



# Direct Payments

## DIRECT PAYMENTS AGREEMENT

This agreement sets out the responsibilities and obligations of Durham County Council (DCC) and the Direct Payments recipient, in relation to the provision of the Direct Payments for;

\_\_\_\_\_ (Service User) \_\_\_\_\_ (Date of Birth)

**Declaration – Please read carefully before signing the agreement**

- I consent to receive Direct Payments and confirm that I understand and will comply with all attached conditions of the Direct Payments agreement.
- I confirm all information I have provided is correct and complete to the best of my knowledge and understand that DCC may take action against me if found to be incorrect. This may include court action.
- I understand and consent to DCC using the information I have provided to set up and process the Direct Payments.
- I agree to the use of any information provided, for the prevention and detection of fraud, including the sharing of information with other bodies responsible for administering public funds including but not limited to, government departments, local authorities and private sector companies such as banks and money lending organisations, insofar as the law allows.
- I understand that I must notify DCC immediately of any change in circumstances, which may affect the Direct Payments.
- I understand that by signing this agreement I will retain legal responsibility for any actions undertaken on my behalf by any nominated persons identified in this agreement (where applicable).

Name: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

Service User

Suitable Appointed Person

Parent/Carer

(Please tick one and initial)

Signed on behalf of DCC: \_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_ Position: \_\_\_\_\_



## Direct Payments

**List of Nominees (if applicable)**

The below nominated persons are authorised to act on behalf of the Direct Payments recipient. Legal responsibility for any actions undertaken by any nominee listed below remains with the Direct Payments recipient.

<u>Name of Nominee</u>	<u>Date of Birth</u>	<u>Date Effective</u>	<u>Signature (Nominee)</u>	<u>Signature (Direct Payments recipient)</u>

**Managed Account Consent (if applicable)**

I authorise Durham County Council to operate a managed Direct Payments Card Account on my behalf, for the purpose of making payments for services provided to the service user in line with their care and support plan.

I confirm that I understand that in providing a managed account, Durham County Council will assume responsibility for financial management only as set out in section 4 of this agreement. **All other conditions listed in section 2 "Responsibilities of the Direct Payments Recipient" remain applicable.**

Signed:

Date:

\_\_\_\_\_  
(Direct Payments Recipient)

Signed on behalf of DCC:

Date:

Name:

Position:



# Direct Payments

The **Direct Payments recipient** referred to in the following conditions, is the Service User, Parent Carer or Suitable Appointed Person as identified on the front page of the Direct Payments Agreement.

The **Service User** referred to in the following conditions, is the person the Direct Payments is paid in relation to, who will be receiving services purchased using the Direct Payments.

The **Direct Payments Card Account** is a pre-paid card account provided by Durham County Council's contracted supplier.

## Conditions

### 1. Responsibilities of Durham County Council

1. To ensure that the assessed eligible needs of the service user, under the Care Act 2014 and outlined in the service users Care and Support Plan, are met through the Direct Payments provision(s).
2. To make Direct Payments available, subject to a financial assessment of the service user, to ensure sufficient funds are available to purchase services in order to meet the assessed eligible needs as outlined in the service user's care and support plan.
3. To open a Direct Payments Card Account in the name of the Direct Payments recipient and load funds to the account in line with Durham County Council's payment schedule.
4. Durham County Council retains the right to remotely access the Direct Payments Card Account under the Data Protection Act 1998 and monitor activity on the account. Data will be analysed and shared with relevant responsible managers. This does not affect the requirements of the Direct Payments recipient under section 2.7 of this agreement.
5. To provide advice and support to the Direct Payments recipient and any nominated persons, during the setting up of the Direct Payments and to provide ongoing advice and support as required.
6. To ensure regular checks are undertaken on the use of the Direct Payments. This includes but may not be limited to, checking the Direct Payments Card Account, liaising with care providers, payroll providers and employment insurance companies, where applicable.
7. To ensure that regular audits of the Direct Payments Card Account are undertaken and any funds deemed as surplus are automatically recovered from the account. Written notice will be provided to the Direct Payments recipient prior to any surplus funds being recovered.
8. To increase/decrease the Direct Payments amount at any time, following a reassessment of the service user's eligible needs resulting in the revision of the Care and Support plan.
9. To issue an invoice to the Direct Payments recipient for the recovery of any identified unauthorised expenditure from the Direct Payments Card Account.
10. To undertake a final audit of the Direct Payments Card Account and recover any remaining funds as a result of the Direct Payments ending.



## Direct Payments

### 2. Responsibilities of the Direct Payments Recipient:

1. To use the Direct Payments to purchase goods and services that:
  - a. Meet the assessed eligible needs of the service user as outlined in their Care and Support Plan in agreement with their Social Worker/Care Co-ordinator;
  - b. Are safe and meet legal requirements.
2. To pay any financial contribution towards the cost of services where applicable, as assessed in accordance with Durham County Council's charging policy for non-residential services.
3. To inform Durham County Council at the earliest opportunity of any change in circumstances that may affect the service users' entitlement to Direct Payments, including:
  - a. Change in assessed needs of the service user;
  - b. Change in financial circumstances of the service user;
  - c. Change in capacity of the service user to consent to the Direct Payments;
  - d. Change in ability of the service user to manage the Direct Payments, where applicable;
  - e. Change in ability of Direct Payments recipient to manage the Direct Payments, where applicable;
  - f. Death of the service user.
4. The Direct Payments **MUST NOT** be used to:
  - a. Purchase health services;
  - b. Purchase long term/residential care;
  - c. Purchase respite care in a residential facility of more than four consecutive weeks;
  - d. Employ a partner, close relative or any other person living in the same household as the service user, unless otherwise agreed in writing by Durham County Council;
  - e. Pay any sums owing to Durham County Council;
  - f. Pay any household bills, personal expenses or any other costs outside of the service users' assessed eligible needs;
  - g. Pay any fees/charges as a result of late payments or non-payment of HMRC contributions.
5. When using the Direct Payments to employ a personal assistant, to ensure:
  - a. All legal responsibilities of being an employer are met;
  - b. An appropriate level of employers liability insurance is in place;
  - c. Each employee is provided with a payslip based on hours worked; identifying tax, National Insurance and pension contributions (where applicable). A payroll company can be used for this purpose;
  - d. Where a payroll service is used, payment is made to the payroll provider for their service;
  - e. All employees are paid in accordance with the payslip provided and in line with Durham County Council's payment schedule;
  - f. All HMRC payments are made on time;
  - g. Any HMRC refunds in relation to the employment scheme are returned to Durham County Council;
  - h. A workplace pension is arranged for employees and contributions made, where applicable;



## Direct Payments

- i. DBS checks are undertaken on all prospective employees prior to employment commencing, where the service user is under 18 years old. Where a service user is over 18 years old, DBS checks of prospective employees are still recommended by Durham County Council;
  - j. Data Protection requirements as outlined by the Data Protection Act 1998 are adhered to, including the confidential disposal of any employee's personal data that is no longer required to be held by the employer;
  - k. A safe working environment is provided to all employees;
  - l. Relevant training is provided to employees.
6. When using the Direct Payments to purchase services from an agency/organisation, to ensure:
- a. Any change in the Direct Payments is communicated to the care provider, including any increase/decrease in assessed hours or change in hourly rate;
  - b. Invoices are obtained and paid on time and in line with Durham County Council's payment schedule;
  - c. When using the services of a self-employed worker that evidence is provided of an appropriate level of liability insurance cover.
7. To comply with the conditions of audits on the Direct Payments, including:
- a. Retaining all evidence of expenditure in relation to the Direct Payments including where applicable, invoices, receipts, timesheets and cash record sheets, for a period of 6 years;
  - b. Providing on request, relevant information listed in condition 2.7a, to Durham County Council for the purpose of a review/financial audit;
  - c. Payment from your own person funds, of any invoice issued by Durham County Council following an audit, for:
    - i. Unauthorised expenditure from the Direct Payments Card Account;
    - ii. Unpaid financial contribution due into the Direct Payments Card Account;
  - d. Following the ending of the Direct Payments, to provide or arrange for Next of Kin/Executor to provide; information listed in condition 2.7a, to Durham County Council for the purpose of a final financial audit.
8. To operate the Direct Payments Card Account in an appropriate manner, including:
- a. Complying with the prepaid card suppliers own terms and conditions;
  - b. Keeping the Direct Payments Card, PIN number, log in and password details secure;
  - c. Using only for the payment of goods/services in relation to the Direct Payments and not for any personal transactions;
  - d. Accept liability for any fees/charges incurred on the account, which may arise due to the fault of the Direct Payments recipient;
  - e. Reimbursement of any cost to Durham County Council as a result of a replacement card being required.



## Direct Payments

### 3. Suspension/Termination of Direct Payments

1. Durham County Council reserves the right to suspend or terminate the Direct Payments immediately:
  - a. If the Direct Payments recipient fails to fulfil any of the conditions within section 2 of this agreement;
  - b. Where arrangements made for securing services are not adequate to meet the assessed eligible needs of the service user as identified in their Care and Support Plan;
  - c. Where there is reason to suspect that the Direct Payments recipient is no longer able to manage the Direct Payments;
  - d. Where the need for services are temporarily not required;
  - e. Should financial contributions exceed the value of the Direct Payments following a reassessment of the service users financial contribution;
  - f. If the assessed eligible needs of the service user are no longer applicable following a reassessment of need;
  - g. Upon the death of the service user.
2. The Direct Payments recipient may request to terminate the Direct Payments at any time.
3. Upon the termination of the Direct Payments under any circumstance, a final audit of the Direct Payments Card Account will be completed by Durham County Council and all remaining funds automatically recovered from the account.

### 4. Managed Account by Durham County Council

**The below conditions are only applicable where it has been agreed and indicated on page 2 of this agreement that Durham County Council will operate a 'Managed Account' on behalf of the Direct Payments recipient.**

1. In providing a 'managed account', Durham County Council will assume responsibility for the following conditions from "2. Responsibilities of the Direct Payments Recipient":
  - a. Condition 2.5.c – ensure each employee (where applicable) receives a payslip, via an appointed payroll provider;
  - b. Condition 2.5.d – any payments to payroll company for any services provided;
  - c. Condition 2.5.e – any payments to employees;
  - d. Condition 2.5.f – any payments to HMRC;
  - e. Condition 2.6.b – any payments to agency/self-employed workers;
  - f. All conditions under condition 2.8 – operation of the Direct Payments Card Account.
2. All other conditions under section 2 of this agreement, remain the responsibility of the Direct Payments recipient.
3. The requirement for Durham County Council to provide written notice of recovery of any surplus from the account (condition 1.7) is removed.
4. All other conditions under section 1 of this agreement remain applicable.



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## Direct Payments

5. All conditions under section 3 of this agreement remain applicable.

EXAMPLE