Guidance for colleges and other post-16 education providers on implementing the Disability Discrimination Act

learning and skills development agency

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Inclusive risk assessment

Dr Christine Rose

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I would like to offer thanks to the main writer Christine Rose for all her efforts in generating this report from the projects. I am also extremely grateful to the research sites who contributed to the project and to the many people who offered comments and suggestions which have helped to shape this publication.

I hope you will find this a valuable resource for helping you to respond to the DDA.

Sally Faraday
Research Manager
Learning and Skills Development Agency

1 Introduction

Alongside the duty, under the Disability Discrimination Act (DDA), to make reasonable adjustments and to avoid treating disabled people less favourably, education providers have duties to safeguard the health and safety of staff and learners in their organisation. The definition of a disabled person is quite broad and can include physical or sensory impairments as well as 'hidden' impairments, such as dyslexia, mental health difficulties and epilepsy. It is likely that up to one in six learners are covered by this definition (the estimate of 'one in six' is based on adults of working age who fall within the definition of the DDA, and is taken from a survey commissioned by the Department for Work and Pensions, March 2004).

While many providers have responded positively to the requirements of the DDA, seeing this as an opportunity to further the inclusion agenda, disabled people still face barriers to participating fully in education, particularly if there is an element of risk, perceived or otherwise.

In her foreword to *The dignity of risk*, Philippa Russell makes the point that 'Risk (however defined) has become one of the last taboos in taking forward the inclusion agenda and acknowledging disabled people's rights to be treated with dignity and respect and receive the support they need for full inclusion in society.' (Lenehan, Morrison and Stanley 2004, vii)

Russell also quotes the words of a young disabled person:

The saddest words are 'you can't', when you know that you can – I'm like a glass vase shut up in a cupboard where nobody sees me, because everybody thinks I might break if they got me out. I don't want to sue anyone if I have an accident – I just want to get a life.

Lenehan, Morrison and Stanley 2004, vii

Purpose of this guidance

Staff may understandably feel anxious about carrying out a risk assessment, in terms of their ability to ensure they do not discriminate under the DDA and to ensure the safety of the learner and others in the organisation. Staff may be concerned at the potential consequences of getting it wrong and putting someone at risk. We live in a culture that is increasingly litigious and this can fuel a fear of potential litigation and personal and organisational liability.

Although there is plenty of information on health and safety management and risk assessments, there is only limited information on carrying out risk assessments with people with learning difficulties in the care sector, and very little, if any, guidance available on carrying out inclusive risk assessments with disabled learners in education. This guidance is intended as a start to bridging this gap. More advice and information will be required, and it is hoped that further research and development will lead to additional guidance materials in the future.

This report explores the process of inclusive risk management, to help ensure that the legal rights of disabled learners and applicants are exercised safely. It will be of interest to managers and staff responsible for learners with disabilities and learning difficulties in the post-16 education sector, as well as staff responsible for heath and safety and those involved in providing support, such as college nurses, student services staff and advice and guidance staff.

Section 2 of this guidance provides an overview of the context of risk management with disabled learners. The remaining sections provide practical advice and guidance on carrying out inclusive risk assessments. Section 3 considers the basic principles of risk assessment with disabled learners in education while Section 4 presents a series of fictionalised scenarios, based on fact, to illustrate how these principles can be translated into practice. Section 5 looks at the approaches to take for successful risk assessment with disabled learners, and this is expanded in Section 6, which identifies the elements of good practice to consider in developing inclusive risk assessment policies and procedures. A skeleton risk assessment policy is provided in Appendix A, and a template for risk assessment in Appendix B.

A number of the examples and quotes in this report are from providers involved in national action research projects run by the Learning and Skills Development Agency (LSDA), in partnership with Skill and the National Institute of Adult and Continuing Education (NIACE).[1] These are referred to as project sites in this report. Other examples and quotes are from staff and learners in further education colleges, sixth form colleges, adult and community education services and social services, who have been willing to share their practice and progress, success and difficulties in carrying out risk assessments with disabled learners. The contributions of all are gratefully acknowledged.

[1] Project reports can be viewed on the LSDA website (www.lsda.org.uk).

2 The context

Legislative background

Under health and safety legislation providers have a duty to assess the risks to the health and safety of all who work and learn in the organisation, and then to put in place measures that reduce any risk to an acceptable level. Health and safety law does not require providers to remove all conceivable risk, but to ensure that risk is properly identified, evaluated and managed.

The DDA and accompanying code of practice acknowledge that there may be times when a duty to health and safety legislation overrides a provider's responsibility to make reasonable adjustments. There might be instances when, although an adjustment could be made, it would not be reasonable as it would endanger the health and safety either of the disabled person or of other people. However, the DDA and code of practice also make it clear that health and safety justification should not be used spuriously as an excuse for not making adjustments or accepting a disabled learner onto a course. The risk assessment process should be seen as an inclusive and enabling process, identifying the support and adjustments that can be provided, rather than used as a process which excludes.

The following are examples given in the code of practice of situations when health and safety may or may not be used legitimately to override the duty to make a reasonable adjustment.

A wheelchair user is a student on a Theatre Studies course. One module of the course is on stage lighting. This involves students climbing up scaffolding and sitting on narrow gantry planks while they alter the lighting. Having taken specialist advice, the lecturer decides that, although an adjustment could be made in order to hoist a wheelchair up to the required height, the gantry planks and scaffolding system are not strong enough to hold a wheelchair. It is unlikely, therefore, to be reasonable for the college to make the adjustment in this instance. (Code of Practice, example 6.13A, page 90)

A student with learning difficulties who also has a physical disability applies to do a trampolining course for students with learning difficulties at an adult education centre. His disability means that he will require staff to lift him on to the trampoline. The adult education provider has drawn up a risk assessment policy for lifting, which states that no member of staff should lift a student unless they have received appropriate recognised training on lifting. Because this course is one that is highly likely to involve staff in lifting, it is likely to be reasonable to expect staff to have received training in lifting in anticipation of applicants who require support. (Code of Practice, example 6.14A, page 91)

A student with cerebral palsy who uses a wheelchair wants to take a Photography A level. The entrance to the darkroom is not wide enough for the student to enter. The college is willing to adapt the doorways but the tutors are concerned he should not be allowed to take the course anyway because there would be a health and safety risk when he used the chemicals in the darkroom. The college therefore agrees to make an additional adjustment to deal with the health and safety risk, by ensuring that he has an assistant or technician with him when in the darkroom. (Code of Practice, example 6.15B, page 92)

At the time of writing this guidance, there have been two court cases relating to disability discrimination in education. Both involved issues around health and safety and risk assessments. The first case concerned a school that had refused to allow a pupil with diabetes, Tom White, to attend a water sports trip on the grounds of health and safety. Tom had experienced a hypoglycaemic attack on a previous school trip, partly brought about because Tom had not monitored his blood sugar levels correctly. A decision was made in Tom's favour: the court was particularly critical of the school's failure to involve Tom or his parents in the decision-making process, and the school's failure to carry out a meaningful risk assessment.

The second case involved a young man, Anthony Ford-Shubrook, who is a wheelchair user and who applied to study at a college but was unable to access the first floor. The college refused to allow him to use a stair-climbing wheelchair to overcome the barrier of the stairs, because they assumed it would be a health and safety risk. The Disability Rights Commission took up Anthony's case, and the County Court made a mandatory interim injunction against the college. Again, the court was critical of the failure of the college to undertake a meaningful risk assessment involving the disabled person.

Both these cases illustrate the risk of applying a blanket health and safety ban and making stereotypical assumptions about the dangers that disabled people pose. These cases also illustrate the need to undertake a meaningful risk assessment that fully involves the learner or potential learner.

Under the DDA, providers have a duty to anticipate the requirements of disabled learners. Consideration of adjustments such as the relocation of a class to the ground floor as an interim measure, and accommodation plans to address issues of inaccessibility as a long-term measure, may be considered as a legitimate anticipatory response for programmes that are currently inaccessible for learners who are wheelchair users. Justification on health and safety grounds may therefore be deemed inappropriate because of a failure to anticipate this requirement. Of course, not every requirement can be anticipated, as learners have individual support needs. However, organisations should expect to meet the requirements of a broad range of learners with disabilities and learning difficulties.

Different approaches

Learners, parents, managers, teachers and support staff can have different and at times conflicting views about the nature of risk and how it ought to be negotiated in everyday life. For example, people may feel that a disabled learner has a right to take risks, and may perceive risk as a barrier to the learner accessing education with the same degree of dignity and choice as other learners. Some may be concerned with the vulnerability of a learner and the potential harm that a learner might be exposed to. Others may be concerned at the impact of litigation and thus stress the dangers that a course or an activity may bring. People may be keen to advocate a learner's rights to take risks, recognising this as an opportunity for personal or educational development, independence and autonomy. These different perspectives may influence decision-making processes and outcomes.

Another factor that may influence outcomes is the extent to which the risk assessment process is 'learner-centred'. This relates to 'person-centred planning', derived from the Department of Health's White Paper *Valuing People* (DoH 2000). The four key principles underpinning the White Paper are a recognition of a person's rights, independence, choice and inclusion. First and foremost, a person's past experiences, present needs, hopes and aspirations are acknowledged.

Finally, the way people view 'disability' may influence the approach they adopt when carrying out a risk assessment. It is useful, at this point, to consider two contrasting models of disability: the medical model and the social model.

The medical model of disability reinforces the idea that the problems people face are a direct result of their own health or impairment. This model takes a narrow, labeling approach that can perpetuate stereotypes and create a cycle of dependency and exclusion that is often difficult to break.

The social model of disability, in contrast, refutes the medical perspective, and shifts the focus from what is 'wrong' with the disabled person to what is wrong with attitudes, systems and practices, as it is these that often create disabling barriers and prevent participation by disabled people. The social model of disability promotes the right of a disabled person to belong, to be valued, to determine choice and to make decisions. Education professionals work alongside the person in order to identify the organisational and attitudinal barriers, and develop solutions, make adjustments and provide support in order to overcome these barriers. The emphasis is taken away from the disabled person and is placed firmly with the provider.

A number of project sites identified that their risk assessment procedure and processes were focused on a medical model rather than a social model approach. Staff at one project site, for example, on reflecting on the past year, said:

Along with a lot of people I saw a 'risk assessment' as looking at 'what can go wrong', not as I now see it, how can we make it work. I think this was because my starting point was the medical model of disability, not the social model.

Overprotection or entitlement?

There have been a number of high-profile health and safety cases involving schools and colleges and/or disabled people. For example, an improvement notice was served on a college for failing to carry out suitable and sufficient risk assessments for disabled learners who required assistance when boarding vehicles. A teacher was fined after a nine-year-old girl died in a boating accident during a school trip. The school was found guilty of failing to carry out a suitable risk assessment.

The BBC reported in June 2004 that successful legal action taken by employees who have developed skin cancer while working in Australia may well have precipitated Derby City Council to issue guidelines to schools. The council asked teachers to consider 'postponing or cancelling events… in periods of excessive sun' and to 'try to plan external activities, for example, short duration trips, external lessons and sports days, for times when the sun is likely to be at its lowest strength – and the temperature at its lowest'. Teachers should also consider keeping a supply of maximum factor sun cream to spray onto pupils, although they are told 'not to rub it in for fear of being accused of inappropriate contact'.

The National Union of Teachers tried to counteract this over-reaction by telling teachers to take a common sense approach to protecting their charges from the sun in the face of an increasing risk of legal action. John Cullen, Head of Public Services at the Health and Safety Executive, reiterated this need for common sense at a recent Association of Colleges (AoC) conference on health and safety. He said that the Health and Safety Executive has to 'get the message over that this is about "sensible" management, and applying common sense', and complained about the way in which press coverage can give a distorted view of health and safety management.

The danger is that such high-profile cases and a growing culture of suing and litigation can result in a backlash of overprotection that may restrict learners' opportunities and access to education: 'Fear of risk brings out a series of irrational responses, and that fear dominates much risk discussion.' (Manthorpe 2001).

One organisation made the point: 'It's against health and safety is an excuse that's given here too readily,' and a project site noted:

The taking of risks is an integral part of all of our lives, and this can be a growth-enhancing process. This growth, we feel, can be retarded by attempts at the total elimination of risks in order to keep safe.

[2] http://news.bbc.co.uk/2/hi/uk-_news/education/3776091.stm, accessed 18 Feb 2005.

[3] AoC National Health and Safety conference, 29 June 2004, Peterborough.

The project leader's report for Project 10, 'Developing appropriate programmes for adults with learning difficulties, derived from person-centred planning, which promotes learner empowerment, active citizenship and social inclusion', commented:

If learners are only exposed to that which is safe and predictable, they will never have the experience of taking risks and coping with the unpredictable, which in turn further disadvantages them in adapting to and coping with change in their everyday lives.

(Dee 2004, 7)

The project leader's report for Project 18, 'Developing inclusive provision for learners with profound and complex learning difficulties', noted:

The risk-averse attitudes of the care staff and supporters who work with adults with profound and complex learning difficulties can create barriers to learning and inclusion. Care staff and supporters tend to be very concerned about potential 'harm', 'risk' and 'disruption' to other students and college life, and the consequent danger of exclusion flowing from the unusual behaviours of their clients. College staff found themselves reassuring these colleagues, helping them to see that taking carefully calculated risks is an integral part of learning and that it is appropriate to develop educationally-focused goals for learners as well as keeping them safe. Under these circumstances, well-developed risk assessments and risk-taking policies are essential.

(Byers 2004, 17)

This project also noted that risk taking could be seen as a learner 'entitlement to a diversity of new and stimulating experiences', providing an environment where 'learners are challenged to envisage new possibilities and encounter fresh opportunities'.

Although focusing on children in a care setting, the following comments are equally applicable to post-16 education:

Everybody has the right to be safe – but inappropriate and over-zealous approaches to risk management can negate disabled children's life chances and have a long-lasting impact on their future development and achievements.

(Lenehan, Morrison and Stanley 2004, vii)

The Jay Report recognises that ordinary life experiences involve the opportunity to take risks. Although the report focuses on nursing and care, again, the comments are equally applicable to education:

The question of risk, which at this stage involves such things as climbing and running, and later in life, hazards of other kinds, is one of extreme delicacy for those who care. Staff are likely to receive harsh criticism when accidents or injury occurs, yet if we entirely cushion people against these dangers, we immediately restrict their lives and their chance of development. This restriction can be cloaked in respectability and defended on the grounds of protecting… and keeping them safe, but it can also endanger human dignity.

(Jay 1979, para 121)

The Disability Rights Commission (DRC Nov 2003) has presented evidence about the ways in which health and safety has been used to affect disabled people negatively in the workplace, and has made a number of recommendations to the Health and Safety Commission to 'redress the balance between the rights of disabled people and the requirements of health and safety legislation'. The DRC believes that 'a lot more can be done to resolve the tensions between the (perceived) requirements of health and safety legislation and the rights of disabled people to live and work with the same degree of dignity and choice as other people'.

The challenge for providers is thus to allow maximum possible freedom and choice for learners and potential learners while at the same time ensuring that risk is reduced to an acceptable level and effectively managed. We should take an approach that acknowledges the rights of a learner to choice and inclusion, focuses on making adjustments and identifying solutions to organisational barriers and recognises the personal and educational benefits of risk taking.

Such an approach will enable us to meet the requirements of disability and health and safety legislation, ensuring that disabled learners are able to access and enjoy a high-quality learning experience in a safe and secure environment.

The terminology debate

The question of disability terminology is the subject of much debate with disabled people. The language we use is important because words reflect our attitudes and beliefs.

Some disabled people prefer to be called 'people with disabilities' because they want to be regarded as people first. Others prefer the term 'disabled people', arguing that in the social model of disability, the experiences of impairment and disability are separate. They would define these terms as follows:

- Impairment is the physical, mental or sensory characteristic, feature or attribute that affects the function of an individual's mind or body.
- Disability is the loss or limitation of opportunities to take part in society on an equal level due to social, attitudinal and environmental barriers such as inaccessible buildings, inflexible organisational procedures and patronising or negative attitudes.

People who prefer this terminology would argue that the term 'people with disabilities' suggests that the disability 'belongs' to the disabled person, rather than more accurately belonging to a society that disables. However, some disabled people dislike the term 'impairment'.

While everyone would agree that barriers are created by the society in which we live, there is not, therefore, complete agreement among disabled people on what is appropriate terminology and we recognise that this is a sensitive and complex issue. We have tried to use the term 'impairment' where possible within this report and tried to confine the use of the term 'disability' to refer to the organisational, environmental or attitudinal barriers that disabled people experience in education. However, we have not always been able to do so, for example when looking at the definition of 'disability' under the DDA, or quoting directly from the DDA Part 4 Code of Practice. We have continued to use 'disabled learners' and 'learners with disabilities and learning difficulties' interchangeably as the roots of both these expressions lie in legislation and are the current terms used and understood in the education sector.

In addition, there are issues about the use of the word ‘support’ as this is open to misunderstanding and potential misuse in reinforcing a medical model approach. However, in the context of education, ‘support’ has broader connotations and can be taken to mean the services, facilities, equipment and resources available to all learners, such as tutorial ‘support’. In this document, ‘support’ should be seen in this context and taken to mean the organisation’s responsibility to make adjustments to meet disabled people’s legal rights to education and inclusion.

3 Understanding the principles of risk assessment

Understanding the language

The process of risk assessment uses a number of different words, and it is helpful to have an understanding of them before exploring the steps involved in assessing risk.

A **hazard** is something with the potential to cause harm. For example, knives in a kitchen, chemicals used in a laboratory experiment, someone with limited upper body movement who is using machinery, someone experiencing an epileptic seizure while operating a power tool. Hazards may include a person, the environment, a task, equipment and materials or substances used. For a learner with a visual impairment who applies to do a horse-riding course, for example, the hazards may include the horse, the person, the environment (for example, uneven ground or sudden noise), and the task.

A **risk** is the chance that someone will be harmed by the hazard. Risk is thus a combination of the severity of harm with the likelihood of it happening. It is important to appreciate that risk may not be fixed, for example where learners present varying levels of risk because of fluctuating health.

A **control** is the precaution taken to eliminate the hazard or to reduce the associated risk to an acceptably low level. Sometimes the word action is used to mean the same as control.

A **risk assessment** is nothing more than a careful and systematic examination of what can cause harm and how this can be prevented. It involves an identification of the hazards present and an estimate of the risk involved. An assessment will take into account the precautions already in place, and the actions that can be taken to reduce risk further. Initially, a risk assessment may be carried out when a person applies for a course. This risk assessment should be reviewed regularly, often as part of the review of support requirements for a disabled learner. Additional risk assessments may be required if, for example, a visit or work experience is arranged. The term **care plan or intervention plan** is sometimes used by staff as an alternative expression to a risk assessment. The process is the same, such as the identification of hazards, and the identification of controls to reduce risk. Often, the wording used is influenced by a person's background. Staff with a care background tend to use care or intervention terminology, while staff with a health and safety background tend to use risk assessment terminology. All follow the basic principles discussed in the next section.

You may want to incorporate the risk assessment within a learner's overall assessment of support requirements. One project site member made the point that:

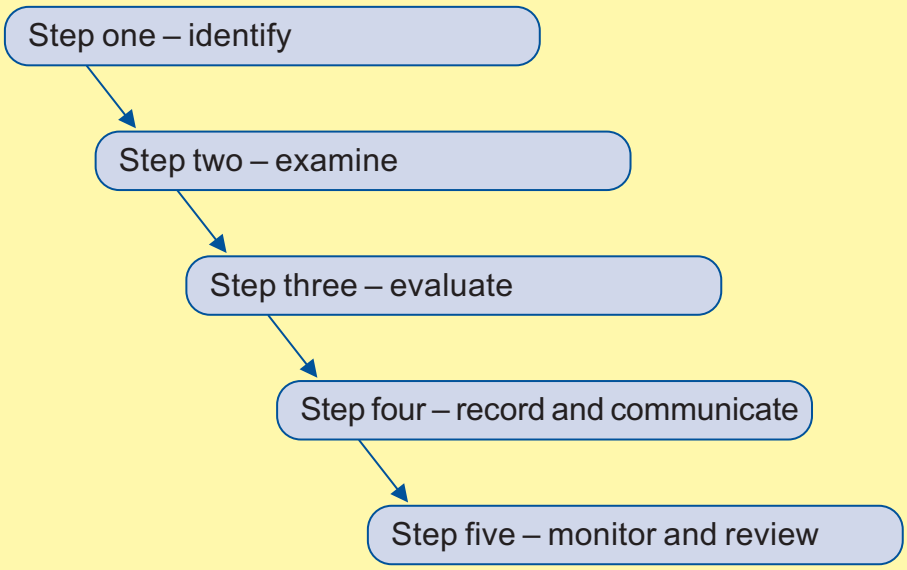
In developing a positive, inclusive risk assessment, I felt that… it is necessary to limit the number of times a learner has to go over the details of their difficulties/disabilities – we therefore came up with the idea of making the initial assessment more comprehensive and incorporating the risk assessment into it.

This organisation also recognises that the use of the word 'risk' can be open to misunderstanding and incorporating the process into the overall assessment of support helps to avoid its use.

Five steps to successful risk assessment

The Health and Safety Executive (HSE) identifies five steps, or stages, in the process of successful risk assessment (Figure 1). These have been adapted and considerably expanded for post-16 education providers who carry out risk assessments with disabled learners. It is useful to consider these steps separately, although in reality they will overlap as a risk assessment is carried out. It is important to involve the learner actively in all stages of the risk assessment process.

Figure 1 Steps to successful risk assessment



Step one – identify

The first step in carrying out a risk assessment involves identifying the different hazards. Learners do not want to be thought of as a risk. This is often very difficult, and the people involved can feel this acutely. Being sensitive, and reassuring learners that the process is being carried out to identify how you can provide them with the best support, will do much to encourage them that you are working in their best interests.

You should generally ignore the trivial and concentrate on the hazards which you could reasonably expect to result in significant harm. The Health and Safety Executive (HSE) points out that 'you do not have to assess everything, no matter how trivial, nor everything that could theoretically go wrong, however improbable. The level of detail in a risk assessment should be in proportion to the risk'.

The risk assessment should be specific to the person applying for, or studying on, a course or programme offered by your organisation. For example, what may be considered safe for an experienced adult may not be safe for a younger learner. Some learners, such as those with learning difficulties, for example, may not have a full appreciation of the potential risks.

It is also important to keep an open mind during the risk assessment process, to avoid making stereotypical assumptions about the health and safety implications of an impairment, both in general terms with a learner or applicant, and in relation to a particular type of impairment. A number of the project sites identified situations where it can be all too easy to make assumptions about a learner's capabilities. For example, one learner said:

It asks about me as a mental health patient, not me as a person. It assumes that I am likely to have certain difficulties or do certain things because of my illness. Even if they [his care team] don't tick the box, it's still written down as if that's what they expect me to do. This kind of thing is exactly what fuels the negative images in the papers and on TV [with reference to the language used and the impression given].

Some organisations use prompts to help staff in this stage in the risk assessment process. For example, a sixth form college running trips away from home for learners with learning difficulties on discrete courses has the following prompts on their risk assessment documentation:

- mobility
- personal hygiene
- toileting requirements
- dietary needs
- special equipment
- emotional and behavioural support
- travel needs
- spiritual needs
- sleeping needs
- additional support.

One FE college uses the following prompts:

- medical condition
- medication
- continence and personal care needs
- hearing, sight and speech
- mobility and physical coordination
- memory and concentration
- social, emotional, behavioural needs.

One specialist residential college recognised that:

Our previous risk assessment was mainly a medical model… it gave no real idea of the intensity of the problem… After much deliberation we decided to develop a two-stage holistic analysis of risk, the first part being completed at pre-entry and subsequent parts being completed at the learner's induction and throughout their course and therefore a 'live' document.

They have divided their risk assessment in to several different areas:

- medical (including medication, continence)
- mental health (including psychological and emotional needs)
- social (including behavioural needs)
- physical (including mobility and physical coordination)
- sensory (including hearing, sight and speech)
- independence (including social vulnerability)
- other (this might include ethnicity, home circumstances and so on).

Different members of staff contribute to different elements, such as a medical professional, disability officer and care manager. Although at an early stage in implementing the risk assessment process, a member of staff at the specialist college made the point:

We have been made aware of the strengths of profiling levels of risk and the PRA [personal risk assessment] has become an integral and important part of the assessment process… It is also proving to be an excellent way of encouraging learners to take responsibility of their personal development, as well as being aware of where, when and why there are situations when either they are at risk or could cause risk to other people. In addition, it gives the college and the learner a benchmark to reference the distance travelled by learners while at the college.

Pitfalls to avoid

The above prompts may be useful to consider in identifying hazards, but it is important to avoid focusing on a learner's impairment and the difficulties that an impairment can pose, and instead to focus on the organisational barriers that need to be overcome, in line with a social rather than a medical model approach to risk assessment.

Step two – examine

This stage involves you examining who is at risk and how the harm may arise, the existing controls already in place and identification of what more can be done. You may establish a number of controls or actions to eliminate or reduce risk to an acceptable level and likelihood, such as personalised equipment, provision of a support worker or providing information or training for relevant staff.

As with the previous step, the learner (or applicant) should be actively involved, and may be able to provide a unique insight on risk and valuable suggestions on how risk might be managed. You will want to listen carefully to the learner or applicant's needs, concerns, hopes and aspirations, respecting their right to choice and inclusion. One learner with chronic fatigue syndrome said:

I had to have a risk assessment where I used to work, they went on about health and safety and wouldn't listen to what I had to say… and all I kept thinking was 'I'm not a danger to anyone', and in the end I refused to do it.

Step three – evaluate

This stage is about considering how likely it is that each hazard will cause harm, and therefore whether the risk is high, medium or low. Evaluation should take account of any reasonable adjustments that can be put in place and the process should be carried out in such a way that learners' rights are fully recognised. You are aiming for an open, honest and transparent discussion. It is important that learners (or close relatives and advocates) are active and equal participants and therefore fully involved in the decision-making processes that will take place in this step, as these decisions will affect choice and participation in learning.

Even when all reasonable precautions have been taken and adjustments have been made, some risk usually remains. It has to be decided, for each significant hazard, whether the remaining risk is acceptable.

Your risk assessment may also need to consider 'what if?' scenarios, to give clear guidance on the types of support to employ or the response required if the risk is realised.

This stage in the risk assessment process therefore involves examining all hazards carefully and thoroughly, making judgements about the level of risk, identifying control measures to reduce these risks to acceptable levels, and ensuring that any decisions made are likely to be valid for a reasonable period of time. The Health and Safety Executive uses the phrase 'suitable and sufficient' to describe this.

Pitfalls to avoid

In determining the level of risk, you may be tempted to identify every risk as 'high', just to 'be on the safe side'. Rather than looking at the worst possible outcome, it is important that you focus on the likelihood of the risk occurring, as this will help you to prioritise. Some organisations offer guidance for staff on assessing the level of risk; examples are provided in Section 4 of this report.

It is important to bear in mind that health and safety law does not require providers to remove all conceivable risk. There is no absolute requirement to make an organisation's environment or situation absolutely safe for everyone. Reducing risks to an acceptable level involves recognition that there are potential risks for some activities. Where risk cannot be eliminated, the process of risk assessment is to ensure that risk is properly identified, evaluated and managed.

Step four – record and communicate

Appropriate documentation is an essential part of the evidence supporting the decision-making process and should clearly outline how risk will be managed. There is no specific format to use. As an example, two possible forms are provided at the end of this section to give you an idea of the most common ways of recording risk assessment decisions in the education sector. They have been created by selecting elements of good practice from a number of examples used by providers. Both these forms have merits. For example, the first ensures that each hazard identified has a corresponding comment on the level of risk and any action identified to reduce risk. The second example provides an opportunity for the views of the learner and parents or advocates to be clearly recorded, and identifies who should be informed of the outcomes of the risk assessment, with the learner's consent. You may wish to consider using a combination of the two forms, and a template is provided in Appendix B. Examples of this completed template are provided in the next section.

Whatever documentation is used, the important point is to ensure that all decisions are recorded with sufficient detail to provide an accurate record of the outcomes from steps 1, 2 and 3. In particular, the actions identified and recorded to ensure that risks are reduced to an acceptable level and likelihood should be:

- comprehensive
- communicated effectively to all relevant staff
- efficiently carried out.

Risk assessment documentation serves multiple purposes. It documents the status of a risk assessment at a given point in time, serves as a management tool to ensure that relevant staff are informed, allows action to be planned and prioritised, and provides the information necessary as part of the monitoring and review process (see next step). It provides relevant background information if specific and unforeseen issues arise, and could also provide invaluable evidence should a case be brought against the organisation.

Pitfalls to avoid

Some providers use paperwork that only includes the actions (or controls) that are required to reduce or eliminate risk. However, it is important to specify who is responsible for carrying out each action, and by when. One organisation carried out a risk assessment for a learner with epilepsy and found that a particular type of computer screen was required. However, a misunderstanding resulted in staff in learning support assuming that IT staff were responsible for obtaining it, while IT staff claimed that they did not know anything about it. By the time this was sorted out, the learner had been kept waiting for eight weeks.

If the information from a risk assessment is not used and shared, it becomes important information that simply sits in a file. Procedures therefore need to clarify how risk assessment paperwork is used as an effective communication tool. This is discussed further in Section 6.

The third pitfall to avoid is to see the form as an end to itself, rather than a working document for the organisation and the learner. Risk assessment documentation should clearly indicate who is responsible for the monitoring and review process, as this will help ensure that actions have been carried out; this is discussed in the next step.

The fourth pitfall to avoid is to focus on getting the paperwork right at the expense of the needs of staff training and development. Although paperwork is important in formally recording the process, it is just as (or perhaps more) important to have sensitive, responsive and well-trained staff who can carry out the process appropriately with disabled learners and applicants. One project site commented:

We focused too much on trying to get the paperwork right, and not fully appreciating the cultural change necessary to affect change. This includes overcoming the fears associated with the taking of appropriate risks rather than trying to be safe and attempting to eliminate risks. There have been underlying historical tensions concerning risk assessments within the college which we are now addressing.

Step five – monitor and review

The risk assessment documentation summarises the decision-making outcomes and facilitates a continual review of risk within the ongoing review of assessment and support provided for a learner. The risk assessment documentation becomes a dynamic tool rather than a completed piece of paper. One project site rightly points out that 'the content of the risk assessment may change – indeed we hope they will change – as the learner develops self-advocacy, personal risk management and transition skills'.

Monitoring allows you to check that actions have been fully implemented in practice and are working well. Monitoring also allows you to review any change in circumstance such as alteration to a learner's medication or fluctuation in the health of a learner.

The monitoring process will involve asking a range of questions, such as: Have the control measures been implemented effectively? Are they working and still relevant? Have the levels of risk changed? Is there something more that can be done? It is therefore helpful for the risk assessment paperwork to include details of how the assessment will be monitored and who is responsible for this, and the timescales involved in the monitoring process. It almost goes without saying, but ongoing and regular contact with the learner is important within this review process.

Risk assessment record, example 1

Name of learner or applicant:

Date:

Course or activity:

Hazard	Who may be at risk and how? (consider learner, other learners, staff)	Precautions (controls) already in place

Assessed by

To be reviewed by (Date)

	Risk Level High, Medium or Low (or a rating, eg 1,2,3,4)	Actions required to reduce risk	By whom, by when

Risk assessment record, example 2

1 What are the hazards or hazardous situations?

2 What are the possible risks (give details of who is at risk, what might happen, the likelihood of this happening, the possible consequences for the learner, other learners or staff)

3 If the risk is realised, how severe is the likely outcome? (use scale of 1-6)

4 How likely is it that this will happen? (use scale of 1 – 6)

5 Calculate the risk rating (outcome x likelihood, and refer to table) – see section 4 for examples

6 What are the potential benefits to the learner? (To be considered, in order to get a balanced view of the benefits versus the risks)

7 Actions agreed to minimise risk (include person responsible for each and the dates to be completed)

8 Information to (Who needs to be informed of these actions and decisions? Ensure learner consent has been obtained).

Name and signature of staff

Date Date of Review

Additional comments

4 Translating principles into practice

This section considers a series of fictionalised scenarios based on fact, to illustrate how the principles of risk assessment discussed in the previous section can be applied in practice. Two scenarios illustrate how documentation might be completed, while others address specific issues, such as the administration of medication.

There is a danger that in attempting to describe appropriate responses to learners with a range of impairments, this will inadvertently encourage stereotyping. It is therefore important to appreciate the need to avoid making assumptions and to ensure that all risk assessments are tailored to the needs of each individual.

Scenario 1

Rashid is studying for A-levels and hopes to be a doctor. He has haemophilia which is generally well managed through medication and regular check-ups with his GP, but sometimes he has had injuries, which have required occasional trips to hospital. A risk assessment was carried out when Rashid applied to the college. It identified the need for staff awareness, prompting to take care on some activities, the use of a cold compress for general bumps and bruises, and the need for emergency services to be called if a significant cut caused uncontrollable bleeding, or if Rashid experienced other types of injury such as a bone fracture.

The college organises an outdoor pursuits course, which involves walking, mountain climbing and kayaking, and Rashid is keen to attend. However, tutors are concerned that an injury to Rashid will have far more serious consequences than injury to other students. They are also concerned about their potential personal liability if such an injury occurred while Rashid is in their care.

It is important that with any new activity or change in circumstances risk assessment is used to determine risk and to explore strategies to see how risk can be reduced to an acceptable level. The examples given on the following pages provide an indication of how documentation might be used to record the outcomes of this risk assessment.

As we discussed in Section 2, schools and colleges are reluctant to organise trips because of fears of litigation if there is an accident. However, we shall see in Section 6 that having clear policies and procedures in place will help staff to feel confident and help ensure that they no longer feel vulnerable to legal action.

Some organisations provide guidance to staff on how to assess the magnitude of risk, and the following are examples of such guidance. You may disagree with the assessment of risk as either low, medium or high, and indeed the examples below take differing positions on the identification of medium risk, for example. However, these examples demonstrate how guidance can be given within organisational procedures, to assist staff in determining the level or risk, and thus assist in the prioritisation of actions.

Example 1

	Likelihood of hazard occurring		Magnitude of impact
1	Highly unlikely	1	Mild / minor injury, no first aid treatment required
2	Unlikely	2	First aid treatment required
3	Possible	3	Accident and Emergency treatment required
4	Likely	4	Hospitalisation is likely
5	Highly likely	5	Serious injury requiring long-term treatment /long-term effects
6	Certain	6	Serious permanent or fatal injury

Risk factor – multiply likelihood with magnitude

Risk is **Low** if score 0–6

Risk is **Medium** if score 7–12

Risk is **High** if score above 12

Example 2

Severity if outcome realised	Likelihood of it happening
Fatal = 4	Very Likely = 4
Major = 3	Likely = 3
Minor = 2	Possible = 2
Trivial = 1	Unlikely = 1

Risk rating (= outcome x likelihood)

Above 9 – **Intolerable** risk. Activities must be prohibited unless risk can be significantly reduced

9 – **High** risk. Priority action. Controls should be identified to reduce risk to acceptable level

6 – **Medium** risk. Controls should be identified to reduce risk to acceptable level

4 or less – **Low** risk. Further action may not be necessary but monitoring required to ensure controls are maintained

Example 3

How likely is the possibility of harm form the identified hazards?

Unlikely / Infrequent 1	Possible / frequent 2	Probable /Likely 3
How serious is the outcome?		
Minor discomfort / first aid 1	Hospital treatment / accident and emergency 2	Major injury 3

Risk rating	
Score 6–9	**Unacceptable** risk and all activities must cease until significant control measures are put in place to lower risk
Score 4–5	**High** Risk. Urgent action required to lower risk, either to reduce severity of outcome or probability or both
Score 3–4	**Medium** Risk. Some action required to lower risk, either to reduce severity of outcome or probability or both
Score 1–2	**Low** Risk. Take all necessary action to lower risk, and ensure risk is monitored

Support plan

Confidential

(To be used as part of the support process when an element of risk has been identified)

Name of Learner or Applicant Rashid

Date 28 Feb 20_

Course or Activity Outdoor pursuits trip to Wales in April 2005

1 What are the hazards and risks?

(Give details of who is at risk, what might happen, and the possible consequences for the learner, other learners or staff)

General bumps and bruising do not normally cause Rashid a problem, and a cold compress is all that is required. However, there is a risk that Rashid may fall or slip while out walking, climbing etc, and administration of first aid will be unable to control bleeding. A more severe injury would require emergency services to transport him to the local hospital. There is also the risk that the potential distance from the hospital will prevent Rashid from receiving appropriate emergency treatment without a delay. Rashid's mother believes that the risk is minimal provided that Rashid would be able to receive treatment within 30 minutes of injury. It has been established that a hospital is within a 30-minute call out from the outdoor pursuits centre, and there is also a mountain rescue team on 24-hour call out.

2 What are the potential benefits to the learner?

(to be considered, in order to get a balanced view of the benefits versus the risks)

Rashid is very keen to go on this trip with his peers and his parents support this. He has not had the opportunity to participate in a similar activity before this.

3 Who has been involved in this assessment and the subsequent decisions?

GS (Learning support coordinator), with KJ (tutor), Rashid and Rashid's mother

4 Additional comments

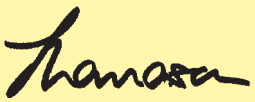
5 Actions required to reduce risk

Hazard	Who may be at risk and how? (consider learner, other	Precautions (controls) already in place
Distance from hospital if emergency treatment required	Injury to Rashid	Hospital is within 30 minutes call out and there is mountain rescue
Lack of staff awareness of appropriate response should Rashid experience injury	Injury to Rashid	Staff are already aware of the need to call first aid staff if Rashid experiences injury. First aiders are aware of appropriate response
Outdoor pursuit staff unaware of Rashid's condition	Injury to Rashid	Outdoor pursuits staff are all trained in first aid and carry health and safety qualifications
Slips or falls during activities	Injury to Rashid	Protective equipment is worn by students at all times

6 Information to

(Who needs to be informed of these actions and decisions? Ensure learner consent has been obtained).

Copies of assessment to Rashid and Rashid's mother, tutor, college nurse, all staff who accompany students to outdoor pursuits centre, and head of outdoor pursuits centre.

Signature of staff 

To be reviewed by 16th March 20_

Countersignature (if required)

Risk Level High, Medium or Low (or a rating, eg 1,2,3,4)	Actions required to reduce risk	By whom, by when
High	■ Check with Rashid's GP that 30 min delay is acceptable risk ■ Provide mobile phones for two staff to carry at all times	GS, 15/3/_
Medium	■ Ensure a member of staff on visit is trained in first aid ■ Ensure all staff are aware of response for general bumps and bruises and also aware of when there would be a need to call emergency services	KJ, 15/3/_ College nurse 15/3/_
Low	■ Inform outdoor pursuit staff and also advise they alert mountain rescue to possible need for a response	KJ, 15/3/_
Medium	■ Explore if further protection would be possible / beneficial ■ Portable first aid box carried by staff	GS, 15/3/_ College nurse, 15/3/_

Scenario 2

Jim is offered a place on a course at a local college. The time comes for enrolment, but Jim does not attend. A letter is sent asking if Jim intends to accept the offer, and asks him to contact the college as a matter of some urgency. Jim's mother, with his consent, rings the college and asks to speak to the course tutor. She explains that her son has obsessive compulsive disorder (OCD) and is at the moment unwell, but is still very keen to do the course and his GP is hopeful that Jim will be able to join in two weeks. The course tutor says 'I'm sorry to have to ask this, but is Jim dangerous?'

This is a true scenario, and permission has been given to share it, although names have been changed to preserve confidentiality. Media portrayal often fuels public perceptions that people with mental health difficulties pose a health and safety risk to society. In reality, the reverse is true. People with mental health difficulties are more likely to be the recipients of violent acts from the general public than to be violent themselves. As Alaszewski, Parker and Alaszewski (1999, 7) point out:

Bizarre events and actions, especially those which result in significant harm to innocent victims, attract media attention so that, rather than being recognised as exceptional, they are seen as normal or typical… This type of distortion has been referred to as 'moral panic' when the source of fear is a specific group in society.

This scenario illustrates the need to raise staff awareness on supporting learners with mental health difficulties. It is important that training, for example, is provided for all staff, tackles myths and misconceptions and focuses on the support that the organisation can provide for learners with mental health difficulties. For further information on supporting learners with mental health difficulties, see James (2005).

Scenario 3

Tariq applies for a plumbing and carpentry course at a local education provider. At the interview, he explains to the tutor that he has epilepsy. The tutor asks if Tariq is likely to experience a seizure while on the course and Tariq explains that this is possible as his current medication does not fully prevent seizures. The tutor says that, because of health and safety, he does not feel that this is the most appropriate course for Tariq.

As we discussed in Section 2, health and safety might, on rare occasions, override your duty under the DDA, but such a blanket health and safety response by the tutor is likely to be unlawful, as no account has been taken of either Tariq's individual requirements or the actual contents of the course.

One organisation has generic risk assessment documentation for epilepsy, diabetes, asthma and allergies, which are used as a framework to inform individual risk assessments. Another has generic risk assessment documentation for learners who may not recognise everyday hazards because of learning difficulties, learners with limited mobility or coordination, and learners who require support in taking medication. It is important that such generic risk assessments are only used as a guide to the process, but these can be useful when carrying out risk assessments with an individual. Both organisations also have protocols in place that provide guidance for staff on what to do in the event of a learner experiencing a seizure, and what to do in the event of a prolonged seizure.

One organisation has specific prompts on risk assessment documentation for learners with epilepsy and these include the questions:

- How long have you had epilepsy?
- How often do you have seizures?
- What type of seizure do you have?
- How long do the seizures last?
- Do you have any warning signs?
- How long a rest period do you need after a seizure?
- Are there any conditions or events that could trigger the seizure?
- Are you on medication and if so, what?
- Are you photosensitive?
- What are your parental and other contact details?

Although the focus of these questions are on the learner and his or her impairment, the purpose of asking such questions should be for the organisation to identify and implement their responsibilities in removing barriers, making adjustments and thereby meeting the requirements of a disabled learner.

Such an assessment with Tariq might reveal that he can have absence seizures a couple of times a week, and an epileptic seizure once every couple of months, when he will need a few hours' rest. He has warning signs, and triggers include long periods of concentration at a computer screen and getting hot after physical exertion.

Once the hazards of the course are examined the possible controls to reduce risk might include:

- one-to-one supervision when using power or electric tools
- increased supervision when using sharpened tools
- briefing Tariq on location of medical room, where a period of rest can take place
- regular breaks when carrying out more physical tasks
- only use a TFT (antiflicker) screen on a computer
- regular breaks when using this computer
- regular verbal and visual confirmation of Tariq's well-being
- regular reviews of course content by a tutor with regard to physical input and concentration levels required, and consideration of viability of heavier, more arduous tasks and support that can be offered on these occasions.

Scenario 4

Jenny is a young woman who wants to attend a foundation course in IT. She is a wheelchair user. She has had a dedicated learning support assistant at school, and the school and Jenny's parents have provided a detailed summary of Jenny's support and care requirements .

Access to information is an important aspect of risk assessment and this is discussed further in Section 6.

Again, the example given on the next page gives an indication of how risk assessment documentation might be used to record the outcomes of a risk assessment with Jenny.

One organisation provides 'safe systems of work' following a risk assessment. These provide guidelines to follow on safe practice, in order to minimise hazards and thus prevent harm to a person. These guidelines act as a checklist or reminder. For example, if a learner requires physical support, risk-assessment documentation identifies the need for staff to have accompanying safe systems of work, which may include the following suggestions:

- Never attempt to take a wheelchair upstairs or across uneven terrain.
- Don't attempt to lift a person from their chair unless you have had specific 'people moving people' training (manual handling).
- Obtain the learner's consent prior to any physical handling.
- Afford the learner dignity and respect at all times.

Support Plan

Confidencial

(To be used as part of the support process when an element of risk has been identified)

Name of Learner or Applicant Jenny

Date 28 March 20_

Course or Activity Foundation course in IT

1 What are the hazards and risks? (Give details of who is at risk, what might happen, and the possible consequences for the learner, other learners or staff)

Jenny has already arranged for a carrier transport to take her to and from college to home. She would like to be met by someone from the college at the front door, to assist her in reaching B block, which is where her course will be taught. Classes will take place on the first floor, which is fully accessible via a lift. Accessible toilets are also located on this floor. The doors to B block are automatic. Jenny's parents are supportive but anxious about how Jenny will adjust to a large environment with many students, as her previous school was quite small.

She uses a manual wheelchair and requires staff to assist her with transport and with care requirements as she has limited upper body movement.

2 What are the potential benefits to the learner?
(to be considered, in order to get a balanced view of the benefits versus the risks)

Jenny is very keen to join this course and is interested in a career in the IT field.

3 Who has been involved in this assessment and the subsequent decisions?

GS (Learning support coordinator), with AB (tutor), AC (Premises manager), Jenny and Jenny's parents

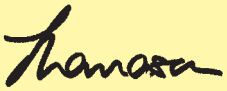
4 Additional comments

5 Actions required to reduce risk

Hazard	Who may be at risk and how? (consider learner, other learners,staff.)	Precautions (controls) already in place
Transport to and from college	Injury/trauma to Jenny	Jenny has arranged transport to and from college
Movement around college	Injury/trauma to Jenny	Classes are all timetabled in B block. Canteen and LRC are only a short distance away.
Inadequate levels of supervision	Injury/trauma to Jenny	
Inadequate levels of staff training	Injury/trauma to Jenny Injury/trauma to staff	
Use of computer equipment	Injury/frustration and stress to Jenny	Adjustable height table is already present in IT suite in B block and suitability has already been checked
Fire	Injury/trauma to Jenny	Fire evacuations procedures are in place, fire exits are clearly marked in B block, evac chair is available on first floor
Staff placed in compromising situation	Staff stress	

6 Information to (Who needs to be informed of these actions and decisions? Ensure learner consent has been obtained).

Copies of assessment to Jenny and Jenny's parents, all IT foundation tutors, premises manager, health and safety officer

Signature of staff 

Risk Level High, Medium or Low (or a rating, eg 1,2,3,4)	Actions required to reduce risk	By whom, by when
Low	■ Check credentials and capability of carrier ■ Identify support assistant to meet and escort Jenny from drop off / pick up point	AC, 1/6/__ GS, 1/7/__
Low	■ Arrange induction session for Jenny prior to Jenny attending ■ Identify support assistant to assist Jenny in moving around college	GS, 1/5/__ GS, 1/7/__
Medium	■ Arrange 1 to 1 supervision for educational activities ■ Arrange 2 to 1 supervision for changing and related welfare tasks	GS, 1/7/__ GS, 1/7/__
High	■ Staff to receive advanced people moving 'people' (manual handling) training ■ Training will be documented and records of staff training kept ■ Carers and tutors to be informed on wheelchair use and capabilities ■ Safe systems of work circulated to all staff	Health and safety officer, 1/7/__
Low	■ Premises staff to be alerted that table is in use	AC, 1/9/__
Medium	■ Ensure personal emergency egress plan (PEEP) is suitable for Jenny ■ All staff and Jenny to be informed of PEEP	AC, 1/7/__ 3/9/__
Medium	■ All welfare activities such as changing will be conducted by two staff, both female.Welfare events will be logged to record who administers care	GS, 1/9/__

To be reviewed by 1st Sept 20__

Countersignature (*if required*)

Scenario 5

Aisha has learning difficulties and applies for a place at a college, which she very much wants to attend. At the interview, her parents explain that Aisha has epilepsy, which is controlled by medication that she takes three times a day, but she will need reminding to take her medication at lunchtime, while she is at the college. Also, Aisha sometimes experiences prolonged seizures that require administration of further medication.

The staff are concerned that they are not trained or qualified in nursing and are reluctant to administer medication. They are worried about the consequences if they forgot to remind Aisha to take her medication, and are also concerned at what would be involved when administering medication if Aisha has a prolonged seizure. They believe that both would contravene health and safety.

Having positive policies on medication and supporting learners' medical needs helps ensure that learners are able to access all aspects of post-16 education. *Supporting pupils with medical needs* (DfEE and DoH 1996) offers useful advice on developing policies and protocols for the administration of medication and other medical procedures. While aimed at schools, the advice is relevant for any education provider, although organisations may wish to modify exemplar forms. For example, pupils under 16 should not be given medication without written parental consent, but this may not be appropriate for learners over 16. Advice is also offered on four common conditions: epilepsy, anaphylaxis (severe allergic reaction), asthma and diabetes.

Generally, conditions of employment do not include giving medication, although staff may volunteer to do this and many do so happily. Supporting learners to receive regular medication may involve something relatively simple such as reminding a learner to take a tablet each lunchtime. However, other learners may have more complex needs. Medication, for example, can vary from the taking of tablets, and the use of allergy sprays and pumps, to the insertion of pessaries and suppositories. Medical procedures can include connecting or emptying catheter bags or dressing wounds.

Unions have expressed concern at the potential consequences for their members if things go wrong. However, Unison has produced some guidelines on the administration of medication by non-medical staff that you may find useful. These guidelines are intended to ensure that learners with specific medical needs are not excluded from mainstream education or activities, and though aimed primarily at schools the principles are again transferable to post-16 education. Unison points out that, generally, only qualified staff such as nurses should undertake these tasks, but they recognise that some children would be denied many services if some of these procedures could not be carried out by non-medical personnel in a volunteer role. They note that the need for non-medical staff to administer drugs has increased as education has become more inclusive; many more children have allergies and other medical conditions that are not severe enough for them to remain away from school or leisure facilities, but which could become life threatening when they occur. The Unison guidelines stress the need for clear procedures, guidance, training and specific instructions for such staff, and provide a quick checklist of a policy and procedure for the administration of medication and other medical procedures.

The following are extracts from one college's 'procedure for supervisory assistance of medication to students':

- Ensure quiet room/area if possible for administration.
- Ensure access to water to drink.
- Read medical record sheet (this gives details of medication, dosage, route of administration, expiry date, time to administer, any special instructions etc).
- Check student's name and identification photograph – first check.
- Check record sheet for medication, date, time and route to be given.
- Wear protective covering, apron/gloves, if applying lotions.
- Ask student's name and tutor group – second check.
- Ensure medication is taken and observe for any side-effects.
- Second person to check this procedure with you.
- Sign medical record sheet, immediately following student taking his/her medication.

The college has similar guidelines for other medical procedures such as the emptying of catheter bags, and the emergency administration of adrenaline.

One frequently expressed concern is the need to administer rectal diazepam if someone has a prolonged seizure. One organisation has guidelines for staff on such a procedure, including obtaining permission for college staff to administer when at college or in a public place, and alternative arrangements if consent is not given. The guidelines also contain information on when the medication should be administered and when further action may be needed, such as when to call for an ambulance. All staff who administer this drug have training that is regularly updated. One organisation has a set of guidelines for administration of buccal midazolam, which is an effective and reliable alternative to rectal diazepam in the control of prolonged seizures. While a GP would be required to make such a decision, this has proved a useful alternative that staff are often much happier to administer.

An individual risk assessment with Aisha may identify aspects such as:

- who reminds her
- 'what if' scenarios, for example, what if the member of staff who usually administers medication goes off sick
- actions if Aisha goes on an outing with different staff to those who usually teach and provide care for her
- how volunteer staff are instructed and receive training in administration of this medication to Aisha
- what to do and who to contact in an emergency.

It should be borne in mind that trying to help Aisha to take responsibility for her medication is a valid learning outcome.

5 Critical approaches to successful risk management

Working together

Staff may understandably feel anxious about carrying out a risk assessment, both in terms of their ability to ensure a learner's safety and of the possible consequences of getting it wrong and putting someone at risk. They may be concerned at facing potential litigation and personal or organisational liability. As we discussed in Section 2, we live in a culture that is increasingly litigious, and this can naturally fuel these fears.

The Health and Safety Executive points out that risk assessment should be carried out by a 'competent person' – someone who has a combination of training, knowledge and experience to undertake the risk assessment process. The difficulty here is that people are often experienced in supporting disabled learners or experienced in dealing with matters of health and safety, but rarely experienced in both – yet carrying out effective risk assessments with disabled learners often involves knowledge of both these areas. Some organisations have overcome this difficulty by involving more than one member of staff in the risk assessment process. For example, in one organisation, the learning support coordinator and the health and safety officer jointly carry out risk assessments with disabled learners. Another draws on the experience of the college nurse and the learning support manager. One organisation involves the college nurse, the additional support coordinator and the health and safety officer. One organisation involves the key worker as an integral part of the risk assessment process for learners or applicants who are mental health service users. Another involves the premises manager if there are issues that involve the organisation's physical environment.

These examples illustrate the benefits of collaborative working and sharing of skills and expertise. In addition, taking responsibility for the risk assessment process can be a stressful task if there is a perception, real or otherwise, that those involved would be blamed if things go wrong. Having more than one person involved can help alleviate these concerns and this is also more likely to result in a balanced and measured approach to risk assessment and the accompanying decision-making processes.

You may decide that staff require training in carrying out risk assessments; certainly, having the knowledge to carry out a risk assessment properly is an essential tool with which staff should be equipped. One project site noted:

We have determined that there is a substantial need for staff development regarding risk assessment, since there is a considerable fear of involvement because of potential litigation. We feel that such fear may lead to an over-cautious approach to risk assessment, which might lead to oppressive practice in the striving towards keeping safe.

'Competence' also includes knowing our own limitations and where to go to get help and advice. For example, the health and safety officer in one organisation carries out risk assessments for disabled learners. Where he believes that the process is beyond his expertise, he contacts a local occupational health adviser for help and advice in carrying out a detailed assessment. Providers should recognise that there may be occasions when staff need to seek advice from external specialists, and it is helpful to ensure that partnership arrangements are established to facilitate this.

Involving the learner

A shared respect and understanding among staff of a learner's, or a potential learner's, rights to choice and inclusion is a crucial approach in successful risk management. Such a respect and understanding will lead to trust and confidence by learners, applicants and parents. As we discussed in earlier sections, inclusive risk assessment involves listening carefully to a learner's needs, concerns, hopes and aspirations, and entails their active involvement in the risk assessment and decision-making process. This point was described by one project site as follows:

The involvement of learners in their own risk assessments is of importance. Risk assessment can be an opportunity for learning, especially for learners with learning difficulties. We have therefore made the documentation with which the learner interfaces as simple as possible. Learners can be encouraged to take some ownership for the management of their own risks through being involved in the risk assessment process. We encourage our learners to be as independent as possible to prepare them for their lives after college, where they may have to manage their own risks with little or no support. Learners can bring knowledge and insights to the risk assessment process.

Another said: 'We try to work *with* the individual, rather than *for* the individual.'

One project site consulted with learners on their perceptions of the risk assessment process:

[The consultation] taught me a huge amount about how and when risk assessments should be carried out. It highlighted how difficult it can be to reassure the learner of the positives of risk assessment, especially when they feel they are 'under the microscope' and powerless. It also highlighted how putting a learner through the process of the 'wrong' type of risk assessment process could do more harm than good.

One project site made the point that it practises the policy of fully including the learners in all decision-making processes:

Although I rarely come into direct contact with learners I believe, from what I have been told by those that do, that learners here seem to be reasonably confident that we require the process of disclosure and risk assessment solely in order to fully enable them to achieve.

However, no consultation had actually taken place with learners to confirm this point, so it may be a dangerous assumption to make. This is supported by findings from other project sites; one organisation surveyed learners regarding their understanding and involvement in risk assessments and were surprised to find that learners felt that they were not fully involved in their own risk assessment, despite this being technically an integral part of their system:

We consider this particularly significant since we circulated a questionnaire to a sample of our learners, the outcomes indicating that not one of the learners sampled had contributed to, or even seen, their own risk assessments at the start of the project. This was disturbing since learners were supposed to have been involved, but were not.

It is therefore far easier to advocate the philosophy of active learner involvement than it is to actually put it into practice. Similar situations have also been found in community service providers, leading Alaszewski, Parker and Alaszewski (1999, 26), to comment, 'There was a rhetoric of empowerment but the reality was often hazard control.'

Consequently, it is important that learners have an opportunity to discuss their perceptions of the risk assessment process in order to inform and improve practice. One of the key findings from all the projects was the need to listen more effectively to learners with disabilities and learning difficulties. For further information, see Nightingale (2005).

Access to information

Fair and accurate assessment of risk is dependent on clear and comprehensive information from applicants, learners and partner organisations. Effective mechanisms for encouraging disclosure are therefore essential, as are effective partnership arrangements with external agencies such as partner schools, day centres, health care trusts, GPs, social services and Connexions personal advisers.

One college has the following paragraph about risk assessment in its publicity brochure on courses for people who use mental health services or who experience mental health difficulties:

If there is anything in your past or current behaviour that may present a safety risk to yourself or to other people while you are at college, we may need to take it into account while planning your learning programme. You may wish to discuss it with your key worker to see if your behaviour presents any risk while you are studying at college before you decide to disclose information about yourself. If you feel there may be some risk to yourself or to other people then it is important that we know. This information will be treated confidentiality but your education counsellor will wish to talk to you about what support you may need or possible adjustments to your learning programme in order to minimise any risk while you are at college.

This organisation recognises that it is highly reliant on appropriate sharing of information and has excellent liaison and partnership arrangements with local health care trusts.

A detailed discussion of good practice to encourage disclosure is outside the scope of this guidance document. However, further information can be found in Maudslay L and Rose C (2003) *Disclosure, confidentiality and passing on information* and Rose C (2005) *Do you have a disability – yes or no? (or is there a better way of asking?).*

6 Developing effective risk assessment policies and proceedures – elements of good practice

Why they are important

Robust policies and procedures play an important role in balancing protection and entitlement issues. They help embed the rights of disabled learners into the operation of health and safety in the organisation, and they also help to reassure staff who are feeling anxious about the process as they provide clear guidelines for staff to follow. As Alaszewski, Parker and Alaszewski (1999, 8) point out:

The existence of a clear policy and evidence that all individuals have acted within this framework would enable agencies and professionals to justify their actions… The best way of ensuring confidence and minimising unfounded fears is to have policies which provide an assurance that the agency and its employees have a clear awareness of hazards and risk issues, and decision making processes which enable them to balance reasonable risk taking with safety and protection.

The Department for Education and Skills issued a press notice in February 2005,[4] stating its intention to issue guidance in the summer of 2005 to encourage schools to take pupils on school trips. These guidelines will emphasise that 'staff who take reasonable care and follow employer guidelines are, in the event of any unfortunate accident, protected by law'. Ruth Kelly, the Education Secretary, hopes that these guidelines will give staff confidence and help ensure that they no longer 'feel vulnerable' to legal action. Although these statements are related to school trips, the general principles of clear policies and procedures providing confidence to staff holds true for all health and safety matters.

[4] DfES press notice 2005/0021.

Local Learning and Skills Councils will seek assurance within their performance review and contracting processes that providers have suitable and sufficient arrangements for learner health and safety, including arrangements for disabled learners. These policies and procedures are part of the evidence that should be used to make such judgements.

General principles to consider

It is not possible to develop a single prescriptive approach to risk management. Post-16 education providers vary considerably in size, context and culture. However, you may wish to consider the following principles of inclusive risk assessment when formulating your own guidelines. Policies and procedures should:

- recognise the rights of disabled learners and applicants to access the curriculum fully, and understand that risk assessment is about ensuring that these rights are safely exercised, thereby ensuring that there is an effective balance between safety and entitlement issues
- focus on making adjustments and identifying solutions, in order to enhance opportunities for disabled learners and applicants
- acknowledge the personal and educational benefits of risk taking
- ensure that learners (or close relatives or advocates) are active participants in the risk assessment process, and are fully involved in the decision-making processes that affect choice and participation in learning
- build trust and confidence with learners, parents, carers and other advocates
- provide clear guidelines that give reassurance and confidence to staff
- clarify communication processes
- be regularly reviewed with learners to inform and improve practice
- identify roles and responsibilities for carrying out the process of risk assessments with disabled learners, thereby providing a clear framework of accountability
- plainly identify how appropriate training and guidance for staff are provided.

You may decide to include a statement recognising the rights of disabled learners to education and the role and responsibility of the organisation in making adjustments and removing barriers in order to meet their legal requirements.

A skeleton policy and a risk assessment template are provided in Appendix A and Appendix B, respectively. You may find these useful when developing policies and procedures for your own organisation. A policy articulates your vision of what needs to be in place, and a procedure identifies how you intend to implement the policy in the best interests of a learner. There are no clear dividing lines between the information that goes into a policy and that which goes into a procedure, and you may therefore decide that some of the information suggested in the skeleton policy in Appendix A fits better into a procedure. It is not possible to provide a model procedure, as these vary enormously between different types of organisation. However, using the skeleton policy in appendix A and working through this document will help you to develop appropriate policies and procedures in consultation with staff and learners in your own organisation.

Monitoring procedures and performance

Policies and procedures should clearly identify the process for monitoring and evaluation to ensure that practice is matched with them effectively. A joint LSDA/NIACE publication (Ewens 2003) on making health and safety manageable in adult and community learning uses the title ‘Mind the Gap’ as a familiar safety warning to indicate the possible gap between health and safety policies and procedures on the one hand, and everyday practice on the other.

There are two key components in monitoring procedures and performance of risk assessment processes: active monitoring and reactive monitoring.

Active monitoring involves reflecting critically on the extent to which policies and procedures are operating effectively. This involves a range of activities, for example, periodic examination of risk assessment documentation and engaging with disabled learners on their perceptions of the process. Were learners fully informed and actively involved in the decision-making process? Did they feel that staff carefully listened and considered their views and wishes? To what extent did they feel the process to be open, transparent and inclusive?

Monitoring also involves consultation with staff. For example, how confident do staff feel in carrying out risk assessments with disabled learners? Are the current guidelines in procedures helpful in ensuring that staff take a balanced approach between protection and entitlement issues? Consultation ensures that policies and procedures are effectively implemented in practice and also provides information that can be used to improve practice.

Reactive monitoring involves investigating injuries and accidents. We have seen that risk assessment is not about the elimination of risk and thus, despite working within a clear and robust risk assessment system, accidents will occur. Hood et al (1992) identify two approaches that organisations can take when things go wrong. They can: 'either have systems which focus on the allocation of responsibility and blame, or systems which emphasise the importance of learning from, rather than punishing mistakes'.

It is important that the latter approach is adopted, and accidents are investigated properly, identifying in each case what could have happened to prevent such an accident and using the results of such an analysis to improve practice. A learner incident assessment form can be downloaded from the LSC website that you may find useful in this regard [5].

Embedding policies and procedures in practice

It might be self-evident, but it is worth bearing in mind that senior management commitment and involvement is crucial if new policies and procedures are to have a real impact on the learner experience and are to be embedded effectively in practice. Staff and learner involvement in the formulation of policies, procedures and associated documentation is equally important if they are to be learner-centred and have staff ownership.

[5] See www.lsc.gov.uk (Documents – Subject listing – Improving quality – Guidance and good practice – Health and safety); accessed 27 June 2005.

7 Conclusions

As a sector we have achieved much over the last few years in responding positively to general health and safety matters and better managing risk. Our challenge now is to extend this process to enable and empower disabled people to access and enjoy education and training in a safe and secure environment.

Disabled learners do not want to be a risk. Disabled learners want to be able to access education and training with the same degree of dignity and choice as other learners. As we saw in section 1, in the words of a young disabled person:

I don't want to sue anyone… I just want to get a life.

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Appendix A Skeleton policy: risk assessment with disabled learners and applicants

Policy statement

A policy should provide a clear statement of the vision of the organisation in carrying out risk assessments with disabled learners and applicants. You may wish to include some of the principles identified in Section 6. It would be helpful if the statement:

- articulates the organisational vision to balance safety and empowerment issues
- acknowledges that risk assessment for disabled learners is unique for each individual
- recognises the process of risk assessment as an enabling process
- identifies the support and adjustments that can be provided in order to ensure that the rights of the learner to choice, access and inclusion can be safely exercised
- acknowledges the rights of disabled learners to education, and the role and responsibility of the organisation in making adjustments and removing barriers.

The risk assessment process

1 Access to information

You may wish to describe briefly how you intend to encourage disclosure, and the partnership arrangements that you have to facilitate the appropriate sharing of information. You may perhaps wish to state how you intend to strengthen these.

2 Assessment with the learner or applicant

You may wish to:

- include the process that is followed in meeting with learners and applicants, and other relevant parties such as parents and carers, in order to identify the support requirements and aspirations of the learner

- include a statement on the importance of balancing the potential personal and educational benefits against the possibility of harm
- incorporate elements discussed in Section 3 of this report, to provide general guidance for staff
- identify key contacts to use where expertise and skill is required that is above and beyond that of staff members.

3 Decision making

It is helpful if this section articulates the vision of the organisation in ensuring that learners are active participants in all decision-making processes. On occasion, a learner's wishes may contradict the wishes of the parent. Sometimes a learner may prefer not to include relatives in the decision-making process. While you will want to respond sensitively to this, you may wish to make a statement here that the learner's views should, where possible, be kept central to any decision-making process.

It would be helpful if this section identified the process to follow if staff found it difficult to make a decision, or if the level of risk is judged unacceptable. For example, you may wish to identify a more formal stage of consultation, such as the involvement of a senior member of staff. While the requirements of a small minority of disabled people may prove too complex for an education provider to be able to meet, following a risk assessment, it is important that you take every reasonable step to ensure the inclusion of all people who can be included. You may wish to make a statement to this effect.

4 Recording and communicating

This section could provide an example of documentation that is used to record the risk assessment and decision-making processes, and how outcomes of risk assessment are communicated to the learner and relevant staff. This section could also describe the process for obtaining learner consent to pass information on to others.

5 Monitoring and review

This section may describe the process of monitoring and review. You may also wish to include information on how accidents are recorded and how the lessons learnt are used to inform planning and practice, in order to minimise future risk.

Roles and responsibilities

This section could include information on the roles and responsibilities of:

- the learning support coordinator (or equivalent)
- the health and safety officer
- the college nurse
- accommodation managers
- premises staff
- a senior member of staff
- any other appropriate staff.

Staff development

This section could include information on what staff development is planned to implement the policy and procedure, and for ongoing staff training and development.

Monitoring and evaluation

This section could include information on:

- how the organisation will monitor practice
- who will report to whom
- how monitoring information will be used to evaluate and improve practice
- how learners will be involved in the monitoring and evaluation process.

Links with other policies

This section could include information on how this policy links with other policies and procedures in the organisation, such as its:

- disability equality policy
- inclusive learning policy
- equal opportunities policy
- admissions policy
- disclosure and confidentiality policy
- general health and safety policy.

The aim here is to ensure a coherent framework of policies and procedures rather than isolated policies and procedures that have little bearing on one another.

Review date and responsibility

This section should identify who is responsible for reviewing the policy and by what date the review will take place.

Appendix B Support Plan

Confidential

(To be used as part of the support process when an element of risk has been identified)

Name of Learner or Applicant

Date

Course or Activity

1 What are the hazards and risks? (Give details of who is at risk, what might happen, and the possible consequences for the learner, other learners or staff.)

2 What are the potential benefits to the learner?
(To be considered, to get a balanced view of the benefits versus the risks.)

3 Who has been involved in this assessment and the subsequent decisions?

4 Additional comments

5 Actions required to reduce risk

Hazard	Who may be at risk and how? (consider learner, other learners,staff.)	Precautions (controls) already in place

6 Information to

(Who needs to be informed of these actions and decisions?
Ensure learner consent has been obtained.)

Signature of staff

To be reviewed by

	Risk Level High, Medium or Low (or a rating, eg 1,2,3,4)	Actions required to reduce risk	By whom, by when

Countersignature (*if required*)

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