

REPORT TO: Executive Board Sub Committee
DATE: 18th March 2010
REPORTING OFFICER: Strategic Director – Health & Community
SUBJECT: Review of Direct Payments Policy & Procedure
WARD(S) Borough-wide

1.0 PURPOSE OF THE REPORT

1.1 To provide the Board with an update of changes to Direct Payments Regulations and seek approval for the changes to the draft Direct Payments Policy & Procedure for Adults Social Care.

2.0 RECOMMENDATION

That members of the Executive Board Sub Committee approve the amendments to the Direct Payments Policy & Procedure (Appendix 1) in order to reflect:-

- **the changes introduced by the Department of Health extending the direct payments scheme; and**
- **the recommendations from ADASS, “Personalisation and the Law: Implementing Putting People First in the current legal framework”.**

3.0 BACKGROUND

3.1 Halton Borough Council is committed to increasing the number of people who receive Direct Payments and Personal Budgets. Direct Payments are crucial to achieving the government’s aim to increase independence, choice and control for service users and their carers through allowing them the opportunity to arrange their own personalised care. They give people the freedom to design services around their specific circumstances and needs, resulting in better outcomes for both the service user and their carer. They are a key part of the transformation of adult social care agenda set out in *Putting People First*.

3.2 The removal of the blanket exclusion of people who are subject to various provisions of mental health and criminal justice legislation has also been lifted. Consideration should be given to people in these groups to have the chance to benefit from direct payments, where the circumstances are right and we agree that they are appropriate. A power to make such payments in respect of some categories of these people or for certain services and a duty to make direct payments in other circumstances subject to certain

exclusions.

3.3 From 9th November 2009 new regulations extended the direct payments scheme to people who lack the capacity to consent, and to people with mental health problems who are subject to mental health and certain criminal justice legislation. 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. People benefiting from this extension of the direct payment scheme may include, for example, some adults with head injuries and some people with dementia. In addition, severely disabled children moving into adulthood, who would previously have lost the direct payments they receive as a child, can now continue to receive them on reaching the age of 18.

3.4 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.

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 it may with agreement, accept that individual as the suitable person.

3.5 The Association of Directors of Adult Social Services (ADASS) has developed a document "Personalisation and the law: Implementing Putting People First in the current legal framework" to provide advice to councils showing how the main elements of Putting People First can be delivered within the current legal framework. ADASS advises that giving the 'suitable person' the direct payment net of the user's contribution/charge, would clearly be inadvisable, leaving them short of necessary funds, might be regarded as contributing to adult abuse risks.

3.6 Payment net of the clients' contribution under the Health and Social Services and Social Security Adjudications Act (HASSASSA) 1983 and fairer charging may put the suitable person in the position of making inappropriate use of a Pin Card or online banking, to access the 'other' part of the money necessary to pay for the full package of

support assessed as needed. An invoice for the client contribution should be sent in the usual way if a suitable person is receiving the direct payment on behalf of the client.

4.0 **POLICY IMPLICATIONS**

4.1 The DP Policy & Procedure (Appendix 1) has been amended to:

- Reflect the changes to extend direct payments to include people who lack the capacity to consent to the making of direct payments and to remove the exclusions that currently apply to people who are subject to various provisions of mental health legislation.
- Reflect the guidance from ADASS to give the person the option to pay their client contribution towards cost of support package via an invoice rather than paying the direct payment net if a suitable person is managing the direct payment.

5.0 **OTHER IMPLICATIONS**

5.1 None

6.0 **IMPLICATIONS FOR THE COUNCIL'S PRIORITIES**

6.1 **Children & Young People in Halton**

The proposals cover Children's Services as the Direct Payments Team currently provides services to 30 Parents of Disabled Children via a Service Level Agreement with Children and Young People's Directorate.

6.2 **Employment, Learning & Skills in Halton**

None identified.

6.3 **A Healthy Halton**

None identified.

6.4 **A Safer Halton**

None identified.

6.5 **Halton's Urban Renewal**

None identified.

7.0 **RISK ANALYSIS**

7.1 There is a risk that if the suitable person is not the spouse, civil partner, partner, close relative (or spouse or partner of a close relative) or friend involved in the provision of care of the person

lacking capacity, then as a safeguarding measure we must ensure a CRB check is obtained for the suitable person.

7.2 A risk assessment will need to be undertaken which should inform the care plan/support plan about arrangements for monitoring and review – conducting more frequent reviews especially in the early stages of the direct payments being made.

7.3 Independent Mental Capacity Advocates (IMCA's) should be used in care reviews where the person concerned has no one else to be consulted.

8.0 **EQUALITY AND DIVERSITY ISSUES**

8.1 It is essential that the Council addresses equality issues, in particular those regarding race, gender, sexuality, age and disability when considering its policies and procedures.

9.0 **LIST OF BACKGROUND PAPERS UNDER SECTION 100D OF THE LOCAL GOVERNMENT ACT 1972**

Document	Place of Inspection	Contact Officer
Guidance on Direct Payments for community care, services for carers and children's services – Department of Health	Runcorn Town Hall	Andrea Holland Senior Direct Payments/Individualised Budgets Officer
Directors of Adult Social Services (ADASS) "Personalisation and the Law: Implementing Putting People First in the current legal framework".	Runcorn Town Hall	Andrea Holland Senior Direct Payments/Individualised Budgets Officer