

# Indirect Payments: the Mental Capacity Act meets Direct Payments

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# Project team

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# Personalisation in social care



- Community Care (Direct Payments) Act 1996
- Direct Payment Guidance: Community Care Services for Carer's and Children's Services (2003)
- Improving the Life Chance of Disabled People (2005)
- Independence, Wellbeing and Choice: Our vision for the future of social care for adults in England (2005)
- Guidance of direct payment: for community care, services for carers and children's services (2009)
- Farer Care Funding: the report of the Commission on Funding of Care and Support (2011)

Increased choice



Cost containment



Growing, ageing population



'Marketisation' of public  
services



Welfare dissatisfaction



Cash-for-care  
schemes

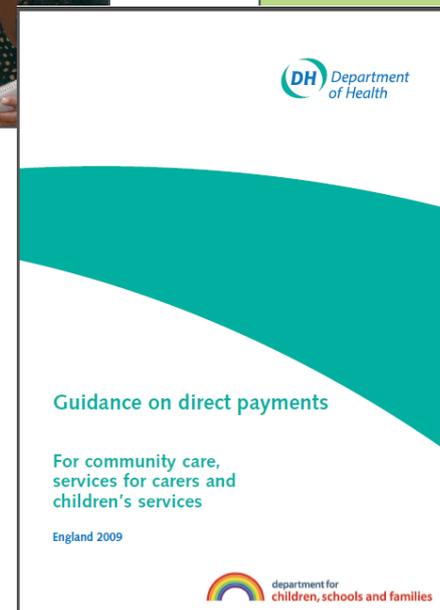
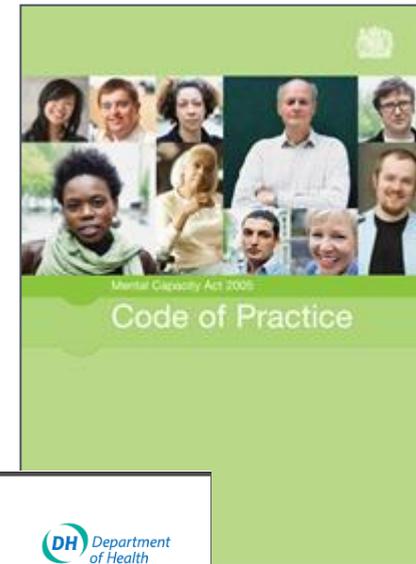
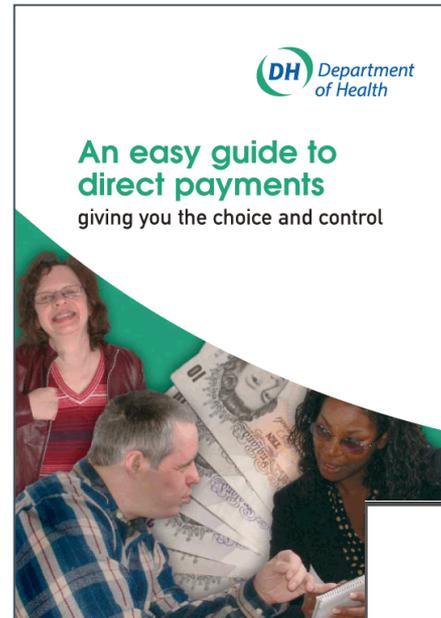
# Our area of interest

The interface between:

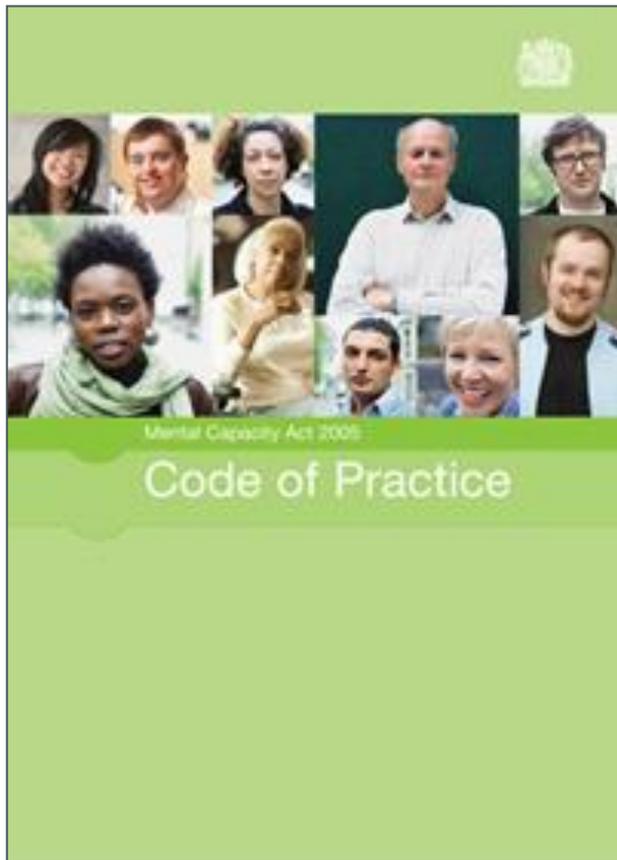
**Direct Payments**

and

**The Mental Capacity Act**



# The Mental Capacity Act 2005



Assumption of capacity

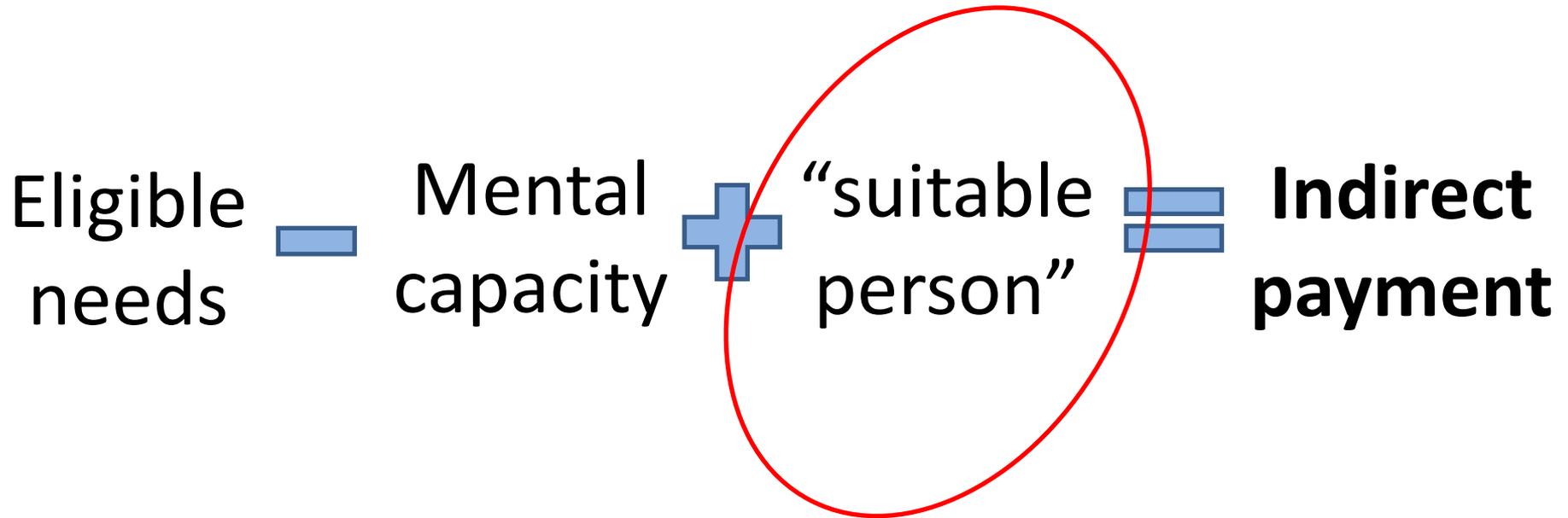
All practical steps to help must be taken to make decisions

Unwise decision does not mean incapacity

Decisions must be made in best interests

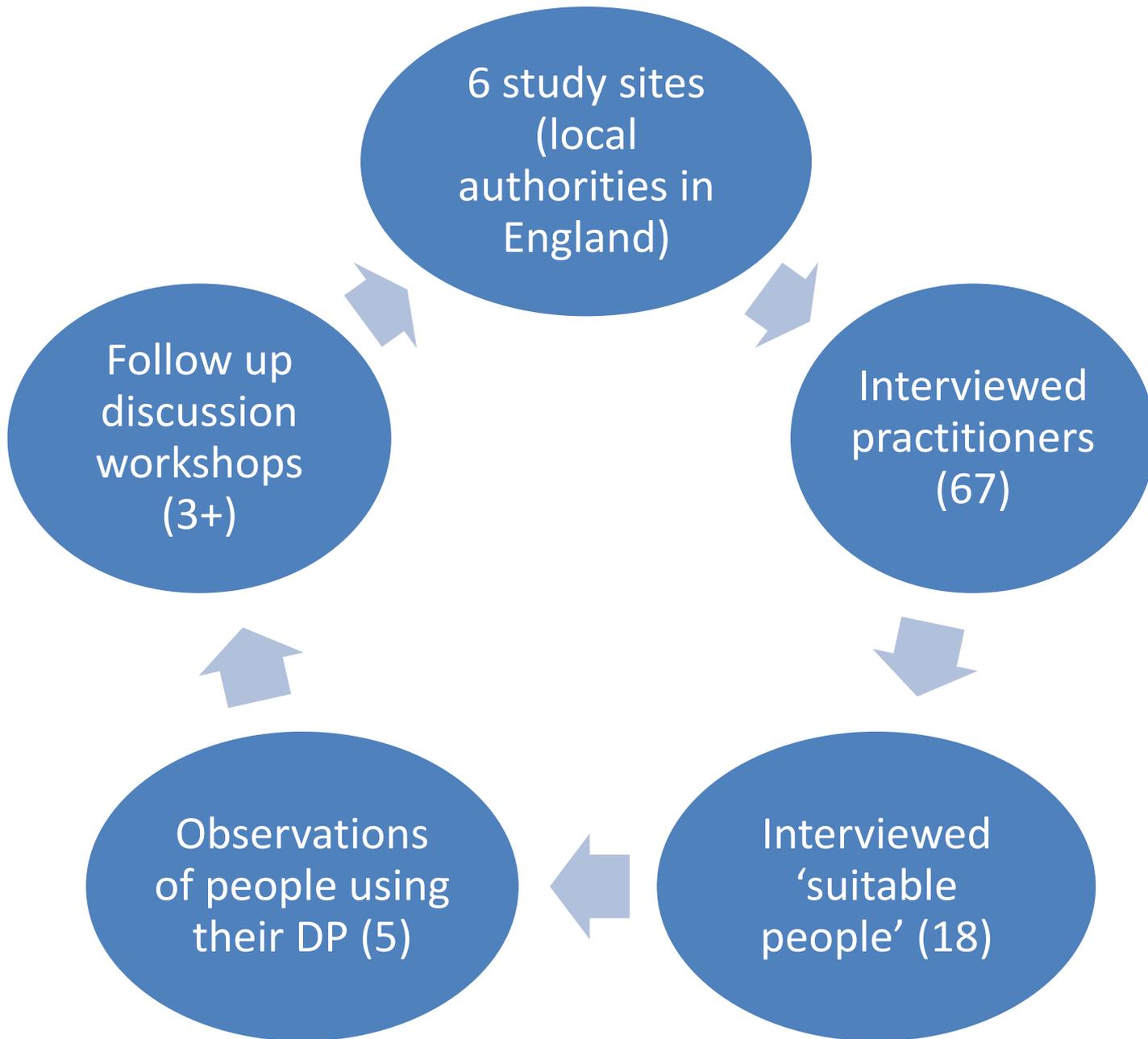
Must not limit rights and freedom of action

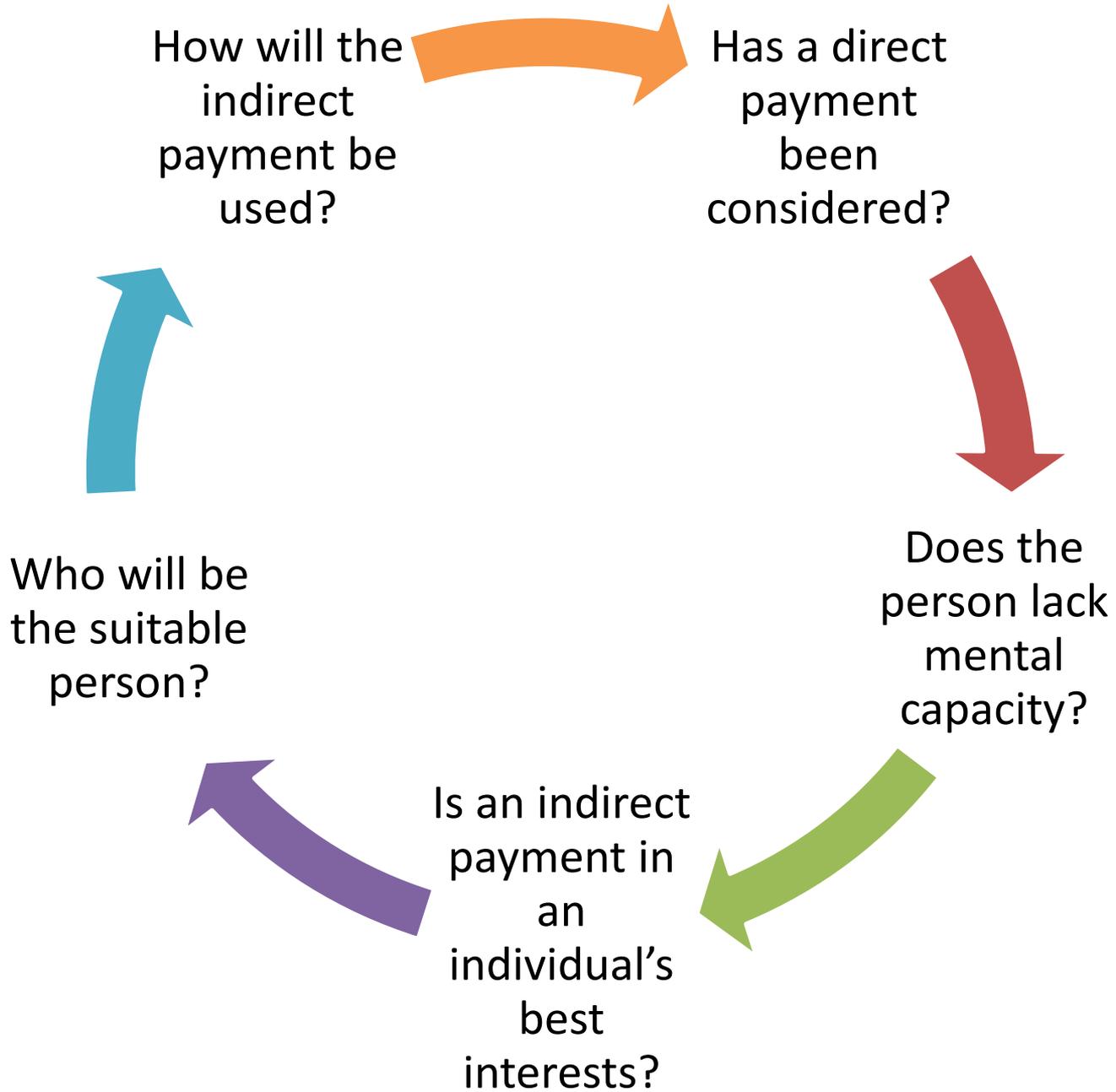
# Direct payments for people lacking the capacity to consent



# Aims

- How are direct payments being administered in practice for people who lack capacity to consent?
  - How are social care practitioners managing the policy direction of personalisation within the framework of the Mental Capacity Act?





# The decision to take up an indirect payment

- Indirect payments help to achieve targets for direct payments (DP)
- Avoid restrictive social care provision, ensure meaningful activity and outcomes (SP)

... our area's got one of the very, very lowest uptakes of direct payments. So there's a massive amount of pressure on workers now to... you need push hard to get a direct payment, 'cos it's a performance indicator now

I felt so awful every time I left her, because she was put to bed at half-past three. And my Mum is a very, y'know, was a head teacher of a very busy school. She's an author of Maths books. Y'know she's, she's a highly intelligent person, and she was being put to bed at, at half-past three.

SP6

# Does the person lack capacity?

- Practitioners were usually familiar with the 'language' of the MCA (but not always)
- Suitable people confused about capacity assessment

We were re-assessed, but not in terms of his capacity.

SP3

So just on my own professional ... experience ... actually just knowing the family, from old ... and knowing that this lad had already got a registered learning disability

P5

# Capacity assessment

*Councils should not confuse whether somebody has the capability to **manage** direct payments with whether they have the mental capacity to **consent** to such payments.*

(DH, 2009; p26)



# Does the person lack capacity?

- Assessing capacity to consent or to manage?

SP11

He would've understood, but he wouldn't have taken on board say the implications.

I mean they have said, you need to manage this on his behalf, because obviously he's not able to do it himself.

SP10

# Capacity assessment

- Difficulty defining the decision for which capacity was being assessed
- Assessing understanding of micro-level financial management

Does the person have the ability to understand the information, in the format, is there a different format, is [ability] fluctuating, could she understand it next week if we presented it in a different way?

P1

...pictures of money,  
pictures of a bank  
[and] invoices...

SP26

# Is an indirect payment in the person's best interests?

## Practitioners

- Concept well understood by practitioners
- Lack of evidence of 'formal' process (2 sites)
- BI decision linked with availability of SP

So before you even think about a suitable person, you have to make a decision that making an indirect payment is, in principle, in the best interests of this person. And when you're making a best interests decision in favour of one option you have to be able to articulate why you've ruled out the other options...and then, having decided that it's appropriate, then you have to find a suitable person

# Whose best interests?

## Suitable people

- Rarely aware a best interests decision had been made
- Connected with their own “best interests” (LD)

So he needed to live where people knew him, where he knew people, where he felt safe and secure, where his family live, where he'd grown up. All of that sort of important stuff where his relationships were. ...so we started off with a circle of support.

# Who will be the suitable person?

*In most cases the suitable person will be a family member or close friend already involved in the provision of care for the person concerned.*

(DH 2009, p.65)

- The only suitable person available
- Different processes for LD than dementia

Just use the family member.

P6

..then normally it would be the parents.

P4

# How will the indirect payment be used?

*The suitable person should be required to take all practical steps to ensure that decisions are taken in the best interests of the person who lacks capacity.* (DH 2009)

- Confusion about the support planning process
- Making personalised decisions
- **Reviewing and monitoring** (outcomes, not just finances)

I've heard of it, but I can't, can't recall anyone ever mentioning it. But they may have done, I might've forgotten.

SP12

The social worker has kind of said, 'Oh don't worry with your fancy support plans, all we're interested in is the money bit at the back'

SP7

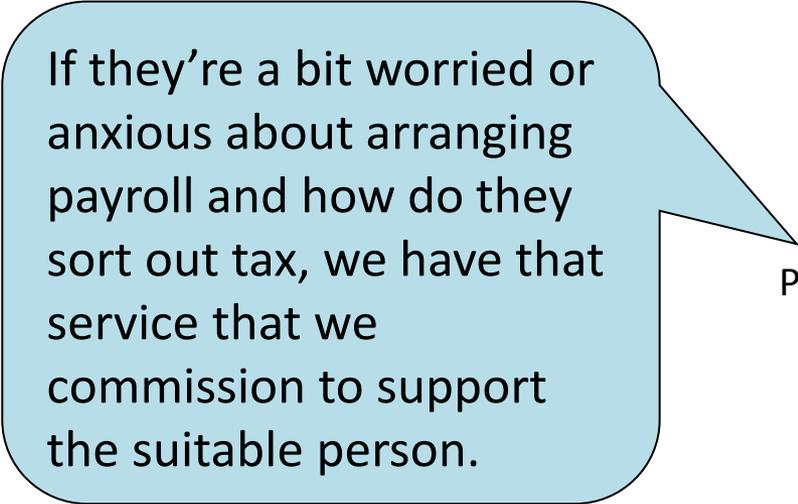
# Conclusions

- Five key decision points in setting up an indirect payment
  - in practice people move back and forth
- Discrepancy between practice and experience of suitable people
- Blurred practice around capacity
  -  Does it matter?
- Support is needed

# Information and advice services

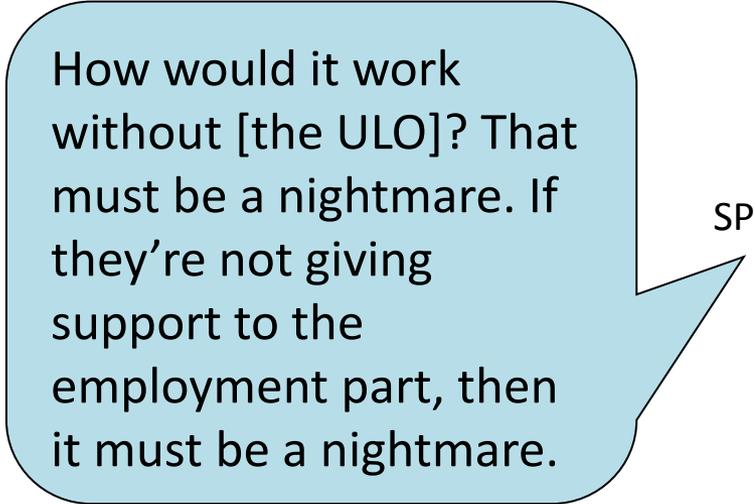
*Support provided through user led organisations has been shown to be particularly effective and valued by recipients.*

(DCSF guidance on direct payments, 2009)



If they're a bit worried or anxious about arranging payroll and how do they sort out tax, we have that service that we commission to support the suitable person.

P



How would it work without [the ULO]? That must be a nightmare. If they're not giving support to the employment part, then it must be a nightmare.

SP

# Recommendations

- Ongoing professional support and development for practitioners, including accessible guidance and resources
- Training and support for suitable people
- Shared learning of what works between learning disability and dementia services, e.g. person-centred planning
- Improved scrutiny and monitoring



# Website/app resource for practitioners

## ≡ MENU



Introduction →



## Indirect Payments: Practitioners' Guide *DRAFT FOR REVIEW*

Does the person have mental capacity to consent to a direct payment?

Making a 'best interests' decision about using an indirect payment

Appointing a suitable person

Managing an indirect payment

Monitoring and reviewing an indirect payment

Ending an indirect payment

Case Studies

Glossary of terms

About this Guide

### Introduction

Indirect payments are a form of direct payments. Since 2009 it has been possible for someone to receive a direct payment even if they lack the mental capacity to consent to it. Councils have a duty to consider making a direct payment to people who lack capacity, where a suitable person can be identified who will manage it on their behalf. This is often referred to as an indirect payment.

For this to happen, the council must establish that although the person lacks capacity to consent to receive a direct payment, it is nevertheless in their best interests to receive assistance in this way and that there is someone willing and appropriate to act as a suitable person.

Because the use of indirect payments relies on establishing that someone lacks capacity to consent to receive a direct payment, it is important that social care practitioners have a good understanding of the Mental Capacity Act and the Mental Capacity Act Code of Practice.

Available on the App Store

ANDROID APP ON Google play

# Find our findings

Jepson & Laybourne et al. Indirect payments: when the Mental Capacity Act interacts with the personalisation agenda, *to be submitted to British Journal of Social Work*

Laybourne & Jepson et al. Dementia and indirect payments: experiences of adults social care practitioners and suitable people, *submitted to Dementia*



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*The views expressed in this presentation are those of the authors and not necessarily those of the NIHR School for Social Care Research or the Department of Health, NIHR or NHS.*

