

OPEN

**Direct Payment – personal assistant
(PA) uplift hourly rate fees**

**Report of: Helen Charlesworth May, Executive Director Adults,
Health and Integration**

Report Reference No: AH/20/2024-25

Ward(s) Affected: All

Purpose of Report

- 1 The purpose of the report is to seek approval to:
 - a) Uplift the direct payment personal assistant (PA) hourly rate paid to those recipients who employ a personal assistant through a direct payment arrangement and continue to align the hourly rate for adults and children direct payments.
 - b) To delegate authority to the Executive Director of Adults, Health and Integration to undertake annual reviews of direct payment personal assistant (PA) hourly fees that will track annual increases to the National Living Wage (NLW) as part of the council's financial planning cycle including authority to make decisions to implement the financial uplifts.
- 2 Increasing the direct payment PA hourly rate aligns to the following priorities within Cheshire East Council's Corporate Plan 2021 – 2025: 'delivering an open and enabling organisation', and 'a council which empowers and cares about people'.
- 3 The All Age Direct Payment Policy was presented to Children and Families Committee on 29th April 2024 and the resolution from Children and Families Committee agreed (minute number 96) to the:

'IMPLEMENTATION OF ALL AGE DIRECT PAYMENT POLICY'

The committee considered the report which sought agreement to implement the All Age Direct Payment Policy.

RESOLVED (unanimously):

That the Children and Families Committee:

1. Agree and instruct officers to implement the 'all age' Direct Payment Policy
2. Agree that any future all age policy/services development decisions around Direct Payments be dealt with by the Adults and Health Committee.

Executive Summary

- 4 To note, Adults DMT and Children and Families DMT have considered and are in agreement for uplifts to the direct payment hourly rates for personal assistants to be implemented. To also note (section 3) that Children & Families Committee resolved unanimously that service development decisions around Direct Payments (including the rate) should be agreed by Adults & Health Committee on behalf of Children and Families (so as to ensure consistency of approach irrespective of age) on 29th April 2024 (minute number 96).
- 5 Direct payments offer choice and control to those residents in Cheshire East who access their personal budget. A direct payment can enhance a resident's quality of life, improve their overall wellbeing, supporting independence and personalisation.
- 6 Currently the direct payment Personal Assistant (PA) hourly rate in Cheshire East is below the NLW rate for 2024/25 and there is no current council policy around reviewing the rate in-line with national annual inflationary increases. An uplift to direct payment PA hourly rate fees would ensure residents who receive a direct payment can meet the cost of their legal employer responsibility of paying as a minimum the NLW and enables the council to meet its statutory duties under the Care Act.
- 7 This report outlines recommendations to increase the direct payment PA hourly rate in Cheshire East, detailing the current approach and the national policy/statutory requirements upon which the recommendations in this report are based.

RECOMMENDATIONS

Adults Health and Integration Committee to approve:

1. To set the direct payment personal assistant hourly rate fee for those residents who employ a personal assistant at £15.31 based on the current NLW.
2. Delegate authority to the Executive Director of Adults, Health and Integration to undertake annual reviews of direct payment personal assistant hourly rates, tracking increases to the NLW and to approve and implement uplifts to the rates alongside the MTFs budget setting process.

Background

National Context

National Minimum Wage / National Living Wage

- 8 Since 2016 The Low Pay Commission have made annual recommendations to the Government on future National Minimum Wage (NWM) requirements.
- 9 The National Living Wage (NLW) is the highest of the NMW rates and since April 2024 this applied to all workers aged 21 years and over¹.
- 10 As of 1st April 2024, the NLW increased to £11.44 per hour, an increase on the previous year of £1.02 per hour. This is the legal minimum hourly wage for workers aged 21 years and over.
- 11 The NLW was introduced in 2016 and in 2019 the Government set a target for the NLW to reach two-thirds of median earnings by 2024 for workers 21 years and over. Historically any changes to the NLW have been announced during the Government's Autumn Statement.
- 12 The Government announced in March 2024 that it intends to maintain the two-thirds median earnings in relation to NLW rates for 2025 and the remit for the Low Pay Commission is to make recommendations on that basis.²
- 13 As at March 2024 the estimated rate for the NLW for 2025 is £11.89 (to meet the aim within a range of £11.61 - £12.18). This would be an increase of 45 pence or 3.9 per cent on the 2024 rate of £11.44. Nationally and locally the impact of staff recruitment and retention in the social care sector is often exacerbated by low pay. Caring is skilled

¹ The National Minimum Wage and Living Wage: Overview - GOV.UK (www.gov.uk)

² [National Minimum Wage and National Living Wage: Low Pay Commission remit 2024 - GOV.UK](http://www.gov.uk) (www.gov.uk)

work and often the social care sector is competing against other employment opportunities, such as the retail sector, that offer improved terms and conditions and other non-pay benefits such as discounts on food. More recently this has been exacerbated by the cost-of-living crisis.

- 14 A survey carried out in 2022 by the Local Government Association (LGA) and TLAP (Think Local Act Personal) highlighted that low pay 'was by far the biggest factor' with recruitment difficulties because people were choosing better paid jobs and made the linked point that people were taking roles with better terms and conditions.
- 15 Research undertaken by the National Institute for Economic and Social Research (NIESR) highlights that increases to the NMW / NLW provides some protection to the lowest paid workers from real-term cuts in wages, rises in inflation and the cost-of-living crisis, with increases to the NLW / NMW having a positive effect on lower income households and the ability to move into work³.

Real Living Wage / Local Living Wage

- 16 The Real Living Wage (voluntary) is the only UK wage based on living costs. In the UK this is £12 per hour and a higher rate of £13.15 in London for 2023/2024. RLW employers implement any increases annually by 1st May. The rates are calculated annually by the Resolution Foundation and overseen by the Living Wage Commission⁴.
- 17 Our neighbouring Local Authority Cheshire West and Chester Council is committed to the Local Living Wage.

Local policy / context

- 18 Direct payments support the personalisation agenda for residents in Cheshire East, and increases capacity across commissioned homecare, and residential care provision through the transfer of commissioned packages of care to care delivered via a direct payment, therefore also creating financial efficiencies by avoiding more expensive care costs.

³ [What Are the Implications of the Rising National Minimum Wage and National Living Wage Rates? - NIESR](#)

⁴ [What is the real Living Wage? | Living Wage Foundation](#)

- 19 There is a wider programme of work currently underway in Cheshire East Council around promoting and further embedding policy and practice around direct payments:
- Implementation of the new 'all age' Direct Payment Policy, launched in July 2024, which sets out a consistent approach to implementing direct payments across adults, adult carers and children and/or those with parental responsibility for a child. An action plan has been developed to support the implementation of the new policy and will be overseen by the Direct Payment Transformation Project Group.
 - Implementation of a digital prepaid card solution for adult direct payments, which will go live in September 2024 (already exists for children and young people).
 - An ongoing targeted direct payment personal assistant recruitment campaign is underway. The aim is to raise awareness of the role of a personal assistant / promoting the flexible employment opportunity and increase the number of personal assistants across the borough. Residents will have choice and control over the care and support they require, with the aim to move away from traditional based home care provision.
 - Collaborative working with the adults commissioned Direct Payment Support Service.
- 20 Currently expenditure is circa £10m for Cheshire East adult direct payments, which includes fees in relation to personal assistants and home care agencies.
- 21 Direct payments are the most cost-effective way of providing support to children with disabilities, who would otherwise in most cases be supported by commissioned agency care to meet their assessed needs. Typically, the hourly rate for such care is in the range £21-28 per hour. Therefore, meeting assessed care needs for the children we can support via Direct Payments is financially advantageous to the Council.
- 22 An MTFS target of £900K has been set for children with disabilities, of which £250K will come direct from Direct Payment savings against the set budget (projected outturn is £950K against a £1.2M budget) and a further £150K per annum is expected to come from Direct Payments recoveries.

- 23 Currently expenditure is approximately £780K per annum on Children's Direct Payments. A net budget of £800K (see para 22 above) would keep overall net spend close to 2023-24 actuals.
- 24 The current direct payment personal assistant (PA) hourly rate is £13.98. The rate was implemented in April 2023 to ensure direct payment recipients could meet their employer responsibilities and were able to pay as a minimum the 2023 NLW rate of £10.42 per hour. However, there has been no agreed uplift to the direct payment PA hourly rate in Cheshire East in line with the national NLW rate increase for 2024/25 to take effect as of 6th April 2024. As a result, direct payment recipients will not be able to meet their obligations as an employer of paying, as a minimum, the NLW.
- 25 Direct payment adult recipients (once a financial assessment has been undertaken) may be required to make a financial contribution to the cost of their care. However, if a direct payment recipient has the necessary financial means and wishes to pay their personal assistant more than the NLW they can do so and pay a top up.
- 26 To note there has been no increase to the direct payment home care fee of £14.20 per hour in Cheshire East since 2016.
- 27 Cheshire East Council currently has a tiered rates approach for commissioned domiciliary care rates; the current average hourly rate for domiciliary care is £22.64 per hour.
- 28 This illustrates the disparities in rates for paid carers between commissioned care and those employed via a direct payment. There is recognition that care providers will have overheads, however, direct payment recipients employing a PA may also have additional costs that must be covered, such as any non-exempt National Insurance, Employers and Public Liability Insurance, income tax, holiday and sick pay contingency and pension contributions.
- 29 To ensure a consist approach to considering and implementing uplifts for care rates in Cheshire East Council, where there is a national requirement to meet the NLW as a minimum rate of pay. It is recommended that an annual review of direct payment personal assistant hourly rate takes place, and increases are tracked to the NLW.
- 30 There is also currently a disparity in direct payment rates for PAs between Cheshire East and the neighbouring authority Cheshire West and Chester Council, where the direct payment rate is currently higher at £17.83 per hour, this is currently under review.

Consultation and Engagement

- 31 No direct consultation or engagement has taken place specifically in relation to direct payment personal assistant hourly rates as this is applicable to financial decision making and financial planning processes.
- 32 As part of the wider consultation and engagement undertaken in relation to the 'all age' direct payment policy and personal assistant recruitment campaign, feedback received from Direct Payment recipients and/or their families highlighted concerns in relation to the hourly rate of pay / frequency of increases (lack of) and the impact this has upon recruitment and retention of PAs.
- 33 The direct payment recipients who employ a personal assistant as part of their direct payment and their personal assistant will be the beneficiary of an uplift to direct payment personal assistant hourly rate.

Reasons for Recommendations

- 34 The recommended options for the uplift to direct payment personal assistant hourly rates is to approve option 2 for 2024/2025 rates and to approve option 3 for an annual review to be undertaken.

Option 2 – to uplift direct payment personal assistant hourly rate to £15.31 per hour based upon the NLW of £11.44 per hour. This would be an overall increase to the current direct payment budgets for:

- Adults - increase of £343,732, an increase of 10%.
- Childrens - increase of £79,786.

This uplift would be backdated with effect from 6th April 2024 in line with the increase to the NLW.

Option 3 – to undertake an annual review of direct payment personal assistant hourly rate in line with NLW announcements, as part of the wider financial planning cycle for uplifts for commissioned care rates.

- 35 This uplift would be funded out of £7.6million growth within the adult social care base budget for 2024/25.
- 36 This uplift would be comfortably within the growth built into Children's social care budget for 2024 – 2025 of 8.8%.
- 37 The recommendations support the strategic aims and objectives of the Council's Corporate Plan 2021 – 2025, to reduce inequalities, promote opportunity for all and support our most vulnerable residents.

38 The benefits of the recommended options are:

- Ensures direct payment recipients are able to meet their obligations as an employer of paying PAs in-line with the NLW rate as a minimum.
- Ensures the council is meeting its duties under Section 5 of the Care Act (2014) around developing an efficient and effective care market (including direct payments) and have regard to ensuring market sustainability.
- Providing a competitive rate of pay for PAs employed through direct payments will improve recruitment and retention rates for PAs in Cheshire East and supports the targeted PA recruitment campaign currently underway. Creating a more sustainable PA workforce will also avoid the potential wider impact of carer breakdown.
- Enables CEC to maintain a competitive rate of pay with our neighbouring borough, which will help to grow the personal assistant market in Cheshire East.
- Ensures a more consistent approach to financial planning for uplifts to care rates in Cheshire East, so that direct payment fees are not considered in isolation i.e., direct payment personal assistant rates are considered in line with other commissioned care rates as part of wider financial planning cycle.
- The ‘all age’ Direct Payment Policy has been agreed by Adults and Health Committee and Children and Families Committee, therefore provides the opportunity to align adult and children direct payment rates.

Options Considered

39 Options considered detailing impact and risk as illustrated below:

Option	Impact	Risk
1. Do nothing – no uplift applied to DP PA rates for 2024/25	<ul style="list-style-type: none"> • Not an option as not legally defensible – council must ensure DP recipients employing a PA pay NLW as a minimum. 	<ul style="list-style-type: none"> • DP recipients unable to meet their employer responsibility of paying in-line with NLW as a minimum. • Reputational damage to the council and

	<ul style="list-style-type: none"> • Difficult to sustain local PA workforce If a more competitive hourly rate is not offered to PAs in Cheshire East they may seek employment elsewhere, reducing the local pool of PAs. • Existing DP recipients may look to commissioned services to meet their care and support needs, which comes at a higher cost to the council 	<p>council is open to legal challenge.</p> <ul style="list-style-type: none"> • Additional pressure on existing adult and children social care budget and domiciliary care provision should packages of care be handed back to commissioned care providers due to no increase to hourly fees for PAs employed through a DP.
<p>2. Uplift Direct Payment Personal Assistant (PA) hourly rates fees for 2024 – 2025 in line with NLW</p>	<ul style="list-style-type: none"> • DP recipient able to pay PA as a minimum NLW, ensuring direct payment recipient meets their employer responsibility. • Providing a competitive rate of pay for PAs employed through direct payments will improve recruitment and retention rates for PAs in Cheshire East • Potential for more recoverable funds due to surplus spend • Ensures the council is meeting it's duties under 	<ul style="list-style-type: none"> • This will require additional investment when there is currently existing pressure on the adult social care budget, particularly as the recommendation is to consider annual uplifts in line with the NLW rate. • If no uplift agreed DP recipients will not be able to meet their employer responsibility of paying PAs in line with NLW.

	<p>Section 5 of the Care Act (2014) around developing and efficient and effective care market (including direct payments) and have regard to ensuring market sustainability.</p> <ul style="list-style-type: none"> • Ensures the council is meeting it's legal duties under the Children Act 1989 and Children & Families Act 2014. 	
<p>3. 2024/2025 onwards – review Direct Payments Personal Assistant (PA) hourly rate fees on an annual basis</p>	<ul style="list-style-type: none"> • Financial cost modelling to be undertaken on an annual basis in line with the government directive around NLW for DP PA rates 	<ul style="list-style-type: none"> • This will require additional investment when there is currently existing pressure on the adult and children social care budget. • If no uplift agreed in line with NLW, DP recipients will not be able to meet their employer responsibility of paying PAs in line with NLW.
<p>4. Uplift Direct Payment Personal Assistant (PA) hourly rates in line with Cheshire West and Chester Council rate of £16.30 (2023/24 rate)</p>	<ul style="list-style-type: none"> • Competitive rate with neighbouring authority • Providing a competitive rate of pay for PAs employed through direct payments will improve recruitment and retention rates for 	<ul style="list-style-type: none"> • This will require additional investment when there is currently existing pressure on the adult social care budget, particularly • Additional pressure if Cheshire West

	<p>PAs in Cheshire East</p> <ul style="list-style-type: none"> • Ensures the council is meeting it's duties under the Care Act (2014) around market development and sustainability. • Ensures the council is meeting it's legal duties under the Children Act 1989 and Children & Families Act 2014. 	<p>and Chester Council increase rate above 2023/24 rate</p>
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Implications and Comments

Monitoring Officer/Legal

- 40 The Care Act 2014 places a duty on local authorities to facilitate and shape the whole publicly funded and self-funded care and support market. Legislation requires authorities to provide choice that delivers outcomes and improves wellbeing. Relevant features of the Care Act 2014 include obligations such as:
- Promoting efficient and effective market in services to meet care and support needs.
 - Ensure sustainability of the market, and sufficient services are available to meet the care and support needs in its area.
- 41 The Care Act 2014 requires local authorities to meet a person's eligible needs for care and support (s18 Care Act 2014) which can be met through direct payments to the individual if requested and subject to certain conditions.
- 42 The current hourly rate for direct payment personal assistants is below the NLW. Although the Council is not in breach of minimum wage

regulations itself (as it is not the employer of the personal assistants), a failure to uplift the hourly rate means residents would be unable to meet their legal obligations to pay NLW out of the direct payments made to them. This could result in legal challenge against the resident and/or additional financial pressure due to meeting increased costs themselves.

- 43 In addition, if there was a shortfall in the cost in the market for a Personal Assistant compared with what the local authority agrees to pay it would have to be able to show that the service could be purchased for that price. The Personal Budget is the mechanism that, in conjunction with the care and support plan, or support plan ,enables the person ,..... to exercise greater choice and take control over how their care and support needs are met(Paragraph 11.3 Care and support statutory guidance.) Failure to uplift the rate to a level sufficient to provide individuals with a choice of how to receive their care could put the Council at risk of a Judicial review and also at risk of a breach of the Council's statutory duty under s18 of the Care Act 2014
- 44 Failure to increase the hourly rate for direct payment personal assistants could also lead to be reputational damage to the Council.
- 45 The NLW is set by Government on an annual basis and this means that the Council's direct payments fee will need to be reviewed annually alongside the MTFS budget setting process to ensure that provision is made in the budget to meet the increased payments. In order to ensure that decisions are being made at the correct level, the report proposes that future annual reviews be carried out by the Executive Director of Adults, Health and Integration, including implementation. This includes the decision to set the revised fee which, given the sums involved, meets the threshold of a significant decision as set out in the Council's Constitution.

Section 151 Officer/Finance

- 46 The options under consideration can be afforded from within the Council's existing Medium Term Financial Strategy (MTFS) which continues to reflect the financial impact of both increasing prices and increasing costs, the latter through both the changing demographics and growth in complexity of service users being supported within the Borough.
- 47 In agreeing an uplift to the Direct Payment hourly rates to reflect the recent increase to NLW, full consideration should be given to both the current financial position of the Adult Services department and also, the wider Council position as it embarks on a transformation process which

initially at least, is focussed on achieving financial recovery (for example, a replenishment of current depleted reserves).

Policy

48 The Corporate Plan sets the policy context and are aligned to:

An open and enabling organisation
Listen, learn and respond to our residents' promoting opportunities for a two-way conversation
A council which empowers and cares about people
Reduce health inequalities, work with residents and partners to support people and communities to be strong and resilient

Equality, Diversity and Inclusion

49 An Equality Impact Assessment (EIA) has not been completed as part of this report.

Human Resources

50 Any HR implications that arise will be dealt with on an individual basis for those who employ a PA.

Risk Management

51 Risk management will be measured through adult social care and reported and escalated through the appropriate channels including Commissioning SMT and Adults DLT.

Rural Communities

52 An uplift to the Direct Payment Personal Assistant (PA) rate will support people across all communities in Cheshire East including those in rural communities.

Children and Young People including Cared for Children, care leavers and Children with special educational needs and disabilities (SEND)

53 The uplift applies to children from the above group with eligible social care needs determined by a social care assessment, under the Children Act 1989, Children & Families Act 2014, and Chronically Sick and Disabled Persons Act 1970.

Public Health

- 54 The policy aligns with the Joint Health and Wellbeing Strategy / Place Plan priorities:
1. Cheshire East is a place that supports good health and wellbeing for everyone
 2. Our children and young people experience good physical and emotional health and wellbeing
 3. The mental health and wellbeing of people living and working in Cheshire East is improved
 4. That more people live and age well, remaining independent; and that their lives end with peace and dignity in their chosen place
- 55 Direct payments can provide greater independence, choice and control for residents, and have a positive impact on the individual's health and wellbeing for residents accessing their personal budget as a direct payment in Cheshire East.

Climate Change

- 56 Any climate change implications that arise will be dealt with in individual reports to which they relate.

Access to Information	
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Appendices:	None
Background Papers:	Cheshire East Corporate Plan 2021 – 2025