:

Direct Payments Guidance: Community Care, Services for Carers and Children's Services (Direct Payments) Guidance England 2003

The Department of Health,
Richmond House,
79 Whitehall,
London, SW1A 2NS
Telephone: 020 7210 4850
Email: dhmail@dh.gsi.gov.uk
Web: www.dh.gov.uk

Sense factsheets on deafblind people's rights and entitlements

Sense Information Service
101 Pentonville Road,
London, N1 9LG
Telephone: 0845 127 0060
Textphone: 0845 127 0062
Fax: 0845 127 0061
Email: info@sense.org.uk
Web: www.sense.org.uk

Community Legal Advice

Telephone: 0845 345 4 345
Textphone: 0845 609 6677
Web: www.clsdirect.org.uk

Action for Advocacy

PO Box 31856,
Lorrimore Square,
London, SE17 3XR
Telephone: 020 7820 7868
Fax: 020 7820 9947
Email: info@actionforadvocacy.org.uk
Web: www.actionforadvocacy.org.uk

Advocacy Resource Exchange

Unit 3,
60 Duke Street,
Liverpool, L1 5AA

Advocacy finder Helpline: 0845 122 8633 (Monday – Friday, 2pm – 5pm)

Email: arx@advocacyresource.net

Web: www.advocacyresource.net

Older People's Advocacy Alliance (OPAAL)

c/o Beth Johnson Foundation,
Parkfield House,
64 Princes Road, Hartshill,

Stoke on Trent, ST 4 7JL
Telephone: 01782 844036
Email: jo@bjf.org.uk
Web: www.opaal.org.uk

Local Government Ombudsman

PO Box 4771,
Coventry, CV4 0EH
Telephone: 0845 602 1983 or 02476 821 960
Fax: 02476 820 001
Email: advice@lgo.org.uk
Web: www.lgo.org.uk

Endnotes:

- ¹ Direct Payments Guidance, Department of Health, paragraph 5, page 5
- ² Direct Payments Guidance, Department of Health, paragraph 19, page 7
- ³ Direct Payments Guidance, Department of Health, paragraph 101, page 27
- ⁴ Direct Payments Guidance, Department of Health, paragraph 92, page 24
- ⁵ A parent, parent-in-law, aunt, uncle, grandparent, son, daughter, son-in-law, daughter-in-law, step son or daughter
- ⁶ Direct Payments Guidance, Department of Health, paragraph 94, page 26
- ⁷ Direct Payments Guidance, Department of Health, paragraph 42, page 14
- ⁸ Direct Payments Guidance, Department of Health, paragraph 44, page 14
- ⁹ Direct Payments Guidance, Department of Health, paragraph 47, page 14
- ¹⁰ Direct Payments Guidance, Department of Health, paragraph 36, page 11
- ¹¹ Direct Payments Guidance, Department of Health, paragraph 68, page 19
- ¹² Direct Payments Guidance, Department of Health, paragraph 71, page 20
- ¹³ Direct Payments Guidance, Department of Health, paragraph 50, page 15
- ¹⁴ Direct Payments Guidance, Department of Health, paragraph 50, page 15
- ¹⁵ Direct Payments Guidance, Department of Health, paragraph 153, page 41
- ¹⁶ Direct Payments Guidance, Department of Health, paragraph 154, page 41
- ¹⁷ Direct Payments Guidance, Department of Health, paragraph 40, page 13