



Executive
19 October 2009

**Report from the Director of
Housing and Community Care**

Wards Affected:
ALL

**Safeguarding Vulnerable Adults – Update on CSCI Action
Plan and Mental Capacity Act, Deprivation of Liberty
requirements**

Forward Plan Ref: H&CC-09/10-4

1.0 Summary

- 1.1 This report provides an update following the report to Executive in July 2008, detailing the outcomes and action plan from the CSCI inspecting of safeguarding vulnerable adults, which is now completed and ongoing monitoring will be carried out by the Safeguarding Adults Board, which reports to the Adult Strategic Partnership
- 1.2 The report summarises and updates on national and London developments concerning safeguarding adults legislation and procedures.
- 1.3 It also provides information on Brent developments for safeguarding, including arrangements with NHS Brent for the implementation of the Mental Capacity Act Deprivation of Liberty safeguards from April 2009.

2.0 Recommendations

- 2.1 Members note the progress made in implementing the CSCI action plan.
- 2.2 Note the national and local developments concerning safeguarding adults, and joint arrangement with NHS Brent on the Mental Capacity Act Deprivation of Liberty Safeguards.
- 2.3 To affirm the decision that has been made to secure an Independent Chair for the Safeguarding Adults Board.

3.0 Detail

Background

3.1 The CSCI Safeguarding Action Plan concluded Brent's arrangements were adequate, praising the strategy, and partnership board and quantitative monitoring. Areas identified for development were in casework, recording and the need to address variability across teams. A key development was to have a quality assurance framework to address the lack of qualitative data available to managers, and the Safeguarding Adults Board. These were incorporated into the action plan attached to the report to the Executive July 2008. The updated action plan has been submitted to the Care Quality Commission (CQC) the successor body to CSCI from April 2009.

3.2 The quality assurance framework has taken forward these areas, as set out in the action plan.

The majority have been implemented. Where there has been delay this has been due to external factors beyond the control of the Council, such as the local London procedures not yet being agreed, and the DoH national monitoring guidance not yet being issued. This has affected the local community strategy which anticipated using new procedures as a method to raise awareness of existing and new requirements. However, other opportunities have been taken to raise awareness. A specific area of awareness raising has been undertaken by an external consultant with BME communities which is ongoing during 09/10.

3.3 A particular issue of the quality assurance framework has been to ensure and validate increased management oversight of cases, and improved casework recording. There have been 4 quarterly audits of a sample of cases (one by an external consultant) since July 2008. Whilst these revealed variability in recording they have provided managers with better information on staff learning and development needs and areas to follow up with teams and individuals. These audits will continue on a regular basis, and inform Heads of Service on a monthly basis of particular case issues.

3.4 Volume of referrals.

The area of safeguarding adults is complex and requires constant vigilance from managers to ensure procedures and processes to be followed. Whilst the actual numbers do not seem high, compared to children's services, these have to be seen in the context of a high number of general referrals for assessment and care services. Overall there were 254 referral 07/08 an increase of 20% on the previous year. The highest number of referrals related to older people and mainly concerned allegations of financial abuse. Whilst the adult social care transformation has strengthened safeguarding arrangements, this will need to be kept under close review, particularly if there is a significant and steady increase in referrals of suspected abuse.

3.5 Supervision of cases

The Quality Assurance framework has ensured the case audits consider management oversight evidenced on Framework i. A separate audit of supervision files was commissioned by Learning and Development to look at supervision records across community care cases not just safeguarding in January 2007. This has resulted in an action plan to improve consistency of process across community care which will be monitored through the

Community Care Management Team chaired by the Assistant Director Community Care.

3.6 New safeguarding issues

Whilst the inspection action plan has been progressed, new developments have required additional actions. The children's safeguarding concerns following 'Baby P' and the Haringey issues have been considered internally with the Chief Executive, statutory partners and the Safeguarding Adults Board. Agreement has been given to seek an independent chair for the Safeguarding Adults Board, to ensure a robust quality assurance system is overseen, independent of the multi-agency partners, as with children's safeguarding board. NHS Brent has agreed to jointly fund this and the post will be advertised shortly for up to 30 days per annum. Funds will be from the joint development fund. Recruitment for this post will be done from September 2009.

3.7 Mental Capacity Act 2005 Deprivation of Liberty requirements.

These are important new safeguards for any adult who is suffering from a mental disorder (including learning disability), who lacks capacity to decide where they should live, but who, for their own best interest, needs to be deprived of their liberty, either in a residential/nursing home or hospital. The training and implementation of these new provisions in Brent has been used to emphasis and promote dignity in care and to ensure the least restrictive options are taken when providing for adults without capacity. Accordingly deprivation of liberty is to be avoided if there are less restrictive care options which can manage the risk to the individual. Deciding when care arrangements amount to a deprivation of liberty, rather than restraint or restriction, can be difficult but may, for example, arise in circumstances where the family and possibly the client want the client to live outside of the care home, but others involved in the client's care are concerned about neglect or abuse if they leave and decide that the client should remain in the care home/hospital.

The Mental Capacity Act 2005 requires an application from the home or hospital to the LA or PCT which then appoints assessors to report on a range of issues. The LA or PCT then decides whether to grant or refuse authorisation for the deprivation of liberty. The process involves consideration of whether there is a less restrictive option.

The Council has had a lead to raise awareness within the Local Authority and in the health sector and private and voluntary sectors. Furthermore because of the role the LA plays in the process new procedure and systems needed to be put in place from April 2009.

In order to implement DOLS The Council was required to train social work staff to be accredited as 'Best Interest Assessors'. A number of Brent social workers were interested and have been accredited. However, all staff involved with clients who lack capacity need to be aware of the requirements and training has been rolled out on this.

A considerable amount of awareness raising was done at provider events, and through a scoping document sent to all residential providers in Brent to

establish an estimate of the number of clients the new provisions would affect. The result so far has been 6 requests and 1 authorisation has been granted. Authorisations cannot be for more than a year and are subject to review. DH is closely monitoring to determine whether implementation is reaching all the individuals it should. Locally, the Assistant Director Community care chairs the Mental Capacity Act Implementation Network and this group will audit progress and issues. Legal services have taken a key role in training and setting up systems and assisting in determining the balance between restriction and deprivation of liberty.

A S75 Partnership agreement has been reached with NHS Brent who agreed to a joint process for consultation and applications. NHS Brent contributes 20% of the cost of a Deprivation of Liberty post based on DH estimates of assessments expected. However, so far no requests have been made from hospital settings.

3.9 Safeguarding team

Following the inspection changes have enabled the establishment of a small safeguarding team, as part of the transformation of adult social care. The team now consists of a more senior safeguarding manager, two senior practitioners and two support officer posts for the qualitative data, servicing the Board, and the 'Deprivation of Liberty' arrangements. They provide advice, not just across community care, but to all statutory and other providers. The manager is also the chair of the London wide safeguarding network.

3.10 London region network

Deprivation of Liberty Safeguards(DOLs):

The DH is closely monitoring Deprivation of Liberty requests on a national and regional basis. There are significant variables between NHS and local authorities on numbers referred and numbers of DOLs authorised. A London region network is examining this, as there are a lot of variable factors, such as types of homes, hospitals and population needs to take into account. Brent has low number of referrals, however this is consistent with a number of other boroughs.

Safeguarding Adults:

The development of Pan London procedures has continued over the past 6 months. Recently a small multi-agency editorial group has been established to take this forward and it is envisaged that a revised draft will be available in the autumn. The Brent Safeguarding Adults Board will have an opportunity to comment on the draft and also consult more widely, as appropriate, prior to a final version being issued.

3.11 Safeguarding adults annual report 2008/09

The annual report will summarise actions as outlined in this report, and the developments for 2009/10. It will be presented as usual to Scrutiny in October 2009. The Director of Housing and Community requested an internal audit to assist with the developing of a robust quality assurance framework, and this commenced end of June 2009. Any weaknesses or further areas for development will be reported to the Safeguarding Board and an action plan

drawn up. This will also be reported to Scrutiny, along with the annual report, in October 2009.

4.0 Financial Implications

- 4.1 There are no specific financial issues arising from this report. The implementation of the Mental Capacity Act and deprivation of liberty requirements are met by a DH grant over 3 years. The grant to the Local Authority was for £112,275 for 08/09, £172,504.00 for 2009/10 and £164,789.00 for 2010/11. The main expenditure is on salaries and the contract with Cambridge House, who is providing the Independent Mental Capacity Act Advocacy service required by the Mental Capacity Act.

5.0 Legal Implications

- 5.1 The Mental Capacity Act 2005 (as amended by the Mental Health Act 2007) sets out the requirements for lawfully depriving an incapacitated person of their liberty. The legal changes were introduced by the Government to protect such individuals' human rights following the case of HL v UK (ECHR 2005). HL was kept informally in a psychiatric ward against the wishes of his previous carers, with the staff having complete and effective control over his movements, medication etc. The Court decided HL had been deprived of his liberty and that contrary to Art 5 ECHR there was no lawful process for doing so. The provisions under the Mental Capacity Act 2005 for the deprivation of liberty set out procedural safeguards for such individuals, including an assessment and decision making process and reviews. This authorisation process applies to person who are in registered care homes or hospitals and it is the Local Authority or PCT who grant the authorisation. For persons in other care settings an order of the Court is needed to lawfully deprive a person of their liberty. The new legal provisions came into effect on 1st April 2009 .

6.0 Diversity Implications

- 6.1 The implementation of Deprivation of Liberty Safeguards has been subject to on Equality Impact Assessment (EIA). The intention is to ensure those who are most disabled due to lack of capacity have appropriate safeguards in place. There will be an annual retrospective EIA to consider progress and gaps.

7.0 Staffing/Accommodation Implications (if appropriate)

- 7.1 None.

Background Papers

Contact Officers

Keith Skerman, Interim Assistant Director Community Care, Mahatma Gandhi House, 34 Wembley Hill Road, Wembley Middlesex HA9 8AD tel: 020 8937 4230 email: keith.skerman@brent.gov.uk

Sarah McDermott, Safeguarding Co-ordinator, Mahatma Gandhi House, 34
Wembley Hill Road, Wembley Middlesex HA9 8AD tel: 020 8937 4230 email:
Sarah.McDermott@brent.gov.uk

Martin Cheeseman
Director of Housing and Community Care