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Y Dirprwy Weinidog Gwasanaethau Cymdeithasol
Deputy Minister for Social Services



Llywodraeth Cymru
Welsh Government

Our ref: LF GT 734 13

David Rees AM
Chair
Health and Social Care Committee
National Assembly for Wales
Cardiff Bay
Cardiff
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25 November 2013

Dear David,

Social Services and Well-being (Wales) Bill – Direct Payments

In keeping with my commitment to keep the Committee informed of issues affecting the Social Services and Well-being (Wales) Bill, I am writing to you as regards the future provision of direct payments in Wales. This is by way of confirming my response to the Committee's Stage 1 Scrutiny Report recommendation on placing a duty on local authorities under section 34 of the Bill to promote direct payments.

Like the Committee I am keen to increase the uptake of direct payments in Wales and to ensure that those who would benefit from these are properly informed of this option, and are able to make an informed choice about whether a direct payment is right for them. To facilitate this a set of key principles on the future provision of direct payments under the Bill has been drawn up by the Direct Payments Overview Group and I attach a copy of these for the Committee's information.

I established the Direct Payments Overview Group a number of years ago to advise me on policy issues relating to direct payments and to monitor how direct payments arrangements are working across Wales. It consists of representatives from local authorities, the third sector and direct payment recipients themselves. Its work is informed by the work of two other networks; the All-Wales Direct Payments Forum (for local authority direct payments officers) and the Direct Payments Support Schemes Network (which brings together support scheme providers from across Wales). The third sector representatives on the Overview Group are from Disability Wales, Age Cymru and MS Society Cymru.

I asked the Overview Group to work with my officials to develop a set of key principles on the future provision of direct payments in Wales. This was to help me achieve my policy intention as regarding their future provision under the Bill so as to increase their uptake and to make it easier for those who would benefit from these to access them and be able to use them effectively to meet their care and support needs. The Overview Group met between March and July this year to develop these principles. They will be used by the Group and my officials to underpin the co-production of the regulations and code of practice on direct

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payments envisaged under the Bill to ensure that my policy aspirations are delivered in practice.

As regards the Committee's Stage 1 recommendation on introducing a duty on local authorities to promote direct payments, while I am sympathetic to the intention behind this I believe there is a more appropriate way of delivering it. I am concerned that placing a duty on authorities to promote direct payments could be misinterpreted, resulting in direct payments being promoted over other ways of meeting care and support needs, thereby becoming the default in the way in which such needs are met. While for many direct payments offer real choice in the way a person's care and support is met, and are therefore appropriate, for others direct payments are not the answer. I note that the Committee's majority view was that it did not want to see direct payments becoming such a default in the way care and support was provided in Wales.

As a result in recognition of the Committee's recommendation I have tabled Government amendments to the Bill to address this issue. The first, Government amendment 139, requires the Welsh Ministers to make regulations so that they must specify the steps a local authority must take to ensure those able to receive a direct payment are able to make an informed choice as to whether a direct payment is right for them. In this way we can ensure that those able to receive a direct payment are not only informed of this option but receive key information in order to consider this without undue influence from their local authority. Such information would include, for example, what their direct payment would entail, what support they would receive if they chose to have one, and other core data required to make an informed choice. The second, Government amendment 504, adds the option of receiving a direct payment to the list of ways in which care and support can be met outlined at section 20(2) of the Bill. This is to ensure that the option of receiving a direct payment to meet care and support needs is emphasised in the Bill but done so in the context of the other ways of meeting such needs. As you will be aware I have also tabled technical and consequential amendments on this matter.

I hope the Committee finds this letter helpful. I look forward to considering these amendments at the relevant point during Stage 2 proceedings. I very much hope Members of the Committee will support the amendments tabled which address their concerns. I am also writing in similar terms to Mark Isherwood AM, whom I have promised to keep informed of developments on the future provision of direct payments in Wales.

Yours sincerely,



Gwenda Thomas AC / AM

Y Dirprwy Weinidog Gwasanaethau Cymdeithasol
Deputy Minister for Social Services

Social Services and Well-being (Wales) Bill

Principles to underpin future arrangements for Direct Payments in Wales

1. Eligibility and choice

1.1. All who have eligible needs for care and support should be offered the opportunity to use a direct payment.¹ This includes those who lack the capacity to consent to them, where a 'suitable person' arrangement may be put in place.

1.2. Anyone with eligible needs who wants a direct payment should be able to have one.²

1.3. Individual ability to manage should not necessarily be a barrier to having a Direct Payment.

1.4. Individuals with eligible needs should be made aware of the level of support they can expect if they choose to use a direct payment.

1.5. Individuals with eligible needs should have appropriate information available prior to the decision to have or not to have a direct payment.

1.6. The choice of having a direct payment or not should be made after a full explanation of the advantages, responsibilities (including those of being an employer) level of support available and expectation.

1.7. People can choose not to have a direct payment. Where an individual chooses not to have a direct payment, local authorities should record why the individual made this decision after appropriate information was provided.

1.8. People who choose not to have a direct payment should nonetheless be encouraged and enabled to have a voice and as much control as possible over the way their care and support is provided.

¹ Subject to the condition set out in sections 34 (3) and (4) (in relation to adults), 35(3), (4) and (5) (in relation to children) and 36 (3) to (7) (in relation to carers) of the Social Services and Well-being (Wales) Bill 2013 that the local authority is satisfied that the individual or suitable person is capable of managing the payments either by themselves or with support. This also applies to principles 1.2 and 1.3 above.

² The limited circumstances where a local authority has a power (but not a duty) to make Direct Payments (set out in Annex B to the Direct Payments Guidance 2011), and the exclusions to Direct Payments set out in Annex C of the 2011 Guidance, will remain.

2. Information

2.1. The aim of a direct payment is to increase the independence and control which the individual has over their care and support, and information supplied should encompass these aims.

2.2. Information should be provided both by a local authority and also by a local independent support organisation.

2.3. The information provided to individuals should include information about the charging implications and all other relevant financial considerations.

2.4. Local authorities should be encouraged to put in place a support scheme which can provide impartial but specialised information to the individual, family, carer or suitable person. Local support organisations which are independent of the local authority are well placed to provide such impartial and tailored support.

2.5. Local authorities should supply accurate, up-to-date information on the policies and procedures on direct payments and ensure that individuals receive information from the local support organisation as well. This should include information on the legal obligations of being an employer, and the support available to individuals to enable them to fulfil these.

3. Support

3.1. Ability to manage the direct payment should not be a deciding factor and should not be a barrier to having a direct payment.

3.2. Ways to remove barriers to individuals wishing to receive a direct payment should be actively and positively sought and encouraged. This includes the provision of appropriate advocacy services.

3.3. Support should be proportionate to the needs of the individual managing the direct payment, and should be sufficient to enable those individuals who have difficulty managing a direct payment to benefit from using a direct payment.

3.4. Support in managing should be consistent with allowing the individual to be in control of their care and support as much as possible, and to take as much responsibility as possible.

3.5. The overriding factor should be that where a direct payment will benefit the individual, and the individual has made an informed choice to have a direct payment, the support provided will be citizen-directed. Individuals should have choice and flexibility over the support they receive and who provides it. The support provided should be impartial, comprehensive and flexible enough to meet different individual needs whoever provides it.

3.6. Co-operative and social enterprise models of managing direct payments and supporting users should be encouraged.

4 Reviews and Outcomes

4.1. Reviews of direct payments should be based on the outcomes being achieved and not as a comparison to service/needs driven provision.

4.2. The review frequency should be sufficient to support people receiving direct payments. Reviews should take place at least annually, and their frequency will depend on individual circumstances including how well the individual is managing the direct payment and the amount of support they need.

4.3. Direct payments place citizens/individuals at the heart of decisions about their care and support. The aim is also to minimise local authority influence and maximise individual choice and control over the way outcomes are achieved.

4.4. Reassessment and review should take place when a young person transfers to or assumes responsibility for a direct payment arrangement, and at other periods of transition.

5. Value and Calculation of Direct Payments

5.1. The amount of the direct payment should be sufficient to enable the individual to achieve the agreed outcomes, and calculated to meet the cost of the assessed need and the set outcomes (subject to any contribution from the individual recipient).

5.2. Where a direct payment user seeks to employ personal assistants, the amount of direct payment should be adequate to cover all associated employment costs and to meet the legal obligations of being an employer.