



**Derbyshire County Council  
Direct Payments Agreement**

This Direct Payment Agreement is made on  
(date)..... and is between

Name	
Address	
<b>Role</b> DP Recipient/ Nominee/ Authorised Person/ Carer	
Telephone	
E-mail	

**Name of client receiving care and support (mandatory)**

Name	
Address	
Telephone	
E-mail	

**AND**

## Direct Payment Provider

Name	Derbyshire County Council
Name of Worker	
Position	
Work Base	
Telephone	

**Note:** In this document, all references to the Direct Payment Recipient (or 'I' or 'you' or 'your' or 'my' or 'mine' or 'their') may refer to, and include, the Nominee or the Authorised Person or Carer where they have signed the Direct Payment Agreement.

I confirm I have been provided by Derbyshire County Council (DCC) with the explanation note of the Direct Payment Agreement and supporting guidance as detailed in the DCC Adult Care Direct Payments Policy and Procedures in line with the statutory responsibilities set out in the Care Act 2014.

This information, including the Direct Payment Agreement, is available in alternative formats on request.

## TERMS OF THE AGREEMENT

- 1.1 Derbyshire County Council (DCC) has carried out an assessment of your need for adult care services and has determined that the services set out in your care and support plan and or support plan (Support Plan) should be provided.
- 1.2 You have requested to receive some or all of DCC's contribution to the cost of meeting your assessed needs as a Direct Payment and are willing and able to secure the services outlined in your Support Plan.
- 1.3 The first Direct Payment will not be made until all of the relevant documentation has been completed and signed by all parties concerned.
- 1.4 Where this Agreement has been signed by the Nominee or the Authorised Person they are legally responsible for administering the Direct Payments on behalf of the person who is in need of care and support.

- 1.5 Where DCC administer a Direct Payment on behalf of any Clinical Commissioning Group (CCG) for continuing health care, the terms and conditions of this agreement still apply, even where the CCG hold responsibility for decisions relating to care and support.
- 1.6 This agreement is underpinned by the Derbyshire County Council Policies and Procedures.

### **Derbyshire County Council (DCC) Agree to:**

- 2.1 Transfer the amount of money identified in your Support Plan to an account, agreed by DCC, for you to purchase services required to meet the outcomes specified in the Support Plan. This money may be all or part of the personal budget.
- 2.2 This payment will normally be made into a prepaid account. Where this is not suitable DCC will explore other methods of making direct payments.
- 2.3 Set up the Direct Payments by an agreed start date. If there is a delay in setting up the Direct Payment due to no fault of the Direct Payment recipient referred to above, the monies may be backdated to the appropriate start date up to a maximum of 28 days. Only a Senior Manager can agree to extend the backdated payments beyond the 28 days and this will only occur in exceptional circumstances.
- 2.4 Make four weekly payments into the agreed account in advance. Where payments are made to a third party who manages the Direct Payment monies on your behalf you will receive notification of these payments via a remittance advice.
- 2.5 Where the amount of the direct payment is less than £20 per week, to pay this into your own personal account.
- 2.6 Provide you with a remittance advice detailing what has been paid to you. This summary will also inform you of any changes to your payments.
- 2.7 Provide you with additional funds required, as agreed by your DCC worker.
- 2.8 At your request, carry out a Disclosure and Barring Service (DBS) check on your personal assistants. **(Where there are children in the house all personal assistants must complete a DBS form, either employed or self-employed. Disclosure and barring checks have to be completed every three years).** These checks are paid for by DCC and DCC recommend you carry out a DBS check on all your personal assistants.

- 2.9 Work with you in reviewing the Support Plan at agreed times or when there is a substantive change in circumstances. The review may result in payments being decreased or increased. Any changes to the Support Plan and the money you receive will be agreed with you if this is possible and you will receive 4 weeks' notice of this in writing. If there is a reduction in the Direct Payment, DCC will take into account any employment or contractual responsibilities that are in place.
- 2.10 Provide you with information called the “*Direct Payments Information Pack*” in an appropriate format, to help you manage the Direct Payment. DCC recommends that you seek independent advice if you need help to manage your Direct Payment. Your DCC worker will sign post you to appropriate services and information.
- 2.11 Provide extra help if you are struggling with managing your Direct Payments. You must contact your DCC Worker if you need extra support, who will be able to direct you to the appropriate services.
- 2.12 If you become unable to manage the direct payment and DCC is satisfied that this is only temporary, DCC may continue to make payments. However, if this is likely to be permanent, then DCC is legally not able to continue to pay the Direct Payment and the payments must cease. In these circumstances we may agree to continue to provide support via a ‘Nominee’.
- 2.13 An “**Authorised Person**” may be appointed by DCC if you lose capacity in order to ensure continuity of your services. Derbyshire County Council has discretion as to who can act as an Authorised Person.
- 2.14 An Authorised Person or Nominee cannot be paid from the Direct Payment to provide care and support. At its’ discretion DCC may agree that the Authorised Person or Nominee be paid out of the Direct Payment for the provision of management or administration support only.
- 2.15 Direct Payments cannot be used to employ an “Excluded Person”, except where DCC determines this to be necessary. An Excluded Person for the purposes of this Agreement is defined as:
- a) a spouse or civil partner of the person receiving care and support;
  - b) a person living as if the spouse or civil partner of the person receiving care and support; or
  - c) a family member living in the same household as the person receiving care and support.
- 2.16 Any payments to an Authorised Person, Nominee, or an Excluded Person need to be agreed prior to the commencement of the Direct Payment and included in the Outcomes of the Support Plan. The Support Plan will also include the amount of the payments, their frequency and the activities that

are covered. These payments may be subject to HMRC regulations and should be declared as income by the Authorised Person, Nominee or the Excluded Person.

- 2.17 Work with you to try and resolve issues which might otherwise lead to the termination or suspension of this Agreement.
- 2.18 Address your Direct Payment enquiries and complaints in accordance with DCC complaints procedure.

I..... the \*Direct Payment Recipient or Nominee or Authorised Person or Carer (\*delete where not applicable)

**Agree to:**

**Financial and Monitoring Requirements**

- 3.1 Comply with all Direct Payment financial and monitoring requirements as and when requested by DCC.
- 3.2 I understand my Direct Payment monies are paid gross. I understand that DCC will then issue an Invoice to me for my financial contribution or arrange for me to pay my contribution by direct debit straight to DCC, unless I am assessed as not being eligible for co-funding or a carer in receipt of eligible services.
- 3.3 It is my responsibility to ensure my assessed financial contributions are paid to DCC.
- 3.4 The Direct Payment must be spent on ensuring the Outcomes set out in the Support Plan are met.
- 3.5 I understand that the first Direct Payment will not be made until all the relevant documentation has been completed and signed by all parties concerned.
- 3.6 If there is a delay in setting up the Direct Payments due to no fault of mine it may be possible to back date the payments to the start date for up to a maximum of 28 days.
- 3.7 If it has been agreed with my DCC worker that I can start using my Direct Payments from the agreed start date, I understand that it is my responsibility to ensure I have the necessary records and paperwork to provide DCC with the evidence of this expenditure. I understand without these records Direct Payments cannot be backdated.
- 3.8 Retain all records about the Direct Payment and financial transactions for a period of six years from the date of the **document** including all,

timesheets, invoices and receipts for permitted items and all other financial documents.

- 3.9 I agree to keep all the necessary paperwork until requested by DCC for audit purposes and make all documents pertaining to expenditure available for inspection by DCC.
- 3.10 If I choose to use a managed bank account for my Direct Payment any paperwork or transactions in connection with the use of the Direct Payment must be available to DCC as and when required for audit purposes. This includes giving consent to managed account providers to share information with DCC.
- 3.11 I understand that I am responsible for managing the Direct Payment within my agreed personal budget. I agree to ensure there is sufficient in my budget to meet all associated costs.
- 3.12 Where there are insufficient funds in my Direct Payment account to pay my contractual obligations through overuse, I understand I will be personally liable for such payments.
- 3.13 I understand I am responsible for any bank charges or Her Majesty's Revenue and Customs (HMRC) charges and/or any fines. DCC will not pay any bank or HMRC charges or fines.
- 3.14 To inform DCC if I have not received a service for more than 4 weeks.

### **When employing Personal Assistants or using a self-employed personal assistant**

- 4.1 I understand that the arrangements for employment between me and those people I employ to provide a service is a private arrangement and DCC is not involved in that arrangement and bears no responsibility to me or the personal assistants that I employ with regard to the employment relationship.
- 4.2 I have received the 'Brief Guide to Employing a Personal Assistant' in an appropriate format which I will use to sign post me to appropriate information and services to support me to fulfil my statutory responsibilities as an employer.
- 4.3 I understand that my Nominee (if I have one) or any person approved by me to support me with the management and paperwork of my Direct Payment cannot be employed in any capacity through my Direct Payment other than for administrative and management tasks where approved in advance by DCC.

- 4.4 Neither can the 'authorised person' be employed in any capacity through the Direct Payment other than for administrative and management tasks where approved in advance by the local authority.
- 4.5 Ensure that any personal assistants I employ have the appropriate skills and any essential training is discussed and agreed with DCC prior to any expenditure being incurred relating to training.
- 4.6 I will request that DCC carry out a DBS check on new personal assistants where children reside in my house. I understand that Direct Payments may be suspended if DBS checks are not carried out as required.
- 4.7 Ensure that any tax and employee national insurance required to be paid is deducted from a personal assistants wages and paid to HMRC. Ensure any employer's national insurance contributions to be paid are taken out of the direct payment monies and paid to HMRC. Assistance can be obtained from a third party to calculate tax and national insurance.
- 4.8 Ensure that any pension contributions are deducted from the personal assistants wages and paid to the appropriate pension provider. Ensure that any employer pension contributions are taken out of the direct payment monies and paid to the appropriate pension provider. Assistance can be obtained from a third party to calculate any pension deductions.
- 4.9 To ensure that I comply with employment legislation, this includes obtaining Employer and Public Liability Insurance. I understand that Derbyshire County Council has recommended that I seek independent advice in order to achieve this.
- 4.10 I understand I am responsible for the health and safety of any personal assistants I employ which includes ensuring any equipment used is regularly maintained.
- 4.11 I agree not to employ an Excluded Person without DCC's prior consent. I accept that DCC may only authorise the payment of such persons if they determine it to be necessary.
- 4.12 Abide by the Equal Opportunities Legislation when recruiting and employing staff as far as is consistent with meeting my needs.

### **When Contracting with a Service Provider**

- 5.1 I understand that when I contract with a service provider to meet my assessed needs, the contract is a private arrangement and DCC is not

involved in that arrangement and bears no responsibility to me or that agency or organisation with regard to the contract.

- 5.2 I understand that when I contract with a service provider who employs and manages personal assistants on my behalf to meet my assessed needs, the contract is a private arrangement and DCC is not involved in that arrangement and bears no responsibility to me or the organisation concerned with regard to the contract.
- 5.3 I understand that where personal care tasks are being undertaken, the provider must be registered with The Care Quality Commission for such purposes.

### **Pooled Direct Payments**

- 6.1 Where I have made the decision to pool part or all of my Direct Payments with other Direct Payments recipients I am responsible for meeting the terms and conditions of such an arrangement. This includes making the agreed payments from my Direct Payment account into the pooled Direct Payment budget or to pay for my share of services. Any contracts entered into with other Direct Payment recipients are a private arrangement and DCC is not involved in the arrangement and bears no responsibility to me or the other parties involved.

### **Repayment of Funds**

- 7.1 Monies in the Direct Payment account, including any monies paid into a pooled direct payment account, belong to Derbyshire County Council. Any unused monies will be collected by DCC.
- 7.2 I understand that I must notify DCC immediately of any changes to my circumstances that may affect my assessment of needs or my entitlement to a Direct Payment.
- 7.3 Repay any unauthorised use of the Direct Payment. If unauthorised expenditure is not repaid then DCC may take legal action to recover this and/or the direct payment may be suspended or terminated and alternative services provided.
- 7.4 I understand that DCC will collect unneeded money from the Direct Payment, where there is more than an eight week surplus and it is not needed to meet the outcomes set out in my support plan.
- 7.5 In the event of my death, any monies remaining in the account will be collected by DCC. DCC will take into account any contractual responsibilities of the parties when calculating what balance of the Direct Payment is to be repaid to the Council.



## **Suspending the Agreement**

- 8.1 Before suspending this agreement DCC shall endeavour to provide any appropriate support to continue to provide a Direct Payment.
- 8.2 Either party may suspend this agreement by giving the other party four weeks' notice in writing. When the Agreement is suspended, DCC will provide and/or arrange the care services directly for me should I still be eligible for services. Both parties will take account of the employment and contractual responsibilities of the direct payment recipient when serving notice of suspension.
- 8.3 DCC may temporarily suspend this Agreement if:
- It appears that there has been a breach of this agreement
  - It is suspected the direct payment has been used for fraudulent purposes
  - It appears that my circumstances change
  - It appears that I am at risk of abuse, or I am being abused
  - If I go into hospital or respite
  - If I go on holiday or a short break where it is not part of the outcomes of my support plan
  - If I have not complied with the financial monitoring requirements after two written reminders.
  - The Council assesses that I no longer have the ability to manage my Direct Payment

## **Termination of the Agreement**

- 9.1 Before terminating this agreement DCC shall endeavour to provide any appropriate support to continue to provide a Direct Payment.
- 9.2 Either party may terminate this agreement by giving the other party four weeks' notice in writing. When the Agreement terminates, DCC will provide and/or arrange the care services directly for myself should I still be eligible for services. Both parties will take account of the employment and contractual responsibilities of the direct payment recipient when serving notice of termination.

- 9.3 The Direct Payment Agreement may be terminated if I am no longer eligible for adult care support or if I move into long term residential or nursing care.
- 9.4 Notwithstanding paragraph 1 above, DCC reserves the right to, without providing four weeks' notice, terminate this Agreement if any of the following situations occur;
- A serious breach of conditions of this agreement
  - The Direct Payment is used for fraudulent purposes
  - The Direct Payment is used for purposes which do not meet my support needs or promote my welfare.
  - I become incapable of managing the direct payment (even with support). However, where appropriate DCC will seek to appoint a **“Authorised Person”**, to enable the service to continue.
  - I have a safeguarding protection plan that recommends the immediate cessation of a Direct Payment
  - A safeguarding conference considers that I am at risk of abuse or have suffered abuse

### **Comments, Complaints and Compliments**

You have the right to complain under DCC Complaints Procedure about any issue in this Agreement

I have read and understood the contents of this Agreement

Signed.....

Print name.....

Direct Payment recipient, Nominee or Authorised Person or Carer (in receipt of their own direct payment) (delete where not applicable)

Date.....

Signature of DCC Worker .....

Print name.....

**Derbyshire County Council worker**

Date.....

**Only complete Where the Nominee has signed the Direct Payment Agreement**

'I have nominated.....to manage and take responsibility for my direct payment and they have agreed to act on my behalf and they have read and understood the contents of this agreement.

Signature

.....

Print name

.....

**Direct Payment recipient**

Date.....

## Explanation of the Direct Payment Agreement

### The Direct Payment Agreement

When a direct payment has been agreed the direct payment recipient\* and Derbyshire County Council (DCC) have certain responsibilities to ensure the direct payment is managed properly to enable the outcomes of the direct payment recipient's support plan to be met. The direct payment agreement sets out the terms and conditions and the responsibilities for both the direct payment recipient and DCC. A DCC worker signs the agreement on behalf of DCC.

The agreement is an integral part of the direct payment process and both parties need to sign the document to indicate they have understood the contract into which they are entering before a direct payment can be set up.

Some of the direct payment recipient's responsibilities include:

- using the direct payment to meet the outcomes of their support plan
- ensuring any employment responsibilities are fulfilled where applicable, i.e. employer and public liability insurance, contracts of employment, tax, national insurance contributions are made, pension contributions, etc.
- or when using an agency ensure any contractual obligations are fulfilled.
- Compliance with direct payment financial monitoring requirements which include paying any co-funding contributions
- Seek advice and support as required
- Letting your DCC worker know if there has been a change in your circumstances
- Talking to your DCC worker if you wish to suspend or terminate your direct payments

Some of DCC responsibilities include to;

- Pay your direct payments in advance
- Provide you with direct payment information in the relevant format to help you manage your direct payment
- Carry out Disclosure and Barring Service (DBS) checks
- Provide safeguarding advice and support
- Will support you with your direct payments to meet the outcomes of your support plan
- Discuss and try and resolve any management concerns of your direct payment with you prior to a decision whether to suspend or terminate your direct payments
- Signpost you to independent services for additional support with your direct payment, i.e. payroll, budgeting, advocacy, etc

Copies of the direct payment agreement can be obtained from your DCC worker, the Direct Payment Team or can be accessed from [www.derbyshire.gov.uk/directpayments](http://www.derbyshire.gov.uk/directpayments)

\* the words 'direct payment recipient' can be substituted for 'nominee' or 'authorised person' or 'carer (in receipt of a direct payment)' where these are applicable.