Positive Risk Management
Good Practice Guidance
Supporting Individual Choice and Control

Social Care and Health, Social Work Services
Scottish Borders Council
and
NHS Borders

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Scottish Borders Council/NHS Borders acknowledge the influence of the risk management policies of Gateshead and Cumbria Councils in drafting this document.
SUMMARY

This joint document has been produced by NHS Borders and Social Work Services to provide good practice guidance to staff on risk management.

National policy direction in health and social care promotes a rights based and personalised approach. If we are to deliver health and social care services that offer individual control and choice then we need an approach to risk that is able to deliver this agenda.

Positive risk management is an approach that recognises the importance of professional judgement, with assessment tools that inform this judgement, and an understanding that ‘the sort of society in which there is no risk is neither achievable nor desirable’.

Positive risk management must take into account duties placed on staff such as the Multi-Agency Adults at Risk Protection Arrangements and Health and Safety legislation.

For staff within NHS Borders, Social Work Services and partner organisations positive risk management includes:

- Working in partnership with people who use services and carers
- Helping people to access and widen their opportunities and understand the consequences of different actions
- Recognising that people learn from risk and experience enhances individual’s quality of life
- Ensuring staff use the appropriate procedures and assessment tools
- Ensuring staff receive appropriate support and supervision
- Ensuring accurate recording and appropriate information sharing

A structured approach to the identification, assessment and management of risk, and review of incidents is essential.

**Identification of Risk**- this needs a balanced approach, which looks at what is and is not a manageable risk. Not every situation will entail a risk that needs to be assessed or managed.

**Risk Assessment** – is a process of thinking through with the individual and others who can contribute to the process – it involves weighing up the potential benefits and harm and putting things in place to manage and minimise the risks.

**Risk Management** –is the activity of exercising a duty of care where risks are identified, and can entail a broad range of responses to reduce the negative consequences of risk and promote the potential benefits of taking appropriate risks. This will occasionally involve more restrictive measures where the risks have an increased potential for harmful outcomes. Decisions need to be negotiated and understood between all parties.
Introduction

Within society generally, 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 in which people take risks to achieve their aspirations, and for many people risk is an accepted part of life. People with disabilities, with mental health needs 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 claims against health or social care services.

‘Changing Lives’, the 21st Century Social Work Review recommends a change in organisational culture in order to promote personalisation. Central to this approach is greater user and carer empowerment and the management of positive risk taking. Social Work operates in a risk averse and litigious society, however, to be able to deliver more personalised services Social Work and its partners need to manage risk effectively and support creative approaches to managing risk which enable individuals to live as full a life as possible.

The Scottish Government in ‘Delivering for Health’ promotes user empowerment and responsibility as a way to of support people to take more care of their health. Documents such as the NHS Scotland ‘Rights, Relationships and Recovery: The National Review of Mental Health Nursing in Scotland’ (July 2007) state the importance of a rights based and person-focused approach to practice.

Within the next year the Scottish Government plan to introduce a strategy and Bill on self-directed support. Self directed support encourages’ people to meet their needs in ways that best suit them. This means that we need an approach to risk that is suited to delivering this agenda, one that is proactive, that manages risk, is about working with users and carers to build on their capacity and skills, and is open to learning.

This guidance takes account of the 2007 Scottish Government ‘Effective approaches to risk management in social work: an international literature review-research findings’. A key finding is that the relationship between worker and client is paramount to effective working in risk assessment and management. Positive risk management is an approach that recognises the importance of professional judgement, with risk assessment tools that inform not replace this judgement, and an understanding that ‘the sort of society in which there is no risk is neither achievable nor desirable’.

The Council and NHS Borders will endeavour through commissioning arrangements and Service Level Agreements to encourage agencies and services they contract with to adopt a positive risk management approach. 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.

Social Work Services, NHS Borders and its partners recognise that any positive risk management approach must be balanced with its responsibilities to implement the Multi-Agency Adults at Risk protection arrangements and takes into account the Management of Health and Safety at Work regulations 1999 regulation 3 – the statutory obligation to assess and record the significant risks.

This is joint guidance although each organisation recognises that they have their own risk tools.
Scottish Borders Council’s General Risk Assessment Procedure and Guidance and the SBC Health and Safety Policy govern how general risk assessments are carried out in the Council. The principles adhere to the Health and Safety Commission’s ‘Principles of Sensible Risk Management’. The Health and Safety Executive’s ‘Five steps to risk assessment’ should be referred to.

Within its ‘Guidelines for Management of Clinical Adverse Event Recording’ (p5) NHS Borders states that ‘clinical risk events will never be prevented altogether…the underlying principle of effectively managing risks are based on valuing people, working in partnership with each other, sharing information and experiences in order to learn from each other and be open to changes in practice as necessary and plan care in a way that reflects this learning within an open, fair and just culture.’

Section One – Background to Positive Risk Management

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. For example, an event can occur because of:

- risks associated with everyday activities and might be increased by a person’s frailty or disability e.g. falls
- accidents, for example, in the community, during travel to work, shops
- the misuse of drugs or alcohol
- the use of medication
- behaviours resulting in injury, neglect, abuse, violence, aggression and exploitation by self or others
- suicide or self-harm

Risk is often thought of in terms of danger, loss, threat, damage or injury. But as well as potentially negative characteristics, risk-taking can have positive benefits for individuals and their communities.

The difference for many disabled adults and older people when they take risks is that they may do so when being supported by a paid support worker. There will be times when a disabled or older person might take risks on their own, but the service might be held responsible if harm to them or others occurs.

A balance therefore has to be achieved between the desire of people to make decisions about the level of risk in their everyday lives, the duty of care owed by services and employers to their staff, and the legal duties of statutory and independent services.
In this circumstance the risk to staff in terms of accountability for outcomes also needs to be considered. It is recognised that the support and trust of the employing organisation needs to be explicit if staff are to promote a sensible risk management approach in respect of their work with clients.

**Key Principles of Working with Risk**

A number of important issues need to be considered by practitioners when carrying out risk assessments and risk management:

- Practitioners should promote the independence and social inclusion of users; this includes helping the person to understand the consequences.
- All stakeholders should be involved and whenever possible in multidisciplinary meetings, with responsibility for actions agreed and shared and joint accountability recorded.
- Involvement of 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.
- Decision based on clear reasoning, evidence and involving all stakeholders, with recorded outcomes and care planning are transparent and accessible to all.
- Risks change as circumstances change.
- Risk can be minimised and/or managed, but not eliminated.
- There are inherent risks in relation to record keeping in that information may sometimes be incomplete or inaccurate.
- Identification of risk carries a duty to do something about it i.e. identify ways to minimise risk/risk management.
- Managing risk should involve everybody working together to achieve positive outcomes.
- Confidentiality is a right, but not an absolute right and may be breached in exceptional circumstances when people are deemed to be at risk of harm or it is in the public interest.
- The standards of practice expected of practitioners must be made clear by their team manager/supervisor, and by organisational policies and procedures, to give staff the confidence to be involved in decisions to take risk.
- Sensitivity should be shown to the experience of people affected by any risks that have been taken and where an event has occurred.

**What is positive risk management?**

Positive risk management 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’. (Steve Morgan, risk consultant, 2004)

For staff within NHS Borders, Social Work Services and partner organisations, this means:

- being empowering
- working in partnership with people who use services and carers
- developing an understanding of the responsibilities of each party
- helping people to access and widen their opportunities
- developing trusting working relationships
- helping people who use services to learn from their experiences
- understanding the consequences of different actions
- making decisions based on all the choices available and accurate information
- being positive about potential risks
- understanding a person’s strengths
- knowing what has worked or not in the past
- where problems have arisen, understanding why
- ensuring support and advocacy is available to service users
- sometimes tolerating short-term risks for long-term gains ie people learn from risk, and experience enhances individuals’ quality of life
- gradually withdrawing inappropriate services that are not promoting independence
- having an understanding of the different perspectives of clients, carers, practitioners, advocates and services
- ensuring staff use the appropriate procedures and assessment tools and receive appropriate support and supervision
- accurate recording and appropriate information sharing

**Understanding the Purpose of Risk Assessing**

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<tr>
<th>YES</th>
<th>NO</th>
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<tr>
<td>“If someone wanted to do something new which involved risks, I see my job as being to help them understand the risks involved. I would work with the person and others to minimise and manage the risks so that the person is supported and enabled to make informed choices about this and can do the things they want to do”.</td>
<td>“If someone wanted to do something new I would plan a risk assessment to eliminate any risk of harm to the service user.”</td>
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It is the job of people involved in social and health care to manage risk rather than to try to keep people safe at all costs. People should be supported to think through the risks and to make informed choices (see ‘informed choice’ within Section Two - Practice Guidelines) It is important that organisational issues to do with health and safety, policies and procedures, fear of litigation, etc. are fully understood whilst promoting the goals and human rights of individuals as citizens.
Section Two – Practice Guidelines

Risk Identification, Assessment, Management and Critical Incident Review

A structured approach to the identification, assessment and management of risk and the review of incidents is essential as the total elimination of risk is impractical. It is vital that staff use the procedures and assessment tools that have been developed and implemented by their service and seek clarification from their manager, if they are unsure of what is expected of them. Agreed joint tools and procedures across partner organisations should be used where possible.

1. Risk Identification

Identification of a risk should involve a balanced approach, which looks at what is and is not a manageable risk. It should be a view based on an individual’s aspirations, which aims to support them to get the best out of life. The views of adults who use services and their families and family carers are equally as important as those of practitioners.

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 adult concerned than it would be for any other person. For example, does a person need to be assessed in relation to risk just by having a disability?

2. Risk Assessment

Risk assessment is a process of thinking things through with the individual and others who can contribute to the process. It involves weighing up the potential benefits and harm and putting things in place to manage and minimise the risks. The following should be considered:

- The service user 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 staff need to emphasise the importance of information that is 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 management e.g. their abilities, social and family networks, the diverse support and advocacy services available to them.

- A person-centred approach should be used to identify, assess and manage risk.

- 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.

• If anyone involved in the care plan does not agree with the assessment, the reasons for this should be recorded, and any concerns they have about the action being taken noted.

• The influence of historical information in any assessment should be concerned with understanding what happened if risk-taking resulted in harm rather than the stigma of the events themselves.

<table>
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<th>Informed choice</th>
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<td>Risk assessments will involve making judgements about a person’s ability to exercise informed choice. Where it has been agreed the user can make an informed choice i.e. has capacity, then the risk assessment process should enable individuals to make their own choices in the context of their own culture and values.</td>
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An ‘informed choice’ means that a person has the information and support to think the choice through and to understand what the reasonably expected consequences may be of making that choice. Enabling people to make informed choices does not mean an abdication of responsibility to ensure people have a good quality of life. We have a responsibility to support people to understand that with rights comes responsibility.

Where the individual lacks capacity they are unable to make an informed choice, this may also be the case when the individual involves themselves in drug/alcohol misuse to a degree that affects their judgement and puts them in high risk situations. In these situations there should always be a case conference to consider appropriate choice and control issues.

3. Risk Management

Risk management 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 and may involve preventative, responsive and supportive measures to reduce the potential negative consequences of risk and promote the 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. Decisions need to be negotiated and agreed between all parties, and clearly understood. The following must be considered:

• Decision making in relation to risk, and the process, must be clearly evidenced on relevant documentation.

• Managers / supervisors have a responsibility to ensure that their approach supports practitioners in risk decisions.

• Risk management is enhanced by working to shorter timescales, with smaller goals. This is supported by having mechanisms to check on progress and to quickly change previous decisions when needed, including intervening in a more restrictive way where necessary.
• Risk management should be part of a practitioner’s ongoing work and reflected in people’s case notes.

• Individual practitioners are expected to accept responsibility for professional standards of conduct but it is the collective responsibility of the team to share information, make decisions and plan.

• There may be a statutory responsibility e.g. when an individual is assessed as ‘lacking capacity’ in relation to a specific decision or ‘at risk’ - see appendix for legislation

• Positive risk management needs to be underpinned by contingency planning for any change in circumstance.

• 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 staff are affected by this decision, any support service being provided will be reviewed to ensure that how it is delivered guarantees the safety of any worker involved.

**Information Sharing**

Information gathering and sharing is an essential part of risk assessment and management, and is key to identifying a risk in the first place. However, the use and sharing of information must respect the principles outlined in the Data Protections Act 1998 and Scottish Borders Information Sharing Protocol 2008 (e-link to be added). When collecting new data or information, it is important to tell the person and their family carers the purpose of the data collection, why information gathering is necessary, whom it will be shared with, and wherever possible to get written consent to share. Decisions need to be transparent and evidence based as good practice and to allow for scrutiny by external agencies. Therefore 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 multi-disciplinary opinion as to the severity of risk.
- Involvement of the adult, their family and any health, education, social care, advocacy or independent sector professional involved.
- Inclusion of the adult and their family in decision-making
- Identification of conflicting opinions and interests.
- Evidence of reasons for actions

**4. Critical Incident Review**

In the context of this policy, an incident is when an event occurs that results in physical, emotional or psychological harm to an individual in receipt of services, practitioner or other. This also includes ‘near misses’ with the potential for harm.

If things go wrong and the risk management results in a negative outcome for the individual, there is no doubt that the risk taking process will come under scrutiny and the way in which this process worked to minimise the foreseeable risks will be considered.
Those scrutinising what happened will be looking at whether those involved in the risk assessing process acted appropriately and in accordance with risk policy.

The way in which staff followed policy and procedures, evidenced their consideration of risk, utilised their training, and acted reasonably and responsibly will be given due consideration and regard when investigations are made into the risk management process.

Scottish Borders Council and NHS Borders recognise that the point at which a risk becomes an incident is a traumatic time for practitioners, as well as everyone else involved and that there is a need to support staff after an incident and to undertake the duty of care to staff.

To report and investigate an incident refer as appropriate to:

NHS Borders ‘Policy document; Mental Health and Learning Disability Network; the Conduct of Critical Incident Reviews.’


Request for Inter-Agency Practice Review- form

SBC Accident/Incident Procedures and Arrangements

Adult Support and Protection Significant Case Review procedures (draft)
Appendix 1

Decision Making and Recording

The decision-making involved in the assessment of risk and its management is generally effective in avoiding harmful situations but it is not infallible and it should be open to scrutiny. An open and transparent decision is one where:

- All reasonable steps have been taken to identify risks and put in place a care plan that will maximise choice and independence and minimise risk.
- Reliable, agreed and joint 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.

Risk Enablement Panel

A risk enablement panel is a tool that can be used by any organisation to ensure that staff and individuals feel supported in seeking positive solutions and outcomes in the process of making a difficult decision. Risk decision making can be shared. The panel should ideally be multi-professional and can meet in exceptional circumstances where, for example, the risks identified are perceived as exceeding what is reasonable; there is conflict in the decision making process.

Appendix 2

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 and promote best practice. Where there is doubt about a legal issue expert advice should be sought from the organisation’s Legal and Corporate Services.

Legislation

a) Human Rights
These are rights and freedom to which every human being is entitled e.g. the right to liberty and security. The Human Rights Act 1998 brought the European Convention on Human Rights into domestic law for the UK in 2000.

b) Disability Rights
A legal framework has developed in the UK to protect those affected by disability discrimination. See in particular the Disability Discrimination Act 2005 and Disability Equality Duty 2006.

c) Adults with Incapacity (Scotland) Act 2000
Should there be any concern about the capacity of the individual in assessing risk there should be discussion with line manager/mental health team/GP/consultant psychiatrist.
For information go to:

www.scotland.gov.uk/justice/incapacity

**d) Adult Support and Protection (Scotland) Act 2007**
This Act introduces new duties to support and protect individuals who fall into the category of ‘adults at risk’. Any intervention should benefit the individual and should be the least restrictive option of those that are available.
For further information:
www.scotland.gov.uk/Topics/Health/care/adult-care-and-support

**e) Safety at Work**
The Health and Safety at Work etc Act 1974 places requirements on employers to ensure their employees' health and safety, and a duty on employees to take reasonable care for their own health and safety.
The Management of Health and Safety at Work Regulations 1999 contain the requirement, purpose and principles of risk assessment for significant health and safety risks.
Employers have a responsibility to others for health and safety. NHS Borders and Social Work Services staff should contact their organisational health/wellbeing and safety advisors for professional advice and support.

**Legal Principles**

**a) 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. Professional workers owe a specific duty of care to the 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.

**b) 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.

**Appendix 3**
**Policy and Guidance for reference**

NHS Borders ‘Consent to Treatment’, Sept 2008
Public Protection Agency Guidelines
Codes of Practice for Social Service Workers and Employers: SSSC
SBC Health and Safety Policy and guidance
See also documents referred to within this guidance