

Adult Social Care Risk Enablement Policy

**(Draft Version 2.3 Final version – if this hasn't been
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approval')**

Version 1

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Version Control and Document History

Version Control

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Document History

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Draft v1.0	August 2010	Unknown	Original document created for CQC Inspection and approved by Transformation Board
Draft v 2.0	21 July 2010	David Clayton	Original Policy amended and formatted in respect of new SDS Policy and Cabinet report..
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1. Policy Statement

1.1 Introduction

Risk is the probability that an event will occur with beneficial or harmful outcomes for a particular individual or others with whom they come into contact.

Allowing individuals to have more choice and control over their lives and to manage their own risk is central to achieving better outcomes for individuals under Self-Directed Support (SDS).

Risk should not just be thought of in negative terms. It is part of everyday life, inherent in everything that we do. It is often through taking risks that people develop and learn. Focusing on what can potentially go wrong can limit opportunities for trying something new or different and so limit positive outcomes for individuals.

Fear of supporting disabled and older people to take reasonable risks in their daily lives can prevent them from doing the things that most people take for granted. By taking account of the benefits in terms of independence, well-being and choice, it should be possible for a person to have a support plan which allows them to manage identified risks and to live their lives in ways which best suit them.

1.2 Aim

The aim of this Risk Enablement Policy is to create a framework for positive decision-making in relation to supporting people to take identified risks within SDS and in doing so, support customers to achieve their desired outcomes.

1.3 Objective

The objective and governing principle behind this policy is that people have the right to live their lives to the full as long as that does not stop others from doing the same.



2. Scope of the Policy

2.1 Derby City Council staff

Derby City Council Staff are expected to carry out this policy when they are involved in the assessment, support or care of people over 18 years, including those who are involved in the setting up and administration of services for people with eligible assessed needs, administrative and finance staff.

2.2 Commissioned / contracted staff

All staff working for provider and third sector organisations who have contracts with the Council to provide care and support services are expected to carry out this policy. This will be reflected in contracting arrangements.

2.3 Customers

The vast majority of people receiving services from Derby City Council Adult Social Care will have a right to SDS allowing them to manage identified risks and to live their lives in ways which best suit them. This also applies to their carers and circles of support. This includes the following groups of people:

- older persons (over 65)
- adults (age 18 and above) with a physical disability
- adults (age 18 and above) with a learning disability
- adults (age 18 and above) with mental health support needs
- young people (age 17) with a disability who are in transition
- other vulnerable adults in need of social care support.

3. Policy Principles

This policy is based on a number of principles that will help the Council to make informed decisions that promote both the involvement and interests of disabled adults, older people and their families in positive risk taking.

3.1 Person Centred Practice

Person-Centred Practice (with person centred planning) is an approach based on the principles of rights, independence, choice and inclusion. It is used to help disabled and older people to work out what they want to do with their lives, and then find out how services and support in the wider community can achieve their aspirations.

3.2 Assuming Mental Capacity

An individual must be assumed to have capacity unless it is established that he/she lacks capacity. Capacity will be worked out in line with the requirements of the Mental Capacity Act 2005. If there are no other legislative requirements to force a person to prevent harm and there is no convincing evidence that the person has a lack of capacity to make the decision, the law is likely to treat that person as having agreed to the risk. Where the individual lacks the mental capacity to make a decision about a course of action, including one involving any level of risk, they will not be able to give their agreement. In these circumstances, any decisions or actions must be made on the basis of what is in the person's best interests and in line with the Mental Capacity Act 2005.

3.3 Defensible Decision Making

Defensible decision making applies to all staff involved in the provision of assessment or support planning services to an individual. It consists of making sure that there is evidence, if required by an investigation or a court, that shows:

- all reasonable steps have been taken to manage risk
- reliable methods have been used to manage risk
- information has been collated and thoroughly evaluated
- decisions are recorded and communicated
- policies and procedures have been followed
- practitioners and their managers have adopted a proactive approach to supporting people to manage and identify risk.

3. Policy Principles

3.4 Professional Competence

For social workers, care managers and support planners, allowing individuals to take control requires a practice which promotes positive risk-taking. The practitioner will be expected to adhere to the General Social Care Council Code of Practice in respect of this policy.

3.5 Duty of Care

There is a shared responsibility when dealing with risks between the local authority, its customers, their family members and carers, providers and their staff. This requires staff of Derby City Council to take reasonable care to avoid any action or omission which it can reasonably foresee would be likely to result in harm, loss or undesirable outcome to individual, family members, carers, other staff or to the general public.

Where the Council has acted reasonably in respect of clearly communicating and recording the advice given to an individual, family members and carers and providers, in accordance with this policy, they will have met their duty of care to the individual and carer and be able to show a clear audit trail.

4. Staff learning and development / guidance

4.1 Staff Training

A learning and development strategy will seek to make sure that all Council staff involved in self-directed support will be given training about the process and underlying values of risk enablement. Social workers and care managers involved in identifying personal budgets and authorising support plans will have more detailed training on how to manage risk positively.

4.2 Customer and provider training

Training will also be available to carers, families, other 'circles of support' members, provider staff and peer support brokers who are offering support brokerage to customers. Risk enablement workshops for customers and their circles of support will also be available to help customers plan their support and manage risk.

4.3 Staff Risk Enablement Guidance

Managing risk is a core function of every day practice for staff working in the adult social care where decision making uses line management arrangements and professional supervision. However, when risks are at a high level and cannot be resolved through existing line management arrangements, further advice and decision will be sought from a risk enablement panel under this policy. Staff guidance has been produced to support staff with the operation of this policy including a risk rating system that will give guidance on when to refer to the risk enablement panel.

4.4 Risk Enablement Panel

The responsibility for arranging a risk enablement panel sits with the service manager and is called together when there are high level risks identified during the normal process of 'signing off' – agreeing to an individual's support plan which cannot be resolved through the usual decision making process. The panel will not replace or act in cases where adult protection/safeguarding procedures or Multi-Agency Protection Panel Arrangements (MAPPA) takes priority. The aim of the risk enablement panel is to provide a forum for full and frank discussion and resolution of serious concerns relating to the management of identified risks highlighted in an individual's support plan. It will also provide a forum for a shared decision making process in respect of the support plan being agreed. This will also clearly show that the Council has been seen to have discharged its legal duty of care in a proper manner. An independent Mental Capacity Advocate (IMCA) will, in specified circumstances, support and represent individuals who have nobody to speak for them when certain types of decisions are being made about choices that have risks attached.

4. Staff learning and development / guidance

4.5 Reviewing Decisions

The decision of the panel is recorded and communicated to everyone who was at the panel meeting within three working days of it taking place. The decision will be given in writing, or using an appropriate communication method for the individual customer. Decisions supported by the risk enablement panel will need to be reviewed, which may be in addition to statutory community care reviews, depending on the complexity or imminent nature of risks, or the suspicion that people may not accept responsibility for risk.

4.6 Complaints

As with all other activities of the Council, risk enablement can be subject to complaints and people who have been part of the risk enablement panel will be made aware of how they can challenge or complain about decisions through the Council's complaints procedure.

5. Legislative, national strategy and related policy / guidance

5.1 Policy Context

Government policy directed at achieving greater personalisation and dealing with risk is included within the following key documents:

- No Secrets: Guidance on developing and implementing multi-agency policies and procedures to protect vulnerable adults from abuse, DH and Home Office (2000)
- Independence, Choice and Risk: A Guide to Best Practice in Supported Decision Making (DoH 2007)
- Enabling risk, Ensuring Safety: Self-directed support and personal budgets (Social Care Institute for Excellence 2010)
- Personalisation and Safeguarding (Association of Directors of Adult Social Services) 2008).

5.2 Legal Context

- **Community Care**

Derby City Council has a duty to provide community care services for eligible customers under several pieces of legislation as detailed in the main Self-Directed Support Policy.

- **Mental Capacity Act 2005**

The Mental Capacity Act 2005 makes it clear that there should always be the belief that a person has the capacity to make decisions unless it is clearly shown otherwise. It provides a statutory framework to protect and support adults who may lack capacity (ability) to make all or some decisions about their lives. It also makes provision to make sure that advocacy support is available for people who lack capacity during safeguarding processes and for their best interests to be explicitly considered through formal processes.

- **Health and Safety**

The Health and Safety at Work Act 1974 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. Manual Handling Operations Regulations 1992 (amended 2002) require a risk assessment when any of a wide range of manual handling activities of inanimate objects or persons is involved.

5. Legislative, national strategy and related policy / guidance

- **The Human Rights Act 1998**

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 work out if or how to proceed in circumstances where there may be conflict between the rights of someone who 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.

- **Equalities Act 2010**

All public authorities have a duty to promote equality and not to discriminate against people because of disability, gender, race, age, sexual orientation, religion or belief, pregnancy and maternity, and gender reassignment.

5.3 Derby City Council

Related policies, procedures and forms include:

- Derby City Council Risk Enablement Staff Guidance
- Adult Safeguarding Policy and Procedure
- SDS Policy
- Resource Allocation System Policy
- The Derby City Council Self-Directed Support Toolkit, including guidance on:
 - Support Brokerage
 - Agreeing the Support Plan and Actual Personal Budget
 - Financial Monitoring and Review of Personal Budgets
 - Evaluating the Impact of SDS for customers
- Personalisation Programme Communication and Engagement Strategy
- Learning and Development Strategy for implementing the new customer pathway, including SDS
- Deprivation of Liberty Safeguards (DOLS) Policy
- Mental Capacity Act Policy and Guidance
- Independent Living Fund Policy
- Derby City Council Complaints Policy and Procedure