

TITLE: 'Everyone has an agenda': Professionals' understanding and negotiation of risk within the Guardianship system of Victoria, Australia

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ABSTRACT

It is frequently asserted that pressures to assess and manage risk have eroded the therapeutic, rights-based foundation of the human services profession. Some argue that human service workers operate in a culture of fear in which self-protection and blame avoidance, rather than clients' needs, primarily drive decision making. In the field of Adult Guardianship, it has been suggested that organisational risk avoidance may be motivating applications for substitute decision-makers, unnecessarily curtailing clients' rights and freedoms. However, the absence of research examining the operation of risk within Guardianship decision-making inhibits verifying and responding to this very serious suggestion. This article draws on semi-structured interviews conducted with 10 professionals involved in the Victorian Guardianship system, which explored how issues of risk are perceived and negotiated in everyday practice. Risk was found to be a complex and subjective construct which can present both dangers and opportunities for Guardianship practitioners and their clients. While a number of participants reported that Guardianship might sometimes operate as an avenue for mitigating the fear and uncertainty of risk, most participants also valued positive risk-taking and were willing, in their clients' interests, to challenge conservative logics of risk. These findings highlight the need for further research which examines how service providers and policy makers can create spaces that support open discussions around issues of risk and address practitioners' sense of fear and vulnerability.

INTRODUCTION

The concept of risk is a ubiquitous feature of modern political, corporate and community discourse. In what has been termed the “risk society” (Beck 1992, Giddens 2013), the assessment and measurement of risk, both potential and actual, has emerged as an expectation of both government and private sector organisations (Green 2007, O'Malley 2012). While the demands of risk management have impacted on professionals' identities and practices across many occupations, it has been suggested that those within the human services field have become the focus of particular scrutiny and public accountability (Daniel 2013). In holding dual responsibilities as both advocates and protectors of society's most vulnerable members, human service practitioners are expected to not only predict and contain possible risks posed to society (for example, from offenders) but also to take responsibility for the protection of those people deemed *at risk* of harm (for example, children, the elderly, and people with a disability) (Daniel 2013, Hardy 2015).

With an increasing public and political expectation for risk to be calculated, contained, and controlled, risk management and risk assessment frameworks have played an increasingly influential role in the formulation of organisational policies and procedures, and the delivery of services to the community (Green 2007, Munro 2012). Human service organisations' risk management frameworks have been strongly influenced by corporate understandings of risk and they are shaped by political and societal expectations concerning safety and accountability (Douglas 2013, Green & Sawyer 2010). In this context, risk is typically constructed as a negative component of human services practice that can endanger practitioners' and clients' safety, as well as service providers' reputations. It has been suggested that a “safety first” (Titterton 2005, p. 76) philosophy, that focusses on identifying clients' deficits rather than their strengths, pervades organisational policy and procedure and frames human services professionals' practice (Douglas 1990, 2013, Green 2007).

Risk in everyday practice

The public, political and organisational emphasis on the management of risk has also been subsumed within the role of the human services professional. Practitioners are faced with the challenge of managing their ethical responsibilities to promote their clients' rights and choices within a political and practice environment that tends to emphasise the potential negative, rather than the positive, consequences of risk for both themselves and their clients (MacLeod & Stadnyk 2015, Titterton 2005). Balancing the tensions, opportunities and dangers that risk poses in everyday practice has consistently been identified as an ethical issue for practitioners working in a variety of roles and settings (Brett *et al.* 2010, Sawyer & Green 2013, Stanford 2008, Taylor 2005).

Much of the existing literature suggests that organisational risk management regimes intrude on professionals' discretion and have the potential to foster approaches to risk in which "professional judgment shrinks to an empty form of defensible compliance" with organisational policy and procedure (Power 2004, p. 42). Further, Webb (2006, p. 143) argues that occupational health and safety regulations have tightened the breadth of professional discretion given to human service workers, and replaced it with a series of objective administrative procedures and technical skills designed to "manage" and "supervise" clients rather than to engage them in a positive and therapeutic relationship. In response to the fear associated with practitioners' confrontation with risk, it has been suggested that issues of risk minimisation, control and protection have usurped rehabilitation and problem solving as the drivers for human services practice (Munro 2004, Pollack 2010, Power 2004, Sawyer 2005).

However, much of this literature examines risk as a static and organisationally determined construct which practitioners are unable to challenge or resist. In response to the positioning of risk as a totalising force upon the helping professions, several studies have sought to examine how practitioners negotiate and integrate risk management regimes in everyday practice (Brett *et al.*

2010, MacLeod & Stadnyk 2015, Sawyer *et al.* 2009, Sawyer & Green 2013, Stanford 2008, 2011, Taylor 2005).

MacLeod and Stadnyk (2015) found that while community practitioners tended to negatively view risk, many also acknowledged that there is a continuum of risk and safety for individual clients, and that such a continuum allows for the co-existence of safety and autonomy. Within Stanford's (2008, 2009, 2011) sample of social workers, several participants confronted the shared vulnerability that risk creates through taking professional risks and "[taking] a stand for their clients – sometimes quite selflessly" (Stanford 2009, p. 10). Brett and colleagues (2010) found that social workers and nurses working in community care were able to maintain a strong sense of agency and ethical practice when faced with risk dilemmas. While some participants were positive about, and others critical of, the value of risk management procedures, a majority of participants negotiated the administrative aspects of risk while maintaining a strong commitment to their professional and ethical responsibilities towards clients.

While it would appear that professionals are willing to "speak back" (Stanford 2009, p. 1065) to the conservatism of risk, knowledge about the factors that facilitate this professional risk-taking on clients' behalf is deficient. Moreover, given that decision making in the human services is often collaborative and multidisciplinary (O'Sullivan 2010), the absence of research examining the communication and negotiation of risk between professionals and organisations limits our understanding of how the value of positive risk-taking might be more effectively promoted and applied in practice.

The Victorian Guardianship System

This study was conducted in the State of Victoria, Australia. The legislative framework for the appointment of a substitute decision-maker is the *Guardianship and Administration Act 1986* (Vic) ('The Act'). This Act grants the Victorian Civil and Administrative Tribunal (VCAT) the power to

appoint a substitute decision maker, under a set range of criteria and conditions. In order to appoint a Guardian, a role equivalent to a Deputy in the United Kingdom (UK), Section 22 (1) of the Act stipulates that VCAT must be satisfied that the person:

- (a) Is a person with a disability; and
- (b) Is unable by reason of the disability to make reasonable judgements in respect of all or any of the matters relating to her or his person or circumstances; and
- (c) Is in need of a Guardian

The Act also appoints the Victorian Office of the Public Advocate (OPA), as the “advocate of last resort” in circumstances where there is not any one person within an individual’s care network considered appropriate and/or willing to fulfil this role (Chesterman 2010, p. 84). The function of the Guardianship and Administration Act 1986 (Vic) is similar to that of the Mental Capacity Act 2005, with the UK Office of the Public Guardian (OPG) being analogous to the Victorian OPA, acting as a Deputy of last resort (OPG 2017).

Risk, Guardianship, and human rights

In removing the individual’s legal right to make decisions about aspects of their own lives, and transferring these powers of decision making to another person, Guardianship places limits on his or her rights to autonomy and self-determination and thus represents a significant intrusion into the individual’s life (Carney & Tait 1995, 1997, Dearn 2010). Recognising the gravity of this intrusion, the Act mandates that a Guardianship Order is intended to be used only as a “last resort”. However, the OPA has questioned the operationalisation of this due process, with an increasing number of applications for Guardianship made in Victoria over the past two decades. Specifically, the OPA has suggested that a culture of risk aversion within the service system may be leading to an over reliance on Guardianship as a means of transferring, and thereby reducing, organisational responsibility for risk (Carney & Tait 1997, Dearn 2010, 2011, OPA 1996, 2003). As a society that places such

importance on the rights and freedoms of individuals to pursue their lives according to their own choices, values and decisions, the potential overuse or overreach of Guardianship is an issue of concern, and prompts further investigation.

Risk assessment and management are key components of professional practice and decision making within the Victorian Guardianship system (Chesterman 2010, OPA 2003, 2004, Dearn 2010, Mills 2017). While the term “risk” only appears once in the Act, VCAT often considers risk when determining whether the limitation of rights and freedoms imposed by Guardianship is in the “best interests” of the person relative to the risks of not appointing a Guardian (Chesterman 2010, p. 97, see also, the case, *MD (Guardianship)*¹ in which an interim guardianship order allayed general risk concerns).

Moreover, the OPA has consistently highlighted the issue of risk aversion as a potential factor in the increased rate of Guardianship applications observed since the introduction of the Act in 1986 (OPA 2011, 2012, 2013). Specifically, the OPA has argued that Guardianship applications are not always made in line with the Act’s “best interests” requirement, but are sometimes used to “transfer duty of care” (Dearn 2010, p. 4) and “spread the responsibility and potential liability associated with a client” (OPA 2004, p. 15). The OPA has further argued that “Guardianship legislation often amounts to a blunt protective instrument that risks limiting people’s freedoms more than is necessary” (Chesterman 2010, p. 89). These observations appear to suggest that Guardianship may not be operating as a “last resort”, and are clearly concerning when considering the possible impact of Guardianship on represented persons’ human rights.

Methodology

in line with previous research (Stanford 2008, 2011), this study approached risk as a discursive construct, which is “spoken into existence” (Søndergaard 2002, p. 189), and given meaning by

¹ [2005] VCAT 2597)

practitioners themselves. Face to face participant interviews, lasting approximately one hour, were conducted between July and September 2014 with 10 professionals involved in the Guardianship system.

The sample selection took into consideration the three processes of the Guardianship system that the researcher identified as being probable sites of “risk talk” (Stanford 2009, p. 4) – (i) the decision to apply for a Guardianship Order, typically made by a community case manager or Advocate Guardian (ii) the Guardianship application and hearing process, often involving lawyers (when contested) and Advocate-Guardians and (iii) the management of clients granted Guardianship Orders, a responsibility of Advocate-Guardians.

Institutional approval to recruit participants was first gained from the Victorian OPA and a large State Welfare department. Research related information was provided to a key contact person at both organisations responsible for distributing invitations to relevant staff members, who then contacted the researcher directly to express interest in participating. The researcher directly contacted lawyers known to be active in Guardianship matters. Prior to interviews commencing, all participants provided formal written consent . The resulting sample comprised five Advocates employed by the Victorian OPA, three community-based case managers, and two lawyers with a professional interest in disability law and Guardianship matters (see Table 1). Interviews were audio-recorded and transcribed verbatim prior to analysis, generating a total of 214 pages of interview data. The Monash University Human Research Ethics Committee granted ethics approval for this study.

TABLE 1 HERE

A thematic analysis enabled the identification of key categories related to the research question and gave structure to the collected qualitative data. Initially, a process of open coding was used to organise data from individual interviews into broad thematic categories (King & Horrocks 2010, p. 152). The initial open coding system developed through “hearing the data” (Rubin and Rubin 2011, p. 3), and identifying participants’ repeated words and phrases when discussing risk, and noting the connection of risk to participants’ descriptions of particular events, emotions and behaviours (Bryman 2015). The codes identified within interviews were then compared and contrasted with one another through disassembling and reorganising the initial themes, until a point of saturation was reached where no new connections or themes were observed (Bryman 2015).

Findings

Findings are presented around eight key themes, beginning with those concerning participants’ perspectives on the meaning and place of risk in everyday guardianship practice, followed by themes related to how risk is communicated, shared and negotiated between different professionals within the Guardianship system.

The place of risk within the Guardianship system

All participants identified the assessment or consideration of situations involving some aspect of risk as central to the Guardianship system, and they considered risk to be a “very real and very challenging issue” (CM02), and a subject of “ongoing discussion, negotiation and reflection” (AG02).

In general, risk as an issue of concern was recognised as a pervasive feature of the Guardianship system:

It’s [risk is] everywhere, it’s before [an Order], during [VCAT] and after...If somebody puts forward an argument that there is a big risk of something happening to the person if another

decision maker isn't put in place... that's the beginning and the end of it [the Guardianship process]. (LA01)

There was broad recognition of risk as subjective, situational and "the grey bit" (AG03) of practice within the Guardianship system. All participants resisted the notion of a "black and white" (AG05) understanding of risk and highlighted the dangers of attempting to encapsulate the complexities of clients' lives within a definition:

Strict definitions can be really dangerous...I don't think it reflects the way anybody lives their life, it is just too concrete and people's lives are more complicated than that. (AG03)

Risk as tangible and transferable

In all interviews, risk was spoken of as a tangible entity, attached to clients and their behaviours, and then "shared" "dispersed" and "held" by and between practitioners and organisations. The movement of risk was identified as occurring at three key points -

Between clients and individual practitioners, such as when one participant advocated for a client to be returned home when a hospital had decided on nursing home placement. He felt that he had 'taken on' the risk:

I am holding some of that risk and saying, 'he is staying at home' ...but yeah, I am holding that risk for him now. (AG05)

Between practitioners and their organisations when, for example, a person is injured or even dies following a practitioner's decision:

I have three levels of management above me to absorb that risk. (AG04)

And between professionals in a care team environment when everyone contributes to decisions:

You could say it [the risk] has become more dispersed as well, now that more people are involved on the care team. (CM02)

All participants spoke of risks as existing and interacting at multiple sites within a particular case. For example, AG1, AG2 and AG4, and LA1 described clients as being simultaneously “at risk” from themselves or others while also posing “a risk” to themselves, the practitioner and/or the community:

The risks could be to self, the risks could be from self to self, and it could be from others to the client. (AG01)

Risks were also described as being interconnected and interactional, with AG01 perceiving risks as compounding and interacting with one another to create a “landscape of risk”. Similarly, CM02 spoke of needing to identify “what risks counteract each other”, while discussing a case in which a guardianship application had been made for an older man with hoarding behaviours whose squalid property was causing health problems for himself and nearby tenants.

Risk as both opportunity and danger

All participants perceived risk to be “both negative and positive” (AG4), with taking risks and participating in trial-and-error seen as vital to the provision of opportunities for clients to build self-confidence and independence:

Having this [a Guardianship Order] shouldn’t mean that we don’t let a person make any mistakes or try new things...it might just be that they need more support to do that.

(AG3)

Similarly, all participants recognized risk as a ‘right’ that should be afforded to their clients, regardless of any disability or impairment:

That ‘dignity of risk’ stuff is really important you know ... people do have the right to make their own choices, whether they have a disability or not ... they do have that right. (CM02)

Concurrently, when asked to describe a recent case or situation that demonstrated the challenges of working with risk, several participants spoke of risk as being negative, and associated with the possibility of harm. The threat of physical harm emerged as participants' predominant concern and was the most readily discussed. Clients' physically threatening circumstances included:

P2 (AG): A client at risk of "environmental toxins".

P6 (Lawyer): "He [client] will drink himself to death".

P7 (Lawyer): Clients who "walk out, [and] don't look for any cars".

Risk can create fear and threaten the professional's professional standing

A consistent theme throughout all interviews was that risk can make practitioners feel cautious and apprehensive, particularly around issues of duty of care and potential legal or professional culpability:

You do sometimes worry about being blamed or being sued or whatever else ... I guess that's a risk we have too. (AG2)

For several participants, the uncertainty of risk and an increasing sense of individual responsibility compounded this threat:

You are the one with the obligation and ... the authority, so even your boss can't actually tell you what to do or what's right or wrong, or too risky ... it's a hard thing. You're alone...I don't know if that exists in other roles. (AG5)

Two Advocate Guardians (AG3, AG5) and two case managers (CM1, CM2) suggested that the fear of legal culpability and blame for a decision involving risk was "reflective of society becoming increasingly ... much more conservative and focused on accountability" (AG3).

Risk can pose an ethical dilemma

All case managers and Advocate Guardians discussed the ethical challenges of balancing their commitment to client self-determination with the need to protect individuals from harm. Several

participants (AG1, AG3, AG5, CM1, CM3, LA1) explored the complexity of negotiating the interrelationships between risk(s) and rights:

It is not like you can say 'human rights or protection from risk?' because each human has a set of human rights which are not all necessarily easily protected separately.

(CM3)

Navigating the ethical dilemmas that risk posed also emerged as an opportunity for practitioners to exercise their professional judgment and expertise. Several participants described 'taking' and 'assuming' risk on behalf of their clients, as a response to the possible imposition of risk aversion on their clients' lives:

I get to assume some risk for them [clients] and that can be a really scary thing or you can embrace it and say, "You know what, this is actually a really positive thing". (AG4)

As an example, this Advocate-Guardian proceeded to describe a common case scenario in which he felt empowered, by nature of his statutory authority, to challenge a hospital medical staff decision to discharge an older adult to a nursing home, as they held a much lower threshold for risk. By absorbing the risk, on the client's and hospital's behalf, he felt he was acting in the client's best interests.

Moreover, when asked to describe their approach to the negotiation of acceptable risk with other professionals, several participants expressed a clear commitment to advocating on their client's behalf in circumstances where they felt that other professionals were being overly risk-averse:

CM1: "I am always trying to stand with the person."

AG2: "It's about ... standing in the shoes of the person."

LA2: "I fight to have their [clients'] voice heard."

Risk is negotiated and debated

A strong theme emerging from all interviews was that risk was often a topic of disagreement and negotiation between different professions within the Guardianship system. Generally, this conflict was associated with disagreements about acceptable levels of risk for clients and the distribution of responsibility for that risk between professionals and their organisations:

Everyone has an agenda and it will be black and white to that individual [professional].

Everyone has a different idea of how much risk is ok ... [and] more importantly who should be responsible for it. (CM1)

Conflicts and disagreements around issues of risk were particularly evident between lawyers and both case managers and Advocate Guardians. Advocate Guardians and case managers questioned the appropriateness, for cognitively impaired clients, of the legalistic 'taking instructions' model²:

I find there can be conflict between the Guardian and the lawyer because I often question who is actually giving the instruction; I know the client, and I am really not convinced that this instruction is coming from the client. (AG5)

In contrast, lawyers perceived human service professionals within the Guardianship system to be "overly risk averse" (LA1) and they spoke of "go[ing] into battle against the OPA" (LA2) in order to protect their clients' rights. These participants acknowledged that other professionals might describe them as being difficult to work with, but maintained that such conflict was necessary in their clients' interests.

Sharing and communicating risk

All participants identified the referral and diffusion of responsibility for risk occurring between professionals and service providers throughout the Guardianship system. This movement of risk was

² 'taking instructions' refers to lawyers' obligation to act on the basis of information provided by their clients about the circumstances of a situation, or their views and values regarding the situation (Australian Law Dictionary 2013)

often perceived as an outcome of risk averse organisational policy focused on reducing the possibility of legal liability. Several participants discussed feeling pressured to avoid taking on responsibility for high-risk cases, particularly those which could result in death or community harm and could negatively impact the organisation. One case manager described the 'sharing' of risk as one outcome of the pressure that some case managers felt:

It's almost a debrief at each case conference where people are just saying, 'It's too much risk, I'm sitting with too much risk, I need to share it, you have it, no you have it, I don't want it'... there is that tendency. (CM2)

On a broader level, all participants highlighted an application for Guardianship as the end-point of the risk referral process within the Guardianship system. The perception among both Advocate Guardians and lawyers was that the appointment of a Guardian often served as a way of "shift[ing] the onus and responsibility for risk" (AG1), rather than necessarily being in the client's best interests:

Instead of just trying to work out a reasonable pathway through it [risk] they [organisations] will seek out a Guardian to take on the responsibility. (AG2)

This participant suggested that rather than using resources to engage in meaningful problem solving, or waiting to determine the outcome of a possible intervention, organisations would sometimes seek to appoint a guardian as a 'quick fix'. The three case managers partially confirmed this perception. For example, CM3 described feeling more comfortable in the knowledge that the ultimate decision making responsibility had been shifted to the Guardian:

They had decisions, ethically very difficult decisions to make, so it's been nice to know ... that at the end of the day the Guardian is making the decision.

Similarly, CM2 described how:

Hav[ing] a Guardian appointed makes our lives so much easier ... [it] takes all the heat off.

Nevertheless, all case managers rejected any suggestion that Guardianship applications might be being made simply to avoid responsibility. They maintained that Guardianship was only pursued where no other option was available to deal with risk.

Risk can be embraced, roles negotiated, and solutions reached

Participants described risk as an issue stimulating conflict and negotiation between professionals within the Guardianship system. This conflict was often associated with differing role expectations and rigid adherence to professional decision-making models. As such, several participants discussed the need to approach issues of risk with openness towards, and towards acceptance of, different professionals' roles and expectations:

It's not [about] changing that perspective, that's there, it's just making sure that everyone has empathy for everyone's roles, responsibilities and confines. (CM3)

While all participants recognised the challenges of working in the midst of various professional models, several participants described situations where their traditional role parameters had been extended in order to reach solutions on issues of risk:

Everyone has some flex in their roles, you get lawyers who ... will flex their 'taking instruction' as much as they can to get a good outcome for the client and you will get social workers who will flex their 'duty of care' because they know they can get a good outcome. (AG4)

DISCUSSION

Perceptions and experiences of risk

While all participants in this study acknowledged the significance of risk and identified a myriad of factors, activities and identities that they considered to be representative of its existence, none of the participants were either able or willing to provide a concrete definition of risk. Although all

participants recognised the subjectivity of risk, clear differences emerged between Advocate Guardians and Guardianship professionals with regard to defining risk.

Case managers and lawyers spoke of risk as an accepted reality of their practice in the Guardianship system, existing “everywhere” (LA1) and being acted upon and engaged with as a routine, and almost subconscious, component of everyday practice. Despite recognising the impact of risk in the Guardianship system, these participants viewed the “job” (LA1) of defining risk as being outside their area of professional responsibility. In contrast, a majority of Advocate Guardians resisted “strict definitions” (AG3) embedded in organisational policies and, instead, emphasized risk as a subjective and contextual construct requiring the application of professional judgment and expertise. Far from being powerless actors in the face of “risk-prone bureaucracies” (Kemshall 2010, p. 1256), as some existing literature suggests (Green 2007, Kemshall 2010, Power 2004, Webb 2006), Advocate Guardians in this study appeared to be active in formulating their own understandings of risk in response to the realities of everyday practice.

This study’s limited sample prevented a deeper exploration of both the explicit and the subtle differences between Advocate Guardians and Guardianship professionals in relation to their conceptualisation of risk. A possible explanation may be that the legislative nature of the Advocate Guardian role allows a greater sense of professional autonomy, and thus independence, to challenge aspects of their organisational and policy environment. The notion of risk operating as a latent aspect of practice, as case managers and lawyers proposed in this study, has not specifically been explored in previous research. However, this finding seemingly supports the notion of risk becoming an increasingly ubiquitous and pervasive feature of everyday life, as the “risk society” perspective contends (Beck 1992, Giddens 2013).

Negotiating and transferring risk within the Guardianship system

Sharing and deferring responsibility for risk emerged within this study as being the dominant approach to managing the fear and uncertainty associated with “holding too much risk” (CM03). For

individual practitioners (except lawyers), communication about risk with superiors and colleagues reduced feelings of anxiety through mitigating the level of individually held responsibility and culpability associated with the risk. This communication typically occurred through the processes of supervision and the completion of detailed case notes to provide a “visible track record” of decision making regarding how risk had been assessed, and what management strategies had been implemented (Pollack 2010, p. 12). While this finding appears to confirm the notion of risk operating as a defensive and procedurally dominated feature of professional practice (Munro 2004, Rose 1998, Rothstein, Huber & Gaskell 2006), an additional theme this study uncovered was that communication about risk also provided professionals with a level of support and reassurance. As such, it appeared that risk was communicated not solely to shift responsibility or to fulfil accountability expectations but also to explore, within the supportive environment of professional supervision, the nature and impact of that risk. While it was beyond this study’s scope to further explore the role of supervision in mediating the impact and experience of risk for practitioners, the limited findings do appear to support Stanford’s contention that “supervision has the potential to be a ‘safe’ space for social workers to explore the ethical and moral dilemmas associated with risk” (2011, p. 1527). Viewed in the context of literature highlighting the potential for supervision to operate as an extension of organisational risk management regimes, a greater focus on providing supportive and open organisational environments is a key recommendation of this study (Beddoe 2010).

At a broader level, this study’s findings in relation to the avoidance of risk provide some evidence for the OPA’s suggestion that organisational risk aversion may be a factor associated with the increasing rates of Guardianship applications lodged in Victoria over the past two decades (Dearn 2010, OPA 2012, 2013). According to lawyers and case managers, organisational risk aversion and the displacement of risk is one of the major drivers for Guardianship applications. This observation is consistent with Brett *et al.*’s (2010) findings, which identified the transfer of ‘high risk’ clients to other organisations as a common approach to managing risk in their large sample of Victorian

community service organisations. However, while case managers did acknowledge that the presence of a Guardian reduced their sense of vulnerability and culpability, all maintained that an application for Guardianship was only made in situations where risk posed a direct threat to a client's wellbeing and where no other approach was available to reduce risk.

While this study's small sample size limits the transferability of this finding to the broader Guardianship system, it does appear to suggest that a combination of risk aversion and a lack of alternative mechanisms of resolution may be implicated in the displacement of risk through the process of Guardianship. This finding suggests that the legislative requirement for Guardianship to be used only where it represents "the means which is the least restrictive of a person's freedom of decision and action" (The Act s. 4 (2)) may not be appropriately met within the current Victorian human services system. Given the impact of Guardianship on clients' autonomy and self-determination, the use of Guardianship processes in this way is concerning. While this study was limited to the Victorian Guardianship system, it is important to note that there is broad international recognition that Guardianship should be pursued only when no other less restrictive means are available to achieve the best interests of an incapacitated person. For example, Section 1.6 of the Mental Capacity Act 2005 (UK) requires that consideration be given to whether the purpose for which a Deputy is being sought can be 'effectively achieved in a way that is less restrictive of the person's rights and freedom of action'.

A key strength of this study was the inclusion of a variety of professionals' perspectives on the issues of risk in the Guardianship system, enabling a preliminary exploration of the operation of risk in an inter-professional and interagency environment. Several participants in this study recognised differences in risk tolerance among organisations operating within the Guardianship system and identified specific organisations and professions that they perceived to be particularly risk averse or difficult to negotiate with on risk related issues. This conflict was most evident between lawyers and both case managers and Advocate Guardians and was spoken of as a key barrier to collaborative

practice between the professions. While the inclusion of only two lawyers in the sample precluded a more thorough examination of the nature and impact of this conflict, much of it appeared to relate to ethical conflicts between the legal model of “taking instructions” from clients (Billings 2005), and the Guardianship approach of acting in the clients’ “best interests” (the Act, s. 4(2)). Given the legal nature of Guardianship and the potential benefits of legal representation for Guardianship clients appearing at VCAT (Billings 2005), this warrants further research.

The sharing of responsibility for risk between professionals in the Guardianship system was found to largely occur through informal negotiation between professionals themselves, rather than through formalised agency agreements. Participants described the need to be open and accepting with regards to different professional approaches to the issue of risk, but also flexible and creative when seeking to work collaboratively in response to issues of risk. This finding supports previous research indicating that human service practitioners are capable of navigating and adapting to structures of risk management while maintaining a clear focus on their clients’ rights (Brett *et al.* 2010, Sawyer *et al.* 2009, Sawyer & Green 2013). However, as Brett and colleagues (2010) suggest, the lack of formal risk sharing arrangements between agencies potentially increases the risk and vulnerability that individual professionals face, and limits the capacity for creative collaborations between agencies. As such, the exploration of possible models or frameworks to enable more formalised and consistent approaches to the management of risk between agencies may be a valuable area of future research.

Conclusion

Drawing on the insights and experiences of 10 professionals engaged with various aspects of the Guardianship system, a complex picture of risk emerged from this study. While an understanding of risk as negative, fearsome and dangerous may pervade organisational policy and procedure, our research indicates that professionals understand risk as a more subjective and situational construct. Despite suggestions that the demands of risk management have transformed human services practice and replaced the ethical value basis of the helping professions, we found a far more hopeful

picture. Though clearly recognising the dangers and vulnerabilities associated with risk, this study's professional participants were found to be active in resisting the conservative logics of risk and prioritising their clients' needs above the demands of risk management. Notwithstanding its methodological limitations, this study has provided a useful first step towards understanding the operation of risk in the field of Guardianship, from the perspective of professionals confronting risk related dilemmas in everyday practice.

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Tables and figures

Table 1
Participant details

Participant	Educational background	Years of Experience in the Guardianship system
Advocate Guardian (AG01)	Social Work	14
AG02	Occupational Therapy	2
AG03	Nursing/Disability	12
AG04	Psychology	9
AG05	Social work	4
Case Manager (CM01)	Social Work	6
CM02	Social Work	9
CM03	Disability	27
Lawyer (LA01)	Law	16
LA02	Law	18