## 1.0 INTRODUCTION/ BACKGROUND

This Procedure and Guidance for positive risk taking has been updated to reflect Cumbria’s policy and best practice towards greater personalisation and Individualisation of care. Cumbria has therefore adopted the following Policy
Statement to underpin practice in protecting and promoting the rights of individuals to live autonomously and with dignity.

2.0 POLICY STATEMENT

Positive Risk Taking 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 individual.

It involves using available resources and support to achieve the desired outcomes. It requires an agreement of the goals to be achieved, or a clear explanation of any differences of opinion regarding the goals or courses of action (Morgan, 2004).

Cumbria has developed a person-centred approach to risk:

- 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.

- Personalisation means 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 of duty of care. This requires employers to consider the responsibility they have to their employees.

- Personalisation needs to include the most vulnerable people, including those who lack capacity. With effective personalisation comes the need to manage risk with and for people to make decisions as safely as possible.

- Making risks clear and understood is crucial to empowering individuals and carers, recognising people as “experts in their own lives”.

2.1 Types of Risk

This procedure covers the most common risks:

- Risks to the individual – including abuse and neglect,

- Risks to others – including paid carers (whether employed by CCC or a contractor) and the public,

- Environment risks – N.B. this policy should not be seen as an alternative to relevant Health and Safety legislation which must be applied,

- Legal and Regulatory risks – including the legality of aspects of a support plan or compliance with legislation

- Risks to the reputation of the Council
Positive risk taking is essential to the wider safeguarding agenda and this document should be read in conjunction with the Cumbria Multi Agency Safeguarding Adults Procedure.

2.2 Principles of Working Positively With Risk

1. Risk is dynamic, constantly changing in response to altered circumstances.
2. Risk can be reduced or resolved
3. Assessment is enhanced by multiple sources of information, but practitioners will frequently be working with incomplete and possibly inaccurate information.
4. Identification of risk carries a duty to do something about it (i.e. risk management).
5. Assessment information and clinical decision making can be improved by engaging multidisciplinary, multi-agency collaboration, through discussions and joint care planning (including involvement of the individual and carers themselves as much as possible).
6. Defensible decisions are also constructive decisions when they are based on clear reasoning.
7. Risk-taking can engage positive collaboration with beneficial outcomes.
8. Confidentiality is a right, but information may be shared with relevant parties in exceptional circumstances when people are deemed to be at serious risk of harm to themselves or others.
9. Health and Care Services recognises that supporting risk taking for positive outcomes requires a sensitive approach which may be challenging for those involved. Practitioners will be supported to work constructively with risk through the procedures and guidance provided and by demonstrating evidence based practice and shared decision making. If, despite thorough and clearly recorded evidence based decision making, decisions are challenged, or if things go wrong, practitioners will be supported by the organisation.
10. Where risk taking results in positive or negative outcomes for people who use support or others, the experience should be learnt from and used to inform future decisions.

The attached Tools to this document (Appendix 1) have been developed by Cumbria Adult Social Care to promote good practice in working with risk. The Tools will support practice by:

- Guiding thinking to the broad areas of risk that may be relevant in particular circumstances, whilst also offering an easily recognisable format for documenting information accessed and discussed.
- Professional judgement leads the use of the standardised documents, not the other way around. Formulation of the risks should include professional, non-judgemental opinion, including intuition (clearly recorded as such). The assessment may change as a result of new information in response to the dynamic nature of the work.

3.0 PROCEDURE

3.1 Roles and Responsibilities of Key Staff in Managing Risk

3.1.1 Organisational Management
- Setting the culture of the organisation through a clear understanding of the complex issues surrounding risk.
• Developing practice based guidelines.
• Putting in place explicit mechanisms for support and supervision.
• Establishing serious incident procedures that investigate in the most transparent, sensitive and supportive way. Recommendations should also reflect notable practice not just failings.
• Senior Management should believe practitioners did everything they possibly could to manage the care and support effectively (i.e. rare events of negligent practice will be picked up later and can be managed appropriately) – nobody benefits from assuming staff practice poorly from the outset whenever an incident has happened.

3.2 Teams Managers
• Acting as the main contact for their service (directorate) and its management on risk matters, and ensuring that corporate information and requirements are communicated.
• Communicating the Cumbria Adult Social Care approach to risk taking for positive outcomes to staff.
• Promoting the benefits of risk management across the service.

Ensure, delegating where appropriate, that:

o teams are aware of their responsibilities in relation to risk assessment and management and that clear lines of accountability are in place
o contingency planning is in place, as appropriate, to mitigate any identified risk
o individual staff skills and experience are linked to the needs of the individual as much as possible
o risk management and risk-taking plans are agreed
o major changes to the plans are agreed

3.3 All Practitioners
• Close monitoring of the individuals they are working with, including their own therapeutic interventions, their indirect contact with informal supports, and ensuring the individual’s views regarding interventions and support are heard and acted on.

• Co-ordinating the input of the multidisciplinary team and wider network of support.

• Demonstrate good practice in assessment interventions, decision making and information sharing, through good recording.

• Clearly record interventions and outcomes.

• Ensuring that adequate review of progress happens in line with good practice guidelines.

• Ensure that they follow the ‘Risk Taking for Positive Outcomes Framework’ detailed below when supporting people to take risks including evidencing rationale for decisions

3.4 Risk Taking for Positive Outcomes Framework

3.4.1 Risk Assessment and Identification
Risk assessment is the gathering of information through processes of communication, investigation, observation and persistence. Where risk has been identified from the initial referral point into Adult Social Care an initial assessment
Risk assessment practice is dynamic and flexible and should respond to change. Therefore it will:

- Be person-centred and include the views of individuals and those of families/carers which should have prominent focus in the assessment, identification and management of risk.
- Focus on a person’s strengths to give a positive base from which to develop plans that will support risk taking for positive outcomes.
- Give consideration of capacity to make decisions and understand the consequences of specific decisions.
- Be proportionate to the risk identified, potential impact and subject to ongoing monitoring and review.
- Use the principles of multi-agency working in proportion to risk and be aware of the impact on self and others.
- Link the context of historical information to current circumstances, to anticipate possible future change.

3.4.2 Risk Management

Risk Management is about managing risks in ways which improve the quality of life of the person, promoting independence, and minimising deterioration as much as possible. Not all risks can be managed or mitigated but some can be predicted.

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 response where the identified risks have an increased potential for harmful outcomes.

Where someone does not have capacity decisions should be made in their Best Interests – practitioners should refer to the [ADD LINK TO BI PROCEDURE] and the Mental Capacity Act 2005 Code of Practice. Where people’s actions put others at risk, consideration should be given to the most appropriate response, which could include reference to Safeguarding Adults Procedures.

Risk management will include:

- Working within a multidisciplinary and multi-agency context,
- Decisions that are negotiated and agreed between all parties, and are clearly understood,
- Balance of the positives and negatives of working with risk,
- Developing plans, actions and a clear idea of shared & individual responsibilities
- Support plans that include contingency plans. The starting point should be the view of the individual.

3.4.3 Review

Reviews take place to assess whether the action / 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 person being supported and, with their consent, other interested parties.
3.5 **Practice Guidance**

The Risk Taking for Positive Outcomes Framework is designed to bring together all assessments of risk including the persons’ perceived at risk own perception of risk. The Framework **should** be used to support management of:

1. High risk cases
2. Unresolved areas of conflict
3. Safeguarding investigation where there is ongoing risk
4. Mental Health Act assessments

The Framework should be applied as per the following stages.

3.6 **Risk Assessment Diagnostic Tool**

This tool is designed to structure the identification, collation and consideration of information pertinent to the case and so aid effective risk assessment and associated decision making. It should include the following as a minimum:

- Details of the person who is potentially at risk
- Clarification as to their capacity to take part in the process including details of any Mental Capacity or Best Interests Assessments
- Details of anyone advocating for them or acting in their Best Interests
- Pen Picture
- Area of Risk, Conflict, Harm or Abuse identified
- The persons perception of their risk, or that of anyone acting in their Best Interests;
- Their preferred choice of action and the impact this might have on their wellbeing and/or quality of life
- The perceived risks identified by the Practitioner and their rationale relating to the decision as to whether to proceed with multi-disciplinary risk management process
- Any action needed in relation to the risk

3.6.1 **Risk Tool to Facilitate Management of Risk Areas Identified**

- Area of risk/conflict
- Who has been consulted and where assessments can be accessed
- Multi-disciplinary involvement
- The Customer, Carer and any relevant Professional view of level of risk for each area identified
- Human Rights that have been considered and effected
- Actions to be taken toward reducing or resolving area of risk

3.7 **Review of Risk Management Plan**

- Actions from previous risk
- Risks reduced or resolved and reasons
- Risks increased and reasons
- Agreed Actions
- Agreed Risk period signed and dated by Practitioner completing document.
3.8 Tools within the Risk Taking for Positive Outcomes Framework – An Overview

3.8.1 Risk Assessment
This framework gives a structure that provides a prompt to the broad areas of risk/conflict that may be considered within the individual circumstances and context of the person being assessed. The Pen Picture should include relevant historical background information, and current support networks. It acts as a format for documenting broad assessments of risk information derived from your professional judgements and views expressed by others, verbally, or in writing.

This form may be used to document who else has been consulted about the risks/conflict/safeguarding and contributed to the assessment of risk. Where the assessment is being used to support a safeguarding outcome, then details of the safeguarding decision should be recorded. Where a person cannot make an informed decision then an assessment of capacity should be undertaken and outcome recorded along with any best Interest decisions.

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<thead>
<tr>
<th>The primary test of a suitable and sufficient Risk Assessment is:</th>
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<td>• Does it accurately reflect what you have identified?</td>
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<td>• Does it accurately reflect what you have assessed could happen?</td>
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<tr>
<td>• Can it easily be understood by others who would need to access it?</td>
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3.8.2 Risk Management Tool
This tool is used to document more detailed specialist assessments contributing to overall management plan. It will identify each area of risk/conflict and the customer’s view of level of risk, each professional’s view of level of risk, and any carer’s view of level of risk. For each area of risk identified an action to be taken towards reducing or resolving risk/conflict must be recorded and by whom. The measure of risk is from High Medium to Low.

Following completion of the Risk Management Tool the question must be asked are there any outstanding problems or conflicts?

Considerations must be given to risk management interventions and any contingency plans. Summary of actions should be recorded and agreed risk period with review date, signed and dated. This Tool is to be used as a standardised method for coordinating risk assessments from multiple sources which have informed decisions made by the professional involved. It is a tool to support and demonstrate reasoned and defensible decisions.

3.8.3 Risk Management Plan
This tool provides a structured review, starting with summary from previous risk management tool and a review of the interventions agreed for each area of risk identified. The outcome of risk management interventions should be evidenced appropriately to indicate whether the risk has reduced, increased or been resolved.

Where risk management interventions have achieved the persons agreed positive outcomes or those made in their Best Interests standard assessment, support planning and promoting independence review procedures would apply.
Where risk management interventions have not achieved the persons agreed positive outcomes or those made in their Best Interests further risk assessment must be undertaken.

Agreed actions should be recorded and any risk period, dated and signed.
APPENDIX 1.
Risk Taking for Positive Outcomes: Risk Assessment Diagnostic Tool

This diagnostic tool **must** be completed prior to the risk management process to ensure that all information relevant to the case has been identified, collated and considered.

<table>
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<th>Customer Name:</th>
<th>IAS No:</th>
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<tr>
<td><strong>Pen Picture</strong> (please include relevant historical background information as well as details of current situation and support networks):</td>
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</table>

1. Does the person have capacity to make the necessary decisions in relation to the risk assessment / risk management process?

   - Yes
   - No
   - Not clear / In doubt

   **N.B.** Where capacity is in doubt it must be assumed until a Mental Capacity Assessment, and where necessary Best Interests Assessment, has been undertaken. The risk assessment process should not continue until capacity has been assessed and the person is being appropriately supported to be part of the decision making process.

   Please include details of Mental Capacity Act Assessment here (where applicable):

   Date of MCA: 
   Details:

   Please include details of Best Interests Assessment here (where applicable):

   Date of BIA: 
   Details:
Name/details of person acting in Best Interest:

Please include details of Court of Protection application here (where applicable):

Date of CoP Application:
Details:

If the person has an IMCA, IMHA or other advocate please include details below:


3. Which of the following are applicable to the case the risk assessment relates to:

   (Please tick all that apply)

<table>
<thead>
<tr>
<th>High risk case</th>
<th>Case with areas of unresolved conflict</th>
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<tbody>
<tr>
<td>Safeguarding investigation with potential for ongoing risk</td>
<td>Mental Health Act Assessment</td>
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   If the assessment is being undertaken following conclusion of a safeguarding investigation please indicate whether the outcome was:

<table>
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<tr>
<th>Substantiated</th>
<th>Unsubstantiated</th>
<th>Partially substantiated</th>
<th>Inconclusive</th>
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4. What is the area or type of risk, conflict or safeguarding concern that is to be assessed?

   (Please include all applicable areas)
5. Who has been consulted about the risk, conflict or safeguarding concern?

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<th>Name</th>
<th>Role / Organisation / Relationship to the Customer</th>
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6. Please detail the customers preferred choice of action, or that which has been determined to be in their Best Interests, in relation to the risk, conflict or safeguarding concern here:

7. Please detail the potential impact on, or risk to the person should their preferred choice of action, or that which has been determined to be in their Best Interests, be implemented here: (Include impact on, or risk to, their wellbeing, quality of life or desired outcomes as applicable)

8. Is there a need for a Multi-Disciplinary Risk Assessment and Management process to be undertaken?
   
   Yes [ ]
   
   No [ ]

   If No please provide a full rationale for this decision here:

9. Please detail the interventions required to reduce or resolve the identified risks here:

   [ ]
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<th>Practitioner Name:</th>
<th>Job Title:</th>
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A1.2  **Risk Taking for Positive Outcomes: Multi-Disciplinary Risk Management Tool**

This tool **must** be completed as a record of:

- the risks identified during the risk assessment process
- the perceived level of risk of the person, anyone advocating for them / acting in their Best Interests
- the perceived level of risk of any carer
- the perceived level of risk the professional leading on the assessment
- the desired outcomes agreed
- actions agreed to manage the risk, by whom and by when
- any risk identified which for which it has not been possible to agree outcomes or actions, details of why this is the case and what actions to be taken to resolve this
- timescales for review of the risk management plan

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<tr>
<th>Customer Name:</th>
<th>IAS No:</th>
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Please provided details of all those involved in the Risk Management Process:

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<th>Name</th>
<th>Job Role / Organisation / Relationship to the Customer</th>
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Please list all specialist assessments which have been considered as part of the Risk Management Process:

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Please record risks identified, perceived level of risk for
If it has not been possible to agree outcomes and/or actions to be taken for any of the above risks please including details of why this is the case and what actions to be taken to resolve this.

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<tr>
<th>Identified Risk</th>
<th>Risk Level (Customer) H / M / L / U</th>
<th>Risk Level (Professional) H / M / L</th>
<th>Risk Level (Carer) H / M / L</th>
<th>Outcome Agreed (or reason for non-agreement)</th>
<th>Action / Intervention Agreed—by whom this will be undertaken and by when</th>
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If it has not been possible to agree outcomes and/or actions to be taken for any of the above risks please including details of why this is the case and what actions to be taken to resolve this.

Key: H = High Risk; M = Medium Risk; L = Low Risk; U = Unable to ascertain
Please give a summary of the Risk Management Plan here (including the timescales and review date):

Timescale:

Review Date:

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<th>Name (Professional):</th>
<th>Job Title:</th>
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<th>Name (Customer)</th>
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Risk Taking for Positive Outcomes: Multi-Disciplinary Risk Management Review Tool

This tool must be completed as a record of the review of the success of the Risk Management Plan and should include the perception of the person, or anyone advocating for them / acting in their Best Interests, the Practitioner and any carer in relation to the:

- risks identified during the risk assessment process
- desired outcomes agreed
- agreed actions
- timescales

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<th>Customer Name:</th>
<th>IAS No:</th>
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Please provided details of all those involved in the Risk Management Review Process:

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<th>Job Role / Organisation / Relationship to the Customer</th>
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Please record perception of the success of the Risk Management Plan level in terms of the extent to which the risk has been reduced or resolved. Where risks have increased or new risks are identified further assessment and risk management must be undertaken.

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<th>Identified Risk</th>
<th>Perception (Customer)</th>
<th>Perception (Professional)</th>
<th>Perception (Carer)</th>
<th>Action / Intervention Agreed– by whom this will be undertaken and by when</th>
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Please give a summary of the Risk Management Review here (including any future review date):

Future Review Date:

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<th>Name (Professional):</th>
<th>Job Title:</th>
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<th>Name (Person / Advocate / BI):</th>
<th>Job Title (if Advocate / BI):</th>
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APPENDIX 2  STEP BY STEP GUIDANCE

A2.1 Assessment and Management of Risk for Positive Outcomes

When should Risk Assessment Procedure and Tool be used:

- High risk cases which is likely to involve several multi-disciplinary assessments and co-ordination of an ongoing risk management plan. The tool will be co-ordinated by the lead practitioner in social care
- Unresolved areas of conflict; this may be between customer and their carers or customer/carers and assessing professional and potentially putting the customer and/or carer at risk and breaching their human rights
- Safeguarding; this is a different risk assessment to the one completed for safeguarding. This tool should be used where there has been a safeguarding incident and the outcome is the need for longer term risk management
- Mental Health Act assessment where a customer is subject to a Mental Health Act assessment. This risk assessment management tool will support the co-ordination of assessments and ongoing risk management plans

1. Which area is to be risk assessed/managed
   Tick which area Tool is used to support

2. Name of Customer
   Should always be recorded

3. IAS number
   Should always be recorded

4. Pen Picture
   This section should give a clear summary of relevant historical background information to the person at risk in the past, what is important to them now and where they want to be in the future. A Quality of Life Questionnaire may be useful at this stage to ascertain what area of risk is impacting on a person’s quality of life.

5. Area of risk, conflict, or safeguarding identified
   This section should clearly identified what the area of concern is who has identified it and whether the customer feels it is an area of concern (or view of advocate if lacks capacity).

6. Who has been consulted about the risks/conflict/safeguarding
   This section should include the customer and their support networks e.g. informal/formal carers, friends, neighbours and other professionals

7. If this is to support a safeguarding outcome, please give details/outcome of safeguarding decision
   Tick the appropriate box and narrative comment of what this means in relation to ongoing risk management.

8. Is the person able to make an informed decision?
   If yes continue with question 9 and 10
   If no, go on to question 11

9. What is the customers preferred choice of action
   This should be in the customers own words of what action they want to happen

10. In choosing their preference of choice, how will this impact on their quality of life and dignity?
This should be taken from the Quality of Life Questionnaire and desired outcome identified at beginning of risk assessment and if not completed from care assessment.

Where the customer is deemed unable to make an informed decision, then an assessment of capacity must be undertaken. Outcome of Mental Capacity Assessment should be recorded with date and professional completing the assessment.

11. **Outcome of Mental Capacity Assessment**
   Where a Mental Capacity Assessment has been undertaken the outcome of that assessment must be recorded here.

12. **Was a Best Interest Meeting required following the outcome of the MCA Assessment?**
   Where yes, record outcome of Best Interest Meeting, date and decision maker. Where no, record reason for Best Interest Meeting taking place.

13. **Outcome of most current Best Interest meeting, date and decision maker**
   Where a Best Interest meeting has been undertaken the outcome of any decisions must be recorded here.

14. **Has application to the Court of Protection been considered?**
   If yes, record details of reasons and dates.

15. **What is customers wishes and what impact of the decisions made due to lack of capacity will have on the customer**
   There should be a record here of an indentified carer/advocate representing the wishes of the customer.

16. **In choosing their preference of choice, how will this impact on their quality of life and dignity?**
   This should be taken from the Quality of Life Questionnaire and desired outcome identified at beginning of risk assessment and if not completed from care assessment.

Where the customer is deemed unable to make an informed decision, then an assessment of capacity must be undertaken. Outcome of Mental Capacity Assessment should be recorded with date and professional completing the assessment.

17. **Have any of the customers Human Rights been impinged, and if so, how?**
   Please refer to Appendix 2 of procedures “Human Rights to be considered in undertaking risk assessment for positive outcomes”. It is important to consider whether you are doing anything that needs legal authority such as DoL’s, Mental Health Act assessment.

18. **Is there a need to proceed to Risk Management Tool**
   If yes, tick box and continue on with completion of tool.
   If no, tick box record to quantify/evidence the decision making.

19. **What steps now need to be taken to minimise each risk area identified**
   The MDT tool to facilitate Management of Risk for Positive Outcomes should now been completed.
   This should clearly record all people and professionals involved in completion of the tool and list any specialist assessments, who they were completed by, date completed and where they can be located.
A2.2 MDT Tool to Facilitate Management of Risk for Positive Outcomes

The MDT tool is a co-ordination tool which pulls together the key points from wider discussion and specialist assessments, clearly identifying the area of risk/conflict and all parties views and agreed actions by whom. Any minutes of meetings or discussions outside of MDT meetings should be recorded, dated and where can be located.

How to use the Tool

Area of risk/conflict should identify the area of risk or conflict broken down. For example, the overall risk may be a customer is seen to be at risk to staying in their own home. There is likely to be several areas of risk contributing to this risk concern, which broken down and managed can change the risk outcome.

Customers view of risk
This is the customers view of each area of risk, so they may identify some areas as quite high and other areas low. It is their perception of the risk, no-one else’s. Where a customer has been assessed as lacking capacity then there may still be some areas where they do have capacity to view their opinion. Where this is not the case there is the option to record being unable to ascertain view of risk.

Professionals view of risk
This will apply to the professional who has made the assessment. If it has involved a moving and handling assessment then it will be the Occupational Therapists view. If it has been a swallowing assessment then it will be the Speech Therapist.

Carers view of risk
This will apply if it is the view of a family carer and/or a paid carer via Direct Payment or an agency. Again, the level of perceived risk is on each separate risk identified and not the overall risk. If there is any conflict issues they are likely to be highlighted in this area.

Action to be taken towards reducing the risk/conflict
The action to be taken towards reducing the risk/conflict will be recorded here with the person who has taken responsibility for the action.

Timescales
Will record timescales for actions being completed and date of completion.

On completion of the Tool where any Protective factors have arisen and/or contingency plans need to be put in place, these must be recorded with the risk areas and any ongoing identified work recorded.

Following completing of the Risk Management Tool, are there any problems or conflict raised that have not been resolved. These will be areas to have come out of completion of the Tool and should be acknowledged and recorded so the process is transparent.

Summary of actions to be taken
These will be the agreed actions made on completion of the Tool.

Agreed Risk Period
The multi-disciplinary decision should identify the agreed timescales for review, however the maximum timescale for review would be no longer than 12 months.
Customer signature
Customer signature are of value in case of customers who choose to take a risk as part of their Support Plan, therefore a customer’s signature must be sought at the end of the Risk Assessment and Management Tool.

A2.3 Review of Risk Management Plan

Summary
This should be the summary from the Risk Management Took

Actions
This should be the agreed actions from the Risk Management Tool

Risk Reductions and Reasons
These should be any identified risks that have been reduced and reasons, and results of any protective factors or contingency planning

Risk Increased and Reasons
These should be any identified risks that have been increased and reasons, including any changes to protective factors or contingency plans

Agreed Actions
These should be agreed with the same people involved in the completion of the MDT tool

Agreed Risk Period
This needs to be a multi-disciplinary decision

If all resolved – the reason and outcome must be recorded to be able to close down
APPENDIX 3.  LEGAL FRAMEWORK

Duty of Care (reference/acknowledge Simon Duffy)
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.

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.

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 position of risk, there being an important distinction between putting people at risk and enabling them to choose to take reasonable risks.

Duty to Involve
The duty to involve seeks to ensure that local people have greater opportunities to have their say. The aspiration for the new duty is to embed a culture of engagement and empowerment across the authority’s functions. Consideration should be given to the provision of information and the consultation and involvement opportunities made available to individuals across all of the Council’s functions.

This new duty, came into force on 1 April 2009, and is set out in section 3A of the Local Government Act 1999 (as inserted into that Act by section 138 of the Local Government and Public Involvement in Health Act 2007). This duty applies to all best value authorities in England except police authorities.

The new duty will not replace existing requirements on authorities to engage with local communities.

The duty requires authorities to take those steps they consider appropriate to involve representatives of local persons in the exercise of any of their functions, where they consider that it is appropriate to do so. It specifies the three ways of involving that need to be addressed in this consideration:

- Providing information about the exercise of the particular function
- Consulting about the exercise of the particular function and/or
- Involving another way

For further information on approaches to engagement with local people see Practical approaches to co-production (DH, 2010).

Human Rights
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.
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.

**Equality Act 2010**
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 s149.

**Health and Safety**
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 might be affected, such as 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.

**Mental Capacity Act (MCA)**
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:

- By empowering people to make decisions 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.
- By allowing people to plan ahead for a time in the future when the might lack the capacity, for any number of reasons, to make decisions for themselves.
- Deprivation of Liberty safeguards for people who lack capacity to decide about their care or treatment and who are deprived of their liberty to protect them from harm but who are not covered by the Mental Health Act 1983 safeguards.
- Best Interest decisions weigh up a range of factors, including the wishes or preferences of the person and the views of their families and carers, and conclude what is on balance the best for the person both now and in the future. Less restrictive options must always be considered.
## DOCUMENT HISTORY

### RELATED DOCUMENTS

| OTHER RELATED DOCUMENTS | • ASC P8 – Reporting of Serious Incidents in Adult Social Care  
• ASC P9 – Safeguarding Adults. |
| LEGISLATION OR OTHER STATUTORY REGULATIONS | • Mental Capacity Act 2005  
• Pan Lancashire and Cumbria Multi-Agency Adult Safeguarding Procedures.  
• Appendix 2 – Legal Framework  
  o Duty of Care  
  o Duty to Involve  
  o Human Rights  
  o Equality Act 2010  
  o Health and Safety |
| DOCUMENTS SUPERSEDED BY THIS PROCEDURE | • 20089 Supporting Individual Choice and Control Through Positive Risk Taking  
• 30053 Supporting Individual Choice and Control Through Positive Risk Taking |

### APPROVAL AND REVIEW

| Original Author: | Professional Lead – Social Work (Cheryl Page) |
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| Approved By: | • Integrated Management Team (IMT) – August 2014  
• Social Care Managers (September 2015)  
• DMT – Business and Strategy (October 2015) |
| Consultation: | • Practice Development Working Group – May 2014  
• Social Care Management Group – May 2014  
• Health and Care Services Quality and Improvement Board (QIB) – July 2014  
• Integrated Management Team – August 2014  
• Social Care Management Group – September 2015  
• DMT – Business and Strategy – October 2015 |
<p>| Date Originally Published: | 17 February 2011 |
| Date of Next Review: | October 2016 |</p>
<table>
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<th>Issued by</th>
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<td>Louise Close</td>
<td>N/A – first 3P issue.</td>
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<td>2011-02-17</td>
<td>Cheryl Page</td>
<td>Content revised considerably. Converted to new template and numbering system – was 20089 and 30053.</td>
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<td>2012-10-19</td>
<td>Cheryl Page</td>
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<td>2012-11-19</td>
<td>Cheryl Page</td>
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<td>2015-10-07</td>
<td>Cheryl Page</td>
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