

Direct Payment Agreement



1. This Agreement

- a) This agreement is between **[NAME OF DP RECEIVER]** receiving the Direct Payment (**you**) and Essex County Council (**we/us**) and takes effect on **[DATE]**.
- b) The Council has carried out an assessment of your needs and has determined that the support services identified in the care and support plan agreed with you can suitably be provided in full or in part via a Direct Payment under the terms of this agreement.
- c) You will use the Direct Payment to purchase the support as set out in your Care and Support Plan and in line with the terms and conditions of this agreement as well as any terms of use provided with a Prepaid Card, or your Dedicated Bank Account, or a Nominated Bank Account, as the case may be.

2. Definitions

In this agreement the following terms have the meaning set out in this clause:

“care and support needs” means the care and support needs of the adult/carer or child receiving care and support from the Council

“Care and Support Plan” means the adult’s or child’s care and support plan produced by the Council following a care needs assessment

“Dedicated Bank Account” means the bank current account held by you and in which your Direct Payment and your contributions are paid

“Legislation” means any and all of the following:

- Care Act 2014
- Care and Support (Direct Payments) Regulations 2014
- Care and Support Statutory Guidance (June 2017)
- Health and Social Care Act 2001
- Children Act 1989
- Community Care, Services for Carers and Children’s Services (Direct Payments) (England) Regulations 2009

“Nominated Bank Account” means the bank account held by a direct payment support service provider and in which your Direct Payment and your contributions are paid

“Prepaid Card” means the Prepaid Card into which your Direct Payment is paid

“you” means any of the adult, carer, or young person over 16 years of age or the Child’s parent (on behalf of the Child), or representative, as the case may be.

3. Direct Payment

- d) We will pay some or all of your Personal Budget directly to you as a Direct Payment so you can arrange, manage and pay for your support.
- e) Your Direct Payment will be made in advance every month.
- f) Whatever type of bank account you choose to have (Pre-Paid , Dedicated or Nominated), this must only be used for your Direct Payment.
- g) If you are assessed as having to pay a personal contribution, we will pay the Direct Payment into the bank account net of the personal contribution.
- h) You must pay your personal contribution directly into the bank account.
- i) We agree for you to keep in the account, on a contingency basis and to allow for agreed purchases, a sum of money equal to eight weeks of Direct Payments at any one time as agreed in your Care and Support Plan, or as we agree with you from time to time. Any sum exceeding this amount shall be repaid to the Council or the Council can reduce your Direct Payment proportionally.
- j) We will review the amount of your Direct Payment within six months from its commencement and at least annually thereafter and may reduce or increase your Direct Payment by such amount as needed to ensure that your needs are met. We will involve you and/or your representative, carer and parents in this review.

4. Variation

- a) We reserve the right to unilaterally vary this agreement from time to time. If we do so, we will write and tell you what has changed. We will give you four weeks-notice of any changes.

5. What you can spend your Direct Payment on

- a) The Direct Payment can only be spent in the way we have agreed in your Care and Support Plan. We reserve the right to terminate this agreement in the event of a breach of this agreement in accordance with the Legislation and the terms within.
- b) You cannot use your Direct Payment for any of the following:
 - i. Buy Illegal drugs

- ii. Buy prescription and over the counter medicines
- iii. Buy tobacco products and related smoking products
- iv. Buy alcohol
- v. Buy lottery tickets and other gambling products and activities
- vi. Buy food
- vii. Pay household bills
- viii. Buy any products or activities which are not included in your Care and Support Plan
- ix. Pay salaries to family members living with you which have not been authorised by the Council
- x. Make unauthorised cash withdrawals
- xi. Withdraw your personal contributions
- xii. Pay your personal contributions in an unauthorised bank account
- xiii. Pay your personal funds in the Direct Payment account
- xiv. Pay rates to your carers which were not agreed with the Council
- xv. Pay salary increases to carers without agreeing this with the Council

6. Change of circumstances

- a) It is your responsibility to notify us as soon as reasonably practicable if:
 - i. your care and support needs and/or circumstances change
 - ii. you decide you do not want or feel no longer able to manage the Direct Payment
 - iii. you are worried or unsure about the support you are receiving
 - iv. you want to employ a family member to provide your paid support
 - v. if you decide to change the company or the person who provides your care and support
 - vi. if you find another way of meeting any of your needs for the same or less money
- b) If you are too unwell to tell us, let us know as soon as you are able to.

7. Employing someone

- a) You agree to get advice about the legal risks and obligations of becoming an employer.
- b) We will not provide any legal advice in respect of your employer's duties, rights and responsibilities.
- c) If you so request, we will direct you to an organisation that will provide free independent advice to you and support you to employ someone.
- d) You agree to purchase out of your Direct Payment adequate employment liability insurance cover with a reputable insurer. You agree to provide us with a copy of the insurance policy within four weeks of you employing your personnel. Failure to put in place the required insurance cover shall constitute a breach of this agreement and may result in the termination of your Direct Payment.

- e) Alternatively, if you take independent advice and pay for this yourself, we will require you to demonstrate that you have done so independently before you employ someone. If you employ someone, we may check to make sure you are meeting your legal responsibilities. If you are not, the Direct Payment may be terminated.
- f) The Council will not be responsible for any employment duties arising from you employing someone and shall not be liable for any loss arising from any of your acts or omissions in breach of the relevant employment legislation.

8. Limitation on employing a family member who lives with you

- a) Employing a family member who lives in your household is not allowed under the Legislation, EXCEPT in the following circumstances:
 - i. you can get help from a family member in an emergency, if the Council agrees; and
 - ii. if a family member is the only person who can provide the support for you (i.e. it is necessary), if the Council agrees
 - iii. you can pay a member of your family to provide administrative and management support with your Direct Payment
- b) You will need to get this agreed with us before you employ a family member.
- c) If you employ a family member in breach of these terms, we reserve the right to terminate this agreement.
- a) We may increase your Direct Payment in response to any changes made to the national minimum wage. We will let you know if this happens.

9. Our right to claim money back

- a) We will claim money back or reduce the amount of the Direct Payment, as the case may be, if:
 - i. there is more than eight weeks of the Direct Payment money in your account (unless we have agreed to the surplus to pay for specified items in advance of you buying such items)
 - ii. the agreement is terminated for whatever reason
 - iii. the money is not spent to secure the provision of the services to which it relates (i.e. is spent on anything which we have not agreed to as part of the Care and Support Plan)
 - iv. you have spent the money to pay a family member without our consent
 - v. you have not used your personal contributions towards meeting your care and support needs
 - vi. you have breached any of the terms of this agreement

- b) Any sum falling to be repaid to the Council following any of the breaches listed in clause 10 a) above, shall be recoverable as a debt due to the Council, as applicable. Any amount due to the Council will be collected back by the Council by withholding future payments, and if this is not possible, by initiating a debt recovery procedure against you. We would consider suitable debt repayment plans with you, failing that, the Council reserves the right to initiate court proceedings for the recovery of the debt and we will give you reasonable notice if we plan to do so.

10. Termination

- a) We reserve the right to terminate this agreement in any of the following circumstances:
- i. If we think fraud is being committed
 - ii. In the event of misuse of the Direct Payment
 - iii. If we review your needs and we assess that Direct Payment is no longer suitable to meet your needs
 - iv. In the event you are no longer suitable to receive or manage the Direct Payment as prescribed by the Legislation
 - v. If it is required under the Legislation
 - vi. If you no longer wish to have a Direct Payment
 - vii. If you have breached your statutory duties as an employer
 - viii. If you breach this agreement
 - ix. In the event of your death
- b) We will give you four-weeks' notice of our intention to terminate this agreement, as applicable.

11. How we will use your information

- a) Your personal information will only be used for the purpose for which it is collected and will be protected by the Prepaid Card provider and Essex County Council in compliance with their policy and relevant confidentiality and data protection legislation.
- b) For more guidance on how Essex County Council uses the your information please visit the Privacy pages on <http://www.essex.gov.uk/privacy-notices/Pages/Default.aspx>

12. Receipts and other Records

- a) We will monitor the transactions in your account by reviewing the documents listed below on a regular basis, and on-request if we have reason to believe that the Direct Payment is used in breach of this agreement.
- b) We will need to see:
 - i. Your bank account statements
 - ii. Invoices and receipts from people and companies who provide your support
 - iii. Receipts for any single item costing more than £200 you have bought with your Direct Payment in the past 12 months
- c) We may ask to see:
 - i. Payroll records
 - ii. Receipts for anything you have bought with your Direct Payment in the past 12 months
 - iii. Any other documents we have asked you to keep

I confirm that I have read and understood the Terms & Conditions set out in this Agreement.

Your Signature:

Date:

Compulsory signature on behalf of Essex County Council

Social Worker / Practitioner

Name

Date

Signature

This information is issued by:
Essex County Council

Contact us:
Essex County Council
County Hall, Chelmsford
Essex, CM1 1QH

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formats, on request.

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