



2nd April 2015

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Dear Marije Davidson

Thank you for your letter of 23 March 2015.

I shall respond to the issues you raise in the order in which they are set out in your letter.

1.1. If current practice was not compliant with the Care Act 2014, why not?

The Care Act 2014 (“**Care Act**”) does not come in to force until 1 April 2015 and indeed some parts do not become law until 1 April 2016. Accordingly, there is no requirement on local authorities to be Care Act compliant until that piece of legislation becomes law. I can confirm, however, that CYC has spent the months leading up to the commencement date preparing for implementation.

1.2. How do the changes relate to the Care Act and associated regulations and guidance?

Although CYC has offered direct payments for some time, the Care Act mandates them for the first time in certain circumstances. Paragraph 12.2 of the Guidance refers to direct payments being the Government’s preferred mechanism for personalised care and support; *“they provide independence, choice and control by*

enabling people to commission their own care and support to meet their eligible needs.”

1.3 Which specific provisions in the Care Act 2014 mandate the changes you are making to the policy and the terms and conditions?

Sections 31 to 33 of the Care Act 2014 set out local authorities' duties in respect of direct payments. CYC's policy regarding direct payments has been formulated in preparation for the Care Act 2014 and having particular regard to these sections and also to the Care and Support (Direct Payments) Regulations 2014 (the "**Regulations**"). Accordingly, as there has been no previous statutory responsibility to provide direct payments, CYC had no written policy relating to them. However, a new policy has been formulated in anticipation of the new duties in respect of direct payments and I enclose a copy for your information. As for the legal basis upon which the changes to the terms and conditions have been made, Regulation 4 of the Regulations referred to above permits local authorities to make a direct payment subject to conditions. The only new condition that is being imposed is that direct payments must be held in individual accounts for reasons of transparency and control. I shall expand on this in response to further questions.

2.1. What, if any consultation has the council had; please could you provide names of people /organizations and dates; and what the findings from the consultation are?

I can confirm that CYC engaged in specific consultation with the Citizens' Advice Bureau, Age UK and the Carers' Centre. In addition, there has been consultation with your organisation. In December 2013 there was a meeting between Kathy Clar, Ralph Edwards, David Walker, and York Independent Living Network. Further, in November 2014 Ralph Edwards and Sharon Calline had a follow up meeting to discuss ongoing concerns and take back any positive or negative feedback to the card supplier. The first meeting focused on the implementation of cashplus accounts for the receipt of direct payments.

Also, CYC made press releases about direct payments which were published on its website. The first was on 27 August 2013. On 9 December 2014 there was a press release advising that cabinet was going to be discussing direct payments when it met on 16 December 2014.

There were no responses to any of this consultation.

2.2. Please could you provide a copy of the impact assessment, including the impact on equality, choice and autonomy of disabled people?

I enclose a copy of the initial impact assessment that was completed on 25 May 2011 and the final assessment that was completed on 12 August 2013.

2.3 What are the aims of the changes?

Owing to the new duties imposed on local authorities around direct payments, CYC is expecting there to be a considerable increase in the number of people deciding to receive a direct payment, especially from 1 April 2016 when the cost capping provisions become law. The council has, therefore, taken the opportunity to review the way in which it deals with direct payments, both to ensure that it is compliant with the Care Act from 1 April 2015 and also to ensure that its methods promote independence and control as outlined in the Guidance (paragraph 12.2).

One of the main objectives for the council in meeting its duties regarding direct payments is to ensure that it does so by promoting “*control over day to day life*” which is, of course, one of the wellbeing principles. CYC wants the individual to have full control over the management of their direct payment. Individuals can only achieve this control if there is absolute transparency around the direct payment ie individuals need to know how much their direct payment is, how that sum is arrived at and how much they have at any particular time. For many individuals this is not achievable at the moment because the organisation they use to manage the direct payment does not have separate accounts for individual customers.

2.5 What alternatives has the council considered?

As set out above the council is keen to promote the individual having control over their direct payment. If an individual would like to receive a direct payment in an alternative way to the council's preferred option ie cashplus accounts, then the council will consider it and would see it as helping to fulfill its obligations around creating diversity in the market place.

3.1 What is the legal basis for presuming consent to changes to terms and conditions?

There has been consultation regarding the proposed changes to which no responses were received. The new terms and conditions are much fairer to the individual in that they promote greater control. All references to the Independent Living Scheme have been removed which helps to promote individuals' choice around organisations they might want to support them and ultimately, the new terms and conditions ensure compliance with the Care Act and reflect the relationship between the individual and the council.

3.2 What is the procedure to follow if individuals disagree with the changes?

If an individual does not agree the terms and conditions they will be encouraged to discuss their concerns with their social worker to see if there is anything that can be done to assist the individual.

3.3 What happens to the direct payments if individuals disagree with the terms and conditions?

Ultimately, if the individual, after discussions with their social worker, does not agree with the terms and conditions, then the council will not make a direct payment and will discuss alternative options with the individual.

4.1 Please could the council explain why they believe it is justified to introduce the changes at such short notice, without prior warning?

First, it is not the case that there was no prior warning. I refer to my response to question 2.1 above. Regarding the short notice to

customers, there were plans in place to send the letter to customers in January 2015. However, owing to unexpected extended sick leave, these plans were delayed and for that, the council apologises.

4.2 Why is the council unable to provide further information about the transfer to Cashplus accounts before the implementation date?

For those individuals who are not already using Cashplus accounts and who decide to use them, there will be no change until September 2015 which affords the council plenty of time to have discussions with individuals about the change. CYC is planning to send individuals further information next month. I apologise for the fact that the letter sent to customers was not clear in this regard.

4.3 How will the council deal with one-off purchases or irregular payments? Will direct payments users be given this money to be kept in their accounts without the four weeks' contingency?

There will be no change to the way these are dealt with currently. There are three types payment that can make up a direct payment. There is the weekly payment to meet the costs of regular care; there is the irregular payment for needs that are predicted eg respite care, increased support over school holidays and there is the one off payment for unexpected needs. These will remain the same.

4.4 Why has the council decided that money towards short breaks will be accounted for separately and what does it mean in practice?

This simply means that money for short break will be paid to the individual as such eg as an irregular or one off payment.

This is simply to ensure transparency and accountability and to ensure that money for a short break is not subsumed within the regular weekly payments and cannot be clawed back as surplus money, unless that money is not used within the budget period.

4.5 What mechanisms are in place to ensure that employers can access redundancy pay and other statutory pay timely and effectively and with minimum disruptions and distress in order to meet their obligations?

The Council is taking further advice on this matter and a response will follow.

5.1 What is the procedure in relation to making individual requests to keep existing arrangements?

If an individual would like to maintain the arrangements they already have in place, they should have discussions with that organisation and ask it to liaise with the council. CYC would prefer the organisation to use cashplus accounts but would be satisfied with other mechanisms, provided they promote accountability, transparency and control. In effect, this means that the council will require individual accounts to be maintained for each individual, which the individual can access should they wish to do so.

5.2 Will the council liaise with care managers, social workers and reviewing officers about individual circumstances, for example if holding 4 week's contingency will cause hardship?

I can confirm that discussions would take place as you suggest. However, it is unlikely that there would be any hardship as individuals will still have irregular and one off payments as they always have.

5.3 What criteria will apply to the decision making?

There will be no set criteria around this issue so as not to fetter discretion. Decisions will be made on a case by case basis.

5.4 Will the council provide guidance about particular circumstances?

There will be no guidance around this issue for the reason set out in 5.3 above.

5.5 What estimate has the council made of the number of individuals who may request to keep existing arrangements and how many of these will be permitted to do so?

There are 200 individuals who do not have cashplus accounts. If any of these individuals wish to keep their existing arrangements that will be permitted provided the organisation that manages the direct payment has a separate account for each individual, to which the individual has access.

6.1 What legal ground does the council have for mandating Cashplus accounts to individuals?

The council is not mandating that individuals have cashplus accounts. CYC is simply requiring direct payments to be held in individual accounts in the interests of transparency, control and accountability. CYC is permitted to make this a condition of receiving a direct payment pursuant to Regulation 4(1) of The Care and Support (Direct Payments) Regulations 2014.

6.2 Has the council made an assessment of the likelihood of indirect discrimination, discrimination arising from disability and failure to make reasonable adjustments?

I have enclosed copies of the impact assessments with this letter as referred to in my response to question 2.2 above.

CYC considers that its requirement for direct payments to be held in an individual account, whether that is a cashplus account or other method, is less discriminating than the existing system. This is because the existing system of ILS holding a single account for all its customers affords individuals no control. They are not able to ascertain at any point in time how much money is currently being held for them and how that sum of money is arrived at. This system falls short of what is being expected of councils in complying with the wellbeing principles set out in the section 1 of the Act in that it offers no real control to the individual.

6.3 What is the council doing to address the many difficulties individuals experience with Cashplus accounts?

I am not sure what you mean by “many difficulties”. In the last eleven months CYC has had only one reported problem. This concerned a voice recognition system that was not compatible with the cashplus account. Discussions took place speedily and the problem was remedied by the supplier to the satisfaction of the individual. Experience to date is that once the system is set up, individuals find it very easy to use. However, should there be any difficulties, social workers will either visit individuals or telephone them to provide help and support.

7.1 What happens to the money after it has been in the account for 4 weeks? Will the council take it back?

For auditing purposes, CYC will be required to reconcile individuals’ accounts every six months (bi-monthly for this first six months for customers receiving direct payments for the first time). In practice, therefore, there will only be two opportunities each year for any surplus monies to be removed from individuals’ accounts. There will be no hardship to the individual because only the weekly payments will be clawed back if there is more than a four week contingency being held. Any irregular payment or one off payment will not be clawed back.

7.2 What reasons did the council have to reduce the float from 8 to 4 weeks?

There is no reason for the individual to have more than four weeks’ float in their account and there is no benefit to the individual in having any more than this. This is because there is no expectation that the individual will have to accumulate money to pay for contingencies. In addition, the individual will still be able to receive irregular and one-off payments.

7.3 What assessment had the council made of the impact of the 4 week’s float on individuals?

There will be no adverse impact on the individual as a result of the change. This is because the council makes the direct payment monthly in advance and the individual will pay carers in arrears. Further as set out in my response to 7.1, reconciliation will only take place twice per year.

7.4 Are there any circumstances in which the council will continue to allow 8 weeks' float?

If there is a valid reason why the individual needs an eight week float then this will be permitted. An example that springs to mind is if the individual has been unable to pay a carer because the carer is sick and has not presented their timesheets. In such circumstances, monies over the four week float would not be removed from the account.

7.5 What steps is the council taking to avoid negative impact on individual's ability to manage direct payments?

It is not envisaged that there will be any negative impact on individuals' ability to manage direct payments. Rather the new system improves upon the old one in that it allows individuals real control over their direct payment in a way that is simply not possible under the old method owing to the lack of individual accounts.

8.1 What assessment has the council made of the risks this potentially creates for individuals who employ personal assistants?

The Council is taking further advice on this matter and a response will follow.

8.2 Can the council explain how their measures are proportionate and how they will ensure that individuals can meet their obligations effectively?

The Council is taking further advice on this matter and a response will follow.

8.3 Is the council able to provide guarantees that they will indemnify the individual if redundancy liabilities occur?

The Council is taking further advice on this matter and a response will follow.

9.1 What legal ground does the council have to be able to impose these requirements?

CYC takes the view that the arrangements with the cashplus account actually place less burden on the individual in terms of monitoring. Under the existing system, individuals are required to send in spread sheets outlining all transactions together with receipts. This frequently involves individuals sending in copies of their bank statements containing personal information because their direct payments are not kept in a separate account. This is far more intrusive than the system that CYC favours ie cashplus accounts. With a cashplus account the individual will not be asked to send in spreadsheets and receipts; rather council employees will be able to log into the cashplus account for audit purposes and will be able to contact the individual if there are any issues that need clarification. There is no invasion of privacy, especially when compared to the current system as the only money in the account is the direct payment; nor is there any disproportionate burden on individuals as you suggest.

9.2 What safeguards are in place to ensure that the council does not use these powers in a way that breaches individuals' human rights and places a disproportionate burden on individuals?

There will be no infringement of individuals' human rights. The council will only have access to information that it currently has the right to request from individuals.

The burden on individuals will be less than it is at the moment as they will simply be required to answer any queries that are apparent from the account rather than having to send in documentation as outlined in my response to question 9.1 above.

I hope the answers to your individual questions help to alleviate some of the concerns you had about what the council is proposing. I do not agree to suspend the policy and changes as you request in order to review the policy because the council has already consulted regarding the changes.

Further, as I hope you will now agree, individuals are being supported to exercise greater control over their direct payments in accordance with the wellbeing principles set out in the Care Act. No individual will be required to have a cashplus account if they do not want it. All individuals will be able to exercise choice about how they manage their direct payment. The only condition that the council will impose is that individuals keep their direct payment in a separate account. If individuals decide to use an organisation to help them manage their direct payment, that organisation will be required to maintain an individual account for them. The council is able to impose this condition by virtue of Regulation 4(1) of The Care and Support (Direct Payments) Regulations 2014. The condition is a proportionate response to the duty imposed on the council to promote control for individuals in need of care and support. It is also necessary in order for the council to be able to comply with its own audit procedures and to ensure effective use of public money as directed in paragraph 12.24 of the Guidance. I am happy to discuss the issue of direct payments further with you .

Your Sincerely



Guy van Dichele
Director of Adult Social Services