



Personalisation and Safeguarding

1. Background

The paper below was discussed at the ADASS Executive Council on 21 October 2008 the purpose being to clarify the options open to ADASS in promoting a framework for adult social care services which helps local authorities ensure that vulnerable people are safeguarded. Safeguarding will be necessary as people begin to have wider choice, and take greater control over, their care services, as outlined in *Putting People First*. This Government document published in December 2007 specifically encourages greater personalisation, individualised budgets and an increased use of personal assistants by those people eligible for local authority social care.

The recommendations outlined in 7 below were approved by the Executive Council.

2. Introduction

The DASS guidance (2006) defined new responsibilities to promote both individual and community wellbeing. This wider remit adds to our responsibilities to meet the needs of vulnerable people and requires us to continue with the move away from an organisational focus on those traditional care services which include residential, nursing and domiciliary care, towards a more universal scope encompassing safer communities, health, wellbeing, transport policies, public health, housing and preventative services. This new landscape coincides with the government's aim, recently emphasised in *Putting People First* (2007) to personalise public services, with personal budgets at the centre of the drive for reform.

As local authorities begin to transform services to meet the ideals of *Putting People First*, there is a need to review how safeguarding frameworks will ensure the safety and protection of vulnerable adults within this new context of greater personal choice and control.

3. Safeguarding Framework

The introduction of *No Secrets* Guidance in 2000 sits alongside a regulatory framework which responds to safeguarding vulnerable adults as defined by a set of national standards delivered by the regulated services they receive. Within this framework, services which are subject to regulation include: 24 hour care, domiciliary care and adult placement services (agency only - not individuals).

This has been supplemented by the advent of the Mental Capacity Act, which creates a new offence (Section 44: wilful neglect or deliberate ill-treatment of a person who lacks capacity). Additionally, the new Safeguarding Vulnerable Groups Act (2006) will introduce a vetting and barring scheme in October 2009 to protect vulnerable people. This will extend to include health, education, housing support and Supporting People services, as well as some transport services within its scope.

However, alongside these services is an increasing range of provision which falls outside both the existing system of care standards regulation, and is not within the ambit of the Safeguarding Vulnerable Groups Act 2006. This currently includes some types of day activities and resources, a wide range of lower level preventative services and also personal assistants who, in the context of *Putting People First*, will be more widely used in future.

Care and support purchased via a direct payment, individual budget or personal budget which does not make use of regulated services as defined by the Care Standards Act 2000 is also outside of the regulatory system. The Fraud Act 2006 also has a significant impact upon safeguarding of vulnerable adults who cannot manage their own financial affairs.

4. Strengthened legislation, not increased regulation

Early indications from personal budget pilots show that half the people, given the choice, opt to keep existing services; 35 per cent made some adjustments, such as mixing council contracted day services with their own personal assistants; while 15 per cent went for a complete change from their previous care package.

As personal budgets gain momentum it is likely that more people will choose to spend their council subsidy on personal assistants or non-traditional support as part of their support package.

As more people move away from statutory services, or even traditional voluntary services, towards a mix of support from universal resources, safeguarding - through increased regulation of the range of new types of support services that are emerging - becomes potentially very costly and would not be practicable. People opting to use such support will have the same recourse as other citizens to wider protection agencies such as trading standards, the Ombudsman and complaints systems. In this context, access to effective advocacy and good risk assessment and risk management becomes ever more crucial to support people through these systems and processes.

5. Safeguarding & Personalisation

Emerging issues include:

- Within the launch of the *No Secrets* refresh consultation, there is likely to be much debate about the effectiveness and extent of the existing safeguarding framework, not only as it currently operates, but also how it should move forward into the future, within the context of *Putting People First*.
- Potential gaps are already emerging regarding the fit between the current safeguarding framework and *Putting People First*, particularly for those eligible for LA social care subsidy/support, who choose to utilise their local authority funding to purchase personal assistants or other non-traditional or non-regulated forms of care.
- There is a need to consider where the contribution of accreditation / regulation may fit with enabling service users and carers to make informed choices about the role and appropriateness of personal assistants. Wider universal accessible services used by the general public are subject to safeguards such as trading standards and complaints processes. The experience of the use by other council services of accreditation (e.g. trading standards, housing and environmental health) demonstrates also the ability of such schemes to drive up standards and promote public confidence. Some authorities are already exploring 'Buy with Confidence' schemes with trading standards for care support.
- *Putting People First*, alongside the objective of placing social inclusion at the heart of modern government, also means that universal services are likely increasingly to become part of the support to social care clients,

identified as vulnerable. This raises questions about additional mechanisms which may need to be in place to ensure safeguarding issues are considered.

- In this context there is a need to establish transparency about the connections between the role and contribution of prevention, *Putting People First* principles and safeguarding duties and responsibilities currently vested in local authorities.
- There is currently an inconsistency in the definition of the term 'vulnerable adult' across a range of legislation, and any move to introduce consistency may lead to a broader definition. This would inevitably have resource consequences in that local authority safeguarding functions would apply to a larger pool of people. For example, currently, in the context of asylum, homelessness, domestic violence, forced marriages, carers, alcohol and drug related behaviours, only those who meet the existing *No Secrets* definition of a vulnerable adult have access to local authority safeguarding services.
- Within the new personalisation agenda there is recognition of the need significantly to expand and develop advocacy and brokerage. This raises questions about the potential contribution that accreditation/ regulation can make in safeguarding potential vulnerable adults who access these types of services independently.
- From the pilot sites there is evidence that risk assessment / risk management is a key step in the support planning process and is a tool for identifying not just current but potential safeguarding issues which need to be mitigated. This raises questions about the value of national standards or competencies for risk assessment.
- There is a need for consideration of the role of CRB/vetting and barring in relation to wider prevention and universal services which become or form part of support plans.
- There is a potential case for developing a national education / training programme which is accessible by users, support staff, providers and the wider public to inform and develop competencies to support the principle of choice and control and which can provide assurance on standards.

6. ADASS 7 Point Plan

In September 2007 ADASS adopted a new 7 Point Plan in response to the future requirements to support safeguarding. This does provide a response to the new context of personalisation by calling for adult protection legislation,

which would ensure that the new freedoms to commission individual care and support is protected by effective legal safeguards. It would give essential powers to the local authority to intervene across the multiplicity of provision where there is suspected abuse and gives a right to intervene through its supports for:

1. **Powers** to enter domestic properties in circumstances of extreme risk
2. **A Duty** to share information between statutory agencies and regulators
3. **A Duty** to co-operate
4. **Clarification** of the futures and powers of other local authority departments and health agencies across geographical and organisation boundaries
5. **A Duty** to act to investigate complaints
6. **A Duty** to be laid upon regulatory bodies to work in partnership with local authorities in identifying and responding to instances of potential abuse and neglect including institutional abuse and neglect.
7. **Clarification** of terminology - currently there is a range of expressions to define abuse and inconsistency in language.

As a new framework this would complement existing public protection mechanisms currently in operation. Since its publication, ADASS has received widespread support from within the profession, although there have been a number of misgivings about the powers to enter domestic properties and this may require further investigation and consideration.

7. Recommendations

Having considered current context and issues, ADASS believes that personalisation and safeguarding can be reconciled by developing the recommendations outlined below.

There has been a strong consensus for legislation as set out in the ADASS 7 Point Plan. However, the timetable for delivering transformation and personalisation with the new elements of personal budgets - alongside an increasing demand for, and take up of, personal assistants which fall outside the existing regulatory and accreditation routes - means this may not be in place fast enough.

Local authorities have a statutory duty to ensure the most vulnerable of our communities are supported and safeguarded. While the 7 Point Plan and a strengthened legislative framework would support delivery, this is unlikely to be in place quickly enough, given the timetable of *Putting People First*.

The challenge to ADASS therefore, is to describe and support a framework that would enable our existing vulnerable users to have confidence in the services they purchase or arrange using their support plans and budgets, but without stifling the principles of independence choice and control. Recommendations to deliver this include:

1. Pursuing the development of a new accreditation scheme for personal assistants, based upon a series of key nationally agreed competencies with national learning and skills organisations. Careful consideration needs to be given as to how any accreditation system would be applied, maintained and funded without undermining an already fragile labour market or the flexible and more informal arrangements that some personal budget holders would choose to make.
2. Supporting every local authority in offering the option of vetting and barring or CRB checks being made available to all vulnerable adults who receive their support through a personal assistant.
3. Calling for Government to adopt the 7 Point Plan
4. Reviewing existing risk assessment and risk management tools that could be accredited or endorsed by ADASS for use in determining and managing existing or potential safeguarding risks in support planning with users. A risk-based approach allows a flexible system whilst at the same time supporting a robust and ethical approach to safeguarding and the appropriate sharing of risk.
5. Addressing the skills and development required to support both the public and staff in managing the interface between personalisation and safeguarding. ADASS is already working alongside the Social Care Institute for Excellence and talking to other partners about the development of training resources and toolkits to support managers and practitioners in their safeguarding work. These will be valuable elements in improving consistency, awareness and delivery against best practice.

In addition, the learning from the last 12 months of safeguarding inspections will be shared by the Commission for Social Care Inspection (CSCI) in November 2008. Work is underway to progress the development of a new framework for the Care Quality Commission that addresses safeguarding and it will be important to ensure that ADASS is strongly represented on, and part of, these processes.

In recognition of the scale and scope of the above, ADASS Executive has agreed the need to convene a DASS Network for Safeguarding to ensure high level representation and influence from across the membership as these areas are developed.

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