

'Indirect payments' for people who lack capacity: How are they working in practice?

KEY POINTS FROM THE RESEARCH

- People in this study had chosen indirect payments for several reasons. Where someone lacked capacity to consent, a 'suitable person' had often chosen an indirect payment because of the desire to avoid inadequate alternative services, and/or to ensure meaningful activity for the disabled person.
- There was some inconsistency between local authorities in the way they were putting the 2009 Department of Health (DH) Guidance into practice. Some evidence suggests that direct payments (DPs) were already being offered prior to 2009 to people who lacked capacity to consent via their families. It may be that the guidance simply legitimates and gives a framework to practice already being undertaken in some localities.
- Although practitioners generally had a sound understanding of the Mental Capacity Act (MCA) 2005, there was a lack of clarity about its application. Practitioners were often unclear about defining the decision for which they were assessing capacity. Best interest decisions about an indirect payment were not being made in any systematic way. There was not always documentation of these decisions. Formal best interest processes were more likely to be followed when something had gone wrong with an indirect payment.

ABOUT THE STUDY

This study aimed to explore how direct payments are operating for people who lack capacity to consent and are living with learning disabilities or dementia. Semi-structured interviews were used to explore experiences of indirect payments with samples of practitioners (67) and 'suitable people' (18) in six English local authorities.

The research was carried out by the Mental Health Foundation and the Norah Fry Research Centre, University of Bristol. For further information about this study, contact Toby Williamson (twilliamson@mentalhealth.org.uk) or visit the project website at www.sscr.nihr.ac.uk/projects/P16.php.

- Identifying a suitable person was usually done informally, often because they were a family member and already involved in managing their relative's services. Practitioners often found suitable people who were seen as having proven organisational skills, e.g. a relevant academic background, experience of social work, bookkeeping, etc.
- Once the indirect payment was offered, there were differences in processes between people with learning disabilities and those living with dementia. People living with dementia were often 'given' a plan by the care manager, which assumed a minimum of care needs, and was not aspirational in nature. By contrast, it was more common for people with learning disabilities to have some form of person-centred planning, and for their suitable people to find out information about using direct payments through networking or peer support.

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- There was a lack of ongoing support for suitable people, and the annual review was almost invariably simply a financial monitoring process.

BACKGROUND

DPs can offer more choice and control to people with social care needs, but less is known about how they are working in practice for people with learning disabilities and people living with dementia who lack capacity to consent to receiving one.

Following the MCA 2005 and an amendment to the 2008 Health and Social Care Act, DPs could formally be offered to groups previously excluded on the grounds of lacking capacity to consent. The DH's 2009 Direct Payments Guidance outlined the ways in which people who lack capacity to consent to a DP could receive one via a suitable person. Essentially, this guidance outlines how the MCA should be applied in the area of DPs, introducing into practice the necessity to assess capacity to consent to a DP and to act in the person's best interests. Once a suitable person has been selected, they both receive and manage the money on behalf of the individual, and make best interests decisions about how to spend the money. This study called this funding arrangement an indirect payment.

FINDINGS

Why did people choose an indirect payment?

This study showed positive outcomes being achieved by suitable people for individuals with learning disabilities or dementia lacking the capacity to consent to a DP. All suitable people reported that they would choose indirect payments again due to the outcomes that had been realised for the individual. They frequently said that they had been driven to take up an indirect payment to avoid the alternatives, which might be residential care or inflexible, non-person-centred services at home. They wanted to personalise support services to suit the individual's needs, and were able to do this by employing their own staff, choosing tailored activities for the individual, or ensuring that the timing and structure of the service was what the individual wanted. Several of the people with learning disabilities in this study had already benefited during

What did the indirect payment provide?

Personal and/or social care in the home (visiting)	8 people
Live in support/contribution to live in support	4 people
Support in a paid job training setting	3 people
PA support to attend activity sessions/education	2 people
Flexible financial support	1 person

childhood from a DP administered by their parents, and had moved on to a similar arrangement in adulthood. Practitioners said that, in some cases, the new guidance simply legitimated practices that were already happening in adult DPs. However, it was clear that there were areas of the indirect payments process that presented challenges to both practitioners and suitable people.

Application of the Mental Capacity Act

Capacity assessment

There were several inconsistencies, both between local authorities and within some. First, capacity assessments were inconsistent. In discussions with practitioners, it was apparent that some most commonly approached capacity to consent to a DP by assessing the understanding of the individual about the micro-level of financial management; one practitioner described showing pictures of coins and receipts to individuals. A lack of understanding of such detail appears to lead some practitioners to assess that people may not have an understanding of the overall DP outcome and, thus, to lack capacity to consent. However, it does raise the question of whether decisions about managing the financial aspects of a DP are a factor in a decision to consent to a DP, and therefore should be part of the capacity assessment, albeit in a more sophisticated way than reported in this project, contrary to the 2009 guidance.

Perhaps connected to these difficulties, the study identified circumstances that meant, in effect, 4 of the 18 indirect payments appeared

not to be operating in accordance with the law. In two cases, the suitable people felt quite confident that their relative lacked capacity to consent to a DP, yet the individual was still receiving the payment in his or her own name. As mentioned above, anecdotal evidence from practitioners suggests that there may be a proportion of people who received a DP in this way prior to the 2009 guidance coming into force. Conversely, in two other cases, there was evidence to suggest that the person did not lack capacity. They had simply stated that they wanted their relative to manage a DP on their behalf and so both these people were in effect DP recipients; they should not have had 'suitable people' acting for them (the 2009 guidance does permit someone to be nominated to manage a DP on a person's behalf, but not make decisions on how it is spent).

Best Interests decision making

There are two levels to best interests decision making in relation to indirect payments: first, the decision about whether or not an indirect payment is in the best interests of the individual, and, secondly, the legal requirement for the suitable person to act in the individual's best interests thereafter. Broadly, practitioners demonstrated a good understanding of language and processes surrounding best interests decision making. In practice, they described an informal process, unless the decision was a serious one where something had gone wrong with an indirect payment. The MCA describes the importance of including the person lacking capacity in best interests decision making processes, yet in this study, the person had rarely been involved in discussions about whether or not they wished to receive an indirect payment.

While some suitable people with prior professional knowledge of social work were confident with the concept of best interests, most were unfamiliar with their formal responsibility to adhere to this principle. Suitable people typically described a more general concept of *acting in the best interest* of the individual and thought of this as a consideration of the person's general interests. Given that the suitable people were most frequently close family members of the person lacking capacity, practitioners often accepted this blurring of the lines.

Identification and role of the suitable person

Practitioners described a relatively informal process for the identification and appointment of a suitable person, often based on the availability of a willing family member. Many of the suitable people spoken to described how they had approached the local authority themselves, typically because they were dissatisfied with existing provision.

All the people with learning disabilities in this study had parents acting as suitable people. If the person had previously received a DP through children's services, it seemed to be automatic that the parent would become the suitable person under adult services. There was greater variety with people with dementia, with half of the suitable people being adult children and the remainder a sister-in-law, two daughters-in-law, and a neighbour. This suggests that considering only immediate family members for the role of suitable person is a model of convenience for practitioners.

Many suitable people were highly skilled for the role, i.e. had pertinent skills and/or pre-existing relevant experience, such as a relevant academic background, experience of working in the learning disabilities field or social work, previously managing a DP, or business skills such as book-keeping. It is not clear whether practitioners favour suitable people who have proven organisational skills or whether they are simply the kind of people most likely to put themselves forward for the role, or a combination of both.

The involvement of the suitable person in the support planning process was variable. Those involved with people with learning disabilities had often written, or been closely involved in the writing of the support plan. They also continued to make decisions about activities and how to spend the money. This was less evident for people with dementia, where suitable people described being provided with a plan for the individual and not being involved in its writing.

Support for suitable people

Support was often missing for suitable people managing an indirect payment. In particular, the perception was that it could be mistimed and in an inappropriate format. With DPs

generally, support and information are known to be important factors in uptake and success (Williams *et al.* 2013), and this is no different for indirect payments.

Practitioners were uncertain when to provide information and make the offer of an indirect payment, particularly for people living with dementia, as they frequently came into contact with these individuals at a point of crisis. Therefore, perhaps in a paternalistic way, they were reluctant to engage them fully in the indirect payments process. However, in some areas local DP support services were sometimes able to fill this gap and provide information on an ongoing basis. Conversely, suitable people reported a desire for a concise and upfront overview of the whole process, ensuring a fully informed decision, while benefiting from further information throughout the process. Support and information were particularly lacking in relation to staff recruitment and dismissal, employment and contractual law.

Review and monitoring

The local authority has a duty to review and monitor all DPs, including those paid indirectly to suitable people. However, the sample of suitable people in this study had largely lost contact with their original social worker, and their annual reviews consisted only of a financial analysis. Some said they would have liked the local authority to continue to take more interest and see how their relative was achieving outcomes.

CONCLUSIONS

This study is one of the first to explore the translation of MCA legislation into DP practice from the perspectives of practitioners, suitable people and recipients. The study described these arrangements as "indirect payments", and found clear benefits of a DP being reported for some recipients.

There are some areas of concern, perhaps understandably given the complexities in this area of work, namely confusion over assessments and some aspects of best interests decision-making processes. The research suggests there may be improvements to the way in which suitable people are identified and supported.

RECOMMENDATIONS

- Practitioners need continued professional development and supervision in the relationship between the MCA and DPs.
- Suitable people need training and support to be fully engaged in the whole DP process, as they are acting as quasi-professionals and custodians of public money.
- Some of the person-centred practices common among people with learning disabilities (such as person-centred planning and relationship mapping) would be useful in working with people living with dementia who use an indirect payment.
- Local authority staff need better guidance, perhaps in the form of a flexible information resource, to remind them of the different stages and processes of setting up an indirect payment.
- Better partnership work, scrutiny and monitoring of indirect payments by local authorities are needed. People receiving care and support via an indirect payment are likely to be among the most vulnerable recipients of social care. The complexity of the arrangements can make it very challenging for suitable people to be sure that they are managing the indirect payment correctly.

REFERENCES

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A web guide to indirect payments has been developed as a result of this project:
<http://indirectpayments.org.uk/>.