

## PERSONAL HEALTH BUDGETS GUIDE

# Choice, risk and decision making



**DH INFORMATION READER BOX**

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# Personal health budgets

A personal health budget is an amount of money to support a person's identified health and wellbeing needs, planned and agreed between the person and their local NHS team. Our vision for personal health budgets is to enable people with long term conditions and disabilities to have greater choice, flexibility and control over the health care and support they receive.

## What are the essential parts of a personal health budget?

The person with the personal health budget (or their representative) will:

- Be able to choose the health and wellbeing outcomes they want to achieve, in agreement with a health care professional
- Know how much money they have for their health care and support
- Be enabled to create their own care plan, with support if they want it
- Be able to choose how their budget is held and managed, including the right to ask for a direct payment
- Be able to spend the money in ways and at times that make sense to them, as agreed in their plan.

## How can a personal health budget be managed?

Personal health budgets can be managed in three ways, or a combination of them:

- Notional budget: the money is held by the NHS
- Third party budget: the money is paid to an organisation that holds the money on the person's behalf
- Direct payment for health care: the money is paid to the person or their representative

The NHS already has the necessary powers to offer personal health budgets, although only approved pilot sites can currently make direct payments for health care.

## What are the stages of the personal health budgets process?

- Making contact and getting clear information
- Understanding the person's health and wellbeing needs
- Working out the amount of money available
- Making a care plan
- Organising care and support
- Monitoring and review

# 1 Introduction

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This guide is primarily for NHS staff engaged in introducing personal health budgets. It aims to:

- increase understanding of issues of risk and choice in order to improve outcomes
- assist NHS staff to think through the management of risk and choice in personal health budgets
- provide practical examples of systems and processes that support positive risk management and decision making
- identify approaches that support self-determination, choice and independence, and minimise risk.

## Mitchell's story

Mitchell is 20 years old, and likes being outdoors and with his friends. He has very complex health needs that mean he is totally dependent on others. Increasingly, people like Mitchell are living at home instead of having to spend a lot of their life in hospital.

From 2001, Mitchell's primary care trust was paying for a large package of home care from a team at the local hospital. This was very similar to hospital care. Mitchell's family felt he was "in hospital, at home" and that they had little or no control over many parts of their lives.

In September 2008, Mitchell became one of the first people to have a personal health budget. A community interest company holds Mitchell's budget on his behalf. It is used to pay for his care, staff recruitment and training, and other related health outcomes.

Having a personal health budget means:

- Mitchell's family has more control over who comes into their home to care for him
- Mitchell's support workers can receive training to support his wider needs, such as supporting him with his visual impairment, not just standard training that may not be relevant to him
- his family can vary his care as needed, so they can take him on holiday, employ staff who share his interests, and take a common sense approach to everyday issues
- the transition from children's to adult services was easier, with no change in his main support team.

Not all his care was included in the personal health budget, for example his physiotherapy and equipment are provided as before.

Mitchell's mother Jo says:

*Having a personal health budget means we make a very detailed care plan, which considers risks and ensures we have plans to minimise or manage them. All the staff are trained in how to manage the risks so that Mitchell can be supported to get on with his life and enjoy more of the things other young people take for granted.*

## 2 Personal health budgets and risk management

Personal health budgets require organisations to develop new processes. There should be checks and balances to improve risk management throughout.

Risks may be directly in relation to the person's health and wellbeing; they may be organisational; or they may be financial. Approaches to safeguarding should be considered both at the strategic planning level and throughout the personal health budgets delivery process.

### Strategic planning

Staff working in personal health budgets pilots' emphasise the importance of strong

leadership and a clear strategy signed up to by senior managers:

*strong leadership and senior level commitment is crucial – personal health budgets are a fundamental change in culture, unless you have strong structure and leadership behind its aims it could easily be abandoned. You need people who truly believe in patients taking control over their care – “champions”. We often focus disproportionately on what could go wrong thereby preventing the possibilities for successful outcomes.*

Clear protocols and procedures enable frontline staff to understand how and when they will be supported by the organisation they work for.

### West Sussex

In NHS West Sussex the policy document for self-directed support outlines principles for implementing personal health budgets by balancing choice and risk, and rights and responsibilities. It recognises that, in the right circumstances, risk can be managed to promote a culture of choice and independence that encourages responsible, supported decision making. It points out that:

*empowering people to take control of their own health can generate a perception of increased risk and adverse consequences. However, in reality there is likely to be a reduced risk because patients have been consulted about their choices, are actively involved in decision making and take ownership of, and some pride in, the responsibility for achieving their outcomes.<sup>2</sup>*

## Kent

NHS Eastern and Coastal Kent identifies how to manage risk within its strategic plan for introducing personal health budgets. Its risk management is based on Kent County Council's positive risk-management policy. This cross-organisational approach helps ensure consistency for staff and patients, reducing duplication and potential for confusion.

The diagram illustrates how people are enabled to exercise maximum control and keep safe. It reflects an ongoing process of assessment and review.

### Enabling people to exercise maximum control and keep safe



## Understanding health and wellbeing needs

The personal health budgets process for gathering information and understanding people's health and wellbeing needs treats people as experts in their own lives, and provides a person-centred, outcome-focused mechanism for determining the issues facing them. The early stages of gathering information provide an opportunity to explore any existing or potential risks and discuss how these can be managed positively. This allows the person to reflect on risks and how well they are able to stay safe from harm.

Where appropriate, an assessment of mental capacity should be carried out. The NHS must identify if there is any doubt as to the person's capacity to make relevant decisions and, if so, must follow the principles of the Mental Capacity Act 2005<sup>3</sup> 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 their behalf using the best interests guidance in the Mental Capacity Act.

### Barry's story

An NHS team is using person-centred risk assessments to support people to live their lives in the ways that are important to them.

Barry likes to ride his bike and be as independent as possible. He has occasional seizures, and lives in supported housing. By understanding Barry's health needs and working with him to gather information about what's important to him, a plan can be developed to manage risk while still enabling Barry to do the things that matter to him.

The plan includes having his bike serviced regularly, wearing a helmet and a medi-alert bracelet with his details in it, and not using his bike 48 hours after a seizure. Staff also agreed with him as part of the plan that he'd tell staff when he was going out and would ring when he got back in.

Barry is supported mainly by female care staff. He didn't want them in the bathroom with him and wanted the door locked. Working with him, staff developed a procedure whereby they would be in the room directly opposite the bathroom door and would knock at regular intervals. If Barry hadn't replied after three knocks, they would go in to make sure he hadn't had a seizure. This process maintains his privacy while staff are still within earshot and can respond quickly. They also agreed with him to change the lock on the bathroom door from an inside latch to a key lock so that staff could get in if they had to.

## Making a care plan

Personalised care planning is central to personal health budgets. It is the process by which the person, together with their carers, family and clinicians, designs and agrees services to meet their health needs in the way that works best in their particular circumstances, informed by the evidence of what is most effective. It is vital that people and their families have the information and support they need to make informed decisions, including a discussion of the evidence available on possible choices and risks.

In enabling a person to develop their plan, risks and benefits are identified and discussed, and consideration is given to what level of risk a person wants to take in their life. The person's awareness of the associated risks is raised, and consideration is given to any approaches that might help eliminate, reduce or manage those risks while still achieving the outcomes they want.

In care planning with people who lack mental capacity, it is important that the person is encouraged and permitted to have the fullest possible input into decisions affecting them. It may be that they lack capacity to consent to a direct payment, but may have capacity to make decisions in other areas of their life. All practical steps to help the person make decisions about their care and support should be taken before any decision is made on their behalf. In all instances the principles of best interest should apply.

## Principles of best interest

The Mental Capacity Act<sup>3</sup> provides a checklist of factors decision makers must work through in deciding what is in a person's best interests. In care planning, a person trying to act in the best interests of people lacking capacity should consider the following.<sup>4</sup>

- Do whatever is possible to permit and encourage the person to participate, or to improve their ability to participate, as fully as possible, in acts and decisions.
- Try to identify and take into account all the things that the person who lacks capacity would try to take into account if they were acting for themselves, including their past and present wishes and feelings and any beliefs and values that would be likely to influence their decisions.
- Avoid making assumptions about what might be in the best interests of the person lacking capacity simply on the basis of the person's age, appearance, condition or behaviour.
- Assess the likelihood of the person regaining capacity.
- Consult others when making decisions, including anyone previously named by the person as someone to be consulted, anyone engaged in caring for the person, family members, close relatives, friends, or any others who take an interest in the person's welfare, any attorney appointed under a lasting power of attorney made by the

person, and any deputy appointed by the Court of Protection to make decisions for the person.

- For any major decisions, make sure a record is kept of the process of working out the best interests of that person.

## Beth's story

In Oxfordshire, Age UK provides a support brokerage service, working with people of all ages to help them plan their care and support. If it is established that a person lacks mental capacity to manage their personal budget, the service does whatever is possible to enable that person to participate in appropriate aspects of the care planning process.

Beth is 26, and has always enjoyed travelling and outdoor activities. At a young age she had a stroke, which has left her with limited mental capacity and without speech.

Beth has a personal health budget that is managed by her parents as she lacks mental capacity to manage the money and to make many of the decisions involved in her care and support. She requires 24-hour care seven days a week, which is provided by a team of personal assistants (PAs) in her own home.

Beth's parents act as her representative, and work with her support broker to ensure a plan is put together that will work well for Beth and give her a good life. Where possible and appropriate, Beth is involved and supported to indicate her preferences. She can communicate through body language with people who know her well. She also uses her eyes to operate a simple computer system to indicate her preferences. People who know Beth well know she has always enjoyed outdoor activity and travel. Beth continues to show through her body language that this is important to her and gives her pleasure, so as part of her support plan she continues to experience outdoor activities, including skiing with her family. Risks are identified with Beth's parents, and the support plan includes what must be put in place before the trip and actions to take in different situations should they arise. This includes always being accompanied by at least two PAs who are fully trained in caring for Beth, investigating the support and equipment at the destination in advance of the trip, taking appropriate medication, and having adequate insurance for all eventualities.

Through good support planning that includes risk management, Beth is able to continue to do the things that are important to her and engage in activity that enhances her quality of life.

Where people may lack capacity in the future, it can be important to ensure that their personal values and preferences are recorded.

Some people will have fluctuating capacity as a result of their condition. At times their condition may affect their ability to make decisions.

However at other times they may be perfectly capable of making decisions. Wherever possible, the person should make their own decisions when they have capacity, and plans should be made with them about how decisions will be made, and by whom, when they lack capacity.

A care plan can be made for both the person receiving care and support and the person providing it. Care plans are more likely to work

well when they are co-ordinated and when a whole-family approach is taken. There are interdependencies between the carer and the person they support, so it is important to ensure arrangements and plans do not have unintended consequences. Often small changes can produce better outcomes for everyone.

As part of care 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, with services and support commissioned or purchased directly by the person. Alternatively, it can be managed by the NHS, or a third party, or as a combination of these arrangements. What is important is that

### **Martin's story**<sup>5</sup>

Martin has recently been diagnosed as being in the very early stages of Alzheimer's disease. He wants to make sure that if he lacks capacity in the future, his personal values and preferences are taken into account when a decision is made on his behalf. He decides to make a lasting power of attorney for health and welfare, which will enable his daughter to make decisions when he loses capacity to make these decisions himself.

He talks through things that are important to him, such as wanting to stay near his friends, and to be able to go into a care home that allows pets. His daughter then registers the lasting power of attorney.

If in the future Martin lacks capacity to decide where he should live, his daughter will have the authority to make this decision. She will be able to take account of the things her father has stated when considering what would be in his best interests.

how the money will be managed and support secured is clear and appropriate for the person and their unique circumstances. Systems for ongoing support should be discussed, and it remains a responsibility of the NHS to ensure any help people need to manage their support is in place. The NHS has a duty of care to

people to whom they provide services, including those who have a personal health budget. A person with capacity may choose to take risks. But there is an important distinction between putting people at risk and enabling them to choose to take reasonable risks (see Appendix 1 for more information on duty of care).

## Somerset

This example from NHS Somerset shows a section in a care plan devoted to identifying and managing risks.

### 5) Contingency plans

What to do or what will be done if certain circumstances arise that may cause inconvenience or put me at risk (e.g. in case of emergency, if the person providing my support is unavailable).

Circumstance:	Action to be taken:	By whom:
Dom care agency unable to provide 2nd carer for personal care am or pm	Sally's son Tom will cover	Son Tom
If Sitter unable to support for any reason	Tom will cover short term. If long term problem may be able to get support from Somerset care	Tom to arrange, if required
If son were unwell and unable to provide care	Sally would need to go into a nursing home	To be identified, son has a list of nursing homes and has noted those that would not suit Sally's needs and preferences. Or a home in (name of town) would suit Sally's needs and be convenient for Tom to continue to visit
Illness or temporary mental disorientation	Call for Dr and/or nurse	Son Tom

## Sandie's story

Sandie's brain tumour left some damage and her MS puts stress on her body, often causing her pain. As a result she has both a personal budget to look after her social care, and now a personal health budget specifically for her health care.

*Personal health budget is completely new thing to take care of yourself. I have MS, so therefore it's things to keep me calm, to help my body. I've had a brain tumour, so things to help my head, to keep me happy, calm, relaxed.*

*When I first thought about doing a personal health budget and a plan, I got very emotional and I cried a lot, because it brought back memories of my fight with the brain tumour and my diagnosis of having MS. But then I found that I was actually putting it on paper, so it was like bringing it all out of me and it's all in one place now, so that I know where I'm at, all my doctors are there, the people that care for me, the supplements I need, the alternative or complementary medicines and therapies I use. It's all down on a piece of paper in one booklet and I find that empowering.*

*It's a living document and you can update it any time if your circumstances change, you don't have to rewrite the whole thing, just remove some of the detail that's wrong and put it right and it still becomes an up-to-date version of your life. It's like a snapshot of your life; what's good, what's bad, what works, what doesn't, and how things can be improved and how much that would cost.*

*While writing my health plan, I found out a lot about myself; how strong and focused I could be; how wrong I was in thinking I could never attempt such a challenging and detailed plan for my life. Now everyone who is involved in my care has a copy of my plan.*

*When I chose Doug, my counsellor – to help with regret and anger – I was very anxious, as I'd faced devastating depression over some of the things that have happened in my life. I was scared this would resurface as I had actually wanted to take my own life, not caring who or what would be affected. I faced all my demons with Doug's help (it wasn't easy!) and I'm so thrilled to say that in March of this year, I was able to tell Doug I didn't need him any more.*

To help her to relax and help control the pain her MS causes, Sandie has used her social care budget to pay for a scooter to help her get around, as well as a PA. She says:

*I want to be able to have adventures in life, I would rather risk going out and getting stuck on my scooter than be stuck at home all day feeling miserable.*

*If someone else had chosen the exact same things as stated in my plan, it wouldn't have had the same impact on my life. It's the fact that I've thought about and chosen for myself; I've taken some control and purchased back, if you like, the self-worth I'd thought I'd lost forever!*

## Agreeing the plan and signing it off

Having considered the health needs, the outcomes to be achieved, and how to use the money in the personal health budget to achieve those outcomes, the proposed plan needs to be agreed and signed off by the relevant health service practitioner. People may choose to meet their needs in ways very different from those traditionally on offer. The care plan should show consideration of risk and how it will be managed. People should be protected when they are unable to protect themselves, but this should not be at the cost of their right to make decisions about how they live their lives, where this is informed by the evidence available.

*It is not possible, nor arguably desirable, to eliminate risk. Empowerment in safeguarding involves risk management that is based on understanding the person, understanding the autonomy of the person and how they view the risks they face. There may be risks the person welcomes because it enhances their quality of life; risks the person is prepared to tolerate and risks they want to eliminate.<sup>6</sup>*

A positive attitude to enabling people to make choices and take risks must be balanced with the duty to have proper arrangements in place to protect people and to comply with the duty of care (see Appendix 1).

Panels that look at risk and benefits can be helpful; sometimes these are called risk

### Oxfordshire

NHS Oxfordshire has a clear process for signing off a plan, and risk is considered throughout the care planning process.

Plans are signed off by a single NHS Continuing Healthcare manager, and there is a process in place that explores potential risks.

*Most importantly, potential risks are flagged up during the support planning process: risk enablement is incorporated into planning. If the support plan throws up a question like "can the money be spent on x?" or "is this a sensible idea?" then the question is referred to a risk panel for discussion. The panel involves the CHC service manager, PCT finance, PCT clinical governance as well as the personal health budget team members and representatives from social care, brokerage support services and other community services as required (for example it may include physiotherapy or learning disability professionals). It meets monthly and is a place where people can check things out. By addressing issues as they arise, it prevents the health care manager from having to say no once the completed plan has been submitted. So far, no plans have been refused sign-off.*

enablement panels, sometimes recovery enablement panels. They focus on supporting staff to reach decisions about when to agree care plans. However, risk should be considered throughout the care planning process, and as much agreement as possible sought at an early stage so that decisions are

timely and, where necessary, alternative arrangements can be considered and negotiated at an early stage. Panels should be used only where needed, to support people with more difficult decision making. Processes should be transparent and decisions communicated clearly to all concerned.

## Doncaster

NHS Doncaster has put in place a risk enablement panel to help resolve difficult decisions. The purpose of the risk enablement panel is as follows:

- To guide, advise and support staff to ensure risks with high repercussions are minimised and managed to protect staff and service users. The panel has been designed to be a safe and supportive environment for both the individual and staff.
- To ensure a consistent approach to managing risk decision making, where the risk to independence is balanced with the risk of not supporting choice.
- To seek positive solutions and outcomes for individuals and resolve issues regarding the sharing of risk between individuals, third parties and the organisation.
- To ensure that no individual is left to make a difficult decision without support and that NHS Doncaster can demonstrate it has fulfilled its duty of care around the support of service users.
- To provide a forum where staff at different levels of the organisation can share risk decision making where there is concern about the level of risk.
- To take the final decision on issues involving high or complex risks, in conjunction with senior managers where necessary.
- To promote a consistent approach to managing complex risk decision making.

## Jo's story

Merseyside's personal health budget risk enablement process helped Jo to spend his budget in the way he wanted.

A personal health budget broker from Imagine (an independent third-sector organisation) met with Jo, whose care plan identified that he would like to be more physically active and spend more time in the outdoors to meditate in peaceful surroundings, in order to manage his bipolar disorder and improve his wellbeing. He identified camping and backpacking as a way to do this, and asked to use some of his personal budget to buy camping gear.

Jo had previously expressed to his care co-ordinator that he would one day end his life in an isolated spot, and the care co-ordinator explained that the risk assessment said he maintains this idea. It was agreed to ask Jo in the next meeting "is your request for camping gear related to your desire to end your life in an isolated spot one day?". He said no, and that if he had wanted to do that he wouldn't have included it in a support plan! The plan, including the request for camping equipment, was presented to a multi-disciplinary team meeting who discussed it. It was agreed beforehand with Jo that if his plan was refused there, it would go to the risk enablement panel, which could be set up at any time to offer recommendations on personal health budget requests that were seen to be controversial or risky, or were refused at any stage of the process.

It came across that this was about living not dying. Many people said it would definitely be turned down, but it was not. With Jo's involvement and a direct approach, people looked at it in a person-centred way. It's about trusting people to make decisions about their own life.

Jo's psychiatrist was the one who told him his request was agreed. Jo now goes camping regularly and is planning backpacking trips to the Scottish highlands, and finds that this has improved his general sense of wellbeing. He understands better what keeps him well and has reduced his reliance on his care co-ordinator.

## Shahid's story

Shahid wanted to use some of his personal health budget to purchase driving lessons for a PA. It is important for Shahid that his PAs can drive as he works full time and often needs to travel for work meetings when not working from home. He also needs access to transport to socialise.

In his essential criteria for recruiting PAs, he compromised on the need for a full driving licence in favour of other desirable attributes. The risk panel agreed this was an acceptable use of his budget, as it would enable him to achieve his outcomes relating to work and socialisation. The panel recommended that the PA's employment contract should include a clause that any money provided to purchase driving lessons be repaid to the budget holder if the PA terminated their employment within 18 months.

This decision demonstrates the risk panel's acknowledgement of Shahid's choice in how he recruited his PAs, but also safeguards against the risk of the PA taking advantage and benefiting from driving lessons without any clear commitment to staying in the post for a reasonable length of time.

## Somerset

This example from NHS Somerset shows a form for agreeing and signing off health outcomes.

<b>Agreed Health Outcome Plan for:</b>			
<b>Address:</b>			
<b>What Health Outcomes do you want to achieve?</b>	<b>What needs to be done to make this happen?</b>	<b>Who will do it?</b>	<b>When will this outcome be achieved?</b>
These are my agreed health outcomes, signed by:			
<b>Name:</b>			
<b>Date:</b>			
<b>Written, agreed and signed by:</b>			
Care Manager:			
Base:			
Phone number:			
Date:			
Original signed copy retained on file at:			

## Monitoring and review

It is important to check at appropriate intervals whether the care plan is achieving the agreed outcomes for both the person and their carers. Reviews that focus on outcomes rather than processes can be the most effective way of identifying what works well and what doesn't work well for the person. Depending on what is agreed at the review, changes can be made to the resources, support or controls described in the care plan. Reviews are a crucial part of personal health budgets and safeguarding, and need to be carried out effectively.

Some people will need more frequent monitoring and review than others – for example if they are particularly isolated, have a degenerative or fluctuating condition or lack mental capacity, or where other particular risks are identified at care planning that need regular monitoring. The ultimate aim of review is to strengthen the person's ability to achieve the outcomes they want.

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 PAs. Sometimes problems are reported by the person themselves; sometimes they are noticed as part of a review; and sometimes a safeguarding alert is raised by family, friend or neighbour.

If there is concern that a person has been abused or is at risk of abuse, local safeguarding adults procedures must always be followed. In other instances, or alongside this, the same personalised approach that was used to set up the personal health 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 manage his or her relationships better. It may be about using a different money management system for the personal health budget or providing greater support for managing the direct payment.

## Alan's story

Alan is a personal health budget holder in Kent who is receiving NHS Continuing Healthcare. His day-to-day care is delivered by members of his family, as they know how to meet his very complex needs. One family member has taken on the role of employer, and a local support organisation, Disability Direct, supports the family in managing the budget.

Alan and his family worked in partnership with a broker and nurse to develop his care plan. Risk, safeguarding and contingency were all discussed and recorded within the plan. As the nurse was involved throughout the care planning process, all the points were discussed and negotiated throughout. This meant that when the plan was due to be signed off, it was a quick process as everyone felt comfortable with the content.

Regular reviews are carried out by the nurse to ensure Alan's needs are being met and that he is achieving his agreed outcomes, with the care plan adjusted accordingly. The impact and needs of the family are also considered in reviews. The broker works with the family to review the budget and provide employment support.

## 3 Safeguarding principles

Safeguarding awareness should be an integral part of delivering personal health budgets. Person-centred approaches and self-care should work hand in hand with safeguarding principles through the process of shared decision making.

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

The government has agreed six principles that shape adult safeguarding.<sup>6,7</sup> These provide a foundation for achieving good outcomes for patients.

- Empowerment involves a presumption of person-led decisions and consent.
- Protection includes support and representation for those in greatest need.
- Prevention of harm and abuse is a primary objective.
- Proportionality involves the least intrusive response appropriate to the risk presented.
- Partnerships offer local solutions through services working with communities.

- Accountability and transparency are central in delivering safeguarding. Personal health budgets can contribute to upholding each of these principles.

### Remember the basics

Department of Health safeguarding guidance<sup>6</sup> reminds NHS practitioners to remember the basics:

- empowerment is a foundation block for all safeguarding
- empowerment means maximising the patient's involvement
- patients are presumed to have capacity
- any actions taken on a patient's behalf require their full and informed consent
- any action without consent must be clearly justified and permitted in law
- where a patient cannot lead decisions, they should still be involved to the maximum the circumstances allow
- patients have the right to choose how to manage their safety – even where this may involve risk
- a patient's choices cannot compromise duties to protect others.

## 4 Conclusion

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Personal health budgets should have checks and balances to improve risk management throughout the process. Leadership and strategic planning are important for ensuring these are in place and that staff are supported.

A well designed process from assessment to review should provide a more person-centred, outcome-focused mechanism for determining what the issues are that face the person, exploring any existing or potential risks and opening a dialogue about how these can be positively managed. With good information and planning, people can be enabled to manage selected risks that enhance their quality of life, and supported to eliminate or manage risks that are unacceptable. Implemented well, personal health budgets provide an opportunity to improve risk management and quality of life.

## 5 References

- 1 Forder, J. et al. **Evaluation of the personal health budget pilot programme.** Personal Social Services Research Unit, University of Kent for the Department of Health. 2012. [www.phbe.org.uk](http://www.phbe.org.uk)
- 2 Department of Health. **West Sussex: Safeguarding Adults Policies.** 2010. [www.personalhealthbudgets.dh.gov.uk/toolkit](http://www.personalhealthbudgets.dh.gov.uk/toolkit)
- 3 **Mental Capacity Act 2005.** [www.legislation.gov.uk](http://www.legislation.gov.uk)
- 4 Department of Health. **Guidance on direct payments for community care, services for carers and children's services: England 2009.** [www.dh.gov.uk](http://www.dh.gov.uk)
- 5 Office of the Public Guardian. **Making decisions: A guide for people who work in health and social care.** 2009. [www.justice.gov.uk](http://www.justice.gov.uk)
- 6 Manson, S. **Safeguarding adults: the role of health service practitioners.** Department of Health. 2011. [www.dh.gov.uk](http://www.dh.gov.uk)
- 7 Department of Health. **Statement of Government policy on adult safeguarding.** 2011. [www.dh.gov.uk](http://www.dh.gov.uk)
- 8 Kemshall, H. **Defensible Decisions for the OLR.** RMA Scotland. 2009. [www.rmascotland.gov.uk](http://www.rmascotland.gov.uk)
- 9 **Human Rights Act 1998.** [www.legislation.gov.uk](http://www.legislation.gov.uk)
- 10 **Equality Act 2010.** [www.legislation.gov.uk](http://www.legislation.gov.uk)
- 11 Home Office. **Equality Act 2010.** [www.homeoffice.gov.uk](http://www.homeoffice.gov.uk)
- 12 Department of Health. **Real involvement: working with people to improve services.** 2008. [www.dh.gov.uk](http://www.dh.gov.uk)
- 13 Health and Safety Executive. **Laws in the workplace.** [www.hse.gov.uk](http://www.hse.gov.uk)
- 14 Health and Safety Executive. **Health and safety regulation... a short guide.** 2003. [www.hse.gov.uk](http://www.hse.gov.uk)
- 15 **Mental Capacity Act 2005 Code of Practice.** 2007. [www.justice.gov.uk](http://www.justice.gov.uk)
- 16 Social Care Institute for Excellence. **At a glance 5: Mental Capacity Act 2005.** 2008. [www.scie.org.uk](http://www.scie.org.uk)

## Appendix 1

# 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 cases, there must be an identified duty of care. An action will be successful only 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 foreseeably harm others. Councils, health bodies, private care providers and care staff owe a duty of care to people to whom they provide services.

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

Health care staff often work with patients who, for a range of reasons, may be less able to protect themselves from neglect, harm or abuse. Duty of care can be said to have reasonably been met where an objective group of professionals considers:<sup>8</sup>

- all reasonable steps have been taken
- reliable assessment methods have been used
- information has been collated and thoroughly evaluated
- decisions are recorded, communicated and thoroughly evaluated
- policies and procedures have been followed
- practitioners and their managers adopt an investigative approach and are proactive.

When a concern relates to a regulated service, there is a responsibility to consider risks to others within that care setting. It also brings responsibility related to compliance with the Care Quality Commission registration requirements and the regulation of individual workers.

Providers of that service have particular responsibilities to address failures in care. Commissioners and regulators need to be assured that concerns are acted upon.

## Human Rights Act 1998<sup>9</sup>

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.

## Equality Act 2010<sup>10,11</sup>

The Equality Act replaces previous anti-discrimination laws with a single act to make the law simpler and to remove inconsistencies. This makes the law easier for people to understand and comply with. The act also strengthens protection in some situations.

The Equality Act covers nine protected characteristics, which cannot be used as a reason to treat people unfairly. Every person has one or more of the protected characteristics, so the act protects everyone against unfair treatment.

The protected characteristics are:

- age
- disability
- gender reassignment
- marriage and civil partnership
- pregnancy and maternity
- race
- religion or belief
- sex
- sexual orientation.

The Equality Act sets out the different ways in which it is unlawful to treat people, such as direct and indirect discrimination, harassment, victimisation and failing to make a reasonable adjustment for a disabled person.

The act prohibits unfair treatment in the workplace, when providing goods, facilities and services, when exercising public functions, in the disposal and management of premises, in education and by associations (such as private clubs).

### The Equality Act and disability discrimination

From 1 October 2010, the Equality Act replaced most of the Disability Discrimination Act (DDA). However, the disability equality duty in the DDA continues to apply.

The Equality Act 2010 aims to protect disabled people and prevent disability discrimination.

It provides legal rights for disabled people in the areas of:

- employment
- education
- access to goods, services and facilities, including larger private clubs and land-based transport services
- buying and renting land or property
- functions of public bodies, eg the issuing of licences.

The Equality Act 2010 also provides rights for people not to be directly discriminated against or harassed because they have an association with a disabled person. This can apply to a carer or parent of a disabled person. In addition, people must not be directly discriminated against or harassed because they are wrongly perceived to be disabled.

## The NHS duty to involve

The Local Government and Public Involvement in Health Act 2007 introduced a strengthened “duty to involve” for the NHS, which came into force in 2008.<sup>12</sup>

## Health and safety law

The basis of British health and safety law is the Health and Safety at Work etc. Act 1974.

The act sets out the general duties that employers have towards employees and members of the public, and that employees have to themselves and to each other.

There is a legal duty placed on all employers to ensure, as far as is reasonably practical, 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<sup>13,14</sup> endorses a sensible approach to risk so that health and safety legislation does not prevent reasonable activity.

## Mental Capacity Act 2005

The Mental Capacity Act<sup>15,16</sup> has been in force since 2007 and applies to England and Wales. The primary purpose of the act 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 protecting people who lack capacity by providing a flexible framework that places people 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 principles:

- a person must be assumed to have capacity unless it is established that they lack it
- a person is not to be treated as unable to make a decision unless all practical steps to help them do so have been taken without success
- a person is not to be treated as unable to make a decision merely because they make an unwise decision
- 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 their best interests
- before the act is done, or the decision is made, regard must be paid to whether the purpose for which it is needed can be achieved as effectively in a way that is less restrictive of the person's rights and freedom of action.



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