

Consultation Response

UK Torture review

23 November 2018

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About this consultation

1. In April 2019, the UK will be reviewed by the UN Committee against Torture as part of its sixth periodic review of the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, a process that only happens every four years. Redress is facilitating a **joint civil society shadow report** to present information to the Committee as part of the review process. This submission will form part of that report.

Key points and recommendations

2. Negative attitudes towards older people and ageing, which are pervasive in our society, lead to the discriminatory and abusive treatment of older people.
3. As people become older, the vulnerability associated with ill health and disability makes them more dependent on others for care and therefore more vulnerable to physical and psychological abuse, organisational neglect and poor care practice, much of which constitutes as cruel, inhuman and degrading treatment. Much of the abuse in health care and care home settings goes undetected and therefore remains a largely 'hidden problem'.
4. For too many older people who lack mental capacity, restrictive care or treatment is being sanctioned as a first measure rather than as a measure of last resort with many older people being unlawfully deprived of their liberty in care and health settings because of the backlog of Deprivation of Liberty Safeguard applications.
5. Age UK and Age International firmly believe that a UN Convention on the rights of older persons would provide a framework and focus to guide policy responses to ageing based on rights, equity and social justice. It also has the potential to create a shift from older people being considered as passive recipients of welfare, to older people as active rights holders and to reduce the level of abuse, neglect and discrimination experienced by many older people.

Introduction

6. Age UK is a national charity that works with a network of partners, including Age Scotland, Age Cymru, Age NI and local Age UKs across England, to help everyone make the most of later life, whatever their circumstances. In the UK, the Charity helps more than seven million older people each year by providing advice and support. It also researches and campaigns on the issues that matter most to older people. Its work focuses on ensuring that older people: have enough money; enjoy life and feel well; receive high quality health and care; are comfortable, safe and secure at home; and feel valued and able to participate.

7. There are 11.8 million people aged 65 or over in the UK. The number of people aged 65+ is projected to rise by over 40 per cent (40.77%) in the next 17 years to over 16 million and by 2040, nearly one in four people in the UK (24.2%) will be aged 65 or over.¹
8. Negative attitudes towards older people and ageing are pervasive in our society. A recent report by the Royal Society for Public Health found that ageist attitudes exist across generations, affecting our health and wellbeing.² Negative perceptions of older people as grumpy, burdensome, and selfish abound. The notion of the older population as a threat is also a component of the prejudice they face. We saw this in the aftermath of the Brexit referendum as older people were blamed for the leave vote and there were even calls from some corners of the media to stop older people from voting once they hit 65. The effect of ageism is that older people frequently experience discriminatory and abusive treatment.
9. Age UK believes that such expressions of prejudice and hostility foster an environment in which discriminatory treatment against older people become more permissible and contribute to the 'dehumanising' of our older citizens, in some circumstances, leading to behaviour such as physical abuse in both the domestic and health and care setting.
10. Despite existing domestic human rights and equalities legislation, older people in the UK continue to face human rights abuses in their daily lives. Increased scrutiny is necessary to call attention to the fact that human rights abuses against older people exist but are largely unreported on in Governments' treaty-body monitoring.

Preventing ill-treatment of patients receiving health care services

11. It is wrong to stereotype older people as vulnerable and frail. However, as people become older, they are more likely to experience some sort of ill health and disability, resulting in people becoming more dependent on others for care. This in turn can make people more vulnerable, and it is this experience of vulnerability, which lends itself to abuse, neglect and ill-treatment by those around them, much of which can be characterised as cruel, inhuman and degrading.
12. In the health and social care setting this includes:
 - a. Neglect and poor care practice within an institution or specific care setting or in relation to care provided in a person's own home. It can be through neglect or poor professional practice as a result of the structure, policies, processes and practices within an organisation. It is likely to occur when staff

¹ National population projections for the UK, 2014-based, Office for National Statistics, 2015

² Royal Society of Public Health, *That Age Old Question*, London, 2018.

are inadequately trained, poorly supervised, have little support from management, or work in isolation. This may range from one off incidents to on-going ill-treatment. For example, a survey of 1544 staff across 92 English care home units found significant evidence of abusive and neglectful behaviours which included making a resident wait for care, avoiding a resident with challenging behaviour, giving residents insufficient time for food, and taking insufficient care when moving residents. 1.1% of staff reported physical and 5% verbal abuse. More staff reported abusive/neglectful behaviour in homes with higher staff burnout-depersonalisation scores.³

b. Restraint and other physical abuse in the care home setting:

- Hitting, slapping, and pushing: for example, see the abuse experienced by residents of the Winterbourne View care home.⁴
- Failure to provide access to appropriate health or care and support; or the withholding of the necessities of life, such as medication, adequate nutrition and heating;
- The failure to treat pain and other debilitating physical or mental symptoms or the denial of medication;
- Removal of assistive aids that would allow a person freedom of movement;
- Forced bedwetting and being left in soiled clothes;
- Not allowing enough time to eat or forced feeding;
- The misuse of medication, restraint, or the use of physical sanctions e.g. the use of in special 'tilt-back' wheelchairs, regardless of whether people can walk or not;
- Psychological abuse including emotional abuse, threats of harm or abandonment, deprivation of contact, humiliation, blaming, controlling, intimidation, coercion, and harassment and the unjustified withdrawal of services or supportive networks.

Between 2005 and 2008, patients at Mid Stafford Hospital, many of whom were elderly, were [subject to appalling abuse](#) and neglect. Some were, [for example](#), left to sit in faeces or urine for hours at a time. Food and drink were left out of reach, and patients suffering from severe pain were not given pain medication for up to 15 hours

³ Cooper et.al (2018), [Do care homes deliver person-centred care? A cross-sectional survey of staff-reported abusive and positive behaviours towards residents from the MARQUE \(Managing Agitation and Raising Quality of Life\) English national care home survey](#), University College London.

⁴ <https://www.bbc.co.uk/news/uk-england-bristol-20078999>

13. In most reported cases of abuse of older people there is little evident consideration of the fact that perpetrators may have been motivated, at least in part, by hostility towards victims because of their age. This is despite the fact that in some cases abuse is overtly linked to the victims' ages, such as the crimes inflicted on older residents living with dementia at [Roundstones Care Home](#).⁵ It appears that in cases such as these ageist attitudes are contributing to the dehumanisation of the older person making it easier to maltreat them without feeling guilt or remorse.
14. By way of example, key findings from the Safeguarding Adults Collection (SAC) for the period 1 April 2017 to 31 March 2018 found that 394,655 concerns of abuse were raised in England during 2017-18, an increase of 8.2% on the previous year. Older people are much more likely to be the subject of a Section 42⁶ safeguarding enquiry; one in every 43 adults aged 85 and above, compared to one in every 862 adults aged 18-64.⁷

Safeguarding older people from abuse and neglect

15. Section 1 of the Care Act 2014 require a local authority to promote individual wellbeing in all it does including 'protection from abuse and neglect'. The Act holds that local authorities are the lead safeguarding agencies and are generally the first point of contact for raising concerns. The safeguarding elements in the Care Act complement broader human rights protections found in the Human Rights Act 1998 which include a right not to be subject to torture, inhuman or degrading treatment (article 3).
16. If an older person is being abused in a professional setting, for example a care home, or by domiciliary (home) care staff, or in a NHS facility, hospital or specialist NHS nursing home, the local authority is the lead safeguarding body unless the police need to take the lead. The local authority has a duty to respond appropriately. It might initiate a safeguarding enquiry, provide social care services, or just provide information and advice to help resolve the issue. They can require a partner organisation to take action or provide further information. They may have to respond urgently, notify the police who could then become the lead agency for the case or liaise with another responsible body such as the Care Quality Commission.

⁵ <http://www.telegraph.co.uk/news/uknews/crime/11304361/Bullying-care-worker-jailed-after-attacking-dementia-patients.html>

⁶ Under section 42 of the Care Act 2014, local authorities have a duty under Section 42 of the Act, where a local authority has reasonable cause to suspect that an adult in its area investigate and make enquiries about whether an adult is at risk of, or is experiencing abuse or neglect. The most common type of risk in Section 42 enquiries that concluded in the year was Neglect and Acts of Omission, which accounted for 32.1% of risks, and the most common location of the risk was the person's own home at 43.5%

⁷ Adult social care statistics team, [Safeguarding Adults England, 2017-18, Experimental Statistics](#), November 2018.

17. However, because of the nature of the problem, and the demographic of people affected, the abuse in health care and care home settings often goes undetected and as such, abuse of older people remains a largely 'hidden problem'. Older people may feel shame, fear of repercussions, guilt or dependency on the abuser, deterring them from reporting the abuse. Limited capacity makes people even more vulnerable. Finally, there is a certain powerlessness of people when they are in health and social care settings.

Persons deprived of their liberty in mental health settings

18. For too many older people who lack mental capacity, restrictive care or treatment is being sanctioned as a first measure rather than as a measure of last resort with many older people being unlawfully deprived of their liberty in care and health settings through a misuse of measures available under the Mental Capacity Act 2005.

19. Under the Act, care homes and hospitals have to seek authorisation for a 'Deprivation of Liberty Safeguard' (DOLS) if they consider they are already in, or may have to move a person into, more restrictive care or treatment in that person's 'best interests'. Ultimately, this deprives a person of liberty, which is why it is necessary to seek a DOLS under the Mental Capacity Act.

20. The DOLS scheme, set out in the Mental Capacity Act, safeguards against arbitrary detention for people who are deemed to lack capacity to consent to their care or treatment. The DOLS aim to ensure that people are only deprived of their liberty when it is in their best interests and there is no other less restrictive way to provide necessary care and treatment.

21. However, funding cuts to social care have meant that people are unable to receive the social care at home that they and their families need and prefer, and therefore people have to be moved to a care home, often against their will. Despite the legislation, underfunded councils are not properly resourced to undertake the assessments of deprivation of liberty, as well as reviewing cases in the necessary timescales. As a result, there are many people whose deprivation does not have suitable conditions placed on it or should not be occurring at all.⁸

22. DOLS are used most often to protect older people,⁹ as the likelihood of a person having a DOLS application made on their behalf increases significantly with age. New analysis suggests for the third year in a row, more Deprivation of Liberty Safeguard applications were received than completed. The number of applications not completed at the end of the reporting period increased by 7% on 2015/16, from

⁸ See the Select Committee on the Mental Capacity Act 2005, [Mental Capacity Act 2005: post-legislative scrutiny](#), House of Lords, 2014.

⁹ *Mental Capacity Act (2005) Deprivation of Liberty Safeguards: England 2016-17*, Official Statistics, p.7.

101,740 to 108,545¹⁰ which is over 108,000 vulnerable adults who may be being illegally denied liberty or the right to associate freely with their own families at the moment.

23. A January 2018 Care Quality Commission report¹¹ shows that there has been a 36% rise in the number of detentions under the Mental Health Act 1983 (MHA) since 2010. This rise has been a result of a number of factors (increased police awareness of mental health issues, overrepresentation of BME groups) but has also in part been due to the increase in the number of older people being detained under the MHA. Because of delays in getting an assessor visit under DOLS, staff are increasingly using the MHA for authorisation of care. This is not appropriate for older people with Dementia or Alzheimer's disease.
24. The Mental Capacity (Amendment) Bill currently in the House of Lords proposes new frameworks which will have a profound impact on people's rights and autonomy, and is of particular significance to older people, as DOLS are most often used in relation to people who lack mental capacity to agree to their residential care arrangement. This Bill is an opportunity to fix a system that is not currently working for older people and ensure that their protection is central to the legislation it produces.

Older prisoners

25. People aged 50 and over are the fastest growing age group in the prison population and yet no national strategy for their care and management exists. In June 2018 there were 13,616 older people (aged 50 and over) in prison in England and Wales of whom around two thirds (65%) were aged 50-59, one quarter (24%) aged 60-69 and just over one in ten (11%) aged 70 and over.¹² Older prisoners made up 15% of the total prison population of England and Wales.
26. It has been estimated that dementia affects approximately 5% of prisoners over the age of 55.¹³ A 2013 Inquiry by the Justice Select Committee found that for these prisoners, many were being held in establishments that could not meet their basic needs, were not being provided with essential social care, and were being released back in to the community without adequate support. The Committee recommended that there should be a national strategy for older prisoners, however, this has not been adopted. The National Offender Management Service (NOMS) has now developed instructions for prisons and prison staff on supporting prisoners with care and support needs and on safeguarding and the Care Act 2014 has also clarified that a prison's Local Authority is responsible for assessment of need and provision of social services, if a prisoner meets eligibility criteria. Despite this, the health and

¹⁰ Statistics are primarily drawn or derived from the datasets and reports compiled by the Adult Social Care Team at NHS Digital for the 'Mental Capacity Act (2005) Deprivation of Liberty Safeguards, (England) 2016/17' publication. Primary source [here](#).

¹¹ Care Quality Commission, [Mental Health Act: The rise in the use of the MHA to detain people in England](#), 2018.

¹² Ministry of Justice, *Offender management statistics quarterly*, January to March 2018.

¹³ 4 Moll, A. (2013), *Losing Track of Time, Dementia and the ageing prison population: treatment challenges and examples of good practice*, London: Mental Health Foundation

social care needs of older prisoners are often unmet, particularly in moments of transition, on entry and discharge from prison.¹⁴

United Nations Convention on the rights of older persons

27. Age UK strongly believes that a UN Convention on the rights of older persons which has at its core a strong emphasis on promoting and protecting older people's rights to autonomy and independence and support for independent living would address these issues. A fuller articulation of the rights to autonomy and independence, dignity in care, housing, essential services and employment within a convention which recognises that dignity, personal autonomy and independence are essential components would allow older people to claim it more effectively. Equally important, it must also be recognised that the undignified care and treatment of older people does not happen in a vacuum; these are rooted in the discrimination evident towards older people across society. Age discrimination and the right to life a life free from cruel, inhuman and degrading treatment must also be explicitly prohibited by a convention.

¹⁴ Senior J et al (2013) *Health and social care services for older male adults in prison: the identification of current service provision and piloting of an assessment and care planning model*, NHS National Institute for Health Research