

# Briefing: Care Act implications for safeguarding adults

## What has changed under the new legislation?

Adult safeguarding is the process of protecting adults with care and support needs from abuse or neglect (hereafter referred to as “adults”). It is an important part of what many public services do, but the key responsibility is with local authorities in partnership with the police and the NHS. The Care Act 2014 puts adult safeguarding on a legal footing and **from April 2015** each local authority must:

- make enquiries, or ensure others do so, if it believes an adult is subject to, or at risk of, abuse or neglect. An enquiry should establish whether any action needs to be taken to stop or prevent abuse or neglect, and if so, by whom
- set up a Safeguarding Adults Board (SAB) with core membership from the local authority, the Police and the NHS (specifically the local Clinical Commissioning Group/s) and the power to include other relevant bodies
- arrange, where appropriate, for an independent advocate to represent and support an adult who is the subject of a safeguarding enquiry or Safeguarding Adult Review (SAR) where the adult has ‘substantial difficulty’ in being involved in the process and where there is no other appropriate adult to help them
- cooperate with each of its relevant partners in order to protect adults experiencing or at risk of abuse or neglect.

It also updates the scope of adult safeguarding:

Where a local authority has reasonable cause to suspect that an adult in its area (whether or not ordinarily resident there) -

**(a) has needs for care and support (whether or not the authority is meeting any of those needs),**

**(b) is experiencing, or is at risk of, abuse or neglect, and**

**(c) as a result of those needs is unable to protect himself or herself against the abuse or neglect or the risk of it.**

In effect this means that regardless of whether they are providing any services, councils must follow up any concerns about either actual or suspected adult abuse. SABs will be strengthened and have more powers than the current arrangements set up by “No Secrets” but they will also be more transparent and subject to greater scrutiny. All organisations who are involved in adult safeguarding will need to reflect the statutory guidance, good practice guidance and ancillary products that have been developed when devising their training and implementation plans for staff. Policies and procedures should be based on the processes laid out in the statutory guidance.

## Key messages

The statutory guidance enshrines the six principles of safeguarding:

1. **empowerment** - presumption of person led decisions and informed consent
2. **prevention** - it is better to take action before harm occurs
3. **proportionality** - proportionate and least intrusive response appropriate to the risk presented
4. **protection** - support and representation for those in greatest need
5. **partnerships** - local solutions through services working with their communities
6. **accountability** - accountability and transparency in delivering safeguarding.

It signals a major change in practice - a move away from the process-led, tick box culture to a **person centered** social work approach which achieves the outcomes that people want. Practitioners must take a flexible approach and work with the adult all the way through the enquiry and beyond where necessary. This is illustrated in the guidance with the use of a decision tree. Practice must focus on what the adult wants, which accounts for the possibility that individuals can change their mind on what outcomes they want through the course of the intervention.

The Care Act also recognises the key role of **Carers** in relation to safeguarding. For example a carer may witness or report abuse or neglect; experience intentional or unintentional harm from the adult they are trying to support or a carer may (unintentionally or intentionally) harm or neglect the adult they support. It is important

to view the situation holistically and look at the safety and well-being of both. The Act makes it clear throughout the need for preventing abuse and neglect wherever possible. Observant professionals and other staff making early, positive interventions with individuals and families can make a huge difference to their lives, preventing the deterioration of a situation or breakdown of a support network.

The Care Act recognises that local authorities cannot safeguard individuals on their own; it can only be achieved by working together with the Police, NHS and other key organisations as well as awareness of the wider public. Fears of sharing information must not stand in the way of protecting adults at risk of abuse or neglect. The Act includes new duties for SABs to work more closely together and share information. The statutory guidance also introduces **Designated Adult Safeguarding Managers (DASMs)** in organisations concerned with adult safeguarding.

Agencies that support adults at risk of abuse and neglect can prevent and detect harm but they must act swiftly and competently when abuse is suspected or reported. There must also be sufficient support, specialist expertise, advocacy and access to criminal justice within each area and the commitment from all agencies and organisations to work together for the well-being of the adult.

The advances in **personalisation** of social care go hand-in-hand with the new approach to safeguarding; empowering people to speak out, make informed choices, with support where necessary, and encouraging communities to look out for one another. The two concepts are also inseparable from **quality of life** and **dignity** - overprotective approaches can in themselves put adults at risk of harm.

There must be an emphasis on sensible **risk appraisal**, not risk avoidance, which takes into account individuals' preferences, histories, circumstances and life-styles to achieve a proportionate tolerance of acceptable risks. In the words of Lord Justice Munby "what good is it making someone safer if it merely makes them miserable?"

In illustrating the types of abuse the Act explicitly mentions **financial abuse**, as this is not commonly understood to be in the scope of abuse, but does not prioritise it above other forms of abuse and neglect. The statutory guidance acknowledges the challenges in working with those who **self-neglect** and observes that SABs can be an appropriate forum for partners to take a strategic approach to this area of work. There is more extensive discussion of types of abuse in the statutory guidance.

## Local authorities (LAs)

Since 2000 and the publication of “No Secrets” the local authority has been required to take a **leading coordinating role** with all relevant organisations on safeguarding adults in its area, the Care Act now places this in primary legislation for the first time.

The Care Act introduces new legislation governing social care but there is still a need for specialist and ongoing training to keep up the **legal literacy** of specialist practitioners. LAs must also ensure they support workers to make sure they use the least restrictive options and comply with the Human Rights Act (HRA) and the Mental Capacity Act (MCA).

Staff must be aware of the criteria that are in force for adults to be considered under the section 42 duty to make enquiries. The enquiry could begin and end with a conversation with the individual who is the subject of the concern or to escalation to a much more formal multi-agency arrangement. Staff in all organisations should be given clear direction as to what information should be recorded and in what format. Managers must ensure that practitioners are properly equipped and supported; recognising that dealing with abuse and neglect can be stressful and distressing. Professional, skilled supervision by line managers is an essential part of managing any safeguarding concern.

The **Making Safeguarding Personal** programme, led by ADASS and LGA, with funding from the Department of Health, has gained widespread momentum. It follows the edict of ‘no decision about me without me’ and means that the adult, their families and carers are working together with agencies to find the right solutions to keep people safe and support them in making informed choices.

There must be enough capacity to provide an **advocate** to individuals when they are unable to speak for themselves without support (and meet the test set out in the Act) or an Independent Mental Capacity Advocate (IMCA) if they are subject to the MCA or an Independent Mental Health Advocate if they are subject to that Act.

All council departments must make their staff aware of adult abuse and neglect and where and how to report any concerns that they have. **Councillors** should also be made aware of their corporate role in preventing and reporting abuse. The **Overview and Scrutiny Committee** and **Health and Wellbeing Board** will have sight of the SAB's strategy and annual reports so must have an understanding in how to interpret and challenge them. The **Director of Public Health** must ensure that their service is working within a safeguarding context to prevent abuse.

## The NHS

The NHS is a key component of safeguarding and the local **Clinical Commissioning Group/s** is one of the three statutory core partners of the Safeguarding Adults Boards. The CCG is in the best position to ensure that NHS providers meet their responsibilities through its commissioning arrangements with them. However SABs are free to invite additional partners to sit on the Board. For example, many SABs also have local NHS **Provider Trusts** on their Boards. Many Boards have also found it extremely helpful to have a representative **GP** on their Board who can communicate directly with their colleagues to emphasise the importance of their role in protecting adults at risk of abuse and neglect.

There have been a number of high profile hospital scandals that have highlighted the need for vigilance and action among staff and managers. The Act therefore set out that CQC registration requirements would introduce a **duty of candour** which would place a duty on providers to be open with patients and their families about failings in their care. The NHS has particular duties for patients less able to protect themselves from harm, neglect or abuse. All commissioners and contractors have a responsibility to ensure that service specifications, invitations to tender, service contracts and service level agreements promote dignity in care and adhere to local multi-agency safeguarding policies and procedures. Commissioners must also assure themselves that care providers know about and adhere to relevant CQC Standards. Contract monitoring must have a clear focus on safeguarding and robustly follow up any shortfalls in standards or other concerns about patient safety.

NHS managers, commissioners and regulators will want assurance that when abuse or neglect occurs, responses are in line with local multi-agency safeguarding procedures, national frameworks for Clinical Governance and investigating patient safety incidents. Therefore these services must produce clear guidance to managers and staff that sets out the processes for initiating action and who is responsible for any decision making. To prevent cases falling through the net, the NHS and the local authority should have an agreement on what constitutes a **'serious incident'** and what is a safeguarding concern and appropriate responses to both.

## The police

The Care Act reinforces the fact that the police play a critical role in safeguarding adults. The Act places a requirement (schedule 2) that the local chief officer of police is a statutory core member of the SAB. The police can protect adults from abuse and neglect, bring perpetrators to justice and provide information, for example intelligence about domestic abuse where an adult is at risk. The local multi-disciplinary procedures should make it clear where and when the police will become involved and the **hierarchy of enquiries** place a criminal investigation as taking precedence, although the LA will need to ensure steps are taken to safeguard and support the adult. There will be occasions where other enquiries can proceed alongside to ensure minimum delays.

It is the responsibility of the police to lead investigations where criminal offences are suspected by preserving and gathering evidence at the earliest opportunity. Where necessary the police will interview the alleged victim (who may well need support), perpetrator and witnesses. As the lead investigating agency, the police should work with the local authority and other partner agencies to ensure that all relevant information is shared and identified and a risk management or safeguarding plan is agreed at an early stage. In cases where criminal proceedings are deemed inappropriate, the police should agree a course of action with partnership agencies to protect the adult/s.

All officers must be up to date with their legal powers and duties, including their responsibilities in relation to the MCA and MHA. They must also take into consideration that the adult may have difficulty in engaging due to learning difficulties or other disabilities as well as cultural, language or other communication difficulties.

## Local Safeguarding Adults Boards (SABs)

By April 2015 all local authorities must have established a SAB as set out in the Care Act and the accompanying statutory guidance. Partners will find themselves more accountable for their actions and there will be higher public expectations. The statutory guidance encourages all three of the core partners to make a resource contribution to recognise the corporate partnership accountability and to ensure the SAB can carry out its functions. The Care Act (schedule 2) gives the local SAB three specific duties it **must**:

1. Publish a **strategic plan** for each financial year that sets out how it will meet its main objective and what each member is to do to implement that strategy. In developing the plan it must consult the Local **Healthwatch** organization and involve the community.

2. Publish an **annual report** detailing what the SAB has done during the year to achieve its objective and what it and each member has done to implement its strategy as well as reporting the findings of any Safeguarding Adults Reviews (SAR) including any ongoing reviews.
3. Decide when a SAR is necessary, arrange for its conduct and if it so decides, to implement the findings. Where the SAB decides not to implement an action from the findings it must state the reason for that decision in the Annual Report.

Boards will need to agree clear policy and procedures, membership, governance structure and communication plan, including how to obtain feedback from the local community. The local training and workforce development strategy will need updating in light of the Act; it should be competency based to ensure that workers' practice meets the Act's new requirements including the latest guidance on the Mental Capacity Act, undertaking MCA assessments, and Deprivation of Liberty Safeguards.

The Care Act says that if a SAB **requests information** from an organisation or individual who is likely to have information which is relevant to the SAB's functions, then they must share it with the Board. Additionally agencies should have drawn up a common agreement relating to **confidentiality** and the sharing of information between themselves based on the well-being of the adult at risk of abuse or neglect. It should also set out in what circumstances information will be shared without the agreement of the individual.

The Act introduces statutory **Safeguarding Adults Reviews** (previously known as Serious Case Reviews) and gives Boards flexibility to choose a proportionate methodology. The purpose of an SAR must be to learn lessons and improve practice and inter-agency working. It defines the circumstances under which a SAB must conduct a SAR as "there is reasonable cause for concern about how the SAB, members of it or others worked together to safeguard the adult and death or serious harm arose from actual or suspected abuse." It expects agencies to cooperate with the review but also gives Boards the power to require information from relevant agencies. The SAB may also commission a SAR in other circumstances where it feels it would be useful, including learning from "near misses" and situations where the arrangements worked especially well.

## Care providers

Providers of domiciliary, residential and nursing home care, including hospitals are regulated by the **Care Quality Commission (CQC)** and have a duty to report any allegations of abuse or neglect to the CQC. The statutory guidance states that all service providers should have clear operational policies and procedures that reflect the framework set by the SAB in consultation with them. This should include what circumstances would lead to the need to report outside their own organisation to the local authority. The employers must be clear where responsibility lies when abuse or neglect is perpetrated by employees - they should investigate any concern unless there is compelling reason why it is inappropriate or unsafe (e.g. serious conflict of interest on the part of the employer). However if the employer considers a **criminal offence** may have occurred then they must urgently report it to the police. A new law is currently being considered to give greater protection to people with mental capacity (legislation already covers people without mental capacity); it will make **ill-treatment or wilful neglect** by any person employed by a care service a criminal offence.

All care providers should share a common value base ensuring that people are treated with dignity and respect, safeguarded from harm and founded in person-centred care. Managers and senior staff must be trained in MCA and DoLS requirements and all their staff should have at least basic awareness safeguarding training.

## Other organisations

The Act recognises and reinforces that other organisations make a significant contribution to adult safeguarding. The statutory guidance lists many of them and encourages SABs to include relevant bodies on their Board. Each organisation must be familiar with the local multi-agency policy and procedures and draw up internal procedures to direct staff on what to do if they encounter abuse. They must also make it clear to staff that they must share information in cases of abuse. All staff (including personal assistants employed using direct payments) and volunteers in any organisation who have contact with adults who could be at risk of abuse or neglect have a duty to act if they have any concern that an adult is being abused, neglected or exploited.

**The voluntary sector** and organisations of disabled, older and mentally ill people should be encouraged and supported to develop their provision of advocacy, signposting and prevention. They are also a very good way to feed in the voice of those using care and support services and carers to the SAB and service planners.

**Housing** providers have a key role in adult safeguarding, particularly as their staff may be in the best position to spot signs of abuse or neglect at an early stage, especially where other services are not involved. While the Supporting People Programme regulates providers and builds safeguarding standards into its contracts, there are many other landlords outside these regulations who house adults with care and support needs.

**Fire and Rescue Services** should be supporting other agencies to recognise, assess and manage ongoing fire risks for adults. The Service can visit identified adults to give safety advice and can provide smoke alarms, for example. Their staff need to be aware of signs of adult abuse and neglect and what to do should they if they have concerns when visiting people.

**Prisons** and approved premises have their own safeguarding duties to prisoners with needs of care and support. The National Offender Management Service is working with a range of bodies in developing improved safeguarding arrangements that will offer equivalent protection to other adults with care and support needs. Prison Governors, or their senior representatives, are able to attend SABs with the agreement of the core partners. They are able to seek and share information on improving adult safeguarding across the piste. Additionally, prison staff may request help or advice from the local authority in a particular situation where they feel the need for more expertise or a different perspective. Local authorities' section 42 duties to make enquiries and section 44 duties (to carry out a SAR) do not apply to prisons and approved premises.

The **Probation Service** should be included in improving safeguarding locally. They already work in partnership with other agencies through the Multi Agency Public Protection Arrangements (MAPPA). They have a remit to be involved with victims of serious sexual and other violent crimes and are in a position to identify and help offenders who are at risk of abuse. They aim to reduce the re-offending behaviour of sexual and violent offenders in order to protect the public and previous victims from serious harm.

**Criminal justice system** bodies will need to ensure that they support enquiries and enable adults at risk, victims and witnesses to have access to justice. Those working with domestic violence, hate crime and anti-social behaviour must be alert to and include adults with care and support needs who may be at risk of abuse or neglect.

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