Promoting Choice: Positive Risk Management

Document reference:	**GCC_ASC_POL_006**
Version:	**2.00**
Ratified by:	**Adult Senior Management Team**
Date ratified	**18 December 2014**
Originator/author:	**Policy Reviewing Officer**
Responsible committee/individual:	**Adult Social Care**
Executive lead:	**Head of Adult Social Care**
Date issued:	**December 2014**
Review date:	**December 2017**

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[1] S. Morgan – practice development consultant in "Risk-making or risk-taking?" Open Mind 101, 2000

Promoting Choice: Positive Risk Management

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1. Policy Statement

1.1. There are fundamental principles, which underpin Gloucestershire County Councils corporate governance arrangements. Principle 4 is “Taking informed and transparent decisions, which are subject to effective scrutiny and managing risk”. This policy contributes to ensuring there is an effective risk management system in place for adult social care and that we are maximising opportunities by enabling individuals to take managed risks.
https://www.gloucestershire.gov.uk/council-and-democracy/corporate-plans-and-strategies/code-of-corporate-governance/

1.2. The introduction of self directed support with the emphasis on people having more choice about how their needs are met makes it all the more essential that we work with individuals and their families to ensure risks are identified, quantified, discussed and managed. We need to ensure we support people and enable them to take risks that are reasonable, because of the benefits they bring, but balance this with our duty to ensure that vulnerable people are protected from exploitation or abuse.

2. Purpose

This policy seeks to demonstrate how the assessment and support planning processes and Face tools should be practiced and used to promote a positive approach to risk management that ensures the requirements of health and safety legislation, care standards and Safeguarding Adults policies are not compromised. Finding positive ways to manage risks will support our approach to prevention, early intervention and self-directed care. As a Health and Social Care provider we need to proactively collaborate with people and their carers to empower them to make choices, while supporting them to take informed everyday risks.

3. Scope

This policy applies to:

- All staff working in adult social care
- All staff delivering a service to a GCC adult social care customer
- Independent providers that are commissioned by Gloucestershire County Council to provide social care services
- Independent providers that are commissioned directly by people who have been allocated a personal budget and are using a direct payment.

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4. Definitions

DoH – Department of Health

FACE – Functional Assessment of the Care Environment – Gloucestershire's Overview Assessment recording tool

FACS – Fair Access to Care Services

Hazard - A hazard is anything with the potential to cause harm.

HSE – Health and Safety Executive who are responsible for enforcing health and safety legislation.

IMCA – Independent Mental Capacity Advocate

Risk – A risk is likelihood that a hazard will cause specific harm to someone or something.

SHE unit – Safety, health and environment unit of Gloucestershire County Council

5. Context

5.1. For the purpose of this policy most of the risks referred to arise from how we meet social care needs:

- A Vision for Adult Social Care: Capable Communities and Active Citizens 2010 – DH
- Our health, our care, our say 2006 – DH
- Independence, choice and risk 2007 - DH

5.2. Safety legislation and guidance applies to support plans to ensure the safety of people, carers and staff.

5.3. The Health and Safety at Work Act 1974 – This act sets out employers' responsibilities for the health and safety of their employees and others, as well as responsibilities employees have to themselves and each other.

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5.4. Management of Health and Safety at Work Regulations 1999 – These regulations require employers to carry out a suitable and sufficient risk assessment of the work related risks to employees and others.

5.5. Manual Handling Operations Regulations 1992 (amended 2002) – These require a risk assessment when any of a wide range of manual handling activities of inanimate objects or persons are involved.

6. What is Risk?

6.1. Risk can be defined as:

"The chance of something happening or not happening that will have an impact, either negative (threat) or positive (opportunity), upon the achievement of objectives. It is measured in terms of likelihood and impact."

6.2. An event can occur because of:

- Risks associated with impairment or disability such as falls
- Accidents, for example, whilst out in the community, during travel to activities, clubs, education establishments, or at a social care service
- Risks associated with everyday activities that might be increased by a person's impairment or disability
- Non-compliance in 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

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

6.4. 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.

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6.5. The difference for many disabled adults and older people with additional needs 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.

6.6. 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, 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.

7. What is Positive Risk Management?

7.1. Risk is often perceived in terms of danger, loss, threat, damage or injury but as well as these negative aspects; it can also have positive benefits for individuals and their communities. Steve Morgan defines positive risk management as:

"Weighing up the potential benefits and harms of exercising one choice of action over another (by) 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. 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."[1]

7.2. In reality this means for staff:

- Being empowering and person centred
- Working in partnership with people, carers and advocates
- Making sure the individual's voice is heard
- Developing an understanding of the responsibilities of each party
- Helping people and their carers to access opportunities and take worthwhile chances
- Developing trusting working relationships
- Helping people who use/ purchase services to learn from their experiences
- Understanding the consequences of actions
- Making decisions based on all the choices available and accurate information
- Being positive about potential risks when promoting independence
- Understanding a person's strengths, skills and abilities
- Knowing what has worked or not in the past

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- Where problems have arisen, understanding why
- Ensuring support and advocacy are available to those people who are vulnerable or perceive themselves to be vulnerable.
- Always accepting short term risks for long term gains unless there are clearly identified and agreed reasons for not doing so
- Regular reassessments to consider reducing support to promote a culture of independence
- Understanding the different perspectives of disabled adults and older people, carers, practitioners, advocates and service providers
- Adopting person-centred and transition planning for both young people and adults to support their involvement and that of their families and other involved professionals in decision-making
- Ensuring that staff use the guidance and procedures with support and supervision from their immediate line manager

8. The Mental Capacity Act 2005

8.1. The individual must be the primary source of information relating to identifying the desired outcomes and risks associated with achieving these. They must, therefore, be supported to provide this information during the assessment and support planning stage.

8.2. Establishing a person's mental capacity is crucial to understanding how someone needs to be supported and a positive approach 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 proven otherwise
- Individuals have a right to be supported in making their own decisions before anyone concludes that they cannot
- Individuals with mental capacity must retain the right to make decisions that might appear eccentric or unwise to others
- 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

8.3. A practitioner's first priority is to maximise 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 at the place and time of the person's highest level of functioning and be relevant to the specific issue / decision.

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8.4. The Mental Capacity Assessment & Best Interests FACE form (MCA2) should be used to document significant decision mental capacity assessments.

The Mental Capacity Assessment & Best Interests FACE form MCA2 can be accessed from an individual's ERIC record by clicking on:

- Documents, then;
- new template, then;
- document group
- Select "Adult Electronic" or 'adult printable' then;
- Select "Mental Capacity Assessment & Best Interests form"

Further information on the Mental Capacity Act is available at:

https://www.gloucestershire.gov.uk/health-and-social-care/adults-and-older-people/finding-the-right-information-and-support/mental-capacity-act-mca

8.5. Where people do not have 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 2005 to carry out an assessment of mental capacity & act in the individuals best interests when deciding what support to provide. If the person has family, friends or advocates (and consideration should be given to instructing an IMCA if the individual is otherwise unsupported) the practitioner must consult them or and any professional involved, before reaching a best interests decision. They may also have to carry out risk assessments.

Where a person has a court appointed Lasting Power of Attorney or Court of Protection Welfare Deputy that person is the decision maker.

Where the decision-maker is not specifically court appointed, the final decision(s) must be made using the statutory framework for best interest decisions under the MCA.

8.6. The Deprivation of Liberty Safeguards (DoLS) applies to people who lack capacity specifically to consent to treatment or care in a hospital or care home, under public or private arrangements. Where a decision by a care home or hospital is likely to deprive someone of his/ her liberty, the care home or practitioner must refer to the relevant Supervisory Body so that a series of 6 assessments, including a Best Interests Assessment, can be carried out in accordance with procedures. https://www.gloucestershire.gov.uk/gsab/i-am-a-professional/deprivation-of-liberty-safeguards-dols/deprivation-of-liberty-safeguards-dols-policy

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8.7. Based on that assessment the Best Interests Assessor (BIA) will recommend that any action to restrict a person's liberty must be carried out in the least restrictive way. The Supervisory Body will authorise the deprivation of liberty for the shortest time possible, taking on the recommendation of the BIA and providing the person meets all other qualifying assessments.

8.8. As an authorisation under DoLS can only apply to a person in a hospital or care home, an application must be made to the Court of Protection if deprivation of liberty takes place elsewhere. Apart from the authorisation of the deprivation of liberty under DoLS as set out above, deprivation is prohibited unless the Court has made an order concerning the person's welfare, or where it is authorised for life sustaining or other emergency treatment.

8.9. It is the responsibility of the practitioner (and where they have not been trained to practice as a Best Interest Assessor - the BIA) to ensure that the directorate's deprivation of Liberty Safeguards Policy is operated fairly and equitably. https://www.gloucestershire.gov.uk/gsab/i-am-a-professional/deprivation-of-liberty-safeguards-dols/deprivation-of-liberty-safeguards-dols-policy

8.10. The DH publication "Nothing ventured, nothing gained" provides guidance on best practice in assessing, managing and enabling risk for people living with dementia. It is based on evidence and person-centred practice and within the context of "Living well with dementia; a national dementia strategy" and Putting People First. The guidance is aimed at commissioners and providers in health and care across all sectors.

9. The Human Rights Act

Article 8 of the Human Rights Act refers to 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 worker 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 someone receives social care support or their carer under the Act and that of others. Any interference with article 8 must be justified, proportionate and clearly recorded and communicated as appropriate.

10. Public Sector Equality Duty

Since 2010 under the Equalities Act GCC has a duty to meet the requirements laid down. The Public Sector Equality Duty Act requires a local authority in the exercise of its function to have due regard to the need to:

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- Eliminate unlawful discrimination
- Eliminate harassment and victimisation
- Advance equality of opportunity between people who share a protected characteristic and those who do not
- Foster good relations between people who share a protected characteristic and those who do not

This means that when we undertake our assessment or support plan we have to ensure that we pay due regard to the 9 characteristics. These are:

- Age
- Disability
- Race
- Religion & Belief
- Sex
- Sexual Orientation
- Gender Reassignment
- Pregnancy & Maternity
- Marriage & Civil Partnership

Due regard means we need to consider the above characteristics and ensure that if any of them apply we mention how we are considering the effect on the service user.

11. Mandatory Procedures

11.1. Identification, Assessment and Management of Risk

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. Information gathering and sharing is essential when identifying and managing risk but regard must be paid to the Data Protection Act 1998 and the purpose of the data collection and who it will be shared with must be explained to people and their carers.

11.2. Whilst a person has the right to make choices and be supported to manage any risks, if they are asking their local authority to provide help to do this, this will be, in practice, done within the local threshold for eligibility and available resources using the Prioritising Needs guidance (formerly known as FACS). For more information on FACS please see the Social Care Institute for Excellence facts about FACS. https://www.scie.org.uk/

11.3. It is neither possible to get rid of all risks 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

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the safeguarding of individuals, with support for people and carers in making their own decisions.

11.4. Individual practitioners are expected to follow the professional code of practice set out by their professional body but risk management is about a collaborative approach to working with people, carers, families and other involved professionals.

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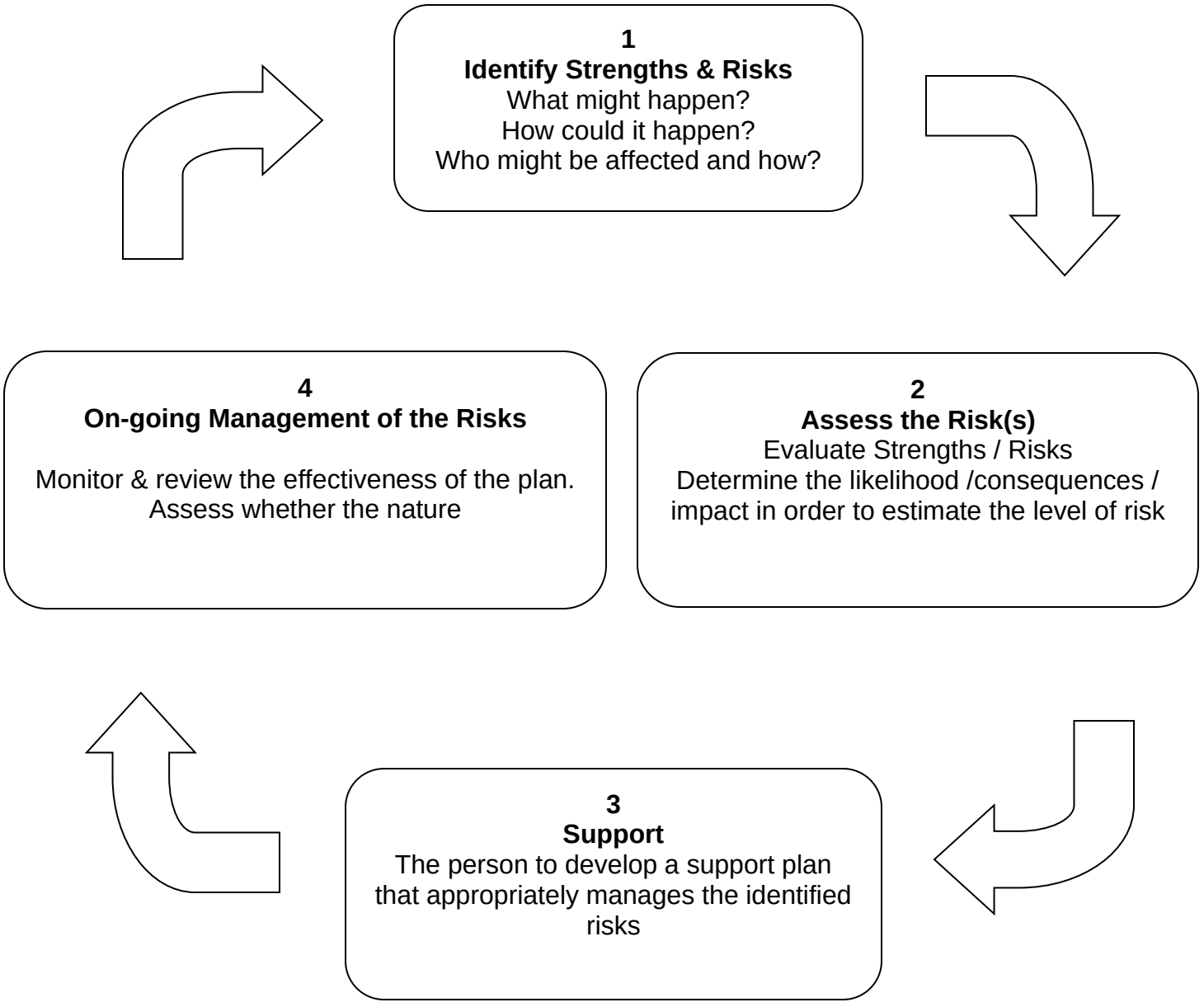
12. The 4 Stages of Positive Risk Management

This diagram represents the stages of the risk management process – not the stages of the self directed support process.



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12.1. Stage 1 - Risk Identification

12.1.1. When considering risk, practitioners should refer to the Prioritising Needs (formerly known as FACS) criteria where the question is posed “What is the risk to loss of independence or greater loss of independence if nothing is done? Three of the four assessment domains are particularly important in this context: health and safety, autonomy, and involvement in family and wider community life (including leisure, hobbies, unpaid and paid work, learning and volunteering). Local authorities are also required to assess risk to the carer.

In Gloucestershire we have declared that people will be eligible for social care support when they face Critical or Substantial risks of not being able to achieve outcomes such as:

- Exercising choice and control
- Health and well being, including mental and emotional as well as physical health and well-being
- Personal dignity and respect
- Quality of life
- Freedom from discrimination
- Making a positive contribution
- Economic well-being
- Freedom from harm, abuse and neglect, taking wider issues of housing and community safety into account

12.1.2. The assessment process is the main opportunity to identify risk but it is important that information is gathered from a number of sources to provide a good basis on which to make an assessment of risk:

- Past records
- Assessments and reviews using Prioritising Needs (FACs) criteria
- Discussions with the person to identify risks that are recorded within the assessment meeting(s) using the FACE overview.
- Reports from significant others e.g. carers, family friends and other involved professionals.

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- Observing discrepancies between verbal and non-verbal cues
- Predictive indicators derived from research
- Judgements based on evidence based practice
- Feedback from existing providers who are delivering services to support the person

12.1.3. All evidence that is gathered must be recorded using the FACE assessment toolkit in order to demonstrate how the decision regarding the level of risk was reached.

12.2. Stage 2 - Risk Assessment

12.2.1. We have a duty to take reasonable care to avoid any action or omission in which it could be reasonable to foresee that the likely result would be harm or loss to the person needing support, carers, staff or the general public.

12.2.2. We also need to ensure that safeguarding concerns are identified and appropriately managed at every stage of the assessment, support planning and co-ordination of services, and that practitioners understand their responsibilities in the safeguarding adults procedures. https://www.gloucestershire.gov.uk/gsab/i-am-a-professional/multi-agency-safeguarding-policy-and-procedures/

12.2.3. Risk assessment is the process of gathering information in the variety of ways described in 12.1.2 i.e. it is the adult care assessment process. This process should be a dynamic, on-going process that manages the information in a way that is meaningful and can be communicated with individuals and carers and practitioners who deliver those services. To be effective it needs staff to collaborate with people and their carers to arrive at appropriate and creative decisions about risk when devising a support plan.

12.2.4. Assessors are prompted to score the identified risks on the FACE overview form (the score should reflect the assessors judgement (and this must be supported by documented evidence) of likelihood of occurrence and severity of impact). Assessors are required to record and score the risks related to health and safety, autonomy, and involvement in family and wider community life (including leisure, hobbies, unpaid and paid work, learning and volunteering).

12.2.5. During the assessment process the following must be considered and/ or achieved:

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- The perception and understanding of risk by the person and their carer
- The mental capacity of the person
- That past behaviour tends to inform future behaviour
- The need to collect accurate information from people and their carers and identification of any concerns or issues that may increase the probability of an event occurring
- The strengths and abilities of the person along with any support or advocacy services open to them. This gives a positive base from which to develop the assessment.
- A person-centred approach to identify, assess and manage risk.
- The distinction between the long and the short term. A short term heightened risk may need to be tolerated and managed for longer term positive gains.
- Taking risks can give some people confidence
- The assessment needs to be clear if it is to protect the person or others.
- Where possible, all involved agencies and the person should agree on the approach to risk and how identified risks will be controlled. Consensus helps to support positive risk taking.
- Any documents that record risks and control measures must be signed and dated by all involved parties and they must include a review date.
- Where somebody involved in the support plan or the provision of support does not agree with the assessment, that their concerns and reasons are recorded.
- That the learning from any previous instances of harm is considered and should be included in the assessment.

12.3. Stage 3 - Support Positive Risk Management

12.3.1. Risk management is the activity of exercising a duty of care by introducing control measures in conjunction with the person concerned when risks are identified. This is the main purpose of the support planning processes and should involve preventative, responsive and supportive measures to reduce the potential negative consequences of the risk and promote the potential benefits of taking appropriate risks. Decision making in relation to risk must always be clearly documented by the support planner and reviewed periodically. Please see A Guide to Adult Assessment in Gloucestershire.

12.3.2. Support Planners must be careful that any risk management strategy is proportionate and any response devised in the support planning stage should relate to the type of arrangements the individual chooses.

12.3.3. Where a risk assessment is needed (not all domains will present issues), a decision then has to be taken about whether or not positive risk-taking is necessary to achieve certain outcomes for the person concerned, 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

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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.

12.3.4. Managers / supervisors have a key role to play by recognising that there is joint accountability for risk decisions and hence they should be involved in signing off all support plans. They are responsible for ensuring that their supervision style is conducive to staff being supported to take risk decisions and staff are confident that they will be supported and treated fairly if an incident occurs. A practitioner should engage the support of their manager to review the progress of support plans where the levels of risk are deemed to be high and decisions should be recorded and signed off by the Community Manager and where appropriate the Locality Panel or Locality Manager.

12.3.5. This approach supports 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. Where the individual lacks capacity consideration must then be given as to how their best interests can be met. If an IMCA needs to be involved, then instruction for an IMCA needs to be made, otherwise consideration should be given to the provision of an advocate to help represent their views.

12.3.6. Positive risk taking needs to be under pinned by contingency planning which will help to prevent some harmful outcomes and minimise others. Risk taking should be seen to promote opportunities and safety and not negligence. Therefore all the involved parties should consider what steps need to be taken in the event of a failure of the risk management plan.

12.3.7. Where people are behaving recklessly, support plans may include the setting of explicit boundaries to contain situations that are developing into potentially dangerous circumstances for all involved. For further information see the Managing Complex and Unstable Care Packages Policy.

12.3.8. Where people are considered to be at risk of abuse from others then an alert needs to be raised via the Gloucestershire County Council Adult Social Care Help Desk on 01452 426868 or socialcare.enq@gloucestershire.gov.uk

For advice on safe guarding adults you can contact the Safeguarding Adults Advice Line on 01452 425109.

For safeguarding adults procedures go to:
https://www.gloucestershire.gov.uk/gsab/i-am-a-professional/multi-agency-safeguarding-policy-and-procedures/

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12.4. Stage 4 - On-going Management of the Risks

12.4.1. Initial, planned and response reassessments are the mechanism for reviewing risks and the control measures (the support plans) introduced to manage them. They must be set to take place as a way of monitoring whether or not the actions or measures agreed in the support plan are happening and that the risks are maintained at the agreed level.

13. Disputed Support Plans and the Risk Management Escalation Processes

13.1. Assessors and support planners will, in the majority or cases, have been successful in identifying risks and negotiating solutions (control measures) with people to manage those risks to within the agreed level of "moderate" – the support plan will detail this and will be signed off by a team manager. However, if a proposed solution within a support plan is considered inadequate to manage an identified risk the support planner must discuss this with the person concerned and any involved carer/ family/ advocate to see if the situation can be resolved. If discussions have failed to reach an acceptable conclusion, decision-making should be escalated to the Locality Panel or Community Manager who can seek the advice and support of the Locality Manager.

13.2. If deemed appropriate, a Senior Practitioner, Manager, Locality Panel, Community Manager or Locality Manager may convene a Risk Management Meeting. The purpose of a Risk Management Meeting is to provide a safe and supportive environment where risks can be openly discussed and participants can negotiate ways of managing risks to acceptable levels.

13.3. Participants should include all relevant parties, for example:

- Admin support to minute discussion and decisions
- The person who will be the subject of the discussion (including their carer or advocate, including IMCA)
- The assessor
- The support planner
- Other members of the multi-disciplinary team as required
- The team manager
- Staff from the relevant service area, both in-house or external provider
- A member of the safeguarding team
- Any other relevant organisation

13.4. The relevant Manager is responsible for arranging and chairing the Risk Management Meeting and for communicating learning from the Risk Management Meeting to other managers, practitioners and Commissioning Colleagues as appropriate.

14. Review of Incidents

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14.1. An incident is when an event occurs that results in physical, emotional or psychological harm to an adult who is receiving an individual budget or to another person as a consequence of the actions of that adult.

14.2. An incident may occur either where a solution has failed to maintain an identified risk to within the acceptable level of risk, or the likelihood and impact had been mis-calculated or the risk and resulting consequence was not foreseen.

14.3. Sometimes positive risk taking will have a negative consequence, and it will be essential to identify what has gone wrong and what can be learned from this. As a Health and Social Care Provider we recognise that when an incident occurs it can be a traumatic time for all concerned. Advice is given in the Post Incident Support Policy on the type of assistance that can be offered.

14.4. When faced with the report of an incident, staff must take into account the likely outcomes of the alternatives open to them, and take the action that they consider to be the least damaging. The judgement should be based on professional judgement and common sense. An Accident, Incident or Near Miss reporting and investigation form (Staffnet - Safety Health and Environment) must be completed as soon as possible after the incident.

Completed forms should be sent to remisesupplieshs@gloucestershire.gov.uk for input onto the database. A system for communicating the summary of incidents and an analysis of the information, including any learning and trends, should be communicated back to operational staff. Staff should also raise an Alert via the Safeguarding team if the incident was perpetrated by another person.

14.5. In line with the corporate incident reporting policy all incidents must be investigated.

14.6. In situations where incidents of serious concern occur that involve people or staff, the relevant Community Manager or Locality Manager should be alerted to the situation. They must decide who should be involved in any investigation e.g. SHE advisor, Safeguarding Adults, CQC, Trade unions etc. The investigation should start from a no-blame standpoint and the results of the enquiry should be communicated to all involved parties in writing as soon as possible. Consideration must be given to learning from the incident and changes made to any policies or procedures if necessary.

14.7. Incidents involving providers need to be managed in line with the Interagency Raising Concerns and Sharing Related Information Policy.

15. Implementation

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Positive risk management is integral to embedding personalisation into the way we provide social care. It is important that staff receive training in support planning and risk assessment if we are to achieve this. People who need support and their carers need to have access to information so that they can be actively involved in the assessment and support planning process, including risk management as a route to increasing choice and control for them.

This policy will be issued with practice guidance and should be included for discussion at every team meeting. Teams will be required to confirm they have done this.

16. Monitoring and Review

The policy will be monitored through:

• Supervision
• the Accident, incident and near miss report database maintained by the SHE unit
• the Abuse of Vulnerable Adults (AVA) returns to the DH

The policy will be reviewed in line with the current policy review procedures.

Further reading and guidance from the DoH for managing risk specifically for people with dementia:

Nothing Ventured, Nothing Gained': Risk Guidance for people with dementia

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