



Written Evidence prepared by the Association of Directors of Adult Social Services (ADASS) to the Equalities and Human Rights Commission Inquiry into Older People in Homecare and Human Rights 2011

Background

The Association of Directors of Adult Social Services (ADASS) represents Directors of Adult Social Services in Local Authorities in England. As well as having statutory responsibilities for the commissioning and provision of social care, including the safeguarding of vulnerable adults, ADASS members often share a number of responsibilities for housing, leisure, library, culture, arts, community services, and increasingly, Children's Social Care within their Local Authority.

ADASS members have statutory responsibilities to promote social inclusion and wellbeing, to lead on adult safeguarding, and have leadership responsibilities in Local Authorities to promote good standards in Homecare, although increasingly Local Authorities are no longer providers of these services.

ADASS welcomes the opportunity to contribute to the work of the Equalities and Human Rights Commission (EHRC) with regard to the human rights of older people in homecare and makes the following points:-

Commissioning

We welcome the interim finding that there is much good practice in commissioning Homecare by Local Authorities but share the concern that there is also evidence that the care being commissioned by Local Authorities on behalf of Older People is of poor quality, where providers/agencies are not complying with the high standards expected. ADASS is committed to raising the standards of adult care services and is working alongside many stakeholders to ensure that care services are delivered at a high standard and that poor care is tackled.

ADASS has worked for many years with the national regulator on the standards of care and compliance with them. A protocol with the Care Quality Commission (CQC) was agreed in December 2010 to provide an overarching framework for joint working and information sharing in light of their respective responsibilities in overseeing the practices of adult social care providers.

It is an opportune time to review this protocol with CQC who are examining changes to their operational procedures. We feel that the protocol should include stronger references to the responsibilities that both organisations have under the Equality Act 2010 and that the issues of inspection and regulation of homecare need greater consideration.

It is recognised that the current financial climate presents real challenges to Local Authorities in commissioning services but it is noteworthy that the standards of care are not always linked to the price of services. There are many providers of good quality care which promote the human rights of older people whose costs are lower than average.

The proposed reductions in funding will restrict the ability of Local Authorities to commission services and there needs to be a mature debate about what can be funded in these circumstances.

Commissioning is also under pressure – from further budget reductions over the next two years on one hand to growing citizen control of care packages using direct payment on the other. Making these challenges mean broader debate.

Timely, good quality information and advice is critical to the needs of older people and their carers and ADASS recognises that this is an essential component of the commissioning process. There are indeed many examples where information and advice can avoid unnecessary entry into the care process and providing information at certain periods of poor health can provide alternative options for example the voluntary sector. ADASS believes that more focus and attention needs to be attributed at a National and local level through information campaigns and partnership working at a local level.

Local Authorities and partner agencies recognise that the joint strategic needs assessment are a critical part of the commissioning process and believe this process provides and opportunity to overcome some of the barriers to accessing the views and experiences of older people receiving services. ADASS believes that more focus and attention could be considered to build upon this framework

The evidence presented to the Inquiry does highlight the many areas where there is a good, open relationship between Local Authorities and providers of homecare, where there is a good understanding of the Human Rights Act 1998 and the Equality Act 2010 and where there are concrete steps taken to implement these responsibilities. ADASS considers that personalisation and the development of self-directed support have strengthened understanding and implementation of human rights legislation, but is keen to ensure a consistent, good level across England.

ADASS supports the Dignity in Care Campaign which does promote the human rights of older people, amongst others, using homecare and other care services. ADASS will review practice in commissioning homecare, and greater clarity over the roles of Local Authorities and CQC will assist, and will consider what steps can be taken alongside other stakeholders to ensure that commissioning takes full account of the human rights of older people.

In November 2010 it was announced by the Government that CQC will no longer conduct an annual performance assessment of councils' commissioning of care under the existing framework. Hence ADASS considers that there is merit in a joint approach with the EHRC on the development of specific guidance on commissioning, combining the advice in EHRC reports such as "From Safety Net to Springboard" with other resources to provide a toolkit for commissioners together with benchmarking information, good practice examples and templates, standards of practice and training material. This work should include consideration of the standards within the vocational training arena and it would be appropriate to engage with Skills for Care and others to review the content of National Vocational Qualifications.

The development of personalisation in adult social care will change the relationship between Local Authorities and providers of Homecare for Older People. Local Authorities will be reducing their direct commissioning of homecare as more individuals choose to use direct payments and take over that role themselves. This may require voluntary agreements with providers, including with Personal Assistants who are not regulated by CQC, on a local basis to offer the choice of using a service meeting local standards to individuals. These agreements may be made with user and carer organisations, or with Local Authorities, depending on local circumstances. Again it would be helpful to provide advice and guidance for such organisations considering a local voluntary set of standards.

ADASS does recognise that the involvement of service users in the commissioning process is crucial to its credibility and success. Social care has an excellent record of user involvement, with many examples of good practice in engagement with the different groups of older people, but the EHRC survey does reveal wide variation across England. We are keen to promote a consistent engagement and involvement of older people in the commissioning, contracting, monitoring and evaluation of homecare and suggest that this is done in conjunction with EHRC as outlined above.

The issue of the application of the Human Rights Act to independent sector providers is contentious and the Government has made clear statements about its reluctance to add to the legislation. This issue was fully debated with reference to care homes and ADASS feels that there is little likelihood of this being considered by Government at this time. However the steps suggested above would provide a degree of protection, albeit within a voluntary basis, for individuals.

Regulatory Framework for home care

ADASS does consider that the current framework for registration is not sufficiently specific and that CQC should review its standards with regards to their application to homecare and should have a greater emphasis on human rights. The previous set of National Minimum Standards did set very specific requirements for homecare which gave a sharper edge to inspection and regulation than is currently seen. It is clear that the removal of routine inspections has led to a fall in confidence in the sector.

CQC should consider detailed consultation with users, carers, Local Authorities and other partners on this issue to review the standards it uses and to agree an inspection regime that would recognise the personal nature of the services delivered in individuals' homes but also the potential vulnerability of those who receive a service in private. Greater involvement of users and carers in inspections would provide more information about the quality of care and enable more effective action against poor standards of care. It would also reassure individuals about the vast majority of providers of homecare whose staff act with real commitment to promote the human rights of the individuals they are working with.

Personal Assistants are outside the regulation by CQC and it is intended by Government that this should continue, giving the choice to individuals to use this self-managed service as an alternative to the regulated homecare providers. ADASS does not disagree with this approach but considers that local voluntary agreements can be used to protect both users and personal assistants and that this would increase the choice available to an individual. Personal assistants should be included in the work with Skills for Care outlined above to ensure that there is appropriate training available for them in their similar but different role to homecare.

Positive Obligations

ADASS considers that the proposals above for joint work with EHRC on commissioning could be used, with minor modifications, for other Local Authority staff to increase awareness and understanding of their obligations under the Human Rights Act. Other professional bodies such as the Local Government Group and Local Government (LG) Improvement and Development have been actively working on these issues and EHRC should consider working with them to develop more effective guidance and training.

ADASS has already responded to the Dignity in Care Inquiry and provided many practical examples of how we can address our positive obligations. ADASS believes there still remains some confusion regarding the overlap between some components of the Human Rights Act and Dignity in particular the language used by Government and agencies is very similar yet the legislation covering the Act is clear. ADASS therefore believes there should be greater congruence or clarity between the Human Rights Act and many of the principles within dignity in care.

Care Assessments

ADASS agrees that the current guidance on the "Prioritising Needs" criteria gives only very general comments about human rights and does not give sufficient depth to ensure that staff carrying out assessments are fully aware of all their responsibilities. It would be appropriate to review the guidance with respect to the Human Rights Act and Equality Act 2010 and ADASS suggests that a recommendation by EHRC that the Department of Health does review this guidance would be timely.