# SEFTON METROPOLITAN BOROUGH COUNCIL

**DIRECT PAYMENTS AGREEMENT**

**This agreement made is between**

Sefton Metropolitan Borough Council

 (The Council)

**And**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

 (The Recipient)

On behalf of **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (if applicable)**

 Service User)

**Definitions**

|  |  |
| --- | --- |
| **Assessment / Care Plan** | This is the assessment that the Council carries out to help understand an individual’s needs and work out whether they are eligible for support. |
| **Assessed Client Contribution** | The amount the service user must contribute towards the cost of their care and support; this is the first element to be used against the total cost of care purchased; The cost will be determined by Financial Assessment |
| **Direct Payment** | The sum which the Council agrees to pay to the Recipient as specified in your Assessment/Care plan |
| **Direct Payments Support Services** | A service provided by Sefton Carers Centre in partnership with the Council to assist the Recipient in the managing of their Direct Payments |
| **Nominated Person** | A family member, friend, specialist organisation or other third party who has been nominated to assist the Service User with managing their Direct Payment |
| **Nominated Account** | The bank account chosen for the Direct Payment to paid into. This could be a prepaid card account or a current bank account. The account must be used for the sole purpose of the Direct Payment |
| **Outcomes** | What the service user and their family / carers hope to achieve with their care and support. These will be written down in the Care Support Plan |
| **Unused Monies** | Any money that is left once all assessed support has been paid from the Direct Payment. The Council will allow a maximum of 8 weeks unused monies to build up in the Direct Payments account, this is to cover employers on costs and payments made in advance. Unused money in the account above 8 weeks, will be repaid to the Council. |

**Introduction**

1. The detail of this agreement is based on Sefton Councils Direct Payments guidelines. These guidelines are available to view online at [www.sefton.gov.uk/directpayments](http://www.sefton.gov.uk/directpayments)
2. Sefton Metropolitan Borough Council (“The Council”), Social Care and Health Directorate, Magdalen House, 30 Trinity Road, Bootle L20 3NJ, are for this agreement, the lead authority.
3. The person who has been assessed as needing care support is known as” the **Service User.”**
4. In most cases, the **Service User** will be the sole person responsible for managing the Direct Payment and signing the agreement. Where the **Service User** is unable to fulfil this duty, they can have a “**Nominated Person”** who will be responsible on their behalf.
5. Where relevant, the **Nominated Person** will take full responsibility for the receiving and management of the Direct Payment and for purchasing care services on behalf of the **Service User**. The **Nominated Person** cannot be paid for managing the Direct Payment or for providing care support.
6. The Service User or Nominated Person who agrees to take responsibility for the Direct Payment and signs this agreement is known as the **Recipient***.*
7. **Direct Payments Support Services** are provided by Sefton Carers Centre, 27-37 South Road, Waterloo L22 5PE in partnership with Sefton MBC.

**Your Direct Payment**

1. The **Council** has carried out an assessment of the **Service User’s** care support needs and is willing to make a Direct Payment to enable the Service User to obtain the services identified. The calculation of the Direct Payment will be based on the assessment and will be reviewed annually.
2. The **Recipient** agrees to use the Direct Payment to meet the Outcomes identified in the Service User’s care and support plan. The money paid as a Direct Payment remains the property of the **Council** until it has been used in this way.
3. Decision making regarding the use of the Direct Payment, in accordance with the assessed care support plan, remains the responsibility of the **Recipient** and cannot be devolved.
4. The Direct Payment must be paid into a Nominated Account in the **Recipients** name and can only be used for transactions in respect to the Direct Payment, any Assessed Client Contribution and ‘top up’ contributions. Money will be held solely in this account, under the terms of this agreement, and will not be transferred to any other account without agreement of the **Council.**
5. Nominated account for Direct Payment is

Bank Name:

Account name:

Account number: Sort code: - - -

1. The **Council** agrees to make the Direct Payment to the **Recipient** for the assessed amount. Payments will be made in advance at 4 week intervals. This amount will be paid **net** of any Assessed Client Contribution into the Nominated Account.
2. Contingency arrangements must be made in case care and support services are temporary disrupted.

If care arrangements breakdown, whether in an emergency or not, the **Council** will offer to support the **Service User**, this support might include a referral to an appropriate support and advice service and/or the temporary provision of a commissioned care agency.

1. Where care support is unable to be provided, for example an unplanned hospital stay or short-term placement, the **Council** must be notified as soon as possible. As the Direct Payment is paid 4 weeks in advance, any contractual obligations can be met from your advanced pay, for example to pay a Personal Assistant a retainer payment. If the hospital is likely to be longer than 4 weeks then your Direct Payment may be suspended and the **Council** will ensure the care and support is in place upon discharge.

**Recipient responsibilities**

1. It is the responsibility of the **Recipient** to make all arrangements to secure appropriate services, such as engaging an agency or employing staff, to meet the assessed eligible need identified in the care support plan. The **Recipient** must comply with all legal requirements that may arise in making such arrangements. Where staff are employed the Recipient becomes the legal employer and so takes on the responsibilities which align with this role. The **Council** accepts no responsibility for any matters that arise as a consequence of these arrangements.
2. The **Recipient** agrees to pay any Assessed Client Contribution into the Direct Payments Nominated Account from their own or the Service User’s personal monies, as this is the first element to be used against the total cost of care purchased; The **Service User** will be notified annually by the Financial Assessment Team of any changes to the Assessed Client Contribution.
3. If the **Recipient** chooses to pay a higher rate for a service than the rate set by the Council for Direct Payments, then the difference is known as a ‘top up’ and will be paid from personal funds. Any ‘top up’ payments are in addition to Assessed Client Contribution.
4. If any charges or fines are incurred because the Direct Payment has not been managed properly, or failure to comply with relevant legislation, for example Inland Revenue and Pensions Regulator, then the **Recipient** will be liable for the costs**.**

**Restrictions to Direct Payments**

1. The **Recipient** agrees **not** to use the Direct Payment to purchase care support from the spouse/partner of the Service User, or from a close relative who is living in their household, unless the **Council’s** Senior Managers agree that it is appropriate due to exceptional circumstances.
2. The **Recipient** cannot use the Direct Payment to purchase any service that is provided by the Council, for example day centre meals, transport charges, personal contribution towards respite and permanent residential care.
3. If the **Recipient** chooses not to use the **Direct Payments Support Service** and opts for a third-party organisation to provide employment support or brokerage services, for example a payroll service, then the Recipient agrees to meet the cost for this service from their own personal funds.

**Employing staff (if applicable)**

1. The **Recipient** is advised to obtain appropriately qualified independent legal advice regarding the legal risks and obligations of becoming an employer including in respect of HMRC and pension issues. For the avoidance of doubt, the Council will not be the employer in these circumstances.

Your Direct Payments Advisor will provide you with a copy of a Guide to becoming an employer.

1. The **Recipient** agrees to purchase out of the Direct Payment monies, adequate Employers and Public Liability insurance with a reputable insurer. The Recipient agrees to provide a copy of the insurance policy within four weeks of employing any personnel. Failure to put in place the required insurance cover shall constitute a breach of this agreement and may result in the termination of the Direct Payment. It is the employer’s responsibility to renew the insurance policy when it expires.
2. Where driving is part of the employee’s duties, the **Recipient** must ensure that the employee is in possession of a full UK driving licence and that the vehicle being used complies with all government regulations for Tax and MOT. The employee must have appropriate and valid business insurance cover for the vehicle and any necessary safety equipment is maintained.
3. If, in the opinion of the **Council**, the service provider or potential employee selected by the **Recipient** is either not available to or is unfit to provide a safe and adequate service, the **Council** has the right to require that the **Recipient** finds an alternative person or organisation to provide the care.
4. Where the **Recipient** employs staff, or uses self-employed staff the **Council** strongly recommends that appropriate checks are made through references and Disclosure and Barring Service (DBS).

DBS checks are compulsory for anyone who is providing care or support, to a child or an adult that lacks capacity. The Employee cannot commence employment until clearance has been obtained.

The Recipient must contact the **Direct Payments Support Service** to obtain a DBS check for any of their employee(s); the costs of the checks will be funded directly by the **Council**.

Self Employed staff must provide their own clearance checks.

The Council will request further details, which could include a face to face interview, from the potential employee should the DBS check show they are unsuitable for the post.

DBS clearance must be renewed every 3 years in line with current DBS legislation.

1. Neither the **Recipient** nor any employee on the Direct Payments scheme should hold themselves as being an employee or agent of the **Council**, or enter any contract on the **Councils** behalf.
2. The **Recipient** must protect any personal or sensitive data of all employees as defined in current data protection legislation.

Employees’ personal information must be kept securely or on a system that is password protected and can only be used for the purpose of the employment.

All personal information relating to an employee must be destroyed 6 years after the employment ends, and any information obtained for unsuccessful interviewees must be destroyed within 6 months.

If the Recipient use the **Direct Payments Support Service** for payroll administration, all information held on their behalf for complying with any regulatory requirements or obligations to third parties, will be compliant with current Data Protection Legislation.

**Monitoring and auditing of your Direct Payment**

1. The **Recipient** is required to provide all relevant information and documentation to enable the **Council** to audit the Direct Payments account i.e. bank statements, timesheets, invoices and receipts for care support and a copy certificate of the Employers and Public Liability insurance policy purchased.
2. All documentation must be provided on a quarterly basis or upon request by the **Council**. Failure to provide required paperwork may result in the Direct Payment being suspended, until the documentation is received by the **Council**. Alternative arrangements for care support will be made by the **Council** during the suspension period.
3. The **Council** will regularly assess the balance of funds held in the Direct Payments account and seek to recover any Unused Monies.

**Prepaid Cards System**

1. The **Council** has the right to lock access to the prepaid card system, should it be deemed that the account is not being managed within the boundaries of this agreement, for example misuse of card / funds. The **Council** will then make payments on behalf of the **Recipient** from the account upon request.
2. The **Council** has administrative access to the Prepaid Card System and will, if necessary, review the account online, make payments on your behalf and download any stored supporting documentation.

**Review and repayment of the Direct Payment**

1. The **Recipient** agrees to repay the Direct Payment, or any part of it, to the **Council** if it has not been used appropriately in accordance with this agreement and current Direct Payment guidelines. If monies owed are not repaid within 14 days, the Council may take steps to recover this debt, in line with the Councils debt recovery policy.
2. Where the Direct Payment allocation is reduced, the **Council** will give at least 4 weeks’ notice in writing and giving reasons for the change.

**Ending the Direct Payments Agreement**

1. The **Council** and the **Recipient** have the right to terminate this agreement by giving 4 weeks’ notice in writing.
2. If the requirements of the Direct Payments agreement are not met, the **Council** has the right to suspend the Direct Payment until they are satisfied that suitable arrangements have been made
3. The **Recipient** agrees that monies paid by the **Council** under the terms of the agreement and held in the account, remain the property of the **Council**. Upon termination of the Direct Payment, the **Council** will request the return of any Unused Monies and payments made in advance. The **Council** will carefully consider what contractual responsibilities exist when determining the balance to be repaid.
4. The **Recipient** should provide details of the Next of Kin or Executor of the Estate to the Council, so that arrangements can be made to return monies should the **Service User** decease.

**Data Protection Legislation**

1. **Sefton Council** are required to participate in the Audit Commission's National Fraud initiative and to share certain limited personal information with other bodies responsible for auditing or administering public funds. This enables them to prevent and detect fraud.

The Council has a duty to protect the public funds it administers, and may use information held about the Recipient or Service User for lawful purposes, including and not limited to the prevention and detection of fraud, and the matching Council Tax data with Electoral Registration records.
The Council will also use the information for performing any of its statutory enforcement duties. It will make any disclosures required by law and may also share this information with other bodies responsible for detecting/preventing fraud or auditing/administering public funds.

1. The **Recipient** consents to the processing of any personal data or special category data as defined in the current data protection legislation for assessing, implementing and monitoring of Direct Payments and for complying with any or regulatory requirements or obligations to third parties.

All personal information will be destroyed 6 years after the final payment from **Sefton Council**

**Declaration**

I have read the Direct Payments agreement and understood that I have agreed to be bound by it.

I understand that failure to comply with the responsibilities as a Direct Payments **Recipient** may result in the **Council** terminating this agreement.

I understand that I must contact the **Direct Payments Support Service** to request DBS checks for employees

I confirm that I hold an up to date copy of the care support plan.

|  |
| --- |
| **Signed by the Direct Payments Recipient:** |
| Start date of agreement: |
| Name: |
| Address: |
| Signature: | Date: |
| Telephone: | Email: |
| Name of service user (if different than above): |
| Address: |

|  |
| --- |
| **Witnessed by:** |
| Name: |
| Address: |
| Signature: | Date: |

|  |
| --- |
| **Signed on behalf of Sefton MBC:** |
| Name: |
| Signature: | Date: |
| Job Title: |
|  |
| **Executor of Estate / Next of Kin details:** |
| Name: |
| Address: |
| Telephone: | Email: |