



# THE 3 R'S PROJECT FACTSHEET

## When things go wrong with direct payments

This FACTSHEET looks at what may happen if the local authority has concerns about how direct payments are being used: there are occasions when a supported person may be asked to repay funds. The factsheet also considers what may happen when direct payments are interrupted because the supported person is admitted to hospital.

Local authorities have powers to terminate a direct payment made under Option 1 of the self-directed support options. These powers are set out in the Self-directed Support (Direct Payments) (Scotland) Regulations 2014 (the 2014 Regulations).

A local authority may terminate a direct payment if:

- ▶ the supported person becomes ineligible to receive direct payments;
- ▶ all or part of the direct payment has been used for some purpose other than support to meet the assessed needs
- ▶ the local authority thinks that the supported person has breached criminal or civil law in relation to their support
- ▶ the direct payment has been used to employ a family member without agreement from the local authority.



Where the local authority is considering terminating a direct payment, the key consideration should be whether the support plan is capable of meeting the personal outcomes and assessed needs of the supported person. The local authority should not automatically assume when problems arise that the solution is to discontinue the direct payment. The local authority should be open and transparent with the supported person. Where it concludes that a particular form of support will not meet the supported person's needs and outcomes, they should explain why this is the case and seek to collaborate with the supported person to develop alternative plans.

The local authority should inform the supported person of any decision, or potential decision to terminate a direct payment as soon as possible. Before terminating a direct payment, the local authority must tell the supported person in writing the reason why it has decided to terminate the direct payment, and the date from when the direct payment will be terminated. Where necessary, this information should also be provided in other formats including accessible formats.

The official guidelines recommend that each local authority set a minimum period of notice to be given before the payments are discontinued. This information should be provided to supported people at the outset. The local authority should also bear in mind any contracts into which the supported person has entered.

If the local authority decides that it must terminate the direct payment, it should discuss the alternative arrangements for delivery of support under Options 2 or 3 of the 2013 Act.

## Short-term changes in the person's support arrangement

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Where it is necessary for the supported person to enter hospital for a period of time, the local authority should take a *proportionate* approach. Where the person enters hospital for a short period, direct payments should continue in order to allow personal assistant contracts to remain in place. This is to ensure continuity of care once the person is able to return home, and avoid repeating the recruitment process.

Sometimes, it may be necessary for the local authority to consider pausing the direct payment temporarily, for example: when a supported person enters hospital for a longer period, or because his or her condition improves, or when a supported person is temporarily unable to manage the direct payment even with support.

The local authority should discuss with the supported person how best to manage any adjustment and inform the person as soon as possible if it is considering pausing a direct payment arrangement. It should avoid taking immediate steps without consulting the supported person.

## Seeking repayment of direct payment funds

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Depending on the circumstances surrounding any decision to terminate a direct payment, the local authority may need to decide if they should recover unspent funds. The legislation enables the local authority to require some, or all of the money they have paid out to be repaid if they are not satisfied that it has been used to secure the support to which it relates. The local authority may also require repayment if the person has not met any condition which the authority has properly imposed, or has been imposed by regulations.

The local authority has the discretion to take into account *hardship considerations* when deciding whether to seek repayments. When challenging decisions to seek repayments, it should be made clear to the local authority if hardship considerations should be taken into account, depending on individual circumstances.



The local authority should also consider how to recover any unspent budget if the recipient dies. For example, if someone has paid an agency in advance for its services, the local authority should bear in mind that it may be difficult to recover money paid for services which were not in fact delivered. The local authority should consider that before their death, the supported person might have incurred liabilities which should legitimately be paid for using the budget.

For example, if they had received services for which payment had not been made at the time of death. There may also be occasions where additional money is required from the local authority to settle liabilities in full.

If you would like further clarification on any of the information contained in this FACTSHEET please contact the 3 R's Project on 0131 467 2994 or email them at:

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