

# Briefing Sheet

# 04

**A Synopsis of Current Policy and Legislation**



**POLICIES**

**PROCEDURE**



## A Synopsis of Current Policy and Legislation

**Over the last decade there has been growing recognition of the needs of BME carers within key policy and legislation at both a Scottish Government and UK wide level. This progress is reflected both in the development of community care and equalities legislation. This section will provide a brief overview of these developments.**

### **The Carers (Recognition & Services) Act (1995)**

This Act was the first time legislation sought to define the rights of carers specifically through an assessment of their own needs and their ability to provide care. Under the Act, carers were able to request an assessment within the assessment process for the person in receipt of care (the service user). However, certain stipulations applied in that carers had to be providing (or intending to provide) a substantial amount of care on a regular basis. Interpretations of the terms ‘substantial’ and ‘regular’ were not defined within the Act but left to the discretion of individual local authorities. Guidance produced at a later date to support the implementation of the Community Care and Health (Scotland) Act 2002<sup>1</sup> advised that any interpretation of the term ‘substantial’ should be in its widest sense and take into account fully the individual’s circumstances.

Whilst this Act contained very little specific reference to the needs of BME carers, it is important as it introduced the concept of a ‘carers assessments’ as a core statutory responsibility.

### **The Community Care and Health (Scotland) Act 2002**

The 2002 Act signalled a radical change to the way in which the provision of informal care was viewed by the Scottish Parliament:

“The fundamental principle underlying the new provisions is that carers should be recognised and treated as key partners in providing care. The recognition of carers as partners rather than service users should underpin all support given to carers and the people they care for.”<sup>2</sup>

As providers of care, the Act recognised that adequate resourcing was central to a carer’s ability to sustain a caring role.

Additionally, a number of significant changes were made to existing legislation:

- carers providing a ‘substantial and regular’ amount of care became entitled to an assessment of their needs, independent of any assessment of the person they were caring for;
- young carers under the age of 16 had the same right to an assessment;
- local authorities had a duty to inform carers of their right to an assessment;
- local authorities were required to take account of the care provided by a carer and the views of the person in need and their carer before deciding what services to provide; and,
- Ministers were given the power to require NHS Boards to develop information strategies informing carers of their rights under the new legislation.

<sup>1</sup> Scottish Executive Health Department CCD2/2003 *Community Care & Health (Scotland) Act 2002: New Statutory Rights for Carers: Guidance*

<sup>2</sup> Scottish Executive Health Department *ibid*

Guidance<sup>3</sup> issued by the Scottish Executive to support the implementation of the 2002 Act contained the most explicit references to supporting Minority Ethnic carers:

### Section 2.3 Equality and Social Inclusion

- ▶ Authorities should also ensure that services that support carers and the people they care for are universally accessible and not affected by issues of race, sexuality and culture (2.3.2: p.6).
- ▶ Statutory agencies must ensure that in providing services to support carers and the people they care for they take full account of their obligations under the Race Relations (Amendment) Act (2000), which gives public bodies a statutory duty to promote race equality. Key bodies, including local authorities and NHS Boards, are also subject to specific duties to monitor existing policies and services to ensure they promote race equality, and to assess and consult on the likely impact on the promotion of race equality of proposed policies and services (2.3.3: p.7).

### Section 3.5 'Substantial and Regular'

- ▶ In interpreting substantial and regular, local authorities should take into account a range of factors including ... cultural background of caring situation (3.5.2: p.9), and
- ▶ Recognise that carers from Minority Ethnic groups may have different caring patterns and may be caring in more than one location (3.5.2: p.10).

### Section 5.2 Who to Inform

- ▶ Local authorities should make information available in formats that are accessible (including tapes and video) and appropriate (especially for ... carers from Minority Ethnic groups) (5.2.2: p.15).

### Section 6.10 Assessment Approach

Local authorities should ensure that assessments are culturally competent in terms of the Race Relations (Amendment) Act 2000 (6.10.1: p.20).

### Section 6.12 Tensions between Carer and Cared-for Person

- ▶ Local authorities should recognise that tension can arise where either the cared-for person's or carer's first language is not English and one person interprets for the other; and
- ▶ Local authorities should provide access to translation and interpreting services where necessary (6.12.1: p.21).

### Section 7.7 Services provided to Carer for Person & Charges

- ▶ Local authorities should provide information, training, advocacy, translation, interpreting and other support to carers free of charge, without the need for a formal assessment (7.7.3: p.28).

### Section 11.1 Measuring Success

- ▶ Local authorities should make arrangements to monitor the following indicators of successful implementation of the provisions for carers. Indicator 1: Number of carers requesting, offered and receiving assessment split by gender, age and ethnic background (11.1.2: p.43), and
- ▶ Local authorities and other statutory agencies are already required to carry out ethnic monitoring of all their services for carers and services users to monitor the impact of their policies on the promotion of race equality. This monitoring is required to comply with their legal obligations under the Race Relations (Amendment) Act 2000 (11.1.4: p.44).

The Guidance remains the most substantive pillar to support and underpin work with BME carers to date.

<sup>3</sup> Scottish Executive Health Department *ibid*

## Carers Information Strategies

In 2006 the Scottish Executive Health Department issued a Health Department Letter (HDL)<sup>4</sup> to Health Boards on the development and implementation of Carer Information Strategies. The Letter placed a legal obligation on Health Boards under Section 12 of the 2002 Act to:

- ▶ Prepare and submit an NHS Carer Information Strategy to Scottish Ministers by 31 October 2006;
- ▶ Meet in that Strategy, the minimum requirements set out in Annexe A to the Letter; and,
- ▶ Engage with carers, carer organisations, local authorities and other stakeholders in developing a Strategy as required in Annexe A.

Under the Minimum Requirements set out in Annexe A Health Boards were specifically required to:

- ▶ Specify arrangements for the involvement of carers from Minority Ethnic groups and other equality groups in developing and reviewing the NHS Carer Information Strategy (Section 1 General);
- ▶ Develop strategic proposals to address the identification and information needs of specific carer groups such as young carers and carers from Minority Ethnic communities (Section 2 Content);
- ▶ Include in Action Plans, details on training for staff on culturally sensitive issues for carers from Minority Ethnic communities (Section 4 NHS Staff Training);
- ▶ Ensure that effective monitoring arrangements are in place to establish accessibility to information for carers from Minority Ethnic groups in line with the requirements of the Race Relations (Amendment) Act 2000 and Boards' Equality Schemes (Section 7 Monitoring);
- ▶ A description of how the Strategy ensures that it supports equality responsibilities including 'Fair for All' and requirements to implement Race Equality Schemes (Section 8 Policy Context);
- ▶ A principle of accessibility, ensuring that information is provided to carers in a wide range of formats and languages, enabling all carers to access information irrespective of their age, disability, ethnicity or other specific needs (Section 9 General Principles);
- ▶ A statement of commitment to ensure that information and support is available and accessible to carers from Black and Minority Ethnic communities, as required under the Race Relations (Amendment) Act and 'Fair for All' (Section 9 General Principles); and,
- ▶ A statement of commitment to the principles of equality and diversity (Section 9 General Principles).

Under Annexe B which sets out guidance to support the development and implementation of NHS Carer Information Strategies, Health Boards are required to meet the minimum requirements set out in Annexe A.

<sup>4</sup> Scottish Executive Health Department Directorate of Primary and Community Care *NHS Circular: HDL (2006) 22 NHS Carer Information Strategies: Minimum Requirements and Guidance on Implementation*



## **‘Caring Together’: The Carers Strategy for Scotland 2010 – 2015**

The Scottish National Strategy contains an explicit commitment to Minority Ethnic carers (as well as other equality groups) and to ensuring that all action points contained in the Strategy are taken forward with due regard to equalities, whether this is emulating best practice or meeting their statutory responsibilities under the Equality Act 2010.

It also contains a number of specific action points:

- By 2012, the Scottish Government will draw up a specification and seek to commission research on communities of carers we know little about including refugees, asylum seekers, Gypsy/Travellers and carers with disabilities, including learning disabilities. This is relevant to young carers too (Action Point 3.3);
- The Scottish Government, with COSLA and partners, will ensure that all the Action Points in this Strategy are taken forward in ways which fully address the equalities perspective (Action Point 5.1);
- In 2011-12 and beyond, local authorities, Health Boards and all carer support organisations are to identify carers and young carers in the hard to reach groups, including BME carers (Action point 8.4); and,
- In order to improve the carrying out of carers assessments with the aim of delivering improved carer support, the Scottish Government will, by 2012 commission the production of practical guidance on the undertaking of carers assessments. This will include guidance on how to conduct culturally competent assessments (Action Point 9.3).

## **Getting it Right for Young Carers: The Young Carers Strategy for Scotland 2010 – 2015**

A similar commitment to ensuring that all Action Points are taken forward with due regard to equalities is contained in the Young Carers Strategy. The Strategy also contains a number of specific Action Points:

- In 2011-12 and beyond, local authorities, Health Boards and all carer support organisations are to identify carers and young carers in the hard to reach groups, including BME carers (Action point 3.6);
- In 2011 -12, the Scottish Government will draw up a specification and seek to commission research on young carers in communities we know little about including BME young carers, new migrant workers and Gypsy/Travellers (Action Point 3.7);
- The Scottish Government, with COSLA and partners, will ensure that all the Action Points in this Strategy are taken forward in ways which fully address the equalities perspective (Action Point 3.8); and,
- By 2012, Skills Development Scotland will review and evaluate with the Scottish Young Carers Services Alliance and BME young carers the particular issues they face in accessing education, employment and training (Action Point 8.8).

## The Equality Act 2010

The Equality Act streamlined existing equalities legislation bringing them together for the first time and replaced the existing six equality strands (race, religion, disability, age, sexual orientation and gender) with nine protected characteristics (disability, gender re-assignment, marriage or civil partnership, maternity and pregnancy, race, religion or belief, sexual orientation, sex/gender and age). The law protects individuals as employees and users of services and applies to the public, private and voluntary sector organisations. It protects people from discrimination on the basis of certain characteristics (ie. the protected characteristics) although there are slight differences if an individual is an employee or a service user.

The law protects both against direct and indirect discrimination, harassment and victimisation. In addition to providing protection on the basis of the protected characteristics, the law also prohibits individuals being discriminated against on the basis of being incorrectly assumed to have one of the nine protected characteristics. For example, if an individual is treated in a homophobic manner as it is incorrectly assumed that they are gay, then this would be covered under the Act. The Act also affords redress under discrimination by association (ie. they are associated with someone who has a protected characteristic). For example, a carer caring for a disabled adult or child (see Coleman 'v' Attridge Law).

For service providers, the Act requires that services are provided without discrimination.

The General Equality Duty under the Act came into force in April 2011. It requires Public Authorities (listed in Schedule 19 and includes local authorities and health boards) in carrying out their functions to have due regard to:

- ▶ Eliminate unlawful discrimination, victimisation and harassment and any other conduct that is unlawful under the Act;
- ▶ Advance equality of opportunity between those who have a protected characteristic and those who do not; and,
- ▶ Foster good relations between those who have a protected characteristic and those who do not.

Compliance with the General Duty is a legal obligation. Public Authorities must take into account equality considerations in the design of policies (including internal policies) and the delivery of services. To advance equality, Public Authorities must remove or minimise disadvantage experienced by individuals who have a protected characteristic due to that characteristic and take steps to meet the needs of individuals with a protected characteristic that are different from individuals who do not have a protected characteristic.

For BME carers, protection under the Act is afforded through one or more of the protected characteristics but also the requirements of the General Duty and the prohibition of both direct and indirect discrimination. More broadly, carers also have protection under the discrimination by association mechanism if they are providing care to an individual who has a protected characteristic.

Information and support on the requirements and implementation of the Equality Act is available from the Equality and Human Rights Commission<sup>5</sup>.

<sup>5</sup> Scotland@equalityhumanrights.com