

**Open Report on behalf of Glen Garrod,  
Executive Director of Adult Care and Community Wellbeing**

|                     |   |
|---------------------|---|
| Report to:          | <b>Councillor Mrs P A Bradwell OBE, Executive Councillor for Adult Care, Health and Children's Services</b> |
| Date:               | <b>Between 02 - 03 December 2019</b>  |
| Subject:            | <b>Direct Payment Support Service</b>   |
| Decision Reference: | <b>I018150</b>  |
| Key decision?       | <b>Yes</b>  |

**Summary:**

The Direct Payment Support Service (DPSS) is the Council's dedicated service contract that helps support service users who have a direct payment with a range of activities. The current contract has had its full extension now taken, which means the current provision must to an end on the 31 March 2020. A new service will have to be procured to start on the 1 April 2020.

This report seeks to present the case for re-commissioning the Direct Payment Support Service on the basis of the work undertaken and seeks approval:-

1. To agree to re-commission a community based service supporting people with direct payments.
2. To agree proposed changes to the existing scope and specification of the service.

**Recommendation(s):**

That the Executive Councillor:

1. Agrees to re-commission a community based service supporting adults and children with direct payments through a single county-wide contract with a duration of three years with the power to extend for two further periods of one year each.
2. Approves that the contract be in broadly the same model as the existing service subject to the changes specified in section 1.5 of the report.
3. Delegates to the Executive Director of Adult Care and Community Wellbeing, in consultation with the Executive Councillor for Adult Care, Health and Children's Services, authority to approve the final form and the entering into of the contract and all other legal documentation necessary to give effect to the above decisions.

**Alternatives Considered:**

1. Negotiate a Revised Contract with the Current Provider

The Council has an existing contract for a Direct Payment Support Service. The contract does not have provision for any further extension.

2. To Do Nothing

Under the Care Act 2014, a local authority has a duty to ensure that 'people are given relevant and timely information about direct payments, so that they can make a decision whether to request a payment, and, if doing so, are supported to use and manage the payment appropriately'. Local authorities may choose to discharge this duty in different ways such as providing in house support or delegating different elements of the support. However the provision of a specific Direct Payment Support Service allows social work staff, people who take a direct payment and their families to refer to an expert source of advice and guidance. This resource is crucial in ensuring the DP is set up and used effectively and efficiently.

3. Bring Services In-House

This has been considered and is not appropriate due to the high cost of delivering the service this way. In addition the independent nature of the out-sourced provider is important in engaging with those who have chosen to take a direct payment.

**Reasons for Recommendation:**

1. There is a relatively limited market for Direct Payment Support services. The Council has an obligation under the Care Act to support those who are in receipt of direct payments.
2. The alternatives considered have been deemed unsuitable in delivering the required outcomes of the service.

**1. Background**

**1.1 Strategic and Policy Drivers**

1.1.1 The re-commissioning of the service will support both local and national policy objectives:-

1.1.2 The Care Act 2014 places a duty on local authorities to ensure that 'people are given relevant and timely information about direct payments, so that they

can make a decision whether to request a payment, and, if doing so, are supported to use and manage the payment appropriately'.

- 1.1.3 The Lincolnshire personalisation agenda sets out Lincolnshire County Council's commitment to the growth of direct payments and availability of choice. See Appendix A which shows the Council's approach to Direct Payment support.
- 1.1.4 However the ADASS [Association of Directors of Adult Social Services] Peer Review of Lincolnshire County Council Adult Care in 2018 found that our direct payment offer was an area to consider for development.
- 1.1.5 Direct payments are a positive and enabling way for people to arrange and pay for their care and support. They enable the person to exercise their right to choice of appropriate care provision. The Direct Payment Support Services will support the increase in the take up of direct payments as well as decrease failed direct payments.

## **1.2 Level of Need**

- 1.2.1 Currently there are approximately 8,805 adults in Lincolnshire who are eligible for social care support and a personal budget with 2,135 currently in receipt of a direct payment. All these people will have a form of personal plan. As of June 2019 157 children and young people were recipients of a direct payment.
- 1.2.2 The volumes at the end of the last reported quarter for the service stand at 2,039 active accounts of which 1,611 are fully managed. The current volume of referrals for direct payment support averages at 2.3 per week, each with varying support requirements. Since commencement of the contract in 2015 the main growth in individuals using the service overall can be seen in the Learning Disability and Physical Disability categories.
- 1.2.3 There are people that have eligible needs but will be fully funding their own care and support that will benefit from this service.
- 1.2.4 There is currently a strong case for Personal Health Budgets (PHB) to become part of the requirement during the term of the contract which would require integrated working arrangements with CCGs [Clinical Commissioning Groups]. There are 499 adults who are eligible for NHS Continuing Health Care (CHC), who have the right to request a PHB with approximately 90 in receipt of a PHB. 332 of these adults are receiving care at home and will be moving on to PHBs during the life of the contract. There are also over 40 Lincolnshire children who are eligible for CHC funding and are entitled to a PHB. This overall number is set to increase due to the NHS Targets which were introduced in 2019.
- 1.2.5 At this stage the Council is still working with CCG colleagues to confirm the scope and commitment to joint working. However the current premise for such an arrangement is based on the following assumptions.

- That we appoint a single provider for the DPSS with the understanding that this provider may sub-contract elements of the service to specialist providers.
- Lincolnshire County Council must have a new contract in place by 1 April 2020 and will go out to tender on 4 December 2019.
- There is insufficient time for Health to make any major changes to the service specification and will be required to conform to the Council's contract.

#### 1.2.6 Current Joint Working Options being considered:

1. The simplest approach in which CCGs are named on the contract as purchasers and/or referrers within a separate lot of the contract. In this arrangement Health would directly enter into contract with the provider that was procured by the Council which is based on the County Council specification and terms and conditions. CCGs would act independently as purchasers and managers of the service with the ability to coordinate with the County Council on any outstanding issues like performance. This should not require a new section 75 agreement.
2. As option 1 but with the addition of the contract management of the whole service being carried out by the County Council's Commercial Team. This option would also benefit from having a pooled budget with Lincolnshire County Council as the purchaser and CCGs as authorised referrers. (An example of this option would be the existing Transitional Care and Reablement Beds agreement)
3. As option 2 but with the addition of an audit function that would review the personal budgets and the personal health budgets of each service user. Currently the Direct Payment Audit Team in Lincolnshire County Council Adult Care undertake regular analysis of direct payment personal budgets in order to ensure that funds are being used appropriately and also identifying any surpluses which are then returned to the purchaser. Both these issues are high risks with regard to the proper performance of the service.

At this stage we are waiting for Health to confirm their preferred approach and have also requested further clarification on the following matters:

- Current volumes and service user breakdowns
- Budget
- Confirmation of service scope and if there any specific requirements for CCGS that is might not be covered in a Social Care arrangement e.g. increased statutory duties, service standards, etc.

The contract will be drafted in a manner that will support the delivery of each these options to be determined at a future date.

### **1.3 Current Service Issues and Performance**

- 1.3.1 The current contract is delivered by Penderels which went live on the 1 April 2015 and was awarded for a period of three years with the option to extend a further two periods of twelve months. The full extension having now been taken, brings the current provision to an end on the 31 March 2020. A new service will have to be procured to start on the 1 April 2020.
- 1.3.2 The contract has been monitored through the contract management process and the provider has to submit quarterly performance information.
- 1.3.3 A number of issues with the current contract have been identified, these are detailed below:

- The current contract was created with set volumes based on historic demand and a corresponding core price of £337,225 that would be sufficient to meet this demand. Since then the contract has seen a significant increase in volumes. When the Council activated the extension in the contract the opportunity was taken to renegotiate the volumes in the contract by decreasing the less used parts of the services such as the good employer workshops and information workshops for social work teams and increase the core volumes for areas of higher demand. The core volumes for active accounts went up from 1,550 to 1,800 and for fully managed accounts from 675 to 775. Alongside this was a decrease in the cost for active accounts from £40 to £34.
- The actual spend by contract year is shown in the table below:

| <b>Direct Payment Support Service</b> | <b>2015/16 (£)</b> | <b>2016/17 (£)*</b> | <b>2017/18 (£)</b> | <b>2018/19 (£)*</b> |
|---------------------------------------|--------------------|---------------------|--------------------|---------------------|
| Actual Spend*                         | 424,725            | 521,745             | 424,276            | 466,374             |

- The main area of growth and higher costs is attributed to an increase in the number of new referrals, active accounts and the significant rise in number of fully managed accounts. The latter may be partially attributed to the large volume uptake of direct payments by individuals (older persons) using homecare as a result of changes to the homecare contracts.

### **1.4 Engagement**

- 1.4.1 A number of types of engagement have been undertaken to understand the impact that the current service has had on stakeholders and people that use services. The findings from the engagement have helped to shape the planning and design of the new revised specification. An overview of the types of engagement undertaken can be found below:-

1.4.2 An annual survey was conducted in May 2018 to gain a good understanding of how people are finding the service. There were 1,927 service users on the database when the survey was conducted. 20% of those held were sampled, so approximately 385 service users with 70 returned which 18.18%.

1.4.3 Social work practitioner representatives and a member of the lead professional team are part of the project group set up specifically for this re-procurement and are engaged on:

- reviewing demand for managed services and potential to change the focus;
- operational issues and challenges associated with referrals and internal processes;
- assessing suitability of existing contract solutions; and
- designing new processes and workflows to deliver the new focus.

1.4.4 The lead professional team support includes wider engagement with practitioners through tapping into team meetings, existing communication channels and the leadership forums.

1.4.5 Benchmarking activity also took place with five local authorities to understand the services they were commissioning including, scope of services, contract value, payment mechanisms and service capacity and demand.

1.4.6 Wider market engagement was conducted to try and understand the market's position in relation to delivery of services of this nature. This involved a market engagement questionnaire for interested parties to complete and return. The feedback summary is available in section 1.7.

1.4.7 Co-production will form part of the evaluation and method statement questions will be developed alongside a service user who will also form part of the qualitative evaluation process. The Council is working closely with the advocacy provider to source a suitable person.

## **1.5 Proposed Changes to the Service**

1.5.1 There is no substantial change in the range of services to be delivered. However, the proposed changes are to how the services will be delivered. This is explained below (see also Appendix B):-

- To provide an information, advice and guidance service for all direct payment users.
- To provide a front loaded hand holding service to ensure that the start of the direct payment is smooth and efficient.
- To enable people to move to the most appropriate level of support for them taking into account the other Direct Payment Support services commissioned by the Council and facilitating the individuals path to independence.

- To incentivise the provider to move clients to the most suitable type of direct payment support.
- To seek to reduce the increase in managed accounts and as a result better manage costs.
- To add in new controls and mechanisms to better manage demand growth.

1.5.1 There will be more emphasis on the provider to develop and maintain good partnership working practices with health and social care and the third sector to further develop a good understanding of the services available. The partnership working will be supported by relevant Lincolnshire County Council staff to ensure that there is a good understanding of the referral pathways into the service for operational Council staff that would be using it.

1.5.2 The new model will encourage better use of resources and outcomes for services users by ensuring the right level of support is in place in accordance with the needs of the service user. The key performance indicators will ensure that on one hand there is a reduction in the number of fully managed accounts but not at the expense of the direct payment take up by performance managing both the number of fully managed accounts as a percentage of the total supported and measuring the number of direct payments that have failed, which should be zero. The concentrated upfront support will also support this outcome.

1.5.3 Key performance indicators are being developed to place a focus on the information that is gathered from the provider that will need to demonstrate their performance against the outcome of the specification. Mechanisms will be built into the contract to ensure that the provider can be held to account if performance levels are not being met.

## **1.6 Procurement Approach**

1.6.1 The intention to re-commission the Direct Payment Support Service for a further three years, with the option to extend for a further two years would be delivered by the way of a competitive tender process in accordance with regulations 74 to 76 of the Public Contract Regulations 2015 (Annex A) under "Light Touch Regime" utilising an Open Procedure method. This approach is being proposed due to the limited number of potential providers within the market. The decision as to which provider is awarded the single provider status will be based on their evaluation performance.

1.6.2 The Invitation to Tender (ITT) evaluation will focus on service quality and the capability of the provider to deliver the required work and quality outcomes as outlined in the specification.

1.6.3 Performance will be managed through use of service credits and performance credits linked to key performance indicators. Management information and key performance indicators are to be included focused on the following:

- a key performance indicator to encourage signposting to less intensive support services;
- key performance indicators and management information to encourage concentrated intervention at the start by looking at the percentage of failed direct payments and reduction in intervention required;
- management information to acknowledge the numbers supported and allow adjustment using the payment mechanism;
- a key performance indicators to encourage a lower percentage of fully managed services i.e. to be in line with findings from other authorities; and
- a key performance indicators on quality assurance and linked to customer feedback.

## **1.7 Market Engagement Questionnaire**

- 1.7.1 A Prior Information Notice (PIN) was issued on the 4 October 2019 to carry out market engagement. A questionnaire and draft specification was issued to organisations expressing an interest in the PIN. This being intended to establish the level of market interest in provision of Direct Payment Support Services in Lincolnshire, as well as seeking the market's views on key factors influencing the scope and structure of any resulting contract such as contract duration, price and payment and performance management and innovation.
- 1.7.2 Nine questionnaires were returned, the responses have helped to inform the procurement strategy and specification development. The responses indicated that providers would be keen to have a minimum three year contract both from a practical and financial perspective with a block contract payment as the most appealing for this type of service. The questionnaire confirmed that there is interest from the market for this type of contract other than just the incumbent provider and the responses suggested some level of performance related payment would be acceptable to the market. Out of the nine returns three providers indicated that they are able to provide the service in its entirety and one provider indicated they could with sub-contracting a specialist area.
- 1.7.3 Due to the level of interest a market engagement event has been scheduled for the 19 November 2019. Another reason for the market engagement event is that there is a requirement in the contract that a minimum of ten per cent of the contract is sub-contracted as per the current arrangements as it allows for a consideration of social value. This has worked well in the current contract to engage small specialist local suppliers. The event will seek to understand some of the responses around cost and demand and at the same time act as a networking opportunity for some of the smaller providers. To date 13 organisations have registered their interest to attend.

## **1.8 Contract Duration**

1.8.1 The Commercial Team propose a contract duration of three years. This contract term was confirmed through the market engagement phase as the minimum contract length providers would consider as financially viable. In addition to the three year contract term, the ability to extend the contract for a further two years (one + one) should be included to provide the Council with options at the end of the initial contract period.

## **1.9 Pricing Structure**

1.9.1 The annual budget for the Direct Payment Support Contract is currently £485,300 owing to the fluctuations in demand. The Commercial team propose that in view of the new focus for the contract the tender will go out with a budget headline of £420,000.

1.9.2 The pricing model is being developed and currently is set at a baseline on current volumes with the aim of re-profiling the support types within the service over the life of the new contract. The provider shall also be required to operate an open book accounting system so the cost of resourcing the service is clear and the amount related to profit which can then be better managed in contract. The service would be delivered through a block payment and unit volume arrangement with service credits and performance credits attached to KPI's. A gain share model will work if volumes fall below the core amounts so that the Council can manage that risk.

1.9.3 This approach would help to encourage the provider to work on increasing referrals ultimately supporting a greater number of people.

1.9.4 It is also the Council's intention to make best use of other support tools for Direct Payment such as Virtual Wallets. It is anticipated that a substantial number of the current cohort may be better supported through these offers which in turn may reduce the overall volume of the DPSS. The contract will therefore need to be able to respond not only potential increases in volume but also a decrease in the numbers of fully managed accounts.

## **1.10 Procurement and decision making timeline**

|   |                                    |
|---|------------------------------------|
| Adults and Community Wellbeing Scrutiny Committee | 27 November 2019                   |
| Executive Councillor decision                     | 2 December 2019                    |
| Issue Invitation to Tender                        | 4 December 2019                    |
| Evaluation  | 3 January 2020 to 16 January 2020  |
| Report and Delegated Decision                     | 17 January 2020 to 27 January 2020 |
| Standstill period                                 | 29 January 2020 to 7 February 2020 |
| Contract Award                                    | 10 February 2020                   |
| Mobilisation Period (7 weeks)                     | 11 February 2020 to 31 March 2020  |
| Go Live   | 1 April 2020                       |

## 2. Legal Issues:

### Equality Act 2010

Under section 149 of the Equality Act 2010, the Council must, in the exercise of its functions, have due regard to the need to:

- \* Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act
- \* Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it
- \* Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The relevant protected characteristics are age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; and sexual orientation

Having due regard to the need to advance equality of opportunity involves having due regard, in particular, to the need to:

- \* Remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic.
- \* Take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it.
- \* Encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.

Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to tackle prejudice, and promote understanding.

Compliance with the duties in section 149 may involve treating some persons more favourably than others.

The duty cannot be delegated and must be discharged by the decision-maker. To discharge the statutory duty the decision-maker must analyse all the relevant material with the specific statutory obligations in mind. If a risk of adverse impact is identified consideration must be given to measures to avoid that impact as part of the decision making process.

- 2.1 The key purpose of the service is to support people from Lincolnshire who have been assessed to be eligible for social care support and have chosen to take their personal budget as a direct payment.
- 2.2 An Impact Assessment has been completed and a copy of it is appended to this report (Appendix C). It is clear within the proposal for this service that the service will remain open to all groups regardless of protected

characteristic if recommissioned.

- 2.3 The impacts of continuing the service are positive with particular benefits for older people and people with a disability who are the predominant users of the service. The alternative is that individuals will end up in residential type services rather than have the opportunity for both them and their carers support to improve their lives and live independently for longer.
- 2.4 There is also a risk that a change of provider will impact on persons with a protected characteristic arising out of the employment impact on staff. The staff employed by the current provider will be affected by the end of the current contract. Mitigating factors will relate to the legal protections that will be in place through TUPE, if it applies, and general employment laws. The contract that will be entered into will also contain clauses requiring the contractor to comply with the Equality Act.
- 2.5 Given these mitigations and having regard to the adverse impacts it is open to the Executive Council to conclude that having considered the duty that any potential there is for differential impact or adverse impact can be mitigated.

### **3. Joint Strategic Needs Analysis (JSNA and the Joint Health and Wellbeing Strategy (JHWS)**

The Council must have regard to the Joint Strategic Needs Assessment (JSNA) and the Joint Health & Well Being Strategy (JHWS) in coming to a decision.

3.1 The Joint Health and Wellbeing Strategy (JHWS) for Lincolnshire, agreed by the Lincolnshire Health and Wellbeing Board in June 2018, has a strong emphasis on prevention and early intervention, with a clear aim to deliver transformational change which shifts the focus from treating ill health and disability to prevention and self-care. The Lincolnshire Joint Strategic Needs Assessment (JSNA) highlighted in the prioritisation and engagement work as being the most important health and wellbeing issues facing the county:

- Mental Health & Emotional Wellbeing (Children & Young People)
- Mental Health (Adults)
- Carers
- Physical Activity
- Housing and Health
- Healthy Weight (previously known as Obesity)
- Dementia

3.2 The Direct Payment Support service will positively impact on a number of these themes:

- it will support all those who are eligible for social care and have chosen to take their personal budget as a direct payment to set up solutions that are

tailored to the individual and otherwise may not have been possible through a more traditional approach.

- Lincolnshire Partnership NHS Foundation Trust who provide the social care for mental health have a high uptake of direct payments through the current service. The service also receives a high number of referrals to support those with a physical disability and a learning disability where very specific and specialist services can be assembled to meet complex needs
- Carers are also specifically identified as engaging with this service.
- The service will improve and enable access to local and community based services and support the development of the PA market. Bolstering the care and support workforce available to social care.

#### **4. Crime and Disorder**

Under section 17 of the Crime and Disorder Act 1998, the Council must exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent crime and disorder in its area (including anti-social and other behaviour adversely affecting the local environment), the misuse of drugs, alcohol and other substances in its area and re-offending in its area

4.1 This service is unlikely to contribute to the furtherance of the section 17 matters.

#### **5. Conclusion**

5.1 An effective Direct Payment Support Service can become a fundamental part of the supporting independence and personalisation of services for Lincolnshire and play a significant role in reducing the burden on the overall health and social care system.

5.2 The conclusion of the current Direct Payment Support Services contract means a procurement process needed to commence in 2019. Developing a service scope, payment, and performance management mechanism informed by extensive market engagement will help to ensure a sustainable service that will provide vital support to people with a range of health related outcomes in Lincolnshire.

5.3 The focus of the procurement will be to establish a single provider for the county that will be able to fully meet the quality requirements set out by the Council, guarantee that they are able to properly meet demand, supporting individuals to make best use of the wider community based market effectively as appropriate. By supporting individuals to develop and access appropriate interventions addressing their health and care needs the service will ultimately support independence and choice and at the same time delay access to the higher cost social and health care services.

## 6. Legal Comments:

The Council has the power to enter in the contract proposed. The decision is consistent with the Policy Framework and within the remit of the Executive.

## 7. Resource Comments:

7.1 The Direct Payment Support Service, currently provided by the Penderels Society, is due to end on the 31 March 2020. The budget for the existing service is £485,300. This report seeks to present the case for the continued provision of this service via a procurement process for the same budgetary value as the existing contract. It is confirmed that the Council has sufficient budget to fund the service. It is also confirmed that current commissioning intentions and delegated approvals recommended within this report meet the criteria set out in the Council's published financial procedures.

## 8. Consultation

a) **Has Local Member Been Consulted?** – n/a

b) **Has Executive Councillor Been Consulted?** - Yes

### c) Scrutiny Comments

This proposed decision will be considered by the Adults and Community Wellbeing Scrutiny Committee on 27 November 2019 and the comments of the Committee will be reported to the Executive Councillor prior to her making her decision.

d) **Have Risks and Impact Analysis been carried out?** - Yes

e) **Risks and Impact Analysis** - Attached at Appendix C

9. **Appendices** - These are listed below and attached to the report.

|            |   |
|------------|---|
| Appendix A | Lincolnshire County Council Approach to supporting people with a Direct Payment |
| Appendix B | Service Delivery Model  |
| Appendix C | Equality Impact Assessment  |

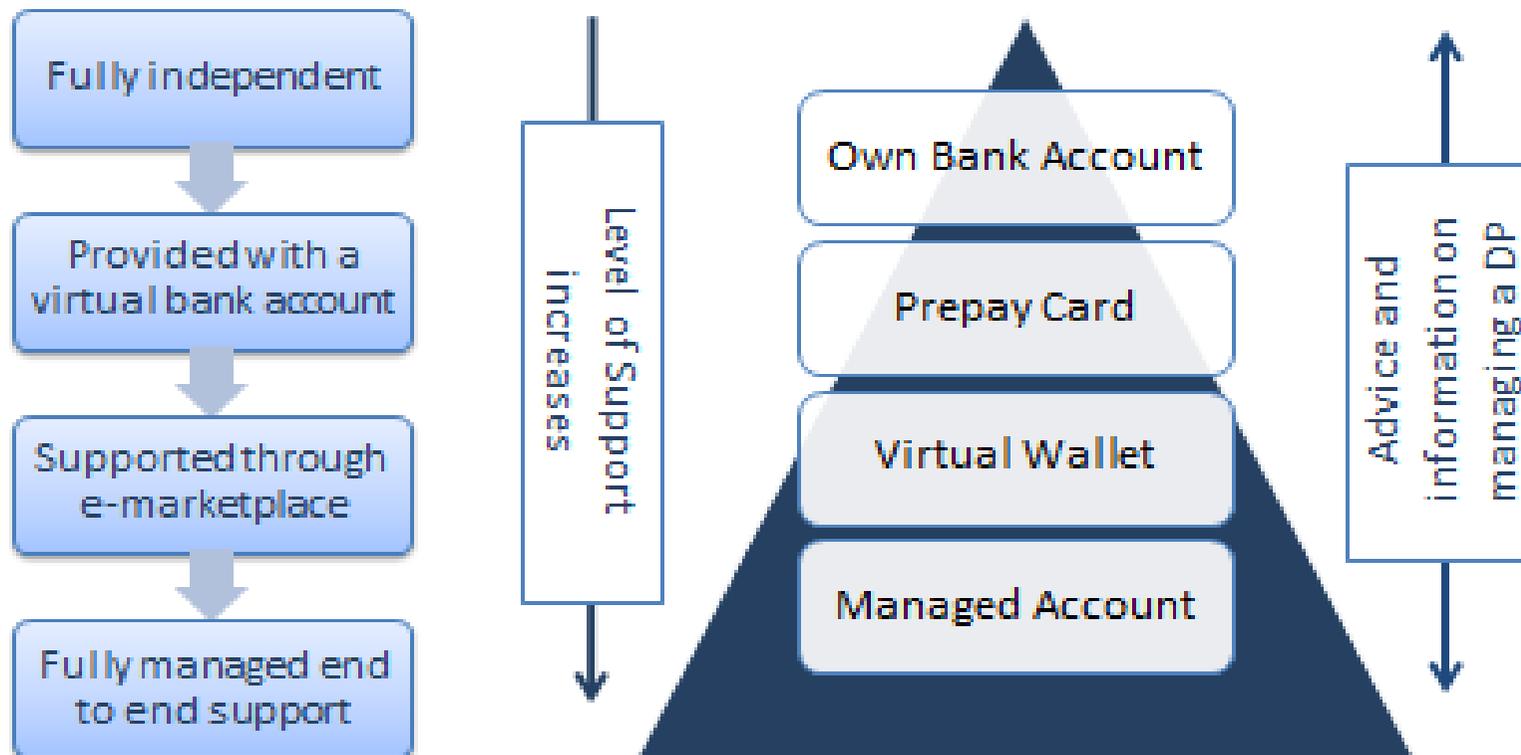
## 10. Background Papers

No Background Papers within the meaning of section 100D of the Local Government Act 1972 were used in the preparation of this Report

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## Lincolnshire County Council Approach to supporting people with a Direct Payment

The Council will offer a range of support choices for people who use direct payments (DPs) to purchase their care and support. We know that some people like to take full control of their budget and some prefer to have more support to manage their money. The graduated approach to support will allow people to have the level of support that is right for them.



APPENDIX B

