

JAP Special Edition Editorial

The Care Act 2014: a new legal framework for Safeguarding Adults in Civil Society

Many of us may be able to remember the general air of excitement that surrounded the writing and publishing of 'No Secrets' (DH, 2000) and 'In Safe Hands' (WAG, 2000), although we might wish we were young enough not to! At the time, the documents generated mixed feelings amongst service users/customers and carers as well as professionals/practitioners. To some they were a major step forward on the road to raise the status of 'vulnerable adult protection' (as it was then known) closer to that already enjoyed by child protection and domestic violence; to others it was a missed opportunity to go even further along that road and to a small number it was a step too far when the perception was that existing legislation provided sufficient protection and any increased powers amounted to state intrusion into the private lives of adults.

The constitutional situation across the four countries of the United Kingdom meant that England and Wales had slightly different structures put in place to respond to situations of abuse and neglect while Scotland and Northern Ireland were responsible for their own processes and took different approaches. Even within England and Wales, 'No Secrets' and 'In Safe Hands' were issued as guidance to Local Authorities under existing legislation and, as such, did not place any requirements on any other agencies or organisations to cooperate with the Local Authority. In fact it could be argued that Local Authorities didn't have to act in accordance with guidance if they could see good reason why not. Indicative of the anomalous position of the guidance is the situation in England regarding the requirement of Local Authorities to produce multi-agency policies and procedures to protect vulnerable adults – it is interesting to note how they had to produce multi-agency policies and procedures, but no other agency was required to work with them to do so!

'No Secrets' was published in March 2000 and required the above-mentioned policies and procedures to be forwarded to the Department of Health by October 2001. When one of us (PM) took up the post of Vulnerable Adult Protection

1
2
3 Coordinator with Coventry City Council in mid- 2003, he discovered that the Council
4
5 hadn't submitted its policy and procedure to the Department and that in fact the
6
7 Council had not even finalised them. When he advised the Department of Health of
8
9 this, they didn't seem unduly surprised or bothered and when he did submit them
10
11 later that year their receipt wasn't acknowledged; when he chased the Department
12
13 six months later to confirm that they had received them and to ask for feedback on
14
15 them, he was told they had received them, and, if they had had any negative
16
17 comments to make, they would have been in contact. Not really what you would
18
19 want or expect if the Department and the Government were really committed to
20
21 making vulnerable adult protection a reality and to have a real impact on the lives of
22
23 vulnerable adults and the services designed and intended to protect them. However,
24
25 given that both 'No Secrets' and 'In Safe Hands' were launched with no Key
26
27 Performance Indicators and were announced as being 'cost-neutral' perhaps we
28
29 shouldn't have been surprised.

30
31 As suggested above, 'No Secrets' was subject to criticism from the time of its launch;
32
33 in itself, this is hardly surprising. No piece of legislation, let alone statutory guidance,
34
35 is going to command a hundred per cent support across a range of constituencies
36
37 covering service users, carers, professions, agencies, organisations and sectors. 'No
38
39 Secrets' came under fire from most if not all the above for a number of reasons
40
41 including:

- 42 • The terminology of 'vulnerable adults' was considered by some if not many to
43 be discriminatory and labelling of the very people it was trying to empower by
44 making it appear that they were some way the cause of their being abused
45 and neglected;
 - 46 • The definition of 'a vulnerable adult' was interpreted by some Local Authorities
47 to require the adult to be in receipt of community care services to meet it;
 - 48 • The definition of 'abuse' was seen as too vague and open to interpretation,
49 being based as it was on the violation of the individual's human rights rather
50 than specific acts;
 - 51 • A definition of 'abuse' that is based on the violation of someone's human
52 rights by another person or persons doesn't enable the protection of those
53 who self-neglect, a particular issue before and subsequent to the
54 implementation of the Mental Capacity Act 2005;
- 55
56
57
58
59
60

- There was no duty on anybody to act under the multi-agency policies and procedures – there wasn't even a date when they had to be implemented, only returned to the Department of Health, a date that wasn't enforced;
- Not only was there no duty to act, but if the Local Authority, which invariably meant the local Adult Social Services Department, wanted to do so, it had no or few powers under which it could intervene;
- 'Vulnerable adult protection' was seen by other agencies, particularly health organisations and, to a lesser extent, the Police, as the task of Social Services and, having made a referral, they would often withdraw involvement.

We are not saying that the above are all true or correct, but they are accurate reflections of perceptions and criticisms of 'No Secrets' in the early 2000s. There was a groundswell amongst professionals directly involved with 'vulnerable adults' and the organisations and agencies established to support and campaign on their behalf that was lobbying Ministers and the Department of Health to review 'No Secrets' with a view to revising it to make it more effective. What followed was not a review of 'No Secrets' but a consultation on a review of 'No Secrets', perhaps reflective of the lack of political will at that time to tackle the issue.

The Consultation on a Review of 'No Secrets' was held in 2008/9, with a response from the Government in early 2010 that said it would establish an Inter-Departmental Ministerial Group, introduce legislation to put Safeguarding Adult Boards on a statutory basis and issue multi-agency practice guidance. Before this could all happen, a General Election led to a change of government, with the newly-elected Coalition deciding to scrap its predecessor's proposals in favour of a review of the chaotic plethora of legislation supporting – or not – adult social care that would propose a simplified legislative structure that would incorporate safeguarding within it. While frustrating in many ways, from a purely safeguarding perspective, which would otherwise continue to be undervalued, under-resourced and under-powered, this did make a lot of sense and was seen as likely to produce a more coherent base for work in safeguarding adults in the long run.

1
2
3 The Care and Support Bill was published in 2011, based very much on the
4 recommendations of the Law Commission's review of adult social care legislation,
5 which took place between 2008 and 2011. This proceeded through a consultation
6 process of its own, in the process of which it became the Care Bill and then the Care
7 Act, receiving Royal Assent in May 2014 and coming into effect, in part, in April
8 2015. Statutory Guidance was developed to support the implementation of the Act.
9
10 The first edition of this was published in October 2014 by the Department of Health,
11 barely six months after the Royal Assent; perhaps not surprisingly, the second
12 edition was published in March 2016. The second edition was necessary to cover
13 some aspects of the Care Act, which appeared to have been 'shelved' by the
14 Government, some that were decided to be unwise and some that were considered
15 necessary to be added. All of this is somewhat redolent of a piece of Statutory
16 Guidance that was rushed and not properly thought through.
17
18
19
20
21
22
23
24

25
26 The Act, of course, only applies to England; Scotland already had its own legislation
27 relating to adult protection, Wales had developed its own, which had important
28 similarities as well as differences to the Care Act 2014 and Northern Ireland hadn't
29 decided whether to introduce new legislation or not. This seemingly anarchic
30 situation across the United Kingdom did, and still does, provide an opportunity for a
31 research project that examines the processes by which the Care Act came to take
32 the form it did and to compare it, and how it is implemented, with the legislation, or
33 lack of it, in the other three countries.
34
35
36
37
38
39
40
41

42 In terms of adult safeguarding, the Care Act 2014 did contain framework legislation
43 that placed Safeguarding Adults Boards (SABs) on a statutory footing. It required
44 SABs to publish annual reports and strategic plans. Under certain circumstances it
45 placed a duty on SABs to commission Safeguarding Adult Reviews (SARs), which
46 replaced Serious Case Reviews (SCRs), with discretion to commission SARs in
47 other circumstances. SABs were to have three statutory members, the Local
48 Authority, Clinical Commissioning Group and Police, with discretion then as to how
49 wide and inclusive the remaining Board membership was drawn. SABs were given
50 the power to request information and Local Authorities the duty to conduct
51 safeguarding enquiries. The adult safeguarding provisions were part of a general
52
53
54
55
56
57
58
59
60

1
2
3 requirement in the Care Act 2014 to promote people's wellbeing, with agencies being
4 under a statutory duty to co-operate both at strategic and operational levels.
5
6

7
8 The Care Act 2014 did not follow Scottish legislation (the Adult Support and
9 Protection (Scotland) Act 2007) in that no new protection orders were created; nor,
10 despite strong advocacy, was an adult safeguarding power of entry created. Wales
11 has similarly eschewed protection orders but has created an adult safeguarding
12 power of entry in their Social Services and Well-being (Wales) Act 2014. Perhaps
13 less well known, but nonetheless significant, is the fact that the Care Act 2014 has
14 not given SABs the power to require statutory and other partners to contribute to
15 resourcing its activities; nor do SABs have effective sanctions if agencies do not co-
16 operate in terms of its adult safeguarding responsibilities at local level.
17
18
19
20
21
22

23
24
25 Subsequent developments have also shown some equivocation. Self-neglect was
26 included in adult safeguarding arrangements for the first time in England in the Care
27 Act 2014, but in key respects the second edition of the statutory guidance (DH,
28 2016) demonstrates some unease by appearing to limit the occasions when a
29 safeguarding enquiry might be triggered in self-neglect cases. This example, and the
30 failure to legislate for either an adult safeguarding power of entry or protection
31 orders, arguably demonstrates on-going unease with giving the State powers to
32 intervene, despite evidence of the effectiveness of the Scottish adult protection
33 system (see for example, Preston-Shoot and Cornish, 2014). It is therefore important
34 to recognise that the Care Act 2014 was a compromise, that there is nothing
35 inevitable about the legal rules that were developed, and that they are the result of
36 how competing perspectives, and arguably interests, are ultimately in some form
37 reconciled.
38
39
40
41
42
43
44
45
46
47

48 Going forward, it becomes imperative to evaluate the different legislative and policy
49 arrangements, and the four nations of the UK provide a perfect case study for
50 research in that respect. It becomes equally imperative to look at outcomes from the
51 perspectives of practitioners, service users and carers, especially because the
52 statutory guidance (DH, 2016) places great emphasis on Making Safeguarding
53 Personal, which requires a major culture shift in how health and social care agencies
54 in particular have historically delivered adult safeguarding services. Some legislation
55
56
57
58
59
60

1
2
3 is hard for practitioners and their organisations to understand, whilst some is
4
5 experienced as hard to implement. The Data Protection Act 1998 and the Mental
6 Capacity Act 2005 are two cases in point. What, one wonders, might practitioners
7
8 and managers, across health and social care agencies and beyond, say about the
9
10 Care Act 2014? SARs, and their predecessor Serious Case Reviews, also highlight
11 that legal literacy and safeguarding literacy across professions and agencies is
12
13 variable (Braye, Orr and Preston-Shoot, 2015), reinforcing again the need to track
14
15 the experience of implementation of the provision of the Care Act 2014.
16
17
18

19 In 2015 a multi-disciplinary research team obtained funding from the Economic and
20 Social Research Council (ESRC) to run a seminar series to consolidate and advance
21
22 knowledge around safeguarding adults under the new legislative and policy
23
24 framework. The research team comprises the following people: Alison Brammer,
25 Keele University (Principal Investigator); Pete Morgan, Independent Consultant and
26
27 University of Warwick; Paul Kingston, University of Chester; Jonathan Parker,
28
29 Bournemouth University; Bridget Penhale, University of East Anglia (Norwich),
30 Michael Preston-Shoot, University of Bedfordshire and Alex Ruck-Keene, Barrister
31
32 (39 Essex Chambers, London) and the University of Manchester.
33

34 The series aims to explore how the new law emerged through a policy process, the
35 challenges of interpretation that emerge and how practitioners and their
36
37 organisations can be supported to deliver the intentions and requirements of the
38
39 Care Act 2014 and to keep people safe from abuse and harm.
40
41
42

43 Key objectives are that the seminar series will:

- 44 1. Theorise the process of law reform, exploring the interplay in making law between
45 research and practice evidence, policy advocacy and political debate;
46
47
- 48 2. Evaluate the new landscape for adult safeguarding, for example the contested
49 inclusion of self-neglect and the omission in England of a power of entry, and to
50 appreciate the challenges in interpreting and implementing the new powers and
51
52 duties;
53
- 54 3. Examine accountability and responsibility to and for safeguarding adults in civil
55
56 society;
57
58
59
60

- 1
2
3 4. Develop the evidence-base for learning adult safeguarding law that instils an
4 ethical, social justice commitment alongside technical legal knowledge.
5
6 5. Establish an inter-disciplinary network uniting academic and practitioner
7 perspectives, health and adult social care providers with civil society organisations
8 providing welfare services, to assist with interpreting, learning and evaluating the
9 new provisions;
10
11 6. Effectively disseminate work undertaken in seminars to academic, practitioner,
12 service user and carer audiences.
13
14
15
16
17

18 To achieve the objectives, the seminar structure was devised to develop three
19 distinct themes. The focus in year one was on how law is made, reflecting on
20 contributions of researchers, civil society organisations, pressure and advocacy
21 groups, statutory health and welfare agencies, and judicial decision-making,
22 including a comparative perspective. The focus in year two, currently underway, is
23 on interpreting the law, including new concepts, such as making safeguarding
24 personal, dignity and well-being, and new accountabilities. The third and final year of
25 the series will focus on learning law. How might new adult safeguarding powers and
26 duties be taught and what can be learned from safeguarding adult reviews, case law
27 and investigations by the Local Government and the Health Services Ombudsman.
28
29 Each theme is examined from academic, service user, statutory and third sector
30 organisation perspectives.
31
32
33
34
35
36
37
38
39
40

41 Seminar participants

42
43 The series aims to create a strong network of individuals and organisations
44 concerned with adult safeguarding and with the capacity to engage in further
45 collaborative research, policy and practice development, and conferences. Over the
46 first year, seminars were held at Keele University, Bournemouth University and the
47 University of Bedfordshire. Each seminar has been well attended with in the region
48 of 40-60 delegates. The series to date has been truly multi-disciplinary with an
49 impressive range of organisations and disciplines represented including: the
50 Department of Health, Local Authorities, Police Authorities, Health Authorities,
51 ADASS (Association of Directors of Adult Social Services, Care Quality Commission,
52 Civil society, third sector organisations concerned with social and welfare services,
53
54
55
56
57
58
59
60

1
2
3 including Action on Elder Abuse, ASIST and Alternative Futures, SCIE (Social Care
4 Institute for Excellence), academics and educators, training and consultancy
5 organisations, solicitors and barristers.
6
7
8
9

10 An open access dedicated website has been developed to support the series and
11 can be found at: <https://safeguardingadults.wordpress.com>
12

13 The site includes presentations from the seminars, in video and print form, a
14 discussion forum, and a live twitter feed. Summaries of key issues from each of the
15 seminars, links to publication outputs from the seminars and to other key works in
16 the field of safeguarding and suggested pre-reading also appear on the site. Contact
17 information about the seminar network and announcements about the seminar
18 programme and other related events are also posted. The website also provides a
19 forum for collating views expressed by members on any consultation documents of
20 relevance to adult safeguarding. In addition the site hosts blogs during the life of the
21 seminar series, and these are likely to continue beyond the series completion date.
22
23
24
25
26
27

28
29
30 Places at seminars may be reserved by e-mail to
31 law.safeguardingadults@keele.ac.uk Any queries about the series should also be
32 directed to this e-mail address. At the seminars themselves and in between
33 seminars, there is an active twitter feed @SALLY2016_18 #SafeguardingAdults.
34
35
36
37

38 We are delighted that this Special issue of the journal provides a compilation of four
39 papers based on presentations given at one of the seminars that took place in 2016,
40 together with an additional legal paper (more on that later). The theme for the
41 seminar was safeguarding in the devolved nations, so we are delighted to have
42 papers from each of the devolved nations; the papers are as follows.
43
44
45
46
47

48 Our first paper is by John Williams, of Aberystwyth University and the focus is on
49 Wales. The paper explores recent changes to adult safeguarding in Wales (including
50 background information) that have been introduced as part of the Social Services
51 and Well-being (Wales) Act 2014 and discusses their potential impact. Although the
52 Act introduced a number of changes in adult safeguarding in Wales, not least the
53 duty to make enquiries, statutory powers of barring and removal were not included.
54
55
56
57
58 As a recently implemented statute, the legislation is still in the process of becoming
59
60

1
2
3 established and care and health practitioners are becoming used to the changes
4
5 required by the legislation. Although no official data on the impact of the new
6 legislation is available yet, it is likely that the lower threshold that has been set for
7
8 referrals will mean an increase caseloads and the need for practitioners to react to
9
10 both low and high risk cases. The paper provides a detailed examination of the
11 provisions of the Act that are related to safeguarding and identifies that more
12
13 research and evaluation of the different approaches to safeguarding across the
14
15 United Kingdom are needed.

16
17
18 The second paper in the issue is from Scotland, which has had legislation in the form
19
20 of the Adult Support and Protection (Scotland) Act since 2007, implemented from
21 2008. In this paper, Kathryn Mackay of the University of Stirling, together with
22
23 colleague Mary Notman explore the potential value of having a specific, separate
24
25 statute on adult safeguarding. The paper details the powers and duties mandated by
26 the Act and relate these to the overall context of the broader Scottish legislative
27
28 framework in relation to adult protection. The authors utilise a case study of one
29
30 specific Local Authority in Scotland to explore the merits of and issues raised by the
31 Act; this is achieved through consideration of the different forms of data contained in
32
33 the annual reports on adult protection activity produced by the Authority. From the
34
35 data obtained, the use of Protection Orders is quite limited – as intended within the
36 Act. It also appears that effective identification; investigations and interventions
37
38 require staff to be skilled, knowledgeable and well supported. However, a lack of
39
40 reports and data at national level means that comparison between the local and
41 national data is quite limited. The paper provides an appraisal of the implementation
42
43 of the legislation in recent years and considers developments that have taken place
44
45 in both England and Wales. A need for comparative research across the different
46 nations of the UK is highlighted.

47
48
49 The following paper in the issue is by Lorna Montgomery of Queen's University,
50
51 Belfast and her colleague Joyce McKee. The paper examines the current model of
52
53 adult safeguarding in Northern Ireland. The distinctive features of Northern Irish
54 society have shaped its adult safeguarding policy and practice in ways which differ
55
56 from those in England, Scotland and Wales and the paper provides an analysis of
57
58
59
60

1
2
3 adult safeguarding, legislation, policy and practice in this context. Usefully, the paper
4
5 also includes insights from the Regional Adult Safeguarding Officer for Northern
6 Ireland (McKee). A number of strengths, limitations and challenges of Northern Irish
7
8 legal and policy frameworks, and practice systems in relation to safeguarding are
9
10 discussed. This includes an emphasis on changes in the way that adult safeguarding
11 has been conceptualised, together with a focus on prevention and early intervention
12 activities. It appears that organisations from community, voluntary and faith sectors
13
14 have important roles in the continuing development of policy and practice in Northern
15 Ireland.
16

17
18
19 The fourth paper in this issue is by Adi Cooper and Claire Bruin from England. It is
20 now two years since the implementation of the Care Act (2014) in April 2015, and
21 this paper explores the impacts of the Act on adult safeguarding partnerships and
22 practice. The paper considers a range of areas, including wellbeing and safety,
23 safeguarding activity and process, changing criteria and definitions, Making
24
25 Safeguarding Personal, Safeguarding Adults Boards, Safeguarding Adults Reviews,
26
27 and advocacy. The authors, an independent Chair of two Safeguarding Adults
28 Boards, and a senior manager in adult social care in a Local Authority, present
29 information from published sources, experience and networks in the professional
30 sphere. The article argues that the impact on adult safeguarding and Safeguarding
31 Adults Boards has been greater than originally envisaged in a range of areas. This
32 appears to be as a result of aspects of adult safeguarding having been given
33
34 statutory status in the Act, and a new framework put in place. The authors consider
35 that this provision has resulted in added impetus to cultural change in adult
36
37 safeguarding practice.
38
39

40
41
42 The final paper in this issue is by Tim Spencer-Lane of the Law Commission. Some
43 readers of the journal of long-standing will be aware that there have been previous
44
45 papers from Tim (on behalf of the Law Commission) in the journal in relation to legal
46 and regulatory reforms that have a bearing on safeguarding. Examples of these are
47
48 the Regulation of Health and Care Professions (Spencer-Lane, 2012) and the reform
49 of the law relating to Adult Social Care (Spencer-Lane, 2010 and 2011), which
50 culminated in the Care Act 2014. This current paper, written following the recent
51 consultation exercise and work by the Law Commission on potential reform of the
52
53 Deprivation of Liberty Safeguards, provides an overview of the Law Commission's
54
55
56
57
58
59
60

1
2
3 final report and recommendations on the reform of the Deprivation of Liberty
4
5 Safeguards under the Mental Capacity Act, together with some discussion of
6 implications.
7
8

9 We hope that this issue has provided information and food for thought for readers
10 and will stimulate both discussion and potentially, practice development. We also
11 hope that it will stimulate some interest in the seminar series that some readers will
12 be able to attend future seminars and join in the ongoing discussion and debates
13 relating to safeguarding and legal literacy.
14
15
16
17

18
19 Co-Editors:

20 Alison Brammer, Keele University

21 Pete Morgan, Independent Consultant, University of Warwick

22 Paul Kingston, University of Chester

23
24 Bridget Penhale, University of East Anglia
25

26 Michael Preston-Shoot, University of Bedfordshire
27
28
29
30
31

32 References

33
34 Braye, S., Preston-Shoot, M. and Cornish, S. (2015) Learning lessons about self-
35 neglect? An analysis of serious case reviews, *The Journal of Adult Protection*, Vol.
36 17 Issue: 1, pp. 3-18.
37
38
39

40
41
42 Department of Health (2000) *No secrets: Guidance on developing and implementing*
43 *multi-agency policies and procedures to protect vulnerable adults from abuse*,
44 London: The Stationery Office (TSO).
45
46
47

48
49 Department of Health (2005) *Mental Capacity Act*. London, TSO.
50

51
52
53 Department of Health (2009) *Safeguarding Adults Report on the consultation on the*
54 *review of 'No Secrets'*, London: TSO.
55
56
57
58
59
60

1
2
3 Department of Health (2012) *Draft Care and Support Bill*, London: TSO.
4
5

6
7 Department of Health (2014) *Care and Support Statutory Guidance Issued under the*
8 *Care Act 2014*, London: TSO.
9

10
11
12
13 Preston-Shoot, M. and Cornish, S. (2014) Paternalism or proportionality?
14 Experiences and outcomes of the Adult Support and Protection (Scotland) Act 2007,
15 *The Journal of Adult Protection*, Vol. 16 Issue: 1, pp. 5-16
16

17
18
19
20
21 Spencer-Lane, T. (2010) A statutory framework for safeguarding adults? The Law
22 Commission's consultation paper on adult social care", *The Journal of Adult*
23 *Protection*, Vol. 12 Issue: 1, pp. 43-49
24

25
26
27
28
29 Spencer-Lane, T. (2011) Reforming the legal framework for adult safeguarding: the
30 Law Commission's final recommendations on adult social care", *The Journal of Adult*
31 *Protection*, Vol. 13 Issue: 5, pp. 275-284
32
33

34
35
36
37 Spencer-Lane, T. (2012) Reforming the professional regulatory bodies: the Law
38 Commission's review of health and social care professional regulation", *The Journal*
39 *of Adult Protection*, Vol. 14 Issue: 5, pp. 237-243
40
41

42
43
44 Welsh Assembly Government (2000) *In Safe Hands: implementing adult protection*
45 *procedures in Wales*, Cardiff: National Assembly for Wales and the Home Office.
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60