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Conseil des droits de l'homme

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Point 3 de l'ordre du jour

**Promotion et protection de tous les droits
de l'homme, civils, politiques, économiques,
sociaux et culturels, y compris le droit au développement**

Informations communiquées par la Commission pour l'égalité et les droits de l'homme du Royaume-Uni de Grande-Bretagne et d'Irlande du Nord*

Note du secrétariat

Le secrétariat du Conseil des droits de l'homme fait tenir ci-jointe la communication soumise par la Commission pour l'égalité et les droits de l'homme du Royaume-Uni de Grande-Bretagne et d'Irlande du Nord**, qui est reproduite ci-après conformément à l'article 7 b) du Règlement intérieur figurant en annexe à la résolution 5/1 du Conseil des droits de l'homme, qui dispose que la participation des institutions nationales des droits de l'homme s'exerce selon les modalités et les pratiques convenues par la Commission des droits de l'homme, notamment la résolution 2005/74 du 20 avril 2005.

* Institution nationale des droits de l'homme à laquelle le Comité international de coordination des institutions nationales pour la promotion et la protection des droits de l'homme a accordé le statut d'accréditation «A».

** La communication est reproduite en annexe telle qu'elle a été reçue, dans la langue originale seulement.

Annexe

Thematic study on the realization of the right to health of older persons by the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover

In this statement the Equality and Human Rights Commission (hereafter the Commission) welcomes the thematic report and wishes to draw the Special Rapporteur's attention to the Commission's inquiry into the protection and promotion of human rights of older people in England who require or receive home-based care and support. The Commission hopes that the Thematic report and findings from its Inquiry will remind governments of their positive obligations to respect, protect and fulfil the right to health of older people in the context of care delivery, including when care is delivered by private organisations.

The Commission commends the Special Rapporteur for this Report. We share the Report's call for reframing society's concept of aging to an active and inclusive one. We agree there a shift from a needs based approach to a rights based one is necessary, especially in older people's care planning and delivery.

The Commission welcomes mention of CESCR General Comment No.14 and in particular reference to the need to make health facilities, goods and services available, accessible, affordable, acceptable and of good quality for older persons.

We welcome the reminder that the State has an obligation to respect, protect and fulfil the right to health including preventing third parties, such as corporations from interfering directly and indirectly with the right to health. This is particularly relevant for our inquiry, as home care in England is increasingly delivered by private organisations.

We welcome the Rapporteur's recognition that long term care, including home care is one of the key issues and concerns in ensuring older people enjoyment of their right to health. We share the Rapporteur's concern about unreported violence directed towards older persons in care. As the Rapporteur recognises home care often allows for a greater degree of autonomy than institutional care but our inquiry findings show older people can suffer abuse and neglect in home care settings. Our preliminary findings concur with General Comment No 14, which identifies older people are one of the most vulnerable groups, often more susceptible to discrimination and violence.

The Inquiry preliminary findings:

The Commission is conducting a major inquiry into home care, which is investigating how well the home based care and support system in England is protecting the rights of people over 65. The full report will be published in November 2011.

The Commission found that the systems and practices do not fully protect human rights.

In gathering initial evidence from older people and their families, it has uncovered many worrying cases, for example:

- people being left in bed for 17 hours or more between care visits;
- failure to wash people regularly and provide people with the support they need to eat and drink;
- people being left in soiled beds and clothes for long periods;

- a high staff turnover meaning some people have a huge number of different carers performing intimate tasks such as washing and dressing. In one case a woman recorded having 32 different careers over a two week period.

Major problems in the home care system that have been brought to the Commission's attention through this inquiry include:

Inadequate time to deliver care

The very brief time allocated to homecare visits – just 15 minutes in a number of cases – does not allow even basic essential tasks to be done properly. As a result people sometimes have to choose between having a cooked meal or a wash. The short visits also mean that staff have to rush tasks like washing and dressing. Older people and care staff alike have expressed dissatisfaction and frustration about this issue.

Lack of control over timing of care visits

Many older people have little or no control over what time the homecare visit happens. As a result, some people reported being put to bed at 5pm and not helped to get up until 10am, a period of 17 hours.

Failure to deliver adequate homecare

The Inquiry received reports of neglect, in which people have been left in filthy nightwear and bedding after a homecare visit or without a wash or hair wash for several weeks.

Lack of staff awareness and training

Some older people have described feeling that their privacy and dignity is not respected. For example the Commission has been told about an older person being regularly undressed by care staff in front of his ground floor flat window, and another person in front of family members, instead of in privacy. A thorough training process would make sure staff took the simple steps required to avoid these basic mistakes. This would have a significant impact on the day to day lives of those they care for.

High staff turnover

The high staff turnover rate impacts on older people. People have described the emotional impact of being washed and dressed by a large number of different people, and having to repeatedly disclose personal information every time a new care worker comes to the house.

Lack of complaints and low expectations

The full extent of the potential human rights breaches is likely to be masked by the fear of complaining and the low expectations about the quality of homecare that many older people believe they are entitled to. One in five older people who responded to the call for evidence said that they would not complain because they didn't know how to, or for fear of repercussions. In addition, the Commission is exploring what protection and support is in place for whistleblowers who want to report situations in which older people are being mistreated by family, friends or home carers.

Our inquiry is exploring the causes of these problems including the role that public authorities and commissioning processes play.

Local authorities have a pivotal role to play in protecting the human rights of older people, particularly when commissioning home care from the private and voluntary sector. We will be reporting on our findings in relation to commissioning practices in our final report.

However we wish to clarify at this stage that we have not found the problems to be caused by lack of dedication by care workers, who we recognise work in a very challenging environment on low rates of pay. Like any vocation, there will be a few poor workers, and a workforce will only be as good the training, support and information it receives. However we found that the majority will go to great lengths – some in their own time – to provide the best service they can in the shortage of time. However many care workers require more guidance and training to enable them to safeguard human rights.

Tackling under reporting and ensuring accountability is of crucial importance. We welcome the Special Rapporteur's recognition that accountability is a central feature of the right to health and that the NHRI and other organisations can be an effective accountability mechanisms. In conducting the Inquiry the Commission wishes to promote accountability in relation to the right to health and fulfil its duty as the NHRI to monitor compliance with human rights obligations. We wish to prompt action from relevant regulators and institutions and encourage government to ensure all people receiving care in England are protected by human rights provisions.
