



DIRECT PAYMENT RECURRENT SCHEME AGREEMENT

This is a recurrent Direct Payment Scheme Agreement between the Southern Health and Social Care Trust and:

_____ (Person managing the Direct Payment)

_____ (their address)

In respect of care and support for (Individual) _____

Or:

Name of Informal Carer for Short Breaks _____

Does the Individual have capacity to consent? Y / N

If no, either a Short Procedure Order / Enduring Power of Attorney / Controller Order / Court Order (**certified copy to be attached**) in respect of care and support for _____ (Individual) **must be in place.**

Person managing the Direct Payment Obligations

If this agreement is entered into by an Authorised Person these obligations shall be read as obligations of the Person managing the Direct Payment and any references to the SDS Support Plan shall be read as the Individual's SDS Support Plan.

1. General

The Person managing the Direct Payment will agree:

- To advise/notify your key worker / case manager if the Individual's needs have changed.

- To use your Direct Payment to meet the Individual's assessed needs as agreed with the key worker as set out in the Individual's SDS Support Plan.
- To notify any employee or provider of any changes in the Individual's SDS Support Plan or Direct Payment entitlement.

2. Financial

The Person managing the Direct Payment will agree:

- To manage the Individual's Direct Payment through a separate bank account (Post Office accounts cannot be used). Where a person lacks capacity the bank account must be set up following the recommendations of the legal document (i.e. Short Procedure Order / Enduring Power of Attorney / Controller Order / Court Order). As all payments must be traceable, cash payments must not be used. The Trust requires the use of a chequebook facility or online banking.
- To submit annotated/detailed bank statements from this bank account to the Trust. This means the Person managing the Direct Payment will be required to note on the bank statement the purpose of each payment i.e. to whom e.g. employees, HMRC, insurance etc.; and what it is being used for.
- To be responsible for any costs arising out of the mismanagement of the bank account.
- To be personally responsible for the repayment of any money requested by the Trust as a result of overpayments, surplus, or money that has been misused from the Direct Payment.
- To pay all invoices and costs relating to the Individual's Direct Payment on time.
- To adhere to the following requirements in relation to transactions:
 - (i) Must be able to account for all money spent from the Individual's Direct Payment and notify their key worker of Surplus Funds.
 - (ii) Is required to return bank statements on a quarterly basis to the Trust finance department for monitoring and

accounting purposes. The Person managing the Direct Payment is required to indicate on the bank statement information in relation to each transaction (annotated statements) which clearly states the reason for each transaction. The bank statements must cover all the transactions for the relevant quarter. The deadline for submission of these returns is ten working days following the quarter-end. Failure to do so would be viewed as non-compliance and will lead to the Direct Payment being suspended / ceased;

(iii) Should understand and comply with any statutory or other requirements for record retention;

(iv) If a Direct Payment ceases arrangements should be in place for the return of outstanding monies to the Trust for the remaining balance after all employers responsibilities have been settled (alongside the need for the final bank statement). The Person managing the Direct Payment is required to make direct contact with their insurance company to make a claim for redundancy when required (insurance **should not** be cancelled until the claim is made).

The Trust may automatically suspend further payments if the Person managing the Direct Payment does not submit appropriately annotated quarterly Bank Statements and associated documents (e.g. invoices etc.) within specified timescales.

3. Protecting and Using Information

The Person managing the Direct Payment:

- Will as an employer, comply with all relevant data protection legislation and shall handle personal data in accordance with all prevailing requirements of data protection legislation.
- As data controller in respect of any personal data they process about their employees, has a responsibility to keep the information safe, secure and protected against inappropriate loss, access or

destruction and retain all information in line with specific statutory guidance for employers in Northern Ireland. This information must also be retained when the Direct Payment ceases – as an employer you need to check appropriate timeframes for this (i.e. with HMRC or the regional Information Advice and Advocacy Service etc.).

- Must only share this information where they have a lawful basis to do so in accordance with the provisions of Data Protection Legislation. If further information or advice about their responsibilities in respect of GDPR / DPA 2018 is required they can contact the Trust.
- Shall act as a separate and independent data controller.
- Shall provide such assistance as is reasonably required to enable the Trust to comply with requests from Data Subjects to exercise their rights under the Data Protection Legislation within the time limits imposed by that legislation.
- Shall comply with the Data Protection Legislation in terms of informing employees of the obligation on the Person managing the Direct Payment to share data with the Trust.

Designated Trust Staff have the right to inspect all records connected with the Individual's direct payment. The Southern Health and Social Care Trust is under a duty to protect the public funds it administers, and to this end may use the information the Person managing the Direct Payment has provided 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.

4. When to Notify the Trust

The Person managing the Direct Payment will agree:

- To notify the Trust (Key Worker) in the event of the Individual going on holiday, being temporarily admitted to hospital and accessing short break to residential /nursing care as the Direct Payment may be suspended for this period.
- To notify the Trust (Key Worker) if there is a breakdown of care arrangements, in the case of an emergency or otherwise, in order to obtain support for alternative services.

- To notify the Trust (Key Worker) of any material changes in circumstances or needs which would affect the Individual's assessed needs or entitlement to Direct Payments.

5. What Direct Payments Cannot Be Used For

The Person managing the Direct Payment will agree not to use Direct Payments:

- (i) For any other costs or outgoings that do not contribute to the agreed outcomes within the SDS Support Plan for the Individual or anyone else not detailed in the Individual's SDS Support Plan;
- (ii) To unreasonably endanger any person and put their safety at risk;
- (iii) To support an illegal act;
- (iv) For activities that involve gambling or financial investments.
- (v) To purchase residential care (with the exception of short breaks);
- (vi) To pay for health care related tasks

6. Staff Employment & Self Employment Requirements

The Person managing the Direct Payment will agree:

- To meet all statutory requirements which may include:
 - (i) Pay applicable to the national living wage minimum Pay In Lieu Of Notice (PILON), taxation, pension, NI contributions, insurance, and where relevant redundancy, holiday, maternity/paternity and sick pay entitlement etc.:
 - (ii) Work practices, including health and safety requirements, GDPR requirements; and
 - (iii) Employment law.

- That all necessary steps are taken to ensure a safe working environment.
- To follow the appropriate recruitment and Enhanced Access NI procedures, in line with Trust's policies and procedures.

(Enhanced Access NI Checks are compulsory across Learning Disability & Children and Young Peoples Services in the Southern Health and Social Care Trust).

- It is the Person managing the Direct Payment's responsibility, where staff are employed, to ensure that adequate insurance cover for all liabilities that can occur is in place (incorporating at least £10million employer's liability, £5million public liability and redundancy cover) and to provide the Trust with a copy of the Individual's Insurance Certificate on a yearly basis upon renewal. This is the only insurance the Trust will accept and failure to provide evidence of existing insurance cover will result in the suspension of the Individual's Direct Payment.
- All the costs associated with employing personal assistants must be paid from the Direct Payment received and must be managed accordingly in order to meet all associated liabilities.
- As an employer the Person managing the Direct Payment is responsible for ensuring that Individual employees are adequately trained for the job. (Advice in relation to specialist care requirements is available from Trust staff, where appropriate.)
- To comply with all relevant equality legislation in relation to the Selection, Recruitment and Payment of Staff. Trust staff can direct you to the Regional Information, Advice and Advocacy Service which is centrally commissioned by the Health and Social Care Board to provide this information and advice.
- Not to use Direct Payments to secure services from a partner, a close relative or anyone else that lives in the Individual's household as detailed in Regulation 7 of the Personal Social Services and Children's Services (Direct Payments) Regulations (Northern Ireland) 2004 unless otherwise agreed by the Trust, in writing.

7. Purchasing Services from an individual who is Self-Employed

The Person managing the Direct Payment will agree:

That if someone who is 'Self-Employed' is engaged as a Personal Assistant, that person must provide the Person managing the Direct Payment with a copy of the Self-Employed Individual's Public Liability Insurance and proof of their self-employed status which may include one or more of the following:

- Evidence of their self-employment status via information from HMRC (e.g. the individual's Unique Tax Reference Number, Certificate of Self Employment, Tax returns, Real Time Information reports etc.) &:
 - Contact should be made with HMRC to clarify that the information provided is correct;
- Use of the HMRC 'Employment Status Indicator' Online Tool to help determine self-employment status;
- A contract for service delivery;
- Retained copies of invoices and receipts (monthly/4 weekly for the care and support provided).

Please note it is the responsibility of a self-employed Personal Assistant to declare their own tax and national insurance to HMRC. Self-employed PA's are not entitled to any holiday pay, sick pay or redundancy etc. from the Person managing the Direct Payment (who must also have Employers Liability Insurance).

8. Provision of Information

The Person managing the Direct Payment will agree to forward any information requested under this agreement to: SHSCT Direct Payments Monitoring Team, Ghana House, Daisy Hill Hospital, 5 Hospital Road, Newry, Do Down, BT35 8DR.

Recommendation

Although the Trust is not the employer, the Trust has a duty to investigate where a potential individual is / could be at risk of harm. The Trust advises that an assessment of risk by the Person Managing the Direct Payment is essential in these circumstances. If you are employing a personal assistant via a Direct Payment you need to ascertain if:

- They have ever been referred to the Safeguarding Board NI as a result of misconduct involving children and/or adults?
- Are they currently the subject of a police investigation or do they have any prosecutions pending?

If the Personal Assistant / Employee answers yes to either of these 2 questions then the Person managing the Direct Payment needs to consult with the Keyworker in the Trust who can offer additional guidance and support.

Trust Obligations

1. General

The Southern Health and Social Care Trust will:

- Agree to provide the Individual with an identified personal budget to enable the Person managing the Direct Payment to meet the assessed needs as agreed with the Trust and as detailed in the Individual's Self Directed Support (SDS) Care and Support Plan.
- Ensure the Direct Payment will be paid on a 4 weekly basis in advance, unless otherwise agreed in writing with the Trust. The regional minimum rate paid will be set and reviewed annually by the Department of Health.
- Monitor how the Direct Payment is being used to ensure the Direct Payment is being spent on meeting the Individual's needs as agreed in the SDS Support Plan.

2. Reviews & Assessments

The Southern Health and Social Care Trust will:

- Aim to carry out an initial review of the Individual's requirements within 3 months from the commencement of the Direct Payment and thereafter via yearly reviews in line with regional policy.
- Carry out a reassessment if the Individual's needs change.

- If the reassessment finds that the Individual's eligible assessed needs have changed, amend the Personal Budget accordingly and notify the Person managing the Direct Payment.

3. Financial

The Southern Health and Social Care Trust will:

- Make Direct Payments to the nominated Direct Payment bank account by BACS.
- For the purpose of this Agreement only hold information as required in accordance with the accounting and monitoring arrangements associated with Direct Payments. This will include but is not limited to: bank statements of the Individual / Person managing the Direct Payment, relevant insurance certificates, and receipts from the Person managing the Direct Payment to evidence how the money paid through the direct payment scheme has been spent. The Trust will be data controller for this information and will ensure that the information is held securely and protected against inappropriate loss, access or destruction. This information will be retained in accordance with the Department of Health Retention and Disposal Schedule.
- Recover any monies:
 - (i) Which have been overpaid or paid in error;
 - (ii) Which are deemed to be Surplus Funds, which for the purposes of this Agreement means:
 - Accumulated funds in excess of the amount of 12 weeks personal budget which are not allocated for future use in accordance with this Agreement and the SDS Support Plan, or,
 - Any underspend in allocated funds at the point of cessation after all employer's responsibilities have been settled.
 - (iii) Which have been misused, which for the purposes of this Agreement means any monies which are not used in

accordance with the terms of this Agreement and demonstrated within the SDS Care and Support Plan.

Any monies failing to be repaid within a reasonable time scale may be treated as a debt and will be followed up in accordance with the Trust's Debt Management Procedures.

4. Protecting and Using Information

The Southern Health and Social Care Trust will:

- Act as a separate and independent data controller for the purpose of this Agreement. The Trust shall comply with all relevant data protection legislation and shall process personal data in accordance with all prevailing requirements of data protection legislation.
- Provide such assistance as is reasonably required to enable the Person managing the Direct Payment to comply with requests from Data Subjects to exercise their rights under the Data Protection Legislation within the time limits imposed by that legislation.
- Aim to ensure the personal data processed for the purpose of this Agreement is not shared routinely outside the Trust but may be shared with other government bodies as required by law e.g. where required for the prevention and detection of fraud or where it has other lawful grounds under the Data Protection Legislation.
- Retain Individual's information in line with specific guidance issued by the Department of Health in Northern Ireland. The length of time the Trust will keep the information will depend on the types of records created. If the Person managing the Direct Payment wants to find out more about how long records are retained, they can ask the Key Worker or view the "Good Management, Good Records" section under "Disposal Schedule" on Department of Health's website.

For further information about how the Trust protects and uses individual personal data please refer to:

https://southerntrust.hscni.net/download/18/corporate/5578/protecting_your_info_booklet_dec2019-3.pdf

Further Information and Support

Trust staff will provide the Person managing the Direct Payment with information and support, and provide contact details for the Regional Information, Advice and Advocacy Service, which is commissioned by the Department of Health to provide additional support, advice and guidance.

Termination or Suspension of the Direct Payment/this Agreement

- The Trust has the right to suspend or terminate the Direct Payments if any of the terms and conditions of this agreement have not been met (e.g. including inappropriately annotated / untimely submission of Bank Statements etc.).
- The Trust has the right to terminate or suspend the Direct Payments if it considers that the arrangements made for purchasing services or the services purchased are not adequate to meet the assessed needs as detailed in the SDS Support Plan.
- The Trust has the right to suspend the Direct Payments where the need for services is temporarily not required.
- The eligibility for Direct Payments will cease when the entitlement to Direct Payments has ended or Direct Payments are no longer required.
- The Person managing the Direct Payment / Individual may request to end the Direct Payment at any time following which, a final review will be carried out to ensure all outstanding expenses are paid and the reconciled balance of funds is returned to the Trust.
- Where there is evidence of fraud or misuse of funds this agreement will cease immediately and the Trust will seek full repayment of any monies due.

I confirm the following:

Receipt of advice and guidance from the Trust in respect of Direct Payments to allow me to make a fully informed decision to enter into this agreement or to enter this agreement on behalf of the Individual.

I have been recommended to seek independent advice and guidance before signing this Direct Payment Agreement.

If required, has the individual been offered an Interpreter or written information in a suitable alternative format to enable them to understand the Letter of Offer, SDS Support Plan and signed SDS Direct Payment Scheme Agreement?

Not Required _____ Date offered _____

Required _____ Date provided _____

PLEASE COMPLETE:

I consent to receive Direct Payments and confirm that I understand and will comply with the conditions contained in this agreement.

I understand that this may include repaying to the Trust any money the Trust deemed to be surplus &/or spent outside of my agreed SDS Support Plan.

Person managing the Direct Payment (including Parent or Guardian):

SIGNED _____

Print Name: _____

DATE: _____

SUPPORTING DOCUMENT IF REQUIRED:

(E.g. Short Procedure Order / Enduring Power of Attorney / Controller Order / Court Order etc.)

On behalf of Southern Health and Social Care Trust:

KEY WORKER: _____

PRINT NAME: _____

DATE: _____

A copy of this agreement to be held by all Signatories.