

# Executive Member Decision



**REPORT OF:** Executive Member for Adult Services and Prevention,  
Executive Member for Finance and Governance

**LEAD OFFICERS:** Strategic Director of Adults and Health (DASS)

**DATE:** Friday, 12 March 2021

**PORTFOLIO(S) AFFECTED:** Adult Services and Prevention

**WARD/S AFFECTED:** (All Wards);

## SUBJECT:

EMD Direct Payment Rates

## 1. EXECUTIVE SUMMARY

Direct Payments are monetary payments made by local councils to persons whose social care needs have been assessed as meeting Care Act (2014) eligibility, and who would like to arrange and manage their own care and support services (e.g. equipment, day care or support with daily activities) instead of receiving them directly as a commissioned service. The aim of Direct Payments is to provide flexibility, choice and control for the individual in the provision of their social care provision.

To date, Blackburn with Darwen Borough Council has had no set rates for Direct payments. Although this has generated flexibility, it has also resulted in some payments being above our own commissioned services and generated a degree of ambiguity and inconsistency in application. For example, in some cases we pay individuals more via a Direct payment, for similar services we could provide via our own commissioning frameworks. The Personal Assistant (PA) rate requires review in light of changes to the National Living Wage.

This paper seeks to appraise Executive Members of the necessity for a range of Direct Payment rates to enable transparency and accountability in the application and calculation of an individual's direct payment amount. This paper seeks to ensure statutory responsibilities are continually met whilst maintaining objectively rational, and able-to-be-evidenced Direct payment amounts, based on the costs to meet the assessed eligible unmet needs.

## 2. RECOMMENDATIONS

That the Executive Member:

- Approve the following Direct Payment Rates which align to the proposed rates within the provider rates paper 2021/2022. These rates will be applicable from 01/04/2021.

Type	Criteria	Rate	Formulation

<b>Personal Assistant (PA) Rate</b>	Employing a PA	<b>£9.25</b> per hour – no pension <b>£9.52</b> (+3%) if opted into pension scheme.	Based on BwD Green book band A, meets minimum wage criteria for all ages. Rate does not include holidays, which will be a separate element.  Rate does not include sickness as statutory sickness would be applied.  Neighbouring North West authorities pay between £9.15 and £11.21 per hour
<b>Standard Agency</b>	Using a domiciliary care agency	<b>£15.60</b> per hour  Rate only to be agreed by Team Manager	Based on BwD current agency provider commissioned rates. This would be for any activities that a Personal Assistant would provide but Service user wants to use an agency.
<b>Enhanced Agency</b>	Using a specialist Care Agency	<b>£16.04</b> per hour  Rate only to be agreed by a Service Lead	Based on BwD highest LD agency provider rate at the moment (supported accommodation Select Support enhanced rate). Highest as we would always be able to say that we could meet the persons need at this rate.  *note that some historical packages are above this rate – will need to be looked at on a case by case basis at review and if continued payment agreed would have to move to an exception rate below.
<b>Exception Agency</b>	Agencies that are providing bespoke packages	Above <b>£16.04</b>  To be used when all other avenues have been exhausted and identified need can not be met otherwise.  Agreed only by Head of service.	Specific to meet care need when all other rates have been exhausted.

- Approve annual review of the above rates within Fees and Charges activity.

### 3. BACKGROUND

Direct payments are monetary payments to enable people to make their own arrangements to meet eligible needs. Direct payments are a mechanism for achieving personalised care and support as they promote independence, choice and control over how needs are met.

When certain conditions are met, all or part of the authority's proportion of a personal budget allocated under the Care Act 2014 can be paid direct to the person concerned or in some circumstances to someone acting on their behalf to meet needs as identified in the plan. Direct payments may also be used as a way of arranging after care services provided under s117 of the Mental Health Act 1983.

The requirement to offer Direct payments is set out in Part 1 of the Care Act 2014 and the Care and Support (Direct Payments) Regulations (2014).

Direct payments must be used by individuals to purchase services which are appropriate, legal, value for money and which adequately safeguard and promote the person's welfare and wellbeing. The value of the direct payment should be an amount which is a reasonable cost of securing the provision of the service concerned in the local social care market to meet the identified needs of adults or carers who are eligible for a service.

Individuals, carers and parents will be asked to make additional contributions to the costs of their care and support, if their chosen provider is more expensive than other providers who are available locally who could meet their eligible care needs. Similarly individuals may be required to make an assessed contribution under Blackburn with Darwen Borough Council's Charging Policy.

Outside of spending prohibitions outlined within government guidance individuals must be able to use the direct payment in ways and at times of their choosing. The Council does however have the right to require individuals (and authorised persons/ nominated persons) repay any money that has been used incorrectly or not in accordance with an agreed Care plan.

The individual can choose to directly employ a *Personal Assistant* and would then be afforded a 'PA Rate' with associated employer contributions e.g. Pension, Employer Insurance and Wage management. Similarly, the individual can utilise the services of an *Agency* and would be then afforded an 'Agency Rate', which would include the agency's employment costs.

Currently direct payment rates and thus the amount paid to the individual are calculated on an individual basis depending on the service the individual chooses to engage. This is problematic in that there is no consistency in the amounts awarded affecting the calculation of client contributions with individuals potentially using high cost services. Agencies for example have different rates and this paper sets out to define the maximum that the authority will pay depending on identified need.

Setting a rate that the authority is willing to pay will support transparency and consistency in application and where assessed to do so individuals will contribute towards the cost of their chosen care arrangements.

To highlight, this paper offers three agency rates as an acknowledgement that some individuals require specialised care of which the authority has statutory responsibility for meeting, this is particularly evident within the learning disability and mental health service areas. To ensure challenge, line management oversight is incrementally proposed at each rate level.

## 4. KEY ISSUES & RISKS

### Explanation of proposed rates

- **Personal Assistant (PA) rate** – this rate would apply for individuals who employ a personal assistant directly. This rate has been calculated via comparison with the Green Book pay scale and achievement of the National Living Wage at all ages. Should the individual opt into a workplace pension 3% will be added to the rate to allow pension contribution to be paid.
- **Standard Agency rate** – This rate will be applied should an individual prefer to use an agency who will source/manage the personal assistant. The standard rate is comparable to the councils current agency provider commissioned rates.
- **Enhanced Agency rate** – some individuals require specialist support, the rate is calculated on BwD highest Learning Disability agency provider rate. The enhanced rate is set at the highest to ensure that the council would always be able to fulfil its statutory responsibility to provide assessed support. This rate would require Service Lead approval.
- **Exception Agency rate** – the rate has been calculated as above the Enhanced Agency rate and would require Head of Service approval. This flexible rate would be utilised for unique situations whereby no other rate would fulfil statutory responsibility to ensure adequate monies were made available to meet assessed need.

### Transparency of Direct Payment

Implementing agreed rates will ensure transparency and ensure that individuals receive the right level of direct payment which isn't open to interpretation or market inflation by virtue of being a direct payment. Individuals who choose to approach a more expensive care provision will be informed of the necessity to pay the difference in rates and client contributions can be equitably calculated.

Set rates would allow for the accurate calculation of financial contribution and will ensure that the council acts equitably to all individuals in receipt of Direct Payments.

### Future changes to be in line with council wide Fees and Charges

The proposed rates would be considered annually within Fees and Charges activity to ensure that the rates remain comparable to the living wage and agreed agency rates. The rates would be publishable to inform individuals of the choices available to them.

### Mitigating risk that rates may be inflated via agency care

Agencies will be aware that the council will only agree a Direct payment up to the suggested rates and therefore the risk that they will seek inflated amounts may be tempered. This would not prevent their rates being set higher but then the individual would need to meet the difference should this be their preference.

### Financial Risks

Currently commissioned services are recorded as a single weekly payment in the service user electronic record system, Mosaic. This proposal should limit the financial risk as it would be more transparent and enable the one to one support costs to be more visible. One off elements such as insurance costs, DBS checks etc would be purchased separately as and when required. It also allows each element to be reviewed independently and inflated as and when needed.

## 5. POLICY IMPLICATIONS

The proposed fees have been set at a level that takes into account current market conditions in Blackburn with Darwen. Comparisons have been made with other North West authorities. Similarly, they incorporate changes to the living wage.

The Care Act 2014 requires that local authorities should work towards the long term sustainability of the care market through setting realistic fee rates and understanding the true cost of providing care locally. This appears equally important in supporting the Direct payment care market.

## 6. FINANCIAL IMPLICATIONS

The Care Act 2014 states that a Direct Payment must be sufficient to cover the reasonable cost of buying services that the Local Authority has a duty to provide to meet the care needs of an individual.

In 2020/21 the Council is projected to have spent £5,866,721 on Direct Payments for 486 service users. Whilst the financial implications of this proposal cannot be fully quantified, given each direct payment is tailored to individual need, the proposal does ensure that the Authority is Care Act compliant, provides transparency of cost and should reduce the risk of over commissioning or payment of inflated agency rates. The introduction of one off payment elements will enable us to produce reports from Mosaic providing more detailed information on costs ensuring they meet our commissioning strategy and reduce any longer term financial risk to the authority.

## 7. LEGAL IMPLICATIONS

The report writer has considered the following legal implications:

The council must make direct payments if the conditions set out in the Care Act (2014) and its *Direct Payments Regulations* are met. The Care Act (2014) sections 31-33 details the statutory responsibilities of the council to make Direct payments and the provisions for doing so.

In particular to this paper, The Care and Support statutory guidance (2014, Updated 24 June 2020) advises that,

*'The Act states the personal budget must be an amount that is the cost to the local authority of meeting the person's needs. In establishing the 'cost to the local authority', consideration should therefore be given to local market intelligence and costs of local quality provision to ensure that the personal budget reflects local market conditions and that appropriate care that meets needs can be obtained for the amount specified in the budget'.*

The council must arrive at an objectively rational and able-to-be-evidenced Direct payment amount based on the costs to meet the assessed eligible unmet needs and any further needs agreed to be met under section 19 of the Care Act (2014).

The Care and Support statutory guidance suggests that direct payments should be included in Market shaping and commissioning considerations and allow for choice for the individual to commission their own care.

In summary, Direct payment legislation and policy derives from:

The Care Act 2014

Care and Support (Direct Payments) Regulations 2014

Care and Support Statutory Guidance issued under the Care Act (2014) Updated 24 June 2020

Other relevant legislation includes but is not limited to:

Mental Health Act 1983 (MHA)

Mental Capacity Act 2005 (MCA)

Equalities Act 2010

Human Rights Act 1998

Section 5 of the Care Act 2014 requires local authorities to promote the efficient and effective operation of a market in services for meeting care and support needs in their area. This proposal will assist the Council's efforts to ensure that there is a stable market to provide for the care needs of the local community. This includes the need to ensure that providers can remain viable, and can attract and retain staff to provide the care to the required standard.

## 8. RESOURCE IMPLICATIONS

The resource implications of implementing these proposals will be absorbed by the Direct Payment Team and Finance Team to administer payment changes.

## 9. EQUALITY AND HEALTH IMPLICATIONS

**Please select one of the options below.**

Option 1  Equality Impact Assessment (EIA) not required – the EIA checklist has been completed.

Option 2  In determining this matter the Executive Member needs to consider the EIA associated with this item in advance of making the decision.

## 10. CONSULTATIONS

No public consultation has taken place as this work is internal consideration of Direct payment rates.

Rates have been calculated using the National Living Wage, and has utilised the proposed Blackburn with Darwen rates for domiciliary and agency care.

Enquiries have been undertaken with neighbouring North West authorities to ensure comparability.

## 11. STATEMENT OF COMPLIANCE

The recommendations are made further to advice from the Monitoring Officer and the Section 151 Officer has confirmed that they do not incur unlawful expenditure. They are also compliant with equality legislation and an equality analysis and impact assessment has been considered. The recommendations reflect the core principles of good governance set out in the Council's Code of Corporate Governance.

## 12. DECLARATION OF INTEREST

All Declarations of Interest of any Executive Member consulted and note of any dispensation granted by the Chief Executive will be recorded in the Summary of Decisions published.

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<b>DATE:</b>	09.03.2021
<b>BACKGROUND PAPER:</b>	