

REPORT TO: Executive Board Sub Committee
DATE: 29 January 2009
REPORTING OFFICER: Strategic Director, Health & Community
SUBJECT: Review of Direct Payments Policy & Procedure
WARDS: Borough-wide

1.0 PURPOSE OF REPORT

1.1 To provide the Board with an update on consultation events held across the Borough and seek approval for the proposed changes to the draft Direct Payments Policy & Procedure for Adult Social Care.

2.0 RECOMMENDED: That

- i) **The findings of the consultation process held on Direct Payments Policy and Procedural changes for Adult Social Care (Appendix 1) are noted.**
- ii) **The Direct Payments policy and procedure (Appendix 2) be amended as follows as set out below to: -**
 - 1. **To introduce an eligibility criteria to determine the rate at which Direct Payments (DP) will be set, based on current good practice (Appendix 3);**
 - 2. **To reflect the changes introduced by the Mental Capacity Act 2005, with additional detail on capacity;**
 - 3. **To reflect the growth in Personal Assistants (PAs) and, if required, include payroll charges in the set-up costs, and annually thereafter as a supplement to be paid to the service user if required, when employing a PAs from 01.04.2009.**
- iii) **Option 3 as set out in section 5.2 be approved.**

3.0 SUPPORTING INFORMATION

3.1 Background

3.1.1 Following a presentation to the Healthy Halton Policy and Performance Board on 10th June 2008, Executive Board Sub Committee approved a number of changes to the Direct Payment Policy & Procedure on 25th July 2008 and agreed that these should be subject to public consultation. These are stated in full in section 4.1 and Appendix 2.

3.1.2 Healthy Halton Policy and Performance Board (HPPB) received a further report on 13th January 2009 and considered the options set out in 5.2 in detail. HPPB supported Option 3, implementation of proposed changes by October 2009. HPPB noted that this would also offer a reasonable period of time for officers and people affected by the changes to work together to implement any necessary changes.

3.1.3 Halton Borough Council's Direct Payment rates for 2008/9 are

| 2008/9 RATES | AGENCY | Personal Assistant (PA) |
|--------------|--------|-------------------------|
| Standard | £10.70 | £9.35 |
| Complex | £11.36 | £11.36 |

3.1.4 Appendix 4 benchmarks Halton's Direct Payment rates for new and existing service users against neighbouring Councils. This highlights significant differences – Knowsley's rates are £7.85, £9.28 or £11.47(enhanced), St Helens pay £9.13 for a PA and £11.05 for an agency.

3.1.5 Currently, there are no criteria for assessing which level of hourly rate service users should be receiving. Therefore, a review was undertaken to establish current best practice, aiming for a greater degree of equity and consistency in how rates are applied across all service user groups.

3.1.6 Implementation of the criteria will introduce consistency both in relation to all community care packages arranged by Care Managers and those purchased via DP's, as well as ensuring FACS criteria eligibility will be applied. Additionally, comparability would be maintained against our nearest neighbour Local Authorities.

3.1.7 Consultation on changes to the policy for Direct Payment Service users was undertaken in October and November 2008 for existing and potential future Direct Payment service users and residents of Halton. All current direct payment service users were sent a copy of a survey form to complete and seven presentations/ open forums were held in locations across the Borough so that people could come to talk to officers about the proposals and make their views known.

3.1.8 Appendix 1 attached to this report summarises comments made by Direct Payment service users, their carers and potential future recipients of Direct Payments. Copies of the detailed individual comments are available on request.

3.1.9 The results of the survey have been considered as regards the impact and the introduction of the proposed eligibility criteria would have on new and existing service users and the direct payment rate paid now for new service users and for existing service users. A number of options for Members to consider are stated in section 5 of this report.

4.0 POLICY IMPLICATIONS

4.1 The DP Policy & Procedure (Appendix 2) has been amended in the following areas:

4. To introduce eligibility criteria to determine the rate at which DP's will be set based on current good practice (see page 6-7 of the Policy)
5. To reflect the growth in Personal Assistants and to include payroll charges in the set up costs if required, and annually thereafter as a supplement to be paid to the service user if required, when employing a Personal Assistant/s from 1.4.2009.
6. To reflect the changes introduced by the Mental Capacity Act 2005, with additional detail on capacity – Appendix 1 to the Policy.

5.0 FINANCIAL IMPLICATIONS

5.1 Context: Analysis of Existing Direct Payment Service Users

5.1.1 An analysis for Existing Direct Payment Service Users as at 30th September 2008, revealed that 194 Adult Services users received DP for services (excluding respite and children's services), with: -

- 44 (23%) paid at £9.35;
- 23 (12%) paid at the agency rate of £10.70 and
- 127 (65%) paid at £11.36.

5.1.2 Employment of PAs now represents 52% of all activity with service users employing one of more carers.

5.1.3 An analysis of sample payroll data showed that, where HBC pay the service user £9.35 per hour, the majority of employees' gross pay is £7.00 per hour (average £7.05 per hour) and average £8.56 if the service user is paid £11.36 per hour.

5.1.4 These rates are well above the legal minimum wage (from 01.10.2008) of £5.73, if service users employ a PA, including on-costs of employer's National Insurance, 20 days' holiday entitlement and 8 public holidays.

5.1.5 If the basic PA rate of £9.35 (2008/9 rate) is paid this would still allow service users to pay PAs above the minimum wage up to a maximum of £7.40 an hour allowing for full holiday cover and employers national insurance at 12.8%, and meet the criteria in the Direct Payment guidance notes. This rate is slightly higher than the average Halton BC domiciliary care agency 2008/9 employment rate which ranges from £6.23 to 7.20 an hour.

5.1.6 Where PAs are employed, the DP team supplies a standard contract of employment, which is used by the vast majority of service users. This contract allows for variation to hours worked and rates of pay, stating in s1.4 " *the employer may from time to time require you to carry out other duties with additional pay either on a temporary or permanent basis. Alternatively the Employer may have to reduce your duties and pay accordingly to their*

assessed continuing needs". Consequently, variation in hourly rate is permissible under the current contractual arrangements.

- 5.1.7 To ensure a consistent application when determining the Direct Payment rate existing service users may potentially be assessed as standard and not complex and the assessed DP rate of payment could fall. *Seventy-eight personal assistants are currently paid above the £7.40 threshold rate*, including full holiday pay and employers NI.
- 5.1.8 Members are thus asked to consider the following options, given the positive consultation response for the adoption of the criteria for new and existing service users and comments made by existing service users.

5.2 Financial Options

5.2.1 Option 1

Approve the eligibility criteria for new service users only with immediate effect. Current DP payments rates for existing service user packages would be unchanged. When existing packages of care are reviewed any additional hours would be paid at the new assessed rate.

The present perceived inequality would not be addressed for existing DP service users as noted by service users in all service areas. Existing PA's would continue to be paid at above market care pay rates for Halton. Best Value and consistency would not be achieved when comparing PA rates in particular across neighbouring LA's. The Council may be subject to legal challenge having two systems for new and existing service users.

5.2.2 Option 2

Approve the eligibility criteria for new service users with immediate effect and existing service users from 1.4.2009. When existing packages of care are reviewed any additional hours would be paid at the new assessed rate.

This action could create poor relations between the PA and service user, potentially causing the service user to lose a good PA due to a potential reduction in pay. The short lead in time could cause financial uncertainty to both the PA and service user.

5.2.3 Option 3

Approve the eligibility criteria for new service users with immediate effect and for existing service users from 1.10.2009. When existing packages of care are reviewed any additional hours would be paid at the new assessed rate.

The longer lead in time would allow service users and PAs more time to adjust to any potential charge. The effect of the longer lead in time could allow the Direct Payment team to support the service user in assessing the maximum PA

hourly rate which could be paid given NI earning thresholds, hours worked and if full holiday cover was taken by the service user. Guidance could also be given to the service user if a potential top up would be required if the service user wished to continue paying the carer or family member at the same rate.

- 5.2.4 With options 2 and 3 potential savings would be generated if existing service users currently employing agency staff or PA's receiving a DP at the rate of £11.35, on review were assessed as meeting the standard rather than the complex support criteria. The full year effect may be up to a £100K saving if on review assessed need reduces from standard to complex. This money would then be available to provide additional services where necessary.
- 5.2.5 Of the above, option 3 strikes the best balance between equity, appropriate remuneration to the PA and Service user, retaining valued PAs with support provided during the implementation process.
- 5.2.6 In addition, DP agency rates will be kept under review, for further amendments in line with changes to tendering arrangements for domiciliary care agencies. New contracts are to be in place from 1st April 2009. Concerns over outlier agency rates will be addressed with both domiciliary care and group social activity external agency providers, as part of the current tendering and commissioning process. Consideration will also be given to the fact that Personalised and Individualised budgets are proposed to be introduced in 2010/11.

6.0 IMPLICATIONS FOR THE COUNCIL'S PRIORITIES

6.1 Children & Young People in Halton

At this time, the proposal covers Adult Social Care Services only. The DP Team currently provides services to sixteen Children via a SLA with Children and Young People's Directorate.

6.2 Employment, Learning & Skills in Halton

The proposal would ensure DP hourly rates reflect the cost of service and that local services to meet local need can be developed with care staff employed by the service users either via an agency or as PAs.

6.3 A Healthy Halton

The proposal clearly demonstrates the Council's commitment to promoting the service user's independence, health, well-being and choice and inclusion through receipt of Direct Payments, as well as ensuring value for money.

6.4 A Safer Halton

None.

6.5 Halton's Urban Renewal

None.

7.0 RISK ANALYSIS


- 7.1 Any reduction from the complex rate of £11.35 to the standard rate of £9.35 could result in service users needing to reduce their PA's hourly rate of pay or top up contributions themselves to either a PA or an agency. The delayed introduction of these new arrangements for existing service users, could reduce transitional difficulties. Some service users and carers may continue to express their dissatisfaction at a rate cut for care and social activities which are on review are not considered complex. The Council will need to ensure that they have ongoing dialogue with existing direct payment service users during the implementation phase and to monitor any future impact on care and services.
- 7.2 To date, all service users when paid at the average agency rate of £10.70 top up the funding privately or if employing social activity providers, where required, to employ their preferred provider.
- 7.3 By including payroll costs in start up costs and, if required, thereafter for Direct Payment recipients who employ PA's directly, potential difficulties and debt, in relation to tax and national insurance payments could be avoided. DP recipients, and in the future, Individualised Budgets recipients, could thereby employ a PA directly to meet their support needs, which is consistent with the Government's directive to promote the uptake of Direct Payments and Individualised Budgets.

8.0 EQUALITY & DIVERSITY ISSUES

- 8.1 All service users who choose to have their support needs met via DPs will have sufficient funds to access the services that they have been assessed as needing. It would also introduce consistency across all community-based services. The continued presence of the complex rate of £11.35 would allow for complex needs to be met, with the introduction of DP criteria providing consistency.
- 8.2 If a Payroll Service is not funded for DP recipients who employ PAs directly, inequality would be created with service users from other neighbouring and nationwide Local Authorities.

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

- 9.1 There are no background papers under the meaning of the Act.



Health & Community
Directorate

Summary results of the consultation on Direct Payment Policy and Procedure
Changes for new and existing Direct Payment service users
18th December 2008

1.0 Introduction

- 1.1 DP rates were first set in 1999 by taking an average of Halton Borough Council's (HBC) accredited domiciliary care agency rates at the time. In subsequent years, the DP hourly rates were uplifted by annual percentage inflation rates. The Direct Payment Policy and Procedure has been revised annually to take into account legislative changes and increases to direct payment rates approved by members.
- 1.2 The Direct Payments Guidance notes for Community Care, Services for Carers and Children's Services 2003 state, "... the Direct Payment should be sufficient to enable the recipient lawfully to secure a service of a standard that the Council considers is reasonable to fulfil the needs for the service to which the payment relates."
- 1.3 In 2007/8 Halton BC's current payment rates were reviewed for new and existing service users and benchmarked against neighbouring Local Authorities.
- 1.4 The 2008/9 Direct Payment approved rates are as follows:-

| | AGENCY | PA |
|----------------------|-----------------|----------------|
| 2008/9 RATES | £10.70 Standard | £9.35 Standard |
| from 7.4.2008 | £11.36 Complex | £11.36 Complex |

- 1.6 Appendix 4 shows an updated comparison of Personal Assistant (PA) and agency rates for HBC's nearest neighbours who responded to HBC's survey in 2008/9. It can be seen that HBC's PA hourly rate is considerably higher than that of other neighbouring authorities.
- 1.7 Halton's rates also include a two-week contingency at the start of the agreement plus up to £259.00 in start up costs for insurance, CRB checks and recruitment. Additional to this, service users employing a personal assistant currently receive if required financial support via Disability Direct, who provides competitively priced payroll service under a successful pilot initiative. Annual payroll charges for a four weekly payroll are £7 per payroll including VAT, and online e filing of year-end returns, £58.75 per client including VAT. Thus total cost per service user is £142.75 by Disability Direct, which represents good value for money also demonstrating a high level of service user of satisfaction.
- 1.8 DP rates will be kept under review, for further amendments in line with changes to tendering arrangements for domiciliary care agencies. New contracts are to be in place from 1st April 2009.

2.0 Methodology

2.1 All Direct Payment service users were made aware via the October quarterly Direct Payment Newsletter of the proposed changes to the Direct Payment Policy and Procedure and consultation events to be held to capture people's ideas and opinions. A Survey form (Section 4) was also designed and posted out to all Direct Payment service users who did not attend the first consultation event to capture views. Telephone surveys were also conducted for Adults with Learning Disabilities (ALD), Older People, Mental Health and Physical and Sensory Disabilities (PSD) service users in addition. This questionnaire was also used to capture the views of future potential recipients of a direct payment service across all service areas.

2.2 Seven consultation events/ open forums were held across Runcorn and Widnes in October and November so that service users and or their carers could come and talk to Halton Borough Council (HBC) officers about direct payment proposals. The HBC officers who attended these events were:

- Paul McWade, Operational Director, Health & Partnerships
- Hazel Coen, Divisional Manager, Finance & Support
- Kerry Bibby, Acting Senior Finance Officer Direct Payments
- Julie Dearden, Client Finance Officer, Direct Payments Team
- Social Worker Representatives from Older Peoples Services, PSD and Mental Health Services

2.3 Consultation was held in a variety of venues to seek views from new and existing service users:

- The Stobart Stadium, Widnes – Main advertised event also publicised in Libraries, Health Centres and Community Centres
- An informal meeting of physical and sensory disability service users at Bridgewater Day centre.
- "Happy Hearts Club" at Ditton Community Centre, Widnes
- Mental Health Carers Forum – Runcorn
- Mental Health Carers Forum – Widnes
- Residents of Dorset Gardens, Palace fields
- Halton Speak Out – an event organised for ALD service users. Officers of HBC did not attend this last mentioned event.

2.4 A summary of the responses made is provided in Section 3 of this report, with a copy of the questionnaire included in section 4.

3.0 Summary of Results

3.1 Future Use of an Eligibility Criteria

- **Yes** 75 **(82% of respondents)**
- No 16 (17 % of respondents)
- No Opinion Given 1 (1% of respondents)

Overall 82% of respondents thought that the introduction of a criterion was a good idea whilst 17% disagreed with the introduction of a criterion. Some ALD and PSD existing service users who on review may no longer be considered as complex for social activities, mainly held this view.

3.2 Consideration if this proposed criterion is fair and equitable to all service users

- **Yes** 68 **(74% of respondents)**
- No 20 (22% of respondents)
- No Opinion Given 4 (4% of respondents)

The majority of respondents 74% thought the criterion is fair to all, 22% thought it was not fair and 4% had no opinion either way. It was clear from the consultation events held that an imbalance exists now, which needs addressing. There was a general perception that some social workers treat different service users differently when awarding packages and the assessment now is open to interpretation. There was also a comment made voiced by Halton Speak Out that "People who shout the loudest get the most". Concerns were also raised by ALD and PSD existing service users that the person cared for may not on review fall into higher level under new proposal, and have been previously assessed as higher.

3.3 Should we help service users with their payroll costs

- **Yes** 81 **(88% of respondents)**
- No 6 (7% of respondents)
- No Opinion Given 5 (5% of respondents)

The majority of respondents 88% were in favour of mainstreaming the present pilot to help Direct Payment Service users with their payroll costs as a supplement, if required, to be paid from 1.4.2009. 5% had no opinion either way and 7% voted "no" with comments made including "Ratepayers should not pay any more to give someone a choice. The council has to get the full money off ratepayers".

3.4 Changes to the Mental Health Capacity Act

Legislative changes affecting Mental Health Service users were in particular discussed with two Mental Health Carers Forums to widen the scope of Direct Payments to this under represented group. Several carers of service users with mental health problems supported the idea of a DP but were concerned, if their carer held this money, they would be pressurised by the service user to spend on drink and drugs. Carers felt support via the Appointee team (to hold money and pay bills), was a good idea and would encourage them to use a DP.

3.5 **Overall comments about Direct Payments**

A range of general comments both positive and negative were made from positive comments made about “members of the Direct Payments team, they have always come across to me as polite, professional and caring and very on the ball. I have always over the past 18 months found it a pleasure to deal with them. Thank You.” to concerns over the social work assessment process which will be addressed individually with service users.

3.6 Current rates for a Personal Assistant were considered reasonable “ in line with Knowsley and local market rates“. Others commented on the fact they currently receive £11.36 an hour and pay £9.00 an hour to their PA and may in future be assessed at the standard rate. This would mean that the service user would have to cut the payment rate under the contract or top up payments to the carer, and were concerned how this potential reduction may be perceived by a carer or a family member “She’s valued and does a good job. How can we turn around and tell her we’re cutting her money? It devalues her, puts a strain on our good relationship. What if she decides to leave?”

3.7 For agency providers comments were also made that £10.70 is too low does not cover the cost of care from some domiciliary care agencies, which charge more than this if service users choose this agency. The current contracted rates of certain social activity providers was also raised as a concern who charge £12.98 per hour plus mileage, plus entrance fee, plus subsidiary costs (lunch etc). Whilst service users commented that “ this provider offers access meaningful, structured, stimulating activities. In short they offer what young, active people want to do”, other commented “M Power is great but too expensive”. Halton Speak Out also commented that Direct payments do not seem to be currently used to access meaningful work.

Section 4 QUESTIONNAIRE: Asking you about Direct Payments

The Council needs to look at our Direct Payment Policy and Procedure for new and existing service users and have asked us to consult with people who get Direct Payments.

At the moment people get £9.35 an hour, £10.70 an hour or £11.36 an hour depending on your assessed need?

What are your views on the following:

- Do you think the council should use an eligibility criteria to work out who gets what rate of Direct Payment, for example who should get £9.35 an hour, £10.70 an hour or £11.36 an hour?

YES NO

If yes, do you have any comments on the proposed eligibility criteria?

If no, please state what eligibility criteria should be used?

- Do you feel the criterion is fair and equitable to all Direct Payment service users?

YES NO

If no, please state why not

- Should we help Direct Payment Service users with their payroll costs as a supplement to be paid from 1.4.2009?

YES NO

If no, please state why not

- Any other comments, please write below

Name (Optional).....

Please return the attached to a member of Staff from Halton BC or speak to a member of staff directly if you have any questions on the presentation today

APPENDIX 3

Prior to a decision being made with the service user and Halton BC, if they want a DP or a service provided by the authority, FACS criteria for eligibility must be applied.

| <u>Direct Payment Rate Criteria</u> |
|---|
| <p><u>High Level Need/ Complex Support Criteria = £11.36 (Agency & PA)</u></p> <p>In addition to some indicators for standard support below, the individual has:</p> <ul style="list-style-type: none">• High level of challenging behaviours (requiring a level two risk assessment and a risk management plan to manage safety) and employed Carers require additional skills (beyond those required by carers who meet needs below) as certified by formal training. Certificates will need to be produced.• Complex needs which are eligible for SS/PCT joint funded package |
| <p><u>Standard Support Criteria = £9.35 PA or £10.70 Agency rate</u></p> <p>The individual has <i>an assessed need for</i>:</p> <ul style="list-style-type: none">• Assistance to take medication• Support with incontinence• Physical assistance to use the toilet• Assistance with moving and handling• Assistance with washing/ bathing• Support to eat/ drink• Specific support and assistance to stimulate development of communication and/ or negotiation skills.• For support to access social activities.• NB. Supporting People and ILF funding will be used to support other social activities for the service user. <p><i>And/ or</i></p> <p>Mental Health Needs that meet critical/ substantial FACS criteria or are demonstrably preventative and require support.</p> |

Appendix 4- Comparison of Local Authority Direct Payment Rates 2008/9

| <u>APPENDIX 1</u> | <u>HALTON</u> | <u>CHESHIRE</u> | <u>TAMESIDE</u> | <u>KNOWSLEY</u> | <u>WIGAN</u> | <u>ST HELENS</u> | <u>STOCKPORT</u> |
|---------------------------------|---|--|-------------------------------|---|--|--|--|
| <u>AGENCY RATES</u> | <p>Standard Rate £10.70 per hour Complex Rate: £11.36 per hour</p> <p>The rate for any part of an hour is achieved by dividing the hourly rate</p> | <p>East Rates</p> <p>£12.30 per hour</p> <p>£11.19 per 3/4 hour</p> <p>£7.87 per 1/2 hour</p> <p>£5.66 per 1/4 hour</p> <p>West Rates</p> <p>£11.00 per hour</p> <p>£9.73 per 3/4 hour</p> <p>£7.52 per 1/2 hour</p> <p>£5.41 per 1/4 hour</p> <p>Sleeping Night £65.59 Waking Night £83.39</p> | Hourly rate of £9.25 per hour | <p>£7.85</p> <p>£9.28</p> <p>Enhanced up to £11.47</p> <p>These rates are applied whether the person is employing a PA or an agency.</p> <p>The rate for any part of an hour is achieved by dividing the hourly rate.</p> | <p>If using an agency, the Agency Rate for that particular agency the client decides to use would be applied, as long as it was within the current rates.</p> <p>Don't have different rates for people who choose to pool their DP's or access group activities.</p> | <p>Standard Rate: £11.05</p> <p>If anyone wants to use an agency who charge more, then they have to make up the difference with their own money.</p> <p>Any special rates are negotiated Individually.</p> | <p>£9.71 per hour</p> <p>£5.20 per 1/2 hour</p> <p>Same if using a PA</p> <p>No different rates for complex / challenging packages.</p> <p>No lower rates for group activities.</p> <p>Standard annual increase of 2% 2% inflation each year</p> |
| <u>PERSONAL ASSISTANT RATES</u> | <p>Standard Rate £9.35 per hour Complex Rate: £11.36 per hour</p> <p>The rate for any part of an hour is achieved by dividing the hourly rate</p> | <p>£10.18 per hour</p> <p>£9.23 per 3/4 hour</p> <p>£6.75 per 1/2 hour</p> <p>£4.76 per 1/4 hour</p> | Hourly rate of £9.25 per hour | <p>£7.85</p> <p>£9.28</p> <p>Enhanced up to £11.47</p> <p>These rates are applied whether the person is employing a PA or an agency.</p> <p>The rate for any part of an hour is achieved by dividing the hourly rate.</p> | <p>£7.20 8.00am-8.00pm</p> <p>£9.60 evenings/weekends</p> <p>£45.11 midweek sleep</p> <p>£47.54 weekend sleep</p> <p>These rates do not include Holiday Pay.</p> <p>Consider the higher rate for all hours for complex needs, sometimes negotiated rates</p> | <p>Standard Rate: £9.13</p> <p>People need to budget in these amounts for any NI employer contributions.</p> <p>Any special rates are negotiated Individually.</p> | <p>£9.71 per hour</p> <p>£5.20 per 1/2 hour</p> <p>No different rates for complex / Challenging packages</p> <p>Standard annual increase of 2% 2% inflation each year</p> |