Direct payments for social care services in Wales
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1 Information about this factsheet

This factsheet provides information on direct payments in regard to social care services and how the system operates in Wales.

Social care services include a broad range of services, such as personal care and/or other help at home (such as meals on wheels); day centres for older people; or provision of care home accommodation.

Direct payments are cash payments that local authorities can make to individuals so that they can organise their own services to meet their social care needs. They offer an alternative to the local authority arranging social care services on your behalf. It is compulsory for local authorities to offer direct payments to older people who meet the necessary eligibility criteria.

For further information on social care assessments and services that are provided or arranged by your local authority, see Age Cymru’s Factsheet 41w Social care assessments for older people with care needs in Wales.

Note: The information given in this factsheet is applicable in Wales. Different rules apply in England, Northern Ireland and Scotland. Contact Age UK, Age NI and Age Scotland respectively for further information – see section 17 for their contact details.

1.1 Definitions and terminology

Local authority social services departments

In this factsheet references to the ‘local authority’ or ‘council’ will refer to the adult social services department of the local authority. The relevant social services department may be referred to as the following, or similar variations:

- social care department;
- adult social services;
- older persons’ department;
- older persons’ team.

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1 You might also have heard ‘personal budgets’ mentioned if you have carried out any research into direct payments. However, it should be noted that personal budgets apply in England only. In Wales there are direct payments only.
We will use the term ‘local authority’ in this factsheet to describe this type of service.  

Adult social services teams are responsible, among other duties, for assessing people’s need for ‘care and support’ or ‘social care’ services and deciding whether those needs meet the eligibility criteria.

Note: Finding contact details for the local authority’s social services department

Contact details for your local authority should be available in your local telephone directory; from your town hall, local council offices; or a local Age Cymru or Citizens Advice Bureau should be able to provide them. If you have internet access, a list of all the local authorities in Wales, together with links to their individual contact details, can be found on the Welsh Government’s website at:

www.gov.wales/topics/localgovernment/unitary-authorities

1.2 Recent legislation

The Social Services and Well-being (Wales) Act 2014

This Act, which was fully implemented on 6 April 2016, made significant changes to:

- the social care assessment process;
- related rules in regard to arranging and paying for residential care homes, nursing care homes; or care at home/non-residential services;
- the guidance documents that local authorities must use when assessing needs; and
- the guidance documents that local authorities must use when means testing people who may need to pay towards their services.

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2 Though, generally, the term ‘local authority’ could / would also describe Wales’ 22 unitary authorities (i.e. county and county borough councils) which deliver a wide range of other services locally – e.g. environmental health or housing – in addition to social services
Note: The main topic of this factsheet – direct payments in the provision of social care services – is now also covered by the Social Services and Well-being (Wales) Act 2014. Section 2.1 below has some further information on the specific regulations and Welsh Government guidance in relation to direct payments, issued under the Act. However, to a large extent the rules covering direct payments have remained the same under the Social Services and Well-being (Wales) Act as they were with previous legislation.  

The Regulation and Inspection of Social Care (Wales) Act 2016  
This Act received Royal Assent (became law) on 18 January 2016. It was brought in by the Welsh Government as it was felt that the regulatory system for the social care sector in Wales needed to be updated to bring it into line with changes already initiated by the Social Services and Well-being (Wales) Act 2014.

The Regulation and Inspection of Social Care (Wales) Act has established a new system for regulating the social care workforce. As of 3 April 2017, the Care Council for Wales and Social Services Improvement Agency were brought together and renamed Social Care Wales.

The Act will also establish new processes for the regulation and inspection of service providers (i.e. care homes or domiciliary care agencies); however this element of the act will not be implemented and operational until approximately April 2019 (though some elements may be introduced in April 2018).

At the time of writing (August 2017) it appears that the CSSIW will continue to be the regulatory body under the new system.

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3 See ‘Explanatory Memorandum to The Care and Support (Direct Payment) (Wales) Regulations 2015’, Mark Drakeford, Minister for Health and Social Services (Welsh Government), 21 October 2015 – “Broadly, the [Social Services and Well-being (Wales)] Act and [accompanying] regulations make the same provision for the making of direct payments as [existed] under the Community Care, Services for Carers and Children’s Services (Direct Payments) (Wales) Regulations 2011…and the Health and Social Care Act 2001”
2 What are direct payments?

Direct payments consist of money made available by a local authority to an individual who requires social care services.

The individual with care and support needs then uses this money to arrange their own services to meet their identified needs (i.e. the needs which the local authority’s care needs assessment for the person will have identified – see Age Cymru’s Factsheet 41w Social care assessments for older people with care needs in Wales for further information on this topic).

This contrasts with the ‘traditional' way of ensuring that someone’s care and support needs are met, whereby the local authority arranges services on behalf of the service user (indeed, if someone does not want to arrange their own care, then this standard model of the local authority arranging and/or providing the services will be used, rather than direct payments).

However, direct payments can offer greater choice, flexibility and autonomy for the service user, for people who would value this (local authorities do also have certain duties to offer support to people who want to make use of direct payments, but are perhaps daunted by the responsibilities involved – further information on this can be found in section 5.2 below).

Direct payments “can be for all, or part, of a person’s care and support needs”\(^4\).

Carers who have been assessed as requiring support services from the local authority can also opt for direct payments – see section 5 below.

Also, where someone with care needs lack capacity, direct payments may still be available, provided a suitable, trusted, person can manage them on their behalf – see section 5.3 below.

The Welsh Government have stated that “direct payments are an integral part of meeting people’s needs through care and support planning, and must not be seen as a separate, secondary, consideration”\(^5\).

\(^4\) Social Services and Well-being (Wales) Act 2014: Part 4 Code of Practice (Meeting Needs), Welsh Government
\(^5\) Ibid
Example

When Helen’s arthritis and angina got worse, her daughter requested a social care needs assessment. She was found to need regular care at home to help with housework and personal care.

“I’ve always prided myself on being independent and managing on my own, but when my health problems got worse I realised I needed help to stay living at home. After my assessment, the council arranged for a care worker to come round every morning to help me get up, washed and dressed and do a bit of cleaning.

This helped me a great deal, but I wished my care worker didn’t come so early every day – I could never have a lie-in. And having a different carer every day wasn’t ideal either.

I talked to my social worker and she explained about direct payments. My daughter and I read up on it and decided to go for it. I use them to employ a personal assistant, who really understands my needs and fits in well with me. I interviewed a few people before I chose her. She comes a bit later on Fridays so I can sleep in, and takes me to my local cafe for breakfast once a week.

The paperwork for direct payments sounded daunting, especially as my rheumatoid arthritis makes it difficult to write, but my daughter helps me fill in forms and I can file them myself. It isn’t hard to manage, and I know that my council has a direct payment support service to help me should I need it.”

2.1 Welsh Government regulations and guidance on direct payments

The Care and Support (Direct Payments) (Wales) Regulations 2015 – issued under the Social Services and Well-being Wales Act 2014 – contain the rules underpinning the operation of direct payments by local authorities in Wales.

In common with many other pieces of legislation, there are Codes of Practice (CoP) that accompany the Social Services and Well-being (Wales) Act.
The CoP guidance documents are backed by law and aim to assist individuals, professionals and organisations to work within and comply with the Act – i.e. they are written in plainer English and are more straightforward to understand than the actual Act/regulations.

The main Welsh Government CoP document covering direct payments is:

*Code of Practice on the exercise of social services functions in relation to part 4 (Meeting needs) of the Social Services and Well-being (Wales) Act 2014 (Including eligibility, care and support planning and direct payments)*

A copy can be accessed on the Social Care Wales ‘Information and Learning Hub’ website at:

https://socialcare.wales/hub/sswbact-codes

3 **Background information on eligibility criteria and charging procedures for local authority social care services (and how direct payments fit into the system)**

Whether you want to receive a direct payment in order to organise your own services, or for the local authority to arrange services on your behalf, the following are exactly the same:

● the eligibility criteria that a local authority will use to determine whether your needs are of a level where you qualify for services from them; and

● the subsequent means testing procedure for determining if, and how much, you should contribute towards your care costs (i.e. if the local authority arranges services for you – depending on the results of their means test – you will be asked to contribute a certain amount towards the total cost of the services. In the same way, with direct payments, the authority would calculate how much money in total is needed to secure services to meet all your needs, but – again, based on the results of the means test – you may only receive a proportion of this from them as your direct payment and you would be expected to make up the rest of the cost yourself).
3.1 Assessment and eligibility for services

Needs assessment for the person with care needs (and, where relevant, also an assessment for their carer)

The first step in obtaining help from the local authority social services department is to ask for an assessment of your needs. The local authority will generally not be able to assist you until it has first carried out the assessment (this may be referred to by a number of similar terms, such as ‘social care assessment’, ‘community care assessment’, ‘care needs assessment’, or simply ‘needs assessment’).

The local authority has a legal duty to carry out an assessment of anyone living in its area who may need community care services, once it becomes aware of this need\(^6\).

The right to a needs assessment is **not** affected by the level of your financial resources or other circumstances.

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**Note:** If you get help from a friend or family member (a carer), your carer’s own needs and opinions should be considered and taken into account as part of your own assessment. Carers also have a right to their own assessment in parallel or sometimes jointly with yours.

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Eligibility criteria for service provision

After the completion of a needs assessment, based on the results, the local authority will decide whether or not it should provide or arrange social care services for you. **The authority must use national eligibility criteria to make this decision.**

Age Cymru’s Factsheet 41w *Social care assessments for older people with care needs in Wales* has in-depth information on the assessment process.

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\(^6\) An older person would nearly always be entitled to a needs assessment itself (though note that this wouldn’t necessarily mean they would be deemed eligible for services as a result – this would depend on the level or extent of their needs that are identified in the assessment).
3.2 Financial means testing

As noted above, you may be required to contribute towards the cost of your care services and any contribution will be calculated for a direct payment arrangement using the same means-test rules as if the local authority were directly providing or arranging services.

See Age Cymru’s Factsheet 46w Paying for care and support at home in Wales for in-depth information on local authority charging procedures for homecare and other non-residential social care services, including:

- types of income and capital that are taken into account in the means test (and those that can be disregarded);
- a maximum weekly charge (for non-residential care services); and
- your minimum income after paying your charge (and how the local authority should calculate this).

3.3 Information & Advice and advocacy duties on local authorities

Information & Advice

Part 2 of the Social Services and Well-being (Wales) Act 2014 includes duties on local authorities to provide “information, advice and assistance...relating to care and support”.

Broadly speaking, their service “must include, as a minimum publication of information...on how the care and support system operates in the local authority area...the types of care and support available...how to access [this] and how to raise concerns about the well-being of a person who appears to have needs”7.

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7 Social Services and Well-being (Wales) Act 2014: Part 2 Code of Practice (General Functions), Welsh Government
In relation to direct payments, specifically, local authorities “**must** provide appropriate, accessible information and support to enable people, or their representatives, to decide whether they wish to receive direct payments. The information and support provided **must** be suitable to meet their communication needs and...sufficient for the person, or their representative, to be able to make an informed decision”.

In order to do so, “individuals need to understand what is involved in managing a direct payment. A local authority must provide, or arrange [at an early stage in the assessment and care planning process] the provision of...information and support on what receiving direct payments will involve and ensure the person fully appreciate[s] what this entails”\(^8\) – also see section 5.2 below in regard to support services for direct payment recipients.

**Advocacy duties**

The *Social Services and Well-being (Wales) Act* also contains duties for local authorities in regard to advocacy services. If you have difficulty in expressing your views and needs and feel that this would be excessively difficult in regard to discussions on services to be provided and how you will be charged, then an advocacy service may be of help.

In many instances, the duties that fall on the local authority will be to make people aware of the availability of advocacy support, should they wish to utilise this. Alternatively, in other situations the authority will have a specific duty to “安排 an independent professional advocate” for someone\(^9\).

See Age Cymru’s Factsheet 41w *Social care assessments for older people with care needs in Wales* for further information on the information & advice and advocacy responsibilities of local authorities.

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\(^8\) Social Services and Well-being (Wales) Act 2014: Part 4 Code of Practice (Meeting Needs), Welsh Government

\(^9\) Social Services and Well-being (Wales) Act 2014: Part 10 Code of Practice (Advocacy), Welsh Government
4 Do local authorities have to offer direct payments?

If you meet the eligibility criteria, direct payments must be discussed and offered by the local authority following an assessment of your care needs and as part of your support plan.

Welsh Government guidance advises that:

“Where eligible care and support needs...have been identified and that individual, or their representative, expresses a wish to receive one, direct payments must be made available in all cases where they enable personal outcomes to be achieved. A local authority must be innovative and creative when working in partnership with recipients or their representatives to explore ways a direct payment can be used to secure the personal outcomes. Direct payments must only be refused where it is clear after extensive exploration that a direct payment would not secure the outcomes required”.

Furthermore, “individuals must not be refused a direct payment purely because they are unable to manage the payment, or apprehensive about managing one. A local authority, in partnership with the person, must explore all options for supporting the individual to manage a direct payment. Where areas of difficulty are identified, local authorities must ensure the correct level of support to overcome such barriers is available”.

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10 Social Services and Well-being (Wales) Act 2014: Part 4 Code of Practice (Meeting Needs), Welsh Government
Note: As touched upon in section 2 above, an individual does not have to accept direct payments.

If they prefer, they can choose to receive services provided and arranged by the local authority, or a ‘mixed care’ package, where some of the services are provided by the local authority and other needs are met through direct payments.

This can, for example, give somebody the opportunity to familiarise themselves with having direct payments before taking on responsibility for arranging support to meet all their needs.

For information on how you might be able to use your direct payment, see section 9 below.

5 Who can have a direct payment?

5.1 General eligibility criteria

To be eligible for a direct payment:

- Someone will need to have been assessed as needing care and/or support services by their local authority under the Social Services and Well-being (Wales) Act 2014; and

- the local authority will need to be satisfied that direct payments are an “appropriate way of meeting the person’s needs”\(^\text{11}\) (as outlined earlier in the factsheet, an authority should be open minded about the various possibilities for using direct payments and explore all the options fully, prior to reaching a conclusion that they would not be appropriate in any given case).

Therefore, provided the above applies, people with care and/or support needs in all of the following scenarios should be able to receive their social care services via a direct payment:

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\(^{11}\) ‘Explanatory Memorandum to The Care and Support (Direct Payment) (Wales) Regulations 2015’, Mark Drakeford, Minister for Health and Social Services (Welsh Government), 21 October 2015
• A service user who is fully able to manage the direct payment on their own (or fully able, with the addition of appropriate support – also see section 5.2 below).

• A service user who lacks sufficient mental capacity to make the decision to receive a direct payment, **provided there is a ‘suitable’ person to arrange and manage the direct payment on their behalf** (if this wasn’t the case, then they wouldn’t be eligible) – see section 5.3 below for further information on this issue.

• Carers (i.e. ‘informal’ carers, such as family members or a friend – “in general, professional carers who receive payment should not be regarded as carers for the purposes of the [Social Services and Well-being (Wales)] Act, nor should people who provide care as voluntary work”¹³). A carer may be assessed as eligible for services to support them with their caring role, as well as to maintain their own health and well-being whilst doing so. If so, just as the person with care needs can opt to use direct payment, so too can a carer.

• Where the person’s local authority is under a duty to provide them after-care services under section 117 of the *Mental Health Act 1983*¹⁴ (people subject to certain other mental health legislation should also generally be eligible).

• People who are subject to drugs and alcohol-related provisions of certain criminal justice legislation (but *only* on “condition that payment is made to another person who is suitable and both persons agree to the arrangement”¹⁵).

¹² Section 50, 51 & 52 are the specific parts of the *Social Services and Well-being (Wales) Act 2014* that detail this information

¹³ Social Services and Well-being (Wales) Act 2014: Part 3 Code of Practice (assessing the needs of individuals), Welsh Government

¹⁴ Some people who have been kept in hospital under the Mental Health Act are entitled to free help and support after they leave hospital – often referred to as ‘Section 117 aftercare’ as this is the section of the legislation that provides that right. Section 117 places a joint duty on health and social services authorities to provide these after-care services; whether someone’s care falls within the remit of the NHS or their local authority social services department will depend on what their particular needs are.

¹⁵ Welsh Statutory Instruments: 2015 No. 1815 (W. 260) Social Care, Wales: The Care and Support (Direct Payments) (Wales) (Explanatory note). This is a relatively new development, as detailed in the ‘Explanatory Memorandum to The Care and Support (Direct Payment) (Wales) Regulations 2015’, Mark Drakeford, Minister for Health and Social Services (Welsh Government), 21 October 2015 – the new regulations to accompany the Social Services and Well-being (Wales) Act “remove [a previous] exclusion and enables those with drug or alcohol dependency to access direct payments with suitable safeguards, namely that a suitable person agrees to manage the payments and any employment responsibilities on their behalf”.
Note: Direct payments are not available for people eligible for NHS continuing healthcare (NHS CHC) in Wales. For further information on NHS CHC see Age Cymru’s Factsheet 20w NHS continuing healthcare and NHS-funded nursing care in Wales.

5.2 Support for people who are eligible to receive direct payments

Note: This section relates to those with sufficient mental capacity to choose to receive direct payments, but who want and/or need support to help them manage them – see section 5.3 below for information on the rules regarding direct payments being operated on behalf of someone who lacks mental capacity.

Support services provided by local authorities

Local authorities must ensure that they “develop local support services for direct payment recipients” and/or “their representative”.

The services may be run directly by the local authority or in partnership with a local voluntary agency. Also, authorities “must explore, in partnership with recipients, the different models and ways support can be provided to ensure the arrangements they have in place are effective, responsive to recipients’ requirements and are person centred”.

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16 In England they are available, but the Welsh Government has confirmed that they have no plans to make this the case in Wales, see: ‘The Social Services & Well-being (Wales) Act 2014: An overview (Updated and expanded briefing, 2nd June 2017)’, by Professor Luke Clements (Cerebra Professor of Law and Social Justice, the School of Law, Leeds University)

17 Social Services and Well-being (Wales) Act 2014: Part 4 Code of Practice (Meeting Needs), Welsh Government

18 Ibid
Services may include:

- support, information and advice from those who currently receive direct payments who can pass on what they have learnt;
- training and practical assistance, particularly help with employing care workers;
- lists of care agencies;
- help with drafting adverts and contracts;
- providing rooms for interviewing; or
- acting as an addressee for responses to adverts.

Support from a person the service user wishes to help them

Alternatively, the direct payments recipient may not require any services from a support service provided or commissioned by the local authority, as a relative or friend, for example, is able to provide the appropriate level of assistance. As outlined above, this person can make use of a support service themselves, in order to help them in their role.

The local authority will also want to be satisfied that the person offering support for the service user to manage the payment is an appropriate person to do so (in a similar way that someone who manages a payment on behalf of someone lacking capacity must be a suitable person, as discussed below).

5.3 ‘Suitable person’ rules where a service user lacks mental capacity

As previously touched upon in the factsheet, if someone lacks capacity – as defined in the Mental Capacity Act 2005 (see below) – direct payments can be made to a willing and appropriate ‘suitable person’, who receives and manages the payments on behalf of the person who lacks capacity.
Note: The Mental Capacity Act 2005

The Mental Capacity Act 2005 states that: “A person lacks capacity if he is unable to make a decision for himself in relation to a particular matter (at the time) because of an impairment of, or a disturbance in the functioning of, the mind or brain”.

When anyone acts on behalf of another person who has lost capacity – including a ‘suitable person’ in the case of social care direct payments – they must act at all times in the ‘best interests’ of the person they are supporting and adhere to the statutory principles on which the Mental Capacity Act is based\(^\text{19}\).

There is a Code of Practice to accompany the Act and various information booklets to assist people to understand the legislation. These are available on the GOV.UK website at:

www.gov.uk/government/collections/mental-capacity-act-making-decisions

Also, see Age UK’s Factsheet 22 Arranging for someone else to make decisions on your behalf for further information.

Suitable person options

Often, a suitable person will be a close family member or friend with existing involvement in the care of the person eligible for services (“whatever the relationship a local authority must ensure that the best interests of the person lacking capacity are prioritised above all other considerations”\(^\text{20}\)).

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\(^\text{19}\) These are: A presumption of capacity (every adult has the right to make his or her own decisions and must be assumed to have capacity to do so unless it is proved otherwise); the right to be supported to make their own decisions (all practicable steps must be taken to help a person make their own decision before anyone concludes that they are unable to do so); the right to make eccentric or unwise decisions (a person is not to be treated as being unable to make a decision simply because the decision they make is seen as unwise); best interests (any decision made or action taken on behalf of people without capacity must be made in their best interests); and least restrictive intervention (anyone making a decision for or on behalf of a person without capacity should consider all effective alternatives and choose the one that is the least restrictive of the person’s basic rights and freedoms).

\(^\text{20}\) Social Services and Well-being (Wales) Act 2014: Part 4 Code of Practice (Meeting Needs), Welsh Government
In their guidance, the Welsh Government outlines the process to be followed for appointing a suitable person, the conditions to be met by them and approaches to risk and safeguarding. The following are stated options in regard to who can meet the definition of a suitable person:

- Someone who has been appointed as an attorney under an LPA (lastin\ng power of attorney) – though it is unlikely that a financial LPA on its own will be sufficient.

- A person who has been appointed a deputy for the person needing services by the Court of Protection (under section 16 the Mental Capacity Act 2005).

- Someone who has offered to act as a suitable person and who “the local authority considers is acting in the best interests of the person lacking capacity”.

- An employee of an “organisation or third party appointed by a local authority” – for example, a support scheme provider\textsuperscript{21}.

\textbf{Note}: “Provided that the suitable person is able to manage the direct payments, either with or without support, and is considered to have the individual’s best interests at heart, the local authority must provide the direct payments to that suitable person”\textsuperscript{22}.

\textbf{Support for a ‘suitable person’}

Someone acting as a suitable person can themselves have support to manage the direct payment, if required – i.e. they can access the same support services as discussed in section 5.2 above.

\textsuperscript{21} Ibid
\textsuperscript{22} Ibid
5.4 **If you are refused a direct payment**

If you are refused a direct payment, the reasons should be fully explained to you. If you disagree with this, you could use the local authority’s complaints procedure to challenge the decision – see section 15 below.

6 **Switching to a direct payment if you already receive local authority services**

If you have already been receiving care or support services arranged or commissioned by your local authority, you can request at any time to switch to direct payments instead. The authority will probably review your care and support package at that point, as part of the process of deciding whether you are eligible for direct payments.

6.1 **Services during an ‘interim’ period when you are considering a direct payment**

If you are considering whether to have a direct payment, or have decided that you want to use direct payments but have not yet had time to arrange your own services, you should not be left without the services you need in the meantime.

You may need to have services arranged by the local authority until you are able to put your own into place. The local authority is only relieved of a duty to provide services if it is satisfied that your needs are being met. If they are not, the local authority has a duty to provide the services directly.

Obtain as much information as possible so that you can make an informed choice about whether direct payments are the best option for you. Your local authority may have its own guide, or be able to put you in touch with a support group or with other people who already have direct payments.
7 Your care plan when you are receiving direct payments

Following an assessment by a local authority where it is identified that you have ‘eligible needs’, a care and support plan must be discussed, agreed and written down. “Where some or all of the person’s needs are to be met by making direct payments [the] plan must...contain a description of”:

- “the needs which are to be met by direct payments”;
- “the amount and frequency of the direct payments”\(^{23}\).

The local authority must provide you with a written copy of your care plan.

For further information on care plans in general, see Age Cymru’s Factsheet 41w Social care assessments for older people with care needs in Wales.

8 The level of your direct payment

The amount you are given as your direct payment must be enough to enable you to secure a service of a standard that meets your assessed needs and all related legal obligations.

It should be noted that in practice, the authority will be reluctant to make a direct payment for more than it calculates that it would cost to provide (or arrange) the service itself. If your preferred method of securing services will be more expensive than the council’s estimate of the reasonable cost of doing so, you may have to meet any shortfall yourself.

However, significantly, the authority’s estimated cost should include any associated costs connected to direct payments – for example, employer’s National Insurance contributions, sick pay, holiday pay, employer’s liability insurance, VAT etc. The Welsh Government’s guidance addresses this issue as follows:

\(^{23}\) Ibid
“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.”

The local authority may agree to pay more than its estimated cost, if it is satisfied that the increased cost is justified because it is more effective in enabling the person to manage his or her own services and live independently.

You could complain if you think that the local authority has been unduly restrictive about the amount it will pay – see section 15 below.

8.1 Your contribution towards the cost of your care

You may be asked to contribute towards the cost of care arranged using direct payments, in the same way as if the local authority has arranged or provided services – i.e. your direct payment may only cover a certain proportion of the total cost that the authority has calculated will be needed to meet your needs via a direct payment. This will happen if the results of their financial means test determine that you have sufficient resources to meet part of the cost yourself.

There is, however, a maximum weekly charge in Wales for people who receive non-residential social care services from the local authority – since April 2017 this has been £70 per week (it may be revised again in April 2018).

Financial means testing is touched upon briefly in section 3.2 above, though see Age Cymru’s Factsheet 46w Paying for care and support at home in Wales for detailed information.

24 Ibid
9 Using your direct payments

You can use your direct payments however you wish, as long as it is to meet your assessed eligible needs – i.e. the needs as identified in your care assessment.

9.1 Examples of how direct payments can be used

Although social services departments need to set conditions to ensure that the payments are used on assessed needs, a balance should be reached in respect of the overall aim of direct payments – i.e. they are designed to give people more choice and control over the care and support services they are assessed as needing. As such, social services departments should not be overly constrained by existing/established patterns of service provision.

For example, below is a list of some of the things you may be able to use a direct payment for, which includes traditional types of homecare alongside other methods that may suit particular people:

- Personal care – for example, getting dressed, washing and bathing, getting in and out of bed, eating and drinking, or taking medication (see section 10 below for further information on finding a care worker or personal assistant).
- Housework, cooking, shopping, or gardening.
- Support with communication needs.
- Meeting social needs – leisure activities, visiting friends, attending social groups or a course (for example, a computer course to learn computer skills that would enable you to keep in touch with family).
- Specialist homeware or equipment and adaptations\(^{25}\).
- Transport, such as taxis.
- Respite or temporary care in a care home.
- Since April 2016, a long term / permanent care home placement – however, see the ‘Note’ overleaf.

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\(^{25}\) Direct payments in this context could be used, for example, to buy equipment from a different supplier to the one the local authority usually uses, or put money towards a more costly, highly specified model.
Note: Prior to April 2016, direct payments could not be used to arrange long term residential care. However, since the full implementation of the Social Services and Well-being (Wales) Act, they can now in theory be used for care in a care home as well as non-residential / homecare services.

This is confirmed in the Welsh Government’s guidance accompanying the Act:

“Direct payments can be provided for any identified need for care and support a local authority is to meet. This includes community care and support and short and long term residential care”26 (emphasis added).

However, it is worth noting that there has already been an established policy for some years that people are given a choice of accommodation options when going to live in a care home27. The Social Services and Well-being (Wales) Act continues this principle and authorities must ensure that where a person’s needs are going to be best met in a care home “that the person has a genuine choice” of which one. Therefore, given the choice that exists in this area already, it remains to be seen what role the inclusion of direct payments as an option will have28.

9.2 Direct payments case study

The Social Care Institute for Excellence (SCIE) have cited the following case study:

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26 Social Services and Well-being (Wales) Act 2014: Part 4 Code of Practice (Meeting Needs), Welsh Government

27 For further information on the principles behind choice of accommodation for people assessed as requiring a care home, see Age Cymru’s Factsheet 10w Paying for a permanent care home placement in Wales & Factsheet 60w Choice of care home if the local authority is contributing towards your care fees.

28 On this topic, ‘The Social Services & Well-being (Wales) Act 2014: An overview (Updated and expanded briefing, 2nd June 2017)’, by Professor Luke Clements (Cerebra Professor of Law and Social Justice, the School of Law, Leeds University) states that: “The [Social Services and Well-being (Wales)] Act extends direct payments to cover residential care costs. There is little explanation as to how this will work in practice...the potential problems that will arise by permitting direct payments to be used for long periods of residential care, would appear to outweigh any benefits” (“These problems include the potential uncertainty about the ‘ordinary residence’ of people who enter residential care using direct payments and the risk that such residents may be more vulnerable to demands by providers that they ‘top-up’ local authority payments”). “The complexity of the resulting scheme has caused the English Government to postpone such payments until 2020”.
“A 56-year-old man with early-onset dementia has a very short concentration span requiring almost constant stimulation, which he seeks out from his wife, the main carer. The situation is likely to break down if the wife does not receive regular breaks and the husband does not receive regular stimulation. He also requires support to maintain links and regular contact with his family, but he is finding it difficult to remember how to use the train to reach them. Traditionally he would have been provided with three hours of domiciliary home care each week, plus two days a week at a day centre. The approximate cost of this service would have been £600 per month. He now receives a direct payment of £200 per month, and his wife receives a carer’s direct payment of £55 a month.”

The couple use their direct payments to meet their eligible assessed needs as follows:

The husband has a “TV subscription that costs £40 per month. He can watch sport and football, which holds his concentration and which he enjoys immensely. This facility is available seven days a week. He now has a sports club membership and goes to the gym with a personal assistant every week. He also goes swimming when he can. The cost of the [personal assistant] is £100 a month and the sports club membership costs £28 a month. His wife receives a carer’s direct payment to fund her membership as they enjoy swimming together...he also pays the community volunteer transport service, so he can travel with his wife to stay with their family in London whenever possible. He uses part of the money to pay for a taxi every month to attend, with his wife, a club for people with early-onset dementia and their carers. His wife pays for half the cost of the taxi from a carer’s direct payment she receives in her own right”29.

9.3 Varying how you use a direct payment from week to week (due to fluctuating needs)

The Welsh Government’s guidance advises that:

29 Direct payments: answering frequently asked questions, Social Care Institute for Excellence (SCIE) (Adult services SCIE guide 10), September 2005
“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**” (emphasis added)\(^{30}\).

However, if there were significant changes in needs that meant that current arrangements were not suitable, a new care needs assessment may need to take place – see section 13 below.

10 **Issues when arranging your own services via direct payments**

This section covers the issues around arranging your own services, including:

- Employing your own care workers or personal assistants.
- Contracting with an agency or someone who is self-employed.
- Issues around paying for care from a family member.
- Buying your own disability equipment.
- Dealing with emergencies.

10.1 **Employing your own care workers or personal assistants – issues to consider before and whilst recruiting**

**Note:** This option potentially gives someone the greatest choice and control over their care services. Some people worry about the responsibilities of being an employer, however – if so, see section 10.2 below.

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\(^{30}\) Social Services and Well-being (Wales) Act 2014: Part 4 Code of Practice (Meeting Needs), Welsh Government
Your overall legal responsibilities as an employer, including health and safety and liability insurance

The Welsh Government’s guidance provides quite a lot of information on this issue:

- “Where a direct payment is used to employ someone, local authorities must ensure recipients, or their representatives, are fully aware of their legal responsibilities as an employer and that they receive the necessary support and resources to manage their employment responsibilities. This includes supporting recipients to ensure employees are legally entitled to work in the UK”.

- “Local authorities must support direct payment recipients to be compliant with health and safety requirements arising from their direct payment”, including supporting recipients “with health and safety assessments of their employees…particularly in relation to manual handling needs”.

- Local authorities must ensure in all cases that “appropriate up to date liability insurance is in place and that [direct payment] recipients appreciate they have a legal duty of care for those they employ”\(^{31}\).

Advertising the position

You will need to consider issues, such as:

- drawing up job adverts and job descriptions, making sure you have covered all the tasks you will want done;

- where to advertise.

- what to ask at interviews.

Employment contracts

Drawing up a contract is a legal requirement and ensures that both you and the person you are employing are clear at the outset about the terms and conditions of the employment. When the contract is drawn up, it should include:

\(^{31}\) Ibid
• job title and start date;
• hours and place of work;
• how much the employee will earn (this **must** meet the national minimum wage);
• whether the employment is fixed-term or permanent;
• statutory entitlement to sick pay and annual leave;
• pension scheme provision (where appropriate); and
• notice requirements.

You may find that a local support scheme offers training and/or a payroll service that helps with the tax and National Insurance aspects of being an employer. Ask your local authority for details of any local schemes. There is a national **New Employer Helpline**, run by HM Revenue & Customs – see section 16 for contact details. Also, the GOV.UK website has useful information at:

www.gov.uk/employment-contracts-and-conditions/contract-terms

**Risk management**

It is advisable to always ask for two written references for an applicant, plus potentially follow up with a telephone call. You could also consider asking a family member or friend to spend some time with you and your personal assistant at the beginning of the arrangement. Also see section 14 below, which has further information on managing risks and safeguarding.

10.2 **Contracting with an agency or someone who is self-employed (if you want to use direct payments, but do not want to be an employer)**

If you are daunted by the prospect of taking on the responsibility of being an employer, this doesn’t mean that you will be unable to make use of the direct payments system. Instead, you can choose to use your direct payment to contract with:

• an independent care agency, or
• a person who is self-employed.
**Independent care agencies**

If you decide to use an independent care agency you should be able to find local agencies by:

- searching on a database of agencies on the Care and Social Services Inspectorate Wales (CSSIW) website (the CSSIW is the body responsible for inspecting and regulating social care services in Wales – see section 16 below for contact details);

- asking your local authority social services department if they hold lists of agencies that are suitable for meeting your particular care needs;

- searching in the local telephone directory; or

- by personal recommendation.

*You may want to approach several agencies before making a decision.*

**Contracting with someone who is self-employed**

**Important:** If you are choosing the option of a contract with someone who is self-employed, it is important to check very carefully that the contract you make with them means that they are genuinely self-employed. There can be financial consequences for you if you incorrectly engage someone on the basis of it being self-employment, when the reality of the arrangement means that the person is legally employed.

Several different factors affect whether a person is considered to be self-employed for the purposes of tax, National Insurance and employment legislation, including the terms on which they have been engaged and the amount of control you have over the work done. HM Revenue & Customs (HMRC) produces a leaflet which explains the difference between being employed or self-employed. Their website also has an online tool to determine a worker’s employment status called the ‘Employment Status Indicator’, which can be accessed at:


The local authority or a local voluntary or user-led organisation should also be able to help.
You may want to approach several self-employed people offering the services you require before making a decision.

**Things to confirm before entering into a contract with an agency or self employed individual**

Before entering into an agreement, confirm the following with the agency or individual involved:

- the tasks you expect the staff to do and the way in which you would like them to be done;
- what the quoted price covers (some agencies add VAT or charge extra for travelling);
- what insurance cover they have;
- what training the staff have had;
- cover arrangements – for example for sickness; and
- what happens if you have to cancel the service suddenly.

To avoid any future misunderstandings, your contract should be as clear as possible. Agencies often use standard contracts that can be individualised. If you are making your own contract with someone who is self employed, examples of contracts may be useful – some of the organisations listed in section 16, for example Disability Rights UK, may be able to offer further advice on this.

10.3 **Using a direct payment to pay for care from a family member**

Prior to April 2016, apart from in exceptional circumstances, people were not able to use a direct payment to pay for care from their spouse, partner or a ‘close relative’ living in the same household. Since then, the rules that have come into place as a result of the *Social Services and Well-being (Wales) Act* have relaxed this rule to an extent, where it is “appropriate for promoting the well-being of the recipient”\(^{32}\).

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\(^{32}\) ‘Explanatory Memorandum to The Care and Support (Direct Payment) (Wales) Regulations 2015’, Mark Drakeford, Minister for Health and Social Services (Welsh Government), 21 October 2015
The current guidance advises the following:

“In promoting a person’s personal outcomes [that should be achieved through their social care services], a local authority may authorise direct payments to pay a relative living in the same household as the recipient if they provide care and support or they manage the recipient’s direct payments. When considering whether employing the relative will provide the best well-being outcome for that individual, the local authority must consider the views of the recipient before coming to a decision. Where appropriate safeguards are in place the employment of a relative living in the same household is often the most suitable way of providing care as it enables and supports continuity of care, recognition of personal choice and promotes early intervention”.

“In each case, the local authority, after considering the recipient’s views, must be satisfied that the employment of a close relative living in the same household is the best way of promoting and delivering their personal outcomes”33.

10.4 Equipment and adaptations

If, following a needs assessment, you are provided with a direct payment to buy equipment, take advice to ensure that the equipment you are buying is safe, appropriate and cost effective. You can liaise with the occupational therapy department of your local social services who are likely to have been involved with initially assessing your needs and identifying certain equipment as the best way to meet some or all of them.

If you plan to use your direct payment for equipment, establish whether you or the social services department will own the equipment and who will be responsible for ongoing care and maintenance.

Note: The above relates to lower cost equipment and adaptations. Larger scale, more expensive adaptations are generally provided via means tested Disabled Facilities Grants, in conjunction with the housing department. See Age Cymru’s Factsheet 42w Obtaining disability equipment and home adaptations in Wales for further information.

33 Social Services and Well-being (Wales) Act 2014: Part 4 Code of Practice (Meeting Needs), Welsh Government
10.5 **Dealing with emergencies**

If the local authority becomes aware that your assessed needs are not being met or you are at excessive risk, it has a duty to review your case and act to resolve the issue. You should therefore not be left without the support that you need, and should – as part of your care plan – have a named person to contact in an emergency to ask for help.

It is useful to discuss potential problems with social services when your direct payments are set up, so that contingency arrangements can be included as part of your care plan. This could cover issues such as equipment breaking down, or arrangements to cover your care needs if your care worker is sick or on leave.

Your direct payments may need to be adjusted accordingly to meet any necessary extra expenditure. Welsh Government guidance advises that:

“A local authority must have arrangements in place for making additional payments in emergencies. Recipients or their representatives must be made aware of these procedures and how they obtain additional payments if an emergency arises. This information must be made known at the outset to alleviate further pressure on the recipient”\(^{34}\).

11 **Local authority monitoring of direct payments**

Although the social services department is not providing or arranging your services, it is still responsible for making sure your long-term needs are being met and it has an on-going safeguarding duty. A balance between your right to autonomy and safety should be the aim.

Monitoring arrangements to check that your needs have not changed (also see section 13 below) and to discuss any concerns you have should be discussed and agreed with the local authority before you start to receive your direct payments. Do not feel inhibited about expressing reservations or concerns about the services you are purchasing, or any other problems. Your payments should not be stopped automatically or arbitrarily as a result of your concerns.

\(^{34}\) Ibid
There will also be financial monitoring to ensure that public funds are being properly spent. Before your direct payments begin, discuss the information you will be expected to provide and the way monitoring will be carried out. You will normally be expected to keep separate accounts, including operating a separate bank account for your direct payments. Audit arrangements should be as simple and easy to understand as possible.

**Note:** Local authorities will generally be able to require money provided for direct payments be paid back if it has not been used for its intended purpose. Before you receive direct payments the circumstances when recovery may be considered should be explained to you.

You should not be penalised if you have made an honest mistake.

## 12 Discontinuing direct payments

### 12.1 Choosing to discontinue the direct payments

You can decide at any time to stop having direct payments.

If you choose to do so, the local authority should then arrange services for you in the traditional way instead, so that your needs continue to be met.

### 12.2 What if the local authority wishes to discontinue the direct payments?

The local authority can decide to discontinue direct payments if it determines that:

- your needs are no longer being met; or
- you, or the person/people supporting you, are unable to manage your payment; or
- there has been misspending of the payments.
However, in relation to the first two bullet points above, the local authority “must explore all feasible options to continue to meet a recipient’s care and support needs via direct payments”, prior to making the final decision to discontinue them\(^{35}\).

You and, if appropriate, your carer, should be fully involved in these discussions and in exploring possible amendments to provision and/or extra support to manage the direct payment.

13 **Periodic local authority reviews of care needs and direct payments**

Whether someone is receiving their social care services via direct payments, or local authority arranged and provided services, their care needs must be periodically reviewed. These reviews determine if the current provision “is meeting the identified needs of the individual, and to consider if their needs have changed and if a re-assessment is required”\(^{36}\).

In regard to direct payments, specifically, the Welsh Government has stated that authorities should carry out a review within six months of the first payment being made in order to judge how the arrangement is working\(^{37}\) (this is slightly different to a first review where someone is receiving local authority provided or arranged services – here a review should take place within twelve months of services being put in place).

Following the initial six month review, subsequent reviews should take place at twelve month intervals.

Care needs and/or direct payment reviews can also be requested at any time by the service user themselves (or their advocate, carer or family member on their behalf).

For further general information on care needs assessments and reviews of care needs, see Age Cymru’s Factsheet 41w *Social care assessments for older people with care needs in Wales*.

\(^{35}\) Ibid
\(^{36}\) Ibid
\(^{37}\) Ibid
14 Risk management, criminal record checks and safeguarding service users

14.1 Managing risk

The Welsh Government’s guidance advises that local authorities “must work with direct payment recipients, or their representatives, to support them to take responsibility for identifying and managing any risks associated with the provision of their direct payments...recipients must be supported to make choices about the risks they are comfortable with and about positive risk taking”.

Also, “local authorities must share with recipients, or their representatives, the results of any risk assessments that were carried out as part of the care [needs] assessment. This enables the individual to share the risk assessment with their employees and care and support providers”\(^{38}\).

14.2 Criminal record checks – the Disclosure and Barring Service (DBS)

Local authorities should inform the service user (or ‘suitable person’ managing the direct payment on their behalf) about the potential benefits of obtaining a Disclosure and Barring Service (DBS) check, as part of a risk management plan. See section 16 below for contact details for the DBS.

**Important:** If the ‘suitable person’ is not a close relative or friend of the service user, then they are required by law to obtain a DBS check for anyone they employ via direct payments.

14.3 Safeguarding older people

Anyone concerned that an older person may either be the victim of abuse, or at risk of abuse, should contact the local authority social services department (or, if there is a serious danger that the person may be in imminent risk of harm or the situation warrants immediate attention, the police can be called).

\(^{38}\) Ibid
The social services department must have procedures in place that they follow when someone reports abuse to them.

The regulator of social care services in Wales – the Care and Social Services Inspectorate Wales (CSSIW) – will also have to act urgently where there is a safeguarding concern or where a criminal offence has been committed.

For further information on safeguarding and protecting older people from abuse and/or neglect, including Welsh Government procedures and guidance in relation to the issue, see Age Cymru’s Factsheet 78w Safeguarding older people in Wales from abuse and neglect.

15 **Complaining about a decision or service provision**

You, or your representative, have the right to use the local authority complaints procedure if you disagree with a decision about direct payments. A complaint can be about any aspect of a local authority’s actions and also the actions of organisations that are carrying out services on behalf of the local authority.

See Age Cymru’s Factsheet 41w Social care assessments for older people with care needs in Wales which has a specific section on local authority complaints procedures, plus information about complaining in regard to private care agencies.

16 **Useful organisations**

**Acas (Advisory, Conciliation and Arbitration Service)**

An organisation that offers free, confidential and impartial information and advice to employers and employees on workplace relations and employment law.

Helpline: 0300 123 1100
Website: www.acas.org.uk
**Age Cymru organisations (local)**

Your local Age Cymru may be able to provide general advice and support on a range of issues. They may also operate an advocacy service.

For the contact details of your local Age Cymru:

- Telephone Age Cymru Advice on **08000 223 444**;
- E-mail: advice@agecymru.org.uk; or
- visit the Age Cymru website: [www.agecymru.org.uk](http://www.agecymru.org.uk)

**Care and Social Services Inspectorate Wales (CSSIW)**

The CSSIW oversees the inspection and regulation of care and social services in Wales.

Tel: 0300 7900 126  
E-mail: cssiw@wales.gsi.gov.uk  
Website: [www.cssiw.org.uk](http://www.cssiw.org.uk)

**Carers UK**

A national charity providing information, advice and practical and emotional support for carers.

Advice Line: 0808 808 7777  
Website: [www.carerswales.org](http://www.carerswales.org)

**Citizens Advice Bureaus (CABs)**

National network of free advice centres offering confidential and independent advice, face to face or by telephone.

Tel: 03444 77 20 20  
Details of your nearest CAB can be found at:  
[www.citizensadvice.org.uk/wales](http://www.citizensadvice.org.uk/wales)

**Disability Rights UK**

Offers advice and information on accessing services, housing, mobility, welfare benefits and social care provision.

Tel: 020 7250 8181  
E-mail: enquiries@disabilityrightsuk.org  
Website: [www.disabilityrightsuk.org](http://www.disabilityrightsuk.org)
Disclosure and Barring Service (DBS)

This service assists employers to make safer recruitment decisions and prevent unsuitable people from working with vulnerable groups.

Tel: 03000 200 190 (English) / 03000 200 191 (Welsh)
E-mail: customerservices@dbs.gsi.gov.uk
Website: www.gov.uk/government/organisations/disclosure-and-barring-service

HM Revenue & Customs – New Employer Helpline

Tel: 0300 200 3211
Website: www.gov.uk/government/organisations/hm-revenue-customs/contact/employer-enquiries-support-for-new-employers

Older People’s Commissioner for Wales

Independent champion for older people across Wales.

Tel: 03442 640 670
E-mail: ask@olderpeoplewales.com
Website: www.olderpeoplewales.com

Public Services Ombudsman for Wales

The Ombudsman looks to see whether people have been treated unfairly or have received a bad service from a public body, such as the local authority social services department.

Tel: 0300 790 0203
Website: www.ombudsman-wales.org.uk

The Social Care Institute for Excellence (SCIE)

The SCIE is an independent charity which aims to improve the lives of people who use care services. They work with social care services across the UK, as well as with related services such as healthcare and housing. They produce learning materials and resources, including training, to improve the knowledge and skills of people who work in care services.

Tel: 020 7766 7400
Website: www.scie.org.uk
17 Further information about Age Cymru

Age Cymru is the leading charity for all older people in Wales. We campaign, we research and we fundraise to make sure we build a better life for all older people. We ensure older people’s voices are heard, we challenge and change attitudes, we fight discrimination wherever we find it and we tackle elder abuse in all its forms.

Together with our local Age Cymru partners we provide vital services in communities across Wales.

The Age UK family

Along with Age UK, Age Scotland and Age NI, Age Cymru is a member of the Age UK family.

Age UK (Age UK Advice: 0800 169 65 65; website: www.ageuk.org.uk)
Age NI (Age NI Advice: 0808 808 7575; website: www.ageni.org
Age Scotland (Tel: 0845 833 0200; website: www.agescotland.org.uk)

Our information materials

Age Cymru and Age UK publish a large number of free Information Guides and Factsheets on a range of subjects, including money and benefits, health, social care, legal issues, housing and equality.

Some resources, such as this factsheet, are produced ‘in-house’ by Age Cymru, whilst others are branded Age UK and – depending on the subject matter – contain either information which is applicable in England and Wales, or for the whole of the UK.
Contact details

Age Cymru Advice

Tel: 08000 223 444
E-mail: advice@agecymru.org.uk

Contact us if you would like:

- To order copies of any factsheets or information guides.
- Further advice if you cannot find the information you need in this factsheet.
- Details of your nearest local Age Cymru organisation.

Website: www.agecymru.org.uk

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I understand that other taxes such as VAT and Council Tax do not qualify.

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We work in partnership with local Age Cymru partners to provide direct help to over a million people every year.

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