

**ANGUS COUNCIL**

**SOCIAL WORK AND HEALTH COMMITTEE**

**21 AUGUST 2003**

**DIRECT PAYMENTS**

**REPORT BY THE ACTING DIRECTOR OF SOCIAL WORK**

**ABSTRACT**

This report advises Committee of the new statutory duty which local authorities have to implement direct payments and sets out proposals for amending the existing Direct Payments Scheme in Angus. A copy of the new Scottish Executive policy and practice guidance on direct payments will be placed in the members lounge for information.

**1 RECOMMENDATIONS**

It is recommended that the Social Work and Health Committee:

- (i) notes the content of this report;
- (ii) endorses the proposed policy relating to the operation of the Direct Payments Scheme in Angus; and
- (iii) endorses the proposal to establish a support service independent from social work.

**2 BACKGROUND**

A direct payment is a cash payment made by a local authority to an individual or their representative after the person has been assessed as needing certain community care or children's services, including housing support services and equipment and temporary adaptations. The local authority makes the payment instead of arranging the provision of services and the individual uses the payment to purchase the relevant services.

The Community Care (Direct Payments) Act 1996 gave local authorities the power but not the duty to make direct payments. Section 7 of the Community Care and Health (Scotland) Act 2002 introduced a number of new provisions which aim to make direct payments more widely available. From 1 June 2003 the 2002 Act placed a duty on local authorities to offer direct payments to eligible disabled 16 and 17 years olds and adults, to people with parental responsibility for a disabled child, to disabled parents needing support in their parental role, and to attorneys or guardians with relevant powers. Further provisions are proposed which will extend the duty to offer direct payments to all community care groups and children in need, from 1 April 2004.

To receive direct payments an individual must be able to give consent to receiving payments and must be able to manage payments, with support where necessary. Certain groups of people who are subject to mental health or criminal justice legislation will be excluded from receiving direct payments by regulations.

Although the new duties have been introduced since 1 June 2003 the Scottish Executive only issued new policy and practice guidance about direct payments on 23 June 2003.

### **3 THE CURRENT DIRECT PAYMENTS SCHEME IN ANGUS**

Up to 1 June 2003 the implementation of direct payments was discretionary for local authorities. However Angus Council was one of the minority of authorities which used the discretionary powers and we have offered direct payments to adult service users since 1999 within specified eligibility criteria. Report No 639/01 approved by Social Work Committee on 29 May 2001 set out details of the Direct Payments Scheme in Angus and of the current eligibility criteria.

Before the new duty for local authorities to offer direct payment came into effect on 1 June 2003 Angus had 24 direct payment service users. In comparison with other authorities and in proportion to our population this indicates that we have consistently been offering direct payments to more service users than the majority of other authorities in Scotland.

### **4 PROPOSAL FOR EXTENDING DIRECT PAYMENTS**

As described above Angus Social Work has used discretionary powers for several years to offer direct payments to individual service users, where this has been identified as an effective way of providing community care services to meet assessed needs. Committee Report No 639/01 set out how the existing Angus scheme has operated.

With the implementation of new statutory duties from 1 June 2003 the Angus scheme will have to be available for a much broader range of service users. The scheme will have to be consistent with the newly issued national policy and practice guidance which sets out for local authorities the Scottish Executive's view of how the new statutory duties should be implemented. There is also likely to be an increasing interest amongst service users in direct payments as an option for meeting assessed needs, as information about the new legislation and the potential availability of direct payments is being circulated widely through a range of voluntary sector organisations and other networks across Scotland. This could include interest amongst existing service users who may wish to switch from having services arranged by social work to receiving direct payments. For all these reasons there is a need to revise the policy and procedural framework within which the Angus scheme has operated. A new proposed direct payments policy for the Angus scheme is described in full in Appendix 1.

The proposed new policy builds on the procedural framework for the existing Angus scheme and takes account of the new statutory duties and the new national policy and practice guidance.

It retains the essential requirement that direct payments can only be considered as an option following an assessment of need using current assessment and prioritisation procedures which apply within community care and children's services. It also states that the process of assessing need will include specifying the services which would be offered if social work arranges for the service provision directly. This is to ensure that, in line with the national policy guidance, a service user who receives direct payments is not treated any more or less favourably than an individual who receives services arranged by the social worker or care manager in terms of either the level of service provision they can access, or in terms of how quickly services can be started.

Within the new policy a service user can employ their own carers, or purchase services from an agency, as the current scheme allows. The new policy will also

allow service users to receive direct payments and some services arranged by Social Work

The new policy emphasises the need to ensure that anyone who receives direct payments is willing and able to manage the arrangements. This again is in line with the national guidance. The policy also emphasises that where direct payments are being considered as an option the social worker or care manager must be satisfied that the individual is clear about their responsibilities, the support they will receive, the value of the direct payment, the monitoring information they will provide and any specific conditions about what the money may or may not be spent on. Much of this information will be an agreement which every individual who will receive direct payments must sign. An information pack will also be given to each service user, when direct payments are being considered as an option. This information pack will set out in detail how the Angus scheme will operate, what direct payments can and cannot be used for and the monitoring systems which apply to the scheme. In assessing the appropriateness of direct payments the social worker or care manager will go through this information pack with the service user to make sure that they fully understand and accept the requirements of the scheme. A draft copy of this information pack is attached to this report as Appendix 2.

The national guidance also states that a support service is a prerequisite for effective direct payment provision. Support for direct payments recipients within the existing Angus scheme is provided by a direct payments co-ordinator and the current post holder is employed by Social Work and based within the disability resource centre at Friockheim. The national guidance though recommends that support should be provided through an independent user-led organisation. The establishment of an independent support organisation would be consistent with the national guidance. It would also, and very importantly, ensure that employer's responsibilities rest with the service user who receives direct payments, and not with Angus Council. It is therefore proposed that work is undertaken to identify an appropriate voluntary organisation which can be commissioned to provide a direct payments support service in Angus.

## **5 FINANCIAL IMPLICATIONS**

The Scottish Executive has not provided any additional funding for the duties placed on local authorities in relation to Direct Payments. This position is based on the premise that local authorities are already funded for the services to be provided and, therefore, there should not be any additional costs arising.

However, for Angus Council Social Work, the majority of the services that will be funded through Direct Payments are currently provided by permanent employees. This means that there is limited flexibility for any movement of money to fund Direct Payments in any given year. It is not possible to predict what the level of demand and associated costs will be, therefore all expenditure on Direct Payments will be actively monitored by the department's Senior Management Team to ensure that departmental expenditure is contained within the agreed revenue budget.

If significant cost pressures arise, they will be reported to the Social Work and Health Committee.

## **6 HUMAN RIGHTS IMPLICATIONS**

There are no Human Rights implications arising from the recommendations contained in this report.

## **7 CONSULTATION**

The Chief Executive, the Director of Law and Administration and the Director of Finance have been consulted in the preparation of this report.

## 8 CONCLUSION

This report sets out proposals for amending the existing Angus Direct payments Scheme to comply with the new statutory duties which local authorities have to implement direct payments, in line with the new legislation and the new national policy and practice guidance.

R Peat  
Acting Director of Social Work

**NOTE:** The undernoted background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973 (other than any containing confidential or exempt information) were relied on to a material extent in preparing the above report.

Social Work (Scotland) Act 1968, Section 12b & 12c  
Direct Payments: Policy & Practice Guidance – The Scottish Executive 23 June 2003.

## Angus Council Direct Payment Policy

### Introduction

A direct payment is cash paid to a service user or their representative or a person with parental responsibilities for a disabled child, to enable them to purchase services which they have been identified as needing, following an assessment of need. A service user can use direct payments to employ their own workers, or can purchase services from an agency.

Section 7 of the Community Care and Health (Scotland) Act 2002 requires local authorities to offer direct payments to people who meet the criteria for payments as an alternative to the authority arranging the provision of services. Direct payments can also be offered to meet some of the assessed needs which a service user has, complementing services which are arranged by Social Work.

### Eligibility Criteria

Before an applicant can receive direct payments they must:

- be eligible to receive direct payments as defined in the legislation
- have had a full assessment of needs following community care or children's services practice guidance;
- have received a care plan which identifies the services Social Work would arrange to provide;
- have been assessed as being able to consent to receiving direct payments;
- have been assessed as being willing and able to manage direct payments, with help if necessary;
- require at least four hours of care per week;
- be willing to apply for Independent Living Fund funding or Supporting People funding if they are eligible.

Specific groups of people identified within regulations will be excluded from receiving Direct Payments.

### Entry into the Scheme

Applications for direct payments can only be considered following an assessment of need and an assessment of eligibility for direct payments.

An application can only be approved on the basis that the individual, or their representative fully understands the implications of receiving direct payments. Before a decision is taken about whether direct payments are an appropriate way of ensuring that needs are met:

- the individual will be advised of the amount of direct payments they could receive;
- they will produce their own personal plan, setting out how they would use payments to meet agreed assessed needs.

Direct payments will not be considered as appropriate:

- if the applicant proposes to employ their partner or a close relative living in the same household. In exceptional circumstances someone else living in the same household or a close relative living elsewhere, can be employed to provide care;

- to meet recreational needs;
- to employ someone to provide care for a disabled child or a vulnerable adult without an enhanced disclosure check being undertaken;
- to purchase long-term stays in residential accommodation.

Direct Payments applications will be approved by the appropriate budget holder within the relevant social work service area following the same procedures for approving expenditure where services are to be provided or commissioned by social work. When an application for direct payments is approved the individual must sign an agreement before direct payments can start. This agreement will explain the responsibilities and duties of the applicant and those of Social Work.

### **Calculation of Direct Payments**

There is no minimum or maximum on the amounts of direct payments which can be payable.

The amount payable will be calculated based on the assessed care needs which would be met by the provision of services arranged by Social Work. At the same time the Angus scheme will operate within the principles of long-term best value, taking account of the cost-effectiveness of direct payments.

Where a person chooses to employ their own staff an hourly rate will be set by Angus Council. This will be based on:

- the number of hours care per week;
- direct wage costs;
- a contingency element, to cover holiday pay and other elements;
- employers liability insurance.

In addition a one-off payment can be included for appropriate recruitment or training expenses.

Where a person chooses to employ an agency the calculation will be based on an agreed agency rate.

The amount of direct payments payable to any individual will be net of any financial contribution which an applicant will be assessed as being required to make, following the standard financial assessment procedures.

Direct payments will not be paid instead of ILF where a service user is eligible for fund monies.

### **Making and Reviewing Payments**

Direct payment service users who employ their own carers can opt to either manage their own payroll or nominate a third party to operate the payroll (Angus Association of Voluntary Organisations currently offer a payroll service, funded by Angus Council).

Direct payments service users will have to open a specific bank account to receive payments which will be made 4 weekly in advance, and net of any financial contribution due from the service user.

Service users will be expected to keep financial records, as set out in their agreement, and to provide regular financial monitoring information to Angus Council Social Work, again as set out in the agreement and the Direct Payments Information Pack.

Service users must notify their care manager or social worker of any change they wish to make to their scheme. Care needs will be reviewed in line with standard social work reviewing procedures and service users can request a review of their care needs at any time. Direct payment levels will be changed in the light of any review of needs and any change in the level of agreed needs to be met by direct payments.

### **Discontinuing Payments**

Direct payments may be discontinued after a review if:

- the service user no longer requires a service;
- the service user is no longer able to manage arrangements;
- payments are not being used to meet needs appropriately.

The service user's agreement will contain a section clarifying issues relating to discontinuing payments.

### **Employing Care workers**

Regulations prevent service users using direct payments to employ partners or close relatives, as described above. While local authorities can make exceptions and allow people to employ close relatives living elsewhere or someone living in the same household it is envisaged that close family members and others living in the same household will not normally be employed as paid carers.

A service user employing their own staff will require to act as a responsible employer and it will be their responsibility to discharge their obligations as an employer.

Unless an employee who wishes to be treated as self-employed receives a certificate from the Tax office as evidence that they can be recognised as self employed, then service users on the direct payment scheme will not be authorised to use payments to pay that employee.

### **Complaints**

Any service user who does not agree with a decision about direct payments will be able to use the existing formal complaints procedure in Social Work.

**Direct Payments: Arranging Your Own Services**  
**An Information Pack**



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## **1. ABOUT THIS INFORMATION PACK**

From 1 June 2003 the Community Care (Direct Payments) Act has placed a duty on local authorities to make direct payments available to certain groups of people who have been assessed as needing community care services, and to parents of children with a disability. Anyone receiving direct payments must agree to and understand their responsibilities and be able to manage these payments.

This pack offers more detailed information about direct payments to people who have already talked about this option with their social worker or care manager.

To be considered for direct payments you or your child must have had an assessment of needs in the same way as you would for community care or children's services provided by social work.

As part of this assessment you will have received an information leaflet explaining what direct payments are.

This information pack gives more detailed information about direct payments, about how the Angus scheme works, and about the responsibilities you will have if you receive direct payment to arrange your own services.

## **2. INTRODUCTION**

### **2.1 What are direct payments?**

Direct payments are cash payments that Angus Council Social Work can give you, to allow you to buy the services that you need.

Direct payments can only be made after your need for community care services has been assessed or, if you are the parent of a child with a disability, after your child's needs have been assessed. We give you the money, in the form of direct payments, instead of providing the services which you have been assessed as needing and which we would have arranged for you.

Direct payments are intended to support independent living. Receiving direct payments means that you can arrange your own services and spend the money on getting the support that meets your agreed needs. You can make arrangements to employ your own personal care assistants to provide care or support. You can also choose to buy care and support from a private or voluntary sector agency. Direct payments can therefore offer you flexibility, and allow you to decide how your needs will be met, by whom and at what time.

You can receive some services directly provided by Social Work and some direct payments. This would mean that to meet your agreed needs we would arrange some of the service provision and you would get direct payments to arrange services to meet the other identified needs yourself.

Receiving direct payments does not affect your entitlement to benefits such as Disability Living Allowance or Attendance Allowance, or to other income related benefits such as Income Support. The Inland Revenue does not count direct payments as income for tax purposes.

### **2.2 Who can get direct payments?**

Direct payments are for adults or children with disabilities. Direct payments are available for:

- disabled adults, aged 16 or over, assessed as needing community care services;
- disabled young people, aged 16 and 17, assessed as needing children's services;
- parents and people with parental responsibility for a disabled child assessed as needing services;
- disabled people with parental responsibilities, needing services to support their parenting role;
- disabled people aged 16 and over needing housing support services;
- an attorney or a guardian. This is someone who is legally appointed to make decisions on behalf of a disabled adult.

A small group of people who are affected by specific mental health or criminal justice legislation will not be able to get direct payments.

To receive direct payments you must:

- have had an assessment of need which has agreed that you are eligible for services and identified the services which we would provide to meet your needs;
- agree that you want to have direct payments;
- demonstrate that you are able to manage direct payments either on your own or with help from someone else.
- You must also need direct payments to buy 4 hours or more support each week, as identified in your assessment of need.

### **2.3 What can direct payments be used for?**

You must use your direct payment to buy support that meets the needs identified in your assessment which we would otherwise arrange for you.

Direct payments can be used to pay for:

- personal care or assistance. This can include help with dressing, bathing, using the toilet, preparing meals;
- help with other daily living or domestic tasks;
- short breaks/respite care;
- housing support services. These are services to help you stay at home;
- equipment or temporary adaptations;
- the appropriate transport expenses of workers you employ.

As stated earlier you can

- buy personal assistance from an agency to help you meet your needs;
- employ personal assistants.

### **2.4 What direct payments cannot be used for.**

You cannot use direct payments to buy long-term residential care. Direct payments are intended to support independent living, so you cannot use them to pay for long-term stays in a care home. You may be able to use your direct payments to buy occasional short breaks in a care home if this has been identified as a need in your assessment.

You cannot use direct payments to employ:

- your partner;
- a close relative living in the same household;
- a close relative living elsewhere;
- someone else living in your household.

In very exceptional cases we may allow a close relative living elsewhere or someone living in your household to be employed if you cannot arrange services any other way.

In relation to direct payments a close relative is your parent or grandparent, aunt or uncle, son or daughter, son-in-law or daughter-in-law, stepson, daughter, brother or sister, or the partner of any of these.

You cannot use direct payments:

- for recreational needs;
- to meet the expenses of workers you employ, if you are out socially.

### 3. GETTING DIRECT PAYMENTS

#### 3.1 How do I get direct payments?

To be considered for direct payments an assessment of need must have been completed. If you are an adult an assessment of your need for community care services will be undertaken by a care manager. If you are the person with parental responsibility for a child with a disability your child will have their needs assessed by a social worker. If you are a parent with disabilities an assessment of the support you need to help you in your parenting role will be undertaken.

An assessment will involve talking about your needs with you, with your carer if you have one, and where appropriate with health and social care staff who may know you well. An assessment will involve taking your views fully into account in working out what your needs are and the amount and type of help you require.

The assessment of needs and decisions about how needs can be met are part of one process. The assessment of needs will therefore be completed with your social worker or care manager drawing up a care plan which shows how your needs could be met by the provision of services arranged by social work. You will be given a written copy of this plan at the end of the assessment process.

The needs assessment process will be the same whether you receive services from social work or get direct payments. An information leaflet about direct payments as an option will have been given to you during the needs assessment. This information pack gives you more detailed information to help you decide if direct payments are an option you wish to consider.

#### 3.2 Am I automatically entitled to receive direct payments?

No. If you say that you wish to receive direct payment you do not have an automatic right to be offered direct payments by social work. To receive direct payments you must be in one of the groups of people defined in national regulations and set out in section 2.2.

We must also be satisfied that:

- **You are able to consent to receiving direct payments.** This will involve us talking with you about whether you understand the implications of receiving payments. If you have given someone powers of attorney, or if someone has guardianship powers, they may be able to consent on your behalf. If you are a parent you can give consent to receive payments to meet your child's needs; and
- **You want to receive payments;** and
- **You are able to manage the arrangements for using direct payments.** Again to help us decide if you can manage direct payments we will discuss with you what using direct payments will mean. To help with this process your care manager or social worker will talk with you about the different sections of this information pack and about the responsibilities and duties you would have if you receive direct payments.

We can only consider offering you direct payments if you are eligible, if you can consent to receiving payments, if you are willing to receive payments and if you are able to manage them. If we are not satisfied that any of the above criteria are met we can refuse to offer you direct payments.

#### 3.3 How much will my direct payments be?

The Scottish Executive has not set any limit on the maximum or minimum amount of direct payments anyone can get. Local authorities though must make direct payments at a rate which will let you buy a service which is of a standard that will meet your

needs. We must also think about the cost effectiveness of making direct payments rather than arranging services for you.

The amount of direct payments you will get will be based on the agreed number of hours shown on your care plan, less any charge you have been assessed as having to pay (see next section, 3.4).

The amount will be calculated using an hourly rate, and different hourly rates will apply, depending on your needs.

If you are going to employ your own workers there will be two separate hourly rates. One rate will apply to any assessed need for domestic or home support and one rate will apply to any need for personal care.

If you are going to contract with an agency the same hourly rates will apply, depending on the assessed needs. If you cannot buy services from an agency at these rates a higher rate can be approved only if support has to be provided by workers with specific skills and training employed by a specific agency.

Hourly rates will be set to take account of any employers costs you may have, and they will be reviewed annually. Your social worker or care manager will give you up to date information about these hourly rates.

If you can buy a service at less than the set hourly rates, for example if you can use a community childminder whose charges will be below these rates, then your direct payments will reflect this.

The exact amount of your direct payments will be the number of hours care or support per week multiplied by the appropriate hourly rate.

The amount will be less any charge that you have been assessed as having to pay. The amount will also be less the amount you may receive from the Independent Living Fund towards any care costs (see section 3.5).

#### **3.4 Will I have to make a financial contribution if I receive direct payments?**

You may have to contribute financially to the cost of your care if you need services to meet community care needs. The charge will be the same as you would pay if you were receiving services from social work rather than arranging them yourself. This does not apply to the provision of services to meet the needs of a disabled child.

You will have a financial assessment to work out any charge and there is a social work information leaflet which explains the financial assessment and how any financial contribution is worked out. Your care manager will give you a copy of this leaflet.

Any weekly financial contribution you are assessed as being liable to make will be deducted from your direct payments before they are sent to you.

#### **3.5 Independent Living Fund (ILF)**

The Independent Living Fund is a fund financed by central government. This fund supports disabled people aged 16-66 who receive certain benefits and who also receive certain levels of services from local authorities.

If you are eligible for ILF funds you can receive regular four weekly payments which you use to buy personal care in the community, in much the same way as you use direct payments.

As part of the Angus Direct Payments scheme we would expect you to apply for ILF funds if you are eligible for them. Your care manager will help you to make an



application to the ILF fund, and if you receive an award this would be taken into account when we calculate your direct payments.

### **3.6 What can I spend direct payments on?**

The money is for you to use to arrange the services which you have been assessed as needing and that social work would otherwise arrange. Direct payments cannot be used to buy health care or places in care homes. You can use direct payments though to meet your needs as they are identified through the assessment.

With direct payments you choose what that support is, who provides it and when. You must discuss with your social worker or care manager how you would use your direct payments to arrange services to meet your needs. Based on this discussion you will draw up an individual personal plan which will outline how you would use money you might get as direct payments to meet your needs.

Your social worker or care manager can give you a copy of a simple form to be used to put your personal plan on. You can write your plan down yourself, or with support, or your worker can write it down for you. There must be a plan which sets out how you would use direct payments to get services to meet your needs.

### **3.7 Can I change how I spend my direct payments?**

Direct payments must be spent on meeting needs which have been agreed in your assessment.

Direct payments though allow you to choose how support is provided. There is flexibility in how you spend your direct payments, as long as you are still arranging services to meet your needs.

You will need to discuss with your social worker or care manager the amount of flexibility you would have in how you spend your payments. You will though be able to make changes on your own, without asking, as long as you are using payments to meet your needs.

### **3.8 Safeguards/quality of services**

If you receive direct payments then you arrange your own services to meet your needs. This means that you are responsible for making sure that the services you buy are of a good enough quality.

However there are certain safeguards which will make sure that you arrange services which will be of a good quality.

- If you are the parent of a disabled child, and you are going to employ workers, then you must agree that an enhanced disclosure check is requested for anyone you want to employ. Enhanced disclosures are checks on criminal records and on other information held by the police, which help you to decide whether someone is suitable to work with children.

Your social worker or care manager will tell you more about enhanced disclosures;

- If you are an adult with a disability then you must agree to standard disclosure checks on someone you want to employ. If you have a disability which may make you vulnerable to abuse or exploitation or if you have children living in your household you must agree to enhanced disclosure checks;
- If you are going to employ someone with direct payments you must also tell your social worker or care manager about how you will recruit a worker or workers. This is to make sure that you use direct payments to employ people who will be suitable and can provide the care you need (see section 4, about becoming an employer);

- You can use direct payments to buy a service from an agency. Certain services provided by agencies are regulated by the Scottish Commission for the Regulation of Care. You will be able to find out about the quality of services such agencies provide from the Care Commission, and there are national standards which apply to these agencies. Your social worker or care manager can help you get copies of these standards to let you know what you can expect from agencies.

### **3.9 How are direct payments approved?**

Local authorities do not receive any new money from the Scottish Executive to make direct payments. The national guidance also says that people who receive direct payments should not be treated more or less favourably than people who have services arranged for them. This means that if you receive direct payments they will let you buy the same amount of services as you would get if we provided services for you and you will not get service faster than someone who wishes to have services provided by social work.

To make sure that we treat people equally applications for direct payments will be approved by an identified manager within the specific service area in social work. The process of approval will therefore involve your social worker or care manager passing an application for direct payments to the appropriate manager. They can only authorise direct payments if your social worker or care manager recommends this.

### **3.10 How will I get the money?**

If direct payments are approved you must open up a separate bank account to be used solely for direct payments.

You will receive payments four weekly in advance, so that you have money available to buy the services you need.

You will have to sign an agreement before direct payments can start. This agreement explains to you your responsibilities and those of social work. Your social worker or care manager will agree with you the exact date on which direct payments will start to be paid.

### **3.11 What do I need to do before I start receiving direct payments?**

The following points are taken from a guide to receiving direct payments published by the Scottish Executive. It covers the issues which will be discussed and agreed with you by your social worker or care manager, most of which are explained in this section, or in section 6. Before direct payments start you will know:

- what needs the direct payments relate to;
- what services the direct payment are meant to cover;
- the value of direct payments you will receive;
- how much you will be expected to contribute to the cost of the services;
- how you intend to use the money to secure services to meet your needs;
- whether you need help to manage your direct payments, and where you can get help;
- what the money may and may not be spent on, and how much flexibility will be allowed;

- what changes to the way you secure your services would we expect to agree in advance;
- back –up arrangements to cover emergencies;
- how often and in what form payments will be made;
- the information you will need to give us about how the money is spent;
- the arrangements for monitoring how you use payments;
- any conditions attached to the direct payments;
- the date when your arrangements will next be reviewed;
- the circumstances in which we will consider discontinuing direct payments;
- the period of notice we will give you if we decides to discontinue direct payments, and the circumstances in which we would stop payments immediately;
- how any outstanding commitments will be handled if direct payments are discontinued;
- the circumstances in which we would seek repayment.

## 4. BECOMING AN EMPLOYER

As a person receiving direct payments you will have certain responsibilities.

If you employ your own staff you will have legal responsibilities as an employer. You must be aware of and comply with these responsibilities.

This section of the information pack sets out some of the information you should understand about becoming an employer. You may also find it helpful to speak to the local support worker or to contact Direct Payments Scotland (DPS), for more information.

DPS can be contacted at:

27 Beaverhall Road  
EDINBURGH  
EH7 4JE  
Telephone: 0131 558 5200  
e-mail: [info@dpscotland.org.uk](mailto:info@dpscotland.org.uk)

### 4.1 How do I find people to employ?

You can find the right people by a range of methods. This could include word-of-mouth, by asking amongst friends or neighbours; putting a notice in shop windows; or advertising in newspapers or in the Job Centre.

Whichever method you choose there are a number of steps you should take (the rest of the information in this section is taken from a booklet 'A Guide to Receiving Direct payments' published by the Scottish Executive).

#### How do I find people I could employ?

- The first step is to decide what kind of person you want and how many people you need, drawing on the assessment of your needs and what has been agreed you may spend direct payments on. Start by preparing a list of the tasks you want your employees to do. Then ask yourself what skills and personal qualities they will need to do those tasks properly. For example, if part of the job is to enable you to get out and about, you may need someone who can drive. If you think you will need more than one person, you might also consider whether they all need to have all these skills and qualities. You will also need to think about what hours you would expect them to work.
- If you are placing an advertisement in a paper you will need to describe briefly what the job involves, how many hours per week, what kind of person you are looking for and the rate of pay and give a contact number or address. You may prefer not to give your own address or telephone number at this stage, for security reasons. You could arrange with the Post Office to set up a PO Box or discuss other options with your social worker or care manager.

#### How do I decide how much to pay people?

- You may be able to ask people who are already employing people using direct payments how much they pay or look at advertisements for similar jobs. You can also discuss rates of pay with your social worker or care manager. How much you can afford to pay will of course depend on the value of the direct payments you receive, but the amount will be enough to enable you to pay for the services you have been assessed as needing.
- You may need to offer different rates of pay for different bits of the job. For example, you may find that you need to offer higher rates for evening or

weekends than for weekdays. Or you might have to pay more if you need someone with particular skills (for example, driving) for some parts of the job.

- Details about the national minimum wage can be obtained from the Department of Trade and Industry on telephone 020 7215 5000.

#### Do I need to prepare a job description?

- A job description will be helpful to set out clearly what the job requires. It will help you to think through what sort of person you are looking for and to explain to applicants what the job involves. It will also serve as a record of what you expect from your employees, which will help if any difficulties arise.
- The job description should list the tasks your employee will be expected to do, how often they are needed and the likely variations, and anything else you will expect of your employee (for example punctuality, confidentiality). It may be helpful to start with a brief overview of the purpose of the job and how you expect your employees to fit into your life. You could use your care plan to help write a list of the main tasks. You will need to take care to leave sufficient flexibility to allow you to ask your employees to perform reasonable tasks which contribute to the overall purpose of the job as and when they arise, even if they are not specifically listed in the job description.

#### What information should I ask applicants to provide?

- To help you decide whom to invite for interview you will need to ask for information which will help you to form a judgement about the applicant. You may decide to ask applicants to complete an application form, or just ask for a letter saying why they want the job, accompanied by an outline of their employment history. If you are short of time, you may prefer to ask a standard set of questions on the telephone. The fuller a picture of the applicant you can obtain at this stage, the easier it will be to decide whom to interview.
- You may want to ask:
  - for details of experience, training and employment history;
  - when the applicant is able to work and when he or she is able to start;
  - why the applicant is interested in working for you.
- You **must** ask:
  - if the applicant has any criminal convictions;
  - for references and verify those references before offering anyone a job.

#### How do I go about interviewing?

- Go through the applications you receive, comparing them with your list of the skills and personal qualities you are looking for. Decide which of the applicants you will interview and arrange dates for the interviews. You might find it helpful to ask someone else to help you with this choice and with the interviews.
- For security reasons you may not want to hold interviews in your own home. Your local authority or disability organisations may be able to give you the use of a room.
- Think through, before the interviews, the questions you will need to ask to find out more about the candidates.

- It may be helpful to begin the interview with an explanation of what the job involves, to ensure that the applicant has understood the advertisement and to provide additional information. Aim to give the candidates a chance to talk so that you can see what they are like. Give them the opportunity to ask any questions they may have.
- When you come to choose between the candidates, you will need to consider whether they will be able to do the job, and whether you are likely to be able to get along with them.
- If you are the parent of a child with a disability, or an adult with a specific disability which can make you vulnerable, then you must agree to an Enhanced Disclosure being carried out on any person you wish to employ. An Enhanced Disclosure will provide information about convictions and about the suitability of the person to provide services.

## **4.2 What are my responsibilities as an employer?**

As an employer you will have to fulfil your obligations to staff. This means that you must comply with relevant employment and tax laws.

If you employ staff directly:

- You may have to deduct National Insurance (NI) and tax (PAYE) and pay these to the Inland Revenue (Earning thresholds for PAYE and NI change each year and your local tax office will give you details about this.)
- You will have to make sure that you are adequately insured, particularly with Employer's Liability Insurance.
- You have to provide your employee with a contract of employment. This does not have to be in writing, but we would advise you to give staff a written contract.
- You have to make sure that staff can work safely while delivering services, including meeting any Health & Safety Executive requirements.
- You are expected to be a reasonable employer.

It is important that you treat staff reasonably, with adequate breaks and rest time and with good notice when they are required to work. It is also good practice to give staff a written contract, rather than just agree orally what you expect. Written details mean that both you and your staff then know what you can expect from each other, and misunderstandings are less likely to happen.

As an employer you will also want to get the best from your staff.

It will help if you establish clearly from the start the standards you expect. Be prepared to discuss with your employees how you like things done and listen and respond to any difficulties, questions or suggestions they may have. Tell your employees when they are doing well.

You should also tell your employee straight away if you are not satisfied with any aspect of their work. If the problem continues, you may need to consider giving them a formal warning that an improvement must be made. You are the employer and you have the power to dismiss them if their work is persistently unsatisfactory.

## **4.3 Contracting with someone who is self-employed**

If the person you employ says that they would like to be self-employed they should receive a certificate from the Tax Office as evidence that they can be recognised as self-employed. Unless an employee has this certificate then self-employment will not be authorised within the Angus Direct Payments Scheme.

If a person is not self-employed then you will be regarded as the employer with the responsibilities set out earlier. Someone who is genuinely self-employed will make their own arrangements for paying their own Tax and National Insurance Contributions.

## 5 CONTRACTING WITH AN AGENCY

What do I need to know about contracting with an agency?

- There are many agencies which provide services. Purchasing services from an agency means that you do not employ directly the people who provide your care, and you do not have the responsibilities of an employer. Instead, you have a contract with the agency.
- Your social worker or care manager will be able to provide names of agencies in Angus which provide the kinds of services you need. You may also be able to find out about agencies from other people who receive direct payments, your GP or District Nurse, libraries, Angus Association of Voluntary Organisations or Citizens Advice Bureaux, or by looking in the Yellow Pages.
- Before contacting an agency it is important to be clear in your own mind what help you are looking for. Start by preparing a list of the tasks you are expecting agency staff to do, just as you would if you were recruiting your own staff. Then think about what is most important to you about that way those tasks are done. This will help you prepare questions to ask agencies you are considering so as to identify the one which best meets your needs.
- Always contact more than one agency before committing yourself. Remember that you are the customer. If one agency is not prepared to meet your requirements, you may be able to find another which will.
- You might find it helpful to ask some of the following questions before making a decision:
  - What services are available?
  - What charges will be made?
  - Is the price all inclusive, or are there any extras, for example VAT, National Insurance or travelling expenses?
  - Is there a minimum service that has to be bought?
  - Can I choose the person who provides the services?
  - Can I expect to see the same person on a regular basis? What if the regular person is sick or on holiday?
  - Can the organisation be contacted at all times when services are being provided?
  - How can I contact the out of hours emergency service? Is there any additional charge?
  - How can I complain about the service I receive?
  - What obligations will I have if I cancel the service?
  - Does the organisation have full professional and employer's liability insurance?
  - Does the organisation work to a recognised code of practice?



- How are agency staff recruited? Are they required to give references? What training are they given?

## **6. AFTER YOU START RECEIVING DIRECT PAYMENTS**

### **6.1 What if my needs change?**

Your needs will change sometimes. Your needs and the care arrangements, will be reviewed with you regularly, in the same way that the needs of people who are receiving services from social work are reviewed

As part of the process of reviewing your needs your social worker or care manager will talk with you about how you are arranging services, to make sure that you are getting services that do meet your needs.

Your social worker or care manager will tell you when reviews will be arranged. If, at any time between reviews, you feel that your needs have changed, you can ask for a review.

### **6.2 The financial records you must keep if you receive direct payments**

When you start receiving direct payments you will be responsible for keeping information about how you are using the money.

The money you get is for services to meet your needs and it must be used for this purpose. It is also important that you keep records and manage your money properly so that you get the care agreed in your care plan.

This section of the information pack covers record keeping and the next section (6.3) covers the information you have to give social work about how you are spending your money.

You can keep written financial records, or you can use a computer if you have one. However you keep your records you must:

- have a separate bank or building society account in your name into which your direct payments will be paid.

This account can only be used for payments to pay for your care.

If you get money from the Independent Living Fund this should go into the same account.

Your own contribution to the costs of your care should also go into the account.

- keep records of income and expenditure including
  - monthly bank statements;
  - official receipts (for wages or other payments);
  - copies of invoices or other payment documents;
  - employment records, including time sheets

Whenever possible you should make payments by cheque not cash, but if you make cash payments you must get signed receipts.

If you employ staff you must comply with the relevant employment and tax laws and keep records to show that you are taking account of National Insurance and PAYE (Income Tax) contributions. You should have details of your staff – names, addresses, National Insurance numbers and a signed Inland Revenue P45 or P46 for each worker. You should record salary and wages payments in the same way as any other payment and you should have a wages book and time sheets as documentation to support the payments to staff.

We strongly suggest that you keep monthly financial records to make it easier for you to keep track of your income and expenditure.

Social Work has forms for you to use to help you with this and your social worker or care manager will give you copies.

You must keep the original paperwork to back up payments you make (e.g. wages/salary records, invoices, receipts, claim forms) and all financial records need to be kept for a period of six years.

### **6.3 Monitoring Information**

As indicated above we would advise you to keep monthly income and expenditure records, using the forms we can give you, to make it easier for you to keep track of the money you get and the money you spend.

Whatever system you use to record financial details **you must complete a quarterly income and spending record form** and give/send it to your social worker or care manager along with a copy of your bank statements. Copies of this form will be given to you and if you do not complete the form and return it then your direct payments may be at risk.

We need to check your records every three months to make sure that you are managing your direct payments and that you are getting services to meet your needs.

The quarterly record form will summarise your care income and care spending over this period and you will have to fill this form in and sign and date it.

When we receive your monitoring form and bank statements we will check them to make sure that:

- your income and spending record agrees with your bank statement;
- you have made any contributions you are due to your bank account;
- all care payments are shown in your account;
- the care that has been bought is that agreed in your care plan.

Under the terms of your agreement you must make your books and records available to social work as required. This will mean that in addition to your quarterly forms you may be required to show your care records and other supporting documentation to social work – this would include paid invoices/receipts/wages and salaries records.

From time to time some people may also be required to show care records and other papers to the council's auditors. The purpose of this would be to check that records are being kept correctly and that social work are checking records.

### **6.4 Emergencies**

Your direct payments will be calculated to include an element for contingencies. This will be the same amount as one week's direct payments after any charge has been deducted. This will be paid to you in advance and you should keep this in your direct payments bank account. This is for you to use in emergency situations. This could be for example if an unpaid carer is ill and you have to employ a replacement, or to pay the first period of sickness pay for a worker until you can reclaim it from Inland Revenue, or if you require extra support unexpectedly or urgently.

If your care arrangements break down and you cannot make alternative arrangements you should contact your social worker or care manager. If the problem means that you are not getting the care you need social work will make necessary arrangements for your immediate care needs.

### **6.5 Stopping Payments**

Direct payments may be stopped after a review of your needs:

- because you no longer need a service;
- because you are no longer able to manage payments;
- because payments are not being used to meet needs appropriately.

Where payments are going to be stopped then normally you will be given a period of notice of 28 days, before the payments finish. Direct payments may be stopped immediately if there is information that criminal activity such as theft or fraud may be going on.

Direct payments may be stopped temporarily, for example if you go into hospital or cannot manage direct payments for a short period because of ill health. If you are away from home in hospital or elsewhere you may want to be able to continue to employ your workers. Social work will continue to pay your direct payments for up to four weeks. After four weeks your social worker or care manager will review with you the need for a retainer to let you keep your workers and if necessary you can receive up to 50% of your direct payments for a further four weeks.

If you go into hospital or you are having difficulties managing your payment, you should tell your social worker or care manager as soon as possible.

#### **6.6 Repaying direct payments**

If there is a large amount left unspent in your direct payments account you may be asked to repay money you have not needed to spend. This does not apply to money you may be holding for PAYE (Income Tax) or National Insurance, or to payments you may have to make infrequently.

## **7. SUPPORT FOR YOU**

You must be able, as has been explained earlier, to manage direct payments before we can approve them. However we know that many people will need support to help them set up and run their direct payments.

At present support is available from a direct payments coordinator, who is employed by social work. This person can give you help and advice when you first take on responsibility for managing your own services. They can give you practical assistance about employing your own workers, or about finding agencies or contracting with agencies. They can also help you with the task of keeping records and managing your money.

In the future we will be developing a support service in partnership with an independent voluntary organisation. In the meantime support and advice will continue to be given to you by our direct payments coordinator. Your social worker or care manager will put you in touch with this support.

We can also provide practical support with payroll services, if you want to employ your own staff. Currently we pay Angus Association of Voluntary Organisations to provide a payroll service for people who get direct payments and your social worker or care manager again will give you more details about this.

## 8. SUMMARY

You can now apply for direct payments if you are a disabled adult or a disabled parent, a parent of a disabled child, or someone who can legally consent on behalf of a disabled adult.

You can ask for direct payments if you are presently receiving a service from social work, or if you are having your needs assessed.

To get direct payments you must:

- have had your needs assessed and had a copy of a care plan;
- be willing to accept payments;
- be able to manage payments;
- set out how you would use payments to meet your assessed needs;
- sign an agreement which explains what your responsibilities are if you get payments;
- open a bank account specially for payments;
- agree to keep proper financial records.

Direct payments can only be approved if your social worker or care manager agrees that you understand what getting direct payments will involve, and that you will be able to manage payments, with support where necessary.

If a social worker or care manager recommends that you should receive direct payments this has to be approved by the relevant manager in social work.

If direct payments are approved a date for starting payments will be agreed and you will get payments four weekly in advance. You can then use payments to arrange care to meet your needs, as you choose.

If direct payments are not approved then services will be provided or arranged by social work for you, as agreed in your care plan.

**9. WHAT IF YOU ARE NOT HAPPY ABOUT THE SERVICES YOU RECEIVE?**

If you have problems with your direct payments you should talk about these with your social worker or care manager.

If your concerns are about the workers you employ you are responsible for taking appropriate action, as their employer. The direct payments support service can give you advice if you ask for it.

If you have concerns about the staff of an agency you use you should contact the agency. If you cannot resolve the problem with the agency manager and the agency is registered with the Scottish Commission for the Regulation of Care you can contact the Commission and complain. Your social worker or care manager can help you with this.

If you are not happy with decisions made by social work or with aspects of the services we have provided you can use the social work complaints procedure. A leaflet that your worker gave you will give information about this procedure.

## 10. USEFUL CONTACTS

More information is available from:

- Direct Payments Scotland:  
This is a national organisation set up to promote direct payments. It publishes a number of fact sheets and guidelines.

Contact Details:  
27 Beaverhall Road  
Edinburgh  
EH7 4JE

Tel: 0131 558 3450  
Website address: [www.dpscotland.org.uk](http://www.dpscotland.org.uk)

- The Scottish Commission For the Regulation of Care:  
This organisation is responsible for regulating certain care services.

Contact Details:  
The Care Commission  
Compass House  
11 Riverside Drive  
Dundee  
DD1 4NY

Tel: 0845 6030890

- Health & Safety Executive

Contact Details:  
Area office  
Lord Cullen House  
Fraser Place  
Aberdeen  
AB9 1UB

Tel: 01224 252500