Human Rights and Risk Assessment

A Human Rights Based Approach To Risk

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Human Rights & People with Learning Disabilities

- More likely to experience rights violations (Sobsey, 1994; Mazzucchelli, 2001; Davies, et al., 2000)
- May not fully understand their rights (Mazzucchelli, 2001; Flowers, 1998)
- Violations may be rooted in ableism & paternalism (Tarulli et. al., 2004)
Common Human Rights Issues

• healthcare and treatment
  (DH, 2001; Mencap, 2007; 2012; Lunsky et al., 2009; Wullink et al., 2009)

• service responses to behaviour which ‘challenges’
  (Emerson, 2000, 2002; McGill et al., 2009; Webber et al, 2011)

• sexuality
  (Abbott & Howarth, 2005; Joint Committee of Human Rights, 2008;
   Richards et al., 2009)
Rights are often understood as risks

- ‘Risks to’ and ‘risks from’ people with learning disabilities
- Instead of thinking about human pain, anger, & attraction, we do “risk assessment and management”
- Clinical risk as a distiller of practitioner’s and service’s values
Positive Risk Management

• Widely seen as necessary; few practical initiatives (Whittington & Logan, 2011)
• CPA’s ‘tick-box’ approach problematic
• Strong impetus for service users to become involved in all aspects of their own care (Department of Health, 2010)
• Government ‘think tanks’ advocating for more equal distribution of power for service users (Boyle & Harris, 2009)
• Move away from medical, predictive models; towards a social model of risk.
• Requires structures and tools within the MDT to support culture change.
Service User Inclusion in Risk Assessment

• Service user’s voices often excluded (Langan & Lindow, 2004; Bates & Silberman, 2007; Sheldon, 2011)

• Services focus on managing threats to organisations whilst marginalising SU’s human rights (Langan & Lindow, 2004)

• Services fail to explore possibilities of consensus between SU’s and staff (Langan & Lindow, 2004; Hall & Duperouzel, 2010)

• Mental health policy increasingly emphasises both SU’s human rights and inclusive practice (Roberts et. al., 2012)
Person Centred Approaches to Risk


• Absence of a legal basis for much of the good practice proposed (*Mansell & Beadle-Brown*, 2006).

• Calls made for a rights based approach to risk assessment (*Sheldon*, 2011)

• May allow less “them and us” constructions.

• Pilot work suggests a human rights based approach (HRBA) shows promise as a possible model for positive risk management for people with learning disabilities
Defensive Risk Management

Increasingly defensive approach: Escalating risk

Defensive approach to risk

‘Negative Events’

Negative experience for the service user

No strategy in place to manage risk positively

Disengagement from services

(Whittington & Logan, 2011)
Collaborative Risk Management

Open approach: engaging with the user in planning risk

Lower risk as strategies for management are designed and acted upon

Greater collaboration with services

Collaborative approach to risk

Positive experience for the service user

More engagement with the process

(Whittington & Logan, 2011)
Tug of War

‘Duty of Care’
(Sellars, 2002)

‘Dignity of Risk’
(Perske, 1972)

Paralysis, Getting Stuck
Human Rights: A Unifying Framework

Service User Inclusion and Person Centred Practice (QIPP Agenda)

Positive Risk Management & Least Restrictive Practice

Human Rights Based Approach to Risk

Legal Rights and Frameworks (HRA, MCA, MHA)

Relationships and relational context: Collaboration, formulation & dialogue

Recovery Model

(Bailey, Ridley and Greenhill, 2010; Whitehead, Carney and Greenhill, 2011; Greenhill and Whitehead, 2012)
Our solution....

Human Rights
Risk Assessment & Management
Assessment & Management
The Human Rights & Risk Project

1. Risk Assessment
2. JRAMP (Joint Risk Assessment and Management Plan)
3. The Human Rights Benchmarking Tool

Developing service user’s human rights abilities and capacity

Developing staff’s abilities and capacity in human rights

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Key Concepts in HRBA to Risk: Balanced Decision Making

We need to balance the rights associated with:

• the risk posed (for the person or other people)
• and the strategy employed (for the person or the other people)

In practice you may be trying to balance:

• the Service User’s different rights
• Service User, staff and community rights
Key Concepts in HRBA to Risk: Proportionality

- ‘Not using a sledgehammer to crack a nut’
- A strategy should
  - Be appropriate and not excessive to the risk
  - Ensure that any restriction of rights is kept to a minimum
- Always use the least restrictive strategy
Practical Human Rights & Risk Tools

- Developed with BiHR
- Practical tools to guide clinical judgement
- Supported by staff training & Service User human rights workshops
- Available on Equality and Human Rights Commission’s website

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‘Keeping Me Safe and Well’ Risk Assessment
‘Keeping Me Safe and Well’ Risk Assessment

- Looks at risk through a ‘human rights’ lens
- Identifies equality and diversity issues
- Maximises participation and empowerment
- Includes guidelines to individualise the screen
- Includes good practice examples
Section 1: Risks to Self

Medication
Transport (public and private)
Mobility

Safety at home
Not looking after myself
Hurting myself
Section 2: Risk to Others

Religion
- Various people of different ethnicities and ages, including a wheelchair user.

Sexuality
- A couple and a child.

Dependents
- A woman and a child.

Physical Violence (weapons)
- A man holding a knife.

Fire starting
- A person starting a fire.

Truthfulness
- A person looking guilty with another person watching.
Section 3: Risk from Others

Physical abuse by others

Sexuality

Skin colour/ and or culture

Looking out for my family

Financial abuse by others

Emotional abuse by others
Section 4: Risk Relating to Property

Damage to my property

Damage to other people’s property

Fire starting
Relational Risk

- Possibilities of this opened up by formulation based, collaborative approach
- Clinical risk implicitly constructs risk as residing in the person
- Risks are “inextricably connected to interpersonal relationships: They do not just ‘exist’; they are taken, run or imposed” (Hansson, 2000)
- Increasing interest in interpersonal approaches (Wood & Blumenthal, 2011)
- Also ‘Value Congruence Theory’ (Casali & Day, 2010)
“organisational culture as key to rights protection and promotion”

(Ipsos MORI, 2010; Greenhill, under review; Roberts et. al., in preparation; Owen et al., 2009)
What is Organisational Culture?

beliefs, values, attitudes, behavioural norms, established routines and traditions of its workforce

(Davies, Nutley & Mannion, 2000)
Influences on Paid Carers

Formal Context – Service & Policy

Informal Organisational Culture

What staff do

Emotional responses to risk

Knowledge Beliefs & Attitudes

(adapted with permission from Richard Hastings)
Threats to Culture Change: ‘Risk’ and Fear

- Of change (Psychological reactance)
- Of Mental Health
- Organisation Insecurity
- Of Learning Disability
- Of Professional failure
- Of Organisational blame

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An Organisational and Personal Moral Compass
KMSAW Validation Steering Group....

Five Boroughs

Blackpool
Salford
Cheshire and Wirral
Lancashire Care
Calderstones

Keeping Me Safe and Well

5 Boroughs Partnership
NHS Foundation Trust

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Why it matters...
Conclusion

• To integrate rights into risk assessment we need to:
  – Move away from ‘them and us’ ways of working
  – See risk as part of relationships – not just as an attribute of someone else
  – Use rights to understand those relationships
  – Have clear practical decision making tools within services to support culture change
  – Make ‘choices guided by values’ *(Casali & Day, 2010)*
  – Talk about risk and plan how to tackle it together
  – Provide emotional support for staff so they can keep on ‘being people’ in the jobs they do
  – Think about how power is used within organisations (for staff and service users)
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