

# DIRECT PAYMENTS POLICY

London Borough of Haringey

Adults Social Care

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# 1 INTRODUCTION

The London Borough of Haringey (the council) is committed to promoting wellbeing and supporting independence through preventing, reducing or delaying the need for care and support. Direct Payment are the Government's preferred method for providing personalised care and support as they promote independence, choice and control over how needs are met.

## 1.1 What are direct payments?

Direct Payment is an option for the council to pay personal budget to the adult to enable the adult to make their own arrangements to meet their care and support needs as identified in their care and support plan. They are an easy and convenient way of receiving a personal budget and can be paid direct to the person concerned or in some circumstances to their nominated or authorised person.

## 1.2 Direct Payment Policy Context & Legislation

The statutory duties and responsibilities around Direct Payment are set out in:

- [The Care Act 2014.](#)
- [The Care and Support \(Direct Payment\) Regulations 2014, and;](#)
- [Section 117\(2C\) of the Mental Health Act 1983.](#)

# 2 ABOUT DIRECT PAYMENTS IN HARINGEY

## 2.1 Who can receive a Direct Payment

Any adult who has been assessed as being eligible for care and support or a carer who has been assessed as being eligible for support from the council can request a Direct Payment.

The following conditions must be met to receive a Direct Payment:

- The adult requests a Direct Payment;
- The adult has capacity to make the request and any nominated person agrees to receive the Direct Payment;
- The council is not prohibited from making a Direct Payment outlined in Schedule 3, Care and Support (Direct Payment) Regulations 2014 or where discretion is allowed as part of Schedule 3, chooses not to exercise this discretion;
- The council is satisfied that the adult or nominated person is capable of managing a Direct Payment either independently or with support;
- The council is satisfied the making of a Direct Payment is an appropriate way of meeting the adult eligible needs.

There are cases where a Direct Payment is not appropriate to meet needs e.g. where the person lacks capacity to manage the Direct Payment and a suitable person is not available to manage it on their behalf or where a person is subject to a court order for a drug or alcohol treatment program or similar schemes, where the person is in extreme debt, is not eligible for UK services or where there are safeguarding issues.

Where a request for a Direct Payment is declined, eligible needs will be met through council arranged provision or an Individual Service Fund (ISF).

Everyone who is eligible has to consent to receiving a Direct Payment and be able to manage it, with support if required.

Adults without capacity can have a Direct Payment when there is an authorised person to manage it when the conditions in section 2.2 are met.

## **2.2 Authorised Person**

An authorised person is someone who manages the Direct Payment on behalf of an adult who has been assessed as lacking capacity to request direct payment. The authorised person could be a friend or family member. If the adult has an authorised person managing the Direct Payment, then they become legally responsible for everything that goes with it.

An authorised person is someone who:

- Is authorised under the Mental Capacity Act 2005 (MCA) to make personal welfare decision for the service user (i.e. the holder of a lasting power of attorney or a Court appointed deputy), or
- Is not MCA authorised, but the council and any person authorised under the MCA to make personal welfare decisions for the adult agree is a suitable person to whom to make Direct Payment, or
- Is not MCA authorised and there is no MCA authorised person, but the council considers that the person is a suitable person to whom to make Direct Payment.

When determining who is a suitable person to be an authorised person, the council will consider all relevant circumstances on a case-by-case basis.

A Direct Payment will be provided when requested by an authorised person when each of five conditions are fully met:

1. Where the person making the request is not authorised under the MCA to make personal welfare decisions for the adult, the council and any person who is so authorised agree that the person making the request is a suitable person to make decisions about the adult's care and support.
2. The regulations do not prohibit needs from being met through Direct Payment.
3. The authorised person will act in the adult's best interest in arranging care and support with Direct Payment.
4. The authorised person is capable of managing Direct Payment either independently or with support.

5. Making Direct Payment to the authorised person is an appropriate way of meeting needs

A court-appointed deputy or a *donee* of Power of Attorney (enduring Power of Attorney, or its replacement, Lasting Power of Attorney) can act as an authorised person to receive a Direct Payment on behalf of a recipient who lacks capacity, if that person agrees to this. Where the council acts as Deputy for Property & Affairs or Corporate Appointee it will not act as the Authorised Person.

Where someone with capacity was receiving a Direct Payment but then loses capacity to consent, the council will discontinue the Direct Payment to that person and consider making payments to an authorised person instead. In the interim, the council will make alternative arrangements to ensure continuity of support for the person concerned. Where a recipient loses capacity and there is a nominated person receiving the Direct Payment, then the council will review the suitability of continuing that arrangement on a temporary basis until the appointment of an authorised person can be considered.

### **2.3 Nominated Person**

A nominated person is someone you choose to help administer the Direct Payment in the event the adult does not want to take on the responsibility of managing the Direct Payment. This arrangement will enable people who receive Direct Payment to retain control over their support and care, while allowing the nominated person to manage the financial and administrative responsibilities. Often the nominated person will be a family member or spouse.

### **2.4 Direct Payment Agreement**

The authorised and nominated person will sign an agreement to receive and manage the money on behalf of the adult. By doing so they take on the legal responsibility related to employing and managing paid staff employed through the Direct Payment scheme.

All recipients agreeing to a Direct Payment will be required to sign an Agreement Form before the arrangement will commence. A copy of the Direct Payment Agreement Form is attached at **Appendix A**. The Agreement Form for carers attached in **Appendix B**.

### **2.5 Disclosure and Barring Service (DBS) Checks**

If an authorised or nominated person is not a close friend, spouse, partner or a relative of the person receiving support, the authorised person must complete a DBS check prior to taking on the responsibility of managing the Direct Payment funds.

The council strongly recommends that DBS checks are obtained for all employed personal assistants. The council's Direct Payment Support Team and Disability Action Haringey (DAH) can provide advice and support in undertaking DBS checks for individuals that the adult or the authorised or nominated person wish to employ.

Individual employers (including anyone receiving a direct payment, personal budget or self-funding their own care) cannot submit an application for a DBS check. The Individual employers can ask a support organisation who is registered to conduct a DBS check on someone they want to employ or offer a job to or on someone already in their employment provided that the person concerned consents.





## **2.6 Ability to consent to and manage a Direct Payment**

Anyone who agrees to be responsible for managing Direct Payment must be capable of managing Direct Payment either independently or with help. Before a Direct Payment can be made an assessment of capacity will be carried out on a case-by-case basis. Mental capacity is the ability to make a decision. Under the 2005 Mental Capacity Act, a person's lacks capacity in relation to a matter if at the time, they are unable to make a decision in relation to the matter because of impairment of, or a disturbance in the functioning of, the mind or brain.

Adults with capacity can nominate a third party to assist them to manage Direct Payment if they wish. The third party is known as a nominated person and is usually a family member or a friend with written agreement from the Adults Social Care Team.

Where the request for a direct payment has been declined, the person in need of care and support, and any other person involved in the request (for example, nominated or authorised person) will be notified in writing giving the reasons for the decision.

Where the request has been declined, the local authority will continue the care planning process so that it can seek to agree with the person how best to meet the needs, without the use of direct payments.

Adults with capacity and an authorised or nominated person, after providing details that they have the ability to manage the Direct Payment, may purchase assistance, for example record keeping, payroll and other employment related services or a managed account, from a commissioned Direct Payment support service of their choice.

Adults with capacity or the nominated or authorised person remain responsible and accountable for how Direct Payment are used. Information and support will be given early in the process about what receiving Direct Payment will involve. In order to make a decision, people need to understand what is involved in managing Direct Payment and ongoing guidance and assistance will be available. An authorised person acting on behalf of an adult with capacity is in a position of trust and is as liable as a Direct Payment recipient.

Consideration will also be given to cases where capacity is fluctuating or known to fluctuate. This should be covered in the support plan which details the steps to take where capacity fluctuates.

## **2.7 Responsibility to spend the budget appropriately.**

Whilst the council has a duty of care to recipients of Direct Payments, it also has a duty to protect public funds and to ensure that these are spent appropriately. In delivering this responsibility, the council must be satisfied that the Direct Payment is being used to meet eligible needs as set out in a support or care and support plan.

## **2.8 What can Direct Payment be used for?**

Direct Payment must be used to purchase services which are safe, legal, value for money and which adequately safeguard and promote the recipient's welfare and wellbeing.

It is impossible to give an itemised list of all the things that a recipient can spend their Direct Payment on, as needs will vary. Each case must be decided on its own merits and care and support plans are person centred to the recipient.

Direct Payment may be subject to conditions imposed by the council and may be discontinued and or recovered if the council has reason to believe that Direct Payment may have been misspent or accumulated without good reason.

The Direct Payment scheme has been designed to apply to a wide range of community care services including:

- A personal assistant or CQC registered agency care.
- Community activities.
- Attending a day opportunity.
- Equipment following agreement.

## **2.9 What Direct Payment cannot be used for?**

Direct Payment cannot be used to purchase:

- Anything that will harm a person's health, safety or wellbeing e.g. Purchase of alcohol, tobacco or gambling.
- Anything illegal.
- Any health care needs that should be provided by the Clinical Commissioning Group.
- Long term residential or nursing care.
- Services, equipment and or minor adaptations which are responsibility of other public bodies.
- Generally, spend should only be incurred in the UK. Any overseas spend related to holiday arrangement will need to be agreed as part of the support plan and on a case-by-case basis and will be subject to the authorisation of the Head of Service in Adult Social Care (ASC).

## **2.10 Receiving a Direct Payment**

A request for a Direct Payment can be made at any time.

## **2.11 Calculating the value of the Direct Payment**

The amount of Direct Payment is derived from the personal budget set out in the care and support plan, or support plan.

The Direct Payment amount is the equivalent to the council's estimate of the reasonable cost to provide the service concerned. This means that the Direct Payment should be sufficient to enable the Adult to secure a service of a standard the council considers to be reasonable to fulfil their needs.

The council will provide services in accordance with assessed need. The council however can decide the way that such services are provided, in the interests of safeguarding, public funding and making efficient and effective use of limited resources.

The council is not obliged to fund particular costs incurred by the recipient that is not part of the care and support needs and plans.

The council will give recipients as much notice as possible of the value of the Direct Payment and the contribution they are expected to pay towards the cost of their care package if this is applicable.

The Direct Payment will reflect the financial contribution the person is required to make towards the cost of care agreed in the support plan.

## **2.12 Administration Costs**

The personal budget and Direct Payment provide for administrative costs such as payroll management, employer liability insurance etc.

## **2.13 Frequency of Payments**

Direct Payment will usually be sent directly to a pre-paid card account on a 4-weekly basis in advance. On request and where appropriate to meet needs, Direct Payment can be paid into a dedicated account provided by the Adult, nominated or authorised person.

If the Direct Payment is to buy equipment, the council will pay the agreed amount when the relevant documents are provided and authorised.

## **2.14 Financial Contribution**

In considering whether to ask recipients of Direct Payment to make a financial contribution to the cost of their care package, the Care and Support (Direct Payment) Regulations 2014 provides that the council shall determine, having regard to the adult's means, what amount it is reasonably practicable to pay towards the cost of their support. The contribution amount will be determined following a means tested financial assessment.

The council will pay the Direct Payment minus the assessed contribution. The adult should pay their assessed contribution into their Direct Payment account, preferably by standing order, every four weeks in advance to ensure the full budget is available.

Failure to pay the adult's contribution into the Direct Payment bank account may result in a suspension or reassessment of the adult's eligibility for receipt of a Direct Payment.

On closure of a Direct Payment account, shortfall of funds arising from non-payment of the adult contributions may be payable by the person in receipt of Direct Payment.

## **2.15 Non-Payment of Assessed Contributions**

Where monitoring shows that the adult's contribution has not been paid in full the Direct Payment Support Team will write to the adult, nominated or authorised person to remind them of their obligations and will liaise with ASC Team to provide the recipient with assistance in resolving this.

Direct Payment Support Team will work with the adult or their authorised/nominated person to establish any shortfall on the Direct Payment account and to ensure that all employer obligations are being met such as HMRC payments, insurance, contractual wage payments, and that appropriate contingency planning is budgeted for.

Where the Direct Payment Support Team identify the adult or their authorised/nominated person is off-setting non-payment of assessed contribution by not meeting employer obligations in full, and they are unable to resolve the concerns with the adult or their authorised/nominated person, then the Direct Support Team will refer the adult to ASC Care

Management Team for review as the recipient or their authorised/nominated person may be at risk.

## **2.16 Payment Method**

Haringey Council will pay the Direct Payment amount agreed in the care and support plan minus the recipient's contribution into either a pre-paid card account or on request and where appropriate to meet needs, the adult's dedicated account. The adult is expected to pay their contributions into the same account via standing order on a 4-weekly basis.

The Pre-pay card is flexible card system without the need to open a bank account that allows to meet the needs of the Adult and free to exercise choice and control.

## **2.17 Start-up Costs**

Where the recipient chooses to employ a Personal Assistant (PA), additional funds will be paid by Haringey to cover necessary employer's liability insurance and Disclosure and Barring Service (DBS) Checks. The costs of renewing insurance policies after the first 12 months and any future DBS checks will be budgeted for within the Direct Payment funds.

## **2.18 Managed Account Providers**

A Managed Account Provider is a way to get additional help and support to manage the administration of a Direct Payment. It ensures that no one is excluded from the opportunity to have a Direct Payment to manage a personal budget for their care and support needs.

Haringey Council can recommend Managed Account Providers, giving the adult or the authorised or nominated person the choice as to which they use or they may identify their own managing agent.

The Managed Account Providers provides support to adults who have been offered a Direct Payment. They will explain the process in detail to ensure that the service is tailored to meet the person's needs.

The Managed Account Providers take responsibility for a range of tasks should include:

- Receiving all your Direct Payment and making sure they are correct.
- Paying Personal Assistant wages, agency fees and various other bills.
- Paying all amounts due to HM Revenue and Customs (HMRC).
- Keeping a record of all the income received and payments made.
- Providing you with a statement showing all transactions.
- Dealing with the council's audit and inspection checks.

## **2.19 Pre-paid Card Accounts**

Haringey Council has a pre-paid card system in place which can be used to receive Direct Payment. The pre-paid card system can be used like a basic bank account to make payments and set up direct debits or standing orders.

Haringey Council is entitled to recover any under spend or misappropriation (theft) of Direct Payment funds from the adult or their nominated or authorised person. This will result in a review of the adult's eligible needs.

## **2.20 Administration Support and Costs**

The adult can choose to nominate a friend or family member to manage the Direct Payment on their behalf. Any administrative payments for high-cost complex care packages must be agreed with the council. The recipient must be able to demonstrate that the tasks warrant such a payment. The cost of this service will be met by the Direct Payment.

## **2.21 Paying Family Members**

The 2009 Direct Payment Regulations excluded the payment from being used to pay for care from a close family member living in the same household, except where the local authority determined this to be necessary. Where Direct Payment is deemed to be necessary to be used to secure the services from a spouse, a family member or a partner who lives in the same household - in exceptional circumstances - need to be agreed in writing by the relevant Head of Service for ASC.

The Care and Support (Direct Payments) Regulations 2014 it provides a distinction between 'care' and 'administration/management' of the direct payment. This allows people to pay a close family member living in the same household to provide management and/or administrative support to the direct payment holder in cases where the local authority determines this to be necessary. This is intended to reflect the fact that in some cases, especially where there are multiple complex needs, the direct payment amount may be substantial.

The Council recognises that the management and administration of a large payment, along with organising care and support can be a complex and time-consuming task. This allows family members performing this task to be paid a proportion of the direct payment, similar to what many direct payment holders pay to third-party support organisations, as long as the local authority allows this.

This is not intended to be income replacement, and people interested in requesting this option should be informed of tax and employment implications, any impacts upon other benefits and given (or signposted to) information and advice to help them decide. The Council need to be satisfied that it is necessary to make the payment to the family member to provide this service and that the direct payment will only be used for administration and management of the payment.

The circumstances and payment amount should be decided and agreed with the person requiring care and support, the family member, local authority and any other person (for example, advocate), with the local authority taking steps to ensure all parties agree. And the decisions will be recorded in the care plan and include the amount of the payments, their frequency and the activities that are covered.

The administration payment, if appropriate, will be agreed between the adult, the family/friend, Haringey Council and any other interested person such as an advocate.

## **2.22 Transition - when a child becomes an adult.**

Young people from the age of 16 can consent to receiving a Direct Payment. Where a young person in respect of whom a Direct Payment is being made becomes an adult (on their 18th birthday), Haringey Council will take reasonable steps to ascertain whether the young person, if eligible, still consents to receiving a Direct Payment.

### **2.23 Transfers between Direct Payment and Council provided service.**

If, for any reason, the person does not agree to a Direct Payment or if they are no longer in a position to arrange their own services, the council will put in place arrangements to ensure they receive the care needed.

People who are already in receipt of council provided services may wish to switch to a Direct Payment.

It is also possible to arrange a mixture of council provided services and a Direct Payment, if it is appropriate to do so.

### **2.24 Paying for Council Services**

If the adult wishes to receive a service from Haringey Council the Direct Payment will be reduced by the service cost before it reaches the Direct Payment bank account.

The adult may live close to a boundary with another local authority and may use their Direct Payment to access a particular service in that area to meet their outcomes.

### **2.25 Direct Payment Support Team**

The adult or the nominated or authorised person may need support with setting up and managing their Direct Payment and fulfilling their role as an employer. The council's Direct Payment Support Team will provide support in all aspects of the process, including setting up payments and monitoring of Direct Payment.

Once completed forms are received, including the Direct Payment Agreement Form, the Direct Payment Support Team will arrange for payment to be made to the account agreed by the council and will confirm in writing to the adult or authorised or nominated person that the Direct Payment arrangement is now in place.

The Direct Payment Support Team will then monitor all Direct Payment on an ongoing basis in line with the approach detailed in section 3.13 – 3.17.

### **2.26 Safeguarding adults**

Direct Payment recipients are entitled to make their own decisions and to take risks in the same way that any other person is entitled to make choices involving risk. It is however essential to put safeguards in place to prevent any potential financial abuse.

It should be noted that Haringey Council will support individuals in receipt of a Direct Payment to minimize risk of abuse from people who are individually employed by the recipient as it is noted that these employees are not monitored by the Council.

Safeguarding is everybody's business and therefore it is essential that council staff, staff and volunteers of partner organisations and agencies, and members of the public remain alert and vigilant to the potential for abuse.

As with other service users, the adult receiving Direct Payment may be at risk of abuse from family members, friends, carers, neighbours, professionals and strangers. Direct Payment recipients who employ will be advised but they have the option to request pre-employment checks and criminal record checks for any PA they wish to recruit. Support is also provided with the interview process.

In the event that Haringey Council considers the provider of support to be placing the recipient at risk, the Direct Payment maybe suspended and alternative provision provided, whilst a safeguarding investigation is undertaken.

### **2.26.1 How to report suspected adult abuse (members of the public)**

If you think someone else is being abused, you must tell someone:

#### **2.26.2 Call the Police**

- If the danger is not immediate telephone 101
- If the danger is immediate, always call the police on 999.

#### **2.26.3 Contact the First Response Team (adult social services):**

- Telephone: 020 8489 1400
- Email: [firstresponseteam@haringey.gov.uk](mailto:firstresponseteam@haringey.gov.uk)

It will then be referred to the relevant team. The Direct Payment Support Team may be contacted as part of the safeguarding process.

Where a criminal act may have been committed the police must be notified immediately. The person raising the safeguarding concern should call 999 immediately.

## **2.27 Safeguards that are designed to reduce risk to adults who are Direct Payment recipients.**

There are a number of provisions in place to protect adults receiving Direct Payments from potential risks. These include:

- **Care and Support plans** –The care and support plan will set out a recommendation as to how to use Direct Payment, reducing the risk of misuse of the allocated funds. Further discussions will be had regarding employment or agency provision.
- **Contingency planning** – The Direct Payment Support Team and Disability Action Haringey will assist the adult or the nominated or authorised person with any contingency planning, including a backup care provision and ensure that there are sufficient funds in the Direct Payment account to cover care and support bills related to the provision of Direct Payment. Direct Payment recipients are encouraged to communicate any changes in this regard to support services.
- **Reviews** – Direct Payment recipients will be reviewed annually and if support needs change, they will be reassessed.
- **Pre-paid card** – this enables the adult or his nominated or authorised person to recipient receive payments on a visa card to be able to pay for services, giving them



more flexibility in managing their allocated budgets without having to open a bank account.

- **Managed payroll** – this is an option for those recipients who do not wish to manage their Direct Payment. A nominated third-party organisation or a payroll agent will receive the Direct Payment funds and make payments for services based on the client's services/instructions.
- **Financial returns** – Direct Payment recipients are required to complete financial returns demonstrating how they used their Direct Payment so that any difficulties accounting for the allocated funds can be identified early. This process is called reconciliation. Under the Direct Payment Audit Policy, up to 8 weeks of budget can remain in the account. This is not to be used unless agreed with support services.
- **Contract of employment**- PA's contract of employment will highlight terms and conditions and should include a detailed job description to ensure the carer's role and responsibilities are clear.

## 2.28 Further Safeguarding Information

[See more information on Adult Safeguarding.](#)

Haringey Council advises that adults receiving Direct Payment or their authorised or nominated person should ensure they follow health and safety guidelines when employing someone to provide care, general information on health and safety issues is provided by the council. To support the safe delivery of care the council will give the adult or the authorised or nominated person the results of any risk assessments carried out as part of their assessment for care.

The adult or the authorised or nominated person have a responsibility for their own health and safety, including assessment and management of risk to others involved in the provision of care. The council advises the recipient/authorised or nominated person to [visit the Health and Safety Executive website](#) for further information.

## 2.29 Disputes

Any disputes in relation to the allocation of a Personal Budget or provision of a Direct Payment will be subject to Haringey Council's statutory complaints procedure.

If the recipient or nominated/authorised person has a complaint about services they have purchased independently, they should address this with the service provider or employee concerned and inform Haringey Council. The council will review the issues outlined in the complaint and take appropriate action, including safeguarding procedures if required.

# 3 HARINGEY'S OPERATING & FINANCIAL ARRANGEMENT FOR DIRECT PAYMENTS

## 3.1 Agreement to receive a Direct Payment

To receive a Direct Payment, the person must have eligible care and support needs as defined by the Care Act 2014. The Direct Payment Agreement (**Appendix A and B**)

documentation must be completed and co-signed with Haringey Council. This agreement sets out the conditions under which Direct Payment are able to be made and includes important information regarding the responsibilities of Haringey Council, the adult, and/or their nominated/authorised person. The agreement reflects this operating arrangement and requires recipients to utilise the Direct Payment to purchase and contract for support as detailed in their support plan. The arrangements must be made within the parameters required by Haringey Council to ensure they are legal; safe; and that public money is properly accounted for.

In circumstances where the terms and conditions of the agreement are not met, Haringey Council will take reasonable and proportionate steps to address the issues arising and support the recipient whenever possible to maintain the Direct Payment. In the event that the issues remain unresolved, Haringey Council will conduct a review and consider whether the Direct Payment continues to be an appropriate arrangement to meet the adult's assessed needs. If appropriate, Council will discontinue the Direct Payment and put in place alternative support to meet the person's needs.

### **3.2 Employing a Personal Assistant (PA)**

The Adult or the authorised or nominated person may use Direct Payment to employ PAs, or to pay an agency to provide services set out in the care and support plan.

Where a PA has been agreed in the care and support plan, the Direct Payment will include funds to employ a PA, employers' national insurance contributions, income tax, employers' liability insurance, pension and DBS checks.

The council will provide information and support on the interview and employing a PA and will provide regular monitoring to ensure payments are being made correctly. Becoming an employer carries with it certain responsibilities and obligations, in particular in relation to paying Tax, National Insurance, minimum wage requirements, sick pay and annual leave and ensuring that any person employed has the right to work in the UK. A payroll agent will be provided for this service.

When employing a PA, the recipient shall comply with their legal duties and obligations as an employer in the United Kingdom including that which is required by HM Revenue and Customs and the UK Border Agency. The adult or their nominated or authorised person shall be responsible for making appropriate deductions for tax and national insurance contributions from the remuneration paid to its workers, register as an employer with HMRC and ensure all checks are made of their potential employee including a DBS check and the right to work in the UK.

If a PA is employed, the council will fund for an enhanced Employer's Liability Insurance and Public Liability Insurance for the recipient, before the Personal Assistant starts work. This is to be with reputable insurers or underwriters with a minimum limit for any one claim of £10 million (the limit to be increased from time to time as reasonably required by the Chief Finance Officer of the council).

The insurance policy and premium receipts must be produced on demand when requested by Haringey Council.

The council strongly recommends that DBS checks are obtained for all personal assistants. The council will fund for DBS checks and the Direct Payments Support Team will support recipients through this process.

### **3.3 Contract of employment**

The adult or their authorised/nominated person employing Personal Assistants are legally obliged to sign a written contract of employment with their Personal Assistant prior to commencement of employment. The contract will outline the terms and conditions of the Personal Assistant's work including all the statutory entitlements (e.g. maternity leave) and the job description. The employer and employee should both sign the contract and keep copies for future reference.

Direct Payment Support Team and Disability Action Haringey can help you with advice and support with:

- Interviewing for staff
- References
- Induction
- Job descriptions and contracts of employment
- Training available for staff
- Disclosure and Barring checks
- Payroll services

### **3.4 Mixed package of care using an agency and employing personal assistants**

The adult can have a mixed package of care using an agency and employing their own personal assistants, or you could use an agency to cover when an employee is on holiday or sickness absence.

If the agency chosen charges a higher rate than the standard Direct Payment rate, then the adult or the authorised or nominated person should pay the difference from their own personal monies.

### **3.5 Using a care agency**

Purchasing services directly from an agency means that the adult does not directly employ the people who provide the care, and the recipient does not have responsibilities as an employer. Instead, the contract is with the agency.

### **3.6 Managing care agency costs**

Sometimes an agency may charge an hourly rate which is more than the Direct Payment hourly rate paid by the council. It is likely the adult will have to pay the difference from their own personal funds. The Direct Payment can only pay for care hours. The council advises recipients to discuss any additional costs with their social worker when their Direct Payment are arranged.

### **3.7 Care Quality Commission (CQC)**

In England, the Care Quality Commission (CQC) is the Health and Social Care regulator and has an online directory of registered independent care services. The agency that you choose to contract your Direct Payment care support with, must be registered with the [Care Quality Commission \(CQC\)](#).

### **3.8 Receiving a Direct Payment while in Hospital**

Haringey Council may temporarily reduce or suspend payments if the recipient is unable to receive services for a period of time, such when a long stay in hospital is required. Following discussions with the adult or their authorised/nominated person, Haringey Council will give consideration to the adult's circumstances and consider the appropriate action. Direct Payment may continue to be paid for short stays in hospital for up to 8 weeks (including reablement care period) to facilitate staff or PA retention by the adult.

### **3.9 Care and support while staying outside of the UK.**

If the adult needs care whilst abroad, the adult can take their regular carer or PA, but must pay for their travel expenses and accommodation.

The adult or the authorised or nominated person can contact a care agency in the country they are traveling to. They will need to find out if the country has a system for regulating social care equivalent to the CQC in England, and ensure the provider fully complies with this. The adult retains the responsibility to ensure that any employee particularly if this is outside the UK, complies with the country's employment rules and regulations.

The adult or their authorised/nominated person must retain receipts for payment of wages to employees as well as all other documentation related to such employment; this includes copies of timesheets, receipts and invoices relating to purchases made from their Direct Payment bank account. These should be submitted to Haringey Council along with their financial monitoring returns every quarter.

### **3.10 Receiving a Direct Payment while in Residential Care**

A Direct Payment cannot be used to fund a long-term stay in a care home.

The amount of respite care a cared for person may be offered will depend on their assessed needs and circumstances.

Where an adult user, or an unpaid carer on the user behalf, requests accommodation-based respite of longer than 8 weeks duration, the council's top up policy may be applied and the council may agree to contribute to the costs of the respite care being requested.

The need for respite care will be considered whenever care needs are reviewed or reassessed. This will happen at annual review or because needs or circumstances change.

[Read the council's respite policy.](#)

### **3.11 Cost of the equipment or minor adaptations**

The Direct Payment will only fund the amount that it would ordinarily cost the council to pay for the equipment or minor adaptations. The recipient will need to top-up any additional costs privately.

### **3.12 Minor Adaptations**

Minor adaptations up to the cost of £1,000 e.g. grab rails in your home can be purchased through a Direct Payment. However, the adult will be responsible for ensuring that they are installed and maintained safely.

For works above £1,000, the [Disabled Facilities Grant \(DFG\)](#) process would be used. The council's occupational therapist can discuss this with the recipient.

The Direct Payment will include the cost of the equipment plus fitting, training and maintenance for 3 years.

The adult will have the responsibility of maintaining the equipment once any manufacturer's guarantee has expired. The adult may choose to fund any further warranties privately. The adult will need to arrange this directly with the manufacturer.

### **3.13 Ownership and Responsibilities**

Any equipment purchased via a Direct Payment will belong to the adult and will be responsible for its care and maintenance. If the equipment requires regular servicing, the council will usually give you additional money as required, to cover this cost.

When the equipment is no longer of use to the adult, it is the responsibility of the adult to dispose of it. The council is not able to buy it from the adult. Any income raised by the disposal must be put towards the cost of new goods/equipment and will form part of any new Direct Payment.

The adult will need to take all legal responsibility for the equipment which includes health and safety.

Any unauthorised expenditure may be re-claimed from the adult.

### **3.14 Monitoring Direct Payment**

A Direct Payment is public money and needs to be monitored and fully accounted for. Recipients of Direct Payments (including carers) are required to account for how the money has been spent and providing copies of the following information:

- Details of all purchases/ transactions made, showing cheque numbers to aid reconciliation.
- All monthly bank statements relating to the Direct Payment account.
- Invoices and payslips if you employ a worker.
- Receipts for any agreed purchases made using your Direct Payment funds.
- One-off agreed purchases should be made, and receipts retained.

If it is clear that the recipient is struggling to understand their responsibilities in operating the Direct Payment, the council shall assist with further information, advice and support and may offer an alternative service if deemed necessary.

As part of the Direct Payment Agreement, failure to comply with the above requirement may result in the suspension or even cancellation of a Direct Payment.

### **3.15 Six Week Review of Direct Payment**

As part of the monitoring and review process an initial light-touch review will take place 6 weeks after Direct Payment have started to ensure that the recipient is comfortable with using the Direct Payment and experiencing no initial issues. Thereafter, the Direct Payment will be reviewed within 6-months and then annually as part of the care and support plan review.

Where a Direct Payment is being managed by a nominated/authorised person, or where a family member or friend is being paid for administrative support, the review will seek to involve all relevant parties involved in the care arrangements. This will ensure that Haringey Council receives views from everyone involved in the Direct Payment and seek to resolve any issues.

The monitoring will take place across both the financial aspects of the Direct Payment and to identify risks and issues. For example, if the Direct Payment recipient is employing people correctly. Haringey Council will include in the review, checks to ensure the recipient is fulfilling their responsibilities as the employer. In particular, that they are submitting PAYE returns to HMRC as well as paying tax and National Insurance deductions made to HMRC.

If at the initial 6-week review it becomes clear that the recipient is struggling to understand their responsibilities in operating the Direct Payment, Haringey Council shall assist with further information, advice and support.

The outcomes of the review should be written down, and a copy given to all parties. Where there are issues that require resolving, the resolution method should be agreed with all parties involved, as far as is reasonably practicable. Where appropriate, the council would advise recipients of their rights to access the council's complaints procedure.

Expenditure from the pre-paid card account will be monitored. It is important that receipts and invoices to evidence payment from the card are kept and submitted to the council in line with the financial monitoring policy requirement.

All documentation will be held securely in line with the Data Protection Act (DPA) 2018 and the General Data Protection Regulations (GDPR).

### **3.16 Annual Review of Direct Payment**

All Direct Payment will be reviewed at twelve monthly intervals. Reviews and reconciliations may be more frequent depending on the circumstances.

The review will establish if Direct Payment are being used to meet needs/outcomes as intended, conditions are met, and public monies are being used effectively.

The review will look at:

- Whether needs have changed?
- Whether outcomes are being met?
- Whether there are benefits from receiving a Direct Payment?
- How being the money paid is being managed?
- Are appropriate records being kept?

Reviews must involve the adult, any carer, any authorised person, any family member providing paid administrative or management support and anyone else that the service user requests be involved. If the service user lacks capacity to make such a request, anyone who is authorised under the MCA to make personal welfare decisions or if there is no such person anyone who appears to be interested in the service user's welfare should be involved.

Where Haringey Council has identified a change in circumstance that it deems affects the current level of Direct Payment due, Haringey Council will give the recipient, or their authorised/nominated person 7 days written notice of the change. This notice period may be

extended where a reduction may affect any pre-existing contractual arrangements, such as a PA.

The recipient or their authorised/nominated person will ensure that arrangements are in place to notify Haringey Council immediately if there are any changes in their circumstances which may affect their entitlement to Direct Payment. Examples of changes are: if the recipient is admitted to hospital, is going to be away for periods beyond 4 weeks or no longer requires the service, a change of address or support arrangements. It is the responsibility of the recipient to check with Haringey Council if they are unsure if a change in circumstance will affect their eligibility to continue to receive Direct Payment.

A formal review or reassessment of the adult's circumstances by Haringey Council can be requested at any time.

### **3.17 Audits of Payments**

The monitoring will look at all aspects of the Direct Payment to identify risks and issues. For example, if the Direct Payment recipient is employing someone to provide the care, Haringey Council will review and check to ensure the recipient is fulfilling their responsibilities as the employer. In particular, that they are submitting PAYE returns to HMRC, and that tax payments and National Insurance deductions are being made.

A set of principles covering an approach to auditing will be followed:

- People have independence and choice, but they also have responsibility. It is reasonable to ask people to account for how they have spent their recipient budget money in achieving their support plan outcomes.
- Monitoring arrangements will be proportionate to risk involved.
- Monitoring will be aligned as closely as possible with the support plan review processes so that information contributes to an understanding which can support people to make the best use of resources available to them.
- People will have flexibility to spend the resources allocated to meet their needs flexibly, and in ways which reflect their own priorities.
- People will be given clear boundaries about the limit of flexibility that apply to the use of their budget.

The adult or their nominated/authorised person shall keep all documents and records generated in connection with the provision of care and support provided by a Direct Payment Agreement with Haringey Council for a period of seven years following the end of the agreement. The documents or records held by the adult or their authorised/nominated person may be inspected by Haringey Council at any point during this period.

If the adult or their nominated/authorised person has set up their own dedicated Direct Payment bank account, a quarterly return is required with following documentation:

- A fully completed quarterly return form, with details of all purchases/transactions made during the quarter, showing cheque numbers to aid the council reconciliation of payments in the account.
- Copies of all bank statements from the relevant quarter.
- Invoices, pay slips and timesheets if someone is employed to deliver the care.
- Receipts for any purchases made using your Direct Payment funds.
- One off purchases.

Recipients will be asked to return any excess balances over the 8 weeks. The council will reconcile any unspent money in a Direct Payment account where it exceeds an amount equivalent to 8 weeks.

If the Direct Payment is to buy equipment and the equipment has not been bought within eight weeks of the payment being made, the council will reconcile the money. In certain circumstances the council may agree, in writing, for a longer period to purchase the equipment.

These are the most common reasons for reconciling are:

- The recipient moves permanently away from Haringey.
- Due to a change in circumstance that was not notified to Adult Social Care, overpayment may sometimes occur.
- If a recipient is using their budget on expenditure that is not in line with their agreed plan, it may trigger a review and subsequently, monies not used will be reconciled.

In any of the above circumstances, the council ASC staff will work with the recipient to ensure that they are not disadvantaged, when Direct Payment monies are being clawed back.

Haringey Council has the right to suspend or terminate the Direct Payment as a result of the findings of the audit of the Direct Payment account however such action will not be unreasonably applied.

### **3.18 Unspent Direct Payment**

Where money in a Direct Payment bank account is uncommitted or unaccounted for beyond an 8-week payment period, Haringey Council will seek to recover the uncommitted amount from the account.

In most cases Haringey Council will undertake a review of care and support plan with the adult to ensure they are not disadvantaged. Following a review, the Direct Payment may be changed to ensure it still meets the needs of the recipient.

Haringey Council reserves the right, after discussion with the adult or their authorised/nominated person to adjust future payments, recover any over-payments or under-spends. This may occur when the person has long hospital stays, a change in circumstances or the death of the recipient. The council will take into consideration all required expenses in relation to the Direct Payment such as statutory holidays, or payments due to the HMRC.

#### **Misuse and fraud**

In cases of misuse or fraud relating to the use of a Direct Payment, Haringey Council will take action to recover all or part of the monies where appropriate.

- In the event that fraud, abuse or misuse is reasonably suspected, Haringey Council may refer the matter to the Internal Audit Team.
- Haringey Council will refer any potential criminal activity to the Police for further investigation and reserve the right to prosecute where fraud is suspected to have taken place.

#### **1.1. Suspending or Ending a Direct Payment**



The council will stop a Direct Payment agreement by notice if:

- The adult or the authorised or nominated person no longer agrees to receive a Direct Payment
- The adult is no longer entitled to social care support for which the Direct Payment are made e.g. for short-term packages when leaving care home or hospital. Direct Payment for after-care services under section 117 of the Mental Health Act would also cease once the clinical commissioning group and Haringey Council are satisfied that the person concerned is no longer in need of such services.
- If one or more of the qualifying criteria or terms in the Direct Payment Agreement are breached by the adult or nominated/authorised person. For example, failure to comply with the auditing and monitoring of your Direct Payment may result in the Direct Payment being temporarily suspended until evidenced.
- If Haringey Council is no longer satisfied that the nominated/authorised person is acting in the best interests of the recipient.
- The council believes the recipient can no longer manage the Direct Payment effectively to meet their needs, and no suitable assistance is available to enable them to do so and alternative provision will be offered.
- If misappropriation of fund is suspected, following investigation the council may pursue the return of the misappropriated funds.
- The council believes that the recipient is no longer a suitable person to receive and manage a Direct Payment due to a safeguarding matter. However, the council retains a duty of care and service would be delivered via other deployments options such as ISF or commissioned services.
- The adult is placed by the court under a condition or requirement relating to a drug and/or alcohol dependency.
- As part of an investigation or plan under the Safeguarding Adults Procedures.

In such cases Haringey Council will put a managed service in place to ensure that the adult's eligible needs are met. Haringey Council will also initiate a review to consider revision of the care and support plan and Direct Payment.

Notice required will depend on recipient circumstances. Haringey Council will endeavour to put in place a 4 week notice period unless an evaluation of risks or other relevant factors require a speedier resolution.

Once a Direct Payment has been suspended or terminated for the above reasons a new Direct Payment will not be considered until all outstanding issues from the original Direct Payment have been resolved, for example all outstanding balances are repaid, and safeguarding issues resolved.

### **3.19 Discontinuing Direct Payment in the case of persons with capacity to consent**

Where someone with capacity is in receipt of a Direct Payment but loses capacity to consent, Haringey Council will discontinue Direct Payment to that person and consider making payments to an authorised person instead. In the interim, Haringey Council will make alternative arrangements to ensure appropriate continuity of support for the person concerned.

If Haringey Council believes the loss of capacity to consent to be temporary, it may continue to make payments if there is someone else who is willing to manage payments on the person's behalf. This situation should be treated as strictly temporary and will be closely

monitored to ensure that, once the person has regained capacity, they are able to exercise overall control over the Direct Payment as before. If the person's loss of capacity to consent becomes prolonged, Haringey Council will consider making more formal arrangements for an authorised person to take over receipt of the Direct Payment on that person's behalf. The arrangement is designed to be temporary, so that the person managing the Direct Payment does not enter into any long-term contractual arrangements.

### **3.20 Discontinuing Direct Payment in the case of persons lacking capacity to consent**

Haringey Council will discontinue the Direct Payment if the council believes that the authorised person is not acting in the best interests of the beneficiary, within the meaning of the Mental Capacity Act 2005.

Haringey Council may discontinue the Direct Payment if it has sufficient reason to believe that the conditions imposed under regulations on the authorised person are not being met.

### **3.21 How to discontinue Direct Payment**

If a recipient no longer wishes to receive Direct Payment, they should inform the council by contacting Direct Payment Support Team and provide 4 weeks' notice to enable Haringey Council to, if required, meet the care and support plan outcomes by alternative means.

### **3.22 Ending Direct Payment on Death.**

When a service user dies, their representative should contact Haringey Council's Direct Payment Support Team as soon as possible to inform of death and the date when the service user passed away so that Direct Payment can be finalised correctly.

In the event of the death of the adult any amount of Direct Payment remaining in the Prepaid Card or bank account will be recovered by Haringey Council following a discussion with the family and or the authorised/nominated person. Funds will be available to pay for commitments outlined in the care and support plan, if an agreement is in place for advance payments or notice needs to be given before termination.

Any amount due to the estate of the adult for the fulfilment of contractual and legal obligations relating to any person employed by the adult or to HMRC shall be paid by Haringey Council on receipt of supporting documentary evidence or an invoice relating to the services received.

Any personal contribution remaining in the Direct Payment bank account will be paid to the adult or their estate within 28 days of termination of the Direct Payment, subject to all records being made available to Haringey Council. Any additional amount remaining in the Direct Payment bank account will be returned to Haringey Council.

## **4 DIRECT PAYMENT FOR CARERS**

A carer can request to receive a Direct Payment to meet the needs set out in their support plan. This may include arranging 'replacement care' for the person in need of care and

support. Under the Care Act there is no “minimum hours” requirement for a carer to be eligible for support.

Further information about Direct Payment for carers – including how the level of a Direct Payment will be worked out can be found in the [Respite Care Policy for Children, Young People and Adults in Haringey](#).

Carer Direct Payment are specific to services to meet the carer’s own assessed and eligible needs. They are for services that sustain the carer’s health, wellbeing and quality of life, and which support them to keep on caring, for example:

- Services that give the carer a break so that they can have some time to themselves. Carer Direct Payment can be used to pay for sitting services or general day care. They cannot be used to pay for services that involve physical contact like lifting, washing, grooming, feeding, dressing, bathing, toileting. These meet service user rather than carer needs.
- Services that allow carers to spend more time caring, like help in the home or garden.
- Other things that support the caring role, for example relaxation therapy.

#### **4.1 Payment Methods**

Where the Direct Payment is awarded in full as a lump sum, this will generally be paid to the carer’s bank account.

#### **4.2 Monitoring & Reclaims**

The monitoring and reclaims processes for carer’s Direct Payment will largely mirror that of other Direct Payment as per sections 3.13 to 2.17 and will remain proportionate and appropriate considering the level of the Direct Payment and the outcomes agreed in the support plan.

# APPENDIX A – DIRECT PAYMENT AGREEMENT

Date: \_\_\_\_\_ 20xx

## Direct Payment Agreement London Borough of Haringey Adult Social Care Direct Payments Service

This Direct Payment Agreement (“**Agreement**”) is a contract between Haringey Council and you and your representative (if applicable). You should ensure that you read this Agreement carefully before you sign it as it is legally binding.

This Agreement is between:

- (1) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF HARINGEY** of Civic Centre, High Road, Wood Green, London N22 8LE (referred to in this Agreement as “**Haringey Council**”); and
- (2) **[NAME OF SERVICE USER]** who will receive the support services and who resides at [address of service user] (referred to in this Agreement as “**you**”); and
- (3) **[NAME OF REPRESENTATIVE]** who resides at [address of Representative] (referred to in this Agreement as the “**your representative**”) and who has been nominated to and agrees to manage and take direct responsibility for the Direct Payment for you as a (tick appropriate box):

<b>NOMINATED PERSON</b>	<b>AUTHORISED PERSON</b>
<i>A Nominated Person is someone who you have chosen to manage the Direct Payment on your behalf.</i>	<i>An Authorised Person is someone who will manage the Direct Payment on your behalf if you have been assessed as lacking mental capacity to manage the Direct Payment yourself.</i>

(each a “**party**”, and together the “**parties**”).

## **1. BACKGROUND AND INTERPRETATION**

- 1.1 Haringey Council has carried out an assessment of your needs and has determined how much money is available to help you meet your eligible care and support needs. This sum of money is called the “**Personal Budget**”.
- 1.2 You or your representative have requested that some or all of your Personal Budget be provided by cash payments to allow you or your representative to directly arrange for the care and support identified in your care and support plan. These payments from Haringey Council are called “**Direct Payment(s)**”.
- 1.3 The Direct Payment amount will be equivalent to Haringey Council’s estimate of the reasonable cost to provide the social care services and support detailed in your care and support plan to a standard which Haringey Council considers reasonable to fulfil your needs.
- 1.4 Unless the context clearly requires otherwise, all references to ‘you’ in this Agreement shall be deemed to include a reference to ‘your representative’ if a representative has been named as a party to this Agreement, other than in conditions 2.9 - 2.13. Your representative shall be jointly and severally liable for your obligations and liabilities under this Agreement.

## **2. YOUR RESPONSIBILITIES**

- 2.1 You agree to receive Direct Payments from Haringey Council for the purpose of arranging and purchasing social care services and support as detailed in your care and support plan.
- 2.3 You will be responsible and accountable for how the Direct Payments are used and you must ensure that the Direct Payments are only used to meet the outcomes set out in your care and support plan and that it is not misused in any way.
- 2.4 If you are unsure as to whether the support or services which you are considering spending the Direct Payments on will meet the outcomes set out in your care and support plan, then you must seek advice from Haringey Council before purchasing the support or services.

### **Your Contributions**

- 2.5 Haringey Council will carry out an assessment of your financial circumstances and this may result in you being required to make a financial contribution towards some or all of your social care support. If you are assessed as needing to make a

contribution, the Direct Payment which Haringey Council will pay to you will be reduced by the amount of your contribution.

- 2.6 You must pay your contribution directly into your Direct Payment account every four weeks in advance by standing order or at other intervals or by another method this has been approved in advance by Haringey Council.
- 2.7 Where there have been one or more instances where your contribution has not been paid into your Direct Payment account, Haringey Council may suspend or reassess your eligibility for Direct Payments.
- 2.8 On closure of a Direct Payment account or when the Direct Payments come to an end, Haringey Council may seek to recover any shortfall of money arising from non-payment of your contribution.

#### **Your Representative (if applicable)**

- 2.9 Your representative shall:
  - 2.9.1 receive your Direct Payment on your behalf; and
  - 2.9.2 use the Direct Payment money at all times in your best interests and in accordance with the terms of this Agreement.
- 2.10 Your representative must work with you to select, arrange and purchase social care services and support as detailed in your care and support plan.
- 2.11 Your representative must notify Haringey Council immediately if there is a disagreement between you and your representative about the use of your Direct Payment.
- 2.12 Your representative must not have any financial interest in the Direct Payments.
- 2.13 Your representative agrees to be legally bound by all of the terms of this Agreement and shall be jointly and severally liable for your obligations and liabilities under this Agreement.

#### **Safeguarding**

- 2.14 You should be alert and vigilant to the potential for abuse and should take all reasonable steps necessary to ensure that safeguards are put in place to prevent any potential financial, physical or mental abuse.
- 2.15 Haringey Council will provide advice and support to you on request to minimise risk of abuse from employees or providers of support or services.
- 2.16 You must immediately call Haringey Adult Social Services (First Response Team) on 020 8489 1400 if there are any safeguarding concerns relating to you.

- 2.17 You must immediately call the police if you suspect that you are in danger or may be at risk of being in danger or if a criminal act may have been committed.
- 2.18 If Haringey Council believes that a provider of support or services is placing you at risk, then the Direct Payments may be suspended and where possible alternative provision will be provided whilst a safeguarding investigation is undertaken.

### **Health and Safety**

- 2.19 You are responsible for your own health and safety.
- 2.20 You are required to carry out health and safety and risk assessments and to manage risk to others involved in the provision of care to you. You agree to adhere to all relevant guidance published on the Health and Safety Executive website at [www.hse.gov.uk](http://www.hse.gov.uk).
- 2.21 Haringey Council will provide you with copies of any risk assessments which they have carried out in relation to your care.

## **3. HARINGEY COUNCIL'S RESPONSIBILITIES**

- 3.1 Haringey Council will pay any Direct Payments which you are entitled to in accordance with this Agreement into your Direct Payment account. The value of Direct Payments which you will receive will be based on an assessment of your needs and the outcomes set out in your care and support plan and will include where appropriate any money required for agency fees, recruitment costs, national insurance contributions, income tax, employer's liability insurance, public liability insurance, pension and DBS checks. You must ensure you have sufficient insurance to cover any redundancy payments. If you are required to make a contribution, this will be deducted from the total Direct Payment which you will receive.
- 3.2 Haringey Council will aim to write to you within fourteen days of this Agreement being signed to confirm the start date, frequency and value of the Direct Payments.
- 3.3 Haringey Council has agreements with independent organisations to support you in budgeting and using Direct Payments and will provide details of these organisations when the Direct Payments commence.

## **4. PAYMENT METHODS**

- 4.1 The Direct Payments will be paid to you using one of the following methods:

- 4.1.1 Pre-paid card – the card offers instant, anytime access to the account. Payments can be made by telephone or internet banking, and the card can be used to pay providers who accept MasterCard; or
- 4.1.2 Managed payroll – the Direct Payments are paid directly to an independent organisation who manages it on behalf of you. You still retain full control and responsibility for the Direct Payments; or
- 4.1.3 Bank account - Direct Payments can be paid into a separate bank account if this is appropriate to meet your needs. In those circumstances you must regularly provide Haringey Council with financial monitoring information. You must keep the Direct Payment bank account in credit and not allow it to become overdrawn. If the account becomes overdrawn, you will be responsible for paying any charges.

The card, managed payroll or account which the Direct Payment will be paid into is called the “**Direct Payment account**”.

- 4.2 Cash withdrawals from your Direct Payment account can only be made by you up to the value limits which you have agreed with Haringey Council. If you make cash withdrawals, you must regularly provide receipts to Haringey Council to demonstrate how the cash has been spent on your care and support.
- 4.3 Direct Payment money which has been paid to you will remain the money of Haringey Council.
- 4.4 You are not permitted to transfer Direct Payment money to any other personal or business bank account without the prior written consent of Haringey Council, unless the transfer is made to an Employee’s bank account in connection with your obligations as an employer.

## **5. USING DIRECT PAYMENTS**

- 5.1 Haringey Council would like to ensure that you find your Direct Payments suitable and effective. However, there are some limitations on how Direct Payments can be used and you must therefore ensure that you comply with this condition 5 at all times.

### **Permitted Use**

- 5.2 The Direct Payments must only be used to achieve the outcomes identified in your care and support plan. It must not be used for anything else, such as health care services, housing costs, or general living expenses.
- 5.3 The Direct Payments must only be used to purchase services which are safe, legal, good value for money and which safeguard and promote your welfare and wellbeing.



### **Unlawful use**

- 5.4 The Direct Payments must not be used for:
- 5.4.1 any unlawful purposes;
  - 5.4.2 anything which will harm your health or wellbeing including but not limited to the purchase of alcohol or tobacco or for gambling;
  - 5.4.3 any investment, payment of household bills or for general personal expenses;
  - 5.4.4 services, equipment or minor adaptations which are the responsibility of other public bodies and not Haringey Council including any health care needs which should be provided by the Haringey Clinical Commissioning Group; or
  - 5.4.5 any declarations of income or obtaining a loan, credit or similar financial product,
- and the Direct Payments must only be used for permitted purposes approved by Haringey Council.

### **Residential Care**

- 5.5 The Direct Payments must not be used to pay for long-term residential care.
- 5.6 The Direct Payments may be used for short-term residential care provided that it does not exceed four consecutive weeks in any 12-month period, or provided that it does not exceed a cumulative total of four weeks where the residential care is separated into two or more periods separated by less than four weeks.

### **Personal Assistants and other Staff:**

- 5.7 If the Direct Payments will be used to directly employ a personal assistant or other staff (called the “**Employee**”):
- 5.7.1 you must register as an employer with Her Majesty’s Revenue and Customs;
  - 5.7.2 you must take out enhanced employer’s liability insurance and public liability insurance with reputable insurers or underwriters with a minimum limit for any one claim of £10,000,000 (ten million pounds) before the Employee commences work for you. Haringey Council reserves the right to increase the minimum limit required for any one claim from time to time as reasonably required by the Chief Finance Officer of Haringey Council;
  - 5.7.3 you must pay for the insurances from the Direct Payment account, ensure that the insurances are renewed as required and provide Haringey Council with a

- copy of the certificates of insurance within 7 days of policy commencement and annually on renewal thereafter;
- 5.7.4 you will be liable for any costs incurred in relation to any issues covered by your insurance policy and it will not be possible to reclaim these costs from Haringey Council;
- 5.7.5 you must ensure that you are aware of and comply with your responsibilities as an employer including in relation to payment of the Employee, minimum wage requirements, national insurance contributions and income tax, sick pay, maternity and paternity pay, holiday pay, redundancy and pension contributions;
- 5.7.6 you must carry out a thorough recruitment process before appointing an Employee, ensure that the Employee has the right to work in the UK, and obtain employment references prior to the appointment of the Employee;
- 5.7.7 you must enter into a written contract of employment with the Employee prior to the commencement of employment which includes the terms and conditions of employment outlining all statutory employment requirements and the job description. The contract shall be signed by the you and the Employee and retained by you for future reference;
- 5.7.8 you shall ensure that all applicable health and safety guidelines and legislation are adhered to when employing an Employee; and
- 5.7.9 you acknowledge that you are liable for all charges and payments associated with your responsibilities as an employer and that you will be personally liable for any debts incurred.
- 5.8 If the Direct Payments will be used to directly employ an Employee, Haringey Council will:
- 5.8.1 ensure that the direct payment includes additional money for applicable administrative costs which may include agency fees and payroll management, employer's national insurance contributions, income tax, employer's liability insurance, pension contributions and DBS checks;
- 5.8.2 provide advice and support to you in respect of undertaking Disclosure and Barring Service checks prior to you entering into a contract with the Employee; and
- 5.8.3 provide information and support on interviewing and employing a personal assistant and provide regular monitoring to ensure that employer payments are being made correctly.

### **Purchasing Goods, Equipment or Adaptations:**

- 5.9 Where you require goods, equipment or minor adaptations, then Haringey Council will consider how much the equipment or minor adaptation would ordinarily cost and Haringey Council will include that amount in the Direct Payments. Any additional expenses relating to goods, equipment or minor adaptations which exceed the Direct Payment money provided by Haringey Council must be met by your personal money.
- 5.10 If you use Direct Payment money to purchase goods or equipment, then to you are responsible for paying the supplier in full, and you are the owner of the goods or equipment upon purchase.
- 5.11 Where maintenance costs for goods or equipment have been included in the Direct Payments, you will be responsible for the insurance, maintenance and upkeep of the goods equipment including after the manufacturer's guarantee has expired. This includes taking all legal responsibilities which may arise (including health and safety) without limitation.
- 5.12 You must not sell or dispose of goods or equipment purchased with Direct Payment money without first notifying Haringey Council of your intention to do so.
- 5.13 If you are assessed as needing new or different goods or equipment, you are responsible for any costs incurred in disposing of existing goods or equipment which you have previously purchased with Direct Payment money. Any income raised by the disposal must be put towards the cost of new goods or equipment and will form part of any new Direct Payments.
- 5.14 Where you require minor adaptations, then Haringey Council will consider how much fitting, training and maintenance for the adaptations for three years would ordinarily cost and Haringey Council will include that amount in the Direct Payments.
- 5.15 The Direct Payments must only be used to pay for minor adaptations set out in the care and support plan up to the cost of £1,000. Any additional costs for the adaptation must be paid for by you unless Haringey Council has agreed in writing to an increasing the £1,000 cap for a specific adaptation.
- 5.16 You will be responsible for ensuring that any equipment and adaptations are installed and maintained safely.

### **Use of Direct Payments Abroad**

- 5.17 The Direct Payments must not be used to pay for an Employee's travel expenses or accommodation if an Employee is accompanying you abroad.
- 5.18 You may commission services from a care agency in the country which you are travelling to provided that the country has a system for regulating social care

equivalent to the Care Quality Commission in England, the provider is registered with the equivalent body and complies with the regulations, and the provider complies with the employment rules and regulations of that country to a standard equivalent to England.

- 5.19 You must retain receipts for any payments made from the Direct Payment account in relation to your travel abroad and submit these to Haringey Council in line with monitoring requirements.

### **Family Members**

- 5.20 If a proportion of the Direct Payments is being paid to a family member for administration and / or management of the Direct Payments, your family member will be informed of any tax, employment and benefits implications. Your family member will be required to enter into an agreement with Haringey Council and you setting out their obligations and what steps will be taken in case there is a dispute regarding the administration and / or management of the Direct Payments.
- 5.21 You must obtain written agreement from Haringey Council if you wish to use the Direct Payments to employ a family member who lives in your household as a carer. This will only be agreed in exceptional circumstances.

### **Legal Requirements and Other Obligations**

- 5.22 You have a duty to make proper disclosure to the revenue authorities and not to attempt to mislead them.
- 5.23 You agree to comply with all relevant laws, regulations and guidance, particularly with applicable employment, tax, and insurance requirements and obligations. You agree to Haringey Council informing the revenue authorities of any tax liabilities. Direct Payment support organisations can advise on these subjects.
- 5.24 You acknowledge that the Direct Payments may be subject to additional reasonable conditions imposed by the Council and notified to you in writing.
- 5.25 Haringey Council may discontinue or recover Direct Payments if it believes that Direct Payments may have been misspent or accumulated without an approved reason.
- 5.26 Haringey Council may refer any suspected fraud, abuse or misuse to the internal audit team and where any criminal activity may have taken place, the suspected activity will be reported to the police.
- 5.27 Haringey Council will take action to recover all or part of the Direct Payments if misuse or fraudulent use of the Direct Payments is reasonably suspected.

### **Disputes**

- 5.28 If you have a complaint about any goods and or services which you have purchased using your Direct Payments, then this should be addressed with the service provider, retailer or employee concerned and notified to Haringey Council.
- 5.29 If Haringey Council is notified of a complaint pursuant to condition 5.28 then Haringey Council shall review the complaint take any action which it considers to be reasonably required.

## **6. MONITORING THE USE OF DIRECT PAYMENTS**

- 6.1 Haringey Council will monitor how Direct Payments are used to ensure that the Direct Payments are being managed safely and spent in line with the outcomes identified in your support plan, and to identify any risks and issues. You shall cooperate with monitoring by keeping records, providing information and attending meetings as reasonably requested by Haringey Council.
- 6.2 As a minimum, you must provide copies of the following to Haringey Council annually and at the intervals notified to you by Haringey Council:
- 6.2.1 Details of all purchases and transactions, showing invoice and cheque numbers where applicable;
  - 6.2.2 All monthly bank statements relating to the Direct Payment account;
  - 6.2.3 Invoices, payslips and timesheets if the Recipient employs any Employees; and
  - 6.2.4 Receipts for any purchases using Direct Payment money.
- 6.3 You must also provide copies of employer's liability insurance and public liability insurance policies and premium receipts where applicable within seven days of a request from Haringey Council.
- 6.4 Haringey Council may monitor any payments from a pre-paid card account at its discretion.
- 6.5 You must keep all documents, records and monetary records in connection with the Direct Payments for a period of seven years following the end of this Agreement.
- 6.6 You must for a period of seven years following the end of this agreement allow Haringey Council or their authorised or nominated person to inspect all documents, records and monetary records at any time on request.
- 6.7 Haringey Council will aim to review the use of the Direct Payments approximately six weeks after the first Direct Payment, approximately 6 months after the first Direct Payment and annually thereafter as part of your care and support plan review.
- 6.8 Haringey Council reserves the right to review the use of Direct Payments at such other intervals as may be reasonably required to ensure that the Direct Payments

are being managed safely and spent in line with the outcomes identified in your support plan, and to identify any risks and issues.

- 6.9 Haringey Council will report to you as to the outcome of the monitoring review in writing after each review.
- 6.10 If Haringey Council has any concerns as to how the Direct Payments are being administered, then they will assist you with further information, advice and support to enable you to administer the Direct Payments correctly. You agree to work with Haringey Council to ensure that Direct Payments are administered correctly.
- 6.11 If you do not cooperate with monitoring, Haringey Council reserves the right to suspend or terminate your Direct Payments.
- 6.12 If you have appointed a managed account provider who has agreed to comply with Haringey Council's monitoring requirements on your behalf, your appointed managed account provider may submit documents directly to Haringey Council. However, you will still be responsible for ensuring that all monitoring provisions in this Agreement are complied with.

## **7. REASSESSMENT OF NEED**

- 7.1 Haringey Council will contact you to carry out a reassessment of your needs at an agreed date and time. The reassessment will consider:
  - 7.1.1 whether your needs or circumstances have changed;
  - 7.1.2 whether you have been able to achieve the agreed outcomes that were discussed when the Direct Payments were started, and whether Haringey Council can do more to assist you; and
  - 7.1.3 whether Direct Payments remain the best method of meeting your social care outcomes.
- 7.2 If there is a change in your needs, health or circumstances, you must inform Haringey Council immediately.
- 7.3 Haringey Council will write to you if a decision is taken to reduce the amount of, suspend or stop making direct payments following a reassessment of your needs.
- 7.4 You may request a reassessment of your needs by Haringey Council at any time.

## **8. DIRECT PAYMENTS IN HOSPITAL**

- 8.1 If you are admitted into hospital or respite care, you must notify Haringey Council as soon as possible.

- 8.2 Haringey Council will consider whether Direct Payments should be temporarily reduced, suspended or stopped while you are required to stay in hospital or respite care and unable to receive services and will notify you to let you know what adjustments will be made to your Direct Payments (if any).
- 8.3 Haringey Council may in its absolute discretion continue Direct Payments while you are in hospital or respite care and during any enablement care period for up to a maximum of 8 weeks to facilitate Employee retention.

## **9. RETURNING MONEY TO HARINGEY COUNCIL**

- 9.1 You can retain a maximum of 8 weeks' worth of Direct Payment money in your Direct Payment account. You must not move any unused Direct Payment money to an alternative bank account or withdraw any unused Direct Payment money as cash.
- 9.2 Where you consider that it may be necessary to accumulate more than 8 weeks of Direct Payment money for the purposes of meeting your care and support needs, you must seek permission in writing from Haringey Council (which shall be at Haringey Council's discretion) prior to accumulating the money.
- 9.3 If permission is granted by Haringey Council to accumulate more than 8 weeks' worth of Direct Payment money, you must use the accumulated money for the purposes and within the timescales agreed with Haringey Council.
- 9.4 If no consent to accumulate Direct Payment money is sought from the Council or the Council does not consent to the accumulation of more than 8 weeks' worth of Direct Payment money, then Haringey Council will write to you to advise that the surplus Direct Payment money being held is being reclaimed.
- 9.5 Haringey Council will reclaim any surplus money either by adjusting future Direct Payments or by invoicing you.
- 9.6 You may also be required to return Direct Payment money to Haringey Council in any of the following circumstances:
- 9.6.1 there has been an overpayment by Haringey Council;
  - 9.6.2 the amount in the account is more than is or was needed to pay for purchased or planned services;
  - 9.6.3 the Direct Payments or any part of them have been used for purposes other than meeting the outcomes agreed in the support plan or otherwise agreed in writing by Haringey Council, or the Direct Payments or any part of them have been misappropriated;
  - 9.6.4 you are no longer eligible for Direct Payments; or
  - 9.6.5 the termination of this Agreement.

9.7 You agree that any money which is to be returned to Haringey Council must be returned promptly, without deduction and in accordance with any instructions from Haringey Council.

## **10. ENDING / SUSPENDING DIRECT PAYMENTS**

10.1 Haringey Council will send a warning letter to you detailing any concerns in respect of the handling of the Direct Payments and will provide advice on what steps should be taken to prevent your Direct Payments from being suspended or withdrawn.

10.2 Haringey Council may immediately suspend or stop paying Direct Payments to you if:

10.2.1 you no longer agree to receive Direct Payments;

10.2.2 you are admitted to hospital or are otherwise unable to receive services described in your support plan;

10.2.3 you are no longer entitled to social care support from Haringey Council;

10.2.4 your contribution has not been paid into the Direct Payment account;

10.2.5 you have not adhered to all of the terms of this agreement;

10.2.6 Haringey Council believes that you can no longer manage the Direct Payments effectively to meet your needs, and no suitable assistance is available to enable you to do so;

10.2.7 Haringey Council believes that the Direct Payments or any part of them have been used or will be used for purposes other than meeting the outcomes agreed in the support plan or otherwise agreed in writing by Haringey Council, or the Direct Payments or any part of them have been misappropriated;

10.2.8 you no longer have the capacity to consent to the payment of Direct Payments, and there is no suitable person who could receive and manage the money on your behalf, or other interim or long-term alternative arrangements are not considered by Haringey Council to be suitable;

10.2.9 Haringey Council believes in its sole discretion that your representative is not or is no longer a suitable person to receive and manage a Direct Payment for you;

10.2.10 an investigation is being conducted under safeguarding adult procedures, by Haringey Council's internal audit team, or by the police;

10.2.11 you do not have capacity to consent to Direct Payments and Haringey Council believes in its sole discretion that your representative is not acting in the best interests of you within the meaning of the Mental Capacity Act



2005, or your representative is not meeting the conditions imposed on them by any relevant regulations and legislation;

10.2.12 Haringey Council believes that Direct Payments are no longer appropriate for your care and support plan outcomes to be met; or

10.2.13 Direct Payments are no longer required.

10.3 If you no longer wish to receive Direct Payments, you must provide a minimum of four weeks' notice of your decision to stop receiving Direct Payments to Haringey Council's Direct Payment and Support Team.

10.4 Haringey Council will assess your contractual and legal responsibilities when determining the balance of the Direct Payments to be repaid to the Council in the event that the Direct Payments are suspended or stopped pursuant to this condition 10.

10.5 You agree that any money which is to be returned to Haringey Council must be returned promptly, without deduction and in accordance with any instructions from Haringey Council.

10.6 In the event of your death, Haringey Council will:

10.6.1 assess the outstanding contractual and legal responsibilities incurred by you in respect of the use of the Direct Payments to determine whether an amount should be repaid to Haringey Council from your estate; and

10.6.2 liaise with your family or representative to ensure that any amounts due to your estate for the fulfilment of any contractual or legal obligations relating to any person employed using the Direct Payments are paid to your estate on receipt of supporting documentary evidence within 28 days.

## **11 CHANGES TO DIRECT PAYMENT AGREEMENT**

11.1 Haringey Council may change the conditions of this agreement at any time by providing you notice in writing about the change.

## **12. PRIVACY AND DATA PROTECTION**

12.1 The information which you supply for the purposes of Adult Social Care Direct Payments Service may be used by us in connection with the provision of other Council services to you. This authority is under a duty to protect the public money it administers, and to this end may use the information you have provided for the prevention and detection of fraud. We may share/check the information provided with other bodies responsible for auditing or administering public money, such as

HM Revenue and Customs and the Department for Work and Pensions, in order to prevent and detect fraud.

12.2 The Data Protection Act 2018 gives you the right to see your personal information that we hold about you.

12.3 Haringey Council is also required under Part IIA of the Audit Commission Act 1998 to participate in the National Fraud Initiative (NFI) data matching exercise. Please see our Privacy Statement for further details.

I confirm that I have been given sufficient information to understand the terms and conditions set out in this Agreement, and that I have been given an opportunity to obtain independent financial and legal advice if desired. I confirm that I understand and agree to the terms and conditions set out in this Agreement.

**SIGNED by [\*OR for and on behalf of] [SERVICE USER NAME]**

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

\*Only those duly authorised to do so may sign on behalf of the Service User

**SIGNED by [REPRESENTATIVE NAME] (If Applicable)**

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Relationship to  
Service User: \_\_\_\_\_

Date: \_\_\_\_\_

**Signed on behalf of Haringey Council**

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Position: \_\_\_\_\_

Date: \_\_\_\_\_

# APPENDIX B – CARERS DIRECT PAYMENT AGREEMENT

## DIRECT PAYMENTS AGREEMENT ONE-OFF CARER PAYMENT: 2.0

### PARTIES

This agreement is between the London of Haringey (LBH), River Park House, Level 2, 225 High Road, London, N22 8HQ (referred to as LBH) and the person receiving the direct payment (referred to as the recipient) who lives at \_\_\_\_\_

\_\_\_\_\_

The carer \_\_\_\_\_

I consent to receive Direct Payments and confirm that I understand and will comply with the conditions contained in the attached agreement.

I understand that this may include repaying to the council any money spent on activities outside of my agreed Care and Support Plan.

Signed: \_\_\_\_\_  
Carer

Date \_\_\_\_\_

Signed: \_\_\_\_\_

Date \_\_\_\_\_

Authorised Officer For and on behalf of the  
London Borough of Haringey

DP payment date: \_\_\_\_\_

### **Responsibilities of the council:**

1. To make Direct Payments at an amount estimated by the council as a reasonable cost for securing adequate services in order to meet the assessed eligible needs as outlined in your Support Plan.
2. To make a single payment of £\_\_\_\_\_ as agreed following the receipt of the signed agreement.

### **Responsibilities of the Direct Payments Recipient**

1. To use the Direct Payments for the purchase of goods and services that are safe, legal and meet your needs as agreed with your social worker/care coordinator and set out in your Support Plan.
2. To make available to the council on request receipts and/or invoices relating to the Direct Payments as evidence that money has been spent appropriately and as agreed in your Support Plan.
3. Not to use the money for any other purpose other than that which has been agreed.
4. Not to use the Direct Payments to pay any other charges owed to the council.

### **Suspension and Termination**

LB Haringey will stop paying DP's to the carer if:

- 1) The carer no longer agrees to receive them.
- 2) The carer is no longer entitled to social care support from LB Haringey.
- 3) The carer has not kept to the terms of this agreement.