

Direct Payment Fact Sheet

Direct Payments & Mental Health Legislation

This information sheet highlights some of the key elements in legislation and national guidance relating to Direct Payments for people receiving mental health services and their Carers.

In short, there is a duty at assessment and review where an individual has assessed needs and a written care plan for an offer of Direct Payments to be made to the individual. A conversation is required to explore how Direct Payments may assist in meeting needs identified in the care plan.

Direct payments are monetary payments made to individuals who request to receive one to meet some or all of their eligible care and support needs. The legislative context for direct payments is set out in the Care Act, Section 117(2C) of the Mental Health Act 1983 (the 1983 Act) and the *Care and Support (Direct Payments) Regulations 2014*.

This guidance supersedes the 2009 guidance on direct payments, and reflects the new legislative framework.

Direct payments have been in use in adult care and support since the mid-1990s and they remain the Government's preferred mechanism for personalised care and support. They provide independence, choice and control by enabling people to commission their own care and support in order to meet their eligible needs.

Direct payments, along with personal budgets and personalised care planning, mandated for the first time in the Care Act, provide the platform with which to deliver a modern care and support system. People should be encouraged to take ownership of their care planning, and be free to choose how their needs are met, whether through local authority or third-party provision, by direct payments, or a combination of the three approaches.

For Direct Payments to have the processes involved in administering and monitoring the payment should incorporate the minimal elements to allow the local authority to fulfil its statutory responsibilities. These processes must not restrict choice or stifle innovation, and must not place undue burdens on people to provide information to the local authority.

The Care Act 2014 confirms personal budgets in law for people with eligible assessed needs and carers, including the right to direct payment. Care and Support (Direct Payments) Regulations 2014.

People assessed as having eligible needs should not be put off accepting direct payments by a lack of adequate information about how their needs can be met. Putting practical arrangements in place for self-directed support may take longer in some cases, but whether someone opts for direct payments or council-provided services, there should be no significant difference in the ease of the process.

The Health and Social Care Act 2008 amended the Health and Social Care Act 2001 to extend the scope of direct payments to include adults lacking capacity to consent to their receipt. A number of exclusions previously placed upon individuals subject to mental health legislation and to provisions of criminal justice legislation relating to mental disorder have also been lifted.

It is expected that, in most cases, people subject to mental health legislation will now enjoy exactly the same rights to direct payments as anyone else. However, in a few cases, councils will have a power (but not a duty) to make direct payments to such people.

Under the Regulations, councils now have a power (although not a duty) to make direct payments to people ('restricted patients') who are conditionally discharged under the 1983 Act (or the equivalent Scottish legislation). By definition, conditionally discharged restricted patients are offenders who have been detained in hospital under the 1983 Act (or the equivalent Scottish legislation) and who remain liable to recall to hospital if necessary for their own health and safety or the protection of others.

For example, if it is a condition of a person's community treatment order under the Mental Health Act 1983 that they accept a particular type of Community care service, then the council would have a power, but not a duty, to make direct payments in respect of that service (provided, of course, all the other criteria for making direct payments is met)

Where councils decide that it is not appropriate to make direct payments, they should put the reasons for the decision in writing, and make a written record available to the individual. They should also inform the individual about how to access complaints procedures if they are not satisfied with the decision of the council.

Remember, if you are unsure, have any queries or need additional support; please contact the Direct Payments Team here at KDC.

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