People as Partners Project

MAKING SENSE OF SDS
A SERIES OF GUIDES FOR PROVIDERS

Guide 7:
Risk enablement and adult protection

September 2014

Making Sense of SDS

A series of guides for providers

This guide is part of a series which is designed to introduce providers of older people's care and support services to the Social Care (Self-directed support) (Scotland) 2013 Act which came into effect on 1 April 2014.

This particular guide will explore the issue of risk enablement and adult protection which is often a considerable concern not only for those who use social care supports but for those who provide services, are charged to ensure safety and yet are required to enable an appropriate exercising of choice and control.

We shall explore briefly what the Statutory Guidance says about risk enablement and adult protection before offering a human-rights based model which we would suggest offer the potential for bespoke personalised approaches to risk enablement.

What does the Act and Guidance say about risk enablement and adult protection?

The answer is quite a lot, indeed some might argue that risk dominates the Guidance documents which accompany the Act. A crude examination would suggest that risk is mentioned **18** times in User and Carers guide, **143** times in the Practitioners guide and **61** times risk mentioned in Statutory Guidance. A whole section is dedicated to risk management within the Practitioners guide. So why is risk so significant?

The answer is partly because there is a conscious attempt in both the Act and its Guidance to shift our understanding and approach to risk from one which is generally risk averse to one which is enabling and accepting of appropriate risk. The cornerstones of self-directed support, namely informed choice, control and personal autonomy are only achievable if grounded in an adequate understanding of risk.

But the dominance of risk in the Guidance is also reflective of the way in which, for many who use services, risk has become such a dominant factor in social care and health service provision.

Risk is part and parcel of everyday living. There is no context which is completely risk free. It is part and parcel of the way in which we grow from childhood into adults that we learn how to manage and deal with risks, having been protected from them as children to a greater or lesser extent. We learn strategies for dealing with risk, we develop models and systems and we develop an internal risk management system! For there is, in reality, no such thing as total safety but rather there are degrees of safety and levels of risk. Risk is therefore a given of human living and relationships.

It is also a truism that risk is highly personal. I may make judgements and undertake activities and consider them normal and safe e.g. going skiing or mountain climbing but another person may consider those to be highly risky and never to be touched.

It is perhaps also true to say that the influencers on how we manage our approach to risk are numerous. The way we have been brought up, the extent to which we have taken risks and things have worked out well, the impact of our behaviour upon others, especially those who are important to us – all are factors which influence pour approach to risk. But by in large part of adulthood is that we develop strategies that enable us to have a healthy approach to risk and to develop an acceptance that safety is often illusory and subjective.

So why is risk so significant in adult social care and health service provision? Many of those who have been in hospital or who has received support reflect on the way in which the very risk management strategies which have helped them in their adult life are taken away from them once the 'system' takes over. The patient is risk assessed to see if it is 'safe' for them to return home; the individual is assessed to determine the 'risk of falls', whether they can take their medicines safely, and so on. Of course this is in part good clinical and social care practice but at times individuals speak of a creeping risk aversion so that it feels as if risk should be avoided at all costs rather than healthily managed.

There are factors that influence such risk aversion in the health and social care system – one of these is the fear of error or failure not least from external scrutiny, including the media. There is also a desire to protect professional competence and organisational reputation and this can quickly lead to individuals becoming less willing to make decisions which may not work out, which might be inherently risky.

So it is perhaps not surprising that increasingly social care and health services have begun to talk about enabling risk, developing new models and ways of working which enable individuals to re-develop strategies for risk-talking and managing risk even in situations and contexts where familiar securities are no longer there, such as post illness or with declining capacity. This can be seen in some of what is mentioned in the Practitioners Guidance:

> *'There is some apprehension that the development of Self Directed Support approaches, processes and the transferring of power may increase risk for some of the more vulnerable people who engage with services. There is however increased recognition that practice based on sound relationships with the supported person, their families and wider support networks may, in fact, support greater safety and risk enablement opportunities. Helping to identify more creative solutions of support may in many circumstances lead to reduced levels of risk and harm.' (Practitioners Guidance page 24)*

And

'Effective risk assessment and management is fundamental to achieving the right balance between protection and empowerment in current and new duties. Risk is an everyday part of life; it is the skill and professional judgement of the practitioner that helps people balance risk, protection and freedom of choice.'
(Practitioners Guidance page 30)

'Assessing risk is a highly skilled and complex task- made even more complex when faced with complicated family dynamics, when people are in crisis or where a person's capacity may be impaired. Collaboration and partnership allows for exploration of risk factors and clearly identifying where responsibility lies for supporting or diminishing that risk. This is a key element in the support planning process.'
(Practitioners Guidance page 30)

When it talks about risk enablement it reflects a need for considerable skill on the part of the practitioner:

'Whilst adults have the right to make their own decisions about risk, this must be balanced with the authorities' duty of care. The local authority should feel confident in challenging particular forms of support or particular decisions under the person's desired Option if, after assessment and detailed discussion with the supported person, they identify risks that cannot be safely managed and in these circumstances the local authority has the authority not to support the person's preferred option

- *risk enablement needs to be based on detailed, shared discussions (the' skilled conversation') not only with the individual but also with other key family members, carers and professionals involved.*
- *assessment through co-production recognises the capacity, capability ,strengths and personal assets people possess, which in turn informs risk assessment and, where appropriate, risk enablement.*
- *supporting positive risk taking requires the ability to effectively balance the benefits and positive outcomes against the potential negative outcomes of having measures in place that restrict or seek to avoid risk.*
- *shared agreement about what constitutes risk will not always be possible. They often have 'personal' or 'organisational' elements that have been built up over time. Practitioners should be aware of their own values and assumptions and the impact these have on others.*
- *a shared understanding of the views of all those affected is important, however, articulated through efficient and relevant case recording and available for scrutiny and review.*
- *different organisations and sectors operate within different cultures. This in turn affects thresholds of risk. These differences will require to be carefully navigated and will undoubtedly be assisted by effective communication and sharing of values –both on behalf of the individual and on a wider, ongoing basis.'*
(Practitioners Guidance page 31)

The Statutory Guidance defines risk enablement:

> *'The supported person should be assisted to feel safe and secure in all aspects of life, to enjoy safety but not to be over-protected and, in so far as possible, to be free from exploitation and abuse.' (Statutory Guidance page 18)*

Human rights and risk enablement

One of the most frequent observations which one comes across when encountering discussions about how self-directed support will work in practice are concerns that people will potentially be more vulnerable to harm as a result of choosing one of the four SDS options.

Indeed for many practitioners and families the relationship between adult protection/safeguarding and personalisation can appear a challenging one. How do you balance the rights accorded to an individual, including increased choice, with the requirement to ensure the welfare and safety of an individual.

Scottish legislation has struggled with this balance for a number of years. However, what marks the range of Scottish legislative responses to adult safeguarding as distinctive is the way in which protection has been determinedly located within a human rights framework.

The State has the right of intervention in the lives of a citizen in certain limited circumstances. The Adults with Incapacity (Scotland) Act 2000 provides a framework for safeguarding the welfare and/or managing the finances of adults who lack the capacity to do these things for themselves. The Mental Health (Care and Treatment) (Scotland) Act 2003 ensures people with mental disorder can receive effective care and treatment, including the circumstances in which a person with mental disorder may receive treatment and/or be detained on a compulsory basis, and the procedures which have to be followed. The Adult Support and Protection (Scotland) Act 2007 seeks to protect people from being harmed, broadens the definition of harm and defines what it understands as an 'adult at risk'. All three of these significant social care Acts are rooted in human rights principles and frameworks.

SDS and enabling risk

A major Department of Health consultation south of the border which examined their approach to adult safeguarding *'No Secrets'* highlighted some of the issues between choice and safeguarding thus:

'A balance needs to be established between empowerment and protection and between the rights for self-determination and the duty to ensure safety of people and safety of public money… We want to support people to be citizens and take risks

that they understand empowerment in all aspects of life is a protective factor against abuse. We are looking for new approaches to safeguarding'

The same can be said of Scotland. The SDS Regulations and Guidance speak about a 'proportionate' response to risk. They quite rightly see risk as part and parcel of life, especially a life where an individual is exercising greater control and autonomy over their support and care.

The Guidance and the SDS Act itself frequently speak about risk 'enablement' yet many professionals and individuals worry about how to balance enabling risk with their duties of protection and safeguarding.

There are very real and important questions relating to safeguarding and self-directed support. Amongst them:

- How do you enable people to have greater choice and control over their lives but not to be put at greater risk of abuse or harm?
- How do you ensure that giving individuals control over their personal support budgets will not be open to abuse by others, whether family members or organisations?
- How do you protect without suffocating?

Another English report had this to say:

'*The governing principle behind good approaches to choice and risk is that people have the right to live their lives to the full as long as that does not stop others from doing the same. Fear of supporting people to take reasonable risks in their daily lives can prevent them from doing the things that most people take for granted. What needs to be considered is the consequence of an action and the likelihood of any harm from it. By taking account of the benefits in terms of independence, well-being and choice, it should be possible for a person to have a support plan which enables them to manage identified risks and to live their lives in ways which best suit them.*[1]

Good adult protection and safeguarding is about balancing risk. We all live within environments which are not risk neutral but we have developed the skills and tactics to minimise, control and live in the face of such risks. That is part and parcel of what good support should be.

Risk enablement is about proportionality. It's about nurturing within those who might be more vulnerable the insights and abilities which enable us to live in the world. It's

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[1] ' Independence, choice and risk: a guide to best practice in supported decision making. – DH May 2007.

about ensuring that as professionals we do not become any more risk averse and fearful of the consequences with self-directed support.

We would like to continue that discussion by suggesting a Scottish model which could be adapted for risk enablement. Such a model has two parts, the first is to utilise an existing social care legislative framework to encourage the development of a set of principles for risk enablement. Such a set of principles would foster flexibility and diversity in risk enablement whilst embedding any contextual models within a human rights framework; secondly to suggest an existing human rights model, FAIR, as a potential model for the risk enablement process.

Adult Support and Protection Act and risk enablement

There are two broad sets of principles within the Adult Support and Protection Act 2007, namely the overarching and underpinning principles. It is suggested that they potentially provide a useful framework for the principles which should be inherent in all risk enablement. These principles are essentially human rights principles which place the individual and their rights at the heart of all choices around risk. They emphasise the importance of a proportionate approach to assessing risk and the primacy of the individual in all decision making. They also relate closely to the principles of involvement, informed choice and collaboration which are the heart of self-directed support.

The following table highlights how this might work in practice:

Benefit	When making a decision all parties must seek to ensure that any restriction on the wishes of an individual should always be for the benefit of that individual.
Least Restriction	Care should be taken to ensure that any restriction on an individual should be as limited as possible and should be **proportionate** to achieving any agreed outcomes such as safety and security. They should not be 'a sledgehammer to crack a nut' but reasonable and proportionate. Risk planning should select actions which are the least restrictive of the supported individual's freedom, ability to choose and exercise control over their life and support.
Involvement and Participation	At all times of the risk enablement dialogue the wishes and feelings of the adult should be paramount albeit not necessarily overriding. The supported person should be fully involved in considering their risks and how they will be managed. If the supported person identifies the key risks *alongside* the professional and others then all parties will

	have a better awareness of the relevant risks and will be better placed to manage those risks.
Collaboration	It will also be important that an individual's carers, family and advocates are involved in the process of risk assessment and enablement whilst recognising that there may be inevitable tensions between parties when individual risk is being considered. The views of others should not, however, dominate those of the individual themselves.
Support and communication	It is recognised that making decisions and planning around risk will require the supported individual to be assisted to understand the nature of the risk being debated and that this support should be provided in an accessible and appropriate manner.
Fairness	The supported individual should not be treated in a manner which is less favourable to any other citizen. Supported individuals are adults who have the right to make mistakes and exercise choice which others might disagree with. A balance needs to be struck between safeguarding and risk tolerance and where possible the individual should be treated in the same manner as any citizen who is not receiving support.
Equality	Every individual is unique and the characteristics that form individual identity should be recognised in all risk assessment and planning. The race and ethnicity, the religion and belief, the sexual orientation, age, gender, etc. of supported individuals will all play an important part in informing and influencing decisions around risk enablement. There is no one size fits all approach to risk planning and enablement.

Regardless of whether the reader finds merit in the above, the development of a framework of principles for risk enablement is an important and necessary task for social are and health service development in Scotland.

The FAIR model

At the heart of risk enablement is the exercise of fundamental human rights.

The Scottish Human Rights Commission project Care about Rights? seeks to embed a human rights based approach to decision making within social care and health contexts. It has developed the use of the **FAIR** model in such contexts where there may be disagreement or challenge on a course of action or practice.

This model recognises that in any context there are different stakeholders and that each possesses a range of human rights which are held in relation with and to others.

When a decision needs to be taken or an issue addressed then the **FAIR** model allows for the greatest degree of contribution and involvement, a recognition of the importance of exercising basic human rights and a consensual approach to reaching decisions on a way forward.

In each situation one is encouraged to start by identifying who is involved, specifically who is the person at the centre of the concern. How do they feel? Are they being heard? Are decisions being taken with them or for them? In other words what are the **Facts** of the situation?

Then one undertakes an **Analysis** of what rights might be impacted by a particular planned or current action. Are an individual's rights being restricted? Is that restriction justified and most importantly is that restriction proportionate or way over the top?

Even if the restriction of rights is appropriate are there other ways of achieving the desired end without restricting someone's rights? This stage of the process involves the **Identification** of shared responsibilities in any context. This stage is action planning with all engaged through their active involvement in identifying solutions and the way forward. When that action is put into practice it is then **Reviewed**.

If we can use the **FAIR** model briefly for risk and safeguarding - we would suggest it offers a person centred, individual approach to risk enablement which completely chimes with the underlying principles of the Self-directed Support Act. One way in which it might be used could look like this:

- My right to exercise choice is paramount but has to be exercised in recognition that others also have rights and duties. Included amongst those is the duty to ensure that I am safeguarded. The **Facts** need to be identified so

everyone honestly expresses their fears, concerns and desires and aspirations over any proposed or planned restriction of autonomy or control. This is the opportunity for real control to be squarely in the hands of the supported person in dialogue with others.

- Then there needs to be an **Analysis** as to whether the proposed restrictions on an individual are allowable and a proportionate restriction of that person's autonomy and freedom. Is this overt interference, risk aversion or an appropriate meeting of a legitimate aim?

- Then it is up to everyone in dialogue to ensure that they **Identify** their shared responsibilities and are involved in developing an intervention that balances an individual's rights with the need to keep that person safe. Are there alternative and less intrusive safeguards that can be put in place? Is there a different solution which more adequately protects the human rights of all engaged?

- Then a critical step for effective risk enablement is the developing of a process of continuous person centred **Review**, monitoring and evaluation in which the supported individual's rights are paramount.

A lot more can be said about the strengths and weaknesses of **FAIR** as a model for collaborative decision making in order to foster risk enablement. Its beauty is that it is flexible and centred on the individual and the exercising of their rights.

Self-directed support offers thousands the opportunity to achieve greater independence by exercising choice and control. It would be unforgivable if we did not seek to develop risk enablement models to enable people to live the fullest possible lives. One such model with some potential is, it could be argued, the **FAIR** model.

Equally important, however is the opportunity to develop principles for risk enablement rooted within a human rights paradigm which would have impact on risk enablement in both health and social care.

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Note: This paper contains material from a number of previous documents written by the author including 'Human rights as the framework for self-directed support workforce development'; 'Risk enablement and human rights' and contributions to the SDS Statutory Guidance.