

Independent Advisory Council to the NDIS

Attachment D

Risks related to poor employment practices for self-managing participants

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Introduction

In its seminal report into *Long term care and support*, the Productivity Commission expressed cautious optimism that self-directed funding may introduce a new group of workers into the sector contributing positively to the workforce challenges of an expanded system.¹ The ability of people with disability to employ friends or neighbours to assist them was thought to be particularly valuable in situations where, due to isolation or strong demand for staff from other sectors, a well operating formal care market may not exist.

In examining the workforce implications of UK personalisation policy *Putting people first*, Hudson and Henwood (2009) argued that the *social care workforce is not in a state of crisis or failure, but on the cusp of radical and comprehensive change at all levels.*

Research understanding the nature, extent and impact of employment practices of self-managing participants has not kept pace with the radical and comprehensive change. There are a small number of studies that identify where and how self-directed experience intersects with issues of quality, safety and worker skills and training². Researchers note however that studies of self-directed funding are limited by very small samples and their use of self-perception ratings without reference to comparators in traditional services.

This advice seeks to explore risks related to poor employment practices for self-managing participants and to describe strategies used to mitigate risk. The advice concludes with implications for the NDIS.

Evidence

The evidence on the outcomes with self-managed funding is overwhelmingly positive for consumers but more mixed for workers and while arrangements can work well for both parties, there is also scope for things to go wrong with consequences for quality and safety of support. The literature identifies three main areas of concern: employment practices, working outside scope and skills and lack of opportunities for workers to access formal training.

Employment practices

Like some service providers, some individuals who self-manage are not aware of their obligations as employers. In the UK, Glendinning (2000) raised questions about the capacity of service users and workers to negotiate the often complex balance between the rights of service users to take risks and exercise choice with the right of support workers to work in a safe environment. In a 2010 study based on data collected from 132 people with disability

¹ Appendix E of the 2011 Productivity Commission Report into Long Term Care and Support p 734

² Appendix E of the 2011 Productivity Commission Report into Long Term Care and Support, PwC Appendix B, 2012 & Cortis et al 2013

and 32 service providers, Fisher et al reported relatively positively on outcomes for workers in pay and conditions. The authors warned however that in the context of increased participant self-direction, safeguarding conditions of support workers would be critical to underpin quality support.

Working outside scope

Studies indicate that workers perceive themselves to be under pressure to go beyond their work role. One of the largest studies in the UK (Adams and Godwin 2008) reported in the Productivity Commission (2011) collected information from 526 service users who directly hired support workers and 486 workers. This study found that for many workers the opportunity to more directly negotiate the working relationship delivered positive outcomes and higher satisfaction both for service users and workers, but that workers were more likely to feel obliged to work unpaid hours, and raised concerns about adequacy of training. Similar results were reported by Leece (2008) in a small scale comparative study in one local authority in England.

Kremer (2006) warned that people employed directly can feel pressured to undertake tasks they feel are beyond their skills. Glendinning (2000) makes a similar point, citing an example of workers performing health related activities they were not comfortable about, such as giving injections. In relation to this last point, SCIE's work in the UK (Carr 2013) describes the importance of explicit conversations to clarify issues of risk and responsibility to underpin self-management.

Access to training

Studies raise concerns that access to formal training and ongoing professional development could be more at risk under self-managed arrangements (Cortis et al 2013, Kremer 2006, Glendinning 2010). These studies focus on whether formal training is made available, assuming it to be valuable.

HDG Consulting (2010) evaluated individual support packages (ISP) trialled in Victoria and found that in its small sample no workers received formal training.

A large-scale study in the US looking at the effects of self-directed funding on employees is one of the few empirical studies providing information on outcomes for workers that contrasts workers under self-management with conditions of those working for a service provider. On the issue of training it finds that nearly 30% of people directly employed did not receive personal care training compared with only 4% of agency workers. Paradoxically it also found that self-directed workers felt better informed about care needs, leading the Productivity Commission to question the value of formal training in this instance (Dale, 2007, summarised by the Productivity Commission, 2011, Appendix E). One of the difficulties in interpreting these findings is the lack of detail on the nature of support. A support worker providing basic personal care will benefit from minimum ongoing professional development but may have little need for additional training. A person who provides more specialised support and who

has no contact with peers or access to training may rely on out-dated practices or use strategies based on convenience rather than effectiveness in delivering outcomes.

Mitigation strategies

The most appropriate responses are those designed to strengthen and support mutually beneficial relationships between service users and workers. The literature outlines two broadly different responses designed to manage the risks associated with poor employment practices.

One approach calls for tighter regulation, including increasing formal training for workers in all settings to improve quality of supports and reduce the likelihood of worker exploitation.

Others, including service users themselves, strongly reject a more tightly controlled regulatory solution arguing that this works against the intent of individuals exercising authority to make decisions about their lives. They focus instead on ensuring that both services users and workers understand rights and obligations under existing labour laws applying to employees.

The UK Social Care Institute for Excellence (SCIE) brings together material developed by a wide range of stakeholders to provide guidance as to strategies to mitigate the risks of the new environment. Their work in relation to participants on DP focuses on supporting direct employers to be 'good' employers.

Drawing on work by Skills for Care (2011), SCIE outlines the importance of supporting direct employers to:

- work within the legal framework
- develop management skills required for their role
- establish effective relationships with workers and address problems quickly
- engage with peer support to discuss options when issues arise
- gain insights and skills in the areas of recruitment, training and support for workers

Skills for Care identified important roles for user led organisations (ULO) in supporting individual employers when employing their personal assistants and has developed a range of resources to support ULOs in achieving this.

Key themes

There is inadequate evidence to draw conclusions about whether risks related to poor employment practices are greater in self-managed environments compared to worker experience of employment in traditional services. The limited research provides examples of good and poor practice in relation to the concerns raised in the literature that self-

management leads to poor employment practices, pressure on workers to work outside scope and skills and lack of opportunities to access formal training.

Research demonstrates overwhelmingly positive outcomes for consumers who are able to directly employ staff. The evidence is more mixed for workers and while arrangements can work well for both parties, there is also scope for things to go wrong with consequences for quality and safety of support. People who self-manage however have a strong vested interest in maintaining good quality relationships with support workers because unless service users can create satisfying work environments they could experience a declining quality of care associated with high worker turnover and poor attitude.

Mitigation strategies

The most appropriate responses are those designed to strengthen and support mutually beneficial relationships between service users and workers with a focus on ensuring that both services users and workers understand rights and obligations under existing labour laws applying to employees.

The UK Social Care Institute for Excellence (SCIE) seeks to mitigate risks related to poor employment practices by supporting direct employers to be 'good' employers and

- work within the legal framework
- develop management skills required for their role
- establish effective relationships with workers and address problems quickly
- engage with peer support to discuss options when issues arise
- gain insights and skills in the areas of recruitment, training and support for workers

User led organisations (ULOs) are seen as pivotal in supporting DP holders when employing their personal assistants and has developed a range of resources to support ULOs in achieving this.

Implications for the NDIS

Guidance and support is required to enable self-managing participants to be good employers.

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