



Direct Payments

FIN107 – Financial Agreement

Direct Payments Agreement

THIS AGREEMENT is made on _____ 20 _____

BETWEEN:

1. Lancashire County Council, County Hall, Preston, Lancashire PR1 8JX (referred to in this document as LCC); and
2. The Person requesting the Direct Payment

Or

A person nominated by the Person requesting the Direct Payment to receive it on their behalf

Or

If the Person lacks the capacity to request Direct Payments, the authorised person requesting Direct Payments on behalf of that Person (all are referred to in this document as 'You')

Name of Person requesting the Direct Payment or on whose behalf the Direct Payment has been requested ("the Person")	
Address	
Postcode	
Email address	
Telephone	

Is there a	Nominated person?		Authorised Person?	
Name of authorised or nominated person (if applicable)				
Address				
Postcode				
Email address				
Telephone				
Name of Supported Banking Service Provider (if applicable)				

1. Purpose of the Agreement

This Agreement sets out the terms and conditions of the Direct Payment Scheme. It also sets out the key responsibilities of both parties and tells You what You need to know about receiving Direct Payments from LCC in your own right, or as the nominated person of the individual requesting the Direct Payment, or as an appointed person requesting a Direct Payment on behalf of an adult lacking the capacity to make the request himself/herself.

2. Basis of the Agreement

This agreement is made on the basis that:

2.1. LCC has carried out an assessment of the needs of the Person in respect of whom a Direct Payment has been requested which has identified the needs shown in that Person's Support Plan, the cost of which LCC is required to meet either in whole or in part;

2.2. You are willing and able to secure the support, services and/or equipment detailed in the Person's Support Plan; and

2.3. LCC is willing to make a Direct Payment available to you to purchase the support, services and/or equipment required by the Person to whom the Support Plan relates.

3. How and When You Will Be Paid – Prepayment Card

How You will be paid;

Unless an alternative method of payment has been agreed (see section 4 below), the amount of the Direct Payment will be loaded to a Prepayment Card issued to You by LCC. The Prepayment Card will be issued in the name of the Person. If you are an authorised person or a nominated person You will be granted third party access to manage the funds.

You agree to Your telephone number / mobile number and email address being passed onto the Prepayment Card provider.

When You will Be Paid;

LCC will make payments onto the Person's Prepayment Card every four weeks after funding has been approved and the FIN107 signed.

4. How and When You Will Be Paid – Designated Bank Account

LCC will make payments into your separate auditable bank account that is specifically used only for monies associated with meeting the care needs of the Person. It will be paid every four weeks after the funding has been approved and the FIN107 signed.

If you opt to have a designated bank account, we will require you to supply quarterly bank statements. These should be sent to direct.paymentsfinance@lancashire.gov.uk

5. How and When You Will Be Paid - Supported Banking Services

How you will be paid

A Supported Banking Service is a private contractual relationship between the person receiving the direct payment budget and the Supported Banking Service provider. The Supported Banking Service provider will receive the monies on your behalf and manage paying bills, keeping records, and having those records available for LCC to audit. Sign the form at Appendix 2 to give your permission for the monies to be paid to them and for them to share your records with LCC for audit purposes. It is recommended that you have a written contract between yourself and the Supported Banking Service provider detailing what services they will provide and that they send you a written statement at least once a year.

The Council will have no contractual authority over this service and all direct payment responsibilities such as those of an employer, keeping records, spending within the plan and other responsibilities detailed in this policy remain with the person in receipt of the direct payment.

When you will be paid

The payment is made to the Supported Banking Service provider every 4 weeks. You will be invoiced by LCC for your assessed financial contribution.

6. The User's Guide

You confirm that You have read LCC's Direct Payment fact sheets and the LCC Direct Payment Advice Services user guide which provides more detailed information about the Direct Payment Scheme. You confirm that You are also aware that You can seek free, impartial advice from the Direct Payments support service. You confirm that You know how to access the LCC Direct Payments policy and agree to comply with it.

7. Notes for the Authorised Person

If applicable, You confirm that You have read the notes for the authorised person attached at Appendix 1.

8. Assessed Financial Contribution

If applicable, You agree to pay the assessed financial contribution in respect of the Person onto the Prepayment Card or into the designated bank account towards the cost of the support they receive. By making this payment every four weeks, You are ensuring that there is enough money available to pay for the package of support agreed in the Support Plan. Your payment can be made by standing order.

For Supported Banking Services you will receive an invoice from LCC for any assessed financial contributions.

If You do not pay the assessed financial contribution as agreed, LCC will need to review whether the Person's needs can continue to be met through Direct Payments.

In order to complete or update the Person's financial assessment, LCC will make such enquiries as are necessary with other Government departments, including accessing

information held on the Department of Work and Pensions Customer information System.

9. General Rules About How to Use The Direct Payments

The purpose of Direct Payments is to buy support, services and /or equipment as detailed in the Person's Support Plan. You agree to take responsibility for arranging and/or buying the provision of services, support and/or equipment specified in the Person's Support Plan and are accountable to LCC for the way in which the money is spent. Where the Direct Payment is used to purchase services, You must ensure that there is a back-up plan in place to cover any staff absences or unexpected changes in need.

You have the flexibility to arrange support / services when they are needed but You will need to contact LCC in advance if You want to use the money for something that is not specified in the Support Plan. We advise you to seek advice from the Direct Payments support service when making changes to the Person's support arrangements, particularly if You wish to employ staff, to ensure You understand the responsibilities of being an employer and receive the support needed to get set up as an employer.

You must not have any financial interest in providing services funded through the Direct Payments either as a personal assistant or through a care agency.

You must use the Direct Payments legally and only on what is in the Person's Support Plan.

You agree that LCC may have access to the Prepayment Card account or have sight of the designated bank account statements on request in order to determine how the Direct Payments have been spent and to verify that the Direct Payments have been used appropriately.

Buying Services

If You decide to buy services from an organisation, such as a care agency, it is Your responsibility to ensure that You understand and are fully aware of any contractual obligations, as the arrangement will be between You and the organisation delivering the services. The Direct Payments support service can help with this and there is also an LCC factsheet which You should read.

If You wish to use a care agency to provide personal care you must purchase that care from a provider who is registered with the Care Quality Commission (CQC), who inspect the standards provided by agencies nationally, and You should ask to see a copy of their latest inspection report.

Becoming an Employer

If You are considering employing a personal assistant, LCC recommends that You take advice on becoming an employer from our Direct Payments support service, as any employment, insurance, pension and tax issues will be Your responsibility as the employer.

If You decide to employ a personal assistant, You must meet the legal requirements of being an employer. You will be expected to pay for all costs associated with being an employer out of the Direct Payments, including future liabilities such as redundancy and payments in lieu of notice. Advice on this can be given by our Direct Payments support service.

Where a personal assistant is employed, the law says that the employer has to have Employer's Liability Insurance before the employee starts working. It is the employer's responsibility to ensure the insurance is renewed annually. The Direct Payments will be ceased if you employ a personal assistant without having Employer's Liability Insurance in place. Advice on this can be given by our Direct Payments support service.

A personal assistant must not have any involvement with the financial administration of the Direct Payments. You must never give a personal assistant access to the Prepayment Card PIN number or access to the designated bank account.

What direct payments cannot be spent on

The Direct Payments must not be spent on items or services that do not meet the eligible social care need of the Person named in the Support Plan and are not detailed in a valid Support Plan.

Direct Payments must not be spent to benefit or meet the need of any person that is not the Person named in the Support Plan.

The recipient of the Direct Payments, whether that is the Person, the nominated person or the authorised person cannot employ themselves to provide services using a Direct Payment.

What Records You Should Keep

Depending on what the Direct Payments are used for, you will need to keep the following records, which LCC may ask to see for monitoring purposes:

- signed time sheets and copy pay slips
- receipt(s) and invoices
- certificate of Employer's Liability Insurance
- record of personal assistant expenses
- contracts of employment
- records of payments to HMRC

It is important that You keep these records as LCC will / may need to see this information when reviewing how the Direct Payments have been spent.

If You do not have a Prepayment Card, You will be provided with further information about additional records that you will need to keep, and these must be provided to LCC upon request.

The following table demonstrates the circumstances in which LCC will claim back direct payment monies:

Scenario	Surplus monies thresholds		Action
	Children and Young people	Adults	
LCC contacts you regarding surplus on the account	More than 10 weeks	More than 4 weeks	Excluding any financial contribution the Person has made, any money above the relevant value will be reclaimed by LCC.
LCC contacts you regarding surplus on the account but you do not respond	More than 10 weeks	More than 4 weeks	Any money above the relevant value will be reclaimed by LCC.
If you have a separate designated bank account that the Direct Payments monies are paid into, and you have a surplus balance	More than 10 weeks	More than 4 weeks	You should contact the Direct Payments Finance Team who will advise on how this money can be repaid. You will be asked to provide regular statements showing the balance of the account
If you have a separate designated bank account for the Direct Payments monies and as a result of a review it is found that there is surplus in the account	More than 10 weeks	More than 4 weeks	The excess must be returned to LCC. The Direct Payments Finance Team will contact you to arrange this

For each scenario listed above, LCC will give 14 days' notice before any clawback or invoice is issued to allow you time to consider if you need to retain any of the surplus for legitimate reasons.

10. Review of the Person's needs

A review of the Person's needs will be carried out to ensure these have been met. If the Person's support requirements remain the same, the payment will remain the same based on their needs. The payment may be increased or decreased if there has been a change in their needs or circumstances or as a result of changes to legislation or LCC policy. If there is to be a reduction in the amount of a Direct Payment You will be given four weeks written notice by LCC.

If Arrangements Break Down or the Person's Care Needs Change

If things go wrong, You should contact the Direct Payments support service. They will assist You to find other support to meet the Person's assessed needs, but if no support can be found LCC will try to provide the necessary services.

If the Person goes into hospital, short term care or receives reablement services You must inform LCC immediately.

If the Person's care needs or circumstances change You must notify LCC.

11. Temporary Suspension of Payments

LCC reserves the right to temporarily suspend Direct Payments if the person goes into hospital, short term care or receives reablement services.

In circumstances where the Person goes into hospital or short-term care or receives reablement services and Direct Payments are being used to buy services from an agency, LCC will suspend payments in line with the provider's notice period. You must provide details of what You have agreed on notice periods with the provider.

In circumstances where the Person goes into hospital or short-term care or receives reablement services and Direct Payments are being used to employ a personal assistant, LCC will continue to make payments to cover the contracted or statutory notice period of that employee. LCC will also continue to pay a Direct Payment for a period determined, on a case-by-case basis, but usually not exceeding four weeks to cover any other contractual responsibilities the Person may have and is detailed in their support plan.

You must inform LCC if You and / or the Person are going to be out of the county / country for a period exceeding four weeks. Unless an extension has been agreed by LCC, will normally suspend the payments after four weeks.

LCC may suspend Direct Payments if it is considered necessary as part of a safeguarding investigation where the Person is at risk of abuse or has suffered abuse. Where Direct Payments are suspended by LCC in such circumstances, LCC will arrange the services to meet the needs of the Person.

12. Termination of the Agreement

Either party may terminate the agreement by giving no less than four weeks' notice in writing.

If the Person is no longer eligible to receive services from LCC, You will be given at least one week's notice that this agreement will be terminated.

If the Person goes into permanent residential care, this agreement will be terminated with effect from the date of their admission.

Where there have been problems with the management of the Direct Payments LCC will work with You to find a solution to the problems wherever possible. If LCC is unable to find a solution or the problems continue then LCC may need to terminate the Direct Payments in accordance with clause 12.5 below.

LCC will terminate this Agreement with immediate effect if LCC reasonably considers that:

- You are not complying with any part of this agreement;

- You are spending any part of the Direct Payment in a way other than in accordance with the Person's Support Plan;
- the needs and agreed outcomes are not being met as agreed in the Support Plan;
- You are no longer capable of managing the Direct Payments
- The Direct Payment or any part of it is being used illegally or not in the best interests of the Person.
- LCC may also terminate this Agreement with immediate effect if it is not satisfied that Your arrangements are adequate for securing the services You require.

In the event of this agreement being terminated, You are responsible for completing all outstanding payments to your employees, HM Revenue and Customs and settling any invoices for services that have been purchased.

Following termination, any money remaining after any outstanding financial commitments have been paid, belongs to LCC

LCC will ask for money to be repaid if it has not been used to buy the support set out in the Support Plan. If You fail to repay the money LCC will take legal action to recover the debt. This action will involve issuing court proceedings against the person who has signed this agreement and is responsible for making sure the direct payment is spent on meeting the eligible needs of the person named in this agreement. Any such court proceedings will incur further costs and interest as are allowed by the Court. This could lead to a Judgment Order which would be enforced by the High Court Enforcement Officer and will again incur additional costs and interest for which the person would be liable.

13. Data Protection and Use of Data

LCC is under a duty to protect the public funds it administers, and to this end may use the information you have provided on this form for the prevention and detection of fraud. It may also share this information with other bodies responsible for auditing or administering public funds for these purposes. For further information, see LCC's internet web page and search for [National Fraud Initiative](#).

LCC will process your personal data for the purposes of administering the Direct Payments Scheme fairly and lawfully and in accordance with the principles of the Data Protection Act 2018 and UK General Data Protection Regulation (UK GDPR).

In the event that at any time in the future LCC wishes to process your personal data for additional purposes, LCC will ensure there is a clear lawful basis or exemption in place that permits it to do so. LCC will notify you of any such data processing via its privacy notices or through direct communications with you, and where appropriate will give you the opportunity to object to such further processing.

Lancashire County Council have become a member of CIFAS, the UK's largest fraud database. With this decision, we may use your personal data to search the CIFAS database in order to help protect Lancashire County Council from falling victim to fraud.

This is NOT a credit search of any kind and WILL NOT impact on your credit score. The purpose of this database is to identify fraud and help the council make informed decisions. Please read the below for more information on what you need to know and how you can get more details on how we intend to use your data.

The personal information we have collected from you will be shared with fraud prevention agencies who will use it to prevent fraud and money-laundering and to verify your identity. If fraud is detected, you could be refused certain services, finance, or employment. Further details of how your information will be used by us and these fraud prevention agencies, and your data protection rights, can be found at <https://www.cifas.org.uk/fpn> or by contacting the Fraud Investigation Team at askinvestigations@lancashire.gov.uk.

For further information about how LCC will use your personal data for these purposes, please consult LCC's Privacy Notice which is published here:

<https://www.lancashire.gov.uk/council/transparency/access-to-information/service-and-project-specific-privacy-notices/corporate-finance/>

You may also contact LCC's Data Protection Officer via the following contact details:

Information Governance Team

Lancashire County Council
PO Box78
County Hall
Preston
PR1 8XJ
Email: DPO@lancashire.gov.uk

14. Compliments, Comments and Complaints

You have the right to compliment, comment and complain about the operation of this Agreement using LCC's complaints procedure. However, this procedure cannot be used for problems You may have with staff employed directly by You or agencies that You contract with.

If you are having problems with a person that You employ or You need information on how to make a complaint to Your provider, You can contact the Direct Payments advice service for advice.

Signed by				
Print Name:				
Sign Name:				
Date:				
Are you:	the person requesting the direct payment?		A nominated or authorised person?	

APPENDIX 1 Notes for the “authorised Person”

1. From the 9 November 2009 people who lack capacity have been able to receive a Direct Payment paid to an “authorised person”. The local authority has within its powers the ability to make a Direct Payment to someone who lacks capacity or is reasonably believed to lack it, as defined in the Mental Capacity Act 2005.
2. Day to day control of the money and support package is passed on to You as the “authorised person.” It has been agreed by Lancashire County Council that You have the “strongest” incentive to ensure the money is properly spent on the care and support identified in the support/care plan.

3. Who can act as “An appointed authorised person”?

An appointed authorised person is someone appointed to receive and manage Direct Payments on behalf of someone who lacks capacity to consent to the making of Direct

Payments. The “authorised person” will often (but not always) have been given a Lasting Power of Attorney or have been appointed by the Court of Protection as a Deputy under the Mental Capacity Act.

Usually the “authorised person” will be a family member or friend, who is appointed to use the Direct Payments to arrange care and support to meet the Person’s need identified on their support/care plan who may previously have been involved in the care and support of the Person eligible for services.

A Disclosure and Barring Service check must be obtained in respect of the “authorised person” where the appointed “authorised Person” is not the spouse, civil partner, partner, close relative (or spouse or partner of a close relative) or friend involved in the provision of care of the Person lacking capacity.

4. Your responsibilities as a “authorised person”

As the appointed “authorised person” You will comply with the Direct Payments Agreement and ensure where You are employing staff on behalf of the Person, the contracts are in Your name and that You abide by employment legislation. If You are using a provider, it is Your responsibility to ensure that You are fully aware of any contractual obligations and terms and conditions of the provider.

As the appointed “authorised person” You must act in the best interests of the Person on whose behalf You receive the direct payment, within the meaning of the Mental Capacity Act 2005. By signing this agreement, you indicate that you understand you are personally responsible and if you fail to do this legal action will be taken against you personally.

If the Person dies You must inform LCC and comply with arrangements to close down the Direct Payment.

5. Principles of best interest

A person trying to act in the best interests of someone lacking capacity should:



- Do whatever is possible to permit and encourage the Person to participate, or to improve their ability to participate, as fully as possible, in acts and decisions;
- Try to identify and take into account all the things that the Person who lacks capacity would take into account if they were acting for themselves, including their past and present wishes and feelings and any beliefs and values which would be likely to influence their decisions;
- Not make assumptions about what might be in the interests of the Person lacking capacity simply on the basis of the Person's age, appearance, condition or behaviour;
- Assess the likelihood of the Person regaining capacity;
- Consult others when making decisions, including anyone previously named by the Person as someone to be consulted, anyone engaged in caring for the Person, family members, close relatives, friends or others who take an interest in the Person's welfare, any attorney appointed under a lasting power of attorney made by the Person and any deputy appointed by the Court of Protection to make decisions for the Person; and
- For any major decisions, make sure a record is kept of the process of working out the best interests of that Person.

6. Management of a Direct Payment Account by Appointed “authorised person”

I certify that I have been appointed the authorised person to manage the Direct Payment account on behalf of

.....('the Person')

I confirm that I have read the above “Notes for the authorised Person” and agree to act in the best interests of

.....('the Person') within the meaning of the 2005 Mental Capacity Act.

Signature:	
Print Name:	
Date:	

APPENDIX 2

Permission to pay monies and audit a Supported Banking Service provider.

I give my permission for my direct payments monies to be paid to

.....

and I give permission for them to make the records that they keep on my behalf available to LCC for audit purposes.

Signature:	
Print Name:	
Date:	