

Brighton and Hove City Council Adult
Social Care and Health
**POSITIVE RISK MANAGEMENT
POLICY
FOR
STAFF CARRYING OUT
COMMUNITY CARE ASSESSMENTS**

Mission Statement

Enabling access to a range and choice of services which support people to maximise their independence and quality of life'

"Our vision is to create an integrated range of effective services and opportunities that deliver timely and appropriate responses to individuals' needs and aspirations and support them in leading fulfilled and healthy lives. Our commitment is to empower people to make informed choices about the sort of support that suits them and to achieve the outcomes they want to maximise their independence and quality of life. This includes safeguarding those people whose independence and well being are at risk of abuse and neglect."

"To be alive at all involves some risk" Harold MacMillan

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1 Introduction

- 1.1 People who receive social services want independence, choice and control over how, where and with whom they live their lives. They want services that take account of their strengths and are consistent, reliable and flexible. In particular, they want services that fit their desired outcomes as individuals. Self Directed Support (SDS) enables service users to decide the way the money used for their support is spent. In effect, services will be commissioned by the service user instead of the practitioner through personal budgets and direct payments, to help them to achieve the outcomes that matter to them.
- 1.2 Under SDS principles people are given opportunities regarding choice and control but as a public body Brighton and Hove City Council has a duty to ensure that people are properly informed and where vulnerable, protected in accordance with the Multi Agency Safeguarding Policy and Procedures. Where there is a difference of views the Council will take all circumstances into account, including the best interests and safety of the vulnerable person, in reaching a decision.
- 1.3 Where there are risk(s) to the safety and wellbeing of service users and/or others, these have to be identified and managed. Staff must respect people's choices by offering them support to address the risk(s) and providing information advice and guidance on possible consequences, if they are not addressed. Dealing with risk(s) in positive ways gives service users more opportunities to enjoy their rights, fulfil their wishes and so improve the quality of their lives. In providing such support, staff must treat all people fairly regardless of race, gender, disability, age, sexuality and faith.
- 1.4 A positive attitude toward risk must be balanced with the council's duty to have proper arrangements in place to protect the residents of the City and to comply with the duty of care on safeguarding, care standards and health and safety.
- 1.5 This policy and guidance sets out the approach that all staff must apply when considering the issue of risk in working to support adults, including people who fund their own care, to achieve their desired outcomes. It builds on good practice and will increase the confidence of those practitioners who have to make decisions on the balance of risk and opportunity. The aim is to achieve a culture of positive awareness and responsibility for the assessment and management of risk at all levels within the directorate.
- 1.6 This policy and guidance applies to all staff within the Directorate including seconded staff, agency staff, temporary contracted staff and all private and voluntary sector contractors.
- 1.7 This policy is based on the principle of proportionate approach to risk management. Where presenting risks are considered low there may not be a need to work through a detailed risk assessment as set out in this

policy. Conversely it should be used in cases where the risks are considerable and significant. All risk assessments must be “suitable and sufficient” in relation to the particular circumstances of the case.

2. Why we need a policy?

2.1 Self Directed Support means that people will choose to meet their needs in ways that are highly personal and sometimes different from those currently on offer from traditional services. Any risks which may flow from their chosen way of meeting their needs have to be evaluated and managed if their attempts to enjoy fulfilled lives are not to be frustrated. The policy will;

- Enable staff to develop a consistent approach to risk based on managing it, rather than avoiding it.
- Promote the development of new and positive ways to support and empower service users and family carers to live in the ways they choose.
- Enable staff to put service users and family carers at the centre of decision making with regard to the services they receive.
- Promote a “learning from experience” approach as a means of improving the overall quality of services.

3. What do we mean by risk?

3.1 Risk is the chance that an event may occur resulting in harm or loss for a person or others with whom that person comes into contact. The event should not be thought of in negative terms such as injury, danger, damage, loss or threat without also considering its potential benefits. Focussing only on what can go wrong can limit opportunities for trying something new or different that can really improve people’s health and well being.

4. What do we mean by positive risk management?

4.1 Positive risk management involves working with service users and family carers to enable them to achieve the outcomes that matter to them. It is an approach to risk that supports people in thinking through the possible consequences, positive or negative, of any action or inaction. This enables people to make informed choices and accept responsibility for their decisions.

4.2 It is neither possible to get rid of all risk(s) and keep people safe at all costs on the one hand, nor appropriate to leave them to their own devices on the other. Staff must adopt a positive and consistent approach to risk at all times which balances the safeguarding of individuals, with support for service users and family carers in making their own decisions.

5. Positive risk management and the Mental Capacity Act

5.1 A positive approach to risk is a constant theme of the Mental Capacity Act, as indicated by the following principles.

- A person must be assumed to have capacity to make decisions unless it is proved otherwise.
- Individuals have a right to be supported in making their own decisions before anyone concludes that they cannot.
- Individuals must retain the right to make what appear as eccentric or unwise decisions.
- Anything done for or on behalf of people without capacity must be in their best interests.
- Anything done for or on behalf of people without capacity should be the least restrictive option.

5.2 A practitioner's first priority is to maximize a person's decision making capacity, by taking all practicable steps to support the person to make the decision for themselves. Any assessment of capacity must therefore be carried out, wherever possible, at the place and time of the person's highest level of functioning.

5.3 Where people are assessed as not having the mental capacity to consent to a specific decision at the relevant time when the decision needs to be made, practitioners have a duty under the Mental Capacity Act (MCA) 2005 to act in their best interests when deciding what services to support. If the person is likely to regain capacity the decision must be delayed if appropriate to do so until that time. If the person has family, friends or advocates the practitioner must consult them and any professionals involved, before reaching the best interests decision. They may also have to carry out risk assessments to inform this process. The final decision of the decision-maker must be made using the statutory framework for best interests decisions under the Mental Capacity Act.

5.4 The Deprivation of Liberty Safeguards (DoLS), apply to people who lack the capacity specifically to consent to treatment or care in a hospital or care home and have been assessed as requiring this care being delivered in a manner which deprives them of their liberty as to be in their best interests. It is the duty of the Managing Authority (care homes and hospitals) to refer a service user to the Supervisory Body (Local Authority or Primary Care Trust) for a DoLS assessment if they are currently being or likely to be deprived of their liberty.

5.5 The Best Interests Assessor (BIA) will establish whether the service user meets the DoLS requirements. If the service user is deprived of their liberty the BIA may recommend conditions for the Managing

Authority to follow to ensure the deprivation is being carried out in the least restrictive manner. The Supervisory Body will authorize the deprivation of liberty for the shortest time possible, taking on the recommendation of the BIA and providing the person meets all the other qualifying assessments.

- 5.6 DoLS only applies to service users without capacity in a hospital or care home registered under the Care Standards Act 2000. If staff feel that deprivation of liberty is taking place in another setting then this should be addressed via Safeguarding Vulnerable Adults Procedures. An application to the Court of Protection may need to be considered

6. Positive risk management and Safeguarding

6.1 Brighton and Hove City Council has a responsibility to ensure that safeguarding issues are taken into account at every stage of the assessment, support planning and co-ordination of services. Safeguarding issues can present as physical abuse, sexual abuse, psychological abuse, financial abuse, neglect and acts of omission, discriminatory abuse, institutional abuse, domestic violence and self-neglect, or a combination of any of these.

6.2 Staff should bear in mind that positive risk management should be proportionate and any response should relate to the type of arrangements the individual chooses.

6.3 Where a person's agreed outcomes are not being met, or the way in which they are being met raises issues of legality or likely harm, a proportionate response will have to be initiated. This may constitute a safeguarding Alert.

7. The stages of Positive Risk Management

7.1 The chart below shows the four stages :

- (Identify Strengths/Risk(s),
- Evaluate Strengths/Risk(s),
- Support the person to develop Action Plan and Manage the Risk(s) of Positive
- Risk Management. It reflects an ongoing process of assessment and review.

1. Identify / Strengths / Risk(s)

- What can happen?
- How could it happen?
- Who might be affected and how?

2. Evaluate Strengths/ Risk(s)

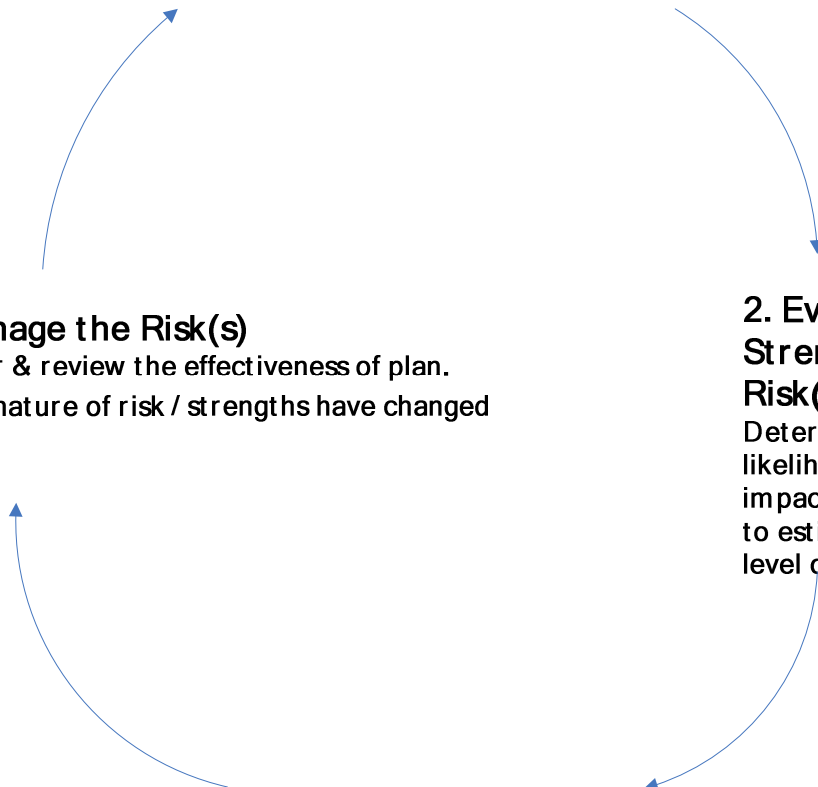
Determine the likelihood/ impact in order to estimate the level of risk

3. Support

The person to develop an Action Plan

4. Manage the Risk(s)

Monitor & review the effectiveness of plan.
Assess nature of risk / strengths have changed



8. Does positive risk management affect “duty of care”?

- 8.1 “Duty of care” requires Brighton and Hove City Council to take reasonable care to avoid any action or omission which it can reasonably foresee would be likely to result in harm or loss to a service user, family carers, staff or the general public. The responsibility which staff have to enable people to make informed choices and decisions, as well as to take appropriate steps to minimise any foreseeable risk(s) by involving the person and where necessary, others who know and support them, must be exercised with this duty always in mind. This is positive risk management in action. Where a service user can make a decision with or without support, the process of risk assessing enables the practitioner to establish the level of risk through discussion and exchange of information with service users an/or their representative. This will include advice on how the risk(s) can be addressed.
- 8.2 If the person chooses not to accept the advice and decides to live with a level of risk to themselves, they are entitled to do so, provided it is legal. The law will treat that person as having consented to the risk. However, staff must continue to act responsibly by discussing the case with their manager or supervisor, informing others involved on a “need to know” basis, monitoring the situation and letting the service user or carer know that they can contact the City Council (Access point) in the event that they need further support or guidance. (See item 5 above on the Mental Capacity Act and if necessary, consult the Mental Capacity Act Guidance).
- 8.3 Where a practitioner has acted reasonably i.e. has clearly communicated and recorded the advice to the service user and/or carer in accordance with case note recording guidance and raised the matter in supervision in accordance with supervision policy, they would have met their “duty of care” to the service user or carer and established a clear audit trail. Any legal liabilities will only arise where a “duty of care” has not been met through negligent acts or omissions by staff which result in injury or loss. Staff must therefore record the events in sufficient detail in all circumstances.
- 8.4 In the risk assessment process staff need to be mindful of their responsibilities towards children and young people. Staff should therefore ensure that actions or choices made by an individual do not place a child or young person at risk. Situations where this may be a possibility should be made clear to the individual concerned and the member of staff should then raise it with their manager to consider what action should (if any) be taken. This discussion and any subsequent actions arising from it should be clearly recorded.

9. How does positive risk management fit with Health and Safety Legislation?

- 9.1 Brighton and Hove City Council has a duty to protect the health and safety of its staff and other people with whom they are involved, as far as is reasonably practicable. This is reinforced by staff training. Positive risk management will not change Health and Safety policy and guidance.
- 9.2 As with “duty of care” staff must not use Health and Safety policy and guidance to block reasonable activity. A risk assessment will determine whether the risk(s) can be managed. Any control measures identified will help to protect people from harm as they pursue their activities.

There will be occasions when the level of risk is so great that Brighton and Hove City Council will not be able to support the activity. In such situations staff must clearly document and communicate the reasons for their decision to all involved.

10. Positive Risk Management and the Human Rights Act

- 10.1 Article 8 of the Human Rights Act confers upon individuals the “right to respect for private and family life, home and correspondence”. These rights are not absolute as they have to be balanced against the rights of others such as care workers or residents of a care home who in certain situations may be exposed to unacceptable risk(s) of injury or harm. Risk assessments are therefore essential to determine if or how to proceed in circumstances where there may be conflict between the rights of a service user or carer under the Act and that of others. Any interference with article 8 must be justified, proportionate and clearly recorded and communicated as appropriate

11. The role and responsibilities of service users and family carers

- 11.1 While service users should as far as possible exercise their right to choose the support they require to achieve their best outcomes, they also need to understand the consequences of their choice and take responsibility for them. This also applies to family carers or those acting for service users who do not have the capacity to make their own decisions. Some people may not want to accept responsibility if something goes wrong, so it is important that practitioners, service users and family carers work together to identify and manage risk(s) and keep accurate records of discussions and decision-making processes. This will promote a culture of positive and responsible decision-making.

Service users and family carers would be expected to:

- Follow the risk action plan agreed with the practitioner or other staff and consult them promptly if they find it difficult to stick to the agreement.

- Work with staff to regularly re-assess or review a risk management action plan, ongoing needs and how those needs can be met.
- Inform staff about any changes to their circumstances which they feel may affect the level of risk positively or negatively. This is particularly vital in situations where people's medical conditions are likely to fluctuate.
- Where appropriate, co-operate with other agencies such as the NHS or voluntary organization that provide services as part of the action plan.

11.2 Where service users choose to purchase services using personal Budget's or direct payments, BHCC has a duty to make payments to them to enable them to meet their needs, minus any financial contribution. Service users or their representatives must, however, act responsibly by ensuring that providers of services are competent to meet the agreed outcomes. People may want to access the local Care Services Directory to assist the service user or their representative in choosing a competent service provider. People may also of course wish to pursue other options of obtaining support through the employment of PA's (Personal Assistants).

12. Risk Enablement Panel

12.1 In exceptional circumstances, where the risk issues associated with the support option(s) chosen by the service user are considered too complex, challenging and the operations manager (or equivalent) or senior social worker (or equivalent) is unable to negotiate an agreement with the service user, the case will be escalated for consideration by a Risk Enablement Panel.

The purpose of the Panel:

- To seek positive solutions and outcomes for individuals by resolving disagreements about how to address complex and challenging risk decisions.
- To reassure practitioner staff that they will not be left to make complex and challenging decisions without appropriate support from senior managers.
- Provide support guidance and direction to staff.
- To demonstrate that the Directorate has fulfilled its duty of care around the support of service users, carers and staff.

12.2 The Risk Enablement Panel will be chaired by a General Manager preferably not of the same service area as the subject in the interest

of objective decision making. Health and Safety and Safeguarding representatives will have permanent seats with others attending as necessary. Expertise will be brought in as and when required e.g Dols or MCA.

- 12.3 The panel will be convened as and when necessary following a referral, reflecting the need to respond in a flexible and timely manner to all referrals. In future, it may be necessary to formally schedule its sittings if it emerges that the referrals it receives will be better managed this way.
- 12.4 Referral to the Panel will be via the Local Operations manager or Senior Social worker who will have a co-ordinating role in organizing the sittings with the identified GM.
- 12.5 The Panel is not a substitute for team level decision making. It is the responsibility of the OM/SSW (or equivalent) to ensure that the cases referred to the Panel have been subjected to robust attempts to resolve them at team level.
- 12.6 The Panel will consider each case and clearly record its discussions, decisions and the reasoning used in reaching those decisions. It is also responsible for ensuring that the information is placed in the service user's file.
- 12.7 The manager and practitioner will be responsible for acting on the advice and/or implementing the decisions recommended by the Risk Enablement Panel.

Legislation

National Assistance Act 1948
Health Services & Public Health Act 1968 (subject to LAC(93) 10)
Chronically Sick & Disabled Persons Act 1970
Race Relations Act 1976
National Health Service Act 1977
Health & Social Services & Social Security Adjudications Act 1983
Mental Health Act 1983
Disabled Personal (Services Consultation & Representation) Act 1986
National Health Service & Community Care Act 1990
Carers (Recognition & Services) Act 1995
Human Rights Act 1998
Health Act 1999
Race Relations (Amended Act) 2000
Local Government Act 2000
Health & Social Care Act 2001
Local Government Act 2003
Community Care (Delayed Discharges etc) Act 2003
Carers (Equal Opportunity) Act 2004
Mental Capacity Act 2005

Disability Discrimination Act 1995 as amended by the Disability Discrimination Act 2005
Equalities Act 2006
Safeguarding Vulnerable Groups Act 2006
Mental Health Act 2007

Policy & Guidance

The New Performance Framework for Local Authority & Local Authority Partnerships (2007)
Building on Progress Public Services (2007)
Putting People First (2007)
Strong & Prosperous Communities : Local Government White Paper (2006)
Our Health, Our Care, Our Say : a new direction for community services (2006)

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