



Direct Payments Support Services

Suitable Person Guidance

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For the purpose of this guidance, the individual is the person eligible for support from Knowsley Council, the recipient is the person nominated as a 'suitable person' who agrees to manage the Direct Payments on behalf of the individual. Where the individual has capacity and is willing to manage the Direct Payments he/she will also be the recipient.

Purpose

This guidance describes the Council's requirements and the process involved in relation to appointing a 'suitable person' to receive Direct Payments on behalf of an individual.

Introduction

The Health and Social Care Act 2008 made amendments to the Health and Social Care Act 2001 to extend the opportunity of Direct Payments to adults who lack the capacity to consent to receive them, where it is in their best interests, enabling them to benefit from the flexibilities that Direct Payments offer.

Direct Payments can now be made to a 'suitable person' who receives and manages the payments on behalf of the individual who lacks capacity or who has capacity to consent to Direct Payments but is unwilling or unable to manage payments. This local guidance is based on the Department of Health's Guidance on Direct Payments 2009.

Policy

Knowsley Council will provide Direct Payments to individuals and their carers to enable them to gain independence, flexibility and choice and control regarding how they meet their assessed eligible needs. There is a local and national expectation that Direct Payments will become the usual way of meeting the individual's outcomes and needs. If an individual lacks capacity to receive a Direct Payment then every effort should be made to appoint a recipient who is a 'suitable person' to receive the Direct Payments on their behalf. A 'suitable person' may also be appointed if the individual has capacity to consent to Direct Payments but is unwilling or unable to manage payments.

This guidance should be read in conjunction with the Direct Payment policy and other relevant policies and guidance.

Consent

It must be established whether or not an individual has the capacity to consent to direct payments under the Mental Capacity Act 2005. Capacity is assessed on an individual basis and should be assessed as specific to the decision to be made. The 'decision in question' in the Mental Capacity Assessment should therefore be 'does the individual have the capacity to consent to receive Direct Payments?'

All practical steps should be taken to assist the individual to reach a decision for themselves.

Assessing capacity to make a decision

The following questions should be considered when assessing capacity to make a decision:

- Does the person have a specific understanding of what decision they need to make and why they need to make it?
- Does the person have a specific understanding of the likely consequences of making, or not making this decision?
- Is the person able to understand, retain, use and weigh up the information relevant to this decision?
- Can the person communicate their decision (by talking, sign language or any other means)? Would the services of a professional (such as a speech and language therapist) be helpful?

For further details see the Code of Practice issued under the Mental Capacity Act 2005 at www.dca.gov.uk/legal-policy/mental-capacity/mca-cp.pdf

The individual has capacity to consent to Direct Payments but unable or unwilling to manage payments.

If it is determined that an individual has the capacity to consent to Direct Payments but not to manage them then the individual can choose to nominate

a 'suitable person' to manage the Direct Payments on their behalf. Legislation states 'The payment may be made to a third party as agent for the user and detailed management of finances may be delegated to an agent, but the person for whom the Direct Payments are made must have control over how support is delivered to meet their assessed need'.

There is no limit to the amount of support an individual may require to manage their direct payment, so long as control over how the support is arranged remains with the individual.

The 'suitable person' must agree to manage the Direct Payments, keeping the individual at the centre of the support, Knowsley Council must satisfy itself that the relationship between the individual and the 'suitable person' will honour the spirit of independent living before Direct Payments begins. The 'suitable person' then becomes the Direct Payment Recipient. If Personal Assistants are employed using Direct Payments, the 'suitable person' then becomes the legal employer.

The individual does not have capacity to consent to receiving Direct Payments.

If an individual has been assessed as lacking the capacity to consent to Direct Payments there may be a 'suitable person' who can receive Direct Payments to purchase support on behalf of the individual. However, the following points need to be considered:

- Can the needs of the person who lacks capacity be met by Direct Payments?
- Will the 'suitable person' act in the best interests (as defined in The Mental Capacity Act 2005 code of practice of the person who lacks capacity)?
- Does the 'suitable person' appear to be able to manage a Direct Payment?

Once lack of capacity has been established, it is important to follow 'best interests' guidance in the Knowsley Mental Capacity Act Guidance/policy to

determine the best way to meet the person's needs and outcomes and whether Direct Payments are appropriate.

Who can act as a Suitable Person?

The Direct Payments Regulations are clear on the process for establishing a 'suitable person'.

The order of priority for identifying a Suitable Person is:

- **Surrogate**: a Court appointed Deputy (Property & Affairs) under the 2005 Mental Capacity Act or a donee of a Lasting Power of Attorney, under S9 of the 2005 Act, whose powers consist of or include powers relating to decisions about securing provision of Community Care Services within the meaning of S46 of the 1990 Act.
- **Representative**: a Court appointed deputy under the 2005 Act or a donee of a Lasting Power of Attorney, under S9 of the 2005 Act but without powers relating to decisions about securing provision of Community Care Services within the meaning of S46 of the 1990 Act.
- **Suitable Other**: A person who is not a representative but that the surrogate (if there is one) and the Local Authority consider to be a Suitable Person.

Someone cannot just decide to be a 'suitable person' in order to receive Direct Payments on behalf of the individual. In most cases, the 'suitable person' will be a family member or a close friend already involved in the provision of care for the individual concerned. However, whatever the relationship of the proposed 'suitable person' to the individual, the Council must still follow this process to ensure that the 'best interests' of the individual lacking capacity are prioritised and will give consideration to an enhanced DBS check being undertaken. The Suitable Person should receive appropriate information and support to enable them to receive and manage Direct Payments and the support plan. They should be referred to the Direct Payment Support Service. They should also be provided with information about how to act in the best interests of the service user and what this means in practice. The Office of the Public Guardian have published a useful guide entitled 'Making Decisions - A Guide for Family and Friends'.

A Suitable Person may not under any circumstance receive Direct Payments in order to pay themselves for providing care.

Consultation

In all cases, whether or not there is a surrogate to assist the Council in its decision, and whether or not the proposed 'suitable person' is a representative, the council should, so far as is reasonably practicable and appropriate, consult and take into account the views of the following people before making the decision to appoint a 'suitable person':

- Anyone who has been named by the individual before they lost capacity as someone to be consulted, either on the subject of Direct Payments to the 'suitable person', or related issues such as matters regarding their personal welfare.
- Anyone currently engaged in caring for the individual lacking capacity to consent, or anyone with an interest in their personal welfare.
- As far as is practicably possible, the individual who lacks capacity themselves. Any representative or surrogate of the individual lacking capacity. Generally speaking, an attorney or a deputy should always be consulted, even if they are not going to take on the role of 'suitable person'.

When trying to determine a person's best interests, KMBC should act lawfully at all times, following professional guidance, as well as other relevant guidance concerning confidentiality

Appointing a Suitable Person

KMBC must first ensure that they have:

- Completed a Mental Capacity Assessment to establish that the person does not have capacity to consent to receive Direct Payments.
- Identified who can act as a 'suitable person', referring to this guidance.
- Taken into consideration opposing viewpoints of those consulted.
- Established the relationship of the 'suitable person' and considered undertaking a CRB check.

- Considered if the 'suitable person' will act in the individuals' best interests
- Considered the 'suitable person's' ability to manage the Direct Payments and what information or support they may need.
- Check if there have been any previous safeguarding alerts made in respect of financial impropriety/fraud of the person concerned

What are the responsibilities of the Suitable Person?

1. To arrange services to deliver the outcomes as defined in the individuals Support Plan ensuring the best interest of the individual is at the centre of the support.
2. To accept responsibility to appropriately manage the Direct Payments as agreed and outlined in the Direct Payment Agreement.
3. To undertake the role of employer and its responsibilities if personal assistants are employed.
4. To provide appropriate information to allow the direct payments team to carry out audits at intervals as required under the terms of the scheme.
5. To carry out CRB checks on any personal assistants they employ.
6. To seek independent legal advice, if they wish.

It must be confirmed that the Recipient understands and agrees to the responsibilities and potential consequences of becoming a 'suitable person'.