

# KENT ADULT SOCIAL SERVICES

## POSITIVE RISK MANAGEMENT POLICY

### FOR STAFF CARRYING OUT COMMUNITY CARE ASSESSMENTS

Version	Date	Revision
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0.3 Draft	12/12/08	Revised after SDS executive meeting held on 12 December 2008
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0.8 Draft	02/03/09	Amendments discussed at meeting of EK AMT
0.9 Draft	05/03/09	Policy Development and Review Board meeting
10 Draft	12/03/09	Service user consultation meeting EK
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12 Draft	08/04/09	Trade Unions (Health and Safety Committee meeting)
13 Draft	14/04/09	Amendments discussed at meeting of WK AMT
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## **Mission Statement**

Kent Adult Social Services is committed to supporting people to make informed choices to meet their needs and staff to address any risks to these choices, consistent with the directorate's responsibilities for safeguarding vulnerable adults.

**"There is a proper dignity and proportion to be observed in the performance of every act in life"  
(Marcus Aurelius, Roman Emperor, 2<sup>nd</sup> Century AD)**

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# 1 Introduction

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

- 1.6 This policy and guidance applies to all staff within the Directorate including seconded staff, agency staff, temporary contracted staff and all private and voluntary sector contractors.
- 1.7 This policy is based on the principle of proportionate approach to risk management. Where presenting risks are considered low there may not be a need to work through a detailed risk assessment as set out in this policy. Conversely it should be used in cases where the risks are considerable and significant. All risk assessments must be **“suitable and sufficient”** in relation to the particular circumstances of the case.

## 2. Why we need a policy?

- 2.1 Self Directed Support means that people will choose to meet their needs in ways that are highly personal and sometimes different from those currently on offer from traditional services. Any risks which may flow from their chosen way of meeting their needs have to be evaluated and managed if their attempts to enjoy fulfilled lives are not to be frustrated. The policy will;
  - Enable staff to develop a consistent approach to risk based on managing it, rather than avoiding it.
  - Promote the development of new and positive ways to support and empower service users and family carers to live in the ways they choose.
  - Enable staff to put service users and family carers at the centre of decision making with regard to the services they receive.
  - Promote a “learning from experience” approach as a means of improving the overall quality of services.

## 3. What do we mean by risk?

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

## 4. What do we mean by positive risk management?

- 4.1 Positive risk management involves working with service users and family carers to enable them to achieve the outcomes that matter to them. It is an approach to risk that supports people in thinking through the possible consequences, positive or negative, of any action or inaction. This enables people to make informed choices and accept responsibility for their decisions.
- 4.2 It is **neither** possible to get rid of all risk(s) and keep people safe at all costs on the one hand, **nor** appropriate to leave them to their own devices on the other. Staff must adopt a positive and consistent approach to risk at all times which balances the safeguarding of individuals, with support for service users and family carers in making their own decisions.

## 5. Positive risk management and the Mental Capacity Act

- 5.1 A positive approach to risk is a constant theme of the Mental Capacity Act, as indicated by the following principles.
- A person must be assumed to have capacity to make decisions unless it is proved otherwise.
  - Individuals have a right to be supported in making their own decisions before anyone concludes that they cannot.
  - Individuals must retain the right to make what appear as eccentric or unwise decisions.
  - Anything done for or on behalf of people without capacity must be in their best interests.
  - Anything done for or on behalf of people without capacity should be the least restrictive option.
- 5.2 A practitioner's first priority is to maximize a person's decision making capacity, by taking all practicable steps to support the person to make the decision for themselves. Any assessment of capacity must therefore be carried out, wherever possible, at the place and time of the person's highest level of functioning.
- 5.3 Where people 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 (MCA) 2005 to act in their best interests when deciding what services to support. If the person has family, friends or advocates the practitioner must consult them and any professionals involved, before reaching the best interests decision. They may also have to carry out risk assessments. The final

decision of the decision-maker must be made using the statutory framework for best interests decisions under the Mental Capacity Act.

- 5.4 The Deprivation of Liberty Safeguards (DOLS) apply to people who lack the capacity specifically to consent to treatment or care in a hospital or care home, under public or private arrangements. From April 2009, where a decision by a practitioner is likely to deprive a service user of his/her liberty, the practitioner must refer to the Supervisory Body (local authority or PCT) so that a series of six assessments, including a Best Interests Assessment, can be carried out in accordance with procedures.
- 5.5 Based on that assessment the Best Interests Assessor (BIA) will recommend that any action to restrict the service user's liberty must be carried out in the least restrictive way. The Supervisory Body will authorize the deprivation of liberty for the shortest time possible, taking on the recommendation of the BIA and providing the person meets all the other qualifying assessments.
- 5.6 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 deprivation of liberty under DOLS as set out above, deprivation is prohibited unless the Court has made an order concerning the person's personal welfare, or where it is authorised for life-sustaining or other emergency treatment.
- 5.7 It is the responsibility of the practitioner and the BIA to ensure that the deprivation of liberty safeguards is operated fairly and equitably in line with the Directorate's Equalities Policy.

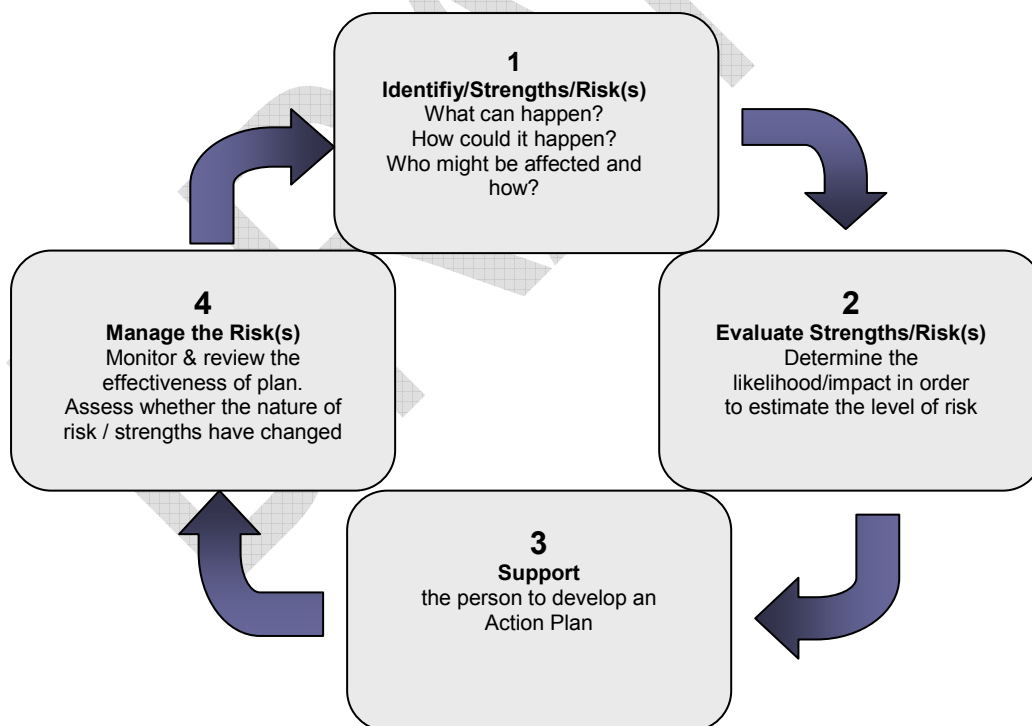
## **6. Positive risk management and Safeguarding**

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

- 6.2 Staff should bear in mind that positive risk management should be proportionate and any response should relate to the type of arrangements the individual chooses.
- 6.3 Where a person's agreed outcomes are not being met, or the way in which they are being met raises issues of legality or likely harm, a proportionate response will have to be initiated. See Kent and Medway Multi-agency Safeguarding Policy and Procedures. Internet link - <http://www.kent.gov.uk/publications/social-care-and-health/ap-pols-procedures.htm>

## 7. The stages of Positive Risk Management

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



Adapted from Kent County Council Business Risk Management Toolkit: Revised 2008

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

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

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

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

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

## **10. Positive Risk Management and the Human Rights Act**

10.1 Article 8 of the Human Rights Act 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 workers or residents of a care home who in certain situations may be exposed to unacceptable risk(s) of injury or harm. Risk assessments are therefore essential to determine if or how to proceed in circumstances where there may be conflict between the rights of a service user or carer under the Act and that of others. Any interference with article 8 must be justified, proportionate and clearly recorded and communicated as appropriate

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

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

Service users and family carers would be expected to;

- Follow the risk action plan agreed with the practitioner or other staff and consult them promptly if they find it difficult to stick to the agreement.
- Work with staff to regularly re-assess or review a risk management action plan, ongoing needs and how those needs can be met.
- Inform staff about any changes to their circumstances which they feel may affect the level of risk positively or negatively. This is particularly vital in situations where people’s medical conditions are likely to fluctuate.

- Where appropriate, co-operate with other agencies such as the NHS or voluntary organization that provide services as part of the action plan.
- 11.2 Where service users choose to purchase services using personal budgets or direct payments, KASS has a duty to make payments to them to enable them to meet their needs, minus any financial contribution. Service users or their representatives must, however, act responsibly by ensuring that providers of services are competent to meet the agreed outcomes. KASS's Care Services Directory is available to assist the service user or their representative in choosing a competent service provider.
- 11.3 See Good Practice Guidance for staff carrying out Community Care assessments (appendix 2), which includes a section on the proper use of Personal budget and Direct Payments.

## **12. Risk Enablement Panel**

- 12.1 In exceptional circumstances, where the risk issues associated with the support option(s) chosen by the service user are considered too complex and challenging and the team manager or supervisor is unable to negotiate an agreement with the service user, the case will be escalated for consideration by a Risk Enablement Panel, one of which will be established in each of the 6 Localities in Kent.

### **The purpose of the Panel:**

- To seek positive solutions and outcomes for individuals by resolving disagreements about how to address complex and challenging risk decisions.
  - To reassure practitioner staff that they will not be left to make complex and challenging decisions without appropriate support from senior managers.
  - Provide support guidance and direction to staff.
  - To demonstrate that the Directorate has fulfilled its duty of care around the support of service users, carers and staff.
- 12.2 Each locality Risk Enablement Panel will be chaired by a Head of Service of another locality in the interest of objective decision making. Health and Safety and Safeguarding representatives will have permanent seats with others attending as necessary.

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