Keeping Me Safe & Well (KMSAW):
A human rights based approach (HRBA) to risk assessment and management

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Outline
- Why take a HRBA in LD services?
- Whistle-stop tour of human rights legislation
- Brief risk refresher
- KMSAW: How to guide
- Group exercise
- Brief introduction to HR-JRAMP
- Questions and reflections

Why take a HRBA in LD services?
Why take a HRBA in LD services?

“"We are disappointed that, at the start of the 21st century, almost ten years after the introduction of the Human Rights Act...the evidence convinces us that we need to emphasise that adults with learning disabilities have the same human rights as everyone else”

(Joint Committee on Human Rights, 2008)

Our responsibilities under the HRA

• As a public authority, all NHS Trusts have a responsibility to not only uphold but also positively promote the Convention Rights
• That means that you must understand those rights and take them into account in your day-to-day work.
• This means that it is unlawful for a public authority to act in a way that is incompatible with a Convention right

Common Human Rights Issues in LD Services

• healthcare and treatment
  (DH, 2001; Mencap, 2007; 2012; Lunsky et al., 2009; Wullink et al., 2009)
• service responses to behaviour which ‘challenges’ (Emerson, 2000, 2002; McGill et al., 2009; Webber et al, 2011)
• sexuality (Abbott & Howarth, 2005; Joint Committee of Human Rights, 2008; Richards et al., 2009)
A Human Rights based approach to healthcare: 5 key principles

• Putting human rights and principles at the heart of policy and planning
• Empowering service users
• Ensuring accountability
• Enabling meaningful involvement & participation of all key people
• Paying attention to vulnerable groups

Mersey Care & British Institute of Human Rights Project

Make the person central to clinical practice

Relationships and relational context:

Collaboration, formulation & dialogue

Positive Risk Management & Least Restrictive Practice

Human Rights Based Approach to Risk

Legal Rights and Frameworks (HRA, MCA, MHA)

Values based approaches e.g. Person Centred Planning and Recovery Model

Whistle-stop tour of human rights legislation

United Nations

European Convention of Human Rights

Universal Declaration of Human Rights

UN Convention on Disability

UK Government & devolved administrations

Human Rights Act (1998)

British Institute of Human Rights, 2008
Human Rights Act (1998)
The rights contained in the Human Rights Act are:
• The right to life
• The right not to be tortured or treated in an inhuman or degrading way
• The right to be free from slavery or forced labour
• The right to liberty
• The right to a fair trial
• The right to no punishment without law
• The right to respect for private and family life, home and correspondence
• The right to freedom of thought, conscience and religion
• The right to freedom of expression
• The right to freedom of assembly and association
• The right to marry and found a family
• The right not to be discriminated against in relation to any of the rights contained in the European Convention
• The right to peaceful enjoyment of possessions
• The right to free elections

Three different types of human rights
• **Absolute**: Cannot be limited or interfered with in any way, by the state, the NHS or any other public authorities or bodies
• **Non-absolute**
  – **Limited**: Can be limited in specific and finite circumstances as set out in the Act e.g. Article 5: the right to liberty
  – **Qualified**: Can be interfered with in the pursuit of a legitimate aim (e.g. protecting the rights of others), if it is lawful, necessary and proportionate

Core values of Human Rights Act

**INTEODUCING FREDAA**

We decided that FREDAA is a woman and she is for everybody. Her name stands for:
- Fairness
- Respect
- Equality
- Dignity
- Autonomy
Risk refresher

“Risk assessment needs to be put in its place as an imperfect tool which vast amounts of research have not improved very much over the years”

(ID 452, Royal College of Psychiatrists Report CRISO, 2008)

Approaches to & Assessments of Risk

- (Unstructured) Clinical Judgement
- Actuarial Risk Assessment
- Structured Professional Judgement

Proportionality

- ‘Not using a sledgehammer to crack a nut’
- A strategy should be appropriate and not excessive to the risk
- Always use the least restrictive strategy
Continuum of service user involvement

Non-inclusive

- Led and initiated by the practitioner
- Service user is not involved in the process

- Service user is informed and invited to participate
- Service user is involved in aspects of the process
- Service user is involved in all aspects of the process
- Service user is fully involved in the process

Fully-inclusive

Keeping Me Safe & Well Assessment Manual

- Developed with BIHR
- Practical tools to guide clinical judgement
- Supported by staff training & Service User human rights workshops
Overview of the KMSAW
- Looks at risk through a ‘human rights’ lens
- Identifies equality and diversity issues
- Maximises participation and empowerment
- Includes guidelines to individualise the screen
- Includes good practice examples

Section 1: Risks to Self
- Medication
- Transport (public and private)
- Mobility
- Safety at home
- Not looking after myself
- Hurting myself

Section 2: Risks to Others
- Religion
- Sexuality
- Dependents
- Physical Violence (weapons)
- Fire starting
- Truthfulness
Section 3: Risk from Others
- Physical abuse by others
- Sexuality
- Skin colour and or culture
- Looking out for my family
- Financial abuse by others
- Emotional abuse by others

Section 4: Risk Relating to Property
- Damage to my property
- Damage to other people's property
- Fire starting

Personalising the ‘KMSAW’ Assessment
- Wording
  - Transport (public and private)
  - "refusing to wear a seatbelt"
  - Use the person’s words and language.
- Picture Booklet
- Traffic Light Picture Card
- Traffic Light Scoring Sheet
Assessing Risk: Likelihood and Severity

When assessing the risk, take into account both the likelihood of the risk occurring and also the severity of the consequences.

**Likelihood**
- **When considering likelihood,** *only* take into account the next six months. You should look at events over the last 6 months to make an estimate of likelihood over the next 6 months.
- The scoring for likelihood is as follows:
  - 1 = *Unlikely*
    - It is unlikely that the risk will happen in the next 6 months.
  - 2 = *Up to 50% chance*
    - There is up to 50% chance that the risk will occur in the next 6 months.
  - 3 = *More than 50% chance*
    - There is more than a 50% chance of the risk occurring in the next 6 months.

**Severity**
- 1 = *Minor*
  - The risks that the client or others are exposed to are no greater than for the general population.
  - Where any harm that results (physical or psychological) would not require professional support (e.g. medical, clinical, on-call etc.).
- 2 = *Serious*
  - Physical injury to the client or others which would require medical attention (e.g. GP).
  - Psychological trauma which impinges on the clients or others quality of life and sense of wellbeing, and would require professional support.
  - Behaviour which may lead to breakdown of current placement.
- 3 = *Major*
  - Physical injury to the client or others which would require their admission to hospital (including death).
  - Psychological trauma to the client or others which would require their admission to hospital.
  - Behaviour which would result in criminal prosecution and imprisonment or sectioning under the Mental Health Act.

Assessing Risk: Scoring Likelihood and Severity

The total score is obtained by multiplying the likelihood score by the severity score, e.g. 2 x 2 = 4.

The scores correspond to the traffic light system as follows:

- 1 or 2 is Green,
- 3 or 4 is Amber
- 6 or 9 is Red.
Assessing Risk: Human Rights Implications

- Each question in the risk assessment asks you to work with the person to rate their risk and to identify the human rights implications of each area of risk.

- The manual lists the human rights that could be affected for each area of risk.

- If a significant risk is recognised the assessor must record which human rights may be engaged.

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Recording and Worked Example

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When is a Risk Management Plan Needed?

- If a service user scores more than 4 on a risk area, a risk management plan will be needed (RED on traffic light system).

- Assessors should use the shared summary at the back of the record form to highlight any significant risks (i.e., above a score of 4). They should also indicate if person's risk has a low score as a result of current intervention, for example because of high levels of staff support or observation.
Key Concepts in HRBA to Risk: Balanced Decision Making

We need to balance the rights associated with:
• the risk posed (for the person or other people)
• and the strategy employed (for the person or the other people)

In practice you may be trying to balance:
• the Service User’s different rights
• Service User, staff and community rights

Case example
Calvin is a young man who pulls his own hair out, and attempts to bite his hands. Incidents used to occur once a week lasting for an entire morning or afternoon. Calvin’s day centre decided to introduce straight arm restrictive devices (splints) to avoid Calvin seriously hurting himself. Over 5 years, the time Calvin spent wearing the splints increased until he spent most days in them. This risked violating Calvin’s right to respect for his private life, and in extreme circumstances, his right not to be treated in an inhuman or degrading way. In particular, the amount of time Calvin spent wearing the splints was not proportionate to his self-injury which occurred at most for one morning or afternoon per week. However, if the intervention raised Calvin’s right not to be treated in an inhuman or degrading way (an absolute right) then proportionality would not apply and the intervention would be unlawful.

The intervention was reviewed; using a human rights based approach, to see if it was proportionate to the risk. As a result, staff systematically faded down the amount of time Calvin wore the splints. The splints are now only used when Calvin’s self-injurious behaviour poses significant risk to his own well-being.

Risk management strategies
Key considerations:
• If a person’s human rights may be raised,
• What type of right is being raised,
• If it’s non-absolute:
  – Is there a legitimate aim?
  – Is it lawful?
  – Is it necessary?
  – Is it proportionate?
• Do I have a duty to protect the rights?
• How do I make sure I’m not breaching them?
**Group Exercise: Vignette**

In pairs role-play introducing and completing the KMSAW with Simon

OR

In groups of two or more, role play a risk management meeting using the Human Rights Decision Making Form to guide your thinking

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"Your service receives a referral from a social worker for "Simon", a 22 year old White-British male who lives in an adult placement in your borough and attends a Life Skills course within the learning support unit of a mainstream adult education college, in a neighbouring borough. The referral states that Simon is at risk of exclusion from his college due to inappropriate sexual behaviour. Simon has a diagnosis of moderate learning disabilities and cerebral palsy; he has attracted labels of autism and attachment disorder but has not been formally diagnosed.

During the pre-assessment phase you discover that there have been several incidents of Simon caressing a male peer's feet whilst at college. Simon's adult placement carers appear very anxious and state they are worried that Simon may be a sex offender and have stopped him from having contact with their 6 year old grand-daughter who visits the family home regularly. Simon's college tutor has concerns about vulnerability and capacity issues, discloses that she and the college are inexperienced regarding sexuality issues. She states that she wishes to advocate for him but feels under-pressure from her manager to exclude Simon, who has stated that 'unsexualised behaviour' is not applicable in college.

The college have initiated a risk management strategy where staff must have sight supervision of Simon at all unstructured times he must remain with a named member of staff. He has also been excluded from attending the end of year prom.

When you visit Simon at college for the first time you observe many instances of students displaying 'unsexualised behaviour' such as a male and a female holding hands and kissing in the corridor. Simon initially states that he wants to get rid of his 'obsession' and perversion' so as not to be in trouble at college."

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**Brief introduction to HR-JRAMP:**

(Human Right Informed Joint Risk Assessment & Management Plan)

- Originally developed to support service users on their journey home (DQA placements)
  1. About me
  2. Who is filling this in?
  3. Where did this information come from?
  4. Why is this assessment being carried out now?
  5. When will my risk plan be looked at again?
  6. My wishes
  7. About my life (Critical events history)
  8. Things me or other people are worried about (Inc. historical, clinical, social and actuarial factors)
  9. What does all this mean (formulation of risk)
  10. What options have I got?
  11. Looking at my options
  12. What legal frameworks are important in my risk plan?
  13. My risk management plan
  14. Monitoring and evaluation
  15. Will the risk decision help me?

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**Summary**

- Rights are often understood as risks - Instead of thinking about human pain, anger, & attraction, we do "risk assessment and management"
- A HRBA to risk assessment and management provides an ethical framework for considering complex situations through a human rights lens, allowing a balance to be struck between our duty of care and person-centred, positive risk management.
- Supports service user engagement in the risk assessment process

Need to consider:

- If adopting in your own service - how using the KMSAW will fit in with your existing local risk assessment and management processes?
- How do we evaluate Human Rights work? (See Donald, 2012)
- Need for broader awareness raising of human rights across local partner agencies and providers
Any questions/reflections?

Further resources:
http://www.humanrightsinhealthcare.nhs.uk/GoodPractice/AtoZ.aspx
- see above website for electronic copies of KMSAW & HR-JRAMP

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