

SUPPORT, CHOICE AND INDEPENDENCE - THE FUTURE OF ADULT SOCIAL CARE

Cabinet Member	Councillor Phillip Corthorne
Cabinet Portfolio	Social Services, Health and Housing
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Papers with report	None

HEADLINE INFORMATION

Purpose of report	<p>The personalisation agenda in Adult Social Care will transform service delivery for 6,000 residents receiving social care services over the coming years. We are proposing to build our new services around the themes of support, choice and independence - becoming a more enabling organisation that supports residents to have more control over what services they receive and enjoy greater autonomy in their lives.</p> <p>A key juncture in achieving these aims is the council's decision over the legal framework the council employs to support the new way of working, Self Directed Support.</p> <p>There are two options: 1) Direct Payments legislation and 2) the Local Authority's Wellbeing power under the Local Government Act 2000.</p>
Contribution to our plans and strategies	<p>The Support, Choice and Independence programme to transform Adult Social Care is making a direct contribution towards achieving Theme 1 of Hillingdon Partners Sustainable Community Strategy 2008-18, "A borough with improving health and wellbeing".</p> <p>The programme is also aligned with Business Improvement Delivery (BID), as a key means of redesigning our business processes to become a modern, effective and efficient organisation delivering excellent services.</p> <p>Finally, the programme has been informed by the Social Services, Health and Housing Policy Overview Committee's wide-ranging review of the Transformation Agenda and Direct Payments.</p>
Financial Cost	<p>The decision on the legal framework for Self Directed Support does not have a direct cost implication. There are no additional financial implications as the one off costs of implementing Self Directed Support are contained within the Social Care Reform Grant provided by the Department of Health; and the allocation of an individuals personal budget is included within the departments revenue budget.</p>

Relevant Policy Overview Committee	Social Services, Health and Housing
Ward(s) affected	All

RECOMMENDATION

That Cabinet:

- 1. Agree that the current legal framework for Direct Payments is the most robust option for implementing Self Directed Support.**
- 2. Agree that, in those cases where Direct Payments legislation is not sufficient in achieving support, choice and independence for social care customers, the use of the Well Being power should be investigated in partnership with the council's Legal Services.**

INFORMATION

Reasons for recommendation

3. The recommendation above has been informed by extensive research into the differing legal frameworks, as set out in this report.
4. The revised guidance for Direct Payments, issued in November 2009, puts a strong emphasis on flexibility and creativity in finding the right support options for social care customers.
5. Our own experience in Hillingdon - and the experience of other councils - indicates that this is sufficient to deliver the desired benefits from the Transformation of Adult Social Care.
6. The use of the Well Being power promises even greater choice for residents in their use of a personal budget. However, the legal complexities of doing so are potentially high, with work necessary to ensure that the budget would not be in breach of any other, pre-existing legal frameworks.
7. The Well Being power should therefore be reserved for exceptional instances and impasse situations.

Alternative options considered / risk management

8. Use of the Well Being power under section 2 of the Local Government Act 2000 as the primary legal framework for Self Directed Support in Hillingdon.

Comments of Policy Overview Committee

A Policy Overview Committee review of Transformation agenda and Direct Payments in Hillingdon has recently been completed and a report is being presented to Cabinet as part of this agenda. Officers have worked with Members of the Committee in helping shape their

recommendations, which if endorsed by Cabinet, will be taken forward as part of the Support, Choice and Independence - the Future of Adult Social Care agenda.

Supporting Information

9. Over the last five years, a growing expectation has been placed on local authorities across the United Kingdom to provide more personalised Adult Social Care services. The national commitment to this has been reiterated and developed through a sequence of major policy documents, including:

- i. ***Improving the Life Chances of Disabled People*** (Prime Minister's Strategy Unit, January 2005);
- ii. ***Opportunity Age*** (Department for Works and Pensions, March 2005);
- iii. ***Independence, Well-being and Choice*** (Green Paper, Department of Health, March 2005)
- iv. ***Our Health, Our Care, Our Say*** (White Paper, Department of Health, January 2006)
- v. ***Putting People First: a shared vision and commitment to the transformation of adult social care*** (Department of Health, 2007)

10. The last of these documents, Putting People First, was published as a cross-government concordat requiring local authorities to transform their Adult Social Care services through the introduction of personal budgets or Self Directed Support (SDS).

11. A national series of pilots and the experience of other local authorities in the United Kingdom has indicated that this approach can lead to better outcomes for individuals, maximising their choice, control and independence and potentially reducing the ongoing cost of their support.

12. The success of this scheme across adult social care services has resulted in pilots for personal budgets being extended to health, welfare, education and beyond, with some Local Authorities adopting it as a mainstream service delivery model.

Support, Choice and Independence

13. In Hillingdon, the Support, Choice and Independence (SCI) programme has been put in place to deliver a whole systems approach to transformation that prioritises increases in customer choice and control while taking a strong approach to the Council's overall financial management.

14. The aims of the programme are to:

- Provide full ***support*** for people to make the most of the new approach to social care and find the right support options
- Give people real ***choice*** in the range of support options available and control in how they are received
- Help people maintain ***independence*** and enjoy fuller lives

15. The programme is aligned with the Business Improvement Delivery (BID) project geared towards developing new systems and re-designing back office processes to make the council a more modern and effective organisation.

16. In line with the principles of Putting People First, partnership working with customers and staff (co-design) is an integral way of developing the new ways of working. The full involvement of all stakeholders in this process is helping the entire local social care network to be more flexible, creative and innovative to improve the lives of people who receive social care services.

17. A number of pilots and test phases are underway to most effectively manage the change process. The implications for residents, the social care workforce, partners and providers are extremely wide-ranging, and will be felt across the following four areas:

Mainstreaming a new way of working: Self Directed Support

18. Self-Directed Support places greater control in the hands of customers of social care services. Through a Resource Allocation System, customers are allocated a personal budget: a sum of funds to be used on meeting their social care needs. Social care practitioners and a new function, brokers, play a key role in supporting them to find the right options so they can have the most effective, personalised package of support to help them live their life and maintain independence.

19. In Hillingdon, implementation of this new approach has been split into two parts:

- From August 2010, Self Directed support will be introduced for existing adult social care customers receiving domiciliary and/or day care.
- Following this, Self Directed support will be provided to all new social care customers from April 2011.

20. A comprehensive programme of communications and training is underway to support customers and staff through this change.

Shaping the social care provider market

21. For Self Directed Support to be effective, there must be true choice in the market place to permit truly personalised, innovative and cost-effective solutions to be found.

22. The Council's commissioning role will undergo a major change as a result of Self Directed Support. Overall, the contractual relationship between care provider and the council will start to shift to a relationship between the care provider and the individual. As a result, the Council will increasingly focus on partnership working with providers and strategic market development at local and pan-regional levels, rather than direct contract management. Work towards this is currently taking place through the West London Alliance.

Putting in place universal information and advice services

23. Through the transformation of Adult Social Care, there is an expectation on councils to review and improve their information and advice services such that they are of a high quality and are known and accessible to the entire population, including self-funders.

24. All residents should be able to easily find locally relevant quality information and advice about their care and support needs in order to enable control and inform choice. Work is taking place with the voluntary sector, libraries, GPs, Hillingdon Social Care Direct and Corporate Communications to ensure information is available in a range of formats and through channels to make it accessible to all groups. In order to achieve this, provision of information, advice and

guidance is being brought together to a single coherent Commissioning for Personalisation Strategy for Hillingdon.

A focus on prevention and reablement

25. The Support, Choice and Independence programme is taking a whole systems approach to prevention and early intervention. Together, this suite of services is aimed at supporting residents to stay independent for as long as possible.

26. Examples of early intervention include reablement type services that help people regain independence to live in their own home. Reablement also helps people to avoid becoming dependent on council provided services with national studies demonstrating many people finish this six-week service with either a reduced need for care, or no ongoing requirement at all. Reablement is being introduced as a key part of the social care process in Hillingdon, through in-house home care.

A key part of this is ensuring council-wide and partnership approaches to universal services e.g. leisure, adult education, transport, employment, healthy living and health improvement (backed by targeted intervention), along with housing and supported living options.

The legal framework for Self Directed Support

27. Central to the implementation of Self Directed Support is the legal framework we employ as a council to release funding in the form of a personal budget, for people to meet their social care needs.

28. No change has been made to the legal framework for social care to facilitate personalisation, other than the introduction of a new piece of legislation extending Direct Payments to people lacking capacity, which came into force in November 2009.

29. In the course of 2009, certain councils had been employing the Well Being power under section 2 of the Local Government Act 2000 as the legal mechanism to release funding to customers in the form of a personal budget.

30. However, since the introduction of new Direct Payments guidance in November 2009, most councils have now opted to use Direct Payments legislation as the tool to achieve this.

31. According to recent Association of Directors of Adult Social Services (ADASS) guidance, a personal budget can be released to an eligible person in the following ways:

- In the form of a Direct Payment, held directly by the person or where they lack capacity, by a “suitable person”
- By way of an “account” held and managed by the council in line with the person’s wishes
- As a mixture of the above
- For impasse situations - those instances where community care and continuing health care legislation do not meet the need - a “Well Being grant” through the Local Government Act 2000

32. In line with this approach, if the person wishes to manage the personal budget themselves, they must take the amount as a Direct Payment subject to the national Direct Payments regulations and Hillingdon’s local policies and procedures.

33. Locally, research has been taking place to ascertain whether the Direct Payments legislation is sufficient to achieve the potential benefits of Self Directed Support, or whether an alternative route should be sought via the Local Government Act 2000.

34. The remaining information in this paper focuses on whether Direct Payments legislation offers sufficient flexibility to provide people the real choice and independence they need from Adult Social Care services; or whether the Local Government Act 2000 is viable as a mainstream legal framework for Self Directed Support.

Option 1: Use of the new Direct Payments guidance – November 2009 (DH)

35. Direct Payments guidance has been altered for the implementation of Self Directed Support.

Specifically, councils are encouraged to be as flexible, creative and innovative as possible:

"In discussions with individuals about how their needs might be met through direct payments, councils should be prepared to be open to new ideas and be as flexible as possible. By exploring innovative and creative options, people should be encouraged to identify how they might most effectively achieve outcomes in a way that aligns with their personal wishes and preferences."

Additionally, councils are recommended to keep the burden of regulation as low as possible:

"Councils may set reasonable conditions on the direct payments, but need to bear in mind when doing so that the aim of direct payments is to give people more choice and control over their support and how it is delivered. For example, individual choice and control would not be delivered were a condition to be set that someone who receives direct payments might only use certain providers. Conditions should be proportionate and no more extensive, in terms or number, than is reasonably necessary. Councils should also avoid setting up disproportionately intensive monitoring procedures."

Possible uses for Direct Payments

According to the November 2009 Direct Payments Guidance and the ADASS legal advice, the following uses of a Direct Payment are permissible:

- Personal care
- Equipment
- Modifications to the home
- Help with personal activities
- Help with domestic activities
- Support to return to work (e.g. an educational course to improve skills)
- Social inclusion activities
- General well being activities (e.g. fitness classes, arts, cultural activities)
- Meals

Conversely, the following services are not able to be bought with a Direct Payment:

- Registered nursing care
- Long-term non-respite residential care
- Services or equipment for which the council is not responsible (e.g. those the NHS is required to provide)
- Illegal activities

36. The Direct Payment is a “conditional resource entitlement” - activities funded in this way will need to demonstrably meet social care needs and be balanced against other priorities for the individual.

37. The Council is currently developing local policies and procedures to determine how this is implemented in Hillingdon, so appropriate uses of Direct Payments under the new guidance are very clear.

Option 2) Use of the Well Being Power instead of Direct Payments

38. The principal benefits of using the Well Being Power are 1) increased flexibility and 2) the decreased requirement for monitoring. Up to this point, Essex County Council have deployed their personal budgets according to this power. However, there is a lack of clarity about the legality of this approach.

A legal article on the Well Being power from King's Bench Walk Temple states:

'The well-being power conferred upon local authorities in section 2 of the Local Government Act 2000 provides that:

"Every local authority are to have power to do anything which they consider is likely to achieve any one or more of the following objects –

- (a) the promotion or improvement of the economic well-being of their area;*
- (b) the promotion or improvement of the social well-being of their area;*
- (c) the promotion or improvement of the environmental well-being of their area."*

39. Section 2(4) of the 2000 Act makes it clear that the well-being power includes a power to incur expenditure, to provide financial assistance and to provide staff, goods, services or accommodation to any person.'

40. This is a “power of first resort” for local authorities. However, the ADASS legal advice “Personalisation and the law” argues the Well Being power should be used by exception for Self-Directed Support, not as the core vehicle for its delivery:

*"A **well-being grant** under s2 Local Government Act 2000 is a different legal vehicle altogether and should not be confused with a personal budget or a Direct Payment for community care services. It is a form of financial assistance which can be given to an individual, so long as the authority believes it will inure to the benefit of the area, and so long as there is no other legislative bar in statute or regulations preventing the desired outcome. These grants cannot be made without regard to the authority's Sustainable Communities Strategy. They cannot be made if any existing enactment prohibits, restricts or limits the achieving of the desired outcome, and they do not, therefore, overcome difficulties with the existing legal framework, for clients who have actually been assessed as eligible for community care services.*

Advice should be sought from one's legal team as to whether it could be said that the desired outcome is one which there is no power at all to achieve within the current framework, because it is strongly arguable that s2 can be used in such circumstances to supply the power. Advice has been obtained to this effect and can be requested from ADASS."

Recommendation

41. Overall and on the basis of the research undertaken, it is advised that the framework for Direct Payments is the most robust option for implementing Self Directed Support.
42. However, in those cases where Direct Payments legislation is not sufficient to meet the required flexibility and benefits, the use of the Well Being power should be investigated in partnership with the council's Legal Services.
43. The revised guidance for Direct Payments puts a strong emphasis on flexibility and creativity in finding the right support options for social care customers. This is sufficient to deliver the desired benefits from the Transformation of Adult Social Care.
44. While the Well Being power would mean a personal budget could be used for any activity so long as it met the social, economic and environmental needs of the area (or individual within that area), the legal complexities of doing so are potentially high, with work necessary to ensure that the budget would not be in breach of any other, pre-existing legal frameworks. The Well Being power should therefore be reserved for exceptional instances and impasse situations.

Financial Implications

45. The decision on the legal framework for Self Directed Support does not have a direct cost implication. There are no additional financial implications as the one off costs of implementing Self Directed Support are contained within the Social Care Reform Grant provided by the Department of Health; and the allocation of an individual's personal budget is included within the department's revenue budget.

EFFECT ON RESIDENTS, SERVICE USERS & COMMUNITIES

What will be the effect of the recommendation?

46. As set out above, the Support, Choice and Independence programme to transform Adult Social Care will have a major positive effect on the lives of Hillingdon's residents and social care customers.

47. The implementation of Self Directed Support through the revised guidance for Direct Payments will permit people eligible for social care funding to have greater choice and control in developing appropriate, personalised packages of support for themselves, improving their wellbeing and helping them to maintain independence.

Consultation Carried Out or Required

48. A consultation has been undertaken with the think tank Demos and the Centre for Disability Research at the University of Lancaster, entitled "What support do you want?". This consultation was aimed at finding out social care customers' level of awareness relating to Self Directed Support and what choices they were likely to make once they had been allocated a personal budget.

CORPORATE IMPLICATIONS

Corporate Finance

The recommendation of a decision over the appropriate legal framework for the implementation of self-directed support does not have any specific financial implications. However, it is probable that the alternative option considered in the report of generally applying well-being powers rather than direct payment powers would result in additional legal costs being incurred by the Council. The wider transformation agenda that this decision underpins, through the implementation of self-directed support, is likely to have significant positive financial implications in terms of greater effectiveness, value for money and improved service outcomes from service delivery.

Legal

The main Direct Payments legislation referred to in this report is the Health and Social Care Act 2001 and The Community Care, Services for Carers and Children's Services (Direct Payments) (England) Regulations 2009 (the "Regulations") which came into force on 9th November 2009 and which, in turn, relates to the Council's powers and duties to provide services under the Mental Health Act 2003, the Children Act 1989 and the National Health Service and Community Care Act 1990.

The Regulations provide a specific statutory framework that enables local authorities to make direct payments in respect of relevant services to persons who appear to the authority to be capable of managing a direct payment by themselves or with such assistance as may be available to them and provided that the authority has their consent. It is the view of the Borough Solicitor, and of ADASS referred to in the body of this report, that the best way of implementing Self Directed Support is to use the specific legislation that has been created. However, if the Service subsequently encounters a situation which it is unable to deal with under the Regulations then the Borough Solicitor will explore the use of the well being powers with the Service to see if a more flexible solution can be provided.

BACKGROUND PAPERS

- “Personalisation and the law”, Association of Directors of Adult Social Services (ADASS), October 2009
- “Guidance on direct payments”, Department of Health (DH), November 2009