

1 June 2015**Agenda Item: 8****REPORT OF THE SERVICE DIRECTOR FOR ADULT SOCIAL CARE,
HEALTH AND PUBLIC PROTECTION****DIRECT PAYMENTS POLICY****Purpose of the Report**

1. To report back to Committee on the outcome of the consultation exercise on the proposed Direct Payments policy, as agreed at the Committee meeting on 5th January 2015.
2. To invite the Committee to comment on the proposed Direct Payments policy and recommend it to Policy Committee for approval.

Information and Advice**Context**

3. A report was brought to the Adult Social Care and Health Committee in January 2015, seeking approval for a proposed Council policy on Direct Payments. Committee decided that there should be a period of public consultation.
4. Direct Payments are monetary payments made by the Council to individuals who are eligible for social care and request to receive one to purchase their own care and support services. Direct Payments are the Government's preferred way of offering people personalised care and support, as they offer people high levels of flexibility, choice and control over the way in which their support needs are met. By March 2015, 45.2% of people in Nottinghamshire who use social care services and have a personal budget chose to take a Direct Payment to arrange to purchase all or some of their care.
5. Increasing the use of Direct Payments supports objectives within the Council's Strategic Plan and Adult Social Care Strategy: to promote independence and develop individual and community resources to prevent, delay and reduce the need for care and support. In working with people, the Council will always consider their needs, choice and preferences. The Council must however be able to demonstrate that the support is achieving the outcomes people need and offers value for money.
6. This proposed policy builds on previous guidance available and sets out how the council will interpret its duties and responsibilities in relation to Direct Payments within the Care Act 2014. For the benefit of staff and people using services it aims to set out clearly the Council's position and the different roles and responsibilities. The proposed policy is included at **Appendix 1**.

7. The consultation process sought the views of the people of Nottinghamshire, staff, providers and those receiving a Direct Payment on the proposed policy.
8. The recommendations in this report are informed by the recent consultation, as well as those made following the slightly earlier consultation undertaken on the increased use of pre-paid debit card, as part of budget savings proposals approved by Full Council on 26 February 2015.
9. As part of the process of developing the proposed policy, advice has been sought from Legal Services. The consultation period has given the Council time to listen to opinion and it has helped to identify some issues which, upon reflection, have prompted some recommended changes to the draft policy.

Consultation

10. The consultation exercise ran for a 4 week period from 13th April to 15th May 2015. The strategic commissioning team has worked closely with the Council's marketing and engagement team to develop and deliver an appropriate consultation process through:
 - Survey Monkey
 - social media such as Twitter
 - face to face meetings with service users, families and carers who have a direct payment
 - face to face meetings with social care staff
 - face to face meetings with accredited Direct Payment support service providers
 - mailing of the consultation documents and survey (with prepaid envelope) to a sample group of 40 service users known to have a direct payment
 - the provision of paper copies of the documents and survey (with prepaid envelope) to people on request
 - promotion of the consultation through key groups as listed in **Appendix 2**.
11. The consultation ensured a wide group of people had the opportunity to give their views on the policy including people known to receive a Direct Payment:
 - 142 responses to the Survey Monkey questionnaire were received, including 21 paper copies. There was a range of supporting comments received as part of this process
 - Representatives of 5 Direct Payment support service providers (representing the majority of the market share) attended meetings
 - 3 key operational staff members attended a meeting
 - 4 family members and carers of people with disabilities attended a meeting at Portland College in Ravenshead
 - 6 members of the Learning Disability and Autism Partnership Board Service User Forum attended a meeting.

Summary of Survey Monkey results

12. The survey asked respondents to state the extent to which they agreed or disagreed with nine statements, corresponding to the nine themes covered in the proposed policy. In relation to all statements a significant majority of respondents either agreed or strongly agreed with the Council's position as set out in the policy. Across all areas

more respondents agreed with the policy than disagreed.

13. The areas in which there was the most disagreement or a neutral response were in relation to the recouping of funds that have accrued in an individual's Direct Payment account and the use of pre-payment cards.
14. A summary of the responses to the Survey Monkey can be found at **Appendix 3**.
15. Respondents were also asked to comment on the nine policy areas. Some common themes included:
 - a) The importance of ensuring that people are properly supported to use direct payments, especially in relation to acting as an employer
 - b) In relation to the recouping of surplus funds held in bank accounts a more flexible and individualised approach to this
 - c) Mixed views about the requirement to carry out Disclosure and Barring Service (DBS) checks, divided between those who felt that it is an important safeguard for vulnerable people and those who felt it denies choice
 - d) Reservations on the part of some people about the use of pre-payment cards, balanced by a view amongst others that they are a valuable option
 - e) Concerns amongst some respondents that the policy on who can be employed is restrictive and limits legitimate choice, balanced by a view from others that the policy serves to protect people from potential abuse and difficulties resulting from not meeting employer responsibilities.

Meetings with Direct Payment Support Service Providers

16. The meetings provided an opportunity for Council officers and provider representatives to discuss the proposed policy and more general issues around the use of Direct Payments in Nottinghamshire. One provider also gave a more detailed written response. The main issues raised were as follows:
 - a) In relation to the recouping of surplus funds held in bank accounts, a more flexible and individualised approach to this was recommended, including work with individual service users to ensure that they understand the nature of any outstanding commitments before returning money. One provider took the view that a six week limit restricts choice and control
 - b) For some service users a pre-paid debit card is a very good way of managing the direct payment, but it is not the best option for everyone. A view was expressed that the Council's use of one provider of debit card services restricted choice in the marketplace
 - c) It is critically important that people choosing to become an employer are properly supported to understand and meet their responsibilities. The extent to which this is happening needs to be a part of the review process. It was suggested that an accreditation process should be extended to include providers who offer the employment related elements of a Direct Payment support service

- d) A view that the policy on employing people who also act in another capacity in relation to a service user's finances should be moderated to allow for this in some circumstances, subject to a risk assessment being carried out
- e) It was suggested that the Council's proposed process for seeking DBS checks may not be in line with current legislation and regulations in this area.
- f) A view was expressed that that the policy on using only accredited providers for third party managed accounts restricts choice and control.

Meeting with operational staff

- 17. A meeting with operational staff from a physical disability team, countywide reviewing team and the direct payments team within Adult Care Financial Services raised a number of key issues:
 - a) it would be helpful to develop the policy to incorporate some areas that are not currently addressed, particularly in relation to the recovery of money from service users in the event of misuse of funds
 - b) the implementation of some aspects of the policy places extra demands on front line staff, e.g. the completion of the HMRC tool to check employment status
 - c) the value of developing further staff guidance to help staff to implement the policy, e.g. in relation to criteria for awarding funding for administrative support from close family members.

Portland College Meeting

- 18. Attended by four family members/carers, the group raised a range of questions which offered discussion and clarification of the policy and how this might affect their family members' use of a Direct Payment. One question raised the issue of using bank accounts that do not attract interest. It was felt that this was a missed opportunity to put extra money back into services.
- 19. The group found the session helpful and had the opportunity to respond individually to the consultation via paper copies of the survey. The group felt similar discussion sessions would be good with the opportunity to ask questions

Learning Disability and Autism Partnership Board meeting

- 20. Attended by six service users, the overall response to the policy is that the group agreed or strongly agreed with the areas covered by the survey. The group acknowledged that the policy met the needs of the individual and the needs of the Council. The group commented that people and family members/carers taking a Direct Payment needed more information and advice on roles, responsibilities and what the Direct Payment is for.
- 21. The groups' response to the requirement of DBS checks was mixed, with some disagreement. In particular it was seen as a contradiction between law and policy and that it is wrong to stop a Direct Payment if a DBS check is not done.

Care Act

22. Through the consultation process issues have been raised which relate to the Council's interpretation of its duties and responsibilities under the Care Act. These include the degree of choice and control that the Council must provide in relation to different elements of service, including pre-paid debit cards and Direct Payment Support Services. An issue was also raised in relation to the requirement for all people employed by the Personal Assistant to be DBS checked, in terms of the proposed process to be used.
23. The Care Act came into force on 1st April 2015 and the interpretation of the statutory guidance has not been tested before the courts. In relation to the specific issue of Disclosure and Barring Service checking, the rationale for the proposed process is to ensure that the Council can balance freedom of choice with its own safeguarding responsibilities. The proposed process reflects current practice within Children's Services.
24. In these circumstances it is recommended that the risk of future challenge will be mitigated by continuing to seek advice and support from Legal Services as the policy, once approved, is implemented. The Council's offer in relation to direct payment will continue to develop on the basis of future legal clarification and case law.

Summary of proposed changes

25. The proposed policy is included at **Appendix 1**. As a result of the feedback received during the consultation it is suggested that changes be made to the proposed policy as follows:
 - a) Changes to paragraphs 6 and 6.1, relating to the recouping by the Council of any funds in an individual's Direct Payment account in excess of six weeks' worth of Direct Payment. This will be changed to state that the amount that an individual can accrue will be agreed and recorded as part of the support, planning and review processes, based on individual circumstances
 - b) Changes to paragraphs 11-11.7 in relation to the requirement for DBS checks for all people being employed as personal assistants to carry out regulated activity. This section will be changed to provide the discretion to waive the requirement in exceptional circumstances if and where it is determined that the individual service user is considered not to be at risk of financial or other forms of abuse
 - c) Changes to paragraph 7.2 in relation to the use of pre-payment cards. This will be changed to state that the use of the pre-paid debit cards is the Council's preferred option for managing a Direct Payment. This will better reflect the Care Act requirement that pre-paid cards should not be provided as the only option.

Reason/s for Recommendation/s

26. To provide a clear policy framework for Direct Payments in Nottinghamshire that promotes the safe and consistent use of Direct Payments and aligns with the priorities of the Council's Strategic Plan and Adult Social Care Strategy.

Statutory and Policy Implications

27. This report has been compiled after consideration of implications in respect of crime and disorder, finance, human resources, human rights, the NHS Constitution (Public Health only), the public sector equality duty, safeguarding of children and vulnerable adults, service users, sustainability and the environment and ways of working and where such implications are material they are described below. Appropriate consultation has been undertaken and advice sought on these issues as required.

Safeguarding of Children and Vulnerable Adults Implications

28. The policy requirement for Direct Payment recipients who intend to employ staff to support them to carry out Disclosure and Barring Service checks promotes the safeguarding of children and vulnerable adults.

RECOMMENDATION/S

That the Committee:

- a) comments on the proposed Direct Payments policy and recommends it to Policy Committee for approval
- b) agrees that the policy be kept under review and further developed in line with emerging legal and operational issues, subject to approval of the policy by Policy Committee.

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Constitutional Comments (SMG 21/05/15)

29. The proposals in this report fall within the remit of this Committee.

Financial Comments (KAS 12/05/15)

30. There are no financial implications contained within this report.

Background Papers and Published Documents

Except for previously published documents, which will be available elsewhere, the documents listed here will be available for inspection in accordance with Section 100D of the Local Government Act 1972.

Direct Payments Policy – report to Adult Social Care and Health Committee on 5 January 2015

County Council Strategic Plan 2014-18
Adult Social Care Strategy

Electoral Division(s) and Member(s) Affected

All.