

TRAFFORD COUNCIL

Report to: Executive
Date: 27 July 2015
Report for: Decision
Report of: Executive Member for Adult Social Services and Community Wellbeing

Report Title

A review on how Personal Budgets made via a Direct Payment should be paid

Summary

A Direct Payment is one of the ways in which a client's Personal Budget can be made. The Council currently pays Direct Payments gross which means the payment is made in full to the service user and the Council then bills the client for their assessed contribution towards the cost of care.

The Care Act 2014 guidance recommends local authorities who operate systems of providing gross direct payments can consider moving to net payments. The Council is considering moving to net payments in order to reduce confusion for clients, reduce unnecessary transactions, processes and costs for both the authority and the person receiving the Direct Payment.

The Council has therefore consulted with service users, partners and stakeholders proposing that Direct Payments should change to be paid net of any client contribution.

Recommendation(s)

That the Executive:

- 1) Note the contents of the report
- 2) To move from paying Direct Payments gross to net with immediate effect for all new and full cost clients and to migrate all other existing clients by no later than 31 October 2015.
- 3) That a prepayment card is provided for all Direct Payment clients unless there are exceptional circumstances which will be considered on a case by case basis.

Contact person for access to background papers and further information:

Name: Louise Shaw/Dianne Baker
Extension: 3120/2057

Background Papers: Equality Impact Assessment; Questionnaire Responses

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|---|--|
| Relationship to Policy Framework/Corporate Priorities | Improving health and wellbeing of residents Value for money and low Council Tax |
| Financial | The financial implications are set out in this report |
| Legal Implications: | The proposed change is fully compliant with the legislation. |
| Equality/Diversity Implications | These proposals have been considered in the context of our public sector equality duty and a EIA has been developed. |
| Sustainability Implications | N/A |
| Resource Implications e.g. Staffing / ICT / Assets | These proposals will require an increase in staffing levels, 1 temporary and 1 permanent, the staffing costs will be less than the administration costs currently incurred paying gross. |
| Risk Management Implications | The risk management implications are set out in this report |
| Health & Wellbeing Implications | Changes to the Direct Payment methodology may impact on client's health and wellbeing as change can cause stress, consultation workshops have taken place with service users to mitigate this and provide support. |
| Health and Safety Implications | N/A |

Key Decision Yes
If Key Decision, has 28-day notice been given? Yes

Finance Officer Clearance ID
Legal Officer Clearance HAK

CORPORATE DIRECTOR'S SIGNATURE (*electronic*)



To confirm that the Financial and Legal Implications have been considered and the Executive Member has cleared the report.

1.0 Introduction

- 1.1 A Direct Payment is one of the ways in which a client's Personal Budget can be made. It supports clients to have choice, flexibility and control of their care. Adults deemed eligible by Trafford Council (hereby referred to as the 'Council'), legally have to be financially assessed to determine what, if any, contribution they have to make towards their package of care.
- 1.2 The Council currently pays its Direct Payments gross which means the payment is made in full to the client and the Council then bills separately for the client contribution amount every 4 weeks.
- 1.3. The Council is proposing to amend the way in which it pays Direct Payments, to net of the contribution that the client has to pay. This will mean that clients will have to ensure they pay into their Direct Payment account their client contributions in a timely manner to ensure sufficient funds to pay for care.
- 1.4 The client's contribution is calculated by carrying out a financial assessment. The contribution a customer is required to pay towards their care is dependent on the value of their budget/support and their ability to pay.

2.0 Direct Payments

- 2.1 Direct Payments are payments available for anyone who has been assessed as eligible requiring help from Social Services under the Care Act 2014.
- 2.2 Direct Payments can be used to buy services from an organisation or to employ somebody to provide assistance. A Direct Payment can be used to purchase the services clients are assessed as needing to support their care, thereby providing clients with much more choice than a traditional package of care.
- 2.3 At the time of writing this report, there are 584 clients receiving a Direct Payment. Less than 50% (284) of these have been financial assessed to contribute to their package of charge, with 300 assessed as not requiring to contribute to pay due to their low level of income. Very few of these clients manage their own Direct Payment funds; in most cases a family member does this for free acting as the 'suitable person'. The suitable person does not necessarily manage a client's personal finances. All clients, or their suitable person, have to sign a Direct Personal Budget agreement which sets out their roles and responsibilities.
- 2.4 Just under one third of clients have Accountant Administered Accounts or Fully Managed Accounts. An Administrated Accountant works for the suitable person, not for the Council, and handles the funding/Payroll as well as providing budgetary performance advice if required. Managed Accounts are required where a client has the capacity to choose the way in which their care needs are met, but they lack the capacity to manage the service and have no alternative suitable person to manage their Direct Payment. The Managed services administrate the funds/payroll/employ staff/hold the contract between Domiciliary Care agencies and the client plus visit the clients to monitor the services. The difference in the service provided is reflected in the cost; Administered Accounts cost £250-300 per annum and the Managed Accountancy Service cost £520-624 per annum.

- 2.5 The Council currently pays clients the gross amount of their allocated budget and, if the financial assessment determines a client contribution is to be made, an invoice is issued separately requesting payment of the client contribution.
- 2.6 The weekly gross spend on Direct Payments is c£135k and the weekly debt raised for client contributions is c£12k.
- 2.7 The current level of client contribution debt owed to the Council for clients receiving a Direct Payment is c£305k. Debt that is not recovered in a timely manner is pursued in accordance with the Council's Debt Management and Recovery policy.
- 2.8 The most efficient and effective way for a Direct Payment to be financially monitored is via a Pre-Payment Card.

3.0 Pre-Payment Cards

- 3.1 Each client is required to hold a separate Direct Payment bank account. A Pre-Payment card is one of the methods in which a client can receive their Direct Payment. Of the 584 existing clients, 44% have a Pre-Payment card. It looks like a credit/debit card and the Council authorises people to use them. The agreed Direct Payment fund is loaded onto the card by the Council and the client pays providers from the card, which has telephone banking and internet banking facilities attached to it.
- 3.2 The Council is able to view transactions made from each card instantly and recall funds if necessary. This has reduced the amount of paperwork and documentation that clients are required to send as part of the audit process. It is a simple process to make payments and monitor Direct Payment spend.
- 3.3 Pre-Payment cards are not the compulsory method of delivery, however they are the preferred option for delivering the Direct Payment to ensure a clear and precise audit can be completed as and when required.
- 3.4 There is a cost to the Council of providing a Pre-Payment. Each card costs £15.00 per annum and there are transaction fees per payment of 35p. Generally users are making 3 or 4 transactions per month resulting in an overall cost of c£8000 per year
- 3.5 All new clients are encouraged to operate their Direct Payment via a Pre-Payment card. The main reasons given for existing clients not wanting to migrate to this method is a fear of change, access to the internet and/or lack of confidence in using computers to manage the fund. There are a small number of reasons why the Council would not want to offer a Pre-Payment card to an individual client but that decision is taken on a case by case basis.
- 3.6 The Council would like to move to a position where Pre-Payment cards are the main delivery method for all Direct Payment clients, with exceptions such as no internet access or lack of basic IT skills being considered on a case by case basis.

4.0 Legal Implications

- 4.1 The Care Act 2014 guidance says; it is ultimately for authorities to decide whether payments are made on a gross or net basis in consultation with appropriate stakeholders. It has set recommendations for Local Authorities (who pay contributions gross) to review the process and explore the benefits of moving to net payments to reduce unnecessary transactions for the clients and authority.
- 4.2 If the decision is taken to make Direct Payments net of the client contribution, the existing Direct Payment agreement will need to be amended to include the service user's (or their suitable person's) duty to ensure their contribution is paid in to their account within the pre-determined timelines in order to cover the costs of their care. The agreement also needs to be amended to reflect that services cannot be reduced to accommodate the shortfall as it would change the assessed need and incur changes under Employment Law for the personal assistants such as potential TUPE issues. This will be addressed in the implementation plans if the proposal is agreed.
- 4.3 Furthermore, they have the legal responsibility of being an employer, which they currently have now, but if they do not pay into their Direct Payment account or on to their Pre-Payment Card the contribution they have been financially assessed to pay there will not be sufficient funds to pay their employees.
- 4.4 If there are not sufficient funds due to client contributions not being paid, the Council will need to consider suspending the Direct Payment and transferring the individual to a commissioned service. This is already considered now if a client is not paying their client contribution as it raises concerns about why the client or their suitable person is not managing the Direct Payment responsibilities effectively. Any implications to the client's personal assistant will need to be carefully considered. Advice will be sought from Legal Services on a case by case basis.

5.0 Financial Implications

- 5.1 In order to ensure sufficient monitoring of client contributions being paid and to manage expectations, the Direct Payment audit staffing numbers will increase by 1 full time equivalent. This will cost just over £25k per year and will be reviewed after the first year of implementation.
- 5.2 On a short term basis, there will also be an extra resource requirement at Business Support Officer level to manage the new Direct Payment agreement signing process. This will cost just under £12k and will be a one-off cost.
- 5.3 If the Pre-Payment cards become the main delivery method this will increase costs to the Council as referred to in point 3.4.
- 5.4 The Council, however, will create efficiencies in relation to the removal of the 4 weekly billing run for client contributions and the debt management and recovery processes. The latter will only be fully realised once all the relevant historical debt has reached the end of the recovery cycle.
- 5.5 The overall financial position for the Council, taking in to account the information above, would be neutral running costs but importantly, no longer accruing this type of client contribution debt. Mainly as a result of reduced administration costs in relation to the removal of paperwork required to support the auditing of the spend, the early identification of contributions not being paid being identified in real time via the Pre-

Payment card functionality, the recovery of underspends directly and the removal of the debt recovery and management for contributions unpaid.

6.0 Public consultation

6.1 It was important for the Council to ensure all current Direct Payment service users and/or their suitable person, were not only aware of the consultation but also had the opportunity to have a face-to-face discussion with Council officers who would be available to answer any questions in relation to the proposal. The public consultation process, therefore, used a variety of engagement methods to ensure that clients and partner agencies were able to participate. These included:

- a letter was sent to all clients to ensure they were aware of the consultation exercise being undertaken and how they could participate;
- An online questionnaire which could be found via the Council's consultation webpages (35 responses);
- This was mirrored with a paper document which was provided on request (3 responses);
- There were 3 consultation workshops, 2 were held at Trafford Town Hall and 1 was held at Sale Waterside. All service users, or their suitable person, were sent a personal invite to attend one of these events. They were also given a direct contact number to one of the officers attending the event who was available leading up to the event to answer any queries and concerns. Providers and interested parties were also personally invited, these included the Citizen's Advice Bureau, Age Concern, Carers Centre as well as accountancy providers; this list is not exhaustive. The workshops were held on 3 separate occasions on different days at different times to ensure that all were able to attend. Over the 3 sessions, 49 people attended.
- Overall, during the consultation, 88 responses were received, which is 31% of clients who will be affected by the change;
 - Online responses 35
 - Paper Surveys 3
 - Workshop attendance 49
 - Letters 1

7.0 Consultation feedback

7.1 The consultation respondents were asked to complete a questionnaire to indicate their level of agreement with the proposal whilst still being able to suggest alternatives. The following paragraphs include general consultation responses; a full detailed version including the comments made against each question have been made available to members of the Executive who will be deciding whether or not to support the proposals contained within the report:

| Questionnaire Questions | Responses |
|---|--|
| <p>1. Do you believe this change will cause any issues or problems?</p> | <p>Yes – 34% No – 26% Not sure – 40%</p> |
| <p>2. Do you understand that this proposed change affects how you contribute to your Direct Payment and not a reduction in your care package, providing you pay your client contribution?</p> | <p>Yes – 82% No – 9% Not sure – 9%</p> |
| <p>3. Clients, or their suitable person, who are in receipt of a Direct Payment and employ personal assistants (PAs) have responsibilities and legal requirements as an employer. If the Council were to adopt this change, what steps could they make to ensure the customer, or their suitable person, is fully aware of the impact that not paying their weekly contribution on time could have</p> | <p>The majority of suggestions focused on the importance of the service user and/or the suitable person being made of aware of their responsibilities as an employer at the beginning of the process, with an explanation or example of none payment.</p> <p>Yes – 75% No – 0% Not Sure – 25%</p> |
| <p>4. Direct Payments give clients control over their care arrangements and support needs. Do you think the introduction of paying net the Direct Payment would impact on this level of control?</p> | <p>Yes – 26% No – 42% Not sure – 32%</p> |
| <p>5. If the proposal was implemented and a client was not paying their client contribution, what support do you think the Council should have in place to ensure a smooth transition potentially from a Direct Payment</p> | <p>The transition from a Direct Payment to a commissioned based service comments were to ensure the suitable person and/or service user is made aware of the implications of not paying the contribution. Comments were also made to look at finding out the root cause for non-payments and signposting to other services for debt advice where</p> |

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| <p>to a Commissioned based service takes place</p> | <p>possible.</p> <p>Fully met – 77% Partially met – 10% Not at all – 13%</p> |
| <p>6. The Council will continue to audit Direct Payments accounts and the weekly contribution. If the audit identifies that contributions are not being paid in to the account how can the Council engage with clients to address this issue?</p> | <p>General feedback received, main comments were to ensure the Council contact clients and provide information in a format that they can understand.</p> |
| <p>7. The most efficient and effective way for a Direct Payment to be financially monitored is via a Pre-Paid card. The Council proposes that Pre-Paid cards should be compulsory if net payments are to be introduced as this will allow them to quickly identify where the client contributions are being paid. Do you see any issues with making Pre-Paid cards compulsory?</p> | <p>Yes – 33% No – 46% Not sure – 21%</p> |
| <p>8. If the Council were to introduce net Direct Payments would this discourage you from having your care delivered in this way?</p> | <p>Yes – 16% No – 54% Not sure – 30%</p> |
| <p>9. Are there any other comments on the Direct Payment method changes that you would like to make?</p> | <p>General feedback received, main comments were supportive of the change although there was a concern around the implementation strategy and ensuring changes are communicated in a simple way.</p> |

7.2 The majority of respondents understood the benefits of the proposed change and believe the change would be a sensible option to define a clear process for payments. It will also save time not only for the Council but for the service user/suitable person.

However, concerns were raised that certain people might have difficulty in using technology to access the pre-payment card.

- 7.4 In order to mitigate the concerns raised during the consultation period, if approval is received, an implementation strategy will be devised which will address the issues and will include the following:
- Frequently Asked Questions (FAQs) raised throughout the consultation period have been collated and would be sent to all service users or their suitable person as well as providers and stakeholders. Workshop attendees were keen for this to be issued in paper format as well as be made available on the internet;
 - Face-to-face workshops focused on what the changes mean in terms of what clients or their suitable person, have to do differently to what they do now
 - Training sessions on Pre-Payment Cards, where clients or their suitable person will be able to use the on-line system in a test environment to give them the skills and confidence to select this option for service delivery
 - A migration strategy for existing service users who have a contribution to pay which will ensure the client contribution due is only required in one 4 weekly period

8.0 Risk Management

- 8.1 There is a risk that the service user/suitable person will not pay their client contribution which will mean only the net Direct Payment will be in the dedicated bank account or on the Pre-Payment Card which will not be sufficient to cover care costs.
- 8.2 In some cases there may be not be a like for like commissioned service to switch the client to if they did not pay their contribution.
- 8.3 225 service users have mixed packages that include commissioned and Direct Payment services. There is no system available to apportion income across mixed services.
- 8.4 Client contribution amounts are currently billed for in arrears, based on Direct Payments made 8 weeks prior. If the migration to net payments takes place service users could find that they have the current contribution to pay as well as a bill in relation to the previous
- 8.5 The Council can mitigate these risks as follows:
- 8.5.1 Clients, or their suitable person, sign a Direct Payment legally binding contract which states that they have to pay their client contribution and this would be relevant whether paying gross or net.
- 8.5.2 All clients receive training on how to manage their Direct Payment which includes the fact they have to pay their contribution
- 8.5.3 The increase in Direct Payment audit resource will allow the Council to closely monitor clients to identify at the earliest opportunity if client contributions are not being made.

- 8.5.4 The increase in Pre-Payment cards will allow the above to be audited in real time as Council staff have online access to the Pre-Payment card activity and balance.
- 8.5.5 The Council will devise an implementation strategy that is fit for purpose and will include the issue of the cross over strategy in terms of billing in arrears and the mixed packages of care.
- 8.5.6 All clients will still receive the same level of support in terms of setting up their Direct Payment.

9.0 The Public Sector Equality Duty

- 9.1 Under the Equality Act 2010 a public authority in the exercise of its functions must have due regard to the need to eliminate discrimination, harassment, victimisation and any relevant prohibited conduct, advance equality of opportunity between persons sharing a relevant prohibited characteristic and persons who do not; and foster good relations between persons sharing a relevant prohibited characteristic and persons who do not.
- 9.2 Protected characteristics for the purpose of the Act are disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 9.3 In order to assist the evaluation of the proposals and to ensure the Council paid due regard to its duties under the Equality Act, an Equality Impact Assessment (EIA) was carried out to ensure that consideration was given to those with the protected characteristics and the likely impact of the proposals on each of these groups.
- 9.4 The EIAs were available to officers evaluating the consultation responses and are available to members of the Executive who will be deciding whether or not to support the proposals contained within the report. Any potential impacts have been identified through the EIA and consultation process. Where any potential impact has been identified consideration has been given to whether measures can be taken to mitigate against these impacts and the mitigation measures are set out within the body of the relevant EIA or are reflected in modifications to the proposals.
- 9.5 In considering the report and deciding whether to accept the recommendations the Executive is required to have regard to the Public Sector Equality Duty. In order to satisfy this duty the Executive must consider the potential impacts identified in the EIA's and the consultation responses. Where reasonable and appropriate mitigation measures have been proposed which will offset either wholly or in part the impacts identified.

10.0 Other Options

The Council could continue to pay the client contribution gross but the current level of confusion and the administrative burden for both the client and the Council would remain. Paying Direct Payments net simplifies the charging process; some clients currently receive a gross Direct Payment but then as they have been financially assessed as having to pay the full cost of their care, are invoiced for this amount 8

weeks later. It confuses service users. All clients with a contribution to pay have the administrative burden of doing this.

11.0 Reasons for Recommendation

- 11.1 The reasons for the recommendations are to simplify the process of Direct Payments in respect of the client contribution due, reduce debt and to follow the recommendations as cited in the Care Act guidance to pay net.