

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

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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 5th 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"> Roll-out of Cashplus accounts 	Individuals who have their account managed by York Independent Living Scheme (est 200)
	<ul style="list-style-type: none"> Contingency reduced from 8 to 4 weeks Statutory pay deducted from direct payments 	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:	https://www.youtube.com/watch?v=oFrzNGKNalk	
Summary:	https://www.youtube.com/watch?v=S2_LRyz5VHM	
23 February 2015:	LU and YILN meeting with Council	
	<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	
	https://www.youtube.com/watch?v=qwTqLE2KthA&feature=youtu.be	
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)	