

“we’re  
supporting  
people who  
use services,  
and carers”

## **learning to live with risk**

**An introduction for service providers –  
full edition with notes on further reading**



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This is one of a series of web-based *Learning to live with risk resources*, all available at [www.skillsforcare.org.uk/risk](http://www.skillsforcare.org.uk/risk)

Other products in the series include the shorter 'abridged' version of this guide, a set of PowerPoint presentation slides including some that can be used as a training resource, and a summary leaflet on the subject.

## ***Learning to live with risk, an introduction for service providers – full edition with notes on further reading***

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## Preface

The government's vision for adult social care<sup>1</sup> is that it becomes more personalised, more preventative, with services that are more focused on delivering the best outcomes for those who use them. This direction of travel requires renewed and refreshed creative thinking about who will be providing adult social care, as well as about support, management, skills development and commissioning. That is why Skills for Care has published its *"Capable, Confident, Skilled: a workforce development strategy for people working, supporting and caring in adult social care"* to support the development of an ever more capable, responsive, skilled and well-trained workforce.

An essential element of personalisation is helping people to make their own decisions as safely as possible, and supporting workers to better understand and manage risks. It is therefore appropriate that Skills for Care should also publish *'Learning to live with risk'*.

We are determined to foster a sector-wide commitment to work collaboratively and recognise the need for greater personalisation, choice & control<sup>2</sup>. However, providing real choice and control for people who use social care means enabling people to take the risks they choose, particularly in the use of self-directed support and personal budgets. To support service providers and commissioners with these issues, Skills for Care has developed a range of *'Learning to live with risk'* resources, comprising:

- This document: *'Learning to live with risk'* - an introduction to risk for employers providing services in adult social care.
- A leaflet and a web resource - introducing *'Learning to live with risk'*.
- A *'Learning to live with risk'* checklist.
- A series of PowerPoint presentation slides that summarise this document for use in learning and management settings. It includes 10 scenarios that can be used in different learning settings relevant to a variety of audiences.
- A summary of key references that itemise the sources used to produce the products, plus a schedule of further reading for those keen to go further.

I commend these products, which are free from our website, to all those working to give the people they support the greatest possible freedom and choice in their lives.

**Professor David Croisdale-Appleby OBE**  
**Independent Chair, Skills for Care**  
**May 2011**

<sup>1</sup> A Vision for Adult Social Care: Capable Communities and Active Citizens, DH. 2010

<sup>2</sup> Think Local, Act Personal, Putting People First. 2011



## Introduction

Skills for Care realises that assessment of risk has often raised difficult questions for practitioners balancing empowerment with duty of care. The rights of adults to live independent lives and to take the risks they choose need to be weighed carefully against the likelihood of significant harm arising from the situation in question.

There is no generally accepted definition of risk, however it is often perceived in purely negative terms and used with reference solely to the chance of an adverse outcome or event occurring.

Choice and control are what everyone wants for themselves and those they care for but an increasing fear of being blamed if things go wrong has led to high levels of risk aversion. This very low tolerance of risk can act to dramatically reduce the ability to exercise choice and control of people who use services.

Changing this situation entails service providers and workers supporting people who use services to take control, and safely make informed decisions. At the same time, service providers and workers must be empowered to begin 'Learning to live with risk'. To work effectively, social care and healthcare practitioners and people who use services must be empowered to work and live with appropriate levels of risk.

The '*Common Core Principles to Support Self Care*' provides the underpinning values that need to be the bedrock for service providers in addressing these issues. Building on this foundation, the *Learning to live with risk* resources will help service providers begin to develop an appropriate risk policy that will be their cornerstone for supporting both practitioners and people who use services.

Such a risk policy must be a clear statement of purpose. It should be written so that people who use services will read it and understand it. It should be published widely, as it is far, far better to deal with issues before actual events occur, and it must offer a clear framework for risk management for people who use your services and for practitioners. Equally, your risk policy must make clear that you cannot predict the future.

The *Learning to live with risk* resources will assist you on your journey towards delivering greater personalisation, choice and control, at the same time as supporting the development of an even more capable, responsive, skilled and well-trained workforce.



## 1.0 Why focus on risk now?

### Why focus on risk now?

- Policy drive to give 'choice and control'
- Support for self-directed care
- Enabling people to take risks they choose
- DH framework for risk management
- Concerns about increasing risk
- Concerns about risk-averse services



Supporting people who use care services to take informed risks has been at the forefront of national policy for the past five years as an essential element of personalisation, and encouraging 'choice and control'. 'Providing real choice and control for people who use social care means enabling people to take the risks they choose, particularly in the use of self-directed support and personal budgets.' (SCIE 2010)

*Our health, our care, our say* (DH 2006) directed the focus of care services toward empowering people to exercise 'choice and control', emphasising 'person-centred planning and self-directed support'. When consulted, people had made it clear that was what they wanted for themselves and for the people that they cared for.

That white paper also gave a commitment to develop a risk management framework to enable people to take greater control over decisions about the way they want to live their lives.

The first part of this framework, general guidance for 'anyone supporting adults using social care within any setting' on 'Independence, choice and risk: best practice in supported decision making', was issued by the Department of Health (DH, 2007), and can be considered alongside more focused guidance on supporting choice and managing risk for particular groups such as people using mental health services or people with dementia. (DH 2007b, DH 2010a)



The guidance is open about the potential downside of risk – ‘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.’

The Coalition Government has given renewed emphasis to personalisation and the management of risk. “With effective personalisation comes the need to manage risk for people to make decisions as safely as possible”, and “As we pick up the pace on personalisation, we need to ensure that this includes the most vulnerable members of our society, including those who may lack capacity. With effective personalisation comes the need to manage risk for people to make decisions as safely as possible. Making risks clear and understood is crucial to empowering service users and carers\*, recognising people as ‘experts in their own lives’.” (DH 2010b)

SCIE meanwhile has pointed up some areas of potential concern that would need to be addressed in taking forward the personalisation agenda:

- the possibility of increased risk to those already shown to be at risk of abuse or neglect
- the possibility that people using services and their carers, may be reluctant to take advantage of new opportunities for choice and control because of fear of potential risks
- organisational and professional risk-aversion which can hinder choice, control and independent living
- practitioners possibly not being confident about sharing responsibility for risk if their organisation does not have a positive risk enablement culture and policies. (SCIE 2010)

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\* ‘Carer’ is used throughout to mean family and friends who provide social care support, as distinct from social care workers and volunteers.



## 2.0 What makes us so risk-averse?

**Shouldn't a good service avoid risks?**

What reasons could there be to avoid supporting people who use services to take risks?



There is a view that minimising risks or even avoiding decisions is the safest strategy to employ. For many of us 'risk equals harm.' This may be encouraged by concerns such as that:

- people may choose to make 'unwise decisions' for which the service may be held responsible
- many people don't have a good understanding of the choices they are considering and the risks involved, so they may not have the capacity to make a judgement
- safeguarding surely requires us to avoid exposing vulnerable people to unnecessary risks?

There may be undesirable and serious consequences for us as practitioners or service providers if 'something goes wrong':

- there may be people looking to find someone or some organisation to blame
- there may be anger from some carers and others who may say "we warned you that this would happen and you didn't listen"
- a service could be sued, and could be found 'negligent' and have to pay damages
- there could be criminal proceedings
- you might have to give evidence to a Coroner's enquiry



- the service could be the focus of enquiries and inspections by the regulation authorities, the Health and Safety Executive, commissioners and contract managers
- the service may experience problems with insurers covering claims and suffer increased insurance costs
- unwelcome media attention could result
- you might suffer a loss of reputation
- practitioners' career prospects could be adversely affected
- staff morale might drop and you might experience high staff turnover
- the business might suffer losses or additional costs and be exposed to financial risk.

Concern that these may happen to you if you support people to make choices is perhaps understandable. It is not hard to see why individual practitioners and services may react by failing to encourage choice and adopting an overly cautious approach to risk.





## 3.0 Risk-aversion analysed



Studies by Taylor (2006) of a broad range of professionals involved in the long-term care of older people have shown that they conceptualized risk and its management according to six paradigms “that seemed to be in a state of reciprocal tension.”

Six Paradigms		Risk Areas
1.	Balancing benefits and harms	Choice and empowerment
2.	Identifying and meeting needs	Needs for services
3.	Minimizing situational hazards	Health and safety
4.	Protecting the individual and others	Safeguarding
5.	Accounting for resources and priorities	Eligibility and resources
6.	Wariness of lurking conflicts	



The first five identified demonstrate the real expectations put onto practitioners through legislation, regulation, or organisational constraint, and correspond to 'risk areas' identified in much of the literature on care services. Services must discover which one – or ones – face them in any given situation. In addition to the tensions that may arise between the "risk paradigm" areas, care workers experience a "wariness of lurking

conflicts." That is their concern at being at risk themselves—a practitioner's response to dealing with the "blame culture" and a "sixth sense of professional danger". The same 'lurking wariness' – and with it varying degrees of risk-aversion – is likely to be experienced by managers, commissioners and service provider organisations, though the particular perceived "lurking conflicts" may differ.

## 4.0 Overcoming risk-aversion

A service that adopts a 'safety first' approach and that does not appropriately support people to have choice and control will be "a major inhibiting factor in achieving good outcomes for people." In fact there is good reason to believe that "the most effective organisations are those with good systems in place to support positive approaches rather than defensive ones." (Taylor 2006)

As well as being more effective, organisations that can demonstrate good practice that is established on a foundation of professional standards will be in the best position to respond successfully to legal challenge

(Carson & Bain 2008) and to the other concerns listed above.

To have confidence in this assertion we need to understand:

- the relevant issues in law and how to best, first, to avoid and, second, to prepare for, legal challenge
- what is meant by 'risk' and what is involved in 'risk decision making'
- the positive benefits of managing risk effectively in an organisation with a risk-decision policy.



## 5.0 Risk and the law

### Know the law

CRIMINAL	CIVIL
<ul style="list-style-type: none"><li>▪ Recklessness</li><li>▪ Beyond reasonable doubt</li><li>▪ Punishment</li></ul>	<ul style="list-style-type: none"><li>▪ Negligence</li><li>▪ Balance of probabilities</li><li>▪ Compensation</li></ul>

The two legal concepts most closely associated with ‘risk’ are ‘recklessness’ and ‘negligence’. The former is most closely associated with criminal law, and therefore requires a case to be proven ‘beyond reasonable doubt’. If proven the court can impose a suitable ‘punishment’. Negligence is associated with civil law where the court has only to decide ‘on the balance of probabilities’ and then has the power to determine the level of ‘compensation’. As the likelihood of care providers being charged with a crime as a consequence of the outcome of risk decisions taken in a professional capacity is

considered by experts in the field to be very low (Carson & Bain 2008), our focus here will be on issues relating to civil proceeding. However, for those interested, a detailed account of the relevant criminal law issues can be found in Carson and Bain.

If care providers do find themselves facing legal action as a result of a risk decision, it is more likely to be through a civil action for negligence. It should be noted that liability may be demonstrated whether the risk decision involved action or inaction—doing nothing is a decision.



## Some key concepts

- ✓ Evidence
  - Facts
  - Record keeping
- ✓ Blame
  - Liability
  - Vicarious liability
- ✓ Sue
- ✓ Insurance
- ✓ Complaints
- ✓ Inquiries
- ✓ Professional misconduct

### THE 5 REQUIREMENTS OF NEGLIGENCE

1. Duty of Care
2. Breaks standards of care
3. Causes harm or loss
4. The loss is legally recognised
5. The loss was reasonably foreseeable



Care providers are vicariously liable for the negligent acts of their employees, provided those acts are related to their employment (Carson & Bain 2008). If negligence is discovered it is the employer who must pay the compensation. As civil law seeks to 'compensate', an action is more likely to be taken if it is believed that the named party has sufficient funds to meet the compensation requirements. As care provider organisations carry insurance, and may have greater financial resources than many front-line practitioners, they are more likely to be named in civil proceedings. There is little point in suing someone who cannot pay any anticipated compensation.

In a civil action about negligence, five requirements have to be met (Carson & Bain 2008):

1. You must have owed a *duty* of care to the person injured (victim)
2. You must have broken the *standard* of care that applies under that duty of care
3. Your breach of the standards of care must have *caused* the victim's losses
4. The losses which you caused must be of a kind that the law compensates
5. Those legally recognised losses must have been reasonably foreseeable.

If any one of these five requirements (or tests) is not satisfied then there can be no liability in the civil law of negligence.



However, to sue you in the civil courts for making a negligent decision, a claimant only has to have a more believable version of events than yours, or on the 'balance of probabilities' as it is more technically stated.



If an organisation or individual can demonstrate that their decision and the processes involved in reaching it were, as a matter of fact, consistent with contemporary professional practices, then they have not been negligent. If they can demonstrate that fact with ease then fewer people will begin proceedings against them, because it will be clear that they will lose and have to pay higher legal costs.

To demonstrate the consistency of its actions with professional practice, it is advisable for an organisation to have a risk-decision policy,

often referred to as a 'Choice, Empowerment and Risk' (CER) policy.

In practice, competent risk-takers have only one thing to fear from the law: being unable to prove the facts of their case.

“Many people believe the law makes risk-taking more difficult. This belief is wrong: although the law requires reasonable professional conduct, it actually supports risk-takers.” (Carson & Bain 2008)

Always remember the importance of being able to prove the facts of your case. Good



record keeping will not only help you prove your version of the facts, if that should be necessary, but it will also help you to work through the complexities of risk-taking and maximise your opportunities to learn from the experience, whether it leads to harm or success.

Carson & Bain also note that the 'standard of care' is what a responsible body of co-professionals would do, which may be determined by the judge calling expert witnesses to give evidence about current professional practice. If there is disagreement about this between different expert witnesses the judge has to resolve such disputes.

If an employee breached the standard of care but did not break any of the four other requirements they cannot be sued for negligence, but the employer or professional body would be able to criticise their conduct and take action. Organisations should act on poor-quality decisions, amounting to professional misconduct, irrespective of whether any harm results. Failing to do so could cause problems in the future and contribute to a system or culture that does not learn from its mistakes.

An alternative to suing someone for negligence could be making a formal complaint or establishing a formal enquiry. If this then finds that the standard of care has been broken they can declare blame and responsibility.

## Ensuring best practice

### Ensure:

- All reasonable steps have been taken
- Reliable assessment methods have been used
- Information has been collated and thoroughly evaluated
- Decisions are recorded, communicated and thoroughly evaluated
- Policies and procedures have been followed
- Practitioners and their managers adopt an investigative approach and are proactive

*Risk guidance for people with dementia (DH 2010)*





The Department of Health's *Risk guidance for people with dementia* (DH 2010a) also provides helpful advice, intended to allay anxieties about supporting risk-decisions, on the key factors that underpin 'defensible decisions'. It says that an action or decision is deemed defensible if an objective group of professionals would consider that:

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

## 6.0 Working with risk

### Negative conceptions of risk

There is no generally accepted definition of risk, however it has often been defined purely in negative terms and used with reference solely to the chance of an *adverse* outcome or event occurring. (Carson & Bain 2008)

This observation is confirmed in *Independence, Choice and Risk* (DH 2007a) which sees it as contributing toward risk-averse behaviour:

“Choice and control are what everyone wants for themselves and those they care for, but sometimes the decisions they make may seem to others as too risky. Risk is a concept that tends nowadays to have mainly negative connotations. We live in a world where, when things go wrong, the media and society in general are quick to look for someone to blame, and this is particularly the case when people using health and social care services are involved. But avoiding risk altogether would constrain the choices people can make.”

### Choice, rights and responsibilities

To make good choices, people need to understand the consequences and take some responsibility for them. So services should promote a culture of choice that entails responsible, supported decision-making.

The Better Regulation Commission's report on risk calls for a redefinition of society's approach to risk management, to recognise that, within the right circumstances, *risk can be beneficial*, balancing necessary levels of protection with preserving reasonable levels of choice and control. (BRC 2006)

### Capacity and consent

A person who has the mental capacity to make a decision, and chooses voluntarily to live with a level of risk, is entitled to do so. The law will treat that person as having consented to the risk and so there will be no breach of the duty of care by professionals or public authorities.



Where services are risk-averse and as a consequence fail to empower people, this “Encourages individuals to be passive recipients and not to speak up. Services often only intervene when things become critical.”

(ADASS/SWRIEP 2010) Risk-aversion can similarly have adverse consequences for people with dementia: “Lowering or eliminating the risks of activities or arrangements that are important to people may reduce some risk but at the potential expense of their happiness and fulfilment. They may also affect chances of re-enablement or rehabilitation, such as regaining abilities to walk or to go to the toilet independently.” (DH 2010a)

### Positive risk-taking or ‘risk enablement’

*Nothing Ventured Nothing Gained: risk guidance for people with dementia* (DH 2010a) contrasts what it refers to as broader and narrower approaches to risk. Broader definitions move away from negative notions of risk towards the idea of ‘positive risk taking’ in which part of the process of measuring risk involves balancing the positive benefits that are likely to follow from taking risks against the negative effects of attempting to avoid risk altogether.

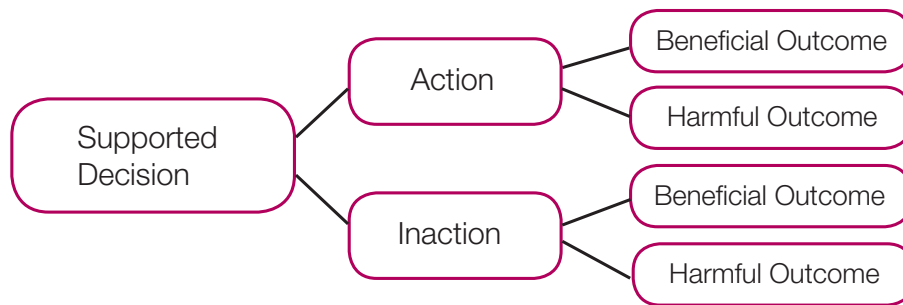
## Some key concepts

- ✓ Supported decision making:
  - choice
  - rights and responsibility
  - consent
  - capacity (mental)
- ✓ Action and inaction
- ✓ Outcomes
- ✓ Benefit
- ✓ Harm
- ✓ Likelihood

```
graph LR; A[Supported Decision Making] --> B[Action]; A --> C[Inaction]; B --> D[Beneficial Outcome]; B --> E[Harmful Outcome]; C --> F[Beneficial Outcome]; C --> G[Harmful Outcome]
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The risk decision options that people will tend to choose and that we will tend to support actively – or through inaction – are those where the potentially beneficial outcomes outweigh the potentially harmful outcomes.

As well as evaluating the balance of negative and positive outcomes, however, a risk-decision needs also to take account of the additional dimension of ‘likelihood’ (DH 2010b). A decision which is considered to involve some possibility of a harmful outcome may be judged to be worth taking for the possible beneficial outcomes if the likelihood of the negative outcome is extremely low. Conversely, even if the *likelihood* of a harmful outcome is very low, if the harm in question is considered to be very great then the action may be considered inadvisable.

### Toward a more balanced definition of risk

This leads us toward an understanding of risk that includes the concepts of *uncertainty*, *outcomes* that may be *harmful* and/or *beneficial*, and *likelihood* which is succinctly put in the following definition:

“Risk is defined as the uncertainty of outcome, whether positive opportunity or negative threat, of actions and events. The risk has to be assessed in respect of the combination of the likelihood of something happening, and the impact which arises if it does actually happen.” (HMSO 2004)

A version of the resulting model can be seen in this figure from a risk enablement policy developed by Essex County Council.

<b>Risk Impact</b>	Critical				
	Major				
	Minor				
	Negligible				
		Hardly Ever	Possible	Probable	Almost Certain
<b>Risk Likelihood</b>					

(Essex CC, 2008)



### **Supported decision making: person-centred planning**

A person-centred approach will involve working alongside the person to encourage them to use their strengths and resources and to consider with them how their outcomes can be achieved and what risks may be involved.

A person's wishes should not necessarily be over-ruled by someone who thinks they are making an unwise decision. Risks need to be shared—no one person should take full responsibility.

### **Recording of decisions about choice and risk**

An accurate record should always be kept of discussions that take place about areas of choice. Such documentation will be critical to protect the person in making their choices, as well as the position of the provider of care in the event of any complaints or litigation, and will encourage an open discussion with the individual about the consequences of particular choices.



## 7.0 Sharing power

### Sharing power

- Do you know what good practice looks like?
- How do you involve people who use your service in running it?
- You want to be innovative and cost-effective – what steps do you take to engage the practitioner workforce in judging the risks?
- Do you have a whistle-blowing policy?
- What is the role of managers in setting and maintaining professional standards?



*Putting People First* encouraged services to progress the transformation of adult social care through the involvement of people who use services and of carers at every stage (DH 2007c).

When power is shared, services recognise and utilise people's expertise in shaping their own care and encourage their involvement in improving the service on offer. It challenges the dominant role of the professional and shifts the person from the role of passive recipient to that of valued participant in the process, on an individual and collective level. To work effectively, both care practitioners and people using the service must be empowered.

A whistle-blowing policy helps to empower workers and opens up a role for all in monitoring the quality of the service and ensuring people's human rights and dignity are respected. The practitioner workforce should be engaged in judging the risks.

There is a key role for managers in setting and maintaining professional standards.



## 8.0 Some complex risk-decision areas

### Complex decision areas

- Safeguarding
- Carers
- Mental capacity
- Health and safety



### Health and safety

There is a legal duty placed on all employers to ensure, so far as is reasonably practicable, the health, safety, and welfare at work of all their employees. In addition, there is a duty to protect the health and safety of other people who might be affected by their undertaking. Fears of breaching health and safety legislation can sometimes prevent people from being supported to do certain activities. The Department of Health guidance, informed by the Health and Safety Executive (HSE) is clear that health and safety legislation should not block reasonable activities, and it commends a helpful five-step guide to risk assessment provided by the HSE. (HSE 2006)

### Mental capacity

Considerations concerning a person's capacity to make decisions should be made with reference to the Mental Health Act 2005 from which the following principles have been derived (DH 2007a):

- always assume a person has capacity unless established otherwise
- do not treat people as incapable of making a decision unless you have tried all you can to help them
- do not treat someone as incapable of making a decision because their decision may seem unwise



- do things or take decisions for people without capacity in their best interests
- before doing something to someone or making a decision on their behalf, consider whether you could achieve the outcome in a less restrictive way.

### **Safeguarding**

There is a delicate balance between empowerment and safeguarding, choice and risk. It is important to consider when the need for protection would override the decision to promote choice and empowerment.

It is essential therefore to engage in proper discussion with the person being supported, be sure they understand the consequences of the action, and document it. (DH 2007a)

### **Carers**

Carers are vital to people living successfully in the community, though there may sometimes be understandable tensions for the carer in relation to their own needs and the interests of the person they care for. One person's needs, however, ought not be given automatic priority over another's, and the choices that each wish to make need to be considered and acknowledged. Where people's choices conflict with those that carers or family members might have made on their behalf, it is important to balance both sets of needs and ideally find a resolution acceptable to all parties.



## 9.0 A broader focus for employers of risk-taking practitioners

### Employers should be alert to:

- Professional standards
- Inspectorate standards
- Better ways of organising work
- Blame
- Value conflicts
- Retention
- Consistency and continuity
- Morale and satisfaction
- Dangerous people
- Continuing professional development
- Celebrating good practice




Employers in adult social care have a number of key areas of focus for policy and procedures. Empowering people who use services so that they can exercise choice and control with the support of risk-taking practitioners will require employers to be alert to policies, procedures, standards and operational challenges.

<b>As an employer you will have policy and procedure about:</b>	<b>As an employer of risk-taking practitioners you will need to be alert to:</b>
<ul style="list-style-type: none"> <li>▪ Recruitment</li> <li>▪ Reward</li> <li>▪ Induction and training</li> <li>▪ Supervision</li> <li>▪ Health and safety</li> <li>▪ Equalities</li> <li>▪ Lone working</li> <li>▪ Violence at work</li> <li>▪ Whistle-blowing</li> <li>▪ Workload</li> <li>▪ Staffing ratios</li> <li>▪ Skill mix</li> </ul>	<ul style="list-style-type: none"> <li>▪ Professional standards</li> <li>▪ Inspectorate standards</li> <li>▪ Better ways of organising work</li> <li>▪ Blame</li> <li>▪ Value conflicts</li> <li>▪ Retention</li> <li>▪ Consistency and continuity</li> <li>▪ Morale and satisfaction</li> <li>▪ Dangerous people</li> <li>▪ Continuing professional development</li> <li>▪ Celebrating good practice</li> </ul>



## 10.0 Developing a model risk-taking policy

### Developing a model risk-taking policy

- Values and principles
- A 'statement of purpose'
- Beneficial outcomes anticipated
- Professional standards
- Identified constraints
- Position on controversial issues
- Associated procedure
- Endorsements
- Acknowledgements
- Consultation
- Review arrangements



In developing a model risk-taking policy, consideration will need to be given to:

- The values and principles to be relied on by risk-taking practitioners – adoption (adaptation) of the Common Core Principles to Support Self Care (SfC/SfH 2008) is recommended.
- A statement of purpose—state the obvious, emphasising difference and exceptional aspects of your service.
- The beneficial outcomes you are expecting to achieve—their relative importance and the likelihood of achieving them.
- The applicable professional standards—in social work and in wider social care.
- Identified constraints—what you don't do and why.
- A position on controversial issues, especially where public and professional attitudes may differ.
- An associated procedure—either attach it or say where it can be found.
- Endorsement of professional associations, acknowledgement of where values, principles and standards have been drawn from and identification of consultations undertaken and contributions made to the final policy.

**Style:** It should be written so that people who use services will read and understand it.

**Publicity:** Let the public and press know about it—it's better to deal with issues before actual events.

**Hindsight:** Make sure your policy offers a clear framework of risk for both people using the service and practitioners, but make it equally clear that you cannot predict the future.



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- DH 2007c *Putting people first: a shared vision and commitment to the transformation of adult social care* (DH 2007)  
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[www.skillsforcare.org.uk/developing\\_skills/selfcare/self\\_care.aspx](http://www.skillsforcare.org.uk/developing_skills/selfcare/self_care.aspx)
- Taylor 2006 Taylor B., *Risk Management Paradigms in Health and Social Services for Professional Decision Making on the Long-Term Care of Older People*. (BJSW, 36, pp.1411–1429, 2006)



## Notes on further reading

### **1. Enabling risk, ensuring safety: Self-directed support and personal budgets (SCIE, At a glance 31 - November 2010, [www.scie.org.uk](http://www.scie.org.uk))**

This Social Care Institute for Excellence (SCIE) briefing highlights some of the emerging findings from research and practice regarding risk taking and safety in the implementation of self-directed support and personal budgets.

### **2. 'Our health, our care, our say' (DH, 2006)**

The White Paper set a new direction for the whole social care and health system, focussed on personalisation and empowering people to exercise choice and control, through means such as personal budgets and self-directed care. It recognised the need to consider risk issues that were raised and promised a framework for risk management.

### **3. Independence, choice and risk: a guide to best practice in supported decision making (DH, 2007)**

This guidance sets out principles and processes to shift the balance from minimizing risk to organizations towards positive risk taking to allow maximum life choices for service users, the governing principle being that 'People have the right to live their lives to the full as long as that doesn't stop others from doing the same.' The guide offers a 'supported decision tool' to help manage the process of choice assessment and to provide documentation of actions and decisions. It recommends the development by social care organisations of a 'choice, empowerment and risk policy'

### **4. Best Practice in Managing Risk: Principles and evidence for best practice in the assessment and management of risk to self and others in mental health services. (DH, 2007)**

This offers practical best practice advice for mental health professionals working with service users to assess risk. It underpins risk assessment with principles of good practice for all mental health settings and provides a list of tools offering structure to risk management

### **5. Nothing Ventured Nothing Gained: Risk Guidance for people with dementia (DH, 2010)**

'Nothing Ventured' was commissioned by the DH and the guidance was researched and compiled by Professor Jill Manthorpe and Jo Moriarty, of the Social Care Workforce Research Unit. It provides a very helpful discourse about the issues at stake, and presents a framework for managing risk in a positive and constructive way by enabling and supporting people with dementia and their carers.

### **6. A Vision for Adult Social Care: Capable Communities and Active Citizens (DH, 2010)**

Sets out the coalition government's vision for adult social care with personalisation at the heart of its framework for quality and outcomes, it says that with effective personalisation, comes the need to manage risk for people to make decisions as safely as possible. Risk management does not mean trying to eliminate risk. It means managing risks to maximise people's choice and control over their services. 'Risk is no longer an excuse to limit people's freedom'.

### **7. Risk Management Paradigms in Health and Social Services for Professional Decision Making on the Long-Term Care of Older People. Taylor B. (BJSW, 36, pp 1411-1429, 2006)**

Research by Taylor suggests that social care practitioners judgements about risk are not generally based on technical risk assessment models but can be seen to fall within 6 practitioner paradigms, which practitioners move between with a rationale more about what is defensible rather than what is right. More positive approaches to promoting health and well-being are avoided for fear of taking risks. The practitioners surveyed relied for their professional judgement on their work experience and informal learning from colleagues, with little if any reference to wider evidence or theory.

### **8. Professional Risk and Working With People, Decision-making in Health, Social Care and Criminal Justice, Carson D, and Bain A, (Jessica Kingsley Publishers, 2008)**

This text by Carson and Bain has relevance for both the managers and designers of risk management policies and systems, and front line practitioners. They consider the various meanings of risk and the differing context in which the meanings arise. This leads to the development of a 5 Level Model, in which the levels of management and systems sit above the levels of people, contexts, and decisions. The book considers the law, risk assessment, risk management, risk communication, risk procedures, risk policies and risk strategies.

### **9. Risk, responsibility and regulation – Whose risk is it anyway? (Better Regulation Commission 2006)**

The Better Regulation Commission was set up to advise the Government on action to reduce unnecessary regulatory and administrative burdens, and ensure that regulation and its enforcement are proportionate, accountable, consistent, transparent and targeted. In this report the Commission called for a redefinition of society's approach to risk management, to recognise that, within the right circumstances, risk can be beneficial, balancing necessary levels of protection with preserving reasonable levels of choice and control.

### **10. A safeguarding and personalisation framework (ADASS and South West Regional Improvement and Efficiency Partnership, 2010)**

This framework document offers quite detailed advice on practical steps to assist people striving to find a balance between empowerment and protection. 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.

### **11. HM Treasury's Orange Book 'Management of Risk: Principles and Concepts.' (HMSO, 2004)**

This Treasury published its first Orange Book in 2001 in recognition of the fact that all sectors of the economy had begun to focus on the management of risk as the key to making organisations successful in delivering their objectives whilst protecting the interests of their stakeholders. This successor publication similarly provides broad based general guidance on the principles of risk management.

### **12. The Health and Safety Executive's 'principles of sensible risk management', can be found at <http://www.hse.gov.uk/risk/principles.htm>**

The 'principles of sensible risk management page on the HSE website provides access to a number of documents which give access to both 'principles of sensible risk management' and helpful, tools to aid the process such as '5 steps to risk assessment' and a 'risk assessment policy template.'

### **13. Putting People First: Risk Enablement Policy (Essex C.C. 2008)**

This policy document, produced by Essex County Council's 'Adult Health and Community Wellbeing Service' highlights the arrangements that the council has established to address complex risk situations in which there are different views held between an individual, family carers or professionals. Its key function is to resolve any issues about where the balance of risk should lie and how it should be shared. It is also intended to perform a function of supporting the resolution of disputes about risk sharing.

## Further background reading

### Policy:

HM Government (2007) *Putting people first: A shared vision and commitment to the transformation of adult social care*, London: HM Government.

DH CSIP (2008) *Commissioning for personalisation: a framework for local authority commissioners* <http://www.personalisation.toolkit.org.uk/>

DH (2008c) *Putting people first – working to make it happen: Adult social care workforce strategy – interim statement*, London: DH.

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ADASS (2009b) *Putting people first: Measuring progress*, London: ADASS/LGA.

*Better Commissioning – for comprehensive information on commissioning health and care including World Class Commissioning, health and well-being and personalisation.* CSIP [www.dhcarenetworks.org.uk/index.cfm](http://www.dhcarenetworks.org.uk/index.cfm)

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*Person Centred Planning Advice for Commissioners* DH 2010

*Personalisation: a rough guide* (revised edition) Sarah Carr: SCIE 2010

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*Cutting the cake fairly: CSCI review of eligibility criteria for social care*: CSCI 2008

*Prioritising need in the context of Putting People First: A whole system approach to eligibility for social care*

*Guidance on Eligibility Criteria for Adult Social Care*, England DH 2010

## **Risk Guidance:**

*Independence, choice and risk: a guide to best practice in supported decision making:* DH May 2007

*Making Choices Taking Risks:* CSCI December 2006

*Risk, Responsibility and regulation – Whose risk is it anyway?* Better Regulation Commission October 2006

*Supporting choice and control: A template policy framework for delivering person-centred outcomes by a positive approach to risk* In Control

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*Guide to Risk Management:* C-Change for Inclusion May 2009

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*Risk Toolkit: How to take care of risk in volunteering: A guide for organizations* Katharine Gaskin c.2008 Volunteering England

*Response with responsibility: Policy-making for public risk in the 21<sup>st</sup> century:* Risk & Regulation Advisory Council May 2009

*Tackling Public Risk: A practical guide for policy makers:* Risk & Regulation Advisory Council May 2009

*HMT Orange Book Management of Risk* HMT 2004

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*Managing risks to the public: appraisal guidance* HMT June 2005

*Leading Health and Safety at Work* HSE <http://www.hse.gov.uk/pubns/indg417.pdf>

*5 Steps to Risk Assessment* 2006 HSE

*Risk Assessment: a Guide for UNISON Safety Representatives* UNISON  
<http://www.unison.org.uk/acrobat/11190.pdf>

*GSCC Codes of Practice* GSCC 2002

*Best Practice in Managing Risk* DH 2007

*Charities and Risk Management:* Charities Commission 2007

*Charities and Risk Management – a guide for Trustees* Charities Commission 2010

#### **Other references:**

*Commissioning Care Closer to Home:* Gerald Wistow et al 2010

*Personalisation and the Social Care Revolution: Future Options for the Reform of Public Services:* Duffy, Waters & Glasby HSMC Jan 2010-07-14

*Don't be fooled by the Law:* a report from In Control, following a conference held on 1 April, 2009

*Supported Decision Making* Fulton, Woodley & Sanderson 2008 Paradigm

*Professional Risk and Working With People:* Carson & Bain 2008 Jessica Kingsley

*Effective Approaches to Risk Assessment in Social Work:* an international literature review Barry SWRC 2007

*A Review of the Research Evidence Surrounding Risk Perceptions, Risk Management Strategies and their Consequences in Adult Social Care for Different Groups of Service Users:* Glendinning & Mitchell SPRU 2007

*Risk and Adult Social Care: What Does UK Research Evidence Tell Us?* Glendinning & Mitchell SPRU 2007

*Risk & Risk Taking in Health & Social Welfare* Mike Titterton 2005 Jessica Kingsley

*Helping independent social care providers to manage risk*

Nigel Walker Chapter 4 in Commissioning Ebook DH/CSIP/CAT 2006  
*A Worriers Guide to Risk*: David Spiegelhalter

*Clinical Risk Management: A Clinical Tool and Practitioner Manual* Steve Morgan SCMH 2000

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