

DERBYSHIRE COUNTY COUNCIL

CABINET

4 June 2020

Report of the Executive Director - Commissioning, Communities and Policy

Urgent Officer Decisions

Strategic Leadership, Culture and Tourism

1. Purpose of the Report

To ask Cabinet to note decisions made under urgent delegated powers arising from the Covid-19 virus pandemic.

2. Information and Analysis

The current challenges relating to the Covid 19 virus have necessitated urgent decision-making processes by Executive Directors and Directors to be implemented in order to ensure the welfare of service users and the public and to safeguard the interests of the Council

The Coronavirus Act 2020 has now been implemented alongside a range of related Regulations. The Regulations include provision for virtual meetings of Council bodies including Cabinet. These regulations took effect on 4 April 2020.

Members will appreciate that prior to these Regulations being introduced and Cabinet meetings resuming, it has been necessary for a range of decisions to be made. These decisions have been made under the urgent delegated powers to Executive Directors as set out in the Constitution. The relevant provision is as follows-

SPECIFIC DELEGATIONS TO EXECUTIVE DIRECTORS

Notwithstanding any other provision of this constitution, the Executive Directors shall have power, after discussion, if practicable, with the leader of the Council or the relevant Cabinet Member or Chairman, to take such action

deemed to be necessary and expedient in matters requiring urgent consideration and which, because of the time scales involved, or the need to safeguard the interests of the County Council, cannot be dealt with by submission to the next following meeting of the Council, Cabinet, Cabinet Member or Committee.

The following two decisions are being reported:

Appendix 1 - Suspension of On Street Pay and Display Bays and reduced on street parking enforcement

Appendix 2 - Personal Assistant Direct Payments

In the main, the decisions relate to short-term temporary arrangements which are subject to regular review. This is particularly important where subsequent Government guidance has been issued notably in area of Adult Care. It intended that as Cabinet is now able to function by meetings being held 'remotely' the need for officers to make urgent decisions will diminish over time.

3. Financial Considerations, Human Resources Considerations and Legal Considerations

As part of the urgent officer decision-making process, regard has been had to equality implications alongside legal, human resources and financial implications within the demanding time scales applying. However, a consolidated Equality Impact Assessment is being undertaken on all the decisions to date and will be considered at this Cabinet meeting.

4. Other Considerations

In preparing this report the relevance of the following factors has been considered: Human Rights, equality of opportunity, health, environmental, transport, property, social value, and crime and disorder considerations.

5. Background Papers

Details of officer decisions held within Departments.

6. Key Decision

As indicated in reports

7. Is it required that the Call-in period be waived in respect of the decisions being proposed within this report?

Not applicable

8. Officer's Recommendation

To note decisions made under urgent delegated powers arising from the Covid-19 virus pandemic.

Emma Alexander
Executive Director – Commissioning, Communities and Policy

Appendix 1

DERBYSHIRE COUNTY COUNCIL

CABINET

4 June 2020

Report of the Executive Director – Economy, Transport and Environment

SUSPENDING THE NEED FOR ON-STREET PAY AND DISPLAY DURING THE CORONAVIRUS (COVID-19) ALERT (HIGHWAYS, TRANSPORT AND INFRASTRUCTURE)

(1) **Purpose of Report** To note the urgent decision taken by the Executive Director - Economy, Transport and Environment, in accordance with the Council's Constitution, to implement the immediate cessation of all Derbyshire County Council's on-street Pay and Display schemes, due to Coronavirus (COVID-19).

(2) **Information and Analysis** The Council has on-street pay and display schemes in Bakewell, Buxton, Castleton and Chesterfield.

Following the outbreak and subsequent global pandemic of the Coronavirus (COVID-19), the UK Government announced a series of measures on 23 March 2020, that were aimed at reducing the spread of COVID-19 and to protect the public from unnecessary risk of exposure. The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 (the Regulations), prohibit anyone leaving the place where they live without reasonable excuse unless they have a 'reasonable excuse to do so, for example:

- shopping for basic necessities, for example food and medicine, which must be as infrequent as possible;
- to take exercise alone or with members of their household;
- any medical need, including to donate blood, avoid or escape risk of injury or harm, or to provide care or to help a vulnerable person; and
- travelling for work purposes, but only where the public are unable to work from home.

As a Highway Authority, the County Council noted that possible continued use of pay and display machines would:

- aid the spread of COVID-19;
- not be reasonable to require drivers to pay when there was little demand for turnover;
- only essential or key workers such as NHS staff were likely to be in need of the space; and
- leave pay and display machines vulnerable to attack.

On 24 March 2020, after giving due consideration to the Government's Coronavirus guidelines, the Executive Director - Economy, Transport and Environment took the decision to empty all the pay and display machines of cash and bag them off to donate them being out of use indefinitely on the basis noted above.

Pay and Display Machines provide Derbyshire County Council with an income of approximately £160,000 a year. 'Bagging off' the machines will therefore lose the County Council approximately £15,000.

At the time of writing this report, the lockdown remains in place and the machines remain 'bagged off'. Officers are developing a recovery plan for the re-implementation of these parking restrictions once the restrictions are lifted.

(3) **Financial Considerations** As detailed within the report.

(4) **Legal Considerations** The Council's Constitution provides that:

"...notwithstanding any other provision of the Constitution, the Executive Directors shall have power, after discussion, if practicable, with the Leader of the Council or the relevant Cabinet Member or Chair, to take such action deemed to be necessary and expedient in matters requiring urgent consideration and which, because of the timescales involved, or the need to safeguard the interests of the County Council, cannot be dealt with by submission to the next following meeting of the Council, Cabinet, Cabinet Member or Committee."

The Council had to act very quickly to ensure the protection of public health and in the circumstances it was not practical to wait until the next scheduled Cabinet meeting.

Other Considerations

In preparing this report the relevance of the following factors has been considered: prevention of crime and disorder, equality and diversity, human resources, environmental, health, property, social value and transport considerations.

- (5) **Key Decision** No.
- (6) **Call-In** Is it required that call-in be waived in respect of the decisions proposed in the report? No.
- (7) **Background Papers** Held on file within the Economy, Transport and Environment Department.
- (8) **OFFICER'S RECOMMENDATION** That the urgent decision taken by the Executive Director – Economy, Transport and Environment, in accordance with the Council's Constitution, to implement the immediate cessation of all Derbyshire County Council's on-street Pay and Display schemes, due to Coronavirus (COVID-19), be noted.



Mike Ashworth

Executive Director – Economy, Transport and Environment

DERBYSHIRE COUNTY COUNCIL

OFFICER DECISION RECORD

Officer: James Adams		Service: Civil Parking Enforcement	
Delegated Power Being Exercised:			
Subject of Decision:		1. Suspension of On Street Pay and Display Bays 2. And reduced on street parking enforcement	
Key decision?		Yes	
Decision Taken(specify precise details):		1. To suspend the need for on-street Pay and Display in town centres of <ul style="list-style-type: none"> a. Bakewell b. Buxton c. Castleton d. Chesterfield e. P&D Machines will be bagged off where necessary. 2. To suspend on-street parking enforcement throughout Derbyshire, but to keep available Enforcement officers on stand-by to maintain: <ul style="list-style-type: none"> a. road safety (primarily enforcement of single and double yellow lines b. turnover in limited waiting bays to allow access to essential shops c. to keep residents' parking zones free for residents as this is a paid for service. 	
Reasons for the Decision (specify all reasons for taking the decisions including where necessary reference to Council policy)		1. Pay and Display <ul style="list-style-type: none"> a. To enable fair access to essential shops, and minimise need for staff to service the machines. b. Unable to guarantee cash collection services from local authorities of other means. Also to prevent P&D machines become targeted for theft. 2. Enforcement. There is reduced traffic but as road safety becomes a problem or access to essential shops a problem the Council maintains the ability to put some enforcement into areas required.	
Alternative Options Considered (if appropriate)		Nil	
Background/Reports/Information considered and attached (Legal, Personnel, Financial Implications etc)		1. Pay and Display. This will incur a loss of £15,000 a month 2. Enforcement. This standby will cost approximately £48,000 a month, subject to available manpower from NSL our contractor. They will be providing DCC with a daily list of available staff. This cost will still be paid if	

	<p>the Council does not require the standby element and have no on-street enforcement.</p> <p>3. This system maintains Health and safety of staff but allows DCC to support the Police if road conditions become unsafe, and is supported by DfT and the BPA.</p> <p> Local Authority Parking Operational</p>
Consultation with relevant Cabinet Member (s)	
Decision:	
<p>Signature and Date:</p> <p></p> <p>25th March 2020</p>	

DERBYSHIRE COUNTY COUNCIL

CABINET

4 June 2020

Report of the Strategic Director for Adult Social Care & Health

**ADDITIONAL DIRECT PAYMENT TO ADULT SOCIAL CARE AND
CHILDREN'S SOCIAL CARE CLIENTS DURING COVID-19 PANDEMIC**

ADULT SOCIAL CARE

9. Purpose of the Report

Cabinet are asked to:

- Note the urgent decision taken by Corporate Management Team on 6 May to pay additional Direct Payments to adult social care and children's social care clients during COVID-19 pandemic to enable them to issue full pay for personal assistants in the Shielded Cohort for a 12 week period whilst they are advised to self-isolate.
- Note that a further review of the decision will take place at the end of the initial 12 week self-isolation period to determine whether these arrangements need to remain in place.

10. Information and Analysis

It has been identified that there are a number of personal assistants (PAs) who are in the shielded cohort for the COVID-19 pandemic who have been advised to self-isolate for a period of 12 weeks from 21 March 2020. As these individuals are not able to immediately access the Government support schemes, and are not classified as sick and therefore able to access statutory sick pay a local policy response is required.

It is considered important that Adult Social Care and Health and Children's Services develop a local additional response to the national guidance to support future recruitment of personal assistants employed through Direct Payments through fair terms and conditions through the crisis.

Officers in Adult Social Care and Health have engaged with people in receipt of a Direct Payment who have confirmed they have been in communication

with the insurance providers, payroll services and direct payment support services regarding payment arrangements to PAs who have been advised to self-isolate.

Feedback has suggested that whilst some PAs are able to access support, a significant proportion of employers are being referred back to the local authority by their liability insurance provider for a decision on funding. Some insurance advice to individuals has been that they cannot furlough an individual because they receive public funding.

The question and answer document issued alongside the national guidance published on 21 April 2020 '[Coronavirus \(COVID-19\): Q&A for people receiving a personal budget or personal health budget](#)' does state there is no automatic entitlement to the job retention scheme for personal assistants, and the Department of Health and Social Care does not expect PA's to be furloughed. The national guidance states: *'In general, the government expects that the Coronavirus Job Retention Scheme will not be used by many public sector organisations, or individuals who employ people through funding provided to them as a direct payment.'*

These arrangements are placing unnecessary confusion and additional stress on individuals.

Consequently, it is proposed that this could be partially mitigated by the introduction of a local policy which would financially support those PAs who can't work as they are shielding while continuing to ensure that the direct payment recipient is able to source temporary alternative care arrangements.

In these circumstances the recipient would have sufficient funds to be able to continue to pay their shielding PA through their existing Direct Payment while receiving an additional amount to fund any temporary alternative care they required.

As well as adopting this approach for Adult Social Care clients, the approach will also apply to any PAs employed to support children whose parents are in receipt of a Direct Payment.

All Direct Payments are processed by the Direct Payments Team located in Adult Social Care Finance. Alternative options have been considered including supporting clients to attempt to access the Job retention scheme via HM Revenue and Customs (HMRC). However, for most this would be via their payroll provider and most payroll providers are advising individuals that this support does not apply to Direct Payments.

Risks have been considered in relation to this decision and there is a risk that without this clients may not have sufficient funding to pay a second PA and

due to concern re costs will choose to go without vital care until they have successfully managed to claim via the HRMC claim process.

While some clients may have built up a contingency to cover costs, at least on a short-term basis, others, especially those with smaller budgets may be disadvantaged.

This is not a decision which would be taken in any normal circumstance and is a temporary arrangement to support individuals for a 12 week period in the shielded cohort.

This decision will be subject to a minimum of fortnightly review by Adult Social Care Senior Management Team to check that it is appropriate to continue with the additional payments during this 12 month period.

A further review of the decision would need to take place at the end of the initial 12 week shielded cohort self-isolation period in case Government suggests further periods of self-isolation. The Council approach to those employees who are shielding will need to be considered as part of this review. At this point we would need to consider the long-term sustainability of this emergency decision.

11. Comments from Principal Social Worker

The Principle Social Worker has commented that they are supportive of this approach as it ensures that vulnerable people who have chosen to exercise their choice and control by exercising their right to a Direct Payment are not disadvantaged compared to those who choose to receive their care via and agency.

She has also highlighted that it is also important that we ensure that any decision and arrangements in respect of the above are communicated effectively and in a timely manner to those who this impacts upon through the mechanisms available to ASCH and kept under review.

12. Financial Considerations

Need to ensure that, in cases where the Direct Payment has to be increased on an interim basis this needs to be highlighted so the department can identify this additional cost which can be charged to the additional funds that Derbyshire County Council has received to support the COVID-19 pandemic response.

13. Human Resources Considerations

The Council continues to review its pay policy approach as the Coronavirus period continues and this proposal should continue to be reviewed against the approach applied to employees of the council. Any extension past the 12 weeks or change in approach for these payments will need to align with the Council approach.

As we are not the employer we are unable to specify what the PAs are paid or what this has been based on, that is up to the individual employer. Generally the payroll companies who support clients use the previous 13 weeks for leave or for pay where the PA works variable hours.

The redeployment approach to employees who are shielding will be applied to PAs to try and seek alternative duties to undertake from home during the period they are shielding and in receipt of payment.

14. Legal Considerations

The Council's Constitution provides that 'notwithstanding any other provision of the Constitution Strategic Directors shall have the power, after discussion, if practicable, with the Leader of the Council or the relevant Cabinet Member or Chair, to take such actions deemed to be necessary and expedient in matters requiring urgent consideration and which, because of the timescale involved, or the need to safeguard the interests of the County Council, cannot be dealt with by submission to the next following meeting of the Council, Cabinet, Cabinet Member or Committee.'

The Care and Support Statutory Guidance states that adults should be encouraged to take ownership of their care planning, and be free to choose how their needs are met, whether through local authority or third-party provision, by direct payments, or a combination of the 3 approaches. This guidance continues to apply throughout the COVID-19 pandemic.

This report highlights that the risk of not making the additional payment, is that individuals may not have sufficient funding to pay a second personal assistant and may choose to go without vital care, until they have successfully managed to claim via the HRMC claim process.

The Council has enacted the Care Act easements, as created by the Coronavirus Act 2020. The enactment of those easements is not intended to impact the support in place for those in receipt of direct payments. As such, the Council remains under a duty to ensure each individual's support arrangements are sufficient in meeting their eligible needs.

In cases where there is a risk that the current direct payment may not be sufficient to meet an adult's eligible needs, the Council is under a duty to consider alternative means of support, having due regard to the adult's choice

over how their needs are met. The *COVID-19: guidance for people receiving direct payments* further advises local authorities to take stock of how to maintain viable personal assistant supports or alternative provision via care providers during the outbreak of COVID-19, including financial resilience.

The Council has powers in accordance with S1-6 of the Localism Act 2011 to do that which will be to the 'benefit of the authority, its area or person's resident or present in its area.' The proposed benefit of this action is to support both adults and children to ensure that vital support is available to them during the pandemic period.

15. Equality implications

There are no adverse impacts on individuals taking this decision, including protected groups. In fact, the policy decision supports protected groups to maintain their independence and sustain care and support arrangements.

16. Other Considerations

In preparing this report the relevance of the following factors has been considered: Human Rights, health, environmental, transport, property, social value and crime and disorder considerations.

17. Background Papers

The Office Decision Record is attached to this report at appendix 1. Coronavirus (COVID-19): Q&A for people receiving a personal budget or personal health budget.

18. Key Decision

Yes

19. Is it required that the Call-in period be waived in respect of the decisions being proposed within this report?

No

20. Officer's Recommendation

Cabinet are asked to note:

- The urgent decision taken by Corporate Management Team on 6 May 2020 to Cabinet are asked to note the urgent decision taken by Corporate Management Team on 6 May to pay additional Direct Payments to adult social care and children's social care clients during COVID-19 pandemic to

enable them to issue full pay for Personal Assistants in the Shielded Cohort for a 12 week period whilst they are advised to self- isolate.

- Note that a further review of the decision will take place at the end of the initial 12 week self-isolation period to determine whether these arrangements need to remain in place.

Helen Jones
Strategic Director – Adult Social Care & Health
County Hall
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DERBYSHIRE COUNTY COUNCIL

OFFICER DECISION AND DECISION REVIEW RECORD

Officer: Helen Jones <i>*For emergency powers, this would be the Executive Director</i>		Service: Adult Social Care and Health
Delegated Power Being Exercised: Emergency Powers <i>*The delegation detailed in the Constitution to the specified officer or emergency powers</i>		
Subject of Decision: (i.e. services affected)	To pay additional Direct Payments to adult social care and children's social care clients during COVID-19 pandemic to enable them to issue full pay for Personal Assistants in the Shielded Cohort for a 12 week period whilst they are advised to self-isolate.	
Is this a review of a decision? If so, what was the date of the original decision?	No	
Key decision? If so have Democratic Services been notified?	Yes	
Decision Taken (specify precise details, including the period over which the decision will be in place and when it will be (further) reviewed):	<p>It has been identified that there are a number of Personal Assistants who are in the shielded cohort for the COVID-19 pandemic who have been advised to self-isolate for a period of 12 weeks from 21 March 2020. As these individuals are not able to immediately access some of the Government support schemes, and are not classified as sick and therefore able to access statutory sick pay a local policy response is required. It is proposed that DCC Adult Social Care, where necessary, makes additional payments to enable full contractual pay for personal assistants who are unable to work due to government guidance regarding the Shielded Cohort to stay at home. As of 05/05/2020 it is estimated that this proposal relates to no more than 10 clients.</p> <p>This decision will be subject to a minimum of fortnightly review by Adult Social Care SMT to check that it is appropriate to continue with the additional payments.</p> <p>A further review of the decision would need to take place at the end of the initial 12 week shielded cohort self-isolation period in case Government suggests further periods of self-isolation. At this point we would need to consider the long-term sustainability of this emergency decision.</p>	
Reasons for the Decision (specify all reasons for taking the decisions including where necessary)	It is considered important that DCC develops a local additional response to the national guidance to support future recruitment of personal assistants employed through	

<p>reference to Council policy and anticipated impact of the decision) Where the decision is subject to statutory guidance please state how this has been taken into consideration.</p>	<p>direct payments through fair terms and conditions through the crisis..</p> <p>We are aware locally from engagement with people in receipt of a Direct Payment in Derbyshire that employers have been in communication with the insurance providers, payroll services and direct payment support services regarding payment arrangements whilst they have been advised to self-isolate.</p> <p>Whilst some are able to access support, a significant proportion of employers are being referred back to the local authority by their liability insurance provider for a decision on funding. Some insurance advice to individuals has been that they cannot furlough because they receive public funding. These arrangements are placing unnecessary confusion and additional stress on individuals which could be partially mitigated by the introduction of the proposed local policy to support PA's in the shielded cohort.</p> <p>The Q and A issued alongside the guidance published on 21 April 2020 'Coronavirus (COVID-19): Q&A for people receiving a personal budget or personal health budget' does state there is no automatic entitlement to the job retention scheme for personal assistants, and the DHSC doesn't expect personal assistants to be furloughed. The national guidance states: <i>'In general, the government expects that the Coronavirus Job Retention Scheme will not be used by many public sector organisations, or individuals who employ people through funding provided to them as a direct payment.'</i></p> <p>During this shielding period some Direct Care recipients may need to put temporary arrangements in place. Therefore, it is proposed that additional payments are issued to those DP clients where a regularly personal assistant is unable to work so that they can still receive their care from another PA.</p> <p>As well as adopting this approach for Adult Care clients, the approach will also apply to any personal assistants employed to support children whose parents are in receipt of a direct payment. All direct payments are processed by the Direct Payments Team located in Adult Social Care Finance.</p>
<p>Alternative Options Considered (if appropriate) and reasons for rejection of other options</p>	<p>We can advise clients <u>to attempt to access the Job retention scheme via HMRC</u>, however for most this would be via their payroll provider and most payroll providers are advising individuals that it doesn't apply to direct payments, which leads to further confusion for individual employers. It is additional administration and work for clients, along with a likely charge from payroll providers.</p>

Has a risk assessment been conducted- if so what are the potential adverse impacts identified and how will these be mitigated		<p>There are no adverse effects in making this decision other than cost to the local authority detailed in the finance section below.</p> <p>There is a risk in not making this decision, that clients may not have sufficient funding to pay a second personal assistant and choose to go without vital care if concerned about funding until they have successfully managed to claim via the HRMC claim process.</p> <p>Some clients may have contingency to cover costs, at least on a short-term basis, but some clients, especially with smaller budgets may be disadvantaged.</p>
Would the decision normally have been the subject of consultation with service users and the public. If so, explain why this is not practicable and the steps that have or will be taken to communicate the decision		No, this is not a decision which would be taken in any normal circumstance and is a temporary arrangement to support individuals for a 12 week period in the shielded cohort.
Has any adverse impact on groups with protected characteristics been identified and if so, how will these be mitigated?		There are no adverse impacts on individuals taking this decision, including protected groups. In fact, the policy decision supports protected groups to maintain their independence and sustain care and support arrangements.
Background/Reports/Information considered and attached (including Legal, HR, Financial and other considerations as required))		<p>Finance - GW</p> <p>Need to ensure that, in cases where the DP has to be increased on an interim, the PO Request need to have the Covid-19 question marked as yes so that we can identify this additional cost which can be charged to the additional funds that Derbyshire County Council has received to support the COVID-19 pandemic response.</p> <p>Children's Services</p> <p>We have liaised with Children's Services throughout the development of these proposals (Linda Dale and DI McKenna) and they are in agreement with the proposed approach. This will enable us to have a consistent approach across DCC.</p>
Consultation with relevant Cabinet Member (s) – please note this is obligatory.		
Decision:		
Signature and Date:		