

Information about the Direct Payments Scheme in Carmarthenshire

Fact Sheet 5

October 2024

This fact sheet tells you about the Direct Payments Scheme. It explains what Direct Payments are, who is eligible for the scheme, how to use it and what support is available.

What are Direct Payments?	2
Who can receive Direct Payments?	2
What can I use the Direct Payment for?	2
What are the benefits?	3
What would my responsibilities be?	3
Will I need to keep records?	3
How much money will I get?	3
Will I have to pay anything?	4
Will Direct Payments affect my benefits?	4
What do I have to do to get Direct Payments?	4
Direct Payments and Additional Costs	4
Who am I employing?	5
Self-employed personal assistants	6
Redundancy	9
Self-employed personal assistants	9
Employed Personal Assistants.....	9
If you would like to find out more about Direct Payments:	10



What are Direct Payments?

A Direct Payment is a payment that can be made to people who are eligible to receive community care services from Social Services, and who would prefer to arrange their own services.

Direct Payments make it possible for you to buy the services that you have been assessed as needing, in a way that gives you greater choice and control. Direct Payments also allows for another suitable person to act on your behalf if needed. A suitable person would be needed if the person with care and support needs lacked the mental capacity to manage a direct payment, even with support.

You can decide how your needs will be met, by whom and at a time that suits you. You will have a wider choice of services as well as real control over your life – you will be managing your own care package. Direct payments help give people the opportunity to live as independently as possible.

Where this factsheet refers to the person needing care, it may refer also to another suitable person who may act on behalf of the individual requiring care.

Who can receive Direct Payments?

Direct Payments can be offered to people who are eligible to receive Social Care Services.

People who are eligible include those people who have been assessed by the local authority as having eligible care and support needs, or in case of carers having support needs.

What can I use the Direct Payment for?

Direct Payments can only be spent on services to meet the needs described in your assessment and detailed in your care and support plan, or in the case of carers, their support plan.

You can use your Direct Payments to buy community care services such as:

- To help with personal care such as washing, dressing and eating meals
- Practical help and support with activities
- Respite care

You cannot normally use Direct Payments for health or housing services.

What are the benefits?

- You can choose how your needs will be met
- You can choose who provides the services
- You can receive services at a time that suits you
- You will receive help and support to manage the scheme

What would my responsibilities be?

You will be responsible for managing the way that your Direct Payments are spent in accordance with a contract which you would agree with us. If you employ a Personal Assistant directly, you will have the responsibilities of an employer. If you employ a personal assistant, we will expect that this person has a valid disclosure and barring certificate before they commence employment.

You may employ anyone as long as they promote your well-being.

Will I need to keep records?

Yes, the money you receive as a Direct Payment is for services to meet your social care needs. It remains public money, you must spend it on services to meet your care needs. When your direct payments start you will be told what records to keep and what information you will be expected to provide.

If you are worried that you might not be able to manage Direct Payments on your own you can get help. An adviser from the Direct Payments support service can offer you advice and support with this and assist you with recruitment and managing staff. The support service is provided by Carmarthenshire County Council.

How much money will I get?

This depends on an assessment of how much and what type of assistance you need. Your Care and Support Plan will state the number of hours per week you need and how much this will cost.

Will I have to pay anything?

You may be asked to make a contribution towards the cost of your care. This will be the same whether the services are arranged for you by us or whether you choose Direct Payments.

You will be entitled to have a financial assessment (means test) and the results of this will determine how much you will be asked to contribute.

Will Direct Payments affect my benefits?

No, Direct Payments do not affect your benefits at all and they are not classed as income for tax purposes.

What do I have to do to get Direct Payments?

The first step is to contact us for an assessment of your care and support needs.

A **Social Work staff member** will talk to you about your situation and the help that you require. This is called an assessment. Once you have been assessed as having social care needs, a Care and Support Plan will be arranged and your social worker will discuss the option of Direct Payments.

We provide a support scheme to help people to manage their Direct Payments if required. If you decide you would like to receive Direct Payments and support with this, an Adviser will visit you to discuss the Scheme.

Direct Payments and Additional Costs

If you decide you would like a direct payment, then Carmarthenshire County Council will ensure that that direct payment is sufficient to meet your assessed and eligible care and support needs.

However, you may want to purchase a more expensive piece of equipment, a more expensive care provider, or pay your employee a higher wage than Carmarthenshire County Council would pay to meet your needs.

If you want to pay for a more expensive version of something you are assessed as needing within your care and support plan, then you will be expected to pay the difference between the amount which the Council would pay and that which you want to pay.

If you do decide to employ a personal assistant to meet your identified eligible care and support needs, and you must ensure that you do not pay your personal assistant all the direct payment monies we give to you. This is because part of the direct payment monies must be kept back for other things like training, pension costs, tax etc. We can advise you on what amount of money you should expect to pay your personal assistant.

In addition, if you do decide to employ a personal assistant, we would advise you not to prevent your personal assistant from their legal entitlements such as annual leave.

Who am I employing?

Some people will use their direct payments to obtain help from another person (called a personal assistant) to meet their care and support needs. Usually, the person who receives the direct payment (or a suitable person) will enter into an employment contract with the personal assistant, and the personal assistant will therefore be employed for this purpose. Sometimes it will be unclear whether the personal assistant is employed or whether they are self-employed. For more information on what to do if you think the personal assistant is self-employed, please see below.

If you are thinking about having a direct payment and are unsure of the employment status of the person you would like to meet your care and support needs Carmarthenshire County Council's Direct Payment Advisors can help you with the steps that need to be taken to work this out.

In addition to establishing whether your personal assistant is employed or self-employed, it is important to be aware that unlike most domiciliary care organisations, personal assistants are not normally regulated by Care Inspectorate Wales (CIW). The reason for this is that if the person

or organisation does not provide care to more than 4 people then they do not need to be registered with CIW. In addition, if as a direct payment recipient your personal assistant provides you with personal care, then provided that your personal assistant works wholly under your direction and control (or your suitable person) i.e. you decide how the care is provided, where it is provided and when it is provided etc. then they also will not need to register with CIW.

Self-employed personal assistants

We do not recommend that you use a self-employed Personal Assistant (PA) as Her Majesty's Revenue and Customs (HMRC) have advised they would consider almost all personal assistants who provide care and support to be registered as employed rather than self-employed for tax purposes.

In view of this it is essential that you clarify the employment status of your worker before they begin working for you. The quickest way of getting HMRC's view on whether your personal assistant is employed or self-employed is to use the [Check Employment Status for Tax \(CEST\)](#) tool. You will need to take a note of the unique reference number provided, plus retain a copy of the questions and the answers you provided.

If you are unable to use the CEST tool, or are unsure of your worker's employment status, you can telephone the HMRC Status Customer Service Team on 0300 123 2326 from 8.30am to 4.30pm, Monday to Friday, except bank holidays. Please also see [Employment status - GOV.UK \(www.gov.uk\)](#)

If you decide to use a self-employed worker, the local authority must see a copy of the following:

- confirmation from HMRC that they are registered as self-employed to work as a personal assistant, including UTR number on HMRC headed paper referred to below. Self-employment status for other job roles will not be valid.
- a copy of the self-employed personal assistant's public liability insurance, which they must provide. You should not pay for the

insurance of someone who is self-employed. You are advised to check that your self-employed assistant(s) renews this each year.

- a copy of the contract agreeing the terms and conditions of the support provided, prices charged/cost of service, which would be mutually agreed by you, including when and where to undertake the work.
- The outcome of the self-employed status check through HMRC referred to above.

The fact that the local authority asks for this information in no way removes your responsibility to determine the employment status of your personal assistant.

This information must be provided before the personal assistant can be paid from your direct payment.

Please note that you are responsible for correctly deciding whether a Personal Assistant is employed or self-employed. **If HMRC decides that you are the employer (even when the worker has registered with HMRC as self-employed) you will be liable to pay the backdated tax, national insurance, and employer's national insurance. It is therefore essential that the personal assistant gives you the relevant documentation for their role as your personal assistant.**

We have set out below the differences in your responsibilities where someone is an employed personal assistant and a self-employed personal assistant? If you directly employ a personal assistant, you will be responsible for:

- The personal assistant's employment terms and conditions, including payment of wages, arranging tax, national insurance (if applicable) and holiday cover
- Providing your personal assistant with a contract of employment
- Arranging your own insurance cover for Employers liability and public liability insurance
- Paying a regular wage to the personal assistant
- Deciding and directing where, when, and how the personal assistant provides the service

- Making your own alternative arrangements for support when your personal assistant is not available
- Providing the equipment and materials for the personal assistant, where necessary

If you engage a self-employed personal assistant, they will be responsible for:

- Providing you with a Unique Tax Reference number (UTR) issued by HMRC on HMRC headed paper stating they are self-employed
- Arranging their own insurance cover to guard against public liability insurance and where needed employer's liability insurance
- Providing a contract agreeing the terms and conditions of the support provided, prices charged/cost of service, which would be mutually agreed by you, including when and where to undertake the work.
- Providing you with invoices quoting their HMRC registration number to request payment from you for the specific service(s) they have undertaken. We would advise you ask the personal assistant to sign the invoice to say you have paid them or obtain a receipt for any payments you make. We advise you do not pay the full hourly rate of Direct Payment you received from Carmarthenshire County Council as you may still need to budget for other unforeseen costs such as contingency arrangements if your personal assistant is absent. If you have more than one personal assistant, they will need to invoice and be paid separately.
- A self-employed person can choose when they work for you. You must decide if this will be suitable for you. Self-employed workers are not entitled to paid annual leave.
- Arranging their own tax, national insurance, and their general accounts
- Providing their own equipment (unless agreed otherwise in contract agreement)
- Providing other workers to support you if they are unable to provide the service themselves.

In relation to the above we will expect you as part of your direct payment contract with us to be satisfied that any genuine self-employed personal assistants have made all of the above arrangements.

If you are unsure about the employment status of your personal assistant, please contact us. However, please be aware that it is your responsibility to verify this through the methods described above.

Whilst it might appear from the above that arranging a self-employed personal assistant to meet your needs may result in less responsibilities on you, we would emphasize that we can support you with your responsibilities as an employer, and claiming someone is a self-employed personal assistant does not mean they are, and the HMRC may still consider they are your employee, and may pursue you for any backdated tax and insurance etc.. So, we would discourage you from using self-employed personal assistants.

In relation to genuine self-employed personal assistants, we will only process payment for their work upon receipt of their invoice after a service has been provided.

Redundancy

It is not the purpose of this factsheet to address all potential employment issues that could arise from using a direct payment to employ a personal assistant. However, there is a specific issue in relation to redundancy which this factsheet wishes to address.

Self-employed personal assistants

If you are using a self-employed personal assistant, then the issue of redundancy should not arise unless for example an Employment tribunal determines that in fact your personal assistant is employed.

Employed Personal Assistants

Where a direct payment is being used to employ a personal assistant (i.e. non-self-employed personal assistants), the local authority expects the employer (either the person who has care and support needs or their suitable person) to obtain employment liability insurance (ELI). If it is necessary to make the personal assistant redundant then it is expected

that any redundancy payment will be made via that ELI. If the ELI is not sufficient to cover any redundancy payment, then the employer will be expected to seek the permission of the local authority to use any surplus direct payment monies towards that payment. It is only when the ELI and any surplus direct payment is insufficient to cover the redundancy payment, that the local authority will on a case-by-case basis consider whether to exercise its discretion and make a further direct payment to cover any shortfall.

If you would like to find out more about Direct Payments:

Contact your Social Worker if you have one or if you would like to receive an assessment of your care needs you can contact the Information and Advice and Assistance Service by:

- phone: 0300 333 2222 or
- minicom on:01554 756741
- SMS: 0789 2345678
- making a referral through our website:

www.carmarthenshire.gov.uk/Socialcare

**This factsheet is also available in Welsh.
If you would like this factsheet in any other format
telephone 01267 228703
or
email: socialcare@carmarthenshire.gov.uk**



For more information on social care services log onto:
www.carmarthenshire.gov.wales/socialcare