

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 act 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 act 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, Ideal for All. They can support you with using direct payments, recruiting and managing Personal Assistants, and undertaking DBS checks, amongst other services. For support with Payroll we advise you to use our payroll provider, Barrie Bookkeeping.

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 carry on 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.

Keeping Safe

- The Council strongly advises that criminal records checks (DBS) are undertaken for anyone employed to provide services for an individual who lacks capacity. The Council will fund the cost of the DBS check.
- The Council can provide access to a DBS check should you request one.
- There are occasions when it is mandatory for the Council to carry out a DBS check when children are present in the household. Please contact the Direct Payments Team for advice.
- The Council will require you to undertake a criminal record check if you wish to be an appointed Authorised Person and you are not a family member, spouse, or a friend involved in the provision of care (please discuss the criteria with your social worker). For example, this would apply to an independent care broker or solicitor not previously known to the person who lacks capacity. You cannot be appointed until this check has been completed.
- As the Authorised Person, you are only responsible for making decisions about direct payments, but there are other ways support can be provided for the person without capacity, either via a virtual budget or by the worker arranging care for the person. Direct Payments are just one form of support. Please discuss the alternatives with your social worker.

Who to contact

Adult Social Care - Tel: 01902 551199

Disabled Children and
Young Person's Team - Tel: 01902 550911

Direct Payments Team - Tel: 01902 551292 or 01902 551294

Civic Centre

St Peter's Square

Wolverhampton

WV1 1RT

Email: direct.payments@wolverhampton.gov.uk

Ideal For All

- Tel: 0121 558 5555 Email: info@idealforall.co.uk