

TELFORD & WREKIN COUNCIL

CABINET - 7 DECEMBER 2010

DIRECT PAYMENTS POLICY

REPORT OF THE SOCIAL CARE SPECIALIST

1.0 SUMMARY OF MAIN PROPOSALS

- 1.1 To provide Cabinet with an update of changes to Direct Payments Regulations and seek approval for changes to the Direct Payments Policy .

2.0 RECOMMENDATIONS

- 2.1 That Members approve the amendments to the Direct Payments Policy (Appendix 1) in order to reflect the changes introduced by the Department of Health extending the Direct Payments scheme.
- 2.2 That Members delegate responsibility to the Director of Adult Social Services, in consultation with the Cabinet Member for Adult Care & Support, to approve a final version of the Policy following a short consultation through Advocacy Organisations and Partnership Boards.

3.0 SUMMARY IMPACT ASSESSMENT

COMMUNITY IMPACT	Do these proposals contribute to specific Priority Plan objective(s)?	
	Yes	ADULT CARE & SUPPORT PRIORITY PLAN Sub priority 2 - Continue to develop choice and control - Ensuring easy and equitable access to good quality services CHILDREN'S PRIORITY PLAN Strategic Priority – Transition arrangements for disabled children
	Will the proposals impact on specific groups of people?	
	Yes	The Direct Payments policy could impact upon any person in the borough with a community care need and/or their family carer. In the main therefore the Policy impacts on ill and disabled people and their families.

TARGET COMPLETION/ DELIVERY DATE	Consultation on the draft policy will take place through December 2010-January 2011 (an 8 week period) with a view to having a final policy in place by February 2011	
FINANCIAL/VALUE FOR MONEY IMPACT	No	There are no budget implications arising directly from the revision to the Policy. Currently around 10% of Council spending on purchasing care is given by a Direct Payment and about 12% of clients are supported in this way. Whilst more people are now eligible for a Direct Payment they would have already been in receipt of a Council funded care package or about to be anyway. The move to increasingly deliver care through Personal budgets and the accessibility of funding by means of a direct payment will create the need to review controls and assess risks over the use of the funding.
LEGAL ISSUES	Yes	<p>Direct payments are governed by the Health and Social Care Act 2001 and the Children Act 1989.</p> <p>The Community Care, Services for Carers and Children's Services (Direct Payments) (England) Regulations came into force on 9th November 2009 with an amendment coming into force on 29th October 2010</p> <p>Statutory "Guidance on direct payments for community care, services for carers and children's services England 2009" was published on 4th September 2009 and issued under section 7 of the Local Authority Social Services Act 1970.</p>
OTHER IMPACTS, RISKS & OPPORTUNITIES	Yes	The Policy review ensures that the Council addresses equality issues, in particular those relating to disability. See Section 5. below
IMPACT ON SPECIFIC WARDS	No	Proposals set out in this report have potential implications for households in all wards across the borough.

4. INFORMATION

- 4.1 Direct Payments are monetary payments made by Councils directly to individuals who have been assessed as having eligible needs. In this context the eligible needs are relating to community care for adults and similar services for disabled children. Direct Payments were first introduced through enabling legislation in 1996 through the Community Care (Direct Payments) Act 1996. Since then there have been several further pieces of legislation which have extended the groups of people who are eligible for and have a right to be offered a Direct Payment.

- 4.2 Building on the success of Direct Payments, the previous and current Government have committed to personal budgets being made available to every adult eligible for social care services. A personal budget is the amount of money that a Council decides is necessary to spend in order to meet an individual's needs and Direct Payments are one way in which the person can choose to use that money in order to meet those needs. Not all people will want to exercise the level of choice and control that receiving a Direct Payment gives them, but the principles that apply to Direct Payments should extend to all people whichever method they choose to direct their personal budget.
- 4.3 Late in 2009 the Department of Health in partnership with the Department for Children, Schools and Families released new Regulatory Guidance to reflect changes in legislation and policy. The broad effect of the Guidance is to extend the current system of Direct Payments to include people who lack capacity to consent to the making of Direct Payments and to remove exclusions that have previously applied to people who are subject to various provisions under mental health legislation.
- 4.4 With certain exceptions, we now have a duty to make direct payments in respect of a person lacking capacity, provided that there is a willing suitable person who meets all the conditions set out in the Regulations. In the first instance, we will need to establish whether someone who has offered to act as a suitable person qualifies as a representative. Someone can be made a representative in one of two ways:
- If the person has been given lasting power of attorney by the person needing services at some point before they lost mental capacity.
 - If the person has been appointed a deputy for the person needing services by the Court of Protection under section 16 of the Mental Capacity Act 2005.
- 4.5 There may be specific circumstances in which a person other than the representative, in particular a close family member or a friend involved in the provision of care, is considered to be the most appropriate choice of suitable person by those consulted about making direct payments in respect of the person lacking capacity. If we are satisfied that this arrangement would work in the best interests of the person lacking capacity, then the Council may with agreement, accept that individual as the suitable person.
- The Guidance sets out in detail where Council's have a duty to offer Direct Payments and in some limited circumstances where it has a power. Clearly the principle underpinning Direct Payments is that the individual should be free to choose how to use their Direct Payment as long as it is used in a way that meets their eligible needs. However a person does not have to accept Direct Payments and may direct the Council to meet their eligible needs in more traditional ways such as the Council providing or arranging services
- 4.6 As a result of the new Guidance, officers have been working to the new Regulations, whilst a review of the Council's Policy & Procedure was undertaken. The review has now been completed and has been used as opportunity to incorporate minor changes to our procedures resulting from internal Audit recommendations. Greater clarity has also been given in respect of the Council's responsibilities for people who are in receipt of a Direct Payment and who choose to go and live in another country.

- 4.7 The Procedure Guidance for staff has also been reviewed and updated to take account of the changes in national and local policy. This procedure ensures that there is robust system in place to ensure that all the necessary checks have been put in place prior to a Direct Payment arrangement being agreed, that people receiving a Direct Payment receive all the necessary support to administer the payment and that appropriate monitoring and regular reviews take place.
- 4.8 Officers would like to seek approval from Members to the proposed Policy changes prior to a short period of consultation to be undertaken through service user advocacy organisations.
- 4.9 It is further suggested that Members delegate the final responsibility to the Director of Adult Social Services in conjunction with the Cabinet Member for Adult Care & Support to approve final version of Policy following consultation.

5. **IMPACT ASSESSMENT – ADDITIONAL INFORMATION**

Section:	Issues to consider:
Community Impact – Specific Groups	<p>Equality Impact Assessment</p> <p>Direct Payments can meet the needs of service users irrespective of impairment, ethnicity, religious belief, age, gender or sexual orientation. Choice is one of the ideals at the heart of the future direction of Social Care and Direct Payments are a really good way of letting people choose the services they want. People with disabilities have told us that they want to be able to live independently and make their own decisions. Direct Payments, managed properly and with appropriate support, will help make this happen.</p> <p>Direct Payments are particularly suited to culturally appropriate services as the Direct Payments user has increased control and choice over what happens and how it happens.</p> <p>Promoting Direct Payments may involve highlighting this aspect to individuals considering it, while recognizing that there are limitations in what is readily available.</p> <p>Direct Payments are not an alternative to striving for culturally appropriate services to be available – for both Direct Payments users and services arranged by social services.</p> <p>There are many cultural views about disability, care and support. Individuals may or may not share the generally held views of their ethnic group or religion. So it is important to ensure independent advocacy, interpreting and translation are available.</p> <p>Direct Payments are accessible to people who are eligible across the whole age range.</p>

	<p>The use of Direct Payments is not expected to have an adverse effect on individuals or groups who are socially excluded. Direct Payments, where eligible, should enable wider choices and promote social inclusion and control.</p>
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6. PREVIOUS MINUTES

None

7. BACKGROUND PAPERS

- 7.1 Guidance on direct payments - For community care, services for carers and children's services, England 2009 – Department of Health.
- 7.2 Direct Payments Policy – T&W Council
- 7.3 Direct Payments Procedure – T&W Council

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