

Protecting Vulnerable Adults – Securing their Safety.

Third consultation paper on the protection of vulnerable adults and related matters.

**Initial thoughts for discussion
by
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Executive Summary

I have three basic concerns over this consultation paper:

1. it is disablist in nature – unnecessarily stigmatising and disempowering disabled (including those with learning impairments) and older people in receipt of community care
2. by labelling all disabled and older people in receipt of community care as ‘vulnerable’, any future legislation, guidelines and procedures could give even greater powers to social care workers, which would consequently impinge on disabled and older people’s human rights and civil liberties
3. if made law, the underlying assumptions and recommendations of this consultation document could undermine the principles of independent living and emancipatory social services. In particular, they could limit the power of PA employers to choose and manage their employees; and live the lives they want to live

The general thrust of this consultation paper is to further 'commodify' disabled and older people, treating them as objects of 'care' rather than protagonists.

The document does nothing to highlight and suggest ways to eradicate the systemic causes of abuse and exploitation within the social care system itself.

It is suggested that labelling disabled and older people as 'vulnerable' is irrelevant to the purpose of the proposed legislation. The identifiable marker is the abuse and exploitation, or potential abuse and exploitation, of the social care worker.

If any social care professional or worker exhibits any such behaviour towards anyone, be they service user or service provider – and no matter how well the recipient of that abuse or exploitation may defend themselves – then not only should the perpetrator be marked as being 'unsuitable' as a care worker, but immediate action should be taken against them in a court of law. If the behaviour cannot be substantiated by a law court, then they should be notified to Disclosure Scotland.

Nothing in the above paragraph warrants anyone being prejudicially labelled as 'vulnerable'.

Community care recipients, no matter what their communication needs, must be involved in the monitoring and reviewing of social care workers on a regular basis. They also need to be empowered to make criticism and complaints without fear of reprisals; they must be supported to participate in the review and management of their own support systems. Above all, they must be the protagonists of their own care – not the commodities.

If there is to be an Adult Protection Committee, disabled and older people need to be part of it; and prevention of abuse should be its key role. The reasons for abuse need to be highlighted and solutions found, which involve disabled and older people along with their allies.

Finally, it is noted that the Scottish Executive Health Department has already renamed its Community Care section dealing with disability issues, including direct payments legislation and this consultation exercise, as "The Vulnerable Adults Unit". This pre-

emptive action not only questions the veracity and virtuosity of the consultation process, but it is a direct snub to disabled and older people, because it was done without their prior knowledge and consent.

It is regrettable that the Health Department, by renaming their section dealing with disabled and older people in such a high-handed and derogatory manner seems to be so out of step with other Government policies and departments – notably the Education Department’s 21st Century Review of Social Work – which seem to be more inclusive of disabled and older people, endeavouring to empower them as protagonists of their own support systems and equal citizens of society.

Risks and rights need to be balanced. But policies and practices need to be based on the respect, dignity, rights and empowerment of disabled and older people. Adequate information, training and resources for all those involved need to be developed. Above all, government, service providers, regulators, professional bodies and disabled people need to get together to open a dialogue and resolve our differences¹.

This consultation document, although fundamentally flawed in its premise and presumptions, could form the basis for that collaborative work. But, first many, many more disabled and older people must get as angry and upset as I am at being labelled a ‘vulnerable adult’.

The consultation paper is disablist in nature, stigmatising disabled and older people in receipt of community care

The purpose of this proposed legislation is to register people deemed unfit to work in social care professions, in either a paid or unpaid capacity.

¹ National Centre for Independent Living (2001) 'Briefing on health and safety, risk management and independent living for disabled people' (unpublished)

So the question must be raised – why is there a need to infantilise, victimise and stigmatise disabled and older people receiving community care services by labelling them as ‘vulnerable adults’?

Surely, the identifiable marker to register such abusive people is not the status, actual or labelled, of the disabled or older person, but the behaviour or potential behaviour of the worker.

There seems to have been some critical debate between the second and third consultation documents over this question, which has resulted in some changes to the definition of ‘vulnerable adult’ rather than total rejection of the need for such a definition in the first place.

The second pre-consultation document of 2004 had defined a ‘vulnerable adult’ as a person aged over 16 to whom:

- accommodation, and nursing or personal care, are provided in a care service;
- personal care is provided in their own home under arrangements made by a domiciliary care agency; or
- prescribed services are provided by an NHS Board, or an independent hospital, independent clinic or an independent medical agency, or National Health Service body that is registered with the Care Commission.

I understand representations were made, which implied health and social care professionals did not feel this definition was wide enough. They wished to include anyone in receipt of a health and social welfare service. This would not only include a direct payment recipient, but say someone in receipt of a chiropody service.

However, the danger could arise that if the definition of ‘vulnerability’ was extended to include all health and social service users, their dignity and civil liberties would be insulted. Defining all health and community care users, as vulnerable, could be construed as an act of stigmatization, inferring that they are inherently culpable for their own ‘risk status’ by merely presenting themselves as a service user.

The authors of the 2005 consultation paper may or may not have considered this, but their re-definition of 'vulnerable adult' could still be criticised along similar lines.

They now define a 'vulnerable adult' as a person over 16 who:

- is unable to safeguard their personal welfare, property, or financial affairs.
- may be in need of community care services by reason of mental disorder or disability, age or illness.
- is unable to care for themselves, or unable to protect themselves against significant harm or exploitation.

Two points need to be made about this definition:

1. The health arena has now been omitted, begging the question: why concentrate only on community care when abuse and exploitation equally can be and has been taken place in health settings?
2. This new definition seems to me to be pure and rampant prejudice for not only is it disablist, but it is ageist as well. It hones down on one group of service users, thus discriminating against them by treating them differently from the rest of the population. Why do disabled and older people warrant the label of 'vulnerability', when other community care recipients or acute health care users don't?

Indeed, I feel it is regrettable and quite offensive that an entire section of the Scottish Executive Department of Health – which had been called "Community Care: section 1" is now called "The Vulnerable Adults Unit". This decision was taken by the Scottish Executive even before this consultation exercise was started, let alone before any such prejudicial act has been passed. I understand this "Vulnerable Adults Unit" is still responsible for other disability related issues, including direct payments. This renaming of the section contaminates anything about 'disability' with a faculty of 'vulnerability'.

This pre-emptive action on the part of the Health Department not only questions the veracity and virtuosity of the consultation

process, but it is a direct snub to disabled and older people, because it was done without their prior knowledge and consent.

Fundamentally I do believe that bringing in the concept of 'vulnerable people' is an unnecessary red herring and wrongly places the 'blame' or reason for this proposed legislation on disabled and older people.

Legislation designed to curtail abuse does not need to define the recipient of abuse. If a worker has harmed or been abusive to any service user or any fellow service provider, then that and that alone should be sufficient reason to go on the list of unsuitable workers. They should also be properly and immediately reprimanded in a court of law. There would, of course, be exceptions, such as self-defence.

Abuse is abuse, whether it is perpetrated on a disabled or non-disabled person. Restricting the perpetration to disabled and older people is discriminatory. It is like saying violence towards a man is not as bad as violence towards a woman; or violence towards a white person is not as bad as violence towards a black person.

Violence is violence, no matter who the victim is. By saying anything other is saying that the one group is superior to the other – and that is prejudicial discrimination. In terms of disability, it is blatant disablism.

In any case, and as a possible scholium, if the 'vulnerability' of disabled and older people were ever to become a relevant factor in any kind of legislation, then it should not be defined in terms of any characteristic, intrinsic, acquired or otherwise bestowed on a person.

'Vulnerability' should be defined in terms of the adequacy and appropriateness of the resources and support systems which surround the person:

- To complete a full needs and risk assessment
- To meet those needs and risks in full
- To make informed judgments and decisions
- To manage the outcomes of those decisions

A 'vulnerable' person, therefore, should be defined as one who lacks such resources and support systems; and the way to reduce their vulnerability is to enhance risk management through the provision of such adequate and appropriate resources and support systems – not to deny the person their human rights and civil liberties.

In terms of this consultation document: it is not disabled and older people who are intrinsically vulnerable. It is not they who deliberately place themselves in vulnerable situations such as within community care services. It is the systems and resources designed to support or 'care' for them, which are so inept, archaic and disempowering that abusers are free to carry out their acts with relative impunity. It is the entire basis and culture of the social care system.

I do recognise that such a 'social model' definition of a 'vulnerable person' places greater pressure on the resources of local government, but surely this is preferable to the denial of the dignity and civil liberties of disabled people.

It may also avoid the risk of any legal action under human rights legislation against a local authority by a disabled or older person who required practical assistance, but objected to having to accept the status of being 'vulnerable' in order to receive that practical assistance.

However, to return to the matter in hand, it is doubtful in any case whether the definition would be considered robust in law. The courts are full each day arguing over crimes in which the mostly non-disabled victims were 'unable to protect themselves against significant harm or exploitation'. Such victims of abuse and exploitation can be found in day-to-day commercial transactions, as well as crimes of robbery and violence. Are all of them to be considered as vulnerable as well; if so should any such vulnerable adults' bill be extended to victims of crime?

By labelling all disabled and older people in receipt of community care as 'vulnerable', any future legislation, guidelines and procedures could give even greater powers to social care workers, which would consequently impinge on

the human rights and civil liberties of disabled and older people.

I do fear there are the beginnings of a reactionary backlash among professionals, their unions and professional bodies against the growth of policies and services geared towards independent living and the empowerment of disabled people. This is evidenced by articles which have appeared in recent editions of professional journals.²

Professor John McKnight has written much on how the welfare state has developed a system of dependency among recipients and power within professions. Although writers within the disability movement reject McKnight's solution of greater reliance on voluntary / community action, they do agree with his analysis. This is that the rise of social care professions, professionalized services and professional bodies has led to their powerful and elated position within society; whilst disabled people continue to lead impoverished lives within society; and society itself has become evermore divorced from their support and inclusion.³

Elsewhere McKnight⁴ has been directly critical of professional duplicity in their undertakings under the guise of 'care':

".... behind the mask (of care and love) is simply a servicer, his systems, techniques and technologies - a business in need of markets, an economy seeking new growth potential, professionals in need of an income."

According to McKnight⁵, in the absence of citizen's power, professionals within the welfare state have been:

- **defining need as they see it**
- **categorising individuals as they see them**
- **defining their own solutions to that need**

² See comment by BASW's Ruth Stark in *Community Care*, 12-18 May, 2005: and Janet Leece, "Money Talks, but what does it say? Direct Payments and the commodification of care", *Practice*, vol 6, no 3, 2004

³ John McKnight (1995) "The careless society", Harper Collins

⁴ John McKnight (1977) "Professionalized service and disabling help", in Illich, I, et al, "Disabling Professionals", Marion Boyars

⁵ John McKnight, op cit

- **evaluating the outcome of those solutions, themselves**
- **and expecting respect of themselves and their work of which they are the sole judge**

Such power has been internalised within the system itself and has resulted to some extent in the 'commodification' of the disabled person.

'Commodification' is defined as treating the disabled person as the 'product' of the support system, rather than the controller or governor – the tin of beans on the conveyor belt rather than the owner / manager of the factory. The thinking within this consultation is a prime example of such 'commodification' of disabled people. The disabled person is not seen as the prime protagonist in their own life, but as a pathetic victim of all that is around them.

This attitude can be traced back to the very creation of system of social care, or 'welfare', in the mid twentieth century. The creation of the welfare state was merely the nationalisation of charity, which had maintained society's status quo of rich and poor for centuries.

I say this for two reasons.

First, the creation of the welfare state brought with it the same patronizing values of 'need', 'worthiness' and 'deference'.

Second, as with the nationalization of the health service, which had to accept the demands, resources and working practices of private doctors to bring them on board; the welfare state had to rely heavily on the patronising practices and feeble facilities of charitable provision.

It is interesting to note the etymology of the word 'charity' derives from the religious concept of 'cherite' (in old French) – the love of God and fellow men – which in turn was borrowed from the Latin 'caritas', meaning something costly or valuable; so we have the love of something of value.

The word 'care' goes further back to the prehistoric Indo-European word, 'gar'. The route reached Old English as 'caru', which

originally meant 'sad', or 'grief', for someone, or something, loved or valued.

So, in both words we have an object of something 'valued'; the consumer of love and care.

Dictionary definitions of 'care' always begin with the 'feelings' of mental anxiety, sorrow; grief; trouble; concern for a loved one; of mindfulness, liking and fondness.

This set of definitions can be categorised as 'caring about' something or someone.

Following such a set of words, comes another set covering the 'practicalities' of watchfulness, provision, custody and management, which presumably relate to the preceding concepts of 'feelings'.

This second set can be characterised as 'caring for'.

Prof. Roy Parker first used such distinctions in social policy analysis in 1981.

However, some might argue that the 'objectification' of the 'something valued' has created an imbalance in the relationship between the love of the charitable provider and the intrinsic value of the person loved; in fact, devaluing that loved person.

Others may argue that the legislation and practice, surrounding the 'nationalisation' and 'professionalisation' of 'social care', seem to have divorced the 'practicalities' from the 'feelings' – the 'caring for' from the 'caring about'.

In turn, the reciprocity of the caring relationship has been stopped, because there is no means for the 'cared for' to respond to such protestations of loving care on an equal basis, i.e. they cannot be the subject of care; they must be the object.

Stigmatising disabled and older people by labelling them as 'vulnerable' by virtue of their state or situ only further increases their 'commodification'. It strips them of any semblance of control or assisted control over their own lives and support. Further still, it

devalues their worth – their ‘value’ – in the roles they play in the lives of others around them and as citizens of society at large.

It is no wonder the disability movement believes the British welfare system has failed disabled people. For example, Ken Davis⁶ once wrote:

"It has failed to bring us into the social mainstream, failed to bring us equality of opportunity, but it has been gloriously successful in spawning golden career opportunities for hordes of 'welfare professionals' doing good works in 'looking after' us and, in the process, of keeping us out of sight and mind. For us, the political intentions underlying welfare are revealed in a system designed to limit social change and to protect and enhance able-bodied privilege."

Davis goes on by saying:

"The upshot of 'community care' is that we are to be kept in the role of eternal children, where grown up service (Commissioners) who know what's best, purchase services on our behalf. And already the new marketeers are beginning to win contracts from statutory purchasers to care for our needs, all working in competition and all providing things that disabled people never asked for."

Such writings and campaigns around the need to empower disabled people to take control of their own lives and the support systems which give them the freedom to live those lives in the way they want spawned the independent living movement.

Fifty years on the movement is beginning to see the reality of their aspirations. Disabled people are gaining greater access to the built environment and transport systems, as well as to training and employment opportunities. Direct payments and Centres for Independent / Inclusive Living are allowing disabled people to take control of the own support systems to live the lives they want to live; whilst assisting others to do the same.

⁶ Ken Davis (1994) "Serving the cause of equal citizenship: Welfare farms or welfare citizenship" Social Action, vol 2, no 1.

But to many professionals and carers alike all this leaves traditional old-style dependency creating social services on the sidelines, as even greater demand for the truly emancipatory services is made by more and more disabled people who wish to actively participate within society at large. So, it is not surprising that the powerful forces within social care would want to reign back on expenditure, whilst securing their traditional services and their own power base.

By classifying **ALL** disabled people in receipt of community care as 'vulnerable', this consultation document could give much wanted oxygen to such pent up feelings. They are already being expressed in the continual tightening of direct payments procedures, which reduces their flexibility and attraction, and by such bodies as Unison in their expression of opposition to 'cheap' labour alternatives of care.

The thinking behind this move in policy formation could be: if **ALL** disabled people requiring community care were deemed to be 'vulnerable', then that would be a golden opportunity to reduce their freedom of choice and control over their lives. They would then **NEED** to be **DEPENDENT** upon the decisions of professional social care workers and **RELY** more on their traditional segregated dependency creating services.

And the outcome? Traditional dependency creating services would be saved, which reduce opportunity and equality: existing professional power structures would be bolstered: thousands of disabled people would turn their backs on social services to lead lives of ever increasing poverty, because they do not wish to live under the yoke of stigmatising disempowering services: and perhaps most importantly to professionals and politicians alike, the community care budget would be retained at a lower level, so more money can be spent on more 'valuable' budget lines.

Hopefully my over-active paranoid delusions will be found to be just that, but until they are proved false, I will still fear for the human rights and civil liberties of disabled and older people. I fear for the ever creeping colonisation of their lives by power hungry professionals. I fear for their deepening misery and poverty as they lose more and more choice and control over their lives.

'Choice' and 'control' must go together. 'Choice' without 'control' is no choice at all. Government rhetoric about 'choice' in public services, with no mention of people having control over their services, gives people little power over their lives. The battle lies over who controls the lives of disabled and older people; professionals, or disabled and older people themselves?

If the vulnerable adults' act comes into force in the state envisaged by this consultation paper, social workers will have more power than the police to forcibly enter private dwellings and "imprison" without trial many physically and mentally abused disabled and older people, for they will have no need of a warrant or jury to do so.

The consultation document of 2005 states that "vulnerable adults" may be abused by a wide range of people including family, friends, professional paid staff, volunteers and other service users. This means that investigative procedures will be conducted in a wide range of settings, including regulated services; and presumably the disabled or older person's own home.

The Scottish Law Commission has recommended that where abuse has been found, the disabled person should not be removed from their residence; the perpetrator should be evicted. But if the abuse took place in the disabled person's own home and the perpetrator were the sole 'carer', I would bet my bottom dollar that that abused disabled or older person would end up institutionalised in some nursing home, because that was the cheapest continued care option open to the council.

The full powers envisaged as being conferred on local authorities are quite draconian. They include:

- a duty to investigate where a vulnerable person, or a person suspected of being vulnerable, seems to be at risk from abuse;
- a power to contact the person and inspect the premises where he or she is;
- a power to carry out or instruct relevant assessments of the person and their circumstances;
- a power to intervene to remove or manage the risk of abuse;
- if necessary and in the last resort, to exclude the perpetrator;

- if necessary and in the last resort, a power of forcible entry to perform the above functions;
- a duty to establish multi-agency Adult Protection Committees to jointly manage adult protection policies, systems and procedures at a local level.

Many of these powers would be laudable if indeed the individual victim were vulnerable. And there are many people disabled and non-disabled who are vulnerable because they lack the resources and support to make them safe.

But it is nothing less than lazy thinking; and nothing more than Machiavellian machinations; to concoct a policy which generalises all within a group as having the same characteristics.

For everyone in receipt of community care services there is a need to have well trained, well motivated, well paid and well supervised workers. These workers need to be monitored and their work double checked regularly.

Community care recipients, no matter what their communication needs are must be involved in such monitoring and reviewing of social care workers on a regular basis. They also need to be empowered to make criticism and complaints without fear of reprisal or discrimination in any future care plan or activity; they must be supported to participate in the review and management of their own support systems. Above all they must be the protagonists of their own care – not the commodities.

Perpetrators of abuse need to be weeded out of the social care system but this must be done by empowering disabled and older people to defend themselves, not by making them even more defenceless through the process of stigmatisation.

If there is to be an Adult Protection Committee, disabled and older people need to be part of it; and prevention of abuse should be its key role. The reasons for abuse need to be highlighted and solutions found, which involve disabled and older people and their allies. It is no use leaving it to senior managers within local authorities to police and punish; for who will police the police, who will punish the punisher? As exemplified below, local authority personnel are quite often the abuser, themselves.

If made law, the underlying assumptions and recommendations of this consultation document could undermine the principles of independent living and emancipatory social services. In particular, they could limit the power of PA employers to choose and manage their employees; and live the lives they want to live

Most of what needs to be said here, has been said above. Nevertheless, the degree of impingement on the decision-making processes within disabled people's lives may be greater and more detailed, since the disabled person should have more control over the day-to-day management of their personal support systems.

It is within these day-to-day decisions and practicalities of managing a PA that hearsay evidence is accumulating about the ever-growing interference of local authorities; and such proposed legislation to label all disabled people receiving community care as vulnerable will only add to this trend of creeping control over the lives and lifestyles of disabled and older people.

As just one example, one local authority in Scotland is now exercising a veto on the appointment of all PAs, so no PA employer in that authority has full control over who should assist them in some very intimate day-to-day tasks, like wiping their backsides.

Also, there are calls for the compulsory training of all PAs; as well as their compulsory registration with the Scottish Care Council. Such calls from professional social workers clearly shows their lack of understanding of independent living and the differences between PAs and care workers; and the need for disabled people to be in control of their own lives. The overpowering dominance and arrogance of professionals discussing such important – and often necessary issues – without the involvement of PA employers and their user-led support organisations is quite oppressive and tyrannically despotic.

Conclusion

The Human Rights Act as it relates to the freedom from torture and inhuman or degrading treatment or punishment; the right to dignity; the right to choose or refuse who touches you, or sees your naked body - all have profound implications on the 'carer - cared for' relationship.

In a paper about the UK government's 'Quality Agenda', Jane Campbell⁷, now Chair of the Social Care Institute for Excellence, but at that time Co-Director of National Centre for Independent Living, stated the need to look at all social care policy from a civil and human rights' perspective. She wrote:

'Currently disabled people can be in danger from covert forms of abuse from paid and unpaid carers because their impairment requires human assistance to survive. If no alternative provision is available other than the person who is abusing, then this may be considered a denial of human/civil rights.'

Jane Campbell cites the case of a woman in 1998 who complained to her local authority that she felt unsafe in the presence of her home help and did not want her to bath her. The authority refused to change the home help, telling her not to be so fussy. The woman was later found badly beaten by the home help.

The right to choose who should help you with intimate tasks should be accepted by everyone, even if it does cause administrative headaches with service providers. Choice requires options; options require back-ups; all require resources and support systems. The sooner governments realise that they cannot pay for community care on the cheap, the less stress there will be on the system. The less stress there is on the system, the less risk of breakdowns and abuse there will be within it.

We need to balance risks and rights. We need to interpret and re-interpret regulations to ensure those policies and practices - not just on abuse, but on moving and assisting, the administration of medicine and invasive care and countless other issues – are based on the respect, dignity, rights and empowerment of disabled

⁷ Jane Campbell (2000) 'Quality agenda: what users expect', NCIL Paper

and older people. We must develop adequate information, training and resources for all those involved. Above all, we must get together - government, service providers, regulators, professional bodies and disabled people - to open a dialogue and resolve our differences⁸.

This consultation document, although so fundamentally flawed in its premise and presumptions, could form the basis for that collaborative work. But, first many, many more disabled and older people must get as angry and upset as I am at being labelled a 'vulnerable adult'.

⁸ National Centre for Independent Living (2001) 'Briefing on health and safety, risk management and independent living for disabled people' (unpublished)