DIRECT PAYMENT AGREEMENT

Adult Social Care

This agreement is between:

Name:	Sefton Council **(Referred to in this agreement as 'the council').**
Address:	Magdalen House 30 Trinity Road Bootle L20 9NJ
The person receiving the direct payment and managing the direct payment account. (Referred to in this agreement as 'you/your').	
Name	
Address:	
Telephone number:	
Email address:	
The person receiving the support if different to above.	
Name:	
Address:	
Office use only	
Council ID:	

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

The direct payment 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

Assessment	A care needs assessment works out what help or support you need with carrying out daily living activities. It is an opportunity to look at your strengths and abilities and explore informal and formal support with you. Anybody is entitled to a care assessment if they think that they need help with their care and support.
Care and support needs	These are the needs which are identified in the care assessment in relation to your care and support.
Client Contribution	This is the amount that you must pay towards the cost of the care services you receive. A financial assessment will work out whether you need to pay, and the amount you need to pay from your personal money.
Eligibility	The council will not meet every need for care and support that you have. Your care and support needs will only be met if they satisfy the eligibility criteria following an assessment. This applies if you have health problems which stop you from doing certain things, which will affect your wellbeing.
Outcomes	In social care, an 'outcome' refers to an aim or objective you would like to achieve or need to happen - for example, continuing to live in your own home, or being able to go out and about. You should be able to say which outcomes are the most important to you and receive support to achieve them.
Personal Assistant	Someone you choose and employ to provide the support needed, shown in your support 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	This is a professional who works with a person and those close to them to help improve their lives by arranging to put in place the things they need. This includes helping to protect adults and children from harm or abuse and supporting people to live independently. In Sefton Council this will usually be a social worker or community assessor.
Support plan	A support plan follows a care assessment, and details what a person's assessed eligible needs are and how these will be met.
Top-up	If you choose to buy support at a cost higher than your direct payment amount or additional support that is not detailed in the support plan, then this is a 'top-up' and must be paid from personal money.
Unused money	Any money that is left once all eligible care and support services have been paid from the direct payment account, will be returned to the council. The council will allow up to 8 weeks money to remain in the direct payment account. This is to cover any employers on costs, outstanding invoices 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 Payment Policy. This policy can be viewed online at www.sefton.gov.uk/directpayments

2. The Care Act 2014 requires that where an adult has identified needs for care and support, the council is responsible for carrying out an assessment of the person's needs. This is to check that care and support is provided to meet those needs. The services that are identified to meet the needs are set out in the person's support plan.

3. In most cases, the person receiving the support is the person who manages the Direct Payment and signs the direct payment agreement. If they are not capable of managing the direct payment, they can have a representative who will be responsible on their behalf.

4. The representative will take responsibility for receiving and managing the direct payment and for buying care and support services.

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

6. 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 payment account.

The Direct Payment

7. The council has agreed to make a direct payment to buy care and support services as identified in the support plan. The calculation of the direct payment is based on the level of care and support assessed and the appropriate standard council rate. Any assessed client contribution will be deducted from this amount.

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

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

10. Should the direct payment be used, without agreement, for services and payments not detailed in the support 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.

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

12. 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.

13. The direct payment must be paid into a bank account that can only be used for the direct payment, any assessed client contribution and 'top up' contributions.

14. 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.

15. The bank account for the direct payment is:

    Bank Name:

    Account name:

    Account number: Sort code: - -

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

17. 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 support plan.

18. The council agrees to pay the direct payment into the above account as per the support plan. Payments will be made in advance every 4 weeks in line with the council's payment schedule. Any client contribution will be deducted from the direct payment amount that is paid.

19. 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.

20. The client contribution will be reviewed every year, and any changes could affect the direct payment amount which is paid by the council. Any change to the client contribution will be notified in writing.

21. Where care and support services cannot be provided, for example 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, during a hospital stay by paying a personal assistant a 2 week retainer payment. If the hospital stay is likely to be longer than 4 weeks, then the direct payment may be suspended, and the council will make sure that the support is in place upon discharge.

22. Where the council and the local integrated health board are jointly funding care and support services, that meets both social and healthcare needs, the direct payment will include the healthcare element. Sefton Council will pay and monitor the direct payment to make sure it is being used to meet all outcomes.

Sefton Council

Your responsibilities

23. You are responsible for making all arrangements for care and support, either with an agency or by employing staff, to meet the needs identified in the support 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.

24. You agree to pay any assessed client contribution into the direct payment account from personal money, so you have enough funds to pay for the care and support outlined in the support plan. The assessed client contribution is the first element of the direct payment that is used to pay for any care.

25. A standing order should be set up to pay the client contribution into the direct payment account. This payment must be paid in advance and on a regular basis. The standing order will need to be amended when there are any changes in client contribution.

26. If you buy care and support services at a rate that is higher than the rate paid by the council or want additional care and support that is not in the support plan, then this must be paid from personal money. This is known as a top-up. Before agreeing to pay a top-up, you must be aware that this:
    - Must be paid into the direct payment bank account before paying for care and support, services.
    - Is in addition to client contribution, and both must be paid from personal money.
    - Arrangement may be long term, so you should consider if it is affordable before you agree to a contract.

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

28. 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 the direct payment.

29. The direct payment cannot be used to buy care and support services from the spouse/partner of the person receiving the support, 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.

30. The direct payment money cannot be used to buy some services that are provided by the council, or to pay personal contributions towards day centre meals, transport, respite, reablement services or permanent residential care. These payments must be paid from personal money.

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

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

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

34. 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 support plan.

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

36. The direct payment cannot be used to purchase personal care support from a domiciliary care agency that is not registered with the Care Quality Commission (CQC). The CQC defines personal care as 'supporting people with things like washing, bathing or cleaning themselves, getting dressed or going to the toilet'. Personal care is defined as a 'regulated activity' by the CQC, which means that agencies providing this support must be registered with them.

Employing Personal Assistants

37. Where personal assistants are employed to provide the care and support services detailed in the support plan, you must ensure that they are suitably qualified and experienced for the role.

38. You are advised to obtain appropriately qualified independent legal advice regarding the legal risks and obligations of becoming an employer including HMRC and pension liabilities.

39. 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.

40. The Direct Payment Advisor will provide an Employers Guide which will detail your responsibilities as an employer and provide useful information and contact details for support.

41. 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.

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

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

44. The council will provide you with enough money to pay the employee the National Minimum Wage rate and allow for any additional payments you may have as an employer, for 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.

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

46. If there is any additional support you require from your personal assistant(s) that has not had prior authorisation, you are responsible for paying the additional employer on-costs incurred. These additional costs must be paid as a top-up to the direct payment account.

47. 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.

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

49. 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.

50. The council strongly recommends that you 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 Payment 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.

51. 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 Payment 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

52. 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.

53. The self-employed worker cannot start working until their status has been confirmed in writing to the council. This is to ensure 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 HMRC declaring 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.

54. 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 HMRC as self-employed.
    (iv) Evidence that enhanced checks have been made through the Disclosure and Barring system (DBS).

55. 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.

56. 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.

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

58. 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).

59. 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.

Sefton Council

Monitoring and reconciliation of the direct payment

60. The council has a duty of care to make sure the person receiving care and support is achieving the outcomes agreed in the support plan and that the terms of this agreement are being met. The council must confirm that public funds are being used as agreed.

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

62. 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.

63. 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 non-payment of client contribution or top-up; low account balance/overspending; inappropriate spending, non-compliance with employer responsibilities. The report will outline any action that needs to be taken by you.

64. If you refuse to pay an assessed client contribution resulting in insufficient funds to meet the cost of assessed needs, then this will be seen as a breach of this agreement and the council will take steps to recover the shortfall.

65. The council will regularly assess the balance of funds held in the direct payment 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

66. 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.

67. 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 the direct payment, and to comply with any regulatory requirement or obligations to third parties. All personal information will be destroyed within 1 year of the prepaid card account closing.

68. 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.

69. 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.

70. 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.

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

72. 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 payment agreement

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

74. If the requirements of the direct payment agreement are not met, the council has the right to suspend and ultimately terminate the direct payment, giving 4 weeks' notice, until they are satisfied that the terms of the direct payment agreement have been met.

75. 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 person receiving the support.

76. 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.

77. To enable the council to finalise the direct payment account when the scheme has ended, you must ensure:
    - That any outstanding payments to employees, HMRC 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 agency / provider of support as per their contract.

78. Should the person receiving the care and support service pass away, the council will make payment up to and including the date of death. No additional payments will be made for any separate agreement you may have for costs after this date.

79. 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 person receiving support.

80. 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.

81. Should the person receiving care and support 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.

Safeguarding

82. 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 person receiving support.

83. 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

84. 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 Payment Team can advise who is best to assist in resolving this complaint.

85. 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

86. 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 of public funds. This is to prevent and detect fraud.

87. 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.

88. 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.

89. 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 payment and for complying with any or regulatory requirements or obligations to third parties.

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

Declaration

- I have read the direct payment 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 Payment Team to request DBS checks for employee(s)
- I confirm that I hold an up-to-date copy of the support 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 person receiving support (if different than above):	
Address:	
Executor of Estate/Next of Kin details of the account holder:	
Name:	
Address:	
Telephone:	Email:
Witnessed by:	
Name:	
Address:	
Signature:	Date:
Signed on behalf of Sefton Council:	
Name:	
Signature:	Date:
Job Title:	