



'A NEED IS ONLY A NEED IF THERE IS THE RESOURCE TO MEET IT'

Despite the focus on person-centred practice, people still get assessed for eligibility to services based on available resources rather than their 'lived experience' of need. This, say **Colin Slasberg** and **Professor Peter Beresford**, reduces social workers to 'street level bureaucrats' and encourages 'gaming' of the system to maximise what people get. Ahead of a green paper on adult social care, they argue reconfiguring services to meet 'absolute need' rather than 'eligible need' is the right thing to do and makes financial sense too

Attention is shifting to the importance of good practice in the long sought transformation of social care to make it both personalised and financially sustainable. This is an important step in the right direction. However, present proposals will end in yet another false dawn if the original cause of the problem – which has ensured the defeat of all previous attempts at transformation – is not first identified and removed.

The national narrative has pointed the finger at the controlling behaviour of practitioners or

the perfidiousness of councils as the culprits. The real problem is the eligibility process. Councils are under an imperative to spend within pre-determined budgets. With concern that need will outstrip resources the question of how much need can be afforded has to be addressed. Eligibility policies do so by creating a circular definition of 'need'. A 'need' is only a need if there is the resource to meet it. Budget holders develop categories of needs they believe exist on the scale their budgets can sustain. The practitioner role is to test each person against the categories.

It has long been recognised that eligibility is delivered through 'street level bureaucracies'

in which practitioners have tended to be seen as the 'bureaucrats'. The pattern of spending, however, points to budget holders, not practitioners, being the bureaucrats. There are as many eligibility policies as there are budget holders around the country. The formal eligibility policies serve only to provide the language with which to dress decisions up, thus creating a semblance of consistency and fairness.

It is a process that denies the uniqueness of the individual and is a world away from what is sometimes called the 'lived

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feature

experience' of need. Social care needs arise from the complex interplay of a host of factors, such as the nature and severity of the person's impairment or condition, how long they have lived with it, the personal resources and attitudes they bring to it, the resources and attitudes of those around them, the community they live in and their physical living environment. These factors are highly variable and can interact in an infinite variety of ways.

Another way to describe the difference between eligible need and the lived experience of need is that the former is relative to resources while the latter is absolute. As Lord Lloyd in the famous *Gloucestershire v Barry* High Court judgement said: "Every child needs a new pair of shoes from time to time. The need is not the less because his parents cannot afford them."

A system that fails to build from the absolute view of the uniqueness of need is inherently depersonalised.

A second serious consequence of eligibility-based working is waste of unknown, potentially very large, sums of money. This is for two reasons. Firstly it induces dependency. The all or nothing nature of eligibility policies creates a focus on how bad things need to be in order to attract resources. This incites practitioners to see people – or have to present them – as less able than they are, less in control of their lives than they could be. Secondly, as eligibility criteria are wont to do in all fields, they encourage gaming behaviour. Practitioners and service users engage in ploys to secure as much resource as they can, regardless of actual need.

We have no way of knowing how much money is required to deliver a good social care service. The circular definition of need means councils have no information about unmet need. But it cannot be ruled out that if all the waste were removed there may already be enough money in the system to absorb all needs currently not met.

Can affordability be managed differently?

The answer is unequivocally yes. Each person's lived experience of their need to have an appropriate level of wellbeing can be assessed and costed. Good practice will minimise the burden to the state through cost effectiveness. It will build on the appropriate and reasonable use of the person's own resources and of those around them and it will find the most cost effective way of meeting the remaining needs. However, it cannot be assumed this will deliver affordability. Case by

case decisions about which needs can be afforded and which cannot will be required to ensure spend matches budget.

This is a person-centred resource allocation process to replace eligibility policies.

There will be six consequences of this:

- 1 The person will become an active participant as an authentic expert in their own needs. This is inevitable when the 'lived experience' of need is the currency rather than 'eligible' needs where expertise lies with the practitioner. Person-centred care will move from lip service to reality.
- 2 The person's own view of their needs will be respected, even if not always agreed with. People who want to remain at home but whose care is too costly for the council will no longer have to endure the patronising insult of being told that residential care will meet all their needs and everything else they seek from life is just a mere 'wish' to be disregarded.
- 3 Practitioners will be freed from compromising their practice and their relationship with service users. They will no longer have to do the job of the budget holder for them. Budget holders will have to work as budget holders usually do, making spending decisions against their budgets.
- 4 The available resource will be put to significantly better use. Personal outcomes will replace deficits as the basis for allocating resources.
- 5 Prevention will move from the margins to the mainstream. Eligibility based working has forced preventive needs to be addressed through preventive services. Yet preventive needs are as unique to the person as needs for continuing support. It is an irony that while there is consensus about the undesirability of standardised, service-led practice, this is exactly what has been created for the area of intervention seen as the most progressive.
- 6 The full cost of meeting needs to enable all to have an appropriate level of wellbeing will be exposed. This will change the politics of funding of social care.

Is such a change legally possible?

There is a belief that all assessed needs must be met by law. But this is not the case. It is a policy choice. The Care Act now makes the law abundantly clear. Assessed needs that require public funding fall into two groups: those that there is a duty to meet and those that there is a power to meet. Those that are a duty must be met whatever the cost. Those that are a power do not. A person-centred resource allocation policy would require all

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needs that there is a duty to meet to form a minimum guarantee, or safety net. All other needs would come under a power. The threshold for the safety net must be robust, transparent and not rely on categories of need. This can be achieved by mapping all individual needs against the universal human needs. The minimum guarantee could be that all individual needs that risk survival or safety will be met. Needs that risk quality of life – self worth and self fulfilment, the needs that promote wellbeing and make life worth living – would come under a power.

Practice

Currently a good deal of hope is being invested in 'strengths based' practice. However, 'strengths based' practice within an eligibility based system is a toxic mix. A person's assets are seen as treasures hidden by artful service users. There may be a measure of credibility in this view given the gaming behaviour mentioned above. A local strategy built on 'strengths based practice' may embolden councils in challenging such behaviour. But in the main personal strengths are hidden by issues such as fears, lack of confidence or dysfunctional relationships. Unravelling them calls for practitioners to tread lightly and skilfully. Strengths based practice in the context of eligibility policies is social work with gum boots.

Social work academics look to the exercise of professional discretion within the street level bureaucracies to promote the practice agenda. However, this is an inherently limiting model. Practitioners are merely pushing against managerially imposed boundaries. Quite apart from very limited evidence of them succeeding, it will be better to free them altogether from such artificial boundaries.

What would it take for change to happen? The solution is simple, notwithstanding it would require a thorough overhaul of practice, budgetary, financial and IT systems. However, there are powerful interests that will resist it.

Political leaders

The circular definition of need means that political leaders can declare there is always

enough money in the system. Paul Burstow, as Minister for Care in 2012, denied there was a funding gap when challenged by the Health Select Committee, saying all 'eligible' needs were met.

Eligibility policies also enable leaders to say that resources are being allocated fairly. The evidence that this is not the case is an inconvenient truth kept well hidden.

Political leaders cannot have their cake and eat it too. It is not possible to have the financial and moral benefits of a personalised system, and at the same time one that denies any tension between needs and resources.

Service user representative/self-advocacy groups/organisations

The idea of the legal duty being a safety net only, with all quality of life needs subject to a power, will raise anxiety amongst service user organisations. They believe councils do only the minimum they have to. Will councils commit only to the minimum guarantee so as to make deep cuts?

There are critical counter balances. Firstly, it would be a flagrant breach of the Care Act and therefore unlawful. Merely ensuring people survive and are safe will come nowhere near delivering wellbeing as defined and required by the Act as a duty in itself.

Secondly, all needs for wellbeing will have been identified in order to separate out those that fall into the safety net. The information thus generated about unmet need will change the political dynamic.

Service user organisations will need to be active in holding their councils to account. They will need to ensure that assessments deliver the Care Act requirement to address all areas of wellbeing, not just 'eligibility'. They will also need to ensure that information about unmet need is aggregated and acted upon.

They should also reflect on the worthlessness of the right to have all assessed needs met when it is the council that decides what a 'need' is in the first place. Courts give them virtually no protection. Eligibility policies place councils in an overwhelmingly powerful position.

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The workforce

The value base of a person-centred approach to resource allocation resonates strongly with social work's code of ethics. Some social workers will leap at the opportunity. However, eligibility based working is etched deeply into the psyche of all who work in the system. Practitioners – and managers – have become conditioned and have developed the requisite skill base.

Sector leaders

Sector leaders seem to be holding to the view that the personal budget strategy, based on up-front allocations, will succeed in transforming social care. We have set out elsewhere the evidence of this being a false narrative (*Disability Journal*, Volume 31). More recently, this was underlined in the High Court case of Luke Davey who unsuccessfully challenged a reduction of funding to his care package by Oxfordshire County Council.

A lengthy judgement about resource allocation makes no mention of an up-front allocation. The phrase 'personal budget' is used, but this means only the financial value of the support plan. This is the exact definition 'personal budget' has in the Care Act. It is stripped of its original strategic intentions.

Providers

The business models of providers create a 'task and volume' operation that delivers the standardised, 'eligible' needs that councils commission them to meet. Person-centred support planning will replace 'eligible' needs with individualised outcomes. Current business models will become unfit for purpose, requiring significant change. Those motivated by the human dimension will welcome the challenge. But it cannot be assumed this will be all, or even the majority.

The legal profession

Under eligibility policies, the level of needs met is ultimately a judicial matter. Councils invariably win disputes about what is 'need', such as in the Oxfordshire case. Those who advocate for councils may see no reason for change.

Those who advocate for service users should reflect whether the slim chance of success in individual cases is worth giving tacit support to a system that so palpably works against the interests of people who need support and the overall health of the service.

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Central government

Recent public debates about the funding crisis have focused on two issues. The first is reductions from previous funding levels. However, this has no regard for how correct was the original level, thus undermining how people should weigh the importance of any reductions. The second is the impact of social care on hospital capacity. This creates a very narrow public understanding of social care. When the Chancellor recently announced the £2 billion increase in resources it was made clear that the impact on the NHS was his concern.

In summary...

The recent Luke Davey High Court judgement illustrates the perpetuation of eligibility policies and their damaging effects post Care Act. However, replacing this with a person-centred approach will not require change to the law, but in how the Government applies it. This would be through change to relevant sections of the Guidance and the Eligibility Regulations.

A system that is both personalised and financially sustainable can only be built from the 'absolute', lived experience view of need. The resource led, 'relative', view of need must become a thing of the past, along with the grip of the street level bureaucracies that delivers it.

The system will have to face up to the possibility of not being able to meet all needs that require public funds at any point in time. That requires the legal duty to meet need is recognised to be restricted to a safety net, with an invigorated political process determining how much need above the safety net is met.

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