



## **Multi Agency Risk Management (MARM) Framework**

### **Appendix D**

#### **Supporting Individuals to Manage Risk**

**Version: 2**

**Date endorsed by Safeguarding Adults Board: September 2022**

**Date due for Review: September 2024**

## 1. Introduction

**1.1.** This document has been devised to support the West of Berkshire Safeguarding Adults Board partnership to achieve successful outcomes when working with individuals who are thought to be taking risks in their life.

**1.2.** The guidance, tools and information within this guide was adapted by Reading Borough Council, West Berkshire Council and Wokingham Borough Council from the following sources:

- A Positive Approach to Risk & Personalisation: A Framework - ADASS West Midlands, Joint Improvement Partnership & NHS West Midlands
- Risk Taking for Positive Outcomes - Cumbria County Council
- Best Practice in Positive Risk Taking - London Borough of Hounslow
- Promoting Choice: Positive Risk Management - Gloucestershire County Council

## 2. “Risk is no longer an excuse to limit people’s freedom”<sup>1</sup>

A more positive approach to risk is now being developed, recognising that in addition to potentially negative characteristics; risk taking can have positive benefits for individuals, enabling them to do things which most people take for granted. In social care ‘Think Local, Act Personal’<sup>2</sup> recognised that in the right circumstances, risk can be beneficial, balancing necessary levels of protection with preserving reasonable levels of choice and control. A balance has to be achieved between the wishes of those who use services and the common law duty of care. This requires employers to consider the responsibility they have to their employees, link to ADASS Employers Standards.

**2.1.** Personalised care is for everyone, but some people will need more support than others to make choices about how they live their lives. Everyone has the right to personalised care and as much choice and control as possible. As the pace on personalisation is picked up it is necessary to ensure that this includes the most vulnerable members of our society, including those who may lack capacity. With effective personalisation comes the need to manage risk for people to make decisions as safely as possible. Making risks clear and understood is crucial and empowering individuals and carers, recognising people as ‘experts in their own lives’.

**2.2.** Risk management does not mean trying to eliminate risk. It means managing risks to maximise people’s choice and control over their lives. True empowerment means that people might make decisions service providers disagree with. If the outcomes are part of the support plan and all risks have been fully discussed and understood, this can lead to real choice and control and a better quality of life for the individual.<sup>3</sup> Throughout this document the term risk management has been used. This term should be understood to include the frequently used terms of risk enablement and positive risk taking.

**2.3.** Risk is an accepted part of life. In our society, people are encouraged to travel widely, take part in regular leisure and sporting activities, go to college, develop careers and have families. People may need to take risks to achieve their aspirations but people who need support can be discouraged from taking risks. This may be because of their perceived limitations or because of fear that they or others might be harmed, resulting in criticism or compensation claims. This guide addresses situations in social care and health where a public organisation is providing funding, as well as individuals who are funding and arranging their own care.

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<sup>1</sup> Vision for Adult Social Care Capable Communities and Active Citizens, Department of Health, November 2010 page 8

<sup>2</sup> Think Local Act Personal, Department of Health, January 2011

<sup>3</sup> A vision for Adult Social Care: Capable Communities and Active Citizens, Department of Health, November 2010 page 26

### **3. Links between Personalisation, Protection and Safeguarding**

- 3.1.** Personalisation and safeguarding are not mutually exclusive throughout this document. The linkage between personalisation, protection and safeguarding are recognised. Positive risk taking is essential to the wider safeguarding agenda. This document assumes that all organisations will work in accordance with the Care Act 2014 and associated Care and Support Statutory Guidance, the Mental Capacity Act 2005 (and Deprivation of Liberty Safeguards) as well as the principles of 'Making Safeguarding Personal' (MSP) which will support the implementation of a personalised approach. Whilst doing this, practitioners will be mindful of Public Interest and Vital Interest matters and associated Duty of Care.
- 3.2.** Making Safeguarding Personal is a shift in culture and practice in response to what we now know about what makes safeguarding effective from the perspective of the adult at risk. It is about having conversations with people about how we might respond in safeguarding situations in a way that enhances involvement, choice and control as well as improving quality of life, wellbeing and safety whilst being mindful of risk to others. It is about seeing people as experts in their own lives and working alongside them. It is about collecting information about the extent to which this shift has a positive impact on people's lives. It is a shift from a process supported by conversations to a series of conversations supported by a process.<sup>4</sup>
- 3.3.** The Care and Support Statutory Guidance (section 14) states that the aims of adult safeguarding are to:
- Prevent harm and reduce the risk of abuse or neglect to adults with care and support needs
  - Stop abuse or neglect wherever possible
  - Safeguard adults in a way that supports them in making choices and saving control about how they want to live
  - Promote an approach that concentrates on improving life for the adults concerned
  - Raise public awareness so that communities as a whole, alongside professionals, play their part in preventing, identifying and responding to abuse and neglect
  - Provide information and support in accessible ways to help people understand the different types of abuse, how to stay safe and what to do to raise a concern about the safety or well-being of an adult
  - Address what has caused the abuse or neglect<sup>5</sup>

### **4. Working with Weighing up Risks and Benefits**

- 4.1.** Research and national guidance indicate an imperative around empowering people and proportionate responses: 'Research is clearly showing that the most effective way to manage risk and enable positive risk taking is to work closely with a person in their own context in order to negotiate the levels of risk enablement and safeguarding that are appropriate for that particular individual'
- 4.2.** MSP councils found that having honest discussions with people about the possible options and the risks and benefits of each option, framed more focused risk enablement. The very process of engaging with them often gave them a sense of control and self-esteem that enabled them to better safeguard themselves.<sup>6</sup>

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<sup>4</sup> Making Safeguarding Personal: Guide 2014

<sup>5</sup> Care and Support Statutory Guidance DH

<sup>6</sup> Car.S (2010) Enabling risk ensuring safety self-directed support and personal budgets London SCIE

## **5. What is Risk?**

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

**5.2.** An event can occur because of:

- Risks associated with impairment or disability such as falls
- Risks associated with changes in relationships
- Accidents, for example, whilst out in the community or using a 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

**5.3.** The level of risk will be determined by the type of event and the impact of the outcome. This depends on the person, their relationships with others and the circumstances they find themselves in.

**5.4.** Risk is often thought of in terms of danger, loss, threat, damage or injury, although in addition to potentially negative characteristics, risk taking can have positive benefits for individuals and their communities. As well as considering the dangers associated with risk, the potential benefits of risk-taking should therefore also be identified; a process which should involve the individual using services, their families and health or social care practitioners

## **6. What is Positive Risk Taking?**

**6.1.** Positive risk taking is a process which starts with the identification of potential benefit or harm. The desired outcome is to encourage and support people in positive risk taking to achieve personal change or growth.

**6.2.** This involves:

- Assuming that people can make their own decisions (in line with the Mental Capacity Act 2005) and supporting people to do so
- Working in partnership with adults who use services, family carers and advocates and recognise their different perspectives and views
- Developing an understanding of the responsibilities of each party
- Empowering people to access opportunities and take worthwhile chances
- Understanding the person's perspective of what they will gain from taking risks and understanding what they will lose if they are prevented from taking the risk
- Promoting trusting working relationships
- Understanding the consequences of different actions
- Making decisions based on all the choices available and accurate information
- Being positive about risk taking
- Understanding a person's strengths and finding creative ways for people to be able to do things rather than ruling them out
- Knowing what has worked or not in the past
- Where problems have arisen, understanding why
- Supporting people who use services to learn from their experiences
- Ensuring support and advocacy is available
- Sometimes supporting short-term risks for long-term gains
- Ensuring that services provided promote independence not dependence

## **7. Principles of Working Positively with Risk**

**7.1.** Risk is a normal everyday experience.<sup>7</sup>

**7.2.** Risk is dynamic and constantly changing in response to changing circumstances, therefore its assessment and management needs to be ongoing with management plans being regularly updated and reviewed.

**7.3.** All people, including vulnerable people, have the right to take risks.

**7.4.** An individual's right to take risks does not give them the right to put others at risk.

**7.5.** Risk can be minimised, but not always removed.

**7.6.** Information will sometimes be partial and should be tested to inform decision making. Decisions should be made using information that is available within a reasonable period and should be checked for accuracy. Some decisions may need to be made prior to all information being available.

**7.7.** Identification of risk carries a responsibility to do something about it.

**7.8.** People who use services, their advocates and where appropriate, their family will be involved in risk assessment and decision making.

**7.9.** Decisions will be based on clear reasoning using the principles of multi-disciplinary and inter agency working in proportion to the risk and impact to self and others.

**7.10.** Risk management will involve everybody working together to achieve positive outcomes for people.

**7.11.** Confidentiality is a right, but not an absolute right and may be breached in exceptional circumstances when children or vulnerable adults are deemed to be at serious risk of harm, or it is in the public interest or vital interest thresholds are met.

**7.12.** Guidance procedures and risk assessment tools should support positive risk-taking including ensuring that staff receive appropriate organisational support and supervision from their immediate line management.

**7.13.** Where risk taking results in negative outcomes for people who use services or others, the experience should be learnt from and used to inform future decisions.

## **8. Positive Risk-Taking Approach**

**8.1.** Staff who are supporting people to take risks must follow a structured approach in which the rationale for decisions can be evidenced. Decision making on the management of risk will be at a level proportionate to the risk and impact. This will include ensuring proper adherence to the legal framework including the principles of the Mental Capacity Act 2005.

## **9. Capacity, Consent and Decision Making**

**9.1.** A person must be assumed to have capacity unless it is established that on balance of probability, he/she lacks capacity. Capacity will be determined in line with the requirements of the Mental Capacity Act 2005. 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

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<sup>7</sup> Morgan, Steve. 'Positive Risk taking: an idea whose time has come', Health care Risk Report, Oct 2004

practice in dealing with decision-making and incapacity, and on the principle of best interests of the person who lacks capacity.

- 9.2.** An individual who has the mental capacity to make a decision and chooses voluntarily to live with a level of risk, is entitled to do so, although where the level of risk is very high, practitioner and managers must consider whether the Inherent Jurisdiction of the Court may apply. The law will treat that person as having consented to the risk and so there will be no breach of the duty of care by professionals or public authorities. Robust recording of considerations and decisions is critical in evidencing defensible decision-making.
- 9.3.** However, the local authority remains accountable for the proper use of its public funds, and whilst the individual is entitled to live with a degree of risk, the local authority is under no obligation to fund it. In very difficult cases, there will need to be a robust process whereby conflict about the acceptability of risk or otherwise can be properly debated and resolved.
- 9.4.** The Local Authority, as a provider or commissioner of services could, however, be exposed to litigation if they place people in a position of risk. There is an important distinction between putting people at risk and enabling them to choose to take reasonable risks.

## **10. Staff Competences and Performance Criteria**

The competences required to support positive risk taking will depend on the role and responsibilities of the workers including:

- Those responsible for direct delivery of social care will need to be able to identify risks to individuals / carers and ensure that individuals/ carers and managers are aware of these risks. All staff will also be expected to work within a risk management plan.
- Professionals (for example social workers, nurses, occupational therapists) and those with managerial responsibility will be responsible for risk assessment and agreeing a risk management plan.
- In order to support learning and development please refer to the relevant section of the HCPC code of conduct and standards. In addition, please also refer to the individual professional capabilities frameworks for Adult Social Care staff i.e. Social Workers, Occupational Therapists etc.

## **11. Risk Assessment and Identification**

**11.1.** People who use services (with support as appropriate and required) should consider potential risks before they occur. This should include identifying the probability of the risk occurring and the impact if it does. It should be remembered that the impact of a risk can be positive and that not all risks will require management.

**11.2.** Risk assessment practice is dynamic and flexible and should respond to change. Therefore, it will:

- Include the views of individuals and those of their families/carers which should have prominent focus in the assessment, identification and management of risk.
- Have a focus on a person's strengths to give a positive base from which to develop plans that will support positive risk-taking. The strengths and abilities of the person, their wider social and family networks, and the diverse support and advocacy services available to them should inform a balanced (and asset-based) approach.
- Be proportionate to the risk identified, potential impact and subject to ongoing monitoring and review.
- Where someone does not have capacity decisions should be made in their best interests.
- Where people's actions put others at risk this will be appropriately assessed and managed.

- Use the principles of multi-agency working in proportion to risk and the impact on self and others.
- Use a person-centred approach to assess, identify and manage risk.
- Ensure that staff have access to appropriate training to support them to promote positive risk taking.
- Ensure that written assessments identify a review date and include the signatures of everyone involved in the assessment.
- Include historical information which is of value in the assessment and management of risk. Historical information should not prejudice a positive approach to risk taking in the future.

## **12. Risk Management**

**12.1.** 'The goal is to manage risks in ways which improve the quality of life of the person, to promote their independence or to stop these deteriorating if possible. Not all risks can be managed or mitigated but some can be predicted.'<sup>8</sup>

**12.2.** Risk management entails a broad range of responses that are closely linked to the wider process of support planning. This may involve preventative, responsive and supportive measures to reduce the potential negative consequences of risk, and to promote the potential benefits of taking agreed risks. These will occasionally involve more restrictive measures and crisis responses where the identified risks have an increased potential for harmful outcomes.

**12.3.** Where someone does not have capacity decisions should be made in their best interests. Where people's actions put others at risk this will be appropriately assessed and managed.

**12.4.** Risk Management will include:

- Decisions that are negotiated and agreed between all parties and are clearly understood.
- Support plans that include contingency plans. The starting point of the contingency plan should be the views of the individuals.

## **13. Review**

**13.1.** Reviews take place to assess whether the care/support plan is working, to see what can be learnt from the process so far and to see if any changes can be made to improve outcomes for the individual. The level and frequency at which reviews happen should be proportionate to the risk identified. Reviews should always include the individual and with their consent, other interested parties.

**13.2.** As part of the review process any risks identified are reassessed and there is opportunity to identify any new risks. Any new risks should be assessed and managed in line with the risk management policy.

**13.3.** Staff/managers should keep a clear record of the review.

## **14. Record Keeping**

**14.1.** The recording of risk assessment and plans for risk management should be proportionate to the probability of the risk and the impact (or severity) of the risk. It should record any mitigating actions undertaken.

**14.2.** In a high risk scenario it is advisable to record the following information:

- Risk identified.
- Legislative framework followed (where a legislative issue is indicated).
- Record of advice and guidance sought.
- Record of meetings held with individuals, their carers, families, other agencies and other interested

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<sup>8</sup> Nothing Ventured, Nothing Gained: Risk Guidance for People with Dementia. Department of Health November 2010

- parties.
- Record of the views of all parties, including unresolved differences.
- Record of issues considered and rationale for plan development.
- Record of plan agreed including identification of lead responsibilities for all elements.
- Record of the sign off of the plan.
- Agreed arrangements for review.

## 15. Information Sharing

**15.1.** Information gathering and sharing is key to the assessment, identification and management of risk. The use and sharing of information will respect confidentiality and the principles outlined in the Data Protection Act and Caldicott guidelines and will be proportionate to the level of risk to be managed and to the circumstances of the individual.

<https://www.gov.uk/government/groups/uk-caldicott-guardian-council>

**15.2.** The Pan Berkshire Information Sharing protocol can be found at <http://www.sabberkshirwest.co.uk/media/1407/pan-berkshire-sab-information-sharing-protocol-v10.pdf>

**15.3.** Copy of risk management plans will be given to the individual/carer.

## 16. Identifying the correct framework to manage risk

**16.1.** Risk should be managed within the first instance through local Care Management procedures and/or Safeguarding Processes where appropriate. However, eligibility criteria and/or engagement of individuals may mean that the processes will be exhausted without a suitable risk management plan in place therefore it would be appropriate to consider the West of Berkshire Safeguarding Adults Board Multi Agency Risk Management Framework (MARM).

**16.2.** Details of the MARM Framework can be found [here](#).

## 17. Relevant Legislation in regards to Risk Management

<p><b>Duty of care</b></p> <p>A duty of care is established in common law in relation to all services. For an action to succeed in negligence there must be an identified duty of care. An action will only be successful where a duty of care is breached through negligent acts or omissions and where injury is suffered as a result.</p> <p>A duty of care is an obligation requiring that a reasonable standard of care is exercised when providing support (or omitting to provide support) that could foreseeably harm others. Councils, health bodies, private care providers and individual care staff owe a duty of care to individuals to whom they provide services.</p> <p>An individual with capacity may choose to take risks. In some circumstances, a court may decide that the individual consented to the risk, and therefore find that the duty of care will not have been breached. Providers and/or commissioners could, however, be exposed to litigation if they place people in a</p>	<p><b>The Care Act 2014</b></p> <p>Part 1 section 1 places a general duty on a local authority to promote the individual's well-being having regard to the following matters:</p> <ul style="list-style-type: none"> <li>• (3)(a) the importance of beginning with the assumption that the individual is best-placed to judge the individual's well-being;</li> <li>• (b) the individual's views, wishes, feelings and beliefs;</li> <li>• (c) the importance of preventing or delaying the development of needs for care and support or needs for support and the importance of reducing needs of either kind that already exist; the need to ensure that decisions about the individual are made having regard to all the individual's circumstances (and are not based only on the individual's age or appearance or any condition of the individual's or aspect of the individual's behavior which might lead others to make unjustified assumptions about the individual's well-being);</li> <li>• (d) the importance of the individual</li> </ul>
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<p>position of risk, there being an important distinction between putting people at risk and enabling them to choose to take reasonable risks.</p> <p><b>Human Rights</b> There is a duty on all public authorities and bodies carrying out functions of a public nature, not to act incompatibly with rights protected under the European Convention of Human Rights (ECHR) and this can extend to a positive duty to protect rights. This duty does not apply to private bodies, such as private care homes, when they are not exercising functions of a public nature.</p> <p>Article 8 of the ECHR concerns the right to respect for private and family life, home and correspondence. Article 8 is not an absolute right, but any interference with it must be justified and proportionate.</p> <p><b>Equality Act 2010</b> The Equality Act 2010 brings together all previous equality legislation and covers eight protected characteristics: age, disability, gender reassignment, pregnancy and maternity, race, religion, or belief, sex and sexual orientation. The Act includes a new separate public sector equality duty which is set out in s148.</p> <p><b>Mental capacity Act (MCA) 2005</b> The MCA has been in force since 2007 and applies to England and Wales. The primary purpose of the MCA is to promote and safeguard decision-making within a legal framework. It does this in two ways:</p> <ul style="list-style-type: none"> <li>• by empowering people to make decisions for themselves wherever possible, and by protecting people who lack capacity by providing a flexible framework that places individuals at the heart of the decision-making process.</li> <li>• by allowing people to plan ahead for a time in the future when they might lack the capacity, for any number of reasons, to make decisions for themselves.</li> </ul> <p><b>Making Safeguarding Personal (MSP)</b> Is an initiative which aims to develop a person-centred and outcomes focus to safeguarding work in supporting people to improve or resolve their circumstances.</p>	<p>participating as fully as possible in decisions relating to the exercise of the function concerned and being provided with the information and support necessary to enable the individual to participate;</p> <ul style="list-style-type: none"> <li>• (e) the importance of achieving a balance between the individual’s wellbeing and that of any friends or relatives who are involved in caring for the individual;</li> <li>• (f) the need to protect people from abuse and neglect;</li> <li>• (g) the need to ensure that any restriction on the individual’s rights or freedom of action that is involved in the exercise of the function is kept to the minimum necessary.</li> </ul> <p>Section 9(5) of the Care Act 2014 imposes a duty to involve the adult, any carer the adult has, any person whom the adult asks the authority to involve, or where the adult lacks capacity to ask the authority to involve, any person who appears to the authority to be interested in the adult’s welfare. Under section 9(6) English authorities must also consider whether and, if so, to what extent, matters other than the provision of care and support could contribute to the achievement of the outcomes the adult wishes to achieve.</p> <p><b>Health and Safety</b> There is a legal duty placed on all employers to ensure, as far as is reasonably practicable, the health, safety and welfare at work of all employees. In addition there is a duty to protect the health and safety of other people who use services. The Health and Safety Executive endorses a sensible approach to risk, so that health and safety legislation does not prevent reasonable activity.</p> <p><b>Public Interest</b> Decisions about what is in the public interest needs to be made by balancing the rights of the individual to privacy with the rights of others to protection.</p> <p><b>Vital Interest</b> A term used in the Data Protection Act 1998 to permit sharing of information ‘where it is critical to prevent serious harm or distress, or in life-threatening situations’.</p>
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