

Self Directed Support Factsheet – 4

Direct payments and personal budgets: what are your rights?

This factsheet explains your rights in terms of direct payments and personal budgets and what to do if you have any problems. For information on your general rights to support from social services, 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 guidance so councils are required to follow it.

However, the guidance does allow for some decisions to be made by councils about how they offer direct payments and personal budgets. This means that there is some regional variation. However, there are some important entitlements that all councils must observe.

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'.

Councils should 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. This includes being able to choose between direct payments or services provided by the council. The guidance states:

‘A person does not have to accept direct payments; if they wish, they can choose instead to receive services that are provided or arranged by the council. In this respect, the individual is still exercising choice over how their support is delivered. Individuals eligible for care and support should not be unfairly influenced in their choices one way or the other.’¹

You can ask for a description of the service that social services would provide if you want them to provide this. Remember that if you have eligible needs, you are entitled to choose between a service, direct payments or a combination of both.

You can 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, councils can arrange mixed packages with some directly provided services and direct payments for other needs. This can, for example, give somebody the opportunity to familiarise themselves with managing direct payments before taking on responsibility for arranging support to meet all their needs.’²

¹ Dept. of Health, 2009, Direct Payments Guidance, para. 15, 9

² Dept. of Health, 2009, Direct Payments Guidance, para. 28, 12

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.

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 and personal budgets: 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 from week to week and 'bank' any spare money to use as and when extra needs arise (this might be particularly helpful for people with long-term and fluctuating conditions). As long as overall the payments are being used to achieve the outcomes agreed in the care plan, the actual pattern of support does not need to be predetermined.'³

³ Dept of Health, 2009, Direct Payments Guidance, para. 123, 44

You should have a choice about which provider you use to meet your needs

The Department of Health guidance suggests to councils that they could compile a list of local services that you may want to use. But you shouldn't have to use a provider from this list.

'Councils should not require the individual only to contract with providers from the register...'⁴

Deafblind people may need to use a specialist service beyond their local council area. This should be possible but you will need to think about any additional travel costs.

Using direct payments to receive support from family members

There has been confusion about whether people who use direct payments are allowed to employ spouses, partners or close relatives who live in the same household. The Department of Health guidance states that that councils may let you employ someone like this 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.⁵

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 linguistic or cultural needs.

You should be allowed to take extra time to make this decision and to allow for advocacy support if required

Some people who have the capacity to agree to receive direct payments may need a bit more time to decide this.

⁴ Dept of Health, 2009, Direct Payments Guidance, para. 89, 33

⁵ Dept, of Health, 2009, Direct Payments Guidance, para. 135, 50

‘Obtaining consent might be a process involving continuous discussion, rather than a single event.’⁶

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

Your capacity to manage your direct payments

Just because someone can consent to direct payments does not mean that they can manage them without support. If you would like support to manage your direct payments, you are entitled to receive it. Councils should not make assumptions about whether certain groups of people can or cannot manage direct payments.

There is no difference between what are your eligible needs whether you want to receive a council service, direct payments or a personal budget

If you are thinking about receiving direct payments or a personal budget, 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.

‘Whichever form of support an individual chooses, there should be no difference in the assessment of their needs...’⁷

Self assessment processes must look at the needs of deafblind people

Self-assessment enables people to assess their own needs. Individuals are increasingly seen as the ‘experts’ in their own needs. It is positive that focus is placed on allowing people a space to

⁶ Dept, of Health, 2009, Direct Payments Guidance, para. 52, 21

⁷ Dept, of Health, 2009, Direct Payments Guidance, para. 94, 35

communicate their needs. However, it is important to remember that a deafblind person is still entitled to a specialist assessment of their needs. The Deafblind Guidance still requires that deafblind people have a specialist assessment carried out by a specialist in deafblindness.

You may find a specialist assessment useful, especially if your needs have changed. If you would like a specialist assessment, ask for one. For more information see the Sense factsheets on deafblind people's rights and entitlements.

Following your assessment a support or 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 people direct their own support or where the council directly provides or arranges services. It also applies whether or not direct payments or a personal budget are received by the person receiving support or by someone else on their behalf.’⁸

You are entitled to an interim service while you wait for your direct payments or personal budget

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 or personal budget and think about how you will purchase the support you need. 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 care arrangements in place,

⁸ Dept. of Health, 2009, Direct Payments Guidance, para. 98, 36

for example if they have been newly assessed, the council may need to provide services in the interim.⁹

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 and personal budgets: receiving the right amount'. 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'.

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 meet their 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.'¹⁰

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.

⁹ Dept. of Health, 2009, Direct Payments Guidance, para. 72, 27

¹⁰ Dept. of Health, 2009, Direct Payments Guidance, para. 236, 85

‘The council will need to be prepared to respond in these circumstances just as it would with any other person using a service.’¹¹

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

Ask your 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 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.¹²

In some cases, individuals can report cases to the Local Government Ombudsman. You may also want to take legal action. This may 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. For more information see Sense’s factsheet ‘What to do if you don’t get what you should’.

Do direct payments count as income?

Any money you receive from social services in direct payments or personal budget will not affect any welfare benefits. The direct payments or personal budget you receive are not liable for income tax.

¹¹ Dept. of Health, 2009, Direct Payments Guidance, para. 237, 85

¹² Dept. of Health, 2009, Direct Payments Guidance, para. 48, 20

Resources

Guidance on direct payments for community care, services for carers and children's services: England 2009

Post: 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

Post: 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

Post: 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

Post: Unit 3, 60 Duke Street, Liverpool, L1 5AA.

Advocacy finder Helpline: 0845 122 8633 (Mon. to Fri. 2pm – 5pm)

Email: arx@advocacyresource.net

Web: www.advocacyresource.net

Older People's Advocacy Alliance (OPAAL)

Post: 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

March 2010