

Statutory Neglect and Care in a Pandemic

Abstract

Much has been written about the prevalence of COVID-19 infections in care homes in Europe and North America, with claims that the high mortality rate has been worsened by the policy decisions taken by governments. This essay argues that the concept of statutory neglect is a useful framework for understanding situations where neglect results from law or policy rather than action by an individual caregiver.

Keywords: Elder Abuse, COVID-19, Long-Term Care, Patient Discharge, Social Workers, Pandemics

Introduction

The rapid spread of COVID-19 in long-term residential care settings has been widely reported across both Europe and in North America (Booth, 2020; Carswell, 2020; Carrenon & Allen, 2020; Gauriat, 2020); with rates of infection and deaths from the disease significantly higher in care homes than in the general population (MacCharles, 2020; Huet, 2020). It is difficult to make international comparisons because of national differences in COVID-19 testing policies, and the recording and reporting of deaths. However, preliminary research from the International Long Term Care Policy Network (ILTCPN) reports on data on care home deaths from 13 countries, with percentages of total deaths ranging from 19 percent in Hungary to 62 percent in Canada (Comas-Herrera et al., 2020). However, the actual death rate is likely to be higher when the indirect effects of the pandemic on mortality are included (MacCharles, 2020; Peart, 2020).

Details emerging from individual care homes in multiple countries have been harrowing. In Spain, Belgium and Canada the military was called in to care homes after standards of care collapsed amidst reports of lack of PPE, staff sickness and negligence complaints against the management of care homes (Carreno & Allen, 2020). In Canada, armed forces found cockroach infestations, short staffing and neglect of residents, and uninfected residents sharing rooms with those who were symptomatic (Howlett, Mahoney & Stone, 2020; Dickson, 2020). In one Belgian care home where the military was called in, 75 percent of residents and 51 per cent of staff had contracted COVID-19 (Gauriat, 2020). In one of the worst-hit care homes in the UK, 62 of the 82 residents contracted COVID-19, and by June 2020, 24 had died (Booth, 2020).

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Responses to the reports on conditions in care homes during the pandemic have been notable for the repeated references to 'abandonment' (Alzheimer's Society, Marie Curie, Age UK, Care England & Independent Age, 2020; Chakelian, Grylls & Calcea, 2020) and 'neglect' (The Local, 2020; Trabucchi and De Leo, 2020; Hull, 2020; Murray, 2020). This use of the language of safeguarding and adult protection to describe a systemic issue is perhaps unusual. However, social workers are familiar with the concept of institutional abuse where neglect is embedded within a particular care setting (Gallagher, 2000; McDonald), and the reports of the situations in care homes during the pandemic from around Europe and North America

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certainly resonate with this. The typology of institutional abuse identified by the Social Care Institute for Excellence, for example, includes factors such as run-down or overcrowded establishment(s); Insufficient staff or high turnover resulting in poor quality care; and not providing adequate food and drink, or assistance with eating (SCIE, 2012). There is no internationally agreed definition of neglect in adult care, and conceptualisations of neglect can vary according to different cultural contexts (Manful & Abdullah, 2000). However, there are a plethora of local and regional definitions. For instance, the National Health Service in England defines neglect as:

“Not being provided with enough food or with the right kind of food, or not being taken proper care of. Leaving you without help to wash or change dirty or wet clothes, not getting you to a doctor when you need one or not making sure you have the right medicines all count as neglect.”

Internationally, the World Health Organisation defines the closely related concept of elder abuse as:

“a single or repeated act, or lack of appropriate action, occurring within any relationship where there is an expectation of trust, which causes harm or distress to an older person... and includes physical, sexual, psychological, and emotional abuse; financial and material abuse; abandonment; neglect; and serious loss of dignity and respect.” (WHO, 2020)

Aspects of all these definitions of neglect and abuse have been reported in care homes during the pandemic. However, although there have been allegations of negligence on the part of individual care home management (Gauriat, 2020; Forrest, 2020), other examples suggest that this neglect goes beyond individual management failings, and indicates a more systemic problem. Trabucchi and De Leo (2020) argue that it is the health authorities themselves who have been neglecting care homes in Italy. In Sweden and the UK, the policy of allowing patients to be discharged into care homes from hospitals without being tested for COVID-19 has been criticised as neglectful and contributing to the high death rate in care homes, especially when coupled with the lack of adequate PPE in many care homes (Grey and Macaskill, 2020, The Local, 2020). In the UK, the government has been criticised in parliament over the official advice for care homes in England, which until 12th March recommended that it was ‘very unlikely’ that infections would spread in care homes (Brand, 2020), despite the high number of infections in care homes by the middle of March. An editorial in the Guardian newspaper described the UK government’s approach to care homes as ‘culpable neglect’ arguing that although the government knew of the risk to older adults, it did not put policies in place to protect the care sector (The Guardian, 2020).

The concept of ‘statutory neglect’ (Jolly, 2018) is one way of understanding the kind of abandonment or neglect as a matter of policy illustrated by the above examples. Statutory neglect describes a situation where people have experiences resulting from exclusionary policies or legislation which would be considered as neglectful if caused by a parent or carer. The concept was developed as a tool to understand social work practice with undocumented migrant children in the UK (Jolly, 2019). However, the experiences of people in care homes during the COVID-19 pandemic has exposed how other social care contexts can be understood through the lens of statutory neglect.

Ethical issues for social workers

In most situations of neglect, even at an institutional level, there is an assumption that the neglectful care worker or institution is acting against legislation or policy by not responding to the needs of people in their care. Where the situation in care homes during the pandemic differs is that the neglect appears to be, in many cases, a result of policy or legislation. For

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instance, where there have been policy decisions to discharge symptomatic people from hospital into care homes despite the risk of infection.

This raises ethical difficulties for social workers in meeting national and international professional ethical expectations (IFSW, 2014) in practice settings where their employers or the government are unable or unwilling to enact policies to safeguard the welfare of those in their care. However, the concept of statutory neglect is one way for social workers to analyse these situations by applying language and concepts drawn from clinical social work practice to structural issues.

By recognising poor policy decisions as neglectful, focus can be shifted towards the harm inflicted on the service user, centring their experience, and providing a framework for social workers to develop a critically engaged practice which analyses, reflects and acts on harmful policies. This can be on an individual micro-level through accurately recording the impact of statutory neglect during assessment, care planning and case notes. At the meso-level this might take the form of raising concerns about statutory neglect in team meetings or using institutional complaint or whistleblowing procedures within care homes. Finally, at the macro-level, ethical practice in response to statutory neglect might take the form of collective campaigning, lobbying and political action in support of service users through national or regional professional associations or in partnership with service user or carer advocacy groups.

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