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Personal budgets in adult social care:
The fact and the fiction of the Care Act 2014

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ABSTRACT

Personal budgets have been heavily promoted in government policy in England as a means of increasing the personalisation of public services, particularly in the field of adult social care. The Care Act 2014 for the first time creates a statutory requirement for personal budgets to be allocated to all individuals using state funded social care. This article examines how a particular rhetoric has developed in social care policy around personal budgets, which draws freely on the language of the disabled people's movement and suggests that grassroots ideas are the central purpose for the introduction of personal budgets into policy. It considers whether the promises made in policy are embedded in the 2014 Act and finds that there is a mismatch between claims in social care policy on the one hand and the model of personal budgets created by the 2014 Act on the other. It concludes that the policy rhetoric around personal budgets directly appropriates the language and ideas of the disabled people's movement while promoting a wholly distinct agenda of public sector marketisation.

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Introduction

This article examines the rhetoric of personal budgets in social care policy and their construction in the Care Act 2014. The purpose of the analysis is to understand how personal budgets were 'sold' to those with an interest in social care policy and provision and whether the legal provisions that exist are adequate to uphold these policy promises. It brings together a study of the language of key social care policy papers from 2005 onwards and a detailed investigation of the content of the provisions of the 2014 Act and its associated guidance, to explore whether and how far the policy and law are connected and the implications of this connection. Given the importance of personal budgets to the English personalisation agenda, which extends beyond social care, the findings of the analysis have a relevance in other public sector fields in which personal budgets currently exist or are anticipated.

Personal budgets are notional sums of money allocated to individuals to 'spend' on support and services. The individual can receive the money in cash, in what is called a 'direct payment' or can ask the local authority or a third party to commission services on their behalf, up to the value of the budget. Originally entering the public sector in the field of social care, personal budgets have now been extended into other areas of English public sector delivery. They are increasingly available and promoted in certain aspects of health provision (NHS England, n.d. (a)) and can be used to obtain support to meet special educational needs (Department for Education [DEd] and Department of Health [DH], 2015). They have been held by their supporters to have the potential to transform social policy in fields as diverse as mental health, unemployment, young people not in education, employment or training (NEETs) and 'families at risk' (Leadbeater, Bartlett & Gallagher, 2008). In the field of adult social care, the Care Act 2014 both enshrines personal budgets in legislation for the first time and renders them obligatory for all people receiving support under the Act (section 25(1)(e)).

The idea of personal budgets was developed and strongly influenced by third sector organisations working in the field of disability – particularly the learning disability organisation In Control, which initially pioneered the idea and developed a model of personal budgets connected to a form of ‘self-directed support’ (In Control 2014). In Control borrowed from ideas that originated in the disabled people’s movement – a grassroots movement of activists who were themselves disabled – although it is not itself a disabled people’s or ‘user-led’ organisation. In particular, it drew inspiration from the idea of direct payments – or the provision by local authorities of sums of money directly to individuals to enable them to buy their own support (Beresford, 2014). Direct payments pre-dated personal budgets. They originated from the actions of a handful of disabled people in the late 1970s and early 1980s, who sought to leave the residential homes in which they lived and in which they experienced restrictions on their lives that they found intolerable (Morris, 1999, Evans; 2003). The individuals in this small group negotiated with the local authorities funding their placements and persuaded them to provide this funding in cash, enabling them to move into their own homes in local towns and employ personal assistants to provide them with daily support (Evans, 2003). The establishment of direct payments in law in 1996 (Community Care (Direct Payments) Act 1996) remains one of the greatest success stories of the UK disabled people’s movement (Evans, 2003). It enabled disabled people across England and Wales to obtain money to buy, direct and manage their own support and exert control over the way they live their lives.

In the UK the disabled people’s movement has always connected direct payments and personal assistance to the philosophy of independent living, also devised and developed by disabled activists in the UK and globally from the 1980s (British Council of Organisations of Disabled People, 1992, Jolly, 2010), and also specifically referenced by the organisation In Control (2016). The core principle of independent living is the right of disabled people to have the same opportunities in life as their non-disabled peers – to be in control of their own lives, to pursue the work and social activities of their choice, to live in ordinary communities and to select one’s own company (Evans, 2001). In short, independent living is about disabled people living the kind of life that non-disabled people take for granted. John Evans – one of the founders of the independent living movement in the UK – describes independent living as:

> the ability to decide and choose what a person wants, where to live and how, what to do, and how to set about doing it …. It is also the taking and establishment of self-control and self-determination in the total management of a person’s everyday life and

> affairs. It is about ensuring that all disabled people have the equality of opportunity in the chances and choices of life like everybody else. (2001).

Independent living has been a central demand of the disabled people's movement in the UK since the 1980s (Morris, 1999; Evans, 2003), and is now enshrined as a human right in Article 19 of the UN Convention on the Rights of Persons with Disabilities (CRPD), ratified by the UK in 2009. Article 19 of the CRPD creates 'the equal right of all persons with disabilities to live in the community, with choices equal to others' and the right of disabled people to 'full inclusion and participation in the community'. Among other things, Article 19 requires states to provide equal opportunities to disabled people to choose their place of residence and living arrangements, and to ensure that disabled people have access to support that enables them to live and be included in the community. For thousands of disabled people, the support provided through the social care system is essential if they are to achieve these aims.

In English social care policy both personal budgets and direct payments have been conceptualised and promoted as central planks of a narrative of 'personalisation' (PMSU, 2005, DH, 2006, HM Government et al, 2007). Indeed, in the field of adult social care, the terms 'personalisation' and the mechanisms of personal budgets and direct payments are now widely used synonymously (see, for example, DH, 2010; West, 2013). Personalisation has been promoted as a radical new model for the English public sector, to the extent that it has been suggested that it has the potential to reframe the contract between the state and the individual (Needham, 2011). The origins of the concept of 'personalisation' lie in the work of the think tank Demos, and in particular the writings of Charles Leadbeater. A trilogy of Demos documents promotes personalisation as a means to enable a shift of responsibility from the state to the individual, while simultaneously increasing the efficient use of public resources, and creating both savings and 'value for money for the taxpayer' (Leadbeater, Bartlett and Gallagher, 2008, p12; see also Leadbeater 2004; Bartlett, 2009). This trilogy constructs personalisation as a grassroots narrative, citing, for example, 'independent living direct payments' as an example of successful personalisation (Leadbeater, 2004, p. 47). In contrast, the disabled activist Jenny Morris has noted the clear distinction between the concept of independent living, as established by the disabled people's movement, and the non-grassroots notion of personalisation (Morris 2014).

In social care policy, personalisation has always been controversial. Initially a nebulous concept, it has never really been defined (Clements, 2008; Needham, 2011; West, 2013), although it is typically used to refer to support or services developed around the individual (PMSU, 2005). This lack of precision has enabled personalisation to encompass many diverse aims and differing ambitions and ideologies (Needham 2011; Mladenov, Owens and Cribb, 2015). Most particularly, personalisation has been able simultaneously to promise *both* radically transformed public sector structures in which 'traditional' paternalistic models give way to empowered decision-making by individuals *and* the facilitation of market principles within the public sector (Mladenov et al, 2015). In this context, and particularly in the recent socio-economic environment of austerity, Mladenov et al argue both that within the personalisation debate discourses of marketisation override those of social justice, and that personalisation has presented attractively packaged ideas of democratised social justice as a cover for 'welfare state retrenchment'. Indeed, many proponents of personalisation through personal budgets have argued that saving – or 'getting more for less' – is a central purpose and anticipated end (Bartlett, 2009). 'Personalisation' has thus come to refer to a variety of things: individualised services, self-directed support *and* an ideology in public service reform which has borrowed ideas and methods freely from the disabled people's movement but which is equally closely connected to neoliberal principles of self-dependence, reduced state intervention and the relentless push for savings in resources.

Personal budgets, therefore, have been presented as a radical idea with connections to the disabled people's movement while becoming a mainstay of a heavily-promoted government policy agenda that is connected to both marketisation and cost-cutting. In this context, it is unsurprising that concerns have arisen, particularly among disabled scholars and commentators, that their ideas and language have been 'colonised and corrupted' to further principles that are wholly unconnected to the movement – particularly the contraction and privatisation of the public sector (Morris, 2011). Indeed, such appropriation is now commonly accepted as fact (Mladenov et al, 2015). In these circumstances, the establishment of personal budgets in the Care Act 2014, and their construction within statute, takes on a particular importance. Given the concerns that personal budgets are part of an exercise in governmental appropriation of grassroots ideas for wholly different ideological ends, we need to understand whether the *legal* provisions relating to them further any of the discourses to which they have been explicitly or implicitly attached in policy, and if so, which. This article answers this question. It traces the rhetoric around personal budgets in policy and examines in detail the statutory provisions to establish whether these fulfil these policy promises, discourses or expectations, and considers what the model of personal budgets established by the Care Act 2014 achieves in practice. The study comprises an analysis of the construction of personal budgets in the core policy papers relating to, or including significant discussion of, the reform of social care services in England between 2005 and 2012. These dates were selected to encompass the discussion of personal budgets in social care policy from their inception in 2005 to the white paper that preceded the Care Act 2014. References to personal budgets in these documents were isolated and the language and ideas around them examined. The relevant provisions of the Care Act 2014 and its accompanying guidance were then explored in detail, to establish the legal purpose and content of personal budgets and establish how far these reflect the statements made about them in policy.

A note on terminology

In this article, following typical usage, the term ‘personal budgets’ is used to refer both to personal budgets, which involve funding only from local authority social services departments, and ‘individual budgets’, which were intended to pull together monies from multiple streams, such as social services, the Independent Living Fund and Access to Work. The term ‘individual budgets’ is only used where individual budgets are explicitly under discussion. The term ‘direct payments’ refers to the provision by a local authority of an *actual* sum of money to an individual, to enable them to purchase their support directly. Under the Care Act 2014, a person receives a direct payment if they take their personal budget, or some of their personal budget, as cash (ss31-32).

Terminology relating to disabled people is a highly charged issue. The term ‘disabled person / people’ is used in this article as it reflects the social model of disability, which argues that people are disabled by social barriers rather than individual distinctions in functioning. It is a preferred term within the disabled people’s movement in the UK. The term ‘adult social care’ is equally problematic. ‘Care’ is seen as perpetuating a model of dependency which is antithetical to the principles of independent living (Shakespeare 2000). The phrase is used here on the basis that it is the term generally used in the policy documents under discussion.

The emergence of personal budgets in English social care policy

In social care policy personal budgets have been strongly connected with ideas that have emerged from the disabled people's movement from the outset, to the extent that they have essentially been framed as a grassroots development. Personal budgets first appeared in social care policy in the breakthrough 2005 strategy *Improving the Life Chances of Disabled People* (hereafter '*Life Chances*') (PMSU) – a document developed with high levels of consultation with disabled people and heralded as a 'step change' in policy approaches (p. 95). Within *Life Chances* personal budgets (then envisaged and referred to as 'individual budgets') were connected to the policy aim of delivering independent living for disabled people and were heavily promoted as a means to build upon direct payments – two concepts that were created by, and are critical to, the disabled people's movement. It was stated that personal budgets would both extend the benefits of direct payments to a greater number of people and bring in monies from different budgets, presenting the user with a single streamlined payment (see particularly pp. 92-93). Both these ambitions responded to issues raised by disabled people. Activists had long explored how greater numbers of people could use or have access to the advantages of direct payments (Hampshire Centre for Independent Living, 1990); and were increasingly expressing concerns about the lack of access to direct payments by many groups who might benefit from them (Morris, 2004; Zarb, 2004). Similarly, streamlining payments was intended to solve the difficulties resulting from the unrealistic fragmentation of need into different policy 'silos' – flawed processes, illogical decisions, and negative practical outcomes including multiple assessments of the same circumstances and unnecessary delay (PMSU, 2005; Morris, 2014).

Personal budgets dominated the policy agenda from their introduction, almost to the exclusion of other forms of support. In *Life Chances* – an extensive, comprehensive and highly detailed strategy document, running to nearly 250 pages – individual budgets emerge alongside direct payments as the key delivery tool. Of the four key areas identified as essential for change – independent living, support for families with young disabled children, transition into adulthood and employment – personal or 'individualised budgets' were promoted as a central way forward in the first two and a significant element in the third. It is remarkable that in a document of this breadth, there should be such a strong focus on a single delivery method, particularly one which was then unevidenced (Boxall, Dowson & Beresford, 2009; Lymbery 2010; Beresford, 2014). While *Life Chances* acknowledged the need for pilots (PMSU, 2005, pp. 69 and 96), the stated purpose of these is questionable. Stating that 'an evidence base *for* individual budgets … should be developed' (emphasis added), the document appears to predict a positive outcome (p. 96 and recommendation 4.5). Despite inclusion of the statement that '[i]t may be that more than one model of delivering the outcomes is shown to be effective', the discussion indicates that the continuation of individual budgets on some level is pre-determined. The document states, for example, that '[s]ocial services authorities … are likely to continue to have a key role in bringing about service improvements, so that disabled people have a real choice when using their individual budgets' (page 96).

Pilots of personal budgets were subsequently carried out – with mixed results. They found that while certain users of adult social care support experienced improvements in outcomes, others did not. In fact the evaluation of the pilot programme found that older people – by far the largest group of social care users – reported *lower* psychological wellbeing with personal budget use (Glendinning et al, 2008). Indeed, there is no obvious reason why a mechanism that was stated to be inspired by structures created and promoted by working age disabled activists would necessarily be of value to older people, who may have very different needs and expectations from the social care system. In their report, Glendinning et al indicated that that high numbers of older people experienced taking financial responsibility for their support as a burden rather than a benefit. They noted, among other things, that many older people access the social care system in situations of crisis, when decision-making may be difficult and stressful, and that the lower levels of funding dedicated to older recipients of care packages (and therefore the smaller personal budgets available to them) reduced the value of having choices over how to 'spend' the notional money (Glendinning et al 2008).

In addition, attempts at the pilot stage to merge monies from a number of different budgets into one single source of income failed – a matter that Morris (2014) ascribes to the 'inability of the different government departments to work together'. The somewhat ambiguous results of these pilot projects were obtained in circumstances that were relatively inclined towards success – the pilots were carried out with additional dedicated funding in volunteer local authority areas (Glendinning et al 2008). Any difficulties in the roll out of personal budgets would be highly likely to be exacerbated in the absence of these advantages. Yet despite these very significant issues, personal budgets were driven forward with an almost evangelical fervour. They were heavily promoted by successive governments in every adult social care policy document after *Life Chances* and its sister green paper on social care, *Independence, Wellbeing and Choice* (DH 2005), culminating with their incorporation into law in the Care Act 2014.

The rhetoric of personal budgets in policy

On their introduction to policy, personal budgets were firmly connected with the stated policy aim of delivering independent living for disabled people. *Life Chances* states:

> A new approach to supporting disabled people is now needed, in line with the Government's new vision for adult social care. This should focus on the promotion of independent living. … The new approach should allocate available resources according to individual needs, in the form of individualised budgets made transparent to the disabled person. (PMSU 2005, p69)

In *Life Chances*, personal budgets were therefore *specifically* connected to the grassroots discourse of independent living. It is noted above that they were also presented as a means to extend the principles, values and achievements of direct payments to greater numbers of people. There can be little doubt that – to a large extent at least – this was indeed the intended outcome – *Life Chances* was developed in very close consultation with disabled people and disabled people's organisations, and has been described by the independent living campaigner Morris (2014) as being 'clearly grounded in the aspirations of the independent living movement'. In Life Chances, both a direct and an implied connection of personal budgets to ideas that arose directly from the grassroots disabled people's movement were made, and this connection formed an essential element of their policy construction.

Following their introduction in *Life Chances*, personal budgets have been connected with a number of ideas in social care policy. The close examination of the policy documents revealed that personal budgets have been associated with, among other things (and in addition to personalisation), responsiveness, flexibility and person-centred support, radical change, innovation and 'modern' services, the development of a 'market' in care, cost effectiveness and efficiency. Overall, however, the overwhelming discourse connected to personal budgets was that of increased choice and control for people using support. The green paper

Independence, Wellbeing and Choice (DH, 2005), released almost contemporaneously with *Life Chances*, states:

> We think that all groups have the potential to benefit from the opportunity to have greater control over the services they need and how these should be provided, in a way that offers the real benefits of choice and control of direct payments without the potential burdens. Therefore… we propose to test the introduction of 'individual budgets' for adults with a disability or with an assessed need for social care support (DH 2005, p11).

The connection of personal budgets to choice and control remained consistent and strong throughout every later policy document without exception. A small sample of multiple examples includes:

> "Personal budgets should be available for everyone who wants them, to give them more choice and control over their care." (DH, 2009, p. 27).

A Vision for Adult Social Care (DH, 2010, para. 4.6) states:

> "Rolling out personal budgets is not, however, an end in itself – our focus is not on the process but on the outcomes of greater choice, control and independence, and ultimately better quality of life."

And the white paper *Caring for our Future* (DH, 2012, p 56) asserts:

> "Personal budgets and direct payments are important tools to give people who use services, and carers, greater control over their care and support. However, they are not an end in themselves, but a way to achieve greater choice, control, independence and quality of life."

A particularly powerful claim was made in the short but important cross-agency document, *Putting People First* (HM Government et al, 2007), which stated:

> "Personal Budgets will ensure people receiving public funding use available resources to choose their own support services – *a right previously available only to self-funders*. The state and statutory agencies will have a different not lesser role – more active and enabling, less controlling" (p. 2, emphasis added).

Personal budgets were therefore promised as a means to enable choice and control and – in respect of these ideas – to put state-funded individuals on a par with the more freely spending middle classes. This latter claim was also made by Demos (Leadbeater et al, 2008, p. 48). A *stated* aim of personal budgets was therefore not simply the enabling of choice and control, but the creation of equity of choice and control within the social care system.

Most notably, the 2012 white paper published concurrently with the (then) Draft Care and Support Bill made it clear – repeatedly – that the purpose of enshrining personal budgets in *law* was to give people choice and control over their support. Among various statements to this effect was:

> "Personalisation is about giving people choice and control over their lives, and ensuring that care and support responds to people's needs and what they want to achieve. It is central to enabling people to lead active, independent and connected lives. One key element of personalised care and support is giving people control of their funding through a personal budget. **We will legislate to ensure that everyone can take control of their care and support by giving them an entitlement to a personal budget.**" (DH, 2012, p. 54, original emphasis).

The concept of choice and control for people using support was, on occasion, explicitly articulated as the transference of power *from the state to the individual* – a change that was envisaged as a result of the existence of a market in support. *A Vision for Adult Social Care* (DH, 2010) stated:

> "The first value is Freedom (sic). We want to see a real shift of power from the state to people and communities. We want people to have the freedom to choose the services that are right for them from a vibrant plural market. That is why this vision

> challenges councils to provide personal budgets, preferably as direct payments, to everyone eligible within the next two years.” (P. 4, see also para 5.1).

In policy, therefore, while numerous ideas and themes were attached to personal budgets, their stated essential purpose was choice and control for those using support through the social care system – specifically in its reincarnated form as a marketised entity – and the availability of this choice and control to all. Overall, the foremost critical policy promise attached to personal budgets in policy was nothing less than the individual having choice and control over their support and, as a result, over one’s resulting life. Within this discussion, the use of the phrase ‘choice and control’, and the emphasis on these outcomes, was not accidental. Over the decades, independent living has become particularly closely associated with the terminology of ‘choice’ and ‘control’ over both life and support, and these are now recognised as its fundamental principles. As Hasler and Zarb (2000) have stated:

> two defining concepts mark independent living from other approaches to meeting disabled people’s support needs: choice over where to live, how to live, who provides assistance and control over who assists, when and what they do.

Morris (2011, p. 5) takes the connection further, arguing that the expression ‘choice and control’ ‘was and is the phrase used by the disabled people’s movement to *define* independent living’ (emphasis added). This language and these elements did not simply resonate with the disabled people’s movement, but implicitly and intentionally referenced the outcome of independent living. It is no coincidence that the concept of ‘independence’ is placed alongside those of choice and control in many of the above examples. In the light of the requirements under the CRPD, the statutory model of personal budgets wrought by the Care Act 2014 might therefore be expected to operate as a key means by which independent living, including the provisions of Article 19, can effectively be realised.

Personal budgets in the Care Act 2014

For many years after their emergence, personal budgets remained entirely creatures of policy with no legal underpinnings. Despite repeated policy statements that personal budgets would usher in radical changes to adult social care, there was very limited discussion of whether and how this could be achieved within existing legal structures (Clements, 2008). This point was considered by the Law Commission in its extensive investigation into the law of adult social care in England and Wales, which recommended the complete overhauling of the former legislation and led to the passage of the Care Act 2014. In its final report, the Law Commission expressed the concern that despite the government's target of personal budgets for all people using support, "no changes had been made to the legislative framework in order to accommodate personal budgets, and in some instances, they do not sit easily with the underlying community care legislation" (2011, para. 8.55). As a result, the Commission recommended that any forthcoming statute on social care should grant a statutory power to the relevant Secretary of State (and the Welsh Government) to make regulations on personal budgets. A power rather than a duty was explicitly preferred, largely because of the (historical and ongoing) reluctance on the part of the Welsh Government to implement personal budgets in either policy or law (para 8.56).

The government's response to the Law Commission's recommendation was emphatic and unambiguous: the Care Act 2014 contains far more than a power to create regulations on personal budgets – it requires that every care and support plan drawn up following a needs assessment *must* contain a personal budget for the adult concerned (s.25(1)(e)). Perhaps ironically, given the connection of personal budgets with the notion of 'choice' in policy, the choice for individuals as to whether to use a personal budget was thus removed and replaced with a legal obligation. The Care Act 2014 enshrined personal budgets in legislation for the first time, presenting an opportunity to examine two aspects of critical importance: firstly, what the legal purpose of personal budgets is; and secondly, whether this furthers – and will achieve – the policy aspirations of choice and control explicitly and unambiguously connected to personal budgets in policy documents since their inception in 2005.

Throughout the passage of the Care Bill, Ministers and representatives of the Department of Health maintained the policy message that the purpose of personal budgets was to transform social care provision by enabling choice and control for people using support. For example, during oral evidence to the Joint Committee on the Draft Care and Support Bill in 2013, the Acting Director of Social Care Policy at the Department of Health responded to a question as to why personal budgets were being made mandatory in the new legislative regime with the statement:

> "This is about for the first time locking into legislation that a key step in care and support planning is to have a personal budget. That gives people transparency about what their care needs are and how they can be met. It is part of that shift from a paternalistic system to a personal system of giving the individual all the information they need to then be able to consider how they want to meet their needs." (House of Lords and House of Commons Joint Committee on Draft Care and Support Bill, 2013, p. 320).

In the government publication *The Care Bill Explained*, the reason for personal budgets was connected to control of care services:

> "Unless regulations specify otherwise, all people will have a personal budget included in their care and support or support plan to help them understand the options available to them and exercise control over how their care and support is provided." (DH, 2013a, para. 81).

Similarly, in a government factsheet on the Care Bill, the response to the posed question: 'Why do we need to change the law?' was:

> "The Government wants the new law to focus on the person and their needs, their choices and what they want to achieve. It should put them in control of their lives and the care and support they receive. The care and support planning process is the way of making this happen…. Personal budgets also need to be included in the law as they are important for making care and support personalised." (DH, 2013b, p. 2).

Personal budgets were therefore explicitly presented as the *legal* means to achieve the choice and control for users of social care support that was promised in policy.

When this is considered, the model of personal budgets created in the Care Act 2014 is perplexing. Throughout the Act, the purposes created for personal budgets relate solely to administrative matters. Section 26 of the Care Act 2014 is the main provision on personal budgets. It defines a personal budget as:

> “a statement which specifies (a) the cost to the local authority of meeting those of the adult’s needs which it is required or decides to meet…. (b) the amount which …the adult must pay towards that cost, and (c) … the amount which [the local authority] must pay”.

The personal budget must also specify – where relevant – the amount of any daily living costs included in the cost of service provision (Care Act 2014, s.26(2)) and it may also state ‘other amounts of public money that are available in the adult’s case’.

Section 26 only extends to the definition of personal budgets. We are required to look elsewhere for a statutory explanation of their purpose. It is here that – as far as choice and control are concerned – there is a vacuum. Section 25(1)(e) of the Act requires a personal budget to be included in a care and support plan (or in a support plan, if the recipient is a carer) but it does not elaborate further. Personal budgets appear in three further places: sections 15, 30 and 31-32. In each, the purpose of the personal budget is solely to calculate cost for administrative reasons. In statutory terms, therefore, personal budgets have no connection at all with choice and control for people using support or even to the content of their care and support plan. So far as these highly advertised principles are concerned, the statute remains quite simply ‘empty’.

As is typical in UK legislation, the provisions set out in the Act are fleshed out by regulations and guidance. In relation to personal budgets, no regulations have been issued, other than in relation to one technical area. It is therefore to statutory guidance that we must turn to locate a purpose for the personal budget that extends beyond the administrative. This contains a chapter on personal budgets (chapter 11), which states:

> “[t]he personal budget is the mechanism that, in conjunction with the care and support plan, or support plan, enables the person…to exercise greater choice and take control over how their care and support needs are met” (DHSC, 2014, updated 2020, para 11.3).

This at last provides a quasi-legal statement of personal budgets as a vehicle for the outcomes promised in policy of enabling choice and control for those using social care.

The *purpose* of a personal budget – in terms of achieving choice and control – is therefore relegated to guidance. Given the stated policy aims of personal budgets, this is far from ideal. Guidance has limited legal force and exists somewhere between law and policy. The guidance under the Care Act 2014 is highly susceptible to change. Alteration to it requires no oversight by Parliament, and since March 2016 – when it became available only in the form of webpages – it has been open to unannounced revision. (It has since been revised multiple times, most recently at the time of writing on 2 March 2020.) Indeed, by the DH's own admission during the passage of the Care Bill, the very reason for enshrining personal budgets in statute was because ***guidance was explicitly deemed to be inadequate***. In 2013 the Department stated:

> "Care and support planning and personal budgets, *although very important to the way care and support is given, have only been set out in guidance.* The Government wants the new law to focus on the person and their needs, their choices and what they want to achieve. It should put them in control of their lives and the care and support they receive.… Personal budgets also need to be included in the law as they are important for making care and support personalised. (DH, 2013b, p. 2, emphasis added)."

Given this statement, it is extraordinary that guidance, rather than the legal provisions of the Care Act 2014 or Regulations, is presented as a reasonable vehicle for implementing the fundamental stated purpose of personal budgets.

The chapter of the statutory guidance relating to personal budgets does, however, contain a significant focus on the choice and control of the personal budget holder. The section on '[u]se of the personal budget' begins with the statement that "[t]he person should have the maximum possible range of options for managing the personal budget, including how it is spent and how it is utilised" (para. 11.29). This section indicates that personal budgets can be 'managed accounts' held, either by the local authority or by a third party, on behalf of the relevant individual with 'support provided in line with the persons (sic) wishes', or taken as direct payments (para 11.30). This is the clearest statement in the legislative regime that the personal budget is to be treated as actual, rather than notional, money allocated explicitly to the individual, for use as they see fit. It is immediately preceded by a clear statement that personal budgets should offer the same levels of control as direct payments, along with a sharp reminder to local authorities that token control is not sufficient.

The guidance also incorporates a requirement that a local authority provide an initial upfront ‘ball-park’ or ‘indicative’ budget to the individual which is then adjusted through the planning process (paras. 11.4, 11.7 and 11.24). In their original conception, this indicative budget was positioned as a central element of personal budgets and considered essential to give more control to people using support (Slasberg and Beresford, 2016). The original idea was that this indicative figure would enable those using support to have some understanding of the financial resources that they might have access to – a principle which Morris (2014) has argued puts ‘disabled people on more of an equal footing with social workers/care managers’. The final amount of the personal budget is decided upon through the planning process in consultation with the person using support (which might involve an increase or a decrease in the budget amount). The guidance makes it clear, however, that the existence of the indicative budget, and the process of establishing the final one, does little to mitigate the highly uneven power relationship between negotiating parties. Throughout the guidance it is clear that final decisions rest with the local authority. As just one example, a statement in the draft guidance that the indicative budget should be ‘agreed’ with the individual at the start of the planning process (DH, 2014 para. 11.6) was amended in the final version to a statement that it should simply be ‘shared’ (DHSC, 2014, updated 2020, para 11.7).

The guidance certainly alludes to the policy promises attached to personal budgets of choice and control for people using support, although these concepts are not particularly entrenched. Indeed, it is a curious feature of the guidance that many of the outcomes ascribed to personal budgets in relation to choice and control could equally well be achieved without them. Thus one example of how personal budgets enable greater control – “having a choice over who is involved in developing the care and support plan for how the personal budget will be spent” (para 11.3) – is essentially circular. Clearly, choosing who should be involved in deciding how a personal budget is spent is only achievable if a personal budget exists, yet people using support could equally be ceded control simply over who to involve in developing their care and support plan. Similarly, the statement “having greater choice and control over the way the personal budget is used to purchase care and support, and from whom” (para. 11.3) could, in the absence of personal budgets, achieve the same result by reading, for example, “having greater choice and control over deciding what care and support is used and who provides it” (or something significantly more radical). While connecting the notion of personal budgets to choice and control for the person using support, the guidance therefore also simultaneously, albeit unintentionally, indicates that the existence of a personal budget itself is ***not*** essential for this aim to be achieved.

Similarly, the claims made in policy that personal budgets would iron out distinctions between self-funders and those requiring state support are wholly negated in the guidance. This states, at paragraph 11.14, that ‘there will be cases where a person or a third party on their behalf is making an additional payment (or a ‘top-up’) in order to be able to secure the care and support of their choice, where this costs more than the local authority would pay…'. This statement that individuals may in fact be required to use their own resources – if they have them – to obtain the support of their choice clearly negates the assertion made in policy that personal budgets would create parity between those buying support with their own means and those using state funds to do so.

In relation to the promised outcomes of choice and control for people using support, the guidance is therefore a mixed bag. While it contains clear statements that the government expects local authorities to use personal budgets to ensure greater choice and control for individuals, the requirements are loose and fail entirely to carry sufficient weight to operate the promises made in policy. The guidance clarifies that power around core elements remains firmly with local authorities rather than the individual; and as it stands, the guidance fails entirely to establish *why* a personal budget is a necessary – or even a helpful – mechanism to enable choice and control. Legally speaking, if personal budgets were removed from both the Care Act 2014 and its guidance, the forms of choice over support planning envisaged in Chapter 11 of the guidance could equally well be met through the support planning process. Choice and control are not absent from the Care Act 2014 – both are referenced throughout the guidance. Both are also incorporated into the principle of wellbeing that underpins the Act. Section 1(2), which defines ‘wellbeing’, includes the matter of control by the individual over both their life and support (at 1(2)(d)); and section 1(3)(b) imposes a duty on local authorities to have regard to an ‘individual’s views, wishes, feelings and beliefs’ when acting under the statute. The guidance to these sections refers specifically both to independent living and to Article 19 of the CRPD. But despite these elements, the legislation fails to establish any connection between choice or control over support (or one’s life) and the device of personal budgets, rendering them ineffective as a means to obtain independent living.

The lack of any such connection between personal budgets and the outcomes of choice and control is amply demonstrated by the case of *R (Davey) v Oxfordshire County Council* ([2017] EWHC 354 (Admin). Luke Davey, a gentleman with multiple and severe physical impairments, including quadriplegic cerebral palsy and almost total blindness, argued that a reduction in his personal budget from £1651 to £950 per week was unreasonable and would require him both to reduce his activities and to be alone for some hours every day – a prospect that he found frightening. Mr Davey's claim was rejected. In his decision, Mr Justice Morris stated that:

> "…there is no warrant for a conclusion that… the service user can have the final say on his own needs and personal budget or dislodge the principle that, under the Act, the decisions are ultimately to be taken by the local authority." (para 49).

One of many notable aspects of this case is that personal budgets were not discussed, other than in administrative terms. Far from being the means to deliver choice and control for the users of social care services, the *Davey* case demonstrates that personal budgets are indeed, in legal terms and as the 2014 Act stipulates, no more than the local authority's calculation of cost – or, as Slasberg and Beresford argue (2016), simply a proxy term for a person's care plan. *Davey* clarifies absolutely that despite governmental claims that personal budgets would be the means to enable choice and control for those using support, and despite the essential promises made around personal budgets during the passage of the 2014 Act, there is simply no translation of these ideas into law. As a result, personal budgets continue to exist in two separate forms: creatures of policy – in which they remain connected with promises of choice and control – and creatures of law, in which they serve a solely administrative function. What we are left with, as Slasberg and Beresford have suggested (2016), is a dual system of personal budgets, in which the legal construction is wholly divorced from their policy existence – the precise problem that the incorporation of personal budgets into law was intended to solve.

Discussion

In the research undertaken for this study two things stood out about personal budgets. The first is that it was clear from the date of their inception in policy that they were to form the central pillar of social care support despite the then profound lack of knowledge as to their value, success or relevance in relation to certain groups of people using support. Secondly, although the stated reason for incorporating personal budgets into the Care Act 2014 was to create legal underpinnings for a mechanism that would enable choice and control for the person using support, no such incorporation has been effected. Despite statements that the purpose of placing personal budgets onto a legal footing was to incorporate policy promises relating to choice and control into law, it is clear that something other than this was going on.

Whatever the reason for the incorporation of personal budgets into the Care Act 2014, it appears that this was not primarily the benefit of people using social care support. Had it been so, the legal form of personal budgets could and would have been more clearly and effectively connected to the individual and constructed in a form that activates the choice and control that are both fundamental to independent living and promised in policy. Despite the difficulties of legal drafting in the English tradition, the requirements of brevity in statute and the ability to develop particular legal concepts in secondary legislation, it seems clear that such a purpose could have been ascribed to personal budgets on the face of the statute. Section 8 of the Act, for example, states:

> "(2) The following are examples of the ways in which a local authority may meet needs under sections 18 to 20—
> (a) by arranging for a person other than it to provide a service;
> (b) by itself providing a service;
> (c) by making direct payments".

It is arguable that this section could have been extended to require adults to have access to their personal budget in a meaningful way, or to emphasise a connection between a personal budget and the intended outcome of enabling choice and control on the part of the person using social care support. Alternatively, it might have been possible to introduce a substantive purpose for the personal budget – in terms of meeting support needs – either in section 26, or in section 25, which relates to the development of the care and support plan. The failure to formulate such a connection is therefore a considered governmental decision.

Law is, of course, a wholly different creature from policy. The purpose of policy is to develop ideas and structures that further a government agenda while also smoothing over sites of contestation and division so as to secure the 'buy in' of different, diverse and multiple stakeholders (Newman and Clarke 2009). In policy terms, what is important about personal budgets is their ability to speak to multiple discourses. Most notably, personal budgets are able simultaneously to allude to the radical discourse of the disabled people's movement, encapsulated in the philosophy of independent living with its underlying principles of choice and control, and the far more nebulous idea of personalisation, which contains these ideas but which also has its own connections with welfare state fragmentation, marketisation and retrenchment.

In contrast, law creates obligations and enforceable duties and, in the public sector, distinct individual actionable entitlements that have significant resource implications. In this context, the same level of flexibility and blurred purpose is not available. When social care policy becomes crystallised in statute, we are likely to see not simply what can realistically be achieved, but what the underlying policy priorities really are. What personal budgets achieve in in the Care Act 2014 is the conversion of *all* users of publicly funded social care support into purchasers or, at the very least, notional or potential purchasers. While personal budgets have been consistently and emphatically presented in policy as a means to realise specific outcomes, this commitment falls away entirely when the model is transferred into law. Just as Mladenov et al (2015) found the discourse of social justice overwhelmed by that of marketisation in relation to the personalisation of disability services and healthcare, a comparison of policy and law in social care demonstrates conclusively that the *legal* purpose of personal budgets appears to be to further the discourse of purchase and marketisation within the welfare state, rather than the construction of legally entitled citizens acting in line with their own choices and with control over their lives. In this context, it is worth noting that the Welsh Government continues to reject the incorporation of personal budgets – and indeed the concept of personalisation – into public sector policy or law on the basis that personalisation 'has become too closely associated with a market-led model of consumer choice' (Welsh Government 2011).

Given the connection in policy of personal budgets to principles and mechanisms that were developed by disabled activists and which have become central to the disabled people's movement in the UK, this has a particular resonance in the context of disability. The connection of personal budgets to independent living, direct payments, and choice and control enabled them to be constructed – erroneously – in policy not simply as a *response* to the demands of disabled people demands, but as their ideas, innovations, and vision. Their construction in law effectively enables the appearance of consensus with the radical ideas of the movement while making no concessions on points of practice and while driving forward the wholly distinct agenda of the marketisation and fragmentation of the welfare state. This is appropriation in a brutal form.

There can be no doubt that the impact of the legal construction of personal budgets has been powerfully affected by the context of austerity, in which it was devised, and in which the Care Act 2014 has been implemented. The drastic cuts in local authority expenditure on social care – particularly since 2010 – have contributed to the now thoroughly well-documented crisis in social care, exhibited in particular through the tightening of eligibility criteria for the receipt of support, the collapse of numerous providers and the inability of other providers to fulfil contracts for the fees that local authorities are able or willing to pay (Bottery, Varrow, Thorlby & Wellings, 2018). In this context, it is unsurprising that the amounts of personal budgets for many people – such as Mr Davey – have been so significantly depleted, decimating the opportunities for choice and control that are available. Outside the context of austerity, it is possible that Mr Davey might not have had the amount of his personal budget so significantly cut, giving him access to greater opportunities. Austerity, however, makes no difference to the fact that in their legal construction, the existence of a personal budget cedes neither choice nor control to the individual – the description of the resources available to Mr Davey as a personal budget had no impact on his ability to exercise his choice not to be left alone, to have the assistants of his choosing, or to continue his former activities.

Conclusion

Discussion continues in England as to how personal budgets may offer new ways forward in certain areas of the public sector (see, for example, Martinez and Pritchard 2019). In this context we may well yet see personal budgets move into areas of the welfare state beyond social care, health and special educational needs, where they are currently most entrenched. If the use of personal budgets is to be increased, we need to understand the rationale driving them forward, particularly as claims are being made that they have become part of an exercise of appropriation and distortion of grassroots discourse, and as future austerity is likely to shape the context in which personalisation is likely to be rolled out. This study has demonstrated that there is a considerable and critical discrepancy between the policy rhetoric and the legal reality of personal budgets. The hollowing out of the policy promises effected by the construction of personal budgets in law does not simply reduce the potential for choice and control. It also neutralises dissent while facilitating the controversial agenda of public sector marketisation – a programme that is antithetical to the aims of the grassroots movement to which personal budgets have been connected. If personal budgets are to extend further into the public sector, it is imperative to examine whether the claims made for and about them in policy are being properly enshrined in law. The evidence of the Care Act 2014 is that they are not.

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