

Adult Social Care Scrutiny Commission Report

An Overview of Direct Payments

Lead Member: Cllr Sarah Russell

Lead Strategic Director: Richard Sword

Director: Ruth Lake

Date: 25th January 2024

Wards Affected: All

Report Author: Sezer Domac/ Bernice Lynch

Contact details: 454 6334 sezer.domac@leicester.gov.uk

Version Control: V3

1. Purpose

- 1.1 To provide the Adult Social Care Scrutiny Commission with an overview of Direct Payments – their purpose, how they are delivered and the mechanisms in place to ensure that Direct Payments (DPs) are an effective and appropriate way to use Council resources to meet statutory adult social care needs.

2. Summary

- 2.1 Direct Payments were introduced by the Community Care (Direct Payments) Act 1996, giving Councils the power to offer cash payments to individuals who wished to make their own arrangements for their care and support. The Care Act 2014 now consolidates the legal right to request a DP and for Councils to offer them in appropriate circumstances.
- 2.2 DPs are available for those people who have been assessed as needing care and support from Adult Social Care (ASC) in line with the Care Act 2014, including carers. The value of a DP is determined by the needs / carers assessment, together with any contributions an individual may be asked to make towards the cost of their care. The DP given to the individual is usually paid net of their contribution.
- 2.3 DPs were introduced to offer flexibility, control and personal choice to people who wished to directly arrange their care and support. Over time, Councils and people drawing on support have developed systems that seek to achieve the original intention of DPs, whilst providing additional support for people who require this to manage a DP and at the same time enabling Councils to administer DPs efficiently, with sufficient audit controls on the use of public money. This can be an area of tension.
- 2.4 Leicester City Council was an early adopter of DPs and has one of the highest rates of DP take up in England, at around 45% of all people in receipt of community-based care and support.
- 2.5 Personal Health Budgets are the NHS version of a DP; initially available for people with continuing health care needs, the NHS Long Term Plan has set out ambitions to increase the use of Personal Health Budgets. People with complex health and care needs may receive both a DP and a personal health budget, to use in a flexible pooled fund.
- 2.6 In 2020-21, Leicester City Council worked with Think Local / Act Personal (TLAP) to co-produce a review of DP arrangements, as they approached

their 25th year. This resulted in a number of changes to process and to the presentation of the DP guidance and documentation. This was positively received by people drawing on support, carers and by staff. This work captured the learning from Covid, when flexibilities regarding the use of DPs were extended to address the unprecedented situations that people were experiencing regarding the provision of care. National disability groups have advocated strongly that this flexibility should remain.

3. Recommendations

3.1 The Adult Social Care Scrutiny Commission is recommended to:

- a) Note the report and to provide comment / feedback.

4. Report

4.1 Having set out the context as a summary, this report focuses on:

- The process of establishing DPs as a way to meet care and support needs
- Contracted support
- The benefits that DPs can achieve for individuals and councils
- The challenges that can be experienced in DP arrangements, for individuals and councils and providers
- Future developments of DPs in Leicester

The process

4.2 DPs are essentially a 'cash' payment to an individual that is sufficient to enable them to make their own arrangements for care and support in the community, in line with an assessment of eligible need. DPs are not available for residential / nursing care costs.

4.3 Following a strengths-based assessment, if a DP is agreed as a suitable way to arrange support, the Council and the DP recipient enter into a DP contract. This sets out the value, the obligations of the recipient in spending money to meet assessed outcomes and the responsibilities of the Council.

4.4 To support people with different aspects of DP administration, the Council contracts with Direct Payment Support Services via a framework contract. These providers assist people receiving DPs to manage their DP fund, to pay local agencies or to become employers, of personal assistants. There is no charge to the individual for support from a Direct Payment Support Service.

4.5 The Council widely uses DP pre-payment cards as the delivery mechanism, where people do not use a DP Support Service; the DP value is uploaded on to a bank card, allowing the individual to spend their DP and giving the

Council direct oversight of the transactions made. Cash withdrawals are permitted within set parameters. Should a pre-payment card not be suitable for an individual, payments into specifically designated DP bank accounts can be made. Individuals will be required to submit receipts / statements to evidence their spend. It has been ruled in case law that councils must not fetter individual choice on how their DP is paid.

4.6 The Council sets hourly or unit rates for direct payments, for services such as domiciliary care from an agency, for a Personal Assistant or for a day service. Rates are increased each year at an amount set by the Leicester City Council in line with inflationary increase and this is known as a DP uplift. In agreed exceptional situations, a DP value may exceed the set hourly / unit rate, for example where a specialist skill set for a personal assistant is required.

4.7 DPs may be used for a wide variety of support or services. There is no definitive list of what a DP can be used for. The Council does set out, in guidance, what a DP cannot be used for, including food or alcohol, household bills, gambling, items that should be provided by the NHS – or anything not connected to meeting agreed outcomes in a support plan.

4.8 The Council's financial operations team monitors the use of DPs, via the pre-payment card functionality or by requesting evidence of spend. Where there are concerns about the use of a DP, this is investigated by the social work team, to establish whether spend is meeting outcomes or being used for other purposes. Unspent DPs will be taken back by the Council.

4.9 The Council can refuse to offer a DP, where this is justifiable due to risk – for example, from misuse or where a DP may put someone into a vulnerable position regarding financial abuse. DPs can be withdrawn, where it is identified that this is not a suitable arrangement, for example where people do not make their personal contribution, accruing debt with a provider of support.

4.10 In exceptional circumstances, DPs can be used to pay for care from someone who is a household / family member. This was one of the flexibilities that was expanded during Covid, where people were anxious about having different people entering their home.

Contracted Support

4.11 A new Direct Payment Support Service contract commenced in October 2022, with three providers. They are:

- Mosaic: Shaping Disability Services
- Purple Zest
- Rosekel

4.12 Of those using the 3 Direct Payment Support Service providers, domiciliary care is the most used type of service, followed by support to arrange community opportunities and supported living services.

4.13 For those being assisted by a Direct Payment Support Service, a managed account (broad support to set up and administer a DP) is the most prominent support type across three Providers, with payroll and employment support also an important offer.

4.14 An issue reported by all 3 providers is the non-payment of contributions by the person in receipt of a DP. This has the potential to result in a shortfall in the fund held to pay personal assistants or agency providers and can result in market fragility for some very small providers. The current total outstanding debt at the end of Oct 2023 is £134,063.24. To address this, officers have developed a flowchart, which clearly outlines the course of action that must be taken if a person fails to make their contributions and is thus in breach of the terms and conditions of the DP contract they made with the council. This has been positive in reducing the total outstanding debt since the introduction of the formal flowchart process.

The Benefits of DPs

4.15 DP take up is cited as a measurement of a Council's success in enabling choice and control for people in receipt of support / carers. With Leicester's figure of 45.4% (2022/23), we are in the top quartile of Councils (ranked 2/151 in 2021/22 benchmarking). 100% of carers who receive direct council support do so via a DP, and we ranked 1/151 (2021/22 benchmarking). This rate has reduced since a high of 50.9% in 2017/18, the reasons for which are multifactorial but described below (see challenges).

4.16 In theory, DPs reduce the process burden for Councils in managing people's care and support via commissioned services and provider oversight. Where they work best, the individual is self-sufficient and in control of their arrangements, allowing for rapid changes, flexibility of timing, the nature of support and the people who provide the support.

4.17 DPs offer the opportunity to draw in support that may not be readily available from a contracted provider market – such as support in specific languages, or able to meet important cultural needs. Leicester City Council participated in a year-long study with IMPACT to explore the experience of people from Black and Minority Ethnic communities who used DPs. It was a very limited sample of individuals, but this work identified positives in terms of choice, coupled with perceptions of a limited contracted market. The research has been published here. [Direct Payments in 2022 - IMPACT \(bham.ac.uk\)](https://www.bham.ac.uk/impact/direct-payments-2022/)

4.18 The review undertaken with TLAP fundamentally reworked the relationship that people using DPs had with the Council, through co-production. A DP working group continues to meet regularly. The project also led to a refresh

of ASC's approach to reviews, as these were cited as a period of anxiety for people. The feedback was positive, after an initially challenging period of hearing what people had to say about their experiences. The work has been nationally recognised for its practical, tangible impact. [Making everyday co-production real - Blogs & Articles - Think Local Act Personal](#)

"[LCC ASC] are able to pin down and demonstrate specific incremental and more strategic changes that have been co-produced with people leading to better outcomes and as a result lives. We think this is especially valuable not only to the people who receive care and support but to the workforce."
Martin Walker, TLAP

The Challenges of Direct Payments

- 4.19 One of the most significant challenges is the balancing of interests, between people who are looking for self- management away from council control and for councils who are concerned about the use of public money.
- 4.20 People using DPs have described the bureaucracy of meeting the audit expectations of councils as 'the price of disability'. Whilst the number of people who abuse a DP system is very low, the misuse of public resources is a legitimate worry for councils and where this is coupled with low corporate understanding of the benefits of DPs, it can lead to a position of conflict or tension, between ASC, finance functions and people using DPs. There are also concerns regarding the safety of people using DPs, who may experience abuse, or low-quality support, that a council is less sighted on.
- 4.21 The review in Leicester supported a shared understanding of our DP ambition and the impact of financial processes on people. That said, there remain areas of improvement to work through.
- 4.22 There are limited resources or mechanisms by which to assess the quality of DP providers, where they do not have any contractual relationship with the Council. This has resulted in difficulties managing safeguarding concerns, where the Council has no contractual levers to use regarding quality.
- 4.23 There is a balance to be struck in asking people for the specific details of their support arrangements (such as PA details) and enabling independence. It is more difficult to have oversight of care quality or risks, for example who else a personal assistant may be providing care to, when concerns do arise about an individual situation.
- 4.24 DP levels have reduced nationally over the last few years. It is not specifically understood why this has happened. Some disability organisations have questioned whether the constrained financial position of Councils has led to a growing reluctance to offer DPs, where financial

control and oversight is less direct. Under investment in DP support services is also cited as a reason why people may not feel able to manage a DP. Whilst neither of these factors are local issues, it is the case that ASC is more confident in ceasing a DP where this is not managed in line with the Council's contractual expectations or where debt is accruing, impacting on the sustainability of the provider market.

- 4.25 It is of note that there are some exceptional situations where a DP is the only mechanism by which the Council can discharge its duties under the Care Act, as no provider can be found to work with an individual who behaves in ways that are challenging to the provision of care. In these situations, the principles of choice, control and reduced Council involvement are diminished, as the Council is generally actively involved in sustaining a DP arrangement in the absence of any other option.

Future Developments

- 4.26 Given the benefits and challenges, work in relation to the local use of DPs is ongoing. The DP Working Group developed from the review in 2020/1, meets monthly to support this work.
- 4.27 It has recommended the creation of a DP 'approved provider' list and is developing a due diligence checklist for the Direct Payment Support Services providers to use when arranging care with non-contracted providers.
- 4.28 Mechanisms to protect individuals and the Council, where a person chooses to use someone who has not been checked via an approved provider list, are in discussion.
- 4.29 Oversight of the achievement of outcomes via a DP is largely managed via the social work review process. Given the challenges regarding overdue reviews, this is recognised as an area of risk and was noted in the Council's audit programme. A dashboard now allows ASC to see, at a glance, the outstanding overdue reviews by each service area and a risk matrix is being tested, to enable the prioritisation of DP reviews.
- 4.30 A workshop with DP recipients and representatives from Finance, Contract and Assurance Service and Operational Teams took place recently, to update the Direct Payment guidance and to add a frequently asked questions (FAQ) section.

5.1 Finance

5.1.1 There are no direct financial implications arising from this update. For information, £43m was spent in 2022/23 on care packages set up as direct payments, with three quarters of this amount for working age adults.

Martin Judson, Head of Finance

5.2 Legal

Making Direct Payments is consistent with the Council's statutory obligations under the Care Act 2014 and Mental Health Act 1983 as well as associated statutory instruments. The contents of this report are all in line with those statutory obligations.

As per the non-contribution process set out within the report, PAs/others will be required to chase debts through courts. The Council should therefore ensure that the person managing their own Direct Payments has the mental capacity to do so, before agreeing to make the same.

Mark Kamlow, Principal Lawyer, Social Care & Safeguarding Tel: 0116 454 1457

5.3 Equalities Implications

Under the Equality Act 2010, public authorities have a Public Sector Equality Duty (PSED) which means that, in carrying out their functions, they have a statutory duty to pay due regard to the need to eliminate unlawful discrimination, harassment and victimisation, to advance equality of opportunity between people who share a protected characteristic and those who don't and to foster good relations between people who share a protected characteristic and those who don't.

Protected Characteristics under the Equality Act 2010 are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation.

The report provides an update to the Commission on the overview of Direct Payments within the Council. The take up of direct payments should impact positively on people from across a range of protected characteristics, as they enable them to have services that meet their specific needs/requirements, such as culturally specific services. The continued use of direct payments will ensure that individuals needs/outcomes are met as appropriate.

Surinder Singh
Equalities Officer
Tel 37 4148

5.4 Climate emergency implications

There are no significant climate emergency implications directly associated with this report.

Aidan Davis, Sustainability Officer, Ext 37 2284

6. Appendices

None

7. Background Papers

None

8. Is this a Key Decision - No