


# Independence, choice and risk: a guide to best practice in supported decision making – Executive Summary



# Executive summary

## Purpose of the guide

1. When the Green Paper *Independence, Well-being and Choice* consulted the public on a vision for the future of social care, people told us they wanted to have more control over their lives and be able to make real choices about services, taking their own decisions about things that others might take for granted. The White Paper *Our health, our care, our say* responded to that call, setting out plans for the future of health and social care in the 21st century in which choice and control are critical components. However, giving people more choice and control is not always as simple as it may seem. Everyday life involves us all in making choices and decisions. People using health and social care services are no different. Some choices might involve taking risks and while this can be a positive thing, it can also pose questions over people's safety, the safety of others and who is ultimately responsible if something goes wrong.
2. People perceive risk differently, including people using health and social care services, practitioners, family carers and others working in support of individuals. This can be difficult for practitioners and confusing for the individual and their carers. We have developed a common set of principles that we want to encourage people and their organisations to use as the basis for approaches to supporting people in making decisions about their own lives and managing any risk in relation to those choices.
3. The advice given in this document does not replace any existing risk guidance, including those risk management processes contained within the Care Programme Approach, Multi-Agency Public Protection Arrangements (MAPPA) or on safeguarding vulnerable adults.
4. The guide is for the use of everyone involved in supporting adults using social care within any setting, whether community or residential, in the public, independent or voluntary sectors. This includes all NHS staff working in multi-disciplinary or joint teams.

## Good approaches to choice and risk

5. The governing principle behind good approaches to choice and risk is that people have the right to live their lives to the full as long as that does not 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. What needs to be considered is the consequence of an action and the likelihood of any harm from it. By taking account of the benefits in terms of independence, well-being and choice, it should be possible for a person to have a support plan which enables them to manage identified risks and to live their lives in ways which best suit them.

## **The practicalities of managing risk in relation to choice**

6. Multi-disciplinary working is very effective in ensuring that a person is supported in a seamless way, and it is satisfying to the practitioners involved. But dilemmas arise when practitioners of different disciplines cannot agree about what arrangements it would be best to support. Even in situations where choices may be very limited, people need to be supported and encouraged as far as possible to make choices about how to live their lives and manage any risks. When disagreements do occur, an agreed process for quick resolution needs to be in place involving appropriate senior management to avoid an unnecessary delay in service provision.
7. We propose that arrangements be put in place to manage more complex situations where there are different views held between the individual, the family carers or the professionals to seek agreed solutions. Ultimately, the local authority has a statutory duty of care and a responsibility not to agree to support a care plan if there are serious concerns that it will not meet an individual's needs or if it places an individual in a dangerous situation. Such arrangements will enable all those involved to explore the issues and set arrangements which go as far as possible in meeting the individual's aspirations, whilst balancing the needs and risks to themselves and others.
8. As part of any assessment process, it will be necessary to identify and assess any risks involved in supporting the person. Person-centred planning approaches identify what is important to a person from his or her own perspective and find appropriate solutions. We commend person-centred approaches for everyone.
9. Even when good approaches are used and the correct processes followed, the reality is that, if something goes wrong, sometimes people may not want to accept responsibility and will look for someone else to blame. It is therefore vital to keep accurate records of discussions that take place about areas of choice. Such documentation will be critical in order to protect the person in making their choices, as well as the position of the local authority, PCT or private provider of care in the event of any complaints or litigation. They are also valuable in giving a structure to the discussion about choices and their consequences.

10. We propose the use of a supported decision tool (at Annex A) to manage the process of choice, assess the potential impact of any risks, and provide documentation of the actions and decisions.
11. Uncertainty about rights and responsibilities in relation to the law can inhibit good approaches to supporting choice and managing risks. We provide clarification over the relevant legislation (duty of care, human rights, health and safety, mental capacity) with illustrative examples, to suggest in broad terms when it is appropriate for health and social care practitioners to support people in their choices and avoid litigation. However, we would stress the need to seek legal advice if there is any doubt in an individual case.
12. We discuss how good approaches to risk and choice fit in with other policies and practices. People with mental health problems or suffering from dementia also have the right to exercise choice, although this may sometimes be constrained in some areas by lack of capacity. Appropriate risk assessment and management contained within the Care Programme Approach may need to be in place. Safeguarding measures need to be put into place when the risks from supporting a person to do what they want suggest there is a danger of abuse, either of themselves or others.
13. The needs and wishes of carers should be acknowledged at all times, and any conflict of wishes should aim to support the rights of all involved. Transition planning for children who become adults needs to start in good time for them to manage well the choices that open up to them when they become adults. Assistive technology – telecare and telehealth – can provide flexible and personalised services responsive to individual need, and can reduce risks.

## Corporate approaches to risk

14. A major inhibiting factor in achieving good outcomes for people in relation to choice and control is operating within a regime where there exists a fear of putting the organisation at risk, both financially, in terms of public relations, reputation or in breach of the law. The most effective organisations are those with good systems in place to support positive approaches rather than defensive ones. The corporate approach to risk that an organisation takes overwhelmingly influences the practices of its workforce.
15. The leadership role of the Director of Adult Social Services (DASS) in promoting health and well-being will be critical to focusing on positive outcomes for people who use social care services. Working with key partners, not least PCTs and the independent and voluntary sectors to effect change, we encourage the DASS to use this guidance as a means of raising the debate about risk and shifting the balance away from risk-aversion towards supported decision-making.

16. To change the culture around the provision of services and address the fear of blame among staff, we propose that organisations and their partners consider establishing a joint choice, empowerment and risk policy that promotes more open and transparent practices. It will need to be supported by senior leadership and shared across the organisation and their partners. There need to be clear lines of accountability and support within the professional team and the respective responsibilities of the council, PCT, independent and voluntary sector organisations, the member of staff and the individual using services. The policy would best be supported by appropriate working arrangements and systems.
17. Where there is a dispute over appropriate support for a person, including the use of resources, conflict resolution mechanisms will be necessary. Such mechanisms might include referral to senior management or a multi-disciplinary decision making panel; whatever the mechanism, the funding body, whether it is the local authority, responsible for meeting assessed needs under community care legislation, or the PCT with responsibility for continuing care, will have the final say. Where there are joint funding arrangements, agreed mechanisms need to be in place to ensure that there are no delays in people receiving services.
18. Various measures can be taken to influence performance in these areas and to promote a common approach. Executive members with responsibility for adult social services will have a role in ensuring that best practice approaches to choice and risk are embedded in local policies and practices. The Local Government and Public Involvement in Health Bill will place a statutory duty on PCTs and Local Authorities to undertake joint strategic needs assessments, whose findings will need to feed into the Sustainable Community Strategy and therefore the Local Area Agreement. Local authority Overview and Scrutiny Committees also have a vital role in ensuring that their local NHS partners do all that is necessary to support people in their chosen environment for the wider well-being of the local population.
19. Practitioners need support to work across systems, and multi-disciplinary arrangements need to ensure a common approach to risk through inter-agency agreements and through good commissioning practices.
20. Increasingly, improvement in the quality of service provision will be driven by the choices people make, combined with healthy competition between different service providers. *Our health, our care, our say* made a commitment to have an integrated health and social care regulator which will support an integrated approach to improving outcomes for people using health and social care services.

21. The Commission for Social Care Inspection's (CSCI) inspection processes are currently being refocused onto outcomes for users of services rather than minimum standards. CSCI stresses that registration of care services should not inhibit the services provided to individuals. Enabling people to exercise choice and control over their lives, and therefore the management of risk, is central to achieving better outcomes for people.
22. The media are highly influential in people's views of risk and how it should be managed. We suggest that good practice in media management is vital to the reputation of the organisation and its corporate approach to managing risk.
23. Fear of compensation claims inhibits good practice towards supporting choice but steps can be taken to mitigate complaints and avoid litigation.
24. Within a commonly agreed approach to choice and risk, there will always be scope for wide interpretation of the issues surrounding individual cases. Annex C provides some further illustrative case studies based on real life case stories to assist practitioners and their organisations to develop their thinking. We very much want to encourage organisations to embed this guidance into their policies, their agreements with other agencies, their own cultures and working practices. In this way, we can help people to achieve their potential without their safety being compromised.