

9th July 2018

Agenda Item: 7

REPORT OF THE SERVICE DIRECTOR, STRATEGIC COMMISSIONING, SAFEGUARDING AND ACCESS

DIRECT PAYMENTS POLICY REFRESH

Purpose of the Report

1. The report invites the Committee to recommend the proposed Direct Payments (DP) policy amendments to Policy Committee for approval.

Information

Background Information

2. In line with Adult Social Care Health guidelines, the attached DP Policy (**Appendix 1**) has been reviewed and revised to ensure that it remains compliant with The Care Act (2014) and the principles set out within the Adult Social Care Strategy. It has also been revised to accommodate the recommendations of the internal audit that took place in November 2017 which reviewed the direct payment financial auditing process.
3. The changes that have been made to the DP Policy are highlighted within the attached DP Policy.

Legal Duties

4. In addition to the changes recommended by Internal Audit, It has been confirmed by the Council's DBS Lead Counter-Signatory and Lead of the Safer Working Group that the role of a Personal Assistant (PA) would be deemed as 'involved in regulated activity'. This means that there is a statutory requirement for an Enhanced Disclosure and Barring Service (DBS) check to include the appropriate barred list check.
5. Clarification guidance received from the Council's Legal department is that a "Local Authority is entitled to ensure that the Service User makes appropriate checks as to the suitability of a carer before agreeing to provide a DP. This is supported by statutory guidance [The Care Act 2014; The Care and Support (Direct Payments) Regulations 2014; Care and Support Statutory Guidance] which highlights that in 'signing off' or agreeing a personal budget or personal health budget a local authority may add conditions such as a DBS check as part of its risk assessment of safeguarding in specific cases. The local authority may also require personal budget holders using Direct Payments to specify whom they are employing to the local authority."

6. The legal responsibility for undertaking the check lies with the service user, however the Council has a safeguarding responsibility to ensure any support arrangement set up is safe and that in any given circumstance, giving a person a DP is an appropriate way to meet that person's needs.
7. Nottinghamshire County Council is a registered body with DBS. The Council also acts as an "umbrella organisation", on behalf of those employers who are unable to deal directly with DBS due to the low volume of checks that they would submit. As an umbrella organisation the Council has the express consent of the individual being checked to view data relating to their DBS application. Any information disclosed as a result of a check can only be viewed through the applicant presenting their disclosure certificate.
8. If a DBS check reveals any convictions, the DP recipient will be required to carry out a risk assessment to determine the suitability of the applicant considering carefully whether it is safe and appropriate to employ the person as a PA. A Council Officer will be required to advise and assist with this process, which will involve the Council Officer having sight of the DBS certificate. This will require the permission of both the DP recipient and the prospective employee, in line with the DBS Code of Conduct. Consent is required in order for the Council to be meaningfully involved in the suitability decision, otherwise the Council cannot be confident that sufficient measures are being taken to safeguard the DP recipient from harm. In circumstances where consent is refused, the Council will take the view that a DP is not an appropriate way to meet the individual's care and support needs and the offer of a DP will be withdrawn.
9. The two newly recruited Direct Payment Quality Officers (DPQOs) will be utilised to perform the ID verification and Right to Work checks with the support of the Authority's counter signatories within the Business Support Centre.
10. Currently, dependent on which Direct Payment Support Service (DPSS) is being used, between £66 and £75 per PA is automatically allocated to a DP recipient's support plan to cover the costs the DPSS charges to undertake each DBS check.
11. In contrast, when DBS checks are completed by the Council, it costs £51.50 per DBS check. By bringing the DBS process in-house, this would realise a saving of between £14.50 and £23.50 per DBS processed on a three year recurrent cycle.

Cost implication of proposal:

DBS checks for all new and existing to be undertaken in - house:

12. Projections based on 2017/18 figures of 655 New DPs commencing and 50% of these being PA Packages there will be approximately 328 new PAs employed each year. This would cost the Council £16,892 a year in DBS checks. This equates to an annual saving of between £4,756 and £7,708 when compared to the cost of DPSS' completing the DBS checks.
13. Undertaking DBS checks for all existing PAs would lead to an additional cost of £61,800. (This is based on research undertaken by the Council in 2016 reviewing the PA sector in Nottinghamshire, which identified that around 1,200 PAs were employed using DPs). The total cost to the Council to complete DBS checks in-house would

therefore be a minimum of £78,692 in year 1. This compares favourably to the cost of DPSS currently completing the checks, releasing an annual saving of between £22,156 and £35,908. In year 2 and year 3 the cost of completing DBS checks for new PAs (**paragraph 12**) would reoccur to reflect the new PAs entering the market in those years.

14. Due to DBS checks only being valid for up to 3 years, from year 4 onwards, there would be the additional annual costs associated with repeating DBS checks on the PAs initially checked three years earlier, as well as the costs of checking the new PAs that enter the market during year 4 and every consequent year onwards.

Recommendation:

15. It is recommended that DBS checks are brought in-house so that the Council can be meaningfully involved in suitability decisions based on any positive DBS disclosures. This would be the case for both established and newly employed PAs.
16. There would be a short term pressure on staff resource to process the DBS applications for established and new PAs, but this could be minimised by temporarily running appointment based 'DBS clinics' from local offices around the County.
17. There are still the same associated risks as per the original DP policy agreed at Committee in January 2015 in that existing service users and PAs may be resistant to undergoing a DBS check which could lead to the breakdown of packages of care that are currently working and result in more expensive packages being required.
18. Where a close family relative is being used as the PA, there is no legal entitlement to undertake any DBS check as laid down in Section 58 of the Safeguarding Vulnerable Groups Act 2006.
19. By rolling out the DBS process to all new and existing PAs, it will mean that there is parity across all means of accessing support. It will ensure that all support staff, will have had an enhanced DBS check regardless of whether they are working for an agency or directly employed by a service user.

Roll out of the revised DP Policy

20. With the exception of the pending decision regarding the implementation of DBS checks, there are no material changes to the structure of the refreshed policy. It is therefore envisaged that it will be sufficient to develop digital mechanisms to raise awareness of the changes amongst frontline staff in collaboration with colleagues in the Communications Team. Articles will be published in 'Team Talk'; the 'Transformation' weekly email for Adult Social Care and Health staff; and in the News section of the intranet to ensure all staff are made aware of the amendments to the DP Policy. In addition to these communications, the DPQOs within the Strategic Commissioning team will advise colleagues of the DP policy updates as part of their core support function when attending front line team meetings.
21. Following guidance from Legal Services, the Council has undertaken a public consultation on the Council offering their DBS checking services as an "Umbrella Organisation". This involved an online survey and six face to face focus groups across the County. From the feedback only 15 out of 97 respondents (15.5%)

disagreed or strongly disagreed to the proposal. The key points of concern raised through the feedback were that service users wanted on the option to choose whether they used the Council or an alternative agency to complete DBS checks on their behalf. Some service users wanted assurance that they would be involved in the suitability decision for PAs and felt they should have the final say as they are the employer. Other feedback was that if their PA already has a DBS check in place and this can be evidenced, they should not need another one as this would be a waste of money. The feedback has been incorporated into Section G of the policy document (**Appendix 1**).

Other Options Considered

22. The alternative would be to not revise the policy and for the ACFS revisions to sit outside the DP policy. However, to take this option would result in the Council not being compliant with Internal Audit recommendations.
23. Additionally the DBS checks could remain with the DPSS, but this would be at an increased cost and a loss of market management and market shaping opportunities. For the Council not to be requesting the DBS check there will be no guarantee that a DBS check is undertaken which is a statutory requirement due to the PA role involving regulated activity. It would also mean that the Council would not be able to be involved in the suitability decisions due to not having consent to access the PA DBS information.
24. DBS Checks for all new and existing PAs to be brought in-house, but where an individual does not wish the Council to be the “Umbrella Organisation” money will be made available for a DBS Check to be undertaken by an accredited DPSS on their behalf. This would be more expensive for the Council and would cost between £14.50 and £23.50 more than being undertaken in-house. It would also mean that the Council would be unable to access the DBS certificate information so would not be able to be involved in the suitability decision process, and therefore could not guarantee that the support arrangement meets the Council's safeguarding requirements.

Reason/s for Recommendation/s

25. The DP Policy has been refreshed to embed the recommendations from the recent internal audit that was undertaken in August 2017. The audit recommendations advised that the DP audit process become more stringent and include escalation processes with clearer worker roles and responsibilities for when ACFS have identified where an individual is not complying with the terms within the DP agreement. The improvements are now reflected in the process maps and within the main body of the DP Policy. The changes make the end to end auditing process clearer to follow and provides clearer direction on how potential breaches of the DP agreement will be escalated, including how the Council will recover funds that have been inappropriately spent.
26. By implementing the policy for all new and existing DP recipients employing a PA to have an Enhanced DBS and barred list check carried out in-house by the Council, this will increase the safeguarding protections it offers to DP recipients.
27. The Care Act 2014 does delegate the employment responsibilities to the service user, but the Council retains its responsibilities for safeguarding individuals who

access support and for determining whether a DP is an appropriate way to meet an individual's care and support needs.

28. It is important for the Council to be involved in the decision making around a PA's suitability in cases where the DBS check has revealed positive information. The Council taking on the role of requesting and administering the checks is the only practical and meaningful way to achieve this.
29. The DBS being requested in-house is more cost effective than the current model that delegates the function to external DPSSs. It will also help the Council to better understand the PA workforce and carry out its wider market management role.

Statutory and Policy Implications

30. This report has been compiled after consideration of implications in respect of crime and disorder, data protection and information governance, finance, human resources, human rights, the NHS Constitution (public health services), the public sector equality duty, safeguarding of children and adults at risk, service users, smarter working, sustainability and the environment and where such implications are material they are described below. Appropriate consultation has been undertaken and advice sought on these issues as required.

Financial Implications

31. The adoption of a more rigorous DP ACFS audit process is likely to result in more DP funding being recouped.
32. New DBS checks will cost £51.50 per PA, but this will be offset against the savings generated by avoiding the higher cost of using a DPSS as the alternative. The cost associated with bringing the DBS checking process in-house for all 2,184 PAs is projected to be £112,476 every three years. (1,200 existing PAs and three years' worth of newly recruited PAs averaging 328 per year). This funding is currently in the individual DP allocation and if not used is clawed back as a recoup.
33. The administration of the DBS checks will be completed using existing staff resource from within the Strategic Commissioning Team and the Business Hub and Recruitment Team.

Human Resources Implications

34. Whilst this report does not impact on direct NCC employees, in seeking to safeguard service users advice has been taken from relevant HR managers with regard to recruitment and safer working.

Safeguarding of Children and Adults at Risk Implications

35. The policy requirement for DP recipients to carry out DBS checks on individuals the DP recipient intends to employ to support them promotes the safeguarding of children and vulnerable adults.

Implications for Service Users

36. A more stringent ACFS auditing process may uncover misuse of DP funds. In some instances, this may lead to a decision to move the DP recipient onto a Managed Service as a more suitable mechanism for meeting their support needs.

RECOMMENDATION/S

- 1) That the Committee recommends the proposed changes to the DP Policy, attached as **Appendix 1**, to Policy Committee for approval.

Paul Johnson

Service Director, Strategic Commissioning, Safeguarding and Access

For any enquiries about this report please contact:

Laura Chambers

Strategic Commissioning Manager

T: 0115 993 2563

E: Laura.chambers@nottsgov.uk

Constitutional Comments (LM 13/06/18)

37. The Adult Social Care and Public Health Committee is the appropriate body to consider the contents of the report.

Financial Comments (KAS 25/06/18)

38. The financial implications are contained within paragraphs 31 - 33 of the 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

Electoral Division(s) and Member(s) Affected

All.

ASCPH540 final