

INCREASING THE USE OF DIRECT PAYMENTS FOR THE DELIVERY OF CARE AND SUPPORT.

SOCIAL SERVICES (COUNCILLOR NORMA MACKIE AND COUNCILLOR ASH LISTER)

AGENDA ITEM: 9

Appendix 3 to this report is exempt from publication pursuant to Paragraph 16 of Part 4 of Schedule 12A to the Local Government Act 1972

Reason for this Report

1. To provide an update on the work underway to improve access to direct payments for care and support, including the progress in creating a pool of “micro-enterprises” to deliver services in the community.
2. To approve a new direct payment rate for micro-enterprises.

Background

3. One of key requirements of the Social Services and Well-being (Wales) Act 2014 is that people who need care and support should have voice and control over the services that are provided to them. Direct payments are one of the keyways in which social services can meet this requirement.
4. Direct payments are a way that a service user with an assessed care and support need can arrange their own care, rather than receiving care from the Council’s commissioned care providers. Direct payments are usually used to employ a Personal Assistant (PA) but can also be used to commission care from an agency. Local Authorities are required to make Direct Payments available, provided that they allow the service user’s requirements and personal outcomes to be met.
5. Commissioning care directly from a PA provides the service user with the greatest level of choice and control over their care. This can be of significant benefit, particularly to an individual’s specific requirements such as language or cultural needs. Of the current users of direct payments, 27% are from an ethnic minority background, while for domiciliary care provision as a whole they make up only 9% of recipients.

The use of a PA can also lead to a much more flexible service than care agencies can generally provide, in terms of timing and frequency of calls.

6. The use of a PA however does involve additional complexity and responsibility for the service user. The service user must become the employer of the PA with all the responsibilities that entails such as identifying and interviewing the PA, issuing payslips, ensuring tax and national insurance is paid, providing a pension, ensuring appropriate insurance is in place and providing annual leave.
7. Support for service users who wish to take up direct payments is provided on behalf of the Council by a third sector organisation, Dewis CIL. Dewis CIL provide a core support service for each direct payment service user and also additional support tailored to each service users' needs, which can include help with employing a PA, payroll services and managed banking support.
8. While this support is available from Dewis CIL to carry out these functions, this level of responsibility can still deter some service users from taking up this opportunity. There is also a shortage of PAs which has resulted in delays in putting care in place. Currently there are 68 adults who are waiting to receive a direct payment as they are unable to recruit a PA.
9. For these reasons, together with the need to increase the availability of care provision generally, many councils are now exploring the opportunities that micro-enterprises can offer in delivering care and support.
10. The Council has an internal Direct Payments Team responsible for making payments, liaising with social workers regarding care packages, and conducting audits. Unfortunately, the administration around direct payments can lead to delays, which can be a further deterrent from using the system.
11. As of the end of 2022/23 there were 763 direct payment recipients, with 602 in Adult Services and 161 in Childrens Services. Prior to the pandemic this number was increasing having reached 842 in 2019, but numbers decreased during the pandemic. The table below illustrates direct payment spend as compared to domiciliary care spending across both Adult Services and Childrens Services in 22/23:

Domiciliary Care and Direct Payments Spend 2022/3

Service	All Domiciliary Care	Direct Payments	No. of DP Users
Adults	£32,377,000	£9,871,386	602
Childrens	£1,756,112	£665,907	161
Total	£34,133,112	£10,537,292	763

12. A direct payments project board was formed in October 2022 with the aim of reviewing the overall process and the support provided, increasing the availability of personal assistants through the development of micro-enterprises and better promoting the use of direct payments among service users.

Issues

Developing Micro-Enterprises

13. Micro-enterprises are very small care and support businesses. The majority would be sole traders although they can also be registered as a limited company employing a maximum of 5 members of staff. They are exempt from normal registration requirements with Care Inspectorate Wales provided that they support no more than 4 clients if they employ staff.
14. Micro-enterprises can provide a range of services, but the principal services for this purpose would be:
 - Support to remain independent at home – cleaning, preparing meals, gardening.
 - Companionship and support to access social groups and activities.
 - Support with personal care needs (within Care Inspectorate Wales guidelines).
15. Micro-enterprises are capable of meeting both council funded and client self-funded needs, giving them much greater flexibility and control and helping people to remain independent and supporting their wellbeing.
16. In a direct payment context, micro-enterprises are considered to be self-employed. When using a micro-enterprise, the service user would just need to pay an invoice from the provider rather than taking on the role of employer, considerably reducing the responsibilities and administrative burden for service users. To ensure that they are not employed directly by the service user, micro-enterprises will be required to support more than one service user and are encouraged to support both direct payment and self-funding clients.
17. Micro-enterprises are most suited for service users with lower care needs. The service user would still need to be able to select a suitable care provider and have the ability to manage the payments, although support would still be available for this through current arrangements with Dewis CIL.
18. Supporting the creation of a pool of micro-enterprises will both create additional options for meeting the growing demands for care while also expanding the choice available for service users. They are a useful addition to the commissioned care arrangements currently in place, helping to fill gaps in provision and to provide more flexibly or more tailored support where this is required.

19. Due to the clear benefits, projects to encourage micro-enterprises have been established across England & Wales (9 local authorities in Wales have active projects). However, there are some challenges that need to be addressed in setting up these arrangements:
- A micro-enterprise is a business with all the attendant risks of running a business – support needs to be put in place for individuals considering setting up a micro-enterprise.
 - Micro-enterprises are not regulated by Care Inspectorate Wales – it is essential that appropriate quality assurance arrangements are in place.
 - The legislative and regulatory framework for providing care and support is complex – micro-enterprises will need support to ensure that they fully understand and comply with these requirements.

Community Catalysts CIC

20. To address these challenges Cardiff Council have partnered with Community Catalysts CIC, for a two-year contract. Community Catalysts specialise in working with local authorities to help local people provide care and support in the community by establishing micro-enterprises. The company was established in 2009 and has since worked in over 75 areas throughout the UK, creating or sustaining over 5,600 jobs. Community Catalysts are currently working with Wrexham (where 60 micro-enterprises have been established) and Powys (where 52 micro-enterprises have been established). The Powys project was highlighted as good practice in an annual Care Inspectorate Wales report.
21. Community Catalysts CIC have devised the “Doing It Right” quality standards. These standards ensure that any micro-enterprises established via this project will be sustainable, safe, and legal. The checks include enhanced DBS checks, public liability insurance, registration with a relevant trade body (eg NACAS or ILG), ensuring that relevant policies and procedures are in place, such as Complaints and Safeguarding policies, and that they are well run and sustainable. Each micro-enterprise on the directory will be audited annually to ensure ongoing compliance.
22. Community Catalysts will operate a directory of micro-enterprises “Small Good Things” where service users will be able to look for a suitable micro-enterprise to suit their needs. They will also support the creation of local WhatsApp groups so that local micro-enterprises can communicate with each other, developing a community of local care providers. Before being added to the directory of services or to any WhatsApp group, micro-enterprises must have passed a successful audit of the “Doing It Right” quality standards.
23. As part of this project, Community Catalysts have appointed a “Catalyst” as project lead for Cardiff. The Catalyst will be responsible for providing one to one mentoring and support to prospective micro-enterprises. This support will involve help with becoming self-employed; market intelligence; guidance on how to run a sustainable business, and

training on regulation and legislation surrounding personal care to ensure compliance. The Catalyst for Cardiff is still currently undertaking induction but already has an active caseload of 9 aspiring new micro-enterprises. In addition, 30 existing micro-enterprises have also been identified, which advertise as delivering care and support, and they will be contacted to see if they are interested in joining the scheme, this will increase quality across the market.

24. In addition to providing more choice and control for service users the development of micro-enterprises will also create jobs and encourage an accessible form of entrepreneurship. They will introduce new people to the care workforce. Cardiff Cares Academy has a number of clients who, due to the limited hours that they are available or restricted locality in which they can work, are unable to work for a care agency. Becoming a micro-enterprise could provide the flexibility they need to join the care workforce.

Direct Payment Micro-Enterprise Rate

25. Micro-enterprises will be mainly sole traders and therefore self-employed, which gives rise to additional costs in terms of business overheads. Community Catalysts have issued guidance to help local authorities calculate direct payments to ensure that micro-enterprises are remunerated fairly for their work and that becoming a micro-enterprise is a sustainable and viable option. The Council is also required to ensure that the direct payment is sufficient to meet the cost of securing the care and support. It is recommended therefore that a new direct payment rate is introduced for micro-enterprises. Setting a micro-enterprise rate will ensure that relevant costs can be met. It also ensures that self-funding service users are aware of what would be considered a reasonable charge.
26. The current direct payment rates for 2023/24 are £14.78 for personal assistants employed directly by the service users and £20.71 for direct payment through an agency. It is proposed that the new rate for micro-enterprises is £16.86 per hour. This rate has been proposed based on guidance from UKHCA (UK Homecare Association) and Community Catalysts. An adjustment has been made to the rate to allow for the Real Living Wage, rather than the National Living Wage, while travel costs and national insurance rate have been reduced to reflect the local and part time nature of these businesses. A breakdown of the proposed new micro-enterprise rate is included at Appendix 1.
27. This rate would ensure that micro-enterprises are paid the Real Living Wage whilst also factoring in business costs ensuring that the care provided is sustainable. The rate would only be applied to micro-enterprises that have been through the quality assurance process and who have met the "Doing it Right" quality standard.
28. It is proposed that the new rate will come into effect from 2nd October 2023 and will not be backdated.

29. It is anticipated that this project will lead to an uptake in direct payments by removing the barriers which prevent service users from hiring a personal assistant, as the service user will no longer have to employ them directly. It will address the shortfall of available personal assistants by offering improved autonomy and flexibility, and by promoting an accessible community focussed form of entrepreneurship.
30. It is envisaged that increasing direct payment uptake will lead to cost savings for Adults and Childrens Services, even at the higher micro-enterprise rate. The current average rate for council commissioned domiciliary care is £22.90. At a rate of £16.86 per hour, every client that uses the services of a micro-enterprise rather than a commissioned care agency will generate a saving of £6.04 per hour. It should be noted that micro-enterprises are targeted towards those with lower care needs, so it is assumed that a package of care with a micro-enterprise would be for 10 hours (which currently accounts for 47% of directly commissioned care packages). Each use of direct payments through a micro-enterprise would save £60.40 per week, or £3,150 per annum.
31. In Somerset, where micro-enterprises have been providing care and support since 2017, it is estimated that £2,000,000 annual savings are being delivered. While it is not anticipated that this level of saving will be made in Cardiff, which already has a relatively high take up of direct payments, however it is clear that micro-enterprises can deliver financial benefits. A saving of £98k has therefore been included for 2023/4, in respect of Adult Services, based on a part year effect.
32. There is some risk that existing direct payment PAs may move to becoming micro-enterprises, as the PA rate would be lower than that for a micro-enterprise this could increase costs. While this may happen in a limited number of cases, experience in other local authorities has not shown a significant move of existing PAs to become a micro-enterprises, due to the additional skills and responsibility involved in becoming a self-employed sole trader. For this reason, it is also unlikely that care workers from care agencies will move to become micro-enterprises. There is evidence to suggest that a micro-enterprise project not only increases retention in social care but can also attract new talent to the workforce.
33. Cardiff is fortunate that it currently has a buoyant domiciliary care market, with a number of providers competing for each care package. Due to the ongoing growth in demand, it is not envisaged that the creation of micro-enterprises will have undue effect on the commissioned care providers as it will be focused on meeting lower-level care needs where the service user wants more flexibility than can easily be provided by a standard agency.
34. Full monitoring will be put in place to assess the effectiveness of the approach in increasing direct payments, any impact on the wider market and savings delivered.

35. An initial service review of the current direct payments process has been completed, covering both the internal council administrative process and the support services provided by Dewis CIL. This review indicated that there are potential advantages to delivering more of the services within the Council. Currently Cardiff Council are one of only six local authorities in Wales that have a fully external direct payments support service with 3 having a fully in-house support service and 13 having a hybrid support service, partly managed within the council with more complex areas of work such as the management of the PA payroll provided externally.
36. A review by the Welsh Audit office in April 2022 found that:
- People in areas where support services to help manage Direct Payments are directly provided by local authorities have a more positive overall experience than those using a 'commissioned' service.*
- This finding is likely to be related to the duplication and number of hand-offs involved where the support service is provided externally. Delivering services in-house could make the service more streamlined and provide more flexibility for service users.
37. The contract with Dewis CIL costs in the region of £500,000 per annum, the exact amount will vary depending on the different services required by each individual service user. This contract has been extended until the end of June 2024 to allow a full options appraisal to be carried out to determine the future model of service delivery. The options to be considered will include providing the full service in house or re-tendering all or part of the service. It should be noted that if a decision is made to deliver the service wholly or partly in house, TUPE arrangements may apply. Once the outcome of the options appraisal is known a further decision will be required, this will be made following the appropriate council decision making processes.
38. Policies, procedures and training around direct payments are being also reviewed to set out Cardiff's commitment to supporting service users to access direct payments, while ensuring that care needs are met and service users are safeguarded.

Impact Assessment

39. An Impact Assessment has been carried out and the findings are that the promotion of micro-enterprises is expected to have a positive impact, providing many groups with flexibility in their care provision to better meet cultural and language preferences, including Welsh, and other specific requirements. Monitoring will continue to ensure that the change is meeting its objectives across the community, and a further assessment and consultation will be carried out if any other changes are proposed as part of the wider project. The Assessment can be found at Appendix 2.
40. The requirements of the Future Generations Act have been considered and taken into account in developing these proposals.

Reasons for Recommendations

41. To inform Cabinet of the approach being taken to encourage and increase the use of direct payments, in line with the Social Services and Wellbeing Act (Wales) 2014, providing more voice and control for services users over their care and increasing choice through the provision of more flexible care and support options. To update Cabinet of the approach being taken to promote the development of micro-enterprises to deliver care and support and to outline the proposed review aimed at enhancing the support provided for direct payment recipients.
42. To put in place a new direct payment rate for micro-enterprises which provide care and support, to ensure that they are compensated fairly and that any new businesses are able to provide sustainable, ongoing services.

Financial Implications

43. The proposal is to increase access to direct payments by supporting the creation of a pool of micro enterprises to deliver care services in the community. The report references that to support the establishment of the microenterprises, a two-year arrangement is in place with Community Catalysts. Specific grant funding is in place to fully cover these arrangements for the two-year period.
44. The new hourly rate proposed for the microenterprises is £16.86/hour taking into account UKCHA guidance, advice from Community Catalysts and areas of the UK where these arrangements are already in place. As the £16.86 hourly rate is £6.04 less than the £22.90 average hourly rate that the Council is currently paying for domiciliary care, each 10 hour/week care package that is placed with a microenterprise could generate savings of c£3,150 per annum on the domiciliary care budget. As part of the 2023/24 Budget, a £98,000 saving was included in Adult Services in anticipation of the proposed arrangements. To deliver this level of saving approximately 31 packages a year would need to be commissioned via this route based on a full year of operation. Full achievement of the saving in 2023/24 would require double this, based on an October implementation date. There could be a risk of additional costs should personal assistants (PAs) who are paid an hourly rate of £14.78 PA decide to set up as micro-enterprises. However, the report notes that other Local Authorities have not experienced a significant shift from PAs to micro-enterprises, potentially due to the additional responsibilities associated with becoming a sole-trader.
45. The report also references a planned review of support services associated with the direct payments process. Current arrangements have been extended to June 2024 to allow time for review to take place, and the extension is covered within existing resources. Specific financial implications will need to be provided to inform officer and member

decisions in relation to the review, its findings, and any associated proposals as this work progresses.

Legal Implications

Social Services and Well Being (Wales) Act 2014

46. In considering this matter the Council must comply with its duties under the Social Services and Well-being (Wales) Act 2014 (the “Act”) and have regard to the code of practices issued under the Act. In brief the Act provides the legal framework for improving the well-being of people who need care and support and carers who need support, and for transforming social services in Wales.
47. The code of practice (amongst other things) sets out what should be taken into account when calculating the Amount of Direct Payments. Please see below:

“A local authority must ensure the value of a direct payment made is equivalent to its estimate of the reasonable cost of securing the care and support required, subject to any contribution or reimbursement the recipient is required to make. The value must be sufficient to enable the recipient, or their representative, to secure the care and support required to a standard the local authority considers reasonable. While there is no limit on the maximum or minimum amount of a direct payment, it must be sufficient to enable the outcomes to be met. In calculating the value of a direct payment a local authority must include inherent costs associated with being a legal employer or by providing sufficient financial support to purchase an adequate legal service to ensure the recipient complies with the legalities of being an employer. A local authority must also consider including, on a case-by-case basis, discretionary costs associated with the requirements for achieving the recipient’s personal outcomes. For example, non-statutory liabilities such as an ex-gratia bonus payment. A local authority must keep abreast of any external factors such as regulatory changes imposed by central government which could determine the value of a payment. Adjustments to incorporate any changes must be made in a timely manner.”

Equalities

48. 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.

49. When taking strategic decisions, the Council also has a statutory duty to have due regard to the need to reduce inequalities of outcome resulting from socio-economic disadvantage ('the Socio-Economic Duty' imposed under section 1 of the Equality Act 2010). In considering this, the Council must take into account the statutory guidance issued by the Welsh Ministers ([WG42004 A More Equal Wales The Socio-economic Duty Equality Act 2010 \(gov.wales\)](#)) and must be able to demonstrate how it has discharged its duty.

Well Being of Future Generations (Wales) Act 2015 - Standard legal imps

50. The Well-Being of Future Generations (Wales) Act 2015 ('the Act') places a 'well-being duty' on public bodies aimed at achieving 7 national well-being goals for Wales - a Wales that is prosperous, resilient, healthier, more equal, has cohesive communities, a vibrant culture and thriving Welsh language, and is globally responsible.
51. In discharging its duties under the Act, the Council has set and published well-being objectives designed to maximise its contribution to achieving the national well-being goals. The well-being objectives are set out in Cardiff's Corporate Plan 2023-26. When exercising its functions, the Council is required to take all reasonable steps to meet its well-being objectives. This means that the decision makers should consider how the proposed decision will contribute towards meeting the well-being objectives and must be satisfied that all reasonable steps have been taken to meet those objectives.
52. The well-being duty also requires the Council to act in accordance with a 'sustainable development principle'. This principle requires the Council to act in a way which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs. Put simply, this means that Council decision makers must take account of the impact of their decisions on people living their lives in Wales in the future. In doing so, the Council must:
- Look to the long term
 - Focus on prevention by understanding the root causes of problems
 - Deliver an integrated approach to achieving the 7 national well-being goals
 - Work in collaboration with others to find shared sustainable solutions
 - Involve people from all sections of the community in the decisions which affect them
53. The decision maker must be satisfied that the proposed decision accords with the principles above; and due regard must be given to the Statutory Guidance issued by the Welsh Ministers, which is accessible using the link below:

<http://gov.wales/topics/people-and-communities/people/future-generations-act/statutory-guidance/?lang=en>

General

- 54. Legal Services are instructed that any contract with the Council has been procured in line with the contract procedure rules.
- 55. The decision maker should be satisfied that the decision is in accordance within the financial and budgetary policy and represents value for money for the council.
- 56. The decision maker should also have regard to, when making its decision, to the Council's wider obligations under the Welsh Language (Wales) Measure 2011 and the Welsh Language Standards
- 57. Please see Appendix 3 for further legal implications.

HR Implications

- 58. There are no HR implications directly arising from this report.

Property Implications

- 59. There are no property implications for this report.

RECOMMENDATIONS

Cabinet is recommended to:

- 1. Note the approach being taken to encourage the use of direct payments, including work to support the development of micro-enterprises to provide care and support and the review that is underway to improve support services for direct payment recipients.
- 2. agree a new direct payment rate of £16.86 per hour for care and support services provided by micro-enterprises, to recognise their additional expenses and to ensure sustainability of the services provided.

SENIOR RESPONSIBLE OFFICER	Jane Thomas Director Adults, Housing & Communities
	15 September 2023

The following appendices are to be attached:

- Appendix 1 – Micro-Enterprise Direct Payment Rate Calculation
- Appendix 2 - Single Impact Assessment
- Confidential Appendix 3 – Further Legal Implications