

## Direct Payment Terms and Conditions Agreement – Customer with Nominee

### 1 Agreement definitions:

1.1 Certain words in this agreement have particular meanings wherever they appear. These words and their meanings are given below.

We, Us	Lincolnshire County Council (LCC) Adult Care, Children's Services, and Lincolnshire Partnership Foundation Trust (LPFT), Lincolnshire Carers Service.
You	The person who is eligible to receive support and the person who has agreed to manage/part manage the Direct Payment as their nominee.
Nominee	A nominated person is someone an adult with capacity has chosen to help with on-going management of the money, or receive and/or manage the Direct Payments on behalf of the person. Any help given can vary depending on your needs.
Family (Close Family)	(a) the spouse or civil partner of the adult; (b) a person who lives with the adult as if their spouse or civil partner; (c) a person living in the same household as the adult who is the adult's; (i) parent or parent-in-law, (ii) son or daughter, (iii) son-in-law or daughter-in-law, (iv) stepson or stepdaughter, (v) brother or sister, (vi) aunt or uncle, or (vii) grandparent; (d) the spouse or civil partner of any person specified in sub-paragraph (c) above who lives in the same household as the adult; and (e) a person who lives with any person specified in sub-paragraph (c) as if that person's spouse or civil partner.
Carer	An adult who provides or intends to provide unpaid care for another adult (needing care).
Your Home	The place where you reside on a permanent basis.
Short Breaks	Short term breaks away from the home.

### 2 Conditions of use:

2.1 **You as the person who is eligible to receive support and you, as their nominee must:**

2.1.1 Use the Direct Payment money to meet the identified needs and outcomes as detailed in the Care & Support Plan.

- 2.1.2 Have an account solely for Direct Payment related use, unless you are receiving a single payment.
- 2.1.3 Be the named account holder for the Direct Payment Account and where your nominee will manage the finances then the Direct Payment Account will need to be in both yours and the nominee's names.
- 2.1.4 Pay the assessed contribution into the Direct Payment Account.
- 2.1.5 Keep records of income and expenses; retain all timesheets, bank statements, receipts and invoices for monitoring and provide these if requested by the Customer Finance Audit Team.
- 2.1.6 Ensure we receive all information which shows how the Direct Payment has been spent and what balances are held in the Direct Payment Account, if requested by us.
- 2.1.7 Meet all legal requirements relating to the support that you purchase, which may include:
- Employer's Liability Insurance
  - Health and safety.
  - National Insurance and Tax.
  - Redundancy.
  - Recruitment and selection of staff.
  - Maintaining employment and payments records for the required seven year period.
- 2.1.8 Have a contingency arrangement in place to provide cover for absences through leave and sickness, if you employ your own staff, rather than pay an agency or service. We will endeavour to make alternative arrangements if the contingency arrangements fail. Brokerage can be accessed by Direct Payment recipients to assist them to find cover where arrangements breakdown.
- 2.1.9 List any equipment on the relevant contents insurance if the item costs over £1,000.
- 2.1.10 Fund any additional costs for care and support, over and above the agreed Direct Payment amount.
- 2.1.11 Arrange Employer's Liability Insurance (ELI) if you are an employer. When arranging ELI, you must disclose both your circumstances to the insurance company, particularly if you do not live together.
- 2.1.12 Repay any surplus funds from the Direct Payment Account as requested by us.

- 2.1.13 Repay any balance that remains and any unpaid contributions following the end of the Direct Payment Account once all liabilities have been discharged.
- 2.1.14 Repay any funds that have not been used for the intended purpose as agreed in the assessment of needs and identified outcomes.
- 2.1.15 Obtain an enhanced DBS check for any person employed, if you are a person with parental responsibility for a person under the age of 18 years in receipt of Direct Payments. We recommend that all persons employed through Direct Payments have an enhanced DBS check. If a child is under 8 and care is to be provided in the employee's home they will need to be a registered child minder.

*N.B. You must obtain an enhanced DBS check for anyone undertaking regulated activity.*

## **2.2 Tell us:**

- 2.2.1 If there is a change in circumstances (e.g. marital status, address, supports needs, financial circumstances).
- 2.2.2 Of any money generated or refunded from the Direct Payment award, for example interest accrued or tax rebates. This money should only be used for the purpose and outcomes detailed in the care and support plan.

## **2.3 You must not:**

- 2.3.1 Use Direct Payments to employ a spouse, partner or other close relative, if that lives in the same household unless we are satisfied that obtaining that service is necessary to satisfactorily meet the outcomes detailed in the care and support plan, and have previously agreed this in writing with a County Manager.
- 2.3.2 Receive help to manage the Direct Payments from anyone who is a paid carer, unless we have previously agreed this in writing. Employ a spouse partner or other close relative to provide administration or management of the Direct Payments unless the Local Authority deems it necessary. You can receive unpaid help to manage the Direct Payment from family members, friends, a designated trust or organisation, or an advocacy group.
- 2.3.3 Use Direct Payments to obtain support services from any Local Authority unless the local has agreed that it would be reasonable in the circumstances to do so.

- 2.3.4 Use Direct payments to fund personal daily living costs, debt repayment, investments, gambling or for any illegal purpose. The Direct Payment should only be used for the purpose and outcomes detailed in the care and support plan.
- 2.3.5 Use Direct Payments for Short term residential care for periods of more than 4 consecutive weeks in a 12 month period. (Periods of short term care less than 4 weeks apart will be combined for this purpose and will add to the total period).
- 2.3.6 Use Direct Payments to pay any personal contributions resulting from a financial assessment.
- 2.3.7 Make cash payments, unless this has been agreed in the care and support plan.

### **3 Carers Payments:**

*N.B. This section is relevant only if you are a carer in receipt of a Direct Payment.*

- 3.1 We will aim to review the Direct Payment during the annual Carer's Review.
- 3.2 We will pay the amount detailed on the agreement as a Direct Payment into the agreed Direct Payment Account.
- 3.3 Payments cannot be made into a Post Office account.
- 3.4 You must retain receipts for the expenditure, for monitoring purposes. The Customer Finance Audit Team will contact you if you need to provide your receipts.
- 3.5 You should highlight and discuss any unspent money with the Lincolnshire Carers Service.
- 3.6 We may recover any money that you have not used or where this has not been used for the intended purpose as agreed in the assessment of needs and identified outcomes.
- 3.7 Other points within these terms and conditions which are relevant to Carers in receipt of a Direct Payment are:
  - (2.1.1) You must use the Direct Payment money to meet the identified needs as detailed in the support plan.
  - (2.1.4) Be the named account holder for the Direct Payment Account and where your nominee will manage the finances then the Direct Payment Account will need to be in both yours and the nominee's names.

- (2.1.11) You must fund any additional costs for care and support, over and above your agreed Direct Payment amount.
- (4.19) We will make all reasonable effort to consult with you before taking any action under these terms and conditions.
- (2.1.15) Repay any funds that have not been used for the intended purpose as agreed in the assessment of needs and identified outcomes.

(8) Problems, Appeals and Complaint.

#### **4 We will:**

- 4.1 Provide information and advice on the operation of Direct Payments within the Local Authority.
- 4.2 Signpost you, the eligible person and you, their nominee to support services that are available to assist with the management of the Direct Payment.
- 4.3 Carry out a basic check with the Direct Payments recipient in the initial 6-8 weeks to ensure that the account is setup and being managed and support is in place.
- 4.4 Review the Direct Payments at least once within 6 months of the Direct Payments being made.
- 4.5 Review the Direct Payments at appropriate intervals not exceeding 12 months thereafter in line with assessment and care management.
- 4.6 Review the Direct Payments if we are notified that it has not been used to purchase services for which it was made.
- 4.7 Review the Direct Payments if we are concerned that you, the nominee are not acting in the best interest of the eligible person.
- 4.8 Review the Direct Payment if we have concerns about your ability to manage the Direct Payment.
- 4.9 Audit all new Direct Payment recipients within 6 months of the Direct Payment being set up.
- 4.10 Use a risk based approach to Audit the use of your Direct Payments in a way that is efficient and proportionate that will support the person to use Direct Payments flexibly in order to meet their needs.

- 4.11 Continue to make payments when you the eligible person have temporary capacity to consent, providing that you, the nominee allow them to manage the payments during periods of capacity, and that you, the eligible person are capable of managing payments during those times.
- 4.12 Help you to find support and seek independent guidance regarding the employment status of any people employed by the eligible person, where the eligible person has lost capacity. However, we will not get directly involved with this process.
- 4.13 Pay you the amount detailed on the agreement as a Direct Payment into the designated Direct Payment Account.
- 4.14 Pay the agreed initial set up costs or reimburse any agreed costs, as detailed on the agreement. These will be paid into the Direct Payments Account.
- 4.15 Pay the Direct Payment at the agreed frequency after you tell us that support is in place.
- 4.16 Review the Direct Payment and financial contribution each year.
- 4.17 Not increase the Direct Payment to cover any VAT payable.
- 4.18 Direct you, the eligible person and you, their nominee to support services that will be able to help you manage the Direct Payment (e.g. help with recruiting new staff, paperwork and managing the Direct Payment money), if required.
- 4.19 Make all reasonable effort to consult with you before taking any action under these terms and conditions.

## **5. We may:**

### **5.1 Suspend the Direct Payment if:**

- 5.1.1 You, the eligible person are temporarily unable to receive support for any reason.
- 5.1.2 There is a break down in the support provided to you, the eligible person and you the eligible person and/or you their nominee are unable to organise alternative support. The Council will ensure that the needs of the individual will be met in the intervening period whilst the break down in support is investigated.
- 5.1.3 We consider that the support the eligible person is receiving is not of an adequate standard, or does not meet their assessed support needs; the Council will provide support in the intervening period so that the individual is not left without support.

## **5.2 End your Direct Payment Agreement if:**

- 5.2.1 There are changes in legislation or other legal circumstances (you will receive 4 weeks written notice prior to this).
- 5.2.2 We are not satisfied that the support that you, the eligible person is receiving is of an adequate standard or meets your support needs (you will receive 21 days written notice prior to this).
- 5.2.3 You have spent the Direct Payments on anything other than meeting the assessed support needs (you will receive 21 days written notice prior to this).
- 5.2.4 You have not complied with the terms and conditions of the Direct Payment Agreement, and you have failed to rectify this within 4 weeks of being notified by LCC (the agreement will end with immediate effect).
- 5.2.5 You have become permanently unable to manage the Direct Payment. Where appropriate, we will make alternative arrangements to ensure the eligible person continues to receive support.
- 5.2.6 You no longer want or are able to act as the nominee.
- 5.2.7 There is evidence that the required contribution to the cost of care is not being paid into the Direct Payment Account.

*N.B. Where people continue to require care and support to meet their assessed need alternative support will be arranged.*

## **6 Short Breaks:**

- 6.1 Direct Payments can be used to purchase a short stay in residential care or a break away from home as detailed in the Support Plan. This is provided that the stay does not exceed 4 consecutive weeks in any 12 month period.
- 6.2 Direct Payments can be used to pay for residential breaks throughout the year unless 4 consecutive weeks have been used in a 12 month period.

*N.B. Where a period between 2 stays is less than 4 weeks apart, the 2 stays should be added together and must not exceed 4 weeks.*

## **7 Equipment:**

- 7.1 If agreed that you can purchase equipment with the Direct Payments you are responsible for paying the provider the full cost of the equipment.



- 7.2 By receiving Direct Payments to purchase the equipment listed in the Support Plan, you understand and agree that you will become the owner of that equipment and must comply with your legal and contractual responsibilities.
- 7.3 You will be responsible for arranging the following:
- Insurance
  - Installation
  - Maintenance and upkeep
- 7.4 You will be responsible for ensuring appropriate use of the equipment.
- 7.5 You will be responsible for the disposal and cost of any unwanted equipment bought with the Direct Payment.
- 7.6 Any income raised by the disposal of equipment must be put towards the cost of meeting the eligible person's assessed support needs or repaid to us.

## **8 Problems, Appeals and Complaints:**

- 8.1 If you have any queries, are unhappy or disagree with any aspect of your Direct Payment, please contact the Customer Service Centre for Adults' (01522 782155) or Children's (01522 782111), or your allocated Carer's Support Worker.
- 8.2 If you have any issues or complaints with your service provider, please contact them directly.
- 8.3 If you wish to make a complaint to LCC you should follow the Complaints Procedure detailed on [www.lincolnshire.gov.uk](http://www.lincolnshire.gov.uk) or write to Corporate Complaints, Serco Local & Regional Government, PO Box 841, Lincoln, LN1 1ZE.
- 8.4 If you wish to make a complaint to Lincolnshire Partnership Foundation Trust, you can contact them on 01529 222265 or write to Complaints Department, Unit 9, The Point, Lions Way, Sleaford, NG34 8GG.