PSS Shared Lives Guidance

Personal Budgets and Direct Payments in Shared Lives Arrangements

By far the simplest and most desirable way to use personal budgets and Direct Payments to purchase Shared Lives in England is for the individual to use their personal budget to purchase Shared Lives from the Shared Lives scheme. In the case of an independent scheme, the individual could take some or all of their personal budget as a cash Direct Payment to purchase Shared Lives. If the scheme is council-run, the individual would need to take their personal budget as a managed fund (although they could take any left over, after paying for Shared Lives, as a Direct Payment, to purchase something else, like day support). If personal budgets and Direct Payments are used in this way, we can see no reason for a Shared Lives arrangement paid for through personal budgets/ Direct Payments to be treated any differently by the regulator, employment tribunals, HMRC or insurers. Keeping it simple in this way is in everyone’s best interests and is very much in the spirit of personalisation.

The complications arise where an individual is encouraged to use a Direct Payment to purchase care directly from the Shared Lives carer. Doing so does not in our view increase choice and control for the individual and it makes the role of the scheme much less clear, which brings a number of risks to the arrangement, including the risk that the arrangement is not lawful under social care provision regulations and that Shared Lives insurance and tax breaks may be invalid. A person is only providing regulated Shared Lives if they are doing so within the terms of a Shared Lives carer agreement which is arranged and monitored by a registered Shared Lives scheme.

This is because it is the registered persons (providers and managers) of Shared Lives schemes that CQC register and regulate. If a Shared Lives carer makes an individual arrangement for someone to move in with them and receive accommodation with personal care outside of the Shared Lives scheme arrangements then the carer should apply to CQC to register for the regulated activity of  ‘accommodation for persons who require nursing or personal care’. The definition of Shared Lives carer in the HSCA 2008 (Regulated Activities) Regulations 2010 says that an “adult placement carer” means “an individual who, under the terms of a carer agreement, provides, or intends to provide, personal care for service users together with, where necessary, accommodation in the individual’s home”. A “Shared Lives carer Agreement” means “an agreement entered into between a person carrying on an adult placement scheme and an individual for the provision, by that individual, of personal care to a service user together with, where necessary, accommodation in the individual’s home”.

So we recommend against arrangements which involve directly paying a Shared Lives carer with a Direct Payment. However, we are aware of one or two areas where a council-run Shared Lives scheme in England has felt under pressure to set up such an arrangement, usually because someone elsewhere in the council wants to increase Direct Payment uptake figures. The view set out here expands a little on the guidance in *A Shared Life of My Choice*. We cannot offer certainty on these arrangements, not least because there are at least four areas of rules and regulations involved and they all operate in slightly different ways: care regulation, tax law, employment law and insurance.

As set out above, a genuine Shared Lives arrangement must always be set out and agreed by all the relevant parties in a Shared Lives agreement.  So, if a Direct Payment is used to pay the Shared Lives carer directly, it is essential that there is a clear Shared Lives Arrangement Agreement in place in which all three parties (the individual, the Shared Lives carer and the scheme) agree that the care being purchased is arranged and monitored by the scheme, that the Shared Lives carer will have the same obligations to the scheme as they would in any other Shared Lives arrangement and that the scheme is ultimately responsible for quality and continuity of care (despite taking on that role and responsibility without receiving a portion of the personal budget allocation to fund them to do so). It is unlikely that an independent scheme could carry out those monitoring and support roles without receiving funding to do so, nor would there be any purpose or benefit in them doing so: it would be far simpler for the Direct Payment to be used to purchase Shared Lives from the scheme in the usual way.

When a Direct Payment holder pays another individual to provide their care, we believe that HMRC has in all other cases taken the view that the carer is an employee of the Direct Payment holder (or of the person managing the Direct Payment on the individual’s behalf). So in the case of a Direct Payment holder paying their Shared Lives carer directly, as set out above, it is hard to predict whether HMRC would recognise the carer as a self-employed Shared Lives carer, even if CQC were happy to define the arrangement as Shared Lives. Similarly, in the event of an employment dispute, such as, for instance, the scheme wanting to terminate the arrangement, it is hard to predict what the decision would be if the Shared Lives carer decided to appeal to an employment tribunal to claim that they were an employee of the service user and had been wrongfully dismissed. Our current insurers have also expressed some doubt about such arrangements, whereas if the care is purchased from the scheme as usual, they have expressed no doubts.

This is general advice and we always recommend that you seek advice about individual arrangements where you are in any doubt.