

Health & Wellbeing  
Directorate



West Offices  
Station Rise  
York  
YO1 6GA

Tel: 01904 55  
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Date:

Ref:

Ask  
for:  
Tel:

Dear ,

Re: Direct Payment – Amendments to Terms and Conditions

City of York Council has recently undertaken a review of policies and procedures to ensure compliance with the Care Act 2014.

The council will be introducing a new policy covering direct payments from 1<sup>st</sup> April 2015. This policy sets out the terms by which direct payments will be offered, and used by customers.

The council has taken the opportunity to update the terms and conditions under which it makes direct payments available, and will be effective to all new and existing customers from 1<sup>st</sup> April 2015.

There are three key changes that the revised terms and conditions implement:

- 1) That customers will have direct payments paid into Cashplus accounts;
- 2) That money that is available for regular expenditure will only be allowed to accrue for one month rather than 8 weeks;
- 3) That City of York Council will hold all money that is currently held in accounts for redundancy provision, and will make payments for statutory maternity pay, statutory paternity pay and statutory sick pay.

A copy of the revised Terms and Conditions are attached and should be kept with your copy of the direct payment agreement (DP1) for reference.

How will these changes affect you?

If you already have your direct payment paid into a Cashplus account then you will not be affected by this change. If you have your direct payment paid to an organisation or managed account provider then you will receive further information about this change after April.

The current terms and conditions allow for 8 weeks money to be built up as 'contingency' where you receive a regular payment. The change means that this amount will reduce to the equivalent of one month's payment, to cover outstanding bills. If you receive money towards short breaks to be taken throughout the year, this will be accounted for separately.

If you employ your own staff, then a small proportion of the money you are paid is to cover redundancy costs. The council decided in February 2014 as part of its budget process that this money should be managed by the council.

It is proposed that all redundancy money held within direct payment account is returned to the council before 31<sup>st</sup> March 2015. The terms and conditions set out that redundancy costs, statutory sick pay (SSP), statutory maternity pay (SMP) and statutory paternity payment (SPP) will be paid to you upon request, where accompanied with supporting documentation. If your account is administered by the ILS, then we will contact them to identify how much money they hold for you to cover redundancy costs, and reclaim it back from them.

The Income Services Team will be responsible for the administration of these statutory payments. The Income Services Team can be contacted as follows:

Phone: 01904 554684

e-mail: [cbssincomeservices@york.gov.uk](mailto:cbssincomeservices@york.gov.uk)

Post: 3<sup>rd</sup> Floor, West Offices, Station Rise, YORK YO1 6GA

Please contact the Income Services Team if you have any queries about this letter.

Yours sincerely

## **Terms & Conditions relating to all Direct Payment Agreements**

### **TERMS AND CONDITIONS**

1. I agree that I will use my Direct Payment (DP) to meet the outcomes, agreed in my support plan. I agree to repay all or part of the DP if City of York Council (CYC) is satisfied that it has not been used appropriately, or in accordance with this agreement and current Direct Payment legislation.

2. I understand that I can nominate someone to administer the direct payment on my behalf – this person is known as a ‘nominated person’. If I decide to receive a DP and I have a legally appointed representative, that person can request and manage a DP on my behalf – this person is known as an ‘Authorised Person’. I understand that should I, or an appointed or nominated person lose the capacity to manage my direct payment, that the council will review the situation and may cease to make payment, in preference for commissioning services on my behalf.

3. CYC will pay DP's into Cashplus Accounts administered by Advanced Payment Solutions Limited (APS). CYC will open the account and retain ownership of the account and debit card issued to assist in operating that account. CYC retains full rights under the Data Protection Act 2003 to access all data relating to the account, as well as load, suspend, cancel or withdraw access to the account. Any such action may be done without prior notice where the account appears to be compromised or is being used for illegitimate or fraudulent means. This is to protect the interests of me and/or CYC. Fees incurred for the use of the account that are passed by APS (such as transaction processing costs) will be met by CYC. CYC will not incur any charges relating to additional costs levied by merchants at the point of sale, or costs relating to the use of telephone banking on the account.

4. Money paid to me under the terms of this agreement will be paid into the Cashplus account and all transactions must take place from this account.

5. I agree that it is my responsibility to make arrangements (with help if necessary) to secure appropriate goods or services that meet my

outcomes. I agree to comply with all legal requirements that may arise in making such arrangements.

6. I agree to inform CYC if I am to receive a payment from a third party (e.g. NHS Continuing Healthcare) to assist in the purchase of goods and services. Any money received from a third party must be accounted for separately and details of payments made, plus associated expenditure must be provided to the Council as and when required for reconciliation purposes.

7. I have been informed of the support and assistance available to me in the operation of the DP.

8. Where I am responsible for employing my own staff I agree to take out Employers and Public Liability Insurance, including Indemnity to Principal and to supply policy documentation to the council if requested to do so, in line with payments made by the Council as part of this agreement.

9. I understand that, if in the opinion of CYC the service provider is either unable or unfit to provide an adequate service, then CYC has the right to require that I change the person or organisation providing those services. I understand that CYC has the right to stop my DP if the service purchased is considered unsuitable for meeting my outcomes.

10. In the event that the care and support arrangements I have made break down, whether in an emergency or not, CYC will support me in the arrangement of alternative services.

11. I agree not to use my DP to purchase care and support services from a Family Member residing in the same household as me, without the express consent of CYC. Family Members can only be paid for administration costs related to the management of the direct payment where this has been specifically agreed.

12. I understand that where I am employing my own staff it is a requirement to have these staff checked by the Disclosure and Barring Service.

13. I understand that CYC may increase or decrease the amount of the

DP in line with my assessed needs. CYC will review my care and support needs and the amount of the DP within the first six months of the DP being made and then at intervals not exceeding twelve months. CYC will notify me of any changes made to the DP in writing.

14. I agree to provide CYC with monitoring information and/or receipts for expenditure as and when required. I will return any information requested within 14 days.

15. I understand that monitoring information will be used by CYC to reconcile the DP account in order to recover any overpaid or unused monies. Surplus money identified will be reclaimed directly from the Cashplus account. CYC will issue an invoice as notification of the amount to be reclaimed 14 days in advance.

16. Where the DP is provided as a regular payment. These payments will be made in advance every month starting on the date shown in the 'Details of Payments' section and then on the first of the month. I understand that the amount paid will be minus any assessed contribution.

17. I agree that I will pay my assessed contribution (if applicable) into my Cashplus account on a weekly or on a monthly basis. I understand that my contribution may change if my financial circumstances change, or my contribution is reassessed, and I will be notified of any change in writing. I agree to notify CYC if there is any change to my financial circumstances.

18. If I am unable to receive the service provided, for example if I am admitted to hospital, CYC may suspend the DP. However, CYC will carefully consider what contractual responsibilities I have when determining whether to suspend the payment. Reasonable notice will be given if payments are to be suspended.

19. Funds may accrue in the DP account; however at no time should these exceed the equivalent of 4 weeks DP, plus money to cover outstanding invoices or wages (including tax and NI), employees' holiday pay and insurance. In the event of my death, CYC will carefully consider what contractual responsibilities I have when determining the balance to be repaid.

20. I understand that if I employ my own staff that I must maintain records relating to the amount of redundancy pay I may have to pay in the event of my employees being made redundant. CYC will hold redundancy money in a separate fund: redundancy payments required will be paid upon request, supported by my records.

21. I agree that both CYC and I have the right to terminate this agreement by giving the other party four weeks notice in writing. In addition, in exceptional cases, CYC may decide to discontinue DPs without giving notice e.g. if an Authorised Person is not acting in my best interests. I have been advised of the exceptional circumstances in which this might occur.

## **DEFINITION OF TERMS USED**

**Assessment** - The assessment of the Recipient's needs under the Care Act 2014, Sections 31 to 33, Mental Health Act Section 117 (2C) and Care and Support (Direct Payments) Regulations 2014.

**Authorised Person** – Someone authorised under the Mental Capacity Act 2005 to make decisions about the adult's needs for care and support; or a person who CYC and a person who is authorised under the Mental Capacity Act 2005 agree is a suitable person to receive the DP; or, if there is no person authorised under the Mental Capacity Act 2005, a person who CYC considers is a suitable person to whom to make the DP.

**Cashplus Account** – The designated bank account 'lite' for use by the customer, an authorised or nominated person, into which payments will be made for the purpose of this agreement.

**Family Member** – Spouse or civil partner or a person living with the person in need of care and support as if spouse or civil partner, or the following people who live in the same household as the person requiring care and support: parent, parent-in-law, son or daughter, son-in-law or daughter-in-law, stepson or stepdaughter, brother or sister, aunt or uncle or grandparent, or the spouse or partner of any of these.

**Direct Payment (DP)** - The payments to be made by CYC to enable the Recipient to arrange care and support to meet their needs.

**Financial Assessment** – The annual assessment of your personal finances to determine how much you can afford to contribute towards the cost of your care.

**I** – refers to the customer, authorised or nominated person managing the direct payment on behalf of the customer.

**Nominated person** - Someone who agrees to manage a direct payment on behalf of the customer with care and support needs, with the customers' full agreement.

**Payment** - The sum of money which is determined by CYC as representative of the cost of meeting care and support needs at the date of the Agreement and as then revised from time to time either as part of the on-going processes of the Support Plan or as provided for in this Agreement.

**Support Plan** – The document agreed by CYC (CYC) and the Recipient following a Needs Assessment, which has identified those needs CYC have agreed to meet, and how they will be met