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 AFQ Inspectors
 RSG/SSG Specialist Inspectors

SOCIAL SERVICES: SOCIAL INCLUSION AND ELECTIVE RISK

This SIM explains the priorities which Social Services departments have for promoting social inclusion of clients into the community and the need for clients to be allowed to take elective risks. The SIM explains health and safety responsibilities and the approaches that need to be taken by Social Services departments and HSE inspectors.

BACKGROUND

1 The aim of the National Health Service and Care in the Community Act 1990 (Community Care Act) is to promote the independence of individuals by encouraging them to live in the community for as long as possible, and to promote the right of choice. Community Care requires the focus of social services work to be on individual care management, helping more people to live 'ordinary lives'.

2 The emphasis is on promoting people's independence, treating them with dignity and respect, tailoring services to meet their needs and encouraging them to do what they can for themselves. Local authority Social Services departments (SSDs) have the statutory lead for arranging and managing this. Many SSDs have homes or arrange accommodation for clients which provide an intermediate between a fully supervised and managed home environment, and complete independence. Where appropriate in these settings, individuals are encouraged to develop or maintain their independence for as long as possible. This requires that there is some level of risk taking to enable them to develop the necessary skills associated with 'ordinary living'; this is known as elective risk.

ASSESSMENTS

3 SSDs have duties (under HSW Act s.3) to ensure so far as is reasonably practicable the health and safety of those being cared for, and (under the Management of Health and Safety at Work Regulations 1999) to assess risks to people who might be affected by their work activities.

4 Under community care legislation, SSDs must carry out a detailed assessment of individuals before accommodating them, to ensure that the proposed accommodation is suitable for their needs and abilities. This assessment must take into full consideration the health and safety of the individual and that of others who may be affected by the individual living there. Only after this assessment can SSDs decide that a level of elective risk is appropriate.

5 A balance has to be made to ensure that the health and safety of the individual is not put at risk, and also that the independence of other individuals is not unnecessarily curtailed.

6 Guidance to social care professionals from the Department of Health, Care Management and Assessment Practitioners Guide, emphasises that an evaluation of risk is central to the assessment of needs of service users. This does not conflict with the HSE view, which is also based on risk assessment.

7 Department of Health (DoH) has also advised of the relevance of a report of a working party sponsored by the DoH and convened by the Centre for Policy on Ageing, *Home life: a code of practice for residential care*. The code of practice states that:

Responsible risk-taking should be regarded as normal, and residents should not be discouraged from undertaking certain activities solely on the grounds that there is an element of risk. Excessive paternalism and concern with safety may lead to infringements of personal rights. Those who are competent to judge the risk to themselves should be free to make their own decisions so long as they do not threaten the safety of others."

8 Thus, as part of a care assessment, social care professionals are required to assess the competence of individuals under care to undertake their own assessment of risks to which they may be exposed to as part of 'ordinary living'. On the basis of this overall assessment, the social care professionals determine the appropriate environment and level of care for the individual. This is consistent with the requirements under health and safety legislation.

9 If social care professionals assess someone as being vulnerable, such that they cannot judge hot water temperature, or they are prone to self harm, then the individual should be placed in an environment, or one created for them, which has the required package of appropriate controls to secure their safety. On the other hand, someone else may be assessed as requiring a more normal environment to enable them to judge normal life risks themselves. In this case, a highly controlled environment would be inappropriate; it would be contrary to the principle of social inclusion.

ADVICE FOR INSPECTORS

10 SSDs and their social care professionals must carry out the necessary assessment of the establishments and the individuals living there to determine whether the level of risk is acceptable. HSE expects the risk assessment to address whether the individual is competent to judge the risk to themselves. The key issue is the appropriate placement of people, ie only people who have been assessed as being competent to

judge the risk should be placed in an environment where the risk exists. For example, only those capable of judging the risk from hot water greater than 44°C should be placed in an establishment with uncontrolled water temperatures.

11 If there is a concentration of people who are unable to judge or self manage a significant risk themselves, such as hot water above 44°C in a nursing home, then HSE inspectors may consider enforcement action if the risks are not controlled. However, HSE inspectors can not insist on a standard package of safeguards for every accommodation provided or arranged for people requiring some level of social care. This is because the required level of risk control must be appropriate to the individuals living at each location, with the capabilities of each individual assessed for their suitability for that location.

12 However, a difficulty would arise for SSDs where at least one individual in a specific environment was assessed as not competent to judge a significant risk, such as hot water. Health and safety legislation would then require physical controls to be provided. This would obviously limit the possibility of responsible risk taking by others. HSE would not accept an argument for a reduction in legal standards in these circumstances. SSDs would need to take appropriate measures to fully safeguard the individual's health and safety, eg by providing alternative accommodation. The action taken is for SSDs to determine, but HSE would require positive steps to be taken and reliance on supervision only would not be acceptable.

13 The key to complying with both health and safety legislation and the Community Care Act is proper risk assessments, and appropriate placement of clients according to their vulnerability and needs. If an incident arose, then HSE would assess the adequacy of the assessment undertaken by Social Services of the individual's ability to judge risk, and their suitability to the environment. If the assessment did not adequately consider the risk, or the control measures identified had not been fully implemented, then HSE would have to consider enforcement action.

OTHER REFERENCES

14 The following documents may also be a useful reference source:

- (1) SIM 07/1999/03 Hot water and surface temperatures scalding risk to patients
- (2) SIM 07/2000/11 Falls from windows in health care and residential homes
- (3) HS(G)104 Health and safety in residential care homes
- (4) NIGM 7/F/1998/2 The roles and responsibilities of parties involved in community care

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