

Self-Directed Support In Oxfordshire – Important information for family carers

Like many other local authorities, because they have been given less money from the Government, Oxfordshire County Council is looking to make cuts to public services. By March 2014 they have to make savings of £7,374.000 to learning disability services alone. One of the ways they have stated they are planning to do this is to reduce people's personal budgets by £12 in every £100 over the next 4 years.

Of course this is a worrying time for all of us and it has also come at a time when the system used to deliver adult social care is changing which makes it doubly worrying for some people. In light of all this we have put together this special bulletin that includes some **key information** for carers of people with learning disabilities. *[We need to emphasise here that we are not legally trained and therefore urge that you seek professional legal advice should you require it]*

We appreciate that as family carers you may have varying degrees of understanding about self-directed support and personal budgets and that whatever your understanding you may not have the time (or energy) to wade through this whole document, so we have broken it down into sections (*so you can skip the bits you don't need and not lose the will to live before you get to the bits you do!*). We have tried to simplify this complicated information as much as possible but appreciate its still complex. We have provided links so you can do your own research and suggest you to look at these but, should you require any help and support to clarify any of the information we have provided, related to your own personal circumstances, then please feel free to get in touch and we'll do our best to help

Gail & Jan – OxFSN

Gail Hanrahan –Tel: 01865 369 477

Jan Sunman – Tel: 01189 723 270

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What is Self Directed Support & what's happening in Oxfordshire? (And where to find out more)

In recent months Oxfordshire Social and Community Services has moved over into the system of Self-Directed Support for all new recipients of adult social care. This means (if you are new to adult services) that after assessing your son or daughter's eligibility for services, they will (if eligible) be offered a **personal budget** rather than direct services. We also understand that people who currently receive services whether directly or through a Direct Payment will have their care packages reassessed in the coming months. Those people using day services have already been sent a letter informing them of this.

The aim of self directed Support is to give the person who is in need of, and is eligible for services from adult social care, a greater choice and control about the kind of support they need and want to receive to live their lives. This way of delivering community care services has been piloted in lots of different areas of the country for a number of years. And, is not, as some people assume, a response to the financial difficulties the country now finds itself in. Self directed support *can* undoubtedly lead to better, cost effective solutions to a person's care and support needs but the principles behind it are to enable people to have better lives within their own communities, have a greater say in how that support is provided and not to save money. I.e. saving money may be a consequence but should not be the sole driver.

Choice and control are key themes that run through Valuing People, the Strategy for people with learning disabilities, which was a Government White Paper published in 2001.

Read Valuing People here: <http://www.archive.official-documents.co.uk/document/cm50/5086/5086.pdf>

This policy was updated in 2009 with Valuing People now, which can be found here:

http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/documents/digitalasset/dh_093375.pdf

Oxfordshire's Transforming Adult Social Care team has a website called Taking Control Oxfordshire. The way self-directed support is being implemented in Oxfordshire is available for you to see here (For further information click on the link below)

<http://www.takingcontroloxon.org.uk/wps/wcm/connect/occ/Taking+control/Home/>

The transformation of adult care services has come about through Government policy called "Putting People First". This policy was developed in 2007. Read about it here...

http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/@dh/@en/documents/digitalasset/dh_081119.pdf

Valuing People Now talks about “Personalisation” and you may have come across this term.

What is personalisation?

The term ‘personalisation’ is still new to a lot of people, and unknown to others.

You may already have heard one or more of the following terms, which are used to describe activities or approaches that are part of a personalised approach:

- in Control
- self-directed support
- person-centred planning
- person-centred approaches
- individual budgets
- personal budgets
- direct payments
- citizenship
- independent living
- needs led

These activities and approaches are all part of a significant change in social policy now referred to as **‘personalisation’**. As part of this change, people receiving social care services are increasingly being given more choice and control over the support they receive. These approaches will also be applied to other public services, including health and education. It could totally transform adult social care.

Personalisation means starting with the person, not the service. It recognises that the individual is best placed to know what support they need and how their needs can best be met, and it gives them the opportunity to arrange their own care.

While many people will need support to make these decisions, their parents and carers are often well placed to help them decide what will work best.

[Source: Mencap -

<http://www.mencap.org.uk/document.asp?id=12148&>

What is a personal budget?

A personal budget is the new way that the council are offering to meet their duties to provide community care services. **Everyone eligible for social care services will be given a personal budget** i.e. an allocation of money given to a person to spend on their support. Basically you will be told how much the council can provide to pay for the care the person needs and then its up to the individual (or you as their carer if they can't do this themselves) to decide how they would like to spend it to meet the agreed outcomes in their support plan.

There are several ways to use a personal budget:

- Through a Direct Payment managed by the person themselves (through his or her bank account to spend as they choose to meet the outcomes agreed in their support plan);
- Through an individual service fund where an independent care provider, family member or friend spends the budget for the holder to meet the outcomes in the support plan
- By telling the council that you would like them to manage it for you ;or
- through a combination of these methods.

What's the difference between a personal budget and a Direct Payment?

- **A personal budget** is an amount of money that the council feels is reasonable to meet a person's eligible community care needs.
- **A Direct Payment** is the way a council can pay someone their personal budget.

The aim of giving everyone a personal budget is to increase their choice and control about which services they use to meet their eligible needs, rather than the old way of doing things which meant the council decided where those needs should be met. It means you don't have to use the councils internal services and can "shop around" for the kind of support that best meets the needs of the person.

* Although everyone will have a personal budget and will know how much money their care costs **you do not have to accept a personal budget as a Direct Payment and can insist that the council continue to provide services as they have before**

Self-Directed Support and the Law

OxFSN is an organisation run *by* family carers of people with learning disabilities *for* family carers of people with learning disabilities. As such we believe strongly in the principles set out in Valuing People. In turn we believe that people with learning disabilities should have self-determination, choice, control and equality of opportunity and be included in all aspects of mainstream society. However, in saying this we also believe that in order to have choice and control people with learning disabilities and their families need to understand what their choices are and their rights in law, as equal citizens.

The way social care services are being delivered may be changing, but it needs to be pointed out that the law relating to Community Care (Adult Social Services) has **NOT** changed. The Personalisation agenda is underpinned by no new law, therefore **the legislation in the NHS & Community Care Act (1990) still applies and must be adhered to.**

Community Care law is complex and can be confusing. For those of us attempting to understand it in greater detail we feel it is made more confusing, because since it was written the language and terminology we use has changed.

Different local authorities also sometimes use different terms than those described in the legislation. For instance...

- In Oxfordshire the community care assessment is called a FACE assessment. FACE is the name of the company that developed the assessment tool and is professional "Jargon" for the same legal requirement.
- In Oxfordshire a "Statement of Need" replaces what is commonly referred to as a Care Plan in legislation and all the guidance we have seen. Whereas "a statement of need" may be a more accurate description it's important to understand they are one and the same in law. Also, a care plan is not to be confused with a support plan and we have explained more about this later in this document.

The following information has been taken from a new publication called, **Disabled Children: A Legal Handbook** and has been written by Steve Broach, Luke Clements and Janet Read. This is a "must have" read for families of disabled children and is available to download for free on the Council for Disabled Children's website at

http://www.ncb.org.uk/cdc/resources/legal_handbook.aspx

For those who prefer hard copy it can also be purchased from the Legal Action Group at

<http://www.lag.org.uk/Templates/System/Publications.asp?NodeID=93342&Mode=display>

Whilst the information in the handbook is specifically aimed at families who have disabled children it is important to point out that although the system in **Adult Social Care** in the county has changed **the law regarding adult social care HAS NOT!**

"In adult social care as in children's services, the move towards personalisation appears to be resulting in some local authorities ignoring their assessment and care planning duties. It is critically important that disabled young people do not simply accept whatever personal budget may be calculated through a resource allocation system (RAS – see para 3.70) **but demand a proper assessment of their needs and a care plan to show how their eligible needs will be met, whether by a direct payment, through a nominal personal budget or through the provision of direct services. Any attempt to determine a personal budget prior to the assessment of a young person's needs will be unlawful.**"

"While many of the principles underpinning the personalisation agenda are admirable, it has had its critics and the implementation has caused not insignificant difficulties – particularly in relation to what are termed 'Resource Allocation Systems/Schemes' (RAS). These are crude systems that endeavour to give a disabled person an indication of the resources that the council would be prepared to expend on his or her care – before the care planning process has been completed. They are sometimes referred to as 'upfront allocations' or 'indicative amounts'. The calculation is generally based on a questionnaire that the disabled person has completed. This awards 'points' which are then converted into an indicative financial amount. The idea is that disabled people may opt for this sum – and then make their own arrangements – without having to go through the whole care planning process, which would involve the detailed assessment of the actual cost of a real care package"

"Admirable as this may sound, in practice the process is often disempowering – so that disabled people do not appreciate that they have a choice to have a direct service instead of a personal budget (for, as noted above, the 'personalisation' programme is underpinned by no law). Children and families may be given to believe that they have little or no option but to accept the 'indicative amount' even though this may be less than they are presently receiving or insufficient to enable them to have their care needs addressed satisfactorily. **In law, individuals are entitled to decline having a personal budget and to insist that their care package be provided by the local authority or that any sum they have (eg as a direct payment) be sufficient to purchase a satisfactory package of care to meet their needs.** The fact that the local authority advises them that their care costs are above the 'indicative amount' generated by a RAS is simply irrelevant: the legal duty remains (as indicated at paras 3.45–3.46) to meet eligible assessed needs."

[Ref: Disabled Children: A Legal Handbook, Broach. S, Clements. L, Read. J (2010)]

Key things to remember....

- The NHS & Community Care Act 1990 Is the overarching legislation relating to anyone who requires community care services (disabled people, including people with learning disabilities, older people and people with mental health difficulties) It sets out the duties and powers of local authorities in relation to community care provision and services. Despite a new system of delivering social care in the form of self- directed support (we reiterate again) that **the law remains the same and should be adhered to in exactly the same way as before.**
- Under the above legislation your family member (or you as their Deputy or advocate on their behalf) **has the right to insist** on a full Community Care assessment of their needs and to receive a care plan (statement of need). This should state what the persons needs are and how they will be met, as well as when it will be reviewed. This assessment is **NOT** the same as the RAS (Resource Allocation System) which is to determine what funding will be available to meet the person's needs through a personal budget.
- In order to change what a person receives through adult social care the person first has to have their needs reassessed. If the support is to be reduced it must be shown that they no longer require the same level of support. * **This also applies to personal budgets via Direct Payments. The local authority CANNOT simply reduce someone's funding without first fully reassessing their needs.** A reassessment could also lead to an increase in support if it is shown that the person's level of eligible needs have increased.
- You **do not** have to accept a personal budget as a Direct Payment and can insist that the local authority continue to provide services directly.
- Whether your family member accepts a personal budget via a Direct payment or not **the legal duty to meet eligible assessed needs remains. i.e. any sum offered must be sufficient to cover a satisfactory package of care to meet their needs.** E.g. if the assessed needs means that a person requires support for 5 days per week then enough funding to provide support for 5 days must be provided.
- When you meet with your family members Care Manager (Social worker) ask them to make it clear that what you are undergoing is an assessment under the NHS&CC Act. It may sound obvious but we have received anecdotal evidence from parents who were unaware that the meeting with the Care Manager (social worker) was an assessment or that the Care Manager was actually filling in a RAS form as they chatted. We of course

hope these were isolated cases but think it's a good idea to always ask! We have also found (from personal experience) that it's a good idea to have someone else with you when you go through this process (This can be a relative, friend or an independent advocate)

- When undergoing assessment you should be very clear what the needs of the person are and importantly **what would/or could happen** (that would put the person at risk of "substantial harm") **if those needs were not met. The key question in any assessment should be "what if?"**
- In the current climate a shortage of resources may be used as a reason for reducing a person's care package or as stated in the opening paragraph "Reduce peoples personal budget". Any "blanket proposal" to reduce peoples personal budgets is unlawful. Resources cannot be the sole criterion when shaping either eligibility criteria or assessing individuals needs. **All assessments should be needs led**
- Once needs have been agreed then the support or services to meet those needs **must** be provided.
- Always check and check again that the law being adhered too. If it feels wrong (and unfair) it may well be wrong!

Carers Rights

As a family carer you should also bear in mind that once your family member becomes 18 there should be no assumption from those making any assessment that you will continue to support the person in the same way you have through their childhood. The following information may be useful...

Carers Rights legislation and Caring Role

Practice guidance to Carers and Disabled Children's Act 2000: *Practice guidance Para 69* – explains that the concept of autonomy (in the context of caring relationships) describes the carers freedom to choose the nature of the tasks they will perform and how much time they will give to their caring role. It is dependent on recognition of their role and an agreed sense of shared responsibility between the local councils and the carer/s.

Practice guidance to the C (RS) A 1995 – LAC (96) 7 Para 9.8; WOC 16/96 describes the proposition in the following terms;

In assessing the carer's ability to continue to care, care managers should not assume a willingness by the carer to continue caring, or continue to provide the same level of support. They will wish to bear in mind the distinction between caring about someone and caring for them. The above reference to the carer's legislation is additional to the legislation and guidance around carer's right to employment, training and leisure.

Department of health – Fair Access To Care Services – which is statute guidance for Local authorities, under **Determining eligibility in respect of individuals – Para 44** states that;

The determination of eligibility in individual cases should take into account of the support from carers, family members, friends and neighbours which individual can access to help them meet presenting needs. If, for example an individual cannot perform several personal care tasks, but can do so without difficulty with the help of a carer, and the carer is happy to sustain their caring role in this way, both currently and in the long term, then the individual should not be perceived as having needs calling for community care services. That is they should not be perceived as having eligible needs. **However, during the actual assessment, no assumptions should be made about the level and quality of such support without the agreement of the relevant parties.**

If the above legislation is ignored by local authorities, or if they have blanket policies in place which are in direct conflict with the legalisation, this could be seen as fettering of the law and appropriate legal challenge would be undertaken.

Additionally, any local authorities refusing to follow statute guidance in the above area of carers rights and the provision of services to meet an individual's assessed needs could also impact on human rights legislation, specifically **Article 8: The Right to Private and Family Life**

Disabled Children: A Legal Handbook also states the following...

Carers

“Whether disabled young people remain with their families or progress towards living separately, it is important that the rights of family carers are not neglected. Although there is no legal obligation on parents to provide or continue to provide care for their adult children (see para 8.17) many continue to offer a great deal of support to their disabled sons and daughters as they become young adults. Local authorities are under a statutory duty, when the young person is being assessed for adult care services, to offer many such family carers the right to a separate assessment. This should address the level of support that they are willing to offer, any plans they may have in relation to work, leisure, education or training as well as any ways that the caring role impacts on their health and well-being (see paras 8.5–8.19 for more on carers’ assessments)”

[Ref: Disabled Children: A Legal Handbook, Broach. S, Clements. L, Read. J (2010)]

Key things to remember:

- As a carer you also have the right to a separate assessment of your needs as a carer. This is called a carers assessment.
- If your son or daughter who has a learning disability is also providing substantial care and support to **you** on a regular basis e.g. you may be an elderly person who needs practical help around the house or someone who is ill or disabled. Then they are also entitled to request and should be offered a Carers Assessment. To find out more click on the link below...

The following is from the Foundation For People with learning Disabilities (Mutual caring page) it lists a guide for people with learning disabilities on getting an assessment if they are supporting an elderly relative.

<http://www.learningdisabilities.org.uk/our-work/family-support/mutual-caring/#rp>

Carers UK produce a useful guide about carer’s rights and benefits...see link below

<http://www.carersuk.org/Newsandcampaigns/CarersRightsDay/FreeCarersRightsGuide>

The RAS: Resource Allocation System (The Method for getting the money)

This is the system the Council uses to assess how much money the person may be eligible for in their personal budget. It generates what is called an "indicative budget". You can find out how this is calculated here...

http://portal.oxfordshire.gov.uk/content/publicnet/other_sites/TakingControlOxon/CalculatingPBs.pdf

- When undergoing a RAS (Resource Allocation System) assessment it is very important that you treat it in the same way as you would a DLA form. (I.e. make sure every minute detail is included)
- You should also remember that the budget that will be mentioned will be an "**indicative**" budget. This means it will be exactly that, an indication of what finances may be available. This is not at this stage set in stone and any funding must be able to meet the persons assessed needs.

Resource Allocation Systems (RAS)

The *Common Resource Allocation Framework (CRAF)*^{iv} is not statutory government guidance. It aims to clarify Resource Allocation Systems (RAS) which attempt to provide a method by which to calculate the sum of money required to arrange support, and therefore the size of personal budget. Most RAS use a points-based system; the cash figure generated being seen as "ballpark" to be adjusted according to individual needs (p10). Councils are advised to operate one transparent RAS for all groups of service users. **There should not be cost ceilings imposed on the individual allocations generated; these should be directly related to individual needs.** It is acceptable to adjust resource allocations according to differing actual unit costs of support for different client groups (p16).

The recommended lawful procedure for assessment for a resource allocation is to:

1. establish, through individual assessment, a person's needs, focusing on those needs which are eligible for the authority to meet through adult services;
2. to identify which needs are being met sustainably, for example by a 'willing and able' carer);
3. to allocate resources to meet any eligible needs which are not otherwise being met.

The difference between a Care Plan (Statement of Need) and a “Support Plan”:

Care Plan (The Statement of Need)

According to the NHS & Community Care Act, once a person has been assessed as requiring services through a community care assessment a care plan (or statement of need) **must** be written. This should include...

- The services which are to be provided, by who, when and what will be achieved by providing them
- A contact point to deal with problems about services
- Information on how to ask for a review of the services being provided if your circumstances change.

This document is the agreement between the local authority and the person and just like a statement of Special Educational Needs this document sets out what should be legally complied with.

The Support plan

Once the assessment and the RAS have been undertaken, the person (or you as their carer) will be given an idea of how much money may be available to provide for their support.

You will then be asked to draw up a support plan with the person who needs support (or for them if they are unable to do this themselves) which should show how the support will be provided and how the money will be spent.

The support plan needs to answer 7 key questions...

1. What is important to you?
2. What do you want to change or achieve?
3. How will you be supported?
4. How will you use your personal budget?
5. How will your support be managed?
6. How will you stay in control of your life?
7. What are you going to do to make this happen?

Further information is available from the Taking Control Website – click on the link below

<http://www.takingcontroloxon.org.uk/wps/wcm/connect/occ/Taking+control/I+look+after+someone+who+uses+social+care+services/TC+-+Look+after+-+how+can+i+help>

Getting help with planning support and the role of Brokers

The Taking Control website also has details of Brokers who can help the person you care for to develop a support plan (and you if you are doing this for/with them) Brokers are meant to be independent of services and the local authority (although those recommended have a contract with, have been approved by and are working to the local authorities specification to deliver this support)

We received the following from Age UK in Oxfordshire, (one of the organisations commissioned by OCC to deliver this support) **it describes the role of the Broker...**

"Support brokers are usually involved in helping someone once an assessment of their needs has been completed. Government guidance recommends the broker is independent from the personal budget funder (Local Authority) and in Oxfordshire, the council has commissioned independent organisations to provide brokerage services.

The broker would offer assistance and support, as little or as much as the individual and their family required for facilitating choice, planning and setting up services. The support broker works with the person to help them think about what services and help they would want in place and researches available options.

Not everyone will be able to access an independent support broker and in some cases it may be appropriate for a social worker or care coordinator to carry out the assessment and also continue help with setting up chosen services and creating a support plan.

People have the choice with who they wish to support them through the process of setting up services and support and may decide to do things themselves or have a family member or someone else help them, they can still receive help from a brokerage service with understanding what needs to be done.

Once the person has considered their options and services they want in place, the support broker helps them to put together a Support Plan which sets out clear outcomes including who's providing what and when it will be provided and any costs involved".

The Support Plan belongs to the person requiring care and once completed and any services set up the work of the Broker comes to an end, apart from a review of how things are going within 4 weeks from when the support plan has been agreed"

* Please note you don't have to use a Broker if you don't want to, or don't feel you need to but the support plan needs to be agreed by the local authority before any money can be released.

Information about what good brokerage looks like can be found here...

[http://www.supportplanning.org/Support Planning Downloads/SP 36 Good%20Practice%20in%20Support%20Planning%20and%20brokerage.pdf](http://www.supportplanning.org/Support_Planning_Downloads/SP_36_Good%20Practice%20in%20Support%20Planning%20and%20brokerage.pdf)

Useful websites/ documents for finding out more about support planning

<http://www.supportplanning.org/>

[http://sds4me.org.uk/What needed in SuppPlan.pdf](http://sds4me.org.uk/What_needed_in_SuppPlan.pdf)

Ends