



## **Additional Guidance for Authorised Person**

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Authorised Person – the term used for someone who is responsible for the management of the Direct Payment on behalf of a person who does not have the mental capacity to make a decision regarding their care and support needs.

This factsheet should be read in conjunction with the Direct Payment Holders Guidance.

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### **1) Introduction**

If someone has eligible care and support needs which are to be met by the council, the Council will allocate a sum of money to pay for their care and support. This is called a Personal Budget, and an individual can choose to take this as a Direct Payment.

If an individual does not have the mental capacity to decide to have a Direct Payment, an Authorised Person can be appointed to do so on their behalf.

As an Authorised Person you will need to sign a Direct Payment Agreement with the Council which states the roles and responsibilities of all parties. As the Authorised Person you will be legally responsible for the Direct Payment, and the Direct Payment card will be issued in your name. There may also be additional legal responsibilities when managing the Direct Payment for example, employing staff.



## 2) General Principles

Under the Mental Capacity Act, 2005 you must, as the Authorised Person, always act in the 'Best Interests' of the individual. Full guidance on what this means in practice is available in the Code of Practice for the Mental Capacity Act 2005 which is available on the following link:

<http://www.justice.gov.uk/downloads/protecting-the-vulnerable/mca/mca-code-practice-0509.pdf>.

If you do not have internet access you can ask the Council for a copy.

When acting as an Authorised Person where practicable it is advisable to consult others when making decisions, including anyone previously named by the individual as someone to be consulted, anyone engaged in caring for them, family members, close relatives, friends or others who take an interest in their welfare, any attorney appointed under a Lasting Power of Attorney made by the individual and any deputy appointed by the Court of Protection to make decisions for the individual.

## 3) Mismanagement or misuse of a Direct Payment by an Authorised Person

The Direct Payment money must only be used to pay for the care and support needs agreed in the individuals Support Plan. You are responsible for how the Direct Payment is used.

If you do not adhere to the Direct Payment Guidance and you have signed the Direct Payment Agreement, the Council may act against you, which may include requiring you to refund to the Council from your own resources, any Direct Payments monies which you have misused.

Any financial mismanagement or misuse is a serious matter and will be viewed as such by the Council. The Council will investigate any potential mismanagement or misuse of a Direct Payment by an Authorised Person and if proven it could constitute a criminal offence and/or ill-treatment and neglect.

The Council may seek to involve the appropriate authorities if, following its investigations it suspects that fraud, neglect or abuse has occurred.



## 4) Changes in circumstances

In addition to the general duty to tell the Council of any changes in circumstances that may affect the Direct Payments arrangements, you must tell the Council if the individual's mental capacity improves and you think that it might be possible for them to manage their own Direct Payment, whether on their own, or with support.

## 5) Service User's Financial Contributions

If the individual is required by the Council to make a financial contribution towards the cost of their support, the amount of any contribution is deducted from their Direct Payment.

As the Authorised Person it will be your responsibility to ensure that the required contribution is paid onto the Direct Payment Card, or in exceptional circumstances where a card is not issued, into the Designated Bank account on their behalf. The contribution should be paid on a weekly basis into the Direct Payment account, or alternatively you can pay in the total of four weekly contributions every four weeks. The simplest way is to set up a standing order at the bank where the individual's money is held.

However, if you do not have legal control over their finances and cannot ensure that these financial contributions are made, you must let the Council know as soon as possible so that alternative arrangements can be made as necessary.

You must also inform the Council of any changes to the individuals' financial circumstances as soon as you become aware of them.

## 6) Special rules about the Disclosure and Barring Service (DBS) checks for some Authorised People

Unless you are:

- The individual's spouse, civil partner, partner, close relative (or spouse or partner of a close relative), or
- A friend of the individual who was involved in the provision of their care before you became their Authorised Person,

Then special rules apply to you about the Disclosure and Barring Service (DBS) Checks. The

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special rules are:

- The Council must obtain a DBS check for you as the Authorised Person, And
- You, as the Authorised Person must obtain a DBS check for any person / people you engage or employ to provide services to the individual.

Note: 'a friend involved in the provision of care' is not at present defined in either the Regulations or the Guidance issued by the Department of Health. If there is any doubt about the closeness of the relationship, or whether you are required to obtain DBS checks, you should be cautious and ensure that you obtain them.

## **7) Who to contact if you need more information or need assistance.**

If you are unsure about anything, need more explanation or need to update the Council about your circumstances please talk to your allocated worker or contact the Customer Service Centre on 0116 305 0004

If you have a crisis which occurs outside of normal office hours the Out of Hours Team can be contacted on 0116 305 0888