

26 September 2018**Agenda Item: 7****REPORT OF SERVICE DIRECTOR, STRATEGIC COMMISSIONING, ADULT
ACCESS AND SAFEGUARDING****DIRECT PAYMENT MISUSE, FRAUD AND DEPRIVATION OF ASSETS****Purpose of the Report**

1. The report provides an update on the work being undertaken to minimise misuse of Direct Payment monies including fraudulent misuse.
2. The report also provides information about instances where it is evident that there has been an intentional 'deprivation of assets' in order to reduce the amount a person has to contribute toward their care and support costs.

Information

3. The Council's total expenditure on Direct Payments during 2017/18 net of contributions was £24,515,640.91.
4. In line with the Council's financial regulations and statutory duties the Adult Care Financial Services Department (ACFS) have a proactive approach and has in place rigorous measures to ensure that the misuse of Direct Payments is minimised wherever possible. As one of the leading performers nationally in the proportion of people that have a Direct Payment to pay for their care and support needs, the systems and processes for monitoring are unique to the Council as guidance was not given to local authorities when Direct Payments commenced.
5. An Internal Audit in November 2017 looked at the policies and procedures for monitoring and auditing the use of Direct Payments, including the response to suspected misuse and the recovery of excess balances. Progress towards implementing the recommendations and agreed actions of the Report are detailed in point 6.

6.

Internal Audit Report – November 2017

Action Description	Update on progress
Nominated or authorised account holders - propose a change in policy and update policy, agreement, factsheets, and guidance for both clients and staff	<p>The Direct Payments Policy was updated and approved by Policy Committee in July 2018. The process for Nominated or Authorised account holders is clearly defined.</p> <p>The Direct Payment Agreement was updated in May 2018</p> <p>Staff Guidance was updated in January 2018 and flowcharts have been rolled out for staff to follow to ensure compliance with the following procedures Chart A – Direct Payments Auditing – ACFS roles and responsibilities Chart B – actions and outcomes Chart C – ACFS escalation process for non-compliance Chart D – Social Work team review following non-return of bank statement (see Appendix A) Factsheets have been updated and are under constant review.</p>
Escalation procedure - design and implement an escalation process to cover all areas of non-compliance. Seek approval for and appoint a senior auditor to apply the procedure.	<p>The Escalation Procedure is included in the new Policy and is described in Chart C.(See appendix A)</p> <p>The ACFS Team Manager is working on a Committee Report for additional staffing requirements for ACFS. The Senior Auditor post is included in this Report which is due to go to ASCH Committee on 10th December 2018.</p>
Repeat recoups - allocate additional resources to monitor follow-up actions to ensure more accurate costing of DP budgets. Implement DP calculator.	There are 2 Quality Development Officers based within the strategic commissioning team that undertaking work to monitor budgets and also the roll out of the DP Calculator which will ensure the accurate allocation of funds to recipients.
Recoupment of funds - update procedures to ensure formal invoices are issued if the issue of initial letters does not result in the return of funds or satisfactory explanations	Process is described in the new Policy.
Recoupment of funds - continue to look for solutions to resolve unmatched credits	We have rolled out an on-line form with debit card link to return money. The form allows the Service User to input more information to enable ACFS to match the transferred amount to the correct client.

Direct Payment Misuse and Fraud

7. The following measures are in place to ensure that incidences of fraud and misuse of Direct Payment funding is minimised:

- The Direct Payments policy is explicitly clear about the misuse of funds and recipients of Direct Payments are advised that they will be asked to move to prepayment cards or have their Direct Payment stopped should there be any deliberate misuse. Where this happens an alternative 'managed' service would be provided to ensure that assessed needs are still being met. A managed service is one that the Council arranges, for example a support service by an independent sector Home Care provider.
- The policy also includes the facility to be able to invoice service users for the full amount of the Direct Payment if they refuse to provide evidence of spend.
- Ensuring that the level of direct payment is correct using the Direct Payment calculator. This helps staff have a better understanding of how much is needed to cover national insurance and other costs related to employing Personal Assistants (PA's) for example. Ensuring that funds do not build up in an account helps reduce the risk of misuse.
- The use of prepaid cards is actively encouraged as the default method of receiving a direct payment which makes auditing easier and more transparent as NCC has immediate access to the account records rather than having to wait for service users to send in bank statements.
- Proactive auditing of Direct Payment accounts by a dedicated resource has meant that misuse is identified at an earlier stage, reducing the level of risk further of loss of funds to the Council.
- If as a result of an audit, it is identified that there has been a misuse of Direct Payment funding or the service user has failed to pay their contribution towards their care costs, an invoice for repayment is issued. If payment is not received in a timely manner, the usual debt recovery process is followed. This only happens after there has been dialogue with the recipient to ensure that a genuine mistake hasn't been made.

Invoices Raised

8. The following table shows the invoices that have been raised in the past 4 financial years.

2015-16	Amount	No invoices
Misuse	£11,622.61	5
Contribution	£8,235.62	2

2016-17	Amount	No invoices
Misuse	£72,584.84	10
Contribution	£28,387.99	7

2017-18	Amount	No invoices
Misuse	£129,230.31	18
Contribution	£12,468.68	5

2018-19	Amount	No invoices
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Misuse	£20,712.36	7
Contribution	£19,901.59	4

9. Of the invoices raised in 2017/18 totalling £141,696.99, £64,793.45 has been recovered to date and work is continuing to recover the outstanding amount.

Fraud Cases

10. The following information shows the number of cases where fraud has been identified; for example;

- 2016-17 – 3 cases
- 2017-18 – 4 cases
- 2018-19 – April to July - 1 case

11. 3 cases have been referred to Action Fraud and police investigations are ongoing. Action Fraud is the UK's national reporting centre for fraud and cybercrime. The service is run by the City of London Police working alongside the National Intelligence Bureau.

12. Officers from Internal Audit have developed relationships with Nottinghamshire Police and now hold regular liaison meetings with local contacts to share knowledge and review progress on investigations. This has provided a local route to seek advice in relation to the development of investigations in addition to referrals being reported to Action Fraud. These discussions have included the opportunity to develop referral route maps for direct payment and deprivation of asset referrals. This is an area that Internal Audit will continue to develop with Nottinghamshire Police.

13. An example of how the Council support the Cyber Fraud Unit with an investigation is that of an elderly service user funded in a care home by the Council at the rate of £607 per week. The resident's son has Lasting Power of Attorney for Property and Affairs. On the basis of a financial assessment form completed by the son the resident contributes £287.88 per week towards the care costs. Initial police enquiries have potentially revealed substantial monies held by the resident which have not been disclosed on the financial assessment form. The Council would provide a statement as a part of the prosecution of the individual.

Deprivation of Assets

14. Deprivation of assets is defined in the Care Act 2014 as follows:

Deprivation of assets means where a person has intentionally deprived or decreased their overall assets in order to reduce the amount they are charged towards their care. This means that they must have known that they needed care and support and have reduced their assets in order to reduce the contribution they are asked to make towards the cost of that care and support.

15. Nottinghamshire has always taken a proactive approach in dealing with deliberate deprivation cases and this is fully embedded in the procedures undertaken by Adult Care Financial Services (ACFS).

16. In 2017-18 there were 130 cases where intentional deprivation has been concluded and 15 cases have been identified so far in the current financial year
17. For 2017-18 ACFS identified £5.67 million in capital which has been categorised as 'deprivation of assets'. The inclusion of notional capital in cases where deprivation had been identified enabled the Council to invoice an additional £192,000 of charges.
18. There have been 2 cases investigated by the Local Government and Social Care Ombudsmen (LGO) where the Council has concluded deprivation and included notional capital in the financial assessment. In both cases the LGO found no fault in the Council's decision. (LGO Complaint references 17 012 327 and 16 013 301)

Statutory and Policy Implications

19. 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.

Data Protection and Information Governance

This report is produced in accordance with the General Data Protection Regulation Guidelines

Financial Implications

Any monies that are lost to fraudulent activity is money that cannot be spent on the delivery of essential services for Nottinghamshire residents.

Human Resources Implications

There are no human resource implications as a result of this report. All staff are aware that there is a zero tolerance approach to fraudulent activity.

Safeguarding of Children and Adults at Risk Implications

There are robust safeguarding procedures in place for adults at risk of all types of abuse which includes financial abuse.

Implications for Service Users

The diligent use of public funds ensures that the Council maximises the use of its budgets.

RECOMMENDATION/S

- 1) The report provides information about work undertaken within the council regarding the misuse of Direct Payment monies, fraud and deprivation of assets.

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For any enquiries about this report please contact:
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Constitutional Comments ([initials and date xx/xx/xx])

20.

Financial Comments ([initials and date xx/xx/xx])

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HR Comments ([initials and date xx/xx/xx])

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