



Getting direct payments for your disabled child (England & Wales)

Information for families

England and Wales

Incorporating **The Lady Hoare Trust**

Introduction

If your local authority agrees that your child needs care services, you can choose to get money to buy these services yourself. This is called direct payments. Direct payments should give you more control over how your child's needs are met but it also involves more responsibility for you. This guide explains how to go about getting direct payments and how they work in practice.

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What are direct payments?

A direct payment is money from your local authority (this will usually be through the social services or children's department), allowing you to buy the care your child needs instead of having services organised by them. Direct payments can be used by a whole range of people including disabled adults and older people, but this guide specifically looks at using direct payments to support families looking after a disabled child.

Control and flexibility

Parents using direct payments often find they have more control over the services they receive, with care being provided in a more convenient and flexible way. Using direct payments means you should be able to:

- decide who is going to provide services
- arrange how and when any service is provided.

Using direct payments

You can use direct payments to buy services from an organisation that provides care such as a private agency, a voluntary organisation or a nursery. Alternatively you can employ someone yourself. However, you can't use your direct payments to buy services from a local authority.

In this guide we refer to an organisation which provides care as a '**service provider**' and to someone you employ directly as a '**personal assistant**' (PA).

Using direct payments can mean extra responsibilities for you, since you will be more involved in arranging services. This is particularly true if you employ a PA to help meet your child's needs. Direct payments are not for everyone

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and you are under no obligation to use them if you don't want to. However, if you like the idea of having more control over services for your family then direct payments are an option worth exploring.

When direct payments may seem an attractive option

Direct payments may be particularly attractive if:

- the services you currently receive don't meet the needs of your family or if you feel you have little say over how those services are provided
- you live in a remote and rural area where no suitable services exist - employing someone local as a PA may be the only realistic method of support
- your child has cultural or language needs that your current service providers cannot meet
- your child has been assessed as needing services but you have been waiting a long time for help to become available – you may be able to organise your own services straightaway.

How can I get direct payments?

The right to choose direct payments

You have the right to choose direct payments rather than getting support organised by your local authority. If you are already getting help from the local authority you can ask for direct payments instead. If you don't currently get help you will first need to ask social services to assess your child's care needs. For more details on assessments see our free guide, 'Disabled children's services

If the local authority don't accept that your child needs support they will not offer you direct payments.

in England and Wales' available from our helpline or at our website
Web: <http://www.cafamily.org.uk>

After an assessment

Once the local authority has carried out an assessment they must decide whether there is a need for support. If they agree that services are needed they should set out a 'care plan' which outlines the support required. At this point you should have the option of:

- asking the local authority to provide care that will meet all of the needs identified in the care plan; or
- asking for direct payments so that you can buy services to meet the assessed needs; or
- opting for a 'mixed package', where social services provides some of the care and you use direct payments to buy the rest.

No assessed needs?

If the local authority don't accept that your child needs support they will not offer you direct payments. If you disagree with their assessment you can challenge it via their complaints procedure. Contact our helpline for more details.



What can I use direct payments for?

Some of the ways direct payments can be used include:

- getting help with your child's personal care, for example bathing, dressing, eating or helping look after them overnight
- a sitter service to look after your child when you are out
- helping your child use leisure facilities
- help with household tasks to free up your time to look after your child
- a place at a day nursery or after-school care
- someone to accompany your child on holiday
- housing support services (for young disabled people aged 16 or over)
- short breaks (see page 22)

- equipment (see page 21).

This list is not exhaustive. You should be allowed flexibility in how you spend your direct payments as long as you can show that the support you want to buy will meet your child's assessed needs and promotes their welfare.

Discuss plans with your social worker

You will need to discuss your plans with your social worker and they will want to draw up an agreement spelling out what care needs will be met via direct payments, how the services will be provided and how they will be monitored.

Are there any restrictions on how I use my direct payments?

There are restrictions on using direct payments to buy care from close relatives. See box on page 6 for more detailed information.

If you pay someone (other than a relative) to look after a child under eight years of age in that person's home, then they need to be a registered childminder. This does not apply where you pay someone to look after your child in your own home.

Direct payments can only be used to buy support that would otherwise be provided by the local authority. They cannot be used to buy services that are seen as the responsibility of other bodies like the NHS or education authority. A recent Department of Health statement suggests

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that if social services and your local health board are jointly providing a care package, you can only get direct payments to cover that element funded by the social services or children's department of your local authority.

Direct payments cannot be used to buy permanent residential care or permanent adaptations to your home. But they can be used to buy short breaks and temporary adaptations or equipment (see page 21).

Generally speaking direct payments cannot be used to pay for residential accommodation, other than limited amounts of short breaks (see page 22). However, a recent court decision decided that direct payments could be used to contribute to the costs of a permanent residential school placement in certain

Direct payments and employing close relatives

There are restrictions on using direct payments to buy care from close relatives. The general rule is that you cannot normally use direct payments to employ a close relative who shares your household. However, the local authority can agree to make an exception to this rule, if they believe that this is the only effective way of meeting your child's needs. The rules do not prevent you from using direct payments to buy care from a close relative who lives elsewhere.

For details of how a close relative is defined, or for further information on these rules, call the Contact a Family helpline.

circumstances. For this to happen, direct payments must only be used to meet the costs of the child's assessed care needs and not any part of the accommodation costs. Call the Contact a Family free helpline for further details.

How much money should I get in direct payments?

The amount of your direct payments should be enough to cover the costs of buying a service of the same quality and quantity as social services would otherwise have provided.

Paying a personal assistant

There is no national set rate of hourly pay for PAs although you must at least pay the national minimum wage (see page 19). Your local authority may have a 'standard' pay rate which it generally uses in calculating direct payments. However, if your child has complex needs, your direct payments should cover the cost of purchasing appropriate care for him or her, even if this is above the rate being paid to meet the needs of other children. The rate of pay allowed for should also take into account the range of different hourly rates that would need to be paid for day, night, weekends, bank and local holidays as well as emergency cover.

Covering additional costs

If you want to employ a PA, your direct payments must also include enough to cover any other costs without which the service could not be legally provided. This may include such costs as:

- employers national insurance

- employers liability insurance
- holiday pay
- sick pay and cover
- maternity/paternity/adoption pay and cover
- training costs
- redundancy costs (required if someone is made redundant after two years or more service)
- emergency cover for staff absence
- any required protective clothing for the personal assistant
- any pay-roll or book-keeping fees.

PA's expenses

When social services calculate the amount of your direct payments, you should discuss how you will cover your PA's expenses if they take your child out. For example, admission fees or a meal and refreshments when they are out with your child. If you don't cover the expenses of the PA this is likely to limit the activities they do with your child outdoors.

What can I do if I don't think the direct payments are enough?

If you think your direct payments won't be enough to meet your child's needs, you can complain about the amount offered. Contact our free helpline for more details about the complaints procedure.

Will I be asked to make a financial contribution to my direct payments?

If your local authority charges for children's services, they may ask you to pay towards the package of care that your direct payments fund. They will calculate this in the same way as they charge people they provide services to.

You should not be charged more than



it is reasonable for you to pay and no deduction should be made at all if you or your partner get Income Support, income-based Jobseeker's Allowance, Child Tax Credit at a rate higher than the basic family element or Working Tax Credit.

The local authority can deduct your contribution from the direct payments before you receive them. Or alternatively they can give you the full direct payment amount and then ask you to repay your contribution separately.

Asked to contribute too much?

If you feel the amount you are asked to contribute is unreasonable, you should consider challenging this amount. For further information on charging for services contact our helpline.

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What happens as my child gets older?

If you have parental responsibility for a child, you can manage direct payments for them so long as they are under 16 years of age. However, as far as possible, you will be expected to take into account the views of your child in decisions affecting them, particularly about how intimate care needs are met.

When a young person reaches 16 years

Once a young person reaches 16, payments can be made to them in their own right. For this to happen they must have the mental capacity to 'consent' to direct payments. This does not mean that they have to manage direct payments without help. They may still need the assistance of parents, carers, a user-controlled trust or a local support service. There is no need for the young person to understand how direct payments work in detail. However, they must at least have the ability to make choices about how their care needs are met.

If a 16 or 17 year old lacks the mental capacity to consent to direct payments their parent can receive them instead.

If your child is 16 years of age or over, receives Disability Living Allowance at the highest rate for personal care and requires a substantial package of care - you may also be able to access additional money to buy care services via the Independent Living Fund. Contact our helpline for more information.

When a young person reaches 18 years

Once a young person turns 18 it is not currently possible to continue receiving direct payments for them. If they have the capacity to 'consent' (see above) then they should get direct payments in their own right. However, if they lack the capacity to consent direct payments will stop.

The government intends to change the law to allow direct payments to be managed by a 'suitable person' on behalf of a disabled adult who lacks mental capacity. This change should be brought about by the Health and Social Care bill, currently being considered by Parliament. Contact our helpline for up to date information on these new provisions.

Services and direct payments for carers

As a carer you may have been assessed as requiring 'carers' services' in your own right. These are services to help support you in your caring role rather than services to meet your son or daughter's needs. You can receive direct payments to enable you to buy carers' services, even if you are unable to continue receiving direct payments on behalf of a disabled

son or daughter who is now 18 years of age or older.

Should I use a service provider or employ a PA?

Deciding which option is best is not always clear cut and there are a number of issues you will have to weigh up.

Using a service provider

- you will have no responsibility for employment issues as staff will be employees of the service provider
- you may have less say in who works

- with your child
- it may be more expensive than employing someone directly.

Employing a personal assistant

- you will have all the responsibilities of an employer
- you will have more control over who provides care to your child and how this care is provided
- you may be able to employ someone who knows your child already.

It is possible to use a service provider to meet some of your child's needs and to employ a PA to meet the rest.

Getting help in using direct payments

You can get advice about accessing and using direct payments from **Contact a Family's** free helpline on Tel: 0808 808 3555 (Mon-Fri 10am–4pm; Mon 5.30-7.30pm).

Local support schemes

Many parts of the UK have independent support schemes to provide practical help to people in setting up and running direct payments. These support services can help parents deal with the practical arrangements of setting up and managing direct payments. If you want to buy care from an organisation they may be able to provide advice on how to choose a suitable provider. If you want to employ someone yourself they can provide help on how

to go about recruiting and employing someone. Many support services also offer a 'pay-roll service'. This means they will provide payslips, deduct tax and national insurance and help you deal with Her Majesty's Revenue and Customs (the Revenue). Contact our helpline for details of the direct payments support service in your area.

In those areas where no independent service exists, support with direct payments should be available from the local authority.

The National Centre for Independent Living (NCIL) also provides advice and training to people employing PAs. For more information on the services NCIL provides see the later section on useful contacts.

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Web: **www.cafamily.org.uk**

Using your direct payments to buy care from a service provider

There are many organisations providing care services. Some of them are large national charities, some are smaller, local voluntary organisations and some are private companies such as care agencies or nurseries.

Finding services in your area

There are a number of ways to find out what services are available in your area. A good place to start would be your local direct payments support scheme. You might also want to ask your social services department for a list of 'approved' service providers it does business with itself. You should also be able to get lists of registered and approved childcare providers in your area by contacting your local Childcare Information Service. For contact details Tel: 0800 096 0296 or go to Web: <http://www.childcarelink.gov.uk>

Services that should be registered

Care providers are registered and inspected by the Care Standards Inspectorate in Wales and by either OFSTED or the Commission for Social Care Inspection in England (see 'Useful contacts' for more details). Many types of care provider need to be registered. Whether this is a requirement depends on the type of care provided and where it takes place. Contact your local direct payments support service for more advice.

Talk to other families using services

It is a good idea to talk to other families about their experiences of receiving care

from specific service providers. Contact our free helpline for details of your closest parent support group or carers' centre.

Service provider is the employer

If you use a service provider, they will be responsible for employing, managing and paying the care workers they send to support your child. You will become their 'customer' paying them for the care services supplied.

Type of services you are looking for

Before talking to service providers it is a good idea to have a clear idea of what type of service you are looking for. Your care plan should make clear the types of help needed but think about whether there are particular ways you would like these tasks carried out.

Useful questions to ask service providers

Some of the following questions may be useful:

- Can they provide the type of care your child needs in the way that you want?
- What are the costs of the service?
- Does this price cover everything or are there extra costs (for example travelling expenses, VAT)?

Before talking to service providers It is a good idea to have a clear idea of what type of service you are looking for.



- Do you have to buy a minimum amount of care?
- Do you have any choice over the worker(s) who cares for your child?
- Will the same care staff be sent out consistently?
- What is the agency policy on lifting and carrying and the use of hoists?
- Can the service provider be contacted at all times when a service is being provided?
- Is there an out of hours emergency service? Does this cost more?
- What obligations will you have if you want to cancel the contract?
- Is the provider registered?
- Does it meet national care standards?
- Does it have full professional and employers liability insurance?
- Does it work to any recognised code of practice?
- How does it recruit its staff? What training is given? What police checks are undertaken?

- What is the complaints procedure in the event you are unhappy with the service?

Your child's views

It is a good idea to involve your child as far as possible in the decision about which services are used to meet their care needs. Depending on your child's age and understanding they could either accompany you on visits to the various service providers, or perhaps visit your first and second choices. As far as possible you should try and get your child's opinions of (or gauge their reaction to) the adults who will be supporting them.

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Agreeing a contract with the service provider

Once you have identified a service provider that you want to use, you will need to agree with them a written contract setting out:

- the service to be provided, for example the number of hours required and where and when this is to be provided
- the terms and conditions for receiving the service, including the costs and how and when these are to be paid
- arrangements for changing the agreement
- arrangements for terminating the agreement.

Using your direct payments to employ a personal assistant (PA)

If you decide to employ someone yourself you will be responsible for recruiting that person and for managing them once they start working for you. This means that you will have all the responsibilities of that person's employer. A summary of some of the main issues that this involves is outlined in the following pages. **If this all seems very daunting – don't worry!** You should be able to get expert advice about every step of recruiting and employing someone from a local direct payments support scheme.

What and who are you looking for?

The first step in employing a PA is to decide what kind of person you are looking for and how many staff you need. The care plan will help you to do

In recruiting someone you need to make sure that you avoid discriminating against candidates unfairly. It is sometimes possible to place certain restrictions around race and gender but only in specific circumstances.

this, but you will also need to think in more detail about the types of tasks you will want the PA to do. Whoever you employ, it is important that they have a positive attitude towards disability and are committed to helping your child meet their full potential.

Avoid unfairly discriminating against candidates

In recruiting someone you need to make sure that you avoid discriminating against candidates unfairly. It is sometimes possible to place certain restrictions around race and gender but only in specific circumstances. For example it may not be sex discrimination to restrict a job to the same sex as your child if the post involves providing personal care. It also may not be considered racial discrimination to restrict a job to people of a particular racial group where this is the most effective way of personal services being provided to your child (for example, someone who can speak the

same language as your child).

If you have any doubts about what might be considered as unfair discrimination then contact your local direct payments support service. Alternatively you should be able to get advice from the Commission for Equality and Human Rights on Tel: 0845 604 5510.

Drawing up a job description and an application form

Before setting out to recruit someone it is a good idea to draw up a job description. This allows both you and the PA to be clear about what is expected of them and this will be useful even if you want to employ someone you know. The job description should include an explanation of the purpose of the job, a breakdown of the main duties as well as details of working hours and the rates of pay. You may also wish to consider drawing up a person profile. This is a list of the type of skills, knowledge, experience and other qualities that you are looking for in a PA. In doing this you need to be very clear about what things are really essential for the person to have already and what skills they might be able to learn later.

We also recommend drawing up an application form. This should cover the following areas:

- biographical details, for example name, address
- employment history
- details of personal experience or voluntary work with disabled children
- training or qualifications
- why the person wants to be your child's personal assistant



- ownership of car or driver's licence (if required)
- name and address of two referees –this should always include the last place the person worked or did voluntary work at
- whether the applicant has any criminal convictions
- their agreement to apply for a CRB check (see box on page 16-17).

Your local direct payments support scheme can help you draw up a job description, person profile and an application form.

Advertising for a PA

Unless you intend to employ someone you already know, you will need to draw up an advert outlining some basic details such as:

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- a short description of your child
- what type of work you will require the person to do
- the hours and pay
- how to get in touch with you.

Where to advertise

There are a number of places where you may wish to place an advert. The local Jobcentre will place adverts free of charge. You may wish to consider advertising in local newspapers, local supermarkets, shops or community facilities. Some direct payments support schemes can also help with advertising for staff.

Word of mouth can be a useful tool – so mention what you are doing to friends and professionals involved in your child's care. If there is a support group in your area you may also want to mention your advert to other parents.

There are some groups of people who may be particularly suitable to work as a PA:

- people who have worked with disabled children
- people who have worked with children
- people who have worked with disabled adults or older people.

With this in mind it may be worth sending your advert with a covering letter to local schools, nurseries, school transport departments, day centres or youth services. Some of these places may be happy to display your advert on a notice board, in case any of their staff are looking for additional work.

Ensuring your privacy

We recommend that you do not include your address in your advert although you will need to say the general area you live in. Consider using a PO box or telephone number instead.

Interviewing candidates

You will need to compare the list of applicants against the list of skills and attributes you are looking for. At the end of this process you should have a shortlist of people you wish to interview.

You will also need to decide where to carry out your interviews. If you are worried about privacy or safety you may prefer to hire a room in a community centre or family centre. However, you might then need to have a second more informal interview at home so that your preferred applicants can meet your child. It's a good idea to ask someone else to help with the interviews such as your partner or a friend. This will give you a second opinion on applicants. Take notes during the interview to help you remember what was said.

Questions to ask

There are some questions you will want to ask all the people you are interviewing. This allows you to compare one candidate with another. These can cover why they are applying for the post, their experience and training, their ideas and views about disability and childcare. It may be worth making up a few scenario questions around situations that could arise in looking after your child. You may also want to ask a candidate specific questions arising from the information on their application form. For example, you

should ask about a period in their career where there is a gap in their employment if this is not explained in their application.

Involving your child

Ideally it would also be good to involve your child in the interview process in some way. In particular you may want to consider allowing your first and second choice candidates to meet your child. This will allow you to see how they interact with your child – does the candidate appear confident and natural in how they relate to your child? You should also try and assess what your child felt about the person either by talking to them or observing their behaviour and emotional response.

Now you've made a decision

Once you have decided to employ someone as a PA you should contact that person to offer them the job, subject to the appropriate checks. This should include a CRB check (see box on pages 16-17 for more information) but in addition you should seek full proof of the PA's identity including current and recent addresses, and ask for their permission to share this with the local authority. You should also request and follow up at least two references. The PA should also be asked for a declaration that any past criminal history, ongoing investigations, or other information about their conduct or behaviour does not make them unsuitable to work with children. **These checks still apply even if you know the person you want to employ.**

Contracts of employment

Once these checks have been completed you can contact the candidate to make



arrangements for them to start work. At this point you should send them a contract of employment to sign. Get help from your local direct payments support scheme in writing this.

While this may seem very formal, a written contract will make sure that both you and your child's PA have the same understanding about the job. It will also be helpful if there are any disagreements later. A contract should include the following areas:

- your name and that of the employee
- job title
- start date, and if a temporary post, the end date
- pay – amount, when and how it will be received. You also need to explicitly state if tax and national insurance will

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Criminal Records Bureau (CRB) checks – making sure your child is not put at risk

Where you employ a PA to look after your child the service they provide is not regulated by any outside agency. It is your responsibility to make sure the person you employ is a suitable person to work with children. It is strongly advised that you ask your local authority to carry out an enhanced disclosure check on any prospective employee via the Criminal Records Bureau (CRB).

A CRB check is a thorough criminal records check.

It is good practice to carry out a CRB check even where you know the person you want to employ. Although a local authority cannot insist that a CRB check be carried out, they can refuse to make direct payments if they feel there is any chance that your child will be placed at risk.

Applying for the CRB check

You cannot apply for the CRB check yourself - the application must be made by the prospective PA. This check will be carried out through a registered organisation, usually your local authority, who will also counter-sign the application. Ask the local authority to meet the costs of the check.

When the check has been completed

The results of the CRB check will be sent to the applicant not to you. You will not have access to the results of the check unless the applicant chooses to show them to you. However, you will be contacted by the registered organisation. They will tell you whether you should go ahead and employ that person, but they will not be able to discuss the content of the CRB with you.

In autumn 2008, a new Independent Safeguarding Authority will be set up to vet people who work with children or vulnerable adults. Contact the helpline for further details.

- be deducted
- hours of work
- duties (in as much detail as you feel appropriate)
- arrangements for taking holidays
- sick leave and other special leave
- period of notice
- pension arrangements (even if only to state that there is no pension scheme)
- if it is a 'live-in' position, any specific arrangements for living in your house.

You should use a contract even if you are employing someone you know well.

Written statement of main conditions of employment

You are legally obliged to at least provide a written statement of the main terms and conditions of employment, within two months of your employee starting work. However, we recommend that you provide them with a full written contract of employment. You should also provide your PA with details of the disciplinary and grievance procedures that will apply in the event that problems develop.

Get advice on appropriate procedures from a local direct payments support service. Alternatively sample procedures can be downloaded from the **Advisory, Conciliation and Arbitration Service (ACAS)** at

Web: <http://tinyurl.com/2hmhml>

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Employing a PA for an initial trial period

It is a good idea to offer the job on an initial trial basis. This allows you to get to know what your PA is really like before offering them a permanent post. Make clear that there will be a probationary period in both the interview and the contract, and explain how long this will be.

Preparing for a PA starting

Before your PA starts you may wish to put together some notes on your child for them. Knowing about your child's likes and dislikes and their daily routines will help your PA settle in quicker. You may also wish to agree a handover period where you will work alongside your PA to show them how you want the job done.

Pay, tax and national insurance (NI)

If you recruit a PA then you will become their employer. The only exception to this is where your PA is self employed (see box on page 20). As an employer you will be responsible for deducting tax and NI and passing this onto Her Majesty's Revenue and Customs (the Revenue).

When you take on your first PA, you must contact the Revenue's New Employers Helpline to let them know (see 'Useful contacts'). They will send you a new employer's starter pack, which has tables to help you calculate tax and national insurance (NI) rates, various forms which you will need and a publication 'Paying someone for the first time'. They will arrange for a 'pay as you earn' (PAYE) scheme to be set up so that you can deduct tax from your employee's

Knowing about your child's likes and dislikes and their daily routines will help your PA settle in quicker. You may also wish to agree a handover period where you will work alongside your PA.

earnings. If your employee earns less than a certain amount (currently £160 per week gross) then the Revenue will operate a simplified deduction scheme rather than full PAYE.

In addition, you will also have to deduct NI contributions from your employee's earnings, so long as they earn more than a set weekly amount (which changes every year). As well as deducting your employee's contributions, you must also make payments (known as an employer's contributions) towards their NI.

How much to deduct for tax and NI

How much you have to deduct in tax and NI will depend on the average hours and earnings of the person that you employ. If your PA only works for a short period each week then they may earn too little to pay tax or NI. However, some personal assistants work for a number of employers at the same time, all of whom may need to deduct some tax and NI.

There is no set rate of hourly pay for



PAs and the amount you need to pay to recruit a suitable person may vary depending on where in the UK you live and the complexity of your child's needs. However, remember that at the very least, you must pay the national minimum wage (NMW). This amount varies depending on age and usually increases every October. There are complicated rules regarding the NMW where a PA sleeps over. For further information or up-to-date rates contact the Revenue's NMW helpline on Tel: 0845 6000 678 or go to Web: <http://www.hmrc.gov.uk/nmw>

Help with tax, NI and pay issues

A local direct payments support organisation should be able to provide you with detailed advice on how to deal with tax and NI issues. In some cases they may even offer 'a pay-roll service'

- this means that they provide payslips, deduct tax and NI for you and otherwise help you to deal with the Revenue. You may also be able to get detailed advice from NCIL (see 'Useful contacts' section for further details) or the Revenue.

Phone your local tax office (look in your telephone book under Her Majesty's Revenue and Customs) and ask for the 'employers section' or contact the Revenue's New Employers Helpline on Tel: 0845 607 0143 (Mon-Fri 8am-8pm; Sat & Sun 8am-5pm).

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You must have employers' liability insurance

All employers have a legal duty of care towards their employees while they are working. This is the case even if you are employing a friend or close relative. If a PA is injured as a result of an accident at work and believes their employer was responsible, they could sue for compensation. For this reason it is compulsory to take out employers' liability insurance. You should also ensure you are covered for public liability insurance, which offers protection if your PA injures somebody else or damages their property while working for you.

Consider taking out employers' indemnity

Some PA employers also take out

employers' indemnity. This is optional and covers the employer against any costs relating to the terms and conditions of employment, for example, legal costs of defending a claim of unfair dismissal.

Other insurance to consider

If the PA will be using your car you will also need to ensure that they are covered to do this.

Finding an insurer

Some insurance companies provide policies specifically aimed at employers of PAs. Seek the advice of a local support organisation or an insurance broker.

Holiday entitlement and other leave

All employees are entitled to at least 4.8 weeks paid leave a year. If your PA works 35 hours a week they will be entitled

What happens if my PA says they want to be self-employed?

The normal arrangement when you hire a PA is that they are directly employed by you as an employee. However, in some circumstances, your PA may say that they are self-employed. Seek advice if this happens as some PAs may think they are self-employed when they are not.

Not sure if someone is an employee or self-employed?

Whether someone is treated as self-employed for tax and national insurance purposes is not a matter of choice. Ultimately it is a decision for the Revenue, who produce a leaflet, 'Employed or self-employed? A guide for tax and national insurance' (IR56)

to help you work out if someone is self-employed or not. If you have any doubts on this issue you should seek advice from the Revenue's New Employer's Helpline (see 'Useful contacts') and operate the standard tax and NI deductions until the issue has been clarified.

You should also seek advice from your local direct payments support service since there is a separate issue about whether someone is self-employed for the purposes of employment law. You will need detailed advice about the implications of this.

to at least 168 (4.8 x 35) hours as paid leave. If someone works 10 hours a week they are entitled to at least 48 (4.8 x 10) hours paid leave. A PA begins accruing annual leave entitlement from their first day of working. For every 13 weeks worked they will have earned one week's annual leave.

As an employer you will also be responsible for ensuring that any staff who are eligible receive statutory sick pay as well as any statutory maternity, paternity, or adoption pay, where this applies. Further advice should be available from the Revenue's New Employer's Helpline, ACAS or your local direct payments support service.

Training costs

The person you recruit to look after your child may require additional training. You may be able to provide some of this yourself, for example about your child's routine. Other training, for example, in lifting or handling, may have to come from a specialist trainer. You should speak to your local authority and health trusts about how this can best be provided. In some cases an insurer may require proof of appropriate training as part of their agreement to provide employers/public liability insurance. The cost of any formal training should be included in your direct payments as part of setting up costs.

Health and safety issues

As an employer you are responsible for making sure a PA is not injured while working for you. This means checking basic things around your house to make sure that there are no potential dangers, for example frayed carpets and faulty



electrical equipment. Ask your local authority if they feel there are any relevant health and safety issues, particularly where lifting and carrying is required. They should give you copies of any recent risk assessments carried out on your child and make sure suitable equipment is provided to ensure transfers are done safely.

Using direct payments to buy equipment

If your child's assessment identifies a need for equipment or temporary adaptations to your home you should have the option of buying this with direct payments. When deciding how much money is required, the local authority should bear in mind the expertise needed to ensure the equipment is safe and appropriate, and whether extra funds are needed to provide training in its use. Note, equipment that has been designed for disabled people or adapted for their

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use may be exempt from VAT. For further details on VAT exemption call the Contact a Family helpline or see the Revenue's website at

Web: <http://tinyurl.com/lcttl>

Costs of maintaining equipment

You will also need to be clear whether ownership of the equipment will lie with you or the local authority. If you own the equipment then you will also be responsible for its service and repair, costs which should be included in the direct payments. Alternatively the local authority should arrange for the maintenance of the equipment.

Choosing more expensive equipment

You can top up your direct payments in order to buy a more expensive piece of equipment, so long as it still meets your child's needs.

Funding permanent adaptations

Please note that direct payments can

only fund equipment and temporary adaptations that would be otherwise provided by social services. They don't fund permanent adaptations to your property. For more details of help with permanent adaptations contact our helpline or see our guide on 'Aids, equipment and adaptations' at
Web: <http://www.cafamily.org.uk>

Equipment that should be provided by the NHS

Direct payments cannot be used to buy equipment that would normally be funded by the NHS, for example a wheelchair.

Using direct payments to buy short term breaks

Direct payments can be used to buy short term breaks. This can include a child going into a residential respite unit, or more flexible breaks such as a child

going to stay with a care worker or a PA accompanying a child on holiday. The maximum amount of residential respite care that you can buy for a child using direct payments is a single period of four weeks, and 120 days in any 12 month period.

Now that you are receiving direct payments

Keeping a record of how your direct payments have been spent

Before direct payments start, social services are likely to ask you to sign an agreement stating that you will only use the money provided to meet your child's assessed needs. Thereafter you are likely to be asked to provide them with information about how you have spent your direct payments. This means you will be expected to keep receipts for anything you use the direct payments for.

The local authority will tell you what

If the local authority is unhappy about how you have spent your direct payments they can ask for the money to be repaid.

other records you need to keep and what information you will be expected to provide.

Using a bank account to administer the payments

You will need a separate bank or building society account to keep track of how your direct payments have been spent. You can use this account to deposit the direct payments you receive and to pay your PA or service provider.

Keeping social services informed

If the local authority is unhappy about how you have spent your direct payments, for instance if it wasn't used to meet the needs they agreed to, they can ask for the money to be repaid. Given this you should make sure you always let your social worker know if you intend to make any changes to the services you buy. The direct payments agreement may allow for some small changes to be made without notifying them, for instance changes to the time of day a service starts or finishes. However, more substantial changes should always be discussed with your social worker first.

Dealing with emergencies

There may be times when the care arrangements funded by your direct payments break down, for example because your PA is ill. When you first set up your direct payments you should speak to social work about what will happen if you require emergency cover. For example, you may be able to

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arrange for cover with an agency. If your emergency plan does not work for any reason, social services should step in and provide care during any period when your normal services are unavailable.

Reviewing your direct payments

The local authority is still responsible for reviewing the services purchased with the direct payments. The aim is to check that needs in the care plan are still being met and that the quality of the service is adequate. The local authority should arrange for regular reviews to take place but you can request a review if circumstances change suddenly. Following a review, the amount of direct payments may need to be increased or reduced.

Who can I complain to if I am not happy with the service I receive via direct payments?

If you are buying care from a service provider and you are unhappy with the service being provided then you should raise this with them directly. You should have a written agreement with the provider setting out what they are supposed to do. A local support service

may be able to help in this process by advocating on your behalf. Alternatively you may be able to complain to the agency responsible for registering that provider. Ultimately if you are not happy with the provider you can stop the service and use another. It is a good idea to keep the local authority informed, because if you struggle to find an alternative service they may need to step in temporarily to make alternative arrangements.

If you are not happy with the services provided by a PA then you will have to discuss the matter with them as soon as possible – preferably before the initial probationary period ends. As an employer you will need to follow the correct procedures when disciplining staff – you cannot just automatically dismiss staff if you are not happy. Failure to follow the correct disciplinary procedures could result in an employment tribunal, so always seek advice from your local direct payments support scheme.

What if I decide that direct payments are not right for me?

If you decide you no longer wish to use direct payments, the local authority should arrange the support your child needs instead. However, you will need to take into account any commitments you have made to the existing service provider/PA, for example you will probably need to give a specific amount of notice.



Frequently asked questions

If I receive direct payments will this affect any of the benefits my family receives?

No – direct payments have no affect on benefit entitlement.

My local authority say they do not give direct payments for services for children and that the payments are at their discretion. Is this correct?

Originally direct payments were a discretionary scheme. However, since 2003 local councils are now under a legal obligation to offer the option of direct payments to certain groups, including people with parental responsibility for disabled children, if they have assessed needs for services.

Can I add other money to my direct payments to buy more expensive or additional services?

Yes. If you are receiving direct payments there is nothing to stop you using other income to buy additional services or more expensive care than the local authority is willing to fund.

My social worker says there is no more money in their direct payments 'budget' and that we will have to wait until next year before we can get direct payments. Can they do this?

Seek further advice from our helpline about challenging this decision. If the local authority has assessed your child's needs and agreed that support is required, they cannot use lack of financial resources as an excuse not to meet your



child's needs. This applies regardless of whether you want to use direct payments or to get services provided by them.

Will I continue to get direct payments if my child is in hospital?

When you set up your direct payments you should make sure you discuss this issue with the local authority. In some circumstances the services of a PA may continue to be needed even when your child is in hospital. In such a case there is a strong argument that your direct payments should be unaffected. However, even if a PA's help is not needed while your child is in hospital, you may be obliged to continue paying them - at least during their agreed notice period. Given this, the local authority may agree to give you an extra amount in your direct payments, to be set aside to cover your PA's wages in the event your child is in hospital.

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Useful contacts

For further advice about any aspect of using direct payments call the **Contact a Family helpline** on Tel: **0808 808 3555** (Mon-Fri 10am–4pm; Mon 5.30-7.30pm). We can also provide details of the local direct payments support service for your area.

Detailed guidance on the use of direct payments is available from the **Department of Health's** website at Web: <http://tinyurl.com/2fpknm>

National Centre for Independent Living (NCIL)

Tel: 0207 587 1663

Web: <http://www.ncil.org.uk/default.asp>

A national organisation which promotes independent living. NCIL provides information and support on direct payments and employing personal assistants.

Her Majesty's Revenue and Customs New Employers Helpline

Tel: 0845 607 0143

Web: <http://www.hmrc.gov.uk>

Provides advice on a whole range of issues related to becoming an employer, but particularly in relation to pay, national insurance and leave. As well as their 'New employers starter pack', the Revenue also produce a number of useful publications such as 'An employer's guide to PAYE and NICs'.

OFSTED

Tel: 08456 404040

Web: <http://www.ofsted.gov.uk>

Regulates and inspects providers of childcare in England including

childminders, nurseries and after-school care.

Commission for Social Care Inspection

Tel: 0845 015 0120

Web: <http://www.csci.org.uk>

Regulates and inspects agencies providing personal care to disabled people in their own home.

Care Standards Inspectorate in Wales

Tel: 01443 848450

Web: <http://tinyurl.com/2r4o7n>

Regulates and inspects providers of care to children in Wales.

Commission for Equality and Human Rights

Tel: 0845 604 5510

Web: <http://www.cehr.org.uk>

For advice on avoiding discrimination in recruitment and employment.

Department for Business, Enterprise and Regulatory Reform (BERR)

Tel: 020 7215 5000

Web: <http://www.berr.gov.uk>

Produces a number of factsheets aimed at small employers covering issues such as maternity rights, contracts of employment, fair and unfair dismissal, and redundancy entitlements.

ACAS

Tel: 08457 474747

Web: <http://www.acas.org.uk>

Provides advice and information on employment law and good practice for employers.

Some of the material in this guide is based on 'A parent's guide to direct payments' produced by the **Department of Children, Schools and Families** and the **Council for Disabled Children**.

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Written by Derek Sinclair

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Getting in contact with us

Free helpline for parents and families

0808 808 3555

Textphone

0808 808 3556

Open Mon–Fri, 10am–4pm;

Mon, 5.30–7.30pm

Access to over 100 languages

www.cafamily.org.uk
www.makingcontact.org

Contact a Family Head Office:

209-211 City Road, London EC1V 1JN

Tel **020 7608 8700**

Fax **020 7608 8701**

e-mail **info@cafamily.org.uk**

Web **www.cafamily.org.uk**



Language Line
services

Other information booklets available

This guide is one of a series produced for parents and groups concerned with the care of disabled children. A full list of Contact a Family publications is available on request or can be downloaded from our website www.cafamily.org.uk

- The tax credits guide (UK)
- Fathers (UK)
- Understanding your child's behaviour (UK)
- Benefits, tax credits and other financial help (UK)
- Siblings (UK)
- Working (UK)
- Special educational needs (England/Wales)
- Dealing with debt (England/ Wales)
- Finding and paying for childcare (UK)

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