Direct payments for people who lack capacity to consent.

Dan Robotham
Mental Health Foundation
Mental capacity?

Five principles
- Presume capacity unless necessary
- Support people to make their own decisions
- Right to make unwise decisions
- Application of best interests
- Least restrictive intervention
Direct payments?

...or indirect payments?
Research question

How do direct payments work for people who lack capacity?
Method

- Qualitative investigation
- Participants (projected)
  - 6 local authorities
  - 60 practitioners
  - 30 suitable persons
  - 20 people lacking capacity to consent
Accessing participants

Recruitment status:
- 6 local authority sites
- 40 practitioners interviewed individually
- 4 practitioner focus groups
- 4 carers interviewed individually
Analysis approach

Thematic analysis
- External transcription
- NVivo
- Three coders
- Analysis during data collection
- ‘Workshop’ at key intervals
Findings

Capacity to consent or ability to manage?

I think those two need to be clearly separated

Practitioner

It does not necessarily follow that because a person has capacity to consent they are also capable of managing direct payments.

DCSF guidance on direct payments (2009)

I think there’s two levels to it; I think there might be the capacity to consent in principle to a direct payment. But then that might not mean they’ve got the capacity to administer it.

Practitioner
Findings

Differences across ‘condition’

I’ve found the whole system with learning disability team, you have your ups and downs and little fights, and stand your ground on some things. [But] the older adults team were woefully uninformed.”

Suitable person (LD+D)

“I would’ve thought very few people would have that ability. Because I mean we don’t have the background to start talking about legal contracts. That would be quite inappropriate in my view.

Suitable person (LD)

“[In learning disabilities] the parents have to get their heads around the fact that the Mental Capacity Act is now enforced upon them, because the person’s 18. And although they’ve been doing everything in the person’s best interests, the person probably does have capacity, but according to certain rules, it’s difficult to challenge”

Practitioner
Findings

The ‘suitable person’?

I think it's merely that they're willing, and is a family member. Practitioner

Where the person with eligible needs does not have the capacity to consent to the making of direct payments, the payments can be made to an appointed suitable person who will manage the payments on their behalf.

DCSF guidance on direct payments (2009)

You could appoint a suitable person. Often that’s a family member, relative, or friend. It could be someone that’s got Power of Attorney, but not necessarily. You could also set up a legal trust of at least three people, with the person’s best interests at heart, to receive and manage the direct payments. Practitioner
Findings

Use of information and advice services

Support provided through user led organisations has been shown to be particularly effective and valued by recipients.

DCSF guidance on direct payments (2009)

If they’re a bit worried or anxious about arranging payroll and how do they sort out tax, we have that service that we commission to support the suitable person.

Practitioner

How would it work without [the ULO]? That must be a nightmare. If they’re not giving support to the employment part, then it must be a nightmare.

Suitable person
Differences across local authorities

- Use of User Led Organisations (ULOs)
- Trusts as suitable persons
- Team structure (generic or specific)
- Use of terminology
- Data management
Analysis approach

- Context
- Condition
- Capacity
Future steps

• Complete analysis of existing data
• Continue accessing suitable persons
• Begin accessing people who lack capacity
• Explore data relating to DP regulations
Contact

Dan Robotham, Mental Health Foundation
Anne Laybourne, Mental Health Foundation
Marcus Jepson, Norah Fry Research Centre

 Drobotham@mhf.org.uk, 0207 803 1116

www.mentalhealth.org.uk