Care Act Statutory Guidance
Response from ADASS and LGA in relation to safeguarding

1. Introduction

This response has been developed jointly between the Association of Directors of Adult Social Services' (ADASS) and Local Government Association's (LGA) leads on safeguarding adults, on behalf of both organisations. We welcome the opportunity to comment on the draft statutory guidance.

2. Overall comments

This response is a joint one from ADASS and LGA in relation to the safeguarding dimensions of statutory guidance and regulations accompanying the Care Act.

We welcome the Care Act and accompanying guidance and the fact that it puts safeguarding adults onto a statutory footing. This is extraordinarily important in terms of the impact on people's lives when they are in extremely vulnerable circumstances. It supports the work that councils and their partners have been undertaking for many years. It also challenges us to re-think the effectiveness of what we do.

We also welcome both the opportunity to comment on the guidance and the significant partnership across sectors that has been in place over a number of years that has informed what is in the Care Act and that guidance. We are particularly pleased that the approaches that LGA and ADASS have developed in relation to Making Safeguarding Personal (MSP) work over the last few years has permeated and is embedded in, not just the safeguarding sections of the guidance, but much else that is in the guidance. This approach is fundamentally based on an outcomes focussed, person centred response, working alongside people and utilising a range of responses to enable them to realise the outcomes that they want.

We have a number of overall comments, which echo the comments we have made previously on the Care Act itself. Firstly, whilst the safeguarding section of the guidance is obviously of interest, we think that the rest of the guidance and some of the key regulations have as much, if not greater, significance in our twin aims of reducing the incidence of harm and abuse and in improving outcomes for and with people once concerns have been raised. Thus this response covers both the safeguarding specific sections and other sections of the guidance.

Secondly, we feel that the overall emphasis of the guidance is on councils, with the key partners – the NHS and Police – being very secondary. We welcome the fact that

councils remain leaders in safeguarding but would also welcome a much more explicit, multi- agency approach throughout.

Secondly, we would welcome, and are happy to contribute to, a review of what should be in statutory guidance and what should be in practice guidance. We appreciate that getting the balance right is not easy, but we think that there are some areas where the guidance reads as and 'A-Z how to do it list' and other complex areas where there is actually very little guidance.

And thirdly, we would welcome a review of the juxtaposition of:

i) the definition of who is included in the duty for councils to make, or cause to be made, safeguarding enquires
ii) the national minimum eligibility criteria regulations
iii) the sections on assessment and care planning.

We say more about this in the sections that follow.

3. The safeguarding sections of the guidance:

We are very pleased to see the Making Safeguarding Personal (MSP) approach embedded here – and, indeed, many of the MSP case studies have been included.

We have said that we would welcome a review of how the definition of the safeguarding group is juxtaposed with the national minimum eligibility criteria regulations and the sections on assessment and care planning. As we read , the guidance definition in 14.2 is critical both for people with care and support needs and for carers. This definition is broader than that adopted by a significant proportion of councils but at the same time reflects the new Act. Most councils currently have some form of wording in their eligibility criteria that 'catches' people who have been, or are at risk of, abuse or neglect. Alongside this, many operate 'thresholds' for safeguarding action that include eligibility for services. Peer reviews have highlighted that many often respond to abuse and neglect therefore with the provision of services or monitoring, which in some cases in less appropriate than supporting people to resolve their circumstances, so on the one hand this is positive reinforcement of the MSP approach.

However, there is a (potentially large) resource issue unless there is some clarification across these areas. The issue arises because the national minimum eligibility criteria regulations, and assessment and care planning requirements, as they are currently described do not explicitly include identifying risk of abuse or neglect and weighing up the risks and benefits of different options, and further the safeguarding definition does not have any distinction about degrees of abuse or neglect.

However, it is helpful that the safeguarding definition in the Act does exclude people who are able to protect themselves (which may make a difference in some areas) and the safeguarding section does include the explicit power to 'cause enquiries to be made' - and therefore expands to a wider group of people those who may make those enquiries.

So it will take some working through and further clarification would be helpful to resolve the tensions between these definitions. Councils already vary very widely between those for whom safeguarding in regulated services predominates and those for which safeguarding in domestic and community settings predominates. They vary widely in their reach, with some providing safeguarding support almost entirely to people with eligible needs in regulated services to the other end of the spectrum with those that provide some support to, for instance, people with mental health or substance misuse problems in the sex industry. Safeguarding leads broadly support what we believe to be the overall intent of these changes, providing we can get greater clarification to assist people to make sense of it locally and in terms of how councils and their partners account for more proactive, lower level safeguarding, more proportionate responses that are judgement rather than fixed process based, and wider engagement of partners in co-operating and possibly making enquiries on behalf of the council.

Unless this is clarified there could be significant costs to councils and their partners.

14.1 This section says Local Authorities must collaborate. This should be more mutual – all partners should collaborate as is stated below.

14.2 We are very pleased to see the outcomes focussed, person centred approach in these paragraphs. In line with other chapters we would suggest that at the end of 14.2 the Department of Health adds: "As with other sections of this guidance this chapter applies equally to carers."

14.4 In the initial bullet points of this section it would be helpful to include a note about developing a learning environment at all levels and across all partners.

In the 'I' statements accompanying the principles it would be helpful, for prevention, to include something along the lines of 'I know that health and care services are safe and that they and the police will protect me from abuse and neglect'

We have had a lot of comments about self-neglect not being explicit in this section. This is clearly an area of concern and safeguarding partnerships are perceived as a positive means of addressing this. It would be helpful to see recognition of this concern alongside local discretion for how it is addressed.

14.8 We have concerns about introducing 'intent' more broadly in relation to safeguarding – though in discussion with family members it may be relevant, as it is in criminal investigations and prosecutions.

The case study in this section has been misunderstood in comments to us. It would therefore help if the wording could be even more explicit, for example: 'However, it can legitimately be described as safeguarding *and should have been recorded as such*; the work with the woman achieved good outcomes and she was effectively safeguarded'.

14.13In this section it would be helpful to add that commissioning or regulatory responses may be as appropriate as well as clinical ones.

It might also be helpful to reference addressing carers' needs as a critical part of preventing abuse or neglect.

14.14 It is perhaps unfair to single out a particular profession, and we are, of course aware of notable exceptions to this, but if there is a means of being much more clear that sharing safeguarding concerns applies equally to the medical profession, then that would be extremely helpful.

We would propose an additional section that makes more explicit family dynamics and the relationship of carers along the following lines:

Safeguarding and Carers

Adult carers are a very diverse group of people living in a wide range of communities and have a range of roles and responsibilities for care and support. It is recognised that the vast majority of carers strive to act in the best interests of the person they support. In terms of safeguarding four broad sets of circumstances are relevant to improving outcomes:

- Carers speaking up about abuse or neglect within the community or within different care settings.
- Carers who are part of support networks for people who have experienced abuse or neglect.
- Carers who may experience intentional or unintentional harm from the person they are trying to support or from their local community or workers or organisations they are in contact with.
- Carers who may unintentionally or in some cases intentionally harm or neglect the person they provide with care or support [See 14.8].

Risk of harm to the supported person may also arise, as noted above, because of carer stress, tiredness, or lack of information, skills or support. Sadly, also, there are times where harm is intended. The approach within the Act to well-being and prevention are keystones around which the potential for harm and the risk of harm can be reduced and capacity for self- protection improved amongst people with care and support needs and carers who support them. The guidance needs to apply to carers.

14.17 We have been told that the case study in this section has also been misunderstood. It might be helpful to retitle it (even though we know that the previous text is clear) perhaps along the lines of ‘poor practice in not listening to the person’s views’ so as to be absolutely clear.

14.23 This section would benefit from additional statements to ensure that people who are in need of care and support should have both the same access to justice as everyone else and that, in order to have this access they receive additional support e.g. support in order to make statements, give evidence, protection of ‘vulnerable victims and witnesses’ etc. Equally, an explicit statement about being taken seriously and not dismissed before much has happened as ‘unreliable witnesses’.

14.24 Please clarify blue box, after paragraph 14.24 line 1, second paragraph "care worker" not "carer" as the person is being paid- this reduces any risk of misunderstanding.

14.25 Whilst it is true that criminal investigation may take place without someone's consent, that doesn't mean that they shouldn't be informed, involved as much as possible and their wishes and feelings taken account of.

14.29 We would welcome additional comments about intelligence about and acting on poor standards of care and support.

14.31 It is good that this is such a clear statement about the first responsibility in regulated settings being the provider, then with regulators and commissioners. However, it would help to add in something about the fact that there may need to be the involvement of social workers, therapists, or others, in order to support people to recover after abuse or neglect.

We need greater clarity about Care Quality Commission and commissioners (health and social care) roles if this is to really work - and when safeguarding might be the only option – particularly if providers are failing and therefore aren't competent to make and act on safeguarding enquiries.

Carrying out enquires….S 14.36 onwards.

We believe that this section is one where there will need to be a significant change of thinking and approach for people in councils who are delivering safeguarding services and their partners. It will require much thinking through in order to make it work, we believe, and we would welcome greater clarity. See also the section above.

We welcome the fact that it defines at least two streams of work: work with the person who has been harmed and work with/ action against the person/ organisation that has caused harm. The bills on wilful neglect, modern slavery and the work on sexual violence will also help if they are harnessed positively.

We would also welcome explicit reference to action post enquiries and more explicit statements about enabling people to achieve resolution and recovery. There are many more councils who are signing up to 'silver' level in MSP this year and we hope that will help. But it may be that, in order to do this, we have to work through the engagement of social workers, psychologists and others through MSP and develop more detailed guidance at a later date.

Safeguarding Adults Boards

14.103 Please add in something about prevention of abuse and neglect as a core responsibility of Safeguarding Adult Boards (SABs). SABs should have an overview of how this is taking place in the area and how this synergises with Quality Surveillance Groups (QSG) and CQC's stated approach and practice. This could be about commissioners and the regulator, together with providers, acting to address poor care and the intelligence that indicates there is risk that care may be deteriorating and becoming abusive or neglectful. It could also be about addressing hate crime or anti-social behaviour in a particular neighbourhood. SAB will need to have effective links and communication across a number of networks in order to effect this.

14.104 Please could you add in something about making effective links with related partnerships such as Local Children's Safeguarding Boards, Health and Wellbeing Boards,

Community Safety Partnerships, QSGs etc so as to maximise impact and minimise duplication. This would reflect the reality and interconnectivities of local partnerships.

14.106 We strongly believe that a single Board for adults and children is a retrograde step and should be discouraged: it would be likely that adult safeguarding leadership, improvement and effectiveness would be overshadowed by children's priorities.

14.111 After the comment about social workers, it would be helpful to add in something about Boards having access to medical, nursing and legal expertise.

14.114 It may be helpful to enable local Board to, for instance, develop and publish a long term strategic plan (e.g. for 3-5 years) and to require publications of updates each year.

We would very much welcome a requirement that annual reports must set out the contributions that the three core partners have made.

14.123 It would be helpful to add in something that clarifies the interfaces of SARs with Domestic or Mental Health Homicide Reviews and with SCRs for children, where there has been a death or serious harm to both a child and an adult in the same household/ environment.

14.133 It may be helpful to refer to the London document that sets out the range of types of review that may be undertaken (reference can be provided).

14.138 It would be helpful here to start with information to support people to protect themselves (for example the Barnet 'Say no to abuse' document) rather than information for people once harm has occurred.

14.148 It would be helpful here to add in reference to directors of NHS organisations and the PACC.

14.155 Please include NHS and Police chief officers/ CEs/equivalents.

14.160 Please add in something about wilful neglect to make the appropriate connection.

14.157 'Removal of a person against their or their family's wishes from the home….' We would welcome this example being deleted as we don't think it is clear or helpful. It is neither helpful in being non person centred and unclear in that it is not clear what legislation might be used to effect it.

14.158 Please include Community Safety Partnerships as well as Health and Wellbeing Boards. In some councils this is the predominant relationship, with no evidence that this produces worse safeguarding outcomes.

14.170 Add in pets!!

This section would benefit generally by having more explicit reference to the connection between human rights and dignity, and abuse and neglect. It would also benefit, alongside considerations about the capacity to make decisions, greater mention of when someone's

ability to form or articulate their wishes is compromised by the undue influence of, or coercion by, someone else.

4. Safeguarding in the rest of the Care Act guidance

Promoting wellbeing

- The very first sentence is 'The core purpose of adult care and support is to help people achieve the outcomes that matter to them in their life'. Protection from abuse and neglect is highlighted as a key part of that. This is the key approach of MSP. Local Authorities are required to promote wellbeing when carrying out any of their care and support functions. Therefore, protection from abuse and neglect must be intrinsic to everything done.

✓ 'In any activity which a local authority undertakes, it should consider how to ensure that the person is and remains protected from abuse or neglect. This is not confined only to safeguarding issues, but should be a general principle applied in every case;'….. 'and the need to ensure that any restriction on the individual's rights or freedom of action that is involved in the exercise of the function is kept to the minimum necessary for achieving the purpose for which the function is being exercised. Where the local authority has to take actions which restrict rights or freedoms, they should ensure that the course followed is the least restrictive necessary'.

- It is not possible to promote wellbeing without establishing a basic foundation where people are safe and their care and support is on a secure footing. The Care Act puts in place a new framework for adult safeguarding and includes measures to guard against provider failure to ensure this is managed without disruption to services.

Preventing, reducing and delaying needs

It would be helpful to include some safeguarding dimensions in this section. For example, in 2.6, primary prevention, could include people taking out enduring powers of attorney, 2.7, secondary prevention, could include commissioners, providers and regulators working together to ensure that care and police responses are of sufficient quality as to do no harm, and 2.8, tertiary prevention might include supporting people to be more self-confident or assertive so that they are more able to protect themselves after abuse. This would be equally relevant in section 2.14, developing resilience and promoting individual strength.

2.24, which relates to 'unmet need', could helpfully include attempting to identify under-reported abuse and neglect, particularly that in domestic settings, as we know that older, disabled and mentally unwell people may find it particularly hard to recognise that help may be available, let alone to ask for it. Key partners here are likely to be the police and Community Safety Partnerships.

Information and Advice

We welcome that the section includes the following:

- What to do in cases of abuse or neglect of an adult
- A cross referral to the safeguarding section
- Reference to people for whom safeguarding concerns have been raised
- The statement in the section on proportionality (3.32) that the local authority should 'enable those providing information and advice to have access to registered social work advice when it is required'

It would be helpful if the guidance could be amended to be clear that information and advice should enable people to not only make good care and financial choices but should also, explicitly, enable them to safeguard themselves, including safeguarding their financial interests.

We welcome reference to the Money Advice Service in this section.

3.46 refers to independent financial advice, with 'independent' having been defined in 3.9 as 'independent of the local authority'. This is not sufficient and may risk people being misled, mis-sold or exploited. It should more explicitly refer to financial advice that is independent of BOTH the local authority and providers of financial products. National Government Departments might help with this as local authority staff are not, in general, in a position to identify either the direct providers of such products or their subsidiaries or related organisations.

Market shaping and commissioning.

This section includes the statement that 'Local Authorities must facilitate markets to offer continuously improving, high quality, appropriate and innovative services…..' (4.18) in relation to promoting quality.

We would welcome this section explicitly addressing both high quality, as above, and minimum quality, such that care services reduce the incidence of harm and abuse that are referred currently to council safeguarding services. There is a critical issue that 50-60% of safeguarding work currently relates to regulated services: in December 2013, CQC reported that 18% of nursing homes and 12-13% of residential facilitates and hospitals failed to meet 'essential' standards of safety and safeguarding. Ensuring 'high quality' care is a good aspiration. The reality is that commissioners, providers and regulators need to do much more to ensure that care is of sufficient quality to not be abusive or neglectful. Whilst we would hope that the developing CQC regime will contribute to addressing this, this chapter should have many more explicit links to safeguarding, to addressing poor quality care with regulators and providers and to processes for de-commissioning poor, neglectful or abusive care.

Managing provider failure and other service interruptions

It would be helpful to set out more explicitly in this section, or the previous, the relationship between provider business failure, quality and safeguarding. Whilst financially healthy providers can provide abusive or neglectful care, there are frequent links between poor care and financial difficulties. It would be helpful if any practice guidance developed to support

this section was consistent with adult safeguarding practice guidance in terms of working across geographic and organisational boundaries.

Assessment and eligibility

We welcome the following statements:

- The reference to assessment not just as a 'gateway to care and support, but',,,,'as a critical intervention in its own right'
- The aim of the assessment is explicitly to consider what outcomes they are looking to achieve to maintain or improve their wellbeing.
- The safeguards of the Mental Capacity Act are explicit.

Sections 6.6 onwards refer to 'needs assessment'. Section 6.33 also requires that the local authority must consider what else, other than the provision of care and support, might assist the person to meet the outcomes they want to achieve. Section 6.25 notes that when carrying out an assessment that local authorities may identify that the person is at risk of abuse or neglect (and rightly then requires the carrying out of an enquiry to consider whether the person is experiencing abuse or neglect). We believe that it is very important to link this more explicitly, for example, to refer to assessment as being about needs, risks, strengths and outcomes. This applies equally to carers, where risk to themselves or others is not made explicit.

Throughout this section it would be helpful if the term 'outcome' were used more precisely. For example, what outcomes someone wants in general will relate to what they want the end results be. 'A full picture of the individual's needs' (6.3) may be an output but is not an outcome in the same sense as the former. Equally, section 6.86 refers to carrying out basic care activities such as 'eating and drinking,. …getting up and dressed etc'. To refer to these activities as outcomes risks confusion as to the aims of care and support and to confused measures as to its success.

Uncoupling abuse and neglect from eligibility would benefit from much greater clarity– see the main section on safeguarding above. Whilst this is in itself neither positive nor negative it will nonetheless require considerably working through. Many councils have a circular system currently and apply the eligibility test to their safeguarding responses as well as to the provision of services. However, many also include actual, or risk of, abuse and neglect as part of their eligibility criteria. Therefore, there is the probability that councils could be both making more enquiries in relation to safeguarding, but also having a broader field of professionals who might be making those enquiries as the council may also 'cause enquiries to be made'.

The section on refusal of assessment requires much greater clarity, particularly in respect of the right to refuse an assessment being waived where the local authority identifies that an adult is experiencing, or is at risk of experiencing, any abuse or neglect. We are not clear under which legislation assessments may be 'forced' on people, nor whether this was the intent of the writers. Ultimately someone may object to this or not participate and further clarification is needed.

Charging and financial assessment

This section would benefit from mention that the financial assessment is an opportunity to spot where someone may be being financially abused, or the victim of theft or fraud. The Mental Capacity Act should also be referred to in terms of promoting the use of and exercising Lasting Powers of Attorney.

Care and Support Planning

We welcome the fact that both person centredness and the safeguards of the Mental Capacity Act are explicit.

The safeguard of enabling people to use the option of using 'accredited people' is neither referred to as something councils should or must do. Whilst we agree that people should not be forced to use such an option; we do feel that the option to use it is both a necessary safeguard and a good service.

It would be beneficial to explicitly include the weighing up of risks and benefits of different options as a means of both enabling and proactively safeguarding people. Equally this section would benefit from a clear statement that decisions should be made free from the undue influence of others, whilst recognising that the views of a carer may be different.

Personal Budgets

Section 11.23 could helpfully refer, in relation to timeliness and care planning, to enabling people to weigh up the risks and benefits of different options

Direct payments

As above, section 12.5 should include reference to enabling people to weigh up the risks and benefits of the options they have.

The option of use of accredited providers or other schemes that attempt to reflect quality should be positively framed. Equally, reference should be made to information and advice to support people to keep themselves safe: it is not possible to feel in control without this.

Integration, co-operation and partnerships

Section 15.2 should state more explicitly that in relation to safeguarding, the police are key partners as well as the NHS.

Section 15.9 It would be helpful to reference safeguarding needs in this section.

Section 15.17 It is helpful to see safeguarding in here, although it would be helpful for the language to be consistent (the section refers to 'protecting adults').

Section 15.23 specifies the requirement for co-operation within local authorities. If this is included then there should also be a section on co-operation in the NHS and possibly also the police and criminal justice system.

Transition to adult care and support

Section 16.73 refers to safeguarding transition and could helpfully additionally refer to other adults and children in the household who may need safeguarding.

Prisons etc

Section 17.60 – we would appreciate far greater clarity in this section as we believe that the current wording is open to the interpretation that councils are require to undertake safeguarding investigations in prisons. which is counter to our previous understanding.

Delegation of functions

We welcome the clarity of section 18.4 and that councils retain responsibility for delegated functions. We also welcome the clarity that the safeguarding lead functions of councils may not be delegated.

Ordinary residence and continuity of care

These chapters would benefit from the inclusion of continuity of safeguarding arrangements and recognition that a move may either increase or decrease risk, but that this should be assessed with the person concerned or their representative or advocate.

Cross border placements

This section should include reference to the risks associated with distance from the placing authority and ensure that there are sufficient safeguards for the individuals concerned. In section 21.15, we believe that the local authority should consider the pros and cons of this alongside the person concerned or their representative, advocate or best interest assessor, in the spirit of an outcomes led, person centred response that is intrinsic the remainder of the guidance.

This section should also include reference to what should happen if safeguarding concerns are raised after the placement has taken place.

CW/AC
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