

Direct Payment Terms and Conditions Agreement – Customer with Authorised Person

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 has agreed to receive and manage the Direct Payment on behalf of a person who is eligible to receive support.
Authorised / Suitable Person	<p>If someone has been found as lacking the capacity to consent to receive Direct Payments, and yet Direct Payments would be beneficial, a Direct Payment can be made if there is someone who is willing and able to fulfil the role of an "authorised person". The law tells the council who can act as this authorised person. This is either:</p> <p>a) A Court of Protection deputy for personal welfare or an Attorney under a Lasting Power of Attorney for personal welfare</p> <p>b) where the person is not authorised as mentioned in paragraph (a), but a person who is so authorised agrees with the Local Authority that the person is a suitable person to whom to make Direct Payments, or</p> <p>Where no one fills a) or b) above the authorised person can be someone who the Local Authority considers to be a suitable person for Direct Payment purposes.</p>
Family (Close Family / Relative)	<p>(a) the spouse or civil partner of the adult;</p> <p>(b) a person who lives with the adult as if their spouse or civil partner;</p> <p>(c) a person living in the same household as the adult who is the adult’s;</p> <p>(i) parent or parent-in-law,</p> <p>(ii) son or daughter,</p> <p>(iii) son-in-law or daughter-in-law,</p> <p>(iv) stepson or stepdaughter,</p> <p>(v) brother or sister,</p> <p>(vi) aunt or uncle, or</p> <p>(vii) grandparent;</p> <p>(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</p> <p>(e) a person who lives with any person specified in sub-paragraph (c) as if that person’s spouse or civil partner.</p>
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 authorised or suitable person must:

- 2.1.1 Use the Direct Payment money to meet the identified needs and outcomes as detailed in the Care & Support Plan of the eligible person.
- 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.
- 2.1.4 Pay the assessed contribution into the Direct Payment Account.
- 2.1.5 Notify the Local Authority if you reasonably believe that the adult no longer lacks the capacity to request the making of the Direct Payments.
- 2.1.6 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.
- 2.1.7 Ensure we receive all information which shows how your Direct Payment has been spent and what balances are held in the Direct Payment account, if requested by us.
- 2.1.8 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.
- 2.1.9 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 for the eligible person to assist finding cover where arrangements breakdown.
- 2.1.10 Arrange Employer's Liability Insurance (ELI) if the eligible person is an employer. When arranging ELI, you must disclose yours and the eligible person's circumstances to the insurance company, particularly if you do not live with the assessed person.
- 2.1.11 List any equipment on the relevant contents insurance if the item costs over £1,000.

- 2.1.12 Fund any additional costs for the eligible persons care and support, over and above the agreed Direct Payment amount.
- 2.1.13 Repay any surplus funds from the Direct Payment Account as requested by us.
- 2.1.14 Repay any balance that remains and any unpaid contributions following the end of the Direct Payment Account once all liabilities have been discharged.
- 2.1.15 Repay any funds that have not been used for the intended purpose as agreed in the assessment of needs and identified outcomes.
- 2.1.16 Where the authorised person is not a close family member, they must have a satisfactory Disclosure and Barring Service (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) in relation to the eligible person.
- 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 yourself, a spouse, partner or other close relative, if that lives in the same household as the Direct Payments recipient unless we are satisfied that obtaining that service is necessary to satisfactorily meet the eligible person's needs, 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 Payment 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 Authority 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 We will:

- 3.1 Provide information and advice on the operation of Direct Payments within the Local Authority.
- 3.2 Need to be satisfied that the authorised person will act in the best interests of the assessed person when securing services; that the authorised person is capable of managing the Direct Payment with or without support; that it would be appropriate to make the Direct Payment to the authorised person.
- 3.3 Signpost you the authorised person/suitable person to the support services that are available to assist with the management of the Direct Payment.
- 3.4 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.
- 3.5 Review the Direct Payments at least once within 6 months of the Direct Payments being made.
- 3.6 Review the Direct Payments at appropriate intervals not exceeding 12 months thereafter in line with assessment and care management.
- 3.7 Review the Direct Payments where we have reasonable grounds to believe the assessed person no longer lacks capacity. We will not end the Direct Payment until new arrangements are in place for the eligible person to manage their own Direct Payments with or without support and has consented to receive the Direct Payment.

- 3.8 Review the Direct Payments if we are notified that it has not been used to purchase services for which it was made.
- 3.9 Review the Direct Payments if we are concerned that you are not acting in the best interest of the eligible person.
- 3.10 Review the Direct Payment if we have concerns about your ability to manage the Direct Payment.
- 3.11 Audit all new Direct Payment recipients within 6 months of the Direct Payment being set up.
- 3.12 Use a risk based approach to audit the use of the 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.
- 3.13 Continue to make payments when the eligible person's capacity to consent is temporary, providing that you allow them to manage the payments during periods of capacity, and they are capable of managing payments during these times.
- 3.14 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.
- 3.15 Pay you the amount detailed on the agreement as a Direct Payment into the designated Direct Payment Account.
- 3.16 Pay the agreed initial set up costs or reimburse any agreed costs, as detailed on the agreement. These will be paid onto the Direct Payments Account.
- 3.17 Pay the Direct Payment at the agreed frequency after you tell us the support is in place.
- 3.18 Review the Direct Payment and the financial contribution each year.
- 3.19 Not increase the Direct Payment to cover any VAT payable.
- 3.20 Direct you to support services that will be able to help you manage your Direct Payment (e.g. help with recruiting new staff, paperwork and managing the Direct Payment money), if required.
- 3.21 Make all reasonable effort to consult with you before taking any action under these terms and conditions.

4 We may:

4.1 Suspend the Direct Payment if:

- 4.1.1 The eligible person is temporarily unable to receive support for any reason.
- 4.1.2 There is a break down in the support provided to the eligible person and you 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.
- 4.1.3 We consider that the support the eligible person is receiving is not of an adequate standard, or does not meet their assessed support; the Council will provide support in the intervening period so that the individual is not left without support.

4.2 End the Direct Payment Agreement if:

- 4.2.1 There are changes in legislation or other legal circumstances (you will receive 4 weeks written notice prior to this).
- 4.2.2 We are not satisfied that the support the eligible person receives is of an adequate standard or meets their support needs (you will receive 21 days written notice prior to this).
- 4.2.3 You have spent the Direct Payments on anything other than meeting the eligible person's assessed support needs (you will receive 21 days written notice prior to this).
- 4.2.4 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).
- 4.2.5 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.
- 4.2.6 You no longer want or are able to act as the authorised person.
- 4.2.7 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.

5 Short Breaks:

5.1 Direct Payments can be used to purchase a short stay in residential care or a break away from home as detailed in the eligible person's Support Plan. This is provided that the stay does not exceed 4 consecutive weeks in any 12 month period.

5.2 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.

6 Equipment:

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

6.2 By receiving Direct Payments to purchase the equipment listed in the eligible person's Support Plan, you understand and agree that you will become the owner of that equipment and must comply with your legal and contractual responsibilities.

6.3 You will be responsible for arranging the following:

- Insurance
- Installation
- Maintenance and upkeep

6.4 You will be responsible for ensuring appropriate use of the equipment.

6.5 You will be responsible for the disposal and cost of any unwanted equipment bought with the Direct Payment.

6.6 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.

7 Problems, Appeals and Complaints:

7.1 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.

7.2 If you have any issues or complaints with the service provider, please contact them directly.

- 7.3 If you wish to make a complaint to LCC you should follow the Complaints Procedure detailed on www.lincolnshire.gov.uk or write to Corporate Complaints, Serco Local & Regional Government, PO Box 841, Lincoln, LN1 1ZE.
- 7.4 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.