

# Wandsworth Council

## Direct Payment Agreement



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## Direct Payment Agreement

### 1. Introduction

This Agreement sets out the responsibilities and obligations of:

a) The London Borough of Wandsworth

And

b) The Direct Payments Recipient for the receipt, use and management of the Direct Payment.

### 2. Service user or carer details

Name:

Date of birth:

Address:

Post code:

Telephone:

Mobile:

Email:

Mosaic number:

### 3. Who will manage the Direct Payment?

- |  |                          |                  |
|--|--------------------------|------------------|
| a) The person will manage their own Direct Payment   | <input type="checkbox"/> | Go to Section 5  |
| b) The person has identified a suitable person (e.g. friend or family member) to manage the Direct Payment on their behalf   | <input type="checkbox"/> | Go to Section 4a |
| c) The Direct Payment will be managed by a Direct Payment Support Provider commissioned by the Council and the care responsibilities will be overseen by an identified suitable person | <input type="checkbox"/> | Go to Section 4b |

## 4a. Nomination of a suitable Representative

This Section should be completed where an individual has been chosen to manage the Direct Payment on behalf of the Service User or Carer.

Name of Representative or Organisation: \_\_\_\_\_

Address: \_\_\_\_\_

Post code: \_\_\_\_\_

Telephone: \_\_\_\_\_

Email: \_\_\_\_\_

## 4b. Nomination of a suitable Organisation

This section should be completed where an organisation has been chosen to manage the Direct Payment on behalf of the Service User or Carer. The organisation will manage the budget but the representative is responsible for the overseeing the care

Name of Representative or Organisation: \_\_\_\_\_

Address: \_\_\_\_\_

Post code: \_\_\_\_\_

Telephone: \_\_\_\_\_

Email: \_\_\_\_\_

## 5. Terms of this Agreement

The Council has completed an assessment of your needs and agreed that you are eligible for care and support. You have agreed with our assessment and are aware of your eligible needs.

You have told us what support you want and have completed your Support Plan. The Council has agreed this Support Plan to meet your eligible needs. You have told us that you would like to arrange some or all of your support yourself and that you and/or your representative(s) are willing and able to secure support to meet your agreed outcomes as outlined in your Support Plan.

### 5.1 It is agreed between the parties as follows:

The Council has agreed to make a Direct Payment to enable you and/or your representative(s) to purchase the Services agreed in your Support Plan. The money advanced to you and/or your representative(s) in this way is solely for the purchase of the Services to achieve the outcomes identified in your Support Plan.

The Council will be entitled to recover any underspend or misappropriation (theft) of Direct Payment funds from the Account as a debt and this may result in a review of your eligible needs.

## **5.2 You agree to undertake as follows:**

You and/or your representative(s) acknowledge that you have received sufficient information and support relating to the receipt and use of your Direct Payment and that you are aware of your obligations in receiving the Direct Payment from the Council.

You and/or your representative(s) agree to only use your Direct Payment to meet the outcomes outlined in your Support Plan. You can use the money flexibly to meet your eligible care and support needs, provided you achieve value for money and you can demonstrate how your support is contributing to your agreed outcomes.

You and/or your representative(s) agree to take responsibility for making reasonable and sensible arrangements to meet the outcomes agreed in your Support Plan and complying with all legal requirements. You agree not to use your Direct Payment for illegal purposes.

Direct Payments cannot be spent on:

- Anything that does not help to meet the outcomes set out in the plan;
- Anything that makes life worse for the person or place them at intolerable risk;
- Anything illegal, including paying people cash in hand;
- Any services provided directly by the local authority;
- Support provided by a spouse, partner or family members who lives with the person;
- Long-term stays in care homes, excluding short stays such as respite;
- Household bills, clothes, food, paying off debt or anything not related to their assessed eligible care and support needs;
- Major daily living equipment or adaptations to your house;
- Anything that does not represent value for money, for example where a valid cheaper alternative available;
- Services which should be provided by the NHS;
- Service which would normally be funded through other government benefits or schemes.

## **5.3 Employing workers**

You and/or your representative(s) shall be responsible directly for the day-to-day management of your Direct Payment including that of employing suitably qualified workers where required or necessary, to provide the support identified within your Support Plan in the manner agreed with your employees.

When employing any persons referred to above, you and/or your representative(s) shall comply with all the legal duties and obligations as an employer in the United Kingdom including payment of tax, National Insurance, Statutory Maternity Pay (SMP) or Paternity Pay (SPP), National Living Wage, Pensions and statutory sick pay.

You and/or your representative(s) agree to enter into a written agreement of employment or contract for these services, which clearly sets out the roles and responsibilities of each party. You and/or your representative(s) agree that the Council is not a party to any such contract of employment or for services between you and a personal assistant or service provider.

When employing any persons referred to above, you and/or your representative(s) would be responsible for all matters relating to the recruitment, right to work in the UK, health and safety, training, day to day activities, supervision, suspension and termination of employment or services from persons providing support and care.

It is your obligation to ensure that you only employ people who have the right to work in the UK. This means that you will need to obtain and check the validity of the person's original documents showing their right to remain and work in the UK, such as passport, national identity card or other acceptable documents and other supporting documents (e.g. documents confirming change of name), make and retain clear copies and record the date the check was made. These checks shall be conducted before the employment starts. You will need to conduct follow-up checks on employees who have time-limited permission to live and work in the UK shortly before their permission to work expires. You shall not employ anyone you know or have reasonable cause to believe is an illegal worker. Further guidance on the acceptable documents and verification process can be found in An Employer's Guide to Right to Work Checks as might be amended from time to time and available in a Publications section at [www.gov.uk](http://www.gov.uk).

You and/or your representative(s) must confirm the identity of the employer of any care provider and to take all reasonable steps to ensure that any persons employed by you shall not be of the impression that they are an employee or agent of the Council.

#### **5.4 Buying Services from family members or friends**

You and/or your representative(s) shall not use your Direct Payment to secure the Services from a spouse (i.e. husband or wife or Civil Partner), a family member (i.e. son, daughter, step son/daughter, aunt, uncle, parent, parent-in-law, grandparent, brother, sister), or a partner (the other member of an unmarried couple) who lives in the same household as you unless the Council has provided prior written consent.

#### **5.5 Safeguarding**

You and/or your representative(s) shall ensure that when employing persons that will have unsupervised access to children or other vulnerable people while providing the Service that a Disclosure and Barring Service (DBS) check must be carried out to ensure that the person has no relevant criminal convictions that would preclude them from working with children or vulnerable people. Confirmation that appropriate DBS checks have been made must be provided to the Council upon request.

You and/or your representative(s) acknowledge that it is an offence under the Criminal Justice and Court Services Act 2000 and Safeguarding Vulnerable Groups Act 2006 for anyone to knowingly offer or procure work with children or vulnerable people to any individual who is disqualified from working with vulnerable people or children, or allow such an individual to continue in such work.

You and/or your representatives(s) agree to fully cooperate with the Council and persons undertaking investigations for and on behalf of the Safeguarding Adults Board and to disclose information requested to assist such investigations.

#### **5.6 Insurance**

When employing persons referred to above, you and/or your representative(s) shall ensure you have adequate Employer's Liability and Public Liability insurance in place to cover any employment related claims, including redundancy and liability associated with the employment of staff and care provided in your home. The relevant insurance policy must be produced within fourteen (14) days of the start date of Direct Payments and annually during the period of this agreement.

## **5.7 Liabilities**

The Council shall not be responsible for any claims, losses, liabilities or demands of any kind whatsoever (including property damage) arising out of or in relation to this agreement except for that which may arise due to the negligence of the Council, its officers, or agents and for death or personal injury any person employed by you occurring in the performance of the Service.

You agree to indemnify the Council against any claims relating to acts or omissions by you or personal assistants engaged by you and funded by Direct Payments.

## **5.8 Retention of Records for Audit**

Her Majesty's Revenue and Customs (HMRC) will require you to retain financial records for 6 years for auditing purposes. This means that you and/or your representative(s) will need to keep any other documents and/or records generated in connection with the provision of the Services for up to a period of six years. For more information about which records to keep, please visit <http://www.hmrc.gov.uk/record-keeping/>.

The Council will require access to your financial records, when carrying out regular checks to monitor the management of your Direct Payment.

## **5.9 Emergency cover**

You and/or your representative(s) shall make the necessary provisions to ensure appropriate cover in an emergency, such as when a worker is unable to support you including annual leave and sickness.

In the event that your contingency arrangements break down, in an emergency the Council shall endeavour to ensure that you receive appropriate care and support to meet the outcomes in your Support Plan until such time that your usual arrangements resume.

Any such emergency cover will result in the need for repayment to the Council of any funds already paid into the Direct Payment Account for the relevant period. The Council will notify you and/ or your representative(s) in writing of the amount to be repaid prior to recovering the funds.

## **5.10 Periods away from home**

You and/or your representative(s) retain responsibility for ensuring that arrangements are in place to pay the wages of any employee(s) in the UK if you wish to retain them while you are away from home.

If you employ someone overseas while you are away outside the UK, you and/or your representative(s) shall be responsible for ensuring to comply with the country's employment rules and regulations.

The Council may temporarily suspend your Direct Payment if you are unable to receive the Services for a period of time, such as for long stays in hospital. The Council shall consider individual circumstances and may continue to make the payments during short stays in hospital to ensure retention of workers providing care and support to you.

## **5.11 Payment of Direct Payments**

The Council will confirm in writing the total amount of your Direct Payment, the amount of financial contribution you have been assessed to make and the date when you can expect the first payment.

The Council will pay your Direct Payment (less any contribution you have to make) directly into the Account monthly in advance.

### **5.12 Financial Contribution**

You and/ or your representative(s) agree to pay your financial contribution directly into the Direct Payment Account. This contribution should be paid monthly preferably via a standing order from your personal account as the easiest way.

The Council will monitor the payment of any assessed financial contribution and Council staff will contact you if they notice any irregularity. Where the Council becomes aware that the financial contribution has not been paid, reassessment of your care and support needs may be required. The Council will notify you and/ or your representative(s) in writing if there are any funds to be repaid and/ or any changes to the amount of Direct Payment you receive.

### **5.13 Monitoring and Review**

The Council has a duty of care to ensure the outcomes of your Support Plan are achieved, that the charges for your care and support are reasonable and that Council funds are being used efficiently.

The Council will therefore look at your financial records in line with the Council's policy and procedure to establish how you are spending your Direct Payment and to ensure you are using it to meet the eligible care and support needs and outcomes outlined in your Support Plan in line with this Agreement.

Monitoring may also occur upon request from the relevant social worker or where the Council has been alerted to unusual activity in the Direct Payment Account.

The Council will not normally request additional documentation, such as receipts with regards to transactions that appear in your financial records, except where Council staff notice a transaction that is not easily recognisable, exceeds or is notably lower than the cost of the care and support agreed in your Support Plan. You and/or your representatives shall provide any such documentation within fourteen (14) days of the request.

### **5.14 Unauthorised use of Funds**

You and/ or your representative(s) shall not use the Direct Payment to pay for any items or services that do not meet the outcomes identified in your Support Plan or knowingly use the Direct Payment funds for anything illegal.

Any such misuse of the Direct Payment will be deemed a breach of contract requiring the repayment of Direct Payment funds. In some cases, misuse of Direct Payment funds may lead to the termination of the Direct Payment.

In the event that fraud, abuse or misuse is reasonably suspected, the Council will refer the matter for investigation and offer support to you to reduce the risk of further loss occurring. The Council will not be responsible for any losses incurred by you and/ or your representative(s) and will not therefore reimburse you unless or until cleared of any involvement in the loss.

### **5.15 Reviewing the Service**

The Council retains responsibility to review your care and support needs and will therefore arrange a review of the Service at intervals of (ordinarily) no more than twelve (12) months to assess that the outcomes as agreed in your Support Plan are being achieved.

You and/ or your representative(s) agree to fully cooperate with the review of your eligible care and support needs and your Direct Payment. Failure to do so may result in the suspension or ending of the Direct Payment.

The Council may increase or decrease the amount of your Direct Payment as the result of the review, on giving you and/ or your representative(s) at least 7 days' notice in writing, where the Council identifies a change in circumstances that it deems to affect the current amount of Direct Payment.

You and/ or your representative(s) agree to ensure that arrangements are in place to notify the Council immediately if there is any change in your circumstances, which may affect your entitlement to Direct Payments. If you are unsure if a change in circumstances will affect their eligibility to continue to receive Directs Payments, it is your responsibility to check with the Council.

#### **5.16 Recovery and Repayments**

The Council allows you to keep up to eight (8) times the weekly value of your Direct Payment as a reserve in the Account to help meet your assessed eligible care and needs in a flexible way. Should the balance in your Direct Payment account exceed this amount, your Direct Payment has not been appropriately used, or in case of overpayment, the Council will discuss the matter with you before recovering the excess amount.

The Council reserves the right, after consultation with you and/ or your representative(s), to review your Direct Payment and adjust future payments where a significant under-spend of your Direct Payment has occurred.

Without prejudice to the rights outlined in this agreement, the Council retains the right to recover Direct Payments in full or in part if it is satisfied that the money has been diverted from the use for which it was originally intended.

#### **5.17 Termination of Contract**

The Council may discontinue payments and terminate this agreement with immediate effect if you and/ or your representative(s) fail to comply with the terms of this Agreement and the Council has reason to believe that future monies would be misspent and/or mishandled.

This Agreement may be terminated by you by giving four (4) weeks' notice in writing to the Council.

This Agreement may be terminated by the Council by giving four (4) weeks' notice in writing to you and/ or your representative(s) on the following events occurring:

- You are no longer able to manage your Direct Payment, even with support, or your needs can no longer be met by a Direct Payment
- You are no longer eligible for care and support in the Wandsworth Borough Council
- You have failed to use your Direct Payment to meet the outcomes of your Support Plan appropriately
- You have failed to comply with any of the terms and conditions of this Agreement
- You are placed by the courts under a condition or requirement relating to drug and /or alcohol dependency
- You are subject to compulsory measures under the Mental Health Act (1983) and are no longer eligible to receive a Direct Payment.

Where this agreement is terminated and you continue to have eligible care and support needs, the Council will work with you and/ or your representative(s) to meet your needs in a different way.

#### **5.18 Death of the Service User or Carer**

In the event of the death of the Service User or Carer, the Council shall arrange to recover any amount of Direct Payment remaining in the Account after fulfillment of any payment due for Services already delivered to meet the outcomes identified in the Support Plan.



## 6. Signature

### 6.1 Signature of Direct Payment Recipient

I confirm that I understand and will comply with the terms and conditions set out in this Agreement.

Print name:	Date:
<hr/>	
Signature:	
<hr/>	

If you need any further information or you need help in completing this form, please do not hesitate to contact a member of the Direct Payment Team on (020) 8871 6470.

“Wandsworth Council has to protect the public money it deals with and may use the information you have given to prevent and detect fraud. For this reason, it may also share this information with other organisations dealing with public money”