

Putting the Cart before the Horse: Resource Allocation Systems and Community Care

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Abstract

The English (draft) Care and Support Bill provides for all eligible community care service users to have a personal budget – and councils have been given a target to ensure that 70% of such users have one by April 2013. All authorities are experimenting with Resource Allocation Systems (RASs) as a way of calculating these budgets. This paper describes and critically analyses the nature of the RASs being used and the increasing body of case law they are attracting – in particular the Supreme Court's 2012 judgment in R (KM) Cambridgeshire County Council. The paper draws on research involving 20 local authorities concerning their use of RASs and represents the first in depth legal examination of the claims made by proponents of the use of RASs. It challenges many of the claims made concerning such systems- in particular that they are 'more transparent', 'more equitable', 'simpler' and less discretionary than the traditional social work led community care assessment process.

Introduction

The legal principles that govern the duty on local authorities to provide community care services in England are so well established as to be trite law. Councils must

assess the needs of the dependent person. They must then compare these needs against a scale of eligibility (the 'FACS' criteria (Department of Health, 2010a)). The scale has four bands of need – low, moderate, substantial and critical – and councils can decide which bands of need they will meet (most commonly, just the critical and substantial bands). Once a person's assessed needs are found to fall into one of the eligible bands, then the council must meet those needs regardless of the cost: although if the need could be funded in different ways, the council is permitted to choose the least expensive. The legal principle is therefore straightforward: the need comes first and the cost of meeting that need follows.

An 'assessment' is a standard tool in social welfare law – be it to determine the need for a heart operation, a judicial review, special educational support and so on. It is the need that has to be the focus of attention: the fact that one heart operation may use more blood than another, or one judicial review takes longer than another is a secondary issue: the need is what we value and the price follows. In assessing the eligibility of a need, we have to rely on professionals (surgeons, judges, social workers) – Michael Lipsky's (1989) 'street-level bureaucrats' – because the nature of their role 'calls for human judgment that cannot be programmed and for which machines cannot substitute' (p.162). Legal obligations of this nature are unruly things: necessitating social workers and home visits; discretion and 'dirty work' (Twigg, 2000) – personal care, soiled bedding and disordered spreadsheets. They rest in the comfort zones of traditional and modern welfare states – but distress those of a neoliberal bent, involving as they do the acceptance of dependency and paternalism.

Commodifying needs

The last 20 years has seen a sustained programme designed to privatise the English social care system (Drakeford, 1999). Social work has become a business – with managers and budget holders and the care involved in meeting a person's needs has been commodified (Harris, 2003). Virtually every care activity has a price (often broken down into 15 minute units), for which an army of care commissioners' issue tenders and contracts. Having recast the process of 'caring' into a simple monetary transaction for which the cost is known (with precision) it was perhaps inevitable that attempts would be made to commodify the social care needs themselves. Instead of a person being assessed as unable to care for herself without 24 x 7 social care support, she would be classified as a £560 per week person. Such a process, if

practicable, would do away with messy time consuming assessments; would trade the open-ended obligation to 'meet need' for a fixed (state adjustable) 'entitlement'; and would consign traditional social work to the paternalistic naughty corner.

The process by which 'need' is commodified (as opposed to the response to that 'need') is generally referred to as 'personalisation' and the price put on that need, as a 'personal budget'. If a personal budget consists of a cash payment to the disabled or elderly person (or a family member / friend on their behalf) then this, at law is a 'direct payment'. In such cases the courts have held that the amount 'must equate to the reasonable cost of securing' the person's eligible needs (*R (KM) Cambridgeshire CC*, 2012 para 22). Most personal budgets do not consist of such payments: they are essentially notional – being held by the local authority or another agency and managed on behalf of the disabled person (ADASS, 2011).

At first sight, commodification of this kind could be difficult to sell in cash strapped England. Logically those dependent on social care services should not be attracted to such a scheme – unless the cash payments were relatively generous, whereas from the state's perspective for the scheme to be viable it would need to operate within existing (or reduced) budgets. This scepticism has been countered by proponents of the process, who have argued that it delivers more bangs per buck – and thereby enables disabled and elderly people to get better care for less cost. The sceptics have however suggested that the evangelical (Henwood & Hudson, 2007, para 2.22) ardour with which personalisation is being promoted is little more than a distraction technique – designed to misdirect scrutiny: that claims of the process being 'simple', 'transparent' and 'equitable' simply do not survive critical analysis.

A number of academic papers have been published concerning 'personalisation' but none have sought to dismantle and critically analyse the commodification engines that power this process (referred to as 'Resource Allocation Systems' (RASs)). This paper endeavours to address this gap, and to assess the validity of the arguments concerning the simplicity, transparency and equitability of RASs. It comes at a time when RASs are being subjected to increasing judicial scrutiny and when some of the leading proponents of the early personalisation programme are severely critical of their obscurity, stating (for example) that:

Complexity has grown; but there is no empirical evidence to suggest that any of these systems is leading to fair and sustainable allocations for all. Frequently

local leaders inform you that their system is currently 'broken' and that they need more time to make further amendments (Duffy & Etherington, 2012 p.8).

RASs come in two general models. 'Points based RASs' ask a series of questions (largely assessing the extent of the individual's 'dependency') and then convert the answers to these questions into a points score. A value is then assigned to each point and an algorithm then produces an 'indicative amount' for the value of the personal budget. The other common model is essentially a 'ready reckoner' which estimates the indicative amount directly from the number of hours of support an assessor estimates that a person needs.

RASs and the law

In England the implementation of the personalisation programme in social care has been a major (more accurately 'the major') political priority since 2004. Most recently, through the use of performance indicators and departmental guidance, (Department of Health, 2010a) councils have been pressurised to increase the numbers of disabled and elderly people on personal budgets. Until recently the target was that by April 2013 100% of eligible person (ie people getting social care support but not in a care home) should have a personal budget (Department of Health, 2010b, para 4.9). Although in October 2012 the target was scaled back to 70% (Brindle, 2012), the draft Care and Support Bill (clause 24(1)) still provides for personal budgets to be mandatory for all.

This major change in the delivery of social care – as a consequence of the personalisation programme – has occurred without any statutory change: a fact both remarkable and important. This means, of course, that when push comes to shove, the legal obligation on councils remains the duty to meet 'need'. As the Court of Appeal has recently observed (*R (Savva) v Royal Borough of Kensington and Chelsea*, (2010a):

... once a local authority has decided that it is necessary to make such arrangements, it has an absolute duty to provide the individual with the services or the personal budget with which to meet the assessed needs: see *R v Gloucestershire County Council, ex parte Barry* [1997] AC 584.

In a series of cases, culminating with the 2012 Supreme Court judgment in *R (KM) Cambridgeshire County Council* service users have sought judicial review of decisions to set personal budgets at RAS derived rates, on the basis that these were insufficient to meet their assessed eligible needs. In *R (JL) v. Islington LBC* (2009) the court emphasised that the local authority must satisfy itself that a person's eligible needs must be capable of being met using a personal budget, and that in doing so 'considerations such as a finite budget and sharing out resources to reach a greater number of people no longer play a part' (para 106). Although the court found that the use of a RAS was not unlawful in itself, it emphasised that local authorities must 'when necessary' increase the value of the personal budget (para 107) if it was otherwise insufficient to meet eligible needs. From the outset, then, RASs cannot dispose of discretionary elements of resource allocation.

The courts have also considered the question of how service users can be satisfied that the value of a personal budget is sufficient to meet their eligible needs. This is particularly so (as the court has emphasised) in relation to the care of dependant people, since it cannot be assumed that service users are 'capable of looking after their own affairs in the context of assessment' (*Savva*, 2010b, para 44). Additionally, as counsel for the appellant in the *Cambridgeshire* (2012, para 36) case explained, in cases where the service-user is presented with 'a global sum of money' the process of establishing whether eligible needs are being met will be 'far less visible'. In *Savva* (2010a, para 20) the Court of Appeal dealt with this issue in the following terms:

When a local authority converts an established right – the provision of services to meet an assessed eligible need – into a sum of money, the recipient is entitled to be told how the sum has been calculated If a local authority were entitled to notify a bald figure without any explanation, the recipient would have no means of satisfying himself or herself that it was properly calculated. As the guidance from the Association of Directors of Social Services puts it, explanations of decisions "make it possible for people and families to challenge these decisions". Or, to put it the other way round, an absence of explanations may make it impossible to mount such a challenge, whether by way of complaint or by way of litigation.

Issues of transparency in how RASs work are thus highly legally salient. In *Savva* for example, the court considered that the local authority explanation should include something like a list of 'the required services and assumed timings... together with the assumed hourly cost' (para 21). This approach was upheld by the Supreme

Court in its *Cambridgeshire* judgment: the process had to be explained and intelligible – for example by detailing what it considered to be ‘the reasonable cost ... of paying for carers’ (paras 35 and 38).

In a legal framework whereby the outcome of the RAS cannot ‘fetter’ the duty on a local authority to meet eligible needs, and where the RAS itself cannot be the sole reason given for how a local authority has established that eligible needs are capable of being met within a particular budget, the purpose of the RAS is unclear. One possible function of the RAS is (as suggested by the Supreme Court) to specify a ballpark figure (para 26), or starting point, which service users can use to compare against the actual value of their budget. Where the value of their budget is substantially lower than that indicated by the RAS, this might alert service users and local authorities to unfairness or inequity. As we shall argue below, it is far from clear that RASs as they are currently employed are even being used in this fashion.

Methodology

A detailed description of the methodology underpinning this research and the statistical analysis of the results is published elsewhere (Series & Clements, 2012). In summary, however, the study was based on information obtained from requests made to 20 local authorities under the Freedom of Information Act 2000 (FOIA). These sought information as to whether the authority was using a RAS; how it had been developed; copies of the questions used to administer it; how these questions translated into points scores (including algorithms that are used); how overall points scores translated to a cash award (the ‘tariffs’); and whether there were different RASs for different client groups. For those local authorities using a points-based RAS, an additional question sought information on how accurate their RAS was at predicting the actual value of a personal budget. Local authorities were not selected at random – but chosen because of their participation in a 2007-09 pilot personalisation programme (In Control, 2009) as these were thought most likely to have well developed and supported RAS’s.

Initial requests for information were made by email in summer and winter 2011 and responses to these and follow up requests were received by late spring 2012. All local authorities contacted responded to requests for information, although the clarity and depth of the responses varied considerably. Two authorities initially refused to disclose information about the RAS, stating that it would ‘prejudice the effective conduct of public affairs’ (s36 FOIA), but later concluded that it was in the

public interest to disclose this information. A third local authority refused to disclose information about its RAS stating that this would prejudice its 'commercial interests' (s43 FOIA) as it planned to market and sell the mechanism it was using to calculate indicative entitlements. These refusals are discussed in more detail below.

General findings

Of the twenty local authorities contacted, thirteen were using a points-based RAS. Three authorities indicated that although they had used a points-based RAS in the past, they had moved to using a 'ready reckoner'. The reasons they gave for the discontinuation of their points based RAS included concerns about their 'complexity to use, transparency to service users and level of accuracy' as well as 'irregularities' in the initial questionnaire. One authority explained that:

Officers from other local authorities with experience in this area have given us differing advice about the effectiveness of this model. Some take the view that it is an effective tool, though some at least appear to be using it as part of a system that allows for the results to be overridden in the light of other evidence. Others say they have not yet been able to develop a RAS which they would be confident about using as their main mechanism for allocating funding.

Another authority undertook a desktop exercise matching a Department of Health RAS to actual allocations, and found 'Currently the match is not close enough for it to be possible to recommend the immediate introduction of this system as a means of allocating budgets.'

Development

An open ended question invited local authorities to describe how their RAS was developed. Three applied FOIA exemptions to this aspect of the request for information, two stating that the information was not held, and one that the relevant colleagues who had designed the RAS had left and so they were unable to answer questions about how it was developed or operated. This latter response raises concerns about ongoing application, development and fine tuning of the RAS, if no current employees fully understand its functioning.

Several authorities indicated that their RAS was based on a methodology whereby several hundred 'live cases' were scored using a needs questionnaire, and these

scores were plotted against the actual expenditure for each individual under traditional methods of support planning. The resultant distributions were then 'smoothed' and sectioned off into bands whereby a particular range of points would equate to a particular indicative amount. One authority had then 'top sliced' these indicative amounts by 15%. This means that the indicative amounts generated for a particular point score using that RAS would be 15% less than the value spent on a service user scoring the same number of points under traditional methods. Cost abatement 'multipliers' as part of the RAS have been proposed by *In Control* in the past to decrease the overall expenditure of a local authority (Duffy & Waters, 2008). In a follow up question about the 15% top-slice, the authority stated:

... The principle comes from acknowledging that any allocation table/system will have exceptions that occur, taking a % out of the initial pot to be allocated ensures that there are sufficient resources to fund those individuals whose needs cannot be met within the general 80:20 rule of what we would ordinarily spend. The top slice was also to acknowledge that fundamental change of this nature may lead to some double running of in-house services as individuals choose different deployment methods of their personal budgets. Some authorities take a higher percentage to account for double running of in-house services as individuals make different choices and perhaps take their resource through a direct payment.

No other authorities admitted to the use of a cost abatement multiplier, and two stated that they did not. However, several authorities suggested it was a key development requirement that the RAS generated indicative amounts that were equal to or less than the value of a traditional budget for the same service user. When asked for an explanation of this position, one stressed that 'personalised' support planning methods, in particular the use of personal assistants employed using direct payments, could reduce overall care costs.

One authority used a method of RAS development which consisted of calculating the maximum number of points available in the local authority area and then dividing this into the total amount of money available to give a pound-per-point value. Surprisingly, given the explicit emphasis on resource-rationing in this methodology, this authority provided a written rationale for how each point score would meet eligible needs. It is unclear (putting it charitably) how such a rationale can spring from such a methodology.

In conclusion, most RASs have been developed by modelling existing patterns of expenditure against points scored on assessment questionnaires. There are indications that most, but not all, RASs may generate lower indicative amounts than traditional expenditure would have predicted for a person with that points-profile on a needs questionnaire.

Are RASs transparent and clear?

In Control guidance on personal budgets states that 'The rules of the RAS must be simple and open and understood by local people' (Duffy & Waters, 2007, p.21). We set out to test how 'simple and open' the rules of RASs were in different local authority areas. As noted, two local authorities initially refused to disclose information about their RAS on the basis that it would be 'prejudicial to the effective conduct of public affairs': one authority explaining that if the information were available:

... then anyone completing the assessment may be able to answer the questions on the assessment in such a way as to produce a higher personal budget than they need.

The other stated:

If people completing the form (or advocating) were aware of how the answers impacted on the indicative allocation, then they may be incentivised to provide inappropriate answers to try and get a higher indicative budget.

The reasons given for initial refusal to disclose the underpinnings of the RAS algorithm suggest that local authorities are not entirely comfortable with the increasing policy emphasis on self assessment. The two authorities quoted above also suggested that exaggeration of needs by service users might threaten the sustainability of their overall budget. From a legal perspective this fear is difficult to fathom. Although policy materials call for 'a greater emphasis on self-assessment' (Department of Health, 2007, p.3) at law the duty to assess still rests with the local authority (*R (B) v. Cornwall County Council*, 2009, para 9). Binding guidance states that assessments should be 'person centred' and 'a collaborative process', but it also emphasises that this 'does not negate a council's duty to carry out its own assessment, which may differ from the person's own views of their needs' (Department of Health, 2010a). Provided the local authority has conducted an adequate assessment of its own, in compliance with its legal duty, there should be no

grounds for concern that disingenuous responses to a needs questionnaire could result in over-expenditure.

In apparent contradiction to the assertion that 'gamed' needs questionnaires could threaten the sustainability of local authority budgets, another ground for refusal to disclose was the assertion that 'the RAS tool does not "allocate" anything'. At law, this is correct, as local authorities *must* be willing to increase personal budgets above the indicative amount if it is necessary to ensure that eligible needs can be met. In any event, as we discuss below, the indicative amounts arrived at using the RAS are not even legally enforceable minimum entitlements- a fact that troubles proponents of RASs (Duffy, 2012). The reality that RASs 'do not allocate anything' does pose the question of what their purpose is, and how they fit into the overall care planning process: questions we address in our concluding discussion. However, these two grounds for refusal to disclose the RAS algorithm – that disclosure could threaten the sustainability of the budget, and that RASs 'do not allocate anything' – do sit in tension with each other.

One local authority stated it was using a RAS system developed by FACE Recording and Measurement Systems. It stated that it had been developed in a similar way to many other RASs – by training the RAS on existing costs under traditional care planning methods. However it was not able to share details of the precise algorithm because it was "the property of the FACE Recording and Management Systems"; and that the company "regards it as distinctive and of commercial value."

The local authority referred to FACE guidance (undated 1), which states:

Viewing an algorithm is in itself not a very enlightening process, without a full explanation of how the algorithm was derived and why each step in the algorithm functions as it does. However, even with such explanation it would not be possible for an individual to assess the validity or otherwise of the algorithm since its validity can only be tested across many individuals.

Yet, as we shall show below, viewing the points scoring systems and algorithms can reveal important underpinning assumptions about which kinds of responses indicate eligible needs, and how much it would cost to meet those needs. Outsourcing the development of the RAS in this way undermines the transparency claims at the heart of the RAS.

One local authority had developed its own RAS scoring system and algorithm, but was planning to market and sell this RAS to other local authorities. Consequently it refused to disclose information about how its RAS worked on the basis that it “would significantly hinder the Council’s commercial interests”. Should this local authority be able to market and sell its RAS, this transparency problem would spread to any local authority which purchased it.

For proponents of RASs, these refusals to disclose the inner workings of the algorithms which actually generate the indicative amounts will be troublesome. Our difficulties accessing information about RASs show that they do not necessarily lead to ‘clear criteria for a fair distribution of resources’ (Duffy, 2005). Duffy has described this as ‘very damaging’, stating that it has ‘radically undermined the transparency of and public faith in the RAS’ (Duffy & Etherington, 2012, p.9). Even stepping aside from the personalisation agenda, refusals to disclose mechanisms involved in the administration of public funds seem at odds with the contemporary governmental drive towards greater transparency in public office (Cabinet Office, 2011). It also seems a departure from the Court of Appeal’s remarks in *Savva* that ‘Recipients and their advisers are entitled to know about the RAS but ... this can be achieved by publishing the RAS on the Council’s website in a user-friendly format’ (2010a. para 21).

Despite these refusals, the majority of respondents did supply details of the algorithm underpinning their RAS. Whilst this is laudable, it is still not clear that the supplied information satisfy the hope that ‘The rules of the RAS must be simple and open and understood by local people’ (Duffy & Waters, 2007. p21). The problem here was less transparency, and more *comprehensibility*. Despite the authors’ familiarity with RASs, statistics and relevant software programs, it was sometimes extremely difficult to extract the mathematical formulae underpinning the RASs from the information supplied. One local authority simply supplied the spreadsheets they used to calculate indicative amounts, which was extremely useful from the perspective of ‘test driving’ a set of responses, but to work out what calculations this was based on required a laborious cell-by-cell unpicking of the spreadsheets. Most authorities provided a copy of the needs questionnaire with the points scored for each response, and then details of the ways in which these points were combined to arrive at an overall score. There was then a separate allocation table, or set of allocation tables, which converted this overall score into an indicative cash value. In our view, no responses indicated that local authorities had considered how to share

'a simple set of transparent rules to demonstrate how the individual gets a fair budget, according to their needs and social circumstances' (Tyson et al, 2010) with their local community.

With the best will in the world it may not be possible to describe the operations of RASs in simple and clear terms. The local authority who was using a FACE system supplied a document produced by FACE (undated 2) which stated:

... public expectations have been shaped by misleading literature, including some from official sources, that assumes that very simple additive models can produce accurate cost predictions. Relative to such approaches, the FACE approach may appear complex, even though compared to more sophisticated modelling techniques it is actually very simple. The problem is that there is no evidence that simple additive models can work and plenty of evidence that they don't. Thus the 'gold standard' for assessing the simplicity of a model has become a standard that has never in fact been met by an accurate working system.

This approach captures a particular mind-set. Essentially that further tweaking is always justified as it produces greater accuracy – and that if transparency has to be sacrificed – it is a price worth paying. However the law is still framed in terms of a social care professional undertaking a face to face assessment and theoreticians (Lipsky, 1989) have argued that such assessments will always require human judgment, for which 'machines cannot substitute'. If this view is correct, then increasingly complex RAS processes are dead-end streets – down which some local authorities appear to be accelerating. It is certainly the case, that when judges have tried to understand the internal workings of RASs they have found the exercise a challenge. In the *Cambridgeshire* proceedings the Court of Appeal described its effort to obtain an intelligible explanation of the system as 'tortuous' (*Cambridgeshire*, 2012. para 35) and the Supreme Court referred to the 'deficits in ... reasoning' (para 38): in *Savva* (para 48) the phrase used was '*left totally in the dark*'.

Do RASs allocate resources fairly?

It has been argued that RASs provide a mechanism for the fairer apportionment of limited resources: that they can reduce 'institutionalised inequalities in the resources allocated between different groups of service users' (Henwood & Hudson, 2007). Relatively little work has been undertaken exploring how RASs affect carers. Clements et al have questioned the assumptions and lack of theoretical explanation

of an early RAS, described in a paper by Duffy (2005), which allocated half – or less than half – the level of funding to disabled people living with family than those living outside the family home (Clements et al, 2009). A further source of concern about RASs has been highlighted in a series of court cases, namely that they generate personal budgets insufficient to meet eligible needs. In this section we analyse the local authority responses to our FOIA requests to examine whether RASs take into account the support informal carers are willing and able to offer in a fair way; we test the claims that RASs result in more equitable distribution of resources between different user groups; and whether – on the surface at least – RASs miss some signs of eligible need.

Social capital deflators

As a matter of public law, local authorities are only obliged to meet assessed eligible needs which cannot reasonably be met through any other means. To the extent that a person's eligible needs are met through informal support networks, and they – and the service user – are willing and able to continue to provide support in that way, local authorities have no statutory duties to meet those needs. Thus, a vital part of support planning is investigating how much support can be provided informally: a process usually addressed through a carers' assessment. Of all the authorities who disclosed the algorithm underpinning their points-based RAS system, all but two reduced the overall value of the indicative amount on the basis of some measure of informal support available to a person. This aspect of the algorithm was sometimes termed a 'carer deflator' or a 'social capital deflator'. It was notable that in many questionnaires we examined, the questions asked about the level of informal support that was *actually* provided, as opposed to the level of informal support a carer is *willing* and *able* to provide.

In the more sophisticated RASs social capital deflators asked about the degree of informal support provided across each of several different domains of need, and then decreased the overall point score for that domain accordingly. The exact terminology and proportions varied considerably. This is illustrated by the list (below) which details the descriptive terms representing the level of informal

support available in a particular domain, and the percentage of the overall point score that would remain for that domain if that term were selected:¹

1. 'All' (0%); 'Most' (25%); 'Some' (50%); 'Little' (75%); 'None' (100%).
2. 'Nearly all' (10%); 'much help' (40%); 'some help' (70%); and 'no help' (100%)
3. 'All' (20%); 'Most' (40%); 'Some' (60%); 'None' (100%)
4. 'All' (0%); 'Most' (30%); 'Some' (60%); 'None' (100%)

In the first and fourth examples, therefore, a person indicating that 'all' their support was provided by an informal carer would receive no points, yet a person in the third example would retain 20% of the points scored for that domain. Likewise, a person indicating they received 'some help' in a particular domain would retain 70% of their points in the second example, 60% in the third and fourth example and only 50% in the first. The financial repercussions of selecting a particular descriptor of informal support thus vary across different RASs. One authority dispensed with descriptive terminology altogether, describing levels of support provided through informal networks, and simply required a drop-down factor of 0, $\frac{1}{4}$, $\frac{1}{2}$, $\frac{3}{4}$, or "all" to be selected from the questionnaire for each domain. Putting aside the question as to how a service user can determine reliably the amount of informal care they receive (ie the impact their care needs actually have on their carers) this approach at least eradicates the uncertainty as to what a particular descriptor means in terms of points scored. For some authorities, some domains of need scored the same whatever level of support is provided – these domains included support with relationships, health and safety and accidents at home.

A number of authorities did not examine the level of informal support available for each domain of need separately, preferring to apply a 'deflator' to the overall point score at the end. This approach is simpler, but is less likely to take into account nuances in the degree of informal support a carer is willing and able to provide in different domains, or that a disabled person would like to receive through informal support networks. Two authorities did not use social capital deflators at all, however they did include questions about the amount of respite care that was needed to support a carer. It is unclear whether these RASs start from the assumption that informal support is, or is not, available. One of the authorities not using a social capital deflator was Authority 2 in the discussions below; the actual

¹ NB. These were not always described in terms of the percentage of points remaining after the application of the deflator, some were described in terms of fractions or multipliers of either the proportion by which points should be decreased, or the proportion that remained.

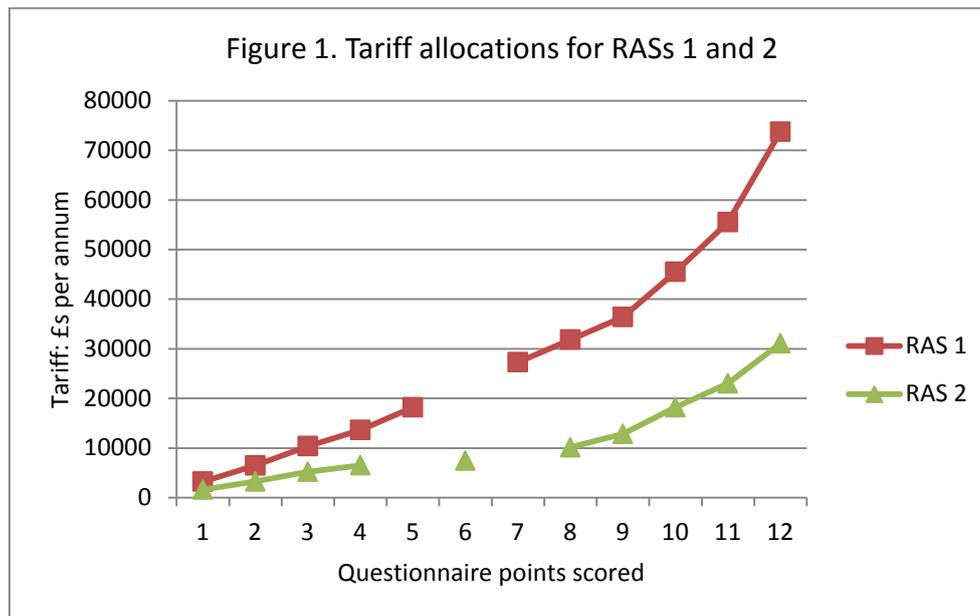
value of their personal budgets was systematically lower than the indicative amount – which may be because the availability of informal support was later used to lower the value of a personal budget in a discretionary way.

One authority's approach to informal sources of support, gave real cause for concern. It operated a single points scoring system which appeared to ignore informal support networks at the level of the questionnaire. However in order to convert the points scored into an indicative amount, a choice of two 'allocation tables' existed – called RAS 1 and RAS 2. The descriptors as to which were appropriate advised as follows:

RAS 1 'should be applied in cases where the individual needs a support presence on a 24 hour basis, either in the background or possibly on a more intensive 1 to 1 basis. Typically the support needed would not be available via a family carer or other informal sources.'

RAS 2, 'should be applied in cases where the individual needs support at key times of the day but generally not on a 24 hour basis or in cases where 24 hour support may be required but a significant amount of this can be provided by a family carer or other informal sources.'

The difference in the resultant distribution of resources for the points scored using the needs questionnaire was stark, and is depicted in Figure 1



The two alternate RASs seem to collapse together both the level of support needed and the presence of informal care networks, and it is hard to see how this can take into account any nuances in the degree of support available. In a follow-up question it transpired that RAS 1 had been applied in only 16% of cases, suggesting it is assumed in 84% of cases that a 'significant amount' of support can be supplied through informal care networks.

RASs and inter-group variations

It has been suggested that RASs may have a role to play in reducing 'institutionalised inequalities in the resources allocated between different groups of service users' (Henwood & Hudson, 2007). In their report on the human rights of older people using domiciliary care services the Equality and Human Rights Commission (EHRC, 2011) expressed concern that less money is spent on social care for older people, and the unit cost of their care is lower than for other groups (Forder, 2008). In its Inquiry the EHRC heard evidence from Age UK that one reason for this was the use of different RASs for older people and younger people. We explored whether local authorities were using universal or different RASs for different client groups, looked for reasons why authorities had adopted their preferred approach, and for signs that universally applied single RASs resulted in a more equitable distribution of resources.

Five authorities indicated that they used different RASs for different client groups, varying either the questionnaire itself, the way points were allocated for each group,

or different allocation tables to match 'indicative amounts' to points for different client groups. One authority had a generic RAS, and a separate one for adults with learning disabilities, another had a separate RAS for older people. Another had four separate RASs for older adults, people with learning disabilities, people with physical disabilities and people with mental health issues. One authority explained its decision to use different allocation tables for different client groups on the basis that it 'had hugely different costs of care in each area' and if one allocation table was used it would be 'constantly changing/overriding allocations that came out of the RAS'.

Of the local authorities who were using 'ready reckoners' (which multiplied the amount of hours of support a service user would need by the unit cost of support) three specified that the unit cost varied in accordance to the client group to reflect market costs. One authority specified that the ready reckoner used a single cost to calculate indicative amounts for all user groups.

Seven authorities indicated that they were using a 'universal' RAS, and one gave equalities legislation as an explicit reason for this:

Our current RAS was developed in house ... It was an enhancement to a much earlier RAS which had separate weightings according to client group. As this was not compliant with equalities legislation, a revised RAS was developed and implemented last September (2011).

Such an approach suggests both a misunderstanding of what the Equality Act 2010 requires and also what 'equality of provision' means. As Clements has observed, it betrays a monetarist vision of equality (ie as to how much money is applied to an individual) rather than one that assesses equality 'of outcomes ... one measured in terms of the quality and effectiveness of the support' that results (Clements, 2008).

The reality, of course, is that the unit costs of care do vary by client group, and so to distribute resources 'equally' at source would mean that different groups would be able to purchase different amounts of hourly support and so result in an inequitable outcome for different groups. The problem, however, is that care providers are likely to respond to consumer demand in setting their hourly rates and thereby local authorities will influence market rates in their area.

In response to follow up questions, three authorities were able to supply client-level data which enabled us to compare a user's indicative amount; the actual value of

their personal budget; and their 'primary client group'. This enabled us to examine the accuracy of the RAS (discussed below) but it also had a bearing on the claim that a universal RAS leads to more equitable distribution of resources between different user groups. Each of the three authorities supplying data were using a 'universal' RAS and allocation tables, but analysis showed that in two of the three authorities the degree to which the RAS indicative amount predicted the actual budget a person received varied between primary client groups (Series & Clements, 2012). This variation is shown in figure 2, below.

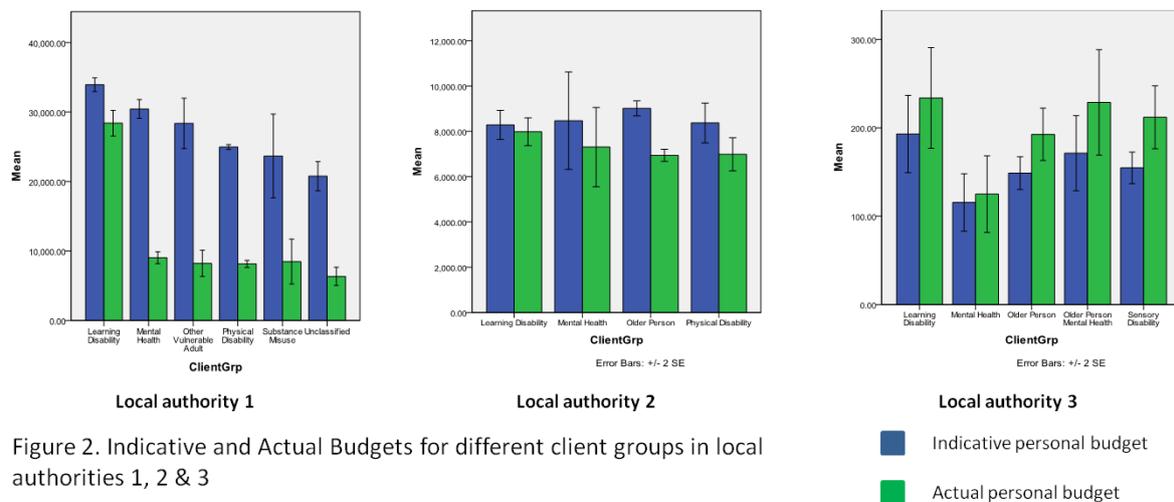


Figure 2. Indicative and Actual Budgets for different client groups in local authorities 1, 2 & 3

The data showed that for all three local authorities there are significant differences between the indicative amount specified by the RAS and the amount a person actually receives. In authority 3, service users received on average more than that specified by the RAS, and in authorities 1 and 2 they received on average less. For all three authorities, different clients groups received different average indicative and actual personal budgets; however this would be anticipated if underlying needs varied between these groups. But what *was* problematic for equalities claims for universal RASs was the finding of an interaction between a person's primary client group and the size of the discrepancy between the indicative amount and the actual value of their personal budget for local authorities 1 and 2.

In plain English, some user groups received personal budgets whose value was closer to that indicated by the RAS than others. In authorities 1 and 2 adults with learning disabilities received personal budgets very close to that indicated by the RAS, albeit slightly lower. But in authority 1 all other user groups received *substantially* less than that indicated by the RAS; people in the Mental Health primary client group experienced the greatest discrepancy between what the RAS

said they should get and what they actually received. In authority 2 this discrepancy was less marked, but it was still statistically significant (Series & Clements, 2012); notably older adults were allocated the most by the RAS but received the least in reality. The hopes of Age UK and the EHRC that universal RASs would eliminate inequitable resource allocation for older people is founded on the presumption that the indicative amount specified by the RAS will be reflected in the actual value of a personal budget. As discussed above, there are legal reasons why local authorities have to retain discretion in valuing personal budgets, and so their actual value cannot be expected to always reflect the RAS indicative amount. But what is interesting is that these distributional inequalities are not eradicated by the use of a universal RAS, instead they creep back in through authorities *decreasing* the value of a personal budget below that indicated by the RAS for all groups, but for some groups more than others.

RAS allocations and unmet need

There were signs in a few local authority RASs that the points scoring system might overlook some eligible needs. For example, the following responses – drawn from two different authorities' needs questionnaires – scored no points on the RAS, and so if a person had these needs in isolation from others the RAS would generate an indicative amount of zero:

- 'I need regular help or support and advice to help me make decisions and choices'
- 'I have had difficulty forming and/or keeping my relationships and activities and need help or support to do this'
- 'I need regular help or support with daily living tasks'
- 'I often need help or support with personal care during the day or night'
- 'I need occasional help or support for me to eat and drink enough to stay well'
- 'I need some help or support and there is some concern about my complex health needs'
- 'I need some help or support and there is some concern about my mental health needs'
- 'Sometimes I need a little help or support to stay safe. There is concern about my safety'.

- 'I need some help to continue to do the things I want to in the community, or to do more. (eg I need some help once or sometimes twice a week)'
- 'I need some help to keep doing the things I want, or to do more. (eg I need some help once or sometimes twice a week)'
- 'I need some help to purchase and/or prepare food and drinks. (eg help with opening packages or occasional heavy shopping)'
- 'I need some help to feed myself (eg cutting up food)'
- 'I sometimes need help to meet my personal care needs, but not every day.'
- 'I have the friendships that I want but I need some support to help me manage them. (e.g. help keeping in touch)'
- 'I need some support with parenting tasks or some support in my role as a carer.'
- 'My health does change and sometimes I require some support to manage this'
- 'I sometimes need support to make decisions and to stay safe.'

Both authorities' eligibility criteria provided for substantial and critical needs. Whilst such needs might in general be met with a small amount of occasional support, the *amount* of help needed is not the same as how *critical* that help is. A person might only need occasional input to help with shopping, eating or drinking, staying safe etc – yet that support could be vital. There is clearly a danger that if users are 'self-assessing' using the RAS questionnaire, or if the RAS is applied rigidly, that some eligible needs could remain unmet.

Measuring the accuracy of RASs

Steps taken by local authorities to ensure the accuracy of their RASs

As noted above, the relationship between the indicative amount specified by a RAS and the actual value of a personal budget is not perfect. This is inevitable, given the legal requirement that local authorities must increase the value of a personal budget if it is insufficient to meet eligible needs. However, if the RAS is to serve any useful function in generating an initial 'ballpark' figure, or 'starting point', it must bear some resemblance to actual patterns of expenditure. This is a question of the *accuracy* of the RAS. We were interested in how local authorities were assuring themselves that their RAS was offering accurate estimates of personal budgets, and with what results. We contacted ten of the authorities who had supplied detailed information about their points-based RAS and asked if they could provide data

showing the indicative amount of a personal budget, the *actual* value of a personal budget, and in each case, the person's client group. If they were unable to supply these data, we asked that authorities provided us with some information on what systems they had in place to monitor the accuracy of their RAS. One local authority refused to supply this additional information on resource grounds (s12 FOIA).

Of the ten authorities contacted with these follow-up questions, one did not appear to be collecting any data on accuracy at all, but indicated that they would seek to do so in the future. This authority was using the RAS developed by FACE, which was 'trained' on a few hundred live cases during development like many other RASs described here. Local authorities must be careful of assuming that this guarantees ongoing accuracy of their RAS; the RAS is effectively a model of a particular dataset, and so long as cases continue to reflect that dataset the model should remain reasonably accurate. However, the costs of meeting eligible needs will change with inflation, market shifts and the development of new ways of supporting people. Any RAS must be able to measure and track such changes to remain valid; this means that authorities must have in place systems for measuring the ongoing accuracy of their RAS. Ideally, they should be collecting data on a routine basis to compare the indicative and actual value of a personal budget at the client level. Only three local authorities of those contacted were doing so. A related question is how accurately any of the RASs described here modelled the initial dataset, and how much 'noise' from individual differences was 'smoothed' out.

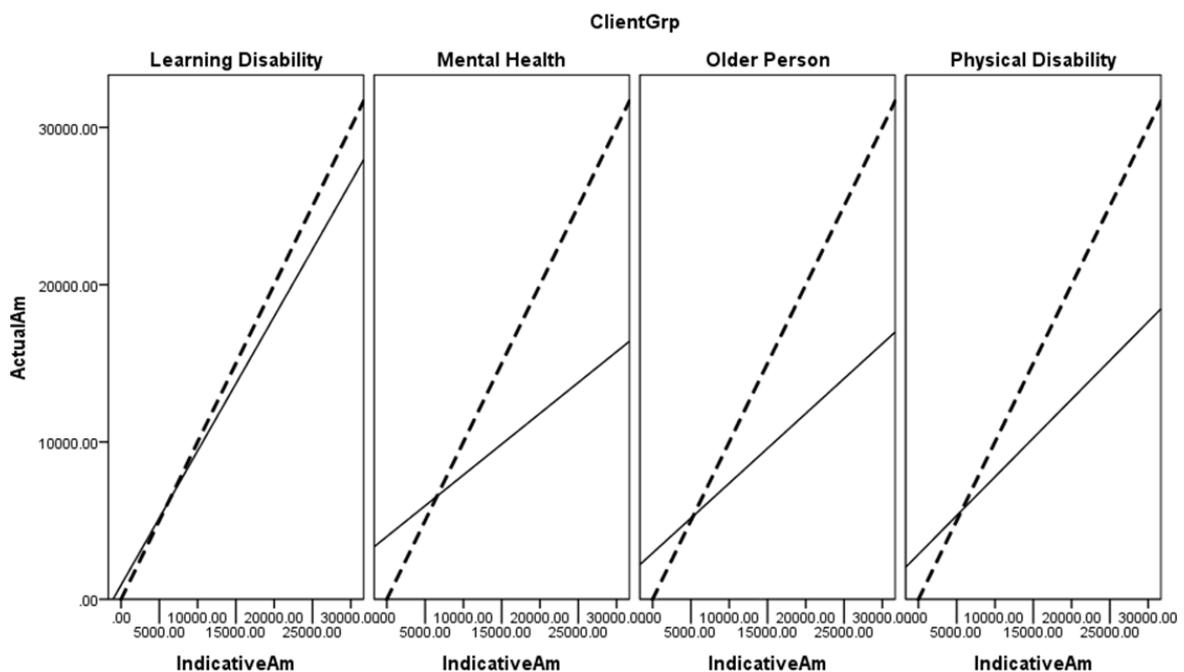
One authority said it had conducted an analysis in April-October 2009 which indicated 'that the RAS meets the needs of more than 80% of customers.' Importantly, this is not quite the same as saying the RAS is accurate in 80% of cases; it means that the RAS *undervalues* a personal budget in 20% of cases, but where the RAS overvalues a personal budget it could 'meet needs' and yet not represent the value of the actual personal budget. One authority responded to this question with striking honesty:

It cannot be said with any confidence that there's a useful correlation between our RAS indicative results and the validated budgets, however, there's sufficient evidence to demonstrate that people at all levels haven't been following the processes and procedures that would allow this. In these circumstances it's impossible to prove or disprove that the RAS works as designed, the lack of reliable statistics will not

allow a credible statement for or against... There's an unacceptable level of data entry errors at each process step, particularly at the validation stage which also skews the evidence/.. Where the correct process has been followed it appears the RAS gives the expected results in 35% of cases where the tolerance is +/- 20% of the RAS amount, or in 58% of cases, if we exclude packages that are greater than -20% of the RAS amount.

Regression analysis: comparing indicative and actual values of personal budgets

For the three local authorities who supplied detailed client-level data, a linear regression analysis enabled us to examine the degree to which the indicative amount specified by the RAS predicted the actual value of a personal budget across different groups (Series & Clements, 2012). The analysis showed that the actual value of personal budgets were a poor fit for the indicative amounts specified by the RAS. In Figure 3, below, the solid grey line shows the line which best describes the relationship between indicative and actual personal budgets for different client groups in local authority 1 (above). The black dashed line shows the relationship that would be expected if the actual value of personal budgets reflected the amount indicated by the RAS. It is clear from this chart that – particularly towards the higher value support packages – people do not typically get what the RAS suggests they should.



Statisticians calculate a measure called the 'coefficient of determination', or R^2 for short, of how well one variable predicts another. In this context, it measures how accurately RAS indicative amounts predict the value of a personal budget. In the technical paper we go into greater detail, but we found that the RAS was generally a poor predictor for the actual value of a personal budget, although this varied between authorities and client groups. Of those authorities able to supply us with client level data, the authority with the highest overall R^2 value was local authority 2 (0.62), followed by local authority 3 (0.52) and then local authority 1 (0.19). However, even within each authority the R^2 values for different client groups varied considerably; for example in local authority 2 the R^2 value for learning disability was 0.80, whereas for mental health it was 0.23. This confirms the finding, described above, that the RAS indicative amounts are more likely to be deviated from for some groups than others.

The evidence suggests therefore, that some authorities are not taking appropriate steps to ensure the ongoing validity of their RAS, or indeed to assess the extent to which their personal budgets deviate from the indicative amounts calculated by their RAS. Although some authorities have assessed accuracy in sampled data, most were unable to share any data which could be used to produce a detailed analysis, facilitating comparisons of the RASs accuracy for different client groups. Of those authorities who were able to share data at this level of detail a mixed picture emerges. In one authority people from all groups tended to get personal budgets with a higher value than the indicative amount specified by the RAS. In the other two authorities, however, people generally got a personal budget with a lower value than the indicative amount specified by the RAS. Careful between-group comparison indicates that some client groups are likely to have personal budgets with values closer to the indicative amount specified by the RAS than others. Other groups experienced substantial variation in the size of personal budgets which could not be explained by the RAS.

Discussion: Fair and transparent entitlements?

In summary, our research findings suggest that:

1. Obtaining information about the inner workings of RASs can be challenging, with some local authorities even refusing to disclose details following requests under the FOIA;

2. Once obtained, information about the inner workings of RASs can be extremely complex, reflecting their increasing degree of sophistication, but making it hard to extract any clear criteria for resource allocation in order to understand underpinning assumptions;
3. Many local authorities are no longer using points-based RASs and report problems with accuracy and complexity – some have resorted to ‘ready reckoners’ instead;
4. RASs differ in how they take into account informal sources of support, with a small number of local authorities appearing not to take this into account at all or doing so in ways which could penalise individuals living with informal carers;
5. There is uncertainty, from an equalities perspective, as to whether RASs should allocate resources differently according to an individuals’ user group, with some local authorities believing that use of a universal RAS is mandated by ‘equalities legislation’ and others taking into account local variations in the unit costs of care for different groups;
6. Even those local authorities using universal RASs may apply it differently for different user groups, with some groups receiving personal budgets of much lower value than that indicated by the RAS;
7. Overall RASs do not accurately predict the value of personal budgets as applied in contemporary local authority social care delivery.

Drawing these findings together, we can now consider some of the claims surrounding the use of RASs. We found that the local authorities we contacted about their RASs were not satisfying the aspiration that ‘The rules of the RAS must be simple and open and understood by local people.’ No local authority contacted by the authors appeared geared up to share the inner workings of their RASs with service users, or to be able to explain in clear and simple terms their underpinning assumptions. Although some authorities were very forthcoming with information and their perspectives on RASs, others were resistant or extremely sluggish in response to our requests for information. This is problematic from a policy perspective, but it is also problematic from a legal perspective as it makes it very difficult for service users to challenge indicative amounts arrived at using a RAS. It makes local scrutiny of the underpinning assumptions of the RAS extremely challenging.

Entitlements?

One of the most striking findings in our research is that the so-called 'entitlements' generated by the RAS often bore little resemblance to the actual value of users' personal budgets. This suggests that there are significant problems with the accuracy of these RASs, but this is not merely a problem of 'noise' - RASs appeared to *systematically* over- or under-estimate the value of personal budgets in different local authority areas. Given that many RASs were designed to deliberately conserve resources through under-estimating the cost of meeting eligible needs, it is unsurprising that in some local authorities personal budgets on average are slightly higher than indicative amounts generated by the RAS. However, what was surprising was that in two of the three local authorities studied in close detail, individual service users had personal budgets which were on average *less* - sometimes markedly less - than the indicative amount calculated by the RAS. This suggests to us that local authorities are not even nominally treating indicative amounts calculated by the RAS as 'entitlements' for service users, and we suggest it is very likely that service users in these areas are not routinely told that a RAS indicated that their budget should be of higher value than it actually is.

Earlier we described how in a series of rulings the courts had emphasized that local authorities must be prepared to exercise their discretion and increase the value of a personal budget from the RAS derived value in order to meet eligible needs. Our research findings suggest, however, that in many areas local authorities are happily exercising this discretion to *reduce* the value of a personal budget where it is felt that eligible needs can be met with fewer resources than calculated by the RAS. It is an interesting question whether local authorities who require increases in budgetary allocations to be cleared by funding panels make the same requirements where budgetary allocations fall below that determined by the RAS. The legal reality is that even if service users were told of the indicative value of their personal budget, they would have no legal 'right' to a budget of that value. RASs are most certainly not generating 'entitlements' in any recognizable sense of the word.

Equalities

How RASs relate to equalities legislation is a challenging matter, and will almost certainly fall to be determined by a court eventually. The EHRC have argued that once provisions of the Equality Act 2010 banning age discrimination in services and public functions come into force, 'age-related discrepancies in financial support for

home care will become unlawful under the Equality Act – unless they can be ‘objectively justified’. They go on to endorse one London Borough who ‘has chosen to adopt the same... Resource Allocation System for adults of all ages’ (European Convention on Human Rights, 2011. p.71) Yet our findings indicate that even where local authorities adopt a universal RAS it is by no means guaranteed that it is applied in a universally consistent fashion. We found evidence that in some authorities where a universal RAS was being used discrepancies between indicative amounts and the actual value of a personal budget were greater for older people in comparison with other groups. Several local authorities indicated that whilst a universal RAS would be desirable for ‘equalities’ reasons, they were concerned that some user groups would be penalized where their unit care costs were higher. Unpicking the relationship between local authorities resource allocation, market forces, and cultural expectations about care quality for different user groups is a thorny matter, and a Universal RAS offers no shortcuts or simple solutions. We also found signs that in one local authority service users living in the family home might be financially penalized on the assumption – untested within the RAS needs questionnaire – that informal support was available to meet a significant proportion of their needs.

What purpose do RASs serve?

In light of findings that personal budgets often do not resemble the indicative amount calculated by the RAS, it seems reasonable to ask what purpose RASs are serving in the care assessment and support planning process. They are said in case law and policy literature to provide a ‘starting point’ from which care planning can proceed. Case law has found that local authorities must take steps to explain the *reasons* for the value of a personal budget to service users, and these reasons must relate to the way in which the support plan meets eligible needs – not the inner workings of the RAS. Given that local authorities are still required to produce carefully costed support plans which they are satisfied can meet assessed eligible needs, the RAS appears to be a cog spinning inside a machine with which it does not engage. It neither reduces the labour of social care assessment, nor provides service users with enforceable ‘entitlements’. However, the RAS is not merely a cog which serves no purpose at all, for in many cases it will serve as a decoy, a pseudo-explanation of how the value of a personal budget has been determined. But the RAS itself has not ‘determined’ anything; the ‘rigidity’ of RAS allocations is entirely at the whim of local authorities, who can choose to disregard calculations that

suggest a person might be entitled to *more* resources. Explanations of the value of a personal budget thus stand in need of a two-part explanation: the indicative amount calculated by the RAS, and an explanation of the local authority's discretionary decision to stick with that value, raise or lower it. If the RAS is to serve any explanatory purpose at all, such explanations should be consistent across all cases, including those where a person receives a personal budget of an equal or lower value than the RAS indicative amount. If RASs do have any validity or equalities value at all, then service users offered less than the RAS indicative amount need an explanation of how authorities have assured themselves that their needs can be met within this budget and they are not being treated inequitably. Wherever the RAS is offered as a standalone explanation of why a personal budget is set at a particular value, it is in danger of achieving the very opposite of what its proponents hoped – obfuscating the reasons behind discretionary care planning and support decisions made by local authorities, making it harder for service users to challenge those decisions.

The legal reality is that community care law requires local authorities to be able to exercise their discretion to increase the value of personal budgets to ensure eligible needs are met. The reality we have uncovered is that they are also exercising their discretion to decrease the value of personal budgets where they feel eligible needs can be met more cost effectively. We are back to professional discretion; in fact we never left it. Even the most ardent believers in RASs recognize that:

Whichever Resource Allocation System is used, local authorities will need a process for managing exceptions when individual allocations are not seen to be fair and reasonable by either the local authority or the person who needs support (Duffy & Waters, 2007. p.20).

Yet the moment you introduce a notion of fairness which stands outside the RAS, which can trump the RASs budgetary allocations, you introduce a system where RAS values have to be checked, and can be overridden in a discretionary fashion. In short, you re-introduce subjective judgment, with all its subjective beliefs and valuations, cultural assumptions, prejudices and human foibles – precisely what RASs tried to get us away from.

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