

**The Direct Payment Agreement and Summary Sheet**

**Direct Payments Agreement**

**PARTIES:**

- (1)

Darlington Borough Council

(The Borough Council)

Town Hall

Feethams

Darlington

DL1 5QT

- (2)

Individual with assessed needs information

Title (e.g. Mr/Mrs)

Name

Address

Email Address

Date of Birth

Liquid Logic ID

Social Worker/Community

Assessment Officer Name

- (3)

The Nominated/Suitable Persons Details

Title (e.g. Mr/Mrs)

Name

Address

Email Address

Date of Birth

**(4) Next of Kin or Executor of the Estate**

Should the individual, nominated or suitable person be unable to fulfil the responsibilities of the Direct Payment, the below named, next of kin/executor agrees to fulfil the responsibilities outlined in this agreement. This includes submitting a final return and returning any unused monies to Darlington Borough Council. The Direct Payment does not form part of the deceased person’s estate.

Title (e.g. Mr/Mrs)  
Contact Name

Address

Relationship

Home telephone Number

Mobile Number

Email Address

**Introduction**

Darlington Borough Council is committed to ensuring that those who want to meet their eligible social care needs with a Direct Payment can do so. This agreement sets out what you or the nominated person or the suitable person must do in agreeing to receive a Direct Payment and what Darlington Borough Council must do in agreeing to make a Direct Payment.

The Borough Council has carried out an assessment of needs and as a result has determined that the needs identified in the table on Page 3. A copy of your support plan will be posted to you. Your needs may at times be expressed as “outcomes”.

In signing this agreement, you/the nominated/suitable person are willing and able to secure services and or support and manage the Direct Payment to meet the needs identified in the support plan. As a result, the Borough Council is willing to make payment direct to you/the nominated/suitable person to enable this to be done.



Throughout this document the Borough Council will take into account the support that individuals need to meet their obligations. To support Individuals to meet their obligations the Local Authority has commissioned Darlington Association on Disability (D.A.D) to provide the support and advice that people may need to manage a Direct Payment. However, this is a legal document and should be read to make sure it is understood before the statements at the back of the agreement are signed. The Direct Payment Support Service can assist with this.

It is agreed by the parties as follows:

### **1. Payment amount & procedure**

The Direct Payment amount has been calculated as £..... per year to meet the assessed care and support needs and associated costs as set out in the Support Plan and agreed with Adult Social Care.

If any of the assessed needs change (or any other changes occur) this agreement will be subject to a variation and a 'variation form' needs to be completed. This will be completed by a Social Worker/Community Assessment Officer

#### **Weekly Services (To be completed by the Social Worker/Community assessment Officer)**

<b>Type of service/support</b>	<b>Number of hours/ sessions per week</b>	<b>Hourly / Session rate £</b>	<b>Total cost per week £</b>
Weekly Support Hours			
Sleepover/waking night (delete as appropriate)			
Day opportunities			
Carer break			
Other (please state)			



Direct Payment Support (annual cost)			
		<b>Total cost of support</b>	

The Direct Payment amount will be paid every four weeks directly into your/the nominated/suitable person's bank account.

The payments will start from..... (insert date). *Please note payments **cannot** be backdated so cannot be made prior to the date this agreement was signed.*

*(Tick box as appropriate)*

- ☐ As a result of your financial assessment a financial contribution towards care and support is required. The financial contribution has been assessed under The Care and Support (Charging and Assessment of Resources) for Non-Residential Services Policy, at £..... (This contribution may be subject to change depending upon any financial re-assessment. As mentioned above a variation form will be completed should any assessed needs change or any other changes occur.)
- ☐ I am a Carer, and no financial assessment is required.

If the assessed financial contribution towards the care and support is greater than the Direct Payment amount the Borough Council will pay the Direct Payment net of the assessed financial contribution i.e. no payment will be made into the direct payment account.

## **2. The Contingency Fund**

You may find that over time, the money in the direct payments bank account builds up. This is called the contingency fund and will include money to pay tax and national insurance contributions, plus holiday, sick pay and redundancy. It will also include saved hours and any hours you haven't used for any other reason.

The Council may seek to recover any unused contingency not required after taking the above into account and/or funds greater than your equivalent 8 weeks-worth of service depending on which is the greater.

## **3. Your / The Nominated / Suitable Person's Obligations**

Advice and support to meet your obligations is available through a Social Worker/Community Assessment Officer and/or through the Direct Payment Support Service

(DAD) in person, by telephone or through their website. In agreeing to accept a Direct Payment from the Borough Council you/the nominated/suitable person agree to:

- Only spend Direct Payments on services/support for the assessed needs/outcomes as identified and agreed in the support plan.
- Open a separate bank account or building society account for the direct payments in your/the nominated/suitable person's name.
- Not use the Direct Payment to secure services from a partner, a close relative or a partner of a close relative that lives in the same household unless otherwise agreed with the Borough Council in writing. Any agreement is subject to annual review.
- Inform the Borough Council immediately if you are in hospital for a period exceeding 4 weeks.
- Inform the Borough Council immediately if you/the nominated/suitable person require more help in managing the Direct Payments or if any of the assessed needs change.
- Inform the Borough Council immediately if you/the nominated/suitable person no longer wish to receive Direct Payments and wish to have services arranged by the Borough Council to meet the assessed needs.
- Keep proper financial records and receipts (as identified in section 4 of this agreement) to show how you/the nominated/suitable person have spent the Direct Payments. (You/the nominated/suitable person understand that the Borough Council may need to view records and audit the Direct Payment accounts.)
- As identified in section 4 of this agreement you/the nominated/suitable person should make financial returns as agreed.
- Not spend the Direct Payments on any services that are the responsibility of any other agency to provide, e.g. housing, the NHS, Education, etc without prior agreement from a Social Worker/Community Assessment Officer.
- Carry out all obligations as an employer and comply with any legal, tax, financial and insurance requirements that may arise as a consequence of employing any person to provide services/support (as identified in section 5 of this agreement).
- Comply with all legal, tax, financial and insurance requirements that may arise in making arrangements to secure services/support from any organisation or provider.
- Put in place an emergency contingency plan that can be used should arrangements for the provision of services to meet the assessed care needs break down.

- Following any discussions with you/the nominated/suitable person, return to the Borough Council any money that is left over from the Direct Payments if identified in the audit process.
- Co-operate with the Borough Council regarding unspent/unused money or misuse of money.
- Take responsibility for any bank charges or Her Majesties' Revenue and Customs charges (which might include tax and national insurance contributions for employees, if applicable.)
- Repay part or all of the Direct Payment if you/the nominated/suitable person breach part or all of this agreement (as set out in section 8 of this agreement).

Seek agreement from the Borough Council and obtain adequate support from an expert before purchasing any equipment and comply with any conditions attached to the purchase of any equipment as provided in writing by the Borough Council. An expert might include a specialist shop, or a Centre for Independent Living.

### **Our obligations**

In agreeing to give you or the nominated or the suitable person a Direct Payment the Borough Council agrees to:

- Deal with each individual in a person-centred way and look to ensure that those who meet the criteria for a Direct Payment are given the reasonable support they need to do so.
- Ensure that the Direct Payment is sufficient to meet the assessed needs as identified in the support plan.
- Provide access to support services should they be needed.
- Consult with you/the nominated/suitable person first should the Direct Payment need to stop for a period or terminate. (The Borough Council will inform you/the nominated/suitable person 4 weeks before, except in exceptional circumstances, if this is going to happen.)
- Review needs and review how you/the nominated/suitable person are managing the Direct Payment at least once a year.
- Ensure that a service is received that meets the assessed agreed needs, should the arrangements for the provision of service break down or Direct Payments be suspended/ terminated.

- Discuss with you/the nominated/suitable person any concerns about how you/the nominated/suitable person are using the Direct Payment. (The Borough Council will then endeavour to provide a plan to help you meet needs more appropriately.)
- Provide you/the nominated/suitable person with support and funding to carry out Criminal Records Bureau checks for every worker employed (as set out in section 5 of this agreement).
- Deal with any Direct Payment enquiries and complaints in a timely manner.
- Should it need to the Borough Council will take all reasonable steps, including court action, should the financial contribution not be paid.

#### **4. Bank accounts, financial records and receipts**

You/the nominated/suitable person must have a Bank or Building Society Account for the sole purpose of managing the Direct Payment. (If the Direct Payment is also to be used for Access to Work funding the Borough Council will require information/evidence regarding the Access to Work element.)

In order to satisfy the Borough Council that the Direct Payment is being spent on the support identified in the support plan, you/the nominated/suitable person are required to keep proper financial records. (Such records will also be required for audit purposes.)

Proper financial records (which are required to keep for 6 years and make available to the Borough Council on request) include any of the following:

- Monthly bank statements
- Completed timesheets (if relevant)
- A record of all payments (cheque number, payee, amount, etc)
- Signed receipts for cash payments
- Agency invoices and receipts
- Records/ receipts for other costs

You/the nominated/suitable person will be expected to send the above documents to the Borough Council's Direct Payments Team initially within the first 6 months then at intervals not exceeding 12 monthly thereafter.

The Borough Council will expect you/the nominated/suitable person to pay any bank charges incurred. The Borough Council will usually only repay any charges incurred as a direct result of a Borough Council error.

If an audit identifies there is unused money left from the Direct Payment made for that period either:

- The identified amount of money may be deducted from subsequent payments; or
- You/the nominated/suitable person may be requested to return the unused money to the Borough Council.

In the event of your/the nominated/suitable person's death, those dealing with your affairs need to know that unused Direct Payment money is to be returned to the Borough Council and does not form part of the estate. For this reason, we request that when you/the nominated/suitable person open the Direct Payment bank account, the bank is aware that the account is for the Direct Payments only.

#### **5. Your/the Nominated / Suitable persons obligations as an employer**

You/the nominated/suitable person may choose to directly employ staff to provide the support you need. In this case you/the nominated/suitable person will be deemed to be the employer of those staff. Such an arrangement constitutes a private contractual arrangement between you/the nominated/suitable person and the employee for which you/the nominated/suitable person are legally responsible. It is understood that in doing this the Borough Council is not involved and bears no responsibility to you/the nominated/suitable person or the staff that are employed with regards to the employment relationship. The Borough Council strongly recommends that independent advice is sought in relation to any obligations as an employer. Further, in line with legal obligations, the Borough Council requires that written particulars of employment are provided to any such employees within 2 months of the first date of employment. The Support Service provided by DAD will assist with this.

You/the nominated/suitable person must ensure that arrangements are made to cover matters such as National Insurance Contributions, Tax, Employer's Liability Insurance and Public Liability Insurance. Provision will also need to be made for maternity pay, sick pay, holiday allowance, etc. You/the nominated/suitable person will also be responsible for ensuring the employee's health and safety whilst at work. Further, any prospective and current employees should have the appropriate skills, and a current and valid Disclosure and Barring Service (DBS) check is highly recommended.

As it is against the law to allow anyone who is known or reasonably suspected of being on the barred list, to provide certain services, it is strongly recommended that two references and DBS checks are obtained for potential employees to ensure that the person is not barred prior to any formal offers of employment.

If you are acting as a nominated/suitable person and are not a close relative then you must obtain a DBS check for anyone you use to provide services, with the direct payment, to the individual.



In employing staff directly, you/the nominated/suitable person agree to:

- Abide by Equal Opportunities/ Discrimination Legislation.
- Ensure that employment legislation is complied with. (It is understood that the Borough Council has recommended that independent advice is sought in relation to this.)
- Comply with any applicable Health & Safety Regulations
- Not employ your partner, a close relative or the partner of a close relative that lives in the household unless otherwise agreed with the Borough Council in writing.
- Take all reasonable steps to ensure that your welfare is safeguarded and to inform the Borough Council immediately in the event that your welfare is at risk of harm or abuse.

The Borough Council recommends that contact is made with your/the nominated/suitable person's Employer's Liability insurance Company prior to taking any form of disciplinary action against employee/s.

If, in the opinion of the Borough Council the person or organisation appointed by you/the nominated/suitable person is either not able to provide an adequate service or is unfit to provide a service, the Borough Council has the right to require the person or organisation who is providing a service to be changed. (Please note this condition applies to sections 6 & 7 of this Agreement also.)

#### **6. Self-Employed support workers**

If engaging someone to provide services who states that he/she is 'self-employed' a check should be obtained about that person's status with HM Revenue and Customs otherwise you/the nominated/suitable person may end up being liable for any unpaid tax or national insurance contributions. Further, it should be ensured that any self-employed support worker has a valid DBS check and is registered with the Disclosure and Barring Service.

#### **7. Obtaining services from an Agency**

If an agency is engaged to provide "personal services" it is your/the nominated/suitable person's responsibility to make sure that the agency is registered with the Care Quality Commission (CQC). If the needs are not of a personal nature (i.e. meal preparation) then an agency may not need to be registered with the CQC.

Contact with the CQC can be made by telephone on 03000 616161 or by e-mail: [enquiries@cqc.org.uk](mailto:enquiries@cqc.org.uk)

#### **8. Repayment**

The Borough Council may require you/nominated/suitable person to repay some or all of the Direct Payment to the Borough Council (this does not affect your rights under sections 9, 10 and 11) if:

- 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.
- Any part/s or all of this agreement has not been complied with.
- Payments have already been received from a 3<sup>rd</sup> party to secure the services or some part of the services.

## **9. Suspension of the Agreement**

If a Direct Payment is not needed for a period exceeding four weeks, for example, if you (the service user) are in hospital, you must inform us immediately so that we can discuss your future payments.

The Borough Council will discuss with you/the nominated/suitable person any contractual agreements and continuing needs you may have this should already be outlined in your support plan, however we will check this situation has not changed. Your Social Worker/ Community Assessment Officer will make a record of when and why the payments are to be suspended.

The Borough Council may suspend the Direct Payment if there is any abuse or risk of any abuse, including financial abuse or any circumstances change.

The Borough Council **may** suspend this agreement with immediate effect if:

- Any of the terms and conditions of this agreement are not being met by you/the suitable person.
- Repeated requests for financial returns are not met.
- Identified financial contributions are not made.
- It is not satisfied that the arrangements made are adequate for securing the services/support that meet the assessed needs, and the outcomes agreed in the support plan.

However, before suspending this agreement the Borough Council will make all reasonable attempts to resolve any issues.

(Please note this list is not exhaustive.)

## **10. Termination of the Agreement**

Either party **may** terminate this agreement by giving to the other party 4 weeks' notice in writing. However, before terminating this agreement the Borough Council will endeavour to provide any appropriate support for the Direct Payment to continue.

The Borough Council may terminate this agreement with immediate effect if:

- The Direct Payment is used for fraudulent purposes.
- Any of the terms and conditions of this agreement are repeatedly breached.
- Any part of the Direct Payment is being used for anything illegal, to gamble, to invest or to lend.
- If following 3 requests the financial returns are not submitted.
- If, following 3 requests the identified financial contributions remain unpaid.
- You/the nominated/suitable person become permanently incapable of managing the Direct Payment or lose mental capacity to manage the Direct Payment.
- As a result of a change in circumstances the needs fall outside of the current eligibility criteria
- There is any permanent residential care or hospital stay.
- There is a safeguarding protection plan in place that requires the Direct Payment to be terminated.
- A safeguarding conference considers that there is abuse or a risk of abuse should the Direct Payment not be terminated.
- A compulsory treatment order due to drug or alcohol dependency is made.

The Borough Council will automatically terminate this agreement upon the award of permanent health care.

If or when this agreement terminates (save for when the agreement terminates due to requiring permanent healthcare), the Borough Council will provide and/or arrange the support services required as long as the needs continue to be eligible for such services/support.

The Borough Council will take account of any employment and contractual responsibilities when serving any notice of termination.

Upon termination of this agreement all money held in the Direct Payment account should be paid immediately to the Borough Council and the account should be closed.

**11. Complaints**

It is in everybody’s interest that the Direct Payment works well. However, if you/the suitable person experience difficulties please discuss these first with the Social Worker/Community Assessment Officer or the Direct Payment Support Team. If these difficulties cannot be resolved in a satisfactory manner or you/the suitable person wish to make a complaint, further information can be found in the leaflet “Complaints, Compliments and Comments” which is available from:

Complaints and Information Governance Team  
Town Hall  
Feetham  
Darlington  
DL1 5QT

Or by e-mailing: [complaints@darlington.gov.uk](mailto:complaints@darlington.gov.uk)

**12. Data Protection**

The personal data that is provided to the Borough Council through this process will be handled in accordance with the Data Protection Act 1998. Any personal data will only be used for purposes arising from this Agreement and for corresponding with you/the suitable person. The Borough Council will not pass personal data on to third parties save for those agencies who are providing support for the Direct Payment or agencies providing funding. By signing this Agreement with the Borough Council you/the suitable person is providing consent for such disclosures.

**13. SIGNATURE SECTION**

**Individual with assessed need**

*(Tick box as appropriate)*

☐ **I confirm that I understand and will comply with the conditions in this agreement.**

Signature of person receiving Direct Payment: -

.....

Name of person receiving Direct Payment: -

.....

Date: .....

**Agreed on behalf of Darlington Borough Council**

Signature of officer: - .....

Name of officer: -.....

Date .....

**Nominated Person:**

A Nominated Person is someone who agrees to take on the full responsibility of a Direct Payment on behalf of an Individual who **HAS** capacity to manage a Direct Payment but chooses to ask someone to manage this for them.

The Borough Council agrees to pay the Direct Payment to the nominated person provided they act in the best interests of the individual and comply with the terms of this Agreement.

The Nominated Person will receive and manage the Direct Payments for the individual under the terms of this Agreement, including providing any requested information, securing the provision of services/support and in dealing with providers or employees.  
*(Tick as appropriate)*

I agree to act as ‘**Nominated Person**’ for: .....  
(Individuals name) and therefore agree to comply with the terms set out in this Agreement.

Signed.....

Print Name .....

Date .....

**Agreed on behalf of Darlington Borough Council**

Signature of officer: -.....

Name of officer: -.....

Date .....

**Suitable Person:**

The Borough Council has assessed that ..... (Please insert name) lacks capacity, as defined in the Mental Capacity Act, to consent to receiving a direct payment. Therefore, only with the appointment of a suitable person, who the Borough Council has agreed to be 'suitable', will the Direct Payment be made.

The Borough Council agrees to pay the Direct Payment to the suitable person provided they act in the best interests of the individual and comply with the terms of this Agreement.

The Suitable Person will receive and manage the Direct Payments for the individual under the terms of this Agreement, including providing any requested information, securing the provision of services/support and in dealing with providers or employees.

*(Tick as appropriate)*

I agree to act as **'Suitable Person'** for: .....  
(Individuals name) and therefore agree to comply with the terms set out in this Agreement.

Signed.....

Print Name .....

Date .....

**Agreed on behalf of Darlington Borough Council:**

Signature of Officer.....

Name of officer .....

Date .....

**Next of Kin or Executor of the Estate**

Signed.....

Print Name .....

Date .....