Safeguarding Adults & the Role of Health Services

Analysis of the Impact on Equality

Contents

Introduction

This analysis of the impact on equality (AIE) applies to 4 documents aimed at improving how health services safeguard adults from neglect, harm and abuse.

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1. Purpose of an analysis of the impact on equality

The evidence for this AIE is contained in the appendix, referred to throughout the AIE and there are links provided to sources that support the statements, analysis of impacts and assurances

The Equality Act 2010 applies to all organisations that provide a service to the public or a section of the public. The Act provides protection from direct or indirect discrimination for people with a 'protected characteristic' that relate to:

- Disability.
- Gender reassignment
- Pregnancy and maternity
- Race
- Religion belief or non belief
- Sex, and
- Sexual orientation
- Age

There is a legal requirement for organisations to understand the effect that their policies have on all these groups.

The Equality Act 2010 also contains other provisions, including the principle of dual discrimination and eliminating age discrimination in services and public functions. Discrimination may also be because a person is associated with someone who has a protected characteristic for example a carer of a person with an impairment. Consequently, this equality impact assessment also considers age and any impact on carers.

The analysis of the impact on equality aims to:
- Identify any potential threats to the general duty, in the issues contained in the documents for people protected in the specific duty; and

- Ensure that implementation of the documents takes account of the potential issues and seeks to continually advance equality.

An analysis of the impact on equality considers what effect activities have on:

- Eliminating unlawful/unjustifiable discrimination and harassment;
- Advancing equality; and
- Fostering positive relationships between different groups of people, thereby
- Improving community cohesion
- Promoting positive attitudes towards disabled people, including positive actions to help people with protected characteristics overcome disadvantage.
- Involving people in decisions regarding their health and social care, and their access to services.

2. Safeguard Adults – Background and Context

What is Safeguarding Adults?

Safeguarding adults describes a range of activities aimed at preventing or responding to harm and abuse. A focus is on those least able to protect themselves from harm or abuse.

No Secrets[1] is the Department of Health statutory guidance for safeguarding adults. The definition of a vulnerable adult used within No Secrets is a person

"who is or may be in need of community care services by reason
of mental or other disability, age or illness; and who is or may be unable to take care of him or herself, or unable to protect him or herself against significant harm or exploitation

Definitions of harm and abuse include behaviours defined as harassment under the Equalities Act 2010

'Unwanted behaviour related to a protected characteristic that has the purpose or effect of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for them.'

The No Secrets guidance promotes positive action to meet the needs of people with a 'protective characteristic'.

Public bodies must act in accordance with the Human Rights Act 1998 and have a positive obligation to uphold those rights for the people it serves.

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1 No Secrets: Guidance on developing and implementing multi-agency policies and procedures to protect vulnerable adults from abuse (DH 2000)

Safeguarding adults policy and guidance therefore need to reflect a human rights framework that ensures protection is balanced with choice and control, avoiding over - protectiveness in managing risks related to personal safety.

Human rights particularly relevant in safeguarding adults are:
- The right to life (article 2)
- The right not to be tortured or treated in an inhuman or degrading way (article 3)
- The right to liberty (article 5)
- The right to respect for private and family life, home and correspondence (article 8)

3. Why health services need documents about safeguarding adults.

The Department of Health conducted a large consultation exercise relating to No Secrets. The Department of Health published a report on the outcomes in 2009[2].
http://www.dh.gov.uk/en/Consultations/Responsestoconsultations/DH_102764

The No Secrets consultation received 12,000 responses. 3000 members of the public participated including adults who may need support to safeguard themselves such as people who had learning disabilities, older, frail adults and people with mental health needs who had been detained under the Mental Health Act. These responses are available at http://www.dh.gov.uk/en/Consultations/Responsestoconsultations/DH_102764

There were strong messages from the respondents about the need to link empowerment to safeguarding, listening to those at risk and supporting their choices about managing their safety.

The consultation report also highlighted that there was a perception across all agencies that the NHS was not sufficiently engaged in safeguarding adults. A strong message was that harm and abuse in the NHS was often not recognised or incidents were managed in isolation from multi agency procedures.

Other evidence from this analysis of the impact on equality, referred to in appendix 1, reinforced learning from this consultation. This includes investigations into NHS failures such as Mid Staffordshire NHS Foundation Trust,[3] the Healthcare Commission investigation into

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2 Department of Health; Safeguarding Adults; Report on the Consultation of the Review of No Secrets (2009)

3 Dr David Colin Thome Report; Mid Staffordshire NHS Foundation trust; A Review of Lessons Learnt; Department of Health 2009

incidents of institutional abuse[4] and the Health Ombudsman report on NHS care of older people.[5]

All these reports identified wide spread failures of care where patients in the most vulnerable circumstances have experienced neglect, harm and abuse.

4. How does safeguarding adults affect certain groups disproportionately?

There is wide ranging evidence in relation to the harm, abuse and neglect that people with a protected characteristic experience. This evidence is listed in appendix 1.

The No Secrets definition identifies 'vulnerable adults' as people with particular characteristics **and** who may be unable to protect themselves from harm.

A strong message from the 2009 consultation is that 'vulnerable adults' are not a homogenous group. Any person can be in a vulnerable situation and a person's age or disability does not of itself, make the person vulnerable.

However, people who have a range of multiple and complex service requirements may be in positions that increases their dependency on others and makes them less able to protect themselves from harm or abuse e.g. a person with impaired mental capacity related to dementia.

The definition used within No Secrets is currently under review. Materials issued in the interim to support No Secrets, need to make clear that vulnerability will vary across time and place and be determined by a combination of:

- Their inherent characteristics and circumstances
- The environment or situation in which they are in
- The presence or absence of resilience/support factors

5. How has the analysis of the impact on equality, been used to address equality within these documents?

The AIE highlights the need to take additional measures to meet the needs of people in the most vulnerable situations and protect their rights in relation to how services intervene. Compliance with the Human Rights Act, the Equality Act and the Mental Capacity Act are fundamental to these aims.

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4 Health Care Commission Investigation into the service for people with learning Disabilities provided by Sutton and Merton Primary Care Trust'

5Care and Compassion; Report of the Health Service Ombudsman on ten investigations into the NHS care of older people; Parliamentary and Health Service Ombudsman 2011

The documents for health services are likely to have greatest positive effect for people with impairments. This is due to the definition of a vulnerable adult used within No Secrets as a person.

"who is or may be in need of community care services by reason of mental or other disability, age or illness; and who is or may be unable to take care of him or herself, or unable to protect him or herself against significant harm or exploitation

However, there is also likely to be a positive impact upon other people with a protected characteristic due to factors giving rise to dual discrimination. The guidance continually reiterates the need to provide individualised care to meet the needs of patients for example, communication that is accessible and culturally competent. This advances equality for all protected characteristics.

A successful outcome from the implementation of the documents would be:

1. Health services improve the prevention of neglect and abuse as they take positive action to meet the needs of people with protected characteristics and their carers.
2. Where neglect and abuse occurs, services provide appropriate protective care.
3. Staff uphold the rights of people to make decisions about their safety and involve them throughout the safeguarding process.
4. Staff take account of the person's lifestyles, beliefs and rights to private life when developing protection plans with them.
5. Protection plans are least restrictive of the person's rights.

5.1 Positive action for equality and human rights.

The documents promote human rights and equality through a framework of safeguarding principles. These principles are:

Principle 1 – Empowerment - Presumption of person led decisions and consent. Adults should be in control of their care and their consent is needed for decisions and actions designed to protect them. There must be clear justification where action is taken without consent such as lack of capacity or other legal or public interest justification. Where a person is not able to control the decision, they will still be included in decisions to the extent that they are able. Decisions made must respect the person's beliefs and lifestyle.

Principle 2 – Protection -Support and representation for those in greatest need. There is a duty to support all patients to protect themselves. There is a positive obligation to take additional measures for patients who may be less able to protect themselves.

Principle 3 – Prevention- Prevention of harm and abuse is a primary objective. Prevention involves helping the person to reduce risks of harm and abuse that are unacceptable to them. Prevention also involves reducing risks of neglect and abuse occurring within health services.

Principle 4 – Proportionality – Proportionality and least intrusive response appropriate to the risk presented. Safeguarding responses should reflect the nature and seriousness of the concern. Responses must be the least restrictive of the person's rights and take account of the person's wishes and beliefs. Proportionality also relates to managing concerns in the most effective and efficient way.

 Principle 5 – Partnerships - Local solutions through services working with communities. Safeguarding adults will be most effective where citizens, services and communities work collaboratively to prevent, identify and respond to harm and abuse*.*

Principle 6 – Accountability - Accountability and transparency in delivering safeguarding. Services are accountable to patients, public and to their governing bodies. Working in partnerships also entails being open and transparent with partner agencies about how safeguarding responsibilities are being met.

The safeguarding principles are applied throughout the documents, helping practitioners, managers and commissioners connect safeguarding with good practice that promotes human rights and advances equality.

5.2 Evidence of positive impact in each guidance document

Safeguarding Adults: The Role of NHS Commissioners

This document reiterates NHS commissioner's duties to commission care for patients who may be least able to protect themselves from harm.The document sites duties under the Human Rights Act, Equality Act and Mental Capacity Act, in relation to how commissioners develop new services and the assurance they seek from providers of health care.

The document identifies the need for commissioners to connect equality with strategies for safeguarding adults in how they plan, procure and assure health services. Application of the safeguarding principles guides commissioners to involve patients and carers in all aspects of commissioning care, recognising the need to take additional steps to involve those who may be marginalised or have additional communication needs.

The document provides reference to guidance document for fairness in financial decision-making.
www.equalityhumanrights.com/advice-and-guidance/public-sector-duties/guidance-and-codes-of-practice/using-the-equality-duties-to-make-fair-financial-decisions/

The document contains good practice examples of using learning to make improvements for equality e.g. a practice example in section 2.2.3 from University Hospital Birmingham developing 'Ability, Not Disability' toolkits.

Appendix 1 contains examples of safeguarding adults across the commissioning cycle e.g. involving people in planning; setting compliance with Equality Act into contracts.

Appendix 2 prompts managers and their boards to consider how well they address equality and human rights within their safeguarding arrangements, for example, whether they are using information to address equality. Evidence contained throughout appendix 1 of this AIE such as The Healthcare Commission 2007 report 'Our State of Healthcare' was used in developing these prompts.

Safeguarding Adults: The Role of Health Service Managers and Boards.

This document assists managers providing health care to consider how they safeguard adults. As with the NHS Commissioners document, this document sites the relevance of the Human Rights Act, Equality Act and Mental Capacity Act in safeguarding adults.

Evidence from the analysis of the impact on equality of this work is used to emphasise the need to make safeguarding adults an integral part of care. The Health Ombudsman report Care and Compassion reviewed ten investigations into NHS care of older people. The ombudsman reported 'a picture of NHS provision that is failing to meet even the most basic standards of care'
 http://www.ombudsman.org.uk/__data/assets/pdf_file/0016/7216/Care-and-Compassion-PHSO-0114web.pdf

Good practice examples include the example from University Hospital Birmingham that bring together safeguarding, patient experience; equalities and dignity in care.

The document also provides link to useful resources such as EHRC guidance for providers
http://www.equalityhumanrights.com/advice-and-guidance/guidance-for-service-providers/

Emphasis is laid on managers developing a culture of involving patients and carers, and using their experience to assure the service is providing individualised care. Chapter 2 discusses how evidence of involvement and good safeguarding practice can be assured through services being accountable to patients, patient and public groups as well as to the Safeguarding Adults Board and regulators.

Appendix 1 provides managers and boards with some prompt questions that focus attention on equality such as 'How do we assure compliance with the Mental Capacity Act?' and 'How is safeguarding information being used to identify strengths and improvements needed for equality?' These prompts were developed from evidence contained within appendix 1 of this

AIE such as Caring for Dignity – A National Report on Dignity in Care for Older People in Hospital ; Healthcare Commission (2007)

Safeguarding Adults: The Role of Health Service Practitioners

This document is aimed at frontline staff and their role in preventing neglect harm and abuse and responding effectively where harm occurs.

The document applies the safeguarding principles throughout, helping practitioners consider the rights of individuals; the need to involve patients and carers in decisions about their safety; taking proportionate, least restrictive actions to protect people.

- Section 3 of the document focuses on empowering approaches, emphasising the importance of the Equality Act 2010 and Mental Capacity Act. Examples are given of empowering approaches such as the extra steps needed to communicate effectively and take account of lifestyle and beliefs. This recognises that effective communication is a great leveller in equality. People need information in a wide range of formats in order to be able to make informed decisions.

- Section 5 guides practitioners in how they respond to concerns of neglect and abuse, using a Human Rights based approach to promote the safeguarding principles

- Section 6 focuses on developing a culture for prevention, helping patients take a balanced approach to risks and providing care that ensures 'specific support needs are met from point of first contact and throughout care'.

The document provides examples of good practice in providing personal care planning to meet a disabled patient's need for support in eating and drinking. Section 6.1 of the document provides case examples of a relatives concern that his brother who has a learning disability would not be assisted to eat and drink and inappropriate restraint may be used because insuffient care is given to his communication needs. This example was developed from learning sited in the appendix to this AIE e.g. Mencap's Death by Indifference report and the Health Care Commission report, A Life Like no Other.

Safeguarding Adults: Self assessment and assurance framework for health services

The self assessment and assurance framework comprises standards and indicators for services to evaluate their safeguarding arrangements and to be able to aggregate the information around the protected characteristics in the Equality Act. There is a focus upon patient involvement across the whole framework.

Evidence contained within appendix 1 of this AIE was used to develop the framework.   For examples, The Pathway to Recovery a review of acute (mental health) inpatient care,

Healthcare Commission 2008 reported poor user involvement and ongoing concerns about management of violence and aggression. Respondents to the No Secrets review who had mental health needs, also identified lack of involvement and fear of aggression when receiving inpatient care. Involvement of patients is contained in each of the 6 pages of standards within the framework. Specific indicators under workforce, relate to training for staff on identifying safeguarding concerns and management of performance concerns including whistle blowing

Specific examples within the framework of addressing equality and supporting human rights as a result of analysing evidence for the impact on equality include:

- Identifying individuals at greatest risk of harm – indicator 2.2 The service has systems in place for person centred care to meet the needs of patients/users at particular risk of neglect, harm or abuse**.**
- Specifying examples of person centered care such as 'patient passports' that convey an individual's needs – for example standard 2.2.
- Focus on good communication, knowledge exchange and information in accessible formats e.g. standard 2.4 measures 'The service has clear and accessible systems for patients/users and carers views and concerns to be heard and influence change'.
- Referencing throughout, the need for patient involvement and representation with the patient leading decisions about their care.
- The need for carers assessments to support people with protected characteristics as recommended in the carers strategy is contained across the framework for example standards 2.2; 2.4. http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_122077
- The use of reasonable adjustments to empower patients and enable full and active involvement
- Integrating safeguarding to other work streams for people with protected characteristics e.g. as outlined in the dementia strategy http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_123476
- Using information to identify emerging trends related to equality
- Compliance with the Mental Capacity Act that provides important safeguards for disabled people.
- Whistle blowing procedures and systems of support (relevant in eliminating victimisation as required in the Equality Act)

5.3 Potential adverse impact of the guidance

As identified in section 2.2 above, the No Secrets consultation responses challenged the use of the term 'vulnerable adult' In the report, 90% of respondents wanted the *No secrets* definition of a 'vulnerable adult' revised and there was much support for replacing the term 'vulnerable adult' with 'person at risk.'

Services such as Mencap challenged the concept that vulnerability is due to the person's inherent characteristic such as disability or age, identifying that levels of vulnerability and risk, relate to how well people, services and environments meet an individuals needs. Many people also felt stigmatised by the language in No Secrets – the use of terms like 'victim' were dis-empowering.
http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/documents/digitalasset/dh_10 2981.pdf

Consequently, there are risks that the guidance may reinforce negative and dis-empowering labelling as it uses the No Secrets definition.

The No Secrets guidance is being reviewed and the law commission have undertaken a wide consultation about definitions.
http://www.lawcom.gov.uk/adult_social_care.htm

Within the introduction in each health document, emphasis is laid upon services having responsibility to protect all patients but provide additional measures for those in situations where they are least able to protect them selves i.e. the qualifying part of the No Secrets definition '…**and** *who is or may be unable to take care of him or herself, or unable to protect him or herself against significant harm or exploitation".*

Emphasis is laid throughout on empowering and inclusive approaches that maximise the person's ability to be involved in decisions relating to their care. This is promoted through the safeguarding principles that are introduced in the first chapter of each document – principle 1 is 'empowerment'

Terminology used refers to people in vulnerable situations. Emphasis on the responsibility of services to provide person centred care, safe environments and make reasonable adjustments further locates the reality that vulnerability is related to how well a service meets a person's needs.

6 How we will check

Government Ministers are reviewing No Secrets, informed by the Law Commission review of social care law that is due to report in April 2011.

The Department of Health safeguarding adults programme has in place an Advisory Board and a Health Advisory Group that includes a wide range of professional bodies and the Strategic Health Authorities. These stakeholders have been actively involved in shaping the documents and will provide feedback from the field about the impact they have on advancing equality. This information will continue to inform future policy development.

The documents stress the importance of embedding safeguarding adults as part of the wider quality agenda that includes equality. Each document lays emphasis on organisations using aggregated data to understand how they are addressing safeguarding and equality for example, chapter 2 in the document for commissioners and managers; chapter 4 in the document for practitioners. This is supported by the self-assessment and assurance framework, which assists services to benchmark their safeguarding arrangements. This includes meeting the individual needs of people with protected characteristics.

Commissioners and providers of health care have clear duties and regulatory requirements in relation to equalities and safeguarding adults.

Current systems of accountability through the Care Quality Commission and Strategic Health Authorities are being developed by the Government as part of the NHS reforms.[6] Subject to parliament, accountability will be through a range of structures that will include local accountability to patients and HealthWatch; Health and Wellbeing Boards; NHS Commissioning Boards; Monitor, the Care Quality Commission and professional regulators.

The details of this accountability are set out in the Governments response to the NHS White Paper, Liberating the NHS and public Health white paper, Healthy Lives, Healthy People

http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/@dh/@en/@ps/documents/digitalasset/dh_122707.pdf

Where the CQC has concerns that services are failing to meet their duties under equality and human rights, they have agreed to refer to the Equality and Human Rights Commission as outlined within memorandum of understanding that exists between the two bodies.

http://www.cqc.org.uk/_db/_documents/MOU_CQC_and_EHRC.pdf

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[6] Liberating the NHS: Legislative Framework and Next Steps; Department of Health 2010

References

Abbot, D. and Howarth J (2005) Secret Loves, Hidden Lives? Exploring issues for men and women with learning difficulties who are gay, lesbian or bisexual, Marston Books

Action on Elder Abuse; Hidden Voices: Older Peoples Experience of Abuse (2006)

AESOP (2006) Aetiology and Ethnicity in Schizophrenia & Other Psychoses– Institute of Psychiatry

British Journal of Psychiatry 185; 479-485 Rates and predictors of mental illness in gay men, lesbians and bisexual men and women. Results from a survey based in England and Wales James Warner, Imperial College London (2004)

Care and Compassion; Report of the health service ombudsman on ten investigations into NHS care of older people; Parliamentary and Health Service Ombudsman 2011

Carers UK (2008a) Profile of Carers Research, http://www.carersuk.org/Policyandpractice/Research

Care Service Improvement Partnership/ National Institute for Mental Health Excellence : Mental Disorders, suicide and deliberate self harm in lesbian gay and bisexual people, 2007

Care Quality Commission; Guidance about Compliance Essential Standards of Quality and Safety (2009)

Commission for Healthcare Audit and Inspection (2007) *A life like no other*: a national audit of inpatient services for people with learning difficulties, (CHAI 2007)

Commission for Social Care Inspection Audit commission and Health care Commission ; Living Well in Later life, A Review of Progress Against the National Service Framework for Older People , (2006)

Commission for Social Care Inspection and the Healthcare Commission (2006), 'Joint Investigation into the Provision of services for People with Learning Disabilities at Cornwall Partnership NHS Trust' London: Healthcare Commission

Delivering Race Equality: A Framework for Action 2004

Department of Constitutional Affairs Mental Capacity Bill Full Regulatory Impact Assessment (2005)

Department of Health: Carers at the heart of the 21st Century Families and Communities; A Caring System on your side, a life of your own (2008)

Department of Health (2008), 'Healthcare for All: Report of the Independent Inquiry into access to Healthcare for people with Learning Disabilities' London: DoH.

Department of Health and Home Office (2000) No secrets: guidance on developing and implementing multi-agency policies and procedures to protect vulnerable adults from abuse (DH and HO 2000)

Department of Health: Living Well With Dementia, National Dementia Strategy 2009

Department of Health; Mental Capacity Act 2005, Deprivation of Liberty Safeguards Assessments (England) - First report on annual data, 2009/10

Department of Health (2004) National Service Framework for Children, Young People and Maternity Services: Part 111 Maternity Standard (London: Gateway ref. 3779)

Department of Health, Patient Safety Research Portfolio The 'Care Homes Use of Medication Study: Prevalence, causes and potential harm of medication errors in care homes for older people (2009)

Department of Health (2010) Recognised valued and supported. Next steps for the carers strategy.

Department of Health; Safeguarding Adults; Report on the Consultation of the Review of No Secrets (2009)

Department of Health; Women's Mental Health: Into the Mainstream (2002)

Disability Rights Commission (2006) Equal Treatment: Closing the Gap - A formal investigation into physical health inequalities experienced by people with learning disabilities and/or mental health problems (DRC 2006)

Government Equalities Office:
http://www.equalities.gov.uk/equality_act_2010/equality_act_2010_what_do_i_n.aspx
(accessed Oct 2010)

Hatton C Improving services for people with learning disabilities, (2005)

Hatton C improving Services for people with learning disabilities from minority ethnic communities. (2007)

Healthcare Commission (2007), 'Investigation into the service for people with learning Disabilities provided by Sutton and Merton Primary Care Trust' London: Healthcare Commission.

Healthcare Commission (2008) Count me in Census, www.cqc.org.uk

Healthcare Commission Caring for Dignity – A National Report on Dignity in Care for Older People in Hospital (2007)

Health Care Commission Our State of Healthcare, 5th Annual report (2007)

Health Care Commission -No Voice, No Choice – A Joint Review of Adult Community Mental Health Services by Health Care Commission & CSCI 2007

Healthcare Commission; The Pathway to Recovery; A review of NHS acute inpatient mental health services 2008

Help the Aged Study ; The Financial Abuse of Older People A Review of the Literature(2008)

HM Government (2008a) The National Carers' Strategy, Carers at the Heart of 21st Century Families and Communities, (HM Government 2008)
Home Office: British Crime Survey 2004
Home Office: British Crime Survey 2008/9
Home Office Police Standards Unit; Hate Crime, Delivering a Quality Service, (2005)
Human Rights Act 1998
Lewis, Gwyneth, Drife, James, et al. Why mothers die: Report from the confidential enquiries into maternal deaths in the UK 1997-9; commissioned by Department of Health from RCOG and NICE London: RCOG Press(2001)

Liberating the NHS: Legislative Framework and Next Steps; Department of Health 2010

McCarthy, M. (1999b) Sexuality and Women with Learning Disabilities, Jessica Kingsley Publishers

Mayhew, L. The Market Potential for Privately Financed Long Term Care Products in the UK. Faculty of Actuarial Science and Insurance, CASS Business School. (2009)

Mencap (2007), 'Death by Indifference' London: Mencap

Mencap; Living in Fear (2000)

Mental Health Act Commission: Coercion and Consent Monitoring the Mental Health Act 2007 – 2009 13th biennial report 2009

Michael, Sir Jonathon (July 2008) Healthcare For All - the report of an Independent Inquiry into access to healthcare for people with learning disabilities reported significant and ongoing health inequalities

National Mental Health Development Unit: http://www.nmhdu.org.uk/our-work/mhep/gender/ (accessed Oct 2010)

National Centre for Social Research and King's College London;The UK Study of Abuse and Neglect of Older People Prevalence Survey Report (2007)

National Centre for Independnt Living and RADAR Disability Network Adult Social care Commission (Law Commission) A Joint Response June 2010

National Fraud Intelligence Bureau Financial Crimes Against Vulnerable Adults for Association of Chief Police Officers (2010)

O'Keefe M; Hills A; Doyle M; McCreadie c; Scholes S; Constantine R; Tinker A; Manthorpe J; Biggs S; Erens B; (2007) Uk study of Abuse and Neglect of Older People

Parliamentry Joint Committee on Human Rights (2008) A Life Like Any Other? Human Rights of Adults with Learning Disabilities (2008 HL Paper 40-1 HC 73-1 House of Lords, House of Commons ,Joint Committee on Human Rights)

Parliamentary Office for Science and Technology Policy Note (Ethnicity and Health) in 2007

Stonewall; Being the Gay One Being the gay one: Experiences of lesbian, gay and bisexual people working in the health and social care sector (2007)

Women's Aid; Making the Links Disabled Women and Domestic Violence (2008)

Appendix 1

Evidence of Neglect, Harm and Abuse Impact on People with a Protected Characteristic

Safeguarding Adults and Disability

Disabled people may be in vulnerable situations and less able to protect themselves from harm. Their needs may relate to

Physical disability
Learning disability
Disability arising from illness
Mental health needs
Impaired mental capacity

Evidence

- The Healthcare Commission 2007 report 'Our State of Healthcare' drew out key findings and common themes. These included failing systems for safeguarding adults and a national poor understanding of adult protection procedures across NHS healthcare providers. Incidents of patient to patient assault were often tolerated particularly in services for older people with dementia and in learning disability services. Their investigations also highlighted instances of institutional abuse

- The National Centre for Independent Living and The Royal Association for Disability Rights (RADAR) a user led organization, in their joint response to the Law Commission in July 2010, identified too many people are kept in positions of dependency and institutionalised against their will. The response called for principles related to non- discrimination, dignity and maximizing choice and control with self reported outcomes. The report noted that the concept of safeguarding adults reflects a deficiency model in understanding disabled people (as people) who need to be protected against their own informed choices. The response called for principles of autonomy and dignity to be translated in a duty to provide care necessary to create a safe and secure environment.

- Commission for Healthcare Audit and Inspection (2007) *A life like no other*: a national audit of inpatient services for people with learning difficulties report highlighted findings from extensive review of impatient care. The Healthcare Commission found that the quality of care in general needed significant improvement and in 6 services there were serious concerns requiring immediate action

- Sir Jonathon Michael report, (July 2008) Healthcare For All - the report of an Independent Inquiry into access to healthcare for people with learning disabilities reported significant and ongoing health inequalities.

- Research by Mencap (*Living in Fear, 2000*) found that nearly nine out of ten people with learning disabilities had been harassed or attacked within the last year, with 32% saying they experienced harassment or attacks on a daily or weekly basis. 23% had been assaulted.

- The Disability Rights Commission's Attitudes and Awareness Survey (2003) found that 22% of disabled respondents had experienced harassment in public because of their disability.

- Submission to the Joint Committee on Human Rights Inquiry into the Human Rights of Adults with Learning Disabilities Crime and Abuse against Adults with Learning Disabilities*:* Adults with learning disabilities are at higher risk of sexual assault, rape and domestic violence than the general population. These, and other crimes, are regularly committed in care settings by the very people who are meant to be caring for them.

- Reports by the Health Care Commission -No Voice, No Choice – A Joint Review of Adult Community Mental Health Services by Health Care Commission & CSCI 2007, found services were not involving people in their care, were failing to provide culturally appropriate care

- The Pathway to Recovery a review of acute (mental health) inpatient care, Healthcare Commission 2008 reported poor user involvement and on going concerns about management of violence and aggression

- Mental Health Act Commission response to the No Secrets Consultation 2009 – The majority of their service user reference panel reported an increased sense of vulnerability while inpatient and reported fear of, or actual abuse from patients and staff as a common experience

- Making the Links Disabled Women and Domestic Violence; report by Women's Aid, 2008 The research shows that disabled women experience a greater need for services – based on the nature and extent of the abuse they experience – but this is accompanied by far less provision than is generally available for non-disabled women

- The Mental Capacity Act 2005 was introduced in response to concerns raised by professional bodies, voluntary organisations and the Law Commission about the care and treatment of people who may have impaired capacity. The Regulatory Impact Assessment carried out by the Department of Constitutional Affairs identified up to 2 million people may be affected by a lack of capacity. Between April 2007 and July 2010 there were 189 prosecutions under the act for neglect or willful ill treatment. The Mental Capacity Act was amended in 2007 to introduce the Deprivation of Liberty Safeguards. This legislation was introduced to prevent unlawful detention of people lacking mental capacity to consent to restrictions and restraint. 7,157 people in England benefited from the safeguards in the first year of the safeguards being introduced.

Safeguarding Adults and Age

Safeguarding adults applies to people over the age of 18yrs, reflecting the different legislative and ethical concerns for adults than for children and young people.

Evidence indicates that safeguarding adults has particular impact for older adults. This may be related to:

1. Disability through age related conditions - age related frailty and health conditions that disproportionately affect older people such as dementia, all increase a person's dependency and susceptibility to harm or abuse.
2. Social conditions and discriminatory attitudes. Social circumstances such as isolation may also leave individuals at risk of harm abuse and exploitation. Assumptions may be made about a person's mental capacity based upon their age or a diagnostic label such as dementia. Older adults may experience discriminatory attitudes about their lifestyles and risks they chose to take.

- Care and Compassion, the report from the Health Ombudsman reports of failures to respond to the needs of older people and to provide even the most basic standards of care.

- Hidden Voices: Older Peoples Experience of Abuse 2006 – report by Action on Elder Abuse found 23% of calls to their help line were from older adults in care homes. This was disproportionately high given that only 4.9% of the survey group were in a care home setting.

- UK Study of Abuse and Neglect of Older People; Prevalence Survey Report by the Kings College; June 2007 conducted a survey of 2000 adults over 65 living at home. 2.6% experienced mistreatment by family member, friend or care worker. More than three-quarters of abuse (78 per cent) is perpetrated against people who are over the age of 70, with 16 per cent of that abuse affecting people over the age of 90. For both men and women, it appears that the period between 80 and 89 years of age is the time of most vulnerability to abuse. This study excluded adults with impaired capacity and people being cared for outside of their home environment.

- The National Fraud Intelligence Bureau reported on Financial Crimes Against Vulnerable Adults in 2010. The report identified the difficulty in determining the national prevalence of financial abuse of people in vulnerable situations. But sited a Help the Aged Study that found that 20% of their survey group who had reported financial crime had lost in excess of £5,000 to people who were in a position of trust. The report also noted a national prevalence study (O'Keeffe et al (2007) study of abuse and neglect of older people) that found financial abuse as the second most common type of abuse for older people after

neglect. The study reported approximately 57,000 over the age of 66 are subject to financial abuse over a 12 month period

- Currently some 570,000 people in the England with dementia, of which some 12,000 are people under 65 who have early onset dementia. An ageing population means numbers of people with dementia are set to rise to over 750,000 in England by 2020. People with impaired capacity are likely to be more dependent upon others and less able to protect themselves from harm. There is very limited research on abuse and dementia as adult abuse prevalence studies have excluded those who with impaired capacity. However to date there has been nearly 200 prosecutions relating to the ill treatment or wilful neglect of people with impaired mental capacity. More research is required in this area.

- Caring for Dignity – A National Report on Dignity in Care for Older People in Hospital ; Healthcare Commission (2007) found older people were not always involved in their care, their wishes disregarded and staff not aware of their dignity issues.

- The Department of Health, Patient Safety Research Portfolio conducted a study of medication use in 2009. The 'Care Homes Use of Medication Study: Prevalence, causes and potential harm of medication errors in care homes for older people' found that 7 out of 10 residents had experienced at least one medication error The average age of the residents was 85yrs.

- Living Well in Later life, A Review of Progress Against the National Service Framework for Older People , CSCI Audit Commission, Healthcare Commission 2006 found older adults experiencing poor standards of care, poorly managed discharge and having meals removed before they could eat them due to lack of support at meal times

Safeguarding Adults and other protected characteristics

Safeguarding adults also has relevance for other groups with protected characteristics under the Equalities Act – race; religion and belief; sex; sexual orientation; gender reassignment; pregnancy and maternity. This is particularly related to dual discrimination with disability.

Race:
- The Parliamentary Office for Science and Technology published a Policy Note (Ethnicity and health) in 2007 which examines the extent of ethnic inequalities in health. Black and minority ethnic (BME) groups generally have worse health than the overall population, although some BME groups fare much worse than others, and patterns vary from one health condition to the next. Evidence suggests that the poorer socio-economic position of BME groups is the main factor driving ethnic health inequalities.

- There is strong evidence of inequalities between ethnic groups in England in the incidence of severe mental illness. The 2006 'AESOP' study of ethnicity and psychosis in England

found rates of psychosis up to nine times higher for African Caribbean communities than for the White British population, six times higher for African communities and increased risks of a smaller degree for other Black and minority ethnic groups. In contrast, rates in the Caribbean and Africa are comparable to the overall rate in England. Since 2005, the Healthcare Commission's annual Count Me In census has consistently found rates of admission for the Black ethnic groups to be around three times higher than average.

- Published work demonstrate that people with learning disabilities from Black or minority ethnic communities face inequalities in terms of outcomes or because they are excluded from mainstream, generic, or learning disability services or policy – Hatton C (2005) Improving services for people with learning disabilities, Hatton C (2007) improving Services for people with learning disabilities from minority ethnic communities.

Religion and Belief:
- Prevalence of violence related to religion or belief is recognised by the Home Office. Police are obliged to record hate crime where the incident is motivated by prejudice or hate based upon faith.

- The impact of spirituality on mental health. A literature review of the evidence linking spirituality and religious expression with different aspects of mental health and, in particular, different mental health problems. Written by Dr *Deborah Cornah. (2006)*

Sex:
- Women's Mental Health: Into the Mainstream (2002) by the Department of Health, described in detail the mental health needs of women.The report identifies the devastating effect life events can have on mental health and the increased risk to women of child sexual abuse, domestic violence and rape.
- The Mental Health Act Commission user reference group response to the No Secrets Consultation, identified the majority had a fear of or actual experience of being abused by patients or staff while receiving inpatient care.

- There are differences in the incidence of dementia according to gender with a higher proportion of men in the ages 65-74 years and a higher proportion of women aged over 75 having dementia. (Dementia Strategy 2009)

- There will also be differences in the nature of care required according to the gender of individuals, and in the approach of caregivers to the provision of care. Male and female caregivers can respond differently to their care giving role in terms of depression, burden, stress, and substance abuse. The impact of caring is reviewed in Carers at the Heart of the 21st Century Families and Communities; HM Government 2008

- Available evidence suggests that gender is a key variable in funding social care, with older women being less financially well off and more in need of residential care than older men.

Nearly five times as many women as men are in institutional care, but they are less able to afford it.[7](Mayhew 2009)

- Domestic violence can affect one in four women in their lifetimes, regardless of age, social class, race, disability or lifestyle. Domestic violence accounts for between 16% and one quarter of all recorded violent crime. In any one year, there are 13 million separate incidents of physical violence or threats of violence against women from partners or former partners. (Home Office,2004; Dodd et al., 2004; Dobash and Dobash, 1980; Walby and Allen, 2004).

- Home Office: British Crime Survey 2008/9 reported women were most at risk of domestic violence. Six per cent of women were victims of domestic abuse in the past year compared with four per cent of men. Prevalence of domestic abuse decreased for men but not for women between the 2007/08 and 2008/09 BCS,

Sexual Orientation:
- A study by Imperial College London in 2004 demonstrated a possible link between levels of homophobic discrimination and mental ill-health among lesbian gay and bi-sexual people. Researchers found that the incidence of mental distress, including anxiety, depression and self-harm, was higher than average among the participants.

- Research from Stonewall, Being the Gay One (2007) drew attention to widespread discrimination and negative attitudes towards gay, lesbian and bisexual employees within health services.

- Abbot D and Howarth J (2005) Secret Lives Hidden Lives? Exploring issues for men and women with learning difficulties who are gay lesbian or bisexual.

- Incidence of violence related to homophobia is recognised by the Home Office Police are obliged to record hate crime where the incident is motivated by prejudice or hate based upon sexual orientation.

Gender Reassignment:
- Evidence reported in Department of Health Briefings for Health and social care; Tran's Peoples Health, suggests that large numbers of people seeking gender re-assignment are refused NHS treatment: 17% were refused (non-trans related) healthcare treatment by a doctor or a nurse because they did not approve of gender reassignment; 29% said that being trans adversely affected the way they were treated by healthcare professionals; 21% of GPs did not appear to want to help or refused to help with treatment.

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7 Mayhew (2009)

People with other disabilities such as learning disability or mental health needs are likely to be further discriminated due to assumptions related to the labels attached to them.

Pregnancy and Maternity:

- The Lewis, Gwynneth, Drife, James, et al. (2001) Why mothers die: Report from the confidential enquiries into maternal deaths in the UK 1997-9; commissioned by Department of Health from RCOG and NICE (London: RCOG Press found 30% of domestic violence started in pregnancy

- The NSF (National Standard Framework) for Children, Young people and Maternity Services includes points on identification of and response to domestic violence in pregnancy.

- The months surrounding the birth of a baby carry the greatest risk for women of developing mental illness and this can have a significant impact on the child as well as the mother. The most common is postnatal depression (between 10 and 15% of mothers) and the most serious, puerperal psychosis. Women's Mental Health: Into the Mainstream DH 2002

Safeguarding Adults and Carers

Safeguarding adults particularly addresses those who because of their social care needs, may be more dependent on others and unable to protect themselves from harm. Many people in such circumstances may rely on carers to support them.

- Carers at the Heart of the 21st strategy identifies that from the 2001 census there were 5.2 million carers in England and Wales with over 1 million caring for more than 50 hrs a week. This group are twice as likely to be in poor health themselves and need support in their own right and in their role as carers.

- Recognised valued and supported. Next steps for the carers strategy outlines the importance of recognising the expertise of carers and supporting their role.

- Some studies such as the UK Study of Abuse and Neglect of Older People, identified that 2.65 of the survey group experienced mistreatment by family member, friend or care worker however it is important to note the survey focused upon people over the age of 65 who were living at home