



# A Shared Approach to Positive Risk Taking

January 2017



*In partnership with:*

*Mencap Cymru  
Compass  
Cartref Ni  
L'arche Flintshire*

**This Policy outlines a commitment to working with disabled adults and older people in ways that support them to.....**

**Be as independent as possible**

**Remain in control**

**Have the right information and advice**

**make use of opportunities**

**exercise personal choice**

**learn from life experiences**

**Reach their potential**

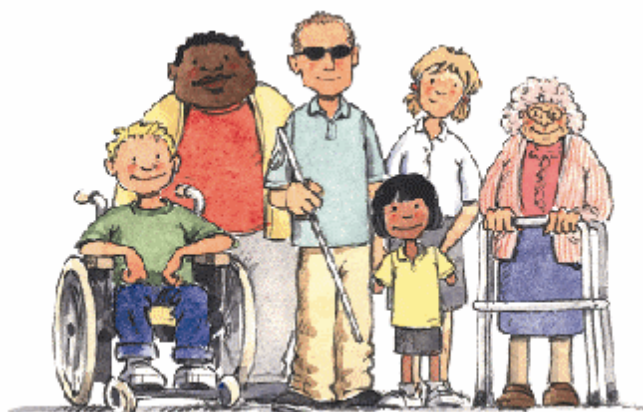
**develop new skills and abilities**

**collaborate with others**

**make their own decisions**

**change and grow in confidence**

**improve their life chances**



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*This policy is based upon a similar document produced by Gateshead Council and has been heavily adapted to reflect Welsh legislation and Flintshire County Council's priorities in relation to person centred practices, empowerment and progression. Our thanks extend to all those involved for their excellent work.*

## Introduction

The Welsh Government's vision for social care in Wales is that it becomes more person centred, more preventative, with solutions that are focussed on supporting people to achieve their bespoke outcomes and well-being.

The Social services and Well-being (Wales) Act provides the legislative framework for people to be supported to understand and achieve what matters to them within the context of their own strengths, assets and relationships. This direction of travel requires renewed and refreshed creative thinking about how people will be supported to achieve their potential and live full lives.

Flintshire County Council recognises that assessment of risks has often raised difficult questions for practitioners and providers of support services. The rights of adults to live independent lives and to take risks they choose need to be weighed carefully against the likelihood of significant harm arising from a particular situation. There is also an acknowledgment that the choices, rights and preferences of vulnerable people may on occasion's conflict with the views of their family, friends and carers etc.

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 risks can often act to drastically reduce the opportunities and the ability to exercise choice and control of people who rely on social care support.

Flintshire County Council believes that to change the situation and nurture a new culture of positive risk taking, a collaborative approach is needed. Social care workers, provider services as well as people who rely on support, and their families must be supported to understand the nature of risks, effectively evaluate risks and deploy proportionate responses to risks that do not limit opportunities for people to develop and flourish. This will be best achieved through a partnership approach that empowers all stakeholders to learn to live with risk. This Policy has therefore been designed co-productively by partner organisation in order to establish and nurture a positive and progressive attitude towards risk taking.

When implementing this policy in day-to-day practice, Flintshire County Council and its partners recognise that any positive risk-taking approach must be balanced with its responsibilities to implement public protection arrangements, or policy and practice arising from legal requirements in relation to Safeguarding Children and Adults, care standards and health and safety legislation.

## What makes us so risk averse?

The saying 'nothing ventured, nothing gained' makes the point that unless someone takes a risk and tries new experiences and situations, they will never know the positive benefits, or opportunities that might result.

For most people risk is an accepted part of life. But disabled adults and older people are often discouraged from taking risks. Either because of perceived limitations or fear that they or others might be harmed, resulting in criticism or litigation.

The development of strategies to recognise, evaluate and monitor risks begins in childhood and extends through teenage years. However, for many people with disabilities these opportunities are denied and are often not approached until adulthood.

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

- People may choose to make unwise decisions for which others 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 all to avoid exposing vulnerable people to unnecessary risks?

Concerns that there will be negative consequences if you support people to make choices are perhaps understandable. It is not hard to see why some people may react by failing to encourage choice and adopting an overly cautious approach to risk.

## 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

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 significant positive benefits for individuals and their communities.

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

A balance therefore has to be achieved between the desire of vulnerable people to do everyday activities, the duty of care owed by services and employers to their workers, the duty of care owed to users of services, and the legal duties of statutory and community services and independent providers. As well as considering the dangers associated with risk, the potential benefits of risk-taking have to be identified ('nothing ventured, nothing gained'). This should involve everyone affected – adults who use services, their families and practitioners.

Support provided to disabled, or older people has in the past primarily been concerned with avoiding potentially harmful situations. Supporting a new culture of opportunity, experience and responsibility means accepting there are risks that cannot be avoided but can be minimised and prepared for.

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

Positive risk taking is a process which starts with the identification of potential benefit or harm. The desired outcome is to encourage and support people in positive risk taking to achieve change, growth, and personal progression.

Positive risk taking is not negligent ignorance of the potential risks, but is a very carefully thought out strategy for managing a specific situation or set of circumstances.

This involves:

- Assuming that people can make their own decisions (in line with the Mental Capacity Act) and supporting people to do so.
- Working in partnership with adults who need social care support, family carers, advocates, support providers and practitioners and recognise their different perspectives and views.
- Developing an understanding and respect of the responsibilities of each party.
- Empowering people to access opportunities and take worthwhile chances.
- Understanding the person's perspective of what they could gain from taking risks and what they could lose if they are prevented from taking risks.
- Promoting trusting working relationships.
- Understanding the consequences of different actions.
- Making decisions based on all the choices available and accurate information.
- Being positive about risk taking.
- Understanding a person's strengths and finding creative ways for people to be able to do the things that are important to and for them.
- Know what has worked or not in the past.
- Where problems have arisen understand why.
- Ensuring support and advocacy is available
- Sometimes supporting short term risks for long term gains.

- Ensuring that all support provided consistently promotes independence not dependence.

## **Principles of Working Positively with Risk**

The following important principles must be considered and understood by anyone who is supporting a person to develop, achieve goals and aspirations and progress in their life:

1. Taking risks is a normal everyday experience.
2. All people, including vulnerable people, have the right to take risks.
3. The identification, assessment and management of risk should promote the independence and social inclusion of vulnerable people.
4. Risk is dynamic and constantly changing in response to changing circumstances, therefore its assessment and management needs to be ongoing, regularly updated and reviewed.
5. A person's right to take risks does not give them the right to put other people at risk.
6. Risk can be minimised, but not always removed.
7. Negative consequences of positive risk management are not always damaging and can teach valuable lessons.
8. Information will sometimes be incomplete and possibly inaccurate.
9. Identification of risk by a professional carries a duty to do something about it, i.e. risk management/ safeguarding.
10. Involvement of adults who need support, their families, advocates and practitioners from a range of services and organisations helps to improve the quality of risk assessments and decision-making.
11. 'Defensible' decisions are those based on clear reasoning using the principles of multi-disciplinary and multi-agency working.
12. Risk management will involve everybody working together to achieve positive outcomes based on a person's choices and personal priorities.



13. The standards of practice expected of practitioners must be made clear by their managers to give them the confidence to support decisions to take risk.
14. Where risk taking results in negative outcomes, the experience should be learnt from and used to inform future decisions.
15. The competencies of those making decisions should be documented.

## **Positive Risk Taking Framework**

Staff who are supporting people to take risks must follow a structured approach in which the rationale for decisions can be evidenced. Decision making on the management of specific risks must be at a level proportionate to the risk and potential impact.

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

Senior managers within all associated organisations must be proactive in demonstrating support for this positive risk taking approach.

### **Risk Assessment and identification**

People who need social care services (with support as necessary and appropriate) should consider potential risks before they occur. This should include identifying the probability of the risk occurring and the impact if it does. It must be remembered that the impact of a risk can be positive and that not all risks will require management.

Risk assessment practice is dynamic and flexible and should respond to change. Therefore it will:

- Include the views of individuals and those of their families/carers/advocates which should have prominent focus in the assessment, identification and management of risks. It is vital that conflicting views are resolved.
- Have a focus on the person's strengths to give a positive base from which to develop plans that will support positive risk taking. The strengths and abilities of the person, their wider social and family

networks, and the diverse support and advocacy services available to them should inform a balanced approach.

- Ensure that responses remain consistent and proportionate to the risk identified, potential impacts and subject to monitoring and review.
- Use the principles of multi-agency working in proportion to risk and the impact on self and others.
- Ensure that staff have access to appropriate training to support them to confidently promote positive risk taking.
- Ensure that where written assessments are necessary these identify a review date and include the signatures of everyone involved in the assessment.
- Recognise and respond to the rights of people to participate in activities appropriate to the person's age, personal circumstances and social norms. Thereby, enabling vulnerable people the same experiences as others in our society.

## **Risk Management**

The goal is to enable the management of risks in ways which improve the opportunities, life chances and quality of life of the person and to promote their independence wherever possible.

Risk management entails a broad range of responses that are closely linked to the wider process of support planning. This may involve preventative, responsive and supportive measures to reduce the potential negative consequences of risk, and to promote the potential benefits of taking agreed risks. These will occasionally involve more restrictive measures and crisis responses where the identified risks have an increased potential for harmful outcomes.

Where someone does not have capacity decisions should be made in their best interests. Where people's actions put others at risk this will be appropriately assessed and managed within this framework.

Risk management should include:

- Decisions that are negotiated and agreed between all parties, and are clearly understood and recorded.

- Where contingency plans are deemed necessary the starting point should be the views of the person, their family, carers and advocates.
- Managers / supervisors have a key role in the successful application of the Positive Risk Taking Policy. They have a responsibility to ensure that their approach to supervision is conducive to supporting staff to adopt positive risk taking skills and practice.
- High quality supervision and support are essential to provide an opportunity to discuss concerns and refine ideas, as well as review the progress of the implementation of risk assessments.
- Managers / supervisors need to recognise that there is joint accountability / ownership for risk decisions. Practitioners need to know that support is available if things begin to go wrong.
- Risk-taking is further enhanced by limiting the duration of the decision i.e. working to shorter timescales and with smaller goals broken down.
- High quality training, teaching methods and techniques are required to support the social care workforce.
- This Positive Risk Taking Policy supports the recognition of an individual's right to make informed decisions about the way they choose to live their life and recognises the concept of empowerment when working with vulnerable people.
- 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 Adult Social Care 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.
- The rights of adult users of services and family carers to make decisions are acknowledged and respected. In certain circumstances these can be overruled, particularly when the individual is regarded as lacking in 'mental capacity' in relation to a specific decision. Where someone lacks 'mental capacity', anything done for or on their behalf must be in their 'best interests'.

## **Review**

Reviews take place to assess whether the support plan/service delivery plan is working, to see what can be learnt and to see if any changes can be made to improve outcomes for the person. The level and frequency at which reviews happen must be proportionate to the risk identified. Reviews should always centre on the person and involve input from all relevant parties.

As part of the review process any risks identified are reassessed and there is opportunity to identify any new risks. Any new risks should be assessed and managed in line with the risk management policy.

## **Record Keeping**

The recording of risk assessments and plans for risk management should be proportionate to the probability of the risk and the impact (severity) of the risk. It should record any mitigating actions undertaken.

In a high risk scenario it is advisable to record the following information:

- Risk identified
- Legislative framework followed (where a legislative issue is indicated).
- Record of advice and guidance sought.
- Record of meetings held with individuals, their families, carers, other agencies and interested parties.
- Record of the views of all parties including unresolved differences.
- Record of issues considered and potential solutions.
- Record of action plan agreed
- Agreed arrangements for review.

## **Information Sharing**

Information gathering and sharing is key to the effective identification, assessment and positive management of risk. The use and sharing of information will respect confidentiality and the principle of the data protection Act and will be proportionate to the severity of the risk to be managed and the person's abilities and circumstances.

## **Appendix 1 - Defensible Decisions**

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

A defensible decision is one where:

- All reasonable steps have been taken to avoid harm.
- Reliable assessment methods have been used.
- Information has been collected and thoroughly evaluated.
- Decisions are recorded and subsequently carried out.
- Policies and procedures have been followed.
- Practitioners and their managers adopt an investigative approach and are proactive.

## Appendix 2 - Professional Competency

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

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

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

## **Appendix 3 - Legislation and Legal Principles**

When approaching the identification, assessment and management of risk, knowledge of key legal principles and legislation will help practitioners to make informed decisions that promote both the involvement and interests of disabled adults and older people, and their families. It will also support and promote best practice for professional staff involved in supporting positive-risk-taking. An understanding of the following legislation and legal principles is important. However, where there is doubt about legal issues, expert advice should always be sought from legal experts. Flintshire County council legal team are a good source of information and advice.

### **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, ie 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 social care staff who work with disabled adults and older people: the right to liberty and security; the right to respect for private and family life; the freedom of thought, conscience and religion; the right to freedom of expression; the right to marry and found a family; and the prohibition on discrimination.

### **Disability Rights**

During the past 20 years, a legal framework has developed in Britain to protect those affected by disability discrimination. The Equality Act 2010 gives 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  
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adjustments also have to be made to workplaces and the way services are delivered. The 2005 Act extended these rights by requiring public bodies such as councils, schools, and health services to promote equality of opportunity for disabled people.

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

## **Mental Capacity**

The Mental Capacity Act 2005 (which comes into force on 1 April 2007) provides a statutory framework to empower and protect vulnerable people who are not able to make their own decisions. It makes it clear who can take decisions, in which situations, and how they should go about this. It enables people to plan ahead for a time when they may lose capacity. The whole Act is underpinned by 5 key legal principles:

- A presumption of capacity - every adult has the right to make his or her own decisions and must be assumed to have capacity to do so unless it is proved otherwise;
- The right for individuals to be supported to make their own decisions - people must be given all appropriate help before anyone concludes that they cannot make their own decisions;
- That individuals must retain the right to make what might be seen as eccentric or unwise decisions;
- Best interests – anything done for or on behalf of people without capacity must be in their best interests; and
- Least restrictive intervention – anything done for or on behalf of people without capacity should be the least restrictive of their basic rights and freedoms.



## **Duty of Care**

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

## **Negligence**

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

## **Safety at Work**

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