

Direct Payments: How did we ever end up here?

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Direct Payments are not a good in themselves:
they are a 'means to an end and the end is
Independent Living'.

John Evans (2000) *Compromise and Corruption: Moving Ahead on the Road to
Citizenship* International Conference on "Self-Determination & Individualised
Funding". Seattle. 19-31 July 2000.

My talk today

Part 1
Technical stuff

Part 2
The wider context

Rhydian Social Welfare Law in Wales

Statutory basis

Social Services and Well-being (Wales) Act 2014

- ss50 – 53 ~ entitlement, calculation & admin.

Detail in:

- The Care and Support (Direct Payments) (Wales) Regulations 2015.
- Part 4 Code of Practice (Meeting Needs)

Statutory basis

In general terms the 2014 Act merely repealed and then re-enacted the previous social care law

Two material changes:

- Local authority in-house services
- Residential care

Cases

Some recent English local government ombudsman cases and the NICE Guidance

Choice

- maladministration not to directly commission care but to put individuals in a position where they feel that they have to have a direct payment.

Complaint No. 16 019 120 Lincolnshire CC 8 August 2017.

Amount

- Where a person provides a breakdown of the hours / costs required to meet their need, the Council must explain why it does not accept this and/or how it has satisfied itself the money it proposes is enough.
- It not acceptable for the council to say, simply that the person has flexibility to use the direct payments as they want.

Complaint No. 16 016 273 Derbyshire CC 19 March 2018.

Reductions

- A reduction because the council considered that some of her eligible needs should be paid from her DLA.
- 'there is nothing in the legislation which allows the Council to require a person to use their benefits this way'.

Complaint No. 16 012 715 Haringey LBC 12 June 2017

Suitable Persons

- Where DP being paid to a suitable person and s/he does not wish to employ a personal assistant, then the DP should be sufficient to enable an agency to be paid to provide the necessary care.

Complaint no 13 006 400 Cornwall Council, 26 February 2015.

Contingency plans

- DP care and support plans should include effective contingency plans and the fact that these may be difficult to predetermine in certain cases does not mean that they are absolved from this responsibility

Complaint No. 14 015 230 Kent CC 20/10.2016.

Less for more

Disabled person assessed as needing 3.5 hours a week. Due to problems with the provider specified by the council the disabled person used the money to pay a provider who charged more but could only afford 2 hours a week.

Complaint No. 16 019 020 Liverpool City Council 19th July 2017

Flexibility

- DPs plans must be flexible and able to 'accommodate changes to a person's priorities, needs and preferences'
- Councils should consider 'agreeing a rolling 3-monthly budget so that people can use their money differently each week'

National Institute for Health and Care Excellence *People's experience in adult social care services*; NICE guideline [NG86] (2018).

Flexibility

- Pre-payment cards

Support / brokerage

NICE guidance

Councils to fund local peer support services which would include providing

•space to hold meetings with people who use services'

•help with applying for grants for funding

•Employment support advice should be provided by user-led CILS and 'other peer-support arrangements'.

NICE Guidance para 1.3.25

Profound problems

- WILG
 - Continuing NHS Healthcare
- See Rhydian Social Welfare Law in Wales

Differing agendas

Disabled people's movement

Neoliberal governments

- Choice
- Independence
- Privatisation
- Commodification
- Responsibilisation (the transfer of risk)
- Managerialism (bucket loads of control and a new 'outcomes theology').

More for less v. less for more

DPs seen as cheaper

- Driving down costs (privatisation)
- Small employer exemptions
- Social capital / asset based management

M Daly and S Westwood Asset-based approaches, older people and social care Ageing & Society (2018) 38(6) 1087-1099

Scandalous rates

The erosion of DP rates
Cerebra survey / Leeds Research

“Up until 31 March 2017 the standard hourly rate was £10.57. Since 1 April 2017, the hourly rate for new cases is £8.71. For existing cases the rate remained at £10.57 per hour but from 1 April 2017 this will reduce to £9.57 per hour”.

One local authority response to a FoI request.

Scandalous rates

Local authority responses

- average gross payment £10.57 gross (n=49)

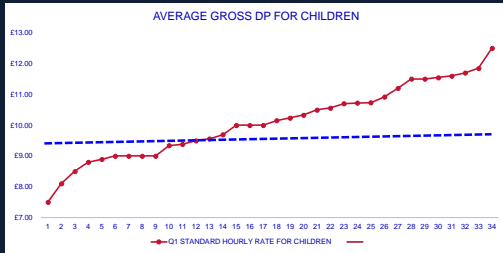
Family responses

- average gross payment £8.90 (n=91)

Expert advice

- The minimum legal gross hourly rate will generally be £9.63.
- Itself ‘appalling low ... hardly be any contingency and have little success in attracting applicants’

Scandalous rates



Scandalous rates

Why doesn't the WG state what the minimum rate should be?

Why doesn't the WG state that rates should be increased where skilled support required?

Transfer of risk / a private matter?

Ultimate example

Royal Mencap Society v. Tomlinson-Blake

[2018] EWCA Civ 1641 13th July 2018

- the National Minimum Wage (NMW) does not in general apply to sleep-in shifts
- denying paid carers 6 years back pay – estimated at £400m
- “We did not want to bring this case”
- DP & NGOs doing the states’ dirty business’

How did we end up here?

It does not have to end this way

Direct payments are a radical idea perverted by the neoliberal agenda

We need to keep the idealism of John Evans and his colleagues alight

To quite another Swansea lad:

We must not go gentle ... We must rage rage against the dying of the light.
