

# Lancashire County Council

## Adult and Community Services

# Positive Risk Taking Policy

[illegible]

## **Services provided or funded by Lancashire County Council should work with disabled adults and older people to support them to...**

- be informed
- exercise choice
- make their own decisions
- make use of opportunities
- develop new skills
- learn from experience
- collaborate with others
- promote their independence
- challenge stereotypes and the assumptions of others
- have confidence in their abilities
- improve their life chances
- improve their economic well being

### **Positive Risk-Taking**

Is weighing up the potential benefits and harms of exercising one choice of action over another. Identifying the potential risks involved, and developing plans and actions that reflect the positive potentials and stated priorities of the service user. It involves using available resources and support to achieve the desired outcomes, and to minimise the potential harmful outcomes. It requires an agreement of the goals to be achieved, or a clear explanation of any differences of opinion regarding the goals or courses of action<sup>1</sup>.

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<sup>1</sup> Morgan, S.(2004) *Positive risk-taking: an idea whose time has come*. Health Care Risk Report 10(10)18-19

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Lancashire County Council acknowledges the influence of the Gateshead Council's Positive Risk Taking Policy and the work of Steve Morgan in the content and structure of this policy. More information about positive risk-taking can be found at the web site: [www.practicebasedevidence.com](http://www.practicebasedevidence.com)

## Introduction

The saying ‘nothing ventured, nothing gained’ makes the point that unless someone takes a risk and tries new activities, they will never know of the positive benefits that might result. 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. These are all activities that don’t just happen, but mean people have to take risks to achieve their aspirations.

For many people risk is an accepted part of life. But disabled adults and older people are often discouraged from taking risks. Either because of their perceived limitations or fear that they or others might be harmed, resulting in criticism or compensation claims against health, social care and other community based services.

Changes in disability, social care and health policy now mean that disabled adults and older people are being actively encouraged to increase their independence by, for example, being fully involved in mainstream society through education, work and leisure.

For disabled people, moves away from a medical model to a social model of disability now means there is an emphasis on the discrimination and exclusion created by social and cultural barriers. This contrasts with a prior emphasis on the ‘problems’ resulting from people’s impaired bodies or minds or learning ability. There is also a shift away from a Deficit Model, concerned with identifying impairments and needs, to a Capacity Model based on identifying people's gifts, strengths, skills and assets

Throughout this document we have used the term “Disabled adults and older people” and derivatives of that phrase to indicate the range of people this policy is intended to cover. We acknowledge that not all people who come into contact with Adult and Community Services consider themselves to be either disabled people or older people. We also acknowledge that many young people access our community services. The policy is intended to cover any person that Adult and Community Services are considering providing with any service or facility or with funding to allow them to purchase any service or facility.

For some services, approaches to risk have in the past been concerned with avoiding potentially harmful situations to adults who use services and staff. Now to support people to take part in everyday activities means accepting there are risks that cannot be avoided but can be minimised and prepared for. This policy is concerned with setting out the approach that Lancashire County Council expects its staff in Adult and Community Services and the staff of

partner agencies to adopt towards the issue of risk when they work with disabled adults and older people.

When implementing this policy in day-to-day practice, Lancashire County Council recognises that any positive risk-taking approach must be balanced with its responsibilities to implement the Multi-Agency Public Protection Arrangements, policy and practice arising from legal requirements in relation to Safeguarding Children and Safeguarding Adults, Care Standards and Health and Safety legislation.

Also, whilst this policy will encourage Lancashire County Council's Community Services to work with disabled adults and older people around the issue of risk, it should not lead them to feel they have to individually risk assess every disabled or older person who uses their services. To do so would be both impractical and potentially discriminatory. Community Services consider their duty of care towards all consumers, including disabled adults and older people, by considering the risks associated with the activities they offer and then they manage these accordingly. Where such services believe they have to risk assess the activities and circumstances of an individual disabled adult or older person, they will explain their justification for this to the individual concerned and do everything practicable to support the their inclusion in the activities they want to take part in.

Lancashire County Council's Adult and Community Services will also endeavour, through its commissioning arrangements and Service Level Agreements, to encourage the individuals, agencies and services it funds or contracts with to adopt a positive risk-taking approach.

## What is risk?

**Risk is a product of the likelihood that an event will happen and the impact that the thing happening will have if it does happen.**

In normal life we think of risk as a negative thing and we talk about the risk of doing something or the risk of not doing something and in each case we think about the harmful consequences which may happen.

If a person who is unsteady walking goes to the local shop by themselves they may fall and injure themselves or, perhaps, get confused and forget how to get home, get knocked down crossing the road, get mugged etc.

If the same person does not go to the shop by themselves they may lose their independence, their opportunity to talk to friends and others, their chance to choose what to buy (just because it looks nice today or you can get 2 for 1), their chance for some fresh air and exercise, being seen by others (who may then notice and alert someone if they do not see them for a day or two).

So taking the risk can have positive benefits both for individuals and for their communities.

A risk event normally occurs because we do something which is inherently dangerous, or which is dangerous for us because of our illness, impairment or disability. This may be:

- Not considering the danger or not taking sensible precautions
- a normal risk associated with everyday activities might be increased by a person's impairment or disability
- the use of some medication may make you less alert to danger
- the use of drugs or alcohol may make you less alert to danger and may be inherently dangerous itself
- neglect, abuse, and exploitation by others
- behaviour which may result in injury to yourself including suicide or self-harm
- aggression and/or violence
- not having the mental capacity to decide if there is a risk, or what the benefits and burdens of that risk might be and/ or how to take precautions

The type of event depends on the nature of the person, their relationships with others and the circumstances they find themselves in.

For example an action you take which is inherently dangerous could be crossing the road. This is always going to be dangerous and the potential consequence is that you will get knocked down by a vehicle and that may kill you or leave you with severe long term injuries. But we all cross roads still.

We do it by taking sensible precautions in order to reduce the risk by

- Paying attention to traffic when near the road
- looking for a pedestrian crossing and using it if there is one
- looking both ways carefully and listening to make sure nothing is coming
- wearing bright clothing especially in the dark so we can be seen better
- crossing in a straight line and not letting ourselves be distracted until we reach the other side

None of these remove the danger or the potential to be knocked down and killed but they do reduce the likelihood of this happening.

Similarly there are actions which the local council and others can take to reduce the likelihood of you being knocked down and the consequences if you are

- setting and enforcing lower speed limits
- installing speed reducing measures
- making cars conform to modern standards of design which can stop quicker and do less damage to pedestrians if they hit them

These don't necessarily stop you being knocked down but they make it less likely that you will and less likely that you will be seriously injured if you are.

One of the big differences for many disabled adults and older people when they take risks is that they will do so when being supported by personal assistants or a support worker from a statutory service or an independent agency. Also, there will be times when a disabled or older person might take risks on their own, but a statutory service might be held responsible if harm to them or others occurs.

A balance therefore has to be achieved between the desire and right of disabled adults and older people to do everyday activities, the duty of care owed by services and employers to their workers, the duty of care owed to users of services, and the legal duties of statutory and community services and independent providers.

As well as considering the dangers associated with risk, the potential benefits of risk-taking have to be identified. This should involve everyone affected – disabled adults and older people who use services, their families, social care workers and other professionals or organisations involved in supporting them (provided consultation is carried out in accordance with information governance and the service user's right to privacy is respected).

## **What is positive risk-taking?**

‘Positive risk-taking is: Weighing up the potential benefits and harms of exercising one choice of action over another. Identifying the potential risks involved, and developing plans and actions that reflect the positive potentials and stated priorities of the service user. It involves using available resources and support to achieve the desired outcomes, and to minimise the potential harmful outcomes. It is not negligent ignorance of the potential risks...it is usually a very carefully thought out strategy for managing a specific situation or set of circumstances.’ (Steve Morgan, 2004)<sup>2</sup>

For Adult and Community Services, this means:

- being empowering
- understanding and valuing a person's strengths, gifts, skills and relationships
- Understanding what is important for the person in relation to the risks
- Understanding that everyone over the age of 16 has a statutory right to make an unwise or eccentric decision unless it has been established that they lack the mental capacity to do so
- working in partnership with disabled adults and older people, family carers and advocates
- developing an understanding of the responsibilities of each party
- helping people to access opportunities and take worthwhile chances
- developing trusting working relationships
- helping adults who use services to learn from their experiences
- helping services to learn how to support people better
- understanding the consequences of different actions
- making decisions based on all the choices available and accurate information

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<sup>2</sup> Morgan S. (2004). Positive risk-taking: an idea whose time has come. Health Care Risk Report 10(10)18-19

- being positive about potential risks
- knowing what has worked or not in the past
- where problems have arisen, understanding why
- ensuring support and advocacy is available to disabled adults and older people, particularly if things begin to go wrong for someone
- Ensuring contingency plans are developed in partnership with disabled adults and older people and family carers
- sometimes tolerating short-term risks for long-term gains
- through regular reviews gradually withdrawing inappropriate services that create dependency
- having an understanding of the different perspectives of disabled adults and older people, family carers, practitioners, advocates and services
- developing person-centred and transition planning for both young people and adults to support their involvement and that of their families and schools in decision-making alongside practitioners
- ensuring staff use the guidance, procedures, risk assessment and risk management tools adopted by the service, and receive appropriate support and supervision from their immediate line manager

## **Why do we need a policy?**

The effective identification, assessment and management of risk and review of incidents can be supported through policy, procedures and practical tools that can be used by practitioners. Lancashire County Council has a Corporate Risk Management Policy in place to outline the structures in place to manage the broad range of financial and organisational risks encountered in delivering complex service arrangements. Its principal requirements are:

- Processes must be established to identify and assess risk and evaluate measures that can reduce the chances of an event taking place.
- Training must be provided for staff and managers.
- Risk assessments should be carried out and regularly updated by competent staff for all identified risks.
- Assessment should involve a level of management that is appropriate to the nature and scale of the risk.
- Decisions should be clearly documented and the resulting actions implemented through prescribed local procedures.
- Clear reporting procedures must be established for each service where the identification of risk and risk management actions are recorded.
- Services must ensure that appropriate, cost effective actions are taken to manage and control risks.

This Positive Risk Taking Policy contributes to the overall framework of the Council's response to the issue of risk and particularly deals with situations encountered in a social care or community context between: practitioners; disabled adults and older people; and family carers.

To support the implementation of this policy and appropriate professional practice, Adult and Community Services are responsible for ensuring appropriate guidance, procedures and risk assessment / management tools are in place for use by their staff.

## **Principles of Working With Risk**

A number of important issues need to be considered by Adult and Community Services staff and their partner agencies when carrying out risk assessments and risk management:

1. The identification, assessment and management of risk should promote the independence and social inclusion of disabled adults and older people.
2. Risks change as circumstances change.
3. Risk can be minimised, but not eliminated.
4. Information will sometimes be incomplete and possibly inaccurate.
5. Identification of risk carries a duty to do something about it, i.e. risk management. However the level of intervention should only be proportionate to the level of risk.
6. Any intervention should build on the strengths, capacities and relationships of the individual, in order to promote their independence and quality of life.
7. Any intervention should be compliant with the principles and provisions of the Mental Capacity Act
8. Involvement of disabled adults and older people who use services, their families, advocates and practitioners from a range of services and organisations helps to improve the quality of risk assessments and decision-making.
9. The risk assessment process will use inclusive methods of communication which allow all participants to express their views and share their experiences.
10. 'Defensible' decisions are those based on clear reasoning.
11. Risk-taking can involve everybody working together to achieve positive outcomes.
12. Confidentiality is a right, but not an absolute right and may be breached in exceptional circumstances when people are deemed to be at serious

risk of harm or it is in the public interest. Any decision to breach confidentiality will be recorded on the individual's record.

13. The standards of practice expected of practitioners must be made clear by their team manager / supervisor to give them the confidence to support decisions to take risk.
14. Sensitivity should be shown to the experience of people affected by any risks that have been taken where an adverse event has occurred.

## **Positive Risk Taking Framework – Identification, Assessment and Management of Risk**

A structured approach to the identification, assessment and management of risk and the review of incidents and achievements is essential as the total elimination of risk is unrealistic. It is vital that staff use the guidance, procedures and risk assessment / management tools that have been adopted by their Service and seek clarification from their manager or supervisor if they are confused or unsure about what is expected of them.

### **Information Gathering and Sharing**

Information gathering and sharing is important. It is not just an essential part of risk assessment and management, but also key to identifying a risk in the first place. However, the use and sharing of information must respect the principles outlined in the Data Protection Act 1998.

When collecting new data or information, it is important to tell the person or family affected the purpose of the data collection and why information gathering is necessary. It will also be necessary to obtain their consent to share information and tell them with whom it will be shared.

Numerous methods can be used to gather information:

- Access to past records
- What the person says themselves
- What people who know the person well say – e.g. carers, relatives or friends, other team members / other teams, advocates, other statutory or voluntary agencies or the police, probation services or courts, or external companies providing services.
- Observing the behaviour of the person in practical situations if appropriate
- Observing discrepancies between verbal and non-verbal cues
- Rating scales or other actuarial methods
- Clinical judgement based on evidence based practice
- Predictive indicators derived from research

Because decisions may need to be defended, during the identification, assessment and management of risk, practitioners must ensure that information shared or gathered is properly recorded to be able to evidence the:

- Formulation of a logical, informed opinion as to the severity of risk.
- Organisation of discussions with the person, their family and any health, social care, advocacy or independent sector professional involved.
- Inclusion of the person and their family in decision-making.

- Identification of conflicting opinions and interests.
- Clarification of lines of accountability.
- Justification of actions.

## **Risk Identification**

Identification of a risk should involve a balanced approach, which looks at what is and is not an acceptable risk. It should be a view based on a disabled adult or older person's aspirations that aims to support them to get the best out of life in a way that is meaningful to them. The perspectives of people who use services and their families are central to identifying risk.

Not every situation or activity will entail a risk that needs to be assessed or managed. The risk may be minimal and no greater for the disabled adult or older person concerned than it would be for any other person.

For example, if a disabled adult with learning disabilities living in residential care is used to travelling independently, taking a train trip to London where family meets them at Euston Station might not necessarily entail a risk that needs to be assessed or managed. Or a disabled parent and their children might be facing the same risks as those faced by any other family; therefore the involvement of Council staff might be inappropriate or even discriminatory.

## **Risk Assessment**

Risk assessment is the activity of collecting information through observation, communication and investigation. It is an ongoing process that involves considerable persistence and skill to assemble and manage relevant information in ways that become meaningful for the users of services (and significant other people) as well as the practitioners involved in delivering services and support.

To be effective it needs disabled adults and older people, their families, carers, advocates and practitioners to interact and talk to each other about what has been tried and learned; what has worked and not worked. They need to work together to find imaginative solutions to risk issues in the light of experience.

Where a risk assessment is needed, a decision then has to be taken about whether or not positive risk-taking is necessary to achieve certain outcomes for the person concerned. It will not always be appropriate to take positive risks but this has to be determined in partnership with the person affected, and their family where appropriate. For the professional it is a judgement that should not be influenced by an overly cautious approach to risk. At the same time though, positive risk-taking is not negligent ignorance of the potential

risks – nobody benefits from allowing risks to play their course through to disaster.

During risk assessment, the following should be considered:

- Disabled adults or older people should not simply be seen as the source of risk – their view of risk and that of their families and carers have a prominent place in the identification, assessment and management of risk.
- When gathering information from disabled adults or older people, or family carers, staff need to emphasise the importance of information that is both accurate and identifies any concerns or issues that may increase the probability of an event occurring.
- There should be a focus on a person's 'strengths' to give a positive base from which to develop plans that will support positive risk-taking. Consider the strengths and abilities of the person, their wider social and family networks, and the diverse support and advocacy services available to them.
- A person-centred approach should be used to identify, assess and manage risk. This requires practitioners to work in this way and for some this may present a challenge to traditional ways of working.
- Approaches to risk assessment should be compliant with the principles and provisions of the Mental Capacity Act
- 'Positive risk-taking' may sometimes need to distinguish between the short-term and long-term position. Short-term heightened risk may need to be tolerated and managed for longer-term positive gains.
- Taking risks can give people confidence and enables them to manage their involvement in community activities better.
- An assessment needs to be clear if it is to protect the individual or others.
- Every individual or agency directly affected should be involved in the development of a positive risk management plan that agrees on the approach to risk and how identified risks will be supported. Consensus helps to support positive risk-taking and promotes a person-centred response.
- Each assessment should identify a review date and include the signatures of everyone involved in the assessment.
- If anyone involved in the care plan or the provision of support does not agree with the assessment, they should be asked to document their concerns and reasons.
- The influence of historical information in any assessment should be concerned with understanding what happened if risk-taking resulted in

harm and how it can be mitigated in future, rather than the stigma of the events themselves.

## **Risk Management**

### **Risk Management:**

- Is the statement of plans and the allocation of responsibilities for translating collective decisions into real actions;
- It is the activity of exercising a duty of care where risks (positive and negative) are identified;
- It entails a broad range of responses linked closely to the wider process of care planning;
- The activities may involve preventative, responsive and supportive measures to diminish the potential negative consequences of risk and to promote potential benefits of taking appropriate risks;
- These will occasionally involve more restrictive measures and crisis responses where the identified risks have an increased potential for harmful outcomes;
- It should also clearly identify the dates for reviewing the assessment and the management plans.

Decisions though, need to be negotiated and agreed between all parties, and clearly understood.

When carrying out risk management, the following must be considered:

- Decision making in relation to risk must be clearly evidenced on relevant documentation.
- Managers / supervisors have a key role in the successful application of the Positive Risk Taking Policy. They have a responsibility to ensure that their approach to supervision is conducive to supporting practitioners in risk decisions.
- High quality supervision and support are essential to provide an opportunity to discuss concerns and refine ideas, as well as review the progress of the implementation of risk assessments.
- Managers / supervisors need to recognise that there is joint accountability / ownership for risk decisions. Practitioners need to know that support is available if things begin to go wrong.
- Risk-taking is further enhanced by limiting the duration of the decision i.e. working to shorter timescales and with smaller goals broken down. This is supported by having mechanisms in place to check on progress; and an ability to quickly change previous decisions when needed, including intervening in a more restrictive way where necessary.

- Risk management should become part of a practitioner's ongoing work with an adult and should be reflected on an individual's record
- Individual practitioners can reasonably be expected to accept responsibility for the professional standards of conduct set out by their professional body. However it is the collective responsibility of the team to share information, make decisions and plan.
- Issues of confidentiality need to be considered by practitioners, officers and their managers / supervisors to ensure client and public safety.
- This approach supports the recognition of an individual's right to make informed decisions about the care or support they receive. It recognises the concept of empowerment when working with vulnerable people.
- The rights of disabled adults and older people and family carers to make decisions are acknowledged. In certain circumstances these can be overruled, particularly when the individual is assessed as lacking in 'mental capacity' in relation to a specific decision. However any person who has capacity is entitled to make a decision on their own behalf even if that decision is seen by others to be unwise.
- If there is doubt about the person's mental capacity with regard to the risk, decision-making must be compliant with the principles and provisions of the Mental Capacity Act and associated Code of Practice, and records must evidence this.
- Practitioners should refer to guidance on best practice in dealing with decision-making when there is doubt about the person's capacity, and on the principle that "all practicable steps should be taken to help the person make the decision for themselves". More information is available in the Mental Capacity Act Code of Practice<sup>3</sup> and the Best Practice Guide to Supported Decision Making<sup>4</sup>.
- If the person has been assessed as lacking capacity to make the decision, anything done for or on their behalf must be in their "best interests" and must aim to be the least restrictive option. Guidance on how to assess capacity, how a best interests decision should be made and the limitations of decision-making under the Mental Capacity Act is available in the Mental Capacity Act Code of Practice
- If any form of restraint is to be used to manage risk this must be carried out in accordance with the provisions of the Mental Capacity Act and associated Code of Practice, aim to be the least restrictive option available and be consistent with professional guidance on appropriate physical intervention.

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<sup>3</sup> [Mental Capacity Act 2005 Code of Practice](#): TSO; London; 2007.

<sup>4</sup> [Independence, choice and risk: a guide to best practice in supported decision making](#) : Department of Health - Publications; London; 2007.

- The assessment and management of risk should be, as far as possible, a multi-disciplinary exercise.
- Positive risk-taking is intended to promote the hopes and aspirations of the individual and create a positive vision of the future for themselves and those who care about them. However it needs to be underpinned by contingency planning for the 'fears' and possibilities of failure. This will help to prevent some harmful outcomes, and minimise others. Risk-taking should be pursued in a context of promoting opportunities and safety not negligence. Therefore, adult users of services, their families and practitioners should be encouraged to learn to think about 'what ifs' and contingencies as part of their day-to-day thinking.
- Where people are behaving recklessly, risk management may include the setting of explicit boundaries to contain situations that are developing into potentially dangerous circumstances for all involved. If a person or their carer makes a decision to continue behaviour that is reckless, a record should be made of their decision and when it was taken. If Council staff are affected by this decision, any support service being provided will be reviewed to ensure that how it is delivered does not compromise the safety of any worker involved.
- Positive risk-taking should be ingrained into the working culture and be reflected in the content of team training. It is not a one-off experiment, but the natural first line of thinking.

### **Support Plan Resolution Group**

- When the potential risks identified in the support plan, or the proposed ongoing management arrangements for the support exceed what is perceived as reasonable by those responsible for signing off the plans, or there is an apparently irresolvable conflict between the wishes of the individual and their carer then the case should be referred to the Support Plan Resolution Group for assistance.

This will only be used where there may be :-

- potential risk of death or injury (to self or others)
- potential risk of abuse (to self or others)
- potential risk of bringing the local authority into disrepute (unprecedented practice which could be perceived to conflict with policy)
- potential risk of controversy
- potential risk of litigation
- potential risk of ill treatment to or wilful neglect of a person who lacks capacity

- potential risk of deprivation of liberty

Or

- When there is a case of conflict between the wishes of the individual and their carer which is seemingly irresolvable.

## Review of Incidents

In the context of this policy, an incident is when an event occurs that results in physical, emotional or psychological harm to a disabled adult or older person who is receiving Council services or another person as a consequence of the actions or behaviour of that individual, practitioner or a member of the public.

When positive risk-taking has a negative consequence, it is necessary to identify what has gone wrong and how the assessment and management of the risk contributed to this. The Council recognises that the point at which a risk becomes an incident is a traumatic time for practitioners, as well as everyone else involved. It is recognised that to fail to support practitioners and officers after an incident would have a negative impact on morale within a service.

In situations where **incidents of serious concern** occur that involve Council staff or users of its services, the following steps will be taken:

1. If it appears that an incident is a criminal offence the police will be notified immediately.
2. The Head of Service and other appropriate managers will be notified as soon as is reasonably practical after an incident has occurred.
3. The Head of Service will identify whether an examination of the incident should be managed through Safeguarding or Multi-Agency Public Protection Arrangements procedures (and their timescales), by another agency or through an internal investigation.
4. If an internal investigation is to be carried out, the Head of Service will set-up a Review Team within 3 working days of the incident.
5. The Review Team will report within 20 working days.
6. The Head of Service will ensure the Review Team's report and recommendations are circulated within 3 working days to appropriate agencies and practitioners.

Following an incident, whatever its degree, the Council will:

- Start an investigation from a 'no-blame' standpoint.
- Offer any support or supervision that staff involved feel are appropriate following an incident and through any investigation process.
- Keep all parties affected fully involved and informed throughout the investigation process that will try to determine the sequence of events that led to the incident.
- Deal appropriately with any case of negligence or bad practice that is identified.

- Provide comfort, support and information to those affected (victims, disabled adults and older people, their families or practitioners) by the loss and trauma associated with a serious incident.
- Disseminate the findings from investigations and reviews following an incident. Within the Council and to other partner agencies and those affected by the incident and their advocates. This will promote the positive lessons learned from the information gathered and not just the recommendations relating to failings in processes and procedures.
- Identify the approach taken to the investigation and review of an incident in full consultation with all appropriate agencies.

## **Review of Achievements**

Where positive risk taking has resulted in a person achieving an objective, either wholly or partly, which they would not previously have attempted it is important for this fact to be recognised, recorded and celebrated.

This serves a number of purposes

- It reinforces to the individual and everyone around them that they can do things that they or others did not expect them to be able to do.
- It allows this achievement to be considered when looking at future plans for the person (previous experience should always be taken into account in positive risk taking).
- Where there was a level of support provided or some constraints were imposed to reduce the risk, it allows everyone involved to consider whether these were appropriate and whether, in future, the support level could safely be reduced or the constraints lessened or removed altogether.
- Where the support or constraints proved necessary it allows the person to learn that, although there may be risks associated with an activity there are ways in which these can be managed.
- In an anonymous form it allows the experiences of one person to be used as a practical example for other people in a similar position and to other carers, care workers and supporting staff to encourage them to work more positively with the people they are involved with.
- For the Directorate it has the potential to build a library of case studies to show the benefits of Positive Risk Taking which will be invaluable in countering those occasions when there is, or is perceived to be, an incident, an adverse outcome or questions about the effectiveness of Positive Risk Taking or particular uses of the personal budget.

As a minimum requirement, achievements must be recorded in the person's case record.

## Recording Stories

If possible the person or their carer should be encouraged to submit their story whether of an incident or achievement to the directorate's story group and possibly for wider distribution within the Directorate and to partner agencies.

Where the person is willing to contribute their story, staff should ensure they have any assistance they need to do so.

Guidance on producing stories is available on the Business Intelligence Group website at [Business intelligence - Adult & community services](#), which also contains a proforma for the story and consent form.

The story should be written from the person's perspective and should contain three sections:

1. Background: Give some background to the person and the story, including what they wanted to achieve
2. Tell the story
  - a. Say what the decision making process was and how was it decided to support them to achieve it?
  - b. Say what actually happened and what effect it has had on the person and/or their carers?
  - c. Say what is going to happen next as a result of this achievement or incident, how has it affected the person's and/or their carer's perception of themselves, their aspirations and/or their responsibilities?
3. Say what, if anything the directorate or others could do better or differently.

## **Positive Risk Taking Toolkit**

There are a number of different tools and formats that can be used to help an individual to express the things they want to achieve. A selection of these are listed in Appendix 5.

It is important to use a tool which is appropriate for the individual and which takes account of their abilities and understanding as well as their preferred method of communication.

Staff should ensure that the person has the right support to express their wishes and aspirations, assume they have capacity unless this has been otherwise proven and consider the physical and mental health of the person and any specialist services they need or are already receiving

Whichever tool is used it should draw out from the individual their aspirations, their understanding of how these might be achieved, what barriers or risks there may be to achieving them and how these may be addressed.

## **Appendices**

### **Appendix 1 – Glossary**

#### **Person Centred Planning and Thinking**

An approach based on the principles of rights, independence, choice and inclusion used to help a disabled person work out what they want to do with their lives, and how they wish to live, and then determine how services and support in the wider community can support the individual to meet their aspirations.

The individual's priorities and aspirations and the services they need to fulfil these can and will change, so person centred planning and thinking is a continual process of listening and learning with the person.

The key features of Person Centred Planning are:

- The person is at the centre and is in control.
- Family and friends are partners
- Planning is based on a person's capacities gifts and skills; it seeks to identify what is important to them.
- Planning uses language and communication methods that make sense for the person.
- Planning is not limited to conventional service options, and can be challenging to services.
- Planning leads to continual listening, learning and action.

Person Centred Thinking is a set of skills and simple tools that people, families, teams and managers can use to think in a person centred way about what is important to the person, and how to support them well. These can be used in everyday life and work, as well as applied to thinking about opportunities and risks.

#### **Medical Model of Disability**

An approach to disability that says disabled people (because of their impaired body, mind or learning ability) are unable to do everyday activities that non-disabled people can take for granted. The consequence of this approach is the emphasis placed on the individual's ability to adapt to the world around them or the need for people to limit their expectations and ambitions.

## **Social Model of Disability**

An approach to disability that says the disadvantage and inequalities experienced by disabled people are not caused by their impaired body, mind or learning ability but by the society in which they live. The way in which buildings and transport are designed or education, hospitals, councils and government are run or how people think about disability can create barriers and lead to discrimination, exclusion and prejudice if deaf and disabled people's needs are ignored. The consequence of this approach is the emphasis on the need to remove physical barriers to buildings and wider society, change attitudes and expectations, and use the law to stop disability discrimination.

## **Appendix 2 - Defensible Decisions**

The decision-making involved in the assessment of risk and its management is generally effective in avoiding harmful situations from arising. But it is not infallible. If harm occurs to a disabled adult or older person or others because of their actions, any practitioners, officers or agencies involved in the assessment or management of risk might need to defend the decisions they made and their reasoning.

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.

## **Appendix 3 - Professional Competency**

For a practitioner, empowering a person to decide the level of risk they are prepared to take with their health and safety involves working with the tension between promoting safety and positive risk-taking.

In order to practice in a way which promotes safety and positive risk-taking, the practitioner concerned should be able to:

- Develop harmonious working relationships with users of services and carers, particularly with those who may not wish to engage with services.
- Promote an understanding of the factors associated with risk of harm to self or others through violence, self-neglect, self-harm, suicide or hate-crime.
- Demonstrate the ability to educate disabled adults and older people, and family carers about the role, function and limitations of support services in relation to promoting safety and managing risk of harm.
- Contribute to accurate and effective risk assessments, identifying specific risk factors of relevance to the individual, their family and carers and the wider community.
- Contribute to the development of risk management strategies and plans that clearly identify the agreed actions to be taken and the goals to be achieved.
- Contribute to the safe and effective management and reduction of any identified risks.
- Develop a knowledge and understanding of national and local policies and procedures for minimising risk and managing harm to self and others.
- Understand the importance of multi-agency and multidisciplinary working in promoting safety and positive risk-taking.
- Have an awareness of the available spectrum of individual and service responses to help manage crises and minimise risks as they are happening.
- Contribute, if appropriate, to the use of medical and psychosocial interventions with the expressed goal of managing a person's risk behaviours in the long term, eg through the use of medication, anger management, supportive counselling, etc.

## **Appendix 4 - Legislation and Legal Principles**

When approaching the identification, assessment and management of risk, knowledge of key legal principles and legislation will help practitioners to make informed decisions that promote both the involvement and interests of disabled adults and older people, and their families. It will also support and promote best practice for professional staff involved in supporting positive-risk-taking. An understanding of the following legislation and legal principles is important. However, where there is doubt about legal issues, expert advice should always be sought by services from the Council's Legal and Corporate Services.

### **Human Rights**

These are rights and freedom to which every human being is entitled. The Human Rights Act 1998 brought the European Convention on Human Rights into domestic law for the whole of the UK on 2 October 2000. The Act:

- Makes it clear that as far as possible United Kingdom courts should interpret the law in a way that is compatible with Convention rights.
- Places an obligation on public authorities, including local authorities, to act compatibly with Convention rights, so all Council staff need to be aware of the human rights of those adults to whom they provide support.
- Gives people the right to take court proceedings if they think that their Convention rights have been breached or are going to be.

Of the 13 Convention rights included in the Act, the following are of particular concern to Council staff who work with disabled adults and older people:

- the right to liberty and security;
- the right to respect for private and family life;
- the freedom of thought, conscience and religion;
- the right to freedom of expression;
- the right to marry and found a family; and
- the prohibition on discrimination.

### **Disability Rights**

During the past 20 years, a legal framework has developed in Britain to protect those affected by disability discrimination. The Disability Discrimination Acts 1995 and 2005 give disabled people rights in the areas of: employment; education; transport; access to goods, facilities and services and the buying or renting of land or property.

People protected by these Acts should not be treated less favourably than non-disabled people when accessing goods or services. Reasonable adjustments also have to be made to workplaces and the way services are delivered. The 2005 Act extended these rights by requiring public bodies such as councils, schools, and health services to promote equality of opportunity for disabled people.

In the area of education, the Special Educational Needs and Disability Act 2001 established legal rights for disabled students in pre- and post-16 education. The Act introduced the right for disabled students not to be discriminated against in education, training and any services provided wholly or mainly for students. Student services covered by the Act can include a wide range of educational and non-educational services, such as field trips, examinations and assessments, short courses, arrangements for work placements and libraries and learning resources.

## **Mental Capacity**

The Mental Capacity Act 2005<sup>5</sup> came into force on 1 April 2007 and provides a statutory framework for people who lack capacity to make decisions for themselves, or who have capacity and want to make preparations for a time when they may lack capacity. It empowers and protects people who may not be able to make their own decisions now or at some time in the future. It makes it clear who can take decisions, in which situations, and how they should go about this. The whole Act is underpinned by five key statutory principles:

- *“A person must be assumed to have capacity unless it is established that he lacks capacity.*
- *A person is not to be treated as unable to make a decision unless all practicable steps to help him to do so have been taken without success.*
- *A person is not to be treated as unable to make a decision merely because he makes 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 his best interests.*
- *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”<sup>6</sup>.*

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<sup>5</sup> [Mental Capacity Act 2005 \(c. 9\)](#): OPSI London 2005

<sup>6</sup> [Mental Capacity Act 2005 \(c. 9\)](#) Part 1, Section 1, *The principles*.

## **Duty of Care**

This is a requirement that a person acts towards others and the public with the watchfulness, attention, caution and prudence that a reasonable person in the circumstances would use. If a person's actions do not meet this standard of care, then the acts may be considered negligent, and any damages resulting may be claimed in a lawsuit for negligence. Professional workers owe a specific duty of care to the disabled adults and older people they work with. The standard of conduct and behaviour expected of people in their professional role is higher than for an ordinary person because of the professional training they have received and the level of responsibility they assume.

## **Negligence**

Negligence is carelessness amounting to the culpable breach of a duty, such as failure to do something that a reasonable person (i.e. an average citizen in that same situation) would do, or doing something that a reasonable person would not do. In cases of professional negligence, involving someone with a special skill, that person is expected to show the skill of an average member of his or her profession.

## **Safety at Work**

Every employer has a common-law duty to take reasonable care for his employees' health, safety, and welfare at work, and must insure against their liability for employees' injuries and diseases sustained or contracted at work. The Health and Safety at Work Act 1974 further requires employers to ensure, as far as is reasonably practicable, that their working methods, equipment, premises, and environment are safe and to give such training, information, and supervision that will ensure their employees' health and safety. Employees also have a duty to take reasonable care for their own health and safety and that of others who may be affected by their activities.

## **Appendix 5 – Person Centred Thinking Tools and Risk**

On the next page is the supported decision tool extracted from [Independence, choice and risk: a guide to best practice in supported decision making](#)<sup>7</sup> the full guidance for this can be found at Annex A of the original document.

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<sup>7</sup> [Independence, choice and risk: a guide to best practice in supported decision making; Department of Health; London; 2007](#)

## Supported decision tool

What is important to you in your life?	
What is working well?	
What isn't working so well?	
What could make it better?	
What things are difficult for you?	
Describe how they affect you living your life	
What would make things better for you?	
What is stopping you from doing what you want to do?	
Do you think there are any risks ?	
Could things be done in a different way which might reduce the risks?	
Would you do things differently?	
Is the risk present wherever you live?	
What do you need to do?	
What do staff/organisation need to change?	
What could family/carers do?	
Who is important to you?	
What do people important to you think?	
Are there any differences of opinion between you and the people you said are important to you?	
What would help to resolve this?	
Who might be able to help?	
What could we do (practitioner) to support you?	
Agreed next steps – who will do what	
How would you like your care plan to be changed to meet your outcomes?	
Record of any disagreements between people involved	
Date agreed to review how you are managing	
Signature	
Signature	

## Other Tools

Tool/Skill	Function in risk assessment
Positive reputations Gifts sheets	Gaining a picture of the person's capacities gifts and skills
Sorting 'Important To' and 'Important For'	Understanding what is important to the person in relation to the risk, and thinking about what keeps them and others safe
One Page Profile	Recording and sharing what makes good support for the person
What success might look like	Creating a positive vision of the future
What's Working/What's Not Working?	Looking at what is working and not working in the person's life, from different perspectives
4+1 Questions" (What have we tried, what have we learned, what are we pleased about, what are we concerned about?)	Gathering information about the risk from the person, their family, supporters and professionals
What are the consequences if we do nothing, for the person, for their family, for the community, for the service?	Balancing the consequences of taking the risk against the consequences of not taking the risk
Blue Sky Thinking	Co-creating imaginative solutions
Happy/Safe Grid	Evaluating ideas
Hopes and Fears, Dreams and Nightmares	Planning for Contingencies
Decision Making Agreement	Clarifying and supporting decision making
Doughnut Tool, which lists: what are Core duties, where can staff use judgement and creativity, and what is not their job?	Clarifying staff roles and responsibilities in relation to the risk
Learning Logs	Recording learning in relation to the risk
Achievement tool	Recording, celebrating and learning from achievements