

## Direct Payments Terms and Conditions

### 1. As part of the direct payment process, Norfolk County Council (NCC) will:-

give clear initial advice on the responsibilities of becoming an employer and managing direct payments. Providing the contact details of Direct Payment Support Services who can support people who choose to become an employer and can offer more advice about personal budgets and direct payments.

NCC will also provide relevant guidance relating to how the payment is going to be managed:

- Self-managed pre-paid card account
- Supported pre-paid account managed by NCC

Terms and Conditions will be provided at the time of the review, ideally these should be signed and returned on an annual basis. However, where they are not signed, it will be a given that by accepting the direct payment you are agreeing to the terms and conditions that are laid out.

### In arranging the direct payment, NCC will:-

- 1.1 open a dedicated pre-paid bank account to receive payments and arrange for monies to be paid into this bank account as defined within the agreed Summary Support Plan. Norfolk County Council will advise if there is any change to this arrangement.
  - 1.2 review the direct payment to see that it is meeting your assessed care needs within the first three months. Thereafter, your care needs will be reviewed on an annual basis or where there has been a significant change in circumstances (e.g. changes to the care needs or finances).
  - 1.3 request that a copy of NCC Direct Payment Terms and Conditions are signed. The signed terms and conditions will apply to the all subsequent Care and Support Plans. Part of the monitoring process will be to ensure the terms and conditions of direct payments are being followed. Where they are not being followed, this may result in the direct payment being withdrawn and replaced by commissioned services.
  - 1.4 review the direct payment - this will be carried out by the Direct Payments Monitoring Team on an annual basis and/or in line with the care review. If you have a **Self-Managed Account**, please make sure you keep receipts/invoices for a period of 2 years.
  - 1.5 as the money paid to you as a direct payment is public money, which the council has a duty to account for, we will review your account and calculate how much you need to keep in the account to meet the costs of your care and support and whether we need to collect any back. If your account holds a build-up of excess funds this will be reclaimed back.
  - 1.6 carry out a financial assessment and advise you how much you are required to contribute towards your care costs. This amount is a weekly contribution and will need to be paid for all weeks where your cost of care (service) is greater than the amount you are required to contribute regardless of the number of days during the week that you receive a service. If you do not notify NCC of a change in your financial situation, increases in care charges may be backdated.
- 2. Disclosure and Barring Service and Employment Law** - the service user must ensure that all prospective staff are subject to a valid enhanced disclosure check undertaken through the Disclosure and Barring Service (DBS). The service user must ensure that they monitor and check the validity of any such check for any staff that they have recruited. Please contact the Direct Payments Client Service Team on 01603 223392 to obtain a free DBS check.

The service user must not employ or use the services of any person who is barred from working with either children or vulnerable adults, or whose previous conduct or records indicate that he or she would not be a suitable person to engage.

### **3. Consent to the Sharing of Information**

Norfolk County Council is under a duty to protect the public funds it administers, and, to this end you agree that NCC may use the information you have provided on this form for the prevention and detection of fraud. You also agree that Norfolk County Council may share this information with other bodies responsible for auditing or administering public funds for these purposes.

The service user consents to the processing of any personal data or sensitive personal data as defined under the General Data Protection Regulations (GDPR) for the purpose of assessing, implementing or monitoring of Direct Payments and for complying with any legal or regulatory requirements or obligations to third parties.

### **4. The person receiving direct payment will:-**

4.1 seek support and guidance on employment law whether directly employing or employing staff who have self-employed status.

- Employed staff: those that work for someone under a contract of employment and have entitlement to statutory payments such as sick, maternity, paternity, adoption pay and have entitlements to time off for emergencies, minimum notice periods and protection against unfair dismissal.
- Self Employed workers: runs their business for themselves, works for more than one employer and must tell HMRC that they are self-employed and account for their own tax and National Insurance not being paid through PAYE. (If you choose to employ someone who is self-employed you should be confident that they have registered this status and hold suitable liability insurance).

4.2 ensure that the direct payment is only used in line with the Care and Support Plan.

Please note: in addition, a direct payment cannot be used for:

- anything an NHS professional would traditionally provide
- anything considered to be a day to day living expense (for example food, rent, mortgage, utility bills, postage)
- anything illegal or may be lawful but may bring the council into disrepute or not promote well-being
- NCC services or charges (contributions should be paid from personal funds)
- Transport to health appointments

Please note: Norfolk County Council may ask for any monies that have not been spent in line the Care and Support Plan to be repaid.

4.3 be responsible for any contractual arrangements and obligations entered into with any agency prior to commencement of services (for example agency introductions [self-employment] and staff employed by an agency). Please note this may involve signing a contract with the agency providing the care.

4.4 ensure their assessed financial contribution is paid into the dedicated bank account. The Finance Exchequer Services Team will advise the person receiving direct payments of the amount they need to contribute. Please note if the contribution is not made NCC may consider cancelling the Direct Payment and putting in place commissioned services. NCC will also seek to recover any unpaid contributions through their debt recovery process.

4.5 advise NCC if they are having any difficulties with the management of the direct payment account

4.6 have sole responsibility to insure and maintain items (throughout its lifetime) that are purchased through the use of direct payments. Items purchased through a direct payment that are damaged or stolen must be recovered through appropriate insurance obtained through individual means and not the direct payment.

Where any items purchased through the use of direct payments are subsequently sold or passed on, a fair market value must be obtained. The recovered funds must be reused as agreed within the Summary Support Plan and paid into the Direct Payment bank account.

**4.7 Payroll Services.** Where Direct Payment Support Services payroll is required, timesheets detailing care provided (hours/dates worked) for the previous month to be submitted by 2<sup>nd</sup> of the month to ensure monthly payroll calculation is completed for your PA's to be paid on 10<sup>th</sup> of the month.

#### **4.8 Self-managed Accounts**

If you are managing your own direct payment funds, you are required to retain invoices and receipts for Direct Payment spend for a period of 2 years or upload them onto the online portal provided to you through Prepaid Financial Services Ltd (PFS). NCC reserves the right to carry out monitoring of this spend as and when required.

#### **4.9 Supported Accounts**

If you have a supported account with NCC who will administer the direct payment funds on your behalf, you will need to send DPCST your invoices or expenses claim form with receipts to request a payment. NCC will support your account on your behalf aligned to your Care & Support Plan.

4.10 be supported to meet all legal requirements and obligations relating to the employment of staff including notifying HMRC of all employees P.A.Y.E and National Insurance Contributions; Employers National Insurance Contributions Reclaims; auto enrolment for pensions; redundancy and sickness payments; notice periods; maternity/paternity payments etc. Only use your Direct Payment to pay PA's that are self-employed & registered with HMRC enrolled by you and registered by DPSS payroll.

4.11 be auto-enrolled on Norfolk County Councils bulk Independent Living Insurance which includes Employers and Public Liability insurance. The Insurance provider will send the Policy to the named employer.

Notify Norfolk County Council if you do not receive a copy of the policy or do not wish to be auto-enrolled.

4.12 The Care and Support (Direct Payments) Regulations 2014 excludes a payment from being used either to:

- Pay for care from a close family member living in the same household, except where the local authority deems this to be necessary; or
- Pay for the administration or management of the DP from a close family member living in the same household, except where the local authority determines this to be necessary.

In either case a close relative is a parent, parent-in-law, aunt, uncle, grandparent, son, daughter, son-in-law, daughter-in-law, stepson, stepdaughter, brother or sister. This restriction is not intended to prevent a person from using their direct payments to employ a live-in personal assistant, providing that person is not someone from the above list. The restriction applies where the relationship between the two people is primarily personal rather than contractual.

A Direct Payment cannot be used to employ a relative or partner living in the same household unless you can provide strong evidence that the circumstances are **exceptional**, and this is the **only satisfactory way of meeting the need**. It is essential that all other possible options have been thoroughly explored.

4.13 note that the direct payment is subject to any changes agreed between NCC and the person receiving support and/or other suitable people as defined within the Care and Support Plan.

4.14 advise NCC immediately or as soon as possible of any change in circumstances by contacting SCCE (Social Care Centre of Expertise) on 0344 800 8020. Change of circumstances include:-

- an increase or decrease in the person's care needs
- extended hospital stays
- moving out of County
- long-term sickness of the employee
- changes to the person's financial circumstances as this may affect the amount you are required to contribute

**Failure to notify NCC of a change in financial circumstances may result in an invoice being issued to collect backdated charges or an overpayment of your contribution from the date of the change.**

## 5. Terminating this Agreement

5.1 Before terminating the Direct Payment Agreement, all parties shall take reasonable steps to find resolutions to any issues or concerns wherever possible, but in cases of serious breach of this agreement, it may be terminated with immediate effect.

5.2 Subject to 5.1, the person receiving direct payments or NCC may terminate this contract by giving a minimum of four weeks' notice to the other party.

5.3 NCC has the right to cancel the direct payment and require the person to repay the direct payment or any part of it where:

- the direct payment or any financial contributions have not been used to secure support as defined within the Summary Support Plan
- the conditions set out in this Agreement have not been met
- the person receiving direct payments has received payment from a third party, for example a Personal Health Budget, for the same or substantially similar services
- an employee or care provider has demonstrated that they are unsuitable
- If a person receiving a DP is no longer eligible for the DP Service

In all of the points above, whilst NCC has the right to stop the direct payment, it will always, where relevant, ensure suitable care is put in place in order to meet the person's assessed care needs.

## 6. Other information to be read in conjunction with the Terms and Conditions

- A simple guide to employing a Personal Assistant.
- Direct Payment Monitoring Requirements and Guidance (relevant to the type of account held).
- Guidance on pre-paid accounts for direct payments.
- Direct Payment Support Services Leaflet
- Direct Payment Support Services webpage: [www.norfolk.gov.uk/care-support-and-health/direct-payment-support-services](http://www.norfolk.gov.uk/care-support-and-health/direct-payment-support-services)

## Direct Payments Terms and Conditions

**Reference Number:**

**Name of person receiving the care and support:**

**Name of appointed person to manage the DP Account:**

**National Insurance No:**

**Previous HMRC Employer Ref:**  
(if applicable)

### 7 The Agreement

#### 7.1 Declaration

I agree to the Direct Payments Terms and Conditions as outlined at 1-6 above.

I also agree to pay my assessed contribution toward my care service as instructed by Norfolk County Council.

Without this section being completed Norfolk County Council cannot put the direct payment in place and therefore may have to arrange these services on your behalf.

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.

Your name:	Your email address:
Your signature:	Your address:
Your date of birth:	Your contact number(s):
If you are signing on behalf of the person receiving direct payments, please indicate the capacity in which you are signing this form	Appointee <input type="checkbox"/> Attorney <input type="checkbox"/> Deputy <input type="checkbox"/> Other <input type="checkbox"/>
Date signed:	Other...please specify your relationship to person receiving the care and support:

## 7.2 Payment details

Please complete:

<p>Prepaid Account Name:</p>	<p>Self-managed (Direct Payment account <input type="checkbox"/> with debit card)</p> <p>Supported Account (managed by NCC) <input type="checkbox"/> <i>Please tick box</i></p>
<p>Prepaid Financial Services Sort Code:  23 – 75 - 24</p>	<p>Account Number:</p>
<p>Identity of account holder checked/ debit card issued by: <i>(state n/a if no card issued)</i></p>	<p>FVO Signed:</p>
<p>Card Accepted by: <i>(state n/a if no card issued)</i></p>	<p>Signed:</p>
<p>Payroll service will be delivered by Direct Payment Support Services.</p>	<p>I employ / do not employ a Personal Assistant (P.A).</p> <p>Please advise the date you P.A. started working for you:</p>
<p>Employer liability insurance: You will be auto-enrolled for FISH insurance cover by Norfolk County Council.</p> <p>I do not wish to be auto-enrolled and would like to discuss what I need to do. <input type="checkbox"/></p> <p>Direct Payment Support Services will provide the following services:</p> <ul style="list-style-type: none"> <li>• Information and Advice Services</li> <li>• Employment Support</li> <li>• Personal Assistant register and Employee Support</li> <li>• Payment Services</li> <li>• Pension Auto Enrollment</li> <li>• DBS Checks</li> </ul> <p>To access these services please contact the DPCST on 01603 223392 or email DPCST@Norfolk.gov.uk</p>	<p>My P.A. is:</p> <p><b>Employed Directly by me:</b> <input type="checkbox"/> <i>NCC recommends that you use our payroll service</i></p> <p><b>Self Employed:</b> <input type="checkbox"/> <i>Your workers should register with HMRC</i></p> <p><b>Employed by and Agency:</b> <input type="checkbox"/> <i>The agency will provide Insurance cover</i></p>