

CHESHIRE EAST COUNCIL

Cabinet Member for Health and Adult Care Services

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| Date of Meeting: | 24 February 2014 |
| Report of: | Brenda Smith, Director of Adult Social Care and Independent Living |
| Subject/Title: | Empower Card Exit |
| Portfolio Holder: | Cllr Janet Clowes |

1.0 Report Summary

1.1 This report provides a recommended approach to withdraw from the Empower Card by 31 March 2014. Empower is the Council's prepaid social care personal budget card product launched in early 2010 to deliver direct payments to customers, to enable customers to have choice and control in meeting their care needs. The cards are held by either the customer, their representative or the care provider.

1.2 It is requested that this key decision be considered and approved by Adult Services Portfolio Holder Cabinet Member. Approval has been sought under the Constitution's General Exceptions to waive the 28 day notice period due to the small number of customers and care providers affected by the closure of the Empower product. Effectively this would be a change in the payment mechanisms only, with a transition to a new and improved way of facilitating Direct Payments as a move to increased opportunities for choice and control. This together with the legal guidance around the definition of a true Direct Payment and the time imperative associated with the corporate change of Council banker, a decision is required to be made to safeguard Council and customer funds and support the 240 remaining users to alternatives by the end of March 2014 (within 4 weeks from approval being granted).

2.0 Recommendations

2.1. That a policy decision is taken by the Portfolio Holder, supported by Corporate Leadership Board to withdraw the Empower Card option by the end of March 2014.

2.2 That the following strategy is accepted and driven forward:

2.2.1 Publicity material held on Cheshire East Council Internet and Intranet sites in respect of the Empower Card is removed and a review of public and departmental information is conducted to support the development of personalisation through appropriate mechanisms.

2.2.2 Closure audits are completed to recover unused Citi Bank funding account monies by the end of March 2014.

2.2.3 That the relationship with the exiting Empower banking provider and software provider be explored to allow a mutually acceptable ending of the relationships.

2.2.4 In support of the future arrangements the Council will actively engage and promote money management services offered by agencies such as Cheshire Centre for Independent Living and AgeUK Cheshire. Such organisations provide customers who are not able to manage their own Direct Payment, access to money management services in order to operate a Direct Payment and remain independent.

2.2.5 A communication strategy and approach be agreed within Adult Services to brief on the closure of the Empower Card and on the future arrangements – communication with the following is critical; Elected Members, Staff, Customers, Care Providers, Healthwatch, Age UK Cheshire and Cheshire Centre for Independent Living.

2.2.6 Customers, their Personal Assistants and care agencies be supported to transfer to new payment arrangements and where necessary have a clear route to escalate and resolve any concerns or issues.

3.0 Reasons for Recommendations

3.1 The Empower Card does not offer a true Direct Payment or personalisation solution and as a result retains some risks in terms of resources held, payments and contractual liabilities.

3.2 The platform on which the Empower product operates is not contractually robust or efficient, and requires significant resource to support it. It is not a sustainable long term product, and in the Council's considered view, alternative newer prepaid card products in the market place do not sufficiently demonstrate full compliance with existing Direct Payments legislation nor the fundamental principles of personalisation.

3.2 Number of Empower Cards in operation:

| Period | Total Empower Cards in operation | Active agency held cards | Active cards held by a customer |
|--------------|----------------------------------|--------------------------|---------------------------------|
| 2011/12 | 2000+ | | |
| August 2012 | 850 | | |
| May 2013 | 629 | 465 | 154 |
| January 2014 | 244 | 177 | 67 |

4. Wards Affected

4.1 All Wards and local Ward Members are affected, as the Empower Card is used Borough-wide.

5.0 Local Ward Members

5.1 All

6.0 Policy Implications

6.1 Direct Payments and the Empower Card was central to the Council's response to the Government's Personalisation Agenda for Adult Social Care.

6.2 When the card was first implemented it became the Council's preferred and primary payment mechanism to community social care providers until it was paused in November 2011, when a traditional Direct Payment via an individual bank account, or a traditionally commissioned service has been offered.

6.2 The detailed review of the application of the Empower Card has resulted in a repositioning of the Council's policy to move to a system of pure Direct Payment options for customers thereby offering real choice and control.

7.0 Implications for Rural Communities

7.1 There may be some customers living in an area which is hard to serve in terms of care provision. Any issues would be addressed as they emerge.

8.0 Financial Implications

8.1 Customers financial contributions and Council funds are held within the Empower product which requires reconciliation and recovery through the closure process. Many customers will require support to end their standing orders due to vulnerability.

8.2 In 2012/13 £6.6m of Council funds were paid through the Empower Card, whilst £0.8m of customer contributions received.

8.3 In December 2013 £0.67m was held on the cards, whilst £0.16m was held in the associated funding account making a total value retained within the Empower product of £0.83. As of 3rd February 2014, £0.35m was held on cards and £0.25m in the funding account, with a total value in the product of £0.6m, reflecting the reduction in cards in operation. It has been normal to find a retained balance relating to unused funds, following for example the death of an individual, a move into long term care or the Council commissioning services directly. These unused funds can be recovered by the Council, and have been over the life of the product. The Council is planning to

draw down further unused funds on the 5 March 2014, ensuring that the balance retained within the card product is kept to the minimum possible.

8.4 It is recommended that a small provision is created from the returned retained balances for any residual payments that may be presented in 2014/15.

9.0 Legal Implications

9.1 The Empower Card, in a similar way to many of other card products, does not constitute a full true direct payment, as funds are given to the individual on a pre-paid card and not as prescribed by the Health and Social Care Act 2001. In addition the contractual relationships are not as robust as they could be.

9.2 Since the introduction of the Empower Card, many individuals have lodged their cards with their providers, which works against the principles of a true Direct Payment and personalisation. If an individual requires support to manage a Direct Payment this should be managed by another individual either commissioned by local authorities or a legally appointed Suitable Person.

9.3 Proposals contained within this report will allow the Council to improve the current arrangements, resolving the difficulties posed above. Legally the Council must offer direct payments to the service user but if they do not accept them then we cannot force them and we must look for alternative arrangements.

10.0 Risk Management

10.1 The Council is managing a number of potential risks through this process.

These include:

- Customer safeguarding through inappropriate card use
- Card system failure
- Lack of developing and encouraging personalisation
- Provider challenges and cash flow
- Potential loss of Council funds
- Timescales to support vulnerable adults to end their payments to a bank account which will close at the end of March 2014

11.0 Background and Options

11.1 The rapid increase in the take up of the Empower card at the time of the launch created a number of issues with both the product itself, the platform on which it operates and associated processes. The Council, therefore, approved a 'pause' in the roll-out of the Empower card in November 2011 as part of a post-implementation review. This pause became indefinite in March 2012 pending completion of a detailed review of all card accounts. During this time, no new customers have been allocated an Empower card.

11.2 During 2011/12 a Task Team reviewed two thirds of the cards held by

care provider agencies and put in place more robust interim arrangements but did not seek to remove the Empower cards at that time unless the customer or agency requested this. The review highlighted risk to the Council due to a lack of clear understanding on the part of care providers who were sometimes inappropriately managing Council funds on behalf of customers. This was due to poor process management in the launch of the Empower product.

11.3 Many customers whose care is managed through an Empower Card held with the care agency do not understand their responsibilities associated with receiving and operating a Direct Payment. Customers who hold an Empower Card themselves generally are better informed and operate their card account reasonably well, however, these customers could have a traditional Direct Payment with an individual separate bank account and associated debit card which is a robust alternative to Cheshire East's Empower card.

11.4 The strategic and operational plan to introduce a new Adult Financial System provides the catalyst for taking a final decision regarding the future of the Empower card. This coupled with the Council's change in banker from 1 April 2014 makes the removal of the Empower Card an imperative by the end of March 2014.

11.5 The corporate banking arrangements with the Cooperative Bank come to an end in March 2014. The Empower Card is populated from funds posted four-weekly in advance into a Citi Bank Funding Account from the corporate Co-op account, which also receives the customers' financial contribution. The Citi Bank Funding Account with the funding platform LA2+ populates individual Empower cards with the Council's net payment and the customers' own client contribution. This mechanism will not be available from April 2014 and because of the advance population of cards it is recommended that the last payments are made before 8 March 2014. From April the Council will have no facility to receive client contributions nor any mechanism for getting any customer contributions onto the Empower card, without setting up similar arrangements with its new bankers – this would be a complex exercise and is not seen as compatible with the Council's wider medium term strategy for personalisation and adult social care finance. The Council would therefore have to make gross payments should the cards remain in use beyond March 2014 potentially losing the opportunity to collect customer contributions.

11.6 A Direct Payment Review project team was established April 2013. This project has captured the full scale of the Direct Payment (including Empower Card) customer base and associated issues. Further work to improve the Council's Direct Payment offer and information is now being prepared. There is an opportunity through this process to withdraw from the Empower Card product using these resources as well as additional care management time for customer review. The team has 400 current Direct Payments remaining to review. The work on traditional Direct Payments would pause whilst the focus is dedicated on Empower customers.

11.7 A detailed exit plan has been developed in preparation to support a smooth transfer of customers to new arrangements, this includes consideration of the impact on care agencies and their payment arrangements as well as customers who employ their own personal assistants who would need notice for any change under employment law. Customers will continue to receive their scheduled care reviews unless there is a request for early review through this transition.

12.0 Access to Information

The background papers relating to this report can be inspected by contacting the report writer:

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