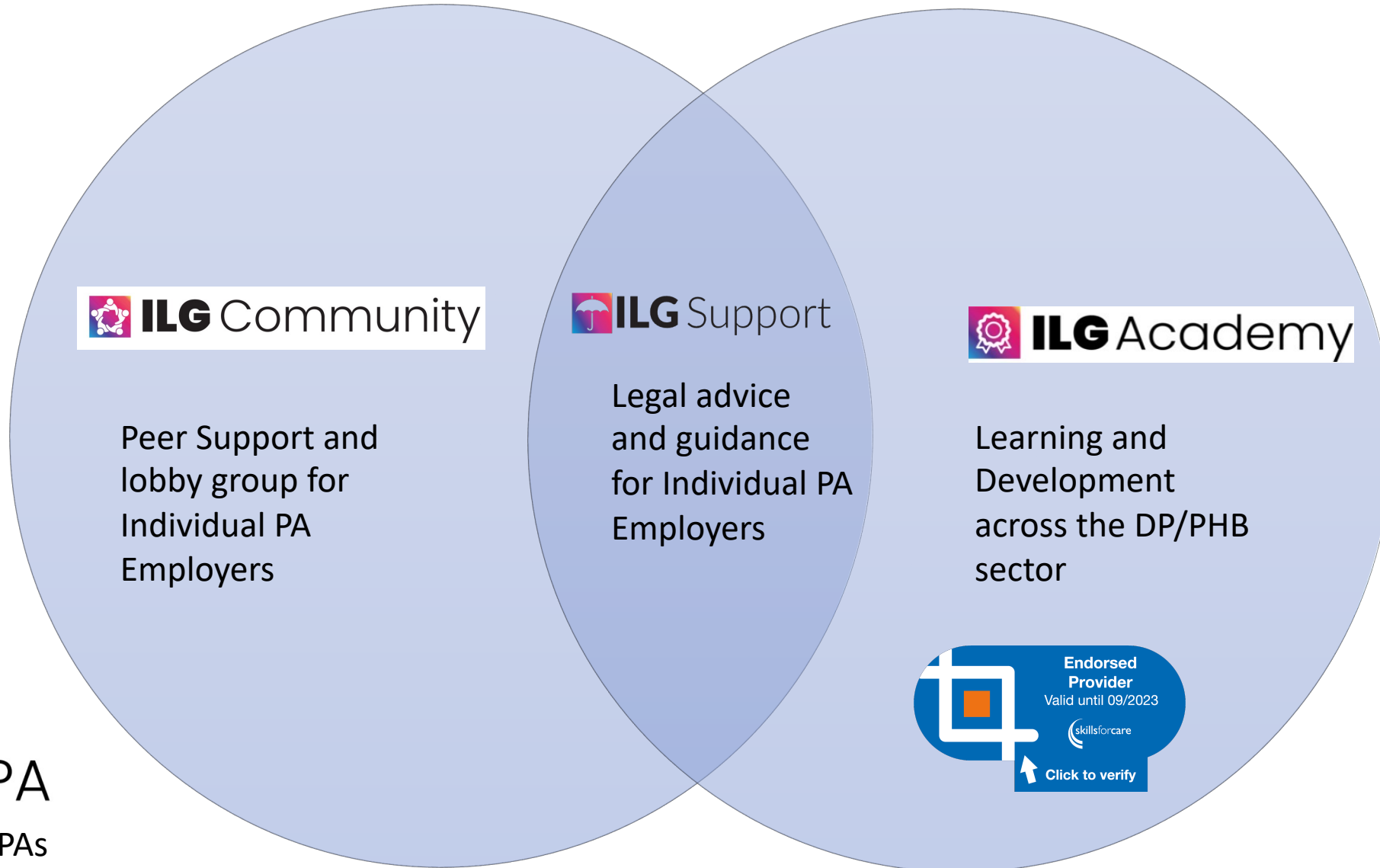


Introduction to Direct Payments & PA employment

David Ashley





Direct Payments and Employment

Workshop Contents

- **Introductions**
- A history of Direct Payments (DP)
- Direct Payment legislation
- Being a DP employer
- Questions

A brief history of Direct Payments



Independent Living Movement

The origins of the Independent Living Movement in the UK go back to the late 1970s and early 1980s.

At that time, services on offer were viewed as out of touch with the real needs of disabled people and based around the **medical model of disability**.

British Council of Disabled People (BCODP) – 1981

“Nothing about us without us”

The European Network on Independent Living (ENIL) - 1989

Social Model of Disability vs Medical Model

The Medical Model of disability views people with disability in need of medical intervention, to be cured or fixed. Under that model, people with disability are to be pitied, considered in need of charity and often hidden away from society.

The Social Model views disability as the result of a person with an impairment living in a world with barriers - *technological, physical, communication and in social attitudes*.

The social model purports that for ***full inclusion***, there must be significant changes made and barriers removed so that people with disability can participate on an equal basis within society.

The First (in) Direct Payments

Applying the principles of the Independent Living movement during the 1980's, some individuals and groups were able to successfully negotiate a financial package which enabled them to move out of the institutions they lived in and into the community.

This was achieved by coming to a social and financial agreement with their Local Authorities based on an assessment of their needs.

The money was used to pay for the support they needed through employing their own personal assistants (paid via a 3rd party provider because it was unlawful to pay cash in lieu of services to an individual).

[John Evans video here](#)

Talking about the origins of Direct Payments and the Independent Living Movement.

Key dates and legislation



Key dates
and
legislation

1948 – [National Assistance Act](#) - Established principle that care for the vulnerable should be provided by Local Authorities (service based i.e. not cash payments)

1970 – [The Chronically Sick and Disabled People Act](#) – provides a duty to provide social care provision. Still in place for children (sec 2) (replaced by Care Act for over 18's)

1988 – The [Independent Living Fund](#) (ILF) is launched to support disabled people to live independently

1997 – [The Community Care \(Direct Payments\) Act 1996](#) - cash payments lawful

2001 – [Carers and Disabled Children Act 2000](#) – *DP for carers & children introduced*

2009 – Health and Social Care Act 2008 - [DP extended to people who lack capacity](#).

2014 – Right to have a [Personal Health Budget](#) from NHS (England)

2015 – The [Independent Living Fund](#) (ILF) is closed in England and Wales

2014 – [Care Act 2014](#) (England) - Outcome based, embeds well-being principles

2014 - [Children and Families Act 2014](#) – outcome based, embeds well-being principles

2019 – Right to have a PHB extended to wheelchair services and section 117

Useful links - legislation

Adult Social Care links:

- [Care Act Statutory guidance – chapter 12](#)
- [Care and Support \(Direct Payment\) Regulations 2014](#)

PHB links:

- [NHS England – guidance of Direct Payments for healthcare: Understanding the regulations](#)
- [The National Health Service \(Direct Payments\) Regulations 2013](#)

Other:

- [Mental Capacity Act 2005 \(c.9\)](#)
- [Mental Health Act 1983 Code of Practice](#)

Direct Payments Legislation – DP for Children

The key legislation governing the provision of services to disabled children.

[Children Act 1989](#) (part 3) (section 17)

[Chronically Sick and Disabled Persons Act 1970 \(CSDPA\)](#) (section 2)

[Children and Families Act 2014](#) – *Care Act harmonisation – introduces personal budgets etc*

The power to make direct payments to people with parental responsibility for disabled children and to disabled 16 and 17-year-olds was created by the **Carers and Disabled Children Act 2000**.

*Section 17A of the 1989 Act, inserted by the [Health and Social Care Act 2001](#), gave councils a **power to offer direct payments to parents of a disabled child or a disabled child aged 16 or 17 in lieu of services which would otherwise have been provided for them by the Local Authority (including periods of respite and short breaks)***

Personal Budgets as a Direct Payment



Personal Budgets– models of support

SOCIAL CARE - Anyone assessed to have eligible unmet needs under the **Care Act 2014** is given a **Personal Budget**.

A Personal Budget can be received in 3 ways;

- **Direct payments (DP)**
- **Council or ICB** managed
- a 3rd party provider managing on the individual's behalf – **Third Party Budget or Individual Service Fund (ISF)**

Direct payments are therefore **one** of the ways in which a PB or PHB can be used in order to meet the outcomes set out in the care and support plan.

Flexible use of DP – The Care Act

“DP are the Governments preferred mechanism for personalised care and support...they provide independence, choice and control by enabling people to commission their own care and support to meet their eligible needs” - [Care Act statutory Guidance 12.2](#)

12.35 “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.”

What can Direct Payment be spent on?

In principle a direct payment can be spent on anything (legal) that will enable the person to meet their health and wellbeing needs as agreed in the personalised care and support plan.

DPs are predominantly used to access care and support from Personal Assistants (PAs).

Employing a PA



Using A Direct Payment To Employ PAs

Benefits

DP Support - payroll, managed account, insurance

Barriers

INDEPENDENCE

Choice & Control

Flexibility & Continuity

RESPONSIBILITY

Recruitment & staff management

Paperwork

What does a new DP employer need to think about?

Managing the budget (see next slide)

Contingency planning

Managing Staff

Peer Support

Payroll – HMRC & Pensions

Insurance

DP Support & Employment Advice

Financial monitoring & budgeting

Recruiting a PA - DBS checks, right to work/reference checks

Basic DP costing sheet

Example costing sheet							
PA1	Rate	Hrs/shifts	Total	PA2	Rate	Hrs/shifts	Total
Hour	11.00	35	385.00	Hour	11.00	20	220.00
Night shift	45.00	3	135.00	Night shift	45.00	4	180.00
PA salary / wk			520.00	PA salary / wk			400.00
Emp NIC @ 13.8% after first £175			47.61	Emp NIC @ 13.8% after first £175			31.05
Pension @ 3%			15.60	Pension @ 3%			12.00
Total sal cost / wk			583.21	Total sal cost / wk			443.05
Cost				Per Wk	Per Yr		
PAYE total				1026.26	53366		
<i>Holiday cover</i>				<i>N/A</i>	<i>5747.06</i>		
Employers liability insurance				1.90	99		
DBS checks @ £65				2.50	130		
Insurance				1.90	99		
Payroll set up £50 plus £20 per PA				1.73	90		
Payroll for 2 PAs @ £6 per payslip per month				2.77	144		
DP/PHB support 10 hrs a month @ £60 phr				138.46	7200		
PA recruitment and training				19.23	1000		
Managed account set up				0.58	30		
Managed account fee £100 each month				23.08	1200		
Stationery				4.50	234		
Contingency				100.00	5200		
Total Cost				1322.91	74539		

PA Employer obligations



**Legal
Obligation**

**To have Employers
Liability Insurance?**

Best Practice

Best Practice

**Legal
Obligation**

Employers' liability Insurance enables an employer to meet the cost of a compensation claim in the event that an employee is injured or becomes ill at work.

**Legal
Obligation**

**To have Public Liability
Insurance?**

Best Practice

Best Practice

**Legal
Obligation**

Public liability provides cover if a third party (not an employee) suffers injury or damage to their person or property for which an employer is held legally responsible.

**Legal
Obligation**

**To pay staff the
national minimum
wage or above?**

Best Practice

Best Practice

**Legal
Obligation**

23 and over
"National Living Wage"

£10.42 (April 2023)

21 to 22

£10.18

18 to 20

£7.49

Under 18

£5.28

Apprentice

£5.28

Living Wage Foundation – “Real Living Wage”

Paying the Recommended Living Wage is not a legal requirement. The figure is recommended by the Living Wage Foundation based on the cost of living. New rates are normally announced in Autumn.



Announced	London	Rest of UK
Sep 2022	£11.95	£10.90
Nov 2021	£11.05	£9.90
Nov 2020	£10.85	£9.50
Nov 2019	£10.75	£9.30
Nov 2018	£10.55	£9.00
Nov 2017	£10.20	£8.75
Nov 2016	£9.75	£8.45
Nov 2015	£9.40	£8.25
Nov 2014	£9.15	£7.85

Legal
Obligation

To keep employees
safe and well at work?

Best Practice

Best Practice

Legal
Obligation

Employers should maintain a safe work environment and talk to their employees about health and safety.

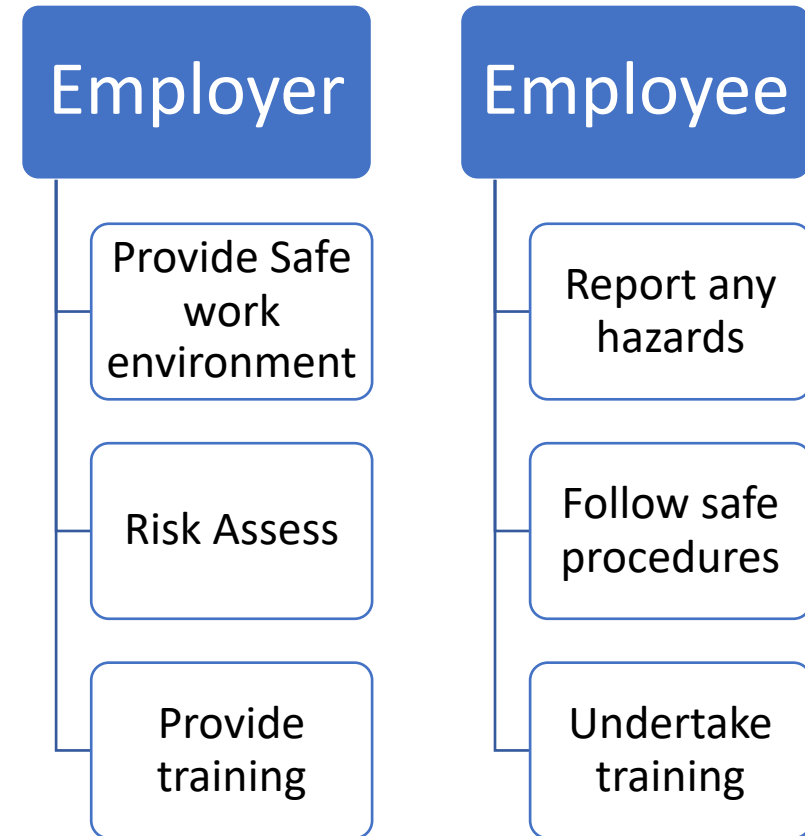
Health and Safety at work is regulated by the **Health and Safety Executive (HSE).**

Health & Safety

Health and Safety in the UK is regulated by the **Health and Safety executive (HSE)**.

H&S is a shared responsibility between employer and employee.

Policies and risk assessments only need to be documented when an employer has 5 or more employees.



**Legal
Obligation**

**Automatically
enrolled into a
workplace pension?**

Best Practice

Best Practice

**Legal
Obligation**

Employers must automatically enrol eligible staff into a workplace pension.

Auto enrolment assessment criteria (2023/24)

There are 3 different categories of worker, determined by age and annual earnings.

- **Eligible jobholders** must be automatically enrolled. Employer must contribute.
- **Non-eligible jobholders** have the right to opt in to a scheme. Employer must contribute.
- **Entitled jobholders** have the right to join a pension scheme. Employer not required to contribute.

Annual earnings above £10,000*	Eligible jobholders	
Annual earnings over £6,240** up to £10,000	Non-eligible jobholders	
Annual earnings up to £6,240	Entitled workers	
Age 16 to 21	Age 22 to State Pension Age	State Pension Age to 74

*£192 per week or £768 per 4 weeks or £833 per month

**£120 per week or £480 per 4 weeks or £520 per month

**Legal
Obligation**

**To undertake right to
work checks?**

Best Practice

Best Practice

**Legal
Obligation**

Employers are legally responsible for checking documents which show permission to work in the UK.

Legal
Obligation

Tell employees how
their personal data is
used, shared and
retained?

Best Practice

Best Practice

Legal
Obligation

A **privacy notice** should be issued to all employees describing the lawful basis and purpose for processing/handling their personal data

Legal
Obligation

To provide a written
contract of
employment?

Best Practice

Best Practice

Legal
Obligation

Employers should issue a written contract of employment **on day 1 for employees and casual workers.**

Written contract of employment for employees

The employment law definition of an employment contract is:

***"a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing"-
Employment Rights Act 1996***

The written statement should reflect the working relationship as accurately as possible!

Employers Legal Obligations

Employers are legally obliged to ensure their staff are;

- Insured against injury (Insurance Act 1969)
- Paid at or above the National Minimum Wage
- Safe at work (HASWA 1974)
- Assessed and potentially enrolled into a workplace pension
- Eligible to work in the UK
- Personal data is kept safe and only used for legitimate purposes
- Issue a written statement to all employees and workers on day 1



Independent Living Group



Personal Care Assistant ID Badge

Display your credentials proudly with a personalised ID badge, showcasing your professionalism and affiliation with ILG PA.

Branded ILG PA Lanyard and Badge Holder



24/7 Counselling & Advice Line



24/7 Health & Wellbeing Advice and Support



24/7 Telephone Access to Personal Financial and Debt Information & Support



MyMindPal App



Exclusive Rewards & Discounts Platform



ILG Community







ILG Community Mission Statement

“Creating a space for Personal Assistant Employers to share experiences, get support and unite their voices in order to help shape health and care services across the UK.”



Downloads & Links

The separate chat transcript is available here to follow the discussions and questions that occurred on the day on the event.

-  Chat Transcript
-  Local Government and Social Care Ombudsman
-  Inclusion London's DRE Chatbox
-  Iggy Patel's DRE Resources

Join the **ILG Community mailing list** [here](#)

Contact details



 **ILG Support**

24hr Legal and Employment
Advice Line

01476 512192

or email advice@ilgsupport.com



The ILG is a one stop shop for employers, providing a membership portal which includes template documentation, peer support, expert blogs and training to aid employers on their journey.

Ver 005-001 1120

 **ILG Academy**

Organised training sessions

training@IndependentLivingGroup.com

Skills For Care endorsed training



Questions