

Direct Payments

Factsheet – Acting as an Authorised Person

From November 2009, the law has been changed to extend Direct Payments to people who lack the mental capacity to consent to them. The Council now has a duty to offer Direct Payments to these individuals, where there is an 'Authorised Person' to receive and manage such payments on their behalf and where it would be in their best interests to have direct payments.

If you are considering acting as an 'Authorised Person' to receive Direct Payments on behalf of someone who does not have capacity, the information on this factsheet may help you to decide.

Being appointed as an Authorised Person

- You cannot just become an Authorised Person. The Council must follow legislation and guidance on how to appoint an Authorised Person. Please discuss the conditions for becoming an Authorised Person with your social worker.
- You must meet all the criteria set out in the Council's guidance notes for appointing an Authorised Person.
- You will function as the Authorised Person on behalf of an adult who lacks mental capacity to consent to receive Direct Payments.
- You must be willing and want to function as an Authorised Person.
- You can have support to manage the Direct Payment and we advise you to use the expertise of our support service, Barrie Bookkeeping. They can support you with using direct payments, recruiting, and managing Personal Assistants, and undertaking DBS checks, amongst other services. Barrie Bookkeeping also support with Payroll services.

Your role and responsibilities

- You must follow good practice in making decisions on behalf of the person who lacks capacity and act in their best interests.
- As the Authorised Person you are accountable for the way the Direct Payments are used.

- You should involve the person who lacks capacity as far as is reasonably practicable and give them as much control and independence as possible.
- You agree to inform the Council of any changes or difficulties, or as soon as you believe the person has regained capacity.
- You will sign an agreement with the Council relating to the use of the Direct Payments and you must keep to its terms.
- You agree to use the direct payments to purchase and obtain the services necessary to meet the needs of the person who lacks capacity, as agreed by the Council.
- Making these arrangements may involve legal responsibilities - for example employing staff.
- If you employ Personal Assistants, you must ensure you act lawfully as an employer – please ask your social worker for the relevant Factsheet.
- If you use an agency, please ask your social worker for the relevant Factsheet for advice on how to use agencies and keep safe.
- If you decide to give up acting as the Authorised Person, you must contact the Council as soon as you no longer want to continue in this role.
- If the person you represent has fluctuating capacity, during periods when they regain capacity you must ensure that you involve them as much as practicable in decisions.
- You may not use the Direct Payment to secure services from a spouse, civil partner, or partner of the individual; or a close relative, spouse, or partner of a close relative of the individual who is currently living in the same household without permission from the Council. You must first speak with a social worker and seek agreement in these circumstances. There may be occasions when the Council decides that it is necessary for an Authorised Person to use direct payments to secure such services, however, such situations are likely to be exceptional and a “best interests” policy is adopted.
- We will issue you with a card account for the sole purpose of purchasing the support required to secure the services to meet the assessed needs of the person who lacks capacity.
- If you are a corporation or unincorporated body, you must ensure that the money can be shown as separate to any funds you may hold for any other person or body.
- Whilst the Council does not want to discourage you from acting on behalf of an individual who lacks capacity, we must ensure that you are aware that anyone who acts as an Authorised Person may be guilty of fraud if they dishonestly abuse their position, intend to benefit themselves, or others, and cause loss or expose the person to risk or loss.
- The Fraud Act 2006 created an offence of ‘abuse of position’. This applies when someone is expected to safeguard the interests of a person but instead acts against their financial interests. Such a person can be found guilty of a criminal offence.
- If you are a corporation or unincorporated body, you must undertake criminal record checks for any workers you use to provide to the person who lacks capacity.

