Newsletter

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Direct payments in social care

Taking stock of developments

What follows is a scattergun review of various relatively recent decisions / reports relating to the rights of adults in need and carers to direct payments (DPs) in England under the Care Act 2014. At the end of this review there is a note concerning the DP rights of disabled children in England (page 11), a separate note concerning the rights of disabled people to DPs in Wales (page 15) and a list of resources (page 21).

Writing in 2013 the late great Michael Oliver raged against the way that local and national governments had distorted and betrayed the Disability Movement's ideas and dreams – and cited the 'direct payments' system as an example. Far from being a force to combat 'the dependency-creating barriers of professional practice' all too often local DP systems resemble unthinking, oppressive, bureaucratic monsters.

It need not be this way – as official guidance and ombudsman decisions 'talk-the-talk' of user choice, of flexibility, of 'admin lite' arrangements and much more in this vein.

Sadly, in the intervening years the evidence suggests that the same problems persist. See for example, the recent blog posting, Lucy Fullard, CEO and Founder of the Parent and Carer Alliance where she provides a troubling summary of the challenges her 3,000+ members experience in the way councils administer their DPs.[1] The statistics also indicate that DPs may be losing some of their appeal. Between 2015/16 and 2023/24 there has been a slight reduction in the numbers of adults opting for DPs - from 28% to 25% in 2023/24 (representing 9,400 fewer) – which the Kings Fund suggests may be in part due to the 'limited choice of local services on which to spend a direct payment' and the difficulty in recruiting PAs.[2]

The current English health and social care systems' inability to deliver on the ideals of Michael Oliver and other founding members of the Disabled Peoples Movement appears to be replicated in Wales and in Scotland.[3] Since the legislation differs in each nation (but their underpinning ideals do not) one wonders what the problem is. Simplistically, the finger of blame might be pointed to their shared experience of austerity, but there are undoubtedly many other factors – a PhD topic for someone perhaps?

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[1] L Fullard 'Direct Payments were meant to deliver independence. For too many families, they now deliver stress' Parent and Carer Alliance (2026) at https://www.parentandcareralliance.org.uk/project/direct-payments-were-meant-to-deliver-independence.-for-too-many-families%2C-they-now-deliver-stress.

[2] In 2023/24, the vacancy rate for PAs stood at 11.0% - the highest vacancy rate for any job role in social care - Kings Fund 'Social care 360' 8 Apr 2026.

[3] See for example R McLean *The impact of Cuts to SDS Option 1 (direct payments) on disabled people and unpaid carers* Three Sisters Consultancy, 2025 and Audit Wales '*Direct Payments for Adult Social Care*' Report of the Auditor General for Wales April 2022.

The right to Direct Payments in England (adults)

Where an adult has been assessed as having eligible needs for community based services and has the necessary mental capacity to request that these needs be met by way of a DP, then the council 'must' (subject to certain provisos) make the payment (Care Act 2014, s31(2)). The provisos are, in essence: (1) that they are not prohibited by law from receiving such a payment;[4] (2) that the council is satisfied that they are capable of managing the DP (alone or with assistance); and (3) that the making of the DP is an appropriate way to meet their assessed needs.

If a council seeks to argue that an adult is incapable of managing a DP or that it is not appropriate for them to have one, then the onus will be on that council to provide evidence-based reasons (specific to the individual) that that this is the case.[5] Where an individual lacks the necessary mental capacity to request a DP, such a payment can be made, but further criteria need to be satisfied.[6]

Councils cannot create additional 'local' barriers that restrict the availability of DPs – for example by requiring that the person gives reasons for asking for one,[7] or by stipulating that DPs cannot be paid for certain community-based services or by stating that DPs cannot be used to employ family members (regardless of where they live).[8]

A 2020 ombudsman report[9] concerned a council policy that DPs would no longer be available to fund respite care (because it had a block purchased contract for such care). The ombudsman held that such a policy was contrary to the law, observing (paras 16-19):

> The Care Act 2014 requires councils to promote the wellbeing of adults in need and carers, and to do this in a way that satisfies certain principles, one of which is the assumption that individuals are best placed to judge their well-being, and should be allowed some control over their day-to-day life, including the care and support they receive. Direct payments are one way this can be achieved. The Council acted contrary to this.
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> While I understand the Council had introduced the policy to save public money, this does not allow the Council to disregard the law.
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> Direct payments are designed to give people more choice and control over the care and support services they are assessed as needing. The Care and Support Statutory Guidance 12.35 - says "The direct payment is designed to be used flexibly and innovatively and there should be no unreasonable restriction placed on the use of the payment, as long as it is being used to meet eligible care and support need".
>
> In this case Mr X was restricted from using his direct payment to meet eligible needs. His previous successful use of direct payments clearly demonstrated the positive benefits having choice and control provides for service users and their families. The law does not allow for councils to restrict choice in the way it did. This was fault.

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[4] The Care and Support (Direct Payments) Regulations 2014 Schedule 1 lists categories of adults who cannot receive direct payments – for example, those subject to certain court orders or controls arising out of their drug and/or alcohol dependencies.
[5] Para 12.22 of the Statutory Guidance provides guidance on the evidence that the council must provide in cases where it declines to make a DP.
[6] Care Act 2014 s 32(2) requires that in such cases a suitable 'authorised person' must request the DP and that the council is satisfied that: (1) they are capable of managing the DP (alone or with assistance) and (2) they will act in the person's best interests – see also Statutory Guidance para 12.16-12.17 and to L Clements 'Community Care and the Law' (Legal Action, 7th ed 2019 para 11.23 – 11.24).
[7] Public Service Ombudsman (Wales) Complaint no B2004/0707/S/370 against Swansea City Council, 22 February 2007, para 75.
[8] Discussed further below – see page 7.
[9] Complaint no 19 008 804 against Staffordshire CC 6 October 2020.

Flexibility and the promotion of choice in England (adults)

The Statutory Guidance to the Care Act 2014 (para 12.4) is explicit: local DP systems 'must not restrict choice or stifle innovation' and at para 12.35, that DPs are 'designed to be used flexibly and innovatively and there should be no unreasonable restriction placed on the use of the payment, as long as it is being used to meet eligible care and support needs'.[10] NICE guidance[11] reinforces this imperative by suggesting that care plans should be sufficiently flexible to 'accommodate changes to a person's priorities, needs and preferences' – and that LAs should consider 'agreeing a rolling 3-monthly budget so that people can use their money differently each week'. In practice, however, it appears that many councils view the idea of flexibility as 'a risk to be managed'.[12]

By creating a presumption of flexibility, the guidance, in effect, requires that local authorities (and health bodies in England[13]) provide rational, evidence-based reasons to justify refusals to permit alternative uses of DPs. By way of example, a 2019 ombudsman report[14] concerned a disabled person who received a DP to meet her assessed needs, which included support to access the community and to enable her mother to have a break. Her council stopped the DP when she used it to pay for horse riding but provided 'no good reason' as to why an activity of this kind was not a permitted way of meeting her assessed needs.

Likewise, a 2018 ombudsman's report[15] found maladministration where a council sought to recover DP monies that had been spent on birdwatching and gardening equipment when the assessment identified their need as being to 'access community activities'. The ombudsman considered that these activities 'could be "community activities" and that the lack of clear advice about how the complainant could spend payments was fault'.

Such considerations will also be of importance in cases where a council is seeking to recoup unspent DPs or recover surpluses that have arisen due to the recipient being unable to secure the necessary support (a topic considered in further detail at page 5 below). In relation to which 2022 guidance[16] emphasised that:

> It has always been possible under the Care Act and direct payment regulations for you to use your direct payments flexibly providing it continues to meet your assessed needs. We expect LAs and CCGs [now ICBs] to be as flexible as possible when you have made reasonable decisions to use your direct payment differently in a way that keeps you safe and avoids your care breaking down.

DPs as a genuine 'choice' in England (adults)

Arranging one's care and support needs can be a daunting exercise – especially when accompanied by unnecessarily onerous administrative obligations (see page 10 below).

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[10] See also complaint no 24 019 078 against Redcar & Cleveland Council, 11 Dec 2025.
[11] NICE 2018 Guideline (NG86) People's experience in adult social care services: improving the experience of care & support for people using adult social care services (para 1.3.11).
[12] C Watson Direct Payments and Flexibility Citizen Network 6.5.25 at https://citizen-network.org/library/direct-payments-and-flexibility.html.
[13] In Wales, DPs are now possible for adults in community settings who are eligible for NHS Continuing NHS Healthcare (CHC) - The National Health Service (Direct Payments) (Wales) Regulations 2026 – and see Rhydian pages *Continuing NHS Healthcare and adults*.
[14] Complaint no 18 010 441 against Cheshire West & Chester Council, 22 Aug 2019.
[15] Complaint no 17 013 291 against Norfolk CC, 24 April 2018. See also complaint no 17 011 713 against Kirklees MBC, 26 September 2018 which concerned a DP used to provide respite care to enable a husband to pursue his walking hobby.
[16] Department of Health and Social Care *Using direct payments: guidance for people receiving direct payments and personal assistants following the announcement of the living with COVID plan* February 2022. Although the guidance was withdrawn in April 2022, the relevant statutory provisions have not been amended and accordingly the statement must remain correct. See also complaint no 22 009 884 against Newcastle upon Tyne City Council, 18 Jan 2023.

Councils are legally obliged to commission suitable support arrangements to meet the eligible needs of disabled people/carers: opting for a DP should be seen as a positive choice.[17]

All too often, however, the inadequacy/poor quality/non-existence of council commissioned services means that a DP is seen as the only possible mechanism for ensuring some semblance of an adequate and sustainable care and support package. The Statutory Guidance addresses this issue head on: 'local authorities must not ... allow people to be placed in a situation where the direct payment is the only way to receive personalised care and support' (para 12.9); adults must be 'free to choose how their needs are met' (whether by DP or otherwise) (para 12.3); they 'must not be forced to take a direct payment against their will' (para 12.5); and that they can 'decide at any time that they no longer wish to continue receiving direct payments' (para 12.69).

The ombudsman has held that it is maladministration for a council not to directly commission care but to put individuals in a position where they feel that they have to have a DP instead (and in consequence the responsibility of commissioning their care themselves). A 2023 report[18] concerned a commissioning failure be a council such that, for long periods, home care visits were regularly too early, delayed or missed altogether – and in consequence the disabled person was left in a position where he felt he had to accept a DP. As the ombudsman's report notes (at para 50):

> The Statutory Guidance says direct payments should not be the only way people can receive personalised care and support. It also says councils must only provide direct payments if people ask for them. But Mr B neither asked for direct payments nor had any alternatives available to him (apart from the unwanted offer of a care home place).

In similar vein, a 2026 report[19] noted that although a LA is not at fault for suggesting DPs when it has difficulty meeting an assessed need, the 'Council's continued and repeated suggestion of this, despite Mrs X not wanting to consider direct payments, was fault'.

Direct payment rates in England (adults)

Councils are under a duty to meet the assessed social care needs of disabled people and carers. It follows that if the individual opts for a DP in order to meet some[20] or all of their assessed needs, the DP must be 'an amount which is sufficient to meet [these] needs'.[21] Local authorities must be able to explain clearly how the DP has been calculated in a way that is 'transparent'[22] and that this information must be provided:[23]

> at a stage which enables them to effectively engage in care and support planning, and that they can have confidence that the amount includes all relevant costs that will be sufficient to meet their identified needs in the way set out in the plan.

[17] Care Act 2014 section 31(1)(b) requires direct payments to be made only where the proposed recipient requests such an arrangement.
[18] Complaint no 21 016 864 against Somerset County Council, 14 May 2023.
[19] Complaint no 25 001 921 against Reading Borough Council, 6 February 2026 para 25 and see also complaint against West Berkshire Council no 19 011 005, 7 September 2020.
[20] Individuals can opt to have some of their care and support needs met by a DP and other needs via local authority or third-party provision – see Statutory guidance para 11.9.
[21] Statutory guidance para 12.25.
[22] Statutory guidance para 11.4 and see also *R (CP) v. NE Lincolnshire Council* [2019] EWCA Civ 1614 paras 73-75.
[23] Statutory guidance para 11.24.

A failure to comply with these obligations may mean that a council is unable to reclaim DPs that it deems to have been misspent.[24]

Councils must be able to explain in simple terms why they consider a DP rate is sufficient to meet a person's needs: ie how the figure has been calculated. This will be especially so if the person's personal assistants require particular skills or have to undertake additional caring roles[25] or if retaining them gives rise to other expenses (for example specific training costs, insurance costs,[26] the costs of providing meals for live-in carers,[27] contingencies for potential redundancy liabilities[28] etc). Since all care and support plans are 'context specific' – determined by the particular needs of the individual – councils must 'not set arbitrary upper limits on the costs [that they are] willing to pay to meet needs through certain routes' – for example via DPs.[29]

This means that it is for the council to demonstrate the sufficiency of the hourly rate in any particular case. A 2025 ombudsman report concerned this issue. The council had responded to a complaint by stating that if the complainant provided 'evidence of the difficulties, she experienced in recruiting a PA' it would 'consider if this provides grounds to alter its view on the hourly rate'. The ombudsman held this to be fault – the evidential onus lay with the council – it had to be able to demonstrate that it had considered 'the circumstances of each individual case when deciding the hourly rate it will pay'.[30]

Likewise, a 2020 ombudsman's report[31] concerned a council that agreed to support an adult with a 24-hour home care DP package but then capped the cost – at the cost of a care home place. In consequence the disabled person had to rely on her family to provide care and had to pay over £100 per week for care out of her own money, as the DP did not cover the full costs. The ombudsman found this to be fault: the council had set an arbitrary limit for the DP package[32] and had failed to explain how her needs could be met through 24-hour live-in care at home, based on the budget allocated.

Repayments and recoupment of unspent sums in England (adults)

Councils have the power to seek repayment of a DP if satisfied that it has not been used to meet 'the needs specified' in their care plan.[33] It follows that if the care plan does not specify these needs with sufficient clarity, then councils may be unable to reclaim the sums that they deem to have been misspent.[34] This was the case in a 2025 ombudsman report, where there was no explanation in the complainant's care plan as to how she could (and could not) spend her 'respite (well-being) payments'. In similar terms, a 2021 report[35] concerned a council assertion that it had imposed a limit on the amount of a DP that could be used to fund an annual holiday, but it was unable to provide evidence to support that

[24] See for example ombudsman complaint no 24 000 521 against North Lincolnshire Council, 18 Feb 2025 where there was no clarity in the complainant's care plan as to how she could and could not spend her 'respite (wellbeing) payments' – and see also the discussion below concerning the 'Repayments and recoupment of unspent sums'.
[25] Complaint no 18 003 496 against Plymouth City Council, 27 November 2018 para 21.
[26] For examples of such costs, see the blog posting by Lucy Fullard (footnote 1 above) and see also L Clements, S Woodin, S McCormack and D Tilley Direct Payments for Disabled Children and Young People and their Families (Cerebra 2019) para 2.03.
[27] Complaint against Staffordshire County Council 17 019 653, 30 Nov 2018.
[28] Complaint no 24 014 783 against West Berkshire Council, 04 Sep 2025.
[29] Statutory guidance para 12.27.
[30] Complaint no 24 019 078 against Redcar & Cleveland Council, 11 December 2025 paras 40 & 41
[31] Complaint no 19 007 855 against Bromley LBC, 4 September 2020.
[32] Contrary to the Statutory guidance para 10.27.
[33] Care Act 2014 s33(5) and The Care and Support (Direct Payments) Regulations 2014 reg 7(1)(b).
[34] Complaint no 24 000 521 against North Lincolnshire Council, 18 Feb 2025.
[35] Complaint no 20 004 697 against Darlington BC, 7 May 2021 and see also complaint no 22 009 884 against Newcastle upon Tyne City Council, 18 Jan 2023 which also concerned the use of a DP for a holiday – and is discussed further below.

assertion and the relevant care plan did not 'set out any specifics or limitations about how the money should be used for holidays'.

Recoupment is a discretionary power

The power to seek a repayment of DP monies is discretionary and, in consequence, one that can only be exercised if the council has had regard to all the relevant circumstances, including the core principle that individuals should be encouraged to use their DP 'flexibly and innovatively'.

A common difficulty encountered by many DP recipients is the problem of securing the care and support that they have been assessed as needing. All too often there are periods when suitable care and support services are simply unavailable. This was the case in a 2023 ombudsman report,[36] that concerned a carer for whom a DP had been agreed to enable him to have a break. Due to difficulties in arranging suitable support, he told the council he had not spent his 2021 DP allocation but planned to use it to help pay for an overseas holiday in 2022 (along with that year's allocation). The council told him it would not pay him his 2022 allocation until he had returned the unspent money, which he considered to be unfair as he had been unable go away in 2021. The ombudsman referred to Covid Guidance to council's that stated:[37]

> It has always been possible under the Care Act and direct payment regulations for you to use your direct payments flexibly providing it continues to meet your assessed needs. We expect LAs and [now ICBs] to be as flexible as possible when you have made reasonable decisions to use your direct payment differently in a way that keeps you safe and avoids your care breaking down.

and

> Unspent money from your direct payment should continue to be made available to you to manage your own care and support in the way that works for you during this time, keeps you safe, and meets your health and wellbeing needs.

This approach has been followed in subsequent ombudsman reports, for example:

> A 2021 report[38] concerned a surplus in a disabled person's DP account, as a result of scheduled respite breaks not being possible during the Covid restrictions. Her mother (who was managing the DP) suggested that the surplus be used to to purchase a garden room that could be used for respite as well as benefiting the disabled person. The council refused. The ombudsman's report observed that (para 49):
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> > The way the Council dealt with spending surplus budget on a garden room does not assist with building a positive working relationship, and compounds [the mother's] feelings that the Council discount her role as deputy. The purpose of Direct Payments is to give the individual choice and control about how they spend their personal budget, providing it is used to meet the eligible care needs detailed in the care and support plan. ...

[36] Complaint no 22 009 884 against Newcastle upon Tyne City Council, 18 Jan 2023.
[37] Department of Health and Social Care Using direct payments: guidance for people receiving direct payments and personal assistants following the announcement of the living with COVID plan issued on 19 July 2021, and updated on 24 February 2022 and withdrawn on 1 April 2022. The guidance remains of relevance (not withstanding its withdrawal) as a statement of good practice encapsulated in its assertion that it 'has always been possible' under the Act and regulations'.
[38] Complaint no 20 003 099 against Barnsley MBC, 16 July 2021.

A 2025 report[39] concerned a council's refusal to allow an underspend to be used to cover additional costs associated with the disabled person's eligible needs. In finding fault, the ombudsman noted that the council had provided no evidence that it had 'considered the reasons why the underspend occurred', stating 'I would expect the Council to have established why it had accrued and to ascertain if this was due to any changes to their eligible needs or problems in meeting their assessed needs'.

Direct Payments and family members in England (adults)

There is no general legal restriction on individuals using their DP to pay close relatives (apart from their spouses/civil partners[40]). However, if the relative lives in the same household as the DP recipient then the payment can only be made if the council considers this to be 'necessary'.[41] The Statutory Guidance (para 12.35) provides little detail as to when it might be considered 'necessary', merely stating:

> The direct payment is designed to be used flexibly and innovatively and there should be no unreasonable restriction placed on the use of the payment, as long as it is being used to meet eligible care and support needs.

Although the regulations[42] create a presumption against using DPs to pay such family members, it is a low threshold presumption. If there is evidence that paying a family member would be a better arrangement for promoting the 'well-being' of the DP recipient, then the onus will shift to the council to provide evidence to demonstrate that it is not necessary. This would presumably require it to establish that an alternative, available mechanism exists that would meet the individual's eligible need equally well. In practice it appears that some councils have policies that only permit payments to same-household family members in 'exceptional' circumstances – and this must be incorrect.[43]

A number of Ombudsman reports have provided valuable guidance on the approach that should be taken in such cases.

- A 2015 complaint[44] concerned an adult who sustained serious spinal injuries at university and requested he be allowed to employ his mother as his personal assistant using DPs. She was a single mother who had given up work to care for him. In refusing, the council applied a test of 'exceptional circumstances', which the ombudsman held was incorrect: the test was (and remains) 'whether employing a family member is "necessary"'. The ombudsman held that any assessment as to whether it was 'necessary' to employ the adult's mother, had to include consideration of how his care needs would otherwise be met – and there was no evidence that the council had looked at this question.
- A 2020 complaint[45] concerned a disabled person who was left without the support she needed after the council told her she could not pay her daughter to care for her. The Ombudsman said:

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[39] Complaint no 24 019 078 against Redcar & Cleveland Council, 11 December 2025 para 44.
[40] The Care and Support (Direct Payments) Regulations 2014 regulation 3(3)(a); see however complaint no 24 016 358 against Suffolk County Council, 11 Aug 2025, where even senior officers of the authority appeared to believe otherwise.
[41] The Care and Support (Direct Payments) Regulations 2014 regulation 3(2)
[42] The Care and Support (Direct Payments) Regulations 2014 regulation 3(3).
[43] 'Exceptional' puts the presumptive bar significantly higher than 'necessary' – see, by analogy, *R (Ross) v West Sussex PCT* [2008] EWHC 2252 (Admin), (2008) 11 CCLR 787; and *R (M) (Claimant) v Independent Appeal Panel of Haringey* [2009] EWHC 2427 (Admin) at para 27.
[44] Complaint no 14 005 078 against Cheshire East, 22 July 2015.
[45] Complaint no 19 004 581, against Cornwall Council, 3 December 2020.

> The council said paid care could only be provided by a live-in family member in exceptional circumstances, where it could not be provided by an external agency. In this case, the council believed the mother's care could be provided by an agency.
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> But the council did not put any alternative care support in place, so the daughter felt she had no choice but to provide significant unpaid care for her mother. This meant she was unable to find paid work and left her without enough breaks to have her own social life or regular time off to relax.

The Ombudsman's investigation found the council at fault for stopping the mother's DPs without carrying out appropriate adult/carers assessments of the mother and daughter and without identifying an agency that could take over the care provided by the daughter.

- A 2025 complaint[46] concerned a council's decision that a disabled person could no longer use his DP to pay his mother for care, asserting that she 'could only be the beneficiary of [her son's] direct payments in "exceptional circumstances"' even though she did not live with him – something the ombudsman found 'concerning' given that senior managers had dealt with her complaint. The report then notes (paras 56-57):

> But worse in my view was what this complaint implied about the Council's attitude towards [the son] as an adult needing care. … Government guidance stresses the need for care planning to be a collaboration between the Council and person needing care. The person's wishes must be at the front and centre of the Council's approach. This is first when deciding how the person wants to receive their personal budget, giving them the right to a direct payment. And second, if they receive a direct payment in deciding what to use those payments for.
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> Here, [the son] clearly made it known to the assessor whom he wanted to provide his care and that was [his mother]. It was not the case as the Council later claimed, he was "open" to receiving care from an agency instead. The Council gave him no choice in the matter. It did not take account of his wishes before embarking on a search for a care agency. That was a fault.

Rational reasoning in England (adults)

A reoccurring theme of many of the ombudsman's reports concerns the failure of councils to provide rational, evidence-based reasons for their decisions. For example, a 2023 report[47] concerned a council's failure to explain why a DP could be used to fund some activities but not others (eg swimming, cooking and horse riding). The ombudsman also held that if a council argues that some costs of admission to activities can be met from the individual's own finances it must explain why it has decided that this is the case.

'Rational reasoning' will also include an awareness of situations where the evidential onus rests with the council. Accordingly (as noted above) in a 2025 report[48] the ombudsman pointed out that it was for the council to demonstrate that the hourly rate for a DP was sufficient to meet the assessed need, and not for the complainant to prove that it was insufficient. The onus on the council will be even greater where the complainant can demonstrate that, despite extensive enquires no potential provider in the council's area are prepared to accept the proposed DP rate.[49]

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[46] Complaint no 24 016 358 against Suffolk County Council, 11 Aug 2025.
[47] Complaint no 22 010 970 against London Borough of Hackney, 19 May 2023.
[48] Complaint no 24 019 078 against Redcar & Cleveland Council, 11 Dec 2025 paras 40 and 41.
[49] *R (BNF) v Newport City Council* [2026] EWHC 1212 (Admin) 20 May 2025.

In a 2025 report[50] the Ombudsman noted that 'there was little reasoning' to explain the council's reduction in a disabled person's DPs: no evidence that the assessor discussed their intentions with him or his carer and no adequate explanation as to why the DPs had been cut – concluding 'without adequate reasoning, I had to find fault with the outcome of the assessment' (para 51).

The obligation to make rational, evidence-based/person-centred decisions means that rigid non-statutory restrictions concerning the way DPs are paid or used are likely to be unlawful. In legal parlance, restrictions of this kind constitute a 'fettering' of a council's duties/ discretions.[51]

Pre-payment cards in England (adults)

Some councils have, in effect, adopted policies that make the use of pre-payment cards mandatory for those who have opted to have a DP.[52] The Statutory Guidance[53] is at pains to stress that pre-payment cards 'should not be provided as the only option to take a direct payment' and that 'the offer of a "traditional" direct payment paid into a bank account should always be available if this is what the person requests and this is appropriate to meet needs' (para 12.58). The guidance continues (para 12.59):

> It is also important that where a pre-paid card system is used, the person is still free to exercise choice and control. For example, there should not be blanket restrictions on cash withdrawals from pre-paid cards which could limit choice and control. The card must not be linked solely to an online market-place that only contains selected providers in which to choose from. Local authorities should therefore give consideration to how they develop card systems that encourage flexibility and innovation, and consider consulting care and support user groups on any proposed changes to direct payment processes.

Timescales in England (adults)

Neither the Care Act 2014 nor the relevant regulations impose a timescale for the completion of a social care assessment or for the making available of a DP for individuals who wish to have their eligible needs met by way of such an arrangement. The Statutory Guidance is also silent on this question. The Act does, however, require that all care and/or support plans to include a 'personal budget for the adult concerned'[54] and the ombudsman has held, on many occasions, that assessments should in general be completed within four to six weeks of first contact with the local authority.[55] A 2021 ombudsman's report[56] concerned a four-month delay between the adult's assessment and the provision of DP funds. In holding this to be fault, the ombudsman observed 'I consider it would be reasonable for the council to have carried out the needs' assessment, completed the support plan and arranged the direct payments within four to six weeks of the initial request.'

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[50] Complaint no 24 016 358 against Suffolk County Council,11 Aug 2025.
[51] For further discussion concerning the unlawfulness of 'fettering a discretion' see the Cerebra 'Accessing Public Services Toolkit: A problem-solving approach' page 24.
[52] See for example complaint no 21 001 705 against West Sussex County Council, 1 February 2022.
[53] See also Luke Clements *Pre-payment cards and direct payments* (2019) which considers guidance issued by Think Local Act Personal (TLAP) *Payment cards as a means of managing a personal budget* (2019) which in turn cites a 2017 report by the Independent Living Strategy Group *Payment Cards in Adult Social Care A National Overview 2017*.
[54] Section 25(1)(e) Care Act 2014.
[55] See for example complaint no 24 009 098 against Islington LBC, 15 May 2025, para 45.
[56] Complaint no 20 007 554 against Hillingdon LBC, 27 July 2021, para 45.

Administration

For many disabled people and carers, administering their DPs can be a daunting off-putting experience:[57] recruiting and employing a PA, having to justify every penny of their DP expenditure and to produce detailed records (sometimes spanning several years). These are bureaucratic systems that discourage users from choosing DPs – 'system demands' that may be disproportionate in terms of cost effectiveness and in conflict with the principles enshrined in the Statutory Guidance – para 12.4 of which, for example, asserts:

> For direct payments to have the maximum impact, the processes involved in administering and monitoring the payment should incorporate the minimal elements to allow the local authority to fulfil its statutory responsibilities. These processes must not restrict choice or stifle innovation by requiring that the adult's needs are met by a particular provider, and must not place undue burdens on people to provide information to the local authority.

And again at para 12.24:

> Local authorities should not design systems that place a disproportionate reporting burden upon the individual. The reporting system should not clash with the policy intention of direct payments to encourage greater autonomy, flexibility and innovation. For example, people should not be requested to duplicate information or have onerous monitoring requirements placed upon them. Monitoring should be proportionate to the needs to be met and the care package. Thus local authorities should have regard to lowering monitoring requirements for people that have been managing direct payments without issues for a long period.

In a number of ombudsman reports, references to administrative responsibilities relate to council failures. For example, a 2025 report[58] concerned a council that received a disabled person's annual account containing invoices showing how his DPs had been spent. These were not analysed for four months and when some discrepancies were identified he was not informed and no action was taken. Having heard nothing the disabled person assumed his spending had been accepted by the council – which the ombudsman considered 'a reasonable assumption for him to make'. However, over a year later, the council sought a substantial repayment. The ombudsman accepted that there had been 'no deliberate misuse of public funds for personal gain' and that 'had the council had appropriate systems in place to manage and monitor [the DP] account properly, this would, on balance of probabilities, have prevented' some of the unauthorised spending'. This was 'fault' - was 'not fair for [the disabled person] to repay all of the money he correctly owed'.

Two further examples of this kind:

- A 2024 Ombudsman's report[59] noted that the council was aware that a substantial surplus had accumulated in the DP account of 'a very vulnerable person who should have had more support' to manage his DP account. He then used some of the surplus to pay off some of his debts. The ombudsman considered that the council was at fault for failing to properly monitor and audit the DP account and accordingly that, in fairness, it should only recoup half of the misspend.
- A 2023 report[60] concerned a council that waited 20 months before seeking to recoup an alleged DP overpayment. Having reviewed the council's records the ombudsman's office declared that it was unable to 'understand how it has arrived at its conclusion in each audit' which it had repeatedly miscalculated – and that the 'lack of clear and transparent financial information was not in line with the guidance and was fault'.

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[57] See, for example, C Needham Why is the take-up of direct payments so low? Centre for Care 17.04.2024 and also C Watson Reflections on Barriers and Opportunities for Increasing the Uptake of Direct Payments in England Self-Directed Support Network 2025.
[58] Complaint no 24 017 716 against Dorset Council, 07 Nov 2025.
[59] Complaint no 23 018 367 against Cornwall Council, 16 Dec 2024.
[60] Complaint no 22 011 312 against Cheshire East Council, 02 Apr 2023.

Disabled Children's rights to DPs in England

The Children Act 1989 s17A(2) provides for the making of DPs to parents of a disabled child (or directly to the disabled child, if aged 16 or 17) where the council has assessed the child as needing services under the Act (or the Chronically Sick and Disabled Persons Act 1970).

The legislation/underpinning principles that are relevant when considering DPs for adults are, in substance, little different to those that apply to DPs for disabled children. It follows that much of the above analysis and the majority of the above cited ombudsman decisions will be of direct relevance when considering DPs for disabled children.

Disabled children's right to a direct payment in England

2009 Regulations[61] provide that where a disabled child has been assessed as having eligible needs for community-based services and their parent (or the disabled child, if aged 16 or 17) requests that these needs be met by way of a DP, then the council 'must' make a DP (subject to certain provisos detailed in regulation 7(2)). The provisos are, in essence:

(1) that they are not prohibited by law from receiving such a payment;[62]

(2) they are 'capable of managing the direct payment by themselves or with such assistance as may be available to them';[63]

(3) the disabled child's needs can be met by way of a DP;[64] and

(4) the welfare of the disabled child will be safeguarded and promoted by the making of a DP.[65]

If a council seeks to argue that the proposed recipient is incapable of managing a DP or that it is not appropriate for them to have one, then the onus will be on that council to provide evidence-based reasons (specific to the individual) that that this is the case.

A 2021 ombudsman report[66] concerned a parent's complaint that 'short break' sessions commissioned by the council were unsuitable for her disabled son. She complained that the council had offered no alternative and that her request for a DP had been refused because her son had been assessed by the Early Help service, rather than by the Disabled Children's Team. In finding maladministration the ombudsman simply noted that the son was 'entitled to direct payments under the 1989 Act regime because he is disabled' (para 30).[67]

Disabled children's DPs: flexibility and the promotion of choice in England

The relevant guidance[68] (the '2009 Guidance') concerning the rights of disabled children to DPs is replete with refences to the importance of councils DP practices promoting 'flexibility and user choice'. For example:

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[61] The Community Care, services for Carers and Children's Services (Direct Payments) Regulations 2009.
[62] The 2009 Regulations Schedule 1 lists categories of adults who cannot receive direct payments – for example, those subject to certain court orders or controls arising out of their drug and/or alcohol dependencies.
[63] The 2009 Regulations regulation 4.
[64] The 2009 Regulations regulation 7(2)(a).
[65] The 2009 Regulations regulation 7(2)(b).
[66] Complaint no 20 012 558 against Liverpool City Council, 14 December 2021.
[67] See also L Clements 'Direct payments and disabled children with the 'wrong impairments' 26 March 2022 and L Clements 'Direct payments and disabled children' 14 July 2023
[68] Department of Health and Social Care and Department for Children, Schools and Families Guidance on direct payments. For community care, services for carers and children's services (2009).

- page 1 refers to the government's 'commitment to give families with disabled children real choice and control to design flexible service packages that respond to their needs. Direct payments are one way of enabling families and disabled young people to achieve this ambition';
- para 90 states that 'councils should be prepared to be open to new ideas and be as flexible as possible. By exploring innovative and creative options, people should be encouraged to identify how they might most effectively achieve outcomes in a way that aligns with their personal wishes and preferences'
- para 123 states 'The flexibility inherent in direct payments means that individuals can adjust the amount they use from week to week and 'bank' any spare money to use as and when extra needs arise (this might be particularly helpful for people with long-term and fluctuating conditions). As long as overall the payments are being used to achieve the outcomes agreed in the care plan, the actual pattern of support does not need to be predetermined.

Disabled children's DPs as a genuine choice in England

The 2009 Guidance para 15, states as follows:

> A person does not have to accept direct payments; if they wish, they can choose instead to receive services that are provided or arranged by the council. In this respect, the individual is still exercising choice over how their support is delivered. Individuals eligible for care and support should not be unfairly influenced in their choices one way or the other.

Disabled children's DP rates in England

s17A(3A) Children Act 1989 requires that the size of a DP is the amount that 'the authority estimate to be equivalent to the reasonable cost of securing the provision of the service concerned'. Payments may be paid gross or net.[69]

This requirement mirrors that in the Care Act 2014 and accordingly the discussion above (page 4) concerning DP rates is relevant – including, for example, that the evidential onus (in determining whether a DP rate is adequate) rests with the council. Councils have to be able to demonstrate that they have considered 'the circumstances of each individual case when deciding the hourly rate [that they] will pay'.[70]

The 2009 Guidance provides additional details on the calculation process, including:

- … [DPs] should be sufficient to enable the recipient lawfully to secure a service of a standard that the council considers is reasonable to fulfil the needs for the service to which the payments relate. There is no limit on the maximum or minimum amount of direct payment either in the amount of care it is intended to purchase or on the value of the direct payment. (para 111);
- In estimating the reasonable cost of securing the support required, councils should include associated costs that are necessarily incurred in securing provision, without which the service could not be provided or could not lawfully be provided. The particular costs involved will vary depending on the way in which the service is secured, but such costs might include recruitment costs, National Insurance, statutory holiday pay, sick pay, maternity pay, employers' liability insurance, public liability insurance and VAT. … (para 114)

[69] Net payments being where the council has a policy for charging for Children's Services and the council deducts the assessed charge from the DP before payment - s17A(3B) Children Act 1989.
[70] Complaint no 24 019 078 against Redcar & Cleveland Council, 11 December 2025 paras 40 & 41.

Disabled children's DPs: repayment and recoupment in England

Councils have the power to seek repayment of a DP if satisfied that it has not been used to secure the provision of the service to which it relates.[71]

The 2009 Guidance at paras 244- 247 gives advice as to when this might be appropriate, but cautions (para 245):

> Councils should bear in mind that repayment should be aimed at recovering money that has been diverted from the purpose for which it was intended or that has simply not been spent at all, or where services have been obtained from someone who is ineligible to provide them. It should not be used to penalise honest mistakes, nor should repayment be sought where the individual has been the victim of fraud.

This requirement (again) mirrors that in the Care Act 2014 and accordingly the discussion above is relevant (see pages 5-7).

Disabled children's DPs: rational reasoning in England

The requirement that councils make rational decisions (and can demonstrate that their decisions are evidence based) is a principle of 'public law' – ie an obligation shared by all public bodies. It follows that the above analysis (page 8) concerning the responsibilities on adult social services in this respect, apply to decisions concerning disabled children's DPs.

Disabled children's DPs and family members in England

There is no general legal restriction on disabled children or their parent using a DP to pay close relatives (apart from their spouses, civil or common law partners[72]). However, if the relative lives in the same household as the disabled child or the parent receiving the DP, then the payment can only be made if the council considers this to be 'necessary'.[73] The 2009 Guidance provides little detail as to when it might be considered 'necessary', but notes (at para 136):

> This restriction is not intended to prevent people using their direct payments to employ a live-in personal assistant, provided that that person is not someone who would usually be excluded by the Regulations. The restriction applies where the relationship between the two people is primarily personal rather than contractual, for example if the people concerned would be living together in any event

A 2013 complaint[74] concerned a disabled child who was blind, deaf and required constant supervision to meet all her needs. In order to keep the number of people involved in her care to a minimum (to reduce her stress levels) the DPs were being used to pay her father to provide the care. The council then decided that it would no longer allow this arrangement. In finding maladministration, the ombudsman noted that the council accepted that the father was best placed to provide the care (particularly given the young person's communication difficulties) but had given no rational reason for requiring the DPs to be used for an alternative carer.

This requirement (again) mirrors that in the Care Act 2014 and accordingly the discussion above is relevant (see pages 5-7).

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[71] The 2009 Regulations regulation 15.
[72] The 2009 Regulations regulation 11(2); see however complaint no 24 016 358 against Suffolk County Council, 11 Aug 2025, where even senior officers of the authority appeared to believe otherwise.
[73] The 2009 Regulations regulation 11(1).
[74] Complaint no 12 015 328 against Calderdale Council, 20 November 2013.

Disabled children's DPs: timescales in England

Neither the Children Act 1989 nor the relevant regulations impose a timescale for the completion of a social care assessment or for the making available of a DP for individuals who wish to have their eligible needs met by way of such an arrangement. However, 2026 'Working Together' Guidance[75] states that the maximum timeframe for the completion of assessments is '45 working days from the point of referral'. As a general rule the ombudsman has held that assessments of disabled children and their carers should be completed 'in a timescale proportionate to the complexity of the issues. This is normally 4-6 weeks'.[76]

Disabled children's DPs: administration in England

Reference is made above to the challenges many disabled people and carers experience in administering their DPs (see page 10). The 2009 Guidance also addresses this issue, for example, at para 122 it gives a 'good practice' example of a disabled person who was able to 'bank' some of his DPs to cover a variety of activities/costs and to 'roll forward any under-spend' – and although the DP was subject to quarterly monitoring (to 'check that the package is working') 'amounts are only adjusted annually, to give him maximum flexibility'.

At para 231 it states:

> Councils should pay particular attention to ensuring that audit arrangements are as simple and easy to understand as possible. Complicated paperwork can be a significant disincentive for people considering direct payments. It is worth taking time to discuss with individuals what is required so as to avoid being needlessly intrusive.

[75] HM Government Working Together to Safeguard Children 2026. A guide to multi-agency working to help, protect and promote the welfare of children (March 2026) para 169.
[76] Somerset County Council (22 003 345) 17 March 2023 para 28.

Overview note of the right to DPs in Wales

This briefing note only contains a limited update concerning the right to DPs in Wales under the Social Services and Well-being (Wales) Act 2014 (SSWBA). This is because there have been very few relevant court judgments / accessible reports of the Public Services Ombudsman for Wales concerning the right. However, many of the reports cited in the English Law sections (above) are of relevance to the duties on councils in Wales since the CA 2014 and the SSWBA 2014 (including the associated regulations)[77] have very many similarities as does the relevant guidance – in England, the Statutory Guidance and in Wales the 2015 Part 4 Code of Practice (Meeting Needs).

The SSWBA (sections 49A – 53A as amended) specifies how an entitlement to a DP arises, how the amount of a DP is to be calculated and how the payment is to be administered. At the time of writing (July 2026) the regulations that flesh-out the detail of the statutory scheme are the 2015 Regulations. These need to be amended (or replaced) as a result of changes to the statutory scheme resulting from section 20 Health and Social Care (Wales) Act 2025.

General guidance on the scheme is provided in the Part 4 Code of Practice (Meeting Needs). At the time of writing the published version of this Code is dated 2015, but it too will have to be modified to address the 2025 Act's reforms.

The SSWBA enables individuals (adults and children) who have been assessed as eligible for care and support to have their needs met by way of a DP – subject to certain conditions detailed in the Act.[78] The 2015 Regulations, state that if these conditions are satisfied, then councils are under a duty to make such payments.

- Section 50 concerns DPs to meet the needs of an adult. It provides for payments to be made directly to the adult whose needs are eligible or to a third party – but in every case the authority must be satisfied on a number of counts, including that the payment is an appropriate way of meeting the assessed needs and that the recipient is capable of managing the payment themselves or with such assistance is available.
- Section 51 concerns DPs to meet the eligible needs of a disabled child and contains not dissimilar conditions. Payments can be made to persons with parental responsibility for the disabled child or directly to the child (or their nominee) if the authority believes the child has sufficient understanding / mental capacity to consent to the making of the payment.
- Section 52 relates to DPs to meet the eligible needs of a carer and again, specifies a number of not dissimilar conditions.
- Section 53A of the 2014 Act provide for the making of direct payments in relation to individuals eligible for support under s117 Mental Health Act (MHA) 1983. Schedule A1 to the 2014 Act details who can benefit from such payments, to whom they can be made and the many conditions that have to be satisfied before such payments can be made. The Schedule also contains a power to make regulations, albeit at the time of writing (July 2026) no such regulations appear to have been published and no publicly available Codes or guidance appear to exist, that explain how the Welsh Government expects this new scheme to operate.

Additional conditions on the making of direct payments are contained in the 2015 Regulations and the broad detail of how the scheme should operate is explained in the 2015

[77] The Care and Support (Direct Payments) (Wales) Regulations 2015 – see discussion that follows in the main text.
[78] As amended by s20 of the 2025 Act.

Part 4 Code of Practice (Meeting Needs) – both of which will need to be amended, as noted above.

The DP scheme regulated by the SSWBA 2014 is very similar to the one operating under the English Care Act 2014 (except, of course the Welsh scheme applies to disabled children as well as adults in need and unpaid carers).

Problematically, in Wales the relevant Code provides materially less detail concerning the operation of the DP arrangements than is provided in England. Given the similarities in the schemes, it would seem appropriate to have regard to the English Statutory Guidance – where the Welsh Code fails to provide specific guidance on a particular DP issue.

The problem concerning the broadbrush guidance in Wales is compounded by the fact that the Welsh Public Services Ombudsman's Office publishes few detailed reports on investigations compared to the extensive publication scheme operated by the English Local Government and Social Care Ombudsman. Again, it would seem appropriate to have regard to the English Ombudsman reports where there is no suitable authority in Wales. The High Court has itself sought fit to cite material relating to the English scheme in proceedings relating to a Welsh DP dispute.[79]

The right to a direct payment in Wales

The 2015 Regulations reg 2, states that if various conditions are satisfied, then councils are under a duty to make a DP to an adult, a disabled child or a carer. In general the main conditions concern:

(1) the question of valid 'consent' being given to the DP arrangement;[80]

(2) the council being satisfied that (a) the DP is an appropriate way of meeting the assessed need; and (b) the recipient of the payment being capable of managing the DP alone or with such support as is available;

(3) that where a the payment is to meet the assessed needs of a child, that their well-being will be safeguarded and promoted by the making of the payment; and

(4) that where the payment is for an adult who lacks the requisite mental capacity to consent, that the 'suitable person' receiving the payment will act in the adult's best interests.

As noted in the discussion above concerning similar conditions that apply in England, (page 2 above), if a council seeks to argue that the proposed recipient is incapable of consenting to (or managing) the payment or that it is not appropriate for them to have one, then the onus will be on that council to provide evidence-based reasons (specific to the individual) that that this is the case.

[79] See *R (BNF) v Newport City Council* [2026] EWHC 1212 (Admin) 20 May 2026 para 11.
[80] By the adult recipient or, if they lack the requisite mental capacity to consent, by a 'suitable person who will manage the payment. In the case of children, the consent required being that of their parent, or of the child if aged 16 or 17 or if under 16 is deemed to have sufficient understanding to make a decision to consent.

DPs in Wales: flexibility and the promotion of choice

Councils in Wales must encourage user choice by promoting the flexible use of DPs. In this respect the Part 4 Code of Practice (for example) states:

- … In the development of, and provision of a direct payment, a local authority must encourage and support people to determine their own personal outcomes and the care and support they require to achieve these taking into account their existing support networks. People must be encouraged to find creative, flexible and innovative ways to maximise their personal outcomes. (para 136).
- When discussing how needs might be met via direct payments, a local authority must be prepared to be open to new ideas and be as flexible as possible. People must be encouraged to explore innovative and creative ways to identify how they might most effectively achieve outcomes in a way that aligns with their personal preferences. (para 148).
- The flexibility inherent in direct payments means that recipients, or their representatives, must be able to adjust the amount of the direct payment they use from week to week. They must be able to 'bank' any unused payment to use as and when extra needs arise (this might particularly be relevant for those whose needs fluctuate). As long as overall the payment is being used to achieve the recipient's personal outcomes, the actual weekly pattern of care and support does not need to be predetermined. (para 159).

DPs as a genuine choice in Wales

Councils are legally obliged to commission suitable support arrangements to meet the eligible needs of disabled people/carers. DPs can only be paid if the relevant individual consents to such an arrangements:[81] opting for a DP should be seen as a positive choice. The 2015 Regulations reg 4 gives emphasis to this point by requiring that councils provide information to the recipient of the DP to ensure that they are 'able to make an informed choice about whether or not to consent to the making of payments'.

Given the similarities of the English and Welsh DP schemes, the English ombudsman decisions, discussed above (page 3 - 4), concerning the importance of individuals not being pressurised would appear to be of equal relevance in Welsh cases.

DP rates in Wales

The Part 4 Code of Practice (Meeting Needs) states as follows:

> 139. A local authority must ensure the value of a direct payment made is equivalent to its estimate of the reasonable cost of securing the care and support required, subject to any contribution or reimbursement the recipient is required to make. The value must be sufficient to enable the recipient, or their representative, to secure the care and support required to a standard the local authority considers reasonable. While there is no limit on the maximum or minimum amount of a direct payment, it must be sufficient to enable the outcomes to be met.
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> 140. In calculating the value of a direct payment a local authority must include inherent costs associated with being a legal employer or by providing sufficient financial support to purchase an adequate legal service to ensure the recipient complies with the legalities of being an employer. A local authority must also consider including, on a case by case basis, discretionary costs associated with the requirements for achieving the recipient's personal outcomes. For example, non statutory liabilities such as an ex gratia bonus payment.

[81] Sections 50(2)(d), 50(3)(e), 50(4)(e), 51(2)(d), 51(3)(e), 51(2)(d), 52(2)(d) and 52(3)(e) SSWBA 2014 Act (as amended).

A 2026 High Court judgment[82] concerned (among other things) a Welsh council's DP duties under the SSWBA. The case was brought by the sister (and unpaid carer) of a disabled person who was in need of full time care. The relevant dispute at the heart of the case took place prior to the 2014 Act's amendment by the Health and Social Care (Wales) Act 2025. The council accepted that he had an eligible need for short spells of respite care, totalling 6 weeks a year. This care had not been provided for several years, because he had become unhappy with the respite care facility that he had previously attended. Due to his cognitive impairments the reasons for his refusal to return to the facility were unclear, but his unwillingness was plain – 'he became aggressive … when he was due to attend'. He continued to refuse to attend even when it was explained to him that the management of the facility had changed since he was last there.

The council was unable to locate a suitable alternative facility and so decided to make a lump sum DP to the sister, at a rate equivalent to the cost it had been paying at the respite care facility.

The judge noted that the legal obligations in the 2014 Act on the council were not in dispute and that the council was permitted to meet eligible needs by way of a DP if (among other things) it was satisfied that this was an appropriate way of meeting the need.[83]

The judge further noted, that in performing these duties the council was under a duty to promote the disabled person's 'well-being' and (in so far as was reasonably practicable) to have regard to his views, wishes and feeling.[84] The judgment also referred to various provisions in the 2015 Codes of Practice[85] - and materially (ie in the context of the DP dispute) to the 2015 version of the Part 4, Code of Practice (Meeting Needs) para 139:

> A local authority must ensure the value of a direct payment made is equivalent to its estimate of the reasonable cost of securing the care and support required, subject to any contribution or reimbursement the recipient is required to make. The value must be sufficient to enable the recipient, or their representative, to secure the care and support required to a standard the local authority considers reasonable. While there is no limit on the maximum or minimum amount of a direct payment, it must be sufficient to enable the outcomes to be met.

The Court accepted the sister's evidence that, despite extensive enquires to source alternative respite care she had been unsuccessful – as none of the potential providers were prepared to accept the council's DP rate. The council's social worker had suggested that this was 'all the Council could afford' – a proposition that the council's barrister accepted was untenable: that 'if there is an eligible need, then it must be met'.

The council's barrister argued that the Claimant might be persuaded/coaxed into returning to the respite facility over time. The Court accepted that this was a possibility but noted that the 'Claimant does not at present want to go there, there is no other option' and the Council had not taken any such steps to address his need over the intervening years.

The judgment, accordingly, held (para 21) that the daily rate calculation for the DP was not sufficient to enable the Claimant's outcomes to be met and that the council was in breach of its duties to meet his needs: a 'declaration to that effect' was made.

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[82] *R (BNF) v Newport City Council* [2026] EWHC 1212 (Admin) 20 May 2026.
[83] Under section 50(4)(d)(i)) of the 2014 Act prior to the amendments made by section 20 Health and Social Care (Wales) Act 2025 coming into force, now under section 50(3)(d)(i) – see the final paragraph of this posting.
[84] 2014 Act, section 6(2)(a) – and as noted in *R (TJ) v Monmouthshire County Council* [2024] EWHC 2594 (Admin), para 25 there is a duty to have regard to the person's views, wishes or feelings and that failing to do so would be a fundamental flaw.
[85] Including Part 3, Code of Practice (Assessing the Needs of an Individual) para 11 and Part 4, Code of Practice (Meeting Needs) para 6.

The repayment and recoupment of DPs in Wales

Councils are entitled to terminate DPs and claim repayment (in full or in part), provide that they are satisfied either[86]—

(a) that the payments have not been used to meet the need to which they relate; or
(b) that a condition imposed on their use has not been complied with.

In deciding whether action of this kind is justified the Code[87] requires councils to undertake an individual assessment – ie that they must not 'operate a blanket policy of recovery' and (mirroring the English guidance[88]) that repayment:

> must be aimed at recovering money that has been diverted from the purpose for which it was intended, or has simply not been spent at all. It must not be used to penalise honest mistakes, nor should repayment be sought where the individual has been the victim of fraud.

Councils must, in addition 'take hardship considerations into account' and 'bear in mind there might be legitimate reasons for unspent funds'.[89]

The criteria for seeking a DP repayment are in essence, indistinguishable from those in England (considered at page 5 - 7 above). Of particular relevance, in this context is a 2022 report by Audit Wales[90] that found that a third of DP recipients it surveyed 'were not required to keep any paperwork (23%) or their local authority rarely asks for paperwork (10%)'. As noted above, the English ombudsman[91] has found that a council's failure to promptly and properly analyse a disabled person's annual account can prevent it from subsequently reclaiming an overpayment.

The duty to provide rational reasoning in Wales

The requirement that councils make rational decisions (and can demonstrate that their decisions are evidence based) is a principle of 'public law' – ie an obligation shared by all public bodies. It follows that the above analysis concerning the responsibilities of English councils in this respect, apply with equal forces to decisi006Fns concerning DPs in Wales (see page 8 above).

DPs and family members in Wales

The 2015 Regulations (reg 6) place the same restrictions as exist in England on the use of DPs to pay a relative living in the same household as the person for whom the DP is paid (see pages 7 and 13 above). The presumption being that this is not permitted unless the council considers that it is 'necessary to promote the well-being' of the person for whom the DP is paid. Helpfully the 2015 Regulations (reg 6(3)) provide advice on how such a determination should be made, namely that the council must take into account the views of the person for whom the DP is paid and of other persons mentioned in regulation 11(3).

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[86] The 2015 Regulations reg 10.
[87] Part 4 Code of Practice (Meeting Needs) paras 174 – 179.
[88] See page 6 - 7 above.
[89] The guidance gives examples 'such as outstanding legal liabilities necessitating an individual to build up an apparent surplus (e.g. periodic employment payments for tax or national insurance purposes, or to pay periodically for care and support provision) – Part 4 Code of Practice (Meeting Needs) paras 175.
[90] Audit Wales '*Direct Payments for Adult Social Care*' Report of the Auditor General for Wales April 2022 page 26.
[91] Complaint no 24 017 716 against Dorset Council, 07 Nov 2025.

Processing DPs - timescales in Wales

Neither the SSWBA 2014 nor the relevant regulations impose a timescale for the completion of a social care assessment for an adult or for the making available of a DP for individuals who wish to have their eligible needs met by way of such an arrangement. However, the 2015 Part 3 Code of Practice[92] states that the maximum timeframe for the completion of children's assessments is '42 working days from the point of referral'. As noted above (pages 9 and 14), the English Ombudsman has, as a general rule, held that assessments of disabled people and carers should be completed 'in a timescale proportionate to the complexity of the issues, and that this is normally 4-6 weeks'. It would appear likely that the Welsh Public Services Ombudsman would take a similar view.

The administration of DPs in Wales

The Part 4 Code of Practice (para 169) states that when councils are auditing DP accounts, 'consideration must be given to the flexibility inherent to direct payments and the fluctuating weekly expenditure they inspire' (para 169), and that councils (para 166):

> must ensure their financial monitoring arrangements for direct payments are proportionate. Reports which are completed by a direct payment recipient or their representative must be user friendly and not over burdensome

A 2022 report by Audit Wales[93] found that only 55% of DP recipients involved in its research considered that they could 'cope with the administration side' of DPs, with 13% reporting that it felt 'overwhelming'. The report noted that a third of care and support providers surveyed in its research 'considered that councils did not provide good support to help people manage their DPs'.

[92] The Part 3 Code of Practice (assessing the needs of individuals) 2015.
[93] Audit Wales '*Direct Payments for Adult Social Care*' Report of the Auditor General for Wales April 2022 page 26.

Further Resources

DPs and Adults in England

- L Clements 'Community Care and the Law' (2019, 7th edition, Legal Action) Chapter 11.
- THINK Local Act Personal (TLAP) Direct Payments Resource library.
- Department of Health and Social Care Statutory Guidance to the Care Act 2014 Chapter 12.

DPs and children / young people in England

- S Broach and L Clements 'Disabled Children: a legal handbook' (2020, 3rd edition, Legal Action) chapter 3 paras 3.98 – 3.107.
- Department of Health/ Department for Children, Schools and Families Guidance on Direct Payments for community care, services for carers and children's services (2009).

DPs for adults, children / young people in Wales

- Audit Wales *Direct Payments for Adult Social Care 06 April 2022 Direct Payments for Adult Social Care* April 2022.
- Social Care Wales *Direct payments: a guide* 2025.
- Welsh Government Social Services and Well-being (Wales) Act 2014 Part 4 Code of Practice (Meeting Needs) (2015) paras 128 – 179.