



# Getting direct payments to buy social care for your disabled child

Information for families

England and Wales

# 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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## Direct Payments and Personal Budgets

The way that social care is provided is changing. Increasingly services should now be provided in ways where families have more control over the support their disabled child receives. This is sometimes referred to as 'self-directed support'.

Direct payments and personal budgets are important features of self-directed support.

A personal budget is an amount of money your local authority has assessed as being sufficient to meet all of your child's care and support needs. Once the amount of the personal budget has been agreed, you will be asked to help develop a support plan setting out how this money will be spent to meet your child's needs. In principle having a personal budget should provide your family with a lot more choice, flexibility and control over how your child's needs are met.

You decide how to make best use of your child's personal budget. You might choose to organise your child's care yourself, taking your child's personal budget in the form of direct payments which you use to buy support for your child.

However, not everyone wants the extra responsibility involved in using direct payments. If you prefer you can ask someone else (like a friend, a local organisation or your local authority) to manage the budget on your child's behalf. This should be done in line with your wishes, so that you still have more say over how your child's needs are met, and by whom.

Not all social services departments currently offer personal budgets. However, even if personal budgets have not yet been introduced in your area, you

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must still be given the option of direct payments. So long as social services assess that there is a need for services to support your child, they are under a legal obligation to offer you the choice of direct payments.

Initially, personal budgets only applied to support that was funded by social services. However they are now in the process of being extended to some forms of health provision in England.

From September 2014 families in England can also get a personal budget as part of an Education, Health and Care plan. This guide provides detailed advice on using direct payments to buy social care for your child. For more information on the use of direct payments to buy special educational needs and health provision see our factsheet on *Personal budgets and Education, Health and Care plans*.

## 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 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.

## Some reasons for using direct payments

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, please see our free guide, *Getting social care services when your child has additional needs* available from our helpline or from our website at [www.cafamily.org.uk](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,

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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

### **Employing close relatives using direct payments**

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 more information on these rules, call the Contact a Family helpline.

- 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)
- equipment (see page 22)
- short breaks (see page 22).

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 by 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 the box on page 6 for more detailed information.

Anyone who is paid to look after a child under eight years of age in their home, for more than two hours a day, must be registered as a childminder with OFSTED. You should bear this in mind if you pay someone (other than a relative) to look after your child in that person's home. This does not apply where you pay someone to look after your child in your own home.

Generally speaking, direct payments cannot be used to pay for permanent residential accommodation, other than limited amounts of short breaks (see page 22). However, in at least one case the courts decided that direct payments could be used to contribute to the costs of a permanent residential school placement. This applies only when direct payments are 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 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 personal assistants (PA) although you must at least pay the national minimum wage (see page 18). 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, such as 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

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- holiday pay
- sick pay and cover
- maternity, paternity or 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 the following:

- 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.

## **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, it is

## Getting help in using direct payments

You can get advice about accessing and using direct payments from our freephone helpline on  
Tel: 0808 808 3555  
(Mon-Fri 9.30am-5pm.)

## 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.

possible for payments to be made to them in their own right, so long as the local authority believes that they have the ability to manage direct payments with help. This is regardless of whether that help comes from parents, a user controlled trust or a local support service.

This allows a 16/17 year old to choose if they want to take control of part or all of their direct payments. Alternatively their parent can continue to receive direct payments on their behalf.

If there is a disagreement between a 16/17 year old and their parent about who should manage the direct payments, guidance makes clear that the local authority is obliged to make the direct payments to the young person. This must be done – as long as the local

authority believes the young person is able to manage the direct payments with appropriate support, and the arrangement safeguards and promotes their welfare.

## When a young person reaches 18 years

Once your son or daughter turns 18, direct payments will normally be made to them rather than you. You can only carry on receiving direct payments on their behalf if they lack the mental capacity to 'consent' to direct payments. This does not mean that they have to be able to manage direct payments independently. Someone can still be treated as being

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able to consent to direct payments, even though they may need help to manage them. However, they must have ability to at least make choices about how their care needs are met.

If your son or daughter lacks the mental capacity to consent to direct payments, you can ask the local authority to appoint you to manage direct payments on their behalf as a 'suitable person'.

In the first instance a local authority should approach any attorney or deputy, appointed under the Mental Capacity Act, to see if they will take on this role. However, if there is no attorney/ deputy, or if they are unwilling to take on this role, local authorities can appoint someone else to act as a suitable person to manage direct payments. In most cases this will be a family member who is already involved in caring for the disabled person.

### **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 allow you to buy carers' services, even if your son or daughter is receiving direct payments to buy their own services on as a young disabled adult.

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

## **Should I use a service provider or employ a PA?**

Deciding whether to use a service provider or employ a PA 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.



## 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 Family Information Service. For contact details see <http://findyourfis.familyandchildcaretrust.org/kb5/findyourfis/home.page>.

### Services that should be registered

Care providers are registered and inspected by the Care Standards Inspectorate in Wales and by either OFSTED or the Care Quality Commission 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.

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## 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)?
- 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?

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.

- 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.

### 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 a PA yourself, you will be responsible for recruiting 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 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 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

When you recruit 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

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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.

### **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:

- 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 undertake a DBS check and to share the results of this with you (see box on page 16).

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:

- 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 including:

- 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.

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## **Disclosure and Barring Service (DBS) checks – making sure your child is not put at risk**

If 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. To do this you must make sure that an enhanced disclosure check is carried out on any prospective employee via the Disclosure and Barring Service (DBS).

A DBS check is a thorough criminal records check.

You should carry out a DBS check even if you know the person you want to employ.

### **Applying for the DBS check**

You cannot apply for the DBS check yourself. Instead you will have to use an 'umbrella body' that is authorised to access checks, like your local authority. They will give you an application form which you should ask your employee to complete and return to them, along with certain documents proving their identity. This should then be returned to the umbrella body. Ask the local authority to meet the costs of the check, unless they have already included an amount for this in your direct payment budget.

### **When the check has been completed**

The results of the DBS check will be sent to the the person you wish to employ, not to you. This means you will need to ask them to show you their DBS disclosure certificate. If you have any questions about information on the certificate, get their permission to discuss the DBS disclosure with your local authority or your direct payments support service.

### **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 DBS check (see box on page 16 for more information) but you should also 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 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
- 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

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in the event that problems develop. Get advice on appropriate procedures from a local direct payments support service, or from the **Advisory, Conciliation and Arbitration Service (ACAS)** at [www.acas.org.uk](http://www.acas.org.uk).

### Employing a PA for a trial period

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

### Preparing for a PA starting

Before your PA starts work, 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 information which includes a link to their *New Employer – Getting Started* guide. They will also arrange for a 'pay as you earn' (PAYE) scheme to be set up so that you

A local direct payments support organisation should be able to provide you with detailed advice on how to deal with tax and NI issues.

can deduct tax from your employee's earnings if appropriate.

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 employ 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 Pay and Work Rights Helpline on 0800 917 2368.

### **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 the Revenue's New Employers Helpline (see 'Useful contacts' on page 25).

### **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.

Freephone helpline: **0808 808 3555**  
Web: **[www.cafamily.org.uk](http://www.cafamily.org.uk)**

## **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 5.6 weeks paid leave a year. If your PA works

35 hours a week, they will be entitled to at least 196 (5.6 x 35) hours as paid leave. If someone works 10 hours a week, they are entitled to at least 56 (5.6 x 10) hours paid 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

### **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 provide an on-line Employment Status Indicator to help you work out if someone is self-employed. You can find this at <http://www.hmrc.gov.uk/calcs/esi.htm>. You can also ask for a written opinion on a worker's status by contacting the HMRC Status Customer Team on 03000 527450.

You should also seek advice from your local direct payments support service about whether there are any separate issues about whether someone is self-employed for the purposes of employment law.



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 or public liability insurance. The cost of any formal training should be included in your direct payments as part of the 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.

Freephone helpline: **0808 808 3555**  
Web: **[www.cafamily.org.uk](http://www.cafamily.org.uk)**



## 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 needed, 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.

Please note that equipment that has been designed for disabled people or adapted for their 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 [www.hmrc.gov.uk/vat/sectors/consumers/disabled.htm](http://www.hmrc.gov.uk/vat/sectors/consumers/disabled.htm).

### Costs of maintaining equipment

You will 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 that 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 *Aids, equipment and adaptations*.

## 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 unit, or more flexible breaks, like a child going to stay with a care worker, or a PA accompanying a child on holiday. The maximum amount of residential 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.

## What to do if you start 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. After this you are likely to be asked to give them 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 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. However,

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

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 need emergency cover. For example, you may be able to 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. This 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

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Web: **[www.cafamily.org.uk](http://www.cafamily.org.uk)**



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. Getting direct payments will have no effect on your benefit entitlement. However, if you use direct payments to employ a family member as a PA, they will then have earnings from the work they do for you as a carer. This could affect any means tested benefits or tax credits they receive.

### 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.

### 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.

## Useful contacts

For further advice about any aspect of using direct payments call the Contact a Family helpline on 0808 808 3555 (Mon-Fri, 9.30am–5pm). We can also give you details of the local direct payments support service for your area.

### England – Department of Health

Web: [www.hpft.nhs.uk](http://www.hpft.nhs.uk)

Provides detailed guidance on the use of direct payments in England.

### Wales – Welsh Government

Web: <http://wales.gov.uk>

### Her Majesty's Revenue and Customs New Employers Helpline

Tel: 0300 200 3211

Textphone: 0300 200 3212

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.

Freephone helpline: **0808 808 3555**  
Web: **[www.cafamily.org.uk](http://www.cafamily.org.uk)**

### **OFSTED**

Tel: 0300 123 1231

Typetalk: 18001 0300 123 1231

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

Regulates and inspects providers of childcare in England including childminders, nurseries and after-school care.

### **Care Quality Commission**

Tel: 03000 616161

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

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

### **Care and Social Services Inspectorate Wales**

Tel: 0300 7900 126

Web: <http://cssiw.org.uk>

Regulates and inspects providers of care to children in Wales.

### **ACAS**

Tel: 0300 123 1100

Typetalk: 18001 0300 123 1100

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

Advice and information on employment law and good practice for employers.

### **The Independent Living Advice Line**

Tel: 0300 555 1525

Web: <http://disabilityrightsuk.org>

Advice on getting direct payments, including information on individual budgets/personalisation, funding from social services in relation to the care needs of disabled people (also involves issues around appealing against the decision of social services) and general advice on employing personal assistants.

Written by Derek Sinclair

## **Social networking**

Contact a Family is on Facebook and Twitter. Join us at:

### **Facebook**

[www.facebook.com/contactafamily](http://www.facebook.com/contactafamily)

### **Twitter**

[www.twitter.com/contactafamily](http://www.twitter.com/contactafamily)

### **Podcasts**

To listen to and download our podcasts click the iTunes link on the bottom of our website homepage:  
[www.cafamily.org.uk](http://www.cafamily.org.uk)

### **Videos**

You can watch videos on our YouTube channel at:  
[www.youtube.com/cafamily](http://www.youtube.com/cafamily)

Freephone helpline: **0808 808 3555**  
Web: **[www.cafamily.org.uk](http://www.cafamily.org.uk)**

## Getting in contact with us

Free helpline for parents and families

**0808 808 3555**

Textphone

**0808 808 3556**

Open Mon–Fri, 9.30am–5pm

Access to over 170 languages

**[www.cafamily.org.uk](http://www.cafamily.org.uk)**  
**[www.makingcontact.org](http://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](mailto:info@cafamily.org.uk)**

Web **[www.cafamily.org.uk](http://www.cafamily.org.uk)**

## Other information booklets available

This guide is one of a series which are free for parents concerned with the care of disabled children, including:

- A guide to claiming Disability Living Allowance for children
- Money Matters: a checklist when your child has additional needs (UK)
- Siblings (UK)
- Fathers
- Understanding your child's behaviour

All our guides can be downloaded from our website. Parents can call our freephone helpline and ask for a copy.



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