

Direct Payments

A Parents Guide to using your payments
and employing your own Personal Assistant



**Children, Young People and Culture
Department**

Bury
COUNCIL

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Introduction

The Community Care (Direct Payment) Act 1996 gave local authorities in England, Wales and Northern Ireland the power to make Direct Payments. The Carers and Disabled Children Act 2000 extended this to include carers, parents of disabled children and disabled young people (aged 16 or 17 years).

What are Direct Payments?

- Direct Payments are payments that are paid by the Council to the parent or carer of a disabled child, or to a disabled young person up to 18 years of age. In the first instance Social Care Services will assess your son or daughter's needs, so that Direct Payments can be provided to put in place the help that is required.
- Direct Payments provide money which must be used solely for meeting the needs that have been identified by Social Care Services.
- Direct Payments allow you to employ your own staff to provide care and support for your child or young person, instead of receiving assistance arranged by the Council.
- You can continue to have some services arranged by Social Care Services whilst you arrange only part of your support package for your son or daughter. In this way, you only have to arrange the aspects of the care that you feel able to manage.

Advantages of Direct Payments

- Direct Payments give more flexibility in how services are provided to people who are assessed as eligible for Social Services support.
- Direct Payments provide people with greater choice and control over their lives, which enables them to make their own decisions about how their care should be delivered.
- You can choose who supports your son or daughter, and how they provide the support.
- You can decide what sort of help you need, how you want the help to be provided and the times when you want to have the help.
- People who use Direct Payments enjoy the flexibility and choice that Direct Payments can bring, and frequently comment on how they have gained greater self-esteem, confidence, and control over how they live their lives.

What Direct Payments can be used for?

- Employing a Personal Assistant to provide care and support and, for example, to accompany the child or young person to social or leisure activities.
- Buying services from support agencies - to support personal care or as a sitting service.
- Paying for short breaks with registered childcare providers.
- Facilitating access to social groups.

Support is at hand

There is help available with employing staff or using the Direct Payments or for other purposes. Social Care Services employs specialist staff to provide information, advice and support for all aspects of managing Direct Payments. This guide includes contact details of the Directs Payments Team.

Keeping Records

Direct Payments are public money and should be spent on meeting your child's assessed eligible needs. This means that the Council does need to know how the money is spent. You will need to keep evidence of how you spend the money, such as bank statements, timesheets, invoices and receipts. You will be expected to show these to your Social Worker and send copies to the Direct Payments Team when you are asked for them.

If you do not spend the money on the services for which the Direct Payment has been provided, or if you have spent it in a way which does not meet any conditions the Council has set, then the Council may require you to repay some or all of the money. The Council can also choose to stop your Direct Payment.

Section 1: Using the Direct Payments

Eligibility Criteria

The Carers and Disabled Children Act 2000 provided councils with the duty to offer Direct Payments to parents of disabled children and disabled young people aged 16 and 17, who have been assessed as being in need of services. Parents/young people will be offered Direct Payments where it is identified within the assessment that they are assessed as needing community care services. The Social Worker will offer Direct Payments, however there is no obligation on parents to take this offer up, and parents are entitled to have services arranged on their behalf.

Where the disabled young person is aged over 16, they may pursue Direct Payments in their own right, and parent/carers will be encouraged to support such arrangements.

In relation to the legal guidance, the Council has a number of duties:

- to assess and review the needs of the child and carers in the normal way
- to ensure arrangements are safe and promote the welfare of your child
- to ensure only appropriate people are employed to work with children and young people
- to support parents, in consideration with the child, in relation to their wishes regarding intimate care, and potential at 16 and 17 to manage their own support (albeit with parental support too!).

Where the arrangements are not cost-effective, the Council reserves the right to decline Direct Payments for all or part of the package.

Parental Responsibilities

Where parents/young people are offered Direct Payments, the following requirements should be met:

- The parent/carer must agree to accept responsibility for organising their child's own care and the legal responsibilities of employing their own staff.
- The parent/carer must be able to evidence clear consideration in their arrangements for safeguarding and promoting the welfare of the child.
- Parents will be expected to adhere to risk assessments set out within the Child in Need Plan, and give regard to the safety of people they employ.
- The parent/carer will be required to ensure DBS checks are undertaken for staff employed.
- The parent/carer will not employ staff under the age of 18.
- Where the child is to receive intimate care, there must be evidence that the views of the child have been sought regarding the proposed arrangements.

Planning your support with you

During the assessment, we will explore how Direct Payments could provide support in meeting your child's and family's assessed needs. Once the assessment has been done, we will then draw up a plan with you which identifies how their needs will be met and the outcomes to be achieved.

In particular, we will need to confirm with you:

- how you are going to introduce your Personal Assistant to your child
- the activities your Personal Assistant will undertake
- where personal care is to be provided, how this will be done to provide for your child's needs and preserve their dignity
- that your home is a safe place and that any specialist equipment your Personal Assistant needs to use is safe and tasks to be undertaken are reasonable
- any training your Personal Assistant will need - for example, if they need specialist training with complex health issues
- any other guidance that needs to be in place if your child has specific support needs or presents complex support needs
- how your child will tell you if they are unhappy about the support offered and steps to take in reporting any disclosure of abuse.

Your Social Worker will supply you with a personal profile, and discuss with you how you can ensure you have clear information to give to your Personal Assistant. This will include information on what is important for your child, their likes and dislikes, how they communicate with others, and any issues of risk.

Employing your own staff

The main benefit to you of employing your own Personal Assistant (PA) is that you are employing the person you want and you are clear of who is coming into your child's life and your home. In other words, it is your decision, as long as the person is appropriate. This may be someone within your social network: a person recommended to you by your Social Worker or voluntary organisation; a person you have advertised for; or someone you know from school or a social club that your child attends.

In making the Direct Payments available to you, the Council is required to ensure that arrangements are safe and promote the welfare of your child. The Council also is required to ensure that this is a cost-effective way of arranging your support. Therefore we would not offer Direct Payments to parents where we are clear that you will be using a childminder or an agency on a consistent basis, as it is simpler for us to make the payment to them directly and avoid the added costs of administration.

Pooling payments

In some instances you may wish to consider pooling of your payments with other families and or sharing of staff. This may be where your child has a friendship with another young person who also receives direct payments and they wish to do activities together. Where this is the case you should confirm the arrangements with your social worker who will want to check with you that the proposed activities are safe. They may request you confirm the arrangements fall within your insurance policy.

Using Agencies

You may also wish to use the Direct Payments so that you can use staff paid from a care agency, or to pay for childcare. Where this is the case, it is important that the service

provider is registered with Ofsted, so that you can be clear that the staff you use are appropriate and have a current DBS (Disclosure and Barring Service) check in place. Our preference within Bury is that the agency has been formally registered with the Council, as we undertake additional checks on providers.

When we know that you are going to use an agency for a short period as an interim measure we will make an enhanced payment. This should allow you to meet the full costs of all agencies.

We do expect care agencies to work with parents, to provide good quality care, consistent staffing and offer flexibility. Where people have difficulties with agencies, the Council may have more influence in challenging issues of poor practice. So if your experience is less than positive, please do let your Social Worker know, and they can also help to pursue the matter on your behalf.

The structure of your support package

In confirming an assessment and Care Plan, we often will provide for additional payments for holiday periods. We also recognise that in the use of your Direct Payment, you may choose to use more hours during school holiday periods, this is at your discretion, and must be agreed by the Disability Resource Meeting (DRM) or by the Team Manager of the Children's Disability Service.

In some eventualities where you have specific difficulties during holiday periods, we will permit you to use your payments to provide for other domestic support – given that we can be clear this is enabling you to meet your assessed needs, albeit in a different way.

Payments will be made to you via a pre payment card system or Brokerage account on a four weekly basis, and it is the Council's expectation that you use the money allocated to your care plan regularly and do not build up significant surpluses. If you have accumulated any excesses we will want to discuss with you the reason why. For instance if you have recently lost staff and need support with recruiting new staff we will seek to offer you support.

Your accounts will be audited at least once a year, with tracker reviews quarterly.

Where you do build up surpluses we may ask you to refund some of the monies.

Where the Care Plan identifies the need for support overnight, it is important that this is formally agreed as part of the assessment and Care Plan. The Council has different payment rates which are payable for waking and sleep-in responsibilities.

Provision of Prepayment Card

The Council's policy is to use a pre payment card account to make Direct Payments. Following determination of a Direct Payment, the Council will require the Parent/Carer to make a Card Application subject to the Card Terms and Conditions. You will receive your Direct Payments four weekly in advance directly onto your pre payment card account supplied by the Company we currently use which is APS (Advanced Payment Solutions Ltd) The Council will load the Council Contributions on to the Prepaid Card, as specified in the Support Plan.

The pre payment card system is a chip and pin card and an alternative to a bank account. Payments can be made to your PA over the internet using the card details. Direct payments and standing orders can also be set up on the account together with transfers to nominated bank accounts (BACS). You will not get into debt when using the prepaid card as you can only spend the funds which are pre loaded on the card.

The Prepaid Card is to be used by the Parent/Carer solely for the receipt of the Personal Budget and for the payment by them of the Support Services in accordance with the terms of this Agreement.

No cash withdrawals should be made using the Prepaid Card.

The parent/Carer is responsible for the management of the funds on the Prepaid Card Account and not allow the Prepaid Card to be used by any person not authorised under this Agreement to use the Prepaid Card, or any person not named on the Prepaid Card.

On termination or suspension of the Direct Payments, the Council may terminate the Prepaid Card Account and recover any contribution made by the Council in that account.

Employing family members

Current Government guidance has been relaxed in recent years to permit the employment of family members who live outside of the family household. The aim of the Council in offering support is to meet assessed needs of the child and family and not substitute in any way the selfcare arrangements which should naturally occur within the extended family network. The expectation is that the support should be over the support which family members might reasonably be expected to provide.

In offering a Direct Payment, the department will want to be satisfied that it is the best way to meet the young person's needs, and will consider all arrangements on an individual basis. The expectation is that Direct Payments will support the needs of the young person and/or carer as identified within the agreed Care Plan.

- A key part of many young people's Care Plan is the development of greater social independence. When relatives are providing care, the opportunities for widening relationships in the community for the young person can be diminished. Some young people with Autism do find accepting other people in their lives difficult; in such situations, we will work with you to plan how this can be progressed.
- In some instances, where children have complex health issues, using relatives can be easier to ensure training is provided and that tasks are done consistently.
- Where parents employ family members, support arrangements will be subject to additional scrutiny to confirm the support arrangements are meeting the identified needs of the child. Where the family cannot evidence that the assessed needs have been met, the Council may withdraw payment, and may require for funding to be repaid. Direct Payments are not to provide employment opportunities to extended family members, but to meet the needs of the young person.
- Employing a close relative can sometimes be problematic. For instance, if the support is from your mother or sister-in-law, can you be confident that they will provide the support when you want and in the way you want, and do so without resentment or criticism?
- It may be that the payments might, in some situations, be used to meet the expenses that your relative incurs, rather than being in the form of a payment for their time, in

lieu of making payments as a Personal Assistant. Where this is the case, payments must meet the identified needs, and form part of the agreed Care Plan. Payments must also be value for money.

Support outside the family home

You must not use your payments to support your child overnight outside of the family home without an explicit written agreement in the Care Plan to do so. Both Direct Payments and Short Breaks care planning guidance identify that the Council has a duty to ensure all arrangements are safe and promote the welfare of the child.

- Where parents want overnight support outside of the family home with a Personal Assistant – the Council will need, in all circumstances, to formally agree the arrangements are safe and appropriate before these go ahead.
- The Council will seek to undertake visits to the home of the Personal Assistant to verify the care arrangements are appropriate, and will seek to ensure that other people living in the property have DBS checks.
- Where the frequency of support outside of the family home is more regular, the Council would need to arrange for an assessment of the Personal Assistant as a Foster Carer, in line with statutory guidance on Short Breaks.
- Where residential provision is assessed for overnight support, it will need to be approved by the Council.

Things you cannot use your payments for

Direct Payments are not intended to replace the existing support provided by your family and community but to meet the assessed needs of your child.

Direct Payments cannot be used for:

- paying for activities which the family might ordinarily do in the course of family life – for instance, going to the pictures
- paying for play equipment, toys or other items – which parents should reasonably be expected to purchase
- paying household bills - beds / furnishings
- games consoles / I-Pads
- meeting the direct costs of activities for the young person – for instance, admission fees or drinks
- meeting the expenses of personal assistants or their travel costs
- buying Local Authority or Health Authority provided services, for residential care or for Short Breaks in children's homes
- buying equipment for everyday living which is funded by the NHS or as part of a Disabled Facilities Grant
- anything that is against the law or a criminal activity
- supporting another individual, other than the child/carer specified in the Care Plan.

Audit Arrangements

If you receive Direct Payments, the money is not counted as income for tax purposes. Having a separate pre payment card helps us to meet our audit requirements, and will ensure that you can show that you are spending the money appropriately. We will give you advice on

keeping simple financial records that show how you have spent the Direct Payment. We will offer you support to make sure that you collect all the relevant information.

A member of the Direct Payments team will visit you (usually with a Social Worker) to set you off on the right foot on the records you need to keep.

The Direct Payments team is responsible for checking that the money you are spending is accounted for and is being spent on the care you have been assessed as needing.

You will receive your Direct Payments four weekly in advance directly onto your pre payment card account supplied by the Company we currently use which is APS (Advanced Payment Solutions Ltd) or through one of our recommended Brokerage companies. Depending on your choice of payroll supplier, you will need to decide to pay your PAs either weekly or monthly. All payments must be made by BACS transfer into your PA's bank account. **You must not make any cash payments from your Direct Payments. This is a requirement of the Direct Payments scheme in order that the account remains fully auditable.**

The Direct Payments team will explain the information you need to keep namely:

- Time Sheets
- Receipts
- Bank Statements
- PAYE records

The Direct Payments team will audit your records. Monitoring meetings will take place 6 weeks after you begin receiving direct payments and then at least annually.

If you have any changes in your circumstances during that time you will need to contact the Direct Payments team or your Social Worker.

Section 2: Employment Responsibilities & Support

Job Description and Person Specification

When you are looking for staff it will help them to know exactly what you are looking for and what they will be doing by writing a job description and person specification. The [DFES](https://www.gov.uk/browse/employing-people) guide (<https://www.gov.uk/browse/employing-people>) provides further guidance

A **job description** is one way of ensuring that your Personal Assistant (PA) will know exactly what their duties will be. When you do employ someone it becomes part of the employment contract. Start by making a list of tasks you would want the Personal Assistant to carry out.

A **person specification** will make sure that people who want to apply will know what sort of skills, experience and personal qualities they will need to work for you. Ideally you should decide which skills; experience and personal qualities are either essential or desirable to the job. Then make a list of qualities and skills

You may find it useful to include your job description and person specification in any letter or information that you send out. Telling prospective PAs something about yourself, your personal needs and the sorts of terms and conditions you will have for example rates of pay and holidays, will help the PA decide whether they are the right person for the job.

Interviewing

If you want support with interviewing your payroll company and/or broker in some instances will support you with interviewing and finding a suitable PA.

It is best to conduct interviews with a friend or professional present to support you. Work out a list of questions beforehand such as previous work experience, how they would deal with difficult situations and respond to emergencies.

It is also advisable that you ask for two references regarding the person's character. You should ask for telephone contact details so you can check on any parts of their application that you may want to clarify.

Further guidance can be found at Info@SkillsforCare.org.uk

DBS (Disclosure & Barring Service) Checks and References

The Council requires DBS (Disclosure & Barring Service) checks to be in place as part of its duty to ensure that arrangements promote the welfare of the child. They check if the person you want to employ as your carer has been found guilty of any crimes. Therefore do:

- check up with people what they have done across the whole of their working career
- take up written references and keep these on your files
- speak to the person giving the reference if you are able to do so.

Once you have confirmed who you wish to employ you need to ensure that a DBS check is carried out. We will not commence payment until this is in place. Where a suitable check has

been done in the last 12 months we will agree to start payments if we have a copy, but we will undertake a fresh (new) check.

Wages

We recommend you pay your staff £8.10 per hour. The hourly rate paid to you by the Council is currently £9.00 per hour and is set high enough to cover basic pay, employer's National Insurance contributions and other deductions required to cover other foreseeable and unforeseeable absences for example the rates for Direct Payments also include an amount for holiday pay.

If you want your personal assistant to work on a bank holiday you may need to consider paying double time.

If you employ staff across the year you may also wish to consider offering them paid holiday entitlement, based on 5.6 weeks average pay.

The Tax and National Insurance payable will vary depending on the number of hours they work for you and if they have other employment.

Staff should meet their own costs on getting to your home. However if you want your personal assistant to go out with your child you should provide for any expenses they incur.

Direct payments are to be used only for meeting your care needs and are not counted as extra income. The payments will not be taken into account by the Benefits Agency. The payments cannot be assessed as income on which you have to pay tax.

Income Tax and National Insurance Contributions

Her Majesty's Revenue & Customs (HMRC) will regard **you as an employer** and **your personal assistant as an employee**. As an employer you will also need to keep records for HM Revenue and Customs. All records must be kept for at least three years after the end of the tax year to which they relate. We can provide help in completing this.

If appropriate, you will be responsible for ensuring that Income Tax and National Insurance Contributions are deducted from your employees' pay and paid to HMRC on their behalf.

Free PAYE tools are available to download from HMRC to run your payroll.

Note: You are the employer. You are liable for ensuring these payments are made

In a small number of cases your Personal Assistant may be self-employed, where this is the case they are responsible for their own employment costs such as paying their own tax, National Insurance contributions, holiday pay and sick pay. Even though they are self-employed you still need to keep a record of their timesheet; how much you have paid them and at what hourly rate. You need to check with HMRC that your Personal Assistant is self-employed for tax purposes. If they are, you do not become their employer.

Guidance can be found at: <http://www.hmrc.gov.uk/working/emp-in-home.htm>

National Minimum Wage/National Living Wage

The National Minimum Wage (NMW) came into effect on 1st April 1999 and all employers have to pay at least a minimum hourly rate. **You must pay at least the minimum hourly rates.**

The National Minimum Wage is the minimum pay per hour almost all workers are entitled to. The National Living Wage is higher than the National Minimum Wage - workers get it if they're over 25.

It doesn't matter how small an employer is, they still have to pay the correct minimum wage.

To check on how the National Minimum Wage applies to you (or your employee), telephone the National Minimum Wage Helpline on 0845 6000 678 or visit <https://www.gov.uk/national-minimum-wage-rates>

Contracts

Once you have decided to employ someone you will need to provide him or her with a written Contract of Employment. The [DFES guide](#) provides further guidance on this matter. A draft contract will be supplied to you as an example.

Insurance

This is a legal requirement that covers you if your personal assistant has an accident, as you may be held responsible. There are insurance providers offering special policies for people employing Personal Assistants. When we set up your Direct Payments we will check out that you have taken out Insurance.

The Insurance providers may also offer you employment advice and also gives cover for possible legal and industrial tribunal costs.

You must take out the Insurance. We will make an initial payment to cover this cost, and will expect to see copies of your policy when we audit your accounts.

Equality Act 2010

Every employee has the right to work in an environment free from discrimination, harassment and victimisation. As an employer, under the Equality Act 2010, you have duties including:

- The duty not to discriminate against, harass or victimise the employee linked to a protected characteristic: age, disability, gender, gender reassignment, religion, race, sexual orientation, pregnancy and maternity, marriage and civil partnership.
- The duty to protect the employee from Third Party Harassment.

The Data Protection Act

When employing a Personal Assistant you will need to know some personal information about them. Your Personal Assistant needs to know that you are keeping this information. This information cannot be given to anyone else without your Personal Assistant's permission.

Health and Safety

The main provisions of the Health and Safety at Work Act do not apply to staff employed directly in a private household; however, to be a good employer you must consider health and safety issues. The key principle being **'in so far as is reasonably practicable'**. In other words, the degree of risk in a particular situation needs to be balanced against the time, trouble, cost and physical difficulty of taking measures to avoid or reduce the risk.

In producing your care plan your social worker will discuss specific risks areas and steps you need to take.

As part of the Insurance process you will be asked to complete a checklist of health and safety issues, which you do need to confirm is in place.

Write down any accidents and incidents that happen, and ring your social worker to discuss so we can help you be sure that the things which should be avoided do not happen again.

Moving, handling and lifting.

It is important that your PAs are appropriately trained so that they can provide you with the best help and support that will keep your child and them safe.

- When you appoint PAs check if they have been trained and ask them to give you a copy of the certificate
- If your PAs need training in Manual Handling and Lifting tell your social worker who will provide information on manual handling training courses.
- If you use specialist equipment to help you, you will need to make sure that your PAs are trained in how to use it.
- Where they are expected to use a hoist – then you must have this serviced every 6 months.

Personal Health Budgets

If a child is receiving a Personal Health Budget the Personal Assistants must be trained to the competencies required to carry out the tasks and that these are reviewed annually. This is important to ensure that there is appropriate training in place to meet the changing need in their regards to their health needs.

Your Relationship with your PA

Your 'working' relationship with your PA or PAs is important, as you are their employer. It will be important that you and the PA can talk to each other. Problems are more likely to develop if you and your PA find it hard to talk to each other. Establish from the start your 'house rules' so both parties know where they stand. For example smoking and non-smoking, how you like things arranged, etc.

Privacy and confidentiality issues should be part of the contract you draw up for your PA. Even with this you should continue to be careful about how you deal with personally sensitive or private issues. There will be times when your relationship with your PA may be strained or difficult. This can be hard to manage particularly when you have been employing someone for a long time and you may have become quite friendly. When problems occur it will be important that you have a set process to resolve them in a way that will not destroy the relationship.

Managing your money with care

It is important that you manage your money carefully when PAs come into your home, to protect both you and your staff PA.

- Never lend money to your PA, however small an amount is requested.
- Never borrow money from your personal assistant
- Do not leave money around the house.
- Do not reveal your Bank PIN number to anybody.
- Do not allow your personal assistant to use your APS pre payment card
- Do not advance your personal assistant's wages, or get involved with your personal assistant's financial affairs.

Section 3: Useful Contacts/Information

Childrens Disability Service

3 Knowsley Place
Duke Street
Bury BL9 0EJ
Tel: 0161 253 6070

Direct Payments Team

3 Knowsley Place
Duke Street
Bury BL9 0EJ
Tel: 0161 253 6051
Email: Julie.Thomas@bury.gov.uk

Local Offer

www.theburydirectory.co.uk

The Local offer sets out provision which is available for children and young people with SEN and disabilities, aged 0 to 25, including education, health and social care services.

Direct Payments Guidance

<http://www.gov.uk/government/organisations/department-of-health> (search for Direct Payments)

Parent and Carer factsheets

Written by parents themselves, with practical advice and tips
www.audit-commission.gov.uk
Tel: 0113 245 1716

Benefit Enquiry helpline

Tel: 0800 882 200

Her Majesty's Revenue and Customs (HMRC)

HMRC is responsible for collecting tax and National Insurance from employers. If you employ your own Personal Assistant you are an employer. HMRC gives advice on setting up tax and national insurance records and tells you what your responsibilities are as employer.
Tel: 0845 60 70 143

Employers Helpline (HMRC): Tel: 08457 143 143
<http://www.hmrc.gov.uk/working/emp-in-home.htm>
<http://www.hmrc.gov.uk/newemployers/>
Tel: 0300 200 3211

Skills for Care

info@skillsforcare.org.uk

Tel: 0113 245 1716

Health and Safety Executive (HSE)

www.hse.gov.uk

The Health and Safety Executive's job is to protect people against risk to their health and safety whilst they are at work.

Payroll / Employment Liability Insurance Companies

A list of these companies will be provided to you. You can choose which one you wish to support you with your payroll and liability insurance. The cost of both of these services will be included and paid into your direct payment account.

Section 4: Glossary of Terms

Direct Payment

Direct Payments are payments that are paid by the Council to the parent or carer of a disabled child, or to a disabled young person up to 18 years of age.

P.A. (Personal Assistant)

The person you employ as your child's carer

Job Description

A list of the jobs you want your employee to do.

Person Specification

Who you want to employ. What skills they will need, (e.g. patience, able to talk to people on all levels).

DBS (Disclosure & Barring Service)

Checks if the person you want to employ as your carer has been found guilty of any crimes.

Contract/Statement of Employment

A list of what you expect from your employee and what they can expect from you, (e.g. when you expect them to work, what they will be paid, when they will be paid).

BACS payment

These are payment made through the banking system