

# Adult Social Care Direct Payments Guide

## Introduction

This is a general guide for people who are deciding whether or not to have direct payments. It may also be useful for their families and carers.

Until direct payments started, Gloucestershire County Council used to make all care and support arrangements for anyone entitled to receive its adult social care services. We still make all the arrangements for anyone who wants us to and nobody has to have a Direct Payment if they do not want one.

With Direct Payments, we put the money allocated for your support into a bank account (set up by Gloucestershire County Council) instead of using it to arrange your services. You hold the money and use it to arrange your support. This can give you more choice about how your needs are met because you are not limited to using only the services that we can offer. You can use your Direct Payment to pay for anything that has been agreed in your Support Plan. This means that if you want to be creative about how you meet your needs you need to discuss this with your Support Planner so that this can be built into your agreed Support Plan.

There are rules about who can receive Direct Payments and how you use the money. Any services that you use must be legal and keep you safe and well.

Direct payments come with responsibilities especially if you decide to use the money to employ your own personal assistants.

This guide briefly outlines:

- what happens when you need support.
- your choices about how your needs are met.
- who can have direct payments
- things you need to know about Direct Payments.

Our social care staff will support you while you decide whether or not Direct Payments are for you, including arranging interim services for you.

They can give you more information about Direct Payments. They can also tell you where you can get independent advice and support.

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## 1. What happens when you need support

### 1.1. Your assessment

Before we can decide whether or how we can help you, we visit you to find out what care and support you need. This is your assessment.

You can invite a family member, a friend or anyone else to the assessment if you would like someone to be there to support you.

You can also get support and advice from an independent advocate by phoning POhWER on freephone **0300 456 2370**.

### 1.2. Your personal budget

If you qualify for adult social care services, we work out how much it will cost to meet your needs. This is called your personal budget. We will tell you how much it is.

### 1.3. Means testing

Your personal budget is means tested.

We will assess your financial circumstances and tell you if you have to pay something towards your care and support. If you have to make a financial contribution, your personal budget will be made up of some of your money and some of ours.

Your financial contribution will be the same amount whether you choose to have direct payments or we arrange your support for you.

### 1.4. Your care and support plan

After the assessment, we will help you plan the care and support you need. This is when you decide whether you would like to have a Direct Payment or whether you would prefer us to make your support arrangements for you. Your options are listed on the next page.

If you need time to decide, we will make interim arrangements to meet your needs. Whatever you decide, you will have a written plan which confirms how your needs will be met and the costs involved. If an occupational therapist has been involved in your assessment, your plan will specify any equipment that you need.

We will always give you a copy of your plan.

## 2. Your choices about how your needs are met

If you are eligible to receive a Direct Payment, you have three options:

### 2.1. Option 1- You use Direct Payments to arrange your own services

We pay our share of your personal budget to you as a direct payment. If you have to make a financial contribution, you add your money to what we pay you. You use the money to buy the support agreed in your support plan.

You control and manage everything. You make all the arrangements and deal with any issues that arise.

There is support to help you manage Direct Payments if you need it. You are in control but this doesn't mean having to do everything on your own.

If you need to pay for assistance with managing the Direct Payment, you can pay for this out of your personal budget.

## **2.2. Option 2 - We arrange services for you**

We arrange all the services you need. If you have to make a financial contribution towards your care and support, you pay this to us.

We are responsible for all care and support arrangements. We are responsible for service quality. We will deal with any complaints or concerns that you may have and make any changes that are required.

## **2.3. Option 3 - You have a mixed package – a combination of options 1 and 2**

With a mixed package, we make some of the arrangements for you and you can have a Direct Payment to arrange the rest. Responsibilities are divided between us.

This can be a useful way of trying Direct Payments if you are unsure about them or if you do not want to take on all of the responsibility straight away.

# **3. Offering Direct Payments**

## **3.1. Who can have a Direct Payment**

Most people who are eligible for adult social care services can have Direct Payments. This includes:

- Older people.
- Disabled people aged 16 and over.
- Disabled people with parental responsibility for a child(ren).
- Carers aged 16 and over who are caring for disabled people aged 18 and over for their own assessed needs, i.e. for services to support their caring role and to maintain their own health and well-being.

We have a duty to offer direct payments in most cases. We will offer you Direct Payments if we are satisfied that:

- You are eligible for adult social care services,
- Making Direct Payments is an appropriate way of meeting your needs,
- You want to have a Direct Payment,
- You have capacity to consent to Direct Payments, and
- You will be able to manage Direct Payment arrangements either on your own or with help.

You may also be able to have Direct Payments to arrange after care service under S117 of the Mental Health Act. Please ask us if you need more information about this. We will check whether you want Direct Payments every time we assess your needs or review your plan.

Some people with alcohol / drug dependencies who are placed under certain conditions by courts are excluded from having Direct Payments.

Regardless of whether the person intending to administer the direct payment is the person who needs care or their authorised or nominated person, the County Council will ask the person to declare any convictions involving dishonesty.

Where a dishonesty conviction is declared, the County Council will assess whether or not it is appropriate for that person to administer the direct payment.

### **3.2. Authorised person**

Direct Payments may still be an option even if you have been assessed as lacking capacity to consent to Direct Payments.

We may be able to make Direct Payments if there is an 'authorised person' who is willing and able to arrange your care and support for you.

An authorised person is:

- Someone you gave lasting power of attorney (attorney) over your affairs before you lost capacity, or
- A deputy appointed by the Court of Protection to act in your best interest.

If there is no attorney or deputy, or they do not want to act as the authorised person, we may consider someone else who wishes to act as an authorised person for you – for example a family member, friend, a solicitor.

No-one can just become an authorised person. We have to agree to the appointment of the authorised person. Anyone authorised to make personal welfare decisions for you has to agree to it and they take on full responsibility for the Direct Payment on your behalf.

Please see also our **Authorised Person and Nominated Person** fact sheet.

### **3.3 Nominated person**

If you have capacity to manage a Direct Payment but want to give the responsibility for managing it to someone else, and they are willing to take this on, they become a “nominated person”.

The nominated person takes on full responsibility for the Direct Payment on your behalf and we need to agree to their appointment (just like an Authorised Person see 3.2 above).

### **3.4. Managing Direct Payments / getting help**

You (or an authorised/nominated person appointed to act on your behalf) have to be able to manage Direct Payments either on your own or with help. Managing Direct Payments means:

- Arranging the care and support required
- Using an agency to supply a personal assistant if one is needed, or employing one yourself
- Managing the money and keeping records of how it is spent
- Dealing with any problems that arise

### **3.5. Direct Payment Support Services**

There are independent organisations who provide information, advice, advocacy and support services to people who would like to have Direct Payments. These support services are listed on our Direct Payment Support Services List which our staff can give you.

Most of the support services offer a free initial consultation either in person or by phone. If you want them to provide ongoing services, they will charge fees which can be paid out of your personal budget.

Support services offer a range of services like payroll and money management, as well as support and advice about using an agency to supply staff or employing your own. You can find information about each of the support services on our website.

Ask our staff to give you the information if you cannot access it.

We recommend that you phone several support services to confirm that they can provide the services that you want and find out what this will cost. Ask about the terms and conditions of the contract you will have to sign if you decide to use them for ongoing services.

### 3.6. Decisions not to allow Direct Payments

We make the final decision about who can have Direct Payments. This is because we have a legal responsibility to make sure that any services we provide or pay for are appropriate. We also have to be sure that you are willing and able to manage Direct Payment arrangements either on your own or with help. If we decide not to give you Direct Payments, we will tell you why and explain our reasons in a letter to you.

### 3.7. Appeals process

You can use our complaints procedure if you disagree with our decision. Our staff can tell you about our complaints procedure, give you a copy of our complaints leaflet and explain your right to access advocacy as part of the appeals process.

Alternatively you can phone customer services on **01452 427614** or email us at [socialcare.enq@gloucestershire.gov.uk](mailto:socialcare.enq@gloucestershire.gov.uk)

## 4. Things you need to know about Direct Payments

### 4.1. How Direct Payments can be used

Direct Payments give you more choice about how your needs are met. You are not limited to the services we can supply but you must use services that are legal and keep you safe and well.

You have to use Direct Payments to meet the needs agreed in your support plan. How you arrange your support is up to you but must be agreed before your Support Plan is approved. You can be creative and meet your needs in new, better or different ways if you like but this flexibility must be agreed in advance in your Support Plan.

For example you can use Direct Payments:

- To pay an agency to supply a personal assistant if you need one. Please read our **Using an Agency** fact sheet.
- To employ your own personal assistants. Please read the section on using Direct Payments to pay for personal assistants and our **Becoming an Employer** guide.
- To pay for respite care or a sitting service. You cannot use Direct Payments to pay for a period of residential care lasting more than four weeks or for very frequent respite care. Our staff can give you more information about this.
- To take part in activities like outings or exercise classes if this has been agreed on your support plan.

Some people also use a Direct Payment for more creative ways of meeting their needs but this must be agreed in advance in the Support Plan- for example

- To buy a club or gym membership instead of attending a day centre, or to support a carer role if this has been agreed in your Support Plan.
- To buy a different make or model of equipment from the one specified on your Support Plan provided that your occupational therapist / specialist assessor agrees that it will meet your needs.

#### **4.2. Direct Payments cannot be used for certain things**

This is set out in National Statutory Guidance. You cannot:

- Use the money for anything other than meeting the needs agreed in your support plan.
- Buy services that we would normally supply directly.
- Buy services or equipment that we are not responsible for, for example health or housing services.
- Buy long term residential or nursing home care.
- Employ your husband, wife, partner or close relatives who live in the same household as you do. We can agree to this only in very exceptional circumstances.
- Use Direct Payments to pay for household bills or other personal expenses.

#### **4.3. Direct Payments bank account**

Gloucestershire County Council will set you up a pre payment card account to be used only for your Direct Payment. We put your Direct Payments into this account and you pay in any financial contributions you are required to pay.

You cannot pay cash for services you buy with Direct Payments unless this is specifically agreed in your Support Plan.

#### **4.4. Direct Payments agreement**

You or an authorised/nominated person acting on your behalf will have to sign a Direct Payments agreement. It will be an *Authorised Person* if you have been assessed as lacking capacity to manage a Direct Payment and *Nominated Person* if you have capacity to manage a Direct Payment but have appointed someone else to do this for you.

#### **4.5. How much money you will receive and when**

Your personal budget is our calculation of how much it will cost to meet your needs. We deduct any amount that you have to contribute and pay the balance to you as a Direct Payment. We always tell you how much your Direct Payment will be.

For ongoing Direct Payments, the first payment is equivalent to 8 weeks of Direct Payments. This pays for start up costs and creates a small reserve to cover emergencies, like if your personal assistant is ill and you have to pay someone else to come in.

We need confirmation from you – evidence like an invoice or a timesheet - that services have started before we can start regular payments. Then we put money into your Direct Payments account every four weeks.

#### **4.6. Managing the money**

You are responsible for how Direct Payments are spent including when you use someone else or a support service to help you.

The authorised or nominated person is responsible instead if they are managing the Direct Payment for you.

Although we pay Direct Payments every four weeks, some things like insurance, holiday pay and so on may only have to be paid once a year. You will have to accumulate money in your direct payment account so that you can pay accounts as they fall due. We estimate that you should always have between 4 and 8 weeks worth of Direct Payments in your account.

You have to keep receipts and invoices of how you use the money or get someone else or a support service to keep records for you. We will be able to view statements for the account that we have set up.

#### **4.7. Using Direct Payments to pay for personal assistants**

Using an agency or a self employed person

You can use your Direct Payments to pay an agency to supply staff or to pay someone who is self employed.

If you use an agency, make sure that it is registered with the Care Quality Commission (CQC). Agencies regulated by CQC are listed on the CQC website. Our staff can tell you how to get this information if you are not sure. Please see also our **Using an Agency** fact sheet.

If you use someone who is self employed, it is important to check very carefully that they are genuinely self employed. There can be serious financial consequences for you if they are not. You should seek further advice about this. There is help on the HMRC website and HMRC can give you a decision if you are not sure.

[www.hmrc.gov.uk/payrti/employee-starting/status.htm](http://www.hmrc.gov.uk/payrti/employee-starting/status.htm)

Once you have confirmed that the person is self employed, ask them to include their Self Employed unique tax number on their invoices.

Self employed people are free to choose if and when they work for you. They are also unregulated (for example by an employer or the Care Quality Commission). You must decide if this will work for you.

Whether you use an agency or a self employed person, we recommend that you talk to several about their terms and conditions before you decide which one will be best for you. You should also ask to see a copy of their public liability insurance.

One of the Direct Payment Support Services can advise you about what you need to consider before you make your final decision and enter into a contract or agreement.

## **Employing your own staff**

**We strongly recommend that you seek independent advice if you decide to use Direct Payments to employ your own staff.** This is because if you become an employer, you will have legal responsibilities towards the people you employ. You will be responsible for all costs of employment.

**You should also seek independent advice about the insurance that you need.** You are required by law to have employers' liability insurance.

Your Direct Payment covers the employers' liability insurance premium. It is your responsibility to renew your insurance each year and pay the premium from your Direct Payments account.

You will need to decide what you want the employee to do, how you will recruit them and the terms and conditions of their employment. Some terms and conditions are set down by law. You should have a written contract of employment with your employees so that rights and responsibilities are clear. You will need to keep timesheets of the hours they work and make sure they work safely and as agreed in the contract. Timesheets must always include the start and end times of each shift they work.

You will have to decide how much to pay your employee. Your Direct Payment has to cover all usual employment related costs. You must pay your employee at least the national minimum wage but you also have to budget for things like tax and national insurance, employers' liability insurance, training, cover for holidays and sick leave, and so on.

**We strongly recommend** that you use a support service from our Direct Payment Support Service List to provide advice and support you with what you need to do. For example they can carry out Disclosure and Barring Service checks (see below) for you, deal with HMRC and make sure that wages, tax and national insurance are paid and recorded correctly. They can also advise on things like holiday pay, sick pay, maternity and paternity pay. There are charges for these services which can be paid from your direct payments account.

You, or an authorised/nominated person acting on your behalf, are legally responsible for all arrangements because you are the employer. Please refer to our **Becoming an Employer** guide.

## **Disclosure and Barring Service**

In addition to checking references for potential employees, **we strongly recommend that Disclosure and Barring Service (DBS) checks are carried out**. This includes the person's criminal history as well as checking whether the person has been barred from working with children or with vulnerable people.

Some of the support services on our Direct Payment Support Service List can arrange for the DBS check to be carried out for you. If you are using staff supplied by an agency, you should check with the agency that any staff they supply have had a satisfactory criminal records check.

### **4.8. Reviewing Direct Payments arrangements**

If you decide to have Direct Payments, we will check how things are going within the first few months. We need to make sure that Direct Payment arrangements are meeting your needs and that you are not experiencing problems.

After that, we will review your plan and your Direct Payment arrangements every year. We have to make sure that Direct Payments are still meeting your needs. If we find that your needs have changed, we will adjust your Direct Payments. This may mean that your Direct Payments will increase, reduce or in some instances stop.

We also have to account for how Direct Payments are spent. As we have set up the account we will be able to check how much money you have in your Direct Payments account and look at statements. We will want to see receipts, invoices and timesheets if you are employing staff. If you are using an agency to supply staff, be sure to keep copies of correspondence and agreements.

#### **4.9. Direct Payments and benefits, tax and Child Support assessments**

Direct Payments are not income or a benefit so they do not affect any benefits that you already receive.

Direct Payments do not affect your Child Support assessment or your income tax.

#### **4.10. If your needs are not being met or your needs change**

If your needs are not being met by Direct Payments or your needs change, please tell our Adult Social Care Helpdesk on **01452 426868** or email [socialcare.enq@gloucestershire.gov.uk](mailto:socialcare.enq@gloucestershire.gov.uk)

We will reassess your needs. We may have to step in and arrange services for you or we may just need to adjust your Direct Payments. This may mean that your Direct Payments are increased or decreased, or they may stop.

#### **4.11. If your support arrangements break down or you get into difficulty**

We will help you to plan for emergencies when we agree the plan. If your emergency plan fails and you cannot make alternative arrangements, or if you experience any difficulty at all with Direct Payments, please phone our Adult Social Care Helpdesk **01452 426868** or email [socialcare.enq@gloucestershire.gov.uk](mailto:socialcare.enq@gloucestershire.gov.uk).

#### **4.12. If you are admitted to hospital**

Please let us know if you are admitted to hospital. You can phone the Direct Payments Team on **01452 426009** or email [directpaymentsteam@gloucestershire.gov.uk](mailto:directpaymentsteam@gloucestershire.gov.uk). If you have a personal assistant, please try to contact them so that they know what is happening. If you are not able to, ask someone else to let them know for you.

#### **4.13. If you change your mind about Direct Payments**

You can change your mind about direct payments at any time. If you have accepted direct payments, you can ask us to arrange services for you instead. You will have to pay back any money you have not used.

You can also ask to switch to Direct Payments rather than continue to have services arranged by us.

Just tell our Adult Social Care Helpdesk by phoning **01452 426868** or by emailing [socialcare.enq@gloucestershire.gov.uk](mailto:socialcare.enq@gloucestershire.gov.uk)

#### 4.14. If you move out of Gloucestershire

If you move out of Gloucestershire, your new local authority may have a different system for Direct Payments. Your new Local Authority will be able to advise you about how things work in their area.

#### 4.15. Next of kin

In the event of your death, any money left in your Direct Payments account must be repaid to us after the final bills or wages have been paid.

We will ask you for contact details of your next of kin and / or who you have appointed to deal with your estate so that we know who to contact.

#### 4.16. If you want to make a complaint

##### About our decisions or our staff

Use our complaints procedure. You can get information about the complaints procedure and a copy of our complaints leaflet from any of our staff. You can also phone our Customer Services on **01452 427614** or email [socialcare.enq@gloucestershire.gov.uk](mailto:socialcare.enq@gloucestershire.gov.uk)

##### About a personal assistant supplied by an agency

Contact the agency manager and tell them about the problem. If you are still not satisfied and the agency is registered with the Care Quality Commission (CQC), you can contact CQC at:

CQC  
Citygate  
Gallowgate  
Newcastle upon Tyne  
NE1 4PA

Phone: **03000 616161**      Fax: **03000 616172**  
Email: [enquiries@cqc.org.uk](mailto:enquiries@cqc.org.uk)

##### About a personal assistant where you are the employer

If you employ a personal assistant, as the employer you are responsible for dealing with any concerns about their performance.

Independent advisors, like the support services on the Direct Payment Support Services List, can provide you with advice and support about what to do.

#### 4.17. Further information

There is additional information in our:

- Becoming an Employer Guide
- Using an Agency fact sheet
- Authorised/Nominated Person fact sheet

If you need more information or would like to have Direct Payments, contact our Adult Social Care helpdesk on **01452 426868** or email us at [socialcare.enq@gloucestershire.gov.uk](mailto:socialcare.enq@gloucestershire.gov.uk).