



## **Direct payments – Acting as an authorised person**

Herefordshire Council has a duty to offer direct payments to people who lack capacity where they have an authorised person acting on their behalf to receive and manage such payments, and where it is in their best interests to have direct payments.

### **Being appointed as an authorised person**

- The council has to follow the law and legal guidance on how to appoint an authorised person, which can be discussed with you by your allocated worker
- You will act as the authorised person on behalf of an adult who lacks mental capacity to consent to receiving direct payments themselves
- You must be willing and want to act as an authorised person, and agree to personal identity and address checks being undertaken.
- You are entitled to receive support to manage the direct payments and the council can advise on the services available to you, including payroll services, recruiting and managing personal assistants and undertaking Disclosure and Barring Service (DBS) checks.

The council recommends using a direct payment support organisation to help you with this, the cost of which can be covered by the direct payment itself, providing it is included in the support plan. To find out more, please contact a direct payment officer on 01432 260060

### **Your role and responsibilities**

- All decisions made by the Authorised person must be in the person who lacks capacity's best interests.
- As the authorised person, you are accountable for the way the direct payments are used
- You should involve the person who lacks capacity as far as reasonably practicable and give them as much control and independence as possible
- You must agree to inform Herefordshire Council of any changes or difficulties, including if you believe the person has regained capacity, as soon as possible.

- You will sign an agreement with the council relating to the use of the direct payments and you must keep to its terms
- You will use direct payments to obtain and purchase necessary services to meet the needs of the person you are acting on behalf of, as agreed by the council
- When making arrangements, it may involve legal responsibilities, such as employing staff
- If you employ personal assistants, you must ensure you act lawfully as an employer. Please ask your allocated worker / direct payments officer for the relevant factsheets, which are also available on the council's website
- If you use an agency, please ask your allocated worker / direct payments officer for the relevant factsheet for advice on how to safely use an agency
- If you decide to stop acting as an authorised person, you must advise Herefordshire Council as soon as possible
- If the person you represent has fluctuating capacity, during periods when they regain capacity, you must ensure you involve them in the decisions which affect them, as much as practicably possible
- A direct payment should not be used to pay a spouse, civil partner or partner of the individual, or any close relative of the individual, who is currently living in the same household.

There may be occasions when the council decides, in exceptional circumstances, that it is necessary for the authorised person to use direct payments to secure such services. The authorised person must first speak with the council and seek agreement in these circumstances.

- The money must be paid into a separate direct payments bank / payment card account
- If you are a corporation or unincorporated organisation, you must ensure that the money can be shown as separate to any funds you may hold for any other person or organisation. You must also complete DBS checks for any workers you use to provide services
- The council encourages people to act on behalf of those who lack capacity, but must ensure you are aware that anyone acting as an authorised person may be guilty of fraud, if they dishonestly abuse their position, intend to benefit themselves or others and cause loss or expose the person to risk or loss

- The Fraud Act 2006 created an offence of 'abuse of position'. This applies when someone is expected to safeguard the interests of a person but instead acts against their financial interests, such a person can be found guilty of a criminal offence

## **Keeping safe**

The council strongly advises that Disclosure and Barring Service (DBS) checks are completed for anyone employed to provide services for an individual who lacks capacity. As outlined above, the cost can be covered by the direct payment itself, providing it is included in the support plan.

- There are occasions when it's mandatory for Herefordshire Council to carry out DBS checks, especially if there are children present in the household
- Your allocated worker or direct payment officer can advise when a DBS check is necessary when employing people to provide services
- As mentioned above, if you are a corporation or unincorporated organisation, you must complete DBS checks for any workers you use to provide services
- If you wish to be an authorised person and are not a family member, spouse or friend involved in providing care, the council will request you undertake a DBS check. For example, you may be an independent care broker or solicitor who is not previously known to the person who lacks capacity. You cannot be appointed until the DBS check has been completed. To find out more, please speak to your allocated worker or direct payment officer

## **Direct payment fraud**

Where funds are spent on things other than what's included in a care and support plan, this may constitute fraud.

Some examples of direct payment fraud include:

- Using money from the direct payment to pay for care for your own personal use
- Being dishonest about financial circumstances or care and support needs when asking for social care funding.
- Not telling the council when a service user has died, and keeping the direct payment money.
- A person abusing their position of care to take money from a vulnerable person.
- Creating a fictitious unregistered care provider
- Submitting false receipts as evidence of care expenses
- Using the direct payment account for money laundering

Any individual who intentionally and dishonestly provides false information, may be investigated in line with the Fraud Act 2006 and other relevant legislation. We may also pursue prosecution under Section 222 of the Local Government Act 1972, or work alongside the Crown Prosecution Service (CPS).

### **Fraud prevention privacy notice**

If a person receives financial support from Herefordshire Council to pay for care, the personal information we collect from them, and anyone acting on their behalf as an authorised person will be shared with fraud prevention agencies who will use it to prevent fraud and money-laundering and to verify identity. If fraud is detected, you could be refused certain services, finance, or employment. View further details of how your information will be used by us and these fraud prevention agencies, and your data protection rights, at [www.herefordshire.gov.uk/fraudprivacy](http://www.herefordshire.gov.uk/fraudprivacy).

If you would like help to understand this document, or would like it in another format or language, please call a direct payment officer on 01432 260060 or e-mail [directpaymentadvice@herefordshire.gov.uk](mailto:directpaymentadvice@herefordshire.gov.uk)