



Lewisham Council Direct Payments Operational Policy

Target audience	Adult Social Care operational staff and those in receipt of a Direct Payment
Purpose of the guidance	To explain how Adult Social Care will provide and monitor direct payments
Action required	To use the guidance to support working practice
This guidance supersedes	DP Policy Procedures- Revised 12Sep2011
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Contents

Introduction	3
Underlying principles of the policy	3
Scope of the policy	3
General	3
Self-funders	4
Payment Methods.....	4
Council Supported Direct Payment administration.....	5
Service users who lack capacity	5
When a direct payment request is declined	5
Review of direct payments	6
Employing a personal assistant	6
Contingencies and insurance	6
Employing a family member	6
Monitoring direct payment expenditure	7
Low direct payment balance	7
High direct payment account balance and reclaim of surplus funds	8
Assessed personal financial contribution	8
If the recipient is in hospital	9
Closure of direct payment accounts	10
Termination of direct payments	10
Suspension of direct payments.....	11
Appendix 1- Direct Payment Agreement form	12-19
Appendix 2- Direct Payment Employment Appendix form.....	20-23

Introduction

The London Borough of Lewisham offers direct payments to all service users and carers where possible. Direct payments enable service users to exercise choice and control over who provides their care and support and how this is provided to meet their eligible care and support needs.

The care and support statutory guidance issued under the Care Act 2014 states:

“The local authority must be satisfied that the direct payment is being used to meet the care and support needs set out in the plan, and should therefore have systems in place to proportionally monitor direct payments usage to ensure effective use of public money”

Underlying principles of the policy

1. Direct payments should be provided to all service users and carers where appropriate and requested.
2. Direct payment accounts will be monitored proportionately
3. If there is an assessed personal financial contribution, this will be paid towards the direct payment on a regular basis

The Council reserves the right to cease direct payments when necessary (see section: Termination of direct payments)

Scope of the policy

This policy covers the monitoring of all direct payment accounts, including those that are managed by Lewisham Council's Managed Account Service or third parties.

Monitoring of direct payments is undertaken by Lewisham Council Arranging Care team.

General

In all dealings with service users and their representatives;

- 1) Either a nominated person, where the service user has capacity and decides to nominate an appropriate third party to be the Direct Payment recipient
- 2) Or authorised persons, where the service user lacks capacity, an authorised person is either;
 - i) A third party who is authorised under the Mental Capacity Act to make decisions in respect of the service user's needs for care and support or
 - ii) a person who is not so authorised under the Mental Capacity Act, but a third party who is so authorised under the Mental Capacity Act 2005

- agrees with the Council that the person is a suitable person to whom to make Direct Payments or
- iii) where there is no third party who is so authorised under the Mental Capacity Act 2005, a person who the Local Authority considers is a suitable person to whom to make Direct Payments

With respect to direct payments, London Borough of Lewisham will have full regard to:

- Sections 31 to 33 of The Care Act 2014
- The Care and Support (Direct Payments) Regulations 2014 and the Care and Support Statutory Guidance

The Council will ensure that service users are given relevant and timely information about direct payments, so that they can make a decision whether to request a payment, and, if doing so, the service users are supported to use and manage the payment appropriately.

The route to a direct payment is for a service user to request one from the local authority, the Council support the right to make this request by providing information and advice.

Service users and their representatives will not be forced to take a direct payment against their will, but instead be informed of the choices available to them.

Self-funders

Direct payments are offered to all service users and carers, where appropriate.

However, where individuals are financially assessed as self-funding (able to pay for the full cost of their care and support services) they will not be set up with a direct payment.

They will be signposted to services and given advice and information as required, to pay for services directly.

The Council may agree to offer Direct Payment support to self-funders in exceptional circumstances, however an administrative charge may be applied.

Payment Methods

A Pre-paid card is the standard method of payment for Direct Payments in Lewisham Council. This is because remote monitoring is far more efficient for the local authority and the service user or their representative.

It additionally provides assurances as the Arranging Care team are able to make payments from the pre-paid card if needed in the event that the service user or their representative are not able to.

Alternative payment methods, such as a third-party account or a private bank account will always be considered if this is requested and appropriate.

Council Supported Direct Payment administration

The Arranging Care team are able to support Direct Payments recipients by administering payments for care and support services, this is called a 'Council Managed Account'. Pre-paid cards will be used to make payments and provide statements to the service user or their representative.

Requests for a council managed account will be considered on an individual basis, with consideration given to why the support is required. In general, a council managed account will only be provided where the service user would have difficulty managing payments, and if there is not an authorised or nominated person to do this for them. Additionally, a council managed account may be offered where the direct payment recipient has not met the conditions of the Direct Payment Agreement (Appendix 1)

Service users who lack capacity

A service user lacking capacity to make a request to receive direct payments will not be excluded from the scheme. Where possible, an 'authorised person' as defined above will make the request for, and manage, the direct payment on their behalf.

The Council will take all reasonable steps to ensure that individuals are supported to manage direct payments.

When a direct payment request is declined

The Council will process the request in as timely a manner as possible. If the request for a direct payment is declined, the service user (or the nominated or authorised person) will receive a written explanation for the declined request, and information about how to challenge the decision through the local authority complaints procedure.

Where the request has been declined, the Council will continue the care and support planning process so that it can seek to agree with the service user how best to meet the needs, without the use of direct payments.

Review of direct payments

The Council will perform a light-touch review of direct payments initially within the first six months of the payment being set up, and thereafter every 12 months. The Council will not require information to be provided more often and in more detail than is reasonably required.

Employing a personal assistant

If the Direct Payment recipient decides to employ a personal assistant to provide care, they will be responsible for all employment related costs and related responsibilities. However, the Council will ensure that these costs are included in the Direct Payment funding. This includes but is not limited to, annual leave, liability insurance, payroll fees, Employers National Insurance. The support planning process will outline employment responsibilities, such as working time regulations, right to annual leave, and ensuring potential employees have the right to work. This is covered in the Employment Appendix to the Direct Payment Agreement. (See Appendix 2)

Contingencies and insurance

During the support planning process discussion will take place regarding having a contingency arrangement in place if the existing care provision breaks down. The funding provided includes a contingency element to cover unexpected costs as well as standard employment related costs such as annual leave.

The Council will inform and support the direct payment recipient around the issue of insurance, including employer's liability insurance. The direct payment funding will include an amount to pay for necessary insurance.

Employing a family member

The Council will only accept direct payment funded employment of a co-habiting family member when an Adult Social Care practitioner has deemed it necessary to meet satisfactorily the service user's care needs and/or to provide administrative or management support, and no alternative ways of doing so have been identified.

This arrangement is subject to the discretion of the local authority after consideration of the request and will be reviewed periodically.

If it is identified that in the Council's opinion the service user's needs can be more suitably met in alternative ways, such as employing a non-family member or obtaining a provider through the direct payment or a commissioned service, or if the service user no longer has eligible needs, then this arrangement will cease.

Monitoring direct payment expenditure

The Council recognises that the direct payment is designed to be used flexibly and innovatively to meet identified eligible needs. The Council will not place unreasonable restrictions on the use of the payment, as long as it's being used to meet eligible care and support needs as outlined in the service user's support plan.

The Arranging Care team will monitor the direct payment account transactions through the use of electronic alerts, system audits and, if applicable, paper monitoring sent in by the service user or their representative.

If a practitioner or the Arranging Care team identify that spending is not in line with the support plan, the Council will look into the circumstances of the case. The spending will be discussed with the service user or their 'nominated' or 'authorised' person to see if a direct payment continues to be the best way for their needs to be met, or whether alternative options need to be explored. The service user may be offered a conditional direct payment in the form of a 'Council Managed Account'. However, the service user/person managing the direct payment will be informed that the direct payment will be terminated if not willing or able to comply with the terms and conditions in the Direct Payment Agreement (see Appendix 1) which was signed at the point the direct payment commenced.

If it is agreed with the Social Care practitioner that a service user will employ a family member, the direct payment account may undergo additional scrutiny to ensure both the service user and the family member being employed are supported, and the service user's needs are being met, as outlined in the support plan.

Due to the complexity of employing family members this additional scrutiny ensures the potential risks are monitored and can be addressed quickly if needed.

If the direct payment recipient is employing carers, the Council will complete regular checks to ensure the individual is fulfilling their responsibilities as the employer – in particular that they are submitting PAYE returns to HMRC with the relevant deductions made to HMRC, complying with working time regulations, and employing those who have the right to work in the UK.

Note: Where a direct payment is ceased and a service user still has eligible care and support needs, alternative arrangements will be made to meet those needs.

Low direct payment balance

All direct payments are paid 4 weeks in advance. Payments are made in advance to ensure funds are available to service users in an emergency.

Service Users who have an account balance of 3 weeks' worth of direct payment money or less will be investigated, to identify the reason for this low balance.

Once the reason(s) have been identified, the Council will work with the service user and/or their representative to bring the direct payment balance back so it does not fall below four weeks' worth of the direct payment funding. If the account continues to run low and the reason for this is not resolved, they may be offered an alternative way of receiving their direct payment, which might be a different type of direct payment, such as a council managed account.

If the service user is unable or unwilling to manage their direct payment in a different way they will be informed that the direct payment will be terminated and that alternative ways of providing the support will be arranged.

High direct payment account balance and reclaim of surplus funds

Due to the flexible use of direct payments, the balance level in an account may build up.

If Direct Payment recipients build up over 8 weeks' worth of funding this will be investigated to see if there is a need for the build-up, such as outstanding charges, annual leave or a respite break.

Accounts with high balances are investigated quarterly and all funds paid by the Council that are deemed to be in excess without good reason will be returned to the Council.

Where the Council provide support to administer payments for care services from a prepaid card, called an 'In-House' supported Direct Payment, excess funds will be recouped after investigation. Statements are available to Direct Payment recipients on request, and any recoups found to be necessary to meet identified care and support needs will be refunded where deemed appropriate.

Assessed personal financial contribution

If a service user has been assessed to personally contribute towards their care and support and chooses to receive a direct payment, they will be required to contribute towards the direct payment. This means that for most Direct Payment recipients the contribution is deducted from the four weekly payments made.

The Financial Assessment Team informs service users of their assessed financial contribution amount once the financial assessment is complete.

When a direct payment first starts, the Arranging Care team inform the service user how the contribution should be paid towards the direct payment. This can be paid weekly or four weekly.

Where a debt is identified, because of a failure to pay the assessed contribution, this will be flagged with the Direct Payment recipient. All reasonable steps will be taken to assist the Direct Payment recipient to pay their assessed contribution.

If there is continued failure to pay the assessed financial contribution, the direct payment will be terminated, and any debts incurred during the period the direct payment was active will be recovered following the Council's standard debt recovery procedures.

There may be cases where the Council decides to pay the Direct Payment before deducting the financial contribution and invoice the service user.

If the direct payment ends due to the death of a service user and there is unpaid financial contribution, the Council will seek the outstanding funds from the estate. If there are outstanding provider invoices due to outstanding financial contribution payments, the provider will be advised by the Council to seek payment directly from the estate.

If the recipient is in hospital

If a person requires a stay in hospital, this does not necessarily mean that the direct payment will be suspended while the individual is in hospital. Suspending or terminating the payment could result in the person having to break the employment contract with a personal assistant, causing distress and a lack of continuity of care when discharged from hospital.

Where a Direct Payment recipient is employing a personal assistant, continued payment of the individual's assessed contribution is also required to ensure there is no risk to employment contracts.

For Direct Payment recipients who chose to purchase services and are not charged by their provider during their hospital stay, the Direct Payments will be suspended, as will the charges for this period.

If a service user's stay in hospital exceeds 28 days, the Direct Payment arrangement may be terminated.

If a nominated or authorised person's stay in hospital exceeds 28 days, the Council would expect an alternative nominated, or authorised person to manage the Direct Payment, or may offer Council supported Direct Payment administration as a short-term support. If there is no suitable alternative authorised or nominated person, the Council would look to commission an alternative care option and the Direct Payment would terminate with immediate effect on the basis that the Council no longer believes it is appropriate to make Direct Payments. In exceptional circumstances the Council may agree to temporarily continue with the Direct Payment care arrangements in the absence of a nominated or authorised person. This would only be agreed where the Council considers that it is in the best interest of the service user, and that it continues to be a safe and appropriate way to meet identified needs. Increased oversight would be put in place by the Council during this temporary period.

Closure of direct payment accounts

When a direct payment ends for any reason, a full account reconciliation is completed. This ensures that all final bills are paid to care and support providers and any funds that remain in the account are paid back to the Council or to the direct payment recipient, depending on the level of care received and the amount of personal financial contribution paid into the account for the duration of the direct

payment. Additionally, any private funds credited to the direct payment account, known as top ups, will also be considered as part of the reconciliation.

Termination of Direct Payments

The Service User, Authorised Person or Nominated Person may terminate this agreement by giving the Council 28 days' notice

The Council will consider all reasonable steps to rectify problems before terminating a Direct Payment

The Council may terminate the Direct Payment upon giving 28 days written notice to the service user or their nominated or authorised person, in the event of one of the following outcomes occurring:

- The Service User no longer has eligible needs
- The death of the Service User or direct payment recipient
- The Service User moving out of the London Borough of Lewisham's area
- The Service User's account is allowed to run low on a consistent basis and the Service User or their nominated person or authorised person is unable or unwilling to manage their Direct Payment in an alternative way to avoid the associated risks
- after exploring remedial options, the council no longer believes it is appropriate to make Direct Payments
- Any of the terms and conditions of this agreement are not being met by the Service User, Authorised Person, or Nominated Person

The Council may terminate this agreement with immediate effect in the following circumstances:

- The death of the Service User or direct payment recipient
- purchasing services and/or items not outlined in their support plan, therefore using funds to pay for items or services which do not meet their eligible care and support needs
- failing to provide requested monitoring information on an ongoing basis
- ongoing refusal to pay their personal financial contribution towards their direct payment
- being unable to manage their direct payment with the necessary support, including complying with employment duties, and continued overspending, (using Direct Payment funds allocated for future care needs.)
- refusing an annual review or not engaging with Adult Social Care resulting in the annual review not being completed

- in the case of an Authorised Person, the council is no longer satisfied that he is acting in the best interests of the service user
- arranging services that the Council deem as unsuitable, and the Direct Payment recipient is not willing to change these arrangements.

Where the Council discontinues a direct payment, and the service user has eligible care and support needs an alternative provision of care will be provided. In all cases the reason for discontinuing Direct Payments will be put in writing, and the Direct Payment recipient will be advised of the complaints procedure if they are unhappy with the decision.

Suspension of Direct Payments

There may be circumstances in which the Council will discontinue Direct Payments temporarily.

An example might be when an individual does not require the care and support that the Direct Payments are intended to secure. The Council will discuss with the service user, the carer, or any other person concerned how best to manage this.

Appendix 1

Lewisham Direct Payment Agreement

This agreement sets out the responsibilities and obligations of the London Borough of Lewisham (hereinafter referred to as the Council) and the Direct Payment recipient:

The Direct Payment recipient can be:

- 1) **The Service User**
- 2) **A ‘Nominated’ person, where the service user who has capacity decides to nominate an appropriate third party to be the Direct Payment recipient**
- 3) **An ‘Authorised’ person, where the service user lacks capacity. An Authorised Person is either:**
 - i) A third party who is authorised under the Mental Capacity Act to make decisions in respect of the service user’s needs for care and support or
 - ii) a person who is not so authorised under the Mental Capacity Act, but a third party who is so authorised under the Mental Capacity Act 2005 agrees with the Council that the person is a suitable person to whom to make Direct Payments or
 - ii) where there is no third party who is so authorised under the Mental Capacity Act 2005, a person who the Local Authority considers is a suitable person to whom to make Directs Payments

(1) The Service User

TITLE:	
FULL NAME:	
ADDRESS:	
LAS ID NO:	

(2) The Nominated Person/Authorised Person (if applicable)

TITLE:	
FULL NAME:	
ADDRESS:	
LAS ID NO:	

TERMS and CONDITIONS

Whereas:

- a) the Council has carried out an assessment of the Service User's need for care and support services, and has subsequently determined that the services identified in the support plan should be provided for the Service User,
- b) the Council has carried out an assessment of the Carer's needs for Carers' Services and subsequently determined that the services identified in the assessment or support plan should be provided for the Carer.
- c) the Service User/Authorised Person/Nominated Person is willing and able to secure the identified services and the Council is willing to make Direct Payments to the direct payment recipient to enable them to secure the identified services.

The Council agrees to make Personal Budget payments to the Service User, Authorised Person or Nominated Person as a Direct Payment on the basis set out below;

By signing this agreement, you agree to comply with and be bound by the terms of this agreement.

1. The Council will provide Personal Budget payments in the form of a direct payment onto a Lewisham Pre-Paid card. In some circumstances other

payment arrangements may be made by agreement between both parties. If applicable these agreed arrangements will be detailed in this document.

2. You (the Service User, Authorised Person, or Nominated Person) have developed a support plan detailing how you will use your personal budget payments to meet the eligible needs and to achieve the required outcomes. The Council's payments are made strictly on the basis that you will spend the funds of each payment solely to buy the care and support services needed to meet the needs as agreed and documented in the support plan.
3. You (the Service User or representative) are welcome to top up the pre-paid card to purchase services in excess of the Direct Payment. Any debt to providers, employees or HMRC for do services you have chosen to buy on top of the Direct Payment are your personal liability, and will not be met by the Council, unless previously agreed.
4. The Council will review your care and support needs and change the amount of your personal budget if your eligible needs change over time. The Council will notify you in advance of any proposed changes.
5. The Council intends that the Direct Payments are the means by which the Service User, Authorised Person or Nominated Person independently secures the services the Council has agreed that the Service User/Carer needs. The Direct Payments may form part of a mixed care package whereby some of the services are arranged or provided by the Council and some services are independently secured by the Direct Payment recipient.
6. Where, in the opinion of the Council, the service provider (e.g., the Personal Assistant) is either not able to meet the identified needs or is unfit to provide the services, the Council has the right to require the Direct Payment recipient to change the person or organisation that is providing the services. Failure to make the required changes to care arrangements will result in the Direct Payment being terminated, and the Council commissioning care services directly.

Securing Services from Relatives

7. The Direct Payment recipient may not use the Direct Payments to secure services from any partner, or a close relative living in the same household unless the Council deem it necessary to satisfactorily meet the adult's assessed eligible needs, and no alternative ways of doing so have been identified. (A close relative means parent, grandparent, parent-in-law, uncle or aunt, brother or sister, son or daughter, stepson or stepdaughter, son-in-law or daughter-in-law, the spouse or partner of any preceding.) This arrangement is subject to the discretion of the local authority after consideration of the request and will be reviewed periodically.

8. The Direct Payment recipient may use the Direct Payments to secure the Services from a close relative living elsewhere other than in the same household.

Increase or Decrease in the level of Direct Payment

9. The Council may increase or decrease the amount of the Direct Payments made to the Service User/Carer at any time following a change in care needs. The Council will notify the Direct Payment recipient in writing of this change.

Change in Circumstance

10. The Direct Payment recipient must notify the Council of any changes in their circumstances that may affect the service users or carers eligibility, or ongoing care and support needs. In the event that a service user will be on holiday out of the country for 28 days or more, the Direct Payment will be terminated. The Direct Payment recipient must approach the Council on the service user's return to request services. The Council may exercise its discretion whether to terminate the Direct Payment if the Service User's absence only slightly exceeds the period of 28 days. In cases where the Council exercises its discretion, the Direct Payment will be suspended rather than terminated for the period during which the Service User is absent.

Securing Care Services Abroad

11. Direct Payment funding cannot be used to secure local care services whilst the service user is abroad. Personal Assistants may be funded to provide their usual support services abroad. Associated costs, such as flights would not be covered. In all cases the Council would need to consider the request in advance and would need to see full supporting documents.

Financial Monitoring (For Self-Managed Direct Payments)

12. The Council has a legal duty to financially monitor the Direct Payments to ensure that the monies are spent only on the services identified in the care assessment. To enable the Council to monitor the use of the Direct Payments, the Direct Payment recipient will:
 - a) Only use the Direct Payments Pre-paid card account.
 - b) Ensure that the pre-paid card account will only be used for transactions in respect of the Service User's/Carer's Support Plan of assessed needs.

- c) Provide to the Council on request information to enable financial checks related to Direct Payment expenditure, including supporting evidence (receipts, invoices, timesheet etc) to identify clearly where and how Direct Payments have been spent.
 - d) To keep a full record of all financial transactions in respect of the Direct Payments for at least six years.

 - e) To allow the Council to inspect all financial transactions in respect of the Direct Payments when necessary.
13. Once financial monitoring has taken place the Council may adjust future payments or recover excess funds from the Direct Payments. This will be reviewed quarterly to ensure an appropriate balance is maintained. For Self-Managed Direct Payments, the Direct Payment recipient will be informed of any actions in this regard to ensure the correct contingencies remain available.
14. Where the Council provide support to administer payments for care services from a prepaid card, called an In-House supported Direct Payment, monitoring will not usually be required, unless there is missing information. Accounts will be reviewed quarterly to ensure an appropriate balance is maintained, and excess funds will be recouped. Statements are available on request, and any recoups found to be necessary to meet identified care and support needs will be refunded where deemed appropriate.

Repaying the Direct Payment

15. The Council may require the Direct Payment recipient to repay to the Council the Direct Payments or any part of it, if the Council is satisfied:
- the Direct Payments or any part of it has not been used to secure the provision of services to meet needs identified in the Care Plan; or
 - that the Direct Payment recipient has not met the conditions set out in this agreement; or
 - that the Direct Payment recipient has received payment from another organisations for the same services or some part of the same services.

Financial Assessment

16. The Service User, Nominated Person, or Authorised Person must provide requested information to the Council to enable then to complete a financial assessment of the service user's income, which is carried out under the Care Act 2014.
17. The Direct Payment recipient is expected to pay the assessed financial contribution. Should the Service User, Nominated Person or Authorised Person consistently fail to pay the service users assessed financial contribution, and if no suitable arrangements can be agreed for making up the outstanding contributions, the direct payment will be terminated with immediate effect. Any

debts incurred during the period the direct payment was active will be recovered following LBL's standard debt recovery procedures.

Employer Liability Insurance

- 18) The Direct Payment recipient must agree to arrange a policy of insurance covering the employment of Personal Assistants against all appropriate risks.

In the event of a death

- 19) In the event of the Service User's/Carer's death, the Council will carefully consider what contractual responsibilities the Direct Payment recipient have when determining what balance of the Direct Payments is to be repaid to the Council. This would include consideration of any notice period, redundancy or accrued annual leave.

Termination of Direct Payments

- 20) The Service User, Authorised Person or Nominated Person may terminate this agreement by giving the Council 28 days' notice
- 21) The Council will consider all reasonable steps to rectify problems before terminating a Direct Payment
- 22) The Council may terminate the Direct Payment upon giving 28 days written notice to the service user or their nominated or authorised person, in the event of one of the following outcomes occurring.
- The Service User no longer has eligible needs
 - The death of the Service User or direct payment recipient
 - The Service User moving out of the London Borough of Lewisham's area
 - The Service User's account is allowed to run low on a consistent basis and the Service User or their nominated person or authorised person is unable or unwilling to manage their Direct Payment in an alternative way to avoid the associated risks
 - after exploring remedial options, the council no longer believes it is appropriate to make Direct Payments
 - Any of the terms and conditions of this agreement are not being met by the Service User, Authorised Person, or Nominated Person
- 23) The Council may terminate this agreement with immediate effect in the following circumstances;
- The death of the Service User or direct payment recipient
 - purchasing services and/or items not outlined in their support plan, therefore using funds to pay for items or services which do not meet their eligible care and support needs

- failing to provide requested monitoring information on an ongoing basis
- ongoing refusal to pay their personal financial contribution towards their direct payment
- being unable to manage their direct payment with the necessary support, including complying with employment duties, and continued overspending, (using Direct Payment funds allocated for future care needs.)
- refusing an annual review or not engaging with Adult Social Care resulting in the annual review not being completed
- in the case of an Authorised Person, the council is no longer satisfied that he is acting in the best interests of the service user
- arranging services that the Council deem as unsuitable, and the Direct Payment recipient is not willing to change these arrangements.

24) Where the Council discontinues a direct payment, and the service user has eligible care and support needs an alternative provision of care will be provided. In all cases the reason for discontinuing Direct Payments will be put in writing, and the Direct Payment recipient will be advised of the complaints procedure if they are unhappy with the decision.

Suspension of Direct Payments

25) There may be circumstances in which the Council will discontinue Direct Payments temporarily. An example might be when an individual does not require the care and support that the Direct Payments are intended to secure. The Council will discuss with the service user, the carer, or any other person concerned how best to manage this.

Data Sharing and Fraud Prevention

26) Lewisham Council will share your name, address, and date of birth with the prepaid card provider, Prepaid Financial Services (PFS); that we use to administer Direct Payments. If Lewisham Arranging Care team are managing payments on your behalf, they may need to share details of the care hours or care tasks within your care plan with your chosen care provider. They will not share your information with any third parties, we can provide further information on their data security measures if required.

- Lewisham Council is required by law 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, in order to improve the delivery of services and to prevent and detect fraud. Further information on how we share information held by the council can be found at

www.lewisham.gov.uk or contact the Information Governance Team on 0208 314 9928 or by email: dpa@lewisham.gov.uk.

- I understand that if I give information that is false or misleading it may be regarded as a criminal offence and action may be taken against me including court action and the recovery of monies paid.

I confirm that I understand and agree to comply with the conditions contained in this agreement.

.....

Signature of the Service User/Nominated Person/Authorised Person

.....

Print Name and Date of Signature

.....

Name and Position of LBL Officer

APPENDIX 2

Employment Appendix

If you decide that you would like to use your Direct Payment to employ a member of staff directly (and not through an agency) then there are certain legal requirements that you must adhere to. It is important that you understand your responsibilities before becoming an employer.

You should read this appendix carefully and sign at the bottom, providing the Council with a copy to indicate that you have understood your responsibilities if you become an employer. We also advise that you source independent employment advice, as this document is not issued as a comprehensive employment guide. You should keep a copy of this appendix for your records in a safe place.

1. All employers need to have **Employers Liability Insurance**. There are several organisations that offer this insurance specifically for people employing their own care staff.
2. You are required to **register as an employer** with Her Majesty's Revenue and Customs (HMRC) for tax and national insurance purposes where applicable.
3. As an employer you will be **responsible for arranging cover** for when your employee is on leave or off sick. It is important to identify how you will provide cover and that you have enough of your Direct Payment to pay for the cover when you need it. It could be that you have more than one employee and they cover for each other, you may be able to have care on a different day or you can identify a domiciliary care agency that can provide you with cover. However, if you are at risk of having no support, you need to let the Council know and they will discuss with you putting in place arrangements to make sure your needs are met.
4. You may use your direct payment to secure services to **meet your assessed need**. If, however, the council is of the opinion that the person or organisation who is providing the service is either not able to provide an adequate service, or unfit to provide a service, the Council has duty to discuss with you their concerns that may require you to change the service provider.
5. In using your direct payment to make your own arrangements for your care, you must comply with **all legal requirements** in making these arrangements. You must also ensure that the person has the **legal right to work** in the UK. www.gov.uk/check-an-employees-right-to-work-documents If you make an arrangement with somebody who does not have clear legal status to reside and work in the UK, the Council will immediately suspend your direct payment, and alternative services managed by the Council will be put in place. Any fines incurred as a result of employing someone who does not have the right to work in the UK will be your personal liability. If you require additional advice or support with this matter please ask the Arranging Care team.

6. You must provide a template '**statement of employment**' (or contract) for every person that you employ. The council can provide you with an example of a contract there is also an example on the ACAS website (www.acas.org.uk). This document needs to be signed by both you and your employee and you need to keep a copy. This is a legal requirement and will set out the terms and conditions of the role i.e. pay, hours of work, notice periods.
7. All employees have a legal right to have **paid annual leave**. This is calculated depending on the number of hours worked. So it is important that you keep money aside to pay for cover as and when your employees are on leave. This cannot be paid in top of wages, unless the care worker's employment has stopped, and this is part of a final salary payment. The statutory minimum for annual leave is 5.6 weeks per year if you work 5 days per week or the equivalent for part-time workers based on the number of hours they work per week (this can include bank and public holidays). You can see guidance on calculating annual leave here: <https://www.gov.uk/holiday-entitlement-rights/entitlement>
8. It is important that you pay anyone who works for you correctly. This includes paying all employees at least the **National Minimum Wage** and making arrangements for the **calculation of Tax and National Insurance** where applicable. HMRC provide factsheets and help on all aspects of tax which can be found on their website: www.hmrc.gov.uk .As an employer it is your responsibility to ensure that you are paying people correctly. You have the option to engage the services of a payroll company and the cost of this would need to be factored in to your budget.
9. You should ensure you are offering a **work-place pension** scheme to your employees. As the employers you have automatic enrolment duties from your personal staging date. Your payroll provider may act as your pension administrator, and you will need to ensure you complete the necessary paperwork in relation to this. More information can be found at; <http://thepensionregulator.gov.uk/>
10. You are also responsible for the **health and safety** of your staff and must provide them with a safe working environment. The Health and Safety at Work Act has specific requirements for the provision of training and equipment for Manual Handling, Hoisting and when employees are requested to support someone with behaviours that may challenge.
11. You should ensure your employment arrangements are compliant with Working Time Regulations which determine the maximum weekly working time, patterns of work and holidays, plus the daily and weekly rest periods. They also cover the health and working hours of night workers. As well as 5.6 weeks paid annual leave, the Working Time Regulations provide rights to:
 - a limit of an average 48 hours a week on the hours a worker can be required to work, though individuals may choose to work longer by "opting out"

- 11 consecutive hours' rest in any 24-hour period
- A 20-minute rest break if the working day is longer than six hours
- One day off each week
- a limit on the normal working hours of night workers to an average eight hours in any 24-hour period, and an entitlement for night workers to receive regular health assessments.

Details can be found on the ACAS website;
<http://www.acas.org.uk/index.aspx?articleid=1373>

12. You must ensure that you comply with all **equal opportunity** legislation in relation to the employment of staff. In line with the Equality Act you cannot discriminate against staff unless for genuine “occupational requirements”
www.gov.uk/equality-act-2010-guidance

13. We suggest that you should get at least **two references** for new, previously unknown, employees and make an application to the Disclosure and Barring service. This is a legal requirement if staff are engaged in “regulated activity” which includes providing personal care to vulnerable adults or unsupervised access to children. Although this check is not always essential it is recommended. The council can help facilitate this and the costs are paid from your Direct Payment;
www.gov.uk/government/organisations/disclosure-and-barring-service/about

14. It is a good idea to write a **Job Description** for your Personal Assistant. This will ensure that your member of staff knows what is expected of them right from the beginning.

15. It is important to **keep records** of all staff that you employ, no matter how much you pay them. If you sign up with a payroll company they will ask you for details about your employee’s e.g. name, address, National Insurance number

16. All staff you employ (even if they are family members) must have:

- A National Insurance Number
- The Legal Right to Work in the UK
- A bank account for wages
- A P45 or a signed P46

Your responsibilities as an employer

I understand that if I use my Direct Payment to employ a member of staff directly I must:

- take out Employers Liability Insurance Cover
- register as an employer with HMRC, where applicable and arrange for the calculation of Tax and National Insurance
- make sure I have enough money to cover my staff when they are on annual leave / off sick

- keep up to date employment contracts with everybody I employ
- follow employment law in terms of employees right to work, working time regulations, giving people notice, redundancy, pension and statutory payments where applicable
- provide a safe working environment
- ensure safe working practices
- make a contingency plan for when my usual arrangements break down. I understand that the Council will arrange support to meet my critical needs if I am at risk of having no support.

Any liabilities as a result of not following advice and information provided by Lewisham Arranging Care team regarding employment responsibilities, will be your own personal liability, unless previously discussed and agreed.

Signed:

Print Name:.....

Date: