

**A HELPFUL GUIDE TO SELF DIRECTED SUPPORT IN EAST LOTHIAN FOR ALL PEOPLE WHO CHOOSE OPTION 1: A DIRECT PAYMENT**

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# Introduction

Self-directed Support offers people greater choice and control over how they receive their social care and support. It promotes flexibility and care and support solutions that are unique to the person.

East Lothian Health and Social Care Partnership work in a person-centred way, involving carers, family and all relevant and important people, where appropriate, to ensure that this is reflected in the assessment and care planning processes. If it is confirmed in the Self-Direct Support Assessment - known as the ‘All About Me, What I Need Assessment’ or ‘Section 23’ Children’s Wellbeing Assessment - that a person has assessed social care and support needs, a set of outcomes are agreed. Many outcomes can be achieved without the need for additional resources. They can be achieved through accessing resources that are already available within families and communities and/or through interventions offered by professionals. In all cases, it is important to work collaboratively in the support planning process to identify and access flexible solutions that assist people to meet the outcomes that have been agreed.

Where additional resources are required, East Lothian Health and Social Care Partnership has a duty under the Social Care (Self-directed Support) (Scotland) Act 2013 to offer people four options as to how they may choose to access their social care and support. This legislation gives people choice, control and flexibility over how they receive their care and support. A Social Work Assessor will assist in helping to make choices about individual outcomes, social care and support. Every person who has been assessed as being eligible for social care and support is able to choose from four options:

* **Option 1 - Direct Payment** - A personal budget is paid directly to the person, or someone on their behalf, so they themselves can purchase support or services. A Direct Payment offers service users the flexibility to arrange their care and support tailored to their specific needs.
* **Option 2** - The person can choose to direct and purchase care and support from a provider of their choice (currently contracted under Option 2 with East Lothian Health and Social Care Partnership) and invoices are paid by East Lothian Health And Social Care Partnership. The service user and provider work together to deliver the individual outcomes within the identified personal budget.
* **Option 3 - Traditional Service** - East Lothian Health and Social Care Partnership arranges any services or support on behalf of the supported individual.
* **Option 4** - A mix of options 1, 2 and/or 3.

If a Direct Payment or Option 2 Personal Budget is chosen, the budget is used to meet the outcomes that have been agreed. There is a requirement to evidence that the budget has been spent in accordance with the outcomes that have been agreed in the support plan.

**This guide is relevant for anyone who is considering Option 1 - a Direct Payment –** where the following are in place:

* a completed assessment of care and support needs
* a set of agreed outcomes
* a budget agreed, to be used to meet the outcomes which have been agreed.

This guide provides essential information about Direct Payments and describes how:

* each Direct Payment is specific to the individual person
* the Direct Payment can be used
* an Agreement between the person and East Lothian Health and Social Care Partnership forms the basis of all Direct Payments
* the money that is spent is monitored and accounted for.

# What can direct payments be spent on?

A Direct Payment can be chosen by a person or their parent/carer/representative (referred to as the Responsible Person), who has been assessed as eligible for social care support to assist them to of money that can be spent on social care, support or other activity that assists the person to achieve the agreed outcomes.

People are sometimes unsure how they can spend their Direct Payment. Questions regarding approved/authorised spending should be put to the Social Work Assessor and/or team responsible for the assessment and support plan.

# Employing paid carers or personal assistants

Some people choose to use their Direct Payment to employ one or more paid carers. This can be helpful in terms of having choice, control and flexibility, and in ensuring that care and support is provided consistently by carers who are familiar to the individual and the family.

Employing a Personal Assistant means that the employer has responsibility for:

* establishing a contract of employment between themselves and Personal Assistant
* paying the carer the Scottish living wage
* the payment of all tax and national insurance
* making provision for an occupational pension
* having statutory insurance (indemnity and public liability insurance)
* making sure that the Personal Assistant has undertaken appropriate training
* it is strongly recommended that the Personal Assistant has an up to date PVG certificate from Disclosure Scotland.

East Lothian Health and Social Care Partnership award start-up funding to recipients of Direct Payments who wish to employ their own carers/Personal Assistants. This is usually agreed at the time of setting up the Direct Payment. This funding may be used to offset the costs of:

* insurance
* accessing training for staff/PAs.

The Direct Payment includes sufficient funding to ensure that any Personal Assistant who is employed is able to undertake their role safely and competently. It is the responsibility of the employer to ensure that that the Personal Assistant completes training that is relevant to their role. This may include Moving and Handling, for example. Agreement will be required for additional funding to secure any additional training that is specific to needs of the person in receipt of care and support. It should be noted that East Lothian Health and Social Care Partnership does not fund Personal Assistants to complete SVQs.

# Further help and support

Some people may be put off by the idea of becoming an employer. However there is a lot of practical help and advice that is available locally and nationally to people who are thinking about this option.

East Lothian Health and Social Care Partnership contract with several local organisations who offer support to Direct Payment employers. We are not able to recommend specific organisations.

Should a person require support with the management of a Direct Payment, it is for the person to select a Payroll service or support provider. It is the employer’s responsibility to ensure that the correct taxi and NI payments are made.

See Appendix A for more information.

# Self-employed carers and personal assistants

Some Personal Assistants are self-employed and offer their services on an hourly or sessional basis. It is important to ensure that when these services are purchased using a Direct Payment, the purchaser verifies that the person is registered with HMRC for income tax and national insurance and has appropriate insurance cover. It is also important to confirm that they have completed training to enable them to provide care and support competently, and safely for the specific work they are undertaking. All services purchased must be invoiced, paid for accordingly and receipts obtained.

To check the employment status of your Personal Assistant, please get them to complete the questionnaire on the following link: [www.hmrc.gov.uk/employment-status/index.htm](http://www.hmrc.gov.uk/employment-status/index.htm)

Appendix B has further guidance on employment of Self Employed assistants: Factsheet Self Employed Carer.

# Employing family members

A Direct Payment can only be used to employ or to purchase care or support from a relative in exceptional circumstances. There are several reasons for this, including a concern to ensure that caring and support arrangements are sustainable.

There are, however, some situations, where after careful consideration, exceptional circumstances may be agreed. This agreement comes from a senior East Lothian Health and Social Care Partnership manager and will be subject to regular review. However, it should be noted that in terms of the Self Directed Support (Direct Payments) (Scotland) Regulations 2014 that permission will not be granted in a case where the family member or relative is a Guardian or attorney of the supported person, as such a payment is prohibited in all circumstances by the Regulations.

Please follow the link below for the Statutory Guidance to accompany the Social Care (Self-directed Support) (Scotland) Act 2013. Page 72-74, paragraph 11.8-11.26 refers to employing family members: <http://www.gov.scot/Resource/0044/00446933>

# Payment to the responsible person – payment card account

The Responsible Person for the Direct Payment signs an Agreement Form in order to receive the Direct Payment. The Agreement lists all the requirements that must be met by the Responsible Person in accepting and managing a Direct Payment. If the Supported Person is defined as lacking capacity, or is a child under 16, then their Representative is also the Responsible Person. If under 16 the Responsible Person will hold Parental Rights and Responsibilities. If over 16 and lacking capacity, the Responsible Person will need to have welfare and financial guardianship, or power of attorney and be able to provide evidence of this legal status.

A Payment Card account is provided to all people in receipt of Direct Payments, in the name of the Responsible Person. Identity checks will need to be made in line with banking regulations.

The name, address and date of birth of the Responsible Person is submitted electronically, to Prepaid Financial Services (PFS) <https://prepaidfinancialservices.com/en/>

PFS (and MasterCard) are Financial Partner/s who provide the technological systems needed to run the programme and create the cards.

PFS will send out a Payment Card with instructions on how to activate it. The Payment Card acts like a debit card and can be used as a card or the online account can be used to pay anyone who has a bank account. The Cardholder details are safe and secure just as they would be with a high street bank. There is a dedicated Customer Services team within PFS to help should there be any queries.

Funding is paid into a dedicated account every four weeks, though in some cases a one-off payment may be awarded. The amount of the payment directly relates to the Support Plan that has been agreed. All expenditure from this account will be made using a Payment Card issued on behalf of East Lothian Health and Social Care Partnership.

For the Agreement Form and further Information about the Payment Card please see:

http://www.eastlothian.gov.uk/prepaidcards

# Financial monitoring

Financial Monitoring is done on-line by East Lothian Health and Social Care Partnership to ensure all monies are spent in accordance with the agreements outlined above. Monitoring is also done to ensure that monies and balances have not accumulated to an excess. In addition to the usual four weekly payments, recipients may retain an additional contingency if that is reflected in their agreed support plan. Please note that some people may build up contingencies for specifically agreed spends, such as an extended short break/respite. East Lothian Health and Social Care Partnership will discuss unspent balances with the Responsible Person for the Direct Payment, before any money is reclaimed.

As the monitoring of spending is undertaken by East Lothian Health and Social Care Partnership via secure online access, there is no need for the Responsible Person to routinely submit any further information in order to evidence the use of monies. However, East Lothian Health and Social Care Partnership may request receipts for audit purposes, so they must be retained by the Responsible Person for the Direct Payment.

# Follow up and review

Six weeks after the Direct Payment is set up, there will be a follow up discussion with the Responsible Person for the Direct Payment to ensure that things are running smoothly. The meeting will focus specifically on how the Direct Payment arrangements are working.

# Changes in circumstances

People’s circumstances are all different and from time to time, they change. All people with Direct Payment, or their Responsible Person, have a responsibility to alert East Lothian Health and Social Care Partnership whenever there is a change in their circumstances. This includes:

* a change of contact details e.g. address, telephone number
* a change in their requirements for care and support e.g. if the Direct Payment is no longer being used to purchase care or support (inability to recruit new PAs etc)
* when a stay of over a week in hospital is required
* a change in the person’s financial circumstances (for Supported People over 18).

A change in agreed outcomes may also affect the budget that is allocated.

# Further information

Further information about Self-directed Support and the four options, including Direct Payments, and the Payment Card can be found on the East Lothian Health and Social Care Partnership website [www.eastlothian.gov.uk/prepaidcards](http://www.eastlothian.gov.uk/prepaidcards).

A Scottish Government Guide to Receiving Direct Payments in Scotland is available at <https://www.sehd.scot.nhs.uk/publications/grdps/grdps.pdf>. This will contain general guidance and not be specific to your local authority area so you need to check whether your local authority has specific local requirements or procedures in place.

# Appendix A – Support to manage a direct payment

Should a person wish for some support with the management of their Direct Payment, there is help available. Sometimes this help is referred to as a Brokerage Service. The organisations below can help with Payroll support and/or assistance with finding and employing a Personal Assistant.

Payroll can be provided by any accountant / bookkeeper /organisation of your choice.

Should you wish to do your own Payroll, a helpful link for support is the gov.uk website:

<https://www.gov.uk/payroll-software>

Currently, people in East Lothian are using the following organisations listed below to assist them in managing their Direct Payment:

# Local organisations

* LCIL – Lothian Centre for Inclusive Living, Norton Park Centre, 57 Albion Road, Edinburgh, EH7 5QY Tel: 0131 475 2350 – provide Independent Living support to manage SDS package, Disability Information and Payroll Service <http://www.lothiancil.org.uk/our-services>
* ICMS – Individual Cash Management Solutions, Kinneil House, Cadham Road, Glenrothes, Fife, KY7 6PE Tel: 01592 775408 <http://www.icms.co.uk>
* DOSH – Financial Advocacy for people with a learning disability. DOSH, The West House, Alpha Court, Swingbridge Road, Grantham NG31 7XT, Tel: 0300 303 1288 <http://www.dosh.org>

# National organisations:

* **SPAEN** - (Scottish Personal Assistant Employers Network) Tel: 0845 601 1156, e-mail: info@spaen.co.uk https://www.spaen.co.uk (will support with all aspects of employment, including payroll)
* **PA Network Scotland** (Personal Assistants Network Scotland); Tel: 01563 522551, e-mail: info@panetworkscotland.org.uk http://www.panetworkscotland.org.uk/ (specifically focused on all types of support with employing PAs – they do not do payroll).

# Appendix B - factsheet on self-employed carers

# Employment status of your personal assistant

East Lothian Health and Social Care Partnership cannot stipulate how you pay for delivery of your care and support, however it is very important that you establish whether your worker is self-employed or directly employed by you. As the person paying for the services, it is your responsibility to determine the employment status of your Personal Assistant. The employment status is not a matter of choice for the worker. If you think your worker is self-employed but later is judged to be directly employed by you, you could face significant payments due to HM Revenue and Customs. You should bear in mind the following:

As a Direct Payment recipient you can employ your own staff/Personal Assistants using PAYE. Alternatively you can buy the services of a self-employed carer who must prove his/her self-employed status by completing the HMRC Employment Status Indicator which will determine whether they are classed as self-employed or must be employed as a Personal Assistant. Anyone can complete the Employment Status Indicator on the HM Revenue and Customs (HMRC) website: www.hmrc.gov.uk/employment-status/index.htm.

* A self-employed carer will have a Unique Tax Reference (UTR) which will be allocated by HMRC.
* A self-employed carer is responsible for completing their own Tax and National Insurance deductions.
* A self-employed carer will have their own Liability Insurance.
* There is a significant difference between the tax and employment status of a carer who is employed by you as a Personal Assistant and a carer who is self-employed.
* The biggest risk when you use a self-employed carer is that HM Revenue and Customs (HMRC) may later decide that the carer was in fact employed rather than self-employed. This can happen even if the checks described above have been completed. If the carer has not paid tax or National Insurance then HMRC can look to recover this from you as the person employing the carer.
* If you decide to have/or continue to have a self-employed carer, East Lothian Council will have no responsibility in regard to the services you receive from them. This includes reimbursing HMRC for any non-payment of tax or National Insurance as this will be your responsibility.

To summarise – the self-employed carer must give you a copy of the completed HMRC Status Indicator and a copy of their liability insurance. Once you have received these documents, we would ask you to forward a copy to Direct Payments Team, Randall House, Macmerry, EH33 1RW.