

# A guide for staff on promoting sexuality, relationships and consent in housing with care services



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# About this guide

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This guide focuses on older people, sexuality, intimacy and relationships in housing with care. It looks at non-sexual and sexual relationships and individual sexual behaviour. This is not an easy subject and each case is unique, but this guide aims to steer you through how to respond and think about situations of this nature. Just because a person is old, it does not diminish their desire for companionship, intimacy and love and yet often this basic right may be denied, ignored or stigmatised. Older people in housing with care who wish to and are capable of expressing choice, should be supported to develop or maintain any relationship of their choosing.

We appreciate the issues involved can be complex, controversial and sensitive. They may challenge your own attitudes, beliefs and values or those of the service user's family or friends, but it is essential to keep an open mind and support service users in this regard. At the same time this guide recognises that many service users may be at risk and it is part of your duty of care to protect them from harm. Balancing the sometimes competing demands of enabling and supporting service users while at the same time protecting them is not always straightforward, so the guide provides you with some key techniques and tools to think about this.

This guide offers information, practical advice and tips to support your everyday working activities. This subject can cause confusion, embarrassment and sometimes shock and so by working through this guide, we hope you will feel more comfortable and confident responding to the needs of the people who use your services.

The first part of this guide provides an overview of the housing with care sector and in particular explores the profile of service users and how they may be at risk. It also provides an overview of how we think about older people, sexuality, intimacy and relationships. In this section we examine attitudes, beliefs and values and how they impact our everyday decision making. The main part of this guide looks at how we think about relationships in housing with care, when a relationship is not an issue and therefore how service users need to be supported, and how to know when a relationship is an issue or problematic and how you should respond. We will also look at the difficult subject of individual sexual behaviour, sometimes referred to as 'inappropriate' or 'challenging' behaviour. This part of the guide looks at how we judge behaviour in this regard and how something that may be inappropriate to one person may be completely appropriate to someone else.

The last section of the guide, provides some advice and tips on how to respond to the family, friends and partners of service users. It can sometimes be the case that family members may not agree with the actions of the service user and how to deal with this potential conflict can be difficult. We also provide an overview of the policy and legislative framework surrounding this subject area and some simple explanations of what they mean to you. Finally we have included some top tips on how to approach this subject and a quiz.

The information in this guide has been informed by a review of the literature and interviews with a range of experts. Remember, there are no set rules as such and there are no set answers, but as you learn more about this subject, we hope you will feel more comfortable in responding to some of the everyday situations that cross your path.

# An overview of relationships, sexual relationships and individual sexual behaviour

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## Introduction

Intimacy, relationships and sex can be difficult topics to talk about. They are difficult topics to talk about even with your partner or close friends, so having to think about this as part of your everyday job may make you feel embarrassed, uncomfortable, nervous and even on occasions shocked. How you feel about the subject matter will probably, even if you do not realise it, impact how you respond to situations of this nature in the workplace. In this chapter we are going to look at why it is important that we can talk openly about this subject matter to service users, to the family and friends of service users, to work colleagues and other agencies.

## Why are relationships, intimacy and sex important?

Most people enjoy some form of intimacy be it non-sexual or sexual. This basic human need does not diminish as people age, or if people have a disability or dementia for example. We all need companionship, intimacy and love and yet for older people, particularly who may have mental or physical conditions, we are not always comfortable even thinking about this let alone talking to them about it.

People who live in housing with care have the same personal and sexual needs and rights as other people – expressing this is a natural and expected part of life whatever your age. These needs may show themselves in different ways for example some service users may just want to kiss and cuddle while other service users may want a sexual relationship. It is also important to remember that not everyone in housing with care will be heterosexual, some of the service users will self-identify as lesbian, gay, bisexual or transgender.

### Key Facts

The need for human intimacy for most people lasts until the end of their life.<sup>1</sup>

Maintaining intimacy and sex for older people is beneficial for their health and wellbeing.

Sexuality is a natural and expected part of an individual's life.

Intimacy can come in different forms from cuddling and kissing to sexual relations.

Older people are just like the rest of us, they may want to end relationships or start new relationships, they may want a 'serious' or a 'casual' relationship.

More older people are wanting and enjoying sex than ever before. A survey in 2015 found that more than half (54%) of men and almost a third (31%) of women over the age of 70 reported that they were still sexually active and one third of them reported having sex at least twice a month.<sup>2</sup>

You may be thinking by now: “**that is all very well for older people who are well, but it is really not the same for our service users, as often they are vulnerable**”. Of course each situation has to be judged on a case by case basis and, as we will discuss later in this guide, issues of safeguarding are paramount. Anyone who is at risk needs to be protected from abuse and exploitation and assessing whether the person has the mental capacity to give informed consent to sexual activity is critical. However, for older people who wish to, and are capable of, expressing choice, they have the right to be supported to develop or maintain close relationships. Service users with dementia for example, may want some sort of relationship and the benefits of sexual expression and intimacy for them are often overlooked.



## So how do you really feel about older people having relationships and sex?

In the earlier section, we explored why older people have a right to enjoy intimacy and relationships. In this section, we want to delve a little more into how you may really feel about this on a day to day basis. Research in this area suggests that in care homes, frontline care workers are a lot more comfortable with platonic relationships, however any form of sexual relations is often met with concern at best and outrage and shock at worst. Often how we respond to older people having a sexual relationship is linked to our own judgements and values, you may not even be conscious of these – for example what you consider ‘normal’ may not be ‘normal’ to someone else. How often have you thought or heard some of the following comments below:

***“Older people aren’t interested in sex”***

***“Even if older people wanted sex – they probably can’t anyway because they are too old or infirm”***

***“I really don’t even want to think about it, it makes me feel really odd inside”***

***“They should act their age, it is laughable those two carrying on like this at their age”***

***“A kiss and a cuddle is ok but nothing else, particularly at their age”***

***“I have enough to do without having to think about this – really it’s my job just to look after them, not to encourage them to have sex”***

***“I mean what will their families think, when I have to explain to them that their Dad is having sex with another service user”***

***“I just can’t talk to an 82 year old man about his relationship, it feels too private and personal”***

***“I can’t believe he’s gay – I didn’t think people back in his day were allowed to be gay”***

***“He’s just a dirty old man”***

We all need to ask ourselves to what extent we may agree or disagree with these comments. Addressing issues related to intimate relationships and sex is really difficult and it is understandable that even unintentionally there can be embarrassment, misunderstanding or prejudice. We need to make sure that we challenge and question how our behaviour and responses link back to what our attitudes, belief and values are, thereby enabling the service user to receive the best possible support they can.





## How do older people themselves feel about intimacy and relationships?

Another helpful way to think about this subject is to think about it from the perspective of the person using the service. How do they feel about their intimate and sexual needs and what sort of support do they need in this respect? The quotes below are taken directly from older people.

***“I never felt like it in all my married life, never felt like sex, but I’ve done more in this last two years than in all the time I was married.”*** Widowed woman aged 71

***“We know what we are doing, we’ve had plenty of practice and I would never have believed that it gets better as you get older, but it does.”*** Married woman aged 52

***“I’ve got some lovely friends (but)...I’ve still felt lonely cause you tend to not feel like a women and I’ve not been well over the last few years and not felt great about myself, so it is nice that someone is interested in me as a women and I find that to be the best bit.”*** Divorced woman aged 52

***“Sex is a part of life...it’s a part of your living definite.”*** Married male aged 76

***“I think the older you get and move away from what actually sex is for it comes down to basically just enjoying yourself...It’s physical problems that make your sex life less really, not the actual need or wanting. It’s just whether it’s physically possible, well it is in our circumstances.”*** Married women aged 76

***“I mean if my wife were....if she were sexually interested and I was also, I would gain satisfaction not sexual satisfaction, personal satisfaction in performing the sex act with her.”*** Married man aged 69

All of the above quotes were from ‘How important is sex in later life? The Views of older people.’ Gott and Hinchliff, 2003.

## What others forms can intimacy or sexual expression take?

Outside of a relationship, older people will also have their own personal or intimate desires. We will discuss this in more detail in another chapter, but it is important to remember that sexual expression can take place for an older person on their own or with someone else. As the World Health Organisation states “*Individual sexual expression is an important part of overall sexual health*”.<sup>3</sup> For some service users this may take the form of physical acts such as masturbation or fondling or it may be expressed in a simple desire to feel close to people in terms of wanting a hug or a kiss.

This becomes more challenging when a service user’s sexual behaviour is considered ‘inappropriate’ or ‘challenging’. There are no hard and fast rules when it comes to sexual behaviour and responses and there is no particular definition as to when behaviour becomes abnormal.<sup>4</sup> It may sometimes be the case that the behaviour is ‘appropriate’ but simply being displayed in an ‘inappropriate’ setting. So, for example, a service user with dementia may not realise that undressing outside is inappropriate or there may not even be a sexual motive behind the behaviour, for example they may just find their trousers uncomfortable or itchy.

***“We had one older gentleman who had dementia and used to undress every day at 4pm on the dot, regardless of where he was, if he was outside or with other people, it didn’t make a difference. The staff repeatedly tried to prevent him or stop him and explain this was not ‘appropriate’. It turned out when they spoke to his family, that the gentleman was a former professional rower and used to undress at that time every day for training. Everyone thought he was just being ‘inappropriate’ but it turned out his motivations for his behaviour were completely innocent”.***

Care Worker

We will discuss in more detail later how you judge and respond to behaviour of a sexual nature, but it is always helpful to try to understand the reasons behind behaviour and consider to what extent your own attitudes, beliefs and values may affect how you respond. Similarly, your response will also be influenced by the culture and ethos of where you work, the location and the frequency of the behaviour. Of course there are no set guidelines on how to respond to each situation and it may be the case that what you consider ‘appropriate’ or ‘inappropriate’ may be different to that of the service user, other members of staff and their family. So it is important to consider your own reactions and critically the needs and feelings of the service user.

Finally, perhaps we also need to think about the best way to describe this sort of behaviour, you may have heard sexual behaviour described as “inappropriate behaviour’ or ‘challenging behaviour’ or ‘improper behaviour’. As we said earlier, what is ‘inappropriate’ to some people may not be to another and therefore it is important to respond without making the service user feel small, belittled or told off.

## Still confused?

We know that this is not an easy subject matter and it’s hard trying to look after and support service users while at the same time empowering and encouraging them to live the life they choose. Below we have explored some of the tensions that underpin how we deal with situations of this nature. It may sometimes feel like you are trying to balance competing demands and it may feel like it is impossible to please everyone all of the time. We hope as you read this guide we will give you a few more tools and techniques to help you respond to some of the more difficult aspects of this.

A focus on protecting and paternalism	Vs	Autonomy and empowerment
A focus on a service user’s identity based on age and/ or physical or mental health	Vs	Emphasis on person centred care / someone who is more than just an age
Accidental or deliberate tendencies to disempower or treat the service user like a child	Vs	Respect and compassion
Service users seen as just receivers of care	Vs	Listening to the views of the service user, their family, other service users



# An overview of housing with care

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## What do we mean by housing with care?

Housing with care includes a range of housing and services available to older people in the UK. Many different models have been developed across the public, voluntary and private sectors. Housing with care generally means all forms of specialist housing for older people where care services are provided or facilitated, this may include extra care housing, assisted living, sheltered housing, supported accommodation and care villages.

As we all know a house is more than just somewhere you lay your head, a home should provide safety and security and ideally improve health and wellbeing. Housing with care is unique in that it aims to meet and respond to service users' physical and social needs whilst at the same time promoting the principles of empowerment, dignity and independence. As frontline staff, you have a key role to play in upholding these principles. With the right package of support, service users should be able to stay in their home for longer and delay or avoid moving to a nursing home.

## What is the profile of older people who live in housing with care?

Many of the older people who live in housing with care will have a range of needs for which they require support. They may have a physical and/or mental health condition or several and these may change over time.

You may be familiar with the terms 'vulnerable adult' or 'adult at risk' but this may mean different things to different people. The Care Act Statutory Guidance now refers to an adult with care and support needs as being when the adult's needs arise from or are related to a physical or mental impairment or illness. A local authority must consider if the adult has a condition as a result of either physical, mental, sensory, learning or cognitive disabilities or illness, substance misuse or brain injury. A formal diagnosis of the condition should not be required.<sup>5</sup>

The Care Act (2014) puts adult safeguarding on a statutory footing for the first time and the chapter on safeguarding replaces the No Secrets Guidance (2000) and its definition of a vulnerable adult (see the chapter 'Policy and legislation: What you need to know' for more information). The Care Act now describes adult safeguarding duties which apply to any adult who:

- Has needs for care and support (whether or not the local authority is meeting any of those needs).
- Is experiencing, or at risk of, abuse or neglect.
- As a result of those care and support needs is unable to protect themselves from either the risk of, or the experience of abuse or neglect.

Source: Social Care Institute for Excellence, (2015) Adult Safeguarding Practice Questions

## How the profile of service users may affect their sexual behaviour, intimacy or relationships?

### Gender

#### Women

You may find that you have more women than men using your particular housing with care service. It may also be the case that some women may be recently recovering from a bereavement which may make them particularly sensitive or vulnerable. Some research indicates that older women compared to older men may be less interested and less inclined to engage in sexual activity. However it is important not to make assumptions and even if someone is recently widowed they may crave new companionship in whatever form. It is also easy to over-protect older women compared to men simply because of their gender, so for example, if an older male service user and female service user start a relationship it should not be assumed the man has 'forced' 'cajoled' or 'persuaded' the other service user and she automatically needs protecting.

***“For some reason I feel much more protective towards the older women than the older men and I guess that is because I am a woman”*** (Care Worker)

Before you respond take time to speak to service users and observe their behaviour when they are alone and together. Do not simply assume the older man is taking advantage because of his gender.

## Men

Gender can also work the other way round. So your gender as an individual will influence how you respond to service users' behaviour whether consciously or subconsciously. For example, if you are a woman it may be much more likely that you may feel uncomfortable or shocked/threatened when a man takes his clothes off or masturbates in a public place compared to a woman. The actual 'inappropriateness' of the action suddenly becomes linked not to the act itself but to how you view the intention of the act.

## Sexuality

The older population are becoming increasingly diverse and as a result of this you are increasingly likely to encounter service users from the lesbian, gay, bisexual or transgender community. A move into housing with care may be particularly challenging for this group of older people. Why?

- Some older people from the LGBT community may have spent a lifetime not disclosing their sexuality and have kept this aspect of their life private. Suddenly finding themselves in a more public setting, they may be uncertain and afraid of 'coming out' either for the first time or yet again.
- Some LGBT service users may be particularly isolated as they may not have a partner or close family. A study in 2011 suggests that LGBT men and women over 55 are more likely to live alone and less likely to have regular contact with their biological family compared to heterosexual peers.<sup>6</sup>
- It could also be the case that some service users may suddenly desire to pursue an LGBT relationship even if they haven't done this previously. This can be particularly the case with service users with dementia (see below). So it is worth remembering that while understanding the sexuality of service users based on previous life practice is important, it is also wise to observe the sexuality people exhibit as they age.
- We know older people from the LGBT community are particularly fearful of the attitudes and potential prejudice of staff, other service users and their family.

***“There was one lady who did not have a partner, but we could tell she preferred women to men. Sometimes the care staff did find her trying to touch other women, which for some reason either provoked complete outrage or extreme amusement amongst the staff. Neither response was appropriate and it just served to remind me how much work we still needed to do on this issue”***

Care Manager



Despite some good practice in the field, we know older people from the LGBT community are fearful of the attitudes and potential prejudice of staff, other service users and their family. As a result, some of these older people may choose not to disclose their sexual identity at all and will assume heterosexual behaviour, having a detrimental effect on their wellbeing and quality of life. This cannot happen: service users should feel comfortable in expressing their sexual wishes without fear of abuse, discrimination or inequality.

It is important to remember that who a service user chooses as a partner and the type of relationship they want, be it casual, serious or even if infidelity is taking place, it is their choice as long as there are no safeguarding issues. It may also be the case that the service user may have recently only 'come out' to explore this part of his personality or his family are not happy about this and call on you to respond. It is critical that you respect and support the service user's wishes in this regard.

## Disability

Many of the service users may have one or more mental or physical health needs, this could range from a physical disability such as hearing loss to mental health needs such as dementia or depression. Older people with disabilities are often particularly at risk and research shows that they are more likely to be abused or neglected. Some health conditions may limit a service user's ability or interest in pursuing a sexual relationship, however this will vary depending on the individual and the condition they have, so it is important not to prejudge in this respect. Some service users will also be taking various medications for their conditions which can also have an impact on their ability to conduct a sexual relationship. It is important to understand that medication, particularly if a person is not taking their prescribed medication properly, can have a significant impact on the behaviour of some service users and this could also show itself through 'inappropriate' sexual behaviour. Therefore, it is also worth looking to what extent a service user is managing their medication regime and if this has affected their behaviour.

## Dementia

You may find depending on the type of housing with care service you work in, that some of the service users will have dementia or they will develop dementia while they are a service user. There are different types of dementia, but generally it is characterised by a loss of or decline in memory and other cognitive abilities. Dementia is a progressive condition and this means that the symptoms can become more severe over time and can be further complicated by other conditions.

While it may be surprising to you, some people with dementia may still want to pursue a relationship or desire intimacy in some way and as noted earlier, research suggests this can improve a service user's general health and wellbeing. If a service user has dementia and is considered to have mental capacity, then they should be supported like other service users to pursue the relationship if they wish. They may require more support to do this and as dementia is a progressive condition, it will be important to monitor the situation carefully to ensure they still have capacity and are comfortable and happy with the relationship they are pursuing.

***“Sometimes our problem as individuals to understand and respond to the sexuality or sexual needs of older people with dementia links directly to our own misconceptions and prejudice.”<sup>7</sup>***

You may have also noticed that service users with dementia may show increased sexual expression or sexual behaviour and this is sometimes classed as 'inappropriate', though as noted in a previous section it is helpful to try to understand why you think this is 'inappropriate' and the reason behind the act itself. The reasons may include disease related factors, poor management of medication or consumption of alcohol, social or psychological factors. This sort of behaviour is not particularly common and more likely to occur in the moderate to late stages of dementia. Of course there are no hard and fast rules when it comes to assessing sexual behaviour for people with dementia, but it is important to remember that dementia as a condition brings with it some specific challenges that require increased understanding and support. In later chapters we provide some helpful tips on how to think about responding to service users with dementia.

**“One older gentleman with dementia often started masturbating in communal spaces, admittedly shocking some of the service users and staff. The thing is you could not really call his behaviour inappropriate as he was doing what felt nice to him. The problem was that the location was completely inappropriate.”** *Care Manager*

## Religion and Spirituality

Valuing diversity means that everyone is accepted and valued for who they are. Just as you are entitled to your religious beliefs/faith/spirituality so are the service users you support. We live in a society with an ever widening and diverse mix of religions and beliefs and even within established religions there are often different rituals and practices with some people being more or less 'strict' in their observances. We also need to remember that many people today hold strong views about not having a personal religious belief. Therefore sensitivity needs to be shown to ensure your religious beliefs do not adversely affect the support you offer to service users. In some religions for example, same-sex relationships are prohibited. Whilst everyone is of course entitled to their personal beliefs, every service user should be treated with respect at all times and cannot be subject to discrimination or harassment on any grounds whatsoever.

***"I always say 'God bless' to everyone and I wasn't saying it in a way that I was trying to convert the service users or anything, I didn't see anything wrong in it, but then as my manager pointed out, I guess if you are not religious maybe you don't want to be blessed!"*** Care Worker

# When might a relationship not be an issue, how to judge mental capacity, and when might a relationship be an issue

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An important part of when you are working with people in housing with care is to create an environment that not only safeguards service users and staff, but also improves wellbeing and quality of life for service users if they choose to engage in a sexual relationship with another service user. Getting this right is crucial, and all staff in housing with care services should be knowledgeable of the policies and procedures to protect service users and staff from harm.

In this section of the guide, we talk about some important points:

1. When is a sexual relationship between a service user and another person not an issue? And if so, what should you do?
2. What is mental capacity, and how can you assess it?
3. When is a sexual relationship between a service user and another person an issue? And if so, what should you do?

## **Section 1 – When is a sexual relationship between a service user and another person not an issue? And if so, what should you do?**

### **When is it not an issue?**

Of course, there will be many occasions where two service users in a housing with care facility will choose to engage in a sexual or intimate relationship which is consensual and safe. In these instances, it is your duty to create an environment which can allow these service users to engage in a relationship. You must remember, however, that even if you or colleagues have initially judged that a relationship is safe and consensual, circumstances can change. Especially with older service users, who for example might have dementia, their capacity to consent may change within the relationship. Therefore it is important to regularly assess these situations with colleagues.

### **It is not an issue if it goes against staff members' cultural or religious beliefs**

It is important not to judge whether a relationship is appropriate based on staff members' moral values. Members of staff may hold cultural or religious beliefs around issues such as homosexuality, or relationships between two different cultures or faiths. Whilst staff have the right to hold these beliefs, it must not impact on how they judge whether a relationship between two older service users is appropriate.

### **It is not an issue if family members disapprove**

Some family members may struggle to accept that their older family member has chosen to enter a relationship. Sexuality in older age is often not discussed, and it may make some people uncomfortable and mean that they disapprove. However if both older service users are deemed to have mental capacity, and the relationship is consensual, then the family of either service user has no right to intervene. That is not to say that it is not important to listen to the family's concerns. Discussing the issue with family members can be very beneficial; refer to the 'How to work with service users' families, friends and partners' chapter of this guide for more information.

### **It is not an issue if the service user's actions are considered 'out of character' (as long as they do not lack mental capacity)**

You should be mindful of the fact that people using your service have the right to make decisions which can be seen as rash, risky or out of character by members of staff or by the service user's family. This is of course dependent on whether they have been judged to have mental capacity or not, which is explained in the section below.

Staff can have a conversation, sensitively, with older service users about how their actions could upset





or surprise their family members.<sup>8</sup> An example of this situation might be if a service user, who has mental capacity, chooses to start an intimate relationship with another service user whilst their husband or wife is still alive and living outside of the housing with care scheme.

However you are not within your rights to stop or disrupt the relationship. This is because that would be applying your own, or the family's own, moral values to the situation.<sup>9</sup> It is important to always remember in this instance that **anyone can make out of character or rash decisions when deciding to have a sexual relationship – and this applies to older people as well.**

### **When a sexual relationship is not an issue, what should staff do?**

When two service users or a service user and a non-service user, are engaged in a sexual relationship which is consensual and safe, you should do your best to create an environment that fosters that safe relationship. Below we list some important points to remember. There is always the danger that members of staff could stop or attempt to stop a sexual relationship between two older service users because of their prejudices and attitudes towards sexuality amongst older people, rather than because of any legitimate safeguarding issues.<sup>10</sup>

#### **Try to respect privacy as much as possible**

We appreciate that service users in housing with care will have varying degrees of care needs. Some service users will have limited contact with members of staff, whereas others will require high levels of care which will mean more frequent contact with staff members. However, you should appreciate that couples will want to spend time alone together without interference; whenever safe, you should respect the privacy of service users.

#### **Create and maintain good communication and trust between service users and staff**

If staff and service users maintain good levels of communication, and service users do not feel uncomfortable about discussing the subject of sex or sexuality with members of staff, this can help create an environment where service users feel comfortable entering a safe relationship with another service user if they wish to. In addition, a culture of “openness, fairness, trustworthiness and thoughtfulness” will result in the possibility of abuse being significantly reduced.<sup>11</sup> **If service users know that they can have a respectful and comfortable discussion regarding issues of sex and sexuality with you, this means that they will feel more comfortable in discussing issues which could be a safeguarding concern.**

#### **Encourage safe sex**

When we think about promoting safe sex, we usually think about younger adults, and rarely consider older people. However, age is not a barrier to sexually transmitted diseases. Older people who are sexually active and entering a new sexual relationship are at risk and should practice safe sex. It is important that resources are available for older service users to allow them to access advice and information, and to share any concerns they may have.

## Do not be complacent

As we have discussed, with older service users, their capacity to make decisions about sex and sexual relationships can change, especially if they have dementia. Therefore, it is important that you should monitor the situation, and take note of any changes of mental states in either parties, which could affect their capacity to consent.

### How to empower service users to protect themselves?

Even if there are older service users who are engaged in a safe and consensual sexual relationship, it is important to create an environment where concerns can be raised, and service users are well-informed to realise when a relationship could be abusive. Below are some good practice examples which could help create that environment:

1. Making service users aware of where they can find support and advice about any forms of abuse – for example, inviting staff from domestic violence units or advisory services to residents' meetings.
2. Making sure all advice and support is accessible to all – for example to service users who are deaf or blind, or have limited English language skills.
3. Making sure all service users know who they can speak to, either within the housing with care provider or other outside agencies, if they are worried or need more information about the topic.
4. Where appropriate, involve neighbours, families and friends in order to help safeguard service users.

Source: CHS People, (2014), Policy & Procedure for Safeguarding and Protecting Vulnerable Adults

Source: Social Care Institute for Excellence, (2014), Adult safeguarding for housing staff: Guidance for frontline housing staff and contractors

## Section 2 - What is mental capacity, and how can you test it?

### What is mental capacity?

Mental capacity is the ability to make a decision. This includes the ability to make a decision that affects daily life – such as when to get up – as well as more serious decisions.<sup>11</sup> This is obviously very important in terms of sexual relationships, as it is illegal for a person to have a sexual relationship with someone who does not have the mental capacity to consent to that relationship.

When we are assessing whether an older service user has the mental capacity to consent to sex, we refer to the Mental Capacity Act 2005, which you can find out more about in the 'Policy and legislation: What you need to know' chapter of this guide. This section of the guide will address the key concepts of mental capacity, and how you can judge whether a person has the ability to decide to make decisions about whether to engage in sexual activity.

Remember, if a person has been judged to lack the capacity to consent to a sexual relationship, there are no ifs or buts – **sexual activity should not take place**.

The Mental Capacity Act states that **you must presume a person has the mental capacity to make decisions until it is established otherwise**. This means that an adult has the right to make their own decision, until it has been proved that they lack mental capacity to do so.<sup>12</sup> The Act also makes it clear that a person cannot be judged to be lacking capacity until all reasonable steps have been taken to help the person understand the decision they are making.<sup>13</sup> This means that information should be provided to service users, if required, in an accessible and easy to understand format. This means that you should consider the language skills, eyesight and hearing of the older person you are supporting.

The Mental Capacity Act also makes clear that, for issues regarding sexual relationships, **a person cannot make a 'best interest' decision for someone else when it comes to sex**.<sup>14</sup> In other areas, for example decisions about money, if a person lacks mental capacity then a family member can decide a certain decision regarding the use of the person's money would be in the person's best interest. For obvious reasons, this cannot be the same for sex or sexual relationships.

When judging whether an older service user can consent to a sexual relationship with another service user, the **decision must be taken without factoring in any moral values**, because it is impossible to judge

what sexual actions the service user would 'normally' think was acceptable.<sup>15</sup> Therefore it is important, when judging decision making ability, to consider the areas listed in the box below, and not any moral judgements.

### **Here are four important areas to consider when judging capacity to consent to having sex:**

1. Do they understand the basic mechanics of the sexual act?
2. Do they understand that having sex can lead to pregnancy for a woman?
3. Do they understand that there can be health risks caused by having sex?
4. Do they understand that they have a choice and can refuse another's advances?

Source Mental Capacity and Policy, (2016). Sex and the simple test? Accessed at: <http://www.mentalcapacitylawandpolicy.org.uk/sex-and-the-simple-test/>

## **How can you test for mental capacity?**

If you have concerns that a service user's mental capacity might be diminished, and they cannot make informed decisions for themselves, you or colleagues should undertake a mental capacity assessment. We have shown this process below:

**Stage 1:** Is there an impairment of or disturbance in the functioning of a person's mind or brain? If yes,

**Stage 2:** Is the impairment or disturbance sufficient that the person lacks the capacity to make a particular decision?

Directly quoted from: Social Care Institute of Excellence, (2009), Mental Capacity Act 2005 at a glance

The Mental Capacity Act states that if a person cannot do one or more of the things below, as a result of the impairment of or disturbance in the functioning of their mind or brain, then they cannot make their own decision:

1. Understand information given to them about their decision.
2. Retain that information long enough to be able to make the decision.
3. Weigh up the information available to make the decision.
4. Communicate their decision – this could be by talking, using sign language or writing.

### **Key points to remember about mental capacity**

1. Always start from the assumption that the service user can make their own decision.
2. Always make sure that information given to them is easy to understand and accessible.
3. A person should not be treated as unable to make a decision unless all practical steps to help them to do so have been taken without success.
4. Just because you or the service user's family members think that a decision to enter a sexual relationship is unwise or morally wrong, that does not mean they lack capacity.

Source: Social Care Institute of Excellence, (2009), Mental Capacity Act 2005 at a glance

Other points to consider about changing capacity in an older couple in a relationship are:

- What was the existing sexual relationship between the couple – were they sexually intimate before the onset of dementia or cognitive decline?
- Was the relationship generally loving and caring, before the onset of dementia or cognitive decline?

Source: Gordon, M., (2016), The difficulty in defining consent in older adults with dementia. *Annals of Long-Term Care and Aging*, Volume 23 Issue 3.

## Changing capacity within a relationship

One of the most difficult aspects of the topic of sex and sexuality in older people is the issue of changing mental capacity within a relationship. This is particularly important when one person in a relationship, or both people, have a form of dementia. This can obviously be a sensitive issue, and must be handled with care and consideration. Be aware that we are talking here about two people who are involved in a relationship that has already begun.

### When both have capacity

The wishes of the service users should be respected, and considerations need to be made about privacy. The situation should be monitored and plans put in place if one of the service user's capacity changes.

### When one person has capacity and one doesn't

There should be a conversation, face to face, with the partner who has mental capacity, about the fact that their partner has been deemed unable to consent to sexual relationships. It is an offence for any person to have sex with a person who is deemed to have no consent, even if they are married or in an established relationship.

### When both have no capacity

Because both people are unable to consent, the sexual relationship should not continue.

### When both have limited capacity

When there is limited capacity, but both parties are still deemed to be able to consent, the situation should be monitored for any deterioration in either person. You should consider:

- Is contact initiated equally? Or does one person consistently initiate contact?
- Is there a similar level of cognitive ability in both people?
- Are both people able to communicate and say no?
- When contact is stopped by members of staff, do both people show signs of distress?

Source: Worcestershire County Council, (2013), Practice guide 4: Sexual activity where a person may have limited capacity to consent"

## Section 3: When might a sexual relationship between a service user and another person be an issue, and if so, what should you do?

When working in housing with care, you will encounter many service users who are vulnerable and therefore more at risk from forms of abuse. It is important that you understand your role in safeguarding these service users. Safeguarding means "protecting an adult's right to live in safety, free from abuse and neglect".<sup>16</sup> You may think that this job is only the responsibility of managers or senior members of staff; however an important phrase to remember is '**safeguarding is everybody's business**'. In fact, as a member of staff who regularly interacts with service users in their day to day lives, you might be best placed to look out for signs of potential abuse or harm.

In this section, we look at what can count as abuse, before looking specifically into sexual abuse. We provide a guide on how to detect signs of sexual abuse or harm, before then giving guidance on what you should do if you suspect sexual abuse is taking, or has taken, place.

### What counts as abuse?

A service user can suffer from a number of different forms of abuse. They can be subjected to one, or more, types of abuse. If you suspect one form of abuse is taking place, this could mean that other forms of abuse are taking place, including sexual abuse. Please see next note regarding types of abuse.

- Physical abuse (e.g. hitting, restraining, misusing medication).
- Sexual abuse (e.g. rape, attempted rape, inappropriate touching, any sexual activity which one party



does not (or cannot) consent to).

- Psychological abuse (e.g. emotional abuse, deliberately isolating a service user, humiliating or intimidating a service user, preventing a service user from having visitors, preventing someone from practicing their religious or cultural needs).
- Financial abuse (e.g. stealing money or possessions, fraud, putting pressure on someone to change their will).
- Neglect (e.g. not providing food, water or medicine, ignoring medical, emotional or physical care needs).
- Discriminatory abuse (e.g. unequal treatment based on religion, race or sexuality).
- Domestic abuse (e.g. controlling behaviour or violence within an existing or previous relationship).
- Organisational abuse (e.g. abuse within a care setting due to neglect or poor processes within the institution).
- Self neglect (e.g. a person neglecting their hygiene or health, or behaviours such as hoarding).

Source: Department of Health. (2016), Care and Support Statutory Guidance. Accessed at: <https://www.gov.uk/guidance/care-and-support-statutory-guidance>

## How to detect potential sexual abuse or harm?

You must remember that there is no definitive checklist for spotting signs of abuse. There are certain things you can look out for which may give indications of abuse taking place, both from the victim and the person allegedly causing harm, and we have included these below. The indicators listed below can all point towards any type of abuse. Following this, we have included a checklist of potential indicators of sexual abuse.

### Use of violence, intimidation or coercion

If you witness violence or intimidation between two service users, or a service user and someone who doesn't use the service, this is obviously serious and needs to be reported. Whilst this could be an isolated incident, it could be a sign that abuse is taking place over a longer period of time. It is also important to recognise that violence doesn't have to be actually carried out; the threat of violence can often be enough to prevent a victim speaking up about abuse in a housing with care setting.

### A different view of what is 'normal' behaviour

You should also look out for service users who recognise abusive behaviour as 'normal'. This can be a feature if a service user has been experiencing long-term abuse, either whilst at the housing with care residence or before they moved. This 'normalisation' of abusive behaviour can make it more difficult for service users to report abuse. It is therefore crucial that people should have support in identifying and reporting abuse.





## Different levels of mental capacity

It is illegal under the Sexual Offences Act (2003) for someone to target a vulnerable person for sexual gain (for more information about the Sexual Offences Act, see the 'Policy and legislation: What you need to know' chapter of this guide). This means that you need to be aware that abuse might be taking place between two apparently consenting service users if one service user has less cognitive ability than the other and, therefore, could lack mental capacity to consent.

For example, one service user who has no cognitive limitations might start a sexual 'relationship' with another service user who has dementia. This indicates that the different levels of mental abilities could mean that abuse is taking place, and staff should investigate further. You can refer to the mental capacity section of this guide for more information.

Other points to consider about changing capacity in an older couple in a relationship are:

- What was the existing sexual relationship between the couple – were they sexually intimate before the onset of dementia or cognitive decline?
- Was the relationship generally loving and caring, before the onset of dementia or cognitive decline?

Source: Gordon, M., (2016), The difficulty in defining consent in older adults with dementia. *Annals of Long-Term Care and Aging*, Volume 23 Issue 3.

## Difference in age

Housing with care services can include service users that vary in age. Whilst there is nothing wrong between two consenting older adults with a wide age gap starting a relationship, you should be aware that this can increase the potential for abuse to take place. This is the case with relationships between service users, and relationships between a service user and a non-service user.

The older a person is, the frailer they tend to be, which can increase levels of physical intimidation if a younger service user or non-service user is attempting to start a relationship with them. Staff also need to be aware of the possibility that a sexual relationship could be initiated in order to access a service user's finances.

## Who is taking the initiative?

If one person is clearly and consistently seeking out sexual contact with another service user, this might indicate that there is potential for abuse. A sexual relationship should be initiated from both parties, rather than just one of the people involved. Two service users could appear to have just started a physical relationship to which they both consent to; but staff could have missed that this was only after persistent long-term pressure from one of them.

## Possible indicators of sexual abuse

Guidance for frontline housing staff and contractors

- Bruising, particularly to the thighs, buttocks and upper arms and marks on the neck.
- Bleeding, pain or itching in the genital area.
- Unusual difficulty in walking or sitting.
- Fear of being alone with a particular individual.
- Infections, unexplained genital discharge, or sexually transmitted diseases.
- Pregnancy in a woman who is unable to consent to sexual intercourse.
- The uncharacteristic use of explicit sexual language or significant changes in sexual behaviour or attitude.
- Excessive fear/apprehension of, or withdrawal from, relationships.
- Fear of receiving help with personal care.

Source: Social Care Institute for Excellence (2014) Adult safeguarding for housing staff



## **When there is a safeguarding concern to do with sexual activity and an older service user, what should you do?**

If you have concerns that a service user could be a victim of sexual assault or abuse, you have a duty to report it. This section details what you, as frontline housing staff, should do if you have a safeguarding concern. As we have discussed in the previous sections, this could be because you have detected some of the indicators of abuse, or you have deemed that an older service user does not have mental capacity.

We have separated this guidance into three sections – what you need to know, what you should do if you suspect that abuse has taken place and what you should do if a service user tells you of abuse.

### **What you need to know**

- How to seek help and guidance, either from your organisation's safeguarding lead, your manager, the police or the local authority safeguarding lead. It is OK to be unsure on what to do, it is not OK if you do not ask for help and guidance.
- Your organisation's safeguarding procedures.
- Your responsibilities under the Local Multi-Agency Safeguarding Procedures.
- Your responsibilities under the Care Act.

### **What you should do if you suspect that sexual abuse has taken place**

- Respond immediately. It is important you do not wait before you report concerns to your manager.
- Always call 999 if there is an emergency, or an immediate threat of abuse taking place.
- Help to preserve possible forensic evidence as directed by the police, for example not washing clothes or by advising the person to not bathe or shower until a specialist sees them.
- Always report all your concerns to a manager.
- Report concerns to the local authority.
- If you are unsure whether what you suspect is abuse, always check with a manager or the local authority safeguarding lead.

### **What you should do if a service user tells you of sexual abuse**

- Listen to what they are saying.
- Be non-judgemental.
- Make sure the service user knows that this will be taken seriously.

- Remember that you cannot promise that what they tell you will remain confidential. Under the Care Act, any provider of care has a duty to report any concerns of abuse to the local authority. But do explain how and why the information they are giving you might be shared.
- Do not attempt to question the service user, leave that for the formal investigation.
- Do not make contact with the person allegedly causing harm.
- Quickly report the allegation to your manager, keeping in line with your organisation's and local authority's procedures.
- Always record what the service user told you, and what actions you took.

Source: Social Care Institute for Excellence (2014) Adult safeguarding for housing staff: Guidance for frontline housing staff and contractors

## What to do if a service user does not want to report abuse

For many reasons, if an older service user has been the victim of sexual assault or abuse they might be reluctant to report it or take the procedure further. They may have feelings of shame, fear that no one will believe them, fear the involvement of the police or other agencies or fear that the person allegedly causing harm will harm them again.

You can take steps to help a service user feel more in control of the situation:

- Always allow the service user to voice their concerns or feelings.
- Always keep the service user informed of procedures and what actions are being taken and why.
- Offer the service user support from outside services, such as the Action on Elder Abuse Helpline or Victim Support, which could make them feel more comfortable in discussing the abuse.
- Think about who the person allegedly causing harm is – does the service user need to be temporarily moved?

Social Care Institute for Excellence, (2015). Safeguarding Adults: Sharing Information.

## Confidentiality and sharing information

The issue of confidentiality is both important and often misunderstood. Therefore it is important that you are knowledgeable about what information you can share and what you cannot. **Remember that you should not make promises to a service user that you can guarantee absolute confidentiality.** Two things staff often get **wrong** about confidentiality and sharing information are:

- **Wrong** = You need a service user's permission to share information they tell you about abuse
- **Wrong** = If a service user tells you about abuse, you can tell them that it will remain a secret

Source: Parry, I. (2013), Adult safeguarding and the role of housing. The Journal of Adult Protection, Volume 15 Issue 1

A significant barrier in safeguarding in housing with care is that staff often believe that you need a service user's permission to pass on details of abuse to the relevant bodies.<sup>17</sup> A key term here is **vital interest** (see the policy and legislation chapter for more information about 'vital interest'). The Data Protection Act permits the sharing of information if doing so prevents serious harm or distress to an individual.<sup>18</sup>

So if there is a high level of risk, other people are at risk, the service user lacks mental capacity, a serious crime has occurred, staff are involved in the incident or the person allegedly causing harm are themselves vulnerable and might be at risk, you must pass on information to your manager or the local authority, regardless of the victim's permission.<sup>19</sup> **This is not to say you should not involve the service user in the procedure, and try to reassure them** – see the above section for more information on what to do if a service user does not want to report abuse.

## Working well with others

An important part of keeping older service users safe is working effectively with other members of staff, or different organisations which are involved in safeguarding service users.<sup>20</sup> This is highlighted by the Care Act

placing a lot of emphasis on joint working between different agencies, with ‘partnership working’ being one of the 6 key principles of adult safeguarding set out in the Care Act (for more information, see the ‘Policy and legislation: What you need to know’ section of this guide).<sup>21</sup>

Part of the Care Act 2014 states that the local authority where the housing with care service is based needs to set up a “multi-agency safeguarding adults system”.<sup>22</sup> Whilst this may sound complicated, it simply means creating procedures around safeguarding adults which involve all relevant organisations which are crucial such as the police and social services. This means that whoever you work for, it is important to work closely and effectively with different agencies to ensure that people in housing with care accommodation are supported to be safe. You can expect the relevant local authority to develop a multi-agency local adult safeguarding system; all housing and housing with care staff should be aware of the policy and procedures.

But what does this mean to you? It means that managers should create an environment and working culture which makes you feel confident and comfortable about working with others to create a safe environment for older service users.

Your organisation should have clear lines of communication between different members of staff, including between staff and managers, as well as between the housing with care provider and other agencies such as the local authority and the police. As a frontline member of staff, you would normally report safeguarding concerns to your manager but you should be made aware of who to contact in other organisations if you do need to. And if you think these lines of communication are not working, you should be made aware of who you can speak to about your concerns.

### **Common barriers to joint working between housing and other relevant agencies:**

- Either the victim, housing staff or both not recognising that abuse has taken place.
- Housing services and organisations not reporting concerns due to previously not having raised concerns, a fear of over-reaction or a fear of their reputation being damaged.
- The definition of “vulnerable adult” being too narrow in the past.
- Housing providers not being involved after they have referred any concerns to the local authority.
- Housing not being included in policies and procedures by other relevant agencies, such as the local authority, police or social services.
- Even if housing is included in these policies and procedures, sometimes front-line housing staff are not included or kept informed – this is despite these staff members often being best placed to spot signs of abuse.

Source: Parry, I. (2013), Adult safeguarding and the role of housing. The Journal of Adult Protection, Volume 15 Issue 1.

### **Examples of good practice to address barriers to joint working:**

- Regular meetings between housing organisations and agencies such as police, local authority and social services.
- Representatives from Safeguarding Adults Boards attending housing meetings.
- Housing organisations represented on Safeguarding Adults Boards.
- Regular joint training between housing providers and other agencies on the subject of safeguarding.

Source: Parry, I. (2013), Adult safeguarding and the role of housing. The Journal of Adult Protection, Volume 15 Issue 1.

## **High staff turnover in the housing with care sector**

In housing with care, staff turnover is often very high. This means that training on safeguarding and sexual relationships between older service users should be done regularly.

# How to work with people's families, friends and partners

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This section will offer you guidance about how to interact with the families of people who use your service. For all of us, having a good relationship with our family members is an important part of our overall wellbeing. Therefore, you should support service users in maintaining healthy relationships with their families. Furthermore, working constructively with people's relatives can be an important part of keeping them safe. In practice this means that it is crucial to foster an open dialogue with service users' families.

However, relatives of older adults can understandably be very protective. They may have spent years caring for the person before they moved into housing with care. When it comes to the sexual activity of older service users, this means that family members may at times be challenging. Studies have shown that many people tend to think of older adults as asexual.<sup>23</sup> Furthermore, children of older adults often don't like to think of their parents as enjoying a sex life. In some instances, service users may even have extra-marital relationships whilst using housing with care services which can be met with disapproval. Nevertheless, it is important to remember that everyone has the right to a sex life regardless of age and ability and you should seek to empower the service user to make their own choices rather than follow the will of their families. These issues can further be complicated by the issue of mental capacity. Here it is crucial to remember that service users should be given full support to make their own decisions before it is decided that they lack capacity to do so.

## What if a person's family disapproves of their sexual relationships?

### 1. Empowering service users

- Your main priority should be to support the individual rights of the service user. As long as a service user has mental capacity to consent, is acting lawfully and is not at risk of abuse then they can make their own decisions with regard to sexual relationships.
- The Care Act 2014 states that empowerment is a key principle of safeguarding.<sup>24</sup> It is important that no service user is denied the right to express their sexuality due to fear of their family's disapproval.
- If a service user is concerned that family members will disapprove of a relationship they have developed while using housing with care you should support that service user in asserting their rights over the choices they make. This can be done through sex education or counselling.

### 2. Discussion with service users' families

- It is crucial to maintain good relationships between service users and their families. Whilst you need to assert the right of service users to make their own decisions, you should aim to help families come to terms with these decisions.
- Best practice may be to support and or signpost people's families to counselling services.<sup>25</sup>
- Explain to service users and family members that sexuality in later life can be just as important and fulfilling as relationships between younger people.
- Family members of older service users may misinterpret later life sexuality as a sign of confusion. It is important to remind them that there is no set age limit on sexual desire.
- Family members may feel a new relationship is offending the memory of a former partner or spouse. You should work to address these issues.
- Family members may disapprove of a service user's sexual relationships due to cultural, moral or religious beliefs, for example a belief that sex should only take place in marriage. Whilst it is important to embrace and respect cultural diversity, you need to encourage people's families to accept the choices made by service users.
- Remember that you should not be subject to verbal abuse or threats from family members if they disagree with a service user's sexual choice. If you are concerned by their behaviour arrange a time when the family can speak to your manager.



### 3. The legal context

- In 1998 the Human Rights Act enshrined into law the European Convention on Human Rights. Article 8 of the ECHR states that everyone has the right to a personal and private life.<sup>26</sup> Therefore family members cannot decide how a service user chooses to live their personal life (see the policy and legislation section for more information).
- Family members do not have any power to make any decisions on behalf of the service user unless they are a deputy of the Court of Protection or have lasting power of attorney under the Mental Capacity Act (see the policy and legislation section for more information).<sup>27</sup>
- In relation to the Mental Capacity Act, family members cannot make a best interests decision with regards to sexual activity. In all cases when a service user does not have the mental capacity to consent to sexual activity, then sexual activity is illegal. The Mental Capacity Act states that people should not be treated as being unable to make a decision just because they make a decision that seems ‘unwise’ to others.<sup>28</sup> Therefore they can still have sexual relationships which are considered unwise in the eyes of other people if there are no safeguarding issues and they have capacity to consent.

#### Lasting Power of Attorney

A lasting power of attorney is a legal document made for when a person (or ‘donor’) is unable to make certain decisions for themselves. It appoints a nominated person to make those decisions on behalf of the person who has or is at risk of losing their mental capacity through illnesses such as dementia, mental health problems or brain injuries.

There are two types of power of attorney, but for this topic the one you need to consider is a ‘health and welfare lasting power of attorney’. This gives an attorney the power to make decisions about things like a person’s daily routine (for example, day-to-day care, washing, dressing, eating), their medical care, where they live, moving into a care home, and life-sustaining treatment.

This does not mean, however, that family members can decide who the service user can see or socialise with.

Key points to remember:

- There are two types of lasting power of attorneys – for ‘property and financial affairs’ and for ‘health and welfare’. If a relative has a lasting power of attorney for property and financial affairs only, then they cannot make a decision on the person’s welfare (although if appropriate they should be involved in discussions about the person’s welfare).
- A health and welfare power of attorney can only be used when the person is unable to make the decisions being considered.
- A lasting power of attorney must be registered with the Office of the Public Guardian before the family member could legally make any decisions on behalf of the donor. If it isn’t registered, the family member cannot act on behalf of the person.
- Staff should not just take the family’s word that they have a lasting power of attorney. You should always make further enquiries, such as what type of power of attorney it is ‘registered’ or ‘unregistered’, and if in doubt staff should contact the Office of the Public Guardian for advice.

Source: Citizens Advice. Managing Affairs for Someone Else. Accessed at: [www.citizensadvice.org.uk/relationships/looking-after-people/managing-affairs-for-someone-else/#h-lasting-power-of-attorney](http://www.citizensadvice.org.uk/relationships/looking-after-people/managing-affairs-for-someone-else/#h-lasting-power-of-attorney)

## Case study

David lives in housing with care and lives with mild early-stage dementia. However he still has full capacity to consent to sexual activity. Recently David has started a sexual relationship with Julie, another resident of the housing with care accommodation. Members of staff have noticed that both Julie and David really enjoy spending time with each other and the relationship is having positive effects on their wellbeing.

After finding out about the relationship David's adult children have approached members of staff and asked that David and Julie are kept apart. David's children believe that due to his early-stage dementia and old-age a sexual relationship is very inappropriate. They have also pointed out that David had enjoyed a loving relationship with their late mother for many years and therefore the new relationship with Julie is just a sign of confusion.

When asked about his children's disapproval David expresses that he wants to keep seeing Julie but is very scared about damaging the relationship with his family. He is also concerned that members of staff will now stop him from seeing Julie due to his condition.

## Questions to consider

1. Do David's family have a right to ask that members of staff end David and Julie's relationship?
2. What should you tell David about his rights to maintain a relationship with Julie?
3. What support could you offer David's children to help them come to terms with the new relationship?
4. Are David's wishes or the wishes of his family your first priority?

# Developing effective and safe policies for individual sexual behaviour

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The World Health Organisation considers sexual health to be a “holistic state of physical, mental and social health and wellbeing”.<sup>29</sup> Individual sexual expression is an important part of overall sexual health. People who use care services have the right to explore their own bodies in private settings as long as their behaviour is legal and they are not causing harm to themselves or others. Older adults do not lose the need for physical intimacy and touch and it is crucial to see sexuality as part of their overall quality of life.

Nevertheless, there can be a fine line between legitimate individual sexual expression and ‘inappropriate behaviour’. Inappropriate behaviour could constitute masturbation or undressing in a public area or attempting to inappropriately touch a member of staff. This section of the guide will offer you specific guidance for dealing with different forms of inappropriate behaviour. Whilst some inappropriate behaviour can be dealt with by improved education and understanding, it is vital that you prioritise your own safety and the safety of other service users to make sure that sexual abuse does not take place.

There are no set in stone rules for assessing sexual behaviour and responses and there is no particular point at which behaviour becomes inappropriate. The categorisations below should help to clarify what should be deemed as appropriate vs inappropriate. Often an act is inappropriate due to the location in which it is taking place or the person whom the act is directed towards.

Inappropriate sexual behaviour can be a symptom of dementia. A decrease in one's cognitive abilities can lead you to not understand how your actions affect others. For example, a service user with dementia who is masturbating in a public area may have no understanding that they are doing anything wrong. Similarly, a person with dementia may undress in a public place due to feeling irritated by an itchy piece of clothing as opposed to trying to cause offence.

## When is individual sexual behaviour appropriate or inappropriate?

### Appropriate individual sexual behaviour

- Masturbating in private.
- Touching in private.
- Watching legal pornography in private.

### Inappropriate individual sexual behaviour

- Sexualised comments to staff or service users which may include swearing.
- Masturbating in communal areas.
- Touching in communal areas.
- Undressing or disrobing/ exposing genitals in communal areas.
- Prolonged kissing and hugging that exceeds normal affection.
- Grabbing or touching personal parts or the body of another service user or member of staff.
- Attempting intercourse or oral sex with a member of staff or a service user.

Source: Bamford,S, (2011), The last taboo A guide to dementia, sexuality, intimacy and sexual behaviour in care homes, International Longevity Centre

## Specific guidance for appropriate vs inappropriate behaviour

### Masturbation

#### 1. When is masturbation appropriate?

- Masturbation is legal as defined by the Obscene Publication Act.<sup>30</sup> If masturbation is carried out by an adult in a private setting (for example his/her self-contained apartment) this is perfectly fine.
- Service users of housing with care should be allowed sufficient time in private should they want to masturbate.

#### 2. What level of guidance and support is acceptable?

- Any sexual education which you carry out should be factual and contain no value judgements.
- Under no circumstances can you physically assist a service user with masturbation as this is illegal under the Sexual Offences Act 2003.

#### 3. When is masturbation inappropriate?

- If masturbation is carried out in a public or a communal space it is inappropriate.
- If service users fail to understand the distinction between public and private spaces due to cognitive or sensory impairments then you should educate them to help them understand. When masturbation is being carried out in a public or communal space you should discreetly advise the service user to return to a private space as soon as possible. You should ensure service users understand that their behaviour itself is not the issue, rather the fact that it is in public.

### Pornography

#### 1. When is viewing pornography appropriate?

- If a service user is viewing legal pornography in private this is fine. However, a service user may need appropriate sexual education to help them understand that pornography is often not an accurate depiction of 'real life' sex.

#### 2. What level of guidance and support is acceptable?

- Service users may request a member of staff to help them purchase pornography. This should only be carried out if it is part of an agreed care plan which your managers are aware of and the pornography is legal. A member of staff should never actively suggest purchasing pornography for a service user. However, they should not deny pornography to a service user who has the capacity to make a choice.

#### 3. When is viewing pornography inappropriate?

- If a service user is found to be viewing illegal pornography this must be stopped and the incident must be reported to the police.
- Under no circumstances can you order a sex worker for a service user because of the law relating to procurement for prostitution.<sup>31</sup>

### Guidance for dealing with inappropriate individual sexual behaviour at the time

- Try to remain calm and not display shock.
- Try to preserve the dignity of the service user.
- If a service user has a cognitive impairment such as dementia they may not be unaware that they are causing offence.
- Try to remember that inappropriate sexual behaviour can be a symptom of dementia and the intentions of the service user may not be malicious. This can help depersonalise the situation.
- If the service user is touching you in a way you do not like, tell the service user that their behaviour is unacceptable and that they are making you feel uncomfortable.

- Remind the service user that you are a member of staff and not their intimate partner.
- A service user may be inappropriately touching members of staff or another service user because they desire touch and intimacy. Review the individual's care needs in a holistic sense and explore if perhaps a massage or pet therapy could help. This can be comforting for older service users who are used to having a warm body in bed beside them.
- If a service user regularly needs such support, then make sure that this is included in their care plan.

Source: Bamford,S, (2011), The last taboo A guide to dementia, sexuality, intimacy and sexual behaviour in care homes, International Longevity Centre

## Guidance for dealing with inappropriate individual sexual behaviour after the event

### 1. What triggers are causing the behaviour?

- It is important to keep records of any inappropriate behaviour so you can identify if the service user's behaviour is typical and when changes may have taken place.
- Has there been a change to the service user's routine or environment? If the service user has no privacy this can be a cause of inappropriate sexual behaviour.
- Is it possible that the service user is mistaking personal care for sexual activity or believes the care worker is an intimate partner?
- Have you assessed the service user's mental wellbeing?
- Is the service user attempting to take off an item of clothing which is agitating them?

### 2. Reflect on how you define and classify inappropriate behaviour

- Think about your own judgement about the behaviour in question. Are you offended because of your cultural or religious beliefs or values? Also think about whether you find the behaviour inappropriate because you think it would be judged negatively by other staff, service users or the service user's family.<sup>32</sup>

### 3. Consider what risks are involved

- Assess the service user's mental capacity and the mental capacity of any service user who it has been directed towards.
- Carry out a risk assessment to see if the service user poses a threat to other service users or members of staff, take action to reduce the risks that you identify and include this in the person's care plan where necessary.

Source: Bamford,S, (2011), The last taboo A guide to dementia, sexuality, intimacy and sexual behaviour in care homes, International Longevity Centre

## What to do when inappropriate behaviour is directed at a member of staff

### 1. Assessing mental capacity

- When inappropriate sexual behaviour takes place it is necessary to assess the mental capacity of the person committing the act. A service user with dementia, for example, may not have the capacity to understand why their behaviour is wrong or how it affects others.
- It may be possible that the service user is mistaking the member of staff for an intimate partner. In this case best practice can be reminding the service user who you are and when they are next going to see their partner.
- It may be possible that the service user is mistaking personal care for sexual activity. In this case it will be necessary to constantly remind the service user what is going on.

### 2. Carrying out a risk assessment

- Members of staff still have the right to not feel threatened when a person lacks the capacity to understand how their behaviour may affect others. Staff must report all inappropriate behaviour to their line manager and keep accurate records of the event.





- Your manager has a responsibility to keep you safe and under no circumstances should they put you in situations where you are at risk. For example, staff should not be alone with service users who have touched them inappropriately. Where this is in issue, an accurate risk assessment will need to include considering the physical strength of the service user.

### 3. Further action if the behaviour persists

- When inappropriate behaviour persists specialist help may be needed, for example a therapist.
- If the behaviour might be illegal (for example assault or indecent exposure), staff should inform their line manager immediately. They will then report this to the police, the local authority or to the Multi-Agency Safeguarding Hub (MASH).<sup>33</sup>

# Policy and legislation: What you need to know

This section of the guide will aim to provide you with a basic level of information about the policy and legislation which relates to sexual activity in housing with care. This guide will not offer a comprehensive explanation of each of the acts but it will pull out the relevant information which you need for your job.

## 1. The Mental Capacity Act 2005 (MCA), England and Wales

The 2005 MCA is the most recent piece of legislation for England and Wales which relates to persons who lack mental capacity. People with cognitive impairments such as dementia or learning difficulties or disabilities may lack the mental capacity to consent to decisions such as having a sexual relationship. Crucially it is illegal for a person to have sex if they don't have capacity to consent.

### What does the legislation say?

#### The five key principles of the MCA

These are the five key principles of the Mental Capacity Act, though they are not specifically about sexual behaviour:

1. A person must be assumed to have capacity unless it is established that he lacks capacity.
2. A person is not to be treated as unable to make a decision unless all practicable steps to help him to do so have been taken without success.
3. A person is not to be treated as unable to make a decision merely because he makes an unwise decision.
4. An act done, or decision made, under this Act for or on behalf of a person who lacks capacity must be done, or made, in his best interests. However the Act also makes clear that, for issues regarding sexual relationships, a person cannot make a 'best interest' decision for someone else when it comes to sex.
5. Before the act is done, or the decision is made, regard must be had to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the person's rights and freedom of action.

Directly quoted from: Mental Capacity Act, Section (2) principles, (2005), Accessed at: <http://www.legislation.gov.uk/ukpga/2005/9/contents>

#### The two stage functional test of capacity

In order to decide whether an individual has the capacity to make a particular decision, you must answer two questions:

Stage 1: is there an impairment of or disturbance in the functioning of a person's mind or brain?

If so,

Stage 2: is the impairment or disturbance sufficient that the person lacks the capacity to make a particular decision?

Directly quoted from: Social Care Institute for Excellence, (2009), Mental Capacity Act 2005 at a glance, Accessed at: <http://www.scie.org.uk/publications/ataglance/ataglance05.asp>

#### Here are four important areas to consider when judging capacity to consent to having sex:

1. Do they understand the basic mechanics of the sexual act?
2. Do they understand that having sex can lead to pregnancy for a woman?
3. Do they understand that there can be health risks caused by having sex?
4. Do they understand that they have a choice and can refuse another's advances?

Source: Mental Capacity and Policy, (2016). Sex and the simple test? Accessed at: <http://www.mentalcapacitylawandpolicy.org.uk/sex-and-the-simple-test/>

## What does this mean for your job?

- A 'best interests' decision cannot be made with regards to sex. If a person lacks capacity to consent then sex is illegal in all situations.
- It is not possible to assess a person's capacity to understand whether sex is moral or immoral. Therefore value judgements should not be considered in an examination of mental capacity.<sup>34</sup>
- You have to take all reasonable measures to help a service user make a decision before deciding that they do not have capacity.
- You must always start from the assumption that a service user can make their own decisions.
- Just because you or the service user's family members think that a decision to enter a sexual relationship is unwise or morally wrong, that does not mean they lack capacity.

## 2. The Sexual Offences Act 2003, United Kingdom

### What does the legislation say?

#### Capacity to consent to sex

The 2003 Sexual Offences Act is designed to safeguard people in the UK who are vulnerable to sexual abuse due to cognitive impairments such as learning difficulties or dementia. This is referred to in the Act as "*a mental disorder impeding choice*."<sup>35</sup> The Act states that sexual activity is illegal when the person:

1. Does not consent.
2. Lacks capacity to consent.
3. Feels coerced to consent because the other person is in a position of trust, power or authority.

Directly quoted from: Worcestershire County Council (2013), Guidance for workers in area social work and integrated teams

#### As a care worker it is illegal to:

1. Have any sexual activity with someone who has a mental disorder.
2. Cause or incite anyone with a mental disorder to have sexual activity.
3. Have any sexual activity in the presence of someone with a mental disorder.
4. Cause a person with a mental disorder to have a sexual act.

Source: Sexual Offences Act (2003), Sections 38-41

## What does this mean for your job?

- In all cases when someone does not have capacity to consent sex is illegal.
- When apparent consent is due to coercion it can still be declared illegal. This is to prevent vulnerable people from being exploited.
- If a service user has a mental disorder you cannot: engage in sexual activity with them, cause or incite them to perform any sexual activity, have any sexual activity in their presence or cause a person with a mental disorder to have a sexual act.
- You cannot physically assist a service user with masturbation.

## 3. The Care Act 2014, England

The Care Act outlines new safeguarding duties for local authorities and other partner agencies in England. It is the first time that a clear legal framework has been created to safeguard adults from abuse and neglect. It is important to notice that the Care Act has superseded the 2013 Department for Health statement on Adult Safeguarding and the 2000 No Secrets Guidance.

## What does the Act say?

### The Care Act states:

- Lead a multi-agency local adult safeguarding system that seeks to prevent abuse and neglect and stop it quickly when it happens.
- Make enquiries, or cause others to make them, when they think an adult with care and support needs may be at risk of abuse or neglect and they need to find out what action may be needed.
- Establish Safeguarding Adults Boards, including the local authority, NHS and police, which will develop, share and implement a joint safeguarding strategy.
- Carry out Safeguarding Adults Reviews when someone with care and support needs dies as a result of neglect or abuse and there is a concern that partner agencies could have done more to protect them.
- Arrange for an independent advocate to represent and support a person who is the subject of a safeguarding enquiry or review, where the adult has 'substantial difficulty' in being involved in the process and where there is no other suitable person to represent and support them.

Directly quoted from: Social Care Institute for Excellence, (2015), The Care Act: Safeguarding adults. Accessed at: <http://www.scie.org.uk/care-act-2014/safeguarding-adults>

### Care and support statutory guidance issued under the Care Act 2014

The statutory guidance to support local authorities to implement the Care Act sets out the six key principles that underpin all adult safeguarding work.

- Empowerment – Personalisation and the presumption of person-led decisions and informed consent.
- Prevention – It is better to take action before harm occurs.
- Proportionality – Proportionate and least intrusive response appropriate to the risk presented.
- Protection – Support and representation for those in greatest need.
- Partnership – Local solutions through services working with their communities. Communities have a part to play in preventing, detecting and reporting neglect and abuse.
- Accountability – Accountability and transparency in delivering safeguarding.

Source: Care Act 2014 Care and Support Statutory Guidance

Additionally, it is important that adult safeguarding work promotes a 'Making Safeguarding Personal' approach. This is a personalised approach that means that safeguarding support and intervention is done with the person, not to them, and focuses on the outcomes that the person wants to achieve.

Source: Local Government Association, (2016), Making safeguarding personal. Accessed at: [http://www.local.gov.uk/adult-social-care/-/journal\\_content/56/10180/6074789/ARTICLE](http://www.local.gov.uk/adult-social-care/-/journal_content/56/10180/6074789/ARTICLE)

## What does this mean for your job?

- When you think that an adult with care and support needs may be at risk of abuse you must report this so that appropriate enquiries can be made to find out what action may be needed. Your managers must take and engage in a multi-agency approach to adult safeguarding. Therefore you need to understand how to work with other agencies such as police and adult social care at the level which is required for your job.
- The Safeguarding Adult Reviews have replaced the Serious Case Reviews in adult safeguarding work.

## 4. The Crime and Disorder Act 1998, United Kingdom

### What does the Act say?

Section 115 of the Crime and Disorder Act 1998 is relevant for adult safeguarding.<sup>36</sup> This section of the Act allows you to share information you keep about your service users with the police or adult social services if it is for the purposes of keeping them safe.

### What does this mean for your job?

- You should never promise service users complete confidentiality as information they tell you will have to be shared with the relevant agencies if their safety is at risk.<sup>37</sup>

## 5. Data Protection Act 1998, United Kingdom

### What does the Act say?

Any personal information should be shared on the basis that it is:

- Necessary for the purpose for which it is being shared.
- Shared only with those who have a need for it.
- Accurate and up to date.
- Shared securely and in a timely fashion.
- Not kept for longer than necessary for the original purpose.

Directly quoted from: Social Care Institute for Excellence, (2015). Safeguarding Adults: Sharing Information. Accessed at: <http://www.scie.org.uk/care-act-2014/safeguarding-adults/sharing-information/does-not-want-to-share.asp>

“**Vital interest**’ is a term used in the Data Protection Act 1998 to permit sharing of information where it is critical to prevent serious harm or distress, or in life-threatening situations. If the only person that would suffer if the information is not shared is the subject of that information, and they have mental capacity to make a decision about it, then sharing it may not be justified.”<sup>38</sup>

### What does this mean for your job?

- “The law does not prevent the sharing of sensitive, personal information within organisations. If the information is confidential, but there is a safeguarding concern, sharing it may be justified.”<sup>39</sup>
- You can share information to relevant authorities to protect someone’s vital interest.
- If there is a high level of risk, other people are at risk, the service user lacks mental capacity, a serious crime has occurred, staff are involved in the incident or the person allegedly causing harm are themselves vulnerable and might be at risk, you must pass on information to your manager or local authority, regardless of the individual’s permission.<sup>40</sup>
- You should never promise a service user complete confidentiality.
- You can however reassure the person that information will only be shared to protect them from serious harm or distress or to keep them alive.
- You can promise service users that information will be accurate, secure and not kept longer than for its original purpose.
- Service users may be able to request to see any information that you have shared about them.



## 6. Duties under the Human Rights Act, United Kingdom

As of the Human Rights Act 1998, local authorities are legally bound to not act in a way which is incompatible with the European Convention on Human Rights. Similarly, as of section 73 of the Care Act 2014, regulated care services are also deemed to be providing a public function as recognised by the Human Rights Act when a local authority arranges and/or pays for that care. The most important articles of the ECHR for this subject are Article 8 which guarantees the right for a private and family life and Article 3 which guarantees that everyone will be protected from inhuman, degrading treatment or punishment.

### Article 8 of the European Convention on Human Rights

“Everyone has the right to respect for his private and family life, his home and his correspondence.

There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

### Article 3 of the European Convention on Human Rights

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

Directly quoted from: European Convention on Human Rights, (1950) accessed at: [http://www.echr.coe.int/Documents/Convention\\_ENG.pdf](http://www.echr.coe.int/Documents/Convention_ENG.pdf)

### What does this mean for your job?

- In your job you will sometimes have to think about balancing these rights. If you suspect abuse may be taking place in someone’s home or within their family in order to protect them you may have to breach their privacy.
- It is important to remember that Article 3 is an ‘absolute right’. This means that in no circumstances is it ever justifiable to infringe this right.
- It is important to remember that Article 8 is a ‘qualified right’. This means that there are reasons why a person’s right to private and family life can be legally infringed.
- As you can see above the ‘protection of rights and freedoms of others, the protection of health or morals and the prevention of disorder and crime’ are all reasons why you can infringe on a service user’s privacy.

# Key principles

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1. All people who use adult care services have the same personal and sexual needs and rights as other people.
2. All service users should be encouraged and supported to lead a healthy life and lifestyle which is meaningful to them.
3. All service users should be enabled and supported to express their personal choices and preferences in respect of personal relationships and sexuality.
4. All service users should not be judged or treated differently because of their sexual attitudes or preferences.
5. Service users should have access to support be it in terms of safe sex or counselling to help safeguard and promote their wellbeing.
6. All service users should be treated as individuals with recognition of their right to a private and family life.
7. All service users are entitled to confidentiality and sensitivity with regard to their personal information unless there are issues of personal safety or a criminal act may have been committed.
8. All service users should receive services that promote: independence, informed choice and risk taking as part of their personal development.
9. Service users should not be discriminated against based on their: race/ethnic origin, creed, age, gender, marital status, class, sexual orientation, religious beliefs, health or disability.
10. All service users should be educated on how to make a complaint if they feel any of their rights have been breached in this respect.

## **At the same time, we need to recognise that:**

1. Sexual activity with service users without capacity is always illegal as they can never legally give their consent.
2. Some service users will be dependent on others to make decisions for them and protect them from abuse and harm.
3. It may sometimes seem difficult to balance the privacy of a service user and act within legal frameworks, however you must always act within accordance to the law. Always seek advice if you are unsure.
4. The choices and preferences of a service user may conflict with your own attitudes, beliefs and values and that of their family or friends.
5. Adults with a disability may need additional advice, information and support.

# Quiz

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Both staff and managers may find it useful to include the quiz in induction, training or supervision sessions. Discussing and reviewing your answers may help staff and managers develop their understanding and confidence in supporting older people with these issues.

**To help you think about the topics covered in this guide, try this quiz:**

## **True or False**

1. Older people can still enjoy their sex lives.
2. It is still important for older people to practice safe sex.
3. Older people are only interested in very serious relationships.
4. People over 65 do not have gay or lesbian relationships.
5. People who are frail or disabled are still able to enjoy a sex life.
6. If a service user's family disagrees with a sexual relationship he or she is having, staff should make sure the relationship stops.
7. There will always be physical signs of sexual abuse.
8. It is legal for an older person to masturbate in the privacy of their own home.
9. If a person lacks the capacity to consent to sexual activity, the activity must not take place.
10. You mustn't tell your manager about a possible safeguarding concern if the person doesn't want you to.

**Look at the questions below and note down if you agree strongly, agree, disagree, disagree strongly, do not know or have no opinion, on the following questions.**

11. Do you feel your role is more about looking after the service users than encouraging or facilitating their sexual needs or desires?  
Strongly agree  Agree  Disagree  Strongly disagree  Do not know  No opinion
12. Do you feel confident in applying the Mental Capacity Act as it relates to sexual expression for service users?  
Strongly agree  Agree  Disagree  Strongly disagree  Do not know  No opinion
13. Do you see sexual expression as important for older people, but lack the time in your day-to-day working routine to respond?  
Strongly agree  Agree  Disagree  Strongly disagree  Do not know  No opinion
14. Do you see sexual expression as important for older people, but lack the confidence or support in responding to situations of a sexual nature when they arise?  
Strongly agree  Agree  Disagree  Strongly disagree  Do not know  No opinion
15. Do you see sexual expression as important for older people, but feel it contradicts or conflicts with your own social, cultural or religious beliefs, values or norms?  
Strongly agree  Agree  Disagree  Strongly disagree  Do not know  No opinion
16. Do you see sexual expression as important for older people, but are worried about the response of the partners or relatives of service users?  
Strongly agree  Agree  Disagree  Strongly disagree  Do not know  No opinion

## Quiz answers

1.True 2.True 3.False 4.False 5.True 6.False 7.False 8.True 9.True 10.False

## Top 10 tips to remember

1. Some service users will have sexual or sensual needs.
2. Affection and intimacy contribute to overall health and wellbeing for service users.
3. Some service users have the capacity to make decisions about their needs and should be supported to do so.
4. You have a duty of care towards all service users to ensure they are protected from harm.
5. There are no hard and fast rules. Assess each situation on an individual basis.
6. Remember not everyone is heterosexual.
7. Inappropriate sexual behaviour is not particularly common – but you always need to be aware.
8. Confront your own attitudes and behaviour towards older people and sex generally.
9. Communicate – look at how you can improve communication with your colleagues, managers, service users and carers on this subject.
10. Look after yourself and remember your own needs as a care professional.

# Endnotes

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