Section nine: the local authorities and adult protection

In this section...

> *...you will learn about a particularly critical context, that is, the challenges arising from the creation of new authorities in 1996 and the implications for the delivery and oversight of social services. The section places a spotlight on Caerphilly CBC since this is where three of the six Operation Jasmine homes were located. A further context is also described, that is, a disproportionate focus on child protection during the late 90s and early 2000s. In relation to older people, referrals were made to Caerphilly CBC under Protection of Vulnerable Adult (POVA) processes which included inattention to pressure ulcer prevention and treatment. These resulted from the publication of the Welsh Assembly Government's framework for adult protection: In Safe Hands. An embargo on placing older people at one home, Brithdir was imposed and lifted during 2004, not least because of the contribution of District Nurses to improving practice at this home. In 2005 Caerphilly gave notice that its contract with Brithdir was to be cancelled. The section concludes by referring to certain deep-rooted issues which are of particular concern to local authorities, including the situation where developers build new homes without reference to the service requirements of the area.*

The homes within the purview of Operation Jasmine spanned three local authorities – Caerphilly CBC, Blaenau Gwent CBC and Torfaen CBC. This section focuses on Caerphilly CBC since it is where three homes were located, **Brithdir**, **Bryngwyn Mountleigh** and **Belmont**. Events at Brithdir would have been centre stage had the efforts to prosecute Dr P Das, **Puretruce Health Care Ltd** and Paul Black proceeded.

In **1996,** the eight county and 37 district councils which at the time constituted local government in Wales were replaced by 22 unitary authorities, containing a range of population numbers. These newly constituted bodies were given diverse responsibilities for a wide range of services. There was no institutional integration, however, between these authorities and the services provided by the hospital and preventive health services. These remained the responsibility of the NHS.

The process of setting up these new authorities is pertinent to this Review. It was experienced as disruptive – and, at times, even chaotic - with considerable uncertainty over job security and future roles for staff at every tier. Added to this was the loss of organisational memory and management expertise as many senior managers retired and/or sought employment elsewhere. Crucially, too, there was a temptation to place decision-making concerning, for example, the greater use of shared services and enhanced communications *on hold* until the new organisations were *bedded-in.* This period of significant change and ambiguity preceded

the widespread availability and use of the internet, electronic mailing lists and rapid communication. Thus at a time when communication within and across organisations and with the public was essential and *business as usual* was expected, information moved relatively slowly through and across the new hierarchies, including within Caerphilly.

Several of those who contributed to this Review recalled the challenges which faced the new authorities and their members as they sought to present a coherent corporate image to employees and the local population, as well as struggling to come to terms with the varying approaches and practices of the amalgamated bodies. The previous committee system, which had dealt with functions such as the provision of social services and housing, had made it possible for councillors to acquire specialist knowledge. The **Local Government Act 2000** established overview and scrutiny committees in local authorities (the legislative provisions may be found in the **Local Government (Wales) Act 2011**). These committees were intended as a counterweight to the executive structures. Their role was to develop and review policy and make recommendations to the council. The **2000** Act had obliged local authorities to adopt political management systems with a separate executive, and every council in Wales was obliged to have a mayor, or a council leader, plus a cabinet system.

Caerphilly emerged as one of the largest of the new authorities, consisting as it did of a merger of two former District Councils (Islwyn and Rhymney) and parts of two former County Councils, that is, Gwent and Mid Glamorgan. In contrast, Torfaen[211], Blaenau Gwent[212] and Merthyr Tydfil were amongst the smallest, prompting questions concerning their capacity to deliver services which were responsive to local priorities and circumstances. The effectiveness of these smaller authorities was assumed rather than demonstrated. The duplication of scarce resources within the south east Wales area, and the challenge of attracting experienced managers and staff to multi-service, multi-functional organisations, had particularly long-lasting consequences and the implications for the delivery and oversight of social services, for example, were under-estimated.

During the early days of transition, a case of child abuse in Caerphilly had a considerable effect on social services functioning. In **1998**, the then Welsh Secretary called for further measures to review and improve child protection arrangements at Caerphilly CBC on the grounds that managerial supervision was poor and that communication between the various child protection agencies was ineffective. While staff concentrated on re-examining historical child abuse cases, it was suggested to this Review that *eyes were off the ball* in terms of **adult protection**. Even the publication of *In Safe Hands*[213] in **2000** which set out the Welsh Assembly

[211] Where The Beeches was located

[212] Where Bank House and Grosvenor House were located

[213] Guidance issued under S7 of the Local Authority Social Services Act 1970

Government's framework for adult protection procedures[214], did not effectively displace the authority's disproportionate focus on child protection issues.

The **National Minimum Standards** (NMS) under the Care Standards Act 2000 contain standards which relate to the prevention of abuse, for example, Standard 18 of the NMS for care homes for older people states:

The Registered Person ensures that service users are safeguarded from physical, financial or material, psychological or sexual abuse, neglect, discriminatory abuse or self-harm, inhuman or degrading treatment, through deliberate intent, negligence or ignorance, in accordance with written policies.

In **2001**, a South East Wales Executive Group for the Protection of Vulnerable Adults was established to coordinate the development and implementation of a south east Wales joint agency framework. Signatories to the framework included Blaenau Gwent CBC, Caerphilly CBC, Torfaen CBC, Gwent Healthcare NHS Trust, CSIW, Blaenau Gwent LHB, Caerphilly LHB, Torfaen LHB and Gwent Police.

In **2002**, *A Report of the Joint Review of Social Services in Caerphilly CBC*[215] stated

Caerphilly social services is not yet serving people well and, despite some encouraging signs, prospects for the future are uncertain...social services in Caerphilly are improving, albeit from a very low base...social services expenditure across different service user groups shows spend is significantly higher in terms of children's services when benchmarked against other authorities...below average spending in adults' services, in particular in services to older people...

Delayed hospital discharges are an area of concern. The pace of development of home and community based services needs to quicken with the Council working in conjunction with partner agencies...Demographic trends analysis shows a 2% annual increase in the number of people over 75, which can only exacerbate current problems...Caerphilly CBC...is like a merry go round with high staff turnover that leads to problems of continuity and hinders the pace of progress at all levels...Social services has a poor record of undertaking timely reviews in...adults' services...a key area for improvement.

In **March 2002**, the Leader of Caerphilly CBC was quoted[216] as *demanding an inquiry into how a disgraced GP* (that is, a former colleague of Dr P Das) *landed a job with one of Wales' biggest private nursing home firms* i.e. Puretruce Care Ltd with *22 care homes...with nearly 1,000*

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[214] This guidance was described by Luke Clements and Pauline Thompson as *process orientated* and *without powers to enable local authorities to protect victims of abuse. Clements L and Thompson P.* (2007) *Community Care and the Law* 4th Edition London: Jessica Kingsley Publishers)

[215] Audit Commission

[216] http://www.thefreelibrary.com/SEX-FOR-CASH+DOCTOR+IN+HOMES+JOB+STORM%3B+Inquiry+call+over+shamed...-a085917693 (accessed on 8 November 2014)

places for older people...Dr [P] *Das confirmed that no checks had been made with police before Bhagat was taken on.*

In **September 2003**, the South East Wales Executive Group for the Protection of Vulnerable Adults published, *Protecting Vulnerable Adults: Interagency policy, procedures and practice guidance for responding to alleged abuse and inappropriate care of vulnerable adults in the South East Wales area.* This stated that:

Large scale investigations, e.g. those involving a group of vulnerable adults...or a number of establishments are complex...Joint planning and management need scrupulous attention... ***The responsibility for coordinating a large scale investigation is with the social services nearest to where the vulnerable adult lives at the time of the alleged abuse...Whenever complaints about abuse suggest a criminal offence may have been committed, the police must be contacted urgently. This takes priority over other enquiries. The safety of the vulnerable adult must be given the highest priority.***

While social services are responsible for coordinating an adult protection case and the police for leading an investigation into an alleged criminal offence, ***the identification, assessment, protection and care of vulnerable adults is an interagency and multi-disciplinary responsibility.***

...if the vulnerable adult needs urgent medical attention this should be arranged without delay...*early police involvement makes sure forensic evidence is not lost or contaminated.*

If during the investigation/assessment there is evidence that the vulnerable adult(s) is exposed to considerable risk, immediate action must be considered to protect them. *This may include moving the vulnerable adult to a place of safety...*

If following a police investigation into an alleged crime, the CPS finds there is insufficient evidence to prosecute, an Adult Protection Case Conference may be held to review the case and plan appropriate action. The police ***must*** *inform other agencies and the vulnerable adult if there is insufficient evidence to prosecute.* ***It is essential to assess any remaining issues not addressed by the police e.g. overall practice and management issues to do with the care of the vulnerable adult and others who might be at risk...***

Alan Sayers' death at **Bryngwyn Mountleigh** in **2004** did not result in a Protection of Vulnerable Adult (POVA) referral. However, there were subsequent POVA referrals from this home.

In **April 2004**, the Western Mail[217] published an article entitled *Elderly will suffer as care home crisis deepens.* This stated that five care homes in Caerphilly *fear they could be forced to close within 12 months in the face of paltry funding increases.* Anna Bentley, of **Belmont Residential Home** anticipated being *forced to close within 12 months,* not least since *'pointless' new regulations...*disallow *double rooms...April 2005 is crunch time – if the fees are increased to*

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[217] http://www.thefreelibrary.com/%27Elderly+will+suffer%27+as+care-home+crisis+deepens.-a0114912458 (accessed 8 November 2014)

offset the reduction in the number of rooms we may be able to keep on going. We will carry on but it will come to the point when we have to ignore the inspectors and the regulations.[218] Mrs Bentley questioned the want of parity across fees for private care home residents and residents in local authority homes.

In **September 2004**, **Caerphilly CBC** and **Puretruce Health Care Ltd** commissioned a report from Gordon Cole[219] to *identify whether the contractual standard of care...was being met*[220] at **Holly House**.[221] He visited the home on four occasions and noted in his report that *there is no doubt that the quality and standards of care more than comply with regulatory requirements.*

During **October 2004**, a period of intensive assessments by District Nurses began at **Brithdir** arising from failures noted by the **CSIW** and **POVA** procedures in relation to pressure ulcer prevention and treatment.

In **December 2004**, **Caerphilly CBC** confirmed that it was *prepared to lift the current embargo* (on placements at **Holly House**) *up to a maximum of 29 beds pending the Tribunal decision.*

Also in December 2004, **Caerphilly LHB** and **Caerphilly CBC** confirmed that the embargo in place on **Brithdir** would be lifted, subject to conditions.

During **February** and **April 2005**, Gordon Cole made two further visits to **Holly House**. His findings did not tally with those of the **CSIW** inspectors.

The decision of the **Care Standards Tribunal** in relation to **Holly House** was produced in **May 2005**. Mr Roger McCarthy QC for **Puretruce Health Care Ltd** proposed the continuing involvement of Gordon Cole.

In **June 2005**, **Caerphilly CBC's Director of Social Services** featured in the BBC Wales broadcast, *Week In Week Out: Taking Care?* This programme expressed a deeply felt discontent with the track record of care at **Holly House** and the **Merthyr Tydfil Nursing Home**.[222] It was noted that an independent consultant had been employed by **Caerphilly CBC** to write a report about the care provided at **Holly House**. The Director of Social Services himself confirmed that he would not place a loved one there since the home did not meet minimum standards *in all respects.* He went on to note that the *first and best option is to make* a failing home *better.* NHS nurses began working at **Holly House**, at public expense, to

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[218] In 2009 Mrs Bentley pleaded guilty to 37 offences, many of which related to the inadequate care of residents at Belmont (see Section 8)

[219] *A policy adviser and representative for Care Forum Wales and an independent consultant providing advice to local authority and independent sector care providers,* (p2 of *Puretruce Health Care Ltd v National Assembly for Wales* [2005] EWCST 544 (EA-W) 5 September 2006)

[220] *Puretruce Health Care Ltd v National Assembly for Wales* [2004] 0371 (EA-W) 15 May 2005

[221] A home in Caerphilly owned Dr P Das and Dr N Das

[222] A home owned by Dr P Das and Dr N Das See Appendix 1

ensure the safety of residents. In other words, improvement of standards was proposed as the initial solution.

Also in June 2005, POVA referrals were made to **Caerphilly CBC** concerning **Brithdir**. During **November 2006**, Caerphilly CBC gave notice that the contract with **Brithdir** was to be cancelled on the grounds that there had been no improvements.

The decision of the **Care Standards Tribunal** (**September 2006**) noted that *one of the more bizarre financial decisions taken by Dr* [P] *Das was his attempt to extract "cheap money" from Caerphilly CBC in* ***June 2005***, that is, *within a very short time of the Tribunal's decision giving him a last chance to save Holly House, Dr Das wrote to the Director of Finance of his company's main customer and revealed that it had pressing debts totalling £49,360 that it could not pay. Dr* [P] *Das in effect threatened Caerphilly that if they did not help him financially he would be forced to leave them without a home in which to place the vulnerable adults for whom they had responsibility.*

During **2006**, **Caerphilly CBC** had *'all qualified' social work teams.*

In a report prepared for this Review[223] **Caerphilly CBC** stated that from the outset, *agencies worked together through the multi-agency POVA process. It appears Police were made aware of all the POVA referrals in Mountleigh Bryngwyn and Brithdir nursing homes.* However, Caerphilly believed that *all referrals at these homes were being considered by the police as either key cases to take forward to a prosecution or as supporting evidence. The usual POVA process of individual strategy meetings appears to have been replaced by overarching meetings where both multiple referrals and systems failures in Mountleigh Bryngwyn and Brithdir nursing homes were discussed. This appears to have assisted staff and particularly the police to gain a broader picture of the concerns however,* it *led to a situation where the individual POVA referral investigation outcomes could not be provided as the case lay with the police as part of...Operation Jasmine. This situation continued for a considerable length of time.*

During **August 2007**, an Occupational Therapist employed by **Caerphilly CBC** *raised POVA and other care concerns*[224] about **Belmont**. Caerphilly CBC *developed a Provider Performance Monitoring Protocol* because *the systems failures...required urgent and specific attention.*

In **January 2008**, **Caerphilly Area Adult Protection Committee** ratified a document, headed ***2002-current day***, which was known as the *Jasmine 'lessons learned'* or *'106 lessons.'*[225] It was widely shared by Caerphilly CBC and Gwent Police at conferences in Wales and England concerning adult protection, for example.

From **2008** onwards, the authority's *Provider Performance Monitoring Protocol* was used.

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[223] 3 October 2014

[224] Caerphilly CBC Improvement Journey: Report for Jasmine Review

[225] See Appendix 5

Between **2008** and **2010, Gwent Police** referred 10 social workers to the **Care Council for Wales** (CCW), none of whom had been charged with an offence. Most of them had responsibility for reviewing older people placed in the Das' homes. *Each case was reviewed with account taken of the context within which these individuals were working and the fact that the employer had assessed each individual and, in some cases, put additional training in place. As a result it was concluded that it would be unlikely that findings would be made against these individuals in a professional conduct hearing. All cases were therefore closed in August 2010.* [226]

In **May 2009**, the service managers responsible for POVA and for Commissioning Adult Services at **Caerphilly CBC** had an article published [227] about the *interagency challenges to improving provider performance.* This highlighted concern about poor standards in some registered homes as evidenced by increasing numbers of referrals to the authority and by the suspension of placements; the significant variations in the performance of providers; the failure to develop a strategic approach to managing contracts and collating POVA issues from sources such as the local health board, NHS Trust and contract monitoring; and the use of *'overarching' meetings,*[228] for example. The article noted that engaging with service providers was enhanced *when it was realised that the regulator and contractor were working together and asking for one consistent set of improvements to be made...discussions with providers with regard to monitoring/inspection unsurprisingly revealed frustrations at the number of different monitoring agencies and episodes of monitoring.* Finally, the article questioned the merits of adopting a reactive stance and using embargoes since these did not have any track record of achieving sustained improvements.

Caerphilly CBC's contract monitoring reports were posted on the Council's website. These include the outcomes of *out of hour's contract monitoring visits.*

Also in May 2009, the Welsh Government published statutory guidance, *Escalating Concerns With, and Closures of, Care Homes Providing Services for Adults.* Issued under S7 of the Local Authority Social Services Act 1970 and sections 12 and 19 of the National Health Service (Wales) Act 2006, it sets out responsibilities and the ways in which these may be discharged. The guidance states that:

Escalating concerns will warrant proactive or reactive intervention from those commissioning services, possibly from one or more commissioning agencies, designed to improve the quality of services and, where possible, prevent what might be avoidable home closures.

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[226] Operation Jasmine Review: Evidence from the Care Council for Wales

[227] Giordano A. and Street, D. (2009) Challenging provider performance: developing policy to improve the quality of care to protect vulnerable adults, in *The Journal of Adult Protection,* 11 (2), 5-12

[228] These were used to manage more than one referral or concern related to the same service or provider.

In **January 2010**, the **Care and Social Services Inspectorate Wales** (CSSIW) undertook an *Inspection of Adult Protection in Caerphilly County Borough Council.* Its report on the results stated that:

Caerphilly CBC has worked hard to make the protection of vulnerable adults a strong and high quality service...and has worked diligently to continue to improve the work of its specialist Adult Protection team. There has been a strong emphasis on getting the processes right so as to provide a clear indication of what action has been taken, what was decided and what the benefits were to vulnerable people. The local authority has been concerned about the inconsistent quality of registered social care services which it either provides or commissions...There have been particular issues associated with a continuing Police investigation into standards of care in residential care homes offering personal care and nursing, which has had a significant impact in Caerphilly. It has focused resources on solving these and other, difficult adult protection considerations...

During **August 2010**, *Fulfilled Lives, Supportive Communities: Commissioning Framework Guidance and Good Practice* was published by the Welsh Assembly Government and NHS Wales. This built on *Promoting Partnership in Care – Commissioning Across Health and Social* Services.[229] Both publications contained a change of terminology from *planning and procurement practice* to *commissioning* and the core features of commissioning were to be activities which ensured that services were planned and organised to meet the *outcomes required.* This involved a *whole system perspective,* familiarity with population needs, best practice and local resources in order to plan, implement and review changes to service provision.

Brithdir was sold in **2006.** It was taken over by Mr Bamrah of **Broadway Care Centre Ltd** and renamed **Hillside**. Subsequent concern about the quality of care at **Hillside**, using Caerphilly's *Provider Performance Monitoring Protocol,* led the Council to terminate its contract in **December 2011**. Mr Bamrah unsuccessfully challenged the process which led to this decision.[230]

In **May 2013, Caerphilly CBC** revised its *Provider Performance Monitoring Protocol* again[231], which enabled information about a commissioned service to be shared in forums other than POVA meetings – and operationalised the requirements of the *Escalating Concerns* guidance. The rationale for the Protocol included a wish to engage proactively with partner agencies in order to *reinforce their expectations of quality services being provided.* This resulted in an expanded role for the contract monitoring team in order to gain *a more comprehensive view of the quality of care services provided.* The approach involved (i) monthly Quality Assurance meetings *to consider and discuss issues relating to any service/ provider* and (ii) *Provider Performance Monitoring Meetings* which were to be triggered by evidence of *poor*

[229] Welsh Assembly Government 2003

[230] [2012] EWHC 37 (Admin) Case No: CO/12238/2011

[231] This was revised regularly following its creation in 2007/08

performance. There was an expectation that all commissioners would have *an informed and independent view* concerning the quality of service provision *rather than be reliant upon inspection reports from the regulatory body or other agencies.*

The tasks **Caerphilly CBC** faced in being the authority in which three of the six Operation Jasmine homes were based are all too familiar to authorities who work with those who provide care services for frail older people with extensive support needs. Caerphilly CBC has currently a *Contract Default Process* with which to address potential and actual contract breaches. The process begins with a meeting with the provider to *agree a way forward...to improve the situation and performance...Where the contract is terminated with a care home, the Caerphilly CBC Care Home Closure Policy will be used to ensure a smooth transition for service users to a new service provider.*

Although the authority acknowledges that the task is incomplete, the reforms and initiatives adopted – described as *The improvement journey* – focus on accountability for the safety and wellbeing of older people, by for example: linking POVA coordinators with care home provider forums and the out of hours team; providing feedback forms for staff visiting care homes; hosting the *Wales Commissioning Network* for information sharing about provider status and performance; evening seminars for elected members; providing workshops for commissioners, CSSIW and health staff; and adopting 'My Home Life'[232] and Dementia Care Matters.[233] Consent has been obtained from providers for commissioners to access copies of reports concerning food hygiene, fire and environmental health. Reviews are offered to self-funding residents.

These reforms are taking place against such deep-rooted and ongoing issues (for all local authorities) as:

- An embargo on placements becoming the pretext for not making improvements
- Less than credible threats of home closure given the shortage of EMI provision and prospective residents subject to *delayed discharges* in general hospital provision
- The dilemma inherent in *waiting* for providers to improve as they commit to adhering to action plans or promise to appoint staff to key roles for example
- Legal challenges by owners disputing the accuracy of critical CSSIW reports
- The expectation of some providers and partner agencies that local authorities and health services will willingly provide staff to failing homes at no cost to the providers
- A widespread belief among private care home providers that local authority provision is given an unfair advantage

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[232] *A UK wide initiative that promotes quality of life and delivers positive change in care homes for older people* http://myhomelife.org.uk/ (accessed 18 February 2015)

[233] An organisation which seeks to transform care for people with dementia http://www.dementiacarematters.com/person.html (accessed 18 February 2015)

- Uncertainty about actions which may be legitimately taken when the police have investigatory primacy, irrespective of the duration of the police investigation
- The development of new homes without reference to the population profile or knowledge of service assessment and requirements
- The resistance of people's relatives to the prospective closure of a home. Typically, but not always, these will be the relatives of people who have not been harmed in the home in question
- The role of home owners and staff in (i) encouraging relatives to challenge the decisions of health and social care managers and regulators, (ii) the citing of research about the implications of moving a person to another home for their mortality and (iii) supposed deference to older people's human rights.