



Direct Payment Agreement with an Authorised Person

Form DP2
(Updated July 2017)

This Agreement should be used if the Direct Payment Recipient has been assessed as lacking capacity to consent to the Direct Payment, and an Authorised Person has requested a Direct Payment on their behalf.

A. About this Agreement

This Direct Payment Agreement includes the rules about using the direct payment. The back page includes an explanation of some of the words and phrases that have been used. If there is anything that you do not understand, please ask the recipients health, social care or education worker.

This Agreement should be read alongside The Plan. The Plan is the document that includes information about how the Recipient's Care and Support needs will be met. The Plan also explains how much of the Personal Budget will be paid as a Direct Payment, and details the goods and services that you can pay for with the Direct Payment.

Your appointment as Authorised Person is subject to a Disclosure and Barring Service check if you are not:

- a close relative as defined in the Regulations, or
- a spouse or civil partner, or a friend of the Recipient who is already involved in the provision of their care.

Where there is a record of conviction this will be considered in respect of the nature of the conviction and the responsibilities that you will assume as Authorised Person. You are advised to take independent legal advice before signing this Agreement.

THIS AGREEMENT is made on (date) _____ between

1. Redcar & Cleveland Borough Council of Redcar and Cleveland House, Kirkleatham Street, Redcar, North Yorkshire TS10 1RT (referred to as "The Council" in this agreement)

And

2. (name) _____ Of (address) _____

(referred to as "You," or "The Authorised Person" in this agreement)

Part B: What the Authorised Person agrees to do

General Responsibilities

1. You will follow good practice in making decisions on behalf of the Recipient and act in their 'best interests' within the meaning of the Mental Capacity Act 2005. You should be aware of the Mental Capacity Act Code of Practice. Information about the Mental Capacity Act can be found on Council's website, or at www.gov.uk.
2. Where possible, you will participate in any reviews of the Recipient's Plan or other discussions about their care and support.
3. You will involve the Recipient as far as reasonably practicable in decisions relating to, and the management of the Direct Payment.
4. When making decisions in the best interests of the Recipient in relation to the Direct Payment, you should also consult other people close to the Recipient, or health and social care professionals where appropriate.
5. You must inform the Council if you think that the Recipient is able to make his or her own decisions again.
6. If you require support to help you manage the Direct Payment, you will contact the Council to discuss options.
7. As an Authorised Person you are appointed to act on behalf of the Recipient and do not have any claim to, or ownership of the funds provided.
8. You must not use the Direct Payment to pay yourself a wage for providing care to the Recipient, or administrative support in respect of the direct payment, unless this has been agreed by the Council and written down in the Recipient's Plan
9. As an Authorised Person you will agree to assume all the responsibilities of a Direct Payment including those of an employer or purchaser of services. Any contracts entered into in respect of the Direct Payment will be in your name.
10. If the Recipient regains capacity to make decisions in respect of the Direct Payment, you will no longer be the Authorised Person.

Using the Direct Payment to buy goods and services

11. The Direct Payment must only be used to pay for services, goods or minor works that are agreed with the Council and written down in the Plan.
12. A Direct Payment for a Carer must only be used to buy goods and services that meet the Carer's needs and are recorded in the Carer's Plan.
13. When buying a service from an individual or organisation, you are responsible for negotiating the terms of the contract. This includes, but is not limited to the price you will pay, the days and times that care will be provided, charges if the service is not provided (for example because of a holiday or a hospital stay), and the process/penalties for terminating the contract.

14. You must keep a record of any contracts and/or terms and conditions for any goods, services or works that are paid for with the Direct Payment.
15. In all but exceptional circumstances, goods and services will be paid for using the Direct Payment Card.
16. You must make appropriate contingency arrangements for if your care and support services are temporarily disrupted. The Council will help you with this.
17. If the arrangements made through using the Direct Payment break down, you will inform the Council immediately so that we can ensure the Recipient's needs continue to be met.
18. If you use your Direct Payment to pay a self-employed personal assistant to provide you with care and support, you are responsible for making the necessary checks to confirm they are self-employed and registered with HM Revenue and Customs (HMRC), and that they have adequate liability insurance.
19. If the Council believes that an individual or organisation is not able to provide an appropriate service, or is unfit to provide the service that is needed, you will be required to find an alternative service. The Council will help you with this.
20. Any one off payments of more than £500 must be approved in advance by the Council (unless it has already been agreed and written down in the Plan).
21. If the Direct Payment is used to buy equipment or pay for minor works, the equipment must be bought, or the works commenced within 8 weeks of receiving the Direct Payment. If this does not happen, the money may be reclaimed by the Council, unless it is agreed otherwise in writing or in the Plan.
22. If the Direct Payment is used to buy goods or equipment, the Recipient will own the item(s). You, as the authorised person, are responsible for paying any on-going maintenance and/or insurance costs from the recipients personal funds, unless it has been agreed otherwise in the Plan.
23. You acknowledge that the Council is providing the Direct Payment only, and any goods or equipment bought with it is not the responsibility of the Council. The Council excludes liability for any damage or injury caused by any goods or equipment bought with the Direct Payment to the fullest extent permitted by law. For the avoidance of doubt nothing in this agreement is intended to exclude liability on behalf of the Council for death or personal injury caused by the Council's negligence or that of its Employees.
24. In the event of damage to any goods or equipment bought with the Direct Payment, the Council does not warrant or guarantee to provide any further monies for repair or replacement of such goods or equipment. If the terms of any contract entered into in purchase of such goods or equipment detail provision for replacement of any faulty goods or equipment, the Council may assist you in liaising with any contractors, but this is not an obligation on the Council.
25. You can use some of the Direct Payment to pay an individual or a third party support organisation to administer the Direct Payment on your behalf. This must be agreed with the Council and written down in the Plan.

Employing someone to provide Care and Support

26. The Direct Payment must not be used to pay a close family member who lives with the Recipient to provide Care and Support, unless there are exceptional circumstances, and it has been agreed with the Council and recorded in the Plan.
27. When employing someone to provide Care and Support, you as the authorised person are agreeing to take on all the responsibilities of an employer. This includes, but is not limited to:
- making relevant identity and criminal record checks before employing someone (the Council can advise on this)
 - providing them with a formal contract of employment
 - paying their wages on time and giving them a pay slip
 - paying sick, holiday, maternity and paternity pay
 - arranging for tax and national insurance to be deducted from their wages
 - enrolling them in a workplace pension scheme
 - maintaining timesheets to show the hours that they have worked
 - ensuring that you have the correct employers insurance
 - paying all costs associated with employing someone. This includes tax, national insurance, employer insurance and redundancy cost
28. If you choose to employ a Personal Assistant to provide care and support, the Direct Payment hourly rate is sufficient to cover the following:
- wage
 - statutory holiday pay
 - potential redundancy costs
 - contingencies in case of emergencies or unexpected circumstances
 - any other associated employment costs, such as national insurance, tax, liability insurance, pension (where applicable)
29. If you wish to pay a higher rate for a service than has been used as a basis for calculating the Direct Payment, this must be paid from the recipient's personal funds. Any additional payments made from personal funds can be loaded onto the pre-payment card but this must be in addition to the amount that the recipient has been assessed as having to contribute towards their care.
30. A Personal Assistant's wages must be paid directly from the Direct Payment Card Account, or through a third party support organisation.
31. You can use a third party organisation to provide you with employment support services to help you to meet your responsibilities as an employer. The direct payment can be used to pay for this support if it has been agreed and written down in the Plan.

Safeguarding

32. Personal assistants must have a satisfactory enhanced Disclosure and Baring Service (DBS) certificate if:
- a) the person receiving care and support is under 18 years old
 - b) the person receiving care and support lacks capacity to make decisions about their care and support
 - c) children and young people aged under 18 (other than the person receiving care) will be present when the personal assistant is providing care and support.
33. The Council will direct you to an organisation that can assist you with making DBS checks on potential employees if these checks are necessary.
34. Personal Assistants must have relevant safeguarding training. The Council can help with this.
35. The personal assistant job description must clearly set out the extent of the relationship with, and the degree of responsibility for the person that they are supporting

Changes in circumstances

36. You agree to tell the Council if there is any change in circumstances that may affect the Recipient's Care and Support needs, or if the Care and Support is not improving outcomes.
37. In the event of a planned or unexpected stay in hospital, the Council must be notified as soon as possible. The Direct Payment will continue to be paid for up to six weeks so that any contractual obligations can be met (for example to pay a Personal Assistant or to keep a place open in a day service). If the hospital stay is likely to be longer than six weeks, the Council will help to ensure the right Care and Support is in place upon discharge.

Help with managing the Direct Payment

38. You can choose to use a third party organisation to support you to manage the Direct Payment received. This must be agreed by the Council and written down in the Plan. There may be a charge for this service. The third party organisation is known as a 'Nominated Person.'
39. You consent to the nominated person sharing the Recipient's personal information with the Council. This will include information about the Direct Payment Account, and the Recipient's care and support. Information will be shared for the purpose of routine monitoring and review, and ensuring that your needs continue to be met.
40. If you enter into an agreement with an organisation that does not have a contract with the Council, it will be your responsibility to ensure that the organisation undertakes their responsibilities as Nominated Person in accordance with this Direct Payment Agreement and any other service agreement that you have with them.

41. If the Council believes that the third party organisation is not able to provide an appropriate service, or is unfit to provide the service that is needed, you will be required to find an alternative. The Council will help you with this.

Payments, Contributions and Monitoring

If you are managing the Direct Payment yourself, or with help from a Nominated Person

42. You will be provided with a Direct Payment Pre-Paid Card that will be loaded with Direct Payment funds. You can use this Card to purchase goods, and set up one off and regular payment arrangements. The Card can only be used to pay for goods and services that have been agreed and written down in the Recipient's plan.
43. You (or the Recipients financial representative) must pay the recipients assessed social care contribution into the Direct Payment Card account until either
- a) The Direct Payment is stopped
 - b) You have been informed by the Council, in writing, that the contribution has reduced or stopped.
44. You must not share your PIN number or Card Account log in details with anyone.
45. You will check the Direct Payment Card account regularly to make sure that payments have been received and that there are sufficient funds in the account to pay any expected bills, direct debits or standing orders.
46. You may keep up to a 4 week surplus in the Direct Payment Card Account as a contingency, unless it has been agreed otherwise in the Recipient's Plan.
47. You must keep a record of everything that is paid for with the Direct Payment, including invoices, receipts, timesheets, copies of payslips and other relevant evidence.
48. You agree providing information about the Direct Payment account to the Council for the purpose of monitoring. This will include bank statements, transaction details, receipts, invoices, details of carers and other information that is relevant to the management of the Direct Payment.
49. You will respond to all queries about the Direct Payment, and requests for monitoring information within 28 calendar days. You will be responsible for forwarding the Council's queries to the Nominated Person where appropriate and informing the Council of the Nominated Person's responses.
50. You will ensure that records about how the Direct Payment has been spent are kept for at least three years.

If you are using a Direct Payment Support service that the Council has a contract with

51. The Council will pay the total amount of the Direct Payment to the Direct Payment Support Service provider.

52. If the recipient is required to pay a contribution towards their care, the invoice for their contribution will be sent to you every six months. The agreed amount must be paid to the Council, from the recipients own personal monies on a monthly basis (or as agreed with the Council's finance team).
53. You and/or the Direct Payment Support Service must keep a record of everything that is paid for with the Direct Payment, including invoices, receipts, timesheets, copies of payslips and other relevant evidence. You must provide this information to the Direct Payment Support Service upon request.
54. The Direct Payment Support Service is responsible for providing the Council with monitoring information.
55. You agree to the Direct Payment Support Service sharing information about the Direct Payment account with the Council for the purpose of monitoring. This will include bank statements, transaction details, receipts, invoices, details of carers and other information that is relevant to the management of the Direct Payment. Copies of these documents can be saved and uploaded to the Direct Payment Account.
56. You agree to the Direct Payment Support Service refunding surplus monies within the Direct Payment Account to the Council, or requesting additional funds on behalf of the recipient when appropriate.
57. You must provide records about how the Direct Payment has been spent to the third party organisation upon request. This includes invoices and receipts for goods and services.

Other

58. If you are required to repay some or all of the Direct Payment for any of the reason, the Council will provide you with at least 3 working days' notice before debiting the money from the Direct Payment Account.
59. The Council reserves the right to debit monies from the Direct Payment Account without notice if:
 - a) there are immediate and serious concerns about the management of the Direct Payment
 - b) There are serious financial safeguarding concerns
 - c) The Council has made an overpayment to you
60. If there is insufficient money in the Direct Payment Account to cover the amount that you owe, you will be sent an invoice for the outstanding amount. Failure to pay this invoice on time may result in the Direct Payment being stopped and the Council may take steps to recover the debt from you.
61. If any charges or fines are incurred because the Direct Payment has not been managed properly, or for failure to comply with relevant legislation, you will be liable to pay these costs.
62. You have the right to request a review of the Direct Payment and/or the Plan at any time.

63. If the Council makes a decision to stop or reduce the Direct Payment, you can appeal against this decision. The Council will only reconsider a decision once, unless there are exceptional circumstances.

Part C: What Redcar and Cleveland Borough Council agrees to do

1. The Council will provide or direct you to information, advice and guidance that enables you to manage and spend the Direct Payment, meet your responsibilities as an employer and deal with an unforeseen or emergency situation.
2. The Council will review the Plan within the first six months to make sure that you are comfortable with using the Direct Payment, that care and support needs are being met and that Outcomes are being improved. After that, the Plan will be reviewed at least annually. This will include a discussion about the Direct Payment.

Payments

3. ***If you are managing the Direct Payment yourself, or with help from a Nominated Person,*** the Council will provide you with a Direct Payment Card and Log in details for the online Card Account. We will also help you to set up the Card and Account. The Council will pay the agreed Direct Payment amount (less the recipient's contribution) into the Direct Payment Card Account every 4 weeks (or as required for one off or additional payments). You are responsible for ensuring the recipient's contribution is paid into the Card Account.
4. ***If the Council has arranged a Direct Payment Support Service*** for you, the Council will pay the full amount of your Direct Payment directly to the service provider. We will invoice you separately for the recipient's assessed contribution. You must ensure their monthly contribution is paid in full and on time. Failure to pay their contribution may result in debt recovery action being taken against you.

Monitoring

5. The Council has full access to the Direct Payment Card Account to:
 - a) view the balance of the account
 - b) view any payments made out of the account (as they occur)
 - c) view and payments into the account (including your social care contributions)
 - d) Reclaim unspent funds
 - e) Make additional payments to the Account
 - f) make payments from the account on your behalf
 - g) Cancel or suspend the card
6. The Council will view the Direct Payment Card Account at least once a month for monitoring purposes.

7. We will make reasonable attempts to contact you to discuss the account if:
 - a) We intend to reclaim unspent funds from your account
 - b) There are any transactions that are unaccounted for, or do not appear to be related to the goods or services that have been agreed and written down in the Plan
 - c) You do not pay the recipient's assessed social care contributions into the Direct Payment Card Account
 - d) There are concerns about the management of the Direct Payment
 - e) We intend to temporarily suspend your card while any the above issues or concerns are resolved.
8. If you use the Direct Payment to pay for goods and services that are not agreed and written down in the Plan, you will be asked to pay the money back into your Direct Payment Card Account. If you do not repay this money within 10 working days, we may stop the Direct Payment and take steps to recover the debt from you.
9. If there are concerns about the management of your Direct Payment, the Council will provide or direct you to support that could enable you to continue to receive the Direct Payment on behalf of the Recipient.
10. If the Council makes an overpayment, we will debit the full amount of the overpayment from the Direct Payment Account. We will take reasonable attempts to contact you beforehand.
11. If you incur any charges through the fault of the Council, you will be reimbursed, upon receipt of evidence of those charges acceptable to the Council.

Support with Employing a Personal Assistant

12. As per clause B26, the Council will not take on any employment responsibilities: these will fall directly on you.
13. The Council will provide or direct you to information, advice and guidance that enables you to meet your responsibilities as an employer
14. The Council will ensure you have support to make Disclosure and Barring Service (DBS) checks on potential employees if these checks are necessary.
15. The Council will provide help to make sure that arrangements are in place if the Personal Assistant is not able to come to work, for example because of illness, holiday or parental leave.

Changes in Circumstances, Reviews and Appeals

16. The Council will consider a request for a review of the Plan and/or Direct Payment at any time. If the request is declined, the Council will inform you of the reason(s) why.

17. If following a review, or a re-assessment, there is a change to the Plan, the Council may increase or decrease the amount of Direct Payment. You will be given reasonable notice to cancel or change any existing arrangements.
18. If the Council believes you to be permanently or temporarily incapable of managing the Direct Payment, we may continue to make payments but will ensure that you have appropriate support.
19. If care and support arrangements break down, the Council will act promptly once it has been notified to ensure that needs continue to be met.
20. If the Council receives an appeal or a request to reconsider a decision to stop, reduce or repay the Direct Payment, we will reconsider the decision, taking into account the views of yourself and any other relevant individual. Once the decision has been reconsidered, you will receive a letter explaining the final decision. The Council will only reconsider a decision once, unless there are exceptional circumstances.
21. If the Council receives a request to reconsider a decision, the Direct Payment may be stopped or reduced while the decision is reconsidered (providing you have been given sufficient notice).

Part D: Ending the Agreement

1. You can end this Agreement at any time by giving four weeks' notice. You should speak to the Council about this, and then confirm in writing that you no longer wish to receive the Direct Payment on behalf of the Recipient and the date that you want this to take effect. The Council will require at least four weeks' notice in order to make any changes.
2. If you no longer wish to act as the Authorised Person and no suitable alternative Authorised Person can be found, the Direct Payment will be stopped and the Council will make alternative arrangements for the Recipient's care and support.
3. If a Direct Payment is stopped, you must ensure that any contractual responsibilities are fulfilled. You will be responsible for using Direct Payment monies (including your Contributions) to pay outstanding invoices or redundancy costs. If you do not have enough money left in the Direct Payment Account to pay for this, the Council will pay any shortfall, providing that the Direct Payment has been managed appropriately and all of your Contributions have been paid.
4. The Council may stop or suspend the Direct Payment or terminate this agreement without notice if:
 - a) The Recipient is temporarily unable to receive services (for example because of a holiday or a stay in hospital)
 - b) after a review or reassessment, we agree there is a reduced level of need or no further requirement for Care and Support
 - c) the Direct Payment is for short term support
 - d) a long term or permanent residential placement is required

- e) the Council believes that you are not capable of managing the Direct Payment, either with or without support
 - f) the Council believes that you are not acting in the best interest of the person with Care and Support needs
 - g) the Council believes that a service provider is not able or fit to provide the service that is needed, and a suitable alternative is not found.
 - h) the Direct Payment has been used to pay for items or services that are not written down in the Plan
 - i) there is evidence of deliberate misuse of funds
 - j) there is a failure to comply with the review or monitoring process
 - k) there is a failure to tell us about other funding that should have been taken into account when calculating the Direct Payment
 - l) any of the terms of this Agreement are broken
5. If the Council intends to stop or suspend the Direct Payment, reasonable steps will be taken to speak to you in order to explore all options before making a final decision.
6. If the Council decides to stop the Direct Payment, your Pre-Paid Card and Account will be closed and your Plan will be reviewed in order to agree alternative care and support (unless care and support is no longer required).
7. In most circumstances the Council will give at least four weeks' notice in writing before ending this Agreement and stopping the Direct Payment. There are exceptions to this, for example if you are not acting in the best interest of the Recipient, or if there is reason to suspect deliberate misuse of funds or criminal activity.
8. If the Council suspects that criminal activity has taken place, the matter may be referred to the police for further investigation and payments recovered as necessary (in line with the Council's debt recovery process).

Part E: Nominated Persons

Please complete this section if you would like to nominate a third party organisation to manage the Direct Payment on your behalf. This must be agreed with the Recipient's social care worker and written down in the Plan.

By Nominating the organisation named below, you are agreeing to them acting on your behalf to:

- a) Purchase goods and services on your behalf
- b) Contact the Council or the Card Provider customer services to discuss the Direct Payment Card Account

c) Log into the on-line Customer Portal to:

- View account details
- View transactions history
- Load funds
- Make payments
- Manage direct debits
- Block/unblock/report lost and stolen cards
- Contact customer services

It has been agreed that the following organisation will act as Nominated Person to support you to manage the Direct Payment

Full name (this person will be named on the Direct Payment Card)

Organisation
(please give full legal name)

Address

Please tick this box if you would like a second Direct Payment Card for yourself

The Nominated Person must sign Part F on the next page

Part F: Signing the Agreement

You agree to act as an Authorised Person to receive and manage Direct Payments on behalf of:

(Full name of the Direct Payment Recipient)

You confirm that you will fully comply with the conditions in the Agreement.

You confirm you understand that repayments of the Direct Payments may have to made to the Council if you spend any of the money on services or items outside those permitted by the Plan

Signed by **the Authorised Person (You)**

Print name

Date

Signed on behalf of **Redcar & Cleveland Borough Council**

Print name

Position

Date

Details of Third Party Organisation

It has been agreed that the following organisation receive and manage the direct payment on your behalf.

Full name of the organisation

Address

Signed on behalf of the organisation

Date

Position

Second signature (if required)

Date

Position

Social care worker to copy the agreement and return the original to the authorised person.

Words and phrases used in this agreement

Assessment:	This is the assessment that the Council carries out to help understand an individual's needs and work out whether or not the individual is eligible for support. This could either be an Adult's Needs Assessment, Carer's Assessment, Children and Families Assessment, or an Education, Health and Care Plan Assessment.
Authorised Person:	Someone who has authority to act on behalf of someone aged 16 or over who lacks capacity to consent to a direct payment. Authority could include: <ul style="list-style-type: none">• Power of Attorney or Deputyship for health and welfare• Written authority from the Council A parent must have authority if their son or daughter is over 16 years old and lacks mental capacity to make their own decisions.
Care and Support	Goods and services that meet assessed Eligible Needs.
Carer	An adult who provides unpaid care for a family member or friend.
Contribution	The amount that the person with care and support needs will have to contribute towards their care and support. This is determined by a financial assessment. (This does not apply to children with disabilities, services to meet special educational needs that are identified in an Education, Health and Care Plan, or adults receiving services after being detained in hospital under the mental health act)
Direct Payment:	A sum of money that the Council pays to you so that you can organise your own care and support to meet your Eligible Needs. A Direct Payment is one way of receiving your Personal Budget.
Direct Payment Card	A payment card that is loaded with Direct Payment monies. The card can be used to pay for goods and service, much like a debit card.
Direct Payment Card Account (also referred to as the Card Account)	On on-line account that is linked to the Direct Payment Card. It can be used to make payments, view your balance and load funds to the account. The Council can also access this account so that we can monitor the Direct Payment.
Direct Payment Support Service	Organisations that have a contract with the Council to support people who are receiving Direct Payments. They can help you to manage the Direct Payment and/or meeting your responsibility as an employer.
Eligible Needs	Care, support or special educational needs that that have been identified during the Assessment and that the Council has a legal duty or power to meet.

Nominated Person	A third party organisation who you have nominated to help manage the Direct Payment.
Outcomes:	What the Recipient and their family/carers hope to achieve with their care and support. These will be written down in the Plan.
Personal Assistant	A personal assistant (sometimes called a PA or a support worker) is employed by a person who needs care and support to enable them to live as independently as possible.
Personal Budget	The amount of money that it will cost to meet Eligible Needs and improve the Outcomes that are written down in the Plan.
Personal Funds	The Recipient's own personal money, excluding the Direct Payment or their contribution towards their care.
Recipient	The young person or adult whose needs will be met through a Direct Payment, or the parent of a child with a special educational need or disability.
Review	The regular review of a Plan where the Council talks to the person with Care and Support needs, and any other relevant individuals to make sure that the Care and Support that is in place is continuing to meet Eligible Needs. A review usually takes place within the first few months, and then at least once a year. The Council will also carry out a review if someone's needs change, or if their Care and Support arrangements break down.
Surplus	Any money that is left over once everything has been paid out of the Direct Payment. The Council will allow a maximum surplus of 10 weeks' worth of Direct Payment monies to build up in a Direct Payment account. This is to pay for unexpected situations, or employment related costs such as redundancy, or cover when a Personal Assistant goes on holiday. Anything above the 10 weeks surplus will usually need to be repaid to the Council.
The Council:	Redcar and Cleveland Borough Council and its employees. This includes the Council employee who provides you with support, for example a Social Worker, SEN Link Officer or SEN Careers Advisor.
The Plan:	The document where an individual's needs and outcomes are written down. The Plan also includes information about care and support, their personal budget and their direct payment. The Plan could be either an Adult's Support Plan, a Carer's Support Plan, an Education, Health and Care Plan, or a Child in Need Plan.
Third Party Organisation	An specialist organisation that you pay to provide you with support to manage the direct payment account, or meet your responsibilities as an employer