Practical approaches to safeguarding and personalisation

Social Care

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Document Purpose	Best Practice Guidance
Gateway Reference	14847
Title	Practical approaches to safeguarding and personalisation
Author	Social Care Policy, DH
Publication Date	16 Nov 2010
Target Audience	PCT CEs, Care Trust CEs, Directors of PH, Local Authority CEs, Directors of Adult SSs
Circulation List	NHS Trust CEs, SHA CEs, Foundation Trust CEs
Description	This briefing paper sets out how personalisation can contribute to more effective safeguarding. It provides practical examples of how whole community approaches and well designed self-directed support processes can help in enabling people to lead the lives they choose free from harm.
Cross Ref	
Superseded Docs	
Action Required	
Timing	
Contact Details	Abigail Merrett Social Care Policy Division Room 116, 133-155 Waterloo Road London SE1 8UG 2079724111
For Recipient's Use	

402789/D 1p Nov10
First published 16 November 2010
Published to DH website, in electronic PDF format only.
www.dh.gov.uk/publications

Practical approaches to safeguarding and personalisation

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For further information, see the Department of Health website:
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Executive summary

Personalisation is about enabling people to lead the lives that they choose and achieve the outcomes they want in ways that best suit them. It is important in this process to consider risks, and keeping people safe from harm. However, risks need to be weighed up alongside benefits. Risk should not be an excuse to restrict people's lives.

Safeguarding is a range of activity aimed at upholding an adult's fundamental right to be safe. Being or feeling unsafe undermines our relationships and self-belief, our ability to participate freely in communities and to contribute to society. Safeguarding is of particular importance to people who, because of their situation or circumstances, are unable to keep themselves safe.

Personalisation and risk management should work hand in hand, empowering people to speak out, enabling them to make informed choices and encouraging communities to look out for one another. The aim should be to build stronger communities where everyone, regardless of their eligibility for social care support, is able to lead the lives they choose free from harm.

Approaches that bring together local citizens along with experts in safeguarding and personalisation will help produce plans and strategies that work for local people. People using support often have the most to contribute to the discussion. Communities benefit when councils develop sound policies across all local organisations including health, housing, leisure and education. Safeguarding approaches need to work for everyone in the community and should include the involvement of community groups, GPs, housing associations and voluntary sector organisations. Good information and advice, including helplines for reporting concerns, public awareness-raising campaigns and literature should be accessible to everyone.

For people who are in need of support through health or social care, a more detailed analysis of risks, including the benefits of taking considered risks, should be an integral part of the self-directed support process. Well-designed self-directed support processes have checks and balances to improve risk management throughout.

Personalisation needs to work for everyone including those who are least able to access services or those considered at greater risk such as people who may lack mental capacity to make their own decisions. Overprotective approaches can place people at risk of being denied a fulfilling life as much as lack of advice and assistance on keeping safe can.

Key points:

- Safety is for everyone and is everybody's business.
- Focus on preventing abuse and exploitation
- Include approaches that focus on the whole population
- Connect people within their communities to encourage safety
- Raise awareness in the whole community, and make it easy to access good information and advice and to report concerns
- Involve citizens in shaping plans and strategies that bring personalisation and safeguarding together
- Make safety an integral part of self-directed support processes
- Encourage positive attitudes to enabling people to manage their personal budget through a direct payment whenever possible
- Do not start from an assumption that personal budgets and direct payments automatically increase risk
- Develop an inclusive approach that considers and involves carers and families
- Develop multi-agency approaches and work with regulators
- Make risk management proportionate to individual circumstances and support people to weigh up risks and benefits, including planning for problems which may arise
- The systems for managing money in a personal budget needs to be appropriate for the person and good support is essential
- Review by focussing on outcomes. Have supportive systems in place that can respond if things go wrong

Introduction

This briefing paper sets out how personalisation of support and more effective safeguarding can be mutually supportive. It shows how self-directed support can help to prevent or reduce the risk of harm and abuse. It is not, primarily, about how councils and partner organisations should respond to abuse. Personalisation does not replace the need for adult safeguarding systems and procedures.

Strengthening citizenship and communities in line with the personalisation agenda can contribute to keeping people safer. Self-directed support enables people to have choice and control over their lives, and be active citizens rather than passive recipients of services. People who have choice and control over their support arrangements, keep in touch with family and friends, and stay active and healthy, are likely to be at less risk of abuse than those who are isolated and dependent on services. They are also more likely to have people in their lives that would notice and take action in response to any concerns of abuse.

Self-directed support provides a framework for managing risk. By incorporating critical checks and balances into person-centred approaches, the management of risks and the maximisation of benefits arising from taking considered risk can be improved.

An exploration of the evidence base concerning risk enablement in the self-directed support process has been produced by the Social Care Institute for Excellence (SCIE)[1]. The SCIE report identifies that misunderstandings about personal budgets have sometimes led to the misconception that people will be left unsupported, taking full responsibility for managing risk alone. It also identifies that misunderstandings about the principles and practice of independent living can impact upon common conceptions of personalisation being 'risky'. Risk aversion and generalised assumptions about groups of people can lead to professionals denying opportunities to people and restricting their lives. Emerging evidence does not appear to support concerns about increased risk through personalised services. A Skills for Care survey[2] shows that despite fears that a move towards person-centred care may leave individuals more vulnerable, people moving to direct payments and employing their own personal assistants experienced significantly less abuse than those recieving traditional council-commissioned services.

This briefing attempts to dispel myths and focus on practical and positive ways in which councils are integrating safeguarding and personalisation, particularly in relation to self-directed support and personal budgets, as they redesign their care management process around the principles of personalisation.

The principal objectives of this briefing paper are:

- to improve understanding of safeguarding and risk management as an integral part of personalisation

[1] Carr, S (2010) SCIE Report 36: Enabling risk, ensuring safety: Self-directed support and personal budgets London: SCIE
[2] Employment Aspects and workforce implications of direct payment. IFF research. Skills for Care 2008

- to encourage change and innovation in process and practice which supports and drives increased choice and control while managing risk and helping people to be safe in their communities

Personalisation, choice and risk

Increasing choice and control for people is central to the personalisation agenda.

The Government's vision for adult social care is one where personalised care and support and personal budgets, ideally as direct payments, are the norm, and where everyone is treated as an individual but also as a member of an engaged and active community.

Personalisation means 'thinking about care and support services in an entirely different way. This means starting with the person as an individual with strengths, preferences and aspirations and putting them at the centre of the process of identifying their needs and making choices about how and when they are supported to live their lives'.[3]

Risk-management is about working with a person using services in order to explore the levels of risk they want to take. It requires a cultural change for staff which includes a change in the way that risk is understood, managed and negotiated. Working in a truly person-centred way avoids the risks of making assumptions. It encourages an approach that considers the particular circumstances of the individual and any problems that have gone before. In designing support arrangements that suit an individual, safety remains one of the goals:

'Safety is a good thing. We ordinarily organise our lives and the lives of others so that we can be safe. However, safety can only be properly understood as one aspect of life – safety cannot be the absolute or only goal of life - that would be meaningless. We cannot just wish to be safe – we can only wish to be as safe as we can while getting on with the business of life.'[4]

Issues around choice and risk are complex. Risk is an inevitable part of life and the degree of risk that an individual finds acceptable to take in their life will vary from person to person. Previous Department of Health guidance on risk[5] has made clear that 'people have the right to live their lives to the full so long as that doesn't stop others from doing the same. Fear of supporting people to take reasonable risks in their daily lives can prevent them from doing the things that most people take for granted.'

A duty of care is established in common law in relation to all services. This duty of care is both about how services are provided and what the outcomes are. Choice and risk need to be integrated with a duty of care, as described by Justice Munby:

A quote from case law:

'sensible risk appraisal is not striving to avoid all risk…..(it aims) in particular to achieve the vital good of the elderly or vulnerable persons happiness. What good is making someone safer if it merely makes them miserable?'

Justice Munby MM (An Adult) (2008) 3 FLR 788; (2009) 1 FLR 443

[3] SCIE A rough guide to personalisation 2010
[4] Personalisation and safeguarding. Simon Duffy & John Gillespie. In Control
[5] Independence Choice and Risk: a guide to best practice in supported decision making DH 2007

1. Taking a strategic approach to safeguarding

Safeguarding and risk management require a community wide approach. Developing multi-agency policies can help ensure that there is a positive and joined-up approach to risk across the whole community. Staff need to know that there is a collective approach to managing risk and understand how and when they will be supported and protected by the organisation they work for. 'The corporate approach to risk that an organisation takes overwhelmingly influences the practices of its workforce.'[6]

Integrating safeguarding and personalisation policies

Below are some examples of councils where a new approach to risk has been introduced as part of the changes to care management resulting from self-directed support.

Case study:

In the Isle of Wight the council has set up a transforming adult social care board. This is a partnership of agencies from across the community working together to develop sustainable communities and person-centred services and support for older and disabled people. The council has developed a multi-layered and multi-agency approach to safeguarding, alongside an ambitious programme of reform, to embed person-centred approaches in all public services. This covers strategic, operational and individual responses, underpinned by four key goals and work programmes:

- a positive risk-taking policy covering all agencies
- a joined-up, non risk averse culture
- supporting the social care workforce to change and adapt
- specific arrangements for care governance and safeguarding

[6] DH Independence Choice and Risk: a guide to best practice in supported decision making 2007

Case study:

In Gateshead the council has developed a positive risk-taking policy to ensure that there is a consistent approach to the identification, assessment and management of risk across all community based services. This helps ensure that staff and managers are clear about their responsibilities, users of services and their families are fully involved in any decisions that are made, and vulnerable adults are safeguarded. The policy applies to any situation where a disabled adult or older person is supported by community-based services and there is a need to assess and manage potential risks. This could be in a person's home, at a centre or in the community. It could involve activities as diverse as cooking a meal, going swimming, travelling independently by bus or going on holiday. The strategy also sets out how to deal with things when they go wrong and when there is a negative outcome. It includes the steps that need to be taken in situations where an incident of concern occurs, roles and responsibilities; and reporting mechanisms and timescales.

Practitioners need a good understanding of how to explain the decisions that they make and demonstrate their reasoning. Gateshead Council's positive risk-taking strategy includes an outline of the key requirements for defensible decision-making as follows:

A defensible decision is one where:

- All reasonable steps have been taken to avoid harm.
- Reliable assessment methods have been used.
- Information has been collected and thoroughly evaluated.
- Decisions are recorded and subsequently carried out.
- Policies and procedures have been followed.

Practitioners and their managers adopt an investigative approach and are proactive.

Gateshead Council also make it clear that it will start any investigation from a 'no blame' standpoint and appropriate support will be offered to those involved including staff. Most importantly, the findings of investigations and reviews need to be disseminated so lessons can be learnt and changes made where needed.

www.puttingpeoplefirst.org.uk/Topics/Browse/Risk/?parent=3151&child=5008

Working with service providers and regulators

Part of the strategic approach to bringing safeguarding and personalisation together involves working with service providers and the regulator. They are important partners, and they need to understand and share the approach the local authority is taking. If a person chooses a service from a service provider, it is important that this service also combines a safe and personalised service. Similarly, the regulator has an important role in supporting the message that with personalisation safety need not be compromised.

Regional frameworks

Providing clear policies and procedures, and a framework for staff to work within that recognises collective responsibility, can be done at both regional and local level. The process of producing such documents is as important as the finished product since there is an opportunity to explore and debate issues of concern and share learning.

Case Study:

Councils in the South West have collectively developed a framework[7] (co-produced with personal budget leads, safeguarding leads, health and police colleagues and representatives from user led organisations, who consulted and involved service users) with links to guidance and good practice material from around the country. The process of developing the framework enabled all participants to engage in a discussion about the issues and arrive at a consensus and shared understanding. Individual councils have then used the action plan to ensure that their safeguarding policies and procedures address personalisation.

www.puttingpeoplefirst.org.uk/Regions/SouthWest/

The **West Midlands Joint Improvement Partnership** has produced a document setting out how to manage both individual and organisational risk within the context of personalisation.

www.westmidlandsiep.gov.uk/index.php?page=246

Working together with citizens

Councils cannot achieve the transformation of social care without working together with disabled people, older people, other personal budget holders, people funding their own support ('self-funders'), and their families and supporters. This applies just as much to safeguarding.

Case Study:

The London Borough of Croydon has taken the view that decision-making must be shared with individuals and communities in a way that reflects the real power shift at the heart of self-directed support. This will embed the values and purpose of introducing self-direction by including a challenge to what the council is doing as part of its implementation.

[7] www.puttingpeoplefirst.org.uk/Regions/SouthWest/

The council has created an inclusive forum for self-directed support. The forum enables citizen voices to be heard and is a 'reality testing' mechanism to check out how self-directed support is going – celebrating personal successes and flagging problems. The forum brings together stakeholders with different interests – personal budget holders, providers and commissioners - and is intended to be a key mechanism for shaping the community and market. One of the purposes of the forum is to agree local systems for assuring quality. Ensuring a discussion on quality assurance at each and every forum meeting enables open and honest explorations of safeguarding and other quality assurance issues central to people's wellbeing. This can take place in ways which balance the need for safeguarding to feature prominently in people's thinking, whilst at the same time avoiding inappropriate restrictions to individuals' right to choice and control.

A group of citizen leaders are currently being supported by In Control to develop their skills and expertise in relation to personalisation. They will facilitate self-directed support by offering people help with support planning, and in other ways. The aspiration is that the forum will eventually become independent of the council, towards which a first step has already been taken by commissioning Croydon Coalition for Independent Living and Learning to run the inclusive forum for the first year of its life.

The inclusive forum and citizen leaders' programme are central to a wider strategy for building community. Other components include a community steering group made up of seven third sector organisations, which has already played a major role in helping to shape Croydon's approach to community and personalisation.

2. Integrating safeguarding into council business processes

A well-designed business process should have checks and balances to improve risk management throughout. The following are critical stages in the process of self-directed support when risks and benefits can be identified and approaches to safeguarding considered:

1. Early intervention and prevention

2. First contact

3. Assessment

4. Support planning

5. Agree plan and sign off

6. Outcomes review

1. Early intervention and prevention

Working to ensure that the general population can lead active and fulfilling lives that are free from harm is the starting point for personalisation and safeguarding. Many councils are actively exploring new approaches to engaging with local people and identifying issues at an early stage rather than waiting for people to come to them when a problem arises. Increasing emphasis is being put on ensuring that there is a ‘universal offer’ that is made to people regardless of their financial means or level of need.

For example:

Case Study:

The navigator service in East Sussex is a free service aimed at helping local people aged 60 and over to live independently at home for as long as they choose.

Trained community workers will visit people in their home to look at the support they may need. This might include:

- getting small jobs done around the home
- smoke detector fitting
- security advice
- aids to help mobility around the home
- home safety checks
- community alarms (lifeline)
- community transport and carer services
- finding a local exercise group or Internet club.

Case Study:

In Gloucestershire, Village Agents bridge the gap between communities and organisations. They are based in the rural parts of Gloucestershire and support the over 50s. This includes providing high quality information, putting people in direct contact with the agencies that are able to provide the service they need and carrying out a series of practical checks. Village agents help build stronger communities.

2. First Contact

Initial contact provides an opportunity to assess the individual's presenting situation and identify existing or potential risks. It is also an opportunity for people to voice their concerns. Well-publicised points of access that encourage the reporting of concerns are important. Safeguarding includes providing good information and advice, signposting or in the case of more serious issues, active reporting and intervention.

A recent report and action plan[8] (published on the Local Government Improvement and Development website) outlines key safeguarding principles and issues for consideration in development of Universal Information, Advice and Advocacy Services. It emphasizes that 'Safeguarding issues need to be considered at every stage of the interpersonal support process and should form a 'golden thread' running through all communications and services.' The report highlights good practice in other parts of the country such as public awareness raising campaigns, help lines and websites that encourage the reporting of abuse. The report also highlights examples of the provision of good information that 'should help people to make wise choices, enable them to take control and help prevent people from losing their abilities, skills and independence.'

3. Assessment

During the assessment process, there is a duty on the council to identify any risks and act appropriately where the situation demands it. The self-directed assessment should allow the individual to reflect on risks and how well they are able to stay safe from harm. The model of using self-directed assessment treats people as "experts in their own lives", and provides a more person-centred, outcome-focused mechanism for determining what the issues are that face an individual. It is an opportunity to discuss and explore any existing or potential risks and open a dialogue about how these can be positively managed.

The assessment process should include an assessment of mental capacity where appropriate. The council must identify if there is any doubt as to whether the person has capacity to make relevant decisions and, if so, must follow the principles of the Mental Capacity Act 2005 and enable appropriate representation. Issues of capacity should be fully explored and decisions made about the level of assistance required. This could include supported decision-making, advocacy, specialist communication, or appointing a suitable person to make decisions on behalf of the individual using the best interests guidance contained within the Mental Capacity Act.

4. Support planning

The focus here is on enabling the person to develop their own plan, with support if necessary, determining what outcomes they wish to achieve when meeting their social care and support needs. In enabling the person to develop their plan, risks and benefits are identified and discussed and consideration given to what level of risk a person wants to take in their lives. The individual's awareness of the associated risks is raised and consideration given to any approaches that might help eliminate, reduce or manage those risks whilst still achieving the outcomes that the person wants to achieve in their lives.

[8] Thacker, Helen 2010 Key safeguarding principles and issues for consideration in development of Universal Information, Advice and Advocacy Services. Action plan: Safeguarding and Independence, Advice and Advocacy. Unpublished report for FreshVoice, available at http://www.communities.idea.gov.uk/c/2962596/doclib/document-display.do?backlink=ref&id=4642678&themeId=7663638

As part of support planning it should be agreed how services and support will be secured. This should include how the money for that person's support will be managed. It may be given as a direct payment and services and support commissioned or purchased directly by the individual. Alternatively it can be managed by the council or a third party or as a combination of these arrangements. What is important is that the way the money is to be managed and support secured is clear and appropriate for the individual and their unique circumstances. Systems for ongoing support should be discussed and it remains a responsibility of the council to ensure any help people need to manage their support is in place. Councils, health bodies, private care providers and individual care staff owe a duty of care to individuals to whom they provide services. An individual with capacity may choose to take risks. However there is an important distinction between putting people at risk and enabling them to choose to take reasonable risks (see Appendix A of this report for more information on duty of care).

A number of different tools have been developed to assist with the process of decision-making. These include:

i) Supported decision-making tool

This is designed to guide and record discussions when a person's choices involve an element of risk. It is particularly helpful for people with complex needs e.g. dementia, or for someone who wants to undertake activities that appear particularly risky and can be amended to suit different circumstances. A detailed and practical guide to supported decision-making has been published by Paradigm in partnership with In Control. The guide explores supported decision-making in light of the Mental Capacity Act 2005, providing ideas and templates to use when supporting people in any decision-making process. The guide explains best interest decision-making and how to meet legal requirements.[9]

A supported decision-making agreement will identify whether the person has a third party representative and if so, who that is. The council must ensure that the agreement and the person's circumstances are regularly reviewed. Ideally, the person will have a circle of support or an advocate.

ii) Risk matrix (see overleaf for example)

A risk matrix is a simplified method for analysing risks. It helps identify the likelihood of an individual being able to safely manage a direct payment. The level of support needed and the level of support in place is identified so that those most at risk can be offered appropriate support. It should be used in conjunction with broader discussion with the individual and their family (if appropriate) around their objectives and aspirations and positive approaches to achieve these.

[9] www.paradigm-uk.org/articles/Supported_Decision_Making_Book/2449/43.aspx

Case Study: Lincolnshire risk matrix

Likelihood of Direct Payments working / Support in place	Very High 5 Inability to get a bank account, manage money, or where the assessor believes there may be possibility of mismanagement	High 4 Little or no understanding or acceptance of responsibilities, can express a preference but needs substantial support to make decisions	High 3 Basic understanding and acceptance of responsibilities, needs significant support to make decisions, may not ask for assistance without prompting	Moderate 2 Reasonable understanding and acceptance of responsibilities, makes decisions with little support, asks for assistance when necessary	Minimal 1 Good understanding and acceptance of responsibilities, makes decisions autonomously, asks for assistance when necessary
None 5 No support available	25	20	15	10	5
Minimal 4 very limited or intermittent support from friends/family	20	16	12	8	4
Moderate 3 Relies on one or two close friends/family for support	15	12	9	6	3
High 2 Network of friends/family provide wide range of support	10	8	6	4	2
Very High 1 Formal support from trust and/or very wide network of friends/family	5	4	3	2	1

Support Matrix

Slide supplied by

Lincolnshire COUNTY COUNCIL

iii) Risk enablement panels support staff in the management of balancing risk and choice whilst recognising that occasionally such choices may go wrong. They have been established by a number of councils to enable shared decision-making if there are concerns about risk. They can help to:

- provide support, guidance and direction to staff, including conflict resolution
- provide consistency
- improve the management of risk decision-making with a focus on risks to maintaining independence
- share the responsibility for the management of complex risk cases and develop local learning and dissemination of best practice in this area.

For example Stockport's risk enablement panel is designed to provide support to care co-ordinators and individuals where they have been unable to reach agreement over the management of risks within a support plan, both in the agreement of a plan and in cases where risks arise once a support plan is in use. The guidance and procedure document for the panel clearly state the background to its being formed, its purpose, membership, and procedures. Its intention is to facilitate individual choices wherever possible, while managing risk proportionately and realistically, and to make its proceedings and decisions transparent.

The Panel may be attended by the person receiving support and, with their agreement, others such as family members and advocates.

It takes a multi-disciplinary approach which, in accordance with current guidance[10] aims "to have a common approach to risk among all parties concerned in delivering health and social care, which will promote the sharing of responsibility for risk in a transparent and constructive way."[11]

5. Agree plan and sign off

At this stage the plan is evaluated and checked by the council to ensure it clearly links the aspirations of the individual with meeting the needs for which funding has been provided. Where there is concern about levels of risk, a risk enablement panel can help provide a forum where staff at different levels of the organisation can share risk decision-making.

[10] Independence, choice and risk: a guide to best practice in supported decision making DH 2007
[11] Stockport Metropolitan Borough Council and Pennine NHS Foundation Trust (2009) Mental Health SDS Project: Guidance and Procedure for referring Self-Directed Support applications to a Risk Enablement Panel.

Case Study: My keeping safe plan

Warwickshire County Council has developed a tool to use with customers during the "set up" of their direct payment. The tool is an example of co-production and was developed by customers, front line practitioners and staff from the Rowan Organisation (provider of the direct payment support service in Warwickshire).

Its purpose is to support the customer through a process which identifies what support is available and how it can be accessed and results in a document which is of practical use to the customer.

The tool provides a framework for discussion between the care worker and the customer and for the provision of information which will support the successful management of the direct payment and mitigation of risk. The plan covers:

1. Managing the direct payment account
2. Recruitment (including use of CRB checks)
3. Responsibilities as an employer (including references, contracts, insurance)
4. Training needs and plan (for the customer and for personal assistants)
5. When things go wrong
6. Who can help me (contact sheet which includes a safeguarding helpline number)

6. Outcomes review

The council must check at appropriate intervals whether the support plan is achieving the appropriate outcomes for the individual. Reviews must be timed to reflect the relative risks and the possibility of significant changes. The review should focus on outcomes not processes, and look at what is working well and what is not working well for the individual. The design of the outcomes review process is an integral part of the risk management process for the council. Depending on what is agreed at the review, changes can be made to the resources, support or controls described in the support plan. Reviews are therefore a crucial part of safeguarding, and need to be carried out effectively.

Councils should invest in effective person-centred 'reviewing' training, so that staff who review by visits, by phone calls, or by observation, know what questions to ask and know how to notice when things are not going well. Some people will need more frequent reviews than others – for example if they are particularly isolated or lack mental capacity. Social care skills are needed rather than simply auditing ones, as the ultimate aim is to strengthen the ability of the person to achieve the outcomes they want.

A project by Lincolnshire Social Services found that –

> *'By shifting the focus of quality assurance from paperwork to building supporting relationships, practitioners and independent living support staff will be in a much better position to help service users manage the most important risks, which are the risk of somebody coming to harm, and the risk of care outcomes not being met.'*[12]

After moving the priority from funding issues to ensuring safety and the achievement of care outcomes, the new process has been found to be more effective at identifying and addressing misuse of funds than the original approach

The Department of Health has produced a guide[13] describing the principles of outcome-focused reviews along with practical examples.

Case Study:

Mrs Peterson is a 90-year old person who lives in her own home in the community. She identified that her friends and family are very important to her.

"It is important that they are able to visit and my support from care workers is arranged around this. I make all my own choices with support from my family, friends and care team. The decisions that I make are appropriate to my life and the way that I choose to live."

Mrs Peterson receives her personal budget as a direct payment. She has chosen to have her care support from an agency and employs them to visit three times a day, and she also has a hairdresser who visits once a week. Mrs Peterson wants to remain in her own home even though she is housebound. She states that this is and will remain very important to her and she does not want to move to a ground floor flat. She has made the decision that she does not want to go out. At 90, she feels that this is the right decision.

At her review the social worker used a person-centred format and found it provided much more information than previous review formats. Mrs Peterson said: "The review worked well for me. I enjoyed going through all of the sections and sharing my life choices with the social worker. I liked having time alone with the social worker to explore my care support and to check that things are still working well."

Responding when things go wrong

Sometimes things go wrong. The person may not be achieving the outcomes agreed, the budget may not be sufficient; there may be abuse of a physical, emotional or financial nature by family, friends or personal assistants. Sometimes problems are reported by the person themselves; sometimes it is noticed as part of a review; and sometimes a safeguarding alert is made by family, friend or neighbour.

[12] www.puttingpeoplefirst.org.uk/_library/Resources/Personalisation/Direct_Payments/Financial_and_Admin_Systems/Direct_Payments_Case_Study_-_CSIP_toolkit_Website-2.pdf
[13] www.puttingpeoplefirst.org.uk/Topics/Latest/Resource/?cid=5625

The same personalised approach that was used to set up the personal budget needs to be used to address the problem. This involves establishing with the person what has gone wrong and working in partnership with them to resolve it. Sometimes the solution is better budgeting skills; sometimes it is referral for advice on debt management; sometimes it is family mediation; sometimes it is assisting the person to better manage his or her relationships. It may be about using a different money management system for the personal budget or providing greater support for managing the direct payment.

If there is concern that a person has been abused or is at risk of abuse, local safeguarding adults procedures must always be followed.

Case Study:

The South West region is establishing clear principles to ensure a person remains in control of the process. It is intended that these will be published in their forthcoming guidance to participation in safeguarding adults. They are:

- **Consent** must be sought before initiating the safeguarding adults procedure unless there are other vulnerable people at risk, or the person concerned may die or be seriously injured if the procedure is not initiated. If the safeguarding adults procedure is to be used without the persons consent, they must be informed and continue to be as much part of the procedure as they wish. If a person. If a person is assessed as not having the capacity to consent, then the principles of the Mental Capacity Act must be followed.
- The outcomes the person wants from the use of the safeguarding adults procedure should be ascertained, clearly recorded at the beginning and form the basis for any safety or protection planning.
- People should have access to appropriate advocacy and support throughout the procedure and afterwards.
- People should be able to participate in whatever way they prefer. Any protection or safety plan will be most effective if the person it relates to has been active in formulating it.

Personalisation means working with the person and their carers to address the problem. Most things that go wrong can be used as learning experiences for all concerned. The aim is to support the person to manage better.

Safeguarding teams should be seen as part of the council system that works to put things right. Safeguarding teams are trained to assess concerns of ‘significant harm’. They have skills and experience in investigating concerns and calling safeguarding meetings, where there are discussions and plans for managing risk of significant harm.

'We have experience of helping people stay safe. Lack of safety can come in many forms – the man who grooms the young woman with learning disabilities for an exploitative sexual relationship, the neighbour who persuades an elderly lady to change her will to his benefit; the personal assistant who develops a coercive bullying relationship with the person she is meant to be supporting. Each of these need a personalised safety plan – and where personalisation teams and safeguarding teams work well together this can be achieved.'

- Safeguarding Co-ordinator

Case Study:

Andy found a course at Preston University where he could learn about the different aspects of motor sport, his real passion. But people around Andy were worried about the risks. They worried Andy might not cope with the course, managing money, meals and day-to day-life. Mostly, they worried Andy would be vulnerable to abuse or exploitation. Andy had, so far, led a very sheltered life, but had also been bullied at college and by local young people who did not understand him. He got a personal budget and wrote a support plan. The plan made clear that the course was so important that the risks were worth it. So the money from social services enabled him to go to Preston and to have some support there. Andy used the natural support of the college's pastoral care team, and gradually made friends as any other young person would do.

However, Andy was vulnerable and some people took advantage of him. During his first months at college, Andy lost several hundred pounds, his PSP games console and his TV. He thought these were 'loans' to people he could trust. He got support to speak to the police. His supporters helped him to learn from this experience so he wouldn't be exploited again. Andy successfully finished his course. He now has a part-time job at Halfords. He also works as a volunteer for a community recycling organisation.

He says if he had been completely protected from risk, he would never have learned about trust. He wouldn't have gained the confidence to deal with people trying to take advantage. *'People learn by making mistakes. I needed to make mistakes too so I could learn.'*

From In Control factsheet 16 managing risks and safeguarding

www.in-control.org.uk/site/INCO/Templates/General.aspx?pageid=1454&cc=GB

3. Building connections

It is important that people are supported to be more connected and recognised as active citizens within their communities. This in turn creates stronger communities, where people with care and support needs are visible, valuable members of the local area. As outlined above, the process of self-directed support and allocating personal budgets should increase people's understanding of risks, options for managing those risks, and ways of balancing this with achieving the outcomes they want.

> *'Putting people in control of their own destiny in this way strengthens their skills and increases their confidence, facilitating increased connectivity or "circles of support", which in turn, increase the likelihood of potentially abusive situations being noticed. Stronger citizens are less likely to become victims of abuse, while stronger communities are more likely to notice the early signs of potential abuse occurring.'*[14]

Involving carers, family and friends as partners

Personalisation is about designing systems of support that work well for an individual and, where they wish it, their family or circle of support. It recognises the uniqueness of each person's lifestyle and relationships. Carers, family members and friends can bring their knowledge and experience to help identify risks and strategies for balancing risk and choice.

Assessment processes should identify the level of caring that families wish to provide and any risks to their health and well-being of doing so. Support plans should consider how to ensure that everyone can positively participate in family life and in the wider community. Carers have a right to an assessment of their own and these assessments should similarly be self-directed allowing the carer to identify their priorities and aspirations and consider risk and safeguarding. These risks include emergency cover, financial risk, health risks and risks to personal safety.

Councils should:

- look at the situation for the family as a whole, rather than assessing the person's needs in isolation
- offer access to information, advice and support for carers
- find out the views of carers during the supported self assessment process and offer a carers assessment
- check how much support the carer is willing and able to provide before the amount of the personal budget is finalised
- consider if there is a need for the personal budget to be sufficient to enable carers to have a break

[14] Safeguarding and personalisation – two sides of the same coin. In control Sept 2009

- consider giving a separate personal budget directly to the carer to enable them to sustain a life beyond caring
- consider the use of advocacy services where there are conflicting views about ongoing support to an individual and to the management of risk

Establishing a circle of support

A circle of support[15] is a group of people who are invited to come together and meet regularly to offer support to someone. It is a way of sharing concerns and plans for the future with someone who needs extra help in areas of their life. The circle should include people who know and care about the person who needs support. It can also include people who have expertise in areas that might be useful (for example, education, housing or employment) and service providers, who can be an essential resource to a circle of support. It is very helpful to have one person who will take responsibility for facilitating the meetings, keeping everyone focused on the task they have offered to undertake, and someone to take notes.

The circle members will spend time listening to the person and their family, getting to know the person well - their likes and dislikes, interests and talents, hopes and ambitions. They will then help the person to discuss and explore the things they want to achieve, by gathering relevant information, making telephone enquiries, writing letters etc.

Circles puts the person at the centre and deliberately shifts power towards them, supported and assisted by those who love, like and know them well. Circles of Support enable people to take control of their lives. Helping them to identify a desirable future, and developing a strategy to achieve it. They can help people to reclaim some of the freedom which most of us take for granted.

User-led organisations

User-led organisations have an important role to play in supporting individuals and are in themselves an example of active citizenship. User-led organisations (examples of which include centres for independent living) are well-established in many parts of the country.

Their strength is that they are local organisations controlled and developed by disabled people themselves. They often have a wide remit within their community, with excellent local connections.

Most centres for independent living provide a range of services such as:

- support to help people self-assess their needs
- support to use direct payments (this can include assistance with recruiting and employing personal assistants (PAs), a payroll service, a register of personal assistants, training of personal assistants and being an employer)
- advocacy and support for self-advocacy
- peer support
- advice and information.

[15] www.circlesnetwork.org.uk/circles_of_support.htm

They may also:

- run projects encouraging take up of direct payments amongst marginalised groups
- provide disability equality and human rights training
- carry out consumer audits of services.

Case Study:

Derbyshire Coalition for Inclusive Living (DCIL) is an organisation of disabled people. It works to apply disabled people's own ideas and experience to developing services and public policies. DCIL aims to provide independent, integrated living opportunities to disabled people through a range of services. This support is based on the seven needs identified by local disabled people: information, counselling, housing, technical aids, personal assistance, transport and access. There is a direct payments, support planning, brokerage team, and a counselling service offered by disabled people trained in counselling to disabled people or their family members.

4. Capacity to make decisions

Using personalised approaches can be helpful in responding to complex cases of vulnerability and abuse. A person-centred approach to establishing a good support plan can help individuals, and those who care about them, think in a positive and productive way about how to achieve the lives they want whilst managing identified risks.

It is important that assumptions and generalisations are not made about the mental capacity of certain groups of people. The SCIE report *Enabling Risk Ensuring Safety: Self directed support and personal budgets* identifies that:

> *"Some risk averse practice in the deployment of direct payments has resulted in frontline practitioners making decision for people based on generalised assumptions about the capacity or 'riskiness' of certain groups (particularly people with mental health problems) without adequate engagement with the individual or understanding of their circumstances."*[16]

Department of Health guidance on risk management for people with dementia looks at risk assessment, enablement and management from a person centred perspective delivered through whole systems working. The risks of overprotective approaches are illustrated in the following personal account from a person living with dementia:

> *"Each day brings its own catalogue of risks, some minor and some dangerous. But over time and with forgetting, there is the risk of being put on the sidelines, of being seen as a hindrance, and having control taken away from you, under the guise of it being for your own good. So, while we can, we must challenge the risks…People living with a dementia must be allowed to take risks, because if we don't, we are in danger of relaxing into the disease. At times we feel hopeless. At times the hurt we feel is indescribable and we can let it be a barrier to life. But there is a life for us, if we risk it." (Morgan K. Risks of living with Alzheimer's disease: a personal view. Journal of adult protection. 2009)*[17]

If self-direction is to be successfully introduced for all those eligible for community care services then the following principles should be followed:

- Levels or potential instances of risk are not assumed because of factors such as diagnosis or service use, but are based on the individual, their circumstances and their actual statements and behaviour
- Risk assessment is proportionate to individual circumstances

[16] Carr, S (2010) SCIE Report 36: Enabling risk, ensuring safety: Self-directed support and personal budgets London: SCIE
[17] Nothing ventured nothing gained: risk guidance for people with dementia. DH 2010. publication pending

- Judgements about capacity to make decisions are based on the principles of the Mental Capacity Act, and not on assumptions based on diagnosis or service use
- All assessments need to be conducted on a holistic basis, based around the individual, their life and aspirations and the various supports they require, rather than on existing funding arrangements for health and social care
- The risks to individuals of continuing to use non personalised services needs to be considered (e.g. loss of social network, confidence, autonomy etc).

Paths to Personalisation in mental health DVD:

Extract from 'Risk' section:

Pauline: "I've been in services for long enough to know that they can be incredibly risky of themselves. Risky, not only in terms of physical risk to oneself, and I've been assaulted in a mental health facility, but also in terms of becoming quite institutionalised, lowering your self esteem, lowering your self confidence, so you come out of there feeling as though you can't do anything anymore, you're a kind of 'rubbish person'.

"So when I'm at home and I'm managing my own mental health using direct payments a lot of those risks are not an issue any more.

"I have ways of managing those risks: just by way of that consistency of worker; having people I like and who know me well; being able to get out and about in my community and being a valued member of my community; being able to give as well as receive in life; and being a citizen…I think when people have a positive sense of self-confidence and self-esteem, then they're not as likely to be at risk to themselves or to others."

And I think when things do unravel, when maybe people are becoming unwell and risks can't be managed in a particular environment, then that's when advanced directives and crisis plans really need to be watertight and need to be agreed beforehand and need to be followed at that time. Those advance directives and crisis plans need to state what the risks are and how they are being managed. It's not about eliminating risk it's about managing risk, and I think we can all do that."

Reference: NMHDU (2010) Paths to Personalisation in mental health DVD.

Full story available from www.pathstopersonalisation.org.uk

Person-centred approaches can be used to establish what is important to the individual and what choices they want to make. For people who lack capacity to make decisions it remains important to understand their individual preferences and values, and what they want to happen in their lives. This can be done through advanced decisions, written statements of wishes or through a Lasting Power of Attorney (LPA). Here an individual can, while they still have capacity, appoint another person to make decisions on their behalf about financial, welfare or health care matters. The person making the LPA chooses who will be their attorney.

The underlying philosophy of the Mental Capacity Act is to ensure that individuals who lack capacity are the focus of any decisions made, or actions taken, on their behalf. All decisions about mental capacity should be guided by the five core principles of the Mental Capacity Act. This means that the approach taken should centre on the interests of the person who lacks capacity, not the preferences or convenience of those caring and supporting that person. Staff and family carers should make every effort to ensure that people are helped to make as many decisions as possible for themselves. With a changing and progressive illness, reviewing and adapting plans is particularly important.

Core principles of the Mental Capacity Act 2005

1. A person must be assumed to have capacity unless it is established that they lack capacity.
2. A person is not to be treated as unable to make a decision unless all practicable (doable) steps to help him to do so have been taken without success.
3. A person is not to be treated as unable to make a decision merely because he makes an unwise decision.
4. An act done, or decision made, under this Act for or on behalf of a person who lacks capacity must be done, or made, in his best interests.
5. Before the act is done, or the decision is made, regard must be had to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the person's rights and freedom of action.

(Mental Capacity Act 2005)

Taking a positive approach to risk means looking at how to enable an individual to lead as full a life as possible and manage the risks that present themselves. This can include the use of different forms of assistive technology such as memory aids and other reminders which can be useful in helping the person retain their skills for longer. Schemes that support and enable people to continue to live their lives to the full can help to contribute to a continued sense of well being and a sense of connection. The use of personal budgets to create more individual and personalised packages of support can help enable people to maintain independence.

5. Managing the money

Personal budgets are an important aspect of personalisation. It is important that in establishing a support plan consideration is given to the most suitable way that the money is managed.

A personal budget describes the amount of money allocated to an individual for their assessed eligible needs. It can be given as a direct payment or managed by the council or a third party.

A personal budget must be spent in line with a support plan that has been agreed by both the person and the council. *A Vision for Social Care: Capable Communities and Active Citizens* (HM Government 2010) encourages councils to provide the right support that makes it as easy as possible for people to receive the money as a direct payment. The Vision challenges councils to provide personal budgets, preferably as direct payments, to everyone who is eligible, within the next two years.

ADASS Making progress with Putting People First 2009 describes a personal budget as:

'the term used to describe the amount of money that will fund a person's care and support costs. It is calculated by assessing a person's needs. It is spent in line with a support plan that has been agreed by both the person and the council. It can be either a full or a partial contribution to such costs. The person may also choose to pay for additional support on top of the budget. So the term personal budget refers to social care money. A personal budget may be taken by an eligible person:

- in the form of a direct (cash) payment, held directly by the person or where they lack capacity, by a "suitable person" (from 9 November 2009).
- by way of an 'account' held and managed by the council in line with the person's wishes i.e. to pay for community care services which are commissioned by the council, or as an account placed with a third party (provider) and 'called-off' by the user in direct negotiation with the provider
- as a mixture of the above.

Direct payments offer people the maximum degree of choice and control in how their eligible needs are met. Alongside good support planning, they empower people to build their own networks of support and manage their own risks. People who are connected to communities and empowered to take control of their lives are more likely to be safe from harm.

The availability of good support services can make a big difference in people's ability and willingness to manage a direct payment. They can provide help with managing money, staff and services. For example:

- Assisting with the advertising and recruitment process of employing a Personal Assistant.
- Liaising with care agencies.

- Compiling job descriptions and contracts of employment offering advice on relevant aspects of employment law, payment of wages, tax and national insurance contributions, and employers liability insurance.

Where there are concerns about an individual's ability or desire to receive and manage the money there are a range of options available. These include different systems for direct payments and the flexibility to mix and match in order to reach an arrangement that suits the person best.

Individual service funds (ISF)

This is an agreement between the individual and the provider that sits beneath the framework contract. The person asks the council to lodge funds with a provider on their behalf while retaining choice and control over the support and services provided. An individual service fund is a means by which someone who does not opt for a direct payment can draw on existing or new contracts in an individualised and person-centred way, without taking on direct budget management responsibilities.

It is important that the organisation can demonstrate that the personal budget money is kept separate from other monies relating to the organisation, and that the support is being provided exactly as specified within the support plan, and not in the standard generic way that the organisation would usually provide support. The package must be personally tailored to the individual.

For more information about individual service funds see Contracting for personalised outcomes

www.dhcarenetworks.org.uk/_library/Resources/Personalisation/Personalisation_advice/CFPO.pdf

Case study of an individual service fund

Margaret is 64 years old and lives with her husband. She had numerous strokes in the past which have left her with reduced mobility. She also suffers from angina and arthritis. Her husband is unable to care for her, or maintain the house due to his own health problems. Margaret has an individual service fund which means she has been able to keep the same carers and agency involved in her care, but has changed how they support her in the things she particularly needs and wants help with. Margaret developed her support plan with help from the care agency managing her individual service fund, her care manager and her husband.

She says: "I wanted to get my independence back and to get my house sorted out. I don't feel safe going out alone, so having someone to come with me when I go shopping really helps, rather than them doing the shopping for me. I've got my social life back as well, as I've started going back to the social club I went to at the British Legion before all of this happened."

Direct payments

Where the person with eligible needs does not have the capacity to consent to direct payments, **a direct payment to a 'suitable person'**[18] can be made to an appointed person who will manage them on their behalf. With certain exceptions, councils now have a duty to make direct payments in respect of a person lacking capacity, provided there is a willing suitable person who meets all the conditions set out in the regulations.

Case study of a direct payment to a suitable person

Joan has dementia and lacks capacity to consent to a direct payment. Her friend Sheila has Enduring Power of Attorney over her financial affairs. Joan tried living in a care home and although the home was of a high standard, it didn't suit her. Friends and family found that she lost confidence and became agitated and unhappy. They felt that her wishes and needs would be better catered for if she could have tailored support at home. It was agreed that Joan's personal budget could be provided as a direct payment to a suitable person. Sheila was appointed by the council to act in this capacity and receive the direct payment on Joan's behalf. She involves Joan in the choice of personal assistant.

By knowing and understanding Joan's behaviours and responses, Sheila can tell if Joan is happy with the decisions made. Joan is supported with a range of activities and personal care and seems more content and relaxed. Sheila, who manages all the payments, says that at first she was daunted at the prospect of these additional responsibilities but in fact it has never been a problem. The personal assistant is employed through an agency who manages all the employment issues including ongoing training. The paperwork is straightforward and she knows there is always help on hand through the council should there be any issues or concerns.

A **third party supported managed account** can be used when someone does not have a bank account but plans to use a direct payment to purchase their support. In these situations, an individual's direct payment is paid to a third party organisation at their request.

This is particularly useful for people who

a) have not been able to access the facilities of the main banks and building societies

b) may not wish to manage the money themselves but do not have anyone who could act as their agent

or

c) if there are any risk issues around the person receiving the money.

There is usually a charge for a supported managed account which must be included within the support plan costing.

[18] Community Care, Services for Carers and Children's Services (Direct Payments) (England) Regulations 2009

Direct payment through prepaid cards – a prepaid card can provide a secure and convenient way for some people to receive direct payments. Cards can be topped up at regular intervals and funds can be available to spend with any organisation able to accept card payments. They can be used to pay for services face-to-face, over the internet, or on the telephone and to release cash. This system supports people who choose not to or are unable to receive money in a personal bank account. It removes the need for the individual to provide financial records to the local council as the council receives this information directly. The extent of their use can be controlled by the council providing the card. However, councils should take care not to unreasonably restrict the individual's choice and control. The options available should be reviewed to increase choice and control in the future through possible alternatives.

Case study of a prepaid card

Mrs N is a 97 year old woman living in Enfield and originally from East Africa. She is of Hindu religion and speaks Gujarati and needs an interpreter to help her express her needs. Mrs N as short term memory loss and was previously getting home care directly through the council's agency provider. This arrangement proved difficult and inflexible with regards to her communication and cultural needs.

The situation was reviewed and a personal budget was allocated to Mrs N. A support plan was developed that includes employing personal assistants who speak her language and understand her cultural needs. They provide support throughout the day including accompanying Mrs N to the shops and helping her cook fresh vegetables as she is a strict vegetarian. Mrs N also attends an Asian Day Centre, where she meets friends who share her background and similar experiences from East Africa, and participates in religious festivities. She also uses some of her money to visit family members in another London borough.

Mrs N receives her money as a direct payment through the E-card. She feels that the E-card makes life easier, more convenient and secure. Her granddaughter helps her by checking transactions and balances online. Mrs N uses her E-card to pay for her personal assistants. This relieves her and her family of the paperwork and only involves two phone calls to the bank each month. She also uses the card for the Asian Day Centre where she goes three times a week. She has names and contact numbers if she or her personal assistants ever need clarification or support from Social Services. She also knows that she can change her mind about her support arrangements, including transferring the financial arrangements back to the local council (e.g. as a virtual budget).

There is no single way that people have to take their personal budget. Personal preferences and experience should determine how their money is organised and managed to suit individual circumstances. Whichever way it is managed, providing high quality, ongoing support to people is fundamental to supporting people to benefit from the choice and control that personal budgets can bring. Support services are often provided by user-led organisations or in partnership with third sector organisations.

Annex A: Legal framework

Duty of care

A duty of care is established in common law in relation to all services. For an action to succeed in negligence there must be an identified duty of care. An action will only be successful where a duty of care is breached through negligent acts or omissions and where injury is suffered as a result.

A duty of care is an obligation requiring that a reasonable standard of care is exercised when providing support (or omitting to provide support) that could forseeably harm others. Councils, health bodies, private care providers and individual care staff owe a duty of care to individuals to whom they provide services.

An individual with capacity may choose to take risks. In some circumstances, a court may decide that the individual consented to the risk, and therefore find that the duty of care will not have been breached. Providers and/or commissioners could however, be exposed to litigation if they place people in a position of risk, there being an important distinction between putting people at risk and enabling them to choose to take reasonable risks.

Duty to involve

The duty to involve seeks to ensure that local people have greater opportunities to have their say. The aspiration for the new duty is to embed a culture of engagement and empowerment across the authority's functions. Consideration should be given to the provision of information and the consultation and involvement opportunities made available to individuals across all of the Council's functions.

This new duty, came into force on 1 April 2009, and is set out in section 3A of the Local Government Act 1999 (as inserted into that Act by section 138 of the Local Government and Public Involvement in Health Act 2007). The duty applies to all best value authorities in England except police authorities.

The new duty will not replace existing requirements on authorities to engage with local communities.

The duty requires authorities to take those steps they consider appropriate to involve representatives of local persons in the exercise of any of their functions, where they consider that it is appropriate to do so. It specifies the three ways of involving that need to be addressed in this consideration:

- providing information about the exercise of the particular function;
- consulting about the exercise of the particular function; and/or
- involving in another way.

For further information on approaches to engagement with local people see *Practical approaches to co-production DH 2010*

Human rights

There is a duty on all public authorities and bodies carrying out functions of a public nature, not to act incompatibly with rights protected under the European Convention of Human Rights (ECHR), and this can extend to a positive duty to protect rights. This duty does not apply to private bodies, such as private care homes, when they are not exercising functions of a public nature.

Article 8 of the ECHR concerns the right to respect for private and family life, home and correspondence. Article 8 is not an absolute right, but any interference with it must be justified and proportionate.

Disability Discrimination Act

Councils must not unlawfully discriminate against disabled persons. Further they are under a duty under section 49A of the Disability Discrimination Act 1995 to have due regard to –

a) the need to promote equality of opportunity between disabled persons and other persons,

b) the need to take steps to take account of disabled persons' disabilities, even where that involves treating disabled persons more favourably than other persons;

c) the need to promote positive attitudes towards disabled persons; and

d) the need to encourage participation by disabled persons in public life.

Section 49A of the Disability Discrimination Act 1995 is replaced by the general duties in section 149 of the Equality Act 2010 which also requires that Councils have due regard to the need to promote equality of opportunity and good relations.

Health and safety

There is a legal duty placed on all employers to ensure, as far as is reasonably practicable, the health, safety and welfare at work of all employees. In addition there is a duty to protect the health and safety of other people who might be affected, such as people who use services. The Health and Safety Executive endorses a sensible approach to risk, so that health and safety legislation does not prevent reasonable activity.

Mental Capacity Act (MCA)

The MCA has been in force since 2007 and applies to England and Wales. The primary purpose of the MCA is to promote and safeguard decision-making within a legal framework. It does this in two ways:

- by empowering people to make decisions for themselves wherever possible, and by protecting people who lack capacity by providing a flexible framework that places individuals at the heart of the decision-making process

- by allowing people to plan ahead for a time in the future when they might lack the capacity, for any number of reasons, to make decisions for themselves

The Act is underpinned by five key principles. These are listed on page 25 of this report.

For further information see Mental Capacity Act 2005 Code of Practice:
www.publicguardian.gov.uk/docs/mca-code-practice-0509.pdf

and SCIE At a Glance 5: Mental Capacity Act 2005:
www.scie.org.uk/publications/ataglance/ataglance05.asp

If you have any comments regarding this document please send these through to
socialcarevision@dh.gsi.gov.uk

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