

User Guide to Direct Payments in the East Riding of Yorkshire

Putting East Riding people first



Introduction

Congratulations! You have been through the process of assessment and support planning and decided that you want a direct payment, also known as a cash personal budget, so that you can be in control of your social care support.

Simply, a cash personal budget, paid to you through a direct payment, is a cash alternative to the local authority arranging your care – it is paid to you so you can organise your care yourself. It is not a benefit so it won't interfere with any other benefits you might get, and it is not income so it is not taxable.

This is a guide to support you to use your direct payments. The direct payment support officer will go through this with you when they visit and will be able to answer any questions that you may have.

If you aren't going to manage your own direct payment the person who does so will need to see and understand this guide too.

It can be a bit daunting at first, especially if you are going to employ your own staff. You will be able to receive all the support you need to set up your direct payment from our Direct Payment Support Service.

The majority of direct payments work very well indeed and most people who use them wouldn't have it any other way!

What can and can't I use my direct payment for?

Your direct payment should be used for those things that you identified on your support plan that will meet your needs. For example you can use it to employ your own staff, to arrange short breaks, or for small items of equipment. If you employ your staff and need to take out insurance, arrange payroll etc. you can pay for all of this out of your direct payment (See below).

You can employ people you know or relatives. You can only employ someone who lives in your house as an exception and this must be agreed by the Council. If you are not sure ask your care coordinator or the direct payment support officer who will visit to help arrange your direct payment.

You can't use a direct payment to pay utility bills, or rent, or mortgage, or to pay for food, alcohol, cigarettes, gambling or anything illegal. You shouldn't use it for anything that has not been agreed in the support plan.

You can use it for short breaks in a care home setting but not for permanent care and you can't use it to pay for

Council-run services like day centres. You can still go into a care home on a permanent basis if this is the best way to meet your needs and you can still use one of our day centres but the Council will arrange this for you.

We will expect you only to use your direct payments for what was agreed in your support plan – there will be some flexibility to suit your everyday needs, but if you do want to make some big changes or feel you do not have enough to manage then you must go back to your care management worker.

You should have built in contingencies in your support plan in case your staff are ill or on holiday and you can talk this through with the direct payment support officer.

If there are any changes in your circumstances, for example change of address, or change in care needs or if you go into hospital, you or your representative should let your care management worker know straight away.

Support to manage all aspects of your Direct Payment

The council has an in-house Direct Payment Support Service, and a direct payment support officer will arrange to visit you to support you with your direct payments. They will advise on a range of things, including:

- Advertising for and recruiting staff, including helping to write interview questions, support during the interview process, helping with references etc. It also includes doing police checks - Disclosure and Barring Service (DBS) checks, formerly known as CRB checks. DBS checks are free of charge.
- Supporting you to draw up a job description and a contract including rates of pay, terms and conditions, holiday entitlement etc. for each employee.
- Helping you decide on Bank Accounts, including managed accounts if you do not want to manage the money yourself.
- Supporting you to arrange public and employee liability insurance providers, payroll providers etc. including car insurance if your staff are going to drive your car.
- Arranging a review 6 weeks after your direct payment starts to check that everything is going well for you.
- Setting up and keeping a file with all necessary records e.g. receipts, bank statements etc.
- Supporting you to make regular payments to HMRC for tax and National Insurance (if you employ your own staff).

The direct payment support officer will give you a pack of information that will include everything you need to know; they will go through the pack with you and make sure you understand it all. You will be able to contact them after the visit for information, or they may visit more than once. The Direct Payment Support Service will provide continuing advice and support for as long as you need it. This service is free of charge.

In addition your care coordinator will remain involved and will carry out a full review of your support within 3 months of direct payments starting.

Bank Accounts and Financial Information

Your direct payment (and contributions if you have to make any) should be paid into a separate bank account that you open for this purpose. It has to be separate as it has to be audited. The bank account should be in joint names with someone else – but not someone you employ – so that if for example you were in hospital, the other person could sort out paying your staff. If you only have a direct payment for occasional use, for example a piece of equipment or short breaks it might be possible to use your own account – speak to the direct payment support officer about this when he/she visits.

If you do not want to manage the money you could ask a third party, for example your son or daughter, to manage the money for you, but that bank account would still need 2 signatures on it.

If you do not have anyone to open a bank account with, or do not want to manage money, or if it is felt by your care coordinator that this might be too much for you, you can have what is called a Managed Account, which can be arranged with your care management worker or your direct payment support officer. With this type of account, the

money goes into an account managed by a specific organisation (they might do your payroll too) and you put your contribution in. This means you still make all the decisions about your care but you don't have to have anything to do with the money side of it as the organisation that manages the account will pay staff and all invoices for you. All you will have to do, if you employ staff, is make sure the timesheet arrives with that organisation. The pack that you get will have a list of providers of Managed Accounts in it to help you choose who to use. The cost of a Managed Account can be paid from your direct payments.

The Assessments & Payments Team within the Council will tell you in writing how much your direct payment will be and your financial contribution – you will have to pay in your own financial contribution to the bank account. The direct payment will go into the account on a 4-weekly basis usually. If you are going to use some or all of your direct payment for short breaks this can be paid as part of your 4-weekly amount, or more usually as and when you need it. You will arrange this with your care coordinator.

You will be informed of any increases to your direct payment, either because your needs have changed or because of an annual increase – this will help you decide whether or not to increase your employee's wages.

Direct payments are not benefits (which you can spend as you like) and the Government says the Council has to audit and monitor how they are used. You will be required to provide bank statements on a regular basis (unless your direct payment is managed by a third party), along with any invoices if you do not employ staff. You will be advised where to send the statements

and supported to do so if necessary. If you do not send bank statements you may have to go onto a managed account or have your care and support arranged by the Council instead.

The Council will monitor use of direct payments and will reclaim any unspent money, making sure there is enough left for your outstanding commitments.

If any money is misused the Council will initially stop the money and may take legal action to reclaim the misused amounts.



Ending Direct Payments

You can end your direct payment whenever you like and the Council will arrange your services for you instead. Just let your care management worker know if this is what you want to do and they will arrange for the direct payment support officer to visit to help you close things down and make any necessary payments.

Very occasionally the Council might have to terminate a direct payment, for example if you can no longer manage and go into a care home on a long-term basis, or if there are financial problems. If this happens you will be kept fully informed and the Council will make other arrangements to make sure you still get the care and support you need.



Emergencies and Contingencies

You should always try to have contingency plans in place in case your personal assistant goes off sick for example, but if there is an emergency and your direct payment arrangements break down and you have no cover, the Council will provide support, usually through a care agency, until your direct payment is up and running again.

Employing Staff

If you decide to employ your own staff and don't have anyone in mind, you will be offered support to find the right people.

- Advertising – you will need to complete a job specification and advertise for the right person. The pack includes sample specifications and adverts and the direct payment support officer will help you to put information together and you can decide where you want to advertise, for example in the newspaper, local shop, Job Centre, etc. You will need to be clear about what tasks the personal assistant will do for you, what skills and qualities you want from a personal assistant, and what experience you would like them to have.
- Interviewing – once you have applicants for the job you will be able to shortlist and invite for interview. You could interview in your own home or elsewhere, the direct payment support officer will help you with this and help you to decide what questions to ask. They will sit in on the interviews if you wish. After the interviews you will be supported to write to the successful and unsuccessful applicants. The pack includes sample questions and letters.
- References should be taken; the pack includes sample requests and forms. DBS checks can be done free of charge and will check whether someone has had criminal convictions and is unsuitable to work with you. There is a leaflet in the pack with more information. The local authority cannot insist on a DBS check for your employees but do strongly recommend it.
- You must also ensure you have seen paperwork from the person you want to employ to prove they are eligible to work in the UK. The leaflet in the pack tells you what documents you will need to see, and the person should not start work until you have been able to see the documents.

- You may decide to contract with someone who is self-employed. Self-employment is not a matter of choice and depends on many things, for example the degree of control you have over how the work is carried out. It is rare that a personal assistant is self-employed and if they say that they are but HMRC says that they are not then you will be liable for tax, National Insurance etc. You will receive advice from your direct payment support officer, and it is strongly recommended that you refer to the “HM Revenue & Customs (HMRC) self-employed status indicator” and follow the steps they provide to determine whether someone is self-employed or not. This is an on-line tool and details of how to access it are at the end of this booklet under “Useful Contacts.”

Being a Good Employer

Being a good employer includes things like having a contract of terms and conditions of employment with your employee/s, deciding how they will be paid, thinking about their health and safety, and finding out about legal responsibilities. The direct payment support officer will be able to assist you with all of this and there is information in your pack.

If you employ staff you have a legal duty to make sure that they remain safe and healthy while doing their job. You will need to carry out a risk assessment on your home including any pets you may have, you will need to think about training (see below), you will need to record any accidents that happen in your home, and take out Employer’s Liability Insurance (see below). Your direct payment support officer will advise on all of this.

You will also need to ensure good working practices and regular supervision of staff, keeping records of these.

You will need to keep certain records about your staff for 3 years mainly about hours worked, sick leave, pay rates and accidents – you will be able to get help with all of this. You will also be assisted to develop staff rotas, ensuring that you have back up in case of staff illness etc., and supported to resolve issues if there are any with employees.

Insurance and Payroll

If you are employing your own staff (rather than using an agency or a self-employed worker) then you will need to make arrangements to pay them. You can do this yourself or you can use a payroll provider to do this for you – the pack has a sheet in with local providers and cost. The cost of payroll can be paid from your direct payment. If you are going to do this yourself you should contact the HMRC to check whether you need to register with them as an employer.

You need to pay at least the minimum wage, and it does change every year but you can contact the National Minimum Wage Helpline for advice (see Section on Useful Information for current minimum wage rates).

You will need to have timesheets completed by your employee and authorised by you, as well as a record of all holidays and sickness absence. Your payroll provider will support you with this.

If you employ staff you will need to take out Employer's Liability Insurance and/or Public Liability Insurance. You will be able to pay for the insurance from your direct payment. If you want your employer to drive your car you must remember to add them to your car insurance. If they are going to use their own car to drive you they will need to have business use insurance on their car.

Contracts

It is essential that you and your employee complete and sign a contract of employment, so you both know where you stand. There is an example in the pack and the direct payment support officer will help you complete it. You will need to sign both copies and send them to your employee; they will sign both, keep one and return the other to you. If you need to change it in the future you will need to put the changes in writing and both of you sign the changes.

The contract will include essential information that you are legally obliged to include, for example your name and that of your PA, their job title, the place of work, date of employment starting, period of notice on both sides, hours of work

and holiday entitlement, sick leave and sick pay entitlement - there are laws about many of these and you will be advised on the correct information to put in.

You should set a probationary period which is a two-way thing and allows you both to get to know each other and the job without committing yourself completely.

You also need to think about what will happen if you are away, or have to go into hospital – will you continue to pay fully or a retainer? The contract will be clear on what happens and you will get advice.



Annual Leave, Sickness

The contract should include full details of annual leave and sickness pay.

All workers are now legally entitled to a minimum of 5.6 weeks paid annual leave a year, including Bank Holidays. The sample contract includes information about your employees annual leave entitlement and how to calculate for the first and subsequent years of employment and your direct payment support officer will help with this. Further information can be obtained from ACAS. You should not usually ask your employee to work an average of more than 48 hours a week unless they have given voluntary consent in writing. There are rules about younger workers and breaks which you will be advised about.

Your employees will not be entitled to contractual sick pay. The only payment for sick leave will be Statutory Sick Pay according to the regulations which will be paid provided you follow the correct procedures. Full details are available from HMRC.

You may pay statutory sick pay to employees who can't work for 4 or more days in a row because of illness or disablement. They must have told you they are sick within the terms of

their contract and they must be earning above a threshold amount per week. HMRC have up to date information on this amount. For up to 7 days the employee can self-certificate, after that they must get a form from their GP. If your employee is off sick you must inform your payroll provider immediately.

Your employees will also have legal rights to maternity, paternity and adoption leave and pay. If this situation arises contact your care management worker about making a referral to the direct payment support team, who will come out and advise you on their rights and your duties, including the requirement for a pregnant employee to have a risk assessment.

Training and Development

You will need to work out what your employee needs to know about you and the job (induction), you will need to discuss how the job is going especially during the probation period (supervision) and you will identify what training they may need (training and development).

Again you will get help with all of this from the direct payment support officer. There is also a website that might help, called “Being the Boss” (see the section on Useful Contacts and Information at the end).

Induction is just about introducing the employee to your way of working and the more thought that goes into that the more effective your employee will be.

Supervision should be regular, say once a month to begin with then maybe every 3 or 6 months, and both you and your employee should prepare for it, bringing issues you want to discuss.

Training is available for staff – the Training Diary is included in the pack and contains basic training such as Moving & Handling, First Aid etc. If it is provided by the local authority in house

it is free to staff, if not there will be a charge. This can be paid for from your direct payment as can any cover for your staff while they are on training. If you have any specialist training needs for staff that aren't in the Training Diary tell your care management worker who will then try to find that training for you. There is a website that can help you think about what training your employees might need called “Picking Your Pathway.”



Understanding Health and Safety

If you employ staff, as an employer you have a duty of care towards your employees. You have to ensure that the workplace (usually your home) is as safe as possible. You must have adequate measures in place to ensure staff are unlikely to come to harm, and one of the ways of checking this is to have a risk assessment carried out.

Your Supported Assessment

Questionnaire may have identified some risks if there are any. A simple risk assessment involves:

- Identifying the risks involved in the place of work (often your home) e.g. could a frayed carpet present a trip risk to a PA? Could a worn lead on a kettle result in someone being electrocuted?
- Considering who would be affected by those risks i.e. you, your staff or any visitors to the place of work
- Considering how likely it is that the risk could actually happen
- Considering what the potential for harm and injury would be if the incident did happen.

If the likelihood of an incident is high and/or the consequences of any

incident could cause severe damage to property or injury to persons, you must put appropriate control measures in place to reduce that risk, or stop that particular task being undertaken until appropriate measures are put in place.

Your staff have responsibilities too, as a minimum they are required to:

- Carry out work duties safely and efficiently.
- Make sure they understand how to use equipment safely.
- Use protective equipment and clothing when necessary.
- Report any incidents that could lead to damage or injury.
- Adhere to all procedures for working safely.
- Assist in any investigation of incident to minimise further risk.

You must demonstrate that you have assessed risks and recorded any actions taken to minimise risk. You must also ensure staff are adequately trained to carry out the duties on your support plan.

Disciplinary and Grievances

Any problems should be addressed professionally, and records kept. Regular meetings and supervision will reduce the likelihood of having to resort to disciplinary procedure. If you are not happy with your employee you may be able to deal with issues by sitting down and having a chat, which might resolve minor things like occasional poor timekeeping. If things don't improve or your employee does something more serious, then you need to follow the correct legal procedures.

You **MUST** follow the correct procedure to remain inside the law or you may have legal action taken against you by your employee if you dismiss them. If you are concerned about your employee you should either contact your insurer, or your care management worker before taking any action in order to comply with the law and receive the right advice – your insurer may not support you if you do not ask for or take their advice.

The following stages should be followed:

Stage 1: Improvement Note (Verbal Warning)	If performance is unsatisfactory, a formal Improvement Note (verbal warning) should be given. This should be recorded in writing by letter to the staff member and remain valid for 6 months.
Stage 2: Written Warning	If the offense is serious or there has been no improvement or a further breach occurs, a Written Warning should be issued stating the reason for the warning. This should remain valid for 12 months.
Stage 3: Final Written Warning	If performance is still unsatisfactory, a final written warning should be given making it clear that any repeat of the “offense” or other serious misconduct will result in dismissal. This should remain valid for 12 months.
Stage 4: Dismissal	If there is no satisfactory improvement or further serious misconduct occurs, the staff member should be dismissed.

If you suspect your staff member of Gross Misconduct (e.g. theft, damage to property, working under the influence of drink or drugs) you should suspend them on full pay with immediate effect pending an investigation. If, after investigation, gross misconduct is confirmed, the member of staff should be dismissed without notice.

Always make notes of concerns and conversations (with dates) to support the disciplinary process. Your staff member may choose to appeal the disciplinary.

You can receive support and advice from the direct payment support officer, or other organisations in detailed in Useful Contacts at the end of this guide, for example **PERS**, or **NCIL, ACAS** or **PA Net**.

Similarly if your employee has a grievance against you they and you should follow the grievance policy, which is included in the Employee Handbook in your pack.

If you feel you are being abused by your staff, either physically, sexually, emotionally or financially you should contact either your care management worker or the safeguarding team within the council (see Useful Contacts section).



Useful Facts and Figures

Current national minimum wage rates

There are currently three aged based national minimum wage rates and an apprentice rate, which are usually updated in October each year. The rates that apply from 1 October 2013 are as follows:

- for workers aged 21 years or more: £6.31 per hour.
- for workers aged 18 to 20 inclusive: £5.03 per hour.
- for workers aged under 18 (but above compulsory school age): £3.72 per hour.
- for apprentices aged under 19: £2.68 per hour.
- for apprentices aged 19 and over, but in the first year of their apprenticeship: £2.68 per hour.

Apprentices aged 19 or over who have completed one year of their apprenticeship are entitled to receive the national minimum wage rate applicable to their age.

You should refer to HMRC for current minimum rates; the direct payment support officer will help with this when you set up your staff initially.

Mileage

You can pay up to 45p/mile maximum allowance. Staff paying tax can claim back the difference between what you pay and what HMRC allows at the end of the year.

Working Time Limits

You cannot force your staff to work more than 48 hours a week (averaged over 17 weeks). Your employee can opt out of this, this must be in writing. If they do not want to opt out they cannot be made to. Your employee can opt out and then cancel the opt out with 7 days' notice but cannot be forced to cancel the opt out.

Contacts and Useful Information

Your care management worker is:

Their contact details are:

General Information

Age UK is an independent charity that works to actively promote the well-being of people in later life.

www.ageuk.org.uk

Telephone: 08001696585 or (01482) 869181

Choices and Rights Disability Coalition are a user-led organisation for disabled people in Hull and the East Riding of Yorkshire and can provide support on a range of disability-related issues.

www.choicesandrights.org.uk

They also have a Personal Assistant Database for people to register their interest in becoming a Personal Assistant to a disabled person.

www.padatabase.org

Telephone: (01482) 878778

Connect to Support Eastriding is a website for people needing support in the East Riding including local and national products & services, information, advice and much more.

www.connecttosupport.org

Disability Rights UK are an organisation of disabled people leading change, working to create a society where everyone with lived experience of disability or health conditions can participate equally as full citizens.

Tel: 020 7250 8181

Email: enquiries@disabilityrightsuk.org

MENCAP values and supports people with learning disabilities, their families and carers.

Telephone: (01482) 867659 or 0808 808 1111

www.mencap.org.uk

MIND where anyone with a mental health problem has somewhere to turn to for advice and support.

www.mind.org.uk / www.mindhey.co.uk

Telephone: (01482) 240200 or 0300 123 3393

Employment Information

www.gov.uk provides a range of advice and information on employing people, working, jobs and pensions.

www.thepensionservice.gov.uk

www.hmrc.gov.uk provides a range of advice for employers and employees including registering as an employer, minimum wage, statutory sick pay etc. and provides downloadable copies of leaflets.

www.hmrc.gov.uk/calcs/esi.htm provides information and a tool to determine whether a PA is employed or self-employed.

www.gov.uk/statutory-sick-pay

National Minimum Wage Helpline: 0845 6000 678

Issues at Work/ Independent Advice

[acas](http://www.acas.org.uk) provides information, advice, training, conciliation and other services for employers and employees to help prevent or resolve workplace problems.

www.acas.org.uk or 08457 474747

PERS provides free employment law and HR advice for people who employ PAs or who are thinking of employing PAs.

Tel: 01924 428030 or email: admin@pers.org.uk

Peer Support

Being the Boss is a website created to address the lack of peer support available to disabled people who employ their own Personal Assistants (PAs). It shares information based on the experiences of disabled people and by providing a safe forum to discuss/share ideas.

www.beingtheboss.co.uk

Information for Personal Assistants

The Personal Assistants Network is an information site designed to provide information and guidance for Personal Assistants (PAs) in social care, or people who wish to become a PA in social care, or people who employ a PA or would like to.

www.panet.org.uk

Safeguarding Adults from abuse

If you are concerned that someone (including yourself) is being abused or is at risk of abuse, or if you have a concern about a specific incident relating to abuse, you should contact the safeguarding adults team. You can contact the team with any enquiries.


Email: safeguardadults@eastriding.gov.uk or (01482) 393939 and ask for the Safeguarding Adults Team. In an emergency outside of hours, contact the emergency duty team on **(01377) 241273**.

If you feel that there is an immediate risk to an individual, please contact the emergency services by dialling 999.

Direct Payment User Agreement

In order to receive direct payments you need to agree to the following actions. You will be supported to carry out these actions by your care management worker and/or the direct payment support service.

1. Open a bank account just for direct payments – either with joint signatures or a managed account. An account can be managed by any person you nominate, for example family or friends (joint signatures required) or by an agency on your behalf.
2. Spend your direct payment only on what is agreed in your support plan.
3. Pay in contributions (if any) – You will be notified of what these are.
4. Send in monthly bank statements (unless you have a managed account, run by an agency on your behalf).
5. Fulfil all the legal requirements of employing staff as advised by the direct payment support officer.
6. To purchase employee liability insurance (ELI) if you employ staff.
7. Pay back any surplus money in your account as required.
8. Pay back any money to the council that is misused or fraudulently claimed – you should understand that if money is misused the council may take legal action to reclaim this amount.
9. Keep a record of expenditure for up to 6 years.
10. Contact your care management worker of any problems or issues.
11. Notify your care management worker of any changes of circumstance for example hospital admission, need for extra support etc.



Care and Support Review Team
Corporate Strategy and Commissioning
Adult Services
Room KG15
County Hall
Beverley
HU17 9BA
Tel: (01482) 392231
Email: transformation.team@eastriding.gov.uk
Website: www.eastriding.gov.uk



EAST RIDING
OF YORKSHIRE COUNCIL