Managing Self-Neglect, Mental Capacity and Best Interests

Why is self-neglect important in the context of safeguarding of persons at risk?

A failure to engage with people who are not looking after themselves, whether they have mental capacity or not, has serious implications for the health and well-being of the person concerned and for the people engaged in the provision of their care and support. An adult will be considered to be vulnerable under this practice guidance where they are unable or unwilling to provide adequate care for themselves and:

- they are unable to obtain necessary care to meet their needs; and/or
- they are unable to make reasonable or informed decisions because of their state of mental health or because they have a learning disability or an acquired brain injury; and/or
- they are unable to protect themselves adequately against potential exploitation or abuse; and/or
- they have refused essential services without which their health and safety needs cannot be met but do not have the insight to recognise this.

Appendix 1 highlights a number of risk factors and indicators associated with self-neglect. Social care workers must balance lifestyle choices, with the need to protect a person who self-neglects. Allowing a person to self-neglect without intervention or support, could be considered as an omission in care and/ or support.

There are clinical, social and ethical decisions to be considered in the management of self-neglect. This guidance has been informed by the research work on self-neglect in older adults undertaken by Mary Rose Day and Patricia Leahy-Warren (2008); the West Sussex County Council Self Neglect Practice Guidance (2010) and the SCIE Report 46(2011). This guidance will be regularly reviewed in line with local and national developments.

The nature of any intervention centres on whether the adult concerned has the mental capacity to make decisions that have legal force. A person may have mental capacity and yet disagree with the views of the local authority or another agency. This right is a right that cannot be taken away from a person who has mental capacity. It does not preclude the local authority or other agency entering into a dialogue with the person in order to explore the area of concern. It is important that the rights of people to make apparently unwise lifestyle choices and to refuse services are respected. An assessment of the person's mental capacity to make decisions in this respect must be taken into account with specific consideration of the risks and safety implications of the decisions being made.

Rather than a passive approach, staff will be supported to undertake active decision making as whether or not to intervene in cases of self-neglect and it is important that the decision making in this respect is kept under constant review. It is essential that people working in social care are aware of the rights of individuals in law and of the duties, powers and responsibilities of the local authority as well as those of other agencies. A summary of these is given in Appendix 2.

What is self-neglect?

The term self-neglect is not included in the definition of elder abuse that is in common usage in England. Self-neglect is:

"the inability (intentional or non-intentional) to maintain a socially and culturally accepted standard of self-care with the potential for serious consequences to the health and well-being of the self-neglecters and perhaps even to their community." *(Gibbons, 2006, page 16)*

People working in social care have a vital role in the early recognition and prevention of self-neglect and have a responsibility to recognise and act upon the risk factors associated with self-neglect. Some common risk factors associated with self-neglect, particularly in older people, are shown in Appendix 1. These include age related changes that result in functional decline, cognitive impairment, frailty or psychiatric illness, which will increase vulnerability to abuse, neglect and self-neglect, as well as increase the potential for developing a number of underlying health conditions.

Guidance – Assessment of Neglect

Working together to effectively assess the needs of people receiving care and support

Where a person at risk (in receipt of services of the local authority or another agency commissioned to provide care) is self-neglecting and/or refusing services and in so doing placing themselves or others at risk of significant harm, a multi-disciplinary approach must be adopted and information shared with the service user about the risk(s) of non-intervention/intervention. A risk assessment will need to be undertaken which gives consideration to the following aspects of the person's life:

- observation of home situation
- engagement in activities of daily living
- functional and cognitive abilities of the person
- family and social support networks
- underlying medical conditions
- underlying mental health conditions or substance misuse issues
- environmental factors
- domiciliary care and other services offered/in place
- environmental health monitoring
- neighbourhood visiting by voluntary organisations
- money management and budgeting.

This assessment may identify the need to refer people with self-neglect for a more specialist assessment. Where there is actual self-neglect, or significant risk of it, the practitioner will, in the course of the assessment, need to make and record their judgment about the risks and what an appropriate response to these should be.

Guidance – Intervention and Management

Building a positive relationship with people receiving care and support

The person should, as far as possible, be included and involved in the assessment process and in developing a Safeguarding Plan to reduce or eliminate identified risks. Under normal circumstances, the person should be invited to attend any case conferences. Where the person continues to refuse all assistance and they have been assessed as having the mental capacity to understand the consequences of such actions, this should be fully recorded. The record should also include a record of the efforts and actions taken by all agencies involved to provide support. A capacity assessment should be carried out if appropriate, to determine if the person has the capacity to make decisions and time specific decisions.

Where a person is unable to agree to have their needs met because they lack the mental capacity to make this decision, then the 'best interest' decision making process should be used. If the care management process/care programme approach has not been able to mitigate the risk of 'serious self neglect which could result in significant harm', the matter should then be referred under the Safeguarding Adults Procedure in order that all subsequent decision making (about what action is or is not taken) occurs within a multi-agency framework. This process will not affect an individual's human rights but it will ensure that respective partner agencies exercise their duty of care in a robust manner and as far as is reasonable.

In exceptional circumstances it may be necessary for staff employed by the local social services authority to intervene using *S.47 National Assistance Act 1948*. This provides for an application to be made to a court of law by the Director of Public Health. If such a course of action is felt to be necessary by staff, following a discussion in professional supervision, legal advice should be sought as soon as practicable.

Mental Capacity Act – Best Interests

What should staff do where someone is believed to be lacking mental capacity to make decisions for him/herself?

- Staff should always consider:
- is there a need to formally assess and record that the person who is believed to be lacking mental capacity - to make a specific decision - is in fact mentally incapable of making that decision?
- is it likely that the person may regain mental capacity in the future and therefore should be involved and can make that decision for him/herself in the future?
- the wishes, feelings, values and beliefs of the person who has been assessed as lacking mental capacity
- the views of family members, parents, carers and other people interested in the welfare, if this is practical and appropriate, of the person who has been assessed as lacking mental capacity
- the views of any person who holds an enduring power of attorney (pre-October 2007) or a lasting power of attorney (from October 2007) made by the person now lacking capacity

- the views of any deputy appointed by the Court of Protection to make decisions on the person's behalf

- whether any decisions that need to be made have in fact already been made based merely on the appearance, age, medical condition or behaviour of the person who has been assessed as lacking mental capacity

- whether people are being motivated by a desire to bring about the death of the person who has been assessed as lacking mental capacity, or are making assumptions about the quality of that person's life

- any other information that may be relevant.

Further information – available on the internet

Mental Capacity Act 2005
http://www.southampton.gov.uk/living/adult-care/mentalhealth/default.aspx

Mental Health Act 1983 (revised 2007)
http://www.dh.gov.uk/en/Healthcare/Mentalhealth/InformationontheMentalHealthAct/DH_4001816

Office of the Public Guardian (Mental Capacity Act)
http://www.publicguardian.gov.uk/mca/mca.htm

Department of Health (Mental Capacity Act Deprivation of Liberty Safeguards)
http://www.dh.gov.uk/en/SocialCare/Deliveringadultsocialcare/MentalCapacity/MentalCapacityActDeprivationofLibertySafeguards/index.htm

Multi-agency Policy, Procedures and Guidance (Southampton, Hampshire, Isle of Wight and Portsmouth) *http://www.southampton.gov.uk/living/adult-care/careprofessionals/safeguardingadultspolicy.aspx*

Selected references

Day, M.R., Leahy-Warren, P. (2008) Self-neglect 1: recognising features and risk factors. *Nursing Times* 104: 24, 26–27.

Day, M.R., Leahy-Warren, P. (2008) Self-neglect 2: nursing assessment and management. *Nursing Times* 104: 25, 28-29.

Gibbons, S. (2006). Primary Care Assessment of Older People with Self-Care Challenges. *Journal of Nurse Practitioners*, 323-328.

Poythress, E.L.; Burnett, J.; Naik, A.D.; Pickens, S.; Dyer, C.B. (2006). Severe Self-Neglect: An Epidemiological and Historical Perspective. *Journal of Elder Abuse and Self-Neglect*, 18 (4), 5-12.

Appendix 1: Risk factors associated with self-neglect

The characteristics and behaviours commonly used to describe self-neglect, particularly - but not exclusively – in older people are:

- living in very unclean, sometimes verminous, circumstances, such as living with a toilet completely blocked with faeces
- neglecting household maintenance, and therefore creating hazards
- portraying eccentric behaviours or lifestyles, such as obsessive hoarding
- poor diet and nutrition evidenced by, for instance, little or no fresh food in the fridge, or what there is being mouldy
- declining or refusing prescribed medication and/or other community health care support
- refusing to allow access to health and/or social care staff in relation to personal hygiene and care
- refusing to allow access to other organisations with an interest in the property, for example, staff working for utility companies (water, gas, electricity)
- being unwilling to attend external appointments with professional staff, whether social care, health or other organisations (such as housing)
- poor personal hygiene, poor healing/sores, long toe nails, isolation and failure to take medication.

To this list can often be added advancing age, chronic illness, depression, alcohol and substance misuse, personal health care issues such as the presence of mental disorder (including the relapse of major psychiatric features, or a deterioration due to dementia), incontinence (single or double), visual and/or other sensory impairment, mobility difficulties, and/or poor access to specialist community health services such as podiatry services. It is worth noting, however, that poor environmental and personal hygiene may be a result of cognitive impairment, poor eyesight, functional and financial constraints or a matter of personal choice or lifestyle rather than for other reasons.

Appendix 2: The Legal Context

There are many legislative responsibilities placed on local authorities and other agencies to intervene in or be involved in some way with the care and welfare of adults who are believed to be vulnerable. Services may need to be provided as a result of neglect, illness, injury or mental disorder. Specific Acts of Parliament include:

National Assistance Act 1948 – including:

- Duty to provide residential accommodation to those people aged 18 years or over "who by reason of age, illness, disability or any other circumstances are in need of care and attention which is not otherwise available to them".

- Duty to promote the welfare of people with disabilities.

- Arrangements whereby an application can be made to a court of law if a person assessed as having capacity is "suffering from grave chronic disease or, being aged, infirm or physically incapacitated, are living in insanitary conditions and are unable to devote to themselves, and are not receiving from other persons, proper care and attention".

Health Services and Public Health Act 1968 – including:

- Duty to make arrangements for promoting the welfare of old people.

Chronically Sick & Disabled Persons Act 1970 – including:

- provision of practical assistance in the home
- assistance in obtaining television, library or similar recreational facilities
- provision of recreational facilities outside the home
- assistance to person in taking advantage of educational facilities
- assistance with travelling to participate in any services provided
- works of adaptation to the home
- facilitating holidays
- provision of meals
- provision of a telephone.

NHS and Community Care Act 1990 – including:

Duty to carry out assessment of individual's needs for community care services and providing any such services needed.

The **Health and Social Care Act 2008** introduced a new single regulatory framework for health and social care. The registered person - usually the owner or manager - has a duty to inform the registration authority within 24 hours of any event that threatens the well-being of any resident (Regulation 18 notification). The registration authority is the Care Quality Commission.

The **Mental Health Act 1983** (revised and extended in 2007) provides a comprehensive legislative framework to support the needs of both children and adults. It is based on the presumption that the right of people who have been assessed as having a 'disorder or disability of mind or brain' is safeguarded when they are being admitted to or treated within a psychiatric hospital. In addition, as much care and treatment as possible, both in hospital and outside, should be given on an informal basis – where the individual patient is able to exercise their own judgement in the matter (with certain additional safeguards in place for children and young people) - and in the least restrictive conditions possible. The Act also presumes that the main emphasis of care is care within local communities, not within hospital settings. S.135 specifically provides the authority to seek a warrant authorising a police officer to enter premises if it is believed that someone suffering from mental disorder is being *ill-treated or neglected or kept otherwise than under proper control* anywhere within the jurisdiction of the Court or, *being unable to care for himself, is living alone in any such place*.

The **Mental Capacity Act 2005** became operational during 2007. Underpinning the Act are five statutory principles, the most important of which centre on the presumption of capacity unless proven otherwise, and the requirement to enable mentally capable individuals (aged 16+) to make decisions for themselves, even where those decisions may be at variance with what other people and organisations feel would be best.

Mental Capacity Act 2005: Statutory Principles

- Any person, aged 16+, must be assumed to have the capacity to make his/her own decisions unless it is established otherwise
- All practicable steps must first be taken to assist people to make such decisions
- Any person has capacity has the right to make an unwise decision

The *Mental Capacity Act* also provides a statutory framework to enable social care (and allied disciplines) to intervene in the lives of a person (aged 16+) where it can be demonstrated that, in relation to a specific decision that needs to be taken, the person lacks mental capacity to make that decision and therefore a decision needs to be made by a third party in the person's best interests. From April 2009, the *Mental Capacity Act 2005* has made it unlawful to deprive of his/her liberty any adult person lacking mental capacity who is living in a care home or staying in a hospital. This can only be lawful if a Deprivation of Liberty Standard Authorisation is in place or a decision has been made to this effect by the Court of Protection. Statutory agencies' practice is also informed by, and needs to refer to, the following relevant legislation:

- Sex Discrimination Act 1975 and subsequent equalities legislation
- Race Relations Acts 1976 and 2000 and subsequent equalities legislation
- Police & Criminal Evidence Act 1984 – Codes of Practice (and subsequent revisions to the Codes)
- Criminal Justice Act 1991 and subsequent criminal justice legislation

- Disability Discrimination Act 1995 and subsequent equalities legislation