

People Group Social Care and Support

DP 1A - Direct Payments Agreement Self-employed personal assistants

The Care Act 2014

For customers who are eligible and in receipt of a Personal Budget, supported by the Council and who choose to receive all or some of the budget as a Direct Payment.

Contents

1. The Reason for this Agreement	4
2. The Direct Payment and Your Contribution	4
3. What You Will Do	5
4. You Agree Not to Use the Direct Payment:	5
5. What We Will Do	7
6. What Your Nominated Person Will Do	8
7. General Rules about Using self employed Personal Assistants.....	8
8. Using Social Care Providers	10
9. If your Arrangements Break Down or your Needs Change	10
10. Comments, Complaints and Compliments.....	10
11. Ending This Agreement	10
Glossary of Terms	13

This Agreement is between:

1. Warwickshire County Council
Enter Council Address here

(Referred to as 'the Council' or 'we' or 'us' in this Agreement)

And

2. Details of the Customer
Enter Name
Enter P Number
Enter Address

(Referred to as 'the Customer' or 'you' in this Agreement)

And

3. Details of your Nominated Person
Enter Name
Enter Address
[Person who is helping you manage your Direct Payments]

(Referred to as the 'Nominated Person' 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.

1. The Reason for this Agreement

- 1.1 You have told us what support you want. This is described in your Care and Support Plan.
- 1.2 We have assessed your social care needs and agreed that you are eligible for support under the Care Act 2014. You have been told how much money is available to help you plan how you meet your eligible needs. Your Care and Support Plan will detail how you will direct and use your budget to enable you to achieve the outcomes as agreed in the Plan. This is called your Personal Budget.
- 1.3 You have told us that you would like to arrange some or all the support. You are willing and able to secure and choose the support detailed in your Care and Support Plan yourself or with assistance (this may be through a nominated agent, your Nominated Person or third party). The Council are satisfied your eligible needs and agreed outcomes can be met by means of using Direct Payments.
- 1.4 We have agreed to provide your Personal Budget as a sum of money (called a Direct Payment) so you can do this.
- 1.5 You have agreed to have a Direct Payment and can manage this with or without assistance. If you need assistance, it has been agreed that your Nominated Person will help you. If your Nominated Person changes you will let the Council know who will support you in the future.

2. The Direct Payment and Your Contribution

- 2.1 Your Direct Payment is currently £ [] per week or/and a one off payment of £ []. This is called the gross amount. This amount may go up or down or it may end if there is a change in your needs or the way you arrange your support. If it does we will write and tell you.
- 2.2 We have financially assessed what you have available to pay towards the cost of the support you want. This is called your Contribution. Your Contribution is £ [] per week.
- 2.3 The amount of your Contribution will be deducted from your gross Direct Payment before we pay it to you. This means the net amount you will receive from us into your Direct Payment bank account will be £ [] per week. This is called your net payment.

The first payment to you will include a one off payment of £ [].

DP Admin please note: Delete where not appropriate - This is to cover 4 weeks contingency/employer liability insurance payment/CRB payment/other, please state.

- 2.4 The starting date for your Direct Payment is []
- 2.5 If the Direct Payment is to buy equipment we will pay you the sum of £ [] to buy the agreed equipment.

3. What You Will Do

- 3.1 You agree to set up a separate bank account for your Direct Payment (unless we tell you in writing that you do not need to do this) and to give us the full and correct details of this account. This is called your Direct Payment Account.
- 3.2 You agree to pay your Contribution, the amount as stated in 2.2 into your Direct Payment Account. **This must be paid by standing order every four 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 your needs as agreed in your 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 or 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 agreed 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.
- 4.12 you must get our written agreement if you want to use your Direct Payment to pay for services from a spouse, civil partner, relative or other person who lives in your household.

(If you are unsure and would like to understand how you can use your Direct Payment please speak to the Council or the Support Service or refer to WCC's Making of a Direct Payment Policy, Information and Guidance for Customers, Carers and Practitioners)

- 4.13 You agree to keep clear records of the Direct Payment money you have received and how it is being used to meet your needs and meet your 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 and receipts of how the money has been spent. By keeping these records it will help you, (your Nominated Person 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 your circumstances which may affect your Care and Support Plan or the services you need.
- 4.15 You agree to plan and make contingency arrangements in case the services you need break down.
- 4.16 You will pay back to us any Direct Payment money which is not used to meet your agreed outcomes as set out in your Care and Support Plan.
- 4.17 You will repay the Direct Payment money to us if:
- (a) You have not met any of the terms of this agreement; or
 - (b) 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 Making of a Direct Payment Policy, Information and Guidance for Carers, Customers 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 Nominated Person (if you have one) sharing personal information about you in order to help to make sure your 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 Payments.
- 4.22 You agree to a Making of Direct Payment review within 6 months of the first payments being made to you.

5. What We Will Do

- 5.1 We agree to pay the Direct Payment (less you're Contribution) into your nominated Direct Payment Account unless it has been agreed to make the payment to a Third Party. Payments will be made in advance every 28 days (in accordance with the Direct Payment timetable) or as a one off payment. We may make additional payments into your Direct Payment 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 Making of Direct Payments Policy, Information and Guidance for Customers, Carers and Practitioners)

- 5.4 We will review the Making of your Direct Payment within 6 months of the first payment. We will then review your Care and Support Plan and the operation of the Direct Payment at least once a year. We will look back over the year at what you have achieved and if your payment will remain the same, based on your eligible needs. You will only receive Direct Payments for as long as you are eligible to receive social care support.
- 5.5 We will allow you to keep up to an eight week surplus of the Direct Payment money to help meet your needs in a flexible way. If agreed you may be allowed to keep above 8 weeks in some circumstances.
- 5.6 We will hold back the Direct Payment if, for whatever reason, you are temporarily unable to receive services.
- 5.7 We have a duty of care to meet your needs if the arrangements for your support break 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 your Direct Payment or suspend or terminate this Agreement:
- (a) if you are no longer eligible for social care support under the Care Act 2014;
 - (b) If the arrangements you make are not adequate to ensure your 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 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 your Direct Payment Account. Direct Payments does not form part of your estate.

- 5.10 If you go into hospital and you purchase services from a self-employed personal assistant we will suspend or stop your Direct Payments without notice. You must let the Council know if you go into hospital. You or your Nominated Person will need to inform the provider or the self-employed person providing your support about what happens when you are in hospital.

6. What your Nominated Person will do

- 6.1 Work with you in a flexible way to help you arrange support to meet your needs and achieve your outcomes as set out in the Care and Support Plan in a way which helps you choose and control your support.
- 6.2 Make every effort to explain to you how your Direct Payment money is being used to meet your needs.
- 6.3 Tell us if there is any change in your circumstances, which may affect your Care and Support Plan or the services you need.
- 6.4 Help you to keep clear records of the Direct Payment money you have received and how it is being used to meet your needs; and allow us to look at these records if we ask you or your Nominated Person.
- 6.5 Tell us if you go into hospital and ensure the self-employed Personal Assistants are aware of what happens next.

7. General Rules about buying support from self-employed Personal Assistants

Please refer to WCC's Direct Payment guidance Making of a Direct Payment and using self-employed information factsheet.

- 7.1 We have advised you that if you are buying support from someone who is presenting as a self-employed personal assistant you should seek independent guidance.
- 7.2 A direct payment from us can only be used to buy support from people who say they are self-employed personal assistants if you have carried out all the relevant checks with Her Majesty's Revenue and Customs (HMRC) and met certain other conditions.
- 7.3 You have confirmed to the Council that you have met the following conditions.

The conditions are:

- You have supported the personal assistant to undertake the HMRC checks and they have obtained a self-employed status (not a User Acceptance Test number) and they shared a copy of the certificate with you and us.
- The personal assistant has provided you with a copy of the questions and the answers they gave to HMRC to the customer and they have been shared with us.
- The personal assistant has the correct insurance policy in place and it has been shared

with you and us.

- The personal assistant agrees to invoice you for services provided which is inclusive of any tax and national insurance liabilities they have to meet. You will retain copies of these invoices for monitoring purposes.
- The personal assistant has a written agreement such as a service agreement with you as the customer. You will retain these and they will be provided to us if requested.
- You are satisfied with all of the above and have retained copies of all relevant documents for a period of at least six years in case of queries from HMRC.
- You agree that all information shared with us will be retained on your customer electronic social care record.

7.4 We have informed you that:

- You should seek independent advice and that access to independent advocacy can be made available should it be required.
- There are risks to you should an employment tribunal see the relationship as an employer/employee relationship contrary to the HMRC status.
- We will not be liable for any financial consequences of your decision. Should the self-employed status be retracted by HMRC or overturned in an employment tribunal.
- Your Direct Payment will be reviewed and financial monitoring will undertake detailed checks in line with these exceptional circumstances and meeting the conditions.
- The same checks must be undertaken for each person you engage with and self-employed status must not be automatically assumed, even if a personal assistant advises you that they have self-employed status for another person they work for.
- You must undertake the check for each personal assistant and provide the information to us on each occasion.
- If these requirements are not met, the Direct Payment may be at risk and it could be suspended or may end.
- You could be found liable for any tax and national insurance for PAYE if at any time in the future HMRC retract the self-employed status from the date the personal assistant started providing a service for you.

- You have sought independent advice and you understand and you are willing to meet and financial liabilities should this happen.

7.5 We have advised you of **Care Quality Commission (CQC)** guidance when using more than one self-employed personal assistant.

This includes

- where there are a group of carers (2 or more) working together who are providing personal care, they either must be directly employed by you, or the need for registration with CQC may be triggered; if so, this would be a legal requirement. (*e.g. providing cover if one carer is off sick or on holiday).
- A person co-ordinating carers** (and therefore running an agency) needs to be properly vetted and checked by the Disclosure and Barring Service (this is a legal requirement) to ascertain that he/she is an appropriate person to be managing the 'agency'. An existing criminal records check is meaningless unless it has been counter-signed by The CQC. (**this would not apply to a senior carer employed directly by you).
- The CQC also advised that even if a group of 'self-employed' carers working together have public liability insurance in place, this could be nullified as any business providing personal care has to be CQC registered. Due to this, in the event of a mishap occurring, neither the carer nor client would be protected.

7.6 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 HMRC, CQC or an employment tribunal.

8. Using Social Care Providers (If Applicable)

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 guidance making of a Direct Payment & Factsheet: 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. Ending This Agreement

- 11.1 You may end this Agreement by telling us in writing at least four weeks before the date you want it to end.
- 11.2 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 your needs will appropriately be met.
- 11.3 You can only receive Direct Payments if you are eligible for social care services under the Care Act 2014. If your situation changes and you are no longer eligible, your Direct Payment will end.
- 11.4 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.
- 11.5 Before ending the agreement we shall work with you (and your nominated person) to find resolution to the issues wherever possible.
- 11.6 You will be required to complete all outstanding payments to your employees, HMRC and any providers. You will be asked to submit your financial information to finalise your Direct Payment account.
- 11.7 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.
- 11.8 Any Direct Payment monies remaining in the account following termination of the agreement must be returned to us.

We understand and agree to the terms of this Agreement:

Signed by the Customer:
Print Name:
Date:
Signed by [name of Nominated Person] who is helping you to manage your Direct Payment – NOT THE SUPPORT SERVICE:
Print Name:
Date:
Signed on behalf of the Council:
Print Name:
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

Glossary of Terms

Agency/Provider - An organisation that you make arrangements with to provide your support.

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.

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 Care and 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 Checks - 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 Payments – A way to receive your Personal Budget. A cash payment to enable you to arrange and buy your own social care support.

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.

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.

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

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 that support people to register with Her Majesty's Revenue and Customs (HMRC) as an employer. They will support people with meeting all their employer responsibilities such as tax and national insurance. The council contract with an organisation to offer a free payroll support services to Direct Payment employers.

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

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.

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

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.

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.