The Prevention and Management of Abuse

Guide for services funded by Disability Support Services

Contents

Executive summary

The Ministry of Health (the Ministry) believes that people supported by Disability Support Services should have the supports they need to lead the best possible life. That is, their supports should give them the greatest possible choice, flexibility and control over their lives, uphold their rights as contributing community members and promote their place in society as citizens. In addition, they should have the support they need to lead a life free from exploitation, neglect or abuse.

Abuse can take many forms including physical, sexual, verbal, emotional, financial and organisational. Abuse in support services reduces the confidence that disabled people and their families have in the services that the Ministry contracts and funds. The Ministry, along with providers, has a duty of care to ensure that any actions taken, or any failures to take action, do not injure or harm disabled people that they support. At the same time, both the Ministry and providers have a responsibility to support disabled people to take risks and experience both success and failure – the dignity of risk – just like other members of the community.

Providers play a vital role in fostering a positive organisational culture in which disabled people are respected and valued and have the same rights as other citizens. Such a culture significantly decreases opportunities for abuse to occur.

1   Purpose

This Guideline has been developed to provide clear and effective guidance to safeguard the disabled people who receive support from your services. This includes people funded by Disability Support Services (DSS) who are living in aged care services.

This Guideline supports providers to comply with the Ministry of Health's (the Ministry's) Outcome Agreement and service specifications for services, including residential, children's support services, foster care and contract board. (See the Ministry's website for the Agreement and specifications.)

Safeguarding the disabled people you support involves preventing abuse, creating a better understanding of signs that abuse is occurring and developing appropriate and responsive systems to deal with incidents of abuse. That is, as the service provider you will:

- have strategies and safeguards in place to guide your organisation in the way you support disabled people
- give both staff and disabled people a good understanding of what abuse looks like
- ensure that where abuse occurs, the person who experiences it is supported appropriately and all incidents are reported
- have a process of debriefing and review when abuse does occur, to learn from the situation
- put strategies in place to prevent any further abuse.

2   Background

Historically, many disabled people in New Zealand, particularly those with psychiatric or intellectual disabilities, lived in institutions. Over time, however, a movement grew internationally to support disabled people to move from institutions into the community (deinstitutionalisation) and from 1985 the New Zealand government began to move gradually towards community-based services for people with intellectual disability (O'Brien et al 1999). The reasons for deinstitutionalisation were complex. Increasing awareness of human rights was one motivation. Another was that many institutions were providing a poor quality of care (Milner 2008).

When disabled people moved into the community, many people expected that they would be more integrated into the community and be supported more effectively. Unfortunately disabled people have continued to experience abuse. Disabled people should never be in situations where they are at greater risk of violence, abuse, neglect and exploitation simply because they need care and support. Ideally, disabled people can make choices and lead everyday lives with no greater risk of harm than other New Zealanders face.

Because they may rely on others for communication and support, disabled people have less power in relation to the staff who support them. This power imbalance has been shown to increase the opportunity for abuse. Organisations must look at the systems and processes they use in relation to support needs to ensure that these are person-directed, that is, led by the individual, and address any power imbalances. It is also essential that disability support service providers understand the known risks and indicators of abuse.

In December 2013 the Ministry published an independent review, *Putting People First: A Review of Disability Support Services Performance and Quality Management Processes for Purchased Provider Services* (Van Eden 2013) (the PPF Review). The review began after a number of significant quality issues were identified in DSS-funded services. It examined the effectiveness of current Ministry performance and quality management processes for disability providers.

The external review panel was asked to 'test if the current processes involved in evaluating, monitoring and managing complaints by National Services Purchasing, support provider improvement and the safety and wellbeing of people with disabilities'. The report identified that inadequate monitoring can be a reason why disabled people continue to be vulnerable to abuse.

> For disabled people to be safe, the systems that safeguard their wellbeing must be designed with an attitude of putting people first. In line with the leadership role the Ministry has in overseeing the safety and wellbeing of disabled people, and setting the tone for the future, there is a need for the Ministry to:
>
> - put disabled people first in all future decisions and actions relating to services
>
> - support providers to place disabled people at the centre of their service – and design it from this premise out
>
> - lift the culture of the sector, by supporting good performance and the achievement of best outcomes.
>
> In short, the message the Ministry must communicate is that the safety of disabled people is paramount and that anything less than this will not be tolerated. (Van Eden 2013, p 1)

In line with both the New Zealand Disability Strategy (Minister for Disability Issues 2001) and the United Nations Convention on the Rights of Persons with Disabilities 2006 (UNCRPD, which New Zealand ratified in 2008), the Ministry supports a culture that values and respects disabled people as full citizens of our community. The Ministry has a zero tolerance of abuse of disabled people who are receiving Ministry-funded disability support services.

3 Key principles in safeguarding individuals

Principles offer a platform on which an organisation can develop prevention strategies and policies to address abuse. The Disability Support Services Tier 1 Service Specification outlines a number of relevant principles in this area. These principles reflect the Ministry's commitment to the UNCRPD, the New Zealand Disability Strategy and the Disability Action Plan. Below are four key principles (while others also apply).

3.1 People are individuals who have the inherent right to respect for their human worth and dignity

Violence against and exploitation of disabled people must be investigated and prosecuted in the same way as they would be for non-disabled people. The Ministry, providers and the disability community must all demonstrate zero tolerance to all forms of abuse. This includes abuse that support staff and disabled people carry out against other disabled people. The Ministry, and in particular DSS, expect that a DSS-funded provider will do everything it can to apply zero tolerance. You should demonstrate this approach through all levels of the organisation. Your systems and policies for and responses to abuse must reflect zero tolerance.

3.2 People have the right to live in and be part of their community and receive supports that provide the least restriction possible

The people we support are entitled to receive services that support them to make choices and lead a full life without greater risk of harm than other New Zealanders face. At the same time, disabled people are capable of making decisions and must have authority over what happens to them in any given situation. In some instances, disabled people will need support to make informed decisions.

3.3 People have the same rights as other members of society to participate in decisions that affect their lives

Disabled people must be supported to manage risks in their lives in a way that best works for them so that they have a dignity of risk – that is, the opportunity to take risks and experience both success and failure. Dignity of Risk acknowledges that many experiences have some risk, and that people must have the opportunity to experience both success and failure. It can be difficult to support decisions that may be risky, or with which we don't agree, within a health care environment but it is important to do so.

What might seem to be a risk for one person might not mean the same thing for another person. Any form of support or supervision or any level of restriction must be proportionate to the level of risk involved.

3.4 People have the right to pursue any grievance over services without fear of losing those services or experiencing any form of recrimination

Services need to have a positive complaints culture that encourages people to speak up without fear that they will experience negative consequences. In many cases, abuse has gone unreported because people were afraid of speaking out or did not have the support to speak out.

4 Prevention of abuse when receiving DSS-funded services

In a recent paper, 'Learning from complaints: safeguarding people's right to be free from abuse' (Disability Services Commissioner 2012), the Disability Services Commissioner in Victoria, Australia identified a three-layered approach to preventing abuse of disabled people. In particular, the approach is concerned with:

- strategies designed to prevent abuse
- how abuse can be identified and dealt with
- how to address the harm caused by the abuse and reflect on learnings from any situation that could prevent further abuse.

This approach provides a useful framework for both the Ministry and service providers as they work to prevent and deal with abuse.

The paper also notes it is important to create a service culture that emphasises a person-led approach, where the disabled person has choice and control over decisions about their life. This philosophy is consistent with the UNCRPD, as well as with broader moves in the Ministry and the disability sector to provide disabled people with supports that they can use to lead the life of their choice.

In response to both a ministerial directive and the recommendations in the PPF Review, an external working group was established to review safety regulation in disability support services. In particular, its purpose was to 'develop proposals for changes to the regulation of disability support that will enable disabled people to make choices and live everyday lives without greater (or lesser) risk of harm than other New Zealanders'.

This external working group uses a Safeguarding Spectrum (adapted from Disability Services Commission, undated). In this model, regulation is one possible safeguarding mechanism but it is part of a wider spectrum of safeguards (see diagram below). The wide range of other mechanisms available, both informal and formal, include building and supporting relationships; education and awareness-raising; independent advocacy services and contractual safeguards.

PROTECT

PROMOTE

ENHANCE

Decision making, choice and control

Safety and wellbeing

The person (and their culture*)

Citizenship and quality of life

Human rights

Personal

Relationships (family/whānau/other)

Independent / community services

Disability support services
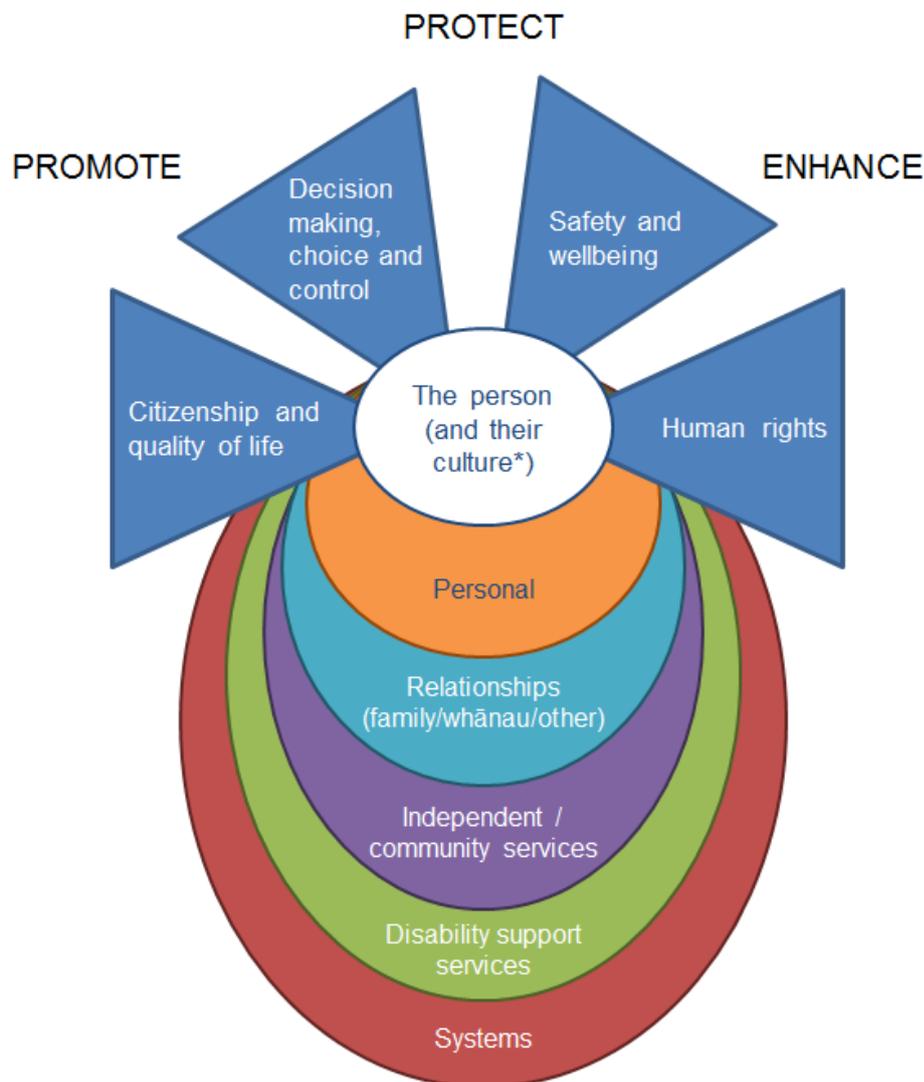
Systems

* Everyone has a way of doing things that is right for them and their family.

The Safeguarding Spectrum places the disabled person at the centre, surrounded by systems of support and safeguarding. Responses will vary depending on the level of safeguarding needed in a particular situation. Some safeguards may happen at the personal or family level; for example, they may involve informing a person about their human rights so the person can safeguard themselves. At another level, disability support services may provide safeguards by training their staff. In some cases, system-based safeguards may be required; for example, at the governance level, disabled people and their families may be involved in overseeing the full system of support and identifying support gaps and issues that may create risk. One of the support gaps that currently exists is the lack of understanding and use of supported decision-making.

The following are some suggestions about how your organisation can implement a safeguarding culture.

Vision and values. Explicitly state your organisation's vision and values that reflect a culture in which the service supports decision-making, choice and control for individuals and has a zero tolerance of abuse. Your governing body has a responsibility to ensure that staff are putting your organisation's vision and values into practice. One way of carrying out this responsibility might be for members of the governing body to regularly talk with people using the service.

Social context. Demonstrate your organisation's understanding of the role that discrimination plays in the lives of disabled people and how they are affected when the system devalues them. Demonstrate your organisation's commitment to a strengths-based approach and to implementing the UNCRPD.

Recruitment, orientation and training. Use recruitment practices that both attract staff who have the right values and attitudes and encourage staff to develop core values such as the ability to empathise and respect people's rights. These practices will need to focus on qualities beyond qualifications and skills alone. Including service users on interview panels can be a useful strategy provided they can engage meaningfully in the decision-making process; it must not be just a token exercise.

Support models. Demonstrate an individualised model of support that the disabled person leads as much as possible, and that identifies any risks of or vulnerabilities to abuse for that person in particular.

Natural supports. Demonstrate a support model that focuses on community integration and connections with family. Social isolation significantly increases a person's vulnerability to abuse. When they have relationships with people outside the service – such as connections with family and friends, work colleagues and links in the community – a disabled person has a level of independent safeguarding against abuse. The other people in such relationships can sometimes recognise problematic situations that the disabled person may not.

Advocacy. Have systems of advocacy through internal consumer groups or links with external advocacy agencies, such as Disabled Persons Assembly, People First and the Health and Disability Commissioner (HDC). Using rights-based education and training for service users, delivered by disabled people, is an effective method of safeguarding against abuse.

Training and supervision. Follow clear and effective training and supervision practices for staff that focus on:

- respectful approaches and self-reflective practice. Support staff need the opportunity through supervision to reflect on how they support disabled people and identify any learning opportunities
- developing coping strategies to deal with challenging behaviours and developing effective behaviour support practices, including when restraint protocols are in place
- understanding codes of conduct and the requirement for a more professional approach to support work
- understanding the way people communicate and engaging with them to find out how they want to be supported
- understanding the UNCRPD and how to put it into practice in the workplace
- understanding what abuse is, and how to report, manage and prevent it
- ensuring that staff are not working too many hours or working in isolation
- working in ways that are consistent with the *Let's Get Real: Real skills for people working in disability* (Te Pou o Te Whakaaro Nui 2014).

Reporting. Have mandatory reporting policies and clear processes for reporting abuse in a range of different formats (such as easy-to-read versions).

5   Understanding abuse

Compared with the general population, disabled people experience a significantly higher level of abuse (Mirfin-Veitch et al 2014). While anecdotes indicate abuse is a common experience among disabled people, little research on this issue in a New Zealand context has been published. It has certainly been highlighted internationally that disabled people are systemically and specifically vulnerable to abuse by people they know and by those who provide care for them (Hague et al 2008). Exploitation and abuse violate the rights of disabled people.

One of the few New Zealand studies to date comes from the Tairawhiti Community Voice, a collection of community agencies in the Gisborne region. It commissioned a study to improve understanding of the many ways in which disabled people experience abuse, as well as of the structures that prevent disabled people who are experiencing abuse from speaking out. The research confirmed that disabled people are much more likely to experience abuse than the general population (Roguski 2013). It also illustrated that disabled people face a number of challenges that make it more difficult to report abuse including:

- fear of losing supports
- previous experience of not being believed
- communication difficulties
- a general lack of respect towards them
- not understanding their own rights.

To deal with incidents of abuse effectively as a service provider, you must have a broad understanding of what abuse is. While some forms of abuse are obvious and acute, others can be more subtle and harder to detect. Sometimes it is also hard to identify the difference between poor practice and abusive practice. If poor practice is undetected, however, it can become abusive by nature.

5.1   Forms of abuse

To abuse someone is to harm or hurt them in some way or violate their human or civil rights. Abuse can take many forms, including but not limited to:

- **physical abuse** – a wilful act carried out to cause pain or injury to disabled people
- **sexual abuse** – forcing someone to take part in sexual activity against their will or with consent gained through coercion
- **verbal abuse** – using disrespectful, derogatory or demeaning language either about or in conversation with disabled people; this language presents disabled people as less important, child-like or inferior to others
- **emotional abuse** – including making verbal threats against, harassing or intimidating a person. Emotional abuse can occur when disabled people are not able to make independent decisions and determine their own identity. It can also occur through restricting a person's social, intellectual and emotional growth or wellbeing
- **financial abuse** – wrongfully using another person's assets, income, benefit or New Zealand Superannuation or using force or coercion to prevent a person from using their own assets

- **neglect and poor practice** – not providing the essentials for life such as adequate nutrition, medication and other health requirements, adequate heating and fresh air. It may involve not meeting disability needs, or not providing necessary equipment or support
- **restrictive practices** – restraining or isolating someone for reasons other than medical necessity or to prevent immediate self-harm (Kruger and Moon 1999).

5.2 Indicators of abuse

Indicators of abuse include both physical and behavioural signs. To understand these indicators, you need to understand who the person is, how they normally present and what some of their disability support needs are. The following indicators can be potential signs of abusive practice.

Behavioural indicators can include:

- extreme changes in behaviour, for example, challenging behaviours may suddenly appear or people may become withdrawn
- being fearful of others
- having an exaggerated startle response
- showing anxiety that is out of character
- being reluctant to accept support with personal cares
- loss of self-esteem
- regression, such as bed wetting
- being tearful or sad
- showing signs of self-harm or suicide
- being overly focused or hyper-vigilant about things they wouldn't normally react to in this way.

Behavioural indicators relating to financial abuse in particular can include:

- being unable to buy things they would normally be able to
- being confused about or being unwilling or unable to explain where money or belongings have gone
- withdrawing money more frequently or in larger amounts than usual
- wanting to give things or money away or make changes to their will.

Physical indicators of abuse include:

- unexplained bruises or other injuries
- frequent complaints of aches and pains
- unusual weight loss or gain
- frequent visits with injuries to the emergency department or a doctor
- increased physical signs of anxiety
- unusual incontinence
- physical withdrawal – flinching on approach
- sleep disturbances
- lack of eye contact.

5.3   People who abuse

A range of individuals commit abusive acts in a variety of situations. The person experiencing the abuse is likely to know the person committing it. Most commonly the abuse is by staff against people their service is supporting or by disabled people against other residents in the service.

Some indicators that staff are committing abuse may include that they:

- always want to work alone with particular individuals
- work a significant number of shifts
- demonstrate controlling behaviour around the running of the service
- keep secrets or get angry when people ask questions
- show signs of stress or burnout.

While different approaches may be taken to deal with each case of abuse, the priority remains the same; the safety of the individual experiencing abuse is paramount. The first response is generally to keep the alleged perpetrator away from the victim wherever possible. Also contact the police immediately if you suspect abuse.

5.4   The role of behaviour support in prevention

Providing effective behaviour support can help to prevent abuse. Some people may present with challenging behaviours that can increase their level of risk, as support staff may struggle with managing some of these behaviours. The Ministry endorses using a positive approach to behaviour support as an effective evidenced-based model, which takes an individual approach to behavioural management.

Positive behaviour support follows a cycle of: undertaking an intervention; evaluating the intervention; adapting the approach to reduce behaviours of concern; and teaching alternative behaviours to replace challenging ones. This is particularly important in situations where a restraint protocol is in place as any hands-on intervention will always involve a risk of harm. By giving staff effective coping strategies, you can minimise the potential for the use of aversive or overly restrictive practices. Such practices can be both harmful and potentially abusive.

5.5   The role of supported decision-making

Supported decision-making is a model for helping people with disabilities, often cognitive disabilities, to make significant decisions in their lives and ultimately exercise their legal capacity – that is, conduct activities within the country's legal framework just as any other New Zealander can do. Article 12 of the UNCRPD directs that disabled people are supported to exercise legal capacity in the same way as other people in the community.

In addition, the United Nations has directed New Zealand that supported decision-making needs to replace substituted decision-making. To make a decision, disabled people may need to draw on a network of support to help them understand relevant information and consider pros and cons in making a decision but ultimately the decision will be theirs. They have the right to seek help from family, peers or independent advocacy services. Some people may already have someone to help them set up a network of support, but others may not and need additional help to do this.

6 Expectations of providers – responses to alleged abuse

6.1 Develop a feedback loop and a positive complaints culture

The PPF Review (Van Eden 2013, p 1) states that ensuring disabled people have a voice requires:

Ensuring the processes that capture complaints, incidents, and issues, do so in a way that:

(i)   keeps disabled people safe, and

(ii) resolves the complaint or issue.

A number of factors have a systemic impact on how safe disabled people and/or their families are to speak up, the key one being knowing they *are* safe. This sense of safety arises from:

(i)   knowing they will be listened to

(ii) knowing complaints will be acted on and resolved, and

(iii) knowing action will be taken to remove the perpetrators of the abuse from situations where they can continue to harm others.

Organisations have or will develop a feedback culture that encourages service users to speak out about any issues that they experience without fear of reprisal and that provides them with the opportunity to give regular feedback. Safe feedback systems and a positive complaints culture can prevent abuse by prompting an intervention in response to the earliest indicators of a problem. Complaints processes need to be clear and intentional as individuals may not be aware of their rights to complain.

6.2 Have policies and quality systems in place

Organisations will have quality assurance processes in which incident debriefing and feedback lead to quality improvement. Service providers will have detailed quality systems that guide how they will manage serious incidents, including those of alleged abuse. Details should include strategies, based on learning from the event, to prevent further incidents. It is vital, however, that reviews and investigations of abuse also focus on service culture and values, rather than being limited to a procedural approach. In the policies developed to respond to abuse that has occurred, the provider will:

- treat the immediate safety of the individual as paramount
- immediately remove the alleged perpetrator from the location of the targeted service user
- inform the service user's family as soon as possible

- contact the police where alleged abuse – particularly sexual, physical or financial abuse – has occurred. The police will investigate and establish whether an offence has been committed

- support the service user to access any necessary follow-up support after the incident, such as advocacy services, medical assessment, counselling, buddy support

- notify the Ministry of the event and any follow-up

- review the situations of abuse to establish how similar events can be prevented in future.

6.3 Fictional case studies: how would you respond?

Fictional case study 1

Sara lives in a house with flatmates who, like her, have disabilities. She has supported living for 20 hours a week to help her with activities like cooking and cleaning. Sara likes most of her flatmates but is a bit scared of one of them. For some time he has been commenting to her about her body and making her feel uncomfortable by standing too close to her. The support worker notices she is getting quite withdrawn and sad but doesn't really know why. Family are also worried about her. They think Sara is just a bit down and take Sara to the doctor to see if she should go on antidepressants. Sara does.

One night Sara's flatmate comes into her room and sexually assaults her. Sara blames herself and doesn't know what to do. She keeps it to herself. She tells her support worker she wants to move but her support worker tells her that it will be really hard to find somewhere else for her to live. A couple of months later Sara is talking to her mum and tells her what happened. Her mum contacts the police, who investigate but do not charge the flatmate because they do not have enough evidence. Sara's mum takes her to live at home with the family until she can find somewhere else to live. The flatmate who assaulted her remains in the house.

Q – As a provider, what could you have done to achieve a better outcome for Sara?

Fictional case study 2

David is a deaf blind man in his 40s. He lives alone and has a support worker coming to his home once a week to provide household management, such as help with cleaning and purchasing groceries. David prefers to communicate through his computer, which has a Braille display attached. However, even though he has advised people on several occasions that he cannot use the phone (which he only has for emergencies) and does not always know when someone is at the door, others are not using the computer to communicate. He has had to reapply for household management because he lost his support when he did not respond to callers by phone or at the door. David had to complain to the Needs Assessment and Support Coordination service recently because his support worker was arriving late and leaving early. He also believes that money and small personal items have gone missing on several occasions after the support worker has been.

Q – As a provider, what could you have done to achieve a better outcome for David?

7 Care recipients under the ID(CC&R) Act

DSS funds Regional Intellectual Disability Supported Accommodation Services (RIDSAS) to provide care and rehabilitation to care recipients under with the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 (ID(CC&R) Act). Care recipients may have a range of restrictions on their freedom of movement and require particular levels of supervision while under compulsory care.

In this situation, support staff have more power over the people they support as they are responsible for day-to-day decision-making about the activities and movement of those people. In addition, the people they support may present with challenging behaviours, putting them at greater risk of abuse as staff may struggle with managing some of these behaviours. The ID(CC&R) Act does provide protective mechanisms for them, in the form of care managers, who have legal responsibility for their care while in a service, and district inspectors.

7.1 Fictional case study: how would you respond?

Fictional case study 3

> After being charged with assault and arson, Mary has been subject to a compulsory care order under the ID(CC&R) Act. She has had many experiences of abuse in her life, starting with an uncle when she was three years old. For the last few months a staff member has been coming into her room during the night and sexually assaulting her. Mary knows this is wrong and has asked the staff at the house to make sure she is not left alone with the particular staff member or in fact any male staff members. Because the service is struggling to find enough staff, this does not happen. The abuse continues. Eventually Mary tells someone about the abuse and the police are contacted.

Q – As a provider, what could you have done to achieve a better outcome for Mary?

8   Individuals with complex care needs

Some individuals who are supported in DSS-funded services have multiple disabilities and so have complex care needs. For example, they may have a moderate or profound intellectual disability, have significant physical health needs and/or have limited verbal communication. These individuals may be more vulnerable to abuse because of the extent of their disabilities and their extreme reliance on support staff.

As a service provider, you can use several strategies to make this group safer and improve their wellbeing. First, you can establish and maintain a culture of respect in your organisation. As stated in the PPF Review (Van Eden 2013, p 1), it is vital that organisations employ staff who are able to:

- communicate with those who are unable to verbalise, using whatever form of communication works for the person, and recognise what different behavioural signals mean
- connect with family and gain an understanding from them of any areas that may indicate concerns or change in behaviour
- provide appropriate behavioural support
- provide the necessary clinical input.

When staff do not have these skills, you must give them the training to develop them. It is only through both recognising and addressing complex needs that you will keep this group safe and care for their wellbeing.

8.1   Fictional case study: how would you respond?

Fictional case study 4

> Jane is a bright young woman who uses a wheelchair. She lives independently with support. Because of some complicated health issues, she needs a support worker for several hours a day. Her support worker has changed a few times as several have left the support agency. Her current support worker does not have a lot of experience and sometimes makes mistakes when lifting her and trying to help her get changed. The support worker has expressed frustration towards Jane on several occasions and handled her roughly, which has resulted in bruising. The support worker implies this is Jane's fault, telling her that she bruises too easily.
>
> Recently, the support worker did not turn up for the morning shift and Jane was left in her bed for the entire day. Jane was very upset. She called the support agency but they could not get anyone else out to support her till later that night. The support worker turned up the next day and appeared angry with Jane, hardly talking to her and using one-word answers when spoken to. Jane regrets complaining and is worried the agency will not be able to find her someone else if this support worker leaves.

Q – As a provider, what could you have done to achieve a better outcome for Jane?

9 Safety and wellbeing for whānau Māori – te oranga whānau

To safeguard disabled Māori, you need to make many of the same systemic responses as those described in previous sections. In addition, you must support individuals to have strong links with their culture, whānau and identity through whanaungatanga (support and growth of relationships) and understanding their whakapapa (genealogy). Such links form natural safeguards against abuse for Māori.

You should include tikanga Māori as part of working with and supporting Māori who your service is supporting. This can involve:

- providing services that are culturally responsive – for example, by drawing on the support of kaumātua to pōwhiri (welcome) the person and their whānau into the service
- supporting people in your services to connect with their whakapapa – whānau, hapū and iwi
- practising tikanga Māori – for example, karakia (prayers), mihimihi (greetings), pōwhiri, waiata (songs) and Māori cultural activities to protect the wairua (spirit) of disabled Māori
- exercising manaakitanga – caring, nurturing
- observing rangatiratanga – ensuring personal sovereignty and self-determination
- including whānau in developing and monitoring personal plans, and encouraging them to have meaningful relationships with their disabled whānau member
- undertaking mahi whakapai wairua – cultural practices to protect the wairua of that person as a whānau member and uri (descendant) of their whakapapa; acknowledging their connection to their tūpuna (ancestors).

Te Whare Tapawhā model underlies this approach: we need to care for (assist in a healing process) a person's wairua, hinengaro (mental/emotional faculty), tinana (physical body) and whānau. When a disabled Māori experiences abuse, it is likely that some form of cultural healing process will be necessary.

9.1 Fictional case study: how would you respond?

Fictional case study 5

Rewi is a young Māori man with an intellectual disability who lives in a disability residential service. Before that, his brother was looking after him but can no longer do so. Rewi has lost contact with other family members. He has been bullied by one support staff member for some time. This particular staff member tells him he is dumb and useless and will end up in prison just like his brother. The staff member also encourages another resident in the service, Adam, to bully Rewi, telling them both that Rewi is younger and much less important than Adam, who has been living in the service for longer. Rewi has told the house leader that he is being bullied but the house leader says that it is all just jokes and he should harden up.

Q – As a provider, what could you have done to achieve a better outcome for Rewi?

10 Safety and wellbeing for Pacific peoples

New Zealand-based Pacific peoples are made up of a number of ethnicities; most are Samoans, Cook Islanders, Tongans or Niueans. While each ethnicity has its own distinctive language and cultural practices, all have common values and principles, which providers must consider when safeguarding Pacific disabled people from abuse (Le Va 2014). These values and principles include but are not limited to:

- **respecting Pacific cultures** – providers must respect the world views, practices and protocols of Pacific peoples. Pacific families have a unique role in the life of a Pacific disabled person. Their input and insights must be respected, valued and supported. Within a Pacific context, abuse occurs when an individual's space is disrespected or 'va'. Respecting the disabled person and their family member is critical to establishing trusting relationships from a Pacific perspective
- **working together** – providers support Pacific peoples more effectively by taking a holistic approach, in which Pacific disabled people, their families and communities work together with services to safeguard those people from abuse.

For further information, see the *Organisational Guidelines for Disability Support Services: Working with Pasifika people with disabilities and their families* (Le Va 2014).

11 The Ministry of Health and safeguarding

11.1 Service specifications

In its service specifications, the Ministry sets out clear expectations about preventing and managing incidents of abuse. You should also refer to the guidelines for contract relationship managers for further information on how your contract relationship manager may engage with you in developing any policies and procedures that you are required to.

The Tier 1 Service Specification, which applies to all DSS Outcome Agreements, includes the following section.

> **Prevention of Abuse and/or Neglect**
> - The Ministry has zero tolerance of any form of abuse or neglect of People using its funded services.
> - The Provider will safeguard People and their family/whānau, advocates, staff and visitors from abuse, including physical, mental, emotional, financial and sexual maltreatment or neglect when interacting with the Service. The Provider will have policies and procedures on preventing, detecting and eliminating abuse and/or neglect. These will clearly outline the responsibilities of all staff who suspect actual or potential abuse, including immediate action, reporting, monitoring and corrective action. These procedures will also include reference to the Complaints Procedure.
> - The Provider will ensure that relevant employees are able to participate in family, inter-agency or court proceedings to address specific cases of abuse and neglect.

In addition, all DSS-funded providers have service specifications that require them to prevent, manage and reduce the risk of abuse and to support the people in their service.

11.2 Reporting

Current Ministry contracts and service specifications detail when providers should notify the Ministry of an incident of abuse. For those providers who are certified, reporting obligations are set out in section 31 of the Health and Disability Services (Safety) Act 2001. These legal requirements do not prevent a provider from raising any other issue of concern with the Ministry.

The Ministry expects that, when notifying the Ministry of complaints and/or incidents involving people that your service is supporting, you will:
- ensure the immediate safety of the people involved, in particular the person who has allegedly experienced abuse and any other people who may be at risk
- complete a written report as a record of the event
- provide the Ministry with incident forms, investigation reports and any necessary updates in a timely manner.

The Ministry reviews the reports of incidents it receives so it can identify any possible trends and deal with them effectively. It may investigate serious events. If it identifies negative trends, it is likely that the provider and the contract relationship manager will have a conversation to clarify the trend and to resolve issues. Examples of trends are increases in the number of injuries within a service, or in the number of complaints from people the service is supporting or from their families and whānau.

11.3 Role of audits and evaluations

Providers' services have routine evaluations and certification audits. The evaluations focus on the quality of life of people using the services, including service practices and how well they align with a provider's contractual agreement. The certification audits focus on meeting the health and disability sector standards. Another part of a provider's contractual agreement may be to have an issues-based audit where concerns are raised about the health and safety of residents. Providers of DSS-funded services will be expected to demonstrate explicitly that:

- they have developed and are implementing abuse prevention and management guidelines
- support staff have attended training on abuse prevention
- through recruitment, induction and supervision practices, they have attracted support staff with the required values and competencies
- they have rights protection systems throughout the organisation for the people they are supporting – for example, consumer groups, regular access to advocacy services, and rights-based education for the people they are supporting.

12 The role of legislation and regulation

The Protection of Personal and Property Rights Act 1988, the Human Rights Act 1993 and the Health and Disability Commissioner Act 1994 provide protections that are specific to or include disabled people. Disabled people supported by providers may also be subject to the Mental Health (Compulsory Assessment and Treatment) Act 1992 (MH(CAT) Act) or the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003.

Both the MH(CAT) Act and the ID(CC&R) Act restrict disabled people subject to these Acts to some degree. They also give these people specific rights that are intended to protect them and prevent exploitation and abuse.

The Health and Disability Services (Safety) Act 2001 enables regulation through the New Zealand Health and Disability Standards (the Standards), which residential services are required to meet. The Standards include requirements such as to uphold consumer rights (NZS8134.1.1) and provide a safe and appropriate environment (NZS8134.1.4).

Community responsibilities in preventing abuse are also recognised. Article 16 of the UNCRPD, for example, states that disabled people have the right to 'Freedom from exploitation, violence and abuse' and requires community members to take steps to prevent exploitation and abuse.

Laws such as the Crimes Amendment Act 2011 give legal responsibilities to all community members in relation to disabled people. The Crimes Amendment Act requires people to report harm to vulnerable adults. A vulnerable adult is defined as 'a person unable, by reason of detention, age, sickness, mental impairment, or any other cause to withdraw himself or herself from the care or charge of another person'. The Domestic Violence Act 1995 covers individuals in a domestic relationship but does not include paid carers or support workers so it does not provide protection for many people with disabilities.

Disabled people must be served by legislative frameworks and support systems that uphold their right to be free from violence and abuse. One way of describing safeguarding is that it provides 'supports and mechanisms that promote, enhance and protect an individual's human rights, decision making, choice and control, safety and wellbeing, citizenship and quality of life' (Disability Services Commission, undated). Safeguarding measures both prevent and respond to abuse. Providers should empower the people they are supporting to work out safeguards for themselves as much as possible.

The Vulnerable Children Act 2014 is designed to create a better life for children in New Zealand. Providers who have children in their services are required to work in a manner that fosters the wellbeing of those children. In addition, these providers now have a legal responsibility to check the safety of potential staff before they work with children. This measure is to ensure that providers select appropriate staff who are not going to put children at further risk.

Providers are subject to the United Nations Convention on the Rights of the Child (ratified by New Zealand in 1993). Of particular relevance is that the Convention prohibits mixing children with adults in institutions where they are deprived of their freedom unless it can be demonstrated that it is in the best interests of the child. In addition, Article 23 relates specifically to disabled children, stating, 'If you have a physical, mental or intellectual disability, you have the right to reach your full potential. You have the right to extra help with your education care and support if you need it.'

13 The role of other agencies

13.1 The police

The police have a number of roles in safeguarding disabled people. First, as part of a service provider's recruitment process, they vet potential staff to identify whether they have any criminal convictions. Second, by maintaining public safety and preventing crime, police have a role in preventing abuse. Finally, where necessary, police enforce the law by conducting investigations and provide a legal pathway in response to crime.

In carrying out their functions, the police work with the community in the interests of better public safety.

13.2 Health and Disability Commissioner

Some incidents of abuse will be referred to the HDC. The abuse of disabled people is a breach under the Code of Health and Disability Services Consumers' Rights (Code of Rights). The HDC's main role is to ensure that the rights of people receiving health and disability services are upheld.

When someone who accesses health and disability services has a complaint, they can complain to the HDC directly. Advocates are available through the HDC's nationwide advocacy service, which provides free, independent and confidential support. The HDC may also direct that an investigation is undertaken in relation to the complaint if they consider it appropriate. The Office of the HDC offers specialist advocates to support disabled people. It also has specialist Māori and Pacific advocates available.

13.3 Office of the Ombudsman

The Office of the Ombudsman is an independent resource to help the community deal with government agencies. It focuses on a fair and impartial approach and undertakes investigations where necessary. It also monitors places of detention, which can include RIDSAS in its role of providing secure services to care recipients under the ID(CC&R) Act.

13.4 District inspectors

Part 5 of the ID(CC&R) Act provides additional safeguards for the rights of care recipients. District inspectors are lawyers appointed under the ID(CC&R) Act to safeguard the rights of people subject to a compulsory care order.

The functions of district inspectors (as set out in Part 7 of the ID(CC&R) Act) are to:
- visit and inspect facilities in the area for which they are responsible, including by monitoring and helping to provide information and checking documentation processes
- handle and resolve complaints of breaches of care recipients' rights under the ID(CC&R) Act, refer all breaches of rights covered under the Code of Rights and coordinate information-sharing with the HDC and delegates
- conduct inquiries and investigations into any alleged breach of the Act that is not covered under the Code of Rights or any alleged breach of duty by a director, employee or agent of a service.

14 Summary

Safeguarding disabled people from abuse requires a whole-of-system approach that places disabled people at the centre. As a DSS-funded provider, you can contribute significantly to safeguarding the people you support. Understanding types and indicators of abuse will help you develop strategies to prevent it. By taking a positive approach to safeguarding, your organisation can develop a culture of support that provides the very best outcomes for the individuals it supports.

This Guideline offers you some strategies for effectively safeguarding disabled people. You will also have your own strategies. The Ministry and your contract relationship managers are available to discuss further any concerns or ideas you have as we all move towards a more responsive system that provides the support that allows disabled people to lead the life they choose and that balances dignity of risk with individual safety.

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