**The Kent County Council**

**Direct Payment Agreement**



**Direct Payments Agreement**

* The Care and Support (Direct Payments) Regulations 2014
* The Community Care, Services for Carers and Children’s Services (Direct Payments) (England) Regulations 2009

**This agreement is between:**

The Kent County Council

Sessions House

County Hall

Maidstone

Kent ME14 1XW

Referred to in this document as ‘we’ or ‘us’

and

The person whom the Direct Payment is for

|  |  |
| --- | --- |
| Name: |       |
| Address 1: |       |
| Address 2: |       |
| Town: |       |
| County: |       |
| Postcode: |       |

Referred to in this document as ‘you’

and

Your nominated person who is supporting you with your Direct Payment

|  |  |
| --- | --- |
| Name: |       |
| Address 1: |       |
| Address 2: |       |
| Town: |       |
| County: |       |
| Postcode: |       |

Referred to in this document as ‘your nominated person’

**or**

The authorised/suitable person who is managing your Direct Payment for you

|  |  |
| --- | --- |
| Name: |       |
| Address 1: |       |
| Address 2: |       |
| Town: |       |
| County: |       |
| Postcode: |       |

Referred to in this document as ‘authorised/suitable person’

and

The person with parental responsibility managing the direct payment on behalf

of a child/young person.

|  |  |
| --- | --- |
| Name: |       |
| Address 1: |       |
| Address 2: |       |
| Town: |       |
| County: |       |
| Postcode: |       |

Referred to in this document as the ‘person with parental responsibility’

**This Direct Payment Agreement (“the Agreement”) sets out the steps that you need to take when you receive your direct payment. Please read it carefully as it is legally binding.**

1. Basis of this agreement
	1. Kent County Council has carried out an assessment of your needs and has determined that you are eligible to receive support services as identified in your care and support plan/Young Person’s/Child in Need plan (“Plan”), to which this document is attached. This payment will be provided through a Direct Payment.
	2. You may only use your Direct Payment to arrange and receive the support detailed in your Plan. You will be responsible for paying for the support you receive, including all agency invoices and employee wages/salaries.
	3. We consider that you are able to secure the support/services detailed in your Plan by yourself, with assistance from your nominated person, the person with parental responsibility or managed by an authorised/suitable person if you lack the capacity to manage it yourself. We are willing to make your Direct Payment available to you, the person with parental responsibility or the authorised/suitable person, to enable you, the person with parental responsibility or the authorised/suitable person, to buy the support/services you need.
	4. We would advise that you, the person with parental responsibility or the authorised/suitable person, obtain independent legal advice should you be unsure about the contents of this agreement.
	5. **Where your Direct Payment is managed by a person with parental responsibility or authorised/suitable person for the purposes of this agreement, all terms that are applicable to you will also be applicable to a person with parental responsibility or authorised/suitable person unless otherwise indicated.**
2. When you will be paid and money which you may need to repay to us.
	1. We will pay you every 4 weeks in advance, and/or a one-off payment, as indicated in your Plan.
	2. Any interest generated on a surplus Direct Payment must be used towards services to meet assessed needs. Once you are no longer eligible or receiving services, we will reclaim any surplus plus any interest that has been generated.
	3. Where we are paying you an amount to cover the cost of you employing one or more personal assistants, you will be their employer and will be responsible for paying their wages and all employment related employer contributions. Should you receive a refund of employer’s national insurance or employer’s pension contributions, or if you are told the amount of such contributions has been reduced, these refunded/surplus monies are repayable to us unless we agree with you in writing that you can keep them. You must retain any such monies in your Direct Payment account until the next financial monitoring review when the monies will be reclaimed. You, the nominated person or the authorised/suitable person or person with parental responsibility must then repay any such monies to us in accordance with our reasonable instructions.
3. How you will be paid
	1. You must either use a Kent Card account to manage your Direct Payment or set up a specific bank or building society account. The Direct Payment will be paid into this account, unless it has been agreed to make the payment to an authorised/suitable person or person with parental responsibility. With a Kent card, by signing this agreement you are giving the authority to KCC to request a Kent Card for you.
	2. If you have been assessed and you are required to pay a financial contribution in accordance with the Council’s charging policy towards the cost of the support received, your financial contribution must also be paid into this account. By making this payment, you are ensuring that there is enough money to pay for the support.
	3. By receiving the Direct Payment onto a Kent Card, you will be required to review and agree the terms and conditions once you have received the card. The terms and conditions are between you and the cardholder.
4. General rules about how you should use the money
	1. The Direct Payment is to buy the services/support as detailed in your Plan. The Direct Payment Support Team or Beams Direct Payment team (“the Support Team”) or your Case Manager/Social Worker, will have explained to you that the Plan can be used flexibly to source the care and support you need, that it will be regularly reviewed and that you should contact the Support Team or your Case Manager/Social Worker if you need to make changes to your Plan.
	2. The Direct Payment cannot be used for debt repayments, financial investments, gambling, alcohol, drugs, tobacco, cigarettes or any items or services that do not meet your eligible care needs.
	3. You must use the Direct Payment legally. If you decide to employ a Personal Assistant (“PA”), you must meet the legal requirements of being an employer. You must refer to the Employing Personal Assistants Factsheet and accompanying checklist provided to you by the Support Team or your Case Manager/Social Worker or follow the advice from the organisation acting on behalf of the Council for children and young people about becoming an employer.
	4. Your PA cannot be a signatory and they cannot support you with record keeping.
	5. If a PA you employ subscribes to the ‘Disclosure and Barring Service’ update service, and when checking you find that they do not have a satisfactory Disclosure and Barring Service certificate, you must inform us immediately.
	6. If you do not employ the PA to provide your support, you must ensure that the person or organisation providing the support accepts and acknowledges in writing that they are not employed by you and also has relevant and sufficient insurance, skills and qualifications, Disclosure and Barring Service Certificate and work permits from the outset. You must check on a regular basis that such cover remains in place and, when necessary, is varied in accordance with changes to the support provided. You are reminded that an individual can be registered as self-employed but regarded as employed on a specific contract ( or “set of contractual terms''). If there is any doubt about whether the terms and conditions under which a worker is carrying out their duties are those of self-employment, then you as the engager are responsible for seeking advice from the HMRC.'
	7. If you wish to use a care agency we recommend that you purchase care from a provider who is registered with the Care Quality Commission. Please contact your Case Manager/Social worker for a list of providers.
	8. Any authorised/suitable person or parent with parental responsibility helping you to manage your Direct Payment cannot have any financial interest in, or be a director of any company providing services funded through your Direct Payment, either as a PA or through a care agency.
	9. You cannot normally use your Direct Payment to employ any member of your family or their partners, or your partner or spouse’s family members if they are living with you, to meet your care needs apart from in exceptional circumstances. This clause relates only to your family, not the family of the authorised**/**suitable person. You must contact your Case Manager/Social Worker if you feel employing such a person would be necessary to meet your care needs, and we will confirm our decision in writing.
	10. You cannot use the Direct Payment to buy services from us.
	11. You cannot use the Direct Payment to pay for long-term residential or nursing care, or for drug or alcohol treatment programs or other similar schemes.
	12. If we suspect the person with parental responsibility or the authorised/suitable person is using the Direct Payment illegally, we have a duty to report the suspicion to our Internal Audit office, which will carry out an investigation. If fraud is suspected, the matter may be investigated by our own fraud investigators and/or reported to the relevant Police authority/Safeguarding agency.
	13. Anyone employed through a Direct Payment will not be considered an employee or agent of Kent County Council and the Council will not be responsible for any income tax or national insurance contributions, VAT or any other payment payable or legal responsibilities in relation to employees including Personal Assistants.
5. Additional rules for an authorised/suitable person
	1. Where an authorised/suitable person is managing the Direct Payment on your behalf because you lack capacity, he or she must:
		* 1. use the Direct Payment in your best interests at all times, within the meaning of the Mental Capacity Act 2005 (“the Act”). The authorised/suitable person must contact the Support Team should he or she require guidance on what this means;
			2. inform us immediately if he or she believes that you have gained or regained the capacity to consent to or manage a Direct Payment;
			3. undertake an enhanced Disclosure and Barring Service Check every three years on people that he or she has employed to provide support to you (unless the authorised/suitable person is a spouse, civil partner, partner, close relative (or spouse or partner of a close relative) or a friend involved in your care; and
			4. inform us immediately if the person they have employed to provide support to you does not have a satisfactory enhanced criminal record certificate.
			5. agree to be subject to an enhanced Disclosure and Barring Service Check every three years carried out by us unless he or she is a spouse, civil partner, partner, close relative (or spouse or partner of a close relative), a person appointed by the Court of Protection or a friend involved in your care.
			6. if registered with the Disclosure and Barring Service update service, agree to give us permission to check their enhanced Disclosure and Barring Service certificate.
			7. A Direct Payment may be used to pay a family member living in your household to provide management and/or administrative support (not care) to help you manage your Direct Payment. Please contact your Case Manager for details.
6. Additional rules for a person with parental responsibility
	1. Kent Specialist Children’s Services’ policy is that everyone working with children should have a current DBS check. Parents/carers/young people should be advised that a DBS check should be carried out in respect of the person they plan to recruit to care for the child/young person, as without this the Direct Payment will not be agreed. It is preferable if the employment of a Personal Assistant can wait until DBS clearance is received (providing this is appropriate), as it avoids actions being taken to terminate employment if the DBS check is unsatisfactory.
	2. If a DBS check has been requested but has not been received by the time the Personal Assistant (PA) is required to start work, the parent/carer/young person should be advised that the PA should not be left alone with the child/young person they are providing care for, until DBS clearance is received. Disclosure and Barring Service checks should be updated every 3 years.
	3. If a PA has been DBS checked and cleared to work with one child and then identified to work with a different child the PA will not need to be DBS checked again unless the DBS check is coming up for its 3-year renewal.
7. What records you should keep
	1. Kent County Council has a responsibility to ensure that public funds, including Direct Payments, are spent on the intended services.
	2. You will need to keep financial records e.g. bank statements, cheque book stubs, payslips, invoices and complete financial return forms for us. You must refer to the ‘Managing your Direct Payment Records Factsheet’ provided to you by your Case Manager/Social Worker for guidance on how to manage your Direct Payments records or to advice from the organisation acting on behalf of the Council for children and young people.
	3. You are responsible for using your money wisely with the support of your nominated person if you have one. Any bank charges, legal charges or HM Revenue and Customs costs will be your responsibility. If bank charges are due to our late payment and are our fault, we will reimburse you so long as you provide us with the relevant documentation.
	4. If you do not send in your financial information your Direct Payment could stop, we could also reclaim any Direct Payments made for the period you are unable to supply financial records. You must keep all supporting documents relating to the direct payments and the provision of the support services for at least six complete financial years.
	5. The Council has the power to recover funds and /or discontinue payments in the event of non-compliance with the terms of this Agreement
	6. We have a right to access information about your Direct Payment. We may use any of the information for the prevention and detection of fraud. We may also share this information with other bodies that are responsible for auditing or administering public funds. For further information on the information we hold about your Direct Payment, or how we may use it, please telephone the Support Team on 03000 413600 or email direct.payments@kent.gov.uk for adults or the organisation acting on behalf of the Council for children and young people.
8. Review of your needs
	1. We will, together with you and your nominated person, carry out a review of the management of the Direct Payment and of your needs (not those of the authorised/suitable person or a person with parental responsibility) no more than six months after payment begins, and then on at least an annual basis after that. If your needs have remained the same the payment will continue at the same rate. If they have changed, your Direct Payment will be reassessed accordingly.
	2. For one-off payments the review will be appropriate and proportionate to ongoing support.
9. If your arrangements break down or your needs change
	1. If things go wrong, you should contact your Case Manager/Social Worker or the Support Team. They will assist you to find other support to meet your assessed needs. However, if this is unsatisfactory then we will try to provide the necessary services.
	2. If your circumstances change, for example, your health improves or worsens, there is a change in your financial circumstances, or you change address, you must contact us. You must also contact us if your needs change from those specified in your Plan.
	3. If you go into hospital or respite, please ensure we are notified as soon as possible. These clauses relate to the person whom the Direct Payment is for, not the authorised/suitable person/person with parental responsibility.
10. Comments and complaints
	1. You have the right to comment, complain and compliment about the operation of this agreement using our complaints procedure. Please contact your Case Manager/Social Worker for details of the procedure. Should you have any problems with the PA you have employed, or care agency staff, then you should complain directly to them rather than us.
11. Ending or suspending the agreement
	1. Either you or we may terminate this agreement by giving four weeks’ notice in writing to each other. If you wish to terminate, you should write to your Case Manager/ Social Worker.
	2. We may suspend or terminate the Direct Payments if:
		* 1. we become aware that the Direct Payment is not needed for a period of more than 21 days. We will discuss the matter with you first, and consider your continuing needs (not those of the authorised/suitable person/person with parental responsibility) and any contractual agreements you may have; or
			2. it is found you or your nominated person/ person with parental responsibility are not using your Direct Payment in your best interests (not the best interests of the authorised/suitable person/person with parental responsibility) or for the needs/services set out in your Plan. You must then repay the whole or part of the Direct Payment plus any interest generated if we ask you to.
	3. We will terminate this agreement immediately if:
		* 1. After investigation it is found that you, your nominated person or the person with parental responsibility are using the money illegally or not complying with any part of this agreement. You must then repay the whole or part of the Direct Payment plus any interest generated if we ask you to;
			2. it appears to us that you or your nominated person or the person with parental responsibility no longer have the capacity to or are not legally permitted to manage a Direct Payment. However, before we do so we will always consider whether there is another suitable person who can accept and manage the Direct Payment on your behalf.
	4. In the event that you or your nominated person, or the person with parental responsibility, do not repay the whole or part of the Direct Payment when requested to do so under 11.2 or 11.3, we reserve the right to take legal action against you or in certain circumstances your nominated person to recover the Direct Payment plus any interest generated. This expressly includes the authorised/suitable person and the person with parental responsibility.
	5. Before this agreement can be terminated, you will need to complete all outstanding payments to your employees, HM Revenue and Customs and agencies, then provide financial returns forms to us or the organization acting on behalf of the Council for children and young people to finalise your Direct Payments account. After this has been done, you will need to return any money remaining in your Direct Payments account to us.
	6. In the event of your death, we will work with any Executor you may have, to take into account your legal or employment responsibilities or any outstanding care provider invoices before finalising the Direct Payments account. It will be the responsibility of the person administering your estate to make all payments in relation to your legal and employment responsibilities (not KCC), apart from in exceptional circumstances at the KCC Assistant Director’s discretion. All monies left in the account after discharging your legal and employment responsibilities should normally belong to us.

**Signatures**

You confirm that you have read and understood the terms of this agreement. Should you require any alternative arrangement to enable you to confirm you have understood the terms of this agreement, please contact your Case Manager/Social Worker who will arrange a suitable format for your needs.

I understand that if I knowingly give information that is incorrect or incomplete, I may be liable for prosecution or other action.

We reserve the right to unilaterally amend this Agreement at any time in order to comply with any Care Act or Children’s Legislation regulations, guidance and employment legislation. You agree to abide by any amended terms.

**1st Party:**

**Us – Kent County Council**

Signature on behalf of Kent County Council:

Print name:

Position:       Date:

**2nd Party:**

**You – The person whom the Direct Payment is for**

Signature:

Print name:       Date:

**Note:** If the person does not require a financial assessment, two identification checks for **Kent Card applications** to be completed and recorded below. The ID documents must match the name and address recorded at the beginning of the Agreement

|  |  |
| --- | --- |
| \*ID Check 1 - Valid Driving Licence/Passport - Number\* & Expiry Date |       |
| \*ID Check 2- Utility Bill/ Government Letter \* issued in the last 3 months (detail type & date) |       |

**3rd Party:**

**Your nominated person who is supporting you with the Direct Payment**

Signature:

Print name:       Date:

**OR**

**3rd Party**

**The authorised/suitable person/ person with parental responsibility managing the Direct Payment for you.**

Signature:

Print name:       Date:

**Any additional comments or information:**

**Note:** Two identification checks for **Kent Card applications** to be completed and recorded below. The ID documents must match the name and address recorded at the beginning of the Agreement.

|  |  |
| --- | --- |
| \*ID Check 1 - Valid Driving Licence/Passport - Number\* & Expiry Date |       |
| \*ID Check 2- Utility Bill/ Government Letter \* issued in the last 3 months (detail type & date) |       |