

# WIRRAL COUNCIL

## CABINET

14 MARCH 2013

<b>SUBJECT:</b>	<b><i>PERSONAL BUDGETS AUDIT: REVIEW OF RESOURCE ALLOCATION SYSTEM</i></b>
<b>WARD/S AFFECTED:</b>	<b><i>ALL</i></b>
<b>REPORT OF:</b>	<b><i>GRAHAM HODKINSON</i></b>
<b>RESPONSIBLE PORTFOLIO HOLDER:</b>	<b><i>CLLR CHRISTINE JONES</i></b>
<b>KEY DECISION?</b>	NO

### 1.0 EXECUTIVE SUMMARY

- 1.1 A robust Resource Allocation System (RAS) is critical to ensuring that Personal Budgets and self directed support is delivered within the current funding envelope and that funds are allocated in a fair and transparent way, which enables people to meet their eligible needs. A report was presented to Cabinet on 4 November 2010 seeking a Cabinet decision on the Resource Allocation System (RAS) to support the roll-out of Personal Budgets which was agreed by Cabinet at its meeting of 14 October 2010.

This report updates members in relation to progress of the review undertaken in relation to the RAS as identified in the Personal Budgets Audit. It recommends that alternative models are explored.

### 2.0 BACKGROUND AND KEY ISSUES

- 2.1 A 'personal budget' is simply the name given to a sum of money which the person's needs ought reasonably to be able to be met within. Generally, in cases where the client is interested in a Direct Payment, that budget will be the net sum after the user's contribution has been deducted.

In conventionally-arranged packages managed by local authority commissioners, the Personal Budget will also be the net sum, but the full cost of the package will be paid by the authority and the user's contribution recouped as happens at present, unless the provider agrees to collect it as the authority's collection agent

There is no new 'vehicle' in the legal framework called a 'Personal' Budget which is different from the funding invested within a Direct Payment or spent on local authority arranged services. But there are many ways of *organising* Direct Payments and contracts which will possibly deliver greater satisfaction and enable re-configuration of services across the country. The development of mixed packages of *partly* Direct Payments, and *partly* services commissioned by one's responsible authority, will enable everyone, even those in residential care, to have the benefits of a personalised budget, so long as the resource allocation calculation process does not simply translate the residential care fee currently being paid into the person's personal budget – and providers are willing to re-configure the way in which they charge for different elements of their packages.

The Resource Allocation System (RAS) is the system by which resources are allocated to service users and carers with eligible assessed needs.

The basic principle of the RAS is to give a points weighting to a series of factors that relate to the components of care packages. An overall points score is then determined which is multiplied by a locally determined £ amount of resource per point to give an indicative value to a particular package.

Having this information available before a package is put in place gives a better guide both to service users and social work staff and managers on the indicative resources likely to be required for a package.

The £ per point serves to provide an indicative allocation of the resources available in the Budget and cannot directly be used to determine the cost of individual Support Plans.

Cabinet on 4 November 2010 agreed to roll out the offer of Personal Budgets to all eligible Wirral residents from 11 November 2010 with a £ per point allocation of £1.62. The original RAS allocation used in Phase 1 and 2 of the Personal Budget pilot was based on a value of £1.88 per point.

## **Financial Evaluation**

2.2 Three financial evaluations have been undertaken since the introduction of Personal Budgets to assess the financial impact and appropriateness of the RAS. The evaluations were based on 2010/11 and 2011/12 financial years and in-year data as at 31 December 2012. The in-year evaluation has focussed on service users and excludes carers in receipt of a Personal Budget.

The initial evaluation demonstrated that, for those people who had transferred from a previously commissioned package of care, costs through a Personal Budget were 14% higher. The previous RAS allocation of £1.88 resulted in additional costs of 20% and the revised RAS allocation of £1.62 resulted in additional costs of 10% when compared against previous support costs.

2.3 The recent evaluation was based on 1,306 Personal Budgets for people in receipt of both commissioned services (Day care, Domiciliary care, Supported Living and Adult Placements) and Direct Payments.

2.4 The table below shows the average Indicative Budget for the 1,306 service users compared to the average Personal Budget.

	<b>£1.62 per Point</b>
Average Indicative Budget	202.37
Average Personal Budget	199.27
% Indicative Budget Used	98.5%

2.5 Whilst the above indicates that the overall average Personal Budget is in line with the Indicative Budget when evaluating the RAS to determine its affordability the revised £ per point was based on the assumption that people would spend on average 72% of their indicative budget allocation.

2.6 In addition, there are significant variations across different service user groups, as highlighted in the table below. Adults with Learning Disabilities have the highest Personal Budget values, exceeding the indicative amounts by 153% on average.

<b>Service User Group</b>	<b>Number</b>	<b>Average Indicative Budget</b>	<b>Average Personal Budget</b>	<b>Average % Variance</b>
Learning Disabilities	212	£270.00	£413.08	153%
Physical & Sensory Disabilities/Other	206	£213.89	£217.21	102%
Mental Health	57	£190.05	£204.66	108%
Older People	831	£183.10	£139.91	76%

The variations between Indicative Budgets and Personal Budgets suggest that the current RAS does not allocate points appropriately across the different client groups. The analysis suggests that too many points are allocated to Older People and insufficient points to Adults with Learning Disabilities. The cost and availability of services across different client groups may also be a contributory factor.

2.7 A further indication that the current RAS does not allocate points appropriately is the number of people with a Personal Budget higher than their Indicative Budget. Of the 1,306 people included in the recent evaluation, 385 (29%) fall into this category.

2.8 A breakdown of the 385 people by service user group, the additional cost and the percentage of people falling into this category is provided in the tables below

<b>Service User Group</b>	<b>Number</b>	<b>Annual Indicative Budget</b>	<b>Annual Personal Budget</b>	<b>Variance</b>
Learning Disabilities	104	1,476,045	3,769,056	2,293,012
Physical & Sensory Disabilities/Other	65	825,728	1,399,915	574,186
Mental Health	26	242,635	449,648	207,013
Older People	190	1,849,849	2,703,364	853,516
<b>Total</b>	<b>385</b>	<b>4,394,257</b>	<b>8,321,983</b>	<b>3,927,726</b>

<b>Service User Group</b>	<b>Evaluation Numbers</b>	<b>PB higher than IB</b>	<b>%</b>
Learning Disabilities	212	104	49%
Physical & Sensory Disabilities/Other	206	65	32%
Mental Health	57	26	46%
Older People	831	190	23%
<b>Total</b>	<b>1,306</b>	<b>385</b>	<b>29%</b>

2.9 The above shows that almost 50% of adults with a Learning Disability or Mental Health problem are receiving a Personal Budget higher than their Indicative Budget.

2.10 From the information available there does not appear to be any transitional arrangements in place to reduce the Personal Budgets were they are higher than the Indicative Budget allocation

## **Conclusion**

A robust RAS is critical to ensuring that Personal Budgets and self directed support is delivered within the current funding envelope and that funds are allocated in a fair and transparent way which enables service users to meet their eligible needs.

It was anticipated that the Resource Allocation Model would give more predictability on the likely cost of packages, give service users a clearer indication of the resources available and ensure that the support provided is in line with assessed need.

The financial evaluation confirms that funding through the current RAS is largely unpredictable with 29% of people having a Personal Budget higher than their Indicative Budget allocation.

The evaluation also highlights the significant variations between service user groups with Older People spending on average 76% of their Indicative Budget allocation and adults with Learning Disabilities spending 153%.

It is evident that adjustments need to be made to improve the effectiveness of the current method of allocating resources whilst ensuring the right balance between affordability and meeting service user needs.

The Department could review the existing model and make changes to the £ per point and points weightings or consider alternative models for allocating resources. Two options have been suggested:

- Costed care package approach
- Care Fund Calculator

### **3.0 RELEVANT RISKS**

It was anticipated that the Resource Allocation Model would give more predictability on the likely cost of packages, give service users a clearer indication of the resources available and ensure that the support provided is in line with assessed need. Failure to establish a sustainable and robust approach to the allocation of resources would leave the authority open to legal challenge and unable to implement appropriate budgetary control.

### **4.0 OTHER OPTIONS CONSIDERED**

4.1 Further options to be explored.

### **5.0 CONSULTATION**

5.1 None required.

### **6.0 IMPLICATIONS FOR VOLUNTARY, COMMUNITY AND FAITH GROUPS**

6.1 None identified.

### **7.0 RESOURCE IMPLICATIONS: FINANCIAL; IT; STAFFING; AND ASSETS**

7.1 The objective of a RAS is to provide formulaic guidance on the indicative level of personal budgets. The value of RAS points is adjustable to calibrate the model and match indicative budgets to available resources.

7.2 The current arrangements are clearly unsatisfactory because:

- ❖ There is a poor correlation between personal budgets actually awarded and RAS calculated indicative budgets (see 2.8 above)
- ❖ The value of indicative budgets exceeds available resources, and this is a significant factor in the forecast DASS overspend of £10.2m in 2012-13.

7.3 The proposal to review the system should therefore be welcomed as an improved arrangement will provide a closer match to clients assessed needs and the resources expended.

7.4 The full financial implications will be evaluated as the proposals are developed.

## 8.0 LEGAL IMPLICATIONS

### 8.1 The duty to assess

In terms of the duty to assess for community care needs, in the first place, authorities are bound to offer to assess people who appear to them to be disabled under the 1986 Disabled Persons (Services, Consultation and Representation) Act, and are also obliged to assess anyone who appears to the authority to be a person who may be in need of any community care service it could lawfully provide or arrange (S47 of the 1990 National Health Service and Community Care Act).

#### The duty to meet assessed eligible need

This duty to meet eligible need is absolute, **regardless of available resources** within social services funds, if the local authority accepts that there is only one way to meet the need appropriately – it is a **corporate** duty to find the money, once someone is eligible (case law proven in *Gloucestershire* and *Wigan* cases). It is only exceptionally that there is only one way to meet need, lawfully, but a care/support package could, in theory, involve capital costs running into thousands (see the *Islington* case involving the purchase of a private house in Islington in which to house a family with an assessed need for urgent re-housing) or cost hundreds of thousands a year and still not be a continuing NHS health care package, simply based on the cost (case law *St Helens*: 2008)

When assessing the *existence* of a need, it is reasonable to take account of existing support, if it is willing and ably offered. It is also legitimate and prudent to highlight other means of support that may be available to the person, to enable them to weigh up the pros and cons of retaining autonomy over the meeting of their own needs (such as benefits, universally available services in the community, etc) rather than relying on the State.

If a person has a reason that would make sense to the majority of people, for declining to make use of such support, then that should not affect the decision on *eligibility*. But an authority can take account of what is available to a person, through health or housing services, for instance, and decline to treat the need as an eligible one, if it does not think that the refusal to use the alternatives is reasonable.

## FACS

LAs do not have a legal duty to meet **all** the public's presenting wants, wishes and needs, but only assessed eligible needs for community care services – the *Gloucestershire* decision settled this, at the highest level, in 1997. This is because the legislation under which all services are provided envisages the local authority deciding whether the person's situation necessitates or calls for or demands a response from the local authority, when considered against the standards and expectations of a civilised society.

FACS guidance is built on the law as laid down in this case, and streamlined and made national, an appropriate approach to precisely what it was that assessment should seek to evaluate. A *person* is not eligible, under FACS - it is their needs in particular domains which are eligible. Those needs must be explored if they are needs for which a power or duty to provide services under community care legislation has been given by Parliament.

FACS guidance prohibits cost ceilings attributable to specific categories of risk. It says the LA cannot assume that critical risks will always be more expensive to meet than lower rated ones. Cost ceilings would connote a resources-driven system, instead of a needs-led one.

FACS guidance, local government law as a whole and specific case law prohibit outsiders to the LA from doing the assessments themselves, without the statutory decision-maker – the authority – formally adopting the content.

**The over-arching duty of care** to all social care clients can be honoured within a personalised system. This will be done through:

- proportionate monitoring of the success of the individual's support plan;
- compliance with the new regulations governing the Direct Payment system, in force from November 2009
- the understanding of all concerned that safeguarding is a form of risk management which should already be integral to assessment and support planning functions
- a commitment to providing an alternative service for the few whose experience of a personal budget ultimately fails to meet their needs.

**The full assessment duty and the duty to meet assessed eligible need appropriately** can all be accommodated within a personalised process.

The process can give the lead to the applicant/existing service user, in terms of identifying their needs and the preferred means to meet them.

Local authority staff with various skills and levels of experience can perform formally required eligibility and support planning decisions, subject to supervision and competence, in proportion to the level and complexity of tasks allocated.

**Resource allocation** is required as part of the legal framework already (ie is part of meeting eligible unmet needs, based on local views as to what is appropriate by way of services, all of which cost money.

Local authorities already do a form of approximate resource allocation based on social work staff's consensus about what is right and proper, against a backdrop of a finite amount of money allocated from Community Care funding

Such allocation occurs lawfully, notwithstanding the corporate local authority duty to meet assessed eligible need, regardless of the resources available to social services in some circumstances.

Approximate resource allocation maximises co-production of the plan, whilst recognising that the law makes the authority the ultimate decision-maker in relation to what is appropriate, for any individual service user, subject only to correction by the courts on public law grounds of irrationality, illegality, etc.

Changes to any authority's allocation system will be changes in local authority policy, effectively, about altering the local FACS threshold or the authority's view of what constitutes an appropriate response to need, and must be made transparently and in line with equalities and diversity duties.

## **9.0 EQUALITIES IMPLICATIONS**

9.1 Has the potential impact of your proposal(s) been reviewed with regard to equality?

(a) Yes and impact review is attached.

## **10.0 CARBON REDUCTION IMPLICATIONS**

10.1 None.

## **11.0 PLANNING AND COMMUNITY SAFETY IMPLICATIONS**

11.1 None.

## **12.0 RECOMMENDATION/S**

12.1 The RAS is not fit for purpose in its current form. Alternative models require further exploration. It is recommended that this work is completed between April and June 2013. Members are requested to agree exploration of alternative models and to receive a report on a recommended model for agreement in August 2013 and to agree implementation from September 2013.

## **13.0 REASON/S FOR RECOMMENDATION/S**

13.1 The current RAS is not providing a robust and sustainable model. Financial implications are such that there is an imperative to adopt a more robust and sustainable model of resource allocation.



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**APPENDICES**

N/A

**REFERENCE MATERIAL**

N/A

**SUBJECT HISTORY (last 3 years)**

<b>Council Meeting</b>	<b>Date</b>
<b>Cabinet - PERSONAL BUDGETS</b>	<b>4 November 2010</b>
<b>Cabinet - PERSONAL BUDGETS</b>	<b>14 October 2010</b>