**DIRECT PAYMENTS AGREEMENT**

Adult Social Care, Carers Services and Children’s Services

Care Act, 2014

Care and Support (Direct Payments) Regulations 2014

**This agreement is between:**

**BOROUGH OF TELFORD & WREKIN** of Darby House, Lawn Central, Telford, TF3 4JA

***(Referred to in this document as (‘we’ or ‘us’)***

**And**

The person(s) receiving the direct payment

**Name**

**ID Number:**

**Address Line 1**

**Address Line 2**

**Telford**

**Postcode**

***(Referred to in this document as (‘you’)***

**And**

Authorised/Nominated Person (the person supporting you with your direct payment)

**Name**

**ID Number:**

**Role**

**Address Line 1**

**Address Line 2**

**Telford**

**Postcode**

***(Referred to in this document as (“Authorised/Nominated Person” )***

You and/or the Authorised or Nominated Person will have received, read and understood, a series of fact sheets during the process of setting up your direct payment giving you a range of information about the Direct Payments Scheme. This agreement is the document that tells you about your direct payment – your money, how you will be paid and how it will be monitored. It needs to be read in conjunction with the Telford & Wrekin Direct Payments Fact Sheets and it contains details of the following:

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**1 Basis of the Agreement**

 This agreement is made on the basis that:

1.1 An assessment of your needs has been completed using the Care Act 2014 criteria and you are eligible to receive support services as identified/shown in your Support Plan to meet specific outcomes.

1.2 You have asked to manage your Personal Budget and arrange your care and support via a Direct Payment. You are either willing and able yourself to choose and arrange the care and support detailed in your Support Plan, or you have nominated another person (called your Nominated Person or Authorised Person in this agreement) who has agreed to receive your Direct Payment and do this on your behalf.

 Please see section 8 for more details.

1.3 We have explained what needs you can meet with your Direct Payment and we are satisfied that you are, or your Authorised/Nominated Person is, capable of managing the Direct Payment with whatever help you are able to access if this is needed to help you to do this successfully.

1.4 We are satisfied that making a Direct Payment to you or your Authorised/Nominated Person is an appropriate way to meet your needs.

1.5 You set up a Fairshare credit union or separate bank account to receive your Direct Payment. There should be no transactions from this account unless they are related to the Direct Payment. For example, a top up may be made into this account for the purpose of additional hourly rate for the Direct Payment purposes. This will need to be agreed with the local authority in the first instance, and/or the purchase of PPE.

1.6 You agree to tell us straight away if your circumstances change in a way which might affect your ability or eligibility under the Care Act to receive a Direct Payment.

**2. About the Direct Payment**

**The Direct Payment and Your Client Contribution**

2.1 Your Direct Payment is currently £……….. per week 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 care and support. If it does we will tell you.

2.2 The starting date for your Direct Payment is ………./………./………..

2.3 Payments will be made in advance every four weeks or as agreed in your support plan, directly into your separate nominated Direct Payment account.

2.4 If you are receiving support as an adult (over 18 years old) you will have been financially assessed and been advised what you have available to pay towards the cost of the care and support you want. This is called your Client Contribution.

Your Contribution is £………. per week. You must inform us if your financial circumstances change as this may impact on your client contribution.

2.5 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.

2.6 Failure to pay your client contribution, may result in us invoicing you for this amount. Failure to pay upon receipt of a Final Reminder, will also lead to the debt being passed without notice to either our Legal Department or an external debt collection agency. Further charges/costs may then also become charged.

2.7 Failure to pay your Client Contribution may also result in the termination

of your Direct Payment. We will then agree with you how your care needs will be met.

1. **How to Use Your Direct Payment:**

3.1 Your direct payment is to be used to pay for the support as detailed in your Support Plan, you must ensure that contingency arrangements are in place in case of any emergencies. Should you wish to change arrangements you should contact your allocated worker or the duty worker from your Adult or Children’s Social Care locality team.

Your Team is …………………………………and their contact details are ………………………………

3.2 You may wish to use a care agency. Care provided by a care agency is not usually purchased through a Direct Payment. If you do wish to purchase care from an agency you will need to discuss this with your allocated worker to determine if this is an option. If you do purchase support from an agency we recommend that you purchase care from a provider who is registered with the Care Quality Commission or Ofsted who inspect the standards provided by agencies nationally.
You will be able to find a list of providers in your area available from the Live Well Telford directory <https://livewell.telford.gov.uk/> or [telfordsend.org.uk](https://www.telfordsend.org.uk/)

3.3 You will agree to pay back to us any Direct Payment money which is not used to meet your agreed outcomes as set out in your Support Plan.

You will repay the Direct Payment money to us if:

(a) You have not met any of the terms of this agreement; or

(b) You have received payment from someone else to meet your care and support needs which we did not know about when the Direct Payment was agreed;

(c) Direct Payments end for any reason

(d) If, when requested, you have not provided satisfactory financial monitoring of your Direct Payment, within 4 weeks, by you or your Authorised/Nominated Person

(e) You have used your Direct Payment for something other than meeting your care and support needs as agreed in your Support Plan

(f) Any additional costs that are not in your support plan e.g. mileage and activities will be your responsibility to fund.

3.4 If the person receiving the care and support via a Direct Payment passes away the obligation passes to the administrators/executors of the estate for repayment of the Direct Payment to the council.

3.5 If the Direct Payment is a one-off payment or 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.

1. **General Rules about Using Personal Assistants**

**If you are employing Personal Assistants your allocated worker and/or the Direct Payment Officers can support you with this.**

4.1 If you will be employing a Personal Assistant you must take out an enhanced Employer’s Liability Insurance and Public Liability Insurance before the Personal Assistant starts working for you. This can be paid for out of your Direct Payments. An initial payment can be made to you so that you can do this.

4.2 Your Direct Payment cannot be paid until you have these insurances in place and have let us know that this has been arranged. We may ask you for evidence of this. You must renew these insurances as required this is usually annually, but you must check with the insurance provider Mark Bates.

4.3 The law tells us you cannot employ anyone who lives in the same household without first getting agreement from your allocated worker. This can only be given where exceptional circumstances are shown. If there are exceptional circumstances we will agree in writing that this arrangement is acceptable. Your allocated worker will explain this process to you.

4.4 You may want to pay a self-employed Personal Assistant. This means when you pay them you don’t need to take off tax, national insurance or pension. They should be doing this themselves. You also do not pay them holiday pay and they do not need to have an employment contract with you.

They should show you evidence of their terms and conditions and provide you with a contract to sign. They will very likely set their own fees, which you will need to discuss with them before they start working with you.

They will send you an invoice for their fees, this again needs to be decided before they commence working with you and they must provide proof of their own Liability insurance. They will also have their own DBS check; you should request a copy of this and keep the copy for your records. They should have any equipment they need to do their job and talk to you about your needs and how you wish for your care and support to be provided to you. They will also organise and pay for their own training; you should speak to them about what training and development would support them to support you better. They should also organise cover when they go away so your care and support is provided to you when they are on leave.

Please refer to DP employer’s handbook for more advice and guidance. You can access this online at:

<https://livewell.telford.gov.uk/Information/Details/30?categoryId=1824>

4.5 You must act as a responsible employer and make all your arrangements in line with employment legislation. You must retain sufficient funding from your Direct Payment each week to cover your potential employer responsibilities. Information, guidance and support can be given to help you do this. Your allocated worker can provide you with a copy of the Direct Payment employer’s handbook.

4.6 We strongly recommend that you carry out checks with the Disclosure and Barring Service on any staff you are intending to employ. If you are employing a Personal Assistant and children will be present in the household the Council must undertake the checks on your behalf. If you employ new Personal Assistants at a later date the same checks must be undertaken. Guidance is available to help you do this.

 If you do not wish to carry out a DBS check you must tell us why, we will need to discuss this with you, your nominated/authorised person. It is important that DBS checks are carried out on all PA’s, and each time you employ a new PA.

Receiving a positive DBS check does not mean you are unable to employ a PA, it does mean you have all the information available to you to make a decision about your PA. **You must speak to your allocated worker before you go ahead and employ a PA.**

Where an individual does not have capacity to manage their Direct Payment and have an authorised person a Mental Capacity Assessment must be completed and a Best Interest Meeting held to support decision making.

We will need you to sign a waiver stating that you are employing a PA against our recommendations without a DBS check or if there are concerning convictions on the DBS check.

 **You must not employ a PA without a DBS or DBS waiver in place.**

A copy of the DBS Check waiver declaration can be found in Appendix 1.

4.7 We strongly recommend you do not use people who say they are self-employed Personal Assistants until you have carried out all the relevant checks with Her Majesty’s Revenue and Customs (HMRC) and the Council agree you have met the conditions. It is highly unlikely that HMRC will recognise a Personal Assistant as being self-employed. You must tell the Council if you are considering or start using self-employed Personal Assistants. 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.

4.8 When employing a Personal Assistant there may be a need to provide additional training. Funds to support this training can be accessed via Skills for Care. There may be circumstances that the local authority will include the funds within your Direct Payment. You need to speak to your allocated worker, locality team or the Direct Payment Support Provider in the first instance.

4.9 You must have employment contracts in place for all of your PA’s and we retain the right to ask for copies of these at any point. This must also be communicated to your PA.

# **5 You agree not to use your Direct Payment:**

1. For health related services – such as dentist, chiropody, physiotherapy, appointments etc.
2. For household expenses, such as food, personal items or utility bills etc.
3. For accommodation - rent, mortgage payments etc.
4. 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)
5. For anything that is illegal or to purchase services that do not keep you safe and well;
6. For gambling, lottery, bingo tickets, raffle tickets, alcohol or cigarettes;
7. To pay for long-term residential care. You can use it for a short stay provided it does not exceed a period of 4 consecutive weeks in any 12- month period;
8. For anything that is not an activity that will assist you to achieve your agreed outcomes on your support plan. If you wish to change your agreed support plan you must get the Council’s agreement. Failure to do this may result in your Direct Payment stopping and alternative care provision being arranged on your behalf.

**What you can use your Direct Payment for:**

You can use a Direct Payment to buy support which meets your eligible needs and achieves your agreed outcomes. The outcomes will be documented in your care and support plan.

Examples of acceptable use are:

* Help with personal care
* Day Care Services
* Help with daily living activities
* Support to promote independence
* Short stay/respite care
* Personal Assistant costs including public liability/employment liability
* Other services identified in your support plan

This is not a full list. Please contact your allocated worker if you are not sure what you can pay for with the Direct Payment funds.

**6** **What Records You Should Keep**

6.1 You are responsible for using your money as agreed under the terms of this agreement and in your Support Plan, with the assistance of the Authorised/Nominated Person as agreed.

6.2 Your Direct Payment you be reviewed with your allocated worker and a Direct Payments Support Officer. You will have to submit financial monitoring after 3 months of having your Direct Payment, then again at 6 months.

You will need to keep financial records, e.g. bank statements, receipts and invoices of how the money has been spent and complete financial returns forms which will need to be submitted to us. These will be requested on an annual basis. We can/may request these on your behalf if you have a Fairshare Credit Union account. If it is felt that the Direct Payment needs amending we will discuss this with you – you may require a review of your circumstances.

If there are surplus funds in your Direct Payment account, monies that have not been spent, these must be returned to the council. We can/may request these on your behalf from a Fairshare Credit Union account. For a High Street bank account you will need to liaise with our Direct Payment Officers.

* 1. If you do not provide any requested information within a 4 week period of the request being made to you or your Authorised/Nominated Person your Direct Payment could be suspended or terminated.

As part of our commitment to you, we will review your care and support on an annual basis or sooner if required. If your circumstances change at any point you can contact your Adult or Children’s Social Care Team.

You or your nominated/authorised person will hold confidential information about a PA and may need to securely share this with a payroll company as per your agreement with the payroll company. The council may also request information from you or your nominated/authorised person and/or your payroll company.

Telford & Wrekin Council will not share any personal data collected with external organisations unless required/permitted to do so by law. However, there may be occasions where we request further information from key third party organisations such as Health or Provider organisations. For further details on the council's privacy arrangements please view the privacy page on the council's webpage: <http://www.telford.gov.uk/terms>

1. **If Your Arrangements Break Down Or Your Needs Change**

7.1 If things go wrong, or your circumstances change which may impact on your care and support and/or client contribution you should contact your allocated worker, the Direct Payments Officer or Telford Adult or Children’s Social Care team. They will assist you to make other support arrangements to meet your assessed needs, if necessary. You may change care agencies or hire different Personal Assistants independently if you wish, as long as this is within the current level of funding.

7.2 If your needs or circumstances change you must contact us.

7.3 If you go into hospital or respite please ensure you and/or your Authorised/Nominated Person or someone close to you notifies us as soon as possible. If you employ a Personal Assistant they may be able to continue to support you but we must be contacted first.

1. **The role of the Authorised and Nominated Persons**

8.1 An individual can have a nominated person to support them with the delivery of their Direct Payment. The nominated person would be chosen by the individual to support with the running and delivery of their Direct Payment. In order for a nominated person to be identified the following conditions need to be met:

* The individual has capacity to make the request, and where there is a nominated person, that person agrees to receive the payments.
* The local authority has not identified any concerns or issues in giving you or the nominated person a Direct Payment, you and/or the nominated person will be advised if this is the case.
* The local authority is satisfied that the person or nominated person is capable of managing the Direct Payment independently, or with whatever help the authority thinks the person or nominated person will be able to access.
* If the nominated person to support the Direct Payment is not identified under a Mental Capacity Assessment and Best Interest decision, but there is a person who is, this person must agree with the nominated person in supporting the Direct Payment.
* The local authority is satisfied that making a Direct Payment to the person or nominated person is an appropriate way to meet the needs in question.

**Failure to meet these conditions would result in a refusal/termination of the Direct Payment.**

Once the nominated person has been identified the local authority should consider whether the nominated person is involved in the care and support planning stage. The nominated person needs to understand their legal obligation to act in the best interests of the person receiving care and support via a Direct Payment. The nominated person should receive the following:

* information regarding the local authorities direct payments processes
* information and advice on using and managing the direct payment

8.2 When a person has been assessed as lacking capacity to request a Direct Payment, an authorised person can request the Direct Payment on the person’s behalf; in order for this to be agreed a Mental Capacity Act and Best Interest Decision needs to be documented. A person with power of attorney can act, and their power of attorney will need to be evidenced to the local authority. The person identified through the Best Interest Decision is the Authorised Person.

The Authorised Person can request the Direct Payment on the person’s behalf; the following 4 conditions must be met before the Direct Payment can be agreed:

* The local authority is not prohibited by regulations under section 33 from meeting the adult’s needs by making direct payments to the authorised person.
* The local authority is satisfied that the authorised person will act in the adult’s best interests in arranging for the provision of the care and support for which the direct payment under this section would be used.
* The local authority is satisfied that the authorised person is capable of managing the direct payment by himself or herself, or with whatever help the authority thinks the authorised person will be able to access.
* We are satisfied the Direct Payment can meet the individuals level of need.
* The local authority is satisfied that making direct payments to the authorised person is an appropriate way to meet the needs in question.

**Failure to meet these conditions would result in a refusal/termination of the Direct Payment.**

1. **Comments, Compliments and Complaints**

9.1 You have the right to comment, complain and compliment about the operation of this agreement using our complaints procedure (a copy of which will be provided on request). However, this procedure cannot be used for problems you may have with your employees or agencies that you contract with.

9.2 Legal issues arising with third parties may require independent legal advice to be obtained by you or the Authorised/Nominated person

1. **Ending The Agreement**

10.1 You and/or your Authorised/Nominated Person may end this Agreement by telling us in writing at least four weeks before the date you want it to end.

10.2 We may terminate this agreement immediately if, after investigation, it is found that you or your Authorised/Nominated Person are using the money illegally, not in your best interests or you or your Authorised/Nominated Person are not complying with any part of this agreement.

10.3 Before terminating the agreement, we shall work with you and/or your Authorised/Nominated Person or any other representative, to find a solution to the problems wherever possible.

10.4 You will need to instruct your payroll provider to complete all outstanding payments to your employees, HM Revenue and Customs and agencies and then provide financial returns forms to us to finalise your direct payment account.

10.5 Any money left in the direct payment account will need to be returned to us within 28 days. We can request these back to the local authority from Fairshare Credit Union accounts.

10.6 Direct Payment 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.

 Funds are not to be used for funeral expenses and is it worth inserting a request that authorised/nominated persons advise the Council immediately should the direct payment recipient pass away.

10.7 We may ask for money to be repaid if it has not been used to buy the support set out in your Support Plan.

10.8 Any direct payment monies remaining in the account following termination of the agreement must be returned to us.

1. **Signatures**

Here, both/all parties are signing up to the agreement and agree to abide by its terms. This means that the fact sheets have been read and understood and that all parties understand their rights and responsibilities

|  |
| --- |
| **Us – Borough of Telford & Wrekin**  |
| Signature on behalf of Telford & Wrekin Council: |  |
| Print name: |  |
| Date: |  |

|  |
| --- |
| **You – The Person Receiving the Direct Payment** |
| Signature: |  |
| Print name: |  |
| Date: |  |

|  |
| --- |
| **Authorised/Nominated Person**  |
| Signature: |  |
| Print name: |  |
| Date: |  |

Your Direct Payment start Date will be: / /

**How Your Information May Be Used**

**Telford & Wrekin Council Adult and Children’s Social Care are collecting your personal data to enable the best possible advice, care or support to be provided and to meet the statutory requirements under the Care Act 2014, wider legislation and Article 9(2)(c) & (h) of the Data Protection Act (DPA) 2018**

**Telford & Wrekin Council will not share any of your personal data collected with external organisations unless required to do so by law. However, there may be occasions where we request further information from key third party organisations such as Health or Provider organisations. For further details on the council’s privacy arrangements please view the privacy page on the council’s** [**website page**](http://www.telford.gov.uk/terms)**.**

**Appendix 1**

**DBS Check waiver declaration**

We strongly recommend that you carry out checks with the Disclosure and Barring Service on any staff you are intending to employ. If you are employing a Personal Assistant and children will be present in the household the Council must undertake the checks on your behalf - the payment will not start until these checks have been completed. If you employ new Personal Assistants at a later date the same checks must be undertaken. Guidance is available to help you do this.

 If you do not wish to carry out a DBS check you must tell us, we will need to discuss this with you, your nominated/authorised person. It is important that DBS checks are carried out on all PA’s, and each time you employ a new PA.

Receiving a positive DBS check does not mean you are unable to employ a PA, it does mean you have all the information available to you to make a decision about your PA. **You must speak to your allocated worker before you go ahead and employ a PA.**

Where an individual does not have capacity to manage their Direct Payment and have an authorised person a Mental Capacity Assessment must be completed and a best Interest Meeting held to support decision making.

We will need you to sign a waiver stating that you are employing a PA against our recommendations without a DBS check or if there are concerning convictions on the DBS check.

**You must not employ a PA without a DBS or DBS check waiver declaration in place.**

We may terminate this agreement immediately if, after investigation, it is found you or your Authorised/Nominated Person are using the money illegally, not in your best interests or you or your Authorised/Nominated Person is not complying with any part of this agreement.

This declaration states you have discussed your reasons not to carry out a DBS check against the council’s advice. You have been advised of the importance of carrying out a DBS check – we are satisfied that you understand the importance of the DBS check and the information it holds to provide safeguards as needed.

If at any time you change your mind and wish to carry out a DBS check you can contact your allocated worker and/or Direct Payment Officer who will carry out the check on your behalf.

|  |
| --- |
| **Us – Borough of Telford & Wrekin**  |
| Signature on behalf of Telford & Wrekin Council: |  |
| Print name: |  |
| Date: |  |
| **You – The Person Receiving the Direct Payment** |
| Signature: |  |
| Print name: |  |
| Date: |  |
| **Authorised/Nominated Person**  |
| Signature: |  |
| Print name: |  |
| Date: |  |

**How Your Information May Be Used**

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**Telford & Wrekin Council will not share any of your personal data collected with external organisations unless required to do so by law. Telford & Wrekin Council understands that You may utilise the services of a third-party payroll company to process any payments due under this agreement.**

**Please note that Telford & Wrekin Adult Social Care or Children’s services may request that the personal data information held by the payroll company, and/or the person processing payroll/payments is shared with us.**

**For further details on the council’s privacy arrangements please view the privacy page on the council’s** [**website page**](http://www.telford.gov.uk/terms)**.**