Northern Health and Social Care Trust

This is an official Northern Trust policy and should not be edited in any way

Risk Management in Direct Care Situations

Reference Number:

NHSCT/10/317

Target audience:

All staff groups

Sources of advice in relation to this document:
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(Dr Mannion's, (Consultant Psychiatrist) guidance and support at case discussions has contributed significantly to this work and has supported its application in practice.

Replaces (if appropriate):

Previous Guidance for staff in relation to Risk Management in Direct Care Situations (2005)

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NHSCT Mission Statement
To provide for all the quality of services we would expect for our families and ourselves

Northern Health and Social Services Trust

Operational Policy

Guidance for staff in relation to risk management in direct care situations

(30 January 2010)

Contents

Introduction

This guidance has been developed to support staff within the NHSCT, service users and carers in the management of situations where direct care risks have been identified. It is a response to the growing acknowledgement that risk is not necessarily a negative factor in all situations and is often evidence of positive decision-making. The change of emphasis from protective care towards encouraging independence in daily living inevitably involves risk taking. There may be risk to the service user, to others, damage of property, distress, annoyance, frustration or embarrassment to the service user, misunderstanding by others, and possibly negative publicity. The guidance aims to improve practice in the management of risk situations and is not intended to replace professional judgement. It provides a framework to support staff to manage risk situations but does not provide prescriptive solutions which restrict individual assessments and management plans.

This guidance must be applied in a manner that makes appropriate reference to other Trust policies and procedures. It must not be used in isolation of these and legislative frameworks

In particular staff in Mental Health and Learning Disability services are referred to the DHSSPS document, 'Promoting Quality Care; Good Practice Guidance on the Assessment and Management of Risk in Mental Health and Learning Disability Services, September 2009 and associated Trust procedures and guidelines. 'Promoting Quality Care' provides a number of brief, comprehensive and specialist risk assessment tools which must be utilised by staff working in Mental Health and Learning Disability services. In particular it requires that everyone referred to mental health and learning disability services must receive a Brief Risk Screen (mental health) or a Routine Initial Assessment (learning disability) and according to the risk factors identified, a clinical decision may be taken to progress to more detailed or specialist levels of risk assessment as designated within 'Promoting Quality Care' . This current operational policy is meant to complement ,'Promoting Quality Care' and associated Trust procedures and guidelines and to provide guidance to support staff working in areas not included within the scope of 'Promoting Quality Care'.

1. Philosophy of Our Service

This guidance builds on NHSCT's vision, 'to work together with the community to provide the best care we can, so that people use our services with confidence and can make informed decisions which promote their health and well-being'.

It acknowledges the teachings of Brearley (1984), Kensall & Pritchard (1996) and Carson (2000) and fully appreciates the challenge inherent in Kensall et al's statement,

"Many risk decisions are made in a context where philosophies and policies on risk minimisation on the one hand, and normalisation of service users on the other, are often in conflict. Where this conflict remains understated, agencies and their practitioners are often unclear about the type of risk decisions which need to be made, and the impact of such philosophies upon the types of risk management strategies subsequently chosen is often unarticulated".

2. The aim of our service is to:

- Safeguard the rights of service users and carers;
- Enhance the quality of service users' lives;
- Enable service users to live as ordinary a life as possible;
- Intervene to the minimum extent necessary to meet need and/or secure safety;
- Safeguard the rights of staff.

3. Codes of Practice

Staff operating within the NHSCT work to the principles laid down in their Professions Code of Practice.

Staff must:

- Protect the rights and promote the interests of service users and carers;
- Strive to establish and maintain trust and confidence of service users and carers;
- Promote the independence of service users while protecting them as far as possible from danger or harm;
- Respect the rights of service users whilst seeking to ensure that their behaviour does not harm themselves or other people;
- Uphold public trust and confidence in social care services; and
- Be accountable for the quality of their work and take responsibility for maintaining and improving their knowledge and skills.

4. Principles of Good Risk Management

Decisions in relation to risk management must be based on the set of principles detailed below, to ensure service users' rights are upheld, and decisions are made in their best interests. Care must be taken to ensure that safe options are not solely agreed on the basis of fear related to possible harmful consequences.

All service users have a right to –

- privacy, dignity and choice;
- independence – opportunities to act and think independently, and make choices that may occur an degree of calculated risk;

- fulfilment – opportunities to pursue the realisation of personal aspirations and the recognition of their abilities in all aspects of daily living;
- a person centred approach to meeting their needs;
- confidentiality;
- the assumption that they can give meaningful consent and have the capacity to make informed decisions, unless they are assessed as not having capacity;
- engage as far as possible in the process of identifying risks, options and agreeing actions.

Each risk management process must give full consideration to Trust's duty to care (HPSS (NI) Order 1972) and the service user's right to self determination –

> 'to make available advice, guidance and assistance to such extent as it considers necessary. For that purpose it should make such arrangements and provide or secure the provision of such facilities as it considers suitable and adequate' Article 4 and 15.

5. Why do we need a guidance and framework for practice?

Service users and carers are rightly encouraged to make positive choices sometimes involving high levels of risk. Good practice guidelines and procedures promote the support of service users and carers in making such decisions. This guidance seeks to outline a framework within which social care staff must operate in situations involving risk. It also offers guidance to support social care staff, service users and carers.

The overriding aim is to improve practice in this area of work making it clearer, more accountable and more consistent.

This guidance should apply in all situations and settings where issues relating to risk are a factor. Private and voluntary organisations with which the Trust has contractual agreements should have risk guidance in place which is in line with the guidance set out in this document.

6. Definitions of terms used in this guidance.

Carson (2004) provides useful definitions for some of the terms used in this document, whilst making an important distinction between Risk Taking, Dilemmas and Emergencies.

Risk Taking is described as, 'choosing to act to achieve beneficial results in an awareness that harms might result'.

Dilemmas however are, 'those occasions or risk taking, when action must be taken because inaction, the status quo, is causing harm'. Often the options to managing dilemmas each carry an element of risk taking. It is rare to find a no risk solution. Staff are required to explore all options and their associated risks whilst balancing these with the service user's human rights.

An emergency situation is, ‘a dilemma where the harm of inaction is so serious that something must be done even before all the issues and data may be collected and calmly considered’. Staff often find themselves in situations where decisions must be made almost immediately, not allowing for a formal risk management process to be implemented.

A dilemma could be interpreted in law as negligence as could an emergency, if it can be shown that action (well prepared and monitored risk management) could previously have been taken.

7. Legislation and Other Guidance/Guidance Documents

In the process of attempting to identify, assess and manage risk consideration must be given to the legislative frameworks which guide our practice. A number of pieces of legislation may be applicable in any one situation and consideration must be given to all relevant sections.

The guidance provided in Appendix 1:Legislation is for reference purpose only and is not intended to be a substitute for professional judgement or legal guidance. Staff are advised to seek legal advice and opinion in situations where there is concern or uncertainty about the application of legislation.

8. Why should service users, carers and staff be encouraged to take risks?

Taking actions that include an element of risk is an essential part of the human life. There is dignity and individuality in being able to take risks. Taking risk is often a highly valued activity and people benefit greatly by taking risks in a range of decisions. To deny people the freedom to learn by taking risks may be regarded as a form of abuse, for example, ‘denial of basic right to make informed choices’ is cited as an example of neglect/deprivation in The Safeguarding Vulnerable Adults Policy. If risks are not being taken, there is often inaction and inaction may be negligence.

9. The Approach to Risk Taking and Risk Management

A structured approach to risk taking and risk management is important, as risk taking can never be an area of precise definition.

The approach seeks to define the level of risk and agree the appropriate action by:

- describing the issue you are being asked to make a decision in relation to
- identifying if the situation presents a dilemma or an emergency
- recording sources of information available
- identifying and detailing possible options to address the situation
- listing the potential benefits, harms/losses for each option considered

- evaluating the likelihood of each benefit, harm/loss occurring;
- detailing statutory powers and responsibilities required
- considering the impact on human rights
- putting important principles into practice which place users and carers at the centre of the process.
- detailing any conflict or disagreement noted
- identifying the option agreed/deemed to be the best solution to managing the risk situation, promote independence whilst balancing their need for protection and care
- detail the actions that will minimise the harms/losses and maximise the benefits in relation to the preferred option
- allocate responsibility and accountability for specific actions required
- agree monitoring and review arrangements
- use staff supervision, multi-disciplinary working and strategy meetings to assist in this process when necessary;

The framework presented in Appendix 2 has been designed to guide staff through this approach, and provide a record of decisions made.

The framework cannot take away the need for individuals to have to make difficult decisions. It cannot prescribe what to decide but a way of deciding and a process to assist in decision making.

An element of risk is part of everyone's life but it is important that risk is defined, supported and planned in formal caring relationships. Risk issues must be carefully considered in all cases. In situations of high risk the approach outlined here and the framework will be required to the fullest extent. They may be applied in situations of medium – low risk if they can support decision making processes.

10. Defining the Risk

It is essential to define and articulate all of the elements which contribute in the risk assessment. The definition will assist in:

- formulating an informed assessment;
- promoting constructive discussion with the service user, carer, other key disciplines, agencies and individuals involved;
- managing conflicting opinions and interests;
- clarifying lines of accountability;
- justifying actions whilst defining priorities for action based on the principles outlined in this guidance.

Part of the process of identifying the preferred option will address the issue of the importance/value attached by individuals to particular outcomes. Choices may then have to be made about which/whose outcomes/aspirations are more important. Such decisions involve subjective judgments. It is important that these judgements and the principles upon which they are based are made explicit and recorded.

By defining the possible options, harms/losses and benefits and their likelihood of occurring, those involved in the process will :

- have clearly set out what they are concerned about;
- have sufficient data to attempt to quantify the level of concern. This should include reference to recent research and inquiry reports where possible;
- have a well developed understanding of the benefits/value to the service user, carer or others of taking the risk.

Likelihood

The risk assessment process must go on to look at how likely the identified outcomes are to occur. The relevant factors in determining the likelihood of particular outcomes should include consideration of:

- available data about likely consequences e.g. suicide rates in older people;
- past experience either relating to the specific issue at stake in the specific situation or relating to other similar situations;
- motivation of all parties involved to successfully manage the identified risks;
- experience to date in the risk-taking process towards achieving a goal. How many steps of the process have been successful. If hindrances have been identified these must be recorded.

Again, the assessment of likelihood will be a subjective one but the factors taken into consideration need to be clearly set out.

11. Assisting the Decision Making Process

It is important to note that risk taking should not be about taking once and for all decisions but it can be:

- a process comprising a series of decisions/small steps towards a goal. Re-assessment of progress and effects of management strategies shall undoubtedly mean re-evaluation of action plans;
- A process constantly being modified by the people involved in it and the circumstances surrounding them.

Each step of the decision making process must be shared with others, monitored and reviewed (as appropriate). Accurate and timely recording is crucial to ensuring good communication of all factors to relevant parties.

Information about the way in which risk decisions have been made should be available to assist service user and carer understanding. It should also be shared appropriately with staff working in different settings e.g. residential, community, day care.

12. Discussion Meeting

A meeting may be useful in situations where complexity makes it difficult to tease out relevant risk factors. Service users and carers should be invited to participate in the meeting. Pre-meeting support should be provided to prepare active participation by the service user and carer where possible. This should include discussion of issues and information that could be potentially distressing and might hinder their involvement in engaging in the meeting process. Arrangements can be made for service users and carers to attend all or part of the meeting. Full consideration must be given to appointing an advocate to represent the service user's views where appropriate. An advocate can be involved to either support the individual or represent them if they do not wish to attend or are unable to constructively participate in the meeting.

The purpose of the meeting is to carry out a proper analysis of all relevant information in relation to the risk assessment and risk management. It should involve listing the appropriate benefits, harms or losses, together with the likelihood of each occurring. Several risk areas may be identified and each must have a separate evaluation. On the basis of a thorough assessment, decisions shall be made as how best to proceed to manage the situation.

A clear action plan should be developed following the meeting which should include a detailed record of the risks identified; an accurate assessment of the likely benefits and possible harm that may occur; an agreed plan of action/non-action, responsibilities and lines of accountability; the monitoring arrangements required and review date. Where possible action in relation to future 'emergency' situations must also be included in the action plan. Appendix 2 has been designed for this purpose.

13. Supporting Situations of Ongoing Risk

The decision as to how to proceed will not usually eliminate risk. Indeed in some situations service users and carers will choose to remain in situations of high risk despite the existence of low risk options. A process will need to be developed to support these situations.

Part of this process will lie in the definition of time limits in terms of:

- the frequency of reviews;
- the frequency and intensity of monitoring arrangements;
- the extent to which staff or agencies will continue to be involved in a situation where risk taking has been an issue.

The above must be carefully considered and decisions against the background of risk factors identified in the assessment process.

There must be a clear plan identifying the input from individuals who are being relied upon to make the management of risk possible. It will be particularly

important to identify individual responsibilities surrounding any critical events or steps to be taken in the life of the individual deemed to be 'at risk'.

It will be more usual to take a series of small steps in risk-taking towards the achievement of a goal. This approach will assist in that the outcome of one risk decision can inform the next.

In using the assessment process, efforts will be focused on increasing benefits and reducing the likelihood of harms occurring. This might be achieved by:

- re-allocation of resources;
- additional resources;
- changes to the service user's environment;
- influencing attitudes/motivation/feelings.

Working alongside service users in situations of risk will require an acknowledgement that their lives often present a high degree of volatility. Timing of reviews and monitoring arrangements will need to take account of this. Goal planning will have to be open to sometimes significant shifts due to changing needs.

Issues relating to assessing and supporting risk within individual situations should be included in care plans. This should be done with sensitivity to the degree to which service users and carers can understand and accept the reality of their situation. Risk to carers should be recorded in the same way as risk to users. In this way both users and carers (formal and informal) will, wherever possible have signed up to and be fully aware of the risk assessment and management decisions. They will therefore have more realistic expectations of each other.

In supporting situations of risk it is essential that everyone who has ongoing contact in the situation shares information and maintains awareness.

14. Staff Support

Any procedure or guidance designed to manage risk situations is dependent on the competence of staff to assess risk and employ recommended strategies. Staff competence is directly reduced as a result of fear of litigation and work related stress (Hughes 97 Britton et al 2001). Advanced competence and continual support are required to enable staff to balance the responsibility to protect service users and others from obvious dangers, whilst at the same time promoting independence and choice. Risk taking and risk management inevitably involves a degree of risk taking for staff and others in contact with the service user involved. If staff are to be sufficiently supported to manage risk situations they must be fully informed of accountability issues and what will happen when things go wrong. Staff will be hindered from taking innovative and responsible risks with service users if they feel the risks to themselves are too great if things go wrong and injury or death occurs.

Managers involvement in the decision making process should re-assure staff that they shall be supported by the Trust when they act in a professional and competent manner. All members of staff involved in identifying and managing risk situations should be encouraged to support each other and openly discuss concerns they may have. Staff supervision is a necessary component of the Trust's staff support system. Staff involved in risk taking and risk management must have the opportunity to engage in both formal and informal supervision as detailed in the Supervision Policy. The supervisory process should assist in reducing unnecessarily high levels of stress for the staff member and minimise the consequences of pressurised decision making.

15. Health and Safety of Staff

Support and advice should be sought from the appropriate senior manager, when situations have been identified to involve significant risk to staff safety (please refer to Health and Safety at Work Guidance). In managing risks to service users it is essential that the safety of staff is given equally serious consideration. Where there is a perceived risk to staff this can be assessed in a similar way to that outlined above. Providers will be in a position to contribute to the assessment of the degree of risk to staff involved. This will then be considered alongside the assessment of risk to the service user and/or carer.

There are some situations where a decision may be made to withdraw staff from care provision. These may include:

Lack of equipment.
Services user/carer refusal to accept equipment.
Physical / verbal abuse from client / carer.
Breakdown in moving and handling situations.
Environmental considerations – lack of working space, etc.

The health and safety of staff who provide hands on care is of paramount importance. Staff training in relation to moving and handling and refresher training is provided on an ongoing basis. Staff supervision provides a forum for staff to highlight with their manager any problems including training needs, service user situations and potential risks. These concerns should be passed on to appropriate others for action eg named worker, occupational therapy, district nurses, back care advisors.

Service users and carers must be fully informed as to the reasons for this decision. The service user will then be invited to agree to steps being taken to reduce the risk to staff. If the service user refuses to agree to such actions then they, their carer and any other key individuals will be informed of the exact nature of the risk they are now running and the actions to which they would have to agree if staff are to be re-introduced to the situation. If it is considered that the person at risk is not capable of making this decision, consideration should be given to appointing an advocate. The possibility of using protective legislation must also be considered.

The Trust will assist where possible in any practical safety concerns Staff should be aware of health and safety at work legislation and guidelines.

17. Risk and Health and Safety Issues for Informal Carers

Separate carer assessments should be carried out where there are risk issues relating to them. The above process and issues relating to supporting individuals deemed to be at risk will apply to carers as well as to service users. All staff involved with care provision should be aware of the Informal Carers Training and Support Scheme and make appropriate referrals to support carers in their caring role.

Legislative Framework APPENDIX 1

There is no specific legislation or body of common law relating to situations of risk or abuse. There are however, pieces of legislation, which seek to provide some protection and provide a potential framework for action. The legislation below is not finite.

Health and Personal Social Services (Northern Ireland) Order 1972

This Order provides a new administrative structure for the Health and Personal Social Services in Northern Ireland. The Ministry of Health and Social Services for Northern Ireland and the Ministry of Home Affairs for Northern Ireland will provide or secure the provision of these services, which will be administered locally by Health and Social Services Boards.

Article 4

This article places a duty on the Department of Health Social Services and Public Safety (DHSS&PS) to; "provide or secure the provision of integrated health services in Northern Ireland" and "to provide or secure the provision of personal social services in Northern Ireland designed to promote the social welfare of the people of Northern Ireland"

Article 15 (1)

This article imposes a duty to make such arrangements and provide or secure the provision of such facilities, as it considers suitable and adequate in order for it to discharge its duty under article 4.

Article 15 (4)

This article gives the DHSS&PS the power to recover such charges (if any), as it considers appropriate, in respect of any assistance help or facilities provided under article 15.

Health and Personal Social Services (Northern Ireland) Order 1991

This Order amends and supplements the Health and Personal Social Services (Northern Ireland) Order 1972 relating to the provision of Health and Personal Social Services.

The Order amends the Constitution of Health and Social Services Boards, provides for the establishment and functions of Health and Social Services Trusts and Health and Social Services Councils. It removes crown immunity from Health and Social Services Boards, the Central Services Agency and Special Health and Social Services Agencies.

The Order also makes new provision for financing the practices of Medical Practitioners and amends the 1972 order in relation to the provision of accommodation by Boards and the administration of general health services.

Mental Health (Northern Ireland) Order 1986

This Order repeals and re-enacts with amendments the Mental Health Act (Northern Ireland) 1961. The Order makes provision with respect to the detention, guardianship, course and treatment of patents suffering from mental disorder and for the management of the property and affairs of such patients.

Article 4

This makes provision for compulsory admission to hospital or treatment respectively in emergency situations.

Article 18-25

These Articles deal with Guardianship, which gives Board/Trusts the power to require an individual to reside at a location identified by a named Trust officer. The person, however, cannot be forced to live there. Such arrangements are received by the Mental Health Commission.

Article 107

If a person is medically assessed as not capable by reason of mental disorder of managing the financial affairs it may be appropriate to apply to the Office of Care and Protection.

Article 121

Makes it an offence to anyone employed in, or responsible for administering, a hospital, private hospital or nursing home to “ill-treat or wilfully neglect” someone with a mental disorder.

Article 122

Makes the intentional “sexual exploitation” of women suffering from sever mental handicap an office.

Article 123

Make it an offence for a man to have unlawful sexual intercourse with a women suffering from a mental disorder who is in is in guardianship, is receiving treatment or in his custody of care.

Article 129

This allows an Officer of a Trust accompanied by a Police Officer, to enter premises by force, if necessary, to protect an individual suffering from a mental disorder.

Access to Health Records (Northern Ireland) Order 1993

This order gives individuals the right of access to manually held health records relating to themselves. Others who can apply for access are someone acting on behalf of a client, by written authorisation, exercising parental rights, court appointment, personal representative or someone with a claim arising from the death of the parent/client.

Carers and Direct Payments (Northern Ireland) Act 2002

This Act extends the provision already contained in the Personal Social Services (Direct Payments) (Northern Ireland) Order 1996 with an extension to over 65's in 1999. For the first time, carers, young carer's and carer's of disabled children have a statutory right to an assessment of need on request. Once a carer's assessment has been carried out, the Trust must consider what services if any can be provided to the carer or the person being cared for.

Chronically Sick and Disabled Persons (Northern Ireland) Act 1978

The Act contains specific duties in relation to chronically sick and disabled people giving them a right to an assessment for services.

Sections 1 and 2 outline the duty to share information and make such arrangements as are necessary for the provision of social welfare services to meet the needs of any person coming within the definition of chronically sick and disabled.

Compensation Law

This legislation enables a private action to be taken against an individual in the civil courts for compensation. An individual may claim compensation (i.e. damages) through the Courts for personal injury usually on the basis of negligence or breach of statutory duties. The criminal injuries compensation scheme enables recompense for criminal injury or damage.

Coroners (Northern Ireland) Act 1959

This Act places a statutory obligation to make sure that, following the report of a death to the coroner; the Trust provides the coroner and his officers with maximum co-operation in providing statements and access to documentation.

Criminal Evidence Order (Northern Ireland) 1999

The Criminal Evidence Order was developed as a response to the 'Speaking Up for Justice' report. It outlines a range of special measures to assist vulnerable or intimidated witnesses, including children, to give their best evidence in court.

Criminal Justice (Northern Ireland) Order 1998 (Sex Offenders Orders)

The Sex Offenders Order is a new Civil order which can be applied for by the Police against any sex offender whose behaviour in the community gives the police reasonable cause for concern that an order is necessary to protect the public from serious harm from him or her.

Guidance for the Order is intended for use by all those involved with Sex Offender Order's, including Police, Health and Social Services Trust and other organisations likely to be consulted over applicants, and the Magistrates Courts.

Criminal Law

Vulnerable adults are protected in the same way as many other persons against criminal acts; thus if a person commits theft, rape or assault against a vulnerable adult they should be dealt with through the criminal justice system, in the same way as in cases involving any other victim. Where there is a reasonable suspicion that a criminal offence may have occurred, it is the responsibility of the police to investigate and make a decision about any subsequent action. The police should therefore always be consulted about criminal matters. Failure to disclose to the police any information about a suspected criminal offence as defined in Article 26 of the Police and Criminal Evidence (Northern Ireland) Order 1989 is itself a crime.

Data Protection (Northern Ireland) Act 1998

This Act places a responsibility on Trust to ensure that all information is managed in a confidential manner that provides the greatest protection for patients, clients and staff, whether living or deceased.

Patient, clients and staff have a right to know what is happening to their information and can request a copy of personal into held about them under the Data Protection Act 1998. Information concerning deceased patients/clients can be requested using the Access to Health Records Act 1990.

Data Protection (Processing of Sensitive Personal Data) (Elected Representatives) Order 2002

The Order allows an elected representative to process sensitive personal data when dealing with a request form as individual without the need to seek explicit consent.

It allows third parties, such as the HPSS to disclose sensitive personal data to an elected representative again without the need to seek explicit consent. However, under the Order sensitive personal data may only be disclosed to an elected representative in response to a request for him/her when:

- the elected representative is dealing with a request from an individual
- The data is relevant to the elected representatives request
- The disclosure of the data is necessary to respond to the elected representatives request

Disability Discrimination (Northern Ireland) Act 1995

The Act introduces new rights for disabled people in the areas of employment and access to goods, facilities, services and premises. Service providers should not refuse service, provide a worse standard of service or offer service on worse terms to a disabled person for a reason related to their disability. Organisations must find a reasonable alternative method of delivery the service where a disabled person cannot gain access.

Disabled Person's (Northern Ireland) Act 1989

This Act contains a statutory duty to assess need. Section 4 of the Act creates a specific duty in relation to assessments of disabled people. An assessment must be carried out when requested by either a disabled person or a carer, in the context of the provision of services under Section 2 of the Chronically Sick and Disabled Person's (Northern Ireland) Act 1978.

Domestic Proceeding (Northern Ireland) Order 1980

This Order provides provision for Personal Protection and Exclusion Order's. The Personal Protection Order is a court order restraining the abusers from molesting the spouse/co-habitant or children and is designed to protect anyone who has been threatened or who has suffered violence from a partner or co-habitee. The Exclusion Order can be used if the court is persuaded that the applicant should have exclusive access to/use of the matrimonial home and that the respondent should be excluded. Breach of the Order is a criminal offence.

Fair Employment and Treatment (Northern Ireland) Order 1998

This Order makes it unlawful to discriminate against someone on the grounds of religious belief or political opinion. Employers can be directed to take affirmative action.

Family Homes and Domestic Violence (Northern Ireland) Order 1998

The Family Homes and Domestic Violence (Northern Ireland) Order 1998 is designed to provide a coherent legal approach to deal with two separate but related issues; providing protection from violence or molestation in families and regulating occupation of the family home when a relationship breaks down.

The main features of this legislation in relation to adult protection are:

- It replaces the provisions under previous legislation with a single set of remedies which both improve and extend the level of protection available.
- A non-molestation order and occupation order replace personal protection, ouster and exclusion order. 'Molestation' is to be broadly interpreted and will be viewed on a case-by-case basis.
- The range of people who can apply for a non-molestation order is extended to include parents, grandparents or friends sharing a house. An occupation order can however only be made in favour of a spouse, former spouse, co-habitee or former co-habitee unless the applicant has a legal share in the property.
- Breach of orders made for protective purposes is a criminal offence and an arrest without warrant can be made.
- Provision is included to allow specified third parties ("a representative") to act on behalf of victims of domestic violence to apply for a non-molestation or occupation order.
- The legislation allows a court to exclude a domestic violence perpetrator from other premises/areas apart from the family home.

Freedom Of Information Act 2000

This Act will increase public access to information held by public authorities. Implementation of the Act will be in stages with the duty on Trusts to produce Publication Scheme's. The individual right of access for members of the public will come into effect in January 2005.

Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003

This Order places a statutory duty on each Health and Social Services Trust to put, and keep in place, arrangements for the purpose of improving and monitoring the quality of the services we provide.

Clinical and Social Care Governance requires us to make sure that services user's receive the highest quality of care possible. It covers the organisations processes for monitoring and improving services through the development of the skills of our staff and service user involvement.

Human Rights (Northern Ireland) Act 1998

This Act seeks to protect people's Human Rights and whilst it is largely concerned with prevention it is important to note that the courts have interpreted the Act as placing a positive obligation on public authorities in certain cases.

The Act allows people to claim their rights under the European Convention on Human Rights. The Act places a duty on all public authorities to act compatibly with the Convention Rights. The DHSSPS has been under this duty since the date of devolution by virtue of provisions of the Northern Ireland Act 1998.

Northern Ireland Act 1998

This Act places a statutory obligation on public authorities to promote equality of opportunity and good relation.

Section 75 covers;- Different religious beliefs
Different political opinion
Different race
Different ages
Different sexual orientation
Different Marital Status
Men/Women generally.
People with/without a disability
People with/without dependants

The Trust must consider the above nine categories when making decisions or reviewing policies.

Police and Criminal Evidence (Northern Ireland) Order 1989

This Order makes changes in the law in Northern Ireland relating to the powers of Police in the investigation of crime and to evidence in criminal proceedings.

Parts 2 and 4 deal with Police powers to stop and search person's and vehicles, to enter and search premises, as well as the powers of arrest and detention. Staff should note that, under criminal law, the standard of evidence required for a prosecution will be 'proof beyond reasonable doubt'.

Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003

Part Three Protection of Vulnerable Adults

Articles 35 – 41
A duty is placed on providers of services to vulnerable adults to refer individuals to the Department for inclusion on the list of those deemed unsuitable to work with vulnerable adults which the Department will be required to maintain.

Articles 46 – 47
A provider of care to vulnerable adults who proposes to offer an individual work in a care position must check whether the individual is on the list of those deemed unsuitable to work with vulnerable adults held by the Department.

Public Health

Public Health legislation may be used in circumstances where a person who is vulnerable is living in conditions of extreme squalor. An environmental health officer from the local council would carry out an assessment and issue an improvement notice. This notice is served on the person responsible for the property, for example the landlord. The Environmental Health Department should be approached for advice.

Public Interest Disclosure (Northern Ireland) Order 1998

The Public Interest Disclosure (Northern Ireland) Order 1998 is designed to "protect individuals who make certain disclosures of information in the public interest; to allow such individuals to bring action in respect of victimisation; and for connected purpose". The type of information includes disclosures of criminal offences, miscarriages of justice, endangerments to health or safety of individuals or damage to the work environment.

Race Relations (Northern Ireland) Order 1997

Outlaws discrimination on the grounds of colour, race, nationality or ethnic or national origin. The Irish Traveller community specifically identified.

Sex Discrimination (Northern Ireland) Order 1976

This Order makes it unlawful to discriminate against an individual on the grounds of his/her sex in the fields of employment, training, education, the provision of goods facilities and services and the disposal and management of premises.

Sexual Offences Act 2003

The Act is in three Parts:

Part 1 makes new provision about sexual offences. It covers the non-consensual offences of rape, assault by penetration, sexual assault and causing a person to engage in sexual activity without consent.

Part 2 contains measures for protecting the public from sexual harm.

Part 3 contains general provisions relating to the Act, including minor and consequential amendments and commencement provisions.

The Registered Homes (Northern Ireland) Order 1992

This Order requires all Residential and Nursing Homes to be registered with the Board, which sets minimum standards and enforced by the Registration and Inspection Unit, which has powers to revoke registration or to force compliance with standards. The inspectors have a duty to respond to any allegations/complaints, which the unit receives, about the standard of care, which residents are receiving.

Further information pertaining to legislation can be found at www.opsi.gov.uk.

APPENDIX 2

FRAMEWORK TO SUPPORT RISK MANAGEMENT DECISIONS

Name of Service User: _____

D.O.B.: _____

Names of Staff, Services User and Carers Involved in Risk Management Process and Designation:

_____

_____

1. **Describe the issue you are being asked to make a decision in relation to:**

_____

_____

_____

2. **Is this a dilemma or emergency? If so why: (see page 7)**

_____

_____

_____

3. **Record sources of information available – service user, professionals, family, records, IT, significant others:**

_____

_____

_____

4. **Does service user have capacity to make informed decisions?:**

5. **Use the tables below to describe the options possible to resolve the situation. Detail both possible benefits and possible harms/losses to the service user and/or others. Indicate the level of likelihood as highly likely, likely or not likely.**

OPTION 1

Possible Benefits	Likelihood	Possible Harms/Losses	Likelihood

What can be done to promote identified benefits:

What can be done to manage potential harms/losses:

What statutory responsibilities/powers are required:

Consider impact on Human Rights:

Resource implications:

OPTION 2

Possible Benefits	Likelihood	Possible Harms/Losses	Likelihood

What can be done to promote identified benefits:

What can be done to manage potential harms/losses::

What statutory responsibilities/powers are required:

Consider impact on Human Rights:

Resource implications:

OPTION 3

Possible Benefits	Likelihood	Possible Harms/Losses	Likelihood

What can be done to promote identified benefits:

What can be done to manage potential harms/losses:

What statutory responsibilities/powers are required:

Consider impact on Human Rights:

Resource implications:

6. **Details of conflict / disagreements noted:**

7. **Identify the option agreed/deemed to be the best solution to managing the risk situation. Detail why it was seen to be the best option:**

Action required and by whom:

Monitoring Arrangements:

Review Date:

Action to be followed if agreed option results in a level of risk that can't be managed or circumstances change significantly:

Signature of all people who were involved in this decision making process and dates:

Signature: _____ Date: _____

Signature: _____ Date: _____

Signature: _____ Date: _____

Signature: _____ Date: _____

Signature: _____ Date: _____

Signature: _____ Date: _____

Copies of this record have been provided to:

Name: _____ Date: _____

Name: _____ Date: _____

Name: _____ Date: _____

Name: _____ Date: _____

Name: _____ Date: _____

Name: _____ Date: _____

Name of person co-ordinating this decision making process:

Name: _____ Date: _____

Appendix 3

FRAMEWORK TO SUPPORT RISK MANAGEMENT DECISIONS

Name of Service User: *Mrs D*

D.O.B.: *22.01.26*

Names of Staff, Services User and Carers Involved in Risk Management Process and Designation:

SW. CPN. OT. Dr Y (Cons Psychiatrist).

Mrs D. Mrs D T (Daughter).

1. **Describe the issue you are being asked to make a decision in relation to:**

   Mrs D has been assessed as medically fit for discharge. She wishes to return

   home and family and staff are concerned that she will be at risk in her home.

2. **Is this a dilemma or emergency? If so why: (see page 7)**

   Dilemma – Mrs D cannot remain in hospital as the hospital setting is

   inappropriate to meet her needs.

3. **Record sources of information available – service user, professionals, family, records, IT, significant others:**

   Social work assessment, CPN assessment, medical assessment, information provided by Mrs D T and Mrs D.

4. Does service user have capacity to make informed decisions?:

Does not have capacity to determine place of residence.

Does not have capacity re finances.

5. Use the tables below to describe the options possible to resolve the situation. Detail both possible benefits and possible harms/losses to the service user and/or others. Indicate the level of likelihood as highly likely, likely or not likely.

OPTION 1 **To Return Home**

Possible Benefits	Likelihood	Possible Harms/Losses	Likelihood
1. Will be orientated in familiar environment.	*1. Very likely.*	*1. Fire risk due to determination to light fire.*	*1. Very likely.*
2. Will be happy in own home.	*2. Very likely.*	*2. Malnutrition due to lack of co-operation with home helps and poor STM.*	*2. Likely.*
3. Will continue to have daily contact with friends and neighbours.	*3. Very likely.*	*3. Wandering day and night – RTA hypothermia.*	*3. Very likely.*
4. Will remain as independent as possible.	*4. Very likely.*	*4. Deterioration in physical condition due to non compliance with medication*	*4. Likely.*

What can be done to promote identified benefits:

1. Social Worker could assist family to re-orientate Mrs D to home environment

through life story book and validation exercises.

3. Family could encourage neighbours to visit more regularly.

What can be done to manage potential harms/losses:

1. Installation of heat and fire detectors. Home care staff work alongside Mrs D to encourage her to follow safe fire lighting procedures.

2. Family and D/N to monitor weight. Community support worker to develop relationship with Mrs D and encourage acceptance of CCM. Home acre staff to monitor food intake.

3. Home care staff call 4 times per day – concerns re wandering to be relayed to social worker. Night time check could reduce night time wandering – installation of Assistive Technology.

4. Home care worker to supervise medication.

What statutory responsibilities/powers are required:

Mrs D would be agreeable to returning to her own home and Trust have a duty to care. HPSS order.

Consider impact on Human Rights:

Mrs D's right to freedom and family (community) life would be supported.

Resource implications:

Waiting list for night time monitoring call – may be several months before slot becomes available. Home care package was in place prior to admission.

OPTION 2 ***Transfer to EMI Residential Unit.***

Possible Benefits	Likelihood	Possible Harms/Losses	Likelihood
1. Nutrition.	*1. Very likely.*	*1. Increased risk of reduced life span.*	*1. Very likely.*
2. Heat.	*2. Very likely.*	*2. Increased risk of*	*2. Likely.*

3. Companion-ship.	*3. Not likely as Mrs D does not make friends easily.*	*infections.* *3. Increased risk of disorientation and confusion.* *4. Depression.* *5. Social isolation.* *6. Deterioration in physical ability.*	*3. Very likely.* *4. Very likely.* *5. Very likely.* *6. Very likely.*

What can be done to promote identified benefits:

1 – 3. Individualised care plan with need for social contact highlighted.

What can be done to manage potential harms/losses::

Increased family contact during induction period – single room – encourage participation in social activities – monitor mental state and prescribe anti-*depressants (risk of poor mobility due to sedative affects).*

What statutory responsibilities/powers are required:

Guardianship – Mrs D refuses to consider any other option than home.

Consider impact on Human Rights:

The locked door would remove Mrs D's right to freedom. Her right to family life would also be affected as her friends would not be able to have daily contact.

Resource implications:

Waiting list for funding.

OPTION 3 ***Moving in with daughter***

Possible Benefits	Likelihood	Possible Harms/Losses	Likelihood
1. Family contact. *2. Nutrition.*	*1. Very likely.* *2. Very likely.*	*1. Wandering.* *2. Carer – user stress.*	*1. Very likely.* *2. Likely.*

3. Heat. *4. 24 hour supervision.*	*3. Very likely.* *4. Likely.*		

What can be done to promote identified benefits:

4. Provision of sitting service to allow Mrs D T out to shop / leave and collect kids from school.

What can be done to manage potential harms/losses:

1. Installation of Assistive Technology so Mrs D could be returned if she leaves / attempts to leave.

2. Regular respite and / or sitting service.

What statutory responsibilities/powers are required:

Guardianship – Mrs D refuses to consider any option other than home.

Consider impact on Human Rights:

Mrs D's right to family life would be encouraged and supported. Right to freedom may be challenged with installation of Assistive Technology.

Resource implications:

Waiting list for sitting service and Assistive Technology packages.

6. Details of conflict / disagreements noted:

7. Identify the option agreed/deemed to be the best solution to managing the risk situation:

Mrs D is to be supported to return to her own home.

Action required and by whom:

Social Worker to -

(a) draw up care plan to reflect Mrs D's needs

(b) add name to waiting list for night time call

(c) add name to waiting list for Assistive Technology

(d) liaise with HCM to restart homecare service for discharge

(e) referral for CCM

(f) family to heat home for return

(g) family to make arrangements to provide additional supervision and support

for 2 week period.

(h) case alert to OOHs – PO

Monitoring Arrangements:

Home care worker to report any concerns to social worker. Social worker to visit weekly.

Review Date:

Two weeks from discharge.

Action to be followed if agreed option results in a level of risk that can't be managed or circumstances change significantly:

(1) Mrs D to be encouraged to move to EMI facility.

(2) Assessment under article 4 (2) a and b of Mental Health Order by

Approved Social Worker and GP.

Signature of all people who were involved in this decision making process and dates:

Signature: _____ Date: _____

Signature: _____ Date: _____

Signature: _____ Date: _____

Signature: _____ Date: _____

Signature: _____ Date: _____

Signature: _____ Date: _____

Copies of this record have been provided to:

Name: _____ Date: _____

Name: _____ Date: _____

Name: _____ Date: _____

Name: _____ Date: _____

Name: _____ Date: _____

Name: _____ Date: _____

Name of person co-ordinating this decision making process:

Name: _____ Date: _____

"Equality and Human Rights Screening"

Northern Health and Social Care Trust is committed to adhering to the principles of Section 75 of the Northern Ireland Act 1998. It is considered that due to the operational nature of this policy it will not impact adversely on any section of the Section 75 categories. This policy has been developed in consultation with those affected by its implementation.