



ADULTS AND COMMUNITIES OVERVIEW AND SCRUTINY COMMITTEE:
17 NOVEMBER 2014

REPORT OF THE DIRECTOR OF ADULTS AND COMMUNITIES

AUDIT AND MONITORING PROCESS FOR DIRECT CASH PAYMENTS
FOR PERSONAL BUDGETS

Purpose of Report

1. To inform the Adults and Communities Overview and Scrutiny Committee of current processes and procedures within the Adults and Communities Department for auditing and monitoring cash payments for personal budgets and to advise members on future plans.

Policy Framework and Previous Decisions

2. On 26 November 2013, the Adults and Communities Overview and Scrutiny Committee considered Personal Budgets and in particular cash budgets as part of a report on the Medium Term Financial Strategy which updated the Committee on the in-year financial pressures experienced by the Adults and Communities Department. Arising from this discussion a request was made for a paper to be prepared to the Adults and Communities Overview and Scrutiny Committee providing information regarding how the Adults and Communities Department is fulfilling its responsibilities for monitoring and reviewing Cash Payments.

Background

3. The Community Care (Direct Payments) Act 1996 gave Local Authorities the power to provide Direct Payments so that people can purchase their own community care services. There has been subsequent legislation which has further strengthened the rights of service users to receive Direct Payments to allow the purchase of individualised services. In 2007, the concordat 'Putting People First' was published which introduced Personal Budgets and the vision that there would be increased use of Direct Payments as part of service users' Personal Budgets.
4. In April 2015 the Care Act will come into force, and this will replace existing Direct Payments legislation. The guidance states that Councils' must ensure that "processes involved in administering and monitoring the payment should incorporate the minimal elements to allow the local authority to fulfil its statutory responsibilities. These processes must not restrict choice or stifle innovation, and must not place undue burdens on people to provide information to the local authority. An effective monitoring process should go beyond financial monitoring, and include aspects such as identifying wider risks and issues, for example non-payment of tax, and provision of employers' liability insurance."

5. The Care Act introduces the opportunity to have Direct Payments for permanent residential care placements but this will not be implemented until 2016. In Leicestershire a decision was taken in 2011 to rename Direct Payments to Cash Payments to help alleviate the confusion regarding what this service encompassed. Hence, Cash Payments in Leicestershire equate to Direct Payments.
6. There are approximately 1,600 adults in Leicestershire who receive a cash payment from Leicestershire County Council; this is 30% of the total number of people receiving a Personal Budget. Almost half of the cash payment recipients receive their cash payment as a Provider Managed Account (PMA); this is where the cash payment is paid to the provider of the service user's choice directly and the provider either organises or directly provides the services. In PMA situations the contract is between the service user and the provider and whilst the Council is funding the provision it does not have a contractual role.

Current Arrangements

7. Operational staff discuss the option of accessing a Cash Payment with service users when eligibility for community care services has been determined. Staff will determine if the service user has capacity to understand what a Cash Payment means and to understand the legal agreement that is required with the Council. For service users who do not have capacity to understand a Cash Payment and agree to it, there is the possibility of the Council to identify a suitable person who could manage the Cash Payment on behalf of the service user; this person assumes significant responsibility to manage the Cash Payment with the 'best interests' of the service user at the forefront of their practice. The Adults and Communities Department has legal agreements and guidance for both service users and the suitable person as appropriate – these set out the roles and responsibilities of the person and the Council, with both parties signing to reflect their agreement.
8. For new Cash Payment agreements the expectation is that operational staff will provide a 'light touch' review within three months of the Cash Payment being established following which annual reviews would be expected to take place.
9. Regarding the monitoring and auditing of Cash Payments the information below sets out the current roles and tasks of Community Care Finance (CCF), Learning and Development and Review Officers/Allocated Care Manager.
10. Cash Payments are made to service users' designated Cash Payment bank accounts by CCF following the support plan completion by allocated care managers. The support plans set out the payments to be made, the support that this is providing and identify who is managing the Cash Payment.
11. CCF carry out some financial auditing for those service users who are ending their Cash Payment; either due to the fact that they are changing the way they receive their support or possibly because they are deceased/admitted to residential care. In such circumstances, where a service user is no longer going to receive a Cash Payment, the following is instigated by CCF:
 - Up-to-date bank statement requested and compared against the CCFs understanding of what the balance should be;

- If the statement appears satisfactory and in line with CCFs assessment of what the balance should be then a calculation of money that is not spent is made and an invoice is raised;
 - If the statement balance is unsatisfactory or it appears from the bank statement that funds have been used inappropriately CCF will assess what monies are owed to the Council and attempt to claw these funds back, an invoice will be raised accordingly.
12. Service users have regular reviews of their care needs. This review determines the person's eligible needs and evaluates the extent to which the support plan has delivered the agreed outcomes. The Review Officer will view key documents and evidence to see what has been received by the service user, what has been paid out and identify any surplus money to be returned to the department.
 13. An audit tool has been developed for the Council which review staff will use to assist them with this task. At a minimum Review Officers will view the following:
 - Bank statements (at least three months);
 - Receipts of expenditure from the Cash Payment;
 - Pay slips where they are employing staff;
 - Evidence of service user Fairer Charging contributions being made into the Cash Payment bank account.
 14. The audit tool is completed and scanned onto the service user's records and the Review Officer will note the closing balance of the bank statement in the case records as well as the regular payments being made from the bank account.
 15. Any irregularities or cause for concern are raised with the Team Senior and a judgement made regarding whether it constitutes a major or minor breach.
 16. For minor breaches, where it is clear that it is due to a misunderstanding/human error the Review Officer will provide guidance and alter the Cash Payment if the funds need to be reduced. This will be documented for consideration at the next review. The Review Officer will liaise with CCF if there needs to be an invoice raised to reclaim any unspent funds.
 17. In a small number of cases a decision may be made that the Cash Payment should end due to the level of irregularity and alternative arrangements (such as a managed service) for meeting the social care needs are made. This has tended to have happened in circumstances where the Council does not have sufficient confidence that the Cash Payment can be managed appropriately. There are a few instances of misuse of the cash payment fund and staff will consider in each situation whether it has been fraudulently managed. To date there have been no cases that have resulted in a referral to the Police. A recent example of misuse involved a service user allowing his daughter to access the cash payment; she subsequently used it to purchase items for herself. As a result CCF is recouping some funds from the service user and an alternative mechanism for service provision has been organised. CCF will make all reasonable attempts to get monies repaid including debt recovery processes.
 18. CCF estimate costs to the Council of debt recovery processes as £65 per person at the minimum – this will rise if the debtor resists repayment. Court proceedings accrue

additional costs ranging from £35 to £455 on a sliding scale (subject to the amount of debt being recovered) and in addition there will be a requirement for legal representative resources.

19. During 2012/13, the Council's Learning and Development Service carried out a training course for Review Teams and operational staff which provided extensive knowledge and guidance on cash budgets and how they should be audited and reviewed. As the number of people receiving a Cash Payment has grown, the complexity of monitoring has increased and a more proportionate and simplified process is required. Staff receive training through the following courses:
- Half day Induction training on Cash Payments;
 - One day employment guidance for Cash Payment employers.

Future Developments

Employment Support

20. During 2013/14 the Adults and Communities Department considered alternative employment support options for service users and/or their representatives. This was in recognition that the employment of staff using a Cash Payment can feel overwhelming and people may not choose this option due to concerns that they do not hold the relevant knowledge. Some employment advice is available from Adults and Communities staff, but it is recognised that employment law is complex and requires specialist support. The Adults and Communities Departmental Management Team approved the procurement of employment advice providers who can support service users to receive a Cash Payment and carry out the various employment/recruitment tasks. This procurement process is due to commence and the framework should be available mid-2015.

Direct Payment Cards

21. The option of providing direct payment cards has been considered and approved recently by the Adults and Communities Department which would provide a different mechanism for people to receive a Cash Payment and potentially provide significant benefits to the Council and service users. This would mean that the Council could provide the option of a direct payment card to service users which would be used to fund their support plan rather than the current requirement of a separate bank account to be opened by the service user with funds being paid in by the Council. Procurement processes are due to begin and it is hoped that direct payment cards will be available in Leicestershire by May 2015. The potential benefits identified by this approach include:
- No need for service users to open a separate bank account for the cash payment;
 - Spend data can be analysed to advise future market mapping which will help with market development and shaping;
 - Analysis can inform on trends and changes in spend on personal budgets;
 - Surplus monies can be clawed back automatically preventing excessive build-up of unspent cash payment funds;
 - Auditing can take place without the need for handling lots of paperwork reducing stress for service users associated with having to retain receipts and bank statements until requested at the annual review;

- Auditing can take place on a more frequent basis and can more easily highlight mismanagement of the account;
- Online banking can be blocked if considered necessary;
- Certain Merchant Categories can be blocked (eg for gambling or off-licences);
- Instant access to the account by the Finance Monitoring Officer;
- Card supplier operates a 24 hour helpline for customers.

Resource Implications

22. The total forecast spend on cash payments at the present time is £24.4m. Review Officers have recently carried out some targeted reviews of cash payments involving a PMA which has resulted in a significant claw back of funds for the Council; for 30 service users who were reviewed there was a total of £136k per annum identified for claw back. These reviews will continue as it identifies a significant opportunity to reduce the cash payment spend. The position will be further improved when direct payment cards are available as these will be encouraged for both new cash payment recipients and for those who have received their cash payment in a traditional way. In particular, it will allow a different option for service users who are not operating their cash payment account in an appropriate way and reduce the risk of build-up of inappropriate funds.

Conclusions

23. The processes used within the Adults and Communities Department and by the external agencies who will be working with service users who have chosen to receive a Cash Payment will be reviewed in the light of the Care Act. In particular, that there are robust methods to ensure that service users, or their representatives, are paying the relevant statutory payments to Inland Revenue and have appropriate insurance protection.
24. Members of the Adults and Communities Overview and Scrutiny Committee are asked to note the information in this report regarding current auditing and monitoring processes as well as the changes ahead as a result of changing legislation requirements, the procurement of an employment support service and direct payment cards.

Background Papers

Public information on cash payments and associated guidance and agreements;
http://www.leics.gov.uk/index/social_services/adults/adult_srv_money/direct_payments_sc_heme

Minutes of a meeting of the Adults and Communities Overview and Scrutiny Committee, 26 November 2013 – minute 21 refers;
<http://politics.leics.gov.uk/ieListDocuments.aspx?CId=1040&MId=3887&Ver=4>

Circulation under the Local Issues Alert Procedure

None.

Officers to Contact

Tony Dailide, Assistant Director (Promoting Independence)
Adults and Communities Department
Telephone: 0116 305 7552
Email: tony.dailide@leics.gov.uk

Anne Walsh, Head of Service (Promoting Independence)
Adults and Communities Department
Telephone: 0116 305 6614
Email: anne.walsh@leics.gov.uk

Relevant Impact Assessment**Equality and Human Rights Implications**

25. Regarding the provision of direct payment cards a positive impact has been identified for service users and their carers as receiving a cash payment will become easier with no need to open a second bank account, which for some people is difficult. In addition, there will be the benefit of the council being alerted in a timely manner to any situations where the cash payment is not being managed appropriately and opportunities to offer support at an earlier point than the current arrangements allow.