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**Report of** John Macilwraith  
**Report to:** *Individual Executive Member for Health and Social Care*  
**Date of Decision:** 20 October 2021  
**Subject:** Direct Payment Support Services - Invest to Save

Is this a Key Decision? If Yes, reason Key Decision:-	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
- Expenditure and/or savings over £500,000	<input type="checkbox"/>	
- Affects 2 or more Wards	<input checked="" type="checkbox"/>	
Which Executive Member Portfolio does this relate to? <i>Health and Social Care and Children, Young People and Families</i>		
Which Scrutiny and Policy Development Committee does this relate to? <i>Healthier Communities and Adult Social Care Scrutiny and Policy Development Committee</i>		
Has an Equality Impact Assessment (EIA) been undertaken?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
If YES, what EIA reference number has it been given? 883		
Does the report contain confidential or exempt information?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
If YES, give details as to whether the exemption applies to the full report / part of the report and/or appendices and complete below: -  <i>"The (report/appendix) is not for publication because it contains exempt information under Paragraph (insert relevant paragraph number) of Schedule 12A of the Local Government Act 1972 (as amended)."</i>		

**Purpose of Report:**

To propose the procurement of an external commission of a Direct Payment Support Service for people to receive accurate and specialist advice on managing Direct Payments and employment responsibilities.

The procurement will be a 2-year provision with the option to extend, while further exploration of long-term Direct Payment support solutions are considered.

The investment is £170k per annum, £340k.

PLT and Individual Cabinet Members have already agreed the invest-to-save proposal however approval is required to move ahead with the procurement of the external support service.

The invest-to-save fits within the wider Direct Payment Improvement Programme and contributes to the mission of the One-year plan. We currently have around £40m worth of annual cost related to Direct Payments highlighting a significant area of activity for the Council.

**Recommendations:**

It is recommended that the Individual Executive Member:

1. Approves the tendering of an external Direct Payments Support Service for an interim 2-year period with the option to extend. The cost will be £170k per annum.
  - a) This will ensure Care Act 2014 compliance by providing people, and our staff, with specialist advice and support. This is particularly relevant for people choosing to employ Personal Assistants.
  - b) During this interim period a full options appraisal will be undertaken to explore the longer-term solution for Direct Payment support. The options appraisal will be co-produced and explore options such as creating an in-house support option, continuing with a procured service, building a community-based user-led consortium, and creating a free-market of several providers.
2. Delegates authority to the Executive Director, People / Director of Adult Services, in consultation with the Director of Finance and Commercial Services and the Director of Legal and Governance to:
  - a) Decide the award of the new contract to the successful service provider chosen by the Council following the procurement.
  - b) Take all other decisions necessary to meet the aims, objectives and outcomes of this report which are not already covered by existing delegations in the Leaders Scheme of Delegations.

## Background Papers:



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Lead Officer to complete:-	
1	I have consulted the relevant departments in respect of any relevant implications indicated on the Statutory and Council Policy Checklist, and comments have been incorporated / additional forms completed / EIA completed, where required.
	Finance: <i>Liz Gough</i>
	Legal: <i>Louise Bate</i>
	Equalities: <i>Ed Sexton</i>
<i>Legal, financial/commercial and equalities implications must be included within the report and the name of the officer consulted must be included above.</i>	
2	<b>EMT member who approved submission:</b> <i>John MacIlwraith</i>
3	<b>Executive Member consulted:</b> <i>George Lindars -Hammond</i>
4	I confirm that all necessary approval has been obtained in respect of the implications indicated on the Statutory and Council Policy Checklist and that the report has been approved for submission to the Decision Maker by the EMT member indicated at 2. In addition, any additional forms have been completed and signed off as required at 1.
	<b>Lead Officer Name:</b> <i>Mary Gardner</i>
	<b>Job Title:</b> <i>Strategic Commissioning Manager</i>
	<b>Date:</b> <i>23<sup>rd</sup> September 2021</i>

### 1. PROPOSAL

- 1.1 To procure an external commission of a Direct Payment Support Service for people to receive accurate and specialist advice on managing Direct Payments and any associated employment responsibilities.

The procurement will be a 2-year provision with the option to extend, while further exploration of long-term Direct Payment support solutions are considered.

The investment is £170k per annum, £340k.

- 1.2 Current key issues identified in Direct Payment support provision, create:

- Non-compliance with the Care Act
- Poor customers experience / journey
- Risk of incorrect advice leading to legal challenges
- Inappropriate expectation on social work staff roles

- Financial cost of current ways of working

Successful delivery of this proposal will enable:

- Improved outcomes - individuals will have the choice and control to use their budgets flexibly to meet need which prevents escalation / crisis and avoids unnecessary costly emergency interventions
- People to access specialist support to set up budgets, to purchase their care in the right way and to respond to issues early
- Compliance with our statutory requirements under the Care Act
- Calculations for budgets will be appropriate to meet need and won't require high levels of recovery
- Increased capacity within social work teams as they will no longer be required to provide support in this area.
- Individuals to understand their responsibilities in relation to Direct Payments and employment duties
- The Council to implement checks and balances to ensure money is being spent appropriately and not at risk
- Alternative options for support considered and in place, reducing budget impact
- Time to consider and plan the long-term solution for on-going support to Direct Payment recipients and employers of PAs

1.3 Compliance with the Care Act is vital: Currently our Direct Payment offer is not sufficient. The Care Act places a duty on local authorities to have opportunities and structures in place not only to encourage people to access Direct Payment but also have sufficient provision for appropriate support for people to understand and manage Direct Payments. This is particularly relevant for those people who chose to employ their own Personal Assistants (PAs).

1.4 Over reliance on social work staff: The advisor role is falling to social care staff who are not experts in employment. This has caused workers to shy away from offering Direct Payments due to concerns about giving incorrect advice or not having the capacity to provide that level of support to the detriment of their statutory social work activities / duties.

1.5 Poor customers experience / journey: Critically, people receive little or no specialist support to understand the responsibilities of having Direct Payments or how to set up their own support resulting in insufficient support to individuals, breaches in employment duties and inappropriate Direct Payments being put in place, putting individuals at risk of breaking employment laws.

1.6 Financial cost of current ways of working: Lack of flexibility, creativity, and trust leads to poorly tailored support which does not represent value for

money and can lead to people not getting the right support, escalating need and costs. We have evidenced, when packages are incorrectly set up it takes up a lot of office time to unpick, thus increasing pressure on social work teams.

- 1.7 To maximise the scope and scale of support available to people through the Support Service, the service specification will expect that there is through-flow of support. This means that there will be intense support with an individual to ensure they understand their responsibilities and become an employer in a safe, compliant way, then the individual will be able to manage their support independently and 'dip' back for advice when needed. This model ensures the service can work with as many people as possible and be monitored against active customers rather than numbers of total customers.

## 2. HOW DOES THIS DECISION CONTRIBUTE?

- 2.1 Direct Payments are available to people of any age and remain the preferred mechanism for true personalised care and support. They provide independence, choice, and control by enabling people who have eligible social care needs to arrange and manage their own support. Direct Payments are monetary payments made to individuals to meet some or all of their eligible care and support needs. It is made in lieu of services.
- 2.2 The Direct Payment Improvement Programme is in year two of a three-year plan. The workstreams are:
  - Direct Payment Support** – appropriate support is available for both people using Direct Payments and staff arranging them
  - Market Shaping** – there is a range of thriving vibrant support opportunities from which to purchase the right support, at the right time
  - Policy** – aligning the Sheffield approach to legislation
  - Process** – ensuring transparent straightforward process and practices are in place
  - Money Management** – there is high quality person-centred support available to only those who really need it
- 2.3 These services will provide improved information, advice, and support, not only improving the customer journey but also improving the Council's capability for financial planning and facilitating improved strategic commissioning and market development to improve Direct Payment services in the future.
- 2.4 The support service ensures that everyone has the budget they need, and it removes the administrative and support burden from front line workers freeing them up to work with more vulnerable people in need of support.

- 2.5 Individuals have the choice and control to use their budgets flexibly to meet need, prevent escalation / crisis and avoid unnecessary support.

### 3. **HAS THERE BEEN ANY CONSULTATION?**

3.1 The Direct Payments Improvement Programme is fully committed to coproduction. People who use Direct Payments are actively involved in all aspects of design and decision making, including representation on the Direct Payments project groups.

3.2 The independent user-led Individual Employer and PA Development group have worked with SSC to define what is required in terms of a support service. Significant input with this group has defined needs and set out the expectations. These findings have defined the service specification for the support service.

3.3 In addition, two surveys have been undertaken; one looking at the Direct Payments from a staff perspective and the second from recipients' perspective. Both consultations have identified poor experience and breaches in practice. All participants called for improved support.

### 4. **RISK ANALYSIS AND IMPLICATIONS OF THE DECISION**

#### 4.1 Equality of Opportunity Implications

As identified below, the proposal is fully consistent with the Council's obligations under the Equality Act 2010 and the Public Sector Equality Duty. It is considered that measures to provide sufficient support will better Direct Payment recipients' ability to exercise choice and control, and the quality and range of services available.

4.1.2 In Equality Act terms, the proposal will have a significant direct, positive impact for people with the protected characteristic of disability – i.e., most beneficiaries. Indirectly, there is also likely to be positive impacts in terms of race, (a higher proportion of adult social care customers from BAME communities choose a Direct Payment); and sex (there is a higher prevalence of women within the PA workforce).

#### 4.2 Financial and Commercial Implications

4.2.1 The funding for the procurement is based on an invest-to-save model. The expansion of the internal Direct Payments team has already had a positive impact on money recovered through Direct Payment audits. The external

specialist support will build on this by supporting people to use alternative creative support options.

Financial Impact		Year One	Year Two	Year Three	Year Four
Investment	Internal Direct Payment Advice Team (9-month cost year 1)	£109k	£36k		
	External Direct Payments Support Service (6-month cost year 1)	£85k	£85k		-£170k
Saving Lines	Reducing growth in existing DP packages, 20% in year one increasing annually by 10% up to year four (excluding PD & LD)	-£76k*	-£76k	-£76k	-£76k
	Reduce new packages within Home Support and Financial Support by 10% (average DP audit reclaim %) and 5% against Respite and PAs (due to applicability)	-£55k*	-£109k	-£109k	-£109k
	Improved DP Audit Income, one off impact clearing audit backlog	£150k	/	/	/
Budget Impact:		<b>-£87k</b>	<b>-£64k</b>	<b>-£185k</b>	<b>-£355k</b>

### 4.3 Legal Implications

- 4.3.1 Under the Care Act 2014, the Local Authority has a duty to promote the wellbeing of individuals when undertaking its care and support functions. If the person has eligible support needs then S18 looks to meet those needs including a discretion under S8 to meet needs by making Direct Payments to ensure its legal obligations are met.
- 4.3.2 Care Act Statutory guidance states 4.8 - Since 2007 when personalisation became a mainstream policy, commissioning has also covered activity to ensure that sufficient and appropriate services are available to meet the needs of growing numbers of people with personal budgets and direct payments. It goes on in 4.107 - local authorities should also consider providing support to people who wish to use Direct Payments to help them make effective decisions through, for example, Direct Payment support organisations.
- 4.3.3 People using Direct Payments to employ their own PAs are expected to act as any other kind of employer. They are bound to the same statutory duties and obligations through employment legislation. Care Act Statutory Guidance 12.48 states local authorities should give people clear advice as to their responsibilities when managing direct payments... Becoming an employer carries with it certain responsibilities and obligations, in particular to HMRC and people need to be aware of these before agreeing to take up a direct payment.

Currently social care workers are expected to support people with issues around employment, financial management and legal obligations relating to being an employer. Our workers are not currently trained or skilled in these areas. Providing inaccurate employment advice could result in employers

being taken to employment tribunal. As we fund the employment we have vicarious liability.

- 4.3.4 The procurement process and any contract awards must be undertaken in accordance with all relevant provisions of the Council's Constitution including its Contracts Standing Orders and in accordance with the Public Contracts Regulations 2015.

Successful service providers chosen by the Council following a compliant procurement process will be required to enter into formal written legal contracts with the Council.

## **5 ALTERNATIVE OPTIONS CONSIDERED**

- 5.1
- Do nothing – continue with Care Act non-compliance and maintain current risks
  - An in-house support service - we currently lack the skill and capacity to achieve this, this will be considered as a longer-term option. Currently we do not have the time to set this up and recruit and train staff to the required standards

## **6. REASONS FOR RECOMMENDATIONS**

- 6.1
- To ensure that employers of PAs have sufficient information and support to meet their legal obligations
  - To provide support and advice to staff, and to increase worker confidence in Direct Payments
  - To provide upfront support that improves budget decisions and management
  - To remove support tasks from workers relating to PA employment issues, freeing up time to deliver social work activities
  - To improve the customer and staff journey, streamlining processes