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| Meeting   | Health and Adult Social Care Policy and Scrutiny Committee                                    |
| Date      | 10 June 2015  |
| Present   | Councillors Doughty (Chair), Cuthbertson (Vice-Chair), S Barnes, Cannon, Craghill and Warters |
| Apologies | Councillor Richardson   |

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The Chair welcomed all new Members to the Committee.

## 1. **Declarations of Interest**

At this point in the meeting, Members were asked to declare any personal, prejudicial or disclosable pecuniary interests that they might have had in the business on the agenda.

A number of Members declared standing personal interests in the remit of the Committee;

Councillor S Barnes' personal interest was due to his employment by Leeds North Clinical Commissioning Group, as they were responsible for commissioning mental health services in Leeds.

Councillor Cannon's was as a current patient at York Hospital and as a member of the Health and Wellbeing Board.

Councillor Craghill was as a member of the Health and Wellbeing Board.

Councillor Doughty confirmed his standing personal interest as a member of York NHS Foundation Teaching Trust.

No other interests were declared.

## 2. **Minutes**

In relation to the minutes, the Chair asked when data would be made available in relation to annual health checks for people with learning disabilities. The Acting Director of Public Health confirmed

that this data was likely to be reported in time for the September committee.

Resolved: That the minutes of the meeting of the Health Overview and Scrutiny Committee held on 25 March 2015 be signed and approved by the Chair as a correct record.

### **3. Public Participation**

It was reported that there had been a registration to speak under the Council's Public Participation Scheme.

Marije Davidson from York Independent Living Network and Lives Unlimited spoke regarding Agenda Item 6 (Direct Payments Terms and Conditions).

She raised a number of points in relation as to whether Members should be asked to review the policy, these included;

- That the terms and conditions currently stated that payments would be paid into a Cashplus account and individuals must make transactions from it. However, further communication said 'no individuals would be required to have a Cashplus account if they do not want it'.
- The letter to people with direct payments proposed that the Council would make payments for statutory maternity pay, statutory paternity pay and statutory sick pay instead of individuals doing it through their normal payroll systems. Individuals have employer obligations and this must be reflected in the Terms and Conditions and the Policy.
- Individuals would only be allowed to accrue 4 weeks or one month funding – the Council was not clear about that, there was a promise last year it would remain at 8 weeks, and it was not part of the policy approved by the Cabinet in December, so where was the authority for that change?

She acknowledged that Council Officers had addressed some of the issues raised in a previous letter(which was included within the agenda pack). However, it did not address issues where Terms and Conditions needed to be amended and she therefore felt this needed to be done and urged the Committee to choose Option 2 in the report.

#### **4. Arrangements for Overview and Scrutiny in York**

Members received a report which highlighted the Council's arrangements for the overview and scrutiny function and resources available for its support, along with the current terms of reference for the Health & Adult Social Care Policy & Scrutiny Committee.

The Scrutiny Officer explained that alongside possible changes to the terms of reference of each of the scrutiny committees there was also the possibility that the future scheduled meeting dates would change.

In respect of how much preparation Members needed for scrutiny work on the committee, the Scrutiny Officer stated that he would circulate a guide on Health Scrutiny. The Acting Director of Public Health suggested to Members that they might wish as a scrutiny topic, to examine how the Public Health Grant to Local Government was spent.

Resolved: That the report and remits of the Committee be noted.

Reason: To inform Members of scrutiny arrangements.

#### **5. Update Report from Leeds and York Partnership NHS Foundation Trust on their progress against Care Quality Commission's (CQC) Action Plan**

Members received a report on Leeds and York Partnership NHS Trust's progress against a Care Quality Commission (CQC) Action Plan following an inspection of the Trust.

Jill Copeland and Antony Deery from the Trust attended to present the report. Members were informed that;

- Refurbishments at Bootham Park Hospital were running behind schedule.
- Acomb Garth had problems and was mixed sex accommodation but these concerns were being managed.
- There was a wait for a new hospital for mental health in York.
- The Trust's complaints procedure had been reviewed.

- Staff morale levels had improved.

In response to Members' questions it was reported that funding for the hospital would be from central Government, and the Trust would ensure the action plan's delivery even if they happened not be the provider of mental health services.

The Director of Adult Social Care commented that he supported the improvements that had been made by the Trust.

Resolved: That the report be noted.

Reason: So that the Committee is kept up to date with the Trust's performance against the CQC's standards.

## **6. Direct Payments Terms and Conditions**

Members received a report which detailed the Council's approach to direct payments to adult social care customers. They had also received a representation via email from York Independent Living Network and Lives Unlimited following publication of the agenda. The Chair requested that this be added to the minutes and it was added as an annex.

Discussion of the report took place following the Public Participation item.

The Chair asked Officers if the Council could continue to use the current system legally. Officers confirmed that this could leave Council more open to challenge in regards to the ability to audit the money used for direct payments. A Member asked if Officers felt comfortable about whether sufficient amounts of consultation had taken place on the terms and conditions. In response, it was noted that what was proposed was not a change in service and assurances had been given in regards to money, for example for short breaks not being counted.

Discussion took place over the Direct Payments terms and conditions.

In response to a comment from a Member about whether encouraging people to have Cashplus accounts for their care was purely for audit means, Officers responded that they encouraged this for transparency and easy manageability. However, they

confirmed that those that did not want to have a Cashplus account did not have to have to receive payment this way.

Referring to a disadvantage of Option 2 mentioned in the Officer's report, one Member asked, what would be the risk of Members approving Option 2. Officers responded that in their opinion it would not allow for the expansion of Direct Payments and therefore not give customers management of their money. However, they admitted that the public engagement over the changes to Direct Payments had been not been sufficient.

In addition, Councillor Stuart Barnes suggested that as the proposed changes to Direct Payments had not been perceived as a service change by service users, Members could themselves provide some criteria and guidelines to Officers what they deemed to be service changes. He added that the Committee could develop some guidelines for Officers. The Chair agreed with the suggestion and urged those Members who felt confident to so, to circulate their ideas via email

Members proposed Option 2 in the Officer's report and suggested some additional wording to include additional engagement with organisations like York Independent Living Network and Lives Unlimited. They suggested that Officers would write to service users to inform them once they had made all changes. A verbal update from Finance on the terms and conditions would also be given at the July committee.

Resolved: That Option 2 is chosen and the terms and conditions under which direct payments are provided remain but are reviewed again, further amendments are considered in conjunction with stakeholders and a further report is made.

Reason: It will allow Members the chance to review the changes made to Council policy following further consultation.

## **7. Work Plan**

Members considered the Committee's Draft Work Plan for the upcoming municipal year.

The Manager from Healthwatch York was in attendance at the meeting and informed the Committee that the data they were

currently gathering on the wheelchair service, which was contracted out by Vale of York Clinical Commissioning Group (VOYCCG), could be presented to the Committee in July.

Discussion took place including mention of whether the Committee could get an update on systems resilience ahead of the winter from the CCG and future scrutiny topics could include IAPTs, Pain Management, and Personalisation.

Following further discussion the following was agreed;

- For Health and Wellbeing Board Update reports to be biannual.
- For a scoping report to be written on the Public Health Grant spending and outcomes for the July meeting of the Committee.
- That a report in relation to annual health checks for people with learning disabilities be presented to the September meeting.
- That a report on health systems resilience be prepared for the September meeting.

Resolved: That the work plan be noted with the above detailed changes made.

Reason: To ensure that the Committee has a planned programme of work in place.

Councillor Doughty, Chair

[The meeting started at 5.35 pm and finished at 7.25 pm].



**Health and Adult Social Care Policy and Scrutiny Committee**  
**10 June 2015**  
**Direct Payments (Item 6)**

**Note from York Independent Living Network and Lives Unlimited**

In December 2013 the Health Scrutiny and Overview Committee approved changes to the direct payments policy and the Terms and Conditions. Following concerns expressed by York Independent Living Network (YILN) and Lives Unlimited (LU) at the meeting of 25 March, the Health and Adult Social Care Policy and Scrutiny Committee will be discussing Direct Payments Terms and Conditions on 10 June. The Council has put forward two options, namely (1) the terms and conditions remain as they are and the Committee members take reassurance that this is the approach to support control and transparency, or (2) the terms and conditions remain for the time being, but will be reviewed, with further amendments considered and a full report sent to the Committee. They recommend that the Committee select Option 1.

We have prepared a brief response to explain why we urge the Committee to choose Option Two. We have appended a timeline from the introduction of Cashplus accounts to present. For further details we refer to the correspondence between us and the Council, of which you've received copies (dd. 23 March 2015, 2 April 2015; 21 May 2015).

1. The Council states that "CYC have been mindful of the concerns raised by York Independent Living Network, Lives Unlimited and a number of individual customers and carers", and that their response of 3 April 2015 has provided reassurances (section 13). However, as our second letter makes clear, the Council's response to our first letter (and responses raised by other individuals), mean that the policy as set out in the Terms and Conditions (which have been sent to everyone) is now wrong in the Council's own view.

One example is that the Council's letter states that individuals are free to make their own arrangements (i.e. not Cashplus account) as long as the direct payments are held in a separate account. This 'reassurance' contradicts the Terms and Conditions which state explicitly that all individuals must have a Cashplus account and transactions must be made using that account.

2. The Council asserts that the purpose of the changes is that "The Care Act 2014 puts direct payments to adult social care customers on a statutory footing" and the changes are to give effect to this (section 5). This is wrong. Direct payments were put on a statutory footing by the Community Care (Direct Payments) Act 1996, followed by the Health and Social Care Act 2001 which made it mandatory for local authorities to offer direct payments to all eligible people who requested them. The Care Act has merely codified the provisions alongside the other areas (assessment, care planning etc). This removes the foundations for the Council's changes. If arrangements were not unlawful before, then they won't be under the Care Act.

3. If anything, we believe that the changes as in the Terms and Conditions and the Policy would make the Council undermine some of the fundamentals about direct payments that have been in law for many years, and make it less compliant with the Care Act, not more. The Council has agreed most of the changes that are necessary, so these now need to be implemented. It would be perverse and irrational not to. Again, this means selecting Option 2.
4. The Council maintains that there has been appropriate consultation and analysis/impact assessment of the proposals. We disagree. The impact assessments are from 2011 and 2012, which predate the Care Bill, so they can't have been informed by the Care Act 2014. As we have set out in our first and second letter, and this is also reflected in the timeline, the Council did not conduct meaningful consultation, as any form of 'consultation' happened after the changes and at our initiative not theirs; issuing press releases are not a means to consultation; and individuals were not informed of the changes starting on 1 April, until the letter of 9 March 2015, less than three weeks in advance, let alone invited to discuss these changes.
5. As our second letter sets out there are also still some other outstanding concerns that need to be discussed and clarified further. For instance, the Council's reports focuses on the Cashplus accounts, however the report has a significant omission as our letters also raise concerns about the reduction of funding that an individual is allowed to hold in their account from 8 to 4 weeks (the 'float'). This leaves individuals with severely restricted capacity to respond to crisis situations, and makes it even more essential that the Council has effective procedures to support individuals. We have not seen evidence that these are in place. We also believe that it is imperative that the Council write to all individuals concerned with clarifications, not just those who have complained.
6. We are very concerned that the Council has reported to the Committee, 7 days after they received our second letter, without acknowledging it to the Committee. We are very disappointed that they did not send us a copy of their report but that we had to retrieve it from the Council's website. After two further emails (dd 2 and 4 June, we finally got a meeting offered on 21 July, two full months after our second letter (this may now be a week earlier).
7. We believe that it is vital that the Council review the Terms and Conditions and the Policy, and issues the Committee with a full report. York Independent Living Network and Lives Unlimited would be very pleased to work with the Council, to help them consult with individuals and determine the approach that will be compliant with the Care Act principles, ensure transparency, choice and control as well as accountability and effectiveness, both for the Council and for disabled people and family carers. We would be willing to provide a report to the Committee.
8. We hope that this note clarifies why the Council has to review the Terms and Conditions and the Policy, and that the Health and Adult Social Care Policy and Scrutiny Committee should expect a full and transparent report from the Council about their approach, i.e. why the Committee should select Option 2.

**8 June 2015**

Contact:

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## Annex A

## Timeline of changes to direct payments

We can provide evidence of the events outlined.

| Date  | Event  | Who affected?  |
|---|--|--|
| 1 October 2013  | Introduction of Cashplus accounts  | Direct payments users who manage their own account. (est. 100)                         |
| <p>22 August 2013: Letter from Council to individuals</p> <p>1 October 2013: Letter from YILN to Council</p> <p>5 December 2013: community meeting with Council to discuss changes (organised by YILN).</p> <p>16 December 2013: Council's written response to problems highlighted at the 5<sup>th</sup> December meeting.</p> <p>4 November 2014: meeting with Council to discuss the Cashplus accounts – what progress has been made and what problems still exist. The Council does not mention the plans to roll out Cashplus accounts to customers of York Independent Living Scheme nor the other changes they're planning to introduce.</p> |  |  |
| Date  | Event  | Who affected?  |
| 1 February 2014   | Decision to withhold share for redundancy/sick/maternity pay; to be held centrally by Council  | All direct payments users (about 200; figure provided by Ralph Edwards).               |
| <p>10 March 2014: Email from Council to YILN seeking meeting to discuss redundancy</p> <p>21 March 2014: Meeting Council with LU, YILN and York Independent Living Scheme</p> <p>24 March 2014: Email from Council to LU confirming that the 8-week float will not be reduced to 4 weeks. <i>However, this was overturned by the new Terms and Conditions introduced on 1 April 2015.</i></p>   |  |  |
| Date  | Event  | Who affected?  |
| 1 April 2015  | <ul style="list-style-type: none"> <li>Roll-out of Cashplus accounts</li> </ul>  | Individuals who have their account managed by York Independent Living Scheme (est 200) |
|   | <ul style="list-style-type: none"> <li>Contingency reduced from 8 to 4 weeks</li> <li>Statutory pay deducted from direct payments</li> </ul> | All direct payments users (est 300)  |
| 15 December 2014: letter from YILN to Council, highlighting the importance of   |  |  |

| Date              | Event   | Who affected? |
|-------------------|---|---------------|
|                   | engaging with social care users. Response from Council of 22 December 2014. <i>This response does not mention the changes to direct payments.</i>   |               |
| 16 December 2014: | Cabinet Meeting Care Act Policy Framework   |               |
| 26 January 2015:  | meeting YILN with Council, discussing importance of working together and sharing information. <i>No mention of changes to direct payments.</i>  |               |
| 12 February 2015: | LU and YILN 'The Care Act and You' event with over 80 disabled people and family carers attending. <i>Although the Cabinet Councillor speaks, no officers of the Council attended except Jess Haslam (Children's Services) and the changes to direct payments were not mentioned.</i> |               |
| Full event:       | <a href="https://www.youtube.com/watch?v=oFrzNGKNalk">https://www.youtube.com/watch?v=oFrzNGKNalk</a>   |               |
| Summary:          | <a href="https://www.youtube.com/watch?v=S2_LRyz5VHM">https://www.youtube.com/watch?v=S2_LRyz5VHM</a>   |               |
| 23 February 2015: | LU and YILN meeting with Council<br><i>Changes to direct payments are not mentioned.</i>  |               |
| 9 March 2015:     | Letter from Council to individuals  |               |
| 20 March 2015:    | YILN and LU meeting with people who have been affected  |               |
| 23 March 2015:    | Letter from YILN and LU to Council  |               |
| 25 March 2015:    | individual complaints sent to Council   |               |
| 25 March 2015:    | Health Scrutiny and Overview Committee – public speaking slot<br><a href="https://www.youtube.com/watch?v=qwTqLE2KthA&amp;feature=youtu.be">https://www.youtube.com/watch?v=qwTqLE2KthA&amp;feature=youtu.be</a>  |               |
| 2 April 2015:     | reply from Council to YILN and LU   |               |
| 21 May 2015:      | second letter from YILN and LU to Council   |               |
| 28 May 2015:      | report from Guy van Dichele and Michael Melvin to Health and Adult Social Care Policy and Scrutiny Committee – does not mention second letter   |               |
| 5 June 2015:      | offer of meeting on 21 July 2015 (after emails from YILN on 2 and 4 June)   |               |