

SAFEGUARDING ADULTS TOGETHER

UNDER THE CARE ACT 2014

A multi-agency practice guide

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**CRITICAL
SKILLS FOR
SOCIAL WORK**

Chapter 1 | **An introduction to safeguarding under the Care Act 2014**

This chapter provides an historical perspective of adult social care legislation and how the need for a safeguarding response has been recognised as an important feature of support to adults with care and support needs. For those practitioners who are unfamiliar with the safeguarding subject, this is an introduction to new changes and duties for all under the Care Act 2014.

Objectives

To develop knowledge and understanding of:

- » the historical background of safeguarding;
- » the legal context of the Care Act 2014;
- » safeguarding principles;
- » safeguarding duties;
- » categories of harm;
- » safeguarding and the role of the carer;
- » a UK approach.

Historical background

When the Care Act was introduced in England in 2014, it was largely welcomed as a legal document that consolidated what had been up until that point a disparate picture of policies and legal statutes.

Recognition of the need to protect adults from abuse had first emerged several decades prior to the Care Act. Brown et al (1999) identify the first documentation of elder abuse taking place in 1975, followed by more documented incidents in the 1980s. The organisation Action against Elder Abuse was set up in 1993 as a response to the growth of this problem. Alongside the increasing awareness of abuse against older people, the abuse of adults with other care needs also began to be identified. A pattern of physical abuse against adults with learning difficulties, incidents that tended to involve physical restraint and punishment for challenging behaviour, started to emerge. Adults

with mental health difficulties also started to highlight abusive treatment practices both in the community and hospital settings. Information pointed at times towards a problem of abusive organisational culture in care institutions, leading to recognition of organisational abuse as a source of harm to adults with care needs.

No Secrets

The government responded to the increased concern about the safety of adults with the introduction of its first policy to safeguard adults known as No Secrets (Department of Health, 2000). The No Secrets guidance was introduced to support the development of a national policy for the protection of adults. The policy promoted multi-agency codes of practice, which coincided with the principles espoused in the Human Rights Act that had recently come into being in 1998.

The policy came with good intentions, and the expectation of a positive step forward in forming a structured partnership approach to the protection of adults. However, the voluntary nature of the arrangements proved insufficient to support success. Ultimately, the need for a legal solution that compelled agencies to work together, with a lead organisation such as the local authority taking responsibility for enquiries, was proved by the discovery of serious organisational abuse at institutions such as Winterbourne View and the Mid Staffordshire NHS Foundation Trust.

Examples of failure to protect adults under the No Secrets policy

Winterbourne View

Winterbourne View was a private hospital that accommodated 24 patients, providing assessment, treatment and rehabilitation for adults with learning difficulties. An investigation by the television programme, *Panorama*, revealed that patients were suffering sustained ill treatment and neglect at the hospital, as a result of abuse inflicted by staff. The hospital was subject to a serious case review by Gloucester local authority, and the home was closed (Department of Health, 2012a).

Mid Staffordshire NHS Foundation Trust

Inquiries into malpractice at Mid Staffordshire NHS Foundation Trust in 2013 revealed a picture of poor care that included: call bells unanswered by staff, patient falls hidden from relatives, drinks placed out of reach of patients and a management culture that

ignored concerns raised by patients and their relatives. The Francis Report (2013) indicated a high level of patient death that the organisation attributed to data errors rather than a sign of very serious neglect and abuse.

Steven Hoskin

It was not only major organisational abuse that prompted the need to place safeguarding on a legal footing; individual incidents of failure to protect were also becoming a cause for concern. Steven Hoskin, a young man with learning disabilities, fell to his death from a viaduct in St Austell, Cornwall, having been tortured and eventually pushed from the bridge by two adult assailants. It transpired that several organisations had been working with Steven, and although the professionals were working within the principles of No Secrets, each agency operated only within their remit, resulting in an absence of anybody having an overview of all that was happening in Steven's life, including risks to his safety (Flynn, 2007).

These significant case examples contributed to an increasingly worrying picture of abuse of vulnerable adults that demonstrated the safeguarding inadequacy of the voluntary No Secrets policy. The government responded with the introduction of the Care Act 2014, taking steps to provide a safeguarding framework that instigated a legal duty to protect adults to be free from abuse and neglect.

Legal context

Before considering the changes brought in by the Care Act 2014, it would be helpful to place the Act itself in the legislative history of adult social care. A look back at the statute history (see Table 1.1) provides a view of the changing approach to the support of vulnerable adults, beginning with a fairly punitive approach permitted in 1948 with the National Assistance Act, through to the more enlightened model of support enshrined in the Care Act today. The timeline of the legislation is provided in Appendix 1.

Aside from the Human Rights Act 1998 and the Mental Capacity Act 2005, the Care Act 2014 repealed the remainder of the legislation identified above. The Act replaced the preceding statutes and the policy document No Secrets with a unified document that incorporated both human rights and mental capacity principles into a legally binding safeguarding framework. Care and support guidance published by the Department of Health underpins the Care Act 2014, providing practice detail about the legal duty to support adults to be free from abuse and neglect.

Table 1.1 Table of legal statutes

Act	Purpose
National Assistance Act 1948	This Act formed the underpinning legislation for adult social care, giving the local authority the legal powers to provide and commission residential care. It gave the authority powers to remove someone who might be deemed unable to care for themselves from their home and place the person in a residential care setting.
Health Services and Public Health Act 1968	This legislation conferred functions to the local authority to promote the welfare of 'old people'.
Chronically Sick and Disabled Person Act 1970	The first Act in the world that recognised and gave rights to adults with disabilities. This at its time was a ground-breaking piece of legislation designed to bring quality of life to people with disabilities.
Health, Social Services and Social Security Adjudications Act 1983	The Act made provision for finance of social services and the Central Council for Education and Training in Social Work.
Disabled Persons (Services, Consultation and Representation) Act 1986	Provision for the improvement of the effectiveness and co-ordination of resources, in the provision of services for people with mental or physical support needs. It made a further provision for the assessment of the needs of such people, establishing consultation processes and representation rights for such people.
NHS & Community Care Act 1990	A significant step in reforming the law relating to adults. This Act imposed a duty to assess need and to ensure that needs were met.
Human Rights Act 1998	The Human Rights Act set out the fundamental human rights that everyone is entitled to. It also protected these rights by enabling individuals to seek redress through British courts if their rights were breached. All public bodies and new laws must comply with these rights.
Health and Social Care Act 2001	Established a direct payments system for a person's care and support needs. It has been replaced by the personal budget finance provision in the Care Act 2014
Mental Capacity Act 2005	The Mental Capacity Act 2005 enables adults who may lack capacity to make decisions for themselves either through support and advocacy or by means of a best interest decision process.

The Mental Capacity Amendment Act received Royal Assent in 2019, replacing Deprivation of Liberty process with Liberty Protection Safeguards. The amendments relate to changes to the Deprivation of Liberty Safeguards that will become a new streamlined process of Liberty Safeguards, considered further in Chapter 5.

Safeguarding principles and the Care Act 2014

The Care Act 2014 strives to maintain a balance between the need to safeguard adults from abuse and the protection of their individual rights as defined by the Human Rights Act (a list of human rights Articles is available in Appendix 2). In many ways it has succeeded in uniting these two important elements in the lives of adults with care and support needs. But the Care Act 2014 has not been without its critics, who believe that the individualisation of safeguarding makes it difficult to establish a consistent process and format across the country – one that enables comparison, relating to good and poor practice, to be made.

The Care Act 2014 is innovative in its provision of a set of legal principles which set out how adults should be supported to be free from abuse and neglect, in a way that enables them to retain choice and control over their lives. These principles are:

- » the three elements that underpin all safeguarding actions;
- » the six guiding principles of the Care Act 2014;
- » the well-being principle;
- » the prevention principle.

(Department of Health and Social Care, 2014)

Three important elements that underpin all safeguarding actions

Three essential features of safeguarding supported by the Care Act 2014 illustrate the alignment of adult protection with an individual person-centred approach.

1. Safeguarding is everyone's responsibility.
2. Any safeguarding response should be a personal one.
3. It should be recognised that adults are experts in their own lives and should be treated accordingly.

These three basic statements set new terms for safeguarding services. They represent a shift in thinking about the provision of safeguarding support to adults, making it the



Figure 1.1 Three important elements of safeguarding

responsibility of everyone to recognise and report abuse or neglect, and be part of the response if appropriate. Abuse and neglect become defined by the adult concerned, rather than by any objective measure. They arise out of the circumstances of the individual and the safeguarding solutions are identified by the adult themselves.

Six guiding principles of the Care Act 2014

The six guiding principles of the Care Act 2014 apply generally to all the functions the Care Act performs. They provide a reference point of guidance for all activity undertaken with adults who have care and support needs but apply in equal measure to any safeguarding response.

1. Prevention

Concerns are identified early, and actions taken to prevent escalation of concerns into abuse.

2. Protection

Supporting adults to be free from abuse and neglect.

3. Proportionality

A safeguarding response that is appropriate in scale to the presenting concern.

4. Empowerment

Adults are encouraged to make their own decisions and are supported to do so.

5. Partnership

Professionals work with the adult and each other to reach the most effective solutions.

6. Accountability

It is clear who is doing what and why, actions are clear and delivery transparent.

(Department of Health and Social Care, 2014)

The Care Act 2014 intends safeguarding to be a personal individual service that supports the adult, empowering the individual at risk to make choices. This necessarily requires knowledge and application of the Mental Capacity Act 2005, to ensure that no adult with care and support needs is excluded from making their views known. It places emphasis on the requirement for local authorities to make sure that an advocate is appointed when appropriate, to support or represent an adult who would otherwise be unable to fully contribute to any safeguarding decisions. The Care Act 2014 also recognises that adults should make their own choices about how to live their lives, emphasising the right of an adult to make unwise decisions. Any application of safeguarding in the current legal environment must therefore necessarily have regard to the process of risk management. It must be accepted that in many safeguarding situations the risk will not always be removed but might be reduced or managed. This marks a sea change from previous safeguarding interventions that focused on resolution of all risk, sometimes at the expense of a person's independence and control.

Principle of well-being

The Care Act 2014 also introduces the principle of well-being but fails to provide a definition of the concept. All practitioners are required to have regard to the well-being principle in any assessment or service that is carried out with an adult.

The Care Act 2014 lists factors that illustrate what is meant by well-being as follows:

- » personal dignity (including treatment of the individual with respect);
- » physical and mental health, and emotional well-being;
- » control by the individual over daily life (including the way that care and support is provided);
- » participation in work, education, training and recreation;
- » social and economic well-being;
- » domestic and family relationships;
- » suitability of living accommodation;
- » individual's contribution to society;
- » protection from abuse and neglect.

(Department of Health and Social Care, 2014)

It is important to note that in keeping with a personal safeguarding approach, all areas of the well-being principle are given equal weighting, including that of protection. This reinforces the Care Act 2014 assertion that its intention is to *'help people achieve the outcomes that matter to them in their life'* (Department of Health and Social

Care, 2014), not to achieve the objectives of practitioners to make everyone safe. For example, whereas a practitioner might believe that protection is the most pressing well-being concern, for an adult, it may be domestic and family relationships that the adult values above all else. The Care Act 2014 has laid the groundwork for the adult to prioritise the actions to support their well-being.

The well-being principle includes within it the duty to assess needs previously outlined in the Disabled Persons Act 1986, now repealed. It directs public services to take a holistic view of the adult that might present with a safeguarding concern, to consider the wider needs picture and if necessary, provide services that extend beyond safeguarding.

Principle of prevention

The prevention of abuse and neglect is a prominent theme in the Care Act 2014, a feature that acknowledges the preference for early detection of abuse and action, when possible, to limit the impact of any harm.

Prevention strategy

Reece (2010) provides a prevention of abuse strategy that continues to be relevant to safeguarding. The strategy comprises five main elements.

1. Reducing the likelihood of repeat episodes of abuse.
2. Empowering people to safeguard themselves.

Table 1.2 Elements of the Care Act 2014 that relate to prevention characteristics

Prevention characteristics	Elements of the Care Act 2014
Reducing the likelihood of repeat episodes of abuse	S42 enquiries that adopt a making safeguarding personal focus to deliver the outcomes the adult wants.
Empowering people to safeguard themselves	Enabling the adult to take part in safeguarding decisions. Providing advocacy in situations when the adult requires help to participate.
Improving service and system quality	Safeguarding Adults Board oversight of the effectiveness of safeguarding in the area.
Early detection of abuse	Principle that safeguarding is everyone’s responsibility to support early identification of abusive situations.
Analysis of safeguarding data to understand and mitigate risk factors	Safeguarding Adults Board requirement to interrogate safeguarding data to identify safeguarding themes and understand the prevalence and type of abuse occurring in the local area.

3. Improving service and system quality.
4. Early detection of abuse.
5. Analysis of safeguarding data to understand and mitigate risk factors.

Safeguarding duties under the Care Act 2014

The principles of the Care Act 2014 serve to provide structure to the implementation of the safeguarding duties now required of professionals. A summary of these duties is provided in Table 1.3.

The duties, like the principles of the Care Act 2014, are specified in terms that strengthen a person-centred approach. Enquiry is used rather than investigation, enabling a range of measures from a conversation to a more formal complex model of safeguarding response. Advocacy must be provided in situations where the adult

Table 1.3 Safeguarding duties

Legal requirement	Outcome
S42 enquiry	Placing a duty on local authorities to carry out an S42 enquiry when an adult with care and support needs is suffering or likely to suffer abuse or neglect; and because of their care and support needs, they are unable to protect themselves.
Establishment of a statutory Safeguarding Adults Board	Requirement for all local authorities to establish a Safeguarding Adults Board responsible for effective multi-agency safeguarding arrangements in their area.
Safeguarding Adults Reviews	The Care Act 2014 places a requirement on Safeguarding Adults Boards to carry out a Safeguarding Adults Review when an adult dies or is seriously injured and it is felt that partner agencies could have done more to protect the person.
Duty to co-operate and supply information to relevant agencies	Organisations are under a duty to provide information if requested by the Safeguarding Adults Board in the process of carrying out a Safeguarding Adults Review.
Duty of candour	A requirement for any care organisation to be open and honest where there has been significant harm as a result of poor care.
Duty to provide advocacy	A legal duty that is placed on local authorities to provide an independent advocate for those that are assessed as needing help in the safeguarding process, where there is no suitable friend or family member to provide support.

(Department of Health, 2019)

might need help to take part in safeguarding decisions. There is also an emphasis on organisational openness and transparency when things have gone wrong, a duty that enhances the prospect of learning lessons for the future.

Categories of harm

The Care Act 2014 does not provide any definition of abuse, instead only providing categories of harm as reference points. These categories follow the broad consensus of types of harm that adults with support needs have been recorded as suffering in the preceding years (ADSS/NAPSAC, 1996; McCreddie, 1996). Further exploration of the categories in greater detail is provided in Chapter 2, but it remains helpful to identify them here. The categories include the following:

- » physical;
- » psychological;
- » neglect;
- » sexual;
- » financial.

The Care Act 2014 amends this list to include categories that have come into being since 1996, ones that reflect the different ways in which abuse manifests itself in today's world. Additions include:

- » modern slavery;
- » financial/material abuse;
- » discrimination;
- » self-neglect;
- » organisational;
- » domestic abuse.

Together the list combines to form the categories now present in the Care Act 2014, but there is a caveat that this is not an exhaustive list and abuse may arise in yet unthought of situations. Emphasis is therefore placed on recognition of the subjective understanding of the individual's experience of situations that may be abusive.

It is worth noting that modern slavery stands alone as a category in recognition of a recent growing problem of slavery, human trafficking, forced labour and domestic servitude. It targets traffickers and slave masters who coerce, deceive and force individuals into a life of abuse, servitude and inhumane treatment.

Safeguarding and the role of the carer

At its onset many felt the Care Act 2014 would be more appropriately named the Carers Act, in view of its recognition and special focus on the role that unpaid carers fulfil for adults with care and support needs. Carers are defined as those over the age of 18 years who care for another adult. The definition does not include paid professional carers or those providing care through a voluntary agency.

The Act makes special provision for carers, as individuals who themselves have needs which should be met in order to ensure a quality of life and sustainability in their caring role. Carers are now entitled to their own assessment and support service, with guidance issued to professionals to encourage consideration of the adult's well-being and that of any relative or friend caring for the individual.

Carers' perspective on safeguarding

There is an understanding of the unique position of carers in relation to safeguarding adults.

- » Carers are well placed to recognise and report possible abuse of an adult.
- » Carers may find themselves victims of harm from the person they are caring for, either deliberate or accidental.
- » Carers are in a position that could result in their abuse of an adult; again, this may be intentional or unintentional.

Often the life of the carer is inextricably linked to the adult with care and support needs. A systems approach to such situations is required to look at any safeguarding situation in the round with a whole-family approach. Practitioners should not only assess the safety and well-being of the adult at risk but also that of the carer.

A UK approach

Safeguarding arrangements under the Care Act 2014 only apply to England; however, there is synergy with legislation in Wales and Scotland.

Wales introduced a Social Services and Well Being (Wales) Act 2014, covering the whole of adult and children social care. The Act incorporates personalisation and duties to make enquiries into allegations of abuse to adults. The Welsh Act provides for the amalgamation of Adult Safeguarding Boards and Children's Safeguarding Boards, allowing for a more cohesive approach to the co-ordination of safeguarding

arrangements from birth to adulthood. This may be a measure that aids transition of children to services for adults with care and support needs.

Scotland has an Adult Support and Protection (Scotland) Act 2007, joined with the Adults with Incapacity Act 2000 and Mental Health Care and Treatment (Scotland) Act 2003, which together mirror the England cohort of legislation for adults with support needs.

One important feature of both the Welsh and Scottish legislation that differs from England is that they retain the powers of the right of entry to a property when there are concerns that a person may be suffering or at risk of suffering harm there. The Care Act 2014 does not retain this right in England, leaving a reliance on the criminal justice powers of the police to enter a property for such a purpose.

In effect, although there exist some slight deviations, there is a sense of commonality across the UK in terms of safeguarding legislation. The subsequent chapters in this book chart the framework as it exists within England, although the content has relevance to the implementation of safeguarding practice for the whole of the UK.

Key chapter **points**

- » The Care Act 2014 consolidated a safeguarding framework bound by legal statute that replaced a disparate situation of laws and policies in relation to adults.
- » Three principles underpin the safeguarding work:
 - safeguarding is everyone's responsibility;
 - Making Safeguarding Personal;
 - individuals are experts in their own lives.
- » Six guiding principles of the Care Act 2014 are:
 - protection;
 - prevention;
 - proportionality;
 - accountability;
 - partnership;
 - empowerment.

- » The Care Act 2014 also introduced the principle of well-being that all practitioners must have regard to.
- » The Care Act 2014 does not define abuse and neglect but provides categories of abuse that might arise.
- » The safeguarding focus should be on the situation as the adult experiences it rather than an objective judgement of abuse.
- » The Care Act 2014 confers special status on unpaid carers, recognising the important role they play in the support of adults with care and support needs.

References and further reading

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