# DIRECT PAYMENTS AGREEMENT
# Children and Young People

## This agreement is between:

| | |
|---|---|
| Name: | Sefton Council<br>**(Referred to in this agreement as 'the council').** |
| Address: | Magdalen House<br>30 Trinity Road<br>Bootle L20 9NJ |
| **The person receiving the direct payment on behalf of the child or young person (Referred to in this agreement as 'you/your').** | |
| Name | |
| Address: | |
| Relationship to child or young person | |
| Telephone number: | |
| Email address: | |
| **The person receiving care and support. (Referred to in this agreement as 'the child or young person').** | |
| Name: | |
| Address:<br>If different from above | |
| **Office use only** | |
| **Council ID:** | |

## This is a legally binding document, please read carefully before signing.

Direct payments will not be paid until this agreement has been signed and returned to Sefton Council.
If the terms of this agreement are not complied with, the council reserves the right to suspend or terminate the direct payment.

Sefton Council

## Glossary of terms

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| **Assessment/ Care Plan** | This is the child and family assessment that the council carries out as detailed in section 17 of the Children's Act 1989 and proposed child's social care plan; Child in Need (CIN), Child Protection or Looked After Child. |
| **Direct Payment** | The amount the council agrees to pay to buy care and support services that they have been assessed as needing, as detailed in the child's plan |
| **Education, Health, and Care Plan (EHC)** | The educational health and care plan are for children and young people who have special educational needs (SENs) and/or disabilities. The child or young person's needs will be assessed by education, health, and social care professionals to see if they should have an EHC plan. |
| **Eligibility** | When the child or young person's assessed needs meet the council's criteria for council-funding of the care and support. The council decides who should get support, based on the level of need and the resources available.<br>If the council assesses the child or young person's needs and decides they are below this threshold, you will not qualify for council-funded care |
| **Outcomes** | In social care, an 'outcome' refers to an aim or objective the child or young person would like to achieve or need to happen from having a direct payment. |
| **Personal assistant** | Someone you choose and employ to provide the support needed, as identified in the child's plan. This may include help with personal care such as washing and dressing, and other things that have been identified in the support plan such as getting out and about in the community. |
| **Social Care Practitioner** | Is a council employee who will complete an assessment to work out what care and support is needed, and to support to find the services required. They will work with you to help improve the child or young person's life by arranging to put in place the things that are needed. |
| **Unused Monies** | Any money that is left once all eligible care and support services have been paid from the direct payment account. The council will allow up to 8 weeks money to cover any employers on costs, any invoices paid in arrears and payments that have been made in advance. . |

Sefton Council

## About this agreement.

1. The detail of this agreement is based on Sefton Council's Direct Payments Children's policy. This policy is available to view online at www.sefton.gov.uk/directpayments

2. Social care provision is provided by the council in exercise of its functions under Section 17 of the Children's Act 1989 (Provision of services for children in need, their families, and others). The welfare of the child or young person will be safeguarded and promoted by securing the provision of care and support services by means of a direct payment.

3. The person who has been assessed as needing care and support is known as the child or young person.

4. The council will pay a direct payment to any of the person's listed below and for the purpose of this agreement will be known as 'you':
   - The child or young person's parent or guardian who consents to receiving direct payments on their behalf.
   - A person nominated to receive the direct payment, provided that the council is satisfied that they can manage the direct payment.

5. You are agreeing to take responsibility for receiving and managing the direct payment and for buying care and support services.

6. The **Direct Payments Team** will provide support to the set up the direct payment, help with recruitment of staff and provide a payroll service. The Direct Payments Team is based in Sefton Carers Centre, 27-37 South Road, Waterloo L22 5PE.

7. The **Self-Directed Support Team** are employed by Sefton Council, and are responsible for monitoring, reviewing and supporting with all financial aspects of the direct payments account.

## The Direct Payment.

8. The council has agreed to make a direct payment for you to buy care and support services as identified in the child's plan. The calculation of the direct payment is based on the level of care and support identified and the appropriate standard council rate.

9. The direct payment should be used to buy services as detailed in the child's plan. There must be prior agreement from the council if the direct payment is to be used for any other purpose.

10. The money paid as a direct payment belongs to the council until it has been used to buy the services identified in the child's plan. The council can recover money that is not used or not spent on these services.

11. Should the direct payment be used, without agreement, for services and payments not detailed in the child's plan, then this could result in:
    i. A review of eligible needs by a social care practitioner.
    ii. A review of the direct payment, which may lead to the arrangements being suspended or terminated.
    iii. The council taking steps to recover any money not used appropriately.

12. The responsibility for managing the direct payment cannot be given to any other person, without prior agreement from the council.

13. Emergency plans must be put in place in case care and support services cannot be provided. If care arrangements breakdown, whether in an emergency or not, the council will offer support if required. This support might include the council arranging support from a care agency.

14. The direct payment must be paid into a bank account that can only be used for direct payments.

15. The council will arrange for a prepaid card account to be set up for the direct payment. You are responsible for the security of this account and must not share PIN numbers or online security details with anyone. The council will not accept liability for any incorrect payments and withdrawals due to security information being shared, this could result in the suspension of the direct payment.

16. The bank account for direct payment is:

    Bank Name:

    Account name:

    Account number: Sort code: - - -

17. Cash cannot be withdrawn from a cashpoint machine to make cash payments to anyone without prior agreement from the council.

18. Bank transfers cannot be made from the direct payment account to any other bank account in your name, except to the person or company that has provided the services set out in the child's plan.

19. The council agrees to pay the direct payment into the above account as per the child's plan. Payments will be made in advance every 4 weeks in line with the council's payment schedule.

20. The council will review the rates used to calculate the amount of the direct payment every year and will write to let you know of any changes.

21. Where care support is unable to be provided, for example the child/young person has an unplanned hospital stay or short-term placement, the council must be told as soon as possible. The direct payment advanced pay can be used to fulfil any contractual obligations in these circumstances. For example, paying a personal assistant a 2 week retainer payment. If the hospital is likely to be longer than 4 weeks, then the Direct Payment may be suspended, and the council will make sure the care and support is in place upon discharge.

## Your responsibilities.

22. You are responsible for making all arrangements for care and support, to meet the needs identified in the child's plan. You must comply with all legal requirements that may arise in making such arrangements. If Personal Assistants are used to provide the care and support, you will become the legal employer with the responsibilities involved in this role. The council accepts no responsibility for any matters that arise because of these arrangements.

23. As the child/young person is aged below 18, you will not be asked to make a financial contribution towards the cost of the care and support.

24. If you buy care and support at a rate that is higher than the rate paid by the council or want additional care and support that is not in the child's plan, then this must be paid from personal money. This is known as a top-up. You should consider that this is affordable before you agree to a contract.

25. You are responsible for any charges or fines incurred if the direct payment has not been managed correctly. For example, HM Revenues & Customs (HMRC) charge for late payment of employee contributions. These fines or charges must be paid from personal money.

26. You must tell the council immediately of any changes in circumstances which affect the delivery of care and support services or the management of the direct payment.

## Restrictions to Direct Payments.

27. The direct payment cannot be used to buy care and support services from the parent/guardian of the child/young person, or from a close relative who is living in the same household. However, in some circumstances this may be the only way that services can be adequately provided. This will be considered on a case by case basis. Permission must be sought before making any changes to the care and support provided.

28. The direct payment money cannot be used to buy some services that are provided by the Council.

29. If you choose to use a third-party organisation for any payroll service rather than use the Direct Payments Payroll Support, then you will have to pay the cost from personal money.

30. The direct payment cannot be used to buy services, equipment and/or minor adaptions which are the responsibility of other public bodies.

31. You cannot be paid from the direct payment account for managing the direct payment, or for providing care and support.

32. The direct payment cannot be used as personal money or be used towards everyday living costs such as household expenses. The direct payment cannot be used to buy items that do not meet the agreed outcomes in the child's plan.

33. The direct payment cannot be used to buy a service for a child or young person who is no longer an ordinary resident of Sefton other than by prior agreement in writing.

## Employing Personal Assistants.

34. Where personal assistants are employed to provide the care and support services detailed in the child's plan, you must ensure that they are suitably qualified and experienced for the role. This includes checking that they have received appropriate training and are competent in carrying out all tasks. Any health provision and training must be clinically assured and validated by the responsible Health Practitioner, and as such will be annually reviewed in terms of compliance.

35. You are advised to obtain appropriately qualified independent legal advice regarding the legal risks and obligations of becoming an employer including in respect of HM Revenue & Customs and pension liabilities.

36. Anyone employed under the direct payment scheme will not be an employee of the council and that the council will not be responsible for any contributions to pay as you earn (PAYE), national insurance or any other payments or responsibilities in relation to the employee. This must be clearly stated in their contract of employment that they are solely employed by you.

37. The Direct Payments Advisor will provide an Employer's Guide which will detail all responsibilities and provide useful information and contact details for support.

38. All employees are legally entitled to 5.6 weeks leave per year, not including bank holidays. As an employer, it is your legal responsibility to ensure that employees use all their statutory leave entitlement between the periods 1st April to 31st March each year.

39. You are responsible to arrange alternative support during the period that the employee takes their statutory leave.

40. You are responsible for notifying the Payroll Support provider of any amendments to your employee's contracted hours worked to reflect that they have taken leave. Further information can be found in the Employer's Guide.

41. The council will provide you with sufficient funds to pay the employee the National Minimum Wage rate and allow for additional funds to meet any costs of your legal responsibilities, for example:
    - Holiday pay.
    - Employer's national insurance contributions.
    - Employer's pension contributions.
    - Redundancy.
    - The purchase of employer's and public liability insurance.

42. Should you choose to pay employee(s) a rate higher than that recommended by the council, then these additional costs may have to be paid from personal money.

43. If there is any additional support required from your personal assistant(s) that has not had prior authorisation, you must make sure that you pay the additional employer on-costs incurred. These additional costs must be paid as a top-up to the direct payment account.

44. Employer's and public liability insurance must be in place before your employee starts. The direct payment can be used to buy this, and the Direct Payment Team can supply you with details of insurance providers. A copy of the insurance certificate must be provided within four weeks of employing any personal assistants. Failure to put in place the required insurance cover will be a breach of this agreement and may result in the suspension or termination of the direct payment. It is the employer's responsibility to renew the insurance policy when it expires. The council will not accept liability for any subsequent costs that may occur because you do not have a valid and up-to-date insurance policy.

45. Where driving is part of the employee's duties, you must check 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 ensure that any necessary safety equipment is maintained. Any mileage allowance must be paid from your personal money.

46. If, in the opinion of the council, the potential employee you have selected is either unavailable or is unfit to provide a safe and adequate service, the council can request that you find alternative support.

47. You must undertake appropriate checks through references and Disclosure and Barring Service (DBS).
    (i) DBS checks are compulsory for anyone who is providing care or support, to a child or an adult that lacks capacity. The employee cannot start employment until clearance has been obtained.
    (ii) You must contact the Direct Payments Team to obtain a DBS check for your employee(s); the costs of the checks will be paid directly by the council.
    (iii) 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.
    (iv) DBS clearance must be renewed every 3 years in line with current DBS legislation.

48. Personal or sensitive data of all employees must be protected as defined in current data protection legislation:
    (i) Employees' personal information can only be used for the purpose of the employment and must be kept securely or on a system that is password protected.
    (ii) 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.
    (iii) If you use the Direct Payments Payroll Support, all information held on your behalf will meet the regulatory requirements or obligations to third parties and be compliant with current Data Protection Legislation.

## Self-employed personal assistants.

49. You are responsible for confirming the employment status of self-employed workers, by completing the online tool on www.gov.uk/guidance/check-employment-status-for-tax and provide a copy of the report to the council. Expenses for materials and mileage are not payable from the direct payment account and cannot be allowed for the when determining the employment status.

50. The self-employed worker cannot start working until their status has been confirmed in writing to the council. This is to check that you are not liable for paying the self-employed worker's tax and national insurance contributions. Also, this is to prevent at a later date the HM Revenue & Customs deciding that the person is employed (not self-employed) and backdating any tax or national insurance liability for you to pay. The council will not be held liable for any backdated contributions or penalties that may arise from you not determining the employment status of any employees correctly.

51. If the status check has correctly determined that the worker is self-employed, then you are legally responsible for obtaining from the worker:
    (i) A contract of engagement from the worker that states that they are not employed by you, the rate that they will be paid and the terms and conditions of their work.
    (ii) Evidence that they have professional indemnity and public liability insurance certificate.
    (iii) Evidence that they have a Unique Tax Refence Number (UTR) to confirm that they are registered with HM Revenue & Customs as self-employed.
    (iv) Evidence that enhanced checks have been made through the Disclosure and Barring system (DBS).

52. All the information above must be provided to the council before the worker starts the contract. The cost of insurance, training and DBS check must be paid for by the self-employed worker.

53. You must provide the council with invoices from the self-employed worker in line with HM Revenue & Customs guidelines, to evidence how the direct payment is being spent.

54. Self-employed workers are only paid for the hours that they work and are not entitled to holiday and sickness payments.

55. If it is deemed that the worker is **employed**, then they must be provided with a contract of employment, job description and be registered for correct deduction and payment of tax, national insurance, and pension contributions. (See **Employing Personal Assistants**).

56. If a worker's self-employed status is **undetermined**, the council will be unable to accept them as self-employed and they should be paid as an employee.

## Monitoring and auditing of the Direct Payment.

57. The council has a duty of care to make sure that the child or young person receiving care and support is achieving the outcomes agreed in the child's plan and that the terms of this direct payment agreement are being met. The council must confirm that public funds are being used as agreed.

58. You must keep invoices and receipts of all payments made from the direct payments account. All paperwork must be sent to the Self-Directed Support Team on a quarterly basis or upon request.

59. If the required paperwork is not provided within the timescales set, then the Self-Directed Support Team will arrange a review with the social care practitioner. This is to check if the direct payment is being managed within the terms of this agreement. The outcome may be that the direct payment is suspended, and alternative care and support arrangements arranged by the council if you are unable to provide evidence for what the direct payment has been spent on.

60. The direct payment account will be reconciled by the Self-Directed Support Team who will send a report highlighting any areas of concern. This may include low account balance/overspending; inappropriate spend, non-compliance with employer responsibilities. The report will outline any action that needs to be taken.

61. The council will regularly assess the balance of funds held in the direct payments account. There should always be enough money in the direct payment account to:
    - Pay for any outstanding employee costs such as wages, tax, insurance.
    - Any outstanding invoices for agencies for care already provided.
    - Allow for 4-weeks payments that have been paid in advance.

    You will be asked to return any unused money to the council by invoice.

## Prepaid card account.

62. The council is required by the Money Laundering, Terrorist Financing and Transfer of Funds Regulations 2019, to verify the account holders' details, including confirming the account holder's identity and retaining documented proof of the account holder's name, address, and date of birth.

63. By signing this agreement, you are consenting to the council processing personal data, storing, and sharing the requested information with the council's prepaid card provider. This is in line with current data protection legislation and UK GDPR for assessing, implementing, and monitoring of direct payments, and to comply with any regulatory requirement or obligations to third parties. All personal information will be destroyed within 1 year of the prepayment account closing.

64. The council has administrative access to the prepaid card account and will, if necessary, review the account online, make payments on your behalf and download any stored supporting documentation.

65. The council has the right to lock access to the prepaid card account, if the account is not being managed within the terms of this agreement, for example misuse of card/funds and sharing of security access to the account. The council will write to you to confirm the reason for locking the account and provide details of alternative ways to pay for support.

## Review and repayment of the direct payment.

66. The council will ask you to repay either all or part of the direct payment if it has not been used appropriately in accordance with the terms of this agreement. If money owed is not repaid within 14 days, the council may take steps to recover this debt, in line with its debt recovery policy.

67. If the direct payment allocation is reduced, the council will give at least 4 weeks' notice in writing and give reasons for the change.

68. The council reserves the right to vary these terms and conditions and will confirm in writing any changes giving 4 weeks' notice.

## Ending the direct payments agreement.

69. You have the right to end this agreement upon discussion with a social care practitioner.

70. If the requirements of the direct payment agreement are not met, the Council has the right to suspend and ultimately end the direct payment, giving 4 weeks' notice, until the terms of the direct payment agreement have been met.

71. The council may end this agreement immediately if, after investigation, it is found that the direct payment is being used illegally or not in the best interests of the child or young person receiving the support.

72. Before ending the agreement, the council will work with you to find a solution wherever possible. In some circumstances, the payment may be suspended whilst additional support or investigations take place.

71. To enable the council to finalise the direct payment account when the scheme has ended, you must ensure:
    - That any outstanding payments to employees, HM Revenue & Customs and agencies are paid.
    - You must act legally as an employer to ensure that adequate notice has been given to the employee.
    - That adequate notice has been given to the personal assistant as per their contract.

73. Should the child or young person receiving the support pass away, the Council will only make payment up to and including the date of death. No allowances will be made for any separate agreement that you may have after this date.

74. In the event that you should pass away, the council will need details of your next of kin or executor of the estate so that arrangements can be made to return monies from the direct payment account. The direct payment is not to be included as part the estate for either you or the child or young person receiving support.

75. When the direct payment ends, the council will request the return of any unused money and payments made in advance. The council will consider any outstanding payments in relation to the direct payment, when calculating the balance to be repaid.

76. Should the child or young person move out of the Sefton area, the social care practitioner will support you with the transfer to the new local authority and end the direct payment with Sefton Council.

## Transition to adulthood.

77. Transition to Adult Social Care services will be arranged by the council before the young person's 18th birthday. This Direct Payment Agreement (Children and Young People) will end once the social care needs have been assessed by Adult Social Care. A new direct payment agreement will be issued upon the transition from Children's Social Care to Adults Social Care, and a new prepaid card will be issued if applicable.

## Safeguarding.

78. You are responsible for notifying the council immediately if there is any risk to the delivery of care and support and report any concerns that you have in relation to safety, abuse, or neglect of the child or young person receiving support.

79. Concerns must be reported to the council to investigate further. You can contact the allocated social care practitioner, the Direct Payment Team, or Self-Directed Support Team or by calling the council on 0345 140 0845.

## Complaints

80. If there is a breach of contract by an employee or service provider, in the first instance this must be dealt with by using the procedure set out within the employment contract or agency contract. If this is not successful, the Direct Payments Team can advise who is best to assist in resolving this complaint.

81. Complaints to the council concerning direct payments should be made either online at www.sefton.gov.uk or by contacting Customer Access on 0345 140 0845. A copy of the Council's complaints procedure is also available on the Council's website or the telephone number above.

## Data Protection Legislation.

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

83. The council has a duty to protect the public funds it administers and may use information held about you or the person receiving support for lawful purposes, including but not limited to the prevention and detection of fraud, and matching Council Tax data with Electoral Registration records.

84. 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.

85. By signing this agreement, you consent 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.

86. All personal information will be destroyed 6 years after the final payment from the council.

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 this agreement may result in the council ending the direct payment.
- I acknowledge that I have received sufficient information and support relating to the receipt and use of the direct payment and that I am aware of my obligations in receiving the money.
- I understand that I must contact the Direct Payments Team to request DBS checks for employee(s)
- I confirm that I hold an up-to-date copy of the child's plan.

| **Signed by the person receiving the direct payment and/or managing the direct payment account:** | |
|---|---|
| Start date of agreement: | |
| Name: | |
| Address: | |
| Signature: | Date: |
| Telephone: | Email: |
| Name of Child / Young Person: | |
| Child / Young Person's date of birth: | |
| Address: | |
| **Executor of Estate / Next of Kin details of Recipient:** | |
| Name: | |
| Address: | |
| Telephone: | Email: |
| **Witnessed by:** | |
| Name: | |
| Address: | |
| Signature: | Date: |
| **Signed on behalf of Sefton MBC:** | |
| Name: | |
| Signature: | Date: |
| Job Title: | |