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## DIRECT PAYMENTS HANDBOOK FOR DISABLED CHILDREN

### 1. Approval and Authorisation

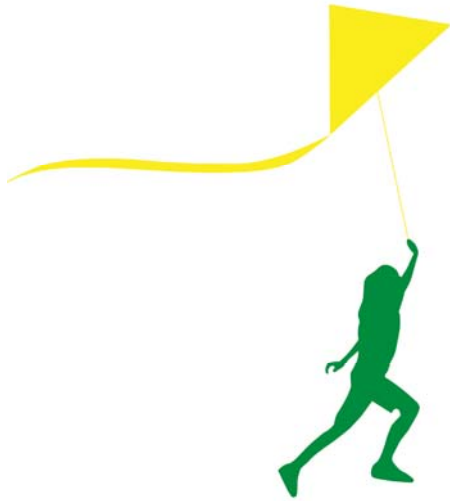
Completion of the following section signifies the review and approval of this process:-

Name	Job Title	Date
Authored by: Camille Pace	Care Managers	2005
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# *Derbyshire County Council Children and Younger Adults*

## **Direct Payments Handbook for Disabled Children and Young People**



**D** **DERBYSHIRE**  
County Council  
Improving life for local people

This handbook is a working document. This means that the information and forms will be updated as necessary. If you have any queries or require further information regarding the contents of this Handbook please contact the Direct Payment Social workers on 01629 532023 or email us on: [directpayments@derbyshire.gov.uk](mailto:directpayments@derbyshire.gov.uk)

If you would like this handbook in another format or require an interpreter please contact the Direct Payment Social Workers on 01629 532023 or e-mail us on:

[directpayments@derbyshire.gov.uk](mailto:directpayments@derbyshire.gov.uk)

# Derbyshire County Council Children and Younger Adults

## Direct Payments Handbook for Disabled Children

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## INTRODUCTION

Derbyshire County Council (DCC) is committed to supporting individual's rights to be in control and able to participate fully in their own lives, with their family and the wider community.

Derbyshire County Council is also committed to promoting choice and expanding the number of people accessing Direct Payments. The Department provides a variety of support services for those people choosing to take up Direct Payments. Direct Payments can be used solely as an alternative to services Derbyshire County Council provide or pay for or as part of a mixed package of support. This means that your disabled child may have direct payments to meet all or some of their assessed needs. If the direct payments form part of a mixed package of support, Derbyshire County Council may provide services for the rest of your child's support package. Some identified needs may be met from services within the community.

This Handbook is designed to help individuals get the most from Direct Payments. (This may be part of an Individual Budget). It contains information to help you get started, and how to manage your direct payment as you go along.

Each Chapter relates to a specific area of direct payments, for example Chapter 5 provides information about recruiting personal assistants. Not all the information in this handbook will be relevant to you. Each Chapter has a different coloured border, helping you to access the relevant information quickly.

You will have someone supporting your child and you with the assessment who will be able to offer advice and support, or signpost you to support. There are many titles given to this worker. This worker could be a Social Worker, Community Care Worker, Family Resource worker, etc. This person will be referred to throughout the handbook as your 'DCC worker'. Any personal assistants you choose to employ will be referred to as 'personal assistants' (PA).

**Note:**

The information contained in this handbook is for guidance purposes only. Derbyshire County Council cannot become involved in contractual matters between a Direct Payment recipient and their personal assistants and/or Agencies/Organisations as these are private arrangements. Neither is Derbyshire County Council responsible for any costs arising out of any difficulties occurred.

You are advised to seek advice from a third party, i.e. your insurers, Local Legal Advice Centre, CAB, Solicitors, etc if you require legal advice on any employment or contractual matters.

**Information in this handbook has been sourced from:**

Direct Payment recipients

Carers

DCC (Derbyshire County Council) workers

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

Direct.gov.uk

HMRC (HM Revenue and Customs)

ACAS (Advisory, Conciliation and Arbitration Service)

Health and Safety Executive

CQC (Care Quality Commission)

DCC direct payments policy and procedures

DCIL (Derbyshire Coalition for Inclusive Living)

[Volunteering.org.uk](http://Volunteering.org.uk)

ICO (Information Commissioners Office)

Equal Opportunities Commission

Businesslink.gov.uk

Citizens Advice Bureau (CAB)

This list is not exhaustive.

## Staying Safe with Direct Payments

We know that direct payments can give you extra control over the care arrangements for your disabled child or yourself. We also know that having control over our lives gives us more resilience against fear of abuse and neglect.

- All direct payment recipients need to know that all professionals and Call Derbyshire are ready to listen to any worries and concerns you or your child may have about staying safe. Have you got a copy of the safeguarding public information leaflet? If not contact your child's DCC worker.
- Telling someone about abuse and neglect does not mean you lose control of what you want to happen to your child or yourself. You have the right to take informed risks. We have the responsibility to work with other agencies to inform you of the options available to you – not to take over your life.
- Personal assistants have a duty of care. They may need to talk to someone if they have a concern regarding the safety of your child or your safety. They should usually do this with your consent but sometimes confidentiality has to take second place if your child, you or another person is at high risk of serious abuse or neglect from (for instance) a family member or other personal assistant. It is essential that you and the personal assistant have a clear understanding about their responsibilities should the personal assistant have any concerns about your child's or your safety.
  - Your personal assistant can also go on 'Safeguarding' training. There are 2 courses run by Derbyshire County Council:
  - A 1 day course specifically for people working with Adults
  - A 2 day course for people working with Children.
- Unfortunately we know that some people and agencies in the care and health professions (including personal assistants) perpetrate recklessly poor practice (for instance poor moving and handling) or intentional abuse. We will help you manage this situation as both a user of the personal assistant's services and also as the employer. Our policy and procedures for safeguarding address the particular needs of direct payments users, including children.
- We are working to develop a support and risk assessment questionnaire that will help identify the best type of support for your child and your specific circumstances. Staying safe will be a central feature of this tool.

It is usually your decision whether or not you use direct payments to support your child. There are some legislative restrictions and your DCC Worker will advise you of these. However, there may be some circumstances when it is still not be possible for you to have, or continue with, direct payments, even though you may wish to do so. This may be because your child, you or a close family member has been the victim of abuse or there is an unacceptable risk of your child, you or a close family member becoming the victim of abuse.

### **What will happen to the direct payments?**

If there are concerns for your or your child's safety we will do our best to work with you to try and resolve the problem and your direct payments will only be stopped if this is seen as necessary you keep your child and you safe.

However what happens to the direct payments will depend on the reasons for the enquiry into your child's safety and welfare. If the DCC Worker and their manager considers your child to be at risk during the enquiry they may suspend the direct payments. They will replace the direct payments with services provided directly by DCC.

Should DCC suspend the direct payments the DCC worker and their manager will take into consideration any contractual responsibilities you may have.

However you must seek employment advice from DCIL, ACAS or your Insurers before suspending your PA. If the situation is critical you can suspend your PA on full pay (pro rata for part time staff) while you seek legal advice. Some Insurers provide a 24 hour employment advice helpline.

If the situation changes and your child or you are no longer considered at risk of abuse your DCC worker will talk to you again about direct payments, if you still wish to use them.

### **Other information**

If you want to know more about keeping children safe or about making a complaint or comment you can ask your social worker for a leaflet or you can download it from: [www.derbyshirescb.org.uk](http://www.derbyshirescb.org.uk)

or

you can ring Derbyshire Call Centre on: 08456 058 058 between 8am and 8pm.

If you want to talk to someone outside these hours then you can ring:

Derbyshire County Council's Out of Hours service on: 01629 532600

**In an emergency you can dial 999 and ask for the police.**

**If you are concerned about your disabled child's, your own or someone else's safety it is important that you talk to someone as soon as possible, do not keep your worries and concerns to yourself.**

Tell your DCC worker, a health professional, such as your GP, Health Visitor, Community Nurse.

There may be other trusted adults that you feel you could talk to for example:

- your tutor or a member of the welfare staff at college
- A trusted family member, friend, neighbour,
- A community leader or someone from your church, synagogue, mosque or other local religious centre.

You can also ring the NSPCC (National Society for the Prevention of Cruelty to Children) helpline on: 0808 800 5000 or go to their Website:

[www.nspcc.org.uk](http://www.nspcc.org.uk)

Children under 18 years can also talk to someone at Childline:

**Childline is a 24 hour helpline: 0800 11 11** or go onto their website:

[www.childline.org.uk](http://www.childline.org.uk)

This is a free and confidential helpline for children & young adults in the UK.

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## GETTING STARTED

### Background

The power to make direct payments to people with parental responsibility for disabled children and to disabled young people aged 16 and 17 was created by the Carers and Disabled Children Act 2000 ('the 2000 Act'). Section 17A of the 1989 Children Act, inserted by the 2001 Act, gave local authorities a duty to offer direct payments for children's services. In making direct payments under section 17A of the 1989 Act, local authorities are subject to the general duty provided by Part 3 of that Act to safeguard and promote the welfare of children in need, and to promote their upbringing by their families when making these payments, in exactly the same way as when providing direct services. Before making any decision about providing direct payments, the local authority must ascertain and give due consideration to the child's wishes and feelings (section 17(4A) of the 1989 Act). (s5); Guidance on Direct Payments for community care, services for carers and children's services (England) 2009.

### What is a direct payment?

A direct payment is money local authorities give you to enable you to arrange care and support for your disabled child instead of providing services directly. Disabled young people (16 and 17 year olds) can have a direct payment in their own right.

A direct payment is one way of meeting the assessed and eligible needs of a disabled child/young person or a parent (someone with parental responsibility for the disabled child or young person) which otherwise social care or social services would provide.

### Control

The main advantage of direct payments is that you have more direct control and choice over your disabled child's care arrangements and how their needs are met. Direct payments give you a greater amount of freedom and control than services provided by social care.

### Flexibility

You can recruit people of your choice to work with your disabled child and arrange for them to work at the times you want. You will have the same people supporting your disabled child and be able to develop a more trusting relationship than you might with a range of different staff provided by Derbyshire County Council. Services you manage on behalf of your disabled child can be more flexible, supporting them at the time they need it most. Direct payments could be used during the evenings and at weekends when mainstream services are more difficult to obtain.

**Note:**

If there are safeguarding issues, direct payments may not be appropriate. Your DCC Worker will need to talk to their manager and seek advice from the Direct Payment Social Workers. (please see section on Staying Safe with Direct Payments)

**Assessments**

It is important to remember that there is no such thing as a direct payment assessment. A direct payment is only one of several ways to meet a disabled child's assessed needs. The assessment of need is carried out in the normal way with direct payments a possible option.

An assessment involves a meeting with a DCC Worker to discuss the needs of a disabled child. It is important that you are clear about what you think is needed, what services and how much support is required and when. The DCC worker will also take into consideration the wishes and feelings of your disabled child before making a decision about providing direct payments. The assessment will also consist of assessing your ability and willingness to manage a direct payment. You are not expected to manage a direct payment on your own. You can be supported by family members, friends, etc and voluntary organisations, i.e. DDCIL (Disability Derbyshire Coalition for Inclusive Living).

The assessment of need is to establish whether your disabled child is eligible for services from Derbyshire County Council. If your disabled child is eligible for a service DCC would provide or pay for then a direct payment could be used to meet their assessed needs. The nature of the support and type of service will be detailed in the assessment of need and the subsequent child's plan.

If your child or you are not eligible for support or services from Derbyshire County Council then you cannot have a direct payment.

If you are unhappy about the outcome of the assessment of need then you can make a complaint using DCC complaints procedure. You can ask your DCC worker for a copy of the Complaints booklet or ring:

Call Derbyshire on: 08456 058 058 to make a complaint or request a copy of the Complaints booklet. Or fill in a complaint on line via: [www.derbyshire.gov.uk](http://www.derbyshire.gov.uk)

**16 and 17 year old**

If your disabled child is 16 or 17 years of age, their DCC worker will assess whether they are capable of managing a direct payment in their own right with or without support. (See section headed Transition – Section 10)

## **Carers – this includes young carers (16 and 17 years of age)**

The needs of carers are also important. Carer needs will always be considered as part of the overall assessment, though a carer may also be eligible for a direct payment in their own right.

## **Reviews**

Where a parent or carer (with parental responsibility) opts for direct payments, local authorities remain responsible under the 1989 Children Act for assessing and reviewing the needs of the child and their family in the normal way.

DCC review direct payment support packages every 6 months for disabled children and young people in receipt of overnight care. For other direct payment support packages DCC reviews these at least annually. Your DCC worker, who could be a social worker, a community care worker or a family resource worker will inform you of the review process.

It is your decision, in consultation with your PA, whether they attend your child's review or not. Personal Assistants should not be contacted or invited to the review by your child's DCC worker without your permission. If the personal assistant does come to your child's review they will need paying for their time, and possibly also for their travel time or travel costs, i.e. fuel, bus or taxi fares. Furthermore there may be matters discussed at the review which are confidential to you and your family which you may not want your child's personal assistant to know. Additionally your personal assistant may not wish to attend the review. If you are uncertain whether you can insist you will need to seek legal employment advice from your Legal Advisors or your Insurer's employment helpline.

Please note: All services are subject to review and may be increased or decreased in line with the assessed needs of the disabled child or young person.

If you have contractual responsibilities, i.e. employing a personal assistant, a contract with an Agency or Organisation, etc. and there has been a change in the amount of the direct payments, please seek advice from your Insurer's employment helpline, DDCIL, ACAS, etc, before taking any action to alter you contractual arrangements.

Contractual arrangements are a private matter between you and your personal assistant and/or the Agency or Organisation concerned. Derbyshire County Council is not responsible for any costs arising out of difficulties in respect of contractual arrangements between you and either your personal assistants and/or the Agency/Organisation.

## **How can a direct payment be used?**

Direct Payments can be used to meet all of your disabled child's assessed needs or be part of a mixed package of support. This latter can consist of direct payments and services directly provided by Derbyshire County Council or through a third party organisation.

How many hours you or your disabled child will receive as a direct payment will depend on outcome of the assessment of need. The direct payment is then given to you on a four weekly basis, and is money paid into a separate bank account. This money would not affect any other benefits you or your disabled child receives because it would be used to meet care and support needs.

Direct Payments are a flexible way of meeting your disabled child's or young person's assessed needs. The main areas a direct payment can be used are listed below. Nevertheless some categories may not apply to your child's circumstances. It depends on what has been agreed in the Assessment of Need and/or Child's plan.

- Social opportunities, i.e. supporting the disabled child or young person in the community to go swimming, bowling, to the park, zoo, social activity, etc
- Transport to and from an activity, but not to and from school.
- Providing personal care in the home, which can include lifting and transferring and clinical and medical procedures, washing, dressing, etc.
- It is possible now to purchase specialist items of equipment through a direct payment, but not for items normally provided by health or social care
- Short breaks

The list is not exhaustive. Flexibility is the key. But remember direct payments only replace services which social care provide directly or pay a third party to provide. It cannot be used to replace health, education services or activities to which a disabled child can go to without social care involvement.

### **Employing a Personal Assistant**

There is a little bit more to think about when employing your own staff. There are responsibilities you would need to take on as an employer, but there is support available. Most people on direct payments do employ their own staff because the benefits far outweigh the responsibilities.

Some of the tasks involved in employing your own staff are recruitment, getting references and criminal records checks\*, contract of employment, paying your staff, health and safety and planning for when your staff are unable to work. This handbook will look at these in more detail in the following chapters.

There is help and support available with everything you need to do. Once you have chosen how you are going to use your direct payment you need

to get started. This will include opening a bank account just for a direct payment, recruiting staff, payroll facilities, etc.

\*Your DCC worker will arrange for a CRB check to be carried out on a potential PA (see 'Recruiting Personal Assistants' Section for details).

## Using an agency or an organisation

If you decide to spend your direct payment on an agency or an organisation, managing everything is straight forward. You agree with the agency what you want them to do and when. Which agency provides the care is up to you, but we recommend you ask them some important questions to make sure they are right for you. There are some advantages in choosing to use an agency.

An Agency or an Organisation will take care of the following:

- recruitment of carers and carrying out enhanced CRB checks
- provision of carers and cover for holidays/sickness
- paying wages/tax and insurance/sick pay and holiday pay
- insuring staff against accidents
- training staff
- supervision and discipline of staff
- day-to-day management of staff

However there are some other factors to think about:

You may not always be able to choose which carer you have. An agency or Organisation will try to work within your preferences but they may not **always** be able to.

An agency or organisation may be more flexible and able to help out in emergencies. The price of the agency or organisation needs to be checked, to ensure your direct payment money will cover the cost. (Some agencies charge higher rates than those set by the Council. Always ask their hourly rate, whether the Agency has a minimum number of hours call out policy and the rate for travel for example. If you choose to use a more expensive agency, calculate the cost incurred and check that you can afford to pay the extra unless your DCC Worker and their manager has agreed that DCC will pay a higher rate for a specialist agency for example)

Let the agency or organisation know that you are contracting with them on a private basis as they may charge local authorities at a higher rate. Make sure you have an up to date, relevant and clear child's plan that addresses their social care needs. Check that the agency or organisation can meet their needs in the way you want and at the times you want. If you would like help with the child's plan and making sure it is up to date, talk to your DCC worker.

## **The Direct Payment Agreement**

Once you have decided a direct payment is right for your disabled child, we ask that you, the DCC worker and anyone who is helping you, to sign the direct payment agreement. This agreement sets out your responsibilities and those of social services. Either party can withdraw from the agreement, after giving 4 weeks notice.

Your worker will help you understand the agreement. If you feel you need the assistance of an Advocate to understand the agreement fully, this can be arranged.

### **A copy of the direct payment agreement can be found in the appendix Direct Payment Support Packages**

A direct payment support package can be any size. This applies whether direct payments are the sole means of support or part of a complex package of care. Variations to levels of support provided via a direct payment can be for a range of reasons, for instance, because unlike adults, children usually spend much of their time at school or college and/or because you as a parent would usually expect to be the main carer for your children which differs from parents of adults.

DCC have developed a policy around small packages. It is recognised that it can be difficult to recruit suitable personal assistants if the costs of managing a direct payment leave insufficient monies left to pay a potential personal assistant a reasonable salary.

### **Definition of a small package**

#### **1. 117 hours or less annually.**

The number of direct payment hours and how they can be used is decided via your child's assessment of need and/or care plan.

#### **2. Employer and Public Liability Insurance**

DCC pay for the first year's Insurance premium on all disabled children's direct payment packages. However subsequent years' premiums are only paid by DCC for as long as the disabled child is on the direct payment 'small package criteria'. The premium paid is the equivalent of FISH comprehensive cover rate of £135.00 per annum or the cost of the Insurance if with another organisation providing the same level of Employer and Public Liability Insurance for a lesser sum. However you, as a parent, can seek your own insurance from other companies, including consulting your own house contents insurers.

Please note: Derbyshire County Council will not contribute towards any extra costs involved if a family choose to expand their own

house contents insurance to cover employer and public liability insurance or if you choose a more expensive premium.

### **3. Training for personal assistants**

In a 'small package' if the assessment or Child's plan identify training needs to enable a personal assistant to do their job and the service manager agrees then extra direct payment hours at personal assistant rate can be paid.

### **4. Payroll costs**

You will need to budget for these costs. No extra money is agreed.

#### **Direct payment packages over 117 hours per annum**

Normal budgeting criteria apply.

#### **Support through an agency or an organisation**

The small package criteria do not apply if the disabled child is receiving support through an agency or an organisation. The agency or organisation is responsible for all the costs of employing staff, providing cover, training, CRB (enhanced) checks, employer and public liability insurance, payroll costs, etc.

#### **Transition to adult services**

The small package criteria do not apply in adult services. Workers will need to raise this matter with their manager as the disabled child begins the transition process at 16 years old.

Please note: with effect from April 2011 Support Packages within Adult Care may be subject to the co-funding criteria. Please talk to your DCC worker for further information.

#### **Opening a Bank Account**

The first task is to open a bank account, so we can pay you the money. In order to receive direct payments normally you must have a separate bank account or Building society account. The account needs to have a cheque book and/or bank transfer facility. You cannot withdraw cash to pay for your personal assistant's salary or the agency invoice, for example. You need to pay by cheque or by bank transfer if you have an internet bank account. The account can only be used for direct payments and for no other services. This enables DCC Direct Payment Finance Section to audit the account. To open an account you will need to complete an application form and provide proof of identity. If you have problems opening a cheque account please contact the Direct Payment Social Workers at Matlock who will advise you, telephone 01629 532023.

Alternatively you may wish to have a 'managed bank account' (see below for details)

The account must remain in credit. Our expectation is that the account should always be in this state as we provide the funds in advance.

Some people may choose online or telephone banking for example if you have access to a computer you can bank on the internet.

To enable the finance team to generate payments into your Direct Payment account you must provide them with verification of the account details, this could be a paying in slip, a cheque marked "void", or a letter from the bank.

### **Direct Debit Mandate**

You will be asked to sign a Direct Debit mandate form when you set up your Direct Payment. This is to simplify the procedure to recover monies from the Direct Payment account if necessary. This may be due to a high bank balance resulting from unused funds (over and above the amount usually allowed for a contingency fund) or if you should end the direct payment scheme. By signing the Direct Debit form, Derbyshire County Council will be able to recover the funds directly from the Direct Payment bank account. In accordance with Direct Debit protocols you will be given a minimum of 10 days notice of any transactions due to take place. Should you dispute any notification sent out, the recovery of funds will not take place until the dispute has been resolved.

### **Managed Bank Account**

The managed bank account service offers people the opportunity to access direct payments where those eligible for services, would find it difficult to either obtain, or manage a bank account or a direct payment themselves. This would also enable parents or carers (with parental responsibility) who employ family members as their Personal Assistants to access a direct payment. Employing family members may leave them with no support with the management of their direct payment. This is because family members who are employed as personal assistants cannot manage the direct payment on behalf of the parent who is employing them. Using the service will therefore enable people to retain choice and control over how their disabled child's support is organised, whilst the organisation take responsibility for the administration and management of the direct payment.

There are 2 organisations that we know of, who run a managed bank account.

They are DDCIL and Paypacket.

Both organisations have a small charge for this service. You will need to contact either organisation for details of the costs involved.

DDCIL – 01773 740246 or 01773 746651

Paypacket – 0800 848 8998

### **How does it work?**

- You complete the managed bank account agreement form and associated documentation in your name.
- The direct payment monies from Derbyshire County Council is paid directly into the managed bank account.
- You send the personal assistant's completed timesheet to either DCIL or Paypacket every 4 weeks.
- Don't forget to send the Employer and Public Liability Insurance reminder to DCIL or Paypacket when the premium becomes due for renewal yearly.
- If using an agency, the agency will submit invoices directly to DCIL or Paypacket.
- You can ask the Agency to send you the Invoices to enable to check the amount. If it is correct you can then send it to DCIL or Paypacket for payment.
- DCIL or Paypacket run the payroll – generate payslips and pay the personal assistant via bank transfer.
- DCIL or Paypacket will pay any authorised invoices.
- DCIL or Paypacket will complete the required monitoring paperwork to DCC.
- Ask DCIL or Paypacket to send you quarterly statements so you know how much is in the contingency budget.

### **JA uses a Managed Bank Account**

JA has severely autistic son (6 years). She employs a personal assistant to play with him in the house or take him to the local park. As a single parent she opted for a managed bank account run by DCIL. This enabled her to continue her part-time job and care for her son and ensure her personal assistant was paid on time. JA said all she had to do was to send the personal assistant's signed timesheet to DCIL every 4 weeks and they do the rest!

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## USING THE MONEY

### What to spend the direct payment on

Basically, you can spend the money on meeting your disabled child's assessed needs as detailed in their assessment of need or child's plan. The purpose of direct payments is for the recipient, whether an individual (in this instance a disabled child) or a parent or carer to take control of how their assessed needs are met.

Some examples:

#### Personal care

This may include washing, dressing, feeding, toileting, transferring and lifting, clinical procedures, etc.

#### Using Direct Payments for Personal Care

**SG (12 months)** His parents employ a personal assistant to support SG with his personal care during the day as needed. His parents enjoy the flexibility that direct payments provides to enable SG to have his personal care needs met when it suits them.

**AM (13 years)** Has autism. He employs his grandmother to help him with his personal care. She also does baking with him in the house but will also take him out to the cinema or out for the day.

#### Practical home care

This may include cleaning, cooking, shopping, etc

#### Social support

Support with accessing social activities, for example supporting the disabled child or young person in the community, eg swimming, bowling, to the park, zoo, or other social activity.

**Note:** If you expect your PA to take your child out you are responsible for paying the PA expenses out of your own pocket, unless you DCC worker has agreed that some of the DP can be used for these expenses. Remember, unless additional DP funding is agreed, any DP money used for expenses leaves less in the DP account (after other costs, i.e. Employer and Public Liability Insurance, payroll, employer national insurance, etc) for your PA salary and you could end up offering them a lower hourly rate. (The PA would in effect be paying their own expenses as they would be receiving less pay)

## Using Direct Payments for Social Opportunities

**LC (13 years)** Has cerebral palsy. He uses his direct payments to pay for an After School Club during term-time and a Holiday Club during school holidays. This gives him the opportunity to participate in social activities with other young people; which increases his independence and confidence.

**WB (15 years)** Has downs syndrome and autism. He uses direct payments to pay a local organisation to take him out with other young people. They go shopping or to the local cinema.

**AM (16 years)** He employs a personal assistant who supports him to participate in his favourite activities, roller skating and ice skating.

**RE (16 years)** He employs a personal assistant during school holidays. The personal assistant supports him on his days out. He has been to Cadbury's World.

## Sleep in provision

To be available, if required, between 10pm-7am. This will usually not involve more than two waking periods each night. Where someone could require assistance during the night but usually sleeps through.

## Personal Assistants

If the direct payment recipient is employing a personal assistant, sitting service, sleep-in personal assistants or a live in carer directly and not through an agency then the following need to be funded by the contingency fund.

- Payroll costs
- Employer national insurance contributions (if applicable)
- Holiday pay for the personal assistant
- Replacement while the personal assistant is on holiday
- Possibly sick pay for the personal assistant
- Replacement while the personal assistant is off sick
- Maternity, paternity pay for the personal assistant (if applicable)
- Replacement while the personal assistant is on maternity, paternity leave, etc
- Redundancy pay (if applicable)
- Employer and public liability insurance (even if the personal assistant is self employed)
- Training for the personal assistant (if applicable)
- Replacement for the personal assistant while they are on training.

See section 'Self-employed Personal Assistants' for information in respect of employing a personal assistant who considers themselves to be self-employed.

### **Agency**

None. The agency is responsible for all expenditure in relation to their personal assistants.

### **Contingency**

When we talk about a contingency fund in the direct payment account, this refers to the amount of money that should be left in the direct payment account to pay for expenditure over and above the personal assistant's salary.

**Note:** The rate Derbyshire County Council gives you to manage your direct payments needs to cover your personal assistant pay as well as the contingency budget. **It is important you do not pay your personal assistant the whole amount, even if they are self-employed.** You still need to budget for Employer and Public Liability Insurance and relief personal assistants, for example.

What is funded by the contingency budget depends on the type of support paid for by direct payments.

You are permitted to build up a contingency fund in your direct payments account equivalent to 4 weeks direct payment money, plus the 4 weeks paid in advance when you opened your direct payment account. So at any one time the account will have up to 8 weeks direct payment allowance.

If the contingency is higher than this requirement, the direct payment finance team may hold back a 4 weekly payment or alternatively if you have agreed to a direct debit mandate, request the Bank to return the surplus monies over and above what is required for that contingency. But they will be aware of any large sums of money which are likely to be held back, for example in cases where the tax office is paid quarterly, or a build up of funds to pay for additional support for a disabled child during school holidays. The direct payment finance team will let you know, in writing, in advance of their plans to take money from your direct payment account and the amount to be taken. You will have the opportunity to comment on the proposal and if you are dissatisfied, to make a complaint about it. Efforts will be made then to resolve any disagreement about the surplus and the method of recovering it.

### **Administrative costs**

There is a small budget added to the direct payment account to cover administrative costs such as; stamps, envelopes, paper, photocopying, etc. The present rate is £17.00 for the first year (£5 start up costs and £1

every 4 weeks thereafter). £13.00 per year after that, paid at £1.00 every 4 weeks. There is no need to provide receipts for this expenditure.

## **Other costs**

These can include reasonable advertising costs, room hire for interviews (where applicable) and travel expenses to enable the direct payment recipient to attend support meetings for example. If you are unsure whether an item can be purchased using direct payments, contact your DCC worker or the Direct Payment Social Worker team on 01629 532023.

## **Permitted Spending**

There is a lot you are permitted to spend your direct payment on, without needing to ask anyone, as long as it is going to meet your disabled child's assessed needs or child's plan. However there is some expenditure which will require either approval from your worker, or will need additional funding requested and agreed.

### **1. Permitted expenditure from the direct payments account (including any contingency reserve)**

It is important to remember you need to use the direct payment to meet your disabled child's assessed needs. You should agree these with your child's DCC worker when developing the child's plan. Below is an outline to what the direct payment should be spent on, however if there is something important you feel you need to purchase to meet your disabled child's plan, please see their DCC worker and exceptional circumstances can always be considered.

#### **a. Services of a personal assistant(s) employed by you to meet your disabled child's assessed needs**

This may include practical assistance in the home, personal support, personal care, support to access social activities or outings, support during school holidays, for example.

#### **b. Services secured from an agency to meet your disabled child's assessed needs**

This may include practical assistance in the home, personal support, personal care, support to access social activities or outings, support during school holidays, etc

#### **c. Other services, as identified in your disabled child's child's plan**

This could include transport to and from social activities (not to and from school), short breaks, day care, activities or group attendance.

d. Short breaks

Direct Payments can be used for short breaks providing it is to meet the assessed need of the disabled child or young person. If the child or young person is staying in someone else's home for their short term break every member of that household will need a CRB (enhanced) check carrying out.

Direct payments are intended to support independent living and, as such, they cannot be used to pay for disabled children to access residential education or long term single episode of short break care. They can be made to enable disabled children to access short breaks. Direct Payments cannot be made in relation to the provision of residential accommodation for a disabled child or disabled young person for any single period in excess of 21 days, and for more than 75 days in any 12 month period.

Please note: There is new legislation coming in. This will reduce the amount from 120 days to 75 days. For further information contact your DCC worker.

e. Childminders and other Organisations

As part of your support plan you may be able to use direct payments to pay for your child to have sessions with a childminder or an organisation that provides activities for children and young people less than 18 years of age. Anyone caring for a child (including a disabled child) under 8 for over 2 hours a day and for payment in their own home has to register with Ofsted (Office for Standards in Education, Children's Services and Skills) as a childminder. Parents of disabled children should be aware of this requirement, designed to safeguard the welfare of young children, when purchasing support via direct payments.

You can get information about registered childminders in Derbyshire by ringing Derbyshire County Council's call-centre on: 08456 058 058. More information can also be found on:

[www.ofsted.gov.uk](http://www.ofsted.gov.uk)

f. Volunteer expenses

If a friend, family member or neighbour volunteers to take your disabled child out and they do not want to be paid. It is reasonable to offer to pay their out of pocket expenses. This can be their refreshments, travel costs, entrance fees, etc. There is no reason why you cannot do this. However the HMRC regulations covering expenses are complex so you need to seek advice before embarking on this course. Particularly if the person concerned is in receipt of benefits, pension, is in paid employment for another person or organisation for example.

Furthermore a volunteer is not the same as a Personal Assistant. They are two different positions:

- i. A volunteer is just that, they can walk away at any time. However if, in the eyes of an employment tribunal, the volunteer is considered to be a paid worker you could be liable for any costs arising from that decision.
- ii. A Personal Assistant is paid a salary for their work. They can also receive out of pocket expenses (but the same restrictions apply. You should seek guidance)

Some of your responsibilities include:

- Taking out Employer and Public liability Insurance.
- Carrying out a Health and Safety Risk assessment
- Requesting receipts for all out of pocket expenditure incurred by your volunteer.
- You will need to keep the receipts to enable the HMRC to audit the out of pocket expenses as necessary.

However you should seek advice from your insurers or your legal advisor. Or seek advice from the CAB (Citizen's Advice Bureau) or from one of the government websites such as:

[www.hmrc.gov.uk](http://www.hmrc.gov.uk) or [www.directgov.uk](http://www.directgov.uk) or [www.volunteering.org.uk](http://www.volunteering.org.uk)

**Note:** The arrangement between a volunteer and Direct Payment Recipient is a private agreement. Derbyshire County Council will not meet any costs arising out of a dispute between the volunteer and Direct Payment recipient.

### **There is an example of a Volunteer Agreement in the appendix**

- g. Payroll charges - from DCIL or elsewhere at similar cost
- h. Managed Bank Account – from DCIL or elsewhere at similar cost
- i. Personal assistants Advertising costs - up to £100.00
- j. Room Hire costs for interviews - up to £60.00
- k. Stationary and postage - up to £13.00 per annum
- l. Additional hours for personal assistants on training - if there is surplus in the contingency reserve fund then you can arrange the training. If there is insufficient money in the contingency budget then you will need to request additional hours from your DCC worker. Do not forget to include any essential training in your disabled child's assessment of need or child's plan. For example; safeguarding, lifting and transferring, hoist, food hygiene, etc
- m. Health and Safety items - as agreed in the support plan (ie, disposable aprons and gloves, contact breaker, etc)

It is possible to use the total allocation of hours flexibly over a 4 week period, to meet your disabled child's/young person's assessed needs.

However if you are changing from using a support agency to a personal assistant or visa versa, you will need to inform your DCC worker and the direct payment finance team (01629 532119) as there are different pay rates.

2. Permitted expenditure requiring prior authorisation by your DCC worker or their service manager

- a. Additional hours for long term changed needs
- b. Advertising - over £100.00
- c. Room Hire - over £60.00
- d. Additional Hours - for essential personal assistants training (if there is not surplus in the contingency fund).
- e. Equipment - as per the occupational therapy or social worker assessment for individual items. This does not include equipment or adaptations coming under the Disability Facilities Grant (DFG)
- f. Equipment for Health and Safety  
This is to enable your personal assistants to work safely (i.e. lighting, circuit breakers). It can also include disposable aprons and gloves where personal hygiene is involved. It can also include the appropriate clothing and gloves when the personal assistant is preparing food.
- g. Employment of a close relative (exceptional circumstances)  
Unless a council is satisfied that it is necessary to meet a person's needs, or, in the case of a child, that it is necessary to promote the child's welfare, a council may not allow people to use direct payments to secure services from:
  - a spouse (husband or wife);
  - a civil partner;
  - the other member of the unmarried or same-sex couple of which they are a part;
  - a close relative with whom they live, or the spouse or partner of that close relative.

This restriction is not intended to prevent people using their direct payments to employ a live-in personal assistant, provided that that person is not someone who would usually be excluded by the Regulations. The restriction applies where the relationship between the two people is primarily personal rather than contractual, for example if the people concerned would be living together in any event.

If you consider your situation to meet these exceptional circumstances you will need to talk to your DCC worker. Any decision as to whether a particular situation meets the 'exceptional circumstances' criteria lies with your DCC worker's service manager.

### **None permitted expenditure**

However by law there are some restrictions on what people may purchase with their direct payment. People cannot spend a direct payment to:

- Services or activities not agreed in the assessment of need or child's plan
- Purchase services from Derbyshire County Council or another Council.
- Buy long term residential care (limited to short stays of up to four weeks up to a maximum of 75 days per annum).
- Employ their spouse, partner or close relative living in the same household unless there are exceptional circumstances.
- Pay for Health care.
- Buy anything (services or items) that would put them in conflict with the law.
- Household items
- Utility bills and other charges
- Bank charges
- Alcohol
- Cigarettes
- Drugs
- Medical costs
- Chiropody
- Transport to medical appointments
- Gambling

Outside of these prohibitions the government guidance clearly indicates that direct payments must be able to be used in ways and at times of the parents/carers choosing to meet the assessed needs of the disabled child/young person. If you are uncertain how you can use your direct payments contact your DCC worker or the Direct Payment Social Worker Team on 01629 532023. This will reduce the risk of misunderstandings which could lead to DCC requesting the return of direct payments money not used appropriately.

### **Changing needs**

We intend for you to be able to use the direct payment flexibly and this will mean making adjustments to your disabled child's support where required. This means that you can use a few less hours this week, and a few extra hours next week. Generally we ask that you use all the hours

within four weeks, though if you require something different, talk to your DCC worker.

Sometimes there are changes where your disabled child/young person will require more or less support on a temporary basis, for example because they are unwell or there has been a change in family circumstances. If your disabled child has any short term changes, just let the DCC worker know and they may be able to arrange some additional hours on a temporary basis.

If your disabled child's needs change on a long term basis, they will need a review or a re-assessment of their needs.

### **Changing personal assistants**

If your personal assistant hands in their notice, or is off sick on a long term basis or on maternity leave you may need to recruit again. We recommend that you try recruiting locally as you did originally but you may need some additional funding for advertising and room hire for interviews.

If you are recruiting to cover long term sick absence or maternity cover you need to be clear about this from the beginning. When advertising the vacancy, when interviewing. You can re-iterate this when offering an applicant the job. It also needs to be clearly stated in their 'Contract of Employment'. If you are not sure what to say contact Disability Derbyshire Coalition for Inclusive Living (DDCIL), who will be able to advise you on this matter.

You will need to let your disabled child's DCC worker know if you change from one personal assistant to another as a CRB (enhanced) check may need carrying out. Also inform your payroll service. You will also need to make sure your timesheets have the name of the new personal assistant. You should not employ a new PA until they have had a 'satisfactory' CRB (enhanced) check carried out.

### **Changing from personal assistant to an agency/organisation or agency/organisation to personal assistant**

If your disabled child's personal assistant leaves for any reason, you may decide to use an agency instead. Or if you have started on direct payments using an agency, you may decide that you would like to employ your own personal assistants. If this did happen we would need to know, as there are different payment rates for agencies and for personal assistants. Furthermore a CRB (enhanced) check may need to be undertaken. Let your disabled child's DCC worker know and they can ensure you get the right direct payment rate for the service you need.

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## RECRUITING PERSONAL ASSISTANTS

### Employing your own personal assistant

There are various ways of looking for a personal assistant, such as:

- Word of mouth through friends and people you know.
- Asking charities, voluntary organisations, cultural associations, schools or colleges (disabled children and young people) etc with whom you have contact if they know anybody who may be interested.
- Contacting Disability Derbyshire Coalition for Inclusive Living (DDCIL) for advice and suggestions
- Using various internet sites specialising in personal assistants
- More formally through advertisements:
  - Job centres
  - Shop windows
  - Other community resources, i.e. libraries
  - Local newspapers
  - Teletext, this has disability pages and job text
  - Disability magazines, local to your area
  - Personal Assistant databases

With all of these suggestions you will need to decide what it is you want the personal assistant to do, the hourly rate and hours involved. At this stage you will need to supply enough information to help a potential personal assistant decide whether to respond, but not too much as you will not want everyone to know your personal circumstances. It is a delicate balance to reach.

Whichever route you take you will need at least the following information:

- the type of work involved
- working hours
- rate of pay
- contact details
- the general area in which you live

### **EA recruited her daughter's Personal Assistant through the school**

**HA** (10 years old) has cerebral palsy and learning difficulties. Her mother asked HA's teaching assistant at school if she would support her daughter with social activities outside school paid through direct payments. The teaching assistant knew HA well and there was already a good bond between them both. This arrangement is in its 3<sup>rd</sup> year.

## **Data Protection**

The Data Protection Act 1998's rules are quite complex. These principles require any organisation, corporation or governmental body that collects personal information to handle it safely. This includes Direct Payment recipients who employ personal assistants. Anyone collecting personal information must:

- fairly and lawfully process it
- process it only for limited, specifically stated purposes
- use the information in a way that is adequate, relevant and not excessive
- use the information accurately
- keep the information on file no longer than absolutely necessary
- process the information in accordance with your employee's legal rights
- keep the information secure
- never transfer the information outside the UK without adequate protection

All organisations and employers collecting and using personal information are legally required to comply with these principles. The law provides stronger protection for more sensitive information - such as your employee's ethnic background, political opinions, religious beliefs, health, sexual life or any criminal history. It is enforced by an independent information commissioner, who can take action against any employer, company or governmental body that fails to protect their employee's information, or that abuses its right to collect and hold that information.

### **In summary**

The Data Protection Act places responsibilities on organisations including employers that hold personal information on an individual to:

- use it fairly
- keep it secure
- make sure it's accurate
- keep it up to date.

Personal Assistants have the right under the Data Protection Act to have their information corrected if it is wrong.

More information on the Data Protection Act can be found from the following organisations. You are advised to consult your Insurers, or your legal advisors for further information. If you have a local Legal Advice Centre they may also be able to advise you.

## 1. Information Commissioners Office (ICO)

Is the UK independent authority set up to uphold information rights, including data privacy for individuals.

Their Helpline number is:

Call us on 0303 123 1113

Open from 9am to 5pm, Monday to Friday.

They also have an online enquiry form which can be accessed through their website. [www.ico.gov.uk](http://www.ico.gov.uk)

## 2. Direct.gov.uk [www.direct.gov.uk](http://www.direct.gov.uk)

### Top Tip

Have a folder for each personal assistant in which you can keep their employment and related information. Put their name on the folder to reduce the risk of the personal assistant's folders becoming mixed up. Place all your personal assistant's folders and related information in a drawer, cupboard which can be locked.

## Equal Opportunities Policy

You will need to ensure that you abide by Equality Act 2010 when recruiting and employing your staff. This means that when you recruit staff you need to give equal treatment to every applicant regardless of their age, disability, HIV status, marital status, race, religion, sex, sexuality, or national origin.

You will find more information at:

Government Equalities Office:

Web site: [www.equalities.gov.uk](http://www.equalities.gov.uk)

GEO Public enquiries: 0303 444 1204

The Equality and Human Rights Commission:

Web site: [www.equalityhumanrights.com](http://www.equalityhumanrights.com)

Advice from the Equality Human Rights helpline: 0845 604 6610

## Immigration, Asylum and Nationality Act 2006

As an employer, you need to ensure that each prospective worker is eligible to work in the UK. You also have a responsibility to prevent an illegal migrant working in the UK. These provisions came into force on 29 February 2008.

There is a lot of information on: [www.businesslink.gov.uk](http://www.businesslink.gov.uk)

The Government has issued a code of practice to help employers comply with the law without discriminating against individuals on the basis of their race. You can download a copy from the UK Border Agency website:

[www.ukba.homeoffice.gov.uk](http://www.ukba.homeoffice.gov.uk)

There is also Home Office UK and Border Agency Sponsorship and Employers' Helpline: 0300 123 4699

The legislation covering this aspect of employment is complex. You should seek advice from your insurers. You could also contact your local CAB or Legal Advice Centre for advice or seek advice from your own legal advisor.

### **Previous Conviction Statements**

Because of the nature of the work for which the personal assistant is applying, this post is exempt from the provisions of Section 4 (2) of the Rehabilitation of Offenders Act 1974 (Exemptions Order 1975). Applicants are not entitled therefore to withhold information about convictions which, for other purposes, are 'spent' under the provisions of the Act.

You can find further information from the Office of Public Sector Information. Web site: [www.opsi.gov.uk](http://www.opsi.gov.uk)

However the OPSI does not give employment advice so you will need to seek this elsewhere.

Therefore if you want employment advice you will need to contact your insurers or legal advisors.

You can find out more on: [www.directgov.uk](http://www.directgov.uk) or

You can contact your local CAB (Citizen's Advice Bureau). For your nearest CAB go onto the CAB website: [www.citizensadvice.org.uk](http://www.citizensadvice.org.uk)

### **Advertising the job**

You can place job advertisements in your local Jobcentre for free. Local shops, supermarkets and voluntary organisations may also have notice boards where you can place job advertisements.

Please note: Your DCC worker cannot advise you on this matter.

Job advertisements should be brief and state:

- the type of work involved
- working hours
- rate of pay
- contact details
- the general area in which you live

## Example of a possible advertisement

### PERSONAL ASSISTANT

Personal care with moving and handling tasks for a disabled young person living in Matlock area

He is a keen football fan and goes to all Matlock town matches at home and away

28 hours a week, with some weekend shifts

£8.50 per hour gross

Valid driving license essential

Training available

Contact: P O Box 1234 Mobile: 07 .....

**A word of caution;** If advertising, using employment agencies or an internet site **do not** give information that could lead an applicant to your front door! If you do not want to be rung up directly either you can ask someone you trust to deal with applicants or give a PO Box number for written replies. You could also talk to DDCIL direct payment support workers.

### Who pays for the advertisements?

Additional funding is available to pay for advertising for staff. You will need to find out how much an advertisement will cost and get the agreement of your worker. If you decide to advertise using an Internet site which specialises in finding Personal Assistants you will need to talk to your worker first. Most sites have a scale of charges, ie monthly, quarterly, yearly subscriptions, etc. which are renewable. Most sites require a debit card or more usually credit card number and these cannot be used to spend money from the direct payment account.

### Job descriptions

It's important to think carefully about exactly what help you need before you employ someone or sign a contract with an agency. It may be helpful to think about a typical day for you, and write a job description for your carer. This should include:

1. a list of all the tasks you may need help with ie
  - personal care
  - moving and handling
  - food preparation
  - administration of medicines or medical procedures

- taking individual to social activities, shopping, medical appointments, etc
2. any particular skills, experience or qualifications your care worker must have - for example;
    - previous experience working in a care role or as a volunteer looking after disabled people, children, elderly people, etc
    - a social care qualification such as the NVQ 2, a nursing qualification or a full driver's licence
  3. other qualities you expect from your personal assistant;
    - **Confidentiality** – the personal assistant must respect the privacy of the person they are working with and not talk about their work with others.
    - **Attitude** –the disabled child may find accepting help stressful and demoralising. The personal assistant must understand that the preservation of dignity and independence is important.
    - **Respect** – the personal assistant should respect the personal space, possessions and equipment in the disabled child's home. They should not do or use anything without prior permission of the disabled child or the family, i.e. making a drink for themselves, smoking, using the telephone, receiving or making mobile phone calls, texts, watching television, using the computer, etc
    - **Learning the tasks involved** – a personal assistant should be prepared to learn how the disabled child wants tasks doing, even though they may have done a similar task with a previous employer. Everyone is different and has different expectations.
    - **Training** – Training is available for the personal assistant if appropriate to the tasks and responsibilities of the job. (see section headed Managing Staff which follows this chapter).
  4. an estimate of the number of hours and days you will need the person to work

A detailed job description will help people who are interested in applying to get a clear understanding of what the job involves.

**There is an example of a job application form in the Appendix**

## **Interviews**

Once you've received any job application(s), select the people you'd like to interview for the job. You can ask a friend or relative to attend the interviews or someone from Derbyshire Coalition for Inclusive Living (DCIL).

Before the interviews, you should prepare a list of questions that cover the key aspects of the job. Base your questions on what you have put in the Job Description and what is in the Child's Plan.

## Possible questions

- Use open questions at the interview, these will give you more than just yes or no as an answer. They encourage the candidate to give you a more detailed answer. For example: begin your questions with who, what, where, when, why, how?
  - a. Why do you want this job?
  - b. What would you say if a friend asked you what you did in your job with me?
  - c. You said in your application form that you took your previous disabled child out for the day. What did that involve?
  - d. How would you shower a disabled child?
  - e. Your mobile phone rings as you are getting the medication ready. What would you do?
  - f. You have been given a list of tasks to do during your shift. How would you decide which order to do them?
  - g. My disabled child will not get into the car when it is time to come home from the park. What would you do?
- Topics to cover in an interview could include:
  1. Time Keeping
  2. Communication skills
  3. Working as part of a team
  4. Using own initiative
  5. Honesty
  6. Confidentiality
  7. Taking direction
  8. Dealing with emergencies
  9. Reliability
  10. Flexibility
- If the candidate does not give you a detailed enough answer, it's always worth asking them to expand on their answer and give it in more detail.
- Ask questions based on a realistic scenario, eg - 'what would you do if.'
- You should base some of your questions on the experience of the candidate and their ideas of doing a task.
- Draft up some specific questions based on each candidate's application form. You may want to ask them about what they did in a previous job(s) or about gaps in their employment which is not explained on their form
- It is important to give the candidate the opportunity to ask you questions about yourself, the job and the working environment. This will give you another chance to clarify the job details.

- If the candidate does not ask questions, it is worth taking time to go through the job details in more depth.

### **Conducting an interview**

- Have somebody you trust with you. You then have someone with whom to discuss the merits of each candidate.
- Take notes - this will help you to remember what each candidate has said and will avoid getting details muddled of different candidates.
- Allow approximately 30 minutes for each interview
- Allow a short break in-between seeing candidates
- If you are interviewing for a carer or personal assistant for your disabled child it is desirable to involve them in the interview process if possible. If that is not possible arrange for any short listed candidates to meet the disabled child before offering them the job. This will help you to gauge their attitude towards your son or daughter.
- At the end of the interview you need to tell the candidate how you will let them know if they have the job. You may wish to do it in writing as turning people down for a job can be a difficult situation over the phone.
- If people call you wanting feedback about why they didn't get the job, it is worth emphasising the strengths of the suitable candidate rather than making critical comments about the unsuccessful candidate.
- You should make your decision after interviewing. Use your notes. Also ask the opinion of the person who was supporting you with the interviews to help you make up your mind. You need to feel you can trust the successful candidate and get on with them and that they will get on with you. You also need to feel the candidate will get on with your disabled child if seeking a carer for them.
- When you have made your decision to whom to offer the job, you can inform them verbally, then in writing. However you need to make in clear the offer of the job is subject to satisfactory references and, where applicable, satisfactory CRB (enhanced) check.

### **There is an example of invitation to an interview letter in the appendix**

#### **Getting references**

When you've decided who to offer the job to, you are responsible for checking that they are suitable. You should always ask for - and check

out - at least two references, including one from someone they've cared for previously. This is important and any information should be in writing.

## **There is a sample request for a reference letter in the appendix**

### **16/17 year old personal assistants**

There are special laws to protect the employment rights of young workers. These concern health and safety, what jobs they can do, when they can work, and how many hours they can work. These laws are very strict and an employer can be prosecuted for breaking them.

If your personal assistant is under 18, you must do an assessment of possible risks to their health and safety, before you employ them. You must pay particular attention to their age, lack of experience, and other things that could be a risk to their health and safety. These are:

- work which they are not physically or mentally capable of doing
- work which brings them into contact with chemical agents, toxic material or radiation.
- work which involves a health risk because of extreme cold, heat or vibration.

For under 18's, the law says that they must not work more than eight hours a day, or more than 40 hours a week. They must have twelve hours rest between each working day, and two rest days per working week. They are also entitled to a 30-minute rest break when working for longer than four and a half hours.

Under 18's cannot usually work between 10pm and 6am.

### **Retirement Age**

The current law allows you, as an employer, to retire your personal assistant at age 65. This is known as the default retirement age and is the same for men and women.

At present your personal assistant has the right to ask you if they can work past their date of retirement and you must consider their request.

From 1 October 2011, you, as an employer, will not be able to use the default retirement age to make your personal assistant retire. As an employer you will still be able to decide at what age your personal assistant retires, but you will have to justify this decision at an Employment Tribunal if questioned.

These changes will mean that in most cases your personal assistant can choose when to retire.

This is a complex area and you are advised to seek legal advice from your Insurers or your legal advisor before taking any action. Further information can be found from:

HMRC Employer's Helpline: 08453 021 413

## **Self-employed Personal Assistants**

We don't recommend you use a self employed personal assistant. Even though a worker believes themselves to be self-employed, HMRC (Her Majesty's Revenue and Customs) or an employment tribunal would look to the terms and conditions of the contract, rather than the title in order to determine the position. If a self-employed worker is deemed as being employed, this may lead to financial consequences for the employer.

However if your personal assistant considers themselves to be self employed we advise the following:

- Clarify with the personal assistant that they fully understand that they are responsible for their own tax and national insurance and they are not entitled to any sick or holiday pay. They are also responsible for their own equipment, such as disposable aprons and gloves and their own training.
- They should give you their Unique Tax Reference number.
- They should also provide you with an invoice for the hours they work for you.
- You should insure them because the law requires that you do.
- You can request that your personal assistant has a CRB (enhanced) check before they start to work for you, even if they are self-employed. Providing there are no children under 18 years old living in your household a CRB check is optional.
- You should still have a contract detailing the services they will provide to you and at what cost. This should be prepared by your personal assistant and you would sign your agreement to the terms and conditions. You should seek advice from your insurer or legal advisor before entering into a contract.
- Write the cheque number and date you paid on the Invoice and get the personal assistant to sign that they have received payment.

You should retain one copy of the Invoice for your own tax purposes and send a copy to the Direct Payment Finance Team to account for expenditure with bank statements and expenditure summaries.

[www.direct.gov.uk](http://www.direct.gov.uk)

**Note:** It is your responsibility to find a suitable replacement when your self-employed personal assistant is absent from work, i.e. when they are on holiday, off sick, etc

Please note: DCC workers cannot become involved in the contractual arrangements between you and your personal assistant, this includes recruitment matters. This is because it is a private arrangement between you and your personal assistant. Neither is Derbyshire County Council

responsible for any costs arising out of difficulties in respect of contractual arrangements between you and your personal assistants.

### **Employment Advice may be obtainable from the following organisations.**

For more detailed advice you can contact your Insurers, if they have an employment helpline. You can seek your own legal advice from your own legal advisers.

You can also contact:

DDCIL: 01773 740 246 or 01773 742165

ACAS: 08457 474747

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

You could also try your local CAB (Citizen's Advice Bureau).

You can find your local branch through the CAB website:

[www.citizensadvice.org.uk](http://www.citizensadvice.org.uk)

You could also try the government web site:

Web: [www.directgov.uk](http://www.directgov.uk)

Further information can be found on business link. This is a free business advice and support service. More information can be found on their web site:

Web: [www.businesslink.gov.uk](http://www.businesslink.gov.uk)

### **HMRC (Her Majesty's Revenue and Customs)**

New Employer Helpline: 08457 143 143

Expert advice for new employers on:

- PAYE and National Insurance contributions
- Statutory Sick Pay, Maternity and Paternity Pay

Opening hours

8.00 am to 8.00 pm, Monday to Friday

8.00 am to 5.00 pm, Saturday and Sunday

Closed Christmas Day, Boxing Day and New Year's Day

For customers who are deaf or hearing or speech impaired:

**Textphone: 0845 602 1380**

A textphone allows you to type what you want to say rather than speaking into a mouthpiece. You can use a textphone instead of a voice telephone if you are deaf or have problems with your speech. It is not possible to speak to an adviser by phoning a textphone number.

Website: [www.hmrc.gov.uk](http://www.hmrc.gov.uk)

## **Criminal records checks**

These are checks carried out by the Criminal Records Bureau on a person applying to work with children or vulnerable adults. The Criminal Records Bureau (CRB) acts as a 'one-stop-shop' for organisations, checking police records and, in relevant cases, information held by the Department of Health (DH) and the Department for Children, Schools and Families (DCSF). Enhanced Disclosures enable the CRB to access any relevant and proportionate information held by the local police forces in addition to the information checked through the standard disclosure procedure.

All Personal Assistants need a CRB (enhanced) check if they are working in a household in which there are children or young people under 18 years regardless as to whether they are working directly with the disabled adult or disabled child. The local authority's safeguarding policies are paramount.

The CRB (enhanced) check needs to be done through Derbyshire County Council and be specific to the post. CRB forms can be obtained from the Direct Payments Team in Matlock;

Telephone: 01629 532023 or E-mail: [directpayments@derbyshire.gov.uk](mailto:directpayments@derbyshire.gov.uk)

The Derbyshire County Council (DCC) worker is responsible for checking the completed CRB Form and identifying documentation. The worker will also need to meet the prospective personal assistant to verify their identity against the documentation presented. Derbyshire County Council pays for the initial check (£36.00). Subsequent checks should take place every 3 years if the personal assistant is still in the same post. In children's services DCC will pay for subsequent CRB (enhanced) checks.

Please note: The DCC worker is only verifying your potential PA identity on behalf of DCC. They are not involved in any employment matters as this is a private arrangement between you and your potential PA.

**Be aware, the CRB process can take up to 8 or so weeks and should be done first**

Setting up the direct payments can be done while the CRB application is being processed.

The DCC Worker and the Personal Assistant will be notified of the outcome. The employer is not. If the CRB check comes back satisfactory that is fine, the direct payment can continue to be set up as normal. If the CRB check comes back and is NOT SATISFACTORY, you will be advised by your DCC Worker not to employ the person concerned as the direct payment is for a disabled child or young person. However

they are not able to give you any details. It would be up to you to ask the applicant for further information.

If you require further details on the Criminal Records Bureau contact their information line:

CRB general helpline: 0870 9090 811

Or go onto their website:

[www.direct.gov.uk](http://www.direct.gov.uk)

**Note:** It is your responsibility as an employer to notify your DCC worker that your PA needs their CRB check renewing. As your PA cannot start working with your child before their CRB check comes back satisfactory, it may be helpful to use the start date on their 'Contract of Employment' as a guide. You will need to allow approx. 12 weeks for the CRB process as your DCC worker will need to meet your PA again to complete the form and verify their identity, etc.

### **CRB Portability**

Many direct payment recipients employ staff already working for Derbyshire County Council as personal assistants. Derbyshire County Council has issued new guidance on this in respect of CRB (enhanced) checks as follows:

- If a DCC employee has a valid and satisfactory CRB (enhanced) check and become a personal assistant for a Direct Payment recipient they do not need to undergo a fresh CRB (enhanced) check.
- If the DCC employee then leaves the employ of Derbyshire County Council but still remains employed as a personal assistant then their current CRB clearance is still valid. However your own DCC worker then becomes responsible for carrying out a CRB (enhanced) check when it next becomes due for renewal. Please do not forget to let your DCC worker know when it is due for renewal. Your PA should show you their original CRB satisfactory certificate as part of their interview process. The Certificate will be dated. You need to make a note of the date in their personal file to refer to it as necessary.

#### **Note:**

If the DCC employee is dismissed from their post with Derbyshire County Council but still works for you as a personal assistant you need to contact your own DCC worker for advice in respect of your child's own safety and wellbeing. (You will not be told the reasons for the DCC employee's dismissal) If you then decide to dismiss the personal assistant you need to contact DDCIL or your Insurers for employment advice. Your own DCC worker cannot get involved in employment matters.

## **YOT (Youth Offending Team) Checks**

A Youth Offending Check is where your DCC Worker checks whether a young person (son or daughter, between the ages of 10 and 16 years, of the personal assistant) is known to Derbyshire County Council Youth Offending Teams.

YOT (Youth Offending Team) checks will be carried out in respect of young people between the ages of 10 to 16 years and replace CRB (Criminal Records Bureau) checks. These checks will be carried out under the following circumstances:

1. One or both of their parents are being employed as a personal assistant for a disabled child or a disabled parent through direct payments and the young person is likely to have substantial contact with the disabled child or child as a consequence.
2. The contact can be in their own home. Or outside should the young person accompany their parent on an activity, social event, etc when the disabled child or disabled parent is taking their child out into the community.

A young person will rarely come into contact with your children in these circumstances. However, direct payments are being used increasingly for social activities. It is possible that a personal assistant may bring along their own children (with your permission) if they were accompanying you on an outing or activity with your children as part of their duties.

CRB checks will remain mandatory for all persons 16 years old and over:

- If they work directly with a disabled child or in a household in which children reside
- Have substantial contact with a disabled child with whom their parent is working as a personal assistant regardless as to where this activity is taking place.

Should a personal assistant decline a YOT check for their child, rather than a disabled child face another barrier to being supported, a CRB check will be carried out on the young person instead.

### **Who carries out the checks?**

1. The checks are carried out by the DCC worker involved with the disabled child or you as a disabled parent with children living in the household. For example; social worker, community care worker, family resource worker, etc. (a child is defined as someone under the age of 18 years old.)
2. The checks will need carrying out every 3 years.
3. Should the young person already be 16 years of age a CRB check will need to be carried out in the normal manner.
4. Should a young person be within 8 weeks of their 16<sup>th</sup> birthday, a CRB check should be carried out rather than a YOT check.

## What are the procedures involved?

1. The DCC worker meets the young person concerned as they would with the prospective personal assistant when undertaking a CRB check. This can be done at the same time. It would also be good practice as it gives the potential personal assistant and the young person concerned to be informed as to the reasons for these checks and raise any questions.
2. The DCC worker then checks with Derbyshire County Council's Youth Offending Teams as to whether the young person is known to them.
3. If the young person is not known to the YOT then the direct payment can be set up as normal.
4. If the young person is known to the YOT then the DCC worker will need to discuss the matter with their Service Manager to assess the level of risk to the DP recipient and their family. The DP recipient cannot be told any details.

## Independent Safeguarding Authority

This scheme came into effect on 12 October 2009. This is the advice given in respect of Direct Payment recipients where there are children under 18 years of age living in the household.

If the individual service user recruits the personal assistant themselves (for example by using direct payments funding) then they may check their ISA (Independent Safeguarding Authority) registration if they wish, but they are not under a statutory duty to do so. It will be illegal for any barred individual to undertake, or attempt to undertake, a regulated activity and they will be informed of this when they are barred.

If you employ someone who is barred then you could be fined. Derbyshire County Council will not pay the fine.

If you want further information you need to contact the Independent Safeguarding Authority (ISA) on:

Telephone: 0300 123 1111 (low cost telephone number)

ISA Office Hours: 8am to 5.30pm Monday to Friday

E-mail: [info@vbs-info.gov.uk](mailto:info@vbs-info.gov.uk)

Web; [www.isa-gov.uk](http://www.isa-gov.uk)

**Note:** There are proposed changes in respect of Safeguarding Regulations. However until a decision has been made by Central government as to how these changes are to be implemented the present Safeguarding regulations introduced in October 2009 continue to apply.

The current situation is that the [Criminal Records Bureau](#) is responsible for the disclosure of criminal records and the [Independent Safeguarding Authority](#) for the barring function.

Both of these functions will be retained when the changes set out in this review are implemented, but economies can be made if we move to a

situation where we have one body responsible for pre-employment checking and barring unsuitable people from working or volunteering with vulnerable groups, rather than two.

## **Summary**

Although there is a lot to consider when recruiting your own personal assistants, it does leave you in charge of your own support. But if you did need support then DDCIL (Disability Derbyshire Coalition for Inclusive Living) can help you with the recruitment of your personal assistants.

Telephone: 01773 740246 or 01773 742165

Minicom: 01773 748452

## MANAGING YOUR PERSONAL ASSISTANTS

This section is only for people who wish to employ their own personal assistant, if you use an agency this information doesn't apply to you. If you employ someone who considers them self to be self-employed there are other considerations. See the section on 'Self-employed Personal Assistants' in the previous section.

Now you have recruited staff to provide the support you want, you need to find out about being a good employer. Being a good employer is important, not just because we want you and your employees to get along but because the law says employers need to treat their staff fairly. There are a number of legislative requirements you must meet if you are an employer of personal assistants. The good news is there is a lot of support to help you with this. The information in this book can help, but there are other places to go for help and advice too.

You may also need to consider the legislation relating to working time to ensure your personal assistants are not working too many hours, or too long in one shift. Some basic rules apply, i.e. 11 hours-uninterrupted rest between each working day, a worker is entitled to one whole rest day per week. You will need to consider your support requirements in the light of this legislation so that you can assess how many personal assistants you need for your disabled child's plan.

You should obtain your own legal advice or seek advice from other agencies such as ACAS or the Citizen's Advice Bureau with regard to employment legislation and how it affects you. ACAS (the Advisory Conciliation and Arbitration Service) provides guidance on all employment law issues for employers and can be contacted on 08457 474747.

The Law says if you employ personal assistants, and this includes self employed support workers you must take out employers liability cover. This topic is covered in more detail further in this section. You should also contact your insurers for advice and assistance for employment law matters, and in particular if you are taking any action with your personal assistants, such as changing contracts or disciplining personal assistants, you **MUST** contact your insurer, and follow their advice exactly.

### **Working Time Regulations**

There are legal limits as to how many hours in a day and over a week your personal assistant can work. Also the number of days your personal assistant can work before they are entitled to a rest day. For example, some basic rules include 11 hours uninterrupted rest between each working day. A personal assistant is entitled to one whole rest day a week. This means that if you require support 7 days a week you will need to employ at least 2 personal assistants, even if they only come in for a couple of hours a day.

If your personal assistants work nights, shifts or you have a live-in carer for example then you need to be sure that their work pattern is consistent with employment law.

For more detailed advice you can contact your Insurers, if they have an employment helpline. You can seek your own legal advice from your own legal advisers.

You can also contact:

DCIL: 01773 740 246 or 01773 742165

ACAS: 08457 474747

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

You could also try your local CAB (Citizen's Advice Bureau).

You can find your local branch through the CAB website:

[www.citizensadvice.org.uk](http://www.citizensadvice.org.uk)

You could also try the government web site:

Web: [www.directgov.uk](http://www.directgov.uk)

Further information can be found on business link. This is a free business advice and support service. More information can be found on their web site:

Web: [www.businesslink.gov.uk](http://www.businesslink.gov.uk)

## Pay

How much you pay your personal assistants is governed by legislation and the amount Derbyshire County Council gives you to manage your direct payments. **You cannot pay your personal assistant the full amount Derbyshire County Council gives you unless you are prepared to top it up with your own money.** The amount DCC give you has to cover your personal assistant's hourly rate as well as the contingency budget.

The minimum you can pay your personal assistant is determined by the Minimum Wage set by the government every October. The minimum wage varies according to the age of the employee. You cannot pay less than the minimum wage.

For example the minimum wage from 1 October 2010 until 30 September 2011 is:

- £5.93 - the main rate for workers aged 21 and over
- £4.92 - the 18-20 yrs rate
- £3.64 - the 16-17 yrs rate for workers above school leaving age

However it is worth paying your personal assistant as much as can be afforded out of the Derbyshire County Council hourly direct payment rate. It is likely to lead to greater job satisfaction if the hourly rate is considered reasonable by the personal assistant for the tasks involved. It is also likely that you may get more applicants for the job if the rate of pay is considered reasonable for the level of responsibilities involved.

For advice on how much to pay your personal assistant contact:  
DCIL: 01773 740246:

For more advice about the minimum wage you can ring:

National Minimum Wage Helpline: 0845 6000 678

Minicom: 0845 915 3296

Web site: [www.lowpay.gov.uk](http://www.lowpay.gov.uk)

## **Contract of employment**

You will then need to agree a start date with your personal assistant and give them a Contract of Employment, preferably before they start work. A Contract of employment is an important document. It sets out a lot of areas that without the contract might cause disputes between you and your personal assistant. It tells them when they will get paid and how much, what they must do if they are unwell, how much holiday entitlement they get, what notice they need to give you if they wish to leave your employ and so on.

The Law says you must provide as a minimum, a written statement of the main terms of employment. The statement must include:

- your name
- your employee's name
- the date when the employment began
- the date on which the employee's period of continuous employment began
- pay and when it will be paid
- the pay intervals
- terms and conditions of hours of work
- holiday entitlement
- entitlement to sick leave, including any entitlement to sick pay
- pension scheme details if appropriate
- notice period
- job title and a brief job description
- place of work or, if your employee is required or allowed to work in more than one location, an indication of this and of your address
- disciplinary and grievance procedures

- What will happen if you no longer require the Personal Assistant to work for you.

There is a sample contract of employment in the appendix of this handbook. This sets out the basic requirements of a contract. However, you will need to personalise a contract of employment, to ensure it covers what is important to you and ensures that your child's support needs will be met. This may be about what happens in your house for example. The contract has to be reasonable.

DDCIL can assist you to write a contract of employment, which is right for you or help check a contract you have already written.

Contact DDCIL on	01773 740246 or 01773 742165
Minicom	01773 748452

ACAS (Advisory, Conciliation and Arbitration Service) can provide you with advice and support too.

You can contact ACAS on	08457 474747
Minicom	08456 061600

Alternatively, you may wish to seek your own legal advice.

### **How do I get it right?**

- Agree terms and any changes with your personal assistant.
- Give your Personal Assistant a written contract of employment
- Remember the notice period agreed, but check as there is a statutory minimum notice required.
- Put as much as possible in writing to avoid confusion.
- If unsure, seek advice.

### **16/17 year old personal assistants**

There are special laws to protect the employment rights of young workers. Please see the section on 'Recruiting Personal Assistants'

### **Hospital Stays and Short-breaks**

You need to write into the contract of employment, what will happen if your disabled child is in hospital. Derbyshire County Council will continue to pay your direct payment money for up to 4 weeks, should your disabled child be admitted into hospital or short-term break. It would be reasonable to pay your personal assistant their present salary for up to this period. It would also be reasonable to negotiate with your personal assistant that they take some of their annual leave during this period.

If your disabled child has a discharge date within the next 4 weeks, then you can discuss an extension to this with their DCC worker and we could continue payments to ensure you do not lose a good personal assistant.

Personal assistants can also carry out different duties on a short term basis, visiting your disabled child in hospital, assisting them generally while they are in hospital. You should agree with the Personal assistant, in advance, what duties they are to carry out while your disabled child is in hospital. You may wish to include these duties in their Contract of Employment and/or Job Description.

If your disabled child is going to be in hospital on a long term basis and it is unsure if they will return home or their needs will be the same, you will need to give the personal assistant notice and they may be entitled to a redundancy payment. You will need to seek appropriate employment on this matter.

A re-assessment of your child's needs will also be required on their discharge.

Direct Payments cannot be made in relation to the provision of residential accommodation for a disabled child or disabled young person for any single period in excess of 21 days, and more than 75 days in any 12 month period.

### **Sleep overs**

From time to time the issue as to when a sleep-in becomes a waking night is raised. It is not straightforward and the decision is dependent on a number of factors.

The Low Paid Unit gives this definition of a sleepover;

'A sleepover occurs where workers are required by their employer to sleep at or near their place of work. If the worker is provided with suitable sleeping facilities, the time they are sleeping will not be treated as time when the minimum wage\* is payable. If the worker gets up to do work during the night, they are eligible for the minimum wage for the time spent working. Official guidance emphasises that if the employment contract clearly sets out when the worker is permitted to sleep and sleeping facilities are provided, the minimum wage\* need not be paid for these periods of sleep. It also states that if the employment contract does not clearly specify sleeping time, Employment Tribunals are likely to conclude that the minimum wage\* should be paid for the whole time the worker is at work'.

**Web page:** [www.lowpay.gov.uk](http://www.lowpay.gov.uk)

In other words; If your personal assistants, as part of their duties, are expected to sleepover night in your house then you will need to be clear in their contract of employment what their tasks are during that period, if any. They need to have suitable sleeping facilities. If they are expected to be awake during the night, this is classed as waking nights and they should be paid their normal salary for the whole period.

**\*Note:** Although the article mentions the minimum wage, you will need to pay your personal assistant their normal hourly rate. For example if you

pay your personal assistant £8.50ph this is the rate they should be paid for every hour they work NOT minimum wage.

Derbyshire County Council Direct Payment time for a sleep in is: 10pm to 7am (9 hours)

Some of the factors you will need to consider to work out what rate you should pay the personal assistant are:

- Whether your disabled child need care during the night and how much will be clearly identified in the child's assessment of need or child's plan
- Is the personal assistant on call, i.e. are they expected to available at any time during the night to get up to provide your disabled child with personal care support or similar?
- How often are they expected to perform these tasks? Is it at set times or as required?
- Have they suitable sleeping facilities in which to sleep or are they expected to sit up awake during the night hours?
- What is in their contract of employment and/or job description?

This is complex area. You are advised to seek advice from DDCIL, your insurers or your legal advisor.

You can also consult ACAS on 08457 474 747 or go onto their website: [www.acas.gov.uk](http://www.acas.gov.uk)

There is further information on: [www.directgov.uk](http://www.directgov.uk) and [www.businesslink.gov.uk](http://www.businesslink.gov.uk)

## **Holidays and Bank Holidays**

What leave someone is entitled to and how much they are paid during this time can be written in to the contract of employment. However there are some holidays and leave that everyone is entitled to by employment law.

All employees are entitled to 5.6 weeks paid holiday per year. (Pro rata for part time hours). This entitlement includes time off on bank holidays, so your personal assistant is not entitled to paid bank holidays off and 5.6 weeks holiday, it is 5.6 weeks in total.

The easiest way to work out how much paid time someone has holiday time, is to multiply their weekly hours by 5.6. So for example, someone who works 10 hours a week, is entitled to 56 hours holiday per year. Each time, they are paid to be on holiday you should deduct the number of hours holiday from the total 56.

We recommend you keep a sheet of personal assistants holiday, and sign it each time they take a holiday so you both know how much they have left.

You may want to make sure the personal assistant is entitled to the leave before they take any holiday, when they first start working for you. One way to do this is to give those 1.2 weeks holiday every 3 months in the first year they work. If you need any help calculating how much holiday your personal assistant has, contact Disability Derbyshire Coalition for Inclusive living (DDCIL) on 01773 740246 or 01773 742165. The holiday pay is found from you contingency fund, which was discussed in Chapter 2. Personal assistants must be paid for holidays, and cannot have payment instead of a holiday. Neither can you give your personal assistant a higher hourly rate instead of paid time off for holidays. (This is called rolled up holiday pay and it is now against the law) If your personal assistant works a bank holiday they are entitled to be paid for their time at their normal hourly rate AND have the hours worked as paid TOIL (time off in lei) at another time.

**There is an example of an Annual Leave sheet in the appendix**

### **Maternity, paternity, adoption & parental leave**

Personal assistants may be entitled to maternity, paternity or parental leave to care for a child. The amounts of time and pay that individuals are entitled to vary, so contact your Insurers (if they provide employment legal advice) or DDCIL, even if they do not do your payroll service. DDCIL provide support and advice for disabled people using direct payments to employ their own personal assistants.

Contact DDCIL: 01773 740246 or v01773 742165  
Minicom: 01773 748452

Alternatively you can contact ACAS on 08457 474747  
Minicom 08456 061600

Some CAB (Citizen's Advice Bureau) will provide advice for small employers. It is worth checking whether your local CAB provides this service.

### **Sickness**

Sometimes your personal assistant might be unwell and it is important that they let you know as soon as possible so that you can arrange cover for them. It is best to let them know what they must do if they are sick when they start working for you. It is best to include this in their contract of employment.

You may ask your personal Assistant to:

- Contact you on the first day at least 1 hour before their start time

- Contact you on a regular basis and keep you informed of their progress.
- They can sign a “self certification” form from their Post Office for the first seven days they are off sick but after 7 days they must get a ‘Fit Note’ from their doctor.
- The 'fit note' is the informal name for the new Statement of Fitness for Work, and it replaced the sick note from 6 April 2010. The statement can only be completed by a doctor. The statement is advice from the doctor to their patient that their patient can use as evidence of their fitness for work for sick pay and benefit purposes. The advice on the statement is not binding on employers.
- Within the 'fit note', GPs will be able to advise if your personal assistant is not fit for work, or may be fit for work. The 'fit note' will also include:  
Suggestions include patients working part-time, adjustments that could be changed in the workplace or a phased return to work.
- The changes are intended to give patients and their employers more useful information on how their health is affecting their ability to work.
- To find out more about your personal assistants pay rights for when they are taking days off from work because they are ill and your responsibilities as an employer contact your insurance company's employment helpline.

This article is based on information from: [www.direct.gov.uk](http://www.direct.gov.uk)

If you do your own payroll you will need to contact HMRC to clarify the position. Furthermore if your personal assistant has more than one job then you will need to sort out who is responsible for Statutory Sick Pay.

You should seek advice from either your insurer or legal advisor before taking any action.

Further advice and information can be found from the following organisations.

### **HMRC (Her Majesty's Revenue and Customs)**

New Employer Helpline: 08457 143 143

**Expert advice for new employers on:**

- **PAYE and National Insurance contributions**
- **Statutory Sick Pay, Maternity and Paternity Pay**

## Opening hours

8.00 am to 8.00 pm, Monday to Friday

8.00 am to 5.00 pm, Saturday and Sunday

Closed Christmas Day, Boxing Day and New Year's Day

For customers who are deaf or hearing or speech impaired:

**Textphone: 0845 602 1380**

A textphone allows you to type what you want to say rather than speaking into a mouthpiece. You can use a textphone instead of a voice telephone if you are deaf or have problems with your speech. It is not possible to speak to an adviser by phoning a textphone number.

Website: [www.hmrc.gov.uk](http://www.hmrc.gov.uk)

You could also seek advice from DCIL: 01773 740 246

You could also try your local CAB (Citizen's Advice Bureau).

You can find your local branch through the CAB website:

[www.citizensadvice.org.uk](http://www.citizensadvice.org.uk)

You could also try the government web site:

Web: [www.directgov.uk](http://www.directgov.uk)

## Redundancy

A redundancy situation is likely to occur where there is no longer the requirement for the personal assistant to provide support or where they will be required to work for fewer hours. Therefore, you must make plans for the possibility that your disabled child may no longer need a personal assistant. This could be because their needs have changed and they no longer require any support or they need more support and choose to move into residential care or move away, or their support needs may reduce. If a redundancy situation is created then, you may be required to make a redundancy payment if the personal assistant fulfils the eligibility requirements. You need to write into the contract of employment what will happen if you no longer require the individual's services. You will be expected to make provision in the contingency budget for redundancy payment, however in the event of unforeseen circumstances Derbyshire County Council will only pay up to the amount of Statutory redundancy pay.

Anyone who has been in employment for 2 years or more is entitled to Statutory Redundancy pay at:

0.5 week's pay for each full year of service where age during that year is less than 22 years old

1.0 week's pay for each full year of service where age during that year is 22 or above, but less than 41 years old

1.5 weeks' pay for each full year of service where age during that year is 41+ years old

The limit on a week's pay for the purposes of calculating a statutory redundancy payment will be £380 per week with effect from 1 October 2009.

If a redundancy situation is likely to occur, you should follow the ACAS (Advice, Conciliation and Arbitration Service) guidance on redundancy handling and procedures and you should seek advice from your insurer or legal advisor.

### **Disciplinary and grievance procedures**

We all hope you will never need disciplinary procedures, and that your personal assistant will never have a grievance, but it is much better to be prepared. If you have these policies in place then you know what to do if something isn't working. For example one of the most difficult problems that you might encounter is what to do if your personal assistant is not doing their job properly.

Sometimes issues such as poor timekeeping or the occasional rudeness on the side of your personal assistant can be dealt with by just sitting down and having a chat. Do not be worried about talking to your Personal Assistant if you are not happy, there may be a reason for it and by talking about it you can resolve the problem and things can improve. Sometimes it may be that your personal assistant didn't realise what they were doing was causing you distress.

Unfortunately there are cases when either problems do not improve or your personal assistant does something more serious like threatens you or steals from you. If this happens you must follow the correct legal procedure. It might seem obvious to you that they should lose their job but if you do not follow the correct procedure there may be legal and cost implications if you do not follow them.

#### Please note:

If employment issues arise, you should seek advice from either your insurer or legal advisor before taking any action. You must follow their advice otherwise they may not cover you in the event of challenge to your decision by your personal assistant.

### **Take advice before action**

#### **What disciplinary measures might be taken and what measures should you take to deal with a grievance?**

In taking any action to determine disciplinary or grievance issues, you

should follow the ACAS (Advice, Conciliation and Arbitration Service) Code of Practice which details measures of good practice in dealing with both disciplinary matters and grievances or complaints raised by your employee. The code recommends that you should have a procedure for dealing with disciplinary or grievance situations, which should be set out in writing and provided to the personal assistant.

With regard to disciplinary matters, your procedure should provide for the opportunity for you to establish the facts of the case and undertake an investigation, which may include an investigatory meeting with the employee. You need to inform the employee of the problem in writing if you decide that there is a disciplinary case to answer and provide the employee with the evidence you have. You should then hold a meeting with the employee to discuss the problem and allow the employee to be accompanied by a companion which may be a trade union representative, if they wish. You will then decide on appropriate action.

There are a range of sanctions which might be reasonable in the circumstances and these include:

1: oral warning.

If your conduct or performance is unsatisfactory, you will be given an oral warning, which will be recorded in your employer's files with the date and issue concerned. The warning will be disregarded after 6 months of satisfactory service.

2: written warning.

If the offence is serious, if there is no improvement in your standards, or if a further offence occurs, you will be given a written warning. This will include a reason for the warning and a note that, if there is no improvement after 6 months, a final written warning will be given.

3: final written warning.

If your conduct or performance is still unsatisfactory, a final written warning will be given making it clear that any recurrence of the offence or other serious misconduct within a period of 12 months will result in dismissal.

4: dismissal

If there is no satisfactory improvement or if further serious misconduct occurs, you will be dismissed.

If there is no improvement within a reasonable period of time after the warning or depending on the effect of the poor performance or the seriousness of the misconduct your employer may move onto the next stage. Your employer does not have to wait 6 months to do so. For more serious problems, your employer may skip stages. For gross misconduct see below.

## Gross misconduct

If you suspect the personal assistant has committed an act of gross misconduct you can suspend them immediately until an investigation is completed. If gross misconduct is confirmed, you can dismiss your personal assistant.

The following offences give an indication of acts which would normally be considered as gross misconduct (the list is not exhaustive) –

- Theft
- Negligent or deliberate damage to your employer's property
- Fraud
- Physical assault
- Incapacity for work due to being under the influence of alcohol or illegal drugs
- Physical, emotional and/or financial abuse
- Any other offence which is serious enough to significantly break the trust between the two parties, including breaches of confidentiality.

Whilst disciplinary investigations are being carried out, or you are seeking advice on disciplinary proceedings, you will need to continue to pay the personal assistant their normal pay. Any decision to dismiss will be taken by you only after a full investigation.

As an employer you will then need to provide the personal assistant with an opportunity to appeal, as the personal assistant may feel that the disciplinary action is wrong or unjust.

With regard to grievance matters, as an employer you need to provide the opportunity for the personal assistant to raise any grievance issues with you. You should then hold a meeting with the personal assistant to discuss the grievance. As with the disciplinary procedure, the personal assistant has the right to be accompanied by a companion, which may be a union representative. Following the meeting, you must determine any action taken, and provide the personal assistant with the opportunity to appeal against the decision if they are not satisfied.

If you include a procedure to be followed to determine a disciplinary or grievance matter, then this will give the personal assistant a contractual right for this procedure to be followed when determining a disciplinary or grievance matter.

You should obtain a copy of the ACAS (Advice, Conciliation and Arbitration Service) Code of Practice. This guide provides more detailed advice and guidance that employers and employees will often find helpful both in general terms and in individual cases. Copies can be downloaded from the ACAS website:

[www.acas.co.uk](http://www.acas.co.uk)

ACAS have published a revised Code of Practice, (6 April 2009).

ACAS also provide a better helpline service (08457 47 47 47), with

longer opening hours:

Monday to Friday from 8.00 am to 8.00 pm

Saturday from 9.00 am to 1.00 pm

**Remember:** Seek advice from your insurer or legal advisor before taking any action.

**Note:** The relationship between employer and employee is a private arrangement. Derbyshire County Council is not responsible for any costs arising out of difficulties in respect of contractual arrangements between an employer and employee.

Do not forget to let your DCC Worker know of the situation. This will enable alternative care arrangements to be put in place if needed. If your worker is not available you will should ring Derbyshire Call Centre on 08456 058 058 who will put you in contact with the DCC Duty Worker for your area. If it is out of hours then you need to contact 01629 532600.

Derbyshire Call Centre Hours: 8 am to 8 pm.

Telephone number: 08456 058 058

Out of Hours: 8pm to 8am

Telephone number: 01629 532600

**Nevertheless if you are concerned for the safety of your disabled child or the safety of another member of your family, including yourself, dial: 999 and ask for the police at any time.**

## **INSURANCE**

### **Employer's and Public Liability Insurance**

It is a legal requirement that anyone who employs personal assistants must have employers' liability insurance under Employers' Liability (Compulsory Insurance) Act 1969. Because it is difficult legally to differentiate between a self employed personal assistant and an employed personal assistant, the law says that you take out insurance, even if your personal assistant considers themselves to be self employed, although generally we do not recommend using self employed workers with your direct payment.

Direct payment recipients are advised to take out full employer and public liability insurance. It is your responsibility to take out the insurance, using the money from your direct payment account. The initial lump sum for the first years' Insurance premium will be provided by Derbyshire County Council and put into your direct payment bank account with the first payment. You are responsible for renewing your Insurance premium annually and you will need to pay for the insurance out of your contingency fund.

Derbyshire County Council can't recommend one insurer over another. There may be other companies which offer a similar package and some household insurance policies cover personal assistants in the Direct Payment recipient's own home. We strongly advise that you look into the most appropriate policy for your particular circumstances as we are not in a position to advise or recommend any particular product. However to help you, we have sourced three providers who may offer this level of cover. The three companies are FISH Insurance, Direct Care Insurance and Premier Care Insurance.

FISH insurance: telephone: 0800 012 6329

Direct Care Insurance: telephone: 0800 458 3301

Premier Care Insurance: telephone: 01476 591 104

They offer two levels of cover for people receiving direct payments, so they can enjoy independent living.

Their full cover policies are designed to ease such concerns by providing not just extended insurance cover but access to a 24-hour employment law advice line to help you prevent or professionally manage any disputes. We understand that they are staffed by qualified employment law advisors. You could use this resource to obtain advice on issues such as disciplinary matters, dismissal, absenteeism, health and safety regulations, change of duties and harassment. In addition, should an employment dispute reach court or tribunal, their policies may cover legal costs.

You may be told that you don't have to have insurance, if you employ a family member. Legally there is an exemption if your employees are closely related to you (as husband, wife, father, mother, grandfather, grandmother, stepfather, stepmother, son, daughter, grandson, granddaughter, stepson, stepdaughter, brother, sister, half-brother or half-sister). However, we still recommend you take out insurance; you have to consider your family, what would happen if they could no longer work because of an accident?

### **Motor Insurance**

If your personal assistant will be driving you or your disabled child about as part of their duties, they will need motor insurance that covers them for business use. If they will be driving your vehicle, you need to ensure they are on your policy as a named driver.

You will also need to ensure that your child uses a car safety seat if they are young enough to meet the legal criteria that make it mandatory for a car safety seat to be used.

Direct Payment money cannot be used to pay for business use element of the personal assistant's car. Neither can it be used to pay any extra

costs on your motor insurance premium to allow your personal assistant to drive your vehicle.

Check that the relevant insurance is in place before allowing the personal assistant to use either their car or yours for business purposes.

## **Building and Contents Insurance**

The Direct Payment Recipient should also have appropriate Building and Contents Insurance in place. They should check with their insurers that the insurance also covers any accidental damage caused by their employee, i.e. personal assistant.

The Employer's and Public Liability Insurance does not cover accidental damage to property by a personal assistant.

### **Insurance terms explained**

#### **Employer's Liability**

Covers you for claims from employees where they are alleging that they have suffered bodily injury, illness or disease arising out of, and in the course of, their employment by you.

#### **Public Liability**

Covers you for claims from anybody who isn't employed by you where, following an accident, they have sustained damage to property or injury, illness or disease as a result of your alleged negligence.

#### **Motor Insurance**

This is compulsory insurance that protects you should you have an accident and be blamed for death or injury suffered by a third party or damage to a third party's property. Comprehensive insurance extends the cover under the policy to cover damage to your own vehicle.

#### **Legal Expenses**

This covers you for employment issues such as: disciplinary matters; dismissal; absenteeism; health and safety regulations; change of duties and harassment. In addition, should an employment dispute reach court or tribunal, the policy may cover legal costs to resist and defend a case and awards which may be made against you for unfair dismissal or discrimination.

## **Health and Safety**

Health and Safety is very important for you and your personal assistants. The law requires every employer to assess workplace risks for all their employees, and take practical action to control those risks. There are a number of areas where health and safety should be considered. You will need to consider health and safety with regard to the tasks which your personal assistant will be required to undertake in caring for your disabled child. If you need assistance with moving and handling you should be

provided with a moving and handling plan by your child's Occupational Therapist. As a responsible employer you must make your employee/s aware of the risk assessment and risk management plan. Your personal assistants will also require training to ensure they can carry out their duties safely. Training is discussed further in this chapter.

A risk assessment might sound daunting but it can be simple and straight forward. It is important that you do these assessments before your personal assistant starts but also go through them at induction to make sure you have both thought about them and any new risks. For example if your new personal assistant has limited reading skills a risk might be that they are unable to recognise different chemicals that you might have stored in your kitchen for cleaning. This risk could potentially be very dangerous so you could put in place a system whereby chemicals are kept in a certain cupboard so that they can't be confused with foodstuffs for example. Another risk might be that there is a danger of your personal assistant harming themselves through using lifting equipment. The solution to reducing that risk is to make sure that your personal assistant has the correct training to use the equipment properly.

Risks can be wide ranging and will be different for each individual. You should therefore take advice from your insurer or legal advisor with regard to this.

### **New and Expectant Mothers**

Employers must carry out a proper risk assessment to identify potential hazards to new and expectant mothers. The definition of a new or expectant mother is someone who is pregnant, has given birth within the previous six months, or is breastfeeding.

Employers must identify hazards in their workplace that could pose a health or safety risk to new and expectant mothers and take appropriate action to remove or reduce the risk. New and expectant mothers may be entitled to a change in working conditions, including ceasing to work but remaining on full pay, if risks to her or her child's health and safety have been identified.

This means if your personal assistant becomes pregnant you will immediately require a risk assessment, to assess what duties your personal assistant can still do. You may want to take advice from the personal assistant's midwife if the personal assistant consents. It may be there are duties you require of your personal assistant, that they are unable to carry out. Your personal assistant is entitled to a change of working conditions for safety. This may mean you need additional direct payment hours during the pregnancy, to employ an additional worker to cover the duties your personal assistant is no longer able to do. Pregnancy is not an illness, and there may be a lot of the tasks that the personal assistant can still carry out.

## **There is a sample risk assessment form in the appendix**

However, you should contact your insurer or legal advisor for advice with regard to ensuring the correct assessment is undertaken. Your DCC worker cannot become involved in this matter as you are responsible for the wellbeing of your personal assistants.

### **Risk Assessments**

Risks can be wide ranging and will be different for each individual. You should therefore take advice from your insurer or legal advisor with regard to this.

Further advice can also be sought from the Health and Safety Executive.

### **Health and Safety Executive**

Telephone: 0845 345 0055

Fax: 0845 408 9566

Minicom: 0845 408 9577

Office hours: Open 8 am - 6 pm Monday to Friday

E-mail: [hse.infoline@connaught.plc.uk](mailto:hse.infoline@connaught.plc.uk)

Online through the Health and Safety webpage: [www.hse.gov.uk](http://www.hse.gov.uk)

### **What do you do if something does go wrong**

You do not need to keep a formal accident book if you have fewer than 10 employees however you should keep records of any accidents that happen. It might be easier to get an accident book from the Health & Safety Executive for recording this information as it will have a column for everything that is needed in there. If you want to keep your own records then you should write down the following details:

- . Date & time of accident
- . Name and job title
- . Nature of injury
- . Place where it happened
- . Brief description of the accident
- . Date of the report.

If the accident is very serious then you need to report it to the Health and Safety Executive at their Incident Centre on **0845 300 9923**. A serious accident is one whereby the person is seriously hurt, dies or if the accident leads to them being off work for more than three days. If you are not sure then phone the Incident Centre and check.

## Employment Advice may be obtainable from the following organisations.

For more detailed advice you can contact your Insurers, if they have an employment helpline. You can seek your own legal advice from your own legal advisers.

You can also contact:

DDCIL: 01773 740246 or 01773 742165

ACAS: 08457 474747

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

You could also try your local CAB (Citizen's Advice Bureau).

You can find your local branch through the CAB website:

[www.citizensadvice.org.uk](http://www.citizensadvice.org.uk)

You could also try the government web site:

Web: [www.directgov.uk](http://www.directgov.uk)

Further information can be found on business link. This is a free business advice and support service. More information can be found on their web site:

Web: [www.businesslink.gov.uk](http://www.businesslink.gov.uk)

## HMRC (Her Majesty's Revenue and Customs)

New Employer Helpline: 08457 143 143

Expert advice for new employers on:

- PAYE and National Insurance contributions
- Statutory Sick Pay, Maternity and Paternity Pay

Opening hours

8.00 am to 8.00 pm, Monday to Friday

8.00 am to 5.00 pm, Saturday and Sunday

Closed Christmas Day, Boxing Day and New Year's Day

For customers who are deaf or hearing or speech impaired:

**Textphone: 0845 602 1380**

A textphone allows you to type what you want to say rather than speaking into a mouthpiece. You can use a textphone instead of a voice telephone if you are deaf or have problems with your speech. It is not possible to speak to an adviser by phoning a textphone number.

Website: [www.hmrc.gov.uk](http://www.hmrc.gov.uk)

## **Health and Safety Executive**

Need help with a particular issue; contact one of their experts on:

Telephone: 0845 345 0055

Fax: 0845 408 9566

Minicom: 0845 408 9577

Office hours: Open 8 am - 6 pm Monday to Friday

E-mail: [hse.infoline@connaught.plc.uk](mailto:hse.infoline@connaught.plc.uk)

Online through the Health and Safety webpage: [www.hse.gov.uk](http://www.hse.gov.uk)

**Health and Safety Executive Incident Centre: 0845 300 9923.**

## TRAINING FOR PERSONAL ASSISTANTS

All personal assistants who are employed by people who receive direct payments in Derbyshire are able to access training to support them in their jobs. The training needs to be linked to your disabled child's assessment of need or their child's plan. For example; if their personal assistant is expected to prepare meals for your child as part of their tasks as detailed in the child's plan, then it may be appropriate for the personal assistant to attend the Food Safety Course. If the personal assistant is not expected to prepare any meals then attending the Food Safety Course would not be appropriate.

Particularly for health and safety, the personal assistants should have some training. You should look at the responsibilities in the job description and also the tasks identified in the risk assessments can help you identify any training the personal assistant may need [this will also depend on any training they have received prior to being employed by you] and the actions you can take to reduce risk to your disabled child. So if for example you are asking your personal assistant to prepare food for your disabled child then it is important that they have attended a food safety course. If they need to use moving equipment or will need to help move your disabled child then they should receive both training on moving and handling and also training on the equipment.

There is a range of appropriate training personal assistants can access. While personal assistants can attend Derbyshire County Council provided training free of charge, Derbyshire County Council will only pay additional hours for essential training. Essential training is training that has been identified in your child's assessment of need or child's plan. There is a fee for the examination for first aid and food safety of £50.00. It is up to you to pay for your child's personal assistant's salary to enable them to attend the training session out of your contingency fund. The rate of pay a personal assistant receives while on training is the same rate they receive when carrying out their duties for your disabled child. There is a skills scan below to assess whether the training is essential.

Safeguarding training for your personal assistants is considered essential. Discuss this with your DCC worker to include safeguarding training in your child's assessment of need or child's plan. This will enable the amount of direct payments you receive to take into account this training.

Training sessions:

A Full-day is 6 hours

Half a day is 3 hours.

Therefore if your personal assistant attended the food safety ½ day course they would need paying 3 hours salary.

**Note:** It is your responsibility as an employer to sort out your child's personal assistant's training. Your personal assistant should not contact the training department directly unless requested to do so by you, as their employer. Neither can your personal assistant attend any training and then expect to be re-imbursed if the training has not been agreed by you and your DCC worker.

## Self employed personal assistants

If your personal assistant is self-employed they are responsible for their own training. They can access training provided by Derbyshire County Council. However there are different procedures involved:

1. They are responsible for contacting the training section themselves
2. They have to attend the training in their own time
3. They are responsible for their own travel costs and where applicable their own refreshments.
4. You cannot claim extra direct payment hours to pay for cover. This is because you are not paying the self employed personal assistant to attend the training (They are going in their own time). Therefore the money you would have spent on their salary is available to pay relief staff.

## Common induction programme - skills for care

Skills scan - helping identify essential training

If you can answer YES, the training is essential for your staff

<b>Training Course</b>	<b>Essential for</b>	<b>YES/NO</b>	<b>Refresher</b>
First aid 1 day	Essential for all personal assistants		1 day annually
Food safety ½ day	Do your staff prepare meals for your disabled child?		
Moving and handling 2 days	Do your staff assist your disabled child with moving?		½ day annually
Hoist training ½ day	Do your staff assist your disabled child with using hoists to move?		½ day annually
Tissue viability ½ day	Do your staff assist your disabled child with personal care?		
Infection control ½ day	Do your staff assist you disabled child with personal care?		
Safeguarding Children 2 days	Do your staff help with childcare or do you have children living with you?		
Safeguarding Adults 1 day	All staff unless working specifically with children.		½ day every 2 years

Working with people who have a learning disability  
1 day

Staff working with people, including young people, with a learning disability

Working with people with autism  
1 day

Staff who work with people, including young people, with autism

There are other courses. If you do not see a course that is relevant, contact the training section on 01629 531415 for further information. Remember when deciding whether a course is relevant, the training needs to meet your disabled child's assessment of need or the child's plan. To access these courses, you need to contact staff education and training centre. There is an application form to complete which can be found in the appendix and further forms can be obtained online at:

[www.derbyshire.gov.uk/directpayments](http://www.derbyshire.gov.uk/directpayments)

Alternatively you can contact training on 01629 531415

It is likely that you will need cover while your staff are on training, meaning you will need to pay extra staff wages. If you have enough in your direct payments account, then you can go ahead and use the money to pay staff while they are on training, but make sure you have enough left over to pay for things like next year's insurance and holiday pay.

If you don't have enough money in your direct payment account to pay for staff on training, you will need to see your DCC worker. They will need to request additional funds for you to pay the staff. They will do this if the training you are requesting the funding for is essential to their job.

### **Health and Social Care Training**

If your disabled child's personal assistant is interested in a formal health and social care qualification and you believe this is appropriate, your personal assistant can find out more information from the following colleges.

You can also talk to DCC training section on 01629 531415

#### **Burton College**

Student Services

Lichfield Street

Burton on Trent

Staffordshire

DE14 3RL

01283 494400

<http://www.burton-college.ac.uk/>

**Buxton College**

1 Devonshire Road  
Buxton  
Derbyshire  
SK17 6RY  
01298 71100  
<http://www.derby.ac.uk/udb>

**Chesterfield College**

Infirmity Road  
Chesterfield  
Derbyshire  
S41 7NG  
01246 500500  
<http://www.chesterfield.ac.uk>

**Derby College**

Prince Charles Avenue  
Derby  
Derbyshire  
DE22 4LR  
01332 757570  
<http://www.derby-college.ac.uk>

**South East Derbyshire College**

Field Road  
Ilkeston  
Derbyshire  
DE7 5RS  
0115 849 2000  
<http://www.sedc.ac.uk>

**Summary**

We hope you find this chapter useful in becoming an employer, though there are many different situations that could arise. If in any doubt, seek help and advice, and don't forget to contact your insurer before taking any action as it could make your insurance invalid.

# Intentional Blank Sheet

## Paying Personal Assistants

You should have already agreed an hourly rate to pay your staff and this is discussed in Chapter 2, where we offer support with planning how you will spend your direct payment, but here we will look at how to pay your staff. You need to keep records of what you pay staff, even if they don't earn enough to pay tax or national insurance. HM Revenue and Customs says we should all keep records about wages for 5 years, this applies if you are an employer or an employee. There is a lot of support with payroll, and paying your staff can be very straight forward.

### Tax and National Insurance

Everyone who earns money is responsible for paying Tax and National Insurance on earnings above a certain amount. As an employer you are responsible for making sure the tax and national insurance contributions are deducted from wages. However there is a lot of support to manage this, and you can use a payroll service to calculate this for you.

### National insurance contributions (NICs)

National insurance contributions are payable if your personal assistant earns more than what is known as the 'Lower Earnings Limit' which is set by the Government each year.

National Insurance Contributions have 2 elements:

#### 1. Employee's National Insurance Contributions

You deduct Employee's NICs from their wages each time they are paid.

#### 2. Employer's National Insurance Contributions

As an employer you have to pay Employer's NICs for each employee, if you pay an employee over a set amount. This rate changes annually. For further information telephone the employers helpline **08457 143 143**

Employees who are over pensionable age (65 for men, 60 for women) may not have to pay the employee's National Insurance Contribution. In such cases, however, the employer's NIC is still payable.

### Tax

The Inland Revenue gives each employee a tax code. The code reflects how much a person is allowed to earn without paying tax each year. This is called their taxable pay. Different people are allowed to earn different amounts depending on certain personal circumstances.

Our advice is to always inform the tax office with the employees national insurance number and they will advise you whether tax is payable or not.

When you take on your first employee, you must contact the Inland Revenue to register as a new employer (unless you have chosen to use a payroll service, who will do it for you).

Telephone help line for new employers to register - **0845 60 70 143**.

As it is difficult to determine which tax office covers your particular area, it is a good idea to contact your nearest tax office who will direct your call to the correct office.

**08457 646 646**                      **Ordering guides, advice and information on tax and national insurance**

**08457 143 143**                      **Help line for employers**

**08453 021 413**                      **Tax office – Southern Derbyshire**

**0845 366 7802**                      **Tax office – Northern Derbyshire**

If you do wish to do your own payroll, HM Revenues and Customs offer a lot of support to new employers, including workshops to learn about payroll.

### **Payroll support**

Most people choose to use an agency to complete their payroll responsibilities for them. The cost of these services can be found from the direct payment, so there is no cost to you.

### **DDCIL Payroll Services**

Disability Derbyshire Coalition for Inclusive Living offer an established payroll service, to calculate the amount of tax and national insurance your personal assistant has to pay. You send a time sheet to DCIL and they do the calculations for you, they provide you with a statement telling you:

- . How much to pay your staff
- . How much to save for HM Revenue and Customs

DCIL will also send you a pay slip to give your personal assistant, detailing how much they have been paid and how much tax and national insurance they have been paid.

All you need to do then is write out the cheques.

DDCIL payroll can be contacted on **01773 740246** or **01773 742165**  
[www.dcil.org.uk](http://www.dcil.org.uk)

## Paypacket

Paypacket is another payroll service. They work in a slightly different way to DCIL, as they pay your staff for you. With paypacket, you send in the timesheet, paypacket will then pay your personal assistant via their bank account, pay HM revenue and customs and then take the total amount from your direct payment account. They will then send you a statement, detailing where the money has gone such as staff wages, HM revenue and customs and paypacket charge.

Paypacket give discounts for having more than one employee.

Paypacket can be contacted on **0800 848 8998**  
[www.paypacket.org.uk](http://www.paypacket.org.uk)

## Accountant or bookkeeper

Alternatively, you may know an accountant or bookkeeper who can help you with you payroll. You may find one competitively priced, however many will charge over and above what can be met from a direct payment, so watch how much services cost. You will need to budget accordingly.

## Pay slips

All employees are entitled to a 'written itemised pay statement' which means you have to give them a pay slip detailing what they have been paid, for how many hours and how much tax and national insurance they have paid. If you use a payroll service they will provide this for you.

## Self-employed workers

Derbyshire County Council **does not** recommend personal assistants providing support on a self-employed basis. In law there are certain conditions that must be met for someone to be classed as working in a self-employed capacity. A personal assistant may not meet these conditions. If you have a self-employed worker you could be found liable for all the tax and national insurance. HM Revenue and Customs are the only people who can decide a workers status. If they decide after your personal assistant has been working for you, that they are not self-employed, you would be liable for the full tax bill.

If you do have a self-employed worker, it is vital to note:

- Employers Liability Insurance is still a legal requirement and you will still need to fund this from the direct payment.
- Ask for a unique tax reference number to show that your personal assistant has been to the tax office and registered as self employed.

- Ask your personal assistant to invoice you on a four weekly basis and do not provide them with timesheets.

To find out more about whether your personal assistant is self-employed or not, talk to your Insurer's Employment helpline, if they have one. Or visit [www.direct.gov.uk](http://www.direct.gov.uk) and look at Money Tax and benefits. Direct Link: [http://www.direct.gov.uk/en/MoneyTaxAndBenefits/Taxes/WorkingAndPayingTax/DG\\_4015975](http://www.direct.gov.uk/en/MoneyTaxAndBenefits/Taxes/WorkingAndPayingTax/DG_4015975)

**Note:**

**Please do not pay your self-employed personal assistant the full Direct Payment rate that you get from Derbyshire County Council.**

You need to budget for the Employer and Public Liability Insurance and possibly a relief personal assistant for when the self-employed personal assistant is on holiday, sick, etc. There may also be payroll services for the relief Personal Assistant, etc.

## Working with an Agency or an Organisation

If you choose to purchase the services of an agency with your direct payment, then the management is much more straight forward. The agency has all the employers responsibilities and you don't need to worry about payroll, insurance or staff training etc.

However, the agency staff are going to become an important part of your life, so it is worth spending a little time getting it right to start with.

The Agency should abide by the Equal Opportunities Legislation in the recruitment and employment of their staff. This means that their recruitment policy should give equal treatment to every applicant regardless of their age, disability, HIV status, marital status, race, religion, sex, sexuality, or national origin.

### Choosing an Agency or an Organisation

It is up to you which agency/organisation you use to support your disabled child. However you are advised to check that your chosen agency or organisation is registered as an agency by CQC (Care Quality Commission) and are approved to work with children. Agencies or organisations providing personal care are legally required to register with the CQC. We would recommend you use an agency or organisation accredited with Derbyshire, these are agencies or organisations the County Council has contracts with. They will be registered with the Care Quality Commission.

If you want to check contact:

Derbyshire Call Centre on: Telephone 08456 058 058.

Text on: 86555

E-mail on: [contactcentre@derbyshire.gov.uk](mailto:contactcentre@derbyshire.gov.uk)

Try Derbyshire County Council's webpage:

[www.derbyshire.gov.uk/social\\_health](http://www.derbyshire.gov.uk/social_health)

You can contact CQC on: Telephone 03000 616161

E-mail: [enquiries@cqc.org.uk](mailto:enquiries@cqc.org.uk)

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

When choosing the right agency for your disabled child, have a set of questions to ask before contacting them, this will help you make sure you have everything covered. Some important questions you may want to ask:

- Can they provide staff at roughly the times you want them?
- Can you have one member of staff or will they send many different staff?
- How much do they charge per hour?
- Is it the same or less than the direct payment rate?

- Do they charge travel costs?
- What happens if the agency carer can't make it, will they send a replacement?
- How much notice do you need to give to change a date or time?
- Can you choose your disabled child's carer or have some involvement in recruiting a carer for your disabled child's care?
- Are there any additional charges to the hourly rate and travel?

Once you have agreed with an agency or organisation how they will be providing your child's support, they should provide you with a contract. This will provide you with important information, such as how much notice you have to give. It is advisable to check this contract and make sure it is fair, you do not want a contract that says you have to give a weeks notice but the agency doesn't have to give you any. If you have any concerns ask DCIL to look over the contract.

### **Child's Plan**

Your child should have a child's plan as part of their assessment, this was covered in Chapter 1. This could provide enough detail to give to the chosen agency, so they can see what support your child requires. Or you can spend a little time writing out what is important in their support to give to the agency, if you don't feel their child's plan covers it. Make sure the child's plan is up to date and the agency have a copy.

### **Paying for services**

Completing the paperwork is covered in chapter 7, and although you do not need to keep and return timesheets if you use an agency, you do need to keep a record of what hours the agency do and what times their staff are with you. Then if anything happens you have a record and you can check that they are invoicing you for the right amount of hours. Many agencies will invoice monthly, this is ok, just pay them when the invoice arrives and save the invoice to send with your next returns. When the agency invoice arrives, check that they have billed you for the right number of hours, pay the invoice using a cheque and make a note of the cheque number on the invoice.

### **Travel expenses**

DCC pay a set amount for travel to accredited and non accredited agencies at present. The amount varies dependant on where you live, and this is to pay travel to your home. This amount is only paid where you use an agency. It also does not include any travel, if they are transporting your disabled child around.

Finally keep in touch with the agency, and let them know if you have any problems, they are probably just as keen to see them resolved as you are.

Travel is not payable for individuals, personal assistants or people claiming to be an agency but not recognised or registered as so. Please note: DCC are shortly to implement a new transport policy. Further information can be sought from your child's DCC worker.

If you want to check contact:

- If you want to know whether an agency or organisation is formally credited with Derbyshire County Council ring Derbyshire Call Centre on: Telephone 08456 058 058 or Text on: 86555 or e-mail on: [contactcentre@derbyshire.gov.uk](mailto:contactcentre@derbyshire.gov.uk)
- Contact CQC on: Telephone 03000 616161  
E-mail: [enquiries@cqc.org.uk](mailto:enquiries@cqc.org.uk)  
Web: [www.cqc.org.uk](http://www.cqc.org.uk)

### **Childminders and other Childcare Organisations**

If your child is going to a childminder or other organisation that caters for children less than 8 years old the organisation must be registered with OFSTED. (Office for Standards in Education, Children's Services and Skills) There are strict regulations as to who can be paid to work with children and young people. It is important to check that the childminder or organisation is registered as this ensures that the relevant levels of child care standards have been met.

For further information contact:

#### **OFSTED**

Telephone: 0300 123 1231  
Textphone/Minicom: 0161 618 8524

E-mail: [enquires@ofsted.gov.uk](mailto:enquires@ofsted.gov.uk)

Web: [www.ofsted.gov.uk](http://www.ofsted.gov.uk)

Derbyshire County Council also has information about local childminders and organisations which provide a range of activities for children and young people less than 18 years:

Contact Call Derbyshire on: 08456 058 058  
E-mail: [contactcentre@derbyshire.gov.uk](mailto:contactcentre@derbyshire.gov.uk)

Web: [www.derbyshire.gov.uk](http://www.derbyshire.gov.uk)

**Note:** The contractual agreement between the Agency/Organisation and yourself is a private arrangement. Derbyshire County Council is not responsible for any costs arising out of difficulties in respect of contractual arrangements between you and the Agency/Organisation.

## Intentional Blank Sheet

## Keeping Records

There are different requirements if you use your direct payment to employ your own personal assistants or use an Agency.

### **Employing personal assistant's paperwork**

The important thing is to decide how you are going to store the documentation for each member of staff and stick to it. Otherwise things are likely to get into a muddle.

### **Why keep the paperwork?**

This will enable you and your personal assistant to discuss any issues that arise in the course of their employment with you, ie pay rises, working conditions, training needs, clarifying annual leave, talking through any misunderstandings, risk assessments, etc. You can both refer back to the relevant documents to clarify the situation. It is very difficult to remember everything, particularly if you have several personal assistants.

Furthermore some documents, ie timesheets, bank statements have to be kept for legal reasons.

For example:

Use the administrative money to purchase some ring binder files and dividers. Allocate a file to each personal assistant and put their name on the front and or spine of the file. You can then divide each file into sections:

- Contract of employment
- Job description
- Annual leave record sheet
- Appraisal records
- Training records
- Timesheets
- Copy payslips, etc
- A note of when their CRB (enhanced) check is due for renewal (if applicable)
- Risk assessments particular to the member of staff
- Record of any accidents they sustained while working for you.

The personal assistant should have a copy of all the above documents for their own records at home.

You can use any method you like but get organised from the word go. Now that you are organised what exactly do you have to do?

#### **1. Contracts of employment**

Ensure that the personal assistant has a contract of employment. Both the personal assistant and yourself as the employer must sign the contract.

- There should be 2 copies of the contract of employment.
  - I. The original for the personal assistant for their record
  - II. Keep a copy for you to keep in your records.
- 2. Job description
  - Again there should be 2 copies one for your personal assistant and one for your records.
  - These are good reminder of what needs doing, when and how, etc. and can form the basis of appraisals, training needs, etc.
- 3. Annual leave sheet
  - This enables both you and your personal assistant to keep track of annual leave taken. Again if you have several personal assistants it can be difficult to remember who has taken how much leave and when it was taken. You should both sign the dates of leave agreed.
- 4. Appraisal records
  - Have regular discussions with your personal assistants. This will enable you to look at training needs, how they are getting on, raise any matters in their work that you are not happy with. It is easier to discuss difficult issues if you have a regular time in which work practices are discussed including praise. Keep written records and both sign and date the document.
- 5. Training records
  - These help you keep track of your personal assistants training.
- 6. Timesheets
  - Complete these every week. They can be completed by either yourself or your personal assistant. But make sure you both sign the timesheet.
  - These are a good way of keeping a record of the hours your personal assistant has worked, particularly if their hours are irregular and or used flexibly over a 4 week period.
- 7. Copy of the personal assistants payslip
  - The original payslip goes to the personal assistant along with their salary cheque.
  - Even if you pay the personal assistant by direct debit or bankers draft they still need a paper payslip. It is a legal requirement.
  - You have a copy of the payslip for your records. If there are any queries regarding tax, national insurance, etc you will have the information to hand.
- 8. Reminder to renew the personal assistants CRB (enhanced) check if applicable. You will need to ask your DCC worker to carry this out.

- You do not have a copy of the actual 'satisfactory' certificate yourself as the information is protected by the 'Data Protection Act' and only available to the personal assistant and Derbyshire County Council.
  - You should make a note of when your child's DCC worker told you that the personal assistant could start working with you. It is up to you as an employer to ensure that your personal assistant has a re-check every 3 years. (See CRB check section for further details)
9. Risk assessments, moving and handling assessments, etc
- Keeping a copy of these assessments will enable you to review these on a regular basis for the protection of your staff and yourself.
  - These can also be linked to the training needs of your personal assistant.
10. Record of any accidents while working for you.
- These will enable you to review the working environment and any equipment used at the time, etc as appropriate.

### **Self-employed Personal Assistants**

Just a reminder that it is the HM Revenue and Customs who determine the employment status of a personal assistant, nevertheless there are some steps you can take which may support your understanding of the situation in the event of a disagreement. For example:

1. Employment Contract  
 The self-employed person should provide a contract stating the terms and conditions of their employ with you, i.e. their hourly rate, number of hours they are to do for you over a particular period in time, duties, they are responsible for their own tax, national insurance contributions, training, holiday and sick pay, insurance, CRB (enhanced) checks, etc. They should also give you their UTR (Unique Tax Reference) number so you can let the Inland Revenue know of the situation.  
 You should both sign the contract and each have a copy for your own records.  
 It would be reasonable to ask to see any training, qualification certificates, valid full driving licence, satisfactory CRB checks, comprehensive insurance document, if they are using their car to take your child out and about, etc. Make sure to see the original documents and keep copies of them for your own records.
2. Invoices  
 The Self-employed personal assistant should issue you an invoice for the work they have done over a 4 week period. (You should NOT complete timesheets for the self-employed personal assistant

to sign, these are only relevant for personal assistants employed by you)

Nevertheless it is advisable to keep your own record of the hours they have worked so you can check their invoice against your own records. This may reduce the risk of any misunderstandings over the hours worked, particularly if the hours are used flexibly.

Make a note on the invoice when and how you paid the amount. Keep a copy for your records and do not forget to send a copy to the Direct Payment Finance Team every 4 weeks.

3. Appraisals

As with employing your own personal assistant it is advisable to keep a signed written record of any discussions you have with the self-employed personal assistant.

4. Risk assessments, moving and handling assessments, etc

Keeping a copy of these assessments will enable you to review these on a regular basis for the protection of your self employed personal assistants and yourself.

These may also inform your self-employed personal assistant of their own training needs.

5. Record of any accidents while working for you.

These will enable you to review the working environment and any equipment used at the time, etc as appropriate.

Please note: All the information you have on your child's personal assistant is confidential. You should not be giving any information to a third party, i.e. another parent, your DCC worker, etc, without your personal assistant's permission first. The employment relationship between you and your child's personal assistant is a private arrangement. DCC will not be responsible for any costs arising from any dispute between your child's personal assistant and you.

**Top Tip**

At the end of every financial year put all the previous years' records in a separate folder marked with the personal assistants name and the year.

Then put the file away in a safe place in case you need to refer to it another time to clarify something and safeguard your personal assistants employment details.

**Agency paperwork**

The paperwork connected with employing personal assistants through an Agency is usually simpler and more straightforward than employing your

own staff. If you follow the advice below it should reduce the risk of any misunderstandings over the hours actually worked, hourly rates, holiday cover, which agency staff came and when.

- Keep a record of the times, date and hours each member of staff works. You can use the timesheet supplied by the direct payment finance team or a diary or calendar, etc.
- If you have a mixed package and use agency staff and your own staff it is important that your records show who did what and when.
- Ask the staff to sign to confirm the hours they have worked.
- Check the agency's invoice against your own records as soon as possible after the invoice is sent to you. It is easier to resolve discrepancies while events are still fresh in your mind.
- If you are satisfied that the invoice is correct pay it.

### **Cheque account**

- Write the cheque number and date you paid the invoice on the invoice itself.
- Send cheque back to the agency with the invoice number and your name and address written on the back of the cheque.
- Send the invoice to the direct payment finance team with the appropriate bank statement.

### **Internet banking**

- If you and the agency have internet banking you can pay the invoice over the internet.
- The agency is likely to send you a paper invoice (but it could be via email see below). However if they have internet banking which enables the invoices to be paid online, their bank payment details will be on the invoice.
- Check the invoice as before, before paying it.
- If you are happy that it is correct; pay the account via the internet banking system.
- Write on the invoice the date you paid it.
- Check your account to make sure the correct sum has been debited from the direct payment account.
- Send a copy of the invoice with a printed copy of your Internet bank account statement to the direct payment finance team or both via email if it is possible (see below for procedure involved).

### **Agency invoices by email**

- Should the agency send you their invoice via email you can still pay by either a cheque or internet banking. If you have the choice select whichever is best for your circumstances.
- Pay the invoice by which ever method you have chosen and record details as advised above.

- Send a copy of the agency Invoice and a copy of your direct payment internet bank statement to direct payment finance section via email.
- Keep a copy of the Invoice in a dedicated direct payment file on your hard drive. Don't forget to regularly back up your files.
- If you have printed the Invoice do not forget to file it along with the relevant timesheets, etc for future reference.

**Note:**

Please remember you are responsible for ensuring that you pay your disabled child's personal assistants and any invoices from the Agency or Organisation on time and following up any queries you may have in respect of hours worked, charges, etc. This is because any contractual arrangements are a private matter between you and your disabled child's personal assistant and/or the Agency or Organisation concerned. Derbyshire County Council is not responsible for any costs arising out of difficulties in respect of contractual arrangements between you and your disabled child's personal assistants and/or the Agency or Organisation.

## LIGHTER TOUCH MONITORING

Most disabled children's direct payment packages are small in comparison to those in Adult Care. However there is no distinction between the financial monitoring of a large complex direct payment package (more common in adult disability services) and a small package (more common in disabled children's services). Both require the same form filling and returns' to the direct payment finance team. This was putting considerable strain on, not just parents who have to fill in the forms in the first place, but on the direct payment finance team. One way round this was for the monitoring of small packages that are well managed to be simplified.

### **What do workers need to consider before a small package goes onto 'lighter touch monitoring'?**

**a. Is the package being managed appropriately by the disabled young person, parent or carer with or without support?**

If it is an ongoing package then this is a decision for the worker to take, in consultation with their manager, the direct payment finance team and relevant family members. It is up to the young person, parents or carers to budget the hours to ensure there is sufficient for school holidays. No additional hours will be agreed if the way hours are used during term-time means less support during school holidays. The aim of direct payments is for families to take control of meeting their disabled child's needs and their own.

**b. Qualifying period for new packages?**

6 months. If during this period financial documentation is getting to the direct payment finance team as required, then 'lighter touch monitoring' may be appropriate.

If the direct package is less than 2 hours per week they automatically go onto lighter touch monitoring automatically.

**c. What paperwork and how often?**

#### **Personal Assistants**

Parents only need to send itemised Bank Statements to the Direct Payment Finance team every quarter as follows:

January                      April                      July                      October

Parents still need to pay the Employer and Public Liability Insurance annual premium, process timesheets, etc as normal to ensure Personal Assistants are paid, to reduce risk of misunderstandings and for the authority's auditors, if requested. They do not need to send the completed timesheets or 4 weekly expenditure forms.

## Agencies

Again parents only need to send itemised bank statements and the agency's invoice showing when it was paid, i.e. writing the payment date and cheque number on the invoice every quarter.

### d. What next?

The DCC worker needs to confirm the agreement in writing to the family with a copy to the Direct Payment Finance Team.

## Direct payments finance information summary

- Open a separate bank account, building society account or internet bank account. Ensure that the account has a cheque book or that you are able to do bank transfers from the account, depending on the method you choose to pay your staff.
- Keep a record of all monies used out of the direct payment account.
- Direct payment recipients must take out employer and public liability insurance if they employ their own staff or use self-employed personnel.
- Direct payment recipients need to register as an employer if employing their own staff.
- Direct payment recipients are responsible for ensuring the appropriate tax and national insurance contributions are paid by their staff as appropriate. Staff may be entitled to relevant tax credits, ie working tax credit, child tax credit, etc  
**NOTE:** From April 2011 all PAYE will need to be done on-line.
- Direct payment recipients are responsible for ensuring there is enough money in the direct payment account to pay for regular staff wages, relief staff, Inland Revenue, payroll costs, employer and public liability insurance, holiday pay, training, etc. This is called a 'Contingency Budget'.
- If using an Agency there is no need for a contingency fund as the agency is responsible for their own staff and relief staff, training, holidays, etc
- Mixed package of support. If you employ your own staff as well as agency staff you will need some money in your 'contingency budget' to pay for cover if your staff are on holiday, sick, etc. The Agency is responsible for covering their own staff's absences but not staff employed directly by yourself.

There is a lot of support available:

1. Becoming an employer:  
HM Revenue and Customs: New Employer Helpline  
Telephone: 08457 143 143  
Textphone: 0845 602 1380  
Web: [www.hmrc.gov.uk](http://www.hmrc.gov.uk)
2. Tax and National Insurance:  
PAYE advice: 08457 143 143
3. Free Help and Training from HM Revenue and Custom Customer Advice Team:  
Telephone: 0845 603 2691
4. Payroll Services, Advice and Support  
Disability Derbyshire Coalition for Inclusive Living:  
Telephone 01773 740246 or 01773 746651  
Minicom: 01773 748452  
Web: [www.dcil.org.uk](http://www.dcil.org.uk)  
E-mail: [payroll@dcil.org.uk](mailto:payroll@dcil.org.uk)  
  
Paypacket: Telephone 0800 848 8998  
Web: [www.paypacket.org.uk](http://www.paypacket.org.uk)  
Email: [info@paypacket.org.uk](mailto:info@paypacket.org.uk)
5. Employment advice and guidance  
Disability Derbyshire Coalition for Inclusive Living: Telephone 01773 740246 or 01773 742165  
Minicom: 01773 748452  
Web: [www.dcil.org.uk](http://www.dcil.org.uk)  
  
ACAS (Advisory, Conciliation and Arbitration Service)  
Telephone: 08457 47 47 47  
Minicom users - 08456 06 16 00  
Web: [www.acas.org.uk](http://www.acas.org.uk)  
E-mail: via ACAS web home page  
  
Directgov.uk Web: [www.directgov.uk](http://www.directgov.uk)  
There is wealth of information on this website.  
  
BERR (Department for Business Enterprise and Regularity And Reform)  
Enquires, telephone: 020 7215 5000  
Minicom: 020 7215 6740  
E-mail us: [enquiries@berr.gsi.gov.uk](mailto:enquiries@berr.gsi.gov.uk)  
Web page: [www.berr.gov.uk](http://www.berr.gov.uk)

### **Employer and Public Liability Insurance Policy**

If your Insurers have a 24 hour employment law helpline and, if you have taken out the FULL cover, you can seek employment advice from their 24 hour employment law helpline.

You will need to access this through the information on your policy.

These are three companies that we have sourced for your information. There may be others. It is your decision as to where you procure your Employer and Public Liability Insurance.

#### FISH Independent Living Insurance Policy

If you have taken out the FULL cover you can seek employment advice from their 24 hour employment law helpline.

You will to access this through the information on your policy.

FISH freephone: 0800 012 6329

Office telephone: 01772 724 442

Web: [www.fishinsurance.co.uk](http://www.fishinsurance.co.uk)

#### Direct Care Insurance

If you have taken out the FULL cover you can seek employment advice from their employment law helpline.

You will access this through the information on your policy.

Direct Care Insurance freephone: 0800 458 3301

Web: [www.directcareinsurance.co.uk](http://www.directcareinsurance.co.uk)

#### Premier Care Insurance

If you have taken out the FULL cover you can seek employment advice from their 24 hour employment law helpline.

You will access this through the information on your policy.

Tel: 01476 591104

Fax: 01476 591543

Web: [www.home-employment-insurance.info](http://www.home-employment-insurance.info)

**Note:** Please remember to follow your insurers' advice otherwise you may invalidate your insurance.

## **5. Health and Safety and Risk Assessments**

### **Health and Safety Executive**

Need help with a particular issue, contact one of their experts on:

Telephone: 0845 345 0055

Fax: 0845 408 9566

Minicom: 0845 408 9577

E-mail: [hse.infoline@connaught.plc.uk](mailto:hse.infoline@connaught.plc.uk)

Online through the Health and Safety webpage: [www.hse.gov.uk](http://www.hse.gov.uk)

## DIRECT PAYMENTS AND TRANSITION

Direct Payments are playing an increasingly important part in the provision of support for disabled young people. Many will already be receiving direct payments by the time the transition process begins at 16 years, either as part of a complex package of support or as the sole means of support. Once a young person is 16 years old there are additional responsibilities for the young person, their respective families, carers and professionals to consider in respect of direct payments. For some young people direct payments may present an ideal opportunity to begin to take some financial responsibility for the support they get as well as having more control over how the support can meet their particular needs. Once they reach 18 years and transfer to adult services their legal status changes and with it a whole new range of responsibilities.

If direct payments are used to provide a range of different types of support, e.g. personal care, social opportunities, etc there is still no reason why a young person cannot take control over part of the package initially. It does not have to be all or nothing.

### **Where to start?**

The starting point is the assessment if the young person has not already had one. This assessment should consider, not just direct payments as an option, but include the young person's ability to manage the direct payment with or without support. Should direct payments already be part of the young person's support package then the review, which is likely to take place around the young person's 16<sup>th</sup> birthday, is a good opportunity to discuss these issues.

### **What is involved?**

There are a number of considerations to determine whether a young person has the ability to manage their direct payment. No assumptions should be made and a young person does not have to tick every 'box', but they do have to have the ability to have control over some aspects of their own lives.

- . Ability to manage, what should workers and workers consider?
  - a. **Does the young person have a concept of money?** Are they able to link spending money with an end product, i.e. CD, going to the cinema, paying for food, that their mum or dad or teachers, for example, get money for going to work? We are not looking at complex financial matters, i.e. buying a house, etc. Most people need financial advice at some point in their lives. It is the degree of understanding that is being assessed.

- b. **Can the young person indicate their wishes and feelings?** This can be verbally, written, through facial expressions, behaviour, makaton, electronic/computer technology, i.e. 'voxbox', etc. The important thing is for a young person to be able to express an emotion to their carer. For example; a smile could indicate they are happy with the way they are showered, they trust their carer. Turning their head away or down could indicate they do not like or want something.
  
- c. **What is meant by 'with or without support'?** Basically does the young person need help to manage a direct payment or can they do it all by themselves? (There are some adult direct payment recipients, who run their care package like a business, but this is rare, most need support to one degree or another.) The degree of support will vary from individual to individual. It can be from variety of sources. For example; family members, friends, trusted acquaintance, neighbour, a trusted professional, an advocate or someone from a disability support organisation, etc. But not from someone who is also the personal assistant being paid through direct payments. More formally through a managed bank account, user controlled trust, etc. The fact that a young person cannot open a bank account, complete financial documentation, sign timesheets on their own should not automatically preclude them from direct payments. This can be done on their behalf. The important thing is for the young person to be able to decide how their needs are to be met.
  
- d. **What if there is a disagreement between the young person and their parents or main carers?** Providing the DCC worker is satisfied that the young person has sufficient understanding to make informed decisions then the young person's wishes and feelings are paramount.

There is no definitive answer as to whether a direct payment is right for a young person or not. It is up to those who know the young person best, in consultation with the young person, to determine what is in the young person's best interests. Furthermore, any decision made during the transition process is not finite. Decisions should be reviewed at least yearly in the normal manner or in response to a rethink by the young person or someone on their behalf or a change in the young person's circumstances.

## Moving from disabled children's services to adult services

Transition from disabled children's service to the appropriate adult care can be complex and the following protocol has been set up to try and ease the process.

- If the young person is 16 years old then the DCC worker needs to consult the relevant adult care team before agreeing to a direct payment.
- A transition referral, supported of course by prior discussion, should have already been made to adult care on or just after 16<sup>th</sup> birthday. Nevertheless there is flexibility around this protocol if the young person is already receiving services.
- If young person is 15 years when direct payment is agreed by disabled children allocation panel, then the worker can continue with setting up the direct payment even if the young person is 16 years during the process. However if the direct payments comes under the 'small direct payment package' criteria the worker will need to discuss this with their manager. The small package criteria do not apply in adult care. (see disabled children section of the handbook)
- If a young person is already 17 years then direct payments need to be agreed by adult services first. However the disabled children services DCC worker would then set up the direct payment as the young person is still under 18 years.
- The transition process usually begins at 14 years in Education (year 9). If complex health, education and social care needs may need multi-agency funding long term the transition process can begin at 14 years in health and social care services as well as in education.
- The aim is a smooth transition from children services to adult life. This is easier if there is a named DCC worker, as it enables links to be developed early. Gradually moving towards joint working before the Adult care DCC worker takes over responsibility. Otherwise the worker needs to follow this up through the appropriate Service Manager.
- There are possible changes to the young person's financial situation. The worker will need carry out the following before the young person is 16.
  - A benefits check - there are changes to benefit entitlement as the young person reaches 16 years, some of which need preparing for at 15 ½.
  - ILF (Independent Living Fund) – this needs following up before the young person reaches 16 years, as there is a 3 month window to apply for ILF at 16 years. The worker needs to check whether the young persons circumstances meet the ILF eligibility criteria. The ILF changed their criteria in April 2010.

Please note:

Adult Care has introduced Co-funding from April 2011. The Adult Care DCC worker will be able to advise and guide families through the procedures. Not all adult service users will be expected to contribute to their support. It depends whether their circumstances meet the Fairer Contribution criteria.

## GLOSSARY

**Advocate** – a person who acts on behalf of and in the interests of a service user/direct payment recipient who feels unable to represent themselves when dealing with professionals. An independent advocate has no vested interest in the service or legal system, solely represents the individual, and is not a relative, friend or professional, thus avoiding conflicts of interest. Self-advocates are trained and supported to represent their own views.

**Arbitration** – settlement of a dispute by an independent person/body appointed by both parties in the dispute.

**Assessment** – collection and interpretation of data to determine an individual's need for health, personal and social care and support services, undertaken in partnership with the individual, their representative/advocate and relevant professionals.

**Capable of managing a direct payment** – able (with or without support) to use a direct payment in a way that will meet the outcomes set out in the Direct Payment recipient's care plan.

**Capacity** – for the purposes of the Mental Capacity Act 2005, a person lacks capacity in relation to a matter if at the material time they are unable to make a decision for themselves in relation to the matter because of an impairment of, or a disturbance in the functioning of, the mind or brain. It does not matter whether the impairment or disturbance is permanent or temporary. A lack of capacity cannot be established merely by reference to a person's age or appearance or to a condition they may have, or an aspect of their behaviour that might lead others to make unjustified assumptions about their capacity.

In the context of the 'Guidance on direct payments, For community care, services for carers and children's services (England 2009)' the decision in question is the decision whether to consent to the making of direct payments.

Certain principles apply under the 2005 Act. These are that:

- a person must be assumed to have capacity unless it is established that they lack capacity
- a person is not to be treated as unable to make a decision unless all practicable steps to help them to do so have been taken without success and
- a person is not to be treated as unable to make a decision merely because they make an unwise decision.

**Close relative** – someone related to the direct payment beneficiary in one of the following ways: parent, parent-in-law, aunt, uncle, grandparent,

son, daughter, son-in-law, daughter-in-law, step son or daughter, brother or sister.

**Consent** – the legal agreement to a choice or action (i.e. to take on a direct payment) freely made by an individual without coercion, and with acceptance of the responsibilities associated with that choice or action. In a legal context, the individual must be ‘mentally capable’ of giving consent before it is valid.

**Control** – having autonomy and power over your own life and what happens to you, regardless of how much support you need to put your choices into action. Having self-determination.

**Decision making** – the process of making choices that lead to decisions and action. The word ‘decision’ is also used in legal contexts. Some people require support (e.g. communication support or advocacy) to consider and make decisions.

**Mixed package** – a direct payment plus a directly provided social care service.

**Nominee** – Someone nominated by the direct payment recipient to take responsibility for the day-to-day management of the money and the care plan on behalf of the direct payment recipient.

- Over the age of 16 years
- Willing and able to manage direct payments on behalf of the direct payment recipient
- The parent/relative/friend of the direct payment recipient
- A person assessed by Adult Care as entitled to receive services as a carer

A nominee or representative cannot be an employee of the direct payment recipient.

**Parental responsibility** – in the Children Act ‘parental responsibility’ means all the rights, duties, powers, responsibilities and authority of parents in relation to the child and their property. People other than parents, for example grandparents or guardians, can have parental responsibility for a child.

**Personal budget** – the amount of money that a local authority agrees needs to be spent to meet an individual’s needs. A direct payment is one way in which the individual can choose to take that money in order to meet their needs, but personal budgets do not have to involve a cash exchange with the service user. Personal budget holders can still choose to receive services provided by their council. Alternatively, the budget can be held by a third party acting on behalf of the service user – such as an individual carer, provider, trust or specialist broker. However the personal budget is deployed, the same principles remain:

- The individual has been informed about a clear, upfront allocation of funding.
- There is an agreed care plan making clear what outcomes are to be achieved with that money.
- The individual can use the money in ways and at times of their choosing.

**Power of attorney** – authority given by one person to another to act on their behalf. The Mental Capacity Act 2005 replaced enduring powers of attorney (EPAs) with lasting powers of attorney (LPAs) from 1 October 2007. As of this date it is no longer possible to create a new EPA. Existing but unregistered EPAs can continue to be registered after 1 October 2007. LPAs were introduced by the Mental Capacity Act 2005 from 1 October 2007. They allow individuals to appoint an attorney to make decisions about their property and financial affairs (or specified property and affairs) and/or to make decisions about their personal welfare (or specified matters concerning their personal welfare). Such attorneys may continue to make these decisions when the person who appointed them lacks the capacity to make these decisions themselves.

**Regulated Activity** – an activity which involves direct contact with children or vulnerable adults. This includes activities which occur frequently (once a month or more) or intensively (3 or more days in a 30 day period), i.e. day sessions, personal care, overnight support, etc.

**Representative** - a person who manages the affairs of another. Someone can be made a representative in one of two ways:

- If the person has been given lasting power of attorney by the person needing services at some point before they lost mental capacity;

Or

- If the person has been appointed a deputy for the person needing services by the Court of Protection under section 16 of the Mental Capacity Act 2005.

**Resource Allocation System** - a system by which resources are allocated to service users and carer with eligible needs.

**Self-directed support** – an overarching term that encompasses a variety of tools to give disabled and older people greater levels of control over how their support needs are met, including personal budgets and direct payments.

**Suitable person** – needs to qualify as a representative (see **representative** above). However a representative does not have to agree to be a suitable person. A suitable person could be a close family member or a friend involved in the provision of care.

**Support brokerage** - is a service that helps you to shop around and arrange a good value package of support services that will help you to continue to live as independently as possible.

**User-controlled trust** – a legal arrangement whereby a third party/agent helps the direct payment recipient to manage the direct payments, for example by receiving and handling the money. The user's choices and preferences direct the decision-making and, where the user has the capacity to consent to direct payments, the user retains control of and is accountable for the arrangements

Please note: The glossary terms cover Children's Services and Adult Care. Some terms may not be applicable to your disabled child's individual circumstances. If you are unsure talk to your DCC worker or you can contact the Direct Payment Social Workers on 01629 532023 or by e-mail: [directpayments@derbyshire.gov.uk](mailto:directpayments@derbyshire.gov.uk)

## **Intentional Blank sheet**



Derbyshire County Council  
Direct Payments Handbook  
For Disabled Children and Young People

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