

Positive Risk Taking

Risk is part of everyone's job. Aberdeen City Council has developed a Positive Risk Taking Policy, recognising that risk is part of everyday life. People who manage risk within the following framework are to be supported.

People have a right to take decisions about their lives. There is a balance to be found between participation in everyday activities, the duty of care to both workers and service users and the Council's legal responsibilities.

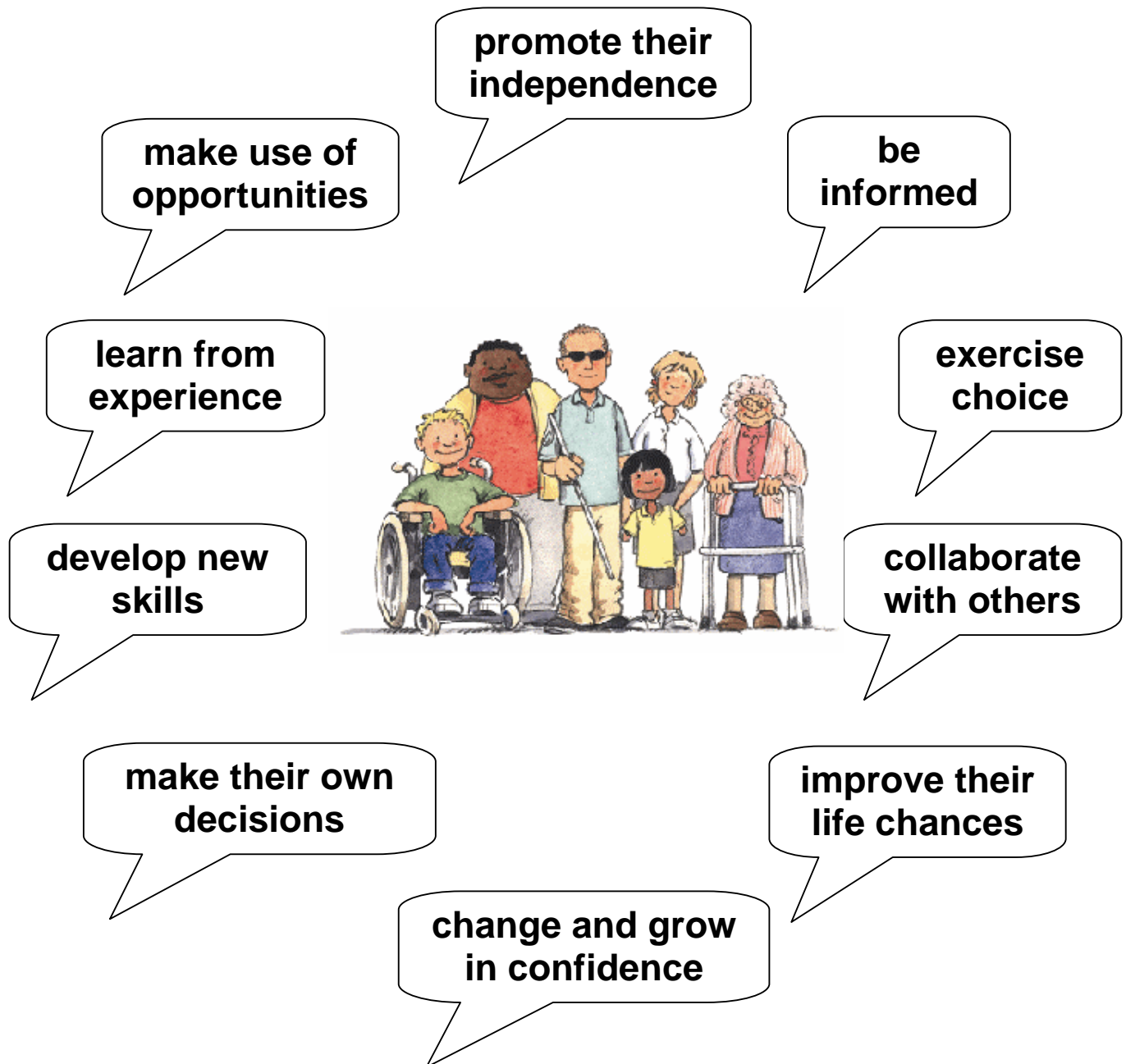
It is impossible ever to fully eliminate risk. It is however possible to minimise and prepare for risk by preventative action. The following policy provides a structured approach to the management of risk, which forms part of ongoing service provision for adults in Aberdeen City.

This policy links with developments in respect of risk assessment and risk management in both adult and children's social work services.

Positive Risk Taking Policy

Aberdeen City Council

Adult Care services provided or funded by Aberdeen City Council should work with service users to support them to...



Contents

Introduction	4
What is risk?	5
What is positive risk-taking?	6
Why do we need a policy?	7
Principles of Working with Risk	8
Positive Risk Taking Framework – Identification, Assessment & Management of Risk and the Review of Incidents	9
Appendices	
1. Glossary	16
2. Defensible Decisions	17
3. Professional Competency	18
4. Legislation and Legal Principles	19

More information about positive risk-taking can be found at the web site: www.practicebasedevidence.com

Introduction

For many people risk is an accepted part of life. Every day activities such as catching the bus, travelling on holiday, playing football, setting up home and starting a family all carry some element of risk. But some adults, for example disabled people or older people, are often discouraged from taking risks. This may be 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 social care and health policy mean that all adults are being actively encouraged to increase their independence by, for example, travelling independently, and by being fully involved in mainstream society through education, work and leisure. For disabled people, a move away from a medical model to a social model of disability now means that there is an emphasis on the discrimination and exclusion created by social and cultural barriers.

For some services, approaches to risk have in the past been concerned with avoiding potentially harmful situations to service users and staff. To support people to live independently or to travel independently or take part in everyday activities means accepting that there are risks that cannot be avoided but can be minimised and prepared for. Changing Lives refers to and emphasises the value of the personalisation of services and if we are beginning to involve people in exercising choice, this will inevitably increase the opportunities for positive risk taking. This policy is concerned with setting out the approach that Aberdeen City Council expects everyone working in Adult Care to adopt towards the issue of risk when they work with adult service users.

When implementing this policy in day-to-day practice, Aberdeen City Council recognises that any positive risk-taking approach must be balanced with the responsibility to implement

- the Multi-Agency Public Protection Arrangements (MAPPA)
- policy and practice arising from legal requirements in relation to protection of children and adults
- Care standards
- Health and safety legislation.

This policy will encourage the Council's leisure, sport and cultural services to work with adult services and service users around the issue of risk. Leisure, sport and cultural services consider their duty of care towards all consumers by considering the risks associated with the activities they offer. These are then managed accordingly. Where such services believe they have to risk

assess an individual, they will explain their justification for this and do everything practical to support the individual's inclusion in the activities they want to take part in.

The Council's community based services will also endeavour through commissioning arrangements and Service Level Agreements to encourage the individuals, agencies and services funded or contracted with to adopt a positive risk-taking approach.

What is risk?

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

An event can occur because of:

- risks associated with impairment or disability such as falls
- accidents, for example, whilst out in the community or at a social care service
- risks associated with everyday activities that might be increased by a person's impairment or disability
- the use of medication
- the misuse of drugs or alcohol
- behaviours resulting in injury, neglect, abuse, and exploitation by self or others
- suicide or self-harm
- aggression and violence

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

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

The difference for many service users 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 an adult might take risks on his or her 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 of service users to take part in everyday activities, the duty of care owed by services and employers to their workers, the duty of care owed to service users, 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 – service users, their families and practitioners.

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)¹

For adult services, this means:

- being empowering
- working in partnership with service users, 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 service users 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

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

- knowing what has worked or not worked in the past
- where problems have arisen, understanding why
- ensuring support and advocacy is available to all adult service users, particularly if things begin to go wrong for someone
- 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 service users, family carers, practitioners, advocates and services
- developing person-centred and transition planning for 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 and risk assessment / management tools recommended by their 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. Risk Management is important in ensuring the effective management of Aberdeen City Council and consideration of risk management principles should underpin all activities undertaken.

The Council's Financial Services Manager, has the role of Risk Management Co-ordinator for the Council. It is his/ her responsibility to:

- Facilitate the risk management process
- Develop best practice in risk management
- Monitor implementation of the process
- Report annually to the Corporate Management Team on the delivery and effectiveness of risk management arrangements
- Maintain the master copy of the risk register

Risk management is everyone's responsibility. Risk is emerging as the crucial factor that distinguishes organisations' performance. The ability to master risks by minimising threats and maximising opportunities is a key factor in success.

Work is in progress on re-drafting the Corporate Risk Register and the Service Risk Registers. A Risk Strategy and a Risk Manual are in development.

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

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

Principles of Working With Risk

A number of important issues need to be considered by staff in adult care when carrying out risk assessments and risk management:

1. The identification, assessment and management of risk should promote the independence and social inclusion of service users.
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.
6. Involvement of service users, their families, advocates and practitioners from a range of services and organisations helps to improve the quality of risk assessments and decision-making.
7. 'Defensible' decisions are those based on clear reasoning.
8. Risk-taking can involve everybody working together to achieve positive outcomes.

9. 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.
10. 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.
11. Sensitivity should be shown to the experience of people affected by any risks that have been taken and where an event has occurred.

Positive Risk Taking Framework – Identification, Assessment & Management of Risk and the Review of Incidents

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 unrealistic. It is vital that staff use the guidance, procedures and risk assessment / management tools that are recommended by the Service and seek clarification from their line manager if they are confused or unsure about what is expected of them.

Information 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, including issues of consent to share information. When collecting new data or information, it is important to tell the person or family affected the purpose of the data collection, why information gathering is necessary and whom it will be shared with.

Numerous methods can be used to gather information:

- Access to past records
- Self-reports during assessment or reviews
- Reports from significant others eg. carers, relatives or friends, other professionals, advocates, other statutory or voluntary agencies or the police, or courts, or external service providers

- Observations of the person's behaviour including any discrepancies between verbal and non-verbal cues
- Risk 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 evidence the:

- Formulation of a logical, informed opinion as to the severity of risk.
- Organisation of discussions with the adult, their family and any health, social care, advocacy or independent sector professional involved.
- Inclusion of the adult 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 service user's aspirations aiming to support the person to get the best out of life. The views of service users and their families 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 person concerned than it would be for any other ordinary person. For example, if a disabled adult with learning disabilities living in residential care is used to travelling independently, taking a train trip to Edinburgh where family meets them at Waverley 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 are meaningful.

To be effective it needs service users, their families, carers, advocates and practitioners to interact and talk to each other about decisions that have been taken and their appropriateness 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 concerned, and their family where appropriate. It is a professional 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:

- Service users 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 adults, or family carers, staff need to emphasise the importance of information that is accurate and identifies any concerns or issues that may increase the probability of a risk occurring.
- 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.
- 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 adult, 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 depends on the willingness of practitioners to work in this way and for some may present a challenge to traditional ways of working.
- '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.

Risk Management

Risk management is the activity of exercising a duty of care where positive and negative risks are identified. It entails a broad range of responses that are often linked closely to the wider process of care planning. The activities may involve preventative, responsive and supportive measures to reduce the potential negative consequences of risk and to 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.

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

- Decision making in relation to risk must be clearly evidenced on relevant documentation.
- Line Managers 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.
- Line Managers 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 events should be reflected in the case record.
- Individual practitioners can reasonably be expected to accept responsibility for the professional standards of conduct set out by their professional body. **But** it is the collective responsibility of the team to share information, make decisions and plan.
- Issues of confidentiality need to be considered by practitioners and line managers to ensure the safety of the service user 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 right of service users and family carers to make decisions is acknowledged. In certain circumstances these can be overruled, particularly when the individual is regarded as lacking in capacity in relation to a specific decision. Where someone lacks capacity, anything done for or on their behalf must be in their best interests, proportionate and the least restrictive action to ensure the persons health and welfare.
- In these circumstances, practitioners should act within the provisions of the Adults with Incapacity (Scotland) Act 2000 (see Appendix 4).
- The assessment and management of risk should be, as far as possible, a multi-disciplinary exercise.
- Positive risk-taking needs to be underpinned by contingency planning for the 'fear of' and possibilities of failure. This will help to prevent some

harmful outcomes and minimise others. Some risks are always present but can be minimised and prepared for by the identification of preventative action. However a reactive response may also be required as it will not always be possible to be proactive. Risk-taking should be pursued in a context of promoting opportunities and safety not negligence. Therefore, service users, their families and practitioners should be encouraged to learn to think about the '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 or behaviour support plans to contain situations that are developing into potentially unsafe or dangerous circumstances for all involved. If a person or their carer continues to behave recklessly, a record should be made of this. If staff or anyone who the council has a responsibility for are affected by this behaviour, any support service being provided will be reviewed to ensure that all reasonable action has been taken to ensure the safety of anyone affected by the behaviour.
- 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.

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 service user or another person as a consequence of the actions or behaviour of that adult, 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 provide the necessary support after an incident would have a negative impact on morale within a service.

In situations where **incidents of serious concern** occur that involve service users or support staff the Council's policy on the Notification of Key Events Policy must be implemented.

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

- Start an investigation from a 'no-blame' standpoint.

- Identify the approach taken to the investigation and review of an incident in full consultation with all appropriate agencies.
- Offer any support or supervision that is appropriate to the staff and service users involved 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, adult users of services and 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.

Appendix 1 – Glossary

Person-Centred Planning

An approach based on the principles of rights, independence, choice and inclusion used to help service users work out what they want to do with their lives, and then determine how services and support in the wider community can fit the needs of the individual so that they are supported to achieve their aspirations. It is accepted that both an individual's priorities and aspirations, and the services they need to fulfil these can and will change. As such, planning is a continual process.

The key features of person-centred planning are:

- the person is at the centre and is in control
- family members and friends are full partners.
- planning reflects a person's capabilities, what is important to them, and identifies the support they need to be full citizens.
- planning builds a shared commitment to action that uphold a person's rights.
- planning leads to continual listening, learning and action and helps a person get what they want from life.

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 that the emphasis is 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 that 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 service user 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 service users 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 service users 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, behaviour support planning, 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 service users 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, i.e. 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 service users: 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.

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.

Capacity

The Adults with Incapacity (Scotland) Act 2000 provides a statutory framework for regulating intervention in the affairs of an adult who has or may have impaired capacity in a wide range of property, financial and welfare matters.

The Act is underpinned by 5 key principles:

Principle 1 – benefit

There shall be no intervention in the affairs of an adult unless the person responsible for authorising or effecting the intervention is satisfied that the intervention will benefit the adult and that such benefit cannot be reasonably achieved without the intervention.

(So, for instance, if there is a prospect that the adult will regain sufficient capacity to make the necessary decision, and if a decision can reasonably be deferred, then it should be deferred)

Principle 2 – minimum necessary intervention

Where it is determined that an intervention in the affairs of an adult under or in pursuance of the Act is to be made, such intervention shall be the least restrictive option in relation to the freedom of the adult, consistent with the purpose of the intervention.

All of the components of this principle are important. It does not refer to the simplest or least complex solution. Failure to follow procedures which are in fact appropriate in the circumstances may be a significant infringement of the adult's freedom, because the proper lawful authority, with resultant protections, has not been obtained. At least the minimum necessary level of

intervention must be provided, if the adult would otherwise not receive the benefit referred to in the first principle.

Principle 3 – take account of the wishes of the adult

In determining if an intervention is to be made, and, if so, what intervention is to be made, account shall be taken of the present and past wishes and feelings of the adult so far as they can be ascertained by any means of communication, whether human or by mechanical aid appropriate to the adult. It is compulsory to take account of the present and past wishes and feelings of the adult if these can be ascertained.

Principle 4 – consultation with relevant others

In determining if an intervention is to be made, and, if so, what intervention is to be made, account shall be taken, so far as it is reasonable and practicable to do so, of the views of:

- The nearest relative and primary carer of the adult;
- Any guardian, continuing attorney or welfare attorney of the adult who has powers relating to the proposed intervention;
- Any person whom the sheriff has directed should be consulted; and
- Any other person appearing to the person responsible for authorising or effecting the intervention to have an interest in the welfare of the adult or in the proposed intervention, where these views have been made known to the person responsible.

It will be necessary to consider the adult's right to confidentiality and any previously expressed wishes about disclosure of information. It will also be advisable to consider any information that is known about the possible financial motives or frictions among family members. It can be helpful to explain to relatives and others that it is relevant to hear their own views even where these differ from those of the adult.

Principle 5 – encourage the adult to exercise residual capacity

Any guardian, continuing attorney, welfare attorney or manager of an establishment exercising functions under this Act shall, in so far as it is reasonable or practicable to do so, encourage the adult to exercise whatever skills he or she has concerning property, financial affairs or personal welfare as the case may be, and to develop new such skills.

Adult Support and Protection

Part 1 of the Adult Support and Protection (Scotland) Act 2007 (http://www.opsi.gov.uk/legislation/scotland/acts2007/asp_20070010_en_1) came into effect on 29 October 2008. The Act places new duties on councils in respect of adults at risk of harm.

Adults at risk of harm are defined in the Act as individuals, aged 16 years or over, who:

- Are unable to safeguard their own well-being, property, rights or other interests; and
- Are at risk of harm; and
- Because they are affected by disability, mental disorder, illness or physical or mental infirmity, are more vulnerable to being harmed than others who are not so affected

All three elements of the definition must be met. It is the whole of an adult's particular circumstances which can combine to make her/him more vulnerable to harm than others and this could be very different from individual to individual.

For the purposes of the act, 'harm' includes all harmful conduct and, in particular, includes:

- Conduct which causes physical harm
- Conduct which causes psychological harm (e.g. by causing fear, alarm or distress)
- Unlawful conduct which appropriates or adversely affects property, rights or interests (e.g. theft, fraud, embezzlement or extortion); and
- Conduct which causes self-harm

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 service users 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, i.e. 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 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, for example by complying with safety regulations and using protective equipment supplied to them.