

Hampshire Safeguarding Adults Board

Policy and Practice Update September 2015

This bulletin provides a summary of recent national policy news, publications, consultations and articles relating specifically to adult safeguarding. A brief summary and link to the original webpage document is provided for each item.

Mental Health	<u>CQC review of support for people in mental health crisis</u>
Published by: Care Quality Commission	
<p>The Care Quality Commission (CQC) has published a report outlining the findings of its review of the help given to people in mental health crisis. The report highlights that the system was "struggling to cope" and describes a "lack of compassion" from A&E staff. CQC carried out its review after the Crisis Care Concordat between the government and the sector was introduced last year. The CQC review was based on surveys of patients, analysis of national data and inspections of services and this found that 42% of patients did not get the help they needed. Patients were also asked about the attitudes of staff towards them. Staff working for charities and volunteers received the most positive ratings, while staff in A&E received the worst. Just over a third of patients who ended up in A&E thought they had been treated with compassion and warmth, and a similar proportion said their concerns had been taken seriously.</p> <p>Publication date: January 2015</p>	

Female Genital Mutilation	<u>Guidance on the Serious Crime Act 2015</u>
Published by: Local Government Association	
<p>Section 74 of this legislation creates a new mandatory reporting duty requiring specified regulated professionals in England and Wales to make a report to the police. The duty applies where, in the course of their professional duties, a professional discovers that FGM appears to have been carried out on a girl aged under 18 (at the time of the discovery). The duty applies where the professional either is informed by the girl that an act of FGM has been carried out on her, or observes physical signs which appear to show an act of FGM has carried out and has no reason to believe that the act was necessary for the girl's physical or mental health or for purposes connected with labour or birth. The duty applies to professionals working within healthcare or social care, and teachers and covers professionals regulated by a body overseen by the Professional Standards Authority including doctors, nurses, midwives, social workers and teachers.</p> <p>Publication date: March 2015</p>	

DOLS	<u>Mental Capacity and Deprivation of Liberty Consultation Paper</u>
Published by: The Law Commission	
<p>The government has brought forward the deadline for the Law Commission to finalise proposals for a legal framework to replace the Deprivation of Liberty Safeguards. The accelerated timetable was announced by care minister Alistair Burt and will result in the publication of draft legislation and detailed proposals for a new deprivation of liberty scheme by the end of 2016 rather than the original date of summer 2017. The Law Commission is reviewing both the DOLS scheme (covering care homes and hospitals) and the Court of Protection process for authorising deprivation of liberty in community placements such as supported living. The new framework is expected to cover both community and residential care settings.</p> <p>Publication date: 17th June 2015</p>	

DOLS	<u>AJ (by her litigation friend the Official Solicitor) and a local authority</u>
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Published by: Community Care

A Court of Protection ruling is forcing authorities to turn to paid professionals to take on the role of relevant person’s representative (RPR) for people subject to DOLS. However, as the advocacy services from which paid RPRs are drawn are under severe pressure themselves, they too are in short supply. Everyone who is deprived of their liberty in a care home or hospital under DOLS is entitled to an RPR. The RPR must represent and support the person in matters connected to the DOLS authorisation including making a legal challenge to the DOLS authorisation if the person wishes to. Other than in cases where a person with the capacity to select their RPR chooses to do so, or an attorney or deputy with authority to select an RPR does so on the person’s behalf, best interests assessors (BIAs) must recommend a family member, friend or carer that they feel can fulfil the role. The local authority then decides whether to appoint them. Where a BIA cannot find a suitable family member, friend or carer, the local authority may appoint a paid representative, often an advocate. It has been common for a family member or friend of the person to be selected as their RPR. However the court’s judgement in the AJ case has triggered concerns over potential conflict of interests in loved ones taking on the role.

The Ruling:

AJ was an 88-year-old woman with dementia who lived with her niece (Mrs C) and her niece’s husband (Mr C). She objected to a decision to move her to a care home on a long-term basis after a respite placement when Mr and Mrs C were on holiday. The council appointed Mr C as AJ’s RPR. An Independent Mental Capacity Advocate (IMCA) was instructed to support Mr C. Yet despite AJ’s known opposition to the care home placement, no legal challenge was made to the DOLS authorisation until more than six months after she was admitted into residential care. There was no effective communication between Mr C as RPR and the IMCA. When the IMCA finally spoke to Mr C he realised that Mr C was not going to initiate proceedings to challenge the DOLS authorisation. At that point the IMCA agreed to act as AJ’s litigation friend and instruct solicitors to make an application to the Court of Protection on her behalf. Mr Justice Baker found that the BIA in the case should not have recommended Mr C as AJ’s RPR because it was clear that Mr C supported her being placed in the care home long term. As a result, his own views conflicted with supporting AJ in any challenge. The court also found that the local authority should have scrutinised the BIA’s decision, identified the conflict, and referred the matter back to the BIA.

The judgement has led to councils increasingly turning to paid representatives to take on the RPR role in a bid to avoid similar conflicts. Paid RPRs are usually sourced from local advocacy services. However, the introduction of new advocacy duties under the Care Act, coupled with sustained pressures on Independent Mental Capacity Advocate (IMCA) teams, means paid-for RPRs are in short supply. **ADASS has revised its DOLS forms** in light of the ruling in order to flag-up the responsibilities of BIAs and local authorities in the RPR selection process. The association is also scoping out possible solutions to boosting the pool of potential paid RPRs that councils can call on, including the potential for regionally or nationally-commissioned services.

Publication date: 10th June 2015

Care Act 2014	<u>Care Act 2014 and Commissioning</u>
Published by: Think Local Act Personal (TLAP)	
<p>TLAP has published two web based tools that will help commissioners to improve the wellbeing of local people while meeting Care Act 2014 obligations. The key message from both tools is that commissioners need to focus on people not processes when it comes to commissioning health and social care services and make sure people with care and support needs, families and carers are equal partners in deciding where services are commissioned from.</p>	
<p><u>People not process - Co-production in commissioning</u> is a web based tool that explains what commissioners should think about to make sure they are working in the way the new Act says they should. This includes encouraging commissioners to seriously think about using co-production in their approach to market shaping and commissioning, which is described in the guidance as a "shared endeavor". This resource explains how commissioners can do this, drawing on a range of evidence of innovative practice and incorporating advice and examples to illustrate the steps that can be taken to make progress.</p>	
<p><u>Top Tips: Commissioning for Market Diversity</u> aims to help commissioners focus on the work they need to do in developing a care and support market that offers a diverse range of ways for their local population to meet their care and support needs. The guide offers ten top tips, examples and links to further information and a short series of questions that will help commissioners assess their progress in meeting market shaping duties and developing a diverse local market, as defined in the Care Act 2014.</p>	
<p>Publication date: 24th June 2015</p>	

NHS Accountability Framework	<u>Safeguarding Vulnerable People in the NHS – Accountability and Assurance</u>
Published by: NHS England	
<p>This document updates and replaces Safeguarding Vulnerable People in the Reformed NHS – Accountability and Assurance Framework issued by the NHS Commissioning Board in March 2013. It sets out the safeguarding roles, duties and responsibilities of all organisations commissioning NHS health and social care recognising that the new responsibilities set out in the Care Act 2014 that came into force on 1st April 2015. The framework aims to identify and clarify how relationships between health and other systems work at both strategic and operational levels to safeguard children, young people and adults at risk of abuse or neglect; set out the legal framework for safeguarding as it relates to the various NHS organisations to support them in their statutory requirements to safeguard children and adults; promote empowerment and autonomy for adults, including those who lack capacity and outline principles, attitudes, expectations and ways of working that recognise that safeguarding is everybody’s business and that the safety and well-being of those in vulnerable circumstances is at the forefront of NHS business.</p>	
<p>Publication date: 2nd July 2015</p>	

NHS Accountability Framework	Managing Safeguarding Allegations Against Staff
Published by: Department of Health	
<p>This document provides a framework to ensure appropriate actions are taken to manage allegations, regardless of whether they are made in connection to duties with NHS England or if they fall outside of this such as in their private life or any other capacity. The purpose of this Policy is to provide a framework for managing cases where allegations are made about NHS staff that indicate that children, young people or adults at risk are believed to have suffered, or are likely to suffer, significant harm. Concern may also be raised if the staff member is behaving in a way which demonstrates unsuitability for working with children, young people or adults at risk, in their present position, or in any capacity. The allegation or issue may arise either in the employee's/professionals work or private life.</p>	
Publication date: 2nd July 2015	

DASM	Link from website
Published by: Department of Health (DH)	
<p>The DH has issued further guidance on the role and functions of the Designated Adult Safeguarding Manager required by each member of the Safeguarding Adult Board. This clarifies that core members of the LSAB are required to have a DASM and that on the basis of good practice other LSAB members can be asked to nominate a DASM if this is consistent and proportionate to their role.</p>	
Publication date: 9th July 2015	

Mental Health	Commission to review the provision of acute in-patient psychiatric care for adults
Published by: Royal College of Psychiatrists	
<p>This report publishes interim findings of the commission on acute adult psychiatric care in England set up by Royal College of Psychiatrists. It highlights that difficulties in securing beds for mental health patients is mainly driven by discharge delays and cuts to community services, not bed closures. The commission was set up to examine the factors behind “major problems” securing hospital admissions for mental health patients in parts of the country. The report highlighted that there was a 39% reduction in the number of inpatient psychiatric beds in England between 1998 and 2012. It found that bed closures “may have gone too far” but concluded that any ‘beds crisis’ was “very significantly a problem of discharges and alternative to admission” and tackling those issues should be the priority.</p>	
Publication date: 15th July 2015	

Residential Care	Review of regulatory reform in the adult residential care home sector
Published by: HM Government	
<p>This review will assess the progress being made in reforming regulatory practices in the Adult Care Homes sector, building on recent analysis of the regulatory framework and regulators’ practices in the sector. The primary aim is to remove unnecessary duplication and overlap in inspections, visits, paperwork, data requests and in commissioning and contract management, whilst safeguarding standards of care and protection for residents. It will cover residential homes, nursing homes, respite care and supported living and will run until 14th September 2015. To contribute to the review, comments can be posted on the government’s ‘cutting red tape’ website</p>	
Publication date: 16th July 2015	

Mental Health	National confidential inquiry on suicide and homicide by people with mental illness
Published by: Manchester University and Healthcare Quality Improvement Partnership	
<p>The inquiry reviewed suicide and homicide data between 2003 and 2013. Researchers found that the proportion of post-discharge period suicides involving patients placed out of area increased from 6% (around 68 deaths per year) over the 2003 to 2007 period to 11% (109 deaths per year) over the 2008 to 2012 period. The report highlights that sending acutely ill mental health patients to out of area hospitals heightens the risk of suicide on discharge. The report recommends that crisis resolution teams should not be used as a default for patients who are at high risk or who lack social supports. The inquiry also found that suicides of patients under care of the teams, which are used by the NHS as a home-based alternative to hospital care, increased in 2013 after years of numbers remaining relatively stable.</p>	
Publication date: July 2015	

Mental Health	Guidelines on mental health checks
Published by: Home Office	
<p>The Home Office has published new guidelines listing factors that must be considered before people's mental health crises are disclosed to employers as part of a DBS background check. The aim of the guidelines is to make the system fairer without lessening protection and ensuring that checks provide employers with the information they need to protect children and vulnerable groups. The guidance emphasises that:</p> <ul style="list-style-type: none"> • Detention under the Mental Health Act, which does not constitute a criminal investigation, is unlikely in itself to be sufficient to justify disclosure • The behaviour of the person during the incident must be a "key consideration" when considering checks and could include assessing whether the person presented a risk of harm to others or whether they were involved in multiple incidents • The date of the mental ill health episode is an "important" factor. In cases where it took place a long time ago, officers should consider giving the applicant an opportunity to make representations about their current state of health • If information is disclosed, the certificate should provide an explanation so the employer or voluntary organisation understands the relevance of the information to the application. 	
Publication date: 10th August 2015	

Mental Health	There to Help
Published by: National Appropriate Adult Network	
<p>The National Appropriate Adult Network has published a study called There to Help which highlights that up to a quarter of a million adults with mental illnesses are not being supported by an appropriate adult while in police custody. The study included an analysis of police data showing appropriate adults were used in around 45,000 of the 1.4 million detentions and voluntary interviews of adults each year, even though up to 280,000 involved those who were mentally vulnerable. The report also highlighted some areas have no organised schemes for vulnerable adults. Police custody sergeants surveyed as part of the study reported difficulties in getting appropriate adults during weekends, evenings and overnight. Of those who completed the survey, around a third said they received no training in identifying vulnerable suspects, while some reported spending hours trying to find a suitable appropriate adult, admitting to sometimes asking random members of the public or proceeding without one.</p>	
Publication date: 25th August 2015	

Learning Disability	British Medical Journal
Published by: British Medical Journal	
<p>A study carried out by Public Health England has estimated that up to 35,000 adults with a learning disability are being prescribed an antipsychotic, an antidepressant or both without appropriate clinical justification. The study published in the BMJ looked at GP data spanning over a decade found that these drugs are being used in response to challenging behaviour rather than treating severe mental illness. In July, NHS England sent a letter to patients and professionals saying these powerful medicines should not be used as a "chemical restraint".</p>	
Publication date: September 2015	

Bulletin Compiled by Sue Lee, Hampshire Safeguarding Adults Board Manager

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