



Direct Payments Agreement

This agreement sets out the responsibilities and obligations of:

The London Borough of Hillingdon (the Council) and

Name :

Nominated Person/Agent :

Address :

I consent to receive Direct Payments and confirm that I understand and will comply with the conditions contained in the attached agreement.

Signature of Service User/Authorised Person:

.....

Name of Service User/ Authorised Person (please print):

.....

Address of Authorised Person

.....

Date:

Signature of Nominated Person:

.....

Name of Nominated Person (please print):

.....

Address of Nominated Person

.....

Date:

Agreed on behalf of London Borough of Hillingdon:

Name of Officer:

Position of Officer: Direct Payments Monitoring Officer

Date:

Introduction

The Service User/Authorised Person is willing and able to take direct responsibility for the provision of the services required to meet the Service User's needs. An authorised person is someone authorised under the Mental Capacity Act 2005 to manage a direct payment for a Service User who lacks capacity.

Where the Service User has appointed a nominated person to manage their direct payment, the nominated person is willing and able to take direct responsibility for the provision of the service required to meet the Service User's needs. A nominated person is anyone who agrees to manage a direct payment on behalf of the Service User.

The Council has carried out an assessment of needs and will develop a Support Plan which sets out how these needs will be met.

Payments made under this agreement are subject to the Council's Fairer Charging Policy as reviewed or amended from time to time.

The Direct Payment will be less any financial contribution the Service User is required to make.

The Direct Payment will be made to a prepaid card (to be provided by the Council)

A 'top up fee' refers to the difference between the Direct Payments made by the Council and the cost of the services the Service User has chosen to use.

Where the Direct Payments are used to purchase care from a care agency, the Council recommends any agency used is registered with the Care Quality Commission. The Service User will have contractual responsibilities in relation to services purchased to meet their needs.

Where the Service User uses Direct Payments to employ their own staff, they will have responsibilities as an employer.

Information and advice in respect of the use of Direct Payments, and information in respect of possible service providers, is available on the Council's Connect for Support website, www.connecttosupporthillingdon.org

The Council has an approved provider list for Direct Payment support services. These providers can offer advice, support (for example with recruitment advice, and in respect of responsibilities owed as an employer) and information to enable responsibilities towards the Council and for acting as an employer.

Responsibilities of the Council:

The Council Agrees:

1. To make Direct Payments into the Service User's prepaid card in accordance with the details of the Support Plan, in order to meet the assessed eligible needs outlined in the Support Plan.
2. To provide information in relation to the use of Direct Payments.
3. To reassess the needs of the Service User and the operation of this agreement annually, or more frequently, to determine whether the assessed needs have changed, how arrangements for the provision of the services are being managed, whether the Service User remains willing to receive Direct Payments, and whether the Service User remains able to manage the Direct Payments.
4. To increase or decrease the amount of Direct Payments paid at any time following a reassessment of needs which results in the revision of the Support Plan, and to give appropriate notice of any changes. (at least 4 week's notice in writing stating the reasons)
5. To ensure that regular checks are undertaken on the management of Direct Payments and provide advice and support or take corrective action where issues are identified.
6. To undertake a financial audit annually or more regularly if the Council deems it appropriate and take appropriate action for the recovery of any money due as a result of ending the Direct Payments.
7. In the event of the Service User's death, the Council will consider what contractual responsibilities existed at the time of death when determining what sum is to be repaid to the Council. Any monies held in the Service User's Direct Payments account will not form part of the Service User's estate. If expected monies are unpaid the Council may make a claim against the Service User's estate.

The Council will not:

8. Have any liability for the service arranged by the Service User other than providing Direct Payments to the Service User.
9. Have any liability for charges or costs, including penalties imposed by her Majesty's Revenue and Customs incurred in the administration of the Direct Payment
10. Have any liability in relation to the Service User Acting as an employer

Responsibilities of the Service User/Authorised Person:

The Service User/Authorised Person agrees:

11. To use a prepaid card to administer their direct payment and purchase services to meet their assessed needs. This prepaid card may only be used for monies relating to Direct Payments (including any financial contribution and/or top up fee paid by the service user).

12. To be liable for any charges which arise as a result of mismanagement of Direct Payments.
13. To use the Direct Payment for the purchase of services that meet the assessed needs identified in the Support Plan.
14. To pay, into the prepaid card, any financial contribution they are assessed and required to make towards the cost of the services assessed in accordance with the Council's charging policy.
15. To pay, into the prepaid card, any 'top up fee' towards the cost of services the Service User has chosen to use.
16. To pay any adjustment in the financial contribution towards the cost of the services as assessed by the council, in line with annual changes in benefits following the April review.
17. To secure services and comply with all health and safety and legal requirements that may arise in making such arrangements.
18. To pay all invoices and costs relating to the purchasing of services using the Direct Payment on time, including employee costs, any services purchased from an agency or organisation and any managed bank account or payroll services.
19. To ensure that all the legal obligations and requirements which relate to the purchase of services and employment of people are met and kept up to date.

This may include:

- Appropriate recruitment procedures;
 - Disclosure & Barring Service checks;
 - Purchase of Public and Employer's Liability Insurance; and
 - Arrangement of relevant training, to provide employees with a safe working environment.
 - Pension Auto Enrolment
20. To have a contingency plan that can be implemented if the arrangements for the provision of service that meet the assessed care needs break down.
 21. To keep for a period of 6 years (plus the current years) and make available to the Council by either sending listed documents below to the Direct payments Team or uploading listed documents below to the pre-paid card portal which , relate to the Direct Payment in order for financial audits to be carried out on expenditure. Documents include:
 - Completed timesheets, holiday and sickness records – if relevant;
 - PAYE, National Insurance and any other payroll records, as applicable;
 - P46, contracts of employment
 - Bank Statements relating to the Direct Payment account;
 - A record of all payments (cheque number, payee, amount);
 - Items purchased as specified in the support plan; i.e. invoices, receipts.
 - Insurance documents

22. To manage any changes with agencies, organisations or employees from which services are obtained, following an increase or decrease in Direct Payments.
23. To notify the Council if you the Service User is going on holiday. Where the holiday period is for more than 6 weeks the Council will consider whether payments should continue to be made.
24. To notify, and /or advise next of kin/executor that, the Council must be informed at the earliest opportunity of any changes in circumstances which would affect your assessed needs or entitlement to Direct Payments. This will include change of address, admission to hospital or any changes in capacity to consent or ability to manage Direct Payments or in the event of the death of the Service User.
25. To notify or advise next of kin/executor that in the event of death the Direct Payment account and any funds contained in it will not be regarded as an asset of the estate.
26. Following the ending of Direct Payments to provide, or arrange for the next of kin/executor to provide, documents relating to Direct Payments in order for a final financial audit to be undertaken and recovery of any money due. If the expected amount is not available to be returned from the Direct Payment account the Council may claim the amount from the estate.
27. To repay the Council Direct Payment specified funds should a request be made to do so in the manner agreed with the Council. Options may include deducting an agreed amount over a specified period or the Service User/Authorised Person making a repayment to the Council, or by way of suspensions/deductions of payments for a limited period. This may be due to any of the following reasons:
 - The Direct Payment or any part of it has not been used to secure the provision of services, or some part of the services that meet the assessed needs.
 - There has been an over payment
 - The conditions of this agreement have not been met.
 - An excess of 6 weeks Direct Payments have accrued on the prepaid card
 - Payment has been received by the Service User from a third party for the same services to meet the same needs.
 - Money has been misspent from the Direct Payment pre paid card/

The Service User will not:

28. Use the Direct Payment to secure services from a partner, a close relative or anyone else that lives in the Service User's household unless otherwise agreed by the Council in writing that there are exceptional circumstances permitting you to do so.
29. Use the Direct Payment to buy health services, long term residential care, to pay household bills, to buy food or other personal expenses.
30. Accrue more than six weeks' worth of Direct Payments on the prepaid card
31. Use the Direct Payment to pay any other charges owed to the Council.
32. Use the Direct Payment for anything illegal, gambling, or investment.

Joint Agreement

The Council and the Service User/Authorised Person agree that:

If, in the opinion of the Council, the person or organisation appointed by the Service User/Authorised Person is either not able to provide an adequate service or is unfit to provide a service, the Council has the right to require a change to the person or organisation who is providing the service.

33. The Service User has the right to complain under the London Borough of Hillingdon's Adult Social Care complaints procedure about the operation of this agreement.

Suspension and termination of the Direct Payment Agreement

34. The Council may suspend payment of the Direct Payment temporarily if the Service User is admitted to hospital or is otherwise temporarily unable to receive services. Any decision to suspend payment will take account of any reasonable existing liabilities including periods of notice relating to the Service User's service arrangements.
35. The Council has the right to suspend or stop the Direct Payment if it is decided that the arrangements made for purchasing services are not adequate to meet the needs and outcomes of the Support Plan.
36. The Council may suspend your Direct Payment if your assessed financial contribution is not added to your pre-paid card for 3 consecutive months. In these instances a review of the needs of the Service User will be arranged by our Social Care team. This could lead to a reduction in the amount of money that you receive to purchase your care. Any decision to suspend payment will take account of any reasonable existing liabilities including periods of notice relating to the Service User's service arrangements.
37. The Council will terminate this agreement with immediate effect if:
- a. The Direct Payments are not being used to purchase services to meet the Service User's assessed needs;
 - b. The nominated person/authorised person is found to be acting in a way contrary to the Service User's best interests; OR
 - c. The Direct Payment is used for anything illegal, gambling or investment.
38. The Council will consider the Service User's contractual and statutory responsibilities when determining the balance of the Direct Payment to be repaid to the Council in the event of the Service User suddenly becoming permanently unable to manage Direct Payments.
39. The Council will stop the Direct Payment when the entitlement to Direct Payments has ended or Direct Payments are no longer required.
40. The Council will consider the Service User's contractual and statutory responsibilities when determining the balance of the Direct Payment to be repaid to the Council in the event of the death of the Service User.
41. Subject to the Council's right to terminate the agreement with immediate effect under paragraph 37 above, either party may terminate this agreement by giving to the other party 4 week's notice in writing. The period of four weeks will commence on receipt of the written notice.

42. The Council will only store and use data relating to the administration of the Direct Payment in line with the General Data Protection Regulations 2018.

Attachments:

❖ Adult Social Care Direct Payments Guide