

NORTH LINCOLNSHIRE COUNCIL

**ADULT SERVICES
CABINET MEMBER**

NORTH LINCOLNSHIRE POSITIVE RISK TAKING POLICY

1. OBJECT AND KEY POINTS IN THIS REPORT

- 1.1 The risks to vulnerable people can be minimised if all local statutory agencies and care providers have a common set of principles under which they consider the risks undertaken by vulnerable people.
- 1.2 This report proposes a Multi Agency Positive Risk Policy be adopted by North Lincolnshire Council from 3 May 2010.

2. BACKGROUND INFORMATION

- 2.1 Government has set out the future direction for Health and Adult Social Services in "Our Health, Our Care, Our Say" (DH 2007) and "Putting People First" (DH 2008). These policy documents outline the need for Health and Adult Social Services to give people greater choice and control over the way in which their support and care needs are met. Changes to the ways in which people receive care and support means councils moving away from an approach that places people into services, to one that helps people to find the best support for them. This new way of working is called 'personalisation' and all councils are required to adopt it.
- 2.2 The principles of personalisation are to allow people to:
- Assess their care needs with support from Adult Social Services.
 - Be allocated an indicative individual budget based on their needs, taking into consideration any support provided by an informal carer.
 - Develop their support plan with support from Adult Social Services to meet identified need within the allocated budget.
 - Identify sources of support to help meet their need.
 - Manage their care and support package within their allocated personal budget.
- 2.2 To date, health and social services' approach to risk has been concerned with avoiding potentially harmful situations to people who use services and to offer protection to staff in managing risk. Traditional social care services utilise care providers that are registered with the Care Quality Commission (CQC) with contracts

being monitored through Adult Social Services. This reduces the risks to service users through regulation and monitoring. However, the impact on the service user can be a restriction on the types of service received and a lack of control and choice.

- 2.3 The support planning process concentrates on how the individual wishes to have their needs met, and how they wish to live. The creation of the support plan includes consideration of any risks and how risk will be managed. The role of staff and managers will be to support and enable people to live lives of their own whilst at the same time advising of any risks to the individual's health and well being and how those risks may be managed.
- 2.4 The North Lincolnshire Safeguarding Adults Board (NLSAB) has considered the impact of personalisation with regard vulnerable people and agreed that risk will be minimised when all agencies agree a common set of principles to apply to their internal risk management processes. The response of the NLSAB to this issue is the multi agency policy contained in Appendix 1 and presented as part of this report.
- 2.5 The policy includes the creation of a Safeguarding Adults Board Risk Advisory Group to allow professional staff, managers and organisations to seek guidance when service users who wish to take risks push the boundaries of the policy. The group will be multi-agency and be able to offer a view on the risks being suggested, and any further potential risk management options available. The group will be accountable to the NLSAB.
- 2.6 The group will also be responsible for monitoring decision making in support planning and risk. It will report to the NLSAB and will highlight issues of concern or areas of good and positive practice. The work of the group will form part of the NLSAB annual report presented to cabinet member.

3. OPTIONS FOR CONSIDERATION

- 3.1 That cabinet member agrees to adopt the policy from 3 May 2010.
- 3.2 The proposed policy is not adopted.

4. ANALYSIS OF OPTIONS

Option 1 – Adopt the Policy

- 4.1 The policy should create greater consistency in the approaches to risk across all statutory agencies and care providers across North Lincolnshire. As a result, risks of harm to vulnerable people will be reduced.

- 4.2 The policy will provide a robust framework for Adult Social Services to achieve personalisation and to promote self directed support whilst minimising risks to service users.
- 4.3 The multi agency approach encourages knowledge sharing and consensus views to be formed.

Option 2 – Not to Adopt the Proposed Policy

- 4.4 The risks to vulnerable people through the implementation of the personalisation will not be adequately managed.
- 4.6 The lack of a policy is likely to have a negative impact on the performance of Adult Social Services. The Care Quality Commission include safeguarding as a key element of their judgement about councils' responses to needs of vulnerable people. A poor performance rating from the regulators would have a negative impact on the judgement contained within the Comprehensive Area Assessment.

5. RESOURCE IMPLICATIONS (FINANCIAL, STAFFING, PROPERTY, IT)

- 5.1 Financial implications
 - 5.1.1 None
- 5.2 Staffing implications –
 - 5.2.1 None
- 5.3 Property implications –
None
- 5.4 IT implications –
None

6. OTHER IMPLICATIONS (STATUTORY, ENVIRONMENTAL, DIVERSITY, SECTION 17 - CRIME AND DISORDER, RISK AND OTHER)

- 6.1 Statutory implications –
The adoption of the policy will allow continued compliance with the statutory requirement on Adult Social Services to deliver services to meet the needs of vulnerable people. It would ensure that the council discharges its statutory duties in line with the requirements of current government policy.
- 6.2 Environmental implications –
None
- 6.3 Diversity implications -

Adoption of the policy will allow an increase and a wider diversity of support services to meet specific needs and requirements of a range of individuals from diverse groups.

A diversity impact assessment has been completed.

6.4 Section 17 – Crime and Disorder implications
None

6.5 Risk and other implications –

6.5.2 The policy will reduce the council's exposure to risk from inappropriate use of care and support funding.

7. **OUTCOMES OF CONSULTATION**

7.1 The proposed policy has been produced by a multi agency sub group of the North Lincolnshire Safeguarding Adults Board. The Board has endorsed the policy and recommend that all agencies adopt the policy

7.2 The multi agency North Lincolnshire Personalisation Board has also endorsed the policy.

7.3 The report will be taken to the Wellbeing and Health Improvement Partnership for endorsement by the Local Strategic Partnership.

8. **RECOMMENDATIONS**

8.1 Cabinet member is asked to approve the adoption of the North Lincolnshire Positive Risk Taking Policy from 3 May 2010.

DIRECTOR OF ADULT SOCIAL SERVICES

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Background Papers used in the preparation of this report

Seen and commented
Safeguarding Adults Board
Personalisation Board
Well-being and Health Improvement Partnership (WHIP)

Positive Risk Taking Policy

North Lincolnshire Safeguarding Adults Board

A multi-agency policy for North Lincolnshire

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North Lincolnshire Safeguarding Adults Board would like to thank Gateshead Council and Steve Morgan (Independent Consultant) for their contribution to this policy. Without their lead progress in North Lincolnshire would have been greatly impeded.

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 adopt a range of different lifestyles; 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 own aspirations, or to encourage others to achieve theirs.

For many people risk is an accepted part of life, but vulnerable adults 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, and or social care services.

The personalised approach to meeting health and social care needs will empower vulnerable people to exercise their rights to choose how their needs will be met within a far more liberal framework of rules and regulations than the statutory organisations and professional bodies would normally require. Personalisation will actively encouraged people to maintain or increase their independence and be fully involved in mainstream society through education, work and leisure for as long as possible. 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.

Health and social care services, approaches to risk have in the past been concerned with avoiding potentially harmful situations to people who use services and staff. Now to support people to live independently or take part in everyday activities means accepting there are risks that cannot be avoided but can be minimised and prepared for. This inevitably means that front line staff and managers will be helping individuals to manage their own risks. The role of staff and managers will be to support and enable people to live lives of their own whilst at the same time advising of any risks to the individual's health and well being and how those risks may be managed.

This policy is concerned with setting out the approach that North Lincolnshire Safeguarding Adults Board (SAB) expects all partner agencies to adopt towards the issue of risk.

When implementing this policy in day-to-day practice, North Lincolnshire SAB 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 requirements in relation to Safeguarding Adults and care standards.

The Board will also endeavour through its commissioning arrangements and Service Level Agreements to encourage partner agencies and services it contracts with to adopt a positive risk-taking approach.

What is risk?

Risk is the probability that an unintended **event** will occur due a decision made (on not made) 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 vulnerable 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 vulnerable adult 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 adults and older people to do everyday activities, the duty of care owed by services and employers to their workers, 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. The consideration should take full account of the principles of the Mental Capacity Act, which includes the assumption of capacity and the right to make "un-wise" choices.

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)

For health and social care services, this means:

- being empowering
- working in partnership with adults who use services, parents, 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 vulnerable 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
- 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 if things begin to go wrong for someone
- sometimes tolerating short-term risks for long-term gains
- gradually withdrawing inappropriate services that create dependency
- having an understanding of the different perspectives of vulnerable adults and older people, families, informal carers, practitioners, advocates, and services
- developing person-centred planning for adults to support their involvement and that of their carers, and families in decision-making alongside practitioners
- ensuring staff use the procedures and assessment tools adopted by their school or service, and receive appropriate support and supervision

Why do we need a policy?

The personalised approach to meeting health and social care needs will empower vulnerable people to exercise their rights to choose how their needs will be met within a far more liberal framework of rules and regulations than the statutory organisations and professional bodies would normally require.

All choices made create an element of unpredictability, and can potentially deviate from what the person hopes to achieve, and the aspirations of the organisations. This has traditionally been managed through organisations risk management processes. These processes are designed to minimise any adverse impacts on the organisation, and do not

This inevitably means that front line staff and managers will be helping individuals to manage their own risks. The role of staff and managers will be to support and enable people to live lives of their own whilst at the same time advising of any risks to the individual's health and well being and how those risks may be managed.

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. North Lincolnshire Council and its partners in the Safeguarding Adults Board will have Corporate Risk Management Policies, 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.
- Training must be provided for staff and managers. In North Lincolnshire the Safeguarding Board sub groups, (Risk Enablement and Training) assure the content and quality of training provided locally.
- 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 Board's response to the issue of risk and particularly deals with situations encountered in a health, or social care context between: practitioners; vulnerable adults and older people; and parents or family carers.

To support the implementation of this policy and appropriate professional practice, each Service within the North Lincolnshire Safeguarding Adults Board will be responsible for ensuring appropriate procedures and assessment tools are in place for use by their staff.

Principles of Working With Risk

A number of important issues need to be considered by health and social care practitioners when carrying out risk assessments and risk management:

1. The identification, assessment and management of risk should promote the independence and social inclusion of, vulnerable adults and older people.
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 the vulnerable 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 procedures and assessment tools that have been adopted by their Service and seek clarification from their manager or supervisor if they are confused or unsure of 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. The Safeguarding Adult Board is clear about the information sharing responsibilities of all partner agencies. 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
E.g. 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 vulnerable 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 vulnerable adult or older person's aspirations that aims to support them to get the best out of life. The views of vulnerable adults who use services and their families and family carers 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 vulnerable adult concerned than it would be for any other ordinary person. For example, if an adult with learning disabilities living in residential care is used to travelling independently, does taking a train trip to London where family meets them entail a risk that needs to be assessed or managed? Is a risk assessment always needed for vulnerable adults when they travel independently using public transport or a taxi?

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 care.

To be effective it needs vulnerable 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:

- Vulnerable 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 vulnerable adults, parents or carers, staff need to emphasise the importance of information that is both accurate 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 vulnerable adult or older person, 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.
- 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 Boards Risk Enablement Group can act in an advisory capacity where disagreement occurs over a risk assessment.
- 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

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 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.

Where any form of restrictive measures are implemented awareness and understanding of national policy guidelines, i.e. Deprivation of Liberty Safeguards needs to be evident in the decision making process.

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 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 events should be reflected in people's case notes.
- 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, officers and their managers / supervisors to ensure client and public safety. In extreme circumstances, outstanding issues relating to information sharing should be referred to the Safeguarding Adults Board Positive Risk Advisory Group. This group will utilise a multi agency approach to offer advice to the practitioner.
- 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 service users 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, service users, 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 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.

- 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 vulnerable adult or older person who is receiving services or another person as a consequence of the actions or behaviour of that person, 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 North Lincolnshire SAB 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, the following steps will be taken:

The organisation responsible will implement their Safeguarding Adult policy. This in turn will result in the implementation of the North Lincolnshire SAB policy and procedures.

Whilst partner organisations Safeguarding Adults policies may vary some overriding principles should apply to the process regardless of agency/organisation and these can be detailed as follows;-

1. The safety and well-being of the victim is of overriding importance and should be attended to first. Without disturbing any evidence of a potential crime if possible.
2. The appropriate safeguarding managers and or care coordinators should be notified as soon as is reasonably practical after an incident has occurred.
3. The family should be notified, (unless they are incriminated in the process) as soon as is reasonably practical after an incident has occurred.
4. As result of implementing the Safeguarding Adults policy the route of investigation will be identified, i.e. the police, North Lincs. Council or an internal enquiry.
5. Any investigation will be from a 'no-blame' standpoint.
6. Support or supervision will be offered to staff involved following an incident and through any investigation process.
7. All parties affected will be fully involved and informed throughout the investigation process that will try to determine the sequence of events that led to the incident.

8. Comfort, support and information will be offered to those affected (victims, families or carers) by the loss and trauma associated with a serious incident.
9. The findings from investigations and reviews following an incident will be disseminated within the SAB and to other partner agencies and those affected by the incident. This will promote the positive lessons learned from the information gathered and not just the recommendations relating to failings in processes and procedures.
10. The approach taken to the investigation and review of an incident will be taken 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 vulnerable 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 vulnerable person is at the centre
- 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 are unable to do everyday activities that non-disabled people can take for granted because of their impaired bodies, minds or learning abilities. 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 exclusion, discrimination and prejudice resulting from the physical, cultural and attitudinal barriers in our society. The consequence of this approach is the emphasis on the need to remove physical barriers to buildings, 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 vulnerable 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, parents and carers, particularly with people who may wish not 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 or suicide.
- Demonstrate the ability to educate disabled adults and older people, parents and 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 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 vulnerable 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 organisations from their own legal council.

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 children or 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 vulnerable 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. 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, and health services to promote equality of opportunity for disabled people.

Mental Capacity

The Mental Capacity Act 2005 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.

The Mental Capacity Act also includes the Deprivation of Liberty Safeguards (DOLs). DOLs provides a framework to protect vulnerable people who are accommodated in hospitals or care homes in circumstances that amount to a deprivation of their liberty, and who lack the capacity to consent to the care or treatment they need. In such cases DOLS provides a lawful way to deprive someone of their liberty, provided that it is in their own best interests or is necessary to keep them from harm.

Details of the MCA DOLS process can be found on the Department of Health website or in publications from the Office of the Public Guardian, (OPG 607, 608,609)

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 vulnerable 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.

Appendix 5

North Lincolnshire Safeguarding Adults Board Positive Risk Advisory Group

Details of case to be referred

(For monitoring purposes only)

Gender:

Ethnicity:

Age:

Responsible Service *(e.g. ASS Localities, Community Nursing, OT etc) :*

North Lincolnshire Safeguarding Adults Board Positive Risk Advisory Group
Referral Form for Advice and Guidance

This e form should be used where advice and guidance is sought from the **risk management** sub group in relation to risk and the support planning process in the delivery of self-directed support. Supporting evidence should not identify the individual or his/her family and carers, but should contain basic information to help the subgroup in its deliberations. This e form should be submitted at least a week before the sub group meeting and the referring practitioner and/or manager should attend to present the case.

Applicant:	Date:
Contact Details:	
Please outline any issues there may be with regard to mental capacity:	
Brief outline of case:	
Please outline the issues relating to risk and safeguarding that you wish the risk management sub group to consider:	

Options already considered:

Views of the practitioner:

Views of service user:

Views of others involved:

Record of SAB Positive Risk Advisory Group Discussion

Recommendations:

Chair:

Signed:

Date:

Panel members & participants:

Review date:
(If applicable)

North Lincolnshire Safeguarding Adults Board
Risk Advisory Group – Terms of Reference

1.0 Purpose

- 1.1 In 2006 the government published “Our Health, Our Care, Our Say”, followed in 2007 by “Putting People First”. These policy documents set the direction for community based health and social services for the next ten years. At the heart of this policy is the concept of enabling people to have choice and control over the health and social services that they require through the implementation of personalisation and self-directed support.
- 1.2 “A simple definition of personalisation is that: **‘it enables the individual alone, or in groups, to find the right solutions for them and to participate in the delivery of a service. From being a recipient of services, citizens can become actively involved in selecting and shaping the services they receive’**. This is important whether someone is taking responsibility for the payment for their own services, or are accessing services provided by the local authority directly, or on their behalf.
- 1.3 Personalisation has been described as a shift from a *consumerist* perspective to one of *co-production*. Currently, where someone is in need of timely and effective services that are personalised to their needs, this is characterised as a consumerist perspective. Professionals and practitioners deploy their skills and knowledge in a timely and effective way to solve a problem for the user and the more that is done in a personalised, considerate and responsive manner the better.
- 1.4 The shift to co-production means that the perspective will be one where people are co-producers of the outcomes, are active participants in the process, deciding to manage their lives rather than being dependent users. Professionals and practitioners will need to deploy their knowledge and skills to help people devise their own solutions that best suit their needs and life choices.
- 1.5 Making such a shift requires us to think more widely than simply care packages and support for individuals. The views of the individual, their personal circumstances, their family, the community, their environment, the resources available to them and the potential impacts on the individual become much more important. “(*Changing Lives; Personalisation: A Shared Understanding: Commissioning for Personalisation: A Personalised Commissioning Approach to Support and Care Services*’, Scottish Government, 2009)
- 1.6 The shift to co-production and the new ways of working required from professionals and practitioners indicate that issues relating to safeguarding and risk become more challenging. From the consumerist perspective, risks can be managed through effective problem solving by the professional or practitioner, often by taking a safe route to solving the problem. From a perspective where co-production is the driving principle, individuals will

manage their own risks, supported by professionals and practitioners who will enable them to do so.

- 1.7 To support professionals and practitioners in addressing issues of risk in personalisation and co-production, the North Lincolnshire Safeguarding Adults Board (NLSAB) is to establish a Risk Advisory Group. The group will report directly to the NLSAB and will offer advice and guidance to professionals and practitioners to assist them in helping individuals to manage their own risks, using the principles of co-production. The group will operate within the North Lincolnshire Safeguarding Adults policy and framework. It will make recommendations that help professionals and practitioners to balance the enablement of risk with ensuring that individuals are safeguarded from harm in cases where there are complex issues.
- 1.8 The group will regularly audit decision making in relation to risk in support planning processes and report findings to the NLSAB with recommendations where appropriate.
- 1.9 The recommendations of the group will not replace the professional, managerial and organisational responsibility for risk and case management. However, the sub-group will report to the NLSAB the response of professionals, practitioners and organisations to its recommendations, particularly where recommendations are not followed. It will be the responsibility of the NLSAB to hold organisations to account for decisions relating to risk and safeguarding, not the Risk Advisory Group.

2.0 Aims

- To promote best practice in support planning with regard to safeguarding and risk.
- To support professionals, practitioners, managers and organisations in their work and to assist in risk decision making processes.
- To assist the North Lincolnshire Safeguarding Adults Board in its safeguarding duties.

3.0 Objectives

- Act in an advisory capacity to professionals, practitioners, managers and organisations on issues relating to the balance between risk management and the rights of individuals in support planning. Make recommendations on what would be reasonable in terms of risk decision making in individual cases.
- Audit risk decision-making in support planning processes

- Act in an advisory capacity to the NLSB, reporting the outcomes of audits and recommendations in relation to risk decision making in support planning
- Provide reports to the NLSAB highlighting local issues with regard to risk decision making in support planning including areas of best practice and areas for further consideration and challenge.

4.0 Membership

- Quality and Assurance Manager, North Lincolnshire
- Council Adult Social Services – Chair
- NHS North Lincolnshire representative – Vice Chair
- NLAG Hospitals NHS Foundation Trust representative
- Expert by experience
- Mental Health Services representative from RDASH
- NLC ASS Service Manager
- NLC ASS Development Manager
- NLC ASS Safeguarding Team representative
- Humberside Fire and Rescue Service
- Minute Taker

The group will be quorate with 4 or more members present

5.0 Meetings

Initially, meetings will take place monthly, to be reviewed after six months. Ad-hoc meetings will be convened between regular meetings when required to give advice and guidance.

