

Warwickshire County Council

People Group Social Care and Support

Please sign, date and return this page only

Authorised Person Direct Payments Agreement

Care Act 2014

For use where an appointed Authorised Person also has responsibility for the customer's personal finances

I (Authorised Person) confirm that I have received information about the Council's direct payments processes and information and advice about using and managing direct payments and that I understand my legal obligations as the direct payment recipient to act in the best interests of the Customer and as an employer

I understand and agree to the terms of this Agreement:

Customer ## ##

Authorised Person ## ##

signature _____

date_____

Signed on behalf of the Council ##

signature _____

date_____

How your information may be used

We work with partners to provide you with public services. To do this, we may need to share your information. We will do this in a way that protects your privacy.

We are under a duty to protect public funds. We may use any of the information you have provided on this form for the prevention and detection of fraud. We may also share this information with other bodies that are responsible for auditing or administering public funds.

Please let us know when any of your contact details change. You have the right to know what information we hold about you and we try to make sure it is correct.

If you would like further information;

visit our website: www.warwickshire.gov.uk/privacy

or contact our Customer Service Centre at:

Warwickshire County Council, Shire Hall, Warwick, CV34 4SA

Telephone: 01926 410410

Important Information

Anyone acting as an appointed Authorised Person who wilfully neglects or ill- treats a person who lacks capacity, can be found guilty of a criminal offence under the Mental Capacity Act 2005. This could be punishable by up to five years in prison, or a fine or both.

The Fraud Act 2006 created an offence of fraud by abuse of position. An appointed Authorised Person receiving Direct Payments on behalf of someone lacking capacity may be guilty of fraud if they dishonestly abuse their position. This applies when someone is expected to safeguard the interests of a person but instead acts against their financial interests.

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Keep this copy

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This Agreement is between:

1. Warwickshire County Council
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(referred to as 'the Council' or 'we' or 'us' in this Agreement)

And

2. Details of Authorised Person who will receive and manage a Direct Payment for the beneficiary

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(referred to as 'you' in this Agreement)

PLEASE NOTE: This is a legal agreement. It includes the rules about your Personal Budget (DP). The words in brackets are not part of the legal agreement, but give advice and guidance.

You will have received information advice and support about choosing a Direct Payment during the process of setting up your Personal Budget. There are a series of factsheets available providing a range of information about Direct Payments. You may request a copy or access to these if you require more information. This agreement is the document that tells you about your Direct Payment – the money – how it will be paid and how it will be monitored.

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1. The Reason for this Agreement

1.1 You agree to act as an Authorised Person to request, accept and manage a Direct Payment on behalf of ## ## of ##.

(The person who lacks capacity is known as '3').

1.2 We have carried out a needs assessment for 3 and agreed that they are eligible for care and support under the Care Act 2014. We have told you how much money is available to help you plan how to meet 3's needs. This is called 3's Personal Budget.

1.3 It has been agreed that you will be responsible for arranging some or all of the support for 3.

1.4 We are satisfied we are not prohibited by regulations made under section 33 of the Care Act from meeting 3's needs by making a direct payment to you acting as the authorised person.

1.5 We have agreed to give you a sum of money (called a Direct Payment) so you can do this.

1.6 You have requested and agreed to receive a Direct Payment for 3 and can manage this with or without assistance. You have been given information about the role of our Support Service and how to access them.

1.7 The Care and Support Plan (referred to as the Plan) for 3 will describe how you will use the Direct Payment to enable you achieve the outcomes agreed in the Plan.

2. The Direct Payment and the Contribution

2.1 The Direct Payment is currently ## ## as agreed in our arrangement. This amount may go up or down if there is a change in 3's needs. If it does we will write and tell you. You must inform us of any changes that could have an impact on 3's care.

2.2 You have been identified also as the person responsible for 3's personal finances. We have completed a financial assessment for 3 and have informed you what must be paid towards the cost of 3's Care and Support Plan. This is called the Contribution. The Contribution must be paid into Direct Payments account held by you, the appointed Authorised Person. The contribution is ## ##.

2.3 The amount of the Contribution will be deducted from the Direct Payment before we pay it to you as the appointed Authorised Person. This means the net amount you will receive from us into your Direct Payment bank account will be ## ##. This is called your net payment.

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2.4 The starting date for the Direct Payment is ##.

3. What You Will Do

- 3.1 You agree to set up a separate bank account for Direct Payments (unless we tell you that you do not need to do this) and to give us the full and correct details of this account on the Bank Mandate Form. This is called your Direct Payments Account.
- 3.2 You agree to pay the contribution as stated in financial information into the Direct Payment account. This must be paid by standing order or direct debit every 4 weeks .By making this payment you are ensuring that there is enough money to pay for your support. If you have difficulty doing this please speak to the Council.
- 3.3 You agree to use your Direct Payment (including your Contribution) only for equipment or a service which enables you to achieve your agreed outcomes and meet 3's needs as agreed in the Care and Support Plan.

4. You Agree Not to Use the Direct Payment:

- 4.1 to pay for more hours from a personal assistant or agency than we have assessed you as needing by paying a lower hourly rate than we have used as the basis for calculating your Direct Payment;
- 4.2 for health related services – such as dentist, chiropody, physiotherapy, appointments;
- 4.3 for household expenses, such as food, personal items or utility bills;
- 4.4 for accommodation - rent, mortgage payments;
- 4.5 for non-statutory liabilities such as tips, bonuses, ex gratia payments (the Council is not obliged to fund particular costs that are incurred on a discretionary basis);
- 4.6 for anything that is illegal or to purchase services that do not keep you safe and well;
- 4.7 for gambling, lottery, bingo tickets, raffle tickets, alcohol, cigarettes;
- 4.8 to buy services from the Council with your Direct Payment as the Council is not allowed to sell its services in this way;
- 4.9 to pay for long-term residential care. You can use it for a short stay provided it does not exceed period of 4 consecutive weeks in any 12 month period;
- 4.10 anything that is not an activity that will assist you to achieve your agree outcomes. You must seek agreement to pursue different outcomes from the Council.
- 4.11 You agree to comply with all the legal requirements which arise from any arrangements you make using the Direct Payment.

(The Support Service can advise on making these arrangements during their visit – or you can refer to WCC's Direct Payments Policy, Information and Guidance for Customers, Carers and Practitioners).

- 4.12 You must get our written agreement if you want to use Direct Payments to pay for services from a spouse, civil partner, relative or other person who lives in the same household as 3. The Council may on occasions decide this is necessary to secure service in this way. However such situations are likely to be exceptional and must be in 3's best interests.

- 4.13 You agree to keep clear records of the Direct Payment money you have received and how it is being used to meet 3's needs and agreed outcomes. We will write to you and ask to see these records. You must allow us to look at these records if we ask you. You will need to keep financial records e.g. bank statements, invoices, payslips, HMRC records and receipts of how the money has been spent. By keeping these records it will help you, (your representative or third party) and us to review your social care support and your Direct Payment. You will need to keep some of the records for up to seven years. We will show you and let you know what you need to do.

If you do not send in your financial information within the agreed time your Direct Payment could be suspended or terminated.

- 4.14 You agree to tell us if there is any change in 3's circumstances which may affect the Care and Support Plan or the services 3's needs.
- 4.15 You agree to plan and make contingency arrangements in case the services 3 needs break down. If you or 3 require a planned or unplanned hospital stay you must let us know so that we can review the making of the direct payment.
- 4.16 You will pay back to us any Direct Payment money which is not used to meet 3's needs and agreed outcomes as set out in the Care and Support Plan.
- 4.17 You will repay the Direct Payment money to us if:
- (a) you have not met the terms of this agreement; or
 - (b) you have received payment from someone else (for example, Independent Living Fund) to meet 3's social care needs which we did not know about when the Direct Payment was agreed;
 - (c) Direct Payments end for any reason.
- 4.18 If the Direct Payment is to buy equipment and the equipment has not been bought within six weeks of payment being made, you will repay the Direct Payment money to us unless we agree in writing that you may keep it for longer in order to buy the equipment.

(Guidance can be found in WCC's Direct Payments Policy, Information and Guidance for Customers, Carers and Practitioners)

- 4.19 If you have monies in the Direct Payments Account above 8 weeks that are not agreed by us you may be asked to return this back to the Council. We will discuss this with you first. You agree to let us know when you have above 8 weeks in your Direct Payment Account.
- 4.20 You agree to us and your Representative (if you have one) sharing personal information about 3 in order to help to make sure 3's needs are met appropriately.
- 4.21 You agree to tell us if your circumstances change in a way which might affect your ability or eligibility to receive a Direct Payment for 3.

5. What We Will Do

- 5.1 We agree to pay the net Direct Payment (less the Contribution) into your Direct Payments Account. Payments will be made in advance every 28 days (in accordance with the Direct

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Payment timetable) or as a one off payment. We may make additional payments into the Direct Payments Account where agreed.

- 5.2 If the Direct Payment is to buy equipment we will pay you the agreed amount to buy the agreed equipment when this agreement is signed.
- 5.3 We will pay a sum towards the maintenance of the agreed equipment, on receipt of a copy of the service invoice, within six weeks of the service being delivered to you.

(Refer to WCC's Direct Payments Policy, Information and Guidance for Customers, Carers and Practitioners & Factsheet DP 20 - Direct Payment for Equipment).

- 5.4 We will review the Care and Support Plan for 3 and the operation of the Direct Payment at least once a year. Following the first payment we will review within 6 months the making of the Direct Payment. We will look back at what has been achieved and we will decide whether Direct Payments will remain the same, based on 3's eligible needs which we have decided to meet. 3 will only receive Direct Payments for as long as they have eligible care and support needs which we have agreed to meet.
- 5.5 We will allow you to keep up to an eight week surplus of the Direct Payment money to help meet 3's needs in a flexible way. If you require more than eight weeks surplus you must discuss with us the reasons why this is required.
- 5.6 We will hold back the Direct Payment if, for whatever reason, 3 is temporarily unable to receive services.
- 5.7 We have a duty of care to meet 3's needs if the arrangements for the support you arrange breaks down, whether in an emergency or not. You must tell us as soon as possible so that support can be arranged.
- 5.8 We may reduce the Direct Payment or suspend or terminate this Agreement:
 - (a) if 3 is no longer eligible for social care support under the Care Act 2014 criteria;
 - (b) if the arrangements you make are not adequate to ensure 3's safety.
 - (c) if you do not meet the terms and conditions of this Agreement, but we will give you advice to try to prevent this happening;
 - (d) if 3 or you are no longer eligible for Direct Payments.
- 5.9 In the event of death, we will consider any legal responsibilities you may have before recovering any Direct Payment money from the Direct Payments Account. All monies should be returned to the Council and do not form part of 3's estate.
- 5.10 If 3 goes into hospital and employs a Personal Assistant we may suspend or stop 3's Direct Payments. The Council will pay the Direct Payment for 4 weeks, following that we will discuss with you the best way of retaining 3's Personal Assistant. You must let the Council know if 3 goes into hospital. You will need to inform 3's employee/Personal Assistant about what happens when 3 is in hospital.
- 5.11 If you purchase 3's services from an agency or other means i.e a self-employed assistant, 3's Direct Payments will be suspended or stopped if 3 goes into hospital without notice. You must let the Council know if 3 goes into hospital. It is your responsibility to cancel the provider or person providing 3's support.

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6. What You as the Appointed Authorised Person Must Do

- 6.1 Work with 3 in a flexible way to arrange services to meet 3's needs and achieve outcomes as set out in the Care and Support Plan in a way which helps 3 choose and control their support wherever possible.
- 6.2 Make every effort to explain and involve 3 in how the Direct Payment money is used to meet their needs.
- 6.3 Tell us if there is any change in 3's circumstances, which may affect the Care and Support Plan or the services 3 needs.
- 6.4 Keep clear records of the Direct Payment money received and how it is being used to meet 3's needs; and allow us to look at these records if we ask you.
- 6.5 You agree to pay the required contribution toward the care package for 3 into the Direct Payments account.

7. General Rules about Using Personal Assistants

If you are employing Personal Assistants please seek advice from the Support Service on becoming an employer. The Council will tell you who this is.

- 7.1 If you will be employing a Personal Assistant you must take out an enhanced Employer's Liability Insurance and Public Liability Insurance before the Personal Assistant starts working for you. This can be paid for out of your Direct Payments. An initial payment can be made to you so that you can do this (guidance is available to help you to do this via the Support Service). You must then save enough each year from your Direct Payment to renew the policy.
- 7.2 Your Direct Payment cannot be paid until you have this insurance in place and have let us known that relevant insurance has been secured. You must renew this insurance as required or annually. You must leave enough money in the Direct Payment account to purchase your insurance renewal.
- 7.3 The law tells us you cannot employ anyone who lives in the same household without first having permission from us. This can only be given where exceptional circumstances are shown. If there are exceptional circumstances we will agree in writing that this arrangement is acceptable.
- 7.4 You must act as a responsible employer and make all your arrangements in line with employment legislation. You must retain sufficient funding from your Direct Payment each week to cover your potential employer responsibilities. (Information, guidance and support can be given to help you do this)
- 7.5 We strongly recommend that you carry out checks with the Criminal Records Bureau on any staff you are intending to employ. If you are employing a Personal Assistant and children will be present in the household the Council must undertake the checks on your behalf. The payment will not start until these checks have been completed. If you employ new Personal Assistants at a later date the same checks must be undertaken.

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- 7.6 We strongly recommend you do not use people who say they are self-employed Personal Assistants until you have carried out all the relevant checks with Her Majesty's Revenue and Customs. It is highly unlikely that HMRC will recognise a Personal Assistant as being self-employed. You must tell the Council if you are considering or start using self-employed Personal Assistants. The Council may not be able to pay Direct Payments if the arrangements you have in place do not meet the requirements as set out by HM Revenue and Customs.

(Please refer to WCC's Direct Payment Policy, Information and Guidance for Customers, Carers and Practitioners for more information about this)

8. Using Social Care Providers

- 8.1 We strongly recommend that you check and only use social care providers or agencies that are registered with the Care Quality Commission to provide services to you.

(More information about how to do this is given in WCC's Direct Payment Policy, Information and Guidance for Carers, Customers and Practitioners & Factsheet 7: Using Agencies)

9. If your Arrangements Break Down or your Needs Change

If things go wrong you should contact us or contact the Support Service.

We will assist you to secure the alternative arrangements to meet your assessed needs. However, if this proves unsatisfactory then we will endeavour to arrange services for you.

If your needs or circumstances change you must contact us.

10. Comments, Complaints and Compliments

- 10.1 You have the right to comment, complain and compliment about the operation of this Agreement using our complaints procedure. However, this procedure cannot be used for problems you may have with staff employed directly by you or agencies you contract with.

11. Safeguarding

- 11.1 Whilst the Council does not want to discourage you from acting as an appointed Authorised Person there are certain things in law that we must tell you about. This important information is at the end of this Agreement.

12. Ending This Agreement

- 12.1 You may end this Agreement by telling us in writing at least four weeks before the date you want it to end.
- 12.2 We may end this Agreement by telling you in writing at least four weeks before the date we want it to end. We will work with you to plan how 3's needs will appropriately be met.
- 12.3 You can only receive Direct Payments if 3 is eligible for some social care services. If your situation changes and 3 is no longer eligible, your Direct Payment will end.
- 12.4 We may end this agreement with immediate effect if, after investigation, it is found you are using the money illegally or not in the best interests of the person receiving Direct Payments.

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- 12.5 Before ending the agreement we shall work with you (and your agent or third party) to find resolution to the issues wherever possible.
- 12.6 You will be required to complete all outstanding payments to your employees, HM Revenue and Customs and any providers. You will be asked to submit your financial information to finalise your Direct Payment account.
- 12.7 Direct Payments monies do not form part of a person's estate. In the event of the death of a Direct Payment recipient the Direct Payment monies must be returned to the Council once all legal responsibilities are met.
- 12.8 Any Direct Payment monies remaining in the account following termination of the agreement must be returned to us.

13. Criminal Records Checks

- 13.1 If it has been identified that you must undergo a Criminal Records Bureau check, this must be undertaken and a positive clearance given before you can act as the Authorised Person. Warwickshire County Council will tell you if this must happen.

14. Seeking Legal Advice

- 14.1 You are advised to seek legal advice before signing this agreement.

Glossary of Terms

Agency/Provider - An organisation which provide care and support.

An Authorised Person – An Authorised Person can be appointed if someone lacks capacity to consent to Direct Payments. The appointed person will receive and manage the payment for those people. The law tells the council who can act as this person.

Assessment – The assessment is the way the Council identify the person needs and how these impact on their wellbeing, and the outcomes that the person wishes to achieve in their day to day life.

Care and Support Plan - This is the plan agreed by you and us to meet your agreed care and support outcomes. You will always have a Support Plan even when you choose to receive a Direct Payment, Personal Managed Budget, an Individual Service Fund or a combination.

Care Quality Commission (CQC) - The Health and Social Care regulator for England. It looks at the 'joined up picture' of health and social care and promotes the rights and interests of people who use the services. It is an independent body which bases its' actions on high quality evidence. Its work brings together independent regulation of Health, Mental Health and Adult Social Care.

Contingency arrangements - The plan you have in place to provide your support in emergencies, i.e. when your personal assistant is on holiday or off sick.

Contribution - The amount you must pay towards your social care support.

Disclosure and Barring Service- The Disclosure and Barring Service (DBS) helps employers in England and Wales make safer recruitment decisions. They can check on request a record of convictions held on the Police National Computer (PNC) for individuals convicted of crimes.

Direct Payment - One way of receiving your Personal Budget. A cash payment to enable you to arrange and buy your own social care support. You cannot buy services from the council.

Direct Payment Agreement - This is the signed agreement between you and us about the terms and conditions which apply when you choose to receive Direct Payments from us.

Direct Payment Bank Account - The bank account you open purely to hold the money paid direct to you as a Direct Payment.

Eligibility – The national eligibility criteria is a minimum threshold for care and support needs and carer support which the Council must meet and comply with.

Employer Liability Insurance - Employers' liability insurance will enable you to meet the cost of compensation for your employees' injuries or illness whether they are caused on or off site. It can help pay costs if your staff are made redundant. Employers' liability insurance is compulsory. You can be fined if you do not hold a current employers' liability insurance policy which complies with the law.

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Enhanced DBS - These can be undertaken for posts that involve a far greater degree of contact with children or vulnerable adults. Such as a Personal Assistant, this level of check involves an additional level of check to those carried out for the Standard DBS check - a check on local police records. Where local police records contain additional information that may be relevant to the post the applicant is being considered for, the Chief Officer of police may release information for inclusion in an Enhanced check.

Financial assessment - A financial assessment, sometimes using a questionnaire, to work out what you can pay (contribute) towards your social care support.

Gross Amount - The total cost of your social care support which includes your contribution and the net amount given by us.

Her Majesty's Revenue and Customs - HM Revenue & Customs (HMRC) is the government department responsible collecting and administering direct and indirect taxes, and some tax credits and other benefits including Child Benefit. It was formed from the merger of the former Inland Revenue and HM Customs and Excise

Monitoring - The council arrangements to check how you use the money.

Net Amount - The amount we will pay towards your social care support.

One off Payment - A one off amount of money.

Outcome - something you want to achieve - how you want your life to be - not just in terms of what social care support you receive, but in a wider sense.

For example:

- How would you like your life to be?
- Who and what is important to you?
- What would you change in your life?
- What would you keep the same?

Payroll Service - An organisation who support people to register with Her Majesty's Revenue and Customs as an employer. They will support people with meeting all their employer responsibilities such as tax and national insurance.

Personal Assistant - A person who you employ to provide your support.

Personal Assistant Support Service - The Organisation we contract with to provide advice, information and support to help you recruit and retain your Personal Assistant.

Personal Budget - Is the sum of money, which a customer is assessed as being entitled to receive to help them be independent, safe and well. Personal budgets can be used to pay for any type of service, (not just a social care service) that would help add value to their life as long as it is legal. For example, a person may choose to use some of their money to join a gym or a craft club to help keep them active and give them the opportunity to socialise. The money must be used to achieve agreed outcomes. A person can choose to receive their Personal Budget as a Direct Payment, Mixed Budget or Personal Managed Budget. These services are chargeable.

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Public Liability Insurance - Public Liability Insurance is different. It covers you for claims made against you by members of the public or other businesses, but not for claims by your employees. Public Liability Insurance is generally voluntary.

Representative - The nominated person assisting you with managing your Direct Payment. This could be a family member, friend, third party, nominated agent.

Self Employed Personal Assistant - A person who offers to provide support to you but you are not the employer. They have received a self-employed personal assistant status from HMRC.

We/us - The Council

You - The Direct Payment recipient.