

CARERS' DIRECT PAYMENT AGREEMENT

**re a carer with capacity to request a
direct payment (no nominee)**

This is a legal Agreement. Please read it carefully. We will go through it with you. However, if you wish you should seek independent help.

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PARTIES TO THE AGREEMENT

This agreement is between:

1. focus independent adult social work community interest company (CIC) of Heritage House, Fisherman's Wharf, North East Lincolnshire, DN31 1SY on behalf of North East Lincolnshire Clinical Commissioning Group
(referred to in this agreement as 'we' or 'us')

And

2. [] of []
being the name and address of the person whose needs for support are to be met using the direct payment
(referred to in this agreement as 'you' and 'your')

BASIS OF THE AGREEMENT

This agreement relates to your need for support as a carer, and is separate from:

- help for your own care needs, if you have them
- help for the care needs of the person(s) you care for.

All direct payments are made in accordance with the law, and our local policy. You can read our policy at: <https://livewell.nelincs.gov.uk/adult-social-care/direct-payments/>. We must only make direct payments where we are satisfied that a direct payment is an appropriate way to meet your need for support as a carer, and offers an appropriate balance between individual outcomes and best value.

We have assessed your need for support as a carer and agreed to provide a direct payment to enable you to meet some or all of the needs identified in your support plan.

You are willing and able to arrange the support detailed in your support plan yourself or with assistance. You will manage matters necessary to the operation of this agreement, alone or with assistance.

If you need help managing the direct payment you can access appropriate assistance.

You must abide by any conditions that we place on the direct payment. Any such conditions are will be listed at the end of the agreement.

Your need for support will be reviewed annually and more frequently if required. Use of the direct payment will also be reviewed regularly.

WHAT YOU WILL DO

Finance

1. As directed by and agreed with us, you will either:
 - a) receive your direct payment via a direct payment card account offered by EML (EML Payments Ltd). Where this applies you will sign an additional set of terms and conditions
 - b) receive your direct payment via a third party supported direct payment account
 - c) set up a separate bank account in your name which is only to be used for direct payments.

However the direct payment is received, for simplicity we will refer throughout this agreement to the 'direct payment account'.

2. It is your personal responsibility to check the direct payment account and any bank statements or other relevant information regularly to ensure payments have been received into the account, and there are sufficient monies in the account to meet expected expenditure/ your need for support.

Use of direct payments

3. You agree to use the direct payment only in accordance with this agreement.
4. You agree to use the direct payment only to meet the identified need for support in your support plan. Misuse of the direct payment may result in ending the direct payments as a way of providing your support. You must seek approval from us to pursue different needs from those set out in your support plan.
5. You agree not to use direct payments:
 - for anything illegal such as drugs
 - for gambling, lottery, bingo, raffle tickets, alcohol, tobacco
 - for non-statutory liabilities such as tips, bonuses, ex gratia payments (we are not obliged to fund particular costs incurred on a discretionary basis)
 - for gifts for yourself or anyone else
 - for accommodation costs such as rent, mortgages
 - for any activity or item that exposes you to serious risk from someone else/ yourself
 - for purchase of a service or equipment which adult social care services is not responsible for such as services that the NHS should provide, or equipment that is not specified in your support plan
 - for health-related services such as dentist, chiropody, physiotherapy
 - for purchase of adult social care services from the CCG
 - for household expenses such as food, personal items, utility bills or other day to day expenses
 - for repayment of loans or other debts or putting into savings
 - as a substitute for Disabled Facilities Grants
 - for employing or paying:
 - your partner (this means the other member of a married or unmarried couple, or civil partner)

- a close relative living in the same household as you (parent, parent-in-law, aunt, uncle, grandparent, son, daughter, son-in-law, daughter-in-law, stepson or stepdaughter, brother, sister or any partner of any of these if they are living in the same household as you)
(exceptions may be made where we consider this necessary; our written approval for any exception would be required in advance).

Equipment

6. You agree that, if your direct payment is used to purchase equipment, you will ensure that it is appropriately serviced and maintained and that where necessary staff receive training in its use. Equipment will also only be purchased where agreed in your support plan. You will own the equipment, therefore it is your responsibility.

Use of employees and contracts for services

7. You will act as the principal person in all contracts and agreements e.g. contracts for services, or employment even if you have help to manage your direct payment.
8. If you employ someone, or enter into a contract for services using your direct payment, it is your responsibility to negotiate the terms of your contract (e.g., the rates they charge).
9. If you employ someone, or enter into a contract for services using your direct payment, we strongly recommend that you obtain a criminal record check through the Disclosure and Barring Service (DBS). DBS checks must be made at your cost.
10. You agree to comply with all legal requirements which arise from arrangements you make using a direct payment.

Acting as an employer

11. You agree to comply with any legal requirements should you become an employer, and to provide us with evidence of compliance on request. This includes (but may not be limited to):
 - ensuring tax and National Insurance requirements are met
 - ensuring relevant insurance is in place, including Employer's Liability Insurance and Public Liability Insurance
 - complying with health and safety requirements, including ensuring a safe working environment as well as access to staff training
 - treating staff properly and fairly
 - offering a work-based pension (auto enrolment) unless the employee wishes to opt out. A declaration of compliance must be provided.

We strongly recommend that you obtain proper advice and support concerning employment law. We are not able to give legal advice.

12. You agree to ensure that if someone whose services you buy using your direct payment is treating themselves as self-employed, this has been accepted by Her Majesty's Revenue and Customs (HMRC) and

- you will provide us with a certificate proving HMRC's acceptance of their self-employed status
- you will provide evidence of their Unique Payable Tax Record Number
- you will ensure they complete the form we provide you with to acknowledge that they are responsible for their tax, National Insurance etc
- If the self-employed status has not been accepted by HMRC, you will have to pay back tax and National Insurance contributions from private funds (we will not meet these costs).

Self-employed individuals will also need to provide evidence that appropriate insurance is in place.

13. If you employ someone, you will agree with the employee(s) how much you are going to pay, but it must not be less than the minimum wage or more than the amount of your direct payment. It is generally expected that direct payments will include an amount to remunerate any employee(s) at minimum wages only. Higher rates may be payable only where we have agreed this with you in advance. Where higher rates have not been agreed in advance, any additional remuneration must be met from private funds.
14. You agree to ensure criminal records checks are undertaken through the DBS where there are children under 18 living in the household where you are receiving support. We strongly recommend that you carry out DBS checks on any staff you intend to employ or contract. DBS checks must be made at your cost.
15. No one who is helping you to manage your direct payment must be employed to give you any other kind of support paid for using your direct payment, unless previously agreed with us, in writing, as necessary.

Maintaining records

16. You agree to keep clear financial records of the direct payment money received, along with any financial contributions you have made, and how these funds are being used to meet the assessed need for support in your support plan. You must keep bank statements, records of expenditure and receipts.
17. Where you are employing anyone, or contracting with a self-employed individual, and managing payments to them yourself, you must keep:
 - invoices or time sheets
 - records of wage payments and other benefits or expenses paid
 - payment of employee's holiday pay, sick pay and maternity pay
 - deductions from employees' wages of tax, National Insurance, pension auto enrolment requirements or any other deduction.
18. You must allow us to look at these records if we ask. You agree to keep all relevant records for the six years from the date of the payment period to which the invoice/ time sheet, payment or deduction relates.

Financial Monitoring

19. You agree to us auditing and monitoring the direct payment to ensure the direct payment is being managed and used properly. You will make records available to us on reasonable request. Failure to comply with reasonable requests may result in the direct payment being suspended or ended.

Review

20. When the direct payment is reviewed you agree to share relevant and accurate information with us about your need for support and the direct payment. You also agree to us speaking to:

- people who are providing your support (including employees, or anyone providing you with services using your direct payment) to ensure that support is being provided in line with your support plan and the direct payment is being managed and used appropriately.
- anyone who is acting as your representative or helping you in any way to manage the direct payment including helping you manage direct payment monies. This includes third party support providers.

21. If requested, you will revise any arrangements you have put in place should we believe they are inadequate to meet the needs identified in your support plan.

Repayment and reductions

22. You agree to repay some or all of the direct payment money to us if:

- services have been purchased to meet your need for support at an advantageous cost (so creating a surplus in the direct payment account)
- direct payment monies have been misused or have not been used to meet the need for support identified in your support plan
- monies have been paid to the direct payment account in error
- direct payment monies have not been fully used, for example because of a temporary change in circumstances (e.g., you have a hospital stay or short-term respite or rehabilitation)
- you have not met any terms or conditions in this agreement; or
- the direct payment is terminated.

23. You acknowledge that your direct payments may be reduced where (by way of example):

- a needs assessment and/ or review identifies that your need for support has reduced
- following assessment and/ or review, we are satisfied that a reduced amount is sufficient to meet the needs set out in your support plan
- a surplus has accumulated in the direct payment account.

Information sharing

24. You agree to us, along with and any other representative appointed to help you (if applicable), sharing relevant personal information about you in order to ensure that your identified need for support is met appropriately.

25. You agree to provide us with any information we consider necessary in connection with the direct payment within 10 days of us requesting it. Further, you agree to us requesting and receiving any information held by another person or organisation in connection with the direct payment (this includes third party support providers). Any such requests made by us will be made directly to a person or organisation holding the information. We will use this agreement as evidence that you have consented to us requesting and receiving information in connection with your direct payment.
26. With regard to any relevant risks identified in your support plan, you agree to share how these will be managed with anyone who provides services to you or supports you in the management of the direct payment.
27. You agree to inform us of significant changes to your assessed need for support or circumstances and of any temporary changes such as going into hospital, rehabilitation, care home (other than planned changes recorded in your support plan) and returning home.

In the event of death

28. You agree to ensure that your appointed executors and/or immediate family members are aware that in the event of your death any direct payment monies held by you revert to us and must not be regarded as an asset of your estate. Appointed executors/ family members will be required to cooperate with us in determining the final balance that we will recover, once any agreed outstanding payment commitments are deducted. If the expected amount is not available to be returned from the direct payment account, we may claim the amount from your estate.
29. You also agree to ensure that any bank holding your direct payment account is informed that the monies in this account belong to us.

WHAT WE WILL DO

Making payments

30. We will notify you in writing of the amount of the direct payment. We agree to pay the direct payment directly into the direct payment account. Payments will be made to you on a 4-weekly cycle, 4 weeks in advance.
31. If your direct payment is to purchase equipment, we will make payment as a one-off sum.
32. Any one-off payments will be paid directly into the direct payment account (or if we have agreed to a one-off payment with no ongoing direct payment for support needs, we will pay into your personal bank account, but you will still need to provide receipts).

Conditions

33. We reserve the right to place such reasonable conditions on the management and use of the direct payment as we think fit to ensure acceptable arrangements are in place.

Review of support plan

34. We will review your support plan and the operation of the direct payment after 6 weeks for support and 6 months for finances, and at least annually thereafter. We have the right to increase or decrease the direct payment in line with your review/ reassessment. You can request a review/reassessment of your circumstances at any time if you think that your need for support has changed. You will only receive a direct payment for as long as you have needs which we are responsible for meeting, and we continue to think that a direct payment is an appropriate way of meeting those needs.

Repayment

35. We will require you to repay us any surplus monies in the direct payment account, having taken into account any agreed outstanding financial commitments. We will also recover any overpayments made. If a requested repayment is not made, this may mean the direct payment ends and your support is provided in a different way.

Stopping / suspending direct payments

36. We may suspend the direct payments, or stop them and terminate this agreement, and recover payments as necessary, in line with our debt recovery process:

- a) If you notify us that you no longer wish to receive direct payments.
- b) If we are satisfied that you have not complied with the terms and conditions of this agreement.
- c) If it appears to us you are no longer capable of managing a direct payment, yourself or with assistance. We may continue payments if we are reasonably satisfied that your inability will be temporary and another person or organisation acceptable to us is prepared to manage the payments on your behalf.
- d) If it appears to us that direct payments are no longer an appropriate way to meet your need for support. This includes (but may not be limited to) situations where the direct payment has ceased to offer an appropriate balance between outcomes and best value i.e., a direct payment is no longer an effective use of public money.
- e) If for any reason, you are temporarily unable to receive support services.
- f) If, after a review/ reassessment, you do not have needs for which we are responsible. Depending on the circumstances and need we will give written notice of the termination of this agreement (up to a maximum of 28 days).
- g) If the direct payment has been inappropriately used (either intentionally or unintentionally), or you are incapable or unwilling to manage the direct payment correctly.
- h) If you fail to comply with the review or financial auditing/ monitoring process, including failing to provide requested information.
- i) If you are admitted into a care home on a long stay basis.
- j) If you have failed to disclose any relevant information that should have been taken into account when calculating the direct payments.
- k) If we suspect fraud or any other criminal activity has taken place concerning the direct payment, we may refer the matter for investigation including to the police.
- l) Regulations prohibit us from making the direct payments, for example if you become the subject of certain mental health or criminal justice legislation.

Going into hospital

37. You agree to inform us of when you go into hospital and when you return home. The direct payment is likely to be suspended while you are in hospital.

38. Where you go into or return home from hospital, you are responsible for notifying anyone you employ/ buy services from. It is your responsibility to cancel the support that you will not receive whilst in hospital, in line with the terms of your agreement with the organisation/ agency, or employees etc.

39. Any temporary retainer payable to a personal assistant must be agreed with us. Any financial contribution that you make to the costs of your support must continue to be made during any period in which a retainer is paid.

ENDING THIS AGREEMENT AND RECOVERY OF PAYMENTS

40. The direct payment may be terminated for reasons stated in paragraph 36 above or in the event of your death.

41. We may end this agreement by telling you in writing and, depending on your circumstances and need, this will be a maximum of 28 days.

42. You may end this agreement by giving 28 days' notice in writing.

43. If we consider you still have needs for which we are responsible, we will work with you to plan how your future needs can be appropriately met.

44. If you no longer have identified needs for which we are responsible, the direct payment will end and be dealt with in accordance with the terms in this agreement.

45. Any direct payment monies remaining in the direct payment account following termination of this agreement must be returned to us once all outstanding bills are paid and employer responsibilities met. We will write to you, or where you have died, to your appointed executors and/or immediate family members to request this money.

46. Direct payment monies do not form part of your estate. Failure to return the expected direct payment monies may result in us making a claim against your estate (see paragraph 28 above).

COMMENTS, COMPLAINTS AND COMPLIMENTS

47. You have the right to comment, complain and compliment under our procedures. You will be given a leaflet to explain how to do this.

GOVERNING LAW

48. This agreement shall be governed by and construed in accordance with the law of England and the parties to this agreement irrevocably submit to the exclusive jurisdiction of the English courts.

ANY CONDITIONS PLACED ON THE DIRECT PAYMENT

49. We are permitted to place any conditions on your direct payment as we think fit. We will do this where we believe it is necessary to ensure that your direct payment arrangements are appropriate to meet your needs. Any conditions will be listed below and kept under review:

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SIGNATURES

Signature – practitioner

Signed:	<i>(signature of worker on behalf of focus)</i>
Name:	<i>(printed name of worker on behalf of focus)</i>
Date:	<i>(date of worker's signature)</i>

I declare that the information I have given on this agreement is correct and complete and I will inform North East Lincolnshire Clinical Commissioning Group (CCG) of any changes in circumstances. I understand that if I knowingly provide false information this may result in termination of payments and I may be liable for prosecution and civil recovery proceedings. I consent to the disclosure of information from this form to and by the CCG, focus and NHS Protect for the purpose of verification, prevention, detection and prosecution of fraud and to the retention of this agreement for a minimum period of two years.

Signature – carer with needs for support

Signed:	<i>(signature of carer)</i>
Name:	<i>(printed name of carer)</i>
Date:	<i>(date of signature of carer)</i>