

## Suitable Person Fact Sheet

### Suitable Person

A suitable person is someone appointed to receive Direct Payments to arrange services for an Individual who:

- Is eligible to receive adult social care services but
- Has been assessed as lacking capacity to consent to receive Direct Payments

A Suitable Person is:

- Someone the Individual have lasting power of attorney over their affairs before they lost capacity, or
- A deputy appointed by the Court of Protection to act in the Individuals best interest.

If there is no attorney or deputy, or they do not want to act as the Suitable Person, someone else may be considered. Usually this is someone like a family member, husband/wife/partner, friend or a professional person like a solicitor.

If the Individual you are supporting **HAS** capacity to manage a Direct Payment but has requested that you manage it for them then you would not be a Suitable Person you would be a Nominated Person instead. (Please see Nominated Person Fact Sheet)

### Being appointed as an Suitable Person

You cannot just become a Suitable Person.

We have to follow legislation and our own policy and procedures before we can appoint you to act as a Suitable Person for an Individual without Capacity. Anyone authorised to make personal welfare decisions for the Individual has to agree too.

Certain conditions have to be met before we can make Direct Payments to a Suitable Person and before we appoint a Suitable Person, we always talk to other people about their views about the appointment. For example, we talk to the individual about what they would like and we consult anyone:

- Appointed as the Individuals attorney or deputy
- That the Individual wishes us to speak to about Direct Payment, their health and welfare arrangements in general, or other related matters,
- Involved in caring for the Individual or who may be interested in their welfare, like family members or friends.

Unless you are the Individuals' husband, wife, partner, a close family member\*, or a friend involved in their care, we carry out criminal record checks through the Disclosure and Barring Service before we make any appointment decisions.

We carefully consider what the Individual would want and what would be in their best interest.

We have to be satisfied that:

- Direct Payments will meet the Individuals needs
- The conditions described in legislation and in our policy and procedures are met.
- You are willing and able to take on the responsibilities of acting as the Suitable Person. This means receiving Direct Payments and arrange support for the individual. If you need help and support to do this, we recommend that you use the Direct Payment Support Service, they can help you with managing the money, payroll services, recruiting and managing personal assistants, undertaking DBS check, using an agency and other services.
- You will act in the Individuals best interest
- Given all circumstance, it is appropriate to make Direct Payments to you.

#### **Yours role and responsibilities as the Suitable Person**

- You will have to sign an agreement about how you will use Direct Payments.
- Only spend Direct Payments on services/support for the assessed needs/outcomes as identified and agreed in the support plan.
- Open a separate bank account or building society account for the direct payments in your name.
- Not use the Direct Payment to pay yourself or secure services from the Individuals partner, a close relative or a partner of a close relative that lives in the same household unless otherwise agreed with the Borough Council in writing. Any agreement is subject to annual review.
- Inform the Borough Council immediately if the Individual is in hospital for a period exceeding 4 weeks
- Inform the Borough Council immediately if you require more help in managing the Direct Payments or if any of the assessed needs change.
- Inform the Borough Council immediately if you/ no longer wish to receive Direct Payments and wish to have services arranged by the Borough Council to meet the assessed needs.
- Keep proper financial records and receipts (as identified in section 4 of this agreement) to show how you have spent the Direct Payments. (You understand that the Borough Council may need to view records and audit the Direct Payment accounts.)
- You should make financial returns as agreed.
- Not spend the Direct Payments on any services that are the responsibility of any other agency to provide, e.g. housing, the NHS, Education, etc. without prior agreement from a Social Worker/Community Assessment Officer.
- Carry out all obligations as an employer and comply with any legal, tax, financial and insurance requirements that may arise as a consequence of employing any person to provide services/support (as identified in section 5 of this agreement).
- Comply with all legal, tax, financial and insurance requirements that may arise in making arrangements to secure services/support from any organisation or provider.

- Put in place an emergency contingency plan that can be used should arrangements for the provision of services to meet the assessed care needs break down.
- Following any discussions with you return to the Borough Council any money that is left over from the Direct Payments if identified in the audit process.
- Co-operate with the Borough Council regarding unspent/unused money or misuse of money.
- Take responsibility for any bank charges or Her Majesties' Revenue and Customs charges (which might include tax and national insurance contributions for employees, if applicable.)
- Repay part or all of the Direct Payment if you breach part or all of this agreement (as set out in section 8 of this agreement).
- Seek agreement from the Borough Council and obtain adequate support from an expert before purchasing any equipment and comply with any conditions attached to the purchase of any equipment as provided in writing by the Borough Council. An expert might include a specialist shop, or a Centre for Independent Living.

Whilst we do not want to discourage you from acting as a Suitable Person, we must ensure that you are aware that anyone who acts as a Suitable Person may be guilty of fraud if they dishonestly abuse their position, intend to benefit themselves, or others, and cause loss or expose the individual 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.

#### **Direct Payments cannot be used for certain things**

- Use the money for anything other than meeting the needs agreed in the support plan
- Buy services that we would normally supply directly
- Buy services or equipment that we are not responsible for, for example health or housing services
- Buy long term residential or nursing home care
- Employ the Individuals husband, wife, partner or close relative who live in the same household. We can agree to this only in very exceptional circumstance.
- Use Direct Payments to pay for household bills or other personal expenses.

#### **Next of Kin**

In the event of the Individuals death, any money left in the Direct Payment account must be repaid to us after any final bills or wages have been paid.

#### **Criminal Records Checks**

We strongly recommend that criminal records checks through the Disclosure and Barring Service are undertaken for anyone employed to provide services to the Service User. The cost can be funded from the Direct Payments account. Direct Payment Support Services can do the check for you.

If you use an agency, you should check that any staff supplied by the agency have had a satisfactory criminal records check.

Regardless of whether the person intending to administer the direct payment is the person who needs care or their authorised or nominated person, the County Council will ask the person to declare any convictions involving dishonesty.

Where a dishonesty conviction is declared, the Council will assess whether or not it is appropriate for that person to administer the direct payment.

**\*Close Family member:**

The definition of a close family member is someone who lives in the same household as the adult who is the adult's:

- Parent or parent-in-law
- Son or daughter
- Son-in-law/daughter-in-law
- Stepson or stepdaughter
- Brother or sister
- Aunt or uncle
- Grandparent, or
- The spouse/partner of any of the people listed above and living in the same household as the adult.