



Positive Risk Taking Policy

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Introduction

The saying nothing ventured, nothing gained makes the point that unless someone takes a risk and tries new activities, they will never know of the positive benefits that might result. In our society, people are encouraged to travel widely, take part in regular leisure and sporting activities, go to college, develop careers and have families. These are all activities that don't just happen, but mean people have to take risks to achieve their aspirations.

For many people risk is an accepted part of life. But disabled adults and older people are often discouraged from taking risks. Either because of their perceived limitations or fear that they or others might be harmed, resulting in criticism or compensation claims against health, social care and other community based services.

Changes in disability, social care and health policy now mean that disabled adults and older people 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, moves away from a medical model to a social model of disability now means there is an emphasis on the discrimination and exclusion created by social and cultural barriers. This contrasts with a prior emphasis on the problems resulting from people's impaired bodies or minds or learning ability.

For some services, approaches to risk have in the past been concerned with avoiding potentially harmful situations to adults who use services and staff. Now to support people to travel independently or take part in everyday activities means accepting there are risks that cannot be avoided but can be minimised and prepared for. This policy is concerned with setting out the approach that SERICC expects its staff in the workplace to adopt towards the issue of risk when they work with disabled adults and older people.

When implementing this policy in day-to-day practice, South Essex Rape & Incest Crisis Centre recognises that any positive risk-taking approach must be balanced with its responsibilities to implement the Multi-Agency 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 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 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.

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A balance therefore has to be achieved between the desire of disabled adults and older 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.

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 risk, it is usually a very carefully thought out strategy for managing a specific situation or set of circumstances.

For community based services, this means:

- being empowering
- working in partnership with adults who use services, 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 adults who use services to learn from their experiences
- understanding the consequences of different actions
- making decisions based on all the choices available and accurate information

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- being positive about potential risks
- understanding a person's strengths
- knowing what has worked or not in the past
- where problems have arisen, understanding why
- ensuring support and advocacy is available to disabled adults and older people, 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 disabled adults and older people, family carers, practitioners, advocates and services
- developing person-centred and transition planning for both 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 adopted 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. South Essex Rape & Incest Crisis Centre has a Risk Management Policy in place to outline the structures in place to manage the broad range of financial and organisational risks encountered in delivering complex service arrangements. Its principal requirements are:

- Processes must be established to identify and assess risk and evaluate measures that can reduce the chances of an event taking place.

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- Training must be provided for staff and managers.
- Risk assessments should be carried out and regularly updated by competent staff for all identified risks.
- Assessment should involve a level of management that is appropriate to the nature and scale of the risk.
- Decisions should be clearly documented and the resulting actions implemented through prescribed local procedures.
- Clear reporting procedures must be established for each service where the identification of risk and risk management actions are recorded.
- Services must ensure that appropriate, cost effective actions are taken to manage and control risks.

This Positive Risk Taking Policy contributes to the overall framework of the SERICC's response to the issue of risk and particularly deals with situations encountered in a social care or community context between: practitioners; disabled adults and older people; and family carers.

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

Principles of Working with Risk

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

1. The identification, assessment and management of risk should promote the independence and social inclusion of disabled adults and older people.
2. Risks change as circumstances change.
3. Risk can be minimised, but not eliminated.

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4. Information will sometimes be incomplete and possibly inaccurate.
5. Identification of risk carries a duty to do something about it, ie risk management.
6. Involvement of adults who use services, their families, advocates and practitioners from a range of services and organisations helps to improve the quality of risk assessments and decision-making.
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 have been adopted by the Service and seek clarification from their manager or supervisor if they are confused or unsure about what is expected of them.

Information Sharing

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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. 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 team members / other teams, advocates, other statutory or voluntary agencies or the police,
- probation services or courts, or external companies providing services.
- Observing discrepancies between verbal and non-verbal cues
- 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 be able 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 disabled adult or older person's aspirations that aims to support them to get the best out of life. The views of adults who use services and their families are equally as important as those of practitioners.

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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 young person or adult 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 London where family meets them at Kings Cross 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 SERICC 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 become meaningful for the users of services (and significant other people) as well as the practitioners involved in delivering services and support.

To be effective it needs disabled adults and older people, 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 affected, 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:

- Disabled adults or older people 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, SERICC staff need to emphasise the importance of information that is both accurate

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and identifies any concerns or issues that may increase the probability of an event occurring.

- There should be a focus on a person's strengths to give a positive base from which to develop plans that will support positive risk-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.
- 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.

Risk Management

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Risk management is the activity of exercising a duty of care where risks (positive and negative) are identified. It entails a broad range of responses 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 though 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.

- 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 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.
- 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. 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 people's case notes where appropriate.
- Individual practitioners can reasonably be expected to accept responsibility for the professional standards of conduct set out by their

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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, officers and their managers / supervisors to ensure client 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 rights of adult users of services and family carers to make decisions are acknowledged. 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.
- Where this happens, practitioners should refer to guidance on best practice in dealing with decision-making and incapacity, and on the principle of best interests of the person who lacks capacity.
- 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 fears and possibilities of failure. This will help to prevent some harmful outcomes, and minimise others. Risk-taking should be pursued in a context of promoting opportunities and safety not negligence. Therefore, adult users of services, their families and practitioners should be encouraged to learn to think about 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 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 SERICC 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.

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- 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 an adult who is receiving SERICC services 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. SERICC 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 support practitioners and officers after an incident would have a negative impact on morale within a service.

In situations where **incidents of serious concern** occur that involve SERICC staff or users of its services, the following steps will be taken:

1. The Management Team and other appropriate managers will be notified as soon as is reasonably practical after an incident has occurred.
2. The Management Team will identify whether an examination of the incident should be managed through Safeguarding or Multi-Agency Public Protection Arrangements procedures (and their timescales), by another agency or through an internal investigation.
3. If an internal investigation is to be carried out, the Management Team will set-up a Review Team within 3 working days of the incident.
4. The Review Team will report within 20 working days.
5. The Management Team will ensure the Review Team's report and recommendations are circulated within 3 working days to appropriate agencies and practitioners.

Following an incident, whatever its degree, SERICC will:

- Start an investigation from a no-blame standpoint.

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- Offer any support or supervision that staff involved feel are appropriate 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 SERICC 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.
- Identify the approach taken to the investigation and review of an incident in full consultation with all appropriate agencies.

- **Appendix 1 Glossary**

Person-Centred Planning

An approach based on the principles of rights, independence, choice and inclusion used to help disabled people 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 disabled person is at the centre and is in control
- family members and friends are full partners.
- planning reflects a person's capacities, 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 the emphasis 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 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

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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 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 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 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.

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- 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 4 - Legislation and Legal Principles**

When approaching the identification, assessment and management of risk, a 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 by the worker.

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 SERICC 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 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 Disability Discrimination Acts 1995 and 2005 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.

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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.

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

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- Least restrictive intervention anything done for or on behalf of people without capacity should be the least restrictive of their basic rights and freedoms.