

At a glance 33

Personalisation briefing



November 2010

Personalisation and mental capacity

Key messages

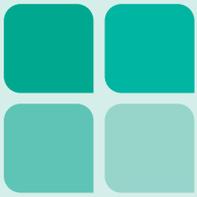
- The Mental Capacity Act (MCA) 2005 supports the values and practice of personalisation by empowering people to make their own decisions.
- The MCA enables people, who lack the capacity to make a decision, to participate as much as possible in a decision made on their behalf.
- There are a number of important decision-making points in setting up self-directed support and managed personal budgets where a person's mental capacity has to be considered.
- A person who lacks mental capacity to manage a direct payment may still receive one if a 'suitable' person is available to manage it for them. This is also an option for managed personal budgets.
- Where a person is assessed as lacking capacity to either choose a direct payment or managed personal budget, local authorities must make a best-interest decision about how the person's support will be managed.

This At a glance briefing looks at how issues of mental capacity should be considered in the context of personalisation, and the implications for staff working in social care, including the private and voluntary sectors.

The Mental Capacity Act (MCA) and personalisation share core values. The MCA says that a person should make their own decisions and where this is not possible because they lack the mental capacity to do so, that they should play as big a role as possible in decision-making processes that directly affect them.

Personalisation means thinking about care and support services in an entirely different way. It means starting with the person as an individual with strengths, preferences and aspirations and means putting them at the centre of the process of identifying their needs and making choices about what, who, how and when they are supported to live their lives. It requires a significant transformation of adult social care so that all systems, processes, staff and services are geared up to put people first.

The traditional service-led approach has often meant that people have not received the right help at the right time and have been unable to shape the kind of support they need. Personalisation is about giving people much more choice and control over their lives and goes well beyond simply giving personal budgets to people eligible for council funding. Personalisation means addressing the needs and aspirations of whole communities to ensure everyone has access to the right information, advice and advocacy to make good decisions about the support they need. It means ensuring that people have wider choice in how their needs are met and are able to access universal services such as transport, leisure and education, housing, health and opportunities for employment, regardless of age or disability.



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Supporting people to make their own decisions

The MCA says that it must be assumed that a person has capacity to make a specific decision unless it is demonstrated that they are unable to do so. A person's opportunity to make their own decisions should be maximised by giving them all possible support.

To enable a person to understand their options and to help them feel at ease, those supporting them in their decision making need to think about:

- using the person's preferred methods of communication
- a suitable location
- the persons' privacy and dignity
- letting the person make the decision at their own pace.

‘Where a person lacks the capacity to make a particular decision, their views must still be sought’

There are a number of important decision-making points in setting up and managing self-directed support. Where a person lacks the capacity to make a particular decision, their views must still be sought. Their ability to make decisions on other matters should be assumed. For example, a person may be able to make a decision about who they would like to support them, but not about how to manage a personal budget.

‘Wherever possible a person should be supported to assess their own needs in the self-assessment process’

Assessment

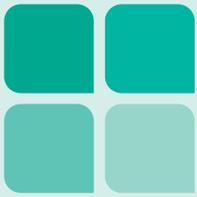
Assessment is the starting point for identifying what a person's needs are, the outcomes they want to achieve and an indicative amount available for the personal budget. Wherever possible a person should be supported to assess their own needs in the self-assessment process.

If a practitioner is supporting a person to complete a self-assessment, then a record should be kept of:

- who is supporting the assessment and their relationship to the person
- how the person is being supported to take part in the assessment
- whose answers are being written down
- whether there is a difference of opinion between the person themselves and the person supporting them
- how differences of opinion are resolved.

Receiving a personal budget: the options

The local authority must make sure that the eligible person is fully supported to understand the range of personal budget options, the benefits and responsibilities involved in each, and the support available to manage them.



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A personal budget may be received in the following ways:

- direct (cash) payment paid to the eligible person, or where they lack capacity, to a 'suitable person'
- a 'managed' personal budget either:
 - placed by the local authority with a third party who works with the provider according to the eligible person's wishes
 - held by the local authority, who arranges and manages services on the eligible person's behalf
- as a mixture of the above options.

If the eligible person is believed to be unable to make the decision themselves about having a direct payment or a managed personal budget, this should be confirmed with a mental capacity assessment. The local authority, for example, social worker, should then lead the best-interest decision about the most suitable option. It must not be assumed that this will be the local authority continuing to manage the person's care and support.

These decisions must follow the best-interest requirements of the MCA. This includes involving the person as much as possible in the decision and consulting with family, friends and paid carers who know them well. The reasons for the decisions should be recorded.

Direct payment to a 'suitable person'

If an eligible person lacks the mental capacity to manage a direct payment themselves, it may be paid to a suitable person. The suitable person must be available and willing to make support decisions and manage the direct payment on the person's behalf.

The suitable person can be:

- a friend, carer or family member

- a deputy appointed by the Court of Protection
- an attorney with health and welfare or finance decision-making powers created by a lasting power of attorney
- an independent support broker.

The choice of the suitable person must satisfy the best interests requirements of the MCA. This includes seeking the views of the eligible person about who they would want to manage their direct payment.

Example: payment of a direct payment to a suitable person

Rohan is a 32-year-old man with an acquired brain injury severely affecting his short-term memory and ability to judge risks. Rohan finds it hard to recognise he needs support. Rohan has a close and supportive friendship with his ex-partner Dominic who he trusts to manage his direct payment. Dominic is able and willing to act as a suitable person. After assessing Rohan's capacity to manage a direct payment the local authority decided it was in his best interests to have a direct payment managed by Dominic. Prior to his accident, Rohan used to be a club DJ. Dominic uses the direct payment to pay someone to support Rohan to reconnect with his interests.

Managed personal budget

The managed personal budget option may be appropriate where:

- the eligible person is unable to manage a personal budget
- there is not a suitable person available and willing to manage the direct payment



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‘The local authority should satisfy itself that the person has the skills and commitment to manage the personal budget on the eligible person’s behalf’

- there is a person who has an active interest in supporting the person but does not want the responsibilities of managing a direct payment.

The local authority should satisfy itself that the person has the skills and commitment to manage the personal budget on the eligible person’s behalf. An appropriate person could be a trusted friend or family member. An attorney or deputy with health and welfare decision-making powers would also be suited to take on this role.

Example: managed personal budget

Rhianna receives support from her local authority to help her access community activities. She experiences severe anxiety and depression. Rhianna has a trusted relationship with a local user-led organisation that provides her personal assistants. She decides that she wants this provider to manage her personal budget, while she maintains control over who she wants to employ. Rhianna feels confident that if she becomes very ill (as she does occasionally) and unable to make decisions about her personal assistants, this provider will be able to make a sensitive, best-interest decision about her support.

Developing a support plan

Once the decision has been made about how the eligible person will receive their personal budget, their support plan needs to be worked out and then agreed by the local authority. It should be assumed that the eligible person has the capacity to plan their support, with someone to help them if they choose. If the person lacks capacity to make decisions about some aspects of their support, the local authority must be satisfied that what is to be provided will be in the person’s best interests according to the requirements set out in the MCA. The process of deciding this should be recorded. In some authorities these decisions are being discussed and shared at risk-enablement panels (see below).

The following people can help the eligible person in the support planning process:

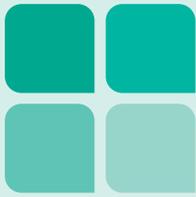
- a trusted friend, carer or family member

Example: risk enablement panel

Oldham Metropolitan Borough Council has introduced a multi-agency Risk Enablement Panel. The decisions are taken in partnership between the person, their carers/supporters and professionals in their care network.

The panel can consider whether:

- it is in the best interests of a person without the capacity to manage a personal budget, that it should be managed on their behalf as a direct payment by a suitable person
- a previous minor offence showing up on the Criminal Records Bureau (CRB) check of a potential assistant, disqualifies them from taking on the role for a person lacking capacity.



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- an independent support broker, person trained in person-centred planning
- an advocate
- an independent living facilitator
- a social worker, if there is a crisis or risk such as safeguarding concern.

Monitoring and review

If a person lacks capacity to make some decisions about their support, the local authority are likely to need to put in place more frequent monitoring arrangements than for other people who use services (Department of Health, 2010). This applies whether or not they have a personal budget. Attention will also need to be given to ensuring the person has as much opportunity as possible to control and review the support they receive. This could include access to:

- information provided in a way that reflects the person's needs
- communication specialists and aids
- advocates including independent mental capacity advocates (IMCAs) for those people who don't have family who can represent them.

Court of Protection

There are a number of instances where it may be necessary to involve the Court of Protection. A suitable person may wish to make an application to the Court of Protection to be appointed as a property and affairs deputy to enter contracts on behalf of the person, for example a tenancy agreement. It should also be used where there are disputes which cannot be resolved. For example whether a person has capacity to manage a direct payment, or whether it is in their best interests for a particular person to be appointed to do so.

‘There are a number of instances where it may be necessary to involve the Court of Protection’

Further reading

Carr, S. (2010) *Personalisation: a rough guide (revised edition)*, London: SCIE

HM Government (2007) *Mental Capacity Act 2005 Code of Practice*, London: The Stationery Office

Department of Health (2009) *Guidance on direct payments for community care, services for carers and children's services*, London: Department of Health

Department of Health (2010) *Prioritising need in the context of Putting People First: A whole system approach to eligibility for social care: Guidance on Eligibility Criteria for Adult Social Care, England 2010*, London: Department of Health

Unity Sale A (2006) Oldham's approach to changing services for all adults and older people, *Community Care*, 30 November 2006
www.communitycare.co.uk
accessed 1 November 2010

Useful websites

In Control website for resources on self-directed support: www.in-control.org.uk

SCIE Mental Capacity Act Resource:
www.scie.org.uk/mca

Information on Independent Mental Capacity Advocacy: www.scie.org.uk/imca



Personalisation briefing: Personalisation and mental capacity

Personalisation: a rough guide tells the personalisation story so far – exploring what it is, where the idea came from and where it sits within wider public service reform. It is freely available online at www.scie.org.uk. This briefing is one of a series explaining the personalisation agenda and what it means for different groups.

Briefings in this series:

At a glance 5: Mental Capacity Act 2005

At a glance 6: Personalisation briefing for commissioners

At a glance 7: Personalisation briefing for home care providers

At a glance 8: Personalisation briefing for housing providers

At a glance 10: Personalisation briefing: Implications for carers

At a glance 18: Personalisation briefing for community mental health services

At a glance 21: Personalisation briefing: Implications for people with autistic spectrum conditions and their family carers

At a glance 22: Personalisation briefing: Implications for community learning disability staff

At a glance 31: Enabling risk, ensuring safety: Self-directed support and personal budgets

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