

Key principles to bear in mind when dealing with risks:

- Enable positive risk taking.
- Empower the individual.
- Identify risks appropriately.
- Provide comprehensive and accurate advice and information to all the people involved.
- Ensure accurate and comprehensive documentation around risks and risk management.

What people say about risk

‘People spend most of their lives taking risks but not thinking much about it; then suddenly once they need care, risk is a big, negative thing’.

‘The focus on keeping everything safe results in a huge waste of people’s potential’.

‘Once people are with us in a care setting we do not just look at the big issues which brought them into contact with services – we scrutinise everything about them. It’s like being in a gold fish bowl – I have bad days, make bad decisions – the last thing I’d want is to be judged on them’.

‘Life is about risk, we take risks every minute of the day. We must not let it inhibit us, we must use it to guide us and make us think, but it should not restrict our ability to lead lives to the full’.

‘I don’t get up in the morning and think about a risk plan, I just think about what I want to do in my life’.

What you must do:

- Keep a person centred approach:
 - Plan with the person involved,
 - Enable/support decision making,
 - Joint/Partnership working,
 - Empower and enable positive risk taking
- Identify the risk/s:
 - What is the presenting risk?
 - Is the risk a safeguarding concern, if so follow safeguarding procedure,
 - If hazard/s identified follow risk management practice.
- Manage the risk:
 - Assess/review risk/s (consider potential benefits from risk),
 - Promote positive risk taking,
 - Consider individuals capacity,

- Discuss consent issues: If your work involves treating or caring for people (anything from helping people with dressing to carrying out major surgery), you need to make sure you have the person's consent to what you propose to do, if they are able to give it. This respect for people's rights to determine what happens to their own bodies is a fundamental part of good practice. It is also a legal requirement. Refer to 'Seeking Consent: Working with Older People',
- Invoke mental capacity act to ensure that people are supported to make their own decisions

What you must not do:

- Be risk averse.
- Impose threshold of risk upon the person.
- Make assumptions.
- Fail to provide clear, accurate and accessible information.
- Fail to complete relevant documentation.
- Prevent individual from making their own decisions.
- Fail to seek appropriate legal/managerial advice when necessary.

There may be occasions, where new, unfamiliar, urgent or potentially high risk circumstances emerge which are not covered within the standard procedures and documentation. In these circumstances, it may be necessary to seek further legal advice.

Practitioners should seek advice from line manager and any other potential sources, prior to seeking legal advice.

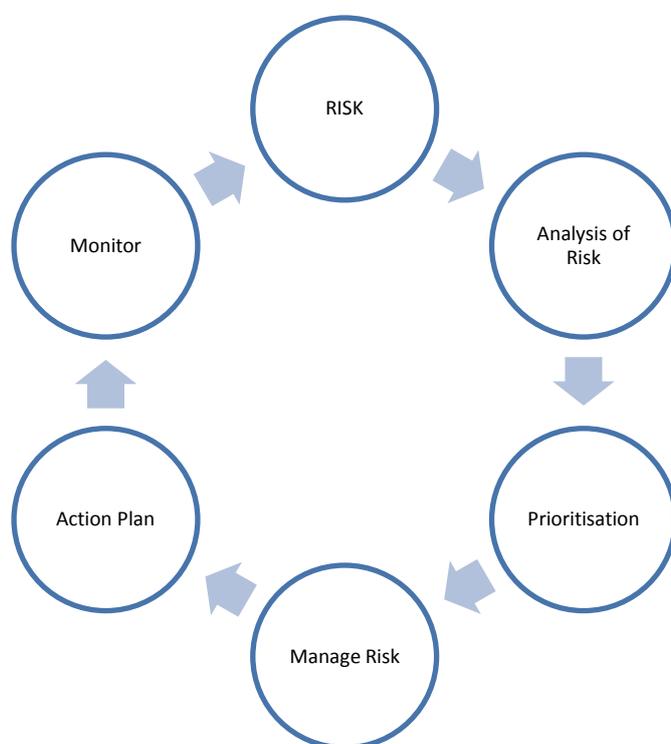
Factors that need to be considered in determining whether professional legal advice may be required:

- Actual or risk of potential litigation,
- Assistance on interpretation and implications of relevant new and/or existing legal legislation,
- Lack of clarity around statutory position, powers or responsibilities.

How to do it:

- Provide advice/information:
 - Identify risks,
 - Identify likelihood, level/impact of harm,
 - Provide advice/information to help person understand their responsibilities and implications of their choice including any risk/s.

- Document:
 - Establish and record reasons for decisions taken,
 - Explain the risk/s, likelihood and potential consequence/s fully,
 - Ensure the person understands the risk/s and consequence/s fully,
 - Ensure the person has capacity to understand and make the relevant decisions,
 - Ensure the person signs documentation to confirm ownership of risk/s.
- Action plan:
 - Confirm who is responsible for actions,
 - Confirm who is responsible for the plan,
 - Confirm where plan is to be kept.
- Monitor/Review:
 - Clarify which method of review to be used and confirm timescales.
 - Identify effectiveness of current measures.
 - Identify any new risks.
 - Fulfil further action plan if required.
 - Ensure person signs amended documentation to confirm ownership of risks.



Examples:

- **Example of the importance of keeping good documentation**

Mr T, 78, lives alone in his own home. He has prostate cancer, is mobile, alert and fully orientated, but is not motivated to get up and remains in bed most days. He is determined to remain at home and has refused offers of support from the Macmillan nursing team. He has missed several urology outpatient appointments, and has been refusing the district nurses access to give medication. His telephone has been disconnected because he has not paid the bill, and his doorbell does not work. He will not accept help from his niece, his only relative, who is very concerned about him and has contacted social services for help.

Mr T has every right to remain at home. Attempts need to be made to develop a rapport with him using his niece, GP and any friends as intermediaries. Income maximisation and assistive technology could support him to remain at home if he would agree to them. Support for his niece and, if appropriate, a carer's assessment, would also be advisable. Sharing the risk decision making with him and all concerned will ensure that no one person is managing it alone.

Outcome: Mr T's wishes are respected, but there is clear documentation of his assessment, including a risk assessment, and a record of all attempts to engage Mr T to ensure that he fully understands the risks he runs in refusing assistance; these will provide evidence that the right procedures have been followed, should anything go wrong.

- **Balancing the rights of one group against another**

The case of R (A&B and X&Y) v East Sussex County Council (2003):

The assessment of A&B, two young disabled people, identified that they liked and responded positively to swimming and to horse riding, but the application of manual handling regulations meant that they were unable to do either. The court decided that the rights of care staff to a safe working environment had to be balanced against the rights of A & B to undertake activities they enjoyed. This meant that the risks to the health and safety of the staff must be kept to a minimum that was consistent with A & B being enabled to exercise their human rights. Article 8 is not an absolute right, but any interference with it must be justified and proportionate. In the first place it was for the local authority to formulate its manual handling policy and to make the appropriate assessments. The Court therefore asked the local authority to complete this task – this was not something for the court to do.

Outcome: A & B exercised their human rights to undertake activities that support staff had felt were too risky to staff.

- **Example: respecting a person's wishes**

Pria is an Asian woman in her 50s, living with Huntingdon's disease and motor neurone disease. She is currently supported at home with her family by a package of Health and Social Care. Pria is finding it difficult to take adequate nutrition orally. Her doctor wants to insert a stomach tube to increase her

nutritional intake and her family agrees. Pria is adamant that she does not want this fitted; it has been determined that she does not lack mental capacity, and that she fully understands the consequences of not having the treatment.

Outcome: Although Pria's family and doctor are concerned about Pria's choice, they respect her wishes even though they think she is making an unwise decision, and all agree to revisit the question on a regular basis.