



*North East Lincolnshire
Clinical Commissioning Group*



DIRECT PAYMENT AGREEMENT

**re an individual with capacity to request a
direct payment, with a 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 are to be met using the direct payment
(referred to in this agreement as 'you' or 'your')

And

3. [] of []
being the name and address of the person nominated to receive the direct payment on behalf of the person with needs (referred to in this agreement as 'the nominated person')

BASIS OF THE AGREEMENT

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 needs, and offers an appropriate balance between individual outcomes and best value.

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

You have nominated a person to receive the direct payment on your behalf, and we have agreed that your nominated person can receive it for you. The person you have nominated agrees to act as nominated person, as set out in the Care Act 2014.

You are willing and able to arrange the support detailed in your support plan yourself or with assistance. You and the nominated person will manage the direct payment account on your behalf and you both agree to be bound by this agreement. The nominated

person also agrees to some additional responsibilities which are included in this agreement.

If you or the nominated person need help managing the direct payment you may access appropriate assistance.

You and the nominated person must abide by any conditions that we place on the direct payment. Any additional conditions will be listed at the end of the agreement.

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

Additional responsibilities of the nominated person

1. In addition to complying with any requirements that normally applicable to a person with needs who receives a direct payment, the nominated person agrees to:
 - Act in good faith
 - Act in a way that avoids a conflict between their own interests and yours (unless we have agreed with you in advance, in writing, that a potential conflict is necessary)
 - Act with care on your behalf, exercising at least such care and skill as they would in arranging their own affairs
 - Act in your best interests and at your direction, working flexibly with you and with us to arrange services and support which help meet the needs and outcomes identified in your support plan
 - Be involved in discussions and decisions about your care as much as you want them to be, and as far as is reasonably practicable for them, so they can support you to have as much control and independence as possible. This includes ensuring you have the information you need to understand how the direct payment money is being used to meet the needs identified in your support plan
 - Notify us promptly if there are any changes in their circumstances or in yours which may affect their ability to act as your nominated person
 - Inform us if they intend to give up the role of nominated person under this agreement as soon as they no longer want to carry it out.
2. The nominated person understands that they are in a position of trust. The Fraud Act 2006 created an offence of 'abuse of position'. This applies when someone is expected to safeguard the interests of a person but instead acts against their financial interests. This constitutes a criminal offence for which they could be prosecuted.
3. In addition to the responsibilities already set out in this agreement, you and the nominated person will agree whether and how they will help you to manage any other matter necessary to the operation of this agreement, alone or in conjunction with any other representatives you may have.

THE DIRECT PAYMENT AND YOUR CONTRIBUTION

4. We will notify you in writing of the amount of the direct payment. The amount paid will be the gross weekly direct payment, less any financial contributions that you are required to make as a result of a financial assessment. Payments will be made to your nominated person on a 4-weekly cycle.
5. You must pay any required financial contribution into the direct payment account on a regular basis. Whilst the amount of care you need may vary from week to week, your weekly contribution is a fixed amount which should always be paid into the direct payment account. The weekly contribution should continue to be paid into the direct payment account whilst your nominated person is receiving the direct payment on your behalf. Failure to make the weekly contributions may result in us ending the direct payment as a way of providing your support.
6. If the direct payment is to purchase equipment, we will make payment as a one-off sum.

WHAT YOU WILL DO

Finance

7. As directed by and agreed with us, on your behalf, the nominated person will either:
 - a) receive the direct payment via a direct payment card account offered by EML (EML Payments Ltd). Where this applies you and the nominated person 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. The nominated person will hold and use this money solely for your benefit. The nominated person will ensure that the bank understands that the monies held in the account are held for your benefit, and do not belong to them.

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

8. Unless we have agreed otherwise with you, any financial contributions you make must be paid into the direct payment account on a four-weekly basis. We recommend you set up, or arrange for the set up of, a Standing Order from your account to the direct payment account as the easiest way of paying the financial contribution.
9. You must inform us promptly of any changes in your financial circumstances. Your nominated person must also inform us promptly of any change in your financial circumstances of which they are aware.
10. It is the nominated person's 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 to ensure with you that there are sufficient monies in the account to meet expected expenditure/ your needs.

Use of direct payments

11. You and your nominated person agree to use the direct payment only in accordance with this agreement.
12. You and your nominated person agree to use the direct payment, including any contribution from your funds, only to meet the identified care needs 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.
13. You and your nominated person 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 you 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 the 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 long term residential care (you may use it for respite care for up to a total of 4 consecutive weeks in any 12-month period) if this is part of your agreed direct payment package and within your support plan
 - 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).
14. You agree to make any back up or emergency arrangements, in case the services you need are temporarily disrupted, for example, you agree to find replacement care at short notice. You can make these arrangements yourself or agree with your nominated person that they will help you to do so. However, any problems should be referred as soon as possible to your case worker or Single Point of Access.

Equipment

15. 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 care providers and personal assistants

16. You will act as the principal person in all contracts and agreements e.g. contracts for services, or employment.

17. Where you use home care provider organisations and/ or agencies to provide you with personal care they must be registered with the Care Quality Commission (CQC) and you must check this is the case. We can advise you of the names of CQC registered organisations/ agencies.

18. If you contract with a home care provider organisation and/ or agency, employ one or more personal assistants, or enter into a contract for services with one or more personal assistants, it is your responsibility to negotiate the terms of your contract (e.g., the rates they charge).

19. If you employ one or more personal assistants, or enter into a contract for services with one or more personal assistants, 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.

20. Your nominated person will make the payments needed to comply with any contract of employment or contract for services that you have entered into.

21. You agree to comply with all legal requirements which arise from arrangements you make using a direct payment.

Acting as an employer

22. You agree to comply with any legal requirements should you become an employer of one or more personal assistants, 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.

Your nominated person will make the payments needed for you to comply with these legal requirements.

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

23. You agree to ensure that if a personal assistant 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 the personal assistant's self-employed status
 - you will provide evidence of the personal assistant's Unique Payable Tax Record Number
 - you will ensure the personal assistant completes 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 personal assistants will also need to provide evidence that appropriate insurance is in place.

24. 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.
25. You agree to ensure criminal records checks are undertaken through the DBS where there are children under 18 living in the household where your care needs are being met. 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.
26. No one who is managing or receiving a direct payment (this includes your nominated person) must be employed to deliver care to you, unless previously agreed with us, in writing, as necessary.

Maintaining records

27. You and your nominated person 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 needs in your support plan. You and your nominated person must keep bank statements, records of expenditure and receipts.
28. Where you are employing a personal assistant, or contracting with a self-employed personal assistant, and managing payments to them, 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.

Where your nominated person makes these payments on your behalf, they must keep records of the payments they make.

29. You and your nominated person must allow us to look at the records each of you hold if we ask. You and your nominated person 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

30. You and your nominated person agree to us auditing and monitoring the direct payment to ensure the direct payment is being managed and used properly. You and your nominated person 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

31. When the direct payment is reviewed you and your nominated person agree to share relevant and accurate information with us about your care needs and the direct payment. You also agree to us speaking to:

- people who are providing your care (including personal assistants, care provider organisations or agencies) 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 your nominated person and third party support providers.

32. 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

33. You and your nominated person agree to repay some or all of the direct payment money to us if:

- services have been purchased to meet care needs 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 needs 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 or your nominated person have not met any terms or conditions in this agreement; or
- the direct payment is terminated.

34. You acknowledge that your direct payments may be reduced where (by way of example):
- a needs assessment and/ or review identifies that your needs have 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

35. 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 needs are met appropriately. This includes your nominated person sharing information about you, where necessary.
36. You and your nominated person agree to provide us with any information we consider necessary in connection with the direct payment within 10 working 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 information held by 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.
37. With regard to any relevant risks identified in your support plan, you agree to share how these will be managed with anyone who provides care to you or supports you in the management of the direct payment. This includes sharing information with your nominated person.
38. You agree to inform us of significant changes to your assessed needs or circumstances and of any temporary changes such as going into hospital, rehabilitation, care home (other than planned respite agreed in your support plan) and returning home. Where they are aware of any such changes, your nominated person also agrees to inform us.

In the event of death

39. 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 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. Also if the expected amount is not available to be returned from the direct payment account, we may claim the amount from your estate.
40. You and your nominated person also agree to ensure that any bank holding your direct payment account is informed that the monies in this account belong to us.
41. Your nominated person agrees to use their best endeavours to work with us to resolve direct payment matters as quickly as possible following your death.

WHAT WE WILL DO

Making payments

42. We agree to pay the direct payment (less any contribution from you) directly into the direct payment account. The weekly payment will be made 4 weeks in advance. 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 care needs, we will pay into your personal bank account, but you will still need to provide receipts).

Conditions

43. 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

44. We will review your support plan and the operation of the direct payment after 6 weeks for care 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 care needs have 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

45. We will require you and/ or your nominated person 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 care is provided in a different way.

Stopping / suspending direct payments

46. 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 your nominated person notifies us that they no longer wish to receive direct payments on your behalf.
- c) If we are satisfied that you or your nominated person have not complied with the terms and conditions of this agreement.
- d) If it appears to us that you or your nominated person are no longer capable of managing a direct payment, alone or with assistance. We may continue payments if we are reasonably satisfied that your or their inability will be temporary and another person or organisation acceptable to us is prepared to receive and/ or manage the payments on your behalf.
- e) If it appears to us that direct payments are no longer an appropriate way to meet your needs. 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.
- f) If for any reason, you are temporarily unable to receive services.
- g) 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).

- h) If the direct payment has been inappropriately used (either intentionally or unintentionally), or you or your nominated person are incapable or unwilling to manage the direct payment correctly.
- i) If your financial contributions are not made to the direct payment account on a regular basis.
- j) If you or your nominated person fail to comply with the review or financial auditing/ monitoring process, including failing to provide requested information.
- k) If you are admitted into a care home on a long stay basis.
- l) If you or your nominated person have failed to disclose any relevant information that should have been taken into account when calculating the direct payments.
- m) 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.
- n) Regulations prohibit us from making the direct payments, for example if you or your nominated person become the subject of certain mental health or criminal justice legislation.

Going into hospital

47. 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.

48. Where you go into or return home from hospital, you are responsible for notifying any care provider organisation or agency, or any personal assistants, from which you receive care. It is your responsibility to cancel the care that you will not receive whilst in hospital, in line with the terms of your agreement with the organisation/ agency, or personal assistants.

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

ENDING THIS AGREEMENT AND RECOVERY OF PAYMENTS

50. The direct payment may be terminated for reasons stated in paragraph 46 above or in the event of your death or the death of your nominated person.

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

52. You or your nominated person may end this agreement by giving 28 days' notice in writing.

53. 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.

54. 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.

55. 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 and your nominated person, or where you have died, to your appointed executors and/or immediate family members to request this money.

56. 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 39 above).

COMMENTS, COMPLAINTS AND COMPLIMENTS

57. You and your nominated person 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

58. 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

59. 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:

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 – person with needs

Signed:	<i>(signature of person whose needs are being met via direct payment)</i>
Name:	<i>(printed name of person whose needs are being met via direct payment)</i>
Date:	<i>(date of signature of person whose needs are being met via direct payment)</i>

Signature – nominated person

Signed:	<i>(signature of nominated person)</i>
Name:	<i>(printed name of nominated person)</i>
Date:	<i>(date of nominated person's signature)</i>