

Royal College of Psychiatrists

Consultation Response



DATE: 14th January 2010

RESPONSE OF: THE ROYAL COLLEGE OF PSYCHIATRISTS

RESPONSE TO: Direct Payments for healthcare

The Royal College of Psychiatrists is the leading medical authority on mental health in the United Kingdom and is the professional and educational organisation for doctors specialising in psychiatry.

We are pleased to respond to this consultation. This consultation was prepared by the following faculties at the College:

- General and Community
- Learning Disability
- Old Age
- Rehabilitation and Social

The Consultation was approved by: Dr Ola Junaid Associate-Registrar

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Direct Payments for Healthcare

1. Introduction

1.1 The College welcomes the Government's proposals for piloting direct payments for healthcare. On the whole the consultation document is reassuring and easy to support. There is much to admire about the proposals for direct payments, particularly the guiding principle of a flexible approach that begins with individual choice and empowerment. It seems like a potential solution to the rigidity of the current system and gives the opportunity to be innovative. Most of us, if our health required it, would like to have the opportunity to consider direct payments.

1.2 The College is pleased that the direct payments for health care scheme is very flexible in giving people with health needs the ability to personalise their care in a way not possible currently: money does not have to be spent on traditional NHS services; PCT's will be taking the lead but GP's can also take a leading role; nobody has to administer their own scheme if they would rather not; lack of capacity is not a problem for entering the scheme; CRB checks may be required in some circumstances to protect people who are vulnerable but this is discretionary and may be waived, for instance, when family members agree to take on the responsibility. The scheme must also be faithful to the principle of the NHS and be free at the point of delivery.

1.3 The authors of direct payments consultation are particularly interested in which proposals should be regulation and which should be guidance as this is likely to define the scope of the scheme. Every PCT will be responsible for the local interpretation of the level of need that will be met by payments. PCTs will have to provide reasons for not meeting needs and presumably will have to come to a decision about eligibility, perhaps along the lines of Fair Access to Care Services (FACS) Guidance. The authors of the document have come up with a radical longer term goal which is that everyone who is eligible for direct payments by reason of their condition should have a right to access them.

1.4 The College is pleased to see that the Department has addressed all the main concerns the College expressed in our response to the *Putting People First: Transforming Adult Social Care Direct Payments*¹ including: the central importance of an agreed Care Plan; the need for regular reviews; the importance of a statutory duty on commissioners to provide support and advice on all aspects of direct payments to patients, nominees, and representatives; the principle of choice (to participate or not); and finally the need for accountability and regular audit.

1.5 However, the College would like to raise some specific concerns with the current consultation document on proposals for piloting direct payments for health care. These are outlined below.

2. Assessment of Health Needs

2.1 The actual process of assessing and agreeing the health needs that may be suitable for health direct payments is not described in any detail in the document. Much more clarity is needed about the types of health care which could be obtained by direct payments as opposed to mainstream NHS care. This is especially the case in people with learning disability who have long standing health needs and where there are several providers available to meet need.

2.2 It is also difficult to know how these health needs will be ascertained or agreed and by whom. The service that a direct payment is spent on has to be agreed in a care plan as meeting the patient's health needs. It may be difficult to know how NHS practitioners or PCTs will understand which non-NHS services will meet the person's health needs. For example, should hypnotherapy be indicated for psychiatric symptoms? - A question that many professionals would find difficult to advise upon. What about acupuncture? Who could advise on whether it is cost effective in psychosis, or indeed for intervention into any condition?

¹ Consultation response from Royal College of Psychiatrists to the Department of Health November 2008

2.3 The Rehabilitation and Social Psychiatry Faculty expressed some concerns about clients of Rehabilitation services being considered unlikely to be “capable of managing a direct payment” even with support. Many clients of Rehabilitation Services may not agree with their care coordinator on a care plan or to stick to it, which could make it difficult to purchase appropriate treatment.

2.4 In our response to *Putting People First: Transforming Adult Social Care Direct Payments*, the College raised the issues of procedures in incapacity, the position of patients subject to the Mental Health Act (MHA) and the problem of variable capacity. Although this consultation document does acknowledge the issues around fluctuating capacity, the position of those subject to the MHA is not sufficiently addressed.

2.5 For example, should detention under the MHA automatically trigger the appointment of a nominee or representative? What are the guidelines which should apply to detained patients receiving direct payments? Are all applicants going to be presumed to have capacity (presumably yes), or, are all going to have to undergo a capacity assessment (presumably no). How will those requiring capacity assessments (which they may or may not satisfy) be identified? There is a safeguard contained in the policy requirement for an agreed care plan.

2.6 A statement of mental capacity and/or the advisability of carrying out a capacity assessment could be included as a requirement of that process. Targeting groups raises potential problems of stigma. Although mental capacity review is a mandatory part of the in-patient assessment process, further consideration of how these issues could be better acknowledged in the policy should be made.

2.7 There is also a potential problem over guidance being used to “encourage” a PCT to publish which services will and will not be available through direct payments, although there is obviously the possibility of exceptions to this position based on an individual’s need.

2.8 Some members suggested that certain aspect of the proposals should be incorporated more in the regulations, especially in the early stages of piloting direct payments for healthcare. This would be in order to reduce any uncertainty for health care teams becoming both accustomed to considering whether the use of direct payments would be appropriate for a particular case under their care and also just exactly what services would normally be available under this remit?

2.9 The College would like greater clarification around whether the following proposal will be considered a ‘right’ or an aspiration.

‘It should be up to the PCTs to calculate the amount of money in a direct payment. The amount allocated should meet the cost of all parts of the agreed care plan which are being met by the direct payment section’

3. A Joined Up Approach

3.1 The distinction between what is a health and what is a social care need will potentially be a very grey area and could easily cause disagreements between the PCT and the Local Authority. The definition of what is a health and what is a social care need will therefore have to be articulated clearly in the guidance.

3.2 The College believes that there is an inappropriate separation of LA responsibility for ‘Social Care’ direct payments and PCT responsible for Health direct payments. Whilst there is some acknowledgement within the document on the ‘importance of combining health and social care planning (p26)’ there

are few references to integrated care. A joined-up approach is important and really unavoidable in mental health and learning disability work.

3.3 There should be an integrated approach at both commissioner level and on the ground. A joint LA/PCT Social Care/Health Care approach is needed certainly in mental health and learning disability practice and probably in health care generally.

4. Implementation

4.1 The descriptions of the proposed regulations and guidance within this consultation paper are quite extensive. The format describes clearly the demarcation between what are proposed regulations and guidance. However, there is an all too common matter within this paper of any proposed guidance on the one hand allowing flexibility and attention to specific local considerations, but this then also risking a lack of clarity to services trying to become au fait with new legislation and its financial and administrative impact for those services at a local level.

4.2 The proposed regulations contain a high degree of detail, and are likely to be difficult to enforce especially at the individual level. Whilst guidance has to be an inevitable component to such proposed legislation, to some degree the greater the level of regulation which can be described in such circumstances, might reduce the extent (and dilemmas) of local policy development needed in order to implement such legislation.

4.3 There is a risk of a substantial increase in bureaucracy to manage this process which would impact on individuals needing to use direct payment. The scheme places a considerable administrative burden on PCT's which will add to the cost. For instance, how many PCTs will find the time to examine the services that holders of direct payments wish to purchase, are compliant with NICE guidelines.

4.4 PCTs will also be responsible for providing detailed advice and support for service users and carers, particularly when money is being spent on employing people to work directly with service users. This is likely to generate complex questions about employment law, pensions, holiday entitlements and a host of other issues. Another responsibility for PCT's will be a minimum of one annual review of each individual who benefits from the scheme.

4.5 The proposals may be burdensome to patients/representatives/nominees and perhaps this is part of the price of ensuring accountability and of providing safeguards. However the College is concerned about how costly the wider introduction of direct payments will be and what time costs will emerge for clinicians and commissioners.

4.6 There are considerable concerns about the impact of the cost direct payments will have on existing services. The real test will be how individual PCTs implement direct payments in the current and future financial climate. It will need careful organisation and is likely to be expensive to administer. The College would encourage any results of financial impact to be shared and available for comment. This could be addressed via the pilot projects.

4.7 As for funding of individual packages, it seems likely that PCTs will wish Mental Health Trusts to continue to fund "all aspects of 24 hour care" and that funding of a specialised package should come from the trust, or if paid by the PCT be reimbursed by the trust which may reduce the level of services.

5. Support and Advice

5.1 The College would like to see greater detail around the notion of support and advice and does not believe that a telephone line will be sufficient to meet the needs of those receiving direct payments. The direct payments process may be complicated and daunting for some people, and requires facilitation and hands on support from a named Case Manager (who could be either a

health or social services employee or better still a member of the Care Management service).

5.2 Families should also benefit from this support as they should not be expected to find their way through the maze of requirements proposed without a helping hand and Care Management support should be ongoing with shared accountability for a patient's/users welfare.

5.3 There needs to be limits to the ambition for choice and self-determination. While the emphasis on choice and self-care/management is welcome, the need to support and protect should be core values within this proposal.

6. Conclusion

6.1 The pilots will hopefully give real life examples of how direct payments can be used in the mental health context which may help us to understand their applicability for those with the most complex problems better. A process of education and training of mental health staff in their use will be vital for their success.

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