

Briefing: The Care Act 2014

Key features and practical significance

1. Introduction

The first part of the Care Act 2014 came into force in April 2015¹ and is the most significant piece of legislation for organisations concerned with the safety and care of adults since the establishment of the welfare state. It pulls together a patchwork of legislation built up since the 1948 National Assistance Act and begins by defining the primary responsibility of local authorities as the **promotion of individual wellbeing**. There is a shift from the duty to provide services to 'meeting needs', which means putting the person at the centre of the Local Authority's service offer; 'personalisation', rather than a one-size-fits all approach.

The Care Act specifies that freedom from abuse and neglect is a key aspect of a person's wellbeing. Statutory guidance, issued in conjunction with the Care Act², states that abuse takes many forms, and that a wide view should be taken of what constitutes it. In a non-exhaustive list, it **includes domestic violence** (including psychological, physical, sexual, financial, emotional abuse and so called 'honour' based violence) among the types of abuse against which individuals should be protected³. It also states that abuse and neglect can be caused deliberately or unintentionally.

The scope of the Care Act in relation to Domestic Abuse Services

Whether or not an individual's wellbeing is affected to the extent that they need or are eligible to receive Local Authority provided care and support is established through a prescribed assessment procedure, however a key part of the Act is a focus on **preventing or delaying** the need for support and obligations are placed upon the local Authority to work with a wide range of agencies and organisations to achieve this, through, for example, the provision of locally tailored information and advice. Since individual wellbeing is expressly concerned with freedom from domestic violence and other forms of control and exploitation, Domestic Abuse service providers must therefore expect to be formally involved in the provision of a holistic range of services ranging from prevention (e.g. outreach and educational campaigns) to acute interventions for vulnerable adults, such as those provided by IDVA services.

The broad meaning of 'wellbeing' and clear inclusion within that of protection from domestic violence and other forms of coercion and control, emphasises the overlap between the work to support people experiencing domestic abuse and safeguarding adults work. It is clear that a significant proportion of people who need safeguarding support do so *because* they are experiencing domestic abuse. Until now the two have developed as separate professional fields however, henceforward, clear strategic and practice links need to be made between the approaches. (see paragraph 3.5 below).

¹ The remaining parts, including how local authorities should charge for both residential care and community care, and the introduction of the 'care cap', come into force in April 2015.

² Care and Support Statutory Guidance Issued under the Care Act, 2014. Department of Health

³ Care and Support Statutory Guidance, 2014. Paragraph 14.17

At SafeLives we are still working through the full implications of the Care Act, and so would ask that this briefing is treated as interim findings only. It is clear, however, that the Care Act mandates the closing of certain gaps in provision that we have identified in the past. Our recently published strategy⁴ refers to these continuing gaps and proposes practical solutions to fill them.

2. Key features of the Care Act:

- In order to promote individual wellbeing, Local Authorities must establish and maintain an information and advice service accessible to everyone, and tailored to the needs of local people. Local Authorities should also put in place arrangements to identify and target those individuals who may benefit from particular types of preventive support.
- Local Authorities must facilitate a diverse, vibrant and sustainable market for care and support services that benefit the whole population. The principles of good commissioning practices are outlined in the Act and Guidance. In relation to safeguarding and domestic abuse the local Authority should ensure there are a range of social work and legal options etc with which to work with people.
- The Act requires Local Authorities to promote integration with the NHS and other key partners – this will include working through local Health and Wellbeing Boards. Throughout the Act there is an emphasis on collaboration and cooperation.
- The Act aims to put people at the centre of their care and support and maximise their involvement. If individuals experience difficulties in making their wishes known then the local authority must arrange for an independent advocate to help them be involved in assessment, planning, appeals or safeguarding. From April 2015 carers will also be entitled to support if they meet the eligibility criteria.
- Needs or carers assessments must be carried out where it appears they are necessary. The assessment should be appropriate, proportionate, person centred and ensure a focus on the duty to promote wellbeing. The Act establishes a national minimum threshold at which people will be eligible for support, subject to their financial circumstances. Once an assessment has been made, there is a duty on local authorities to produce care and support plans and to offer a personal budget. This should focus on keeping people directly involved. The Act also sets out a duty to review Care and Support plans to ensure that they continue to meet the needs of the person.
- The need for care and support is established with reference to specific criteria⁵ and essentially turns upon whether or not an individual has needs arising from a physical or mental impairment or illness which prevent them from performing two or more of a list of basic functions, such as maintaining personal hygiene and being appropriately clothed, the consequence being a significant impact upon their wellbeing.

⁴ http://safelives.org.uk/sites/default/files/resources/SafeLives%20strategy%202015-18%20FINAL_0.pdf

⁵ Contained within the Care and Support (Eligibility Criteria) Regulations.2014

- Adult safeguarding is, for the first time, spelt out in the law in the Care Act. Local Authorities **must** make enquiries, or ensure others do so, if it believes an adult who has needs for care or support is subject to, or is at risk of, being abused or neglected. They must also set up a Safeguarding Adults Board (SAB), including key stakeholders, to enquire whether any action needs to be taken to stop or prevent abuse or neglect, and if so, by whom. Domestic violence is specifically listed in the guidance as a type of abuse that is appropriate to receive prevention and response strategies from Safeguarding Adults Boards. The SAB must arrange, where appropriate, for an independent advocate to represent and support an adult who is the subject of a safeguarding enquiry or where the adult has 'substantial difficulty' in being involved in the process and where there is no other appropriate adult to help them. The SAB has a duty to cooperate with each of its relevant partners in order to protect adults experiencing, or at risk of, abuse or neglect. This board will also carry out safeguarding adults reviews Safeguarding Adult Review (SAR) when people die or experience serious harm as a result of neglect or abuse and there's a concern that the local authority, or its partners, could have done more.

3. Practical implications

3.1 Cooperation and collaboration between agencies

The Act places a duty upon Local Authorities to take a leading and coordinating role in terms of service planning and commissioning. It also stipulates that they must work with all relevant partners, including, for example, housing providers. In terms of broad service provision, as well as individual cases where domestic abuse is in issue, Domestic Abuse service providers would obviously qualify as a relevant partner.

Provision is made for continuity of care between Local Authority areas and there is an expectation that Care and Support packages will be as seamless as possible⁶. This could include, for example, when a high risk domestic abuse victim is moving from one Local Authority area to another. Where a second local authority has been notified that an adult at risk intends to move to their area, they must provide information and start an assessment of needs. The Local Authority where the person currently lives is responsible for co-ordinating the transfer and keeping the adult informed. In practice this will require Local Authorities to work together to create policies, protocols and procedures for risk management across their boundaries, including risk assessment, referral pathways and safety planning.

Our reading of the Act (it isn't explicit) is that it assumes a role for specialist intervention programmes and case management coordinated across Local Authority boundaries for perpetrators, as well as for victims.

3.2 Record Keeping⁷ and Data Sharing

An increased emphasis on coordination and collaboration has record keeping and data sharing implications. Both the Act and Guidance are specific about the requirements for sharing records and the fact that records should be kept in such a way that the information can easily be collated for local use and national data collections.

All agencies should identify arrangements, consistent with principles and rules of fairness, confidentiality and data protection for making records available to those adults affected by, and subject to, an enquiry. Agencies should draw up a common agreement relating to confidentiality and setting out the principles governing the sharing of information, based on the

⁶ Sections 37-38 of the Care Act 2014; The Care and Support (Continuity of Care) Regulations 2014.

⁷ Care and Support Statutory Guidance Paragraph 14.150...

welfare of the adult or of other potentially affected adults. Any agreement should be consistent with the principles set out in the Caldicott Review 2013, ensuring that:

- Information will only be shared on a 'need to know' basis, when it is in the interests of the adult;
- Confidentiality must not be confused with secrecy;
- Informed consent should be obtained but, if this is not possible and other adults are at risk of abuse or neglect, it may be necessary to override the requirement; and
- It is inappropriate for agencies to give assurances of absolute confidentiality in cases where there are concerns about abuse, particularly in those situations when other adults may be at risk.

These principles are closely aligned with the principles which should be in operation as standard at Marac.

3.3 Staff Training

Staff should be trained to deliver the requirements of the Act. Any new training should take into account associated provisions in other legislation eg. the Equalities Act 2010, the Housing Act 1996, the Homelessness Act 2002 and the Mental Capacity Act 2005.

3.4 Personalisation

Domestic Abuse services should ensure that their safeguarding and support arrangements are developed in such a way as to be capable of providing a service / package that is personalised to the person they are working with. Good outcome measurement data will allow services to monitor changing demographics and needs of their service users. All providers should be encouraged to develop their services in a way that is flexible enough to respond to these changing needs.

To give just one example, support services are currently reporting a rise in the number of older victims (60 years old and above) using their service. SafeLives Insights data tells us that the profile of these victims is different to those of other service users, with a higher number of men, a higher proportion of victims who don't plan to leave their relationship, fewer interactions with the Criminal Justice System and so on.

3.5 Safeguarding Duties

Under the Act, safeguarding duties apply to an adult who:

- Has a need for care and support (whether or not the Local Authority is meeting any of those needs) and;
- Is experiencing, or at risk of, abuse or neglect; and
- As a result of those care and support needs is unable to protect themselves from either the risk of, or the experience of, abuse or neglect.

The need for care and support is established with reference to specific criteria⁸ and essentially turns upon whether or not an individual has needs arising from a physical or mental impairment or illness which prevent them from performing two or more of a list of basic functions, such as maintaining personal hygiene and being appropriately clothed, the consequence being a significant impact upon their wellbeing.

The view of what constitutes abuse or neglect should not be limited, as they can take many forms and the circumstances of the individual case should always be considered⁹. Domestic abuse is specifically listed and it is clear that the abuse or neglect can be inflicted intentionally or ***unintentionally***.

⁸ Contained within the Care and Support (Eligibility Criteria) Regulations.2014

⁹ Non-exhaustive list of types of abuse covered can be found at Care and Support Statutory Guidance Paragraph 14.17

The aims of adult safeguarding are to:

- Stop abuse or neglect wherever possible
- Prevent harm and reduce the risk of abuse or neglect to adults with care and support needs
- Safeguard adults in a way that supports them in making choices and having control about how they want to live
- Promote an approach that concentrates on improving life for the adults concerned
- Raise public awareness so that communities as a whole, alongside professionals, play their part in preventing, identifying and responding to abuse and neglect
- Provide information and support in accessible ways to help people understand the different types of abuse, how to stay safe and what to do to raise a concern about the safety or well-being of an adult
- Address what has caused the abuse or neglect.¹⁰

3.5.1 Partnership working in relation to adult safeguarding and domestic abuse

Domestic abuse is perhaps most commonly thought of as violence between intimate partners, but it can take many other forms and be perpetrated by a range of people. Much safeguarding work (meeting the statutory criteria set out above) that occurs at home is, in fact, concerned with domestic abuse. Regardless of whether they are providing any services, councils must follow up any concerns about either actual or suspected adult abuse and work in partnership with the full range of relevant agencies to achieve this. Where the concern relates to domestic abuse these agencies may be a local Idva service. The Act essentially aims to address the barriers to effective partnership working and end a culture of buck-passing that has been flagged up as a factor in many recent abuse and neglect investigations. All agencies should understand how local arrangements work in relation to safeguarding, including but not limited to Multi-Agency Risk Assessment Conferences.

As safeguarding activity has the potential to duplicate that of the Marac, it is important that local protocols indicate how and when Marac will fit into safeguarding procedures and vice-versa.¹¹

3.5.2 Referrals

Anyone can witness or become aware of information suggesting that abuse and neglect is occurring. Regardless of how the safeguarding concern is identified, everyone should understand what to do, and where to go locally to get help and advice. It is vital that professionals, other staff and members of the public are vigilant on behalf of those unable to protect themselves. 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. In line with the overall aim of the Act to promote effective partnership working and end the 'culture of buck-passing' it is clear that individual staff should be trained to accept referrals from the widest range of sources (and services be appropriately structured and resourced to facilitate this).

3.5.3 Staff training implications

Overlap between safeguarding and domestic abuse services has professional development/training implications. All organisations who are involved in adult safeguarding will need to reflect the Care Act, Associated Statutory Guidance and Good Practice Guidance relating to it when devising their training and implementation plans for staff. There should be

¹⁰ Care and Support Statutory Guidance. Paragraph 14.11

¹¹ See pg. 41 of Adult Safeguarding and Domestic Abuse: A guide to support practitioners and managers. LGA /ADASS 2015

integrated training that covers both safeguarding and domestic abuse rather than treating them as separate issues.

3.5.4 Carers

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. Support should be offered to carers if their health or safety is at risk whilst they are providing care to another adult, or if they have unmet needs of their own which jeopardise their ability to offer care, for example:

- Not receiving practical and/or emotional support from other family members
- Having other responsibilities such as family or work
- Having no personal or private space or life outside the caring environment

This situation highlights again the requirement for effective interagency working.

3.5.5 Independent advocates

Where a person with care and support needs is suffering or is at risk of domestic abuse and requires an advocate there is a requirement upon the Local Authority to provide one. Where an Independent Mental Capacity Advocate (IMCA) is supporting the abused person they may well work alongside Independent Domestic Violence Advisors (Idvas) or other workers from a specialist domestic abuse agency. Some training may be necessary to prepare workers for this eventuality. Domestic Abuse service staff should be made familiar with the requirements of the Mental Capacity Act and the purpose and function of an Independent Mental Capacity Advocate.

3.5.6 Safeguarding Adults Boards (SABs)

Local arrangements will differ from place to place according to what is felt to be most appropriate. SABs have wide ranging powers¹² and are free to invite additional partners, including from the VCS, to sit on the Board. If an 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 wellbeing 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 (see *paragraph on Record Keeping and Data Sharing above*).

3.5.7 Children

Where adult safeguarding and domestic abuse are being addressed and children are involved or present, professionals have a duty to refer to children's services, using local protocols and procedures, even if the adult victim chooses not to, or is not able to, accept help for themselves. Exposure to domestic abuse is **always** abusive to children, although the impact on them may vary. Where children are linked to an abusive adult relationship, local children's safeguarding policies and procedures must be followed without delay.

¹² S. 43 (4) Care Act 2014. 'An SAB may do anything which appears to it to be necessary or desirable for the purpose of achieving its objective.'