



CABINET

11 SEPTEMBER 2018

**EXECUTIVE DIRECTOR OF NORTHAMPTONSHIRE ADULT SOCIAL SERVICES:
ANNA EARNSHAW**

**CABINET MEMBER WITH RESPONSIBILITY FOR ADULT SOCIAL CARE:
COUNCILLOR SANDRA NADEN-HORLEY**

Subject:	Direct Payment Rates for those who employ a Personal Assistant
Recommendations:	<p>Cabinet is asked to:</p> <ol style="list-style-type: none"> 1. Consider and take into account the content and response to consultation contained in this report in making its decision 2. Delegate authority to the Executive Director of Northamptonshire Adult Social Services, to implement the decisions proposed in this report and any incidental decisions thereafter, in consultation with the Portfolio Holder. <p>Cabinet is asked to approve:</p> <ol style="list-style-type: none"> 3. That the current set rate of £9.89 per hour is replaced by a calculator that works out an individual hourly rate, depending on the number of hours support an individual has and how many personal assistants are being employed. From 1st October 2018 for new customers. 4. For some currently paid costs related to employing a personal assistant to be removed from the direct payment rate and for the Council to pay the following associated costs centrally: <ul style="list-style-type: none"> • Advertisements for personal assistants if an employer chooses to advertise somewhere that makes a charge • Police checks • Payroll charges for those people who use the Personal Budget Support Service (PBSS) payroll service • Employer pension contributions for those who use the PBSS payroll • Redundancy costs (if there is not enough money in a person's Direct Payment account) • Payments in lieu of notice (if there is not enough money in a person's Direct Payment account) 5. The calculator recommended in Proposal 3 is calibrated to enable Personal Assistants to be paid £8.10 per hour.

	6. The changes take place from 1 st October 2018 for all new individuals who choose to have a direct payment to employ a personal assistant.
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1. Purpose of report

To ensure that the Council is meeting its statutory responsibilities in relation to providing direct payments that are appropriate to meet individual's needs as outlined in section 3.6 of this report. The report outlines the changes to the direct payment rate for individuals who employ personal assistants, how the associated on-costs are managed and how any agreed changes are implemented. It explains the options that have been considered in reaching the proposed recommendations and the feedback that has been received from the consultation.

2. How this decision contributes to the Council plan

The Council's vision is to make Northamptonshire a great place to live and work. This is achieved through increasing the wellbeing of your county's communities and/or safeguarding the county's communities.

This initiative helps the Council to deliver this vision through the following strategic priorities outlined in the Council Plan:

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| <ul style="list-style-type: none"> • Northamptonshire communities and individuals are safe. • Keeping communities and individuals safe and supported to be healthy and stay independent. • Maximising the use and value of our assets to support safe and efficient service delivery. |
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3. Background

3.1 Direct Payments provide individuals with an amount of money to enable them to pay for their own care and support, rather than this support being arranged and paid for by the Council.

3.2 Any person eligible for care can ask to receive a Direct Payment rather than have the care provided to them and the Council has to grant their request as long as they have the required capacity to understand and manage the payments and how it is spent. With increasing demand on services the use of direct payments to employ a personal assistant can be a cost effective solution in meeting an individual's needs.

3.3 Direct payments can be spent on a range of services to meet the person's eligible needs and the outcomes they want. One of these may be to employ a personal assistant. This paper and the consultation only refers to direct payments users who are employing a personal assistant with their direct payment.

3.4 The Council also has to have in place clear frameworks and guidance for the administration of direct payments and the use of personal assistants as well as

ensuring that direct payments are sufficient to meet costs associated with employing someone.

- 3.5 The costs associated with employing someone are called on-costs, at present the direct payment rate includes money to pay the personal assistant and money to pay for the on-costs. On-costs include, amongst other things, the following: insurance, national insurance, pension contributions, advertising, payroll, redundancy costs and payment in lieu of notice.
- 3.6 Concerns were highlighted that the current direct payment rate has not been reviewed for many years and that the rate in place is not sufficient to meet National Living Wage regulations moving forward. The council was at risk of not being able to evidence that it was able to meet their statutory requirements in relation to providing direct payments that were appropriate to meet individual's needs and enable them to employ personal assistants. To mitigate against potential judicial reviews it was agreed that the direct payment rate required reviewing.
- 3.7 Adults Social Services undertook a review earlier this year on the current Direct Payments Policy in relation to the employment of Personal Assistants to support a person's care needs. This review took into account best practice, the appropriateness of current Direct Payments rates against market provision and the requirement to meet the National Living Wage regulations.
- 3.8 The review identified that the current rate provided is not sustainable as it does not allow for National Living Wage regulation increases going forward. The current rate enables most individuals to employ personal assistants at a rate of £7.83 per hour. The current direct payment rate for personal assistants has not been increased in a number of years and feedback has identified that individuals are struggling to recruit personal assistants on the current rate and therefore their needs may not be being met
- 3.9 In addition the current gross rate (including on-costs) is not considered equitable, as the same rate is in place for all individuals irrelevant of the number of hours of support they receive and the on-costs they require within their direct payment to meet their employer responsibilities. At present, under the set rate, there are a number of individuals that do not need the full on-costs provided within the rate, meaning time is spent having to retrieve this money and on the process to administer the on-costs.
- 3.10 The Personal Budget Support Service, sits within Northamptonshire Adult Social Services and provides support to individuals who receive a direct payment to employ a personal assistant. This includes payroll support, advertising and support with other employer contributions. When the current direct payment rate was agreed this support service sat outside of the Council, meaning individuals would pay for the services support from the on-costs included in their direct payment. Now that the Personal Budget Support Service has moved into the Council it is felt appropriate and cost effective to look at the support they provide

and whether some of these costs should no longer be included in the direct payment rate but should be held and managed centrally by this service.

3.11 Approval was given by cabinet on 9th March 2018 for Adult Social Services to hold a formal consultation on the standard rate paid to customers who employ a personal assistant through Direct Payments.

3.12 The Council has a duty to ensure that it is making the best use of resources and part of this should be having a transparent method of calculating a rate for Direct Payments for those employing personal assistants. Having a clear and appropriate way of calculating the rates and on-costs for personal assistants will result in greater equity and consistency and will assist service users in the recruitment and retention, ensuring stability in this part of the social care workforce. In turn this will support customers to direct their own support and maximise choice and control

3.13 Given that the proposals have a direct impact upon current customers, as well as having the potential to affect future customers, it was important that the Council sought a range of stakeholder views and provided the opportunity for people to feedback on how the proposals could affect them. As a result 8 week consultation process has been undertaken the results of which have been set out in the attached appendices.

3.14 Based on the outcome of that process the Council proposes that moving forward that the current set rate of £9.89 per hour is replaced by a calculator that works out an individual hourly rate depending on the number of hours support an individual has and how many personal assistants are being employed

3.15 In addition to this rate the Council will pay certain on-costs related to employing a personal assistant and directly administer and pay them. The on-costs that would be paid centrally would be:

- Adverts for personal assistants if an employer chooses to advertise somewhere that makes a charge
- Police checks
- Payroll charges for those people who use the Personal Budget Support Service payroll service
- Employer pension contributions for those who use the Councils in house payroll run by the Personal Budget Support Service (this is something that already happens so there would be no change here)
- Redundancy costs in line with national regulations (if there is not enough money in a person's Direct Payment account)
- Payments in lieu of notice (if there is not enough money in a person's Direct Payment account)

- 3.16 The revised Personal Assistants baseline hourly rate recommended before any adjustments for the hours of care and number of carers and excluding the on-cost elements recommended will be £8.10 per hour.
- 3.17 The change in rates and approach to on-costs would commence from 1st October 2018 for all new individuals who choose to have a direct payment to employ a personal assistant
- 3.18 For individuals who already have a direct payment in place no changes would automatically take place. A discussion would take place at the individual's next review to look at the viability of their direct payment rates being changed in line with points.
- 3.19 The proposals will not have an adverse impact on direct payment users. The appropriate level of on-cost funding will continue to be provided however some of these costs will move to being centrally managed as opposed to being included in the individuals direct payment rate they receive. This will reduce the current administration that is required by both the individual and the Council but not the level of funding to cover individual circumstances.
- 3.20 An Equality Impact Analysis of the proposals has been updated following the consultation to ensure that the Council has actively sought the views of people who share protected characteristics and that the implications of the proposals on people who share protected characteristics have been assessed and considered, as set out in the requirements of the Equality Act 2010. Members are advised to consider the summary in section 5, and read the final impact assessment available in the link shown in that section, before reaching a decision on this paper.

4. Consultation and Scrutiny

The consultation was carried out between the 1st May 2018 and 30th June 2018. The consultation was published on the Council's website and all potentially affected customers were written to and advised of the proposals and invited to participate in the consultation. 'Consultation analysis report and its appendices 1-3 (questionnaire feedback and distribution list) are attached to this Cabinet report. Appendices 4-9 of the consultation report (copy questionnaires and supporting materials) are available to view online on the *Consultation Register results webpage* (www.northamptonshire.gov.uk/past-consultations)'.

Further opportunities to take part in the consultation were via:

- On-line questionnaires
- Printed questionnaire (on request)
- Public meetings in various accessible locations across the county (Corby, Northampton, Towcester and Wellingborough)
- Meetings with key customer reference groups (Health Watch, Learning Disability)

4.1 It is recommended that the full consultation analysis report (Appendix 1) is read and considered in order to gain a comprehensive understanding of the consultation findings.

5. Equality Screening

5.1 The draft Equality Impact Assessment which was carried out before the consultation was launched has been updated with feedback from the consultation

Due to the nature of particular service users, any change to payments for adult social care will disproportionately affect people with disabilities and health conditions which require them to seek support from Adult Social Services. There are a slightly greater percentage of Direct Payment customers who are female and also the Personal Assistant workforce is predominantly female so there may be a greater impact on females.

Some respondents to the consultation raised concerns that the proposals would not be suitable for people with complex needs and that the proposals go against the concept of personalisation and promoting independence because it could take away choice and control from people with disabilities. However, others thought that increasing the rate for Personal Assistants would have a positive impact on recruitment and retention, which would benefit people with disabilities.

The level of impact on the groups identified has been reviewed in the light of the consultation feedback and is considered to be neutral – as it is proposed no changes are made to existing users, unless agreed at their next review. It could also be considered to be positive – as the proposed changes enable personal assistants to be paid at a higher rate and reduce the administration requirements on the individual users.

There remains no reason to suggest the impact would be anything other than neutral for the other groups listed, including the impact on human rights.

One area learned from the feedback was in relation to customer with complex needs, respondents felt that the proposals would negatively impact on the rates they receive and the proposed rates would not be adequate to meet their needs. The Council acknowledge that the proposed rates do not take into consideration individuals with complex needs and as a result it is proposing that in these circumstances exceptional rates will continue to be agreed.

Members are advised to consider this summary and full equality impact assessment, which can be found at the link below, in reaching their decision on the proposals.

<http://www3.northamptonshire.gov.uk/councilservices/adult-social-care/policies/Pages/EqIAs.aspx>

6. Alternative Options Considered

6.1 For each of the proposals there were a number of options considered. Below each of the recommendations have been outlined, further information relating to the advantages and disadvantages of each can be found in Appendix 3 of this report.

6.2 How the Direct Payment Personal Assistant rate is calculated

- a) A sliding scale of rates for each individual receiving care to employ a personal assistant, based on the number of hours support and how many personal assistants are being employed. **(Proposed option)**
- b) No change is made and the gross rate remains at £9.89 per hour (except in exceptional circumstances)
- c) Two different rates are introduced which would be decided on based on the complexity of individual's needs.
- d) A calculator is used that takes into consideration the exact circumstances for each individual, including number of hours each PA works.

6.3 Whether on costs are paid to individuals (included in direct payment rate) or paid by the council

- a) The County Council pay certain costs relating to employing personal assistants centrally, to include: Advertising, police checks, payroll charges if using PBSS, employer pension contributions for those using PBSS, redundancy costs, payments in lieu of notice. **(Proposed option)**
- b) No change is made and all on costs (except pension contributions) continue to be included in direct payment rate for employees and employees continue to pay.

6.4 The minimum amount that personal assistants will be paid

- a) Introduce the banded calculator (6.2.a) and set the rate for personal assistants at £8.10 per hour. **(Proposed Option)**
- b) No change is made and the gross rate remains at £9.89 per hour (including on-costs)
- c) Remove certain on-costs from the direct payment rate (6.3 a) and reduce the gross rate to a set rate of £9.56 per hour.
- d) Introduce the banded calculator (6.2.a) and set the rate for personal assistants at £8.20 per hour.
- e) Introduce two gross rates (6.2.c) with the rate being paid to personal assistants being £7.83 for standard and £8.20 for complex.

6.5 How will changes be implemented

- a) Changes take effect from 1st October for new direct payments. No immediate changes are made to existing direct payment customers but are discussed at their next review. **(Proposed Option)**

b) Proposed changes are implemented to all direct payment users

7. Financial Implications

7.1 It is estimated that the costs of administering on-costs within the service will be £58,000 per annum (£29,000 for financial year 2018/19).

7.2 It is anticipated that by removing some of the on-costs from the current gross rate and by utilising a banded calculator that savings will be made on the lower support packages. The predicted saving is £33,739 per year (£16,869 for 2018/19).

7.3 The net effect of the above will be an increased overall cost of £12,131 for 2018/19 and £24,261 for future years. This has been provisioned for within the current service budget and it is possible that over time this will be offset in future years by savings realised as a result of the phased proposed changes.

	Current year	Forecast		
	2018/19	2019/20	2020/21	2021/22 & beyond
	£000	£000	£000	£000
Capital Investment				
Costs				
Funded by				
On-going costs (revenue)				
Costs - Staffing				
Other	12	24	0	0
Total on-going costs (revenue)				
Funding by	Existing NASS independent care budget			

7.4 It has to be noted that if the proposals are not adopted then there is a risk that less customers will choose to have a direct payment to employ personal assistants going forward and existing customers may opt to stop employing personal assistants, due to the current low rate and difficulty this brings in recruiting. This would drive up care costs.

7.5 As stated in section 3.6 of this report, there is also a risk that if the rate is not changed then the Council will be at greater risk of judicial review claims as the current rate will not provide individuals with sufficient funds to employ personal assistants via a direct payment, which is a statutory function that must be met.

What benefits will the proposal deliver?	<ul style="list-style-type: none"> • Cost effectiveness, as described in section 6.1.a in Appendix 1 • Efficiency savings, as described in section 1.2.a in Appendix 1. • Return on investment, as described in section 7.3
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8. Risk and Business Continuity Management

a) Risk(s) associated with the proposal

Risk	Mitigation	Residual Risk
Increased complaints as proposal goes against feedback from some customers	<ul style="list-style-type: none"> • Clear guidance is communicated. • Benefits of proposals to individuals are clearly articulated. • Changes are only made to existing customers at point of review and after discussion with them. 	Green
Initial cost of centralising on-costs	<ul style="list-style-type: none"> • It is anticipated that these costs will be offset by future savings. • Whilst initial cost will be more, the current administration costs will be reduced • More efficient system in place 	Green

b) Risk(s) associated with not undertaking the proposal

Risk	Risk Rating
Legal challenge through judicial review	Amber
Financial risk - customers will opt to move from personal assistant support to more costly support from agencies	Red
Customers fail to be able to recruit personal assistants and therefore require more costly support	Red
Continued over and under funding of packages based on variable on-costs	Amber
Inability to adjust the pay rate as and when National living Wage rate increases	Amber

9. List of Appendices

- Appendix 1 – Consultation Analysis Report
- Appendix 2 – Appendices to Consultation report
- Appendix 3 – Options Considered

Author:	Name: Amy Brock Team: NASS
Contact details:	Tel: 01604 361313 Email:

Background Papers:	None
Does the report propose a key decision is taken?	YES
If yes, is the decision in the Forward Plan?	YES
Will further decisions be required? If so please outline the timetable here	NO
Does the report include delegated decisions? If so, please outline the timetable here	NO
Is this report proposing an amendment to the budget and/or policy framework?	YES
Have the financial implications been cleared by the Strategic Finance Manager (SFM)? Have any capital spend implications been cleared by the Capital Investment Board (CIB)	YES Name of SFM: Mark Walker N/A
Has the report been cleared by the relevant Director?	YES Name of Director: Anna Earnshaw
Has the relevant Cabinet Member been consulted?	YES Cabinet Member: Cllr Sandra Naden-Horley
Has the relevant scrutiny committee been consulted?	NO Scrutiny Committee:
Has the report been cleared by Legal Services?	YES Name of solicitor: Duncan Dooley-Robinson
Have any communications issues been cleared by Communications and Marketing?	YES Name of officer: Liz Fitzgerald
Have any property Issues been cleared by Property and Asset Management?	N/A
Have the Procurement Implications below been referenced in the Paper: <ul style="list-style-type: none"> • Have you evidenced compliance with the Council's Contract Procedures Rules? • Have you made clear in this paper where you are seeking Cabinet to approve an exemption from the Contract Procedure Rules and detailed the risks and mitigations? • Have you identified any EU or UK legislative risks such as non-compliance with the Public Contract Regulations Act 2015, 	N/A Name of officer

<p>transparency and open competition?</p> <ul style="list-style-type: none"> • Have you identified the procurement risks associated with a contract? 	
Are there any community safety implications?	NO
Are there any environmental implications:	NO
Are there any Health and Safety Implications:	NO
Are there any Human Resources Implications:	NO
Are there any human rights implications:	NO
Constituency Interest:	

