



## **DIRECT PAYMENT AGREEMENT**

**Between**

Barnsley Metropolitan Borough Council ("**us**", "**we**")

and

DIRECT PAYMENT RECIPIENT's NAME, DATE OF BIRTH (DD/MM/YYYY) AND HOME ADDRESS ("**you**")

REPRESENTATIVE's NAME, DATE OF BIRTH (DD/MM/YYYY), HOME ADDRESS AND BASIS ON WHICH REPRESENTATIVE ACTS ON RECIPIENT's BEHALF (e.g. a Deputy or Lasting Power of Attorney)] ("**representative**" acting on "**your**" behalf)

### **SECTION A: For the provision of a Direct Payment**

1. This Agreement is legally binding on '**You**' and **Barnsley Metropolitan Borough Council ('us' 'we')** and states what you must do in agreeing to receive a Direct Payment and what we will do when agreeing to make Direct Payments to you.
2. '**You**', will be either be the person named in the support plan receiving the Direct Payment or will be the agreed representative receiving and managing the Direct Payment on their behalf.
3. Within this document when it refers to a '**Designated**' bank account it refers to the bank account set up to receive your Direct Payment funds. This could be a Direct Payment Account, a Direct Payment Agent Account or a Supported Managed Account.
4. **You** have told us that you wish to receive a Direct Payment as part of your agreed outcomes detailed in your **Support Plan**, and **we** have agreed to give you a Direct Payment subject to the conditions contained in this Agreement. **You** have agreed to manage your Direct Payments without our assistance.
5. If required, the initial payment will include additional funds to pay for set-up costs, such as: (1) undertaking enhanced Disclosure and Barring Services (DBS) checks (this will be completed by BMBC on your behalf), and (2) employer's public liability insurance.
6. If **You** choose to have a **Supported Managed Account**, where a Third-Party organisation is paid to manage the financial elements of your Direct Payment, then **You** still need to understand the agreed budget to ensure that the invoices being sent to the third-party managed account, by any care provider or payroll service, are in line with the services agreed in the Support Plan. It remains

**Your** responsibility to have an oversight of the budget and spending and that invoices/timesheets are accurate and reflect the service being provided.

7. For a Supported Managed Account **You** will remain responsible for managing the day-to-day care arrangements that are put in place, whereas the third-party organisation managing the Supported Managed Account will solely have responsibility for receiving and making financial payments.
8. In this Agreement, **We** agree to:
  - 8.1 pay the Direct Payment directly into **your** designated bank account;
  - 8.2 regularly review the availability and suitability of the Direct Payment for **you**, as well as the amount offered and the calculation made according to **your** individual circumstances; and
  - 8.3 reserve the right to receive and request evidence that the money paid to **you** has been used for the specified purpose only.
9. **You**, as the person receiving the Direct Payment or as the representative receiving the Direct Payment on their behalf, agree that **you** shall:
  - 9.1 at all times act in the best interests of **You**;
  - 9.2 be responsible for making all the necessary arrangements to ensure that **you** receive the services agreed in the Support Plan;
  - 9.3 set up a separate designated bank account, set up solely for **us** to pay the Direct Payments into on a 4-weekly basis, and be responsible for ensuring that the funds are received into this account;
  - 9.4 ensure that the separate designated bank account, set up solely for your Direct Payments, is approved by **us** and is only accessible by **You** (the person receiving the Direct Payments) or any other person approved in writing by **us**;
  - 9.5 ensure any assessed financial contribution is paid by **you** into the designated bank account ideally by a 4 weekly standing order. Please note if the contribution is not made BMBC may consider cancelling the Direct Payment and putting in place commissioned services. BMBC will also seek to recover any unpaid contributions through their debt recovery process;
  - 9.6 *\*not use Direct Payments to secure services from a partner, relative or anyone living in the same household as **you** (the individual receiving the Direct Payment), unless approval has been gained from **our** service director, under exceptional circumstances. (*\*This is not applicable to those in receipt of a Direct Payment for a child or young person*).*
  - 9.7 not make any cash payments;
  - 9.8 not make private top ups into the Direct Payment account. Anything **you** pay for privately must be paid for and invoiced outside of the designated Direct Payment bank account;
  - 9.9 agree to keep certain financial records and send these to [dpauditandmonitoring@barnsley.gov.uk](mailto:dpauditandmonitoring@barnsley.gov.uk) upon **our** request. Depending on the account type **you** have these records may include; full and accurate records of how **you** have used **your** Direct Payments including: bank statements invoices, receipts or any other record of payments **you** have made or received. These must be sent to the inbox (above) **every 3**

- months. You** will also be asked to provide **us** with copies of employment documents, including timesheets, wage information, PAYE documentation, tax records and contracts of employment;
- 9.10 keep certificates of **your** Employers Liability Insurance;
  - 9.11 keep evidence of self-employed status and registration for any self-employed Personal Assistants;
  - 9.12 ensure **you** uplift your Personal Assistant hourly rate on an annual basis, in line with instruction from BMBC. **You** must also notify your payroll provider to amend timesheets. If **you** have support from an agency or day care services, **you** must also increase the rate if instructed to do so by BMBC. **You** can contact the Self-Directed Support team for support and/or advice, if required;
  - 9.13 be responsible for ensuring the safety and security of **you**, or the person you are representing's safety or security, whilst receiving the services funded by the Direct Payment;
  - 9.14 be responsible for the terms and conditions of any agreement entered into with any other party or parties for the purpose of arranging the services agreed in the Support Plan;
  - 9.15 take all reasonable precautions to make sure that all arrangements **you** make, funded by the Direct Payment, will be in accordance with all relevant laws designed to ensure **your**, or the person you are representing's, safety;
  - 9.16 ensure that any third parties involved in the provision of services provided in accordance with the Support Plan are appropriate individuals to undertake such activities within the meaning of the Safeguarding Vulnerable Groups Act 2006, including ensuring that enhanced Disclosure Barring Service checks have been undertaken, where necessary;
  - 9.17 make sure that **you** receive the support agreed in the Support Plan;
  - 9.18 contact Adult Social Care to provide notice to **us** if **your** needs or circumstances change on a permanent basis.
  - 9.19 inform **us** if **you** move address;
  - 9.20 inform **us** if **you** are unable to receive the services agreed in the Support Plan so that **we** can adjust the Direct Payment amount received;
  - 9.21 inform **us** immediately if **you** no longer wish to receive Direct Payments; and
  - 9.22 terminate this contract by giving **us** at least four weeks' notice in writing following which, a final audit will be carried out to ensure that all liabilities are paid and unspent monies recovered.

10. **You** agree to pay back all of your Direct Payment money received, if:

- 10.1 for whatever reason, **you** are temporarily unable to arrange the services agreed in the Support Plan, or if the balance of the account exceeds 8 weeks' of Direct Payments;
- 10.2 **You** have been using the Direct Payment to pay for items or services not agreed and set out in the Support Plan;
- 10.3 the Direct Payment has been inappropriately used (either intentionally or unintentionally) or **you** have shown yourself to be incapable or unwilling to manage your Direct Payment correctly;
- 10.4 **you** fail to comply with the review or financial monitoring process;

- 10.5 we suspect that criminal activity has taken place;
- 10.6 we decide that another form of assistance or support is, or should be, offered;
- 10.7 there has been an overpayment, that overpayment shall be repaid to us within 28 days of us presenting **you** with an invoice;
- 10.8 **you** are assessed as no longer eligible the Direct Payment, we will give **you** written notice ending this agreement;
- 10.9 not use any Direct Payment money for any purpose other than what was agreed in the Support Plan and which is otherwise stated in this Direct Payment Agreement;
- 10.10 you fail to keep clear and accurate records of all spending and use of the Direct Payment and, in particular, are unable to show how it has been used to meet **your** needs; and/or
- 10.11 you fail to keep all relevant paperwork concerning how you have spent Direct Payment for a period of at least 7 years, including retaining all receipts in a condition which can be checked by us to ensure that all money received has been used for stated purposes.

11. **You** agree **not** to use the Direct Payment monies:

- 11.1 for anything that is illegal or is illegal to purchase, or that would endanger **you**, or the person you are representing;
- 11.2 for gambling, debt repayment, alcohol and/or tobacco;
- 11.3 \*to pay any person related to **you**, except as agreed by **us** in writing which will only be granted in exceptional circumstances. (*\*This is not applicable to those in receipt of a Direct Payment for a child or young person*);
- 11.4 for emergency, acute and most primary healthcare services which is already available or provided on the NHS (National Health Services);
- 11.5 for treatments, such as medication that the NHS does not, or would not, normally fund because it is not shown to be cost effective or for any other reason;
- 11.6 to pay for permanent residential care;
- 11.7 to purchase, repair or service equipment;
- 11.8 as a substitute for Disabled Facilities Grants;
- 11.9 as living expenses, for example, to purchase food, pay rent, utility bills, clothing, etc;
- 11.10 to pay any charges due to the Council, for example, council tax, etc.; and/or
- 11.11 for anything else that has not been agreed and set out in **your** Support Plan.

## **SECTION B: Employing Staff**

- 12. If **you** choose to employ anyone to provide the services agreed in **your** Support Plan, **you** must have employer's liability insurance before they start work. **You** must renew this insurance annually or as required.

**\*You** cannot employ anyone who is related to **you** without first obtaining our prior written permission. **We** may give permission only in exceptional

circumstances. (*\*This is not applicable to those in receipt of a Direct Payment for a child or young person*).

13. **You** must act as a responsible employer and make all **your** arrangements in accordance with employment law. If **you** employ anyone who will have frequent, unsupervised contact with you, **you** must ensure that the employed person has undertaken an appropriate enhanced Disclosure Barring Service (DBS) check and are satisfied that the person does not pose any risk of harm to **you**.
14. **We** reserve the right to carry out checks to make sure that any PAYE, Income Tax and National Insurance contributions due are deducted from an employee's pay and paid to HMRC, that employment payments made do not breach the national minimum wage and conform to pension requirements (if eligible).
15. **You** must obtain independent advice concerning your employment obligations and applicable law, which we can support you on how to do so.

### **SECTION C: Monitoring by Us**

16. **We** must review the making and use of Direct Payments:
  - 16.1 the Initial Review shall be at least once within the first 3 months of the Direct Payment being set up, and
  - 16.2 **we** will undertake an audit around 6 months after the Initial Review, and
  - 16.3 thereafter, reviews will take place every 12 months, or sooner if we are undertaking a new Support Plan.
17. At the time of each review, **we** will request to look at **your** bank statements and other records to establish how you are spending the Direct Payment. This is to ensure that you are using it solely for the purposes agreed in your Support Plan and doing so in compliance with this Direct Payment Agreement. **We** commence each review by contacting **you** to arrange to visit **you** in your home, or at another mutually agreed venue, at a time that is convenient to both you and **us**.

### **SECTION D: Suspending and Terminating this Direct Payment Agreement**

18. **We** will give **you** written notice, setting out our reasons for any decision we make to suspend or stop **your** receipt of Direct Payment by terminating this Direct Payment Agreement, if:
  - 18.1 **You** notify us in writing that **you** no longer consent to receive Direct Payments;
  - 18.2 **You** cease to be a person to whom a Direct Payments may or should be made;
  - 18.3 **You** fail to meet the expectations and responsibilities of being an Employer (as detailed in the Employer Roles and Responsibilities Leaflet: <https://www.barnsley.gov.uk/media/tifgcq3f/employers-roles-and-responsibilities.pdf>).

- 18.4 for any reason, **you** are temporarily unable to arrange the services agreed or the agreed services can no longer be purchased using the Direct Payment;
- 18.5 **We** become aware that making the Direct Payments is:
  - (i) having an adverse impact on other services which **we** provide or arrange for other persons with a Support Plan;
  - (ii) no longer compatible with our efficient use of our resources;
- 18.6 **You** have been using Direct Payment for items or services not agreed in your Support Plan;
- 18.7 **Your** Direct Payment has been improperly or inappropriately used (either intentionally or unintentionally) or you have shown yourself to be incapable or unwilling to manage the Direct Payments correctly;
- 18.8 **You** fail to comply with the review or monitoring process;
- 18.9 **we** suspect that criminal activity has taken place;
- 18.10 **we** decide that another form of assistance is to be offered; and/or
- 18.11 **we** reserve the right to recover payments as necessary in line with the local authority's debt recovery process.

## **SECTION E: The Agreement**

### **19. Declaration**

- 19.1 I agree to the Direct Payments Terms and Conditions as outlined above.
  - 19.2 I also agree to pay my assessed client contribution toward my care service as instructed by BMBC.
  - 19.3 I agree to sign these Terms and Conditions, however, where they are not signed, it will be given that by accepting the direct payment I am agreeing to the terms and conditions that are laid out.
20. Please note if the person who is to receive support lacks the mental capacity to sign this agreement, the following must be signed by someone who is acting formally on their behalf i.e. Lasting Power of Attorney, Deputy or Appointee.

### **Signature:**

Print Name:

Date:

### **Practitioner signature:**

Print Name:

Date:

## SECTION F: Privacy Notice

21. **How is Your information used?** The information we collect will be used for the purpose of completing a financial assessment (if required), for setting up, paying, monitoring and administering Direct Payments to enable you to purchase services in accordance with the Support Plan.
22. **Who we share your information with?** The information you provide may be shared with other departments in Barnsley Metropolitan Borough Council (e.g. Commissioning, Finance). The amount you are paid and details of your financial assessment may be shared with health colleagues, educational settings and other agencies who are working with you for the same or similar purposes. Information may also be shared with the Department for Education (DfE), CQC or where we have a legal duty to do so.
23. Further information about how your personal information will be used can be found at <https://www.barnsley.gov.uk/services/information-and-privacy/your-privacy/> where you can see a full copy of our privacy notice or you can request a hard copy from us by contacting <https://www.barnsley.gov.uk/services/contact-us/>.

## SECTION G: National Fraud Initiative

24. “As part of our duty to prevent and detect fraud, we may share personal data with the Cabinet Office for data matching under the National Fraud Initiative (NFI). This includes information about individuals receiving adult social care services, such as residential care placements and direct payments.
25. Data matching involves comparing sets of data to identify inconsistencies that may indicate fraud. The Cabinet Office is responsible for this initiative and processes data in accordance with the UK General Data Protection Regulation (UK GDPR) and the Data Protection Act 2018.
26. The lawful basis for this processing is the performance of a task carried out in the public interest or in the exercise of official authority (Article 6(1)(e) UK GDPR), and compliance with a legal obligation (Article 6(1)(c)).
27. For more information, please see the Cabinet Office’s [NFI privacy notice](#).”