Managing Risk Positively

A Guide for Staff in Health and Social Care

Isle of Wight Council
Community Services and
Isle of Wight NHS
Primary Care Trust

Authors: Maurice Dix and Simon Smith

1 May 2009
Revised 2nd June 2009 – **1st Sept 2010**
Next Review: 1st Sept 2011

Health and Social Care services on the Isle of Wight should work with adults with a disability and older people to support them to…

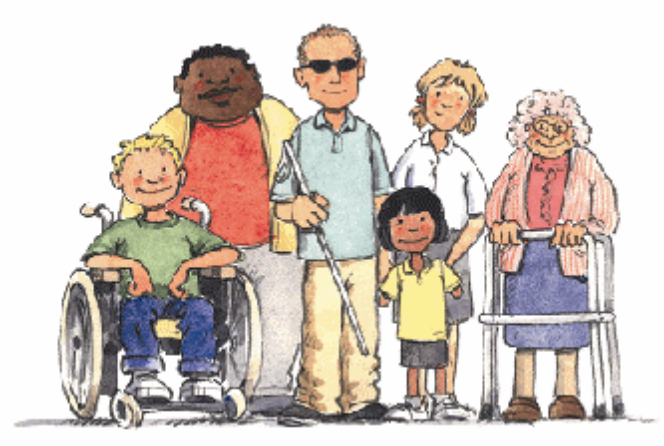
promote their independence

express their views

make use of opportunities

be informed

learn from experience



exercise choice

develop new skills

collaborate with others

make their own decisions

improve their life chances

change and grow in confidence

be aware of their rights and responsibilities

Contents

The authors acknowledge the contribution of the independent consultant Steve Morgan and Gateshead Council in the content and structure of this Guide. More information about managing risk positively can be found at the web site: www.practicebasedevidence.com

1. Policy Statement

1.1 This Guide has been developed to encourage staff in all services to actively explore with service users and their carers the potential benefits of managing risk positively. It aims to promote the effective identification, assessment and management of risk by Health and Social Care Support Services that can be supported through policy, procedures and practical tools. This complements existing clinical and operational risk assessment guidelines that already exist.

1.2 The aims and scope of the Guide are:

- To provide a coherent multi-agency framework which will establish a consistent approach to the processes of risk assessment, risk management and risk taking whatever the context and environment of care / support.

- To promote and support the safety and security of users of services, those who care for them and all those who may come into contact with them.

- To raise awareness of the role of risk assessment / management in the provision of evidence based care, which is meaningful to the individual and supportive to primary carers.

- To promote, and thereby support inclusive decision making as a collaborative and empowering process, which is fully attentive to the individual's perspective and to the views of the primary carers.

- To enable and support the positive management of risks where this is fully endorsed by the multi-disciplinary team as having positive outcomes.

- To promote and enhance safer working environments.

- To provide a shared theoretically sound basis for multi-agency training and for the monitoring and auditing of service responses.

- To promote the adoption by all staff of 'defensible decisions' rather than 'defensive decisions'.

1.3 Review of this Guide: The Guide will be reviewed annually. The next review will take place in September 2011.

2. Introduction

2.1 The saying "nothing ventured, nothing gained" makes the point that unless someone takes a risk and tries new activities, they will never know of the positive benefits that might result. In our society, people are encouraged to travel widely, take part in regular leisure and sporting activities, go to college, develop careers and have families. These are all activities that don't just happen, but mean people have to take risks to achieve their aspirations.

2.2 For many people taking risks is an accepted part of life. However people with a disability and older people are often discouraged from taking risks, either because of their perceived limitations or fear that they or others might be harmed.

2.3 Changes in society's attitude towards disability, social care and health policy now mean that people with a disability and older people are being actively encouraged to increase their independence in their daily activities and decisions about the services they receive. The focus is now more on enhancing people's abilities rather than concentrating on their disabilities.

2.4 "Historically, social care has been good at providing services that minimised risk. However, personalisation means that in the future Social Care (and Health Services) have to work towards providing choices rather than services."[1]

2.5 This Guide is concerned with setting out the approach that the Isle of Wight Council and PCT expect its staff to adopt towards the issue of risk when they work with adults with a disability and older people.

2.6 When implementing this Guide in day-to-day practice, the Isle of Wight Council and PCT recognise that any risk-taking approach must be balanced with their responsibilities in relation to safeguarding adults and children, care standards and health and safety legislation.

2.7 In addition, whilst this Guide will encourage the Council's leisure, sport and cultural services to work with social care services and their users around the issue of risk, it should not lead them to feel they have to individually risk assess every person who use their services outside of their duty of care towards all consumers. We recognise that to do so would be both impractical and potentially discriminatory. However there may be circumstances in which some services provided may need to assess the risk to an individual. They will explain their justification for

[1] *Safeguarding Adults: A consultation on the review of the "no secrets guidance"*: DoH / Dignity and Safety / Lucy Bonnerjea – 14 October 2008

this and do everything practical to enable the individual's inclusion in the activities in which they want to take part.

2.8 The Council and PCT's Services will also endeavour through their commissioning arrangements and Service Level Agreements to encourage the individuals, agencies and services it funds, or with which it contracts, to manage risks positively.

2.9 The Guide will support the Council and PCT to fulfil their responsibilities under the Disability Discrimination Acts 1995 and 2005 and the Mental Capacity Act 2005. The Mental Capacity Act 2005 and its Code of Practice provides a statutory framework for people who lack capacity to make decisions for themselves. The Guide supports the Human Rights Act 1998 as it empowers people make decisions for themselves where possible and places individuals at the heart of the decision making process.

2.10 The Local Authority and PCT owe a duty of care to all their service users. Any risk taking has potential legal implications in negligence. However, these can be minimised where there is a positive approach which generates a clear trail of written records showing the issues and solutions which have been considered, and there is an explicit and justifiable rationale for risk management decisions.

2.11 The fundamental principle of this Guide is that support is provided to individuals to enable them to receive personalised care / support that meets their needs regardless of their disability, age, gender, ethnicity, religion or sexuality. This also applies to people with a particular medical or psychiatric diagnosis. This support must exist within a framework of risk assessment and management that is collaborative, transparent and enabling.

3. What is risk?

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

3.2 A risk event can have harmful outcomes because of:

- risks associated with impairment or disability such as falls
- health conditions or mental health problems
- accidents, for example, whilst out in the community or at a social care / support 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
- self harm, neglect or thoughts of suicide.
- aggression and violence
- poor planning or service management

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

3.4 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.

3.5 Risk can be minimised by the support of others, who can be staff, family, friends, etc. However, in promoting independence, individual responsibility for taking risks must be a balance between safeguarding someone from harm and enabling them to lead a more independent life where they effectively manage risks themselves.

3.6 A balance therefore has to be achieved between the desire of people to do everyday activities with the duty of care owed by services and employers to their staff and to users of services, 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.

4. What is 'managing risk positively'?

4.1 'Managing risk positively' is: weighing up the potential benefits and harms of exercising one choice of action over another, identifying the potential risks involved, and developing plans and actions that reflect the positive potential and stated priorities of the service user. It involves using available resources and support to achieve the desired outcomes, and minimising the potential harmful outcomes. It is not negligent ignorance of the potential risks…it is usually a very carefully thought out strategy for managing a specific situation or set of circumstances." (Steve Morgan, 2004)[2]

4.2 For community based services, this means:

- empowering people
- working in partnership with adults who use services or direct their own support, family carers and advocates
- developing an understanding of the responsibilities of each party
- helping people to access opportunities and take worthwhile chances
- developing trusting working relationships
- helping adults who use services to learn from their experiences
- understanding the consequences of different actions
- making decisions based on all the choices available and accurate information
- being positive about potential risks
- understanding a person's strengths
- knowing what has worked or not in the past
- where problems have arisen, understanding why
- ensuring support and advocacy is available to all users of services, particularly if things begin to go wrong for someone
- sometimes tolerating supported short-term risks in consultation with the service user, for long-term gains

[2] Morgan, S. (2004). Positive risk-taking: an idea whose time has come. *Health Care Risk Report*, 10(10):18-19

- through regular reviews gradually withdrawing inappropriate services that create dependency

- having an understanding of the different perspectives of adults with disability and older people, family carers, practitioners, advocates and services

- developing person centred transition planning so that young people share the management of risks with their families, schools and practitioners / other professionals as they grow to adulthood

- ensuring staff use the guidance, procedures and risk assessment / management tools adopted by their Service and receive appropriate support and supervision from their immediate line manager and, provided all procedures are followed, staff will receive support from Senior Managers and the Council

- managers and staff will, where appropriate, assess service users' mental capacity and determine whether they are making a decision of their own free will.

5. Principles of Working with Risk

5.1 A number of important issues need to be considered by Community Based Services staff and service users when carrying out risk assessments and risk management:

a) The identification, assessment and management of risk should promote the independence and social inclusion of adults with disabilities, older people and people with health conditions and mental health problems.

b) Risks change as circumstances change and should be reviewed on a regular basis.

c) Risk can be minimised, but is unlikely to be eliminated.

d) Information used and recorded will be as comprehensive and accurate as possible.

e) Identification of risk carries a duty to do something about it, ie risk management.

f) Involvement of adults who use services, their families, advocates and practitioners from a range of services and organisations helps to improve the quality of risk assessments, risk management and decision-making.

g) 'Defensible' decisions are those based on clear reasoning, with due regard to appropriate legislation, policies and procedures. They demonstrate clear and precise record keeping and, where possible, signed consent.

h) Risk-taking should involve everybody working together to achieve positive outcomes.

i) Confidentiality is a right, but not an absolute right and may be breached in exceptional circumstances when people are deemed to be at serious risk of harm or it is in the public interest and only where the benefits of doing so, supported by meaningful safeguards, clearly outweigh the risks of negative effects.

j) Members of the PCT Board, Councillors and Senior Managers of Health and Social Care will support their staff in implementing a guide to managing risk positively. Where practitioners in health and social care have followed practice guidelines, their protection from liability and support from managers will be enhanced.

6. Framework for Positive Management of Risk – Identification, Assessment & Management of Risk and the Review of Incidents

6.1 A structured approach to the identification, assessment and management of risk and the review of incidents is essential as the total elimination of risk is unrealistic. It is vital that staff use the guidance, procedures and risk assessment / management tools that have been adopted by their service and seek clarification from their manager or supervisor if they are confused or unsure about what is expected of them.

6.2 Information Sharing

6.2.1 Information gathering and sharing is important. It is not just an essential part of risk assessment and management, but also key to identifying a risk in the first place. However, the use and sharing of information must respect the principles outlined in the Data Protection Act 1998. When collecting new data or information, it is important to tell the person or family affected the purpose of the data collection, why information gathering is necessary and with whom it will be shared.

6.2.2 Information will only be shared in accordance with relevant information sharing protocols.

6.2.3 Numerous methods can be used to gather information:

- Access to past records
- Self-reports during assessment or reviews
- Reports from significant others **e.g. carers, relatives or friends, other team members / other teams, advocates, other statutory or voluntary agencies or the police, probation services or courts, or external companies providing services.**
- Observing discrepancies between verbal and non-verbal cues
- Rating scales or other actuarial methods
- Clinical judgement based on **evidence based** practice
- Predictive indicators derived from proven and evidence based research

6.2.4 Because decisions may need to be defended, during the identification, assessment and management of risk, practitioners must ensure that

information shared or gathered is properly recorded to be able to evidence:

- Formulation of a logical, informed opinion as to the severity of risk.
- Organisation of discussions with the adult, their family and any health, social care, advocacy or independent sector professional involved.
- Inclusion of the adult and their family, where appropriate, in decision-making.
- Identification of conflicting opinions and interests.
- Clarification of lines of accountability.
- Justification of actions.

6.3 Risk Identification

6.3.1 Identification of a risk should involve a balanced approach, which looks at what is and is not an acceptable risk. It should be a view based on the aspirations of an adult with a disability or older person that aims to support them to get the best out of life. The views of adults who use services, their families or advocates are equally as important as those of practitioners.

6.3.2 Not every situation or activity will entail a risk that needs to be assessed or managed. The risk may be minimal and no greater for the young person or adult concerned than it would be for any other person. For example, if a person with a learning disability who lives in residential care is used to travelling independently, taking a train trip to London where their family meets them might not necessarily entail a risk that needs to be assessed or managed. A parent with a disability with a dependent child might face the same risks as those faced by any other parent; therefore the involvement of Council staff might be inappropriate or even discriminatory.

6.4 Risk Assessment

6.4.1 Risk assessment involves the activity of collecting information through observation, communication and investigation. It is an ongoing process that involves considerable persistence and skill to assemble and manage relevant information in ways that become meaningful for the users of services (and significant other people) as well as the practitioners involved in delivering services and support.

6.4.2 To be effective it needs adults with a disability and older people, their families, carers, advocates and practitioners to interact and talk to each other about making a judgement on any potential harm and measures to reduce this. This should inform decisions that must be taken and their appropriateness in the light of experience.

6.4.3 Where a risk assessment is needed, a decision then has to be taken about whether or not positive risk management is necessary to achieve certain outcomes for the person concerned. It will not always be appropriate to take positive risks but this has to be determined in partnership with the person affected and their family where appropriate. It is a professional judgement that should not be influenced by an overly cautious or paternalistic approach to risk. At the same time managing risk positively does not mean ignoring the potential risks as doing this may lead to a negative outcome.

6.4.4 During risk assessment the following should be considered:

- Adults with a disability or older people should not simply be seen as the source of risk – their view of risk and that of their families and carers have a prominent place in the identification, assessment and management of risk.

- When gathering information from adults or family carers all staff need to emphasise the importance of information that is both accurate and identifies any concerns or issues that may increase the probability of a damaging event occurring.

- There should be a focus on a person's "strengths" to give a positive base from which to develop plans that will support positive management of risk. Consideration should be given to the strengths and abilities of the adult, their wider social and family networks, and the diverse support and advocacy services available to them.

- A Person Centred Approach should be used to identify, assess and manage risk. This depends on the willingness of practitioners to work in this way and for some this may present a challenge to traditional ways of working.

- 'Managing risk positively' may sometimes need to distinguish between the short-term, and long-term position. Short term heightened risk, for example after hospital discharge, may need to be tolerated and managed for longer term positive gains.

- Taking risks can give people confidence and better enables them to manage their involvement in community activities.

- An assessment and subsequent Risk Management Plan needs to be clear if it is to protect the individual or others.

- Every individual or agency directly affected should be involved in the development of a positive risk management plan that agrees the approach to risk, who identifies the risk and how identified risks will be managed. Consensus helps to support the positive management of risk and promotes a person centred response.

- Each assessment should identify a review date and include the signatures of everyone involved in the assessment.

- If anyone involved in the care / support plan or the provision of support does not agree with the assessment they should be asked to document their concerns and reasons.

- The influence of historical information in any assessment should be concerned with understanding what happened if risk taking resulted in harm. The stigma of the events themselves should not affect the decision making.

- Transition planning for children who become adults needs to start in good time for them to manage well the choices that open up for them when they become adults.

6.5 Risk Management (See also Risk Management Tool in Appendix 5)

6.5.1 Risk management is the activity of exercising a duty of care where risks and potential benefits are identified. It entails a broad range of responses that are often linked closely to the wider process of care planning. The activities may involve preventative, responsive and supportive measures to reduce the potential negative consequences of risk and to promote the potential benefits of taking appropriate risks. This will also include the clear identification of which agency or individual is responsible for monitoring these risks and communicating effectively variations that may impact on the individual. These will occasionally involve more restrictive measures and crisis responses where the identified risks have an increased potential for harmful outcomes.

6.5.2 When carrying out risk management, the following must be considered:

- Decision making in relation to risk must be clearly evidenced on relevant documentation.

- Managers / supervisors have a key role in the successful application of the Guide to Managing Risk Positively. They have a responsibility to ensure that their approach to supervision is conducive to supporting practitioners in risk related decisions and the ongoing management of risk.

- High quality practice / clinical supervision and support are essential to provide an opportunity to discuss concerns and refine ideas, as well as review the progress of the implementation of risk assessments.

- Managers / supervisors need to recognise that there is joint accountability / ownership for risk decisions. Practitioners and service users need to know that support is available if things begin to go wrong.

- Risk taking is further enhanced by limiting the duration of the decision i.e. working to shorter timescales and with smaller goals broken down. This is supported by having mechanisms in place to check on progress by neighbours, family members, providers, carers and other agencies reporting back concerns that may arise to the nominated lead agency.

- Risk management should become part of a practitioner's ongoing work with an adult and outcomes should be reflected in people's case notes where appropriate.

- Individual practitioners can reasonably be expected to accept responsibility for the professional standards of conduct set out by their professional body. **It is the collective responsibility of all participants, including service users, to share information, make decisions and plan intervention.**

- Issues of confidentiality need to be considered proportionately by practitioners, officers and their managers / supervisors to ensure client and public safety. Information sharing needs to be part of the decision making process with regard to appropriate disclosure.

- This approach supports the recognition of an individual's right to make informed decisions about the care or support they receive. It recognises the concept of empowerment when working with vulnerable people.

- The rights of adult users of services and family carers to make decisions are acknowledged. In certain circumstances these can be overruled, particularly when evidence suggested that the individual is

lacking in 'Mental Capacity' in relation to a specific decision. (See appendix 4)

- Where this happens, practitioners should refer to guidance on best practice in dealing with decision-making and incapacity and on the principle of "best interests" of the person who lacks capacity.

- The assessment and management of risk should be, as far as possible, a multi-disciplinary exercise.

- Positive risk management needs to be underpinned by widely shared and updated contingency planning for any anticipated adverse eventualities. This will include warning signs that indicate risks are increasing and the point at which they become unacceptable will trigger a review of the management plan. This will help to prevent some harmful outcomes and minimise others. Risk taking should be pursued in a context of promoting opportunities and safety not negligence. Therefore adult users of services, their families and practitioners should be encouraged to think about contingencies as part of their day to day practice and recording.

- Where people are behaving in a way that may compromise their welfare, risk management may include the setting of explicit boundaries to contain situations that are developing into potentially dangerous circumstances for all involved. If a person or their carer makes a decision to continue behaviour that is hazardous the processes described in Appendix 2 (Defensible Decisions) should be followed. If any member of staff is put at risk by this decision, any support service being provided will be reviewed to ensure that its delivery guarantees the safety of any worker involved.

- Positive risk management in Case Management should be ingrained into the working culture and be reflected in team procedures and in the content of all training. This should underpin all Health and Social Care practice.

- Examples of cases where there has been appropriate risk management and one case where there has not can be seen at Appendix 6.

6.6 Review of Incidents

6.6.1 In the context of this Guide, an incident is when an event occurs that results in physical, emotional or psychological harm to an adult who is receiving services, or another person as a consequence of the actions or behaviour of that adult, practitioner or a member of the public.

6.6.2 When positive risk management has a negative consequence, it is necessary to identify what has gone wrong and how the assessment and management of the risk contributed to this. The Council and Health services recognise that the point at which a risk becomes an incident may be traumatic for practitioners, as well as everyone else involved. It is important for all managers involved to support practitioners and officers after an incident that could have a negative impact on morale within a service and, when appropriate, to offer staff any counselling support that is available.

6.6.3 In situations where **incidents of serious concern** occur that involve Council and Health staff or users of services, the following steps will be taken:

1. A Safeguarding Adults referral will be made to the Day Time Duty Service or Emergency Duty (out of hours) if appropriate.

2. Appropriate managers will be notified as soon as is reasonably practicable after an incident has occurred.

3. An appropriate manager will consider the application of the Isle of Wight Multi Agency Safeguarding Adult procedures (see References). This may include the need to initiate a Serious Case Review.

Appendix 1 – Underlying principles

Person-Centred Planning

An approach based on the principles of rights, independence, choice and inclusion used to help people work out what they want to do with their lives, and then determine how services and support in the wider community can holistically provide for the needs of the individual so that they are supported to achieve their aspirations. It is accepted that both an individual's priorities and aspirations, and the services they need to fulfil these can and will change. As such, planning is a continual process.

The key features of person-centred planning are:

- The person is at the centre and is in control
- Family members and friends are partners, where appropriate
- Planning reflects a person's capacities and what is important to them, and identifies the support they need to be full citizens.
- Planning builds a shared commitment to action that upholds a person's rights.
- Planning is underpinned by ongoing listening, learning and further action which helps the person to achieve what they want out of life.

Medical Model of Disability

An approach to disability that says people with disability (because of their impaired body, mind or learning ability) are unable to do everyday activities that people without a disability can take for granted. The consequence of this approach is that the emphasis placed on the individual's ability to adapt, with the support of appropriate treatment and services, to the world around them. Wider society may also limit its expectations for people with a disability.

Social Model of Disability

An approach to disability explains the disadvantage and inequalities experienced by people with disability are not caused by their impaired body, mind or learning ability but by the society in which they live. The way in which buildings and transport are designed, education, hospitals, councils and government are run, or how people think about disability, can create barriers and lead to discrimination, exclusion and prejudice. The consequence of this approach is the emphasis on the need to listen to people, remove physical barriers to buildings and wider society, change attitudes and expectations, and use the law to stop disability discrimination.

Appendix 2 - Defensible Decisions

The decision making involved in the assessment of risk and its management is generally effective in avoiding harmful situations from arising. However if harm occurs to an adult with disabilities or older person or other vulnerable person, any practitioners, officers or agencies involved in the assessment or management of risk will need to defend the decisions they made and their reasoning. This Guide is about moving away from defensive decisions, which historically have focussed on avoiding risk, and towards defensible decisions.

A defensible decision is one where:

- All reasonable steps have been taken to avoid harm.
- A person's mental capacity has been taken into consideration and guided by the Mental Capacity Act Code of Practice.
- Reliable assessment methods have been used and information has been collected and thoroughly evaluated.
- Decisions are recorded succinctly and in line with the agencies' recording policy, and decisions and related actions are communicated to all relevant parties with outcomes reported back to the lead agency.
- Practitioners and their managers adopt an approach that is proactive, investigative and holistic, taking into account all aspects of the individual and the wider family and any risks.
- All appropriate services are arranged to mitigate identified risk and meet the assessed needs of the individual concerned as far as that person, with capacity to do so, is prepared to accept such services.
- Any occurrence of a risk event subsequently will require a review of the plan in relation to that risk.
- Policies and procedures have been followed and due adherence to statute and government and professional guidance is maintained.

"Ultimately, the local authority has a statutory duty of care and a responsibility not to agree to support a care plan if there are serious concerns that it will not meet an individual's needs or if it places an individual in a dangerous situation."[3]

[3] Department of Health (May 2007): *Independence, choice and risk: a guide to best practice in supported decision making*

Appendix 3 - Professional Competency

For a practitioner, empowering a person to decide the level of risk they are prepared to take with their health and safety involves working with the tension between promoting safety and positive risk management.

In order to practise in this way the practitioner concerned should be able, where appropriate, to:

- Recognise indicators that meet the criteria for referral for Safeguarding assessments.
- Maintain constructive working relationships with users of services and carers, particularly with those who may not wish to engage with services.
- Promote an understanding of the factors associated with risk of harm to any party through violence, self-neglect, self-harm, suicide or hate-crime.
- Demonstrate the ability to inform adults with a disability, older people, and family carers about the role, function and limitations of support services in promoting safety and managing risk of harm.
- Contribute to accurate and effective risk assessments; identify specific risk factors of relevance to the individual, their family, their carers and the wider community.
- Contribute to the development of risk management strategies and plans that clearly identify the agreed actions to be taken and the goals to be achieved.
- Contribute to the safe and effective management and reduction of any identified risks.
- Develop knowledge and understanding of national and local policies and procedures for minimising risk and managing harm to self and others.
- Understand the importance of multi-agency and multidisciplinary working in promoting safety and positive risk management.
- Have an awareness of the available spectrum of individual and service responses to help manage crises and minimise risks as they happen. In addition, to contribute to intervention with the expressed goal of managing a person's risk behaviours in the long term.

Appendix 4 - Legislation and Legal Principles

When approaching the identification, assessment and management of risk, a knowledge of key legal principles and legislation will help practitioners to make informed decisions that promote both the involvement and interests of adults with a disability and older people, and their families. It will also support and promote best practice for professional staff involved in supporting positive risk management. An understanding of the following legislation and legal principles is important. However, where there is doubt about legal issues, expert advice should always be sought by services from the Council's Legal Services.

Human Rights

These are rights and freedom to which every human being is entitled. The Human Rights Act 1998 brought the European Convention on Human Rights into domestic law for the whole of the UK on 2 October 2000. The Act:

- Makes it clear that as far as possible United Kingdom courts should interpret the law in a way that is compatible with Convention rights.

- Places an obligation on public authorities, including local authorities, to act compatibly with Convention rights, ie Council staff need to be aware of the human rights of those adults to whom they provide support.

- Gives people the right to take court proceedings if they think that their Convention rights have been breached or are going to be.

Of the 13 Convention rights included in the Act, the following are of particular concern to Council staff who work with adults with a disability and older people:

- the right to liberty and security
- the right to respect for private and family life
- the right to freedom of thought, conscience and religion
- the right to freedom of expression
- the right to marry and found a family
- the prohibition of discrimination.

Disability Rights

During the past 20 years, a legal framework has developed in Britain to protect those affected by disability discrimination. The Disability Discrimination Acts 1995 and 2005 give people with a disability rights in the areas of: employment; education; transport; access to goods, facilities and services and the buying or renting of land or property.

People protected by these Acts should not be treated less favourably than able bodied people when accessing goods or services. Reasonable adjustments also have to be made to access workplaces and the way services are delivered. The 2005 Act extended these rights by requiring public bodies such as councils, schools, and health services to promote equality of opportunity for people with a disability.

In the area of education, the Special Educational Needs and Disability Act 2001 established legal rights for students with disability in pre- and post-16 education. The Act introduced the right for students with disability not to be discriminated against in education, training and any services provided wholly or mainly for students. Student services covered by the Act can include a wide range of educational and non-educational services, such as field trips, examinations and assessments, short courses, arrangements for work placements and libraries and learning resources.

Mental Capacity

The Mental Capacity Act 2005, which came into force on 1 April 2007, provides a statutory framework to empower and protect vulnerable people who are not able to make their own decisions. It makes it clear who can take decisions, in which situations, and how they should go about this. It enables people to plan ahead for a time when they may lose capacity. The whole Act is underpinned by five key legal principles:

- A presumption of capacity - every adult has the right to make his or her own decisions and must be assumed to have capacity to do so unless it is proved otherwise;

- The right for individuals to be supported to make their own decisions - people must be given all appropriate help before anyone concludes that they cannot make their own decisions;

- That individuals must retain the right to make what might be seen as eccentric or unwise decisions;

- Best interests – anything done for or on behalf of people without capacity must be in their best interests; and

- Least restrictive intervention – anything done for or on behalf of people without capacity should be the least restrictive of their basic rights and freedoms.

See References: Mental Capacity Act Code of Practice.

Data Protection

The Data Protection Act 1998 governs the management of personal information held by organisations. The Council and Health services must ensure that all processing of personal information complies with the eight Data Protection principles, which state that personal data shall be:

1. Processed fairly and lawfully.
2. Obtained only for specified lawful purpose.
3. Be adequate, relevant and not excessive.
4. Accurate and kept up to date.
5. Not be kept for longer than necessary.
6. Processed in accordance with the rights of data subjects.
7. Protected against unauthorised or unlawful processing of data and against accidental loss, damage, or destruction of data.
8. Transferred within the terms of the Data Exchange Agreement.

Information shall only be shared with those who have a legal right to access it and in accordance with relevant information sharing protocols / data exchange agreements. Every effort should be made to ensure that confidentiality is maintained for all concerned both when an allegation is made and whilst it is being investigated. It is of the utmost importance that all documentation is marked CONFIDENTIAL - NOT TO BE DISCLOSED WITHOUT CONSENT. **Effective Safeguarding remains the highest priority.**

Duty of Care

This is a requirement that a person acts towards others and the public with the watchfulness, attention, caution and prudence that a reasonable person in the circumstances would use. If a person's actions do not meet this standard of care, then their actions may be considered negligent, and any damages resulting may be claimed in a lawsuit for negligence. Professional workers owe a specific duty of care to all vulnerable people with whom they work. The standard of conduct and behaviour expected of people in their professional role is higher than for other people because of the professional training they have received and the level of responsibility they assume.

Negligence

Negligence is carelessness amounting to the culpable breach of a duty, ie failure to do something that a reasonable person (ie an average citizen in that same situation) would do, or doing something that a reasonable person would not do.

In cases of professional negligence, involving someone with a special skill, that person is expected to show the skill of an average member of his or her profession.

Safety at Work

Every employer has a common-law duty to take reasonable care for their employees' health, safety, and welfare at work, and must insure against their liability for employees' injuries and diseases sustained or contracted at work. The Health and Safety at Work Act 1974 further requires employers to ensure, as far as is reasonably practicable, that their working methods, equipment, premises, and environment are safe and to give such training, information, and supervision that will ensure their employees' health and safety. Employers will need to put in place measures to identify risks to their staff working in the community and to provide Lone Working procedures. Employees also have a duty to take reasonable care for their own health and safety, for example by complying with safety regulations and using protective equipment supplied to them.

Appendix 5 – Risk Enablement Panel & Risk Management Tool

Risk Enablement Panel

Underpinning philosophy

Risk is a part of everyday life, it is inherent in everything we do, often it is the element that allows us to grow and learn and it is against this backdrop the following policy has been developed.

The development of self directed support and personal budgets closely highlight the need to manage risk effectively: it needs to strike a balance between empowering individuals and protecting vulnerable people. **However this should not be confused with the Safeguarding process** It is a process that has to promote the rights of individuals and the interests of the Local Authority i.e. reduce the risk of litigation and negative publicity.

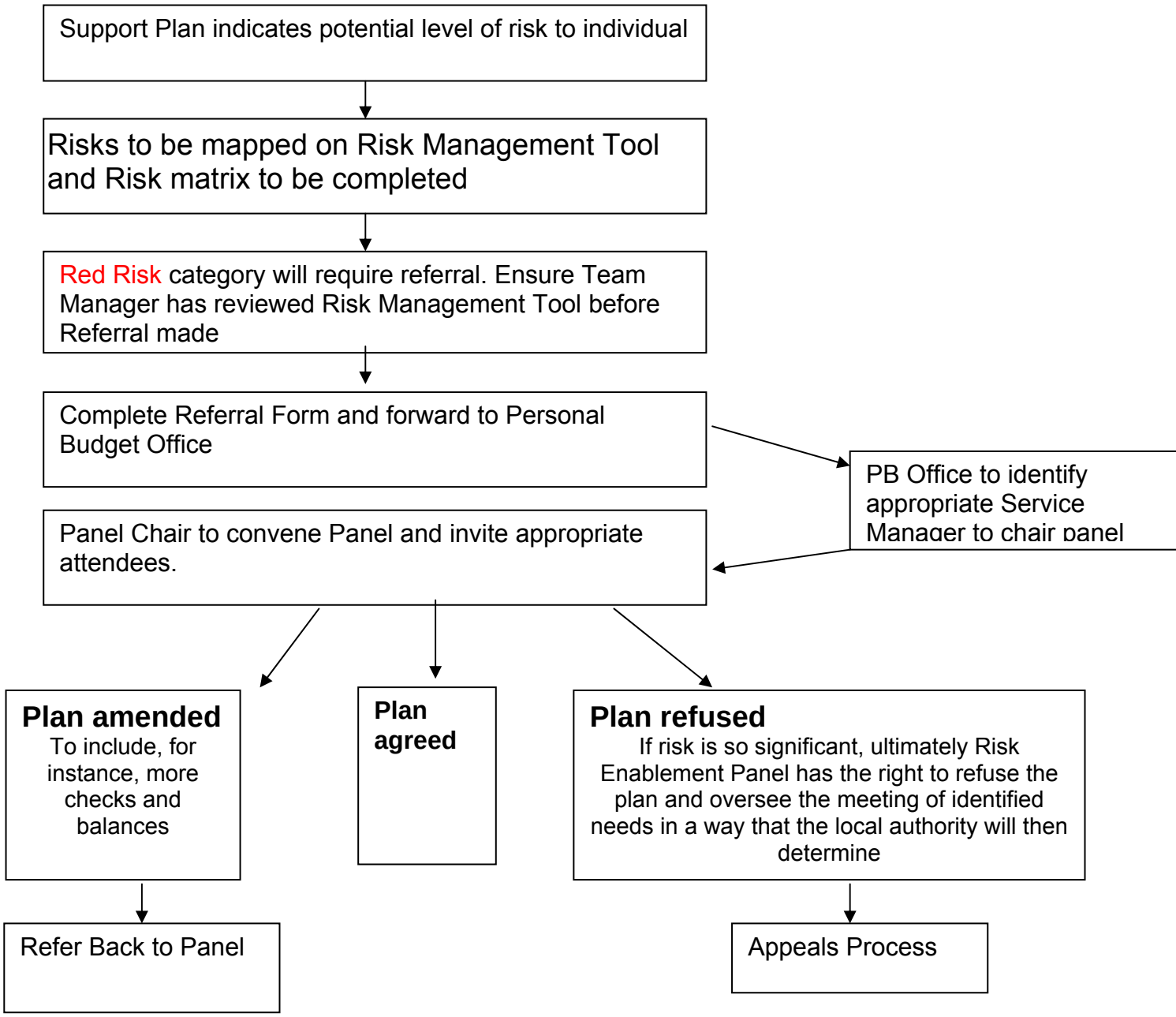
Empowerment and choice are the fundamental principles. It is essential that:

- the person is at the centre (Person Centred Approach - PCA).
- they have real choices over how they live their lives, with opportunities to do things in the way that they choose.
- there is a means of taking account of all views, individual's/family members, staff etc.
- that alongside of rights goes responsibility.

It is based on the belief that shared decision making is the most effective, transparent and safe way to reach a decision: the best decision that could be made at the time based on the information available at that time.

The panel is designed to be a safe and supportive environment for both the individual and staff alike. It seeks to find positive solutions and outcomes and closely demonstrates that no one individual is left to make a difficult decision and the Local Authority can demonstrate it has fulfilled its duty of care.

Making a Referral to the Risk Enablement Panel



Appeals Process

Where there is a disagreement there will be the ultimate right of appeal to the Head of Service. Appeals should be put in writing (or recorded on DVD if more appropriate) within two weeks of a decision being given.

The Risk Enablement Panel will consist of a core team but will be able to invite other relevant others if appropriate.

Chair of Panel - Service Manager

Other members: - Minute taker

- Plus if necessary staff from relevant service area, either in house or external provider.
- Team Manager
- Care manager/social worker (it is expected that workers will have discussed the situation prior to an application to Risk Enablement Panel)
- Family member or
- Person themselves (optional – if the person/family wants to attend, alternatively they can submit evidence in the format of their choice

And if required:

- Advocate/Broker
- Safeguarding service member
- PCT (Primary Care Trust) representative
- Mental Capacity Act Lead
- Legal Services
- Risk Office

It is essential that the process is well documented, with outcomes and actions demonstrably followed up. Particularly, issues of consent must be recorded.

The Panel chair must have knowledge of (and may need to refer to) the Mental Capacity Act, Mental Health Act, Human Rights Act and other legislative frameworks as appropriate.

Who can refer to Panel

1. The Funding Panel – if the support plan does not satisfy basic principles.

2. An individual service/care provider – who wants the support of the local authority and recognises the need to work in partnership.

3. If there is a disagreement between staff members/teams for arbitration or resolution.

The Panel will also support the process of advanced directive and record the decision so as to ensure the wishes of the individual will be acted upon.

It is envisaged that with this approach it will support individuals to have their care and support in the way they choose. In effect, it will support the option to 'get a life' whilst demonstrating a clear, decision making framework that fulfils the Local Authority requirement to work within the law.

Terms of Reference
Risk Enablement Panel

1. Title

The group will be known as the Risk Enablement Panel.

2. Status of Panel

The panel will be responsible for supporting care managers and individuals to make decisions about positive risk management as part of their Personal Budget, as well as offering a mechanism for being the decision making body for those activities which fall into the red risk category when using the Risk Matrix.

The group will only meet as and when necessary as a result of a particular request (either by a care manager, team manager or a service user) in relation to positive risk management.

It has not been established to respond to safeguarding issues – this is the remit of the Safeguarding Service.

3. Proposed Group membership

Core:
Service Manager (Chair)
Minute taker
Staff from relevant service area (either in-house or external provider)
Care manager/social worker
Team Manager
Service user/family member (alternatively, they can submit evidence in the format of their choice)

If required:
Advocate/broker
Safeguarding service member
PCT (Primary Care Trust) representative
Mental Capacity Act lead
Legal Services
Risk Services

4. Purpose and Role of the Group

The Risk Enablement Panel will, on behalf of the Directorate, do the following:

- Demonstrate that the Local Authority has fulfilled its Duty of Care.
- Empower both individuals and employees to make informed, positive decisions about the management of risks resulting in a less risk-averse culture.
- Ensure decisions will be made on the basis of defensible decision making rather than defensive decision making.
- Support care managers/social workers in making decisions about those activities which fall into the red risk category when using the Risk Matrix.
- Provide an additional mechanism to support service users to make decisions about positive risk management.
- Provide a mechanism to allow the sign-off of a risk management plan where those staff involved feel that a higher level of authority is needed.

5. Meeting Arrangements and Conduct

- Panel meetings will be held when requested to do following the agreed process.
- Members of the Panel will act fairly for both the Isle of Wight Council and the service user.

6. Chair

The chair of the group will be a Service Manager. The chair will:

- Convene the meetings.
- Lead the meetings.
- Report back to the TASC Delivery Board on the types of issues taken to the Panel and decisions made.

7. Reporting Mechanisms

The group will feedback to the TASC Delivery Board on the number occasions it has met and outline the cases/risks discussed, as well as the outcomes agreed.

9. Consultation

The group will acknowledge that some of its decisions may require consultation with other Council departments and will seek to undertake such consultation when required.

REFERRAL TO RISK ENABLEMENT PANEL

Name of Client

Swift/ID Number

Care Manager

Team Manager

Brief Description of Activity

Risk Management Tool must be attached

Reason for referral:

☐ Unable to make decision

☐ Support Required to make decision

☐ At Clients request

Signed:

Care Manager

Team Manager

DECISION BY PANEL

☐ Plan agreed

☐ Plan Refused

☐ Plan amended

Amendments/Recommendations

Signed

Panel Chair Client

APPEAL

Date of Appeal

Outcome

Risk Prioritisation Matrix

Likelihood/Probability

4 V likely	**7**	**11**	**14**	**16**
3 Likely	**4**	**8**	**12**	**15**
2 Unlikely	**2**	**5**	**9**	**13**
1 Remote	**1**	**3**	**6**	**10**
Scale	**1 Low**	**2 Medium**	**3 High**	**4 Major**

Impact/Severity

Green – Care Manager decision
Amber – Team Manager decision
Red- Risk Enablement Panel

Likelihood/Probability criteria

FACTOR	SCALE	THREATS- DESCRIPTION	INDICATORS
Very likely	4	More than 75% chance of occurrence	Regular occurrence Circumstances frequently encountered- daily/weekly/monthly
Likely	3	40% - 75% chance of occurrence	Likely to happen at some point within the next 1-2 years Circumstances occasionally encountered (few times a year)
Unlikely	2	10% - 40% chance of occurrence	Only likely to happen within 3 or more years
Remote	1	Less than 10% chance of occurrence	Has happened rarely/never before

Impact/Severity Criteria

Factor	Scale	Personal Safety
Major	4	Death of an individual or several people
High	3	Major injury to an individual or several People
Medium	2	Severe injury to an individual or several people
Low	1	Minor injury or discomfort to an individual or several people

Risk Management Tool

This should be read in conjunction with Managing Risk Positively – a Guide for staff in Health and Social Care; in particular the guidance contained in Appendix 2, Defensible Decision Making.

This tool should be used whenever a service user's wishes to have their needs met in a way that, in the view of the Care Manager, may put them at risk. The aim of this tool is to ensure that all aspects of this risk are considered and balanced, wherever possible, with protective factors to mitigate these aspects and clear criteria and responsibilities are defined to ensure effective management of the risks / dangers. This contributes to 'defensible decision making' and is required prior to presentation to the Risk Panel.

Definitions, with examples, in this case the example of a service user wishing to buy a bicycle to visit family:

Danger (feared outcome) might be death or physical injury due to a road accident.

Hazard, i.e. an action that "increases the probability of the undesirable outcome", in this case falling from the bike, pulling into a junction without looking etc.

Many dangers have "predisposing" and "situational" hazards. In this example alcohol consumption might be seen as a predisposing (or primary) hazard but other situational (secondary) hazards should also be taken into account. For example, it might have been noted that this service user is always offered alcohol by a particular family member, X, and this would be seen as a situational hazard in that it has the potential to trigger the predisposing hazard and thus increase the probability of the **Danger.** Whilst not always present, many **Hazards** are balanced by:

Protective Factors. These can act as 'buffers' that prevent the hazard realising its potential to bring about the feared outcome. For example, the service user can be trained in road safety, be expected to wear full safety equipment and warned about the dangers of alcohol. The secondary hazard might be addressed by the potential 'Protective Factor' of the service user either not cycling to the family member X or gaining assurance from the latter that they will not offer alcohol.

Signals are events (including communications) that indicate that a **Hazard** has increased and/or a **Protective Factor** has decreased, i.e. the balance between Protective Factors and Hazards has changed for the worse. Signals may also indicate a change for the better, e.g. the service user may join a cycling club to increase his proficiency and have models of safe riding.

Detection specifies who will detect these signals and in what context they will have the opportunity to do so; e.g. a carer detects that the service user appears to have had alcohol on his return from family member X or is seen cycling without wearing a helmet.

Action predefines precisely what actions the person / agency that detects these signals will take in response to the increased risk; e.g. the carer will prevent immediate further use of the cycle and inform named individuals.

Simon Smith
Senior Manager, Service Delivery, IW Community Services Directorate
simon.smith@iow.gov.uk July 2010

RISK MANAGEMENT TOOL REF: …….. DANGER: ……				
HAZARDS	**PROTECTIVE FACTORS**	**SIGNALS**	**DETECTION**	**ACTIONS**

There may exist in any case more than one danger, or feared outcome. A Risk Management Tool should be completed for each danger and distributed to all parties. Secondary (situational) hazards should be stated (marked secondary) and planned for in the monitoring process.
REVIEW PERIOD: …….. IMMEDIATELY, AFTER ANY SIGNIFICANT EVENT.

Simon Smith - July 2010

Appendix 6 – Illustrative case studies

The following are illustrative cases (based on real life case stories) taken from the DoH publication "Independence, choice and risk: a guide to best practice in supported decision making"

a) A person chooses to undertake risky activities

Mr L is physically disabled. He lives in sheltered housing and has support from care workers both to help him manage his home and to help him get up in the morning, bathe, prepare meals and go to bed. He goes out twice a week with a care assistant and enjoys playing bowls, but he would like to do something more active. Mr L has always wanted to ski and has heard about 'sitski', enabling disabled people to ski; he wants to try it.

There is a risk of injury if Mr L is supported to access sitski. If this risk is explained to Mr L and he understands and accepts the degree of risk and if he remains enthusiastic and makes it clear that he still wishes to go with his care worker perhaps to try out a dry ski run, he should be supported to do so. Provided he makes an informed decision and his assessed needs are met in terms of support, he is consenting to the risk and no liability will arise if he injures himself in a skiing accident. His disability does not place him in a different position from a person without a disability who chooses to engage in extreme sports and suffers an injury as a result. If there is no negligence on the part of professionals, then the duty of care has not been breached.

b) Putting people into risky situations

Ms P has a learning disability. After leaving residential college, she returned to her parental home. Ms P wanted to live independently and her parents supported her wishes, subject to appropriate support being available to minimise her risk of exploitation and harm. Ms P now lives in a bed-sit. She is assessed as needing support on a daily basis to ensure that she does not become isolated and to help her develop strategies to reduce risk of exploitation and harm. Ms P's care plan includes a review in four weeks, as her parents are nervous about her exposure to risk and would like the situation monitored sooner rather than later. The review does not take place, despite requests from the family who express their concern that Ms P has become withdrawn and isolated and that the paid carer support has, in reality, been only intermittent. Ms P's mother subsequently discovers that her daughter has been befriended by a neighbour who, it transpires, has been sexually abusing her.

In this situation, the council risks litigation or an adverse finding by the Local

Government Ombudsman. This is because they did not respond to the concerns expressed by Ms P's mother or carry out the timely review they had agreed to do. The council was alerted to the risk and did not act.

c) Using Assistive Technology to Minimise Risk

Mr E, 81, has dementia. He is living at home supported by his wife. At night, Mrs E sleeps separately, as her husband frequently gets in and out of bed to look out of the window and check if it is day or night. He is prone to falling and therefore causes her great concern. Both Mr E and his wife want him to continue to live at home, with her supporting him. Neither wants strangers in the house to help. However, if the situation continues, Mrs E's health will deteriorate and she may not be able to continue to care for Mr E. This means he may need to move into residential care.

An assessment carried out by a psychologist established that Mr E's level of dementia and cognitive disability meant that he could still read, appreciate the pattern of letters and make sense of the words. The psychologist referred Mr E to an occupational therapist who completed a full assessment of his environment and his independent living needs, and was able to arrange for assistive technology to support him to remain independent. Mr E was provided with an electronic calendar which displays whether it is morning, afternoon, evening or night time. Now when Mr E wakes it is often enough for him to look at the clock and when it shows it is night he knows he should not get up and disturb his wife.

Mr E was also provided with a pressure mat with a portable linked doorbell facility. The pressure mat is placed by his bed and the doorbell peripheral is placed with MrsE in her bedroom- when Mr E steps on it the doorbell sounds.

References

- Isle of Wight Safeguarding Adults Policy – 2007 (on Isle of Wight Council Intranet - Library policy and procedures)

- Mental Capacity Act 2005 Code of Practice (Office of the Public Guardian - http://www.publicguardian.gov.uk/mca/mca.htm)

- Isle of Wight and Pan-Hampshire Child Safeguarding procedures 2007 (http://www.4lscb.org.uk)

- Independence, Choice and Risk: A guide to best practice in supported decision making. DoH May 2007.

- Safeguarding Adults: A consultation on the review of the "No Secrets Guidance": DoH / Dignity and Safety / Lucy Bonnerjea. 14 October 2008.

Authors of original document 2009:

Maurice Dix. Manager, Development and Implementation Team

Simon Smith. Manager, Emergency Duty Service