

### **What is Self Directed Support (SDS)?**

Self Directed Support is the new way that the Local Authority must allocate resources for those entitled to social care or support. The assessment has not changed but a budget is produced and the user or their carer can decide where the budget should be spent.

### **Who is entitled to SDS?**

Everyone who is entitled to support or services from the social work budget is entitled to SDS. This includes children, carers and incapacitated adults. There are different provisions for these different categories.

### **What are the options under SDS?**

Once the budget has been agreed the Council must advise you on the options available to you. These options are

1. To have the services provided by service providers of your choice.
2. To have the services provided by service providers of the Council's choice
3. To have payment of the budget direct to you. This is known as a direct payment.
4. A combination of the above 3 options.

### **What happens if I do not make a decision?**

The Council will take charge and proceed on the basis that you have agreed to Option 2. i.e. they will proceed to decide who should provide your support/services. This could be by the Council providing the support/service themselves or by them arranging for someone else to provide it.

### **What information am I entitled to?**

The law states that you are entitled to be told the amount of the budget and the period that this budget is to cover. It does not provide that the budget is to be broken down into sections but for Option 4 to work you must be told how the budget has been made up and that you have the option to spend bits of the budget different ways.

### **How much of the budget can I direct?**

It is not clear if you will be able to break down the sections of the budget any further. For example your budget could allocate £5000 to respite care/holidays. You decide to spend £3000 on respite care through the Council's provider (Option 1) but want to take the remaining £2000 as a direct payment (Option 3). We do not know yet if Councils will allow you to do this or insist that you take the full £5000 as a direct payment and then arrange and pay the respite care centre directly yourself.

### **The Council are telling me I cannot use some of the services I have been using now I am on SDS.**

This should not happen. The changes are designed to give you choices for your care. It is the funding method that has been changed. If you are told you cannot use a service you should speak to them directly and see what they suggest you should do about it or obtain legal advice.

### **If I take a Direct Payment can I spend the money on what I want?**

No. The funds must be used to obtain the service or support that it was granted for. Failure to do this can result in the Direct payment being suspended or terminated and may even be considered a criminal offence.

### **Can I take a Direct Payment and employ whoever I want?**

The money must be used for the provision of the services that it was provided for. Therefore you cannot employ someone to do a different job. Also there are limits on the employment of

family members and their partners. Any employment of these family members must be agreed in advance with the Council. Attorneys and Guardians can never be employed under SDS.

### **Is everyone entitled to insist on Direct Payments?**

No. If you are in residential accommodation or residential nursing accommodation for 4 weeks in any 12 months you will not be entitled to Direct Payment. Also the Council can decide that you are ineligible for direct payment. There appears to be no guidance on this yet but obviously if you are bankrupt or convicted of dishonesty offences the Council is likely to consider you ineligible.

### **The Council say I am ineligible for Direct Payments – What can I do?**

The Council must tell you why you are ineligible in writing and advise you of your right to review this decision. The law is not clear on what grounds there are for the review or your options beyond this. If you are ineligible for Direct Payments you can still exercise the options under SDS without the option of Direct Payment.

### **Can Direct Payments be Means tested?**

Yes. There is provision for the Council to decide to means test Direct Payments but not the other options. You should seek clarification of the council's policy on this before you decide what options you want to take for SDS.

### **What about support for Carers?**

The provisions for SDS also apply to the needs of carers. A separate assessment and budget should be provided and the 4 options considered for the carer. Care should be taken in assessing the needs of both carer and user to ensure that aspects of the assessment are not missed. For example is respite care a provision for the user or for the carer?

### **What provisions are there for Children?**

Where a child is under 16 the provisions for SDS apply to their parent (or guardian). The parent is then the supported person to whom the Council must give the SDS options. The parent and the council have an obligation to give the child an opportunity to express their views and to have regard to these views in so far as the child has the maturity to express them.

### **What about incapacitated adults?**

The law makes a distinction between situations where there is a Guardian/ Power of Attorney (PoA) appointed or if there is no such appointment.

### **What Rights do I have as a carer or family member without Guardianship or PoA?**

Without a Guardianship or welfare PoA you do not have the ability to make decisions on SDS. The Council requires to take steps to enable the incapacitated adult to make the decisions themselves. They must also take steps to identify people able to support the adult in making the decision. The person to assist the adult can only do so with the agreement of the adult.

### **I have a Guardianship/ Power of Attorney – what are my rights?**

The law is silent on the rights of Guardians and Powers of Attorney. You need to have welfare powers or continuing welfare powers specifically including SDS or so general as to be read to include SDS to be able to participate in determining the options for SDS. Given that this is all new law you may require an amendment to your powers to be eligible to participate in the decision making process.

### **What Powers as Guardian/ PoA do I require to operate Self Directed Support?**

The ability to decide on the operation of SDS is a welfare power but the ability to operate any of the necessary decisions following from it are financial powers. For example the decision to

employ a service provider is welfare but the ability to sign the contract with them is a financial power. Serious consideration should be given to obtaining financial powers in all cases to ensure that the correct provisions are available. We now advise all Guardians to include basic powers to operate decisions under SDS even if they are not handling money on behalf of the Adult.

#### **Does Additional Financial Powers not impose additional costs?**

We understand that the OPG are in the process of refining their requirements for reporting to them when the Powers granted to not include the actual handling of money. As such there is not likely to be any additional costs.

#### **I am a Carer – I do not want to become an administrator**

It is clear that there is the opportunity to obtain funding for the instruction of someone to administer the guardianship or in general your affairs such as a lawyer or accountant to enable you to comply with the extra regulations and administration that SDS can impose. You should seek to have this included in your budget.

#### **Is a Financial Guardianship necessary?**

Yes and no. If you are administering the Adults estate then you need a financial guardianship. Also if you want to give effect to some decisions under SDS you will need a Financial Guardianship. The Council will insist on a Financial Guardianship if you are going to administer any part of the Adults budget. There is some suggestion that in the future all provision of services may be through Direct Payments and as such Financial Guardianship will become necessary.

#### **Is Legal Aid Available?**

Advice and Assistance Legal Aid(A&A) is available for meeting with you and discussing your legal rights under SDS. A&A is means tested and we are told that it is based on the service users savings and income. This is assessed on the Adult's means and requires their income and savings be assessed.

The other type of Legal Aid is full Civil Legal Aid This would be required for any court action and is assessed by different criteria on income and savings. Again we assume this will be based on the service users circumstances. Further information about eligibility for Legal Aid is available on request. Special rules apply to children where the finances of their parents are also taken into account. There are also special rules for Guardianship applications.

#### **What next?**

This is a new area of law and we will need to see how the law and practice develops over the next few years. It is likely that implementation and practice will vary between different Councils and possibly between different areas within the same Council. We suspect that some people will not be given all the options and that there may be difficulties where some Councils try to use SDS to either force people into using providers that they do not want or need or try to cut budgets. If you feel that you need more information speak to people independent of the Council or seek legal advice to make sure that the best practice is applied to your case.

## **Self Directed Support**

### **- Basic information for Carers and incapacitated Adults**



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