

# Service Provision Decisions

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## Topics

- Personal budgets
- Direct payments
  - Misspending
  - COVID-19

## Personal budgets

- Statutory position – Care Act 2014:
  - Section 25(1)(e): Personal budget must be included in the care and support plan/ support plan
  - Section 26
    - “(1) A personal budget for an adult is a statement which specifies—
      - (a) the cost to the local authority of meeting those of the adult's needs which it is required or decides to meet as mentioned in section 24(1),
      - (b) the amount which, on the basis of the financial assessment, the adult must pay towards that cost, and
      - (c) if on that basis the local authority must itself pay towards that cost, the amount which it must pay.”

## Personal budgets

- Purpose
  - enabling individuals to choose how needs will be met: e.g. by themselves, through LA or individual service fund
  - *Care and Support Statutory Guidance* (s78 of Care Act 2014)
    - Para 11.3: enables greater choice and control over how care and support needs met

## Personal budgets

- Process:
  - *Care and Support Statutory Guidance*
    - Para 11.4. “It is vital that the process used to establish the personal budget is transparent so that people are clear how their budget was calculated, and the method used is robust so that people have confidence that the personal budget allocation is correct and therefore sufficient to meet their care and support needs. The allocation of a clear upfront indicative (or ‘ballpark’) allocation at the start of the planning process will help people to develop the plan and make appropriate choices over how their needs are met.”
    - Para 11.7: At all times, the wishes of the person must be considered and respected. For example, the personal budget should not assume that people are forced to accept specific care options, such as moving into care homes, against their will because this is perceived to be the cheapest option.

## Personal budgets

- Content of personal budget
  - *Care and Support Statutory Guidance*
    - Para 11.10: The personal budget must always be an amount sufficient to meet the person's care and support needs, and must include the cost to the local authority of meeting the person's needs which the local authority is under a duty to meet, or has exercised its power to do so. This overall cost must then be broken down into the amount the person must pay, following the financial assessment, and the remainder of the budget that the authority will pay.
    - Para 11.22: Local authorities should not have arbitrary ceilings to personal budgets that result in people being forced to accept to move into care homes against their will.

## Personal budgets

- Calculating personal budget:
  - *Care and Support Statutory Guidance*
    - Para 11.24: The amount that the local authority calculates as the personal budget must be sufficient to meet the person's needs which the local authority is required to meet under section 18 or 20(1), or decides to meet under section 19(1) or (2) or 20(6) and must also take into account the reasonable preferences to meet needs as detailed in the care and support plan, or support plan.
    - Para 11.25: In establishing the 'cost to the local authority', consideration should therefore be given to local market intelligence and costs of local quality provision to ensure that the personal budget reflects local market conditions and that appropriate care that meets needs can be obtained for the amount specified in the budget

## Personal budgets - LGSCO complaints

- *Report into an investigation into Wiltshire Council (16 015 946) (12 April 2018)*
  - Policy of placing people into bands and paying in line with banding levels regardless of precise need. Resulted in reduction of support after family moved to Wiltshire
  - Ombudsman: “67...The Council cannot set maximum budget levels. The Act says eligible needs must be met, no matter what the cost... 69. The Council has provided me with its bandings. It says Mr P’s disability falls into a certain band and therefore his funding cannot exceed a certain level. 70. Again, this approach does not accord with the Care Act. The Council may use bandings as a guide but, as the Care and Support Statutory Guidance states, such systems are unlikely to work in complex cases like Mr P’s.”



## Personal budgets - LGSCO complaints

- *Report into an investigation into Lancashire CC (17 006 095) (27 Jul 2018)*
  - Council charged B third-party top-up fee for care in residential care home. Council had not offered alternative at lower rate.
  - Top-up fee? The difference between the personal budget and the cost of a home
  - Ombudsman: “7. If no suitable accommodation is available at the amount identified in the personal budget, the council must arrange care in a more expensive setting and adjust the budget to ensure it meets the person’s needs. In such circumstances, the council must not ask anyone to pay a “top-up” fee.
  - ...

## Personal budgets - LGSCO complaints

42. The Ombudsman considers that for families to make an informed choice of care homes, councils must demonstrate that an alternative care home is available at a rate within the user's personal budget. If they do not do so, then we do not consider that they are entitled to charge top-up fees.

43. In this case, there is no evidence that there was a place available for Mr B at an alternative care home within Mr B's personal budget, or that Mr and Mrs B were made aware that there was such an option. Rather, as far as Mr and Mrs B were aware, Care Home 2 was the home with the lowest charge that was available to them."

## Personal budgets - LGSCO complaints

- *Report into an investigation into Havering LB (18 018 467) (24 Sep 2019)*
  - Council awarded Y direct payments at Council rates. Y had to top-up allocated funding for live-in care because none of the agencies on Council list charged Council's rates.
  - Ombudsman: “63. In setting the amount of a direct payment (or the personal budget from which it is derived) the Council must ensure it is enough to buy services which will meet the person's assessed eligible needs. In Mrs Y's case the personal budget was insufficient to cover the cost of the care. The Council was aware none of the agencies on its provider list provided live-in care at the Council rates. The Council says it allocated Mrs Y “It's standard rate for live-in care”. This is fault and not in accordance with the Care Act or Statutory Guidance. The Council should have ensured Mrs Y's budget was sufficient to cover the cost of the service she received.”

## Direct payments - Misspending

- Section 33 of the Care Act 2014:

(3) A direct payment is made on condition that it be used only to pay for arrangements under which the needs specified under section 25(2)(a) in the care and support plan or (as the case may be) the support plan are met.

...

(5) In a case where ...the condition mentioned in subsection (3) is breached, the local authority—

(a) may terminate the making of direct payments, and

(b) may require repayment of the whole or part of a direct payment (with section 69 accordingly applying to sums which the local authority requires to be repaid).

## Direct payments - Misspending

- *Care and Support Statutory Guidance*
  - 12.67 Direct payments should only be terminated as a last resort or where there is a clear and serious contradiction of the Regulations.
  - LAs should take all reasonable steps to address any situations without termination of the payment.
  - 12.68 If terminating direct payment, LA must ensure no gap in provision of care support.
  - 12.81 There should be a period of notice

## Direct Payments - LGSCO complaints

- *Report into an investigation into Nottinghamshire CC (19 000 339) (19 Nov 2019)*
  - Council undertook one annual review between 2012 and 2016 but then demanded repayment of £53,000 for failure to provide wage slips for care from husband (25 hours per week) and misuse of funds
  - Ombudsman:
    - No consideration given to fact that although wage slips not provided, not disputed that husband had provided that care; no opp given to B to discuss its findings/ give extra evidence;
    - Although understandable concerns on other misspending, not raised in 2013 review and no reviews in 2014 and 2015. B had no way of knowing Council considered spending unsuitable.

## Direct Payments - LGSCO complaints

- *Report into an investigation into Lambeth LB (18 002 708) (5 Jul 2019)*
  - Various issues including Council stopping direct payments paid in 2016-2017 due to surplus, overspending and money not being used as set out in care and support plan. Related to organisational issues – number of carers at same time, regularity of calls, lack of training for carers.
  - Ombudsman:
    - LA failed to consider less extreme options, e.g. referral to direct payment support service
    - This was the case notwithstanding A advised on many occasions to arrange care in line with recommendations.

## Direct Payments - LGSCO complaints

- *Report into an investigation into Buckinghamshire CC (17 016 036) (2 Apr 2019)*
  - P's direct payment stopped in April 2018 as a result of perceived misuse of funds despite no review taking place and no advance warning.
  - Over 6 months in 2017, P spent:
    - £3,862.27 (51.6%) on religious classes and sessions
    - £1,921.25 (25.7%) on football, motor sport, cricket, rugby and other tickets
    - £1,272.87 (17%) on fuel
    - £1,050 (14%) on reflexology.



## Direct Payments - LGSCO complaints

- Ombudsman (paras 95 and 106):
  - Should have been formal review of the direct payment while it was active.
  - Should have been explored with P and discussions about what could and could not be spent.
  - Should have been warnings.
  
- “86. From my perspective the plan for how Mr P was to use his Direct Payment was quite vague. This is not necessarily a criticism. As detailed above, the guidance asks councils to do two somewhat contradictory things: to make a plan for how the money is to be used; but also, to ensure the person is given freedom and flexibility to use the money as effectively as possible. Nevertheless, it is evident that the lack of clarity in the plan caused uncertainty for all concerned, including Mr P, those attempting to keep a track of the Direct Payment’s use and those who later investigated matters. As noted above, the Council’s internal audit investigation also highlighted this lack of clarity.”

## Direct Payments - Coronavirus

- Problems: Inability to access classes/ events, staff shortages, PPE
- Govt guidance: *Using direct payments during the coronavirus outbreak (2020)*
  - Direct payments to continue as before
  - Contingency plans
  - LAs should allow “*most flexible possible use*” of direct payments to manage COVID-19 issues when “*reasonable decisions*” made to use direct payments differently. “*Ideally, you will have agreed this with your usual contact person at your LA or CCG, but we understand that this will not be possible every time. This is OK.*”
  - In emergency or time-critical circumstances, could allow variation in plan without immediate sign-off from LA.