

**Cabinet Meeting: 19<sup>th</sup> January 2017**

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**DIRECT PAYMENTS FOR VULNERABLE PEOPLE**

**REPORT OF DIRECTOR OF SOCIAL SERVICES**

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**Portfolio: Joint Report** - Health, Housing and Wellbeing (Councillor Susan Elsmore) and Early Years, Children and Families (Councillor Sue Lent)

**Reason for this Report**

1. To recommend the approach to be taken for the recommissioning of Direct Payments support services in line with the implementation of the Social Services and Wellbeing (Wales) Act 2014.

**Background**

2. Direct Payments take the form of a cash payment made to a person who is eligible for care and support from social services in order to enable them to arrange and pay for their own care and support.
3. Direct Payments are a different way of delivering on the legislative responsibilities of social services where there is an assessed eligible need. The Purpose of Direct Payments is to give people flexibility over when their care is provided, the exact nature of the care, choice and control over who they have caring for them and the standards and quality of that care.
4. Direct payments can also be used for meeting the care and support needs of a child and of their carer.
5. The Social Services and Wellbeing(Wales) Act 2014 states that Direct Payments are an essential tool for the Council in meeting the Welsh Government's strategic aim of supporting people who require support and care to achieve their wellbeing outcomes and also to support carers who require support in achieving their wellbeing outcomes.

6. Typically, direct payments are used for:
- Personal Care Services
  - Personal Assistants
  - Agency support
  - Community Activities
  - Equipment and minor home adaptations
  - Respite
7. As well as increasing flexibility and choice, Direct Payments do require the service user or their carer to take on additional responsibilities for arranging and administering their care and support arrangements.
8. In 2005 the Council appointed the Cardiff & Vale Coalition for Disabled People (CVCDP) (now Diverse Cymru) to provide a service which was responsible for supporting the service user to recruit a Personal Care Assistant (P.A.) or to establish a contract with an Agency. Key services in that support include:
- To work with social workers in identifying potential users of Direct Payments and to meet and advise prospective users of the scheme.
  - To advise the service user of their responsibilities as an employer
  - To provide a “ managed banking” service which provides an alternative for the service user who may not wish to establish their own separate care bank account
  - To advocate on behalf of the service user for problems which arise in relation to the direct payments scheme.
  - To provide user with the support necessary to recruit a PA or appoint an agency.
  - To notify the Council of any concerns about the welfare of the Direct Payments user, their family or personal assistants which relate to this scheme as soon as is reasonably possible.
9. Diverse Cymru has continued to provide the Direct Payment Support Service. The value of the service equates to annual payments of circa £700,000.
10. During the last 11 years service user numbers have increased and currently 621 Adults and 151 Children are in receipt of a Direct Payment. 40 Adults and 16 Children are ‘Working Towards’ a Direct Payment with Diverse Cymru (figures as of 23.11.2016).
11. There is now a need to recommission the Direct Payments support service in order to comply with procurement requirements and also to ensure that the service integrates effectively with current models of social care prevention and support.

## Direct Payment Model Proposal

12. The Directorate has reviewed the direct payment support service requirements in light of legislative requirements and the opportunities for integration made possible through service redesign.
13. In order to inform the development of a new service specification a consultation exercise was undertaken to gather service user views of the support and assistance that they valued and to find out if there were areas of support where additional help was required.
14. The review process has made clear that the current support service arrangements can lead to a degree of duplication and a lack of clarity about respective roles and responsibilities between the provider and the Council. Going forward therefore the specification will more clearly define these roles and responsibilities and ensure that service users have a clear single point of contact for information and advice.
15. There will be a more clearly defined role for the Council in the promotion and encouragement of the use of the Direct Payment option and also in the development of training pathways for individuals who may wish to become personal assistants in Cardiff. Every service user assessed as eligible for a Direct Payment will be visited prior to referral to the support provider to ensure that the option is fully understood and that advice on the widest range of independent living services are explored.

- **The Support Service** - will advise and provide support to people on a number of issues:

- Visit each referred service user within a specified period
- Provide advice on safety and best practices at home
- Support on planning to use PA/Agency or Residential
- Recruitment including adverts/job descriptions/interviews
- Acting as an employer
- Setting up employment systems
- Legal advice relating to HR/Employment
- Advice in relation to training/qualifications/DBS
- Financial advice including pensions/insurance and payroll
- Ongoing advice around employment and Direct Payments

- **Direct Payment Managed Account Service**

Set up a Managed Account arrangement with the service user and providing ongoing support to keep the arrangement in place, as well as liaising with Social Services:

- Providing information about each option
- Setting up and monitoring the dedicated account
- Arrange & pay all agreed outgoings (PA wages, care agency fees, insurance etc.)
- Collect care contributions

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- Pay all amounts due to HMRC and keep pensions/insurance covered
- Record income and payments
- Provide statements of all transactions

16. The Directorate has conducted a consultation with person's, families and case managers in order to assess the current service provision and establish principles for future service models. The main findings of the consultation supported the flexibility of selecting support as and when required from support service or managed accounts. Thus offering the service user more choice. Please refer to **Appendix B**.

### **In Summary**

17. A number of options were researched and considered to secure the delivery of the services. The preferred model would be to appoint either one or two organisation delivering the Support and Managed Accounts Service across the City to the combined value of circa £4.2 million. Further work is currently be carried out by the directorate to determine the most appropriate route of one or two providers to deliver the service. If recommendation 2 is approved, the information would inform the decision report for the director of Social Services. Such benefits are one or two organisations to deliver an effective model which takes into account the service users feedback supporting a single organisation as a point of contact, and the success of the 'one- stop shop' element. There are a number of experienced providers in the Direct Payments market that could provide valuable and effective service to service users of Cardiff, and this could be accessed through a combined tender. Please refer to **Appendix A – Options Appraisal Paper**.

18. It is proposed that the contract for Direct Payments will be delivered as a whole package by tendering to the market for providers.

19. It is proposed the Directorate will procure a sustainable direct payment service expecting providers to deliver services which meet the outcomes of individuals as set out in their support plans, offering individuals more choice, control and independence in their lives.

20. Direct Payments will remain an option for service users in order to ensure that they have a choice over who delivers all or part of their support. This should not present any difficulty and we anticipate being able to deliver choice for service users where this is required.

21. The Directorate recognises it is working to a tight timescale. Transition and contingency arrangements are in place and will be administered by social services for a period leading up to the new contract. All directorate involved in the project have been briefed and are ready to respond as and when necessary.

22. The approach to the commissioning process will be strongly aligned to the Co-operative Values that the Council has signed up to:

- **OPEN** – allowing service users to have their say on what is important to them, ensuring that they are listened to and their views directly inform the way that services are delivered in the future.
- **FAIR** – ensuring that all organisations have the best opportunity to be successful, every effort will be made to ensure that smaller organisations can participate by encouraging joint working and consortia.
- **TOGETHER** – working together with partner agencies, co-producing solutions and jointly commissioning where possible, to deliver a range of services designed for those who need them most.

23. A number of principles underpin this recommissioning:

- Ensuring that services are based on need and that the most vulnerable service users are protected.
- Promoting independence and delivering support at the lowest appropriate level to meet client needs.
- Taking evidence based approach to service design – considering current usage / turnover, outcomes and service user feedback.
- Ensure services are sustainable.
- Maximise the time spent on the client and reduce management costs.
- Wherever possible, commission support in partnership with other organisations / across funding streams.
- Develop service specifications that are outcome based and quality focused.

24. It is proposed that providers will be secured through appointment to a 3-year contract with the option to extend for three further years if they are delivering the best value, quality of service and cost.

25. The Directorate is proposing to seek the most economically advantageous tender based on criteria weighted equally on quality and value for money.

26. If the proposed recommendation is approved, all stages of the procurement process to be delegated authority to the Director of Social Services in consultation with Cabinet Members for Finance and Health, Housing and Wellbeing, the Council's Section 151 Officer and the Director of Governance and Legal Services, to determine all aspects of the procurement process up to and including the award of contracts and all ancillary matters pertaining to the procurement.

27. In light of the tight timescales in which the directorate are working, the Directorate are considering to use the Open procedure although this will be subject to a separate report (director level) if recommendation 2 is approved.
28. The Council propose to secure a support service and a managed accounts service to assist service users in all or elements of the persons direct payment service. It will be important at a time of any transition there is continuity in the delivery of the service.

## ISSUES & RISKS

29. If the proposed recommendations are approved, the procurement process may give rise to the Transfer of Undertakings (Protection of Employment) Regulations (TUPE) between providers. Anonymised TUPE Information will be provided as part of the tender documentation.
30. The Directorate recognise to undertake a competitive tender process could de-stabilise the provision and continuity of support. However there is a requirement to competitively tender the service. The Directorate in conjunction with service users and families will ensure disruption to individuals is minimised.

## CONSULTATION

31. **Communities & Adult Services Scrutiny Committee** on 7<sup>th</sup> December 2016 has considered the proposals outlined in the report. Please find attached a letter from the Chair, Councillor McGarry, of Direct Payments at Community & Adult Services Scrutiny Committee. **Appendix D.**

A pre decision scrutiny of the report will be presented to **-Children and Young People Scrutiny Committee** on 10<sup>th</sup> January 2017 and **Communities & Adult Services Scrutiny Committee** on 18<sup>th</sup> January 2017. Committee's comments will be made available to Cabinet at the meeting.

32. Service user and Case Manager/Social Worker consultation has also taken place. A report of the findings of the consultation can be found at **Appendix B**
33. Officers will continue to work closely with incumbent providers and other stakeholders. Every effort will be made to involve stakeholders and in particular service users in the specification of services and in the evaluation process.
34. This report does not relate to a local issue.

## EQUALITY AND DIVERSITY

35. An Equalities Impact Assessment has been undertaken and attached as **Appendix C** to consider the potential impacts of the proposal in terms of

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equality so that the directorate can ensure that it is making proportionate and rational decisions having due regard to its public sector equality duty.

36. The Council as adopted the principle that in the conduct of public business and administration of justice in Wales, it will treat the English and Welsh languages on a basis of equality.

### **Reasons for Recommendations:**

37. The reason for the recommended decision is to obtain the necessary approval in order to commence the procurement process to invite bids from the market in relation to Direct Payment Services for vulnerable people as outlined in the report.

### **Legal Implications:**

The first recommendation is to seek approval for the proposed model in relation to the longer term arrangements for the provision of support services for Direct Payments.

### **Direct Payments – current legislation**

Direct Payments are monetary payments made available by the Council to individuals, or their representatives, to enable them to meet their assessed care and support needs, thereby increasing choice and independence for those individuals. The primary legislation which now governs Direct Payments is set out in the new Social Services and Well-being (Wales) Act 2014 (“the new Act”). In particular sections 50 – 53 set out the legislative provisions which require or allow the Council to make a Direct Payment towards the cost of meeting (i) an adult’s needs, (ii) a child’s needs, and (iii) a carer’s needs for support under sections 40, 42 or 45. These provisions are underpinned by the Care and Support (Direct Payments) (Wales) Regulations 2015 (“the 2015 Regulations”), which set out, amongst other matters, what steps a local authority must take to enable individuals to make informed choices about direct payments. In addition to the new Act and the 2015 Regulations, the Council is required to act in accordance with the Welsh Government Code of Practice (entitled Social Services and Well-being (Wales) Act 2014 part 4 Code of Practice (Meeting Needs)). It is understood that the Directorate has taken account of the aforementioned legislation and guidance in developing the proposed model for the longer term provision of support services in relation to Direct Payment arrangements.

### **Proposed Model**

It is noted that the Directorate proposes to go out to tender in order to appoint either one or two providers to provide the (i) support services and (ii) a “managed account “ service. Legal Services are instructed that the proposed model will allow individuals and/or their representatives to select which elements of the services, if any, they wish to access, thereby offering choice in accordance with the primary objectives of the current legislation and guidance.

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By way of example only, an individual may elect to have his/her Direct Payment paid (1) to his/her own bank account and to manage the Direct Payment himself/herself, or (2) to a nominated third party on his/her behalf, with the proposed model providing that the individual may choose as his/her nominated third party either (i) the Council's appointed provider of the "managed account" service or (ii) another third party of the individual's choice.

As highlighted in the body of the report, the Directorate has undertaken stakeholder consultation in order to develop the proposed model. Consultation gives rise to the legitimate expectation that the feedback from the consultation will be taken into account when developing proposals.

### Procurement

Legal Services are instructed that the Directorate proposes to undertake a competitive tender in order to award either one or two services contracts for a fixed term of three years with the option to extend for a further period or periods equating to no more than three years. It is understood that the estimated value of the proposed contract is circa £4.2 million. Under the Public Contracts Regulations 2015 the proposed services fall within Schedule 3 of the Public Contracts Regulations 2015 ('2015 Regulations'). Contracts for service that fall within schedule 3 and which are above threshold (ie are over £589,148) must be procured in accordance with the Regulations 74-77 (the so called "Light Touch Regime"). Whilst contracts which fall under the Light Touch Regime are not subject to the full ambit of the 2015 Regulations, nonetheless they are subject to certain mandatory requirements which are set out in the 2015 Regulations. Of particular significance to this proposal, is that there is a mandatory requirement for the Council to advertise such services by means of an OJEU contract notice or a prior information notice in accordance with the provisions of Regulation 75(1). Further, when seeking to award a contract for such services the Council is required to adopt a procedure which ensures compliance with the principles of transparency and equal treatment of economic operators (Regulation 76(2)). Legal Services are instructed that this is how the Directorate intends to proceed.

Detailed legal advice should be obtained throughout the procurement process with regard to i) the drafting of all the relevant procurement documentation (including the draft terms and conditions of contract) and ii) the procurement process in general. It is understood that the Directorate intends to proceed on this basis. The indicative timetable is, however, tight, in that the tender documentation, the agreed evaluation criteria, the draft contract terms and conditions will be required before issue of the OJEU notice).

### TUPE

It is noted that currently the services being provided by an external provider. Accordingly TUPE may apply to the award of the new contract should the incumbent provider bid unsuccessfully. Legal advice should be sought in connection with the proposed terms and conditions of the contract, in particular to ensure that the Council's standard TUPE clauses are contained in the same.



The second recommendation in the report is to delegate authority to the Director of Social Services in consultation with Cabinet Members for Finance and Health, Housing and Wellbeing, the Council’s Section 151 Officer and the Director of Governance and Legal Services, to determine all aspects of the procurement process (including determining the pre qualification criteria and the evaluation criteria to be used, and authorising the award of the contracts) and all ancillary matters pertaining to the procurement. This is a relatively complex and substantial procurement exercise. The purpose of the delegation means that the substantive issues relating to the procurement, including determining the evaluation criteria will be made by the Director of Social Services.

**Equality duty**

In considering this matter the decision maker must have regard to the Council’s duties under the Equality Act 2010. Pursuant to these legal duties Councils must, in making decisions, have due regard to the need to (1) eliminate unlawful discrimination, (2) advance equality of opportunity and (3) foster good relations on the basis of protected characteristics. Protected characteristics are: (a). Age,( b ) Gender reassignment( c ) Sex (d) Race – including ethnic or national origin, colour or nationality, (e) Disability, (f) Pregnancy and maternity, (g) Marriage and civil partnership, (h)Sexual orientation (i)Religion or belief – including lack of belief.

The report identifies that an Equality Impact Assessment has been carried out and is appended at Appendix C. The purpose of the Equality Impact Assessment is to ensure that the Council has understood the potential impacts of the proposal in terms of equality so that it can ensure that it is making proportionate and rational decisions having due regard to its public sector equality duty. The decision maker must have due regard to the Equality Impact Assessment in making its decision.

The decision maker should also have regard when making its decision to the Council’s wider obligations under the Social Services and Wellbeing (Wales) Act 2014 and The Wellbeing of Future Generations (Wales) Act 2015. In brief both acts make provision with regards promoting/improving wellbeing.

**Financial Implications:**

The report seeks approval for the procurement of a revised model for the direct payments support service. An existing direct payment management and support service is currently commissioned from an external provider at an annual cost of circa £700,000 per annum. A savings proposal of £200,000 was included in the 2016/17 budget in relation to the proposed review of this service. The revised timetable for the review has been acknowledged and is reflected in the current year’s monitoring position. Whilst, the outcome of any procurement process cannot be predicted in advance, it is important that the process is conducted within a timescale that provides the earliest opportunity for the realization of savings. It is noted that the revised model assumes an enhanced Council role,

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including a dedicated direct payments team. Any additional resource requirements relating to this team will have to be met from within existing budgets.

### **Human Resources Implications:**

The proposal will involve an enhanced service provided by the Council. Any employee requirements for this service will follow corporately agreed processes and there will be trade union consultation on any changes or additions to the current service.

The procurement process could involve Transfer of Undertakings (Protection of Employment) Regulations between the outgoing and incoming provider, therefore HR will provide advice as part of the procurement process on this matter.

### **RECOMMENDATIONS**

38. The Cabinet is recommended to:
- a) Approve the proposed model for the provision of direct payments support services for service users as set out in the body of the report;
  - b) Authorise the proposed procurement process; If the proposed recommendation is approved, all stages of the procurement process to be delegated authority to the Director of Social Services in consultation with Cabinet Members for Finance and Health, Housing and Wellbeing, the Council's Section 151 Officer and the Director of Governance and Legal Services, to determine all aspects of the procurement process up to and including the award of contracts and all ancillary matters pertaining to the procurement.

**Tony Young**

**Director of Social Services.  
8<sup>th</sup> December 2016**

*The following Appendix is attached:*

- Appendix A - Options Appraisal Paper
- Appendix B – Consultation Findings
- Appendix C – Equality Impact Assessment
- Appendix D - A letter from the Chair, Councillor McGarry, of Direct Payments at Community & Adult Services Scrutiny Committee.

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