



**A Positive Approach to
Risk & Personalisation:**

A Framework

Developed by
**ADASS West Midlands
Joint Improvement Partnership
NHS West Midlands**

Foreword

Achieving balance between the right of the individual to control his or her care package and ensuring adequate protections are in place to safeguard well-being is a very challenging task and can often be a barrier to choice and control. The attached document has been co-produced by Local Authorities and NHS West Midlands and includes clear and practical advice about how to strike the right balance when shaping personalised care services. This implies the need for organisational change in the way risk is understood, managed and negotiated with people using services to respond to new person-centred ways of working. We commend the content to you and strongly endorse implementation of this report in your area. If you have any queries please contact the people listed on page 12.



A handwritten signature in black ink, appearing to read 'E. Robinson'.

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A Positive Approach to Risk & Personalisation:

A Framework

Contents

Introduction	04
What is risk?	06
What is Positive Risk Taking?	07
Principles of Working Positively with Risk	08
Positive Risk Taking Framework	09
Risk Assessment & Identification	09
Risk Management	09
Review	10
Record Keeping	10
Information Sharing	11
Serious Incidents	11
Contributors	12

Appendices

1. Self Assessment Tool	13
2. Staff Competences in Positive Risk Taking	14
3. Legal Framework	16
4. Assessment of Capacity practice example	18
5. Calculating Risk practice example	19

Introduction

“Risk is no longer an excuse to limit people’s freedom”¹

This paper, commissioned by the West Midlands Joint Improvement Partnership (JIP) provides a framework for Councils in shifting the balance away from risk aversion towards supported positive risk taking. The aim is to share risk between the individual using services (regardless of funding source), their family, carers, professional care staff, third parties and the Council.

Jay Dobson, Personal Health Budgets Lead for the West Midlands Strategic Health Authority has provided advice to ensure that the framework is relevant to personalised care planning, personal health budgets or direct payments in health. The framework is equally valuable to organisations developing a single assessment framework and/or joint care/support plans across health and social care.

A more positive approach to risk is now being developed, recognising that in addition to potentially negative characteristics, risk taking can have positive benefits for individuals, enabling them to do things which most people take for granted. In social care ‘Think Local, Act Personal’² recognises that in the right circumstances, risk can be beneficial, balancing necessary levels of protection with preserving reasonable levels of choice and control. A balance has to be achieved between the wishes of those who use services and the common law duty of care. This requires employers to consider the responsibility they have to their employees.

The advice given in this document does not replace any existing risk guidance; rather it seeks to highlight good practice, enabling Councils and health economies within the region to share expertise in developing this component of the transformation agenda. Councils and Health bodies may find the self assessment tool (Appendix 1) included in this framework helpful as a starting point in understanding their current position. Appendix 3 provides the legal framework for risk assessment and risk management.

Personalised care is for everyone, but some people will need more support than others to make choices about how they live their lives. Everyone has the right to personalised care and as much choice and control as possible. As the pace on personalisation is picked up it is necessary to ensure that this includes the most vulnerable members of our society, including those who may lack capacity. With effective personalisation comes the need to manage risk for people to make decisions as safely as possible. Making risks clear and understood is crucial to empowering service users and carers, recognising people as ‘experts in their own lives’.

¹ A Vision for Adult Social Care: Capable Communities and Active Citizens, Department of Health, November 2010, page 8

² Think Local Act Personal, Department of Health, January 2011

Risk management does not mean trying to eliminate risk. It means managing risks to maximise people's choice and control over their services. True empowerment means that people might make decisions service providers disagree with. If the outcomes are part of the support plan and all risks have been fully discussed and understood, this can lead to real choice and control and a better quality of life for the individual³. Throughout this document the term risk management has been used. This term should be understood to include the frequently used terms of risk enablement and positive risk taking.

Risk is an accepted part of life. In our society, people are encouraged to travel widely, take part in regular leisure and sporting activities, go to college, develop careers and have families. People may need to take risks to achieve their aspirations but people who need support can be discouraged from taking risks. This may be because of their perceived limitations or because of fear that they or others might be harmed, resulting in criticism or compensation claims.

This framework addresses situations in social care and health where a public organisation is providing funding, but the content is relevant also where individuals are funding and arranging their own care. Whilst councils and other statutory bodies must have policies and procedures governing the funding of services, they must also ensure access to information and support for people who arrange their own care (and where appropriate their family carers).

Links between personalisation, protection and safeguarding

Personalisation and safeguarding are not mutually exclusive throughout this document. The linkage between personalisation, protection and safeguarding is recognised. Positive risk taking is essential to the wider safeguarding agenda. This document assumes that all organisations will work in accordance with the Mental Capacity Act which will support the implementation of a personalised approach.

³ A Vision for Adult Social Care: Capable Communities and Active Citizens, Department of Health, November 2010, page 26

What is risk?

Risk is the probability that an **event** will occur with beneficial or harmful outcomes for a particular person or others with whom they come into contact.

An event can occur because of:

- Risks associated with impairment or disability such as falls.
- Risks associated with changes in relationships.
- Accidents, for example, whilst out in the community or using a service.
- Risks associated with everyday activities that might be increased by a person's impairment or disability.
- The use of medication.
- The misuse of drugs or alcohol.
- Behaviours resulting in injury, neglect, abuse and exploitation by self or others.
- Suicide or self harm.
- Aggression and violence.

The level of risk will be determined by the type of event and the impact of the outcome. This depends on the person, their relationships with others and the circumstances they find themselves in.

Risk is often thought of in terms of danger, loss, threat, damage or injury, although in addition to potentially negative characteristics, risk taking can have positive benefits for individuals and their communities. As well as considering the dangers associated with risk, the potential benefits of risk-taking should therefore also be identified; a process which should involve the individual using services, their families and health or social care practitioners.

What is Positive Risk Taking?

Positive risk taking is a process which starts with the identification of potential benefit or harm. The desired outcome is to encourage and support people in positive risk taking to achieve personal change or growth.

This involves:

- assuming that people can make their own decisions (in line with the Mental Capacity Act) and supporting people to do so. See Appendix 4 for an example of an assessment of mental capacity process.
- working in partnership with adults who use services, family carers and advocates and recognise their different perspectives and views.
- developing an understanding of the responsibilities of each party.
- empowering people to access opportunities and take worthwhile chances.
- understanding the person's perspective of what they will gain from taking risks and understanding what they will lose if they are prevented from taking the risk.
- promoting trusting working relationships.
- understanding the consequences of different actions.
- making decisions based on all the choices available and accurate information.
- being positive about risk taking.
- understanding a person's strengths and finding creative ways for people to be able to do things rather than ruling them out.
- knowing what has worked or not in the past.
- where problems have arisen, understanding why.
- supporting people who use services to learn from their experiences.
- ensuring support and advocacy is available
- sometimes supporting short-term risks for long-term gains.
- ensuring that services provided promote independence not dependence.

Principles of Working Positively With Risk

1. Risk is a normal everyday experience⁴.
2. Risk is dynamic and constantly changing in response to changing circumstances, therefore its assessment and management needs to be ongoing with management plans being regularly updated and reviewed.
3. All people, including vulnerable people, have the right to take risks.
4. An individual's right to take risks does not give them the right to put others at risk.
5. Risk can be minimised, but not always removed.
6. Information will sometimes be partial and should be tested to inform decision making. Decisions should be made using information that is available within a reasonable period and should be checked for accuracy. Some decisions may need to be made prior to all information being available.
7. Identification of risk carries a responsibility to do something about it.
8. People who use services, their advocates and where appropriate, their family will be involved in risk assessment and decision making.
9. Decisions will be based on clear reasoning using the principles of multi disciplinary and inter agency working in proportion to the risk and impact to self and others.
10. Risk management will involve everybody working together to achieve positive outcomes for people.
11. Confidentiality is a right, but not an absolute right and may be breached in exceptional circumstances when children or vulnerable adults are deemed to be at serious risk of harm or it is in the public interest.
12. Guidance procedures and risk assessment tools should support positive risk taking including ensuring that staff receive appropriate organisational support and supervision from their immediate line management. See Appendix 2 for an example of staff competences in positive risk taking.
13. Where risk taking results in negative outcomes for people who use services or others, the experience should be learnt from and used to inform future decisions.

⁴ Morgan, Steve. 'Positive Risk Taking: an idea whose time has come', Health Care Risk Report, October 2004

Positive Risk Taking Framework

Staff who are supporting people to take risks must follow a structured approach in which the rationale for decisions can be evidenced. Decision making on the management of risk will be at a level proportionate to the risk and impact.

Risk Assessment and Identification

People who use services (with support as appropriate and required) should consider potential risks before they occur. This should include identifying the probability of the risk occurring and the impact if it does. It should be remembered that the impact of a risk can be positive and that not all risks will require management. An example of a practical tool to assist with calculating risk is included in Appendix 5.

Risk assessment practice is dynamic and flexible and should respond to change. Therefore it will:

- Include the views of individuals and those of their families/carers which should have prominent focus in the assessment, identification and management of risk.
- Have a focus on a person's strengths to give a positive base from which to develop plans that will support positive risk-taking. The strengths and abilities of the person, their wider social and family networks, and the diverse support and advocacy services available to them should inform a balanced approach.
- Be proportionate to the risk identified, potential impact and subject to ongoing monitoring and review.

- Use the principles of multi agency working in proportion to risk and the impact on self and others.
- Use a person-centred approach to assess, identify and manage risk.
- Ensure that staff have access to appropriate training to support them to promote positive risk taking.
- Ensure that written assessments identify a review date and include the signatures of everyone involved in the assessment.
- Include historical information which is of value in the assessment and management of risk. Historical information should not prejudice a positive approach to risk taking in the future.

Risk Management

'The goal is to manage risks in ways which improve the quality of life of the person, to promote their independence or to stop these deteriorating if possible. Not all risks can be managed or mitigated but some can be predicted.'⁵

Risk management entails a broad range of responses that are closely linked to the wider process of support planning. This may involve preventative, responsive and supportive measures to reduce the potential negative consequences of risk, and to promote the potential benefits of taking agreed risks. These will occasionally involve more restrictive measures and crisis responses where the identified risks have an increased potential for harmful outcomes.

⁵ Nothing Ventured, Nothing Gained: risk guidance for people with dementia, Department of Health, November 2010

Where someone does not have capacity decisions should be made in their best interests. Where people's actions put others at risk this will be appropriately assessed and managed within this framework.

Risk management will include:

- Decisions that are negotiated and agreed between all parties, and are clearly understood.
- Support plans that include contingency plans. The starting point of the contingency plan should be the views of the service user.

Review

Reviews take place to assess whether the care/support plan is working, to see what can be learnt from the process so far and to see if any changes can be made to improve outcomes for the service user. The level and frequency at which reviews happen should be proportionate to the risk identified. Reviews should always include the person who uses services and with their consent, other interested parties.

As part of the review process any risks identified are reassessed and there is opportunity to identify any new risks. Any new risks should be assessed and managed in line with the risk management policy.

Record Keeping

The recording of risk assessment and plans for risk management should be proportionate to the probability of the risk and the impact (or severity) of the risk. It should record any mitigating actions undertaken.

In a high risk scenario it is advisable to record the following information:

- Risk identified.
- Legislative framework followed (where a legislative issue is indicated).
- Record of advice and guidance sought.
- Record of meetings held with individuals, their carers, families, other agencies and other interested parties.
- Record of the views of all parties, including unresolved differences.
- Record of issues considered and rationale for plan development.
- Record of plan agreed including identification of lead responsibilities for all elements.
- Record of the sign off of the plan.
- Agreed arrangements for review.

Information Sharing

Information gathering and sharing is key to the assessment, identification and management of risk. The use and sharing of information will respect confidentiality and the principles outlined in the Data Protection Act and Caldicott guidelines and will be proportionate to the level of risk to be managed and to the circumstances of the individual.

Serious Incidents

In Health serious incidents are usually referred to as serious untoward incidents whilst in social care the term serious case review is common. For the purpose of this framework the term serious incident is used to include both serious untoward incidents and serious case reviews.

A serious incident has or may have the potential to cause serious physical or psychological harm to the person or other individuals. A serious incident investigation should take place when an event occurs that results in harm to an adult receiving services or others that would be difficult to recover from.

It is recommended that all organisations develop serious incidents investigation procedures to support learning and development. The procedure should include:

- How people who use services, family, carers and staff are supported during a serious incident investigation.
- How and when the serious incident will be reported to the Safeguarding Partnership.
- How and to whom the outcome and lessons learnt from the serious incident will be communicated.
- Serious incident investigation reports should include a timed action plan and identify whose responsibility it is to ensure that the action plan is delivered.
- The procedure should clearly identify the triggers for referrals to adult protection officers for an Protection/ Safeguarding Investigation or to police for criminal investigation.
- All agencies involved in a serious incident should contribute information freely and clearly.

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This document has been informed by the policies developed by **Gateshead Council** and **Northumberland Council** and by the work of **Steve Morgan**.

We would particularly like to thank **Sandra Hudson** from **Department of Health West Midlands** for her efforts in co-ordinating this piece of work.

Appendix 1

Self Assessment Tool

Area	Evidence	R.A.G.	Improvement Plan (if not green)	Date of Review	Person Responsible
Person who uses services actively involved in contributing to assessments and development of support plans					
Procedure for risk assessment and management that emphasis positive risk taking					
Training programme for staff promoting a personalisation approach which includes MCA supporting people who use services to take risks Training for supervisory staff around high quality assessments and safe practice					
Establish a competences framework for all levels of staff in contact with people who use services that promotes a personalised approach and positive risk taking					
SUI Investigation process					
Safeguarding functions reflected in the personalisation implementation board					
Personalisation is identified as a work area in the Adult Safeguarding partnership					

Appendix 2

Staff Competencies in Positive Risk Taking

This is an example taken from social care. Equivalents can be found for health within the KSF framework.

In order to assist those responsible for learning and development this Appendix includes the relevant section of the GSCC code of practice and performance criteria for social care workers and managers in the new Qualification and Credit Framework (QCF) approved qualifications. These competences should be seen as a minimum standard and employers may want to develop competences specific to positive risk taking to supplement those outlined below.

General Social Care Council Code of Practice

Competence in managing risk is underpinned by the General Social Care Council Code of Practice. Standard 4 particularly relates to risk taking:

- As a social care worker, you must respect the rights of service users while seeking to ensure that their behaviour does not harm themselves or other people.
- Following risk assessment policies and procedures to assess whether the behaviour of service users presents a risk of harm to themselves or others.
- Taking necessary steps to minimise the risks of service users from doing actual or potential harm to themselves or other people.

- Ensuring that relevant colleagues and agencies are informed about the outcomes and implications of risk assessments.

Staff Competences and performance criteria

The competences required to support positive risk taking will depend on the role and responsibilities of the workers, who can be divided into three groups:

- Those responsible for direct delivery of social care will need to be able to identify risks to service users and ensure that service users and managers are aware of these risks. They will also be expected to work within a risk management plan.
- Social workers, nurses and those with managerial responsibility will be responsible for risk assessment and agreeing a risk management plan.
- Managers will be responsible for investigating serious untoward incidents and overseeing practice in risk taking.

Competences have been identified from within the existing qualification frameworks for social care workers and leaders and managers. Those for social workers are currently under review.

Social Care Workers

Risk taking competences from the Health and Social Care Diploma Level 3 (QCF)

HSC036: Promote Person Centred Approaches in Health and Social Care

Learning outcomes and assessment criteria:

Be able to establish consent when providing care or support.

Analyse factors that influence the capacity of an individual to express consent.

Establish consent for an activity or action.

Explain what steps to take if consent cannot be readily established.

Be able to support individual's rights to make choices.

Support an individual to make informed choices.

Use own role and authority to support the individual's right to make choices.

Manage risk in a way that maintains the individual's right to make choices.

Describe how to support an individual to question or challenge decisions concerning them that are made by others.

SHC034: Principles for implementing duty of care in health, social care and children's and young people's settings

- Understand how duty of care contributes to safe practice.
 1. Explain what it means to have a duty of care in own work role.
 2. Explain how duty of care contributes to the safeguarding or protection of individuals.

- Know how to address conflicts or dilemmas that may arise between an individual's rights and duty of care.
 1. Describe potential conflicts or dilemmas that may arise between the duty of care and an individual's rights.
 2. Describe how to manage risks associated with conflicts or dilemmas between an individual's rights and the duty of care.
 3. Explain where to get additional support and advice about conflicts and dilemmas.

Leadership and Management for Care Services

LMCC1: Develop and maintain systems, procedures and practice of care services to manage risks and comply with health and safety requirements within your provision.

LMC C1.1: Implement and monitor compliance with health and safety requirements.

LMC C1.2: Promote a culture where needs and risks are balanced with healthy and safe practice.

LMC C1.3: Monitor and review systems, procedures and practice for the management of risk.

Appendix 3

Legal Framework

Taken from 'Practical approaches to safeguarding and personalisation', Department of Health, November 2010

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 foreseeably 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.

Equality Act 2010

The Equality Act 2010 brings together all previous equality legislation and covers eight protected characteristics: age, disability, gender reassignment, pregnancy and maternity, race, religion, or belief, sex and sexual orientation. The Act includes a new separate public sector equality duty which is set out in s149

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.

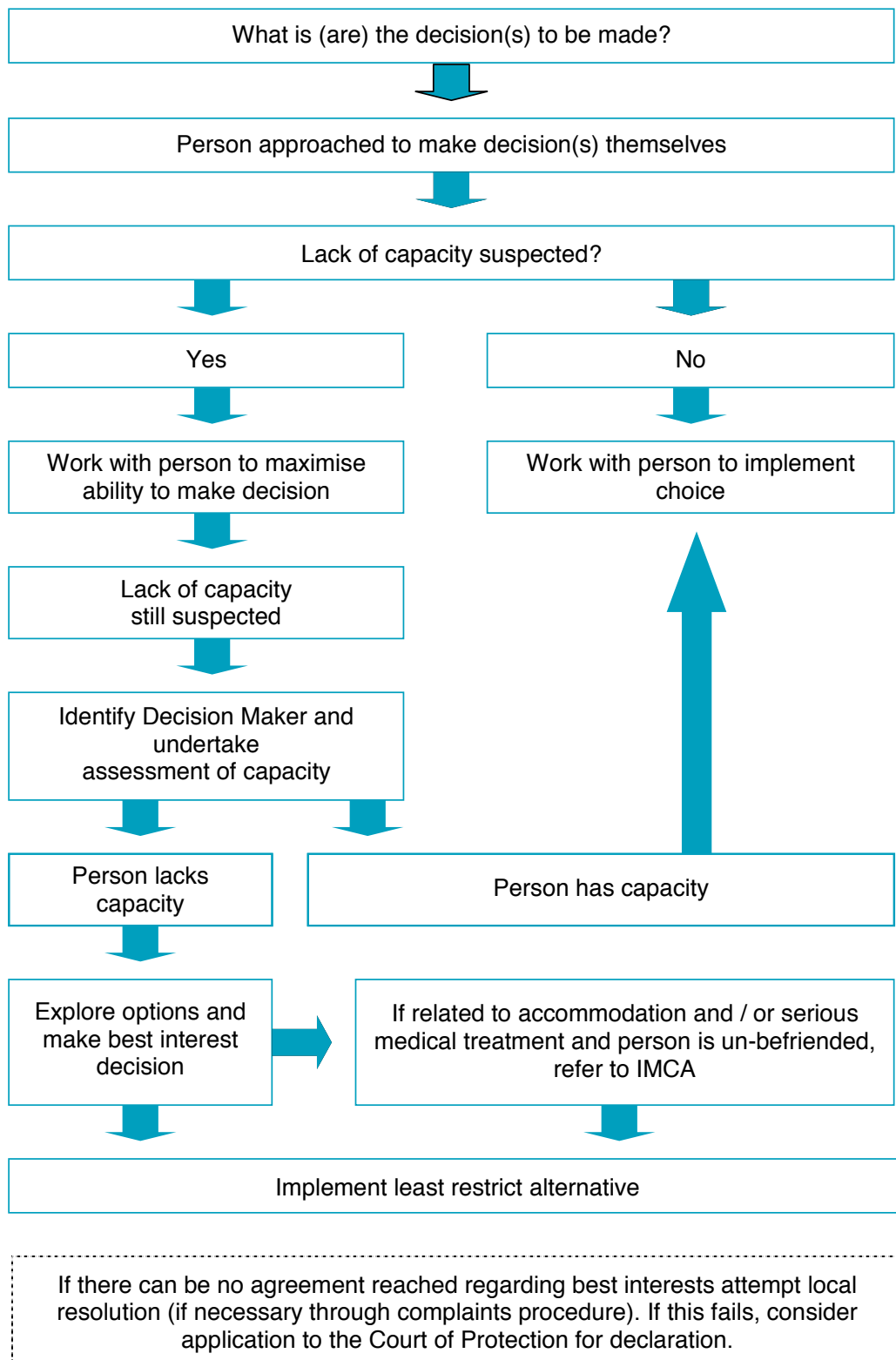
Mental Capacity Act (MCA)

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.

Appendix 4

Assessment of Capacity Process (Staffordshire)



Appendix 5

Calculating Risk -Practice example Staffordshire

It is reasonable to ask people to account for how they have used their Personal Budget to achieve the outcomes in their support plan. However, financial monitoring should wherever possible be ‘light touch’ and proportionate to the level of risk involved.

The table below will support practitioners to calculate and identify the level of financial risk and frequency of checks required based on risk score.

	Risk Value	Risk Score
Value of Personal Budget		
Up to £5000 (1)	1	
£5001 - £15000	3	
In excess of £15001	5	
Ability to manage Personal Budget/Direct Payment		
Good understanding/no concerns	1	
Basic understanding/minor concerns	3	
Little or no understanding / major concerns	5	
Complexity of Support Plan		
Agency	1	
Mixed	3	
Personal Assistant	5	
Other risks identified in the Support Plan/Review		
No other risks	1	
Positive risk taking (person can manage themselves)	3	
Person cannot manage risk	5	
Previous adult protection referrals		
No previous referrals	1	
Previous referral - low risk (minor incident, easily resolved)	3	
Previous referral - medium/high risk (risky situation resulting in protection plan)	5	
Previous allegations about a third party		
No previous allegations	1	
Previous referral - no action taken, not proven	3	
Previous referral – action taken against perpetrator, proven.	5	
TOTAL		

Once is risk score has been calculated, the table below shows the level of risk attributed to the service user and the frequency of review meetings required.

Score	Risk level	Frequency of review	Reviewed by
4-10	Low	Annual review	Keyworker
11-20	Medium	6 monthly review	Keyworker & Possibly DPA
21-30	High*	3 monthly review	Keyworker & DPA

***All high risk packages must be referred to a risk enablement panel**

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adult social services

Joint Improvement Partnership

Supporting innovation and excellence
in social care in the West Midlands



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NHS West Midlands is part of the NHS
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