

# Social care – Direct payments

## Under the Care Act 2014

You may need support from social services if you have a mental illness. Or if you care for someone with a mental illness. Social services can give you money to pay for services that you need. This money is called 'direct payments'.

This factsheet explains who can get direct payments and what you can use them for. This factsheet is for people over 18 who live with mental illness in England. It is also for their carers.

### Key Points.

- Your local authority can pay you money to pay for the social services you need. This money is called direct payments.
- You can get direct payments to pay for your care and support if your local authority say that you have eligible care needs.
- The Care Act 2014 is the law that local authorities must follow regarding how to provide social care.
- Having eligible care needs means that you need support with certain things.
- You can spend direct payments on any service, equipment, or activities. As long as it meets your eligible needs.
- Your carer, friend, or local support service can help you to manage your direct payments.
- You may have to pay for some or all your care and support. This will depend on your financial circumstances.
- Carers can get direct payments to meet the needs they have in their caring role.

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## **1. What are direct payments?**

A direct payment is money that your local authority (LA) can pay you. It is to pay for the social care that you need.

Direct payments were created to give you more say about the social care support that you want and need.<sup>1</sup>

You will choose what services you would like instead of letting your LA arrange services for you.

The amount of money that you get will depend on the level of support that you need. And your financial situation.

A direct payment will be part of your personal budget.

### **What is a personal budget?**

Your personal budget is a statement which gives detail about how much:<sup>2</sup>

- your care costs,
- you will have to pay for your care, if anything, and
- the LA will pay for your care.

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## **2. What social care support do I need?**

Your mental health problems may mean that you have social care needs.

Social care needs can include needing help with things like:<sup>3</sup>

- getting out of the house,
- preparing meals or going shopping,
- managing your money, and
- having social contact with friends and family.

You can ask your local authority for a social care assessment to assess your needs. Even if you have a carer.

The local authority (LA) must assess you even if they do not think you will have any social care needs. The LA must assess you no matter how much money you have.<sup>4</sup>

The assessment could be face-to-face, online or over the phone.

The assessment will work out what your social needs are. If you have 'eligible needs', you can get support.

### **What are eligible needs?**

The Care Act 2014 is the law that LAs must follow on how to provide social care.

The Care Act says that you should get social care support if you cannot do certain things. This is called having eligible needs.<sup>5</sup>

The LA only must provide you with social care if you have eligible needs. They can help you with needs that are not covered by the law, but they do not have to.<sup>6</sup>

### What if I have a carer?

The LA will not support you with needs that a carer is helping you with.<sup>7</sup> But they will support you with any eligible needs if your carer is no longer able or willing to care for you.<sup>8</sup>

### What about my health needs?<sup>9,10</sup>

This sort of assessment does not look at health needs like medication or talking therapy.

If the assessor thinks you may also have medical health needs, they can ask the NHS to assess you too. They may call this a 'joint assessment'.

You can get more information about how local authorities decide if you are entitled to social care in our '**Social care assessment - Under the Care Act 2014**' factsheet from [www.rethink.org](http://www.rethink.org). Or call 0121 522 7007 and ask for the information to be sent to you.

### 3. Can I get direct payments?

You must be offered direct payments if you meet the criteria. Generally, you should be offered a direct payment if:<sup>11</sup>

- you have social care needs which the local authority will fund,
- you have mental capacity,
- you ask for direct payments,
- you can manage a direct payment alone or with help, and
- direct payments will help to meet your needs.

Your local authority (LA) needs to be satisfied that you can manage direct payments by yourself or with support.<sup>12</sup> You will need to be organised, keep track of your spending, and keep receipts.

Your LA should explain to you what your responsibilities are if you choose to have direct payments.<sup>13</sup> See [section 7](#) for more information.

#### What does mental capacity mean?

Your mental capacity means your ability to make decisions.

If you have mental capacity, you can:<sup>14</sup>

- understand information that is relevant to a decision,
- remember the information,
- be able to weigh up the information to help you to make a decision, and
- communicate your decision.

Weighing up information is thinking about the good points and bad points of a decision. And showing that you understand any risks.

You can communicate your decision in different ways. Such as using diagrams or pictures, gesturing, or talking.<sup>15</sup>

Your mental capacity can change. This means that sometimes you may not have capacity to make a certain decision. But other times you will have capacity.<sup>16</sup>

You will always be thought to have mental capacity unless it can be proven that you do not.<sup>17</sup>

You can find more information about '**Mental capacity and mental illness**' at [www.rethink.org](http://www.rethink.org). Or call our General Enquiries team on 0121 522 7007 and ask them to send you a copy of our factsheet.

## What happens if I do not have mental capacity to manage direct payments?

You may still get direct payments if you lack mental capacity if you have: <sup>18</sup>

- an attorney under what is known as Lasting Power of Attorney (LPA), or
- a deputy under a Court of Protection order.

They will be able to ask the LA for direct payments for you.

Your LA can still think about giving someone else your direct payments to manage for you. Even if you don't have an LPA or deputy. <sup>19</sup> This could be a relative or friend.

You can find more information about '**Can someone else manage my money for me?**' at: [www.mentalhealthandmoneyadvice.org/en/managing-money/can-someone-else-manage-my-money-for-me/](http://www.mentalhealthandmoneyadvice.org/en/managing-money/can-someone-else-manage-my-money-for-me/).

## Can someone else manage my direct payments for me, even if I have mental capacity?

Someone else can get direct payments for you. And help you to pay for the services you need. This person is called a 'nominated person'.

They will need to agree to be your nominated person. <sup>20</sup> They can help you to manage your money. But you will still need to decide how to spend it.

## Will I get direct payments if I get free aftercare under Section 117 of the Mental Health Act?

You might have been detained under certain sections of the Mental Health Act. You might be entitled to free aftercare under section 117 of the Act.

You can get direct payments to pay for your Section 117 aftercare services. <sup>21</sup>

You can find more information about '**Section 117 aftercare – Under the Mental Health Act 1983**' at [www.rethink.org](http://www.rethink.org). Or call our General Enquiries team on 0121 522 7007 and ask them to send you a copy of our factsheet.

## Will I get direct payments if I get NHS Continuing Healthcare?

As we have seen above, you can get direct payments to pay for your personal budget for social care.

Under NHS Continuing Healthcare, you can also get direct payments to pay for personal health budget for health needs. <sup>22</sup>

Social care direct payments and NHS Continuing Healthcare for health needs are different things.

This factsheet looks at social care direct payments only.

You may get direct payments for both your social care personal budget. And your health needs personal health budget. This is sometimes called an 'integrated budget.'<sup>23</sup>

### **Do I have to have direct payments?**

You do not have to have direct payments if you do not want them.

But you must be offered them if you meet the criteria.<sup>24</sup> The criteria is explained at the beginning of [section 3](#) of this information.

### **How will I be supported if I do not have direct payments?**

Your LA can meet your social care support needs through different ways such as the following.<sup>25</sup>

- Providing you with a service that you need.
- Arranging for another organisation such as a charity to provide a service.
- Giving you a combination of a service that exists and a direct payment. So, the LA could arrange a homecare service for you and pay you a direct payment to meet your other needs.

### **I already get support from social services. Can I get direct payments instead?**

If you are already getting support from social services, you can apply for direct payments as an alternative. Speak to your care coordinator, social worker or apply online. This is the link that you can use:

[www.gov.uk/apply-direct-payments](http://www.gov.uk/apply-direct-payments).

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## **4. How much money will I get from the local authority?**

This will depend on:

- what social care support you need, and
- your financial assessment.

### **What is a financial assessment?<sup>26</sup>**

A financial assessment will look at your income and capital. This is to work out if you must pay anything towards your social care costs.

Income is money that you get from things like:

- employment
- benefits, and
- pensions.

Capital is money you have in savings, or items you own of high value. If you own and live in your house this will not count as part of your capital.

You can either get:

- free social care,
- part-funded social care, or
- you will have to pay for all your social care yourself.

If you get free or part-funded social care you can get direct payments to pay for the support that you need.

### **What if my direct payments are not enough to meet my eligible needs?**

Your direct payments may be too low because:

- your local authority (LA) did not look at all your needs properly when they worked out your amount, or
- your LA made a mistake with your financial assessment.

See [section 9](#) for your options.

### **What happens if my direct payment does not cover the cost of the service that I want?**

Your direct payments should be enough to buy a service that meets your eligible care needs. If the service you want costs more than your direct payments, you will need to pay the difference.

#### **Simon's story**

- Simon is given a direct payment for an exercise class to help with his mental wellbeing. And to help him to be around other people.
- Simon wants to use his direct payment for a yoga class.
- There are 2 classes being run in his local area.
- 1 class costs £5, the other class costs £7.50.
- Simon prefers to go to the £7.50 class.
- Both classes meet Simon's needs.
- This means that Simon will have to pay £2.50 of his own money to go to his preferred class.

### **I am entitled to free aftercare under section 117 of the Mental Health Act. Do I have to pay towards my social care costs?**

You might have been detained under certain sections of the Mental Health. You might be entitled to free after-care under Section 117 of the Act.<sup>27</sup> This might include free social care.

If you are entitled to Section 117 after-care, you will not have to pay for services that:<sup>28</sup>

- meet needs that you have because of the mental health condition that caused you to be detained, and
- reduce the chance of your condition getting worse, so you do not have to go back into hospital.

This is because you are covered by the rules under the Mental Health Act rather than the Care Act.<sup>29</sup>

You can find more information about '**Section 117 aftercare - Under the Mental Health Act 1983**' at [www.rethink.org](http://www.rethink.org). Or call 0121 522 7007 and ask for the information to be sent to you.

### **I am entitled to NHS Continuing Healthcare. Do I have to pay towards my social care costs?**<sup>30</sup>

You might be entitled to NHS Continuing Healthcare (CHC). NHS CHC should meet your social care needs if you have what is called a 'primary health need.' And your social care should be free.

You have a 'primary health need' if the main parts of the care you need are focused on addressing health needs. Or preventing them.

You might have social care needs that are not linked to a 'primary health need'. If so, they should be assessed in the normal way by your LA.

You can read more about NHS Continuing Healthcare from the NHS here: [www.nhs.uk/conditions/social-care-and-support-guide/money-work-and-benefits/nhs-continuing-healthcare](http://www.nhs.uk/conditions/social-care-and-support-guide/money-work-and-benefits/nhs-continuing-healthcare)

### **Will direct payments affect my benefits?**

Direct payments will not count as income and so will not affect your benefits. But certain benefits will be looked at as part of your financial assessment.

Your LA must leave you with a minimum amount to live on after they have charged you for social care services. This is called the Minimum Income Guarantee (MIG).<sup>31</sup>

You can find more information about '**Social Care - Charging for non-residential services under the Care Act 2014**' at [www.rethink.org](http://www.rethink.org). Or call 0121 522 7007 and ask for the information to be sent to you.

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## **5. How will the local authority pay me?**

Your local authority (LA) will pay your direct payments into your bank, building society, Post Office or National Savings and Investments (NS&I) account.<sup>32</sup> This could make it easier for you to manage.



### What are pre-paid cards?

Some LAs have pre-paid cards for you to use. But you do not have to use a pre-paid card.

With a pre-paid card, you will not have to open a separate bank account. Unless you would prefer to.<sup>33</sup>

If you use a pre-paid card, you can still use the services that you would like to use. The card must not be linked to a marketplace which only allows you to choose certain providers.<sup>34</sup>

Talk to your LA to find out if they use pre-paid cards in your area.

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### 6. What can I spend direct payments on?

You can spend direct payments on services, equipment or activities that meet your social care needs. But the local authority (LA) must agree that your direct payment is being used to meet your social care needs.<sup>35</sup>

Your needs must be set out in your care plan.<sup>36</sup>

There are different things that you could spend direct payments on, such as the following.

Day to day support:<sup>37</sup>

- Transport, such as taxis
- Help with shopping
- Help with budgeting
- Help with gardening
- Help with childcare
- Employing a personal assistant

Social support:<sup>38</sup>

- Visiting friends
- Evening classes and college courses
- Gym membership
- Assistance to access training and employment

### Can I use my direct payments for anything?

You cannot use direct payments to pay for health services.<sup>39</sup> Or permanent accommodation.<sup>40</sup>

You can use them to pay for short stays in residential accommodation. A short stay is defined as up to 4 weeks in a 12-month period.<sup>41</sup>

### Can I use direct payments to pay a relative to care for me?

You can usually use direct payments to pay a relative to care for you, if you do not usually live with them.<sup>42</sup>

If you live with a relative, you may be able to pay them to help you to manage your direct payments.<sup>43</sup>

In some cases, the LA can allow you to use your direct payments to pay someone you live with to care for you. But this is not common.<sup>44</sup>

If you pay your family member, this will count as income and may affect their benefits or other income. The LA should give you and your family member information about how it can affect their income.<sup>45</sup>

You can check with your local authority if you are not sure.

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### 7. What are my responsibilities?

You should:<sup>46</sup>

- keep receipts to show what you have spent your direct payments on, and
- only spend your money on services that have been agreed with your local authority (LA).

You may have to pay money back to your LA if:<sup>47</sup>

- you spend your money on something which you should not have, or
- you have not got a receipt to show where you have spent the money.

### Am I an employer?

You are an employer if you pay for a personal assistant. This means that you have certain legal responsibilities.

You may use your direct payment to pay for an agency worker or someone who is self-employed. If so, you are not an employer.<sup>48</sup>

As an employer you must:<sup>49</sup>

- check if the person can work in the UK,
- have employers' liability insurance,
- register as an employer,
- set up and run payroll, or pay someone else to do it on your behalf,
- pay statutory benefits, such as maternity pay, sick pay, holiday pay, workplace pension and redundancy pay,
- deduct and pay the employee's Income Tax and National Insurance contributions,
- give your employee an employment contract,
- give your employee payslips,

- pay your employee at least the National Minimum Wage,
- not allow your employee to work more hours than is legal.

Your LA should include in your direct payments any extra costs that you have because of being an employer.<sup>50</sup>

Your LA should give you the information you need to be an employer.<sup>51</sup>

Local support organisations can often help with managing direct payments and being an employer. Talk to your LA for more information about support organisations in your area.<sup>52</sup>

### **What is a personal assistant?**

A personal assistant (PA) is someone who helps you to live as independently as possible. They do this by giving you the care that you need such as:

- helping you with shopping,
- helping you fill out forms,
- helping you to take your medication,
- taking you to health appointments.

### **How do I find a PA through an agency?**

You can use the Homecare Association website to find a PA through an agency. This is the link that you need to use: [www.ukhca.co.uk](http://www.ukhca.co.uk)

The agency will be your PA's employer. This means that they will be responsible for the legal side. Such as paying them statutory sick pay.

It may be less complicated to use an agency rather than become an employer. But the downsides are:

- it is more expensive,
- you will have less control over choosing the person who gives you your care, and
- you may have a different carer at different times.

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## **8. What happens with my direct payments if I want to move to another area?**

If you decide to move to another local authority (LA) area, you need to tell your LA. They should contact the LA where you are moving to. You should have support during the move.<sup>53</sup>

They must give you advice and information about services and care in the new LA area.<sup>54</sup> Your current LA and the LA you are moving to should work together to make sure there are no gaps in your support.

You will have a named person from both LAs.<sup>55</sup> They will work together to support you to move.

If you have direct payments, you might have signed a contract to pay for services in the area you live.

The LA should give you advice to make sure you understand how long you are supposed to pay for the services for.<sup>56</sup>

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## **9. How can I deal with problems with direct payments?**

If you have problems with your direct payments, you can:

- talk to your care coordinator or social worker,
- ask a relative, friend or advocate to help you speak to your local authority (LA),
- make a complaint, or
- seek legal advice.

### **What is an advocate and how can I get help from one?**

An advocate is independent from your local authority. They are free to use. They can be useful if you find it difficult to get your views heard and find it difficult to be involved with your care.

There are different types of advocates that might be able to help you deal with your local authority:

- Care Act advocate, and
- community advocate.

### What is a Care Act advocate?

You may have a legal right to a Care Act advocate. Sometimes they are called independent advocates.

You will have a right to have a Care Act advocate if:<sup>57</sup>

- you have substantial difficulty in being involved with decisions about your care and support, and
- you do not have an appropriate person to help you such as a friend or relative.

If the above applies to you ask your LA for an independent advocate.

### What is a community advocate?

Community advocates can support you to get a health or social care professional to listen to your concerns. And help you to get the care and support that you need.

But community advocates are not available in all areas. To search for services, you can try the following.

- Use an internet search engine. Search for terms like ‘community advocacy Leicestershire’ or ‘general advocacy Devon’.
- Ask a support worker or key worker, if you have one.
- Ask your LA whether they have contact details for local advocacy services.

You can find more information about ‘**Advocacy for mental health – Making your voice heard**’ at [www.rethink.org](http://www.rethink.org). Or call our General Enquiries team on 0121 522 7007 and ask them to send you a copy of our factsheet.

### How can I make a complaint?

Your LA will have a complaints procedure for you to follow. You should be able to get information about making a complaint from your LA website or from your social worker or care coordinator.

You can find more information about ‘**Complaining about the NHS and social services**’ at [www.rethink.org](http://www.rethink.org). Or call our General Enquiries team on 0121 522 7007 and ask them to send you a copy of our factsheet.

### When can I seek legal advice?

You can try to get legal advice from a community care solicitor if you think that your LA is not following the law. Like, you might think that you have eligible needs for care and support. But your local authority disagrees.

You may be able to get free advice from the **Disability Law Service**. Their contact details are in the [Useful Contacts](#) at the end of this information.

You can find more information about ‘**Legal advice – How to get help from a solicitor**’ at [www.rethink.org](http://www.rethink.org). Or call our General Enquiries team on 0121 522 7007 and ask them to send you a copy of our factsheet.

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## 10. When will my direct payments be reviewed?

The local authority should review your direct payments no later than 6 months from when they are agreed.<sup>58</sup> This is to make sure you are comfortable using the direct payments. And that you are not having any issues.

The first review should ideally be 6-8 weeks after you signed off your care and support plan.<sup>59</sup>

Your direct payments should then be reviewed every 12 months.<sup>60</sup>

## 11. Will my direct payments end?

Your direct payments can end because of the following reasons.<sup>61</sup>

- You want them to end.
- The person who is getting them for you no longer wants to get them.
- You cannot manage them anymore, even with support.
- You no longer need the care and support that the direct payments were being used for.
- You are no longer able to get them because of certain conditions. Such as if you are placed under a court condition or requirement relating to drug or alcohol dependency.

If you still have eligible needs, you can still get support from social services if your direct payments stop.

Your local authority (LA) must make sure there is no gap in your care.<sup>62</sup> They must get services in place to meet your needs.

### What happens if my condition improves for a short period?<sup>63</sup>

Your LA can stop your payments on a temporary basis if your condition improves for a short period. They will do this if you do not need the support that you buy with your direct payments.

The LA will discuss how this will be managed. You, your carer, and anyone else involved with your direct payment should be contacted.

You will get your direct payments back if you become unwell again and need them.

## 12. I am a carer. Can I get direct payments?

You might have your own needs if you care for someone who has a mental illness.

If you are over 18 and have eligible social care needs, you can get direct payments to meet these needs.<sup>64</sup>

Eligible needs mean that you have care needs in line with the Care Act 2014.<sup>65</sup>

You can find out more about '**Carer's assessments – Under the Care Act 2014**' at [www.rethink.org](http://www.rethink.org). Or call our general enquiries team on 0121 522 7007 and ask them to send you a copy of our factsheet.

## Further Reading

### Care Act 2014 - Statutory Guidance

This is guidance written by the Department of Health and Social Care. It explains how local authorities should apply the Care Act. It could help you to understand your rights under the Care Act.

**Website:** [www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance](http://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance)

## Useful Contacts

### Disability Law Service

They give free legal advice on social care, employment, housing and welfare benefits to disabled people and their carers. This is to ensure that they have access to their rights and justice.

**Phone:** 0207 791 9800

**Address:** The Foundry, 17 Oval Way, London, SE11 5RR

**E-mail:** [advice@dls.org.uk](mailto:advice@dls.org.uk)

**Website:** [www.dls.org.uk](http://www.dls.org.uk)

### Access Social Care

They provide free legal advice to people with social care needs. They accept referrals from member organisations.

**Website:** [accesscharity.org.uk](http://accesscharity.org.uk)

## References

<sup>1</sup> Department of Health. *Care and Support Statutory Guidance 2014*. Para 1.24

[www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance](http://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance) (accessed 10th May 2024).

<sup>2</sup> s26(1) Care Act 2014.

<sup>3</sup> Reg 2(2), *The Care and Support (Eligibility Criteria) Regulations 2015*. SI 2015/313. London: TSO; 2015.

<sup>4</sup> S9(3), Care Act 2014

<sup>5</sup> s13 Care Act 2014.

<sup>6</sup> Department of Health. *Care and Support Statutory Guidance 2014*. Para 6.100

[www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance](http://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance) (accessed 10th May 2024).

<sup>7</sup> s18(7) Care Act 2014.

<sup>8</sup> Department of Health. *Care and Support Statutory Guidance 2014*. Para 6.115

[www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance](http://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance) (accessed 10th May 2024).

<sup>9</sup> NHS *The Community Mental Health Framework for Adults and Older Adults*. Page 12 [www.england.nhs.uk/wp-content/uploads/2019/09/community-mental-health-framework-for-adults-and-older-adults.pdf](http://www.england.nhs.uk/wp-content/uploads/2019/09/community-mental-health-framework-for-adults-and-older-adults.pdf) (accessed 10th May 2024).

<sup>10</sup> Department of Health. *Care and Support Statutory Guidance 2014*. Para 6.3 [www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance](http://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance) (accessed 10th May 2024).

<sup>11</sup> s31 Care Act 2014.



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- <sup>12</sup> s31(6) Care Act 2014.
- <sup>13</sup> Department of Health. *Care and Support Statutory Guidance 2014*. Para 12.7 [www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance](http://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance) (accessed 10th May 2024).
- <sup>14</sup> s3, Mental Capacity Act 2005.
- <sup>15</sup> s3 (1)(d), Mental Capacity Act 2005.
- <sup>16</sup> Department for Constitutional Affairs. *Mental Capacity Act Code of Practice*. Para 4.26 [assets.publishing.service.gov.uk/media/5f6cc6138fa8f541f6763295/Mental-capacity-act-code-of-practice.pdf](https://assets.publishing.service.gov.uk/media/5f6cc6138fa8f541f6763295/Mental-capacity-act-code-of-practice.pdf) (accessed 10th May 2024).
- <sup>17</sup> s1(2), Mental Capacity Act 2005.
- <sup>18</sup> s32 Care Act 2014.
- <sup>19</sup> s32(4)(c) & s32(7) Care Act 2014.
- <sup>20</sup> s31(4)(b) Care Act 2014.
- <sup>21</sup> s117 (2c), Mental Health Act 1983.
- <sup>22</sup> NHS. *Personal Health Budgets*. [www.nhs.uk/nhs-services/help-with-health-costs/what-is-a-personal-health-budget/](http://www.nhs.uk/nhs-services/help-with-health-costs/what-is-a-personal-health-budget/) (accessed 10th May 2024).
- <sup>23</sup> NHS. *Personal Health Budgets*. [www.nhs.uk/nhs-services/help-with-health-costs/what-is-a-personal-health-budget/](http://www.nhs.uk/nhs-services/help-with-health-costs/what-is-a-personal-health-budget/) (accessed 10th May 2024).
- <sup>24</sup> s33(2)(b) Care Act 2014.
- <sup>25</sup> s8(2) Care Act 2014.
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This factsheet is available in large print.

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Phone 0808 801 0525

Monday to Friday, 9:30am to 4pm  
(excluding bank holidays)

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