



# Direct Payment Information and Factsheets

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## Practitioner guidance for using Direct Payments Factsheets

There are a number of factsheets available for practitioners to give to customers considering Direct Payments. These can be printed off to include in the information you give to customers if they are considering a Direct Payment.

**Tailor this to the person you are working with. Not all people will need all the factsheets. Some of the factsheets are available in easy read**

### Factsheet 1: Getting Started

Explanation of the fact sheets available.

### Factsheet 2: Bank Letter

This letter can be used by the customer when approaching the bank to open a Direct Payment account. It has been devised by the Department of Health and the British Banking Association to facilitate opening a current account with banks and building societies. This letter does not always comply with all the requirements of all banking institutions but goes a long way to being widely acceptable by most. It must be on WCC headed paper and personalised by the council for the customer.

### Factsheet 3: Bank Mandate Form

You will need to give this form to the customer and ask them to complete and return it to the appointed DP Administrator within your team. Or complete it for them during the visit. Some people do not need to open a new account.

You need to advise the customer that a bank account should only be opened if they decide they would like a Direct Payment. The bank may complete the information on the form for the customer at the time of opening the account if they ask. If the customer needs support to complete this form or open an account the support service will assist with this at the visit. Each team will need to insert their postal address at the bottom of this form.

### Factsheet 4: Keeping Safe

This fact sheet provides advice to people who are considering using Direct Payments without the support of the support service. It is only a brief guide for people to give consideration to their own safety and clearly recommends that customers seek advice before they choose this route. You should still discuss good safeguarding practices with the customer.

### Factsheet 5: Frequently Asked Questions

Following your visit the customer may start to think more about the option of Direct Payments. This is a short factsheet of frequently asked questions.



### **Factsheet 6: Direct Payments User Network**

This gives the contact details for customers interested in talking to others who have similar experiences.

### **Factsheet 7: Using Agencies**

This gives advice about people checking that agencies are registered with the Care Quality Commission. Please give this to anyone who may be considering using an agency

### **Factsheet 8: Insurance**

This is factsheet that provides details about the types of insurance required when using Direct Payments

### **Factsheet 9: Employed / Self Employed**

This factsheet explains the difference between self-employed personal assistants and employed personal assistants

### **Factsheet 10: Keeping Good Records**

This factsheet explains what records should be kept when someone uses Direct Payments.

### **Factsheet 11 - 13: Customer choosing not to use The Rowan Organisation**

These factsheets, as well as Factsheet 4 & 16, should be given to someone who chooses not to use The Rowan Organisation. You should also share any of the other factsheets relevant to the way they are using Direct Payments.

### **Factsheet 14: When Things Happen**

This factsheet should be given to all customers who are employing personal assistants or using agencies.

### **Factsheet 15: Acting as a Suitable Person**

This factsheet **MUST** be given to the person who is considering acting as and receiving the Direct Payments as a Suitable Person for someone who lacks capacity to have one.

### **Factsheet 16: Choosing not to use the Rowan Organisation for Information & Support**

This factsheet should be given to someone who chooses not to use the Rowan Organisation.



## Direct Payments Factsheet 1: Getting Started

You may have been offered a Personal Budget by the council and are considering taking a Direct Payment to manage the budget.

### What are Direct Payments?

Direct Payments are one way you can manage your Personal Budget.

Direct Payments is a cash amount based on the amount agreed in your Personal Budget so that you can arrange and pay for social care support instead of the council arranging services for you.

Direct Payments offer greater flexibility, choice and control than support being arranged for you by the council.

It is your choice if you want to have Direct Payments. The council must be satisfied that you understand what it involves and the way you choose to use the cash will meet your needs and achieve the agreed outcomes. The way you use them must be legal and keep you safe and well.

For example, you may want to employ your own Personal Assistant, providing you with the support at the times you want. Alternatively you may decide you want to use money to buy support from a care agency. Or you may want to find an alternative to the types of respite support the council could arrange for you.

### Who can have Direct Payments?

You can only have Direct Payment once you have had an assessment and the council agrees you are eligible for certain social care services.

#### If you are eligible and are;

- A disabled person aged 16 years and above;
- A parent of (or people with parental responsibility for disabled children, to pay for services for the family);
- A carer aged 16 years and above, for services to meet the carers own assessed needs
- A disabled people with parental responsibilities for a child, for services to support their parenting role; or
- An appointed Suitable Person for someone who lacks capacity (the council must agree who the suitable person is).

In most cases, the council must offer Direct Payment but for some people who are subject to some mental health legislation or aspects of criminal justice legislation the council have the power rather than duty. Please ask the council more about this.



Some people who are placed under certain conditions by courts in relation to drug/alcohol dependencies are excluded from receiving Direct Payment's.

We have written a number of small information sheets to help you with 'Getting Started'.

You may have been asked to open a separate bank account but please do not open your account until you have decided that you would like to try Direct Payments.

**Factsheet 2:** Banking letter – you can take this letter with you when you go to the bank to explain what you need. Your allocated worker will complete this letter with your details on your behalf.

**Factsheet 3:** Bank Details Form – your allocated worker will tell you if you need to open a new bank account. You can take this form with you and ask the bank to fill it in with your new bank account details. If you already have an account that the council agree you can use please write those details on the form. If you need help to do this please let us know. When you have finished writing your details on the form send it to the address on Factsheet 3.

**Factsheet 4:** Keeping Safe – things you need to think about when you employ staff.

**Factsheet 5:** Did you know? – Frequently Asked Questions.

**Factsheet 6:** Direct Payments customer network – contact details.

**Factsheet 7:** Using Agencies – things to consider before using an agency.

**Factsheet 8:** Insurance – what insurance you will need.

**Factsheet 9:** Employed/Self Employed – understanding the difference.

**Factsheet 10:** Keeping good records – what and how to keep good records.

**Factsheets 11- 13:** For people not using The Rowan Organisation for support.

**Factsheet 14:** When Things Happen.

**Factsheet 15:** Being an Appointed Suitable Person.

**For more information contact:**

Lesley Kendall, Self-Directed Funding Development Officer (Project Officer Direct Payments)  
Warwickshire County Council, Tel: 01926 410410

The Rowan Organisation, Direct Payments Support Service Freephone: 0800 783 1755



## Direct Payments Factsheet 2: Banking letter

**Please print on Letter Headed Paper.**

Any bank/building society  
Any street Any town  
Warwickshire Postcode

Date

To whom it may concern.

You have recently been approached by **(insert name of direct payments recipient)** who wants to open a new or second bank account.

They need to do so as it has been agreed that the customer is entitled to a Direct (cash) Payment in lieu of social care services from Warwickshire County Council. The council gives the customer the money on a regular basis so they can arrange their own services.

A separate bank account is essential, as the money needs to be used for a particular purpose and information given to the council for audit purposes. It is not regarded as income.

The British Bankers Association has agreed that this letter be used as evidence of capacity, following our assessment of **(insert name of Direct Payment recipient)** for a Direct Payment.

Warwickshire County Council only provide services to people living within its boundaries and can confirm the name **(insert name)**, date of birth **(insert date of birth)**, and current permanent address **(insert address)** of this customer.

If you have any queries about the contents of this letter, please contact **(insert name of signatory)** on **(insert telephone number)**.

Yours faithfully

### **Practitioner to sign**

Professional Title (Registered Social Worker)

**Letter to be countersigned by a Registered Social Worker – where signatory is not a Registered Social Worker**



## Direct Payments Factsheet 3: Bank Mandate Form

Please Complete and return this form to: (Team to add address here)

Name of Customer: \_\_\_\_\_

Name (As on Bank Account): \_\_\_\_\_

Address:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Invoice Address: (If Different)  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

Bank/Building Society Name: \_\_\_\_\_

Bank/Building Society Branch Address:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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Bank Account Number

Bank Sort Code

Building Society Account No. (if applicable)

It is WCC policy to pay all suppliers where possible via Bank Automated Credit System (BACS). This preferred method is more secure and efficient than cheques, and reduces the processing time for payments. Please provide your account details as below:



**How your information may be used**

We work with partners to provide you with public services. To do this, we may need to share your information. We will do this in a way that protects your privacy.

We are under a duty to protect public funds. We may use any of the information you have provided on this form for the prevention and detection of fraud. We may also share this information with other bodies that are responsible for auditing or administering public funds.

Please let us know when any of your contact details change. You have the right to know what information we hold about you and we try to make sure it is correct. If you would like further information visit our website: [www.warwickshire.gov.uk/privacy](http://www.warwickshire.gov.uk/privacy) or contact our Customer Service Centre at: Warwickshire County Council, Shire Hall, Warwick, CV34 4SA. Telephone: 01926 410410 (please note do not return this form to this address)

Sending personal information by email is not secure. Please return the completed form or supply the information using the instructions accompanying this form.

I authorise Warwickshire County Council to use this information.

Name (please print): \_\_\_\_\_

Signature: \_\_\_\_\_

Please complete this form in order to enable WCC to set up your supplier Direct Payments account.

**Please note that Direct Payments cannot commence on the start date or any payments due may be delayed if this information is not returned.**

**WCC Use Only:**

<b>Supplier Number</b>		<b>Loaded By</b>	
<b>New / Amendment</b>		<b>Date</b>	
<b>Internal Reference No</b>		<b>Reason for request</b>	



## Direct Payments Factsheet 4: Keeping Safe

You may be thinking about employing your own personal assistant. It is important to take certain steps to try and make sure that there isn't any threat to you from other people who may harm you.

We believe that it would be better for you to have help and advice from The Rowan Organisation if you decide to look at having your own staff. This service is free to you. The Rowan Organisation will give you all the advice you need at each stage of employing your own staff.

If you choose not to use The Rowan Organisation to help you and give you advice there are a number of important things we would ask you to think about to keep yourself safe when you advertise and meet possible staff to see if they are suitable.

The Rowan Organisation will carry out a Criminal Records Check on the person you want to employ. We ask that you think about this a lot when you employ your own staff. You can pay for this from the money you have from your Direct Payment.

Follow this process to keep yourself safe:

1. Do not put your home address, telephone number, or details about yourself on the job advert. You could ask the Job Centre to advertise for you.
2. They have their own process which will help you to stay safe or you can perhaps use a mail box number.
3. Make sure you ask for Job References from the people you interview and follow them up.
4. When you interview people do it away from your home address if you can and have someone with you to support you.
5. You must comply with employment legislation and Warwickshire County Council strongly advises you have support to do this.

If you still choose to recruit staff without this help please talk to your practitioner about it so that the self-directed funding team can give you information on how to do this safely or you can speak with a safeguarding officer who will give you advice.

If you choose to use an agency the law says that care agencies must be registered with the Care Quality Commission. Please discuss this with your practitioner who will advise you how to do this. Warwickshire County Council strongly advise you only use an agency that is registered

Remember – always ask for help if you think you need it.

**Tel: 01926 410410 and ask to speak to Lesley Kendall, Self-Directed Funding Development Officer, or your allocated worker or you can also speak to a Safeguarding Officer Tel: 01926 410410 at Warwickshire County Council**



## Direct Payments Factsheet 5: Frequently Asked Questions

- Direct Payments are not a benefit - the money comes from Warwickshire County Council to meet your assessed social care needs and is an alternative to services which are organised for you.
- Having Direct Payments will not affect your benefits or be counted as income.
- You can take as long as you want to decide if you want to use Direct Payments.
- You can add your own money to top up a Direct Payment to make it even more flexible.
- It may sound like a lot of work but don't panic there is a lot of support to help you manage the scheme and succeed. The most important thing is you are in control but this doesn't mean doing everything on your own.
- You can mix your care arrangements by choosing some services from the local authority and some Direct Payments - a mix and match of services you choose.
- You do not have to calculate Tax and National Insurance if you employ someone - you can use The Rowan Organisation who will provide a free payroll service for you.
- There are no difficult forms for you to fill in - on most occasions we only need a copy of your bank statements to check your fund is working properly.
- If you are considering Direct Payments for someone who lacks capacity to consent to the Direct Payment please discuss with the practitioner.
- You may be able to employ a family member. Please talk to the practitioner about this.
- Sometimes you may be able to employ someone who lives with you, but please talk to us about this first. There could be implications on any household benefits. Talk to your practitioner first.
- If Direct Payments does not work for you we can arrange services for you instead.
- Most people who use Direct Payments say they would never go back or choose to have services arranged for them again. The most important thing is they want to be in control of their life. Direct Payments means you have freedom, choice, control and flexibility in your life to have the help you need by making the arrangements yourself.



## Direct Payments Factsheet 6: Customer Network

### The Best Advice is Often from Other People's Own Experience

Would you like to talk to someone who uses a Direct Payment?

Are you managing a Direct Payment for someone else?

Are you thinking about Direct Payments but have questions you would like answered?

If the answer is **yes** -

It is important to know that you will not be on your own if you choose to have a Direct Payment.

There are a group of people who have experience of using and managing Direct Payments and you could talk to them or join their meetings.

The group meet several times throughout the year across the county and welcome you to come along.

If you do not want to come along to meetings but would like to be on the network mailing list please let us know. This will help you to receive up to date information about Direct Payments and Self Directed Support.

For details of the Direct Payment User Network please contact:

Rebekah Dryhurst  
Assistant Customer Involvement Officer  
The People Group  
Saltisford Office Park  
Ansell Way Warwick CV34 4UL

Tel: 01926 743026

Email: [rebekahdryhurst@warwickshire.gov.uk](mailto:rebekahdryhurst@warwickshire.gov.uk)



## Direct Payments Factsheet 7: Using Agencies

You may want to use a home care, sometimes known as domiciliary care, agency to provide your care. If you choose to use an agency the staff who will work with you will usually be employed by the agency. In this case you will not be the employer and the agency will be responsible for managing the staff and will pay their wages. You will still maintain your choice and control as you will make arrangements directly with them and will be able to say how, when and where your support will be provided.

You will pay the agency invoice when you receive it from your Direct Payments bank account. Always check that you have discussed all of your arrangements with the agency and that the agency has given you a breakdown of all their costs in writing. You do not want to have any unexpected costs, such as additional charges for mileage, bank holidays etc. that you have not previously agreed to pay. Sometimes the agencies may charge an hourly rate which is more than your Direct Payment hourly rate paid to you. It is likely you may have to pay the difference from your own personal funds. The council would advise you discuss any additional costs with your social care practitioner when your Direct Payments are arranged.

Agencies providing personal care are required by law to be registered with the Care Quality Commission (CQC). You can ask the agency staff to show you details of its registration.

You can have as much support as you need in making these arrangements. We recommend that you use either the Direct Payments Support Service, which can be contacted on telephone: 02476 374948 or our Finance Monitoring Team, which can be contacted on telephone: 01926 418657 to help you.

Before you decide to buy a service from a particular agency we recommend that you ask:

- About their registration with the Care Quality Commission (CQC).
- To see a copy of their insurance policy.
- The agency if all their staff has had a Criminal Records Bureau (CRB) check.
- The agency how it manages its staff and how often someone will come and check you are happy with its service.
- If the agency employ the staff and meet all their tax and national insurance payments.
- How they would deal with any complaint you may have with the agency's service.
- How they arrange for staff cover during holiday time or through absence due to sickness and if a member of the agency staff will discuss this with you when cover for regular staff needs to be made.



- What training the agency provides for its staff and what qualifications and experience to they have.
- How you can you tell them if you are not happy with the agency's service.
- If they carry out a risk assessment for you and the staff; and
- If you will be given copies of the hours the staff works so that you can pay the correct amount.
- How much it will cost you to use their service and to pay the money to them.

Once you have been working with individual members of staff for some time you may think you could employ them direct as a personal assistant and not use the agency.

We strongly recommend that you talk to us before you do this. Some agency agreements allow you to employ their staff directly but may charge you a fee as part of their conditions for providing the service for you. If want to do this please contact us on telephone: 01926 743258 and ask to speak with the Self Directed Funding Development Officer who will be able to help you.

We have only given you a few suggestions of the type of questions you may want to ask. Please think about the information you want and what questions you need to ask the agency to help you to choose the right agency for you.

If the agency tells you they will not be able to continue providing care for you. Please contact Warwickshire County Council and ask to speak to a duty social worker as soon as possible. Here are some details of people and organisations which may help you:

The Rowan Organisation (Direct Payment Support Service): 02476 374948

Financial Monitoring Team: 01926 418657

Care Quality Commission [www.cqc.org.uk](http://www.cqc.org.uk) 03000 616161

Self-Directed Funding Development Officer: 01926 410410

Warwickshire County Council Safeguarding Officer: 01926 410410



## Direct Payments Factsheet 8: Insurance

### Employed Personal Assistants

You are legally required as a person who employs staff to have insurance. Warwickshire County Council strongly recommends that you use the support provided by The Rowan Organisation to do this.

Accidents can happen in a number of ways for example the personal assistant may trip, fall, and be involved in a car accident. It could be that the personal assistant thinks you as the employer is to blame for this and may hold you responsible.

One question you may ask is sometimes Employers Liability Insurance and Public Liability Insurance can be included in a comprehensive household policy. Most polices don't you must check with your own insurance company and not assume that it does for these purposes.

**This insurance must be in place before your personal assistant can start work:**

### Employer Liability Insurance

This will insure you to cover if the personal assistant has an accident or becomes ill as a result or while working for you, for example they get food poisoning.

### Public Liability Insurance

This will insure you against any damages or injury caused to someone else by you or your personal assistant while working for you.

Warwickshire County Council will fund the cost of this insurance as part of your Direct Payments. We do not recommend who you use to provide your insurance cover but The Rowan Organisation will provide you with information on where to go. Some insurance policies will cover what is called Gold/Enhanced Cover this may cover you in the event that your personal assistant took you to an industrial tribunal.

There are terms and conditions you must adhere to and these will be explained by the insurance company.

Warwickshire County Council will fund the additional amount required to pay for the Gold Cover via your Direct Payments.



## **Self-Employer Personal Assistant**

It is the responsibility of the personal assistant who is self-employed to provide their own insurance cover to offer their services. You must ask to see a copy of the policy before you agree they can provide you with the service. You would not pay for the insurance for someone who is self-employed.

## **Agency**

It is the responsibility of the agency to have the correct insurance cover before offering their services. You must ask to see a copy of this before buying their service with your Direct Payment.

## **Using a vehicle**

If your personal assistant is providing transport for you in their own vehicle they will need to ensure they take out the appropriate insurance cover. You must advise the personal assistant to contact their insurance company and request business cover and show you a copy.

If the personal assistant is driving your vehicle you must ensure they are added onto your vehicle and contact your insurance company.

Most insurance companies do not charge for this cover.

The Rowan Organisation will provide support and guidance to you to ensure you have all the insurance cover you will need.



## Direct Payments Factsheet 9: Using a Personal Assistant

You may choose to employ your own personal assistant. You can have as much support as you need to help you use Direct Payments. An information and advice support service is available from The Rowan Organisation if you are considering doing this. The support service is independent of the council and has a contract with the council to provide support to people who choose to use Direct Payments. The support service specialises in this advice and will provide support and information on all aspects of Direct Payments and how to be a good employer.

They will be able to keep you up to date with changes in employment legislation and developments within independent living that may be of benefit to you when choosing to use your own staff.

Warwickshire County Council strongly recommends that you use the support of The Rowan Organisation when employing your own personal assistants and using Direct Payments.

Should you choose not to use The Rowan Organisation you **MUST** inform the practitioner who is supporting you. They will provide you with a factsheet pack to give you some guidance on becoming a good employer and how to keep safe and use Direct Payments.

Warwickshire County Council strongly recommends that if you choose to use an individual to provide your support that you employ the staff and not use people who offer a service as self-employed personal assistants.

When you choose to employ people you take on significant responsibilities. You must think about all the areas of employing your own staff to ensure you are a good employer.

### Employed Personal Assistants

If you employ staff this means that you become an employer. If you become an employer you **MUST** register with HM Revenue and Customs previously (HM Revenue). These are number of things you must ensure you have in place when employing staff.

- Payroll.
- Fair rates of pay – You must adhere to the minimum wage.
- Writing job description/job specification.
- Contracts of employment.
- Employee rights and responsibilities must be adhered to i.e. ensuring correct income tax, national insurance contributions, holiday pay, sickness pay (SSP), maternity pay, paternity pay.
- Managing Risk.

The Rowan Organisation can support you with all this. It will make employing staff easier for you.



When you recruit your own staff you may have to apply a selection process that involves advertising and interviewing staff. The council strongly recommend you seek the support of The Rowan Organisation who will advise how “You Keep Safe” when recruiting. If you choose not to have the support we would advise that you apply a number of mechanisms to ensure you keep safe and you must inform Warwickshire County Council that you will not be using The Rowan Organisation to support you.

Below are some things you will need to consider that you will be responsible to apply when recruiting personal assistants.

- Advertising/job description/job specification.
- Short listing and interviewing your staff.
- Job references, appointing staff.
- Criminal records check.
- Employing people legally.
- Employer’s liability insurance.

The Rowan Organisation can provide all or part of this support.

## **Self Employed Personal Assistants**

Some people will tell you that they are self-employed. It is very unlikely that any person who is supporting you as a personal assistant will receive a status of being self-employed for this role.

You will need to check this with HM Revenue and Customs. (HMRC) They do not usually recognise a personal assistant as being self-employed for tax purposes. They will provide you with a leaflet, IR 56 Employed or Self Employed to help you decide. The local inspector at HMRC will also help you with this. If HMRC decide at a later date that the person is employed you may incur additional costs.

If they are recognised as self employed by HMRC you will not become the employer. They must provide you with insurance cover. They can choose if and when they work for you. You must decide if this will work for you.

You should always ask for references from other people they have worked for. The Rowan Organisation can provide you with support to ensure you keep safe when using self-employed personal assistants.

Warwickshire County Council strongly recommends that you do not use people who are self-employed to support you as a personal assistant. Your Direct Payment may be suspended or end if the council are not satisfied that the arrangements in place comply with HMRC requirements.

Contact Details for: HM Revenue and Customs [www.hmrc.gov.uk](http://www.hmrc.gov.uk)  
Employer Helpline: 0845 607 0143



## Direct Payments Factsheet 10: Keeping Good Records

### A checklist of records to be kept by the Direct Payment recipient.

Warwickshire County Council does not expect you to keep detailed accounts but there are some records you must keep. We ask that you retain these as we may request them should a spot check be required by the Monitoring Team, internal or external auditors. If you need to purchase stationery to maintain your files you can claim the cost from your Direct Payment account.

The following information is for your guidance only, which you may wish to check with HM Revenue and Customs who can provide further guidance on employer records. Alternatively The Rowan Organisation will support you with this advice.

The examples shown below have been extracted from information and guidance provided by CIPFA (Chartered Institute of Public Finance and Accountancy).

Record Category	Examples	Suggested Retention period
Major Financial Records	Bank statements, cheque books, paying in books, bank account interest details. Summaries of expenditure	Current year plus six years
Everyday supplies and services	Invoices, receipts for direct payments items, agency fees pa wage slips, domestic help, special supplies, leisure activities, and courses. Also receipts for equipment such as a raised toilet seat. These are supporting documents for any queries re the above records in the major financial section	Current year plus one
Major Equipment and non – permanent adaptations	Expenditure on major equipment or major non-permanent adaptation paid via the direct payment. Records of warranties, maintenance agreements	Life of equipment plus one year
Permanent adaptations	All records relating to permanent major adaptations	Indefinitely
Employer Records	Employer records - advice on this is part of the role of the support scheme, The Rowan Organisation. If you have chosen not to have this support you can receive advice from HM Revenue and Customs	Contact HMRC for advice Or The Rowan Organisation Freephone advice line 0800 783 1755



## Direct Payments Factsheet 11: Recruiting Staff

Warwickshire County Council has a contract with the Rowan Organisation so that you have access to information support and advice about using Direct Payments.

The Rowan Organisation can advise and assist you with all the things you need to consider when recruiting your own staff. If you choose not to have this support there are a number of things you must consider when recruiting and employing your own staff.

Employment law will apply to you as an employer and you must ensure that your process stays within the law.

Things to think about:

- Writing job descriptions, job specifications, job adverts, preparing job application packs.
- The Personal Assistant's conditions of service (rates of pay, hours, breaks).
- What they will do, how and when.
- What training is needed.
- What you will do when they take annual leave, are sick or need other unplanned time off work.
- How to keep safe when advertising, interviewing and recruiting.

Warwickshire County Council would recommend that you:

- Do not place adverts that identify who you are and where you live.
- Do not interview at home.
- Ask for references and undertake Criminal Record Bureau checks.
- Do not interview alone.
- Check what questions you can legally ask at interview.

**Warwickshire County Council recommends that you do not start a recruitment process without talking to someone who has expertise in this field of work. Please talk to your practitioner if you will be recruiting staff and will not be using the Rowan Organisation to support you.**



## Direct Payments Factsheet 12: Being a good employer

Direct Payments offer you the opportunity to have support that fits with the way you want to live your life. If you are going to employ your own staff you must do this in keeping with the law.

- By law you must provide your Personal Assistant with a written contract of employment that defines their terms and conditions of employment. Warwickshire County Council recommends that you seek advice and support in doing this. This is available from The Rowan Organisation, without charge to you.
- You must as an employer pay PAYE Tax and National Insurance contributions. This is easier to manage when you use a payroll service. Warwickshire County Council would advise that you consider doing this. The Rowan Organisation will provide this service without charge even if you choose to have no other support from them.
- You must register with HM Revenue and Customs as an employer. The Rowan Organisation can help you to do this. If you will be doing this yourself please contact the New Employers Helpline on 0845 6070143 or you could contact your local Tax Office for advice.
- You must pay your Personal Assistant no less than the minimum wage. You will also need to keep up to date with any changes to this rate. HM Revenue and Customs will give you advice on these rates.
- There will be occasions when your Personal Assistant is unable to work because of sickness. The Personal Assistant may be eligible for Statutory Sick Pay. You will need to check the qualifying conditions with HM Revenue and Customs.
- You must be aware of Working Time Regulations and your responsibilities as an employer.
- As an employer you will need to be aware that your Personal Assistant is entitled to annual leave. It is advisable that you check the current entitlement and make sure you keep up to date with changes.
- You may have to offer a Stakeholder Pension Scheme to your Personal Assistants. This depends on how many staff you employ and you should check if this applies to you. There is a booklet available from HM Revenue and Customs entitled Stakeholder Pensions on 08457 646 646.

**Warwickshire County Council strongly recommends that you seek advice from The Rowan Organisation or another organisation specialising in employment. The services of the Rowan Organisation will be without charge to you. They can help you with all of this.**



## Direct Payments Factsheet 13: Employing People Legally

Legislation came into force in February 2008 that requires you as an employer to make basic checks with **every person you are considering employing** to confirm that they can legally work in the United Kingdom.

The law says that you must do some document checks and failure to do this may result in a fine.

**We recommend that you have advice and support from the Rowan Organisation to do this.**

If you want to manage this yourself instead The Home Office Guidance document 'Prevention of Illegal Working' for employers will guide you with what you must do. You can get this from the Home Office helpline 0845 010 6677.

You must complete these checks before anyone starts working for you. You can offer them employment once the checks are completed and you are satisfied they can work in the United Kingdom. You must not employ anyone who is not legally able to work in the United Kingdom.

If you are using self-employed personal assistants who are registered with HM Revenue and Customs contact HMRC to ask if you still need to make checks.

If you use a registered domiciliary agency this law does not apply to you. Warwickshire County Council would recommend that you ask the agency if they carry out these employment checks.



## Direct Payments Factsheet 14: When things happen

Occasionally things will happen or changes occur and you will need to talk to someone about what to do.

### **If your needs are not being met:**

The council may have a responsibility to step in and help you. A review or reassessment of your needs may need to take place. The council may have to arrange services for a period of time or support you to enable you to carry on using Direct Payments. If you are assisting with managing Direct Payments for someone please contact the council and let them know about the change. Contact Warwickshire County Council as soon as possible.

### **The emergency plans you have in place do not work:**

You will have discussed a plan about what you will do if your personal assistant goes off sick takes annual leave or doesn't show up for work. Sometimes the best plans do not always work. The council has a responsibility to step in and assist you to meet your identified needs as discussed in your care/ support plan. If this happens, contact Warwickshire County Council.

### **Buying a service from an agency:**

Warwickshire County Council can provide you with factsheet 7 that explains what you should do when arranging your support from an agency. If something happens and you are not happy with the service from the agency, you must first contact them and discuss your concerns with them direct, as you are the customer. You can also contact Warwickshire County Council and discuss your concerns.

### **Employing personal assistants:**

If you employ a personal assistant you will become their employer. As an employer you must follow employment legislation. The Rowan Organisation can support you if you have concerns about the person you are employing. Please contact them or speak to Warwickshire County Council.

### **If your personal assistant threatens to take you to an industrial tribunal:**

If you are unfortunate that this happens please contact The Rowan Organisation immediately and Warwickshire County Council who can support you with this situation.



**If you get into any difficulty:**

Mistakes happen when people are using Direct Payments. Please contact Warwickshire County Council and speak to the duty worker, or contact The Rowan Organisation who will support you with this.

**In any of these situations please do not hesitate to contact:**

Warwickshire County Council Customer Service Centre on Tel: 01926 410410 and ask to speak to a duty social worker or The Rowan Organisation on Tel: 02476 322860 or 0800 783 1755.

**Compliments, comments and complaints:**

If you have any comments or complaints about our services, please let us know. Any member of staff will be pleased to help you, or you can contact the Customer Relations team at:

Customer Relations  
P.O. Box 9  
Shire Hall  
Warwick  
CV34 4RR  
Tel. 01926 414102  
Email: [customerrelations@warwickshire.gov.uk](mailto:customerrelations@warwickshire.gov.uk)



## Direct Payments Factsheet 15: Acting as a Suitable Person

### Direct Payments

From November 2009, the law has been changed to extend Direct Payments to people who lack the mental capacity to consent to them. Warwickshire County Council now has duty to offer Direct Payments to these individuals, where there is a 'Suitable Person' to receive and manage such payments on their behalf and where it would be in their best interests to have Direct Payments.

You are considering acting as a 'Suitable Person' to receive Direct Payments on behalf of someone who does not have capacity.

### Being appointed as a Suitable Person

- You cannot just become a Suitable Person. Warwickshire County Council must follow legislation and guidance on how to appoint a Suitable Person. Please discuss with your worker from Warwickshire County Council what the conditions are.
- You must meet all the criteria as set out in this policy and the Warwickshire County Council checklist for appointing a Suitable Person.
- You will act as the Suitable Person on behalf of an adult who lacks mental capacity to consent to receive Direct Payments.
- You must be willing and want to act as a Suitable Person.
- You can have support to manage the Direct Payments. Warwickshire County Council advises you to use the services of The Rowan Organisation. They can support you with using Direct Payments, payroll services, recruiting and managing personal assistants, and undertaking CRB checks, amongst other services.

### Your role and responsibilities

- You must follow good practice in making decisions on behalf of the person who lacks capacity and act in their best interests.
- As the Suitable 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 agree to inform Warwickshire County Council of any changes or difficulties, or as soon as you believe the person has regained capacity.



- You will sign an agreement with Warwickshire County Council relating to the use of the Direct Payments, and you must keep to its terms.
- You agree to use the Direct Payments to purchase and obtain the services necessary to meet the needs of the person who lacks capacity, as agreed by Warwickshire County Council.
- When making these arrangements it may involve legal responsibilities - for example employing staff.
- If you employ personal assistants, you must ensure you act lawfully as an employer – please ask your worker for Direct Payments factsheet no 9.
- If you use an agency, please ask your worker for Direct Payments factsheet no 7 for advice on how to use agencies and keep safe.
- If you decide to give up acting as the Suitable Person, you must contact Warwickshire County Council as soon as you no longer want to carry on in this role.
- If the person you represent has fluctuating capacity, you must ensure during periods when they regain capacity that you involve them as much as practicable in decisions.
- You may not use the Direct Payments to secure services from a spouse, civil partner or partner of the individual. Or a close relative, spouse or partner of a close relative of the individual who is currently living in the same household without permission from Warwickshire County Council. The Suitable Person must first speak with Warwickshire County Council and seek agreement in these circumstances. There may be occasions when the Council decides that it is necessary for the Suitable Person to use Direct Payments to secure such services, however, such situations are likely to be exceptional and a best interest's policy is adopted.
- You must open a separate Direct Payments bank account and provide Warwickshire County Council with the details on the bank mandate form given to you.
- If you are a corporation or unincorporated body, you must ensure that the money can be shown as separate to any funds you may hold for any other person or body.
- Whilst Warwickshire County Council do not want to discourage you from acting on behalf of an individual who lacks capacity, 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 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

- Warwickshire County Council strongly advises that criminal records checks (CRBs) are undertaken for anyone employed to provide services for an individual who lacks capacity. The cost can be funded from the Direct Payments account.
- The Rowan Organisation can provide access to CRBs should you request one.
- There are occasions when it is mandatory for Warwickshire County Council to carry out CRBs when children are present in the household.
- You must speak with the worker from Warwickshire County Council who will advise when a CRB check must be undertaken for anyone you engage in providing services.
- If you are a corporation or unincorporated body you must undertake criminal record checks for any workers you use to provide to the person who lacks capacity.
- Warwickshire County Council will request you undertake a criminal record check if you wish to be an appointed Suitable Person and you are not a family member, spouse, or a friend involved in the provision of care (please discuss with worker for criteria). For example an independent care broker, solicitor not previously known to the person who lacks capacity. You cannot be appointed until this check has been completed.

As the Suitable Person, you are only responsible for making decisions about Direct Payments, but there are other ways support can be provided for the person without capacity either via a virtual budget, or the worker arranging care for the person. Direct Payments is just one way. Please discuss the alternatives with the worker.



## Direct Payments Factsheet 16: Choosing not to use the Rowan Organisation for Information and Support

Warwickshire County Council has a contract with the Rowan Organisation so that people using Direct Payments have access to expert information, advice and support without charge. You can choose to use the Rowan Organisation for one specific service only if you wish. They provide a payroll service that will assist you with staff wages and make sure that you meet all the HM Revenue and Customs requirements. You may decide that you only want support with recruiting staff or advice on using care agencies. You pick the level of support you want. Access to this service is provided at no cost to you.

**Warwickshire County Council strongly recommends that you use the Rowan Organisation.**

If you choose not to use the Rowan Organisation now - you can do so in the future if you wish.

There are other organisations and consultants who provide support, advice and information on independent living, Direct Payments and other forms of self-directed funding. If you would like advice on how you contact these services please talk to a practitioner from Warwickshire County Council.

We have a number of Factsheets that will help you use your Direct Payments safely. Your practitioner will give you copies.

If you would like to discuss anything in the factsheets please contact the Self Directed Funding Development Officer (Direct Payment Officer) at Warwickshire County Council: 01926 410410

- Factsheet 1: Getting Started
- Factsheet 2: Bank Letter
- Factsheet 3: Bank Mandate Form
- Factsheet 4: Keeping Safe
- Factsheet 5: Frequently Asked Questions
- Factsheet 6: Direct Payments User Network
- Factsheet 7: Using Agencies
- Factsheet 8: Insurance
- Factsheet 9: Employed/ Self Employed
- Factsheet 10: Keeping Good Records
- Factsheet 11: Recruiting Staff
- Factsheet 12: Being a Good Employer
- Factsheet 13: Employing People Legally
- Factsheet 14: When Things Happen
- Factsheet 15: Acting as a Suitable Person
- Factsheet 16: Choosing not to use the Rowan Organisation



## For further information

If you require further information about our services please contact Warwickshire County Council on 01926 410410 in the first instance

## Compliments, comments and complaints

If you have any comments or complaints about our services, please let us know by contacting the:

Customer Relations Team  
P.O. Box 9, Shire Hall  
Warwick  
CV34 4RR  
Tel: 01926 410410

## Information in other formats

If this information is difficult to understand, we can provide it in another format, for example, in large print, on audio tape, or in another language. Please contact the Interpreting and Translation Unit on 01926 410410.

Customers can also contact the Coventry and Warwickshire Sign Language Interpreting service for the information to be translated into Sign Language:

Text: 024 76229667 Voice: 024 76520378  
Fax: 024 7622 6326 Email: [office@cwslis.co.uk](mailto:office@cwslis.co.uk)

## Are we getting it right?

We are interested to know what you think of our leaflets. For any feedback you may have in relation to the content, design or readability, please contact:

Promotions and Publications  
Building 2, Saltisford Office Park  
Ansell Way  
Warwick  
CV34 4UL  
Email: [promotionsandpublication@warwickshire.gov.uk](mailto:promotionsandpublication@warwickshire.gov.uk)

SSAL757  
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