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Social workers' knowledge and skills and the Care Act: Practice Advice Note

Angela Jenkinson and John Chamberlain

November 2019

PRACTICE ADVICE NOTE

FOREWORD

In February 2019 the National Principal Social Worker Network agreed to participate in a series of consultation events with the purpose of producing written guidance on when the Care Act duties of a local authority should be carried out by social workers. One hundred and forty social workers participated in nine separate consultation events, in which the general content of this Practice Advice Note was agreed. Principal social workers convened eight consultation events with practitioners and the National Principal Social Worker Network convened a consultation event with principal social workers. In addition, two Reading Groups consisting of practitioners and principal social workers were convened to advise on the comprehensibility and accessibility of the Advice Note. Throughout the process, the need for and importance of such practice advice was stressed by many who participated.

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The Practice Advice Note will be kept under review for six months and queries, comments or suggestions would be welcomed at angela.jenkinson@kcl.ac.uk.

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1 PURPOSE AND OVERVIEW OF THE PRACTICE ADVICE NOTE

This Practice Advice Note is solely to advise social workers and their employers on when the Care Act duties of a local authority should be carried out by a registered social worker. Part One of the Care Act gives local authorities the power to provide or arrange social work. This Advice Note sets out when social work should be provided or arranged and also on what other roles in the Care Act should be carried out by registered social workers.

This Advice Note is not entirely limited to the Care Act. The Care Act interacts with the Human Rights Act 1998 and the Mental Capacity Act 2005 and the relevant implications for this Advice Note are set out in Section 5.5.7 and in Section 6.2.

This practice advice does not replace the need for social workers to know and understand the Care Act. Social workers are required by their registration to understand current legislation applicable to social work.

The Practice Advice Note is divided into four parts.

Part One concerns the provision of social work itself. The Act identifies social work as an example of how to meet needs. It specifically refers to a counselling type of social work as a way of meeting needs but it recognises that there are other types of social work as well. Social work may only be provided as the outcome of an assessment and it must be included in the care and support plan or support plan.

Part Two concerns the involvement of social workers in assessment and planning. It advises that there should be social worker oversight of all assessments but direct social worker involvement when the individual would be at risk of harm if the assessment were carried out by a person who is not registered as trained in the knowledge and skills needed in their circumstances. This may arise when it is proving very difficult to arrive at agreement with an individual on the well-being outcomes to be achieved.

Part Three concerns the social worker roles in the Act related to protection from abuse and neglect, including self-neglect. These are: the promotion of well-being in relation to protection from abuse and neglect; the duty to have regard in particular to the need to protect people from abuse and neglect; the refusal of a needs assessment when an adult, child or young carer is experiencing, or is at risk of, abuse or neglect; and protection when an adult is unable to protect themselves from abuse or neglect or the risk of it because of their needs for care and support.

Part Four concerns other relevant legislation, specifically the limits of legal compulsion and the relationship between mental capacity assessments and needs assessments.

2 SOCIAL WORKER KNOWLEDGE AND SKILLS

Social workers are registered as having the knowledge and skills to build and sustain professional relationships with individuals, using social work methods to achieve change.

The Care Act is concerned with change. It is concerned with helping individuals in need of assistance to achieve improved well-being and it is concerned with preventing deterioration in well-being. Social workers are fundamental to the achievability of the Care Act. This is because they are registered as having knowledge and skills which are needed to achieve changes which the Act requires. These skills include understanding the need to protect, safeguard, promote and prioritise the well-being of individuals. In doing so, social workers are able to recognise the contribution that the individual's own resources and strengths can bring and can combine that with being able to identify and work with resistance to change and conflict. Social workers understand the emotional dynamics of interactions with individuals and can work with individuals to promote individual growth, development and independence and to assist them to understand and exercise their rights.

3 PART ONE: PROVISION OF SOCIAL WORK

Case Example - AG

AG is a 78-year-old woman living alone. She has recently been diagnosed as being in the early stages of dementia. Her daughter has made contact after an assessment of her mother's needs had confirmed that AG would be eligible for care and support for those needs which are currently being met by her daughter. The daughter says that AG has recently become friendly with a 45-year-old man and that she believes that this relationship is very unsuitable, especially since her mother has agreed that this man may move into her flat. She believes that this man has developed an unhealthy influence over her mother, that her mother would not have been taken in by him in the past and that their friendship will worsen her dementia by confusing her. The man has told the daughter that he wishes to move into AG's flat as a paying lodger. AG is an owner-occupier.

The daughter sees her mother daily and her children also visit often. The daughter has said that, if the relationship with the man continues and especially if he moves in, she will not visit her mother daily and she will stop the practical help she is providing. She will also discourage her children from their contact with their grandmother. She says that she will happily continue to meet her mother's needs, provided the authority intervenes to stop the friend moving in and, if possible, stop the friendship altogether. AG says that she wants

her arrangements with her family to continue unchanged and that she wants her daughter to accept her friendship with this man and her decision that he may move in.

3.1 SOCIAL WORK IS A SERVICE IN ITS OWN RIGHT

Social work is a service which includes counselling and it must be included in a care and support plan or support plan if it is needed.

There are two common misconceptions about social work and the Care Act. The first is that carrying out an assessment is the same as doing social work. The second is that social work does not include counselling.

3.1.1 What the Care Act Says

Social work is given in the Act as an example of what may be arranged or provided to meet needs. Section 8(1)(c) describes it as counselling and other types of social work. This is the only reference to social work in the Act. The local authority's power and duty to meet needs arise in sections 18 to 20, after the assessment of the needs has been completed and a determination has been made on which assessed needs meet the eligibility criteria. (This is except for an adult's urgent needs which may be met under s19(3) without having yet carried out a needs assessment or having made a determination on eligibility.)

3.1.2 Social Work Is A Type of Support

Social work is a different service from assessment and planning. The assessment has to be sufficiently complete before social work can be considered. Social work is a way of meeting needs and, if it is to be arranged or provided, it must be included in a care and support plan or support plan. The plan must indicate what need is being met by the social work and which well-being outcome or outcomes it is intended to achieve.

3.1.3 When Counselling or Another Type of Social Work May Be Needed

An illness or impairment, or another relevant circumstance, may physically cause an adult to be unable to achieve certain outcomes without assistance, or it may present some other practical problems with the same result, with a consequent impact on the adult's well-being. In such cases practical assistance will appropriately be arranged or provided to meet the need.

However, alternatively, an illness or impairment may give rise to or relate to the adult's inability in a psychological or interpersonal way. When the problem with which the adult needs assistance is psychological or interpersonal in nature, then the need for assistance may be met by the provision of social work, to assist the adult, through listening and talking, to achieve change. The same is true for the needs of a carer providing necessary care.

A need for social work may arise, for example, if an adult is living with an illness or impairment which causes an emotional problem for them in developing or maintaining their family or other personal relationships. This is only one obvious example and the need for social work may arise for an individual in many different ways.

3.1.4 What a Counselling Type of Social Work Is

Counselling consists of listening and talking to achieve change. A counselling type of social work is a professional relationship in which listening and talking skills are used to assist an individual to make changes which will reduce or do away with at least some of their needs for support.

3.1.5 Who May Provide Counselling

There is no legal regulation of counsellors, although the Professional Standards Authority accredits registers which are run by non-statutory organisations. It is not compulsory for people practising as counsellors to be on an Accredited Register.

The NHS may be required to provide counselling to treat illnesses or impairments. In such cases the counselling is a health care need and the local authority must not provide it. The decision as to what is required from the NHS is a matter for the NHS to decide and is not for the local authority to decide. Where there is no NHS requirement to provide counselling and the need for it meets the eligibility criteria for care and support or support, then counselling is a social work duty.

Some adult social care is provided by integrated services. If a nurse, or other health professional, provides counselling as part of a care and support or support plan, then they are providing social work and are not providing nursing. Section 22(3) says that the local authority may not meet needs under sections 18 to 20 by providing or arranging for the provision of nursing care by a registered nurse. A service provided by a nurse to meet a social care need is not considered to be nursing care if, having regard to its nature and the circumstances in which it is provided, it does not need to be provided by a registered nurse.

3.1.6 Why Social Work Should be Provided by a Social Worker

A social worker is registered as a professional able to understand the emotional dynamics of interactions with adults and carers and able to use social work methods, theories and models to identify actions to achieve change. A counselling type of social work is the only role in the Act which is definitely social work, whoever provides it.

Counselling is a social work method but each social worker is not required to be equally skilled at each and every social work method. The Care Act recognises counselling as one type of social work but social workers, as autonomous professionals, may exercise their own professional judgement to select whichever social work method they believe will meet the need.

If a counselling type of social work is the identified way of meeting an eligible need, then it must be arranged or provided by the local authority or direct payments must be provided for it. The authority would be required to find a counsellor able to meet the need and, if there is no suitably skilled social worker, the social work would need to be practised by a skilled counsellor who is not a social worker. This would not provide the assurance which social work registration provides.

Social workers are required to maintain fitness to practise and to recognise the importance of career-long learning. For many professionals, counselling is a skill achieved through post-qualifying training and the same may be true for social workers.

3.1.7 What This Means for Social Workers

The provision of social work as a means of meeting needs is the social worker's primary Care Act role. Social work is not the only profession which may provide counselling but when counselling is needed to meet a social care need, then counselling is a type of social work and it should be carried out by registered social workers who have acquired the necessary skills.

Case Example: AG - Social Work is a Range of Methods to Meet Needs Which Includes Counselling

It appears that AG has been presented with the problem of having to choose between her family and her friend and this may result in a need for assistance with developing and maintaining her family and personal relationships.

This problem is related to AG's dementia in two ways. Firstly, AG's daughter believes that the dementia has resulted in an uncharacteristic and possibly abusive relationship, which may be another problem in its own right. Secondly, AG's daughter is threatening to withdraw her practical and emotional support if the friend is allowed to move in and AG needs this care because of her dementia.

AG may be unable to achieve the development and maintenance of her relationships without assistance. The consequence of her not doing so would be a likely significant impact on her well-being relating to her family and personal relationships. AG already has needs which meet the eligibility criteria and so this need would be eligible as well.

The relationship between the dementia and this need for assistance is neither physical nor practical in nature. It is of an interpersonal kind between AG and her daughter. There is no practical assistance which can resolve it. It will require either AG or her daughter, or possibly the friend, to make changes in their ways of thinking or in their decisions. It requires counselling or another type of social work.

4 PART TWO: REGISTERED SOCIAL WORKER KNOWLEDGE AND SKILLS IN ASSESSMENT AND PLANNING

4.1 SOCIAL WORKER INVOLVEMENT IN ASSESSMENT AND PLANNING

Social workers are registered as having the knowledge and skills in assessment and planning to ensure that adults come to no significant harm because of their needs for care and support.

There is a common misconception that it is more important for the local authority to help adults to achieve the outcomes that matter to them in their life than to fulfil its duties to meet assessed, eligible needs which are having a significant, harmful impact on the adult's well-being.

4.1.1 What the Care Act Says

There is no requirement that the provision of care and support must contribute to achieving outcomes the adult wishes to achieve in day-to-day life. Care and support may incidentally assist with achieving them but the only duties on the authority are to assess them, provide information about them and have regard to them in seeking to ensure that the care and support plan is proportionate to the needs to be met.

The core purpose of care and support is the process set out in detail over many sections of the Care Act, which is to assess needs and to make plans to assist adults with problems which are related to living with illnesses or

impairments and which are resulting in the adult being unable to do certain things for themselves, with a harmful impact on their well-being.

4.1.2 When Direct Social Worker Involvement is Needed in an Assessment

The assessment service may be compared to the primary care service in the NHS, in that it acts both as a service in its own right and as the gateway to other services. Social work is one of the services to which assessment is the gateway but there are circumstances in which the skills and knowledge of a social worker are needed in the assessment. The Care and Support (Assessment) Regulations 2014, 5(1), require that the local authority must ensure that any person carrying out an assessment has the skills, knowledge and competence to carry out the assessment in question and is appropriately trained. (This is apart from an individual to whom a supported self-assessment relates.)

Social worker involvement is needed in the assessment when there is a danger that eligible needs will be unmet because it is proving very difficult for the assessor to arrive at agreement with the individual, leaving them at risk of harm to their well-being. Social worker involvement is also needed when an individual's needs may be having a significant impact on well-being relating to protection from abuse or neglect and this is covered in Part 5 of this Practice Advice Note. Social workers are registered as having the skills to work with individuals in such circumstances.

4.1.3 When Social Worker Oversight of an Assessment is Sufficient

Many individuals are perfectly capable of participating fully in the assessment of their needs and in planning and managing their care and support. Those who are less capable are entitled to support and advocacy as appropriate. Many assessments of the needs of adults who lack the capability to participate to any great extent are straightforward. In such cases, social worker assurance may appropriately be provided by oversight and supervision.

4.1.4 How Social Worker Registration Provides Assurance in an Assessment

The purpose of registration is public protection. The protection afforded by the Social Workers Regulations 2018 and the Standards of Proficiency for Social Workers in England provide both the individual and the authority with the assurance that the authority has properly fulfilled its duties.

A social worker is registered as able to practise as an autonomous professional, exercising their own professional judgement. Social workers are registered as professionally able to select and use appropriate assessment tools and to prepare and implement plans in conjunction with adults and carers. They are also registered as able to manage and weigh up competing or conflicting values or interests in doing so and to make informed judgements on complex issues using the information available. The professional care of a social worker also includes a correct understanding of the relevant legislation. They are also registered as able to identify and work with resistance to change and conflict.

4.1.5 What This Means for Social Workers

There should be social worker oversight of all assessments but social workers should participate directly in an assessment when the individual would be at risk of harm if their assessment and care planning were carried out by a person who is not registered as proficient in the skills needed in their circumstances.

Case Example AG – Social Worker Involvement in Assessing and Planning for AG’s Well-Being

Were AG not to maintain her contact with her family and were she to lose the goodwill of her daughter in providing her with practical and emotional support, then AG would suffer emotional harm. AG also wants her friendship to develop and wants her friend to move in with her and there is the possibility of harm by loss of what is possible if that personal relationship does not develop. AG is being confronted with the problem of having to choose between her family and her friend. It is hard to determine what AG’s best possible state of well-being might be if the daughter really intends to carry out what she is proposing. The key role of the social worker in AG’s assessment is to identify with her what is her best achievable state of well-being, in which there is either no harm or least harm, or risk of harm, to her, and how to assist her to achieve it.

4.2 SOCIAL WORKER KNOWLEDGE AND SKILLS IN JUDGING WELL-BEING IN THE ASSESSMENT

The knowledge and skills of a registered social worker are needed when the individual’s own judgement of their well-being would leave or put them at risk of harm.

There are two common misconceptions in relation to Care Act judgements on well-being. The first is that the individual is the judge of their own well-being. The second is that a person with capacity has the right to make an unwise decision in connection with their care.

4.2.1 What the Care Act Says

The duty on the local authority required by s9(4)(a) and s10(5)(c) of the Care Act is to make judgements concerning the impact of an individual’s assessed needs on each of the possible elements of their well-being, which are set out in s1(2).

The Care Act decision-maker is the local authority. The well-being checklist in s1(3) requires the authority to take the individual’s wishes and beliefs very seriously but the Act does not allow the authority to make an unwise decision on the mistaken grounds that the individual wishes them to or, indeed, on any grounds.

The well-being checklist requires the authority to have regard to the importance of beginning with the assumption that the individual is best-placed to judge their own well-being but it does not require the authority to assume that the individual is the best judge of their well-being. The well-being checklist equally requires the assessor to have regard to all the individual’s circumstances in making their judgement.

The misconception that a capacitated person has the right to make an unwise decision has nothing to do with the Care Act. It is a misunderstood principle in the Mental Capacity Act. The correct principle is that an unwise decision is not sufficient evidence to conclude that a person lacks mental capacity and it applies only to the Mental Capacity Act.

4.2.2 The Well-Being Outcomes to be Achieved

In the process of completing an assessment, the assessor must discover what the individual's current state of well-being is, must judge what their well-being would be were it not for their needs for care and support, or support, and must determine how to assist them to get from the one to the other. The well-being checklist factors stress that the well-being judgements must be made as far as possible by the individual themselves but the assessor has to make the final decisions on the well-being outcomes to be achieved. Many social workers find this an uncomfortable position to be in, especially if the individual and the assessor do not agree, but it is an appropriate role for a social worker.

4.2.3 How the Individual's Unique Well-being Must be Identified

The Care Act says in s1(3)(a) that an individual's well-being is a matter of judgement. It may be very hard to judge because what constitutes one individual's well-being does not constitute another's. Each individual's overall, unique well-being consists of a combination of the elements of well-being in s1(2) in the ways which apply in that individual's particular circumstances.

The assessor must have regard to the importance of beginning with the assumption that the individual is best-placed to judge their own well-being but not that the individual is the best judge of their well-being. There are many possible reasons why an individual might have difficulty in judging their own well-being. The individual's mental capacity may be an issue but there are other possible reasons. People with full mental capacity do sometimes make unwise judgements. People do not always act in the interests of their well-being and nor do they necessarily hold consistent views over time as to what constitutes their well-being. An individual's judgement on their well-being may be clouded at any or all times for a variety of reasons. They may, perhaps, be under the influence of another person. The assessor must ascertain as far as possible what the individual's judgement is and must take this fully into account in making their final judgements and decisions.

The decision on the well-being outcome which the authority is assisting the individual to achieve must be made properly in accordance with the requirements of the Care Act. The assessor must take all relevant factors into account, including, but not limited to, all the relevant well-being elements and all the well-being checklist factors. All non-relevant factors must be disregarded. The decision must be lawful and it must not be a decision which no reasonable authority would make. The assessor must be able to demonstrate that their decision is a wise one, in that it is the most reasonable conclusion based on all the available information.

4.2.4 Why a Well-Being Judgement is Not a Best Interests Determination

The individual's mental capacity may be a relevant factor in the judgement of their well-being but the assessor does not follow the processes in the Mental Capacity Act when making a well-being judgement. The Care Act says that a local authority may only undertake acts in connection with care if those acts will promote the individual's well-being. The Mental Capacity Act comes into play if a person is unable to consent to any particular act. In such a case the authority may only go ahead with that act if it is in the person's best interests. The best interests determination does not affect the well-being judgement. It is not concerned with what the individual's well-being

is but only with whether one particular act is in the person's best interests. If it is not, then the authority must find another way.

Unlike the Mental Capacity Act assessor, the Care Act assessor is not assessing whether the individual is able or unable to consent to a decision. The Care Act assessor is making a judgement about the individual's well-being. The Care Act does not require the individual's consent to that judgement. What it does require is that their agreement or disagreement with it must be taken fully into account.

In a Mental Capacity Act assessment, a person either has the capacity to consent to a particular act or they lack it. But there is no comparable line to draw in the Care Act. The individual's judgement of their own well-being is one factor which must be taken into account and the degree to which their capacity to judge it might be diminished is another factor which must also be taken into account.

4.2.5 Why the Well-Being Judgement Should be Made by a Social Worker

A social worker is registered as able to understand the need to protect, safeguard, promote and prioritise the individual's well-being and to manage and weigh up competing or conflicting values or interests to make reasoned professional judgements. At the same time, they are registered as able to recognise the contribution which the individual's own resources and strengths bring.

4.2.6 What This Means for Social Workers

If leaving the individual to act in accordance with their own judgement of their well-being would leave or put the individual at risk of harm, then social worker expertise is required to work with the individual to arrive at an agreed plan which would meet the needs and prevent the harm. The social worker's skill is always in working with individuals and in not working against them.

Case Example: AG - Social Worker Knowledge and Skills in Judging Well-being

It is not known what AG's judgement is of her own well-being but her judgement that it is best promoted by keeping the relationships with both daughter and friend unchanged seems not to be a realistic possibility. In which case AG is being asked to make a difficult choice which requires very careful judgement in weighing and balancing priorities. Her capability to engage in this complexity of judgment may be affected by her dementia. It may also be affected by pressure from both sides. It appears that AG's daughter has resorted to an emotional threat in order to protect her mother as she sees it, and her daughter has also effectively described the friend as exerting undue influence on AG.

The social worker has to make their own assessment of what AG's best achievable state of well-being would be. They must take into account all the elements of well-being and all the checklist factors as well as all other available relevant facts. These relevant facts include AG's own judgement and her wishes; her mental capacity to make that judgement; the influences of her daughter and her friend on it; her developing care needs and how best to meet them; the likely progression of the dementia; the daughter's and grandchildren's lifelong relationships with AG; the uncharacteristic and brief nature of the relationship with the friend and the motivations of the family and friend as far as they can be ascertained and to the degree that they are relevant.

5 PART THREE: SOCIAL WORKER KNOWLEDGE AND SKILLS REGARDING ABUSE AND NEGLECT

5.1 THE FOUR SOCIAL WORKER ROLES IN THE CARE ACT CONCERNING PROTECTION FROM ABUSE AND NEGLECT

The knowledge and skills of a registered social worker are needed: when an eligible need is having a significant impact on protection from abuse or neglect; or when there is a need to balance an individual's wishes with the need to protect them or others; or when an adult refuses an assessment and they are at risk of abuse or neglect, including of self-neglect; or when an adult remains at risk and is unable to protect themselves because of their needs for care and support.

Case Example - CI

CI is a woman of 52 with multiple sclerosis which affects her physical mobility but does not include cognitive dysfunction and has no effect on her mental capacity. CI has recently started having falls and this has prompted a review. She lives with her husband of thirty years. She used to be much more active and she managed the family household herself entirely. Her daughter provides some care for CI and asked to be seen. She said that she believes that her father has become increasingly frustrated with his wife's inability to look after him and their home as she used to and that she believes that he has taken to hurting her, or at least that there is a risk that he will do so. She says that she sees him constantly angry with her mother and often frighteningly so and that a neighbour has told her that she has seen her father with his hands around her mother's throat on a couple of occasions and that CI then seemed in real fear. The daughter has become fearful for her mother's safety but she says she cannot raise this with her father because of the nature since childhood of her relationship with him. CI employs a personal assistant who has not reported any concerns. When asked, CI and her husband individually deny that there is anything wrong with their relationship. He has been offered a carer's assessment which he has turned down, saying that he does not see himself as a carer. They both say that all they want from the council is to continue the direct payments for the personal assistant. CI has said this when with her husband and when on her own.

The Care Act is fundamentally concerned with ensuring that no harm comes to an individual because of their needs for care and support or support. It is concerned with an individual's human rights to live in freedom from neglect and in freedom from abuse, provided that the individual's protection from either neglect or abuse needs to be promoted as a consequence of their needs for care and support or support.

There is no definition of either neglect or abuse in the Care Act but they share the same concept of preventable or avoidable harm. When the Act refers to either it refers to both together and it creates identical duties in respect of them both. The duties arise when there is a danger that an individual is at risk of harm, which includes but is not limited to, self-neglect or abuse by a third-party. The nature of the harm itself may be of any kind and is not limited to physical harm.

The Care Act requires the authority to respond to the risk of harm from abuse or neglect by meeting needs for care and support, or support; or by providing advice and information; or by cooperating with relevant partners; or by any combination of these. There is also a secondary duty on the authority, which is its lead multi-agency safeguarding role.

Part One of the Care Act does not refer to or create a criminal offence concerning the well-being of individuals, except for the offence created by s47(6) of obstructing the authority's duty to protect the property of adults being

cared for away from home. This Practice Advice Note does not address any possible duties of the local authority concerning the criminal law. It is solely concerned with the Care Act.

5.2 SOCIAL WORKER INVOLVEMENT IN WELL-BEING RELATING TO PROTECTION FROM ABUSE OR NEGLECT

There is a common misconception that the authority's duties concerning protection from abuse or neglect consist only of s42 safeguarding and the work of the Safeguarding Adults Boards.

5.2.1 What the Care Act Says

The general duty of the authority in section 1(1) is to promote the individual's well-being and s1(2)(c) says that this includes the individual's well-being relating to protection from abuse and neglect.

The duties in s9(4)(a) and s10(5)(c) include the duty to assess the impact of the individual's needs on their well-being relating to protection from abuse and neglect.

The duties in s18(1) and s20(1) are to meet eligible needs, including those which are having a harmful impact on the individual's well-being relating to protection from abuse and neglect.

The duty in s13(5) includes the duty to give relevant information and advice to individuals whose needs do not meet the eligibility criteria, and this includes information and advice concerning protection from abuse and neglect, if an ineligible need is having such an impact.

The duty in s6(6)(d) is that the local authority and its relevant partners must cooperate with each other for the purpose of protecting adults with needs for care and support who are experiencing, or are at risk of, abuse or neglect.

The Eligibility Criteria Regulations say in 2(1)(a) and 3(1)(a) that, of all the possible relevant circumstances, only physical or mental impairment or illness, or providing necessary care for an adult, create a possible duty on the authority to meet needs for care and support, or support, to promote well-being relating to protection from abuse or neglect. However, the authority may always decide to meet needs for care and support, or support, even if does not have a duty, if the individual is assessed as needing it. And the example in s8(1)(e) of meeting needs by providing information and advice applies to meeting ineligible needs.

5.2.2 The Decision That a Need Has, or Is Likely to have, an Impact on Protection

No proof of actual abuse or neglect is required for the power or duty to promote protection from them. The authority merely has to be satisfied on the basis of the needs or carer's assessment that one or more needs are having an impact on protection from abuse or neglect. If the authority then decides that it must meet a need or that it will meet a need, the decision to do so includes addressing any impact which that need is having on protection from abuse or neglect. The nature of the impact may be of any kind and it does not need to be significant for the duty to apply.

5.2.3 What a Need Is

The duties in s9(1)(b) and s10(1)(b) require the assessor to identify what the needs are that the individual has. A need in the Care Act is a problem of such a nature as to make it appropriate for assistance from the local authority. This means that it must be by reason of age, illness, disability, pregnancy, childbirth, dependence on alcohol or drugs, or any other similar circumstances, including providing necessary care to an adult. It also means that it must have the result that the individual cannot or should not be expected to do certain things for themselves, or the effect that a carer's physical or mental health is, or is at risk of, deteriorating. It also means that it must have a harmful impact on the individual's well-being.

5.2.4 The Importance of Formulating the Problem Precisely

The most important part of the assessment concerning well-being relating to protection from abuse and neglect is to formulate the problem precisely. It is necessary to understand how the problem relates to the individual's relevant circumstances and also how it relates to the risk of abuse or neglect in order to decide what kind of assistance it calls for.

There are three main types of problem which may put an individual at risk of neglect if the individual does not receive appropriate assistance, or which may render them more vulnerable to abuse by a third-party. They are not exclusive of each other and they are not exhaustive.

The first type consists of practical problems which are related to a physical illness or impairment, or to providing care for an adult. Such needs for assistance will be met by the authority providing or arranging care and support, or support, of practical kinds and in appropriate ways, in order to prevent neglect of social care and to help minimise the opportunities for abuse by a third party.

The second type consists of problems related through the lack of relevant mental capacity to a mental impairment or mental illness. Such needs for assistance may be met by the authority arranging or providing care and support in the form of guidance and of proportionate protective measures and protective environments.

The third type consists of psychological or interpersonal problems, which may relate to any relevant circumstances. Such needs for assistance may be met by the authority providing or arranging counselling or another type of social work, in order to assist the individual to develop or maintain personal relationships which cause them no harm.

Some care and support plans or support plans may also require the cooperation of relevant partners, for example to protect against the neglect of health or personal care.

In some cases, the individual will be able to protect themselves but needs assistance to do so. In other cases, the individual will be unable, temporarily or permanently, to protect themselves and this could be for a variety of reasons, not necessarily related to their needs for care and support, such as coercion or control.

If the authority meets the individual's needs, then the care and support plan, or support plan, must ideally remove the problem altogether or assist the individual to remove it. If that is not possible, then the plan must meet the

needs in a proportionate way to assist the individual to live with the problem with the least risk of harm from neglect or abuse.

5.2.5 When the Assessment and Planning Should be Carried Out by a Social Worker

If it appears that the impact of an individual's needs on protection from abuse or neglect may be significant, then the assessment should be carried out by a social worker. Significant is somewhere above minor or trivial on the spectrum of harm but need not be so high as serious. Social workers are registered as able to assess a situation, determine the nature and severity of the problem and call upon the required knowledge and experience to deal with it. They are also registered as able to recognise signs of harm, abuse and neglect and to know how to respond appropriately, including recognising situations which require immediate action.

5.2.6 What This Means for Social Workers

Social workers must recognise that the authority's core duty relating to protection from abuse or neglect is to complete needs or carer's assessments and produce care and support or support plans which will meet all eligible needs which, if they were not appropriately met, would have, or would be likely to have, an impact on protection from abuse or neglect. If it appears that the impact of needs on protection may be significant, then the assessment should be carried out by a social worker.

Case Example – CI – Assessing Needs Which may have an Impact on Protection from Abuse or Neglect

From the information available it is not yet clear whether or how CI's needs for care and support relate to protection from abuse. However, CI's daughter is claiming that her mother's increasing inability to maintain a habitable home environment because of her MS is having the indirect consequence of a significant impact on CI's well-being relating to protection from her husband. If this is so, then it is an eligible need which must be met in such a way as to remove or reduce that impact. However, it is also possible that the assessment reveals a very different explanation of the information provided by the daughter, including the possibilities that neither the abuser's motivation nor CI's ability to protect herself have anything to do with the MS, in which case the abuse would not be a matter which can be helped by care and support provision. The assessment must seek to clarify all this.

5.3 THE DUTY TO BALANCE THE INDIVIDUAL'S WISHES WITH THE NEED TO PROTECT PEOPLE FROM ABUSE AND NEGLECT

There is a common misconception that the individual's wishes are paramount in protection decisions.

5.3.1 What the Care Act Says

The Care Act includes in s(1)(3) a checklist of factors to which the local authority must have regard in particular. These include the individual's views, wishes, feelings and beliefs and equally the need to protect people from abuse and neglect. These two factors may prove to be in conflict with each other. The general duty of the local authority is to promote well-being and all the well-being checklist factors must all equally be taken into account. The balancing principle between factors is always the well-being principle.

The need to protect people from abuse and neglect includes the need to protect adults and carers but it also includes the need to protect any others, such as children, who may be in need of protection from abuse or neglect.

5.3.2 How the Balancing Decision Must Be Made

A thorough appraisal of the risks of the abuse or neglect, and of who is at risk of it, must be carried out in deciding how much weight to give to it in the balance. An equally thorough understanding of the reasons for the individual's wishes and feelings and of the importance to them of their views and beliefs is also needed to decide how much weight to give to them in the balance.

5.3.3 Why the Balancing Decision Should be Made by a Social Worker

If it is decided that following the individual's wishes would put them or others, or leave them or others, at risk of abuse or neglect, then a social worker is the appropriate professional to try to agree a plan with the individual which will achieve adequate protection and also give due weight to their views, wishes, feelings and beliefs.

The assessment and planning process may reach an impasse because agreeing to the individual's wishes may leave them or others at too great a degree of risk. If so, the care and support plan or support plan may at this stage need to be for counselling or another type of social work to seek to resolve the impasse. The assessment would be resumed when circumstances have changed in a way which affects the plan.

Social workers are registered as able to manage and weigh up competing or conflicting values or interests in order to make reasoned professional judgements in assessing and planning. They are also registered as able to exercise authority within the legal framework of the Care Act and within professional and ethical boundaries. In doing so, they are able to use interpersonal skills and appropriate forms of verbal and non-verbal communication and to understand how their communication skills affect the assessment of and engagement with the individuals concerned.

5.3.4 What This Means for Social Workers

Social workers should make the decision on the appropriate balance if the individual's views, wishes, feelings or beliefs conflict with the need to protect them or others from abuse and neglect.

Case Example – CI – The Duty to Balance the Need to Protect with the Individual's Wishes

CI says that all she wishes to have from the council is direct payments. However, the provision of direct payments does not seem to be meeting CI's needs sufficiently to also resolve the newly presented problem of the risk of abuse by her husband. It is not known why the personal assistant has not reported any concerns. There may have been no concerns to report or the personal assistant may have respected CI's wishes not to report them. The explanation of this will affect the decision on the appropriateness of direct payments to meet CI's needs. The duty to meet needs through direct payments is subject to the condition that the local authority is satisfied that making direct payments is an appropriate way to meet the needs in question. The balance between CI's wishes to have her needs met through direct payments and the need to protect her from abuse will have to be part of the needs assessment. There is also the more pertinent question of whether the monitoring and support of a personal assistant is appropriate and sufficient to resolve the problem of risk of abuse. It seems probable that counselling or another type of social work would be needed, even though CI is saying at present that she does not wish to have any such assistance.

5.4 REFUSAL OF A NEEDS ASSESSMENT WHERE THERE IS THE RISK OF ABUSE OR NEGLECT

There is a common misconception that an individual must consent to an assessment before it can be carried out and that the duty to meet assessed eligible needs depends on the individual's consent.

5.4.1 What the Care Act Says

The Care Act does not require that an adult or an adult carer must consent to the assessment for the local authority's duties to arise, although it does for a child or a young carer. Sections 11(1) and 11(5) say that an individual's capacitous refusal of the assessment will remove the local authority's duty but s11(2)(b) says that this does not apply if an adult is at risk of, or is experiencing abuse or neglect. In that case the local authority may not rely on their refusal but must carry out the assessment. Section 18(1) then says that the authority must meet the adult's assessed eligible needs which are not being met by a carer, provided the ordinary residence criteria and the cost and charging conditions are met. The same or similar provisions apply later in the Act to the consent of a child or young carer.

The well-being checklist recognises the importance of the individual participating as fully as possible in their assessment and the importance of them being provided with the information and support necessary to enable them to do so. However, if an adult, child or young carer refuses the assessment or to participate in it but is at least at risk of abuse or neglect, then the authority must carry out the assessment without their participation. The requirement of their participation only applies insofar as it is possible and the Act gives their protection the over-riding priority.

The thinking behind this includes the concern that a refusal to engage with an assessment might arise from, or be part of, the reason for the individual's needs for care and support or support. The refusal might be covering some deep-seated problem. The authority is duty bound to try to discover whether this is the case should an adult, child or young carer refuse the assessment when they are at least at risk of harm from neglect or abuse. However, the assessment must not be narrowed to simply finding this out. The duty to assess in these circumstances is no different from any other assessment and it applies whether the abuse or neglect prove to have any relationship with the needs for care and support, or support, or not.

The grounds for continuing with the assessment include the risk of self-neglect as well as neglect or abuse by others. If the authority knows or ought to know that there is at least the risk of self-neglect or of neglect or abuse by others, then the assessment must be carried out despite the refusal.

It is possible that needs of the level which the authority has a duty to meet, because they are resulting in the individual being unable to do certain things for themselves with a significant, harmful impact on their well-being, would leave the individual in a state of neglect if they are left unmet. It is possible, therefore, that the duty to continue with the assessment will apply to all refusals by adults, children or young carers whose assessments would probably result in the eligibility criteria being met. The eligibility criteria and the absolute duty to assess may possibly be triggered by the same level of unmet need. The assessor has to decide whether leaving the needs

unassessed and leaving them unmet by either the authority or a carer would be to leave the individual at least at risk of neglect.

5.4.2 How a Decision Must be Taken on Whether There is Abuse or Neglect or the Risk of It

The refusal of an assessment is the only circumstance in the Care Act which requires the local authority to decide whether an individual is experiencing or is at risk of abuse or neglect.

The decision must be evidence-based. This means that the authority must already possess sufficient information about the adult, child or young carer to make at least this decision to continue the assessment. This may also amount to sufficient information to conclude an assessment of at least some needs.

5.4.3 Why a Decision on Whether There is or a Risk of Abuse or Neglect Should be Made by a Social Worker

The decision on whether there is abuse or neglect or the risk of it is not always an easy judgement to make. It is one of the most significant decisions in adult social care because of its implications. It requires a professional standard of care and it should be made by a social worker, registered as able to engage in evidence-informed practice and make informed judgements on complex issues using the information available.

5.4.4 How to Assess and Meet Needs Despite a Refusal

The authority must at no time put an individual under pressure to participate nor put them under pressure to withdraw their refusal. Other than specific powers granted by specific Acts, the local authority may only do what individuals generally may do and individuals may not use any form of coercion to substitute their aims for those of another.

In completing the assessment without the adult's, child's or young carer's participation and against their wishes, the power of the authority is confined to using information which is legitimately available from sources other than the individual. Anything beyond that requires their consent and this may only be dispensed with within the limited authority provided by the Mental Capacity Act and the Mental Health Act 1983 in circumstances when they apply.

An understanding of the reasons for the refusal or lack of participation will almost certainly be necessary if the authority is to fulfil its duty to meet the individual's needs in such cases.

If the individual is assessed as having an eligible need which meets all the relevant criteria and conditions, then the authority must meet that need. If any act taken to meet the need would require the consent of the individual, then their consent must be given, unless the Mental Capacity Act or the Mental Health Act provide otherwise. However, the need must be met.

5.4.5 Why the Response to the Refusal Should be Made by a Social Worker

A social worker is registered as able to understand the need to respect and uphold the right of the individual not to participate. The social worker is the appropriate professional to decide how to continue to try to engage with the individual without infringing their rights. They are able to understand the principles of information governance and to be aware of the safe and effective use of health and social care information. They are able to

recognise that relationships with individuals should be based on respect and honesty. They understand the need to adapt practice to respond appropriately to different individuals and to recognise the power dynamics in relationships with individuals and manage those dynamics appropriately. They are able to work with individuals, both to promote their individual growth, development and independence and to assist them to understand and exercise their rights.

It is possible that the individual may be open to changing their mind if they are genuinely convinced of the benefits of doing so. A social worker is able to use effective and appropriate skills in communicating information, advice and professional opinion to individuals and is able to work in partnership with them and to build and sustain a professional relationship with them.

A social worker is able to understand the emotional dynamics of interactions and they will probably need to complete an assessment of this particular interaction. If the needs assessment or young carer's assessment reaches the conclusion that a social work assessment is a necessary next step, then a care and support plan or support plan for the provision of social work must be made, until such time as a review of the plan is needed and is possible.

5.4.6 Whether the Duty is Impossible to Meet Should be Decided by a Social Worker

The duty to complete the assessment and then to meet such assessed, eligible needs as meet the criteria and conditions of s18(1), or s20(1) in the case of a young carer, is absolute. No matter how adamant, unequivocal and persistent the refusal, there is no provision in the Care Act for not completing the assessment in these circumstances and not meeting the eligible needs, provided the relevant criteria and conditions are met. The only basis on which an authority may justify not doing so, and so may justify leaving an adult, child or young carer at risk of, or experiencing abuse or neglect, is that it is impossible to do otherwise.

In order to know that it is impossible to fulfil the duty, the decision-maker must be able to demonstrate that all possibilities have been and are being tried and are found to be ineffective. This is not time limited. The duty persists until it is met or until the individual is no longer at risk. This means that avenues must be kept open to enable the authority to fulfil its duty, should the possibility arise at any time and in any way.

A decision that the authority has no choice but to leave an adult, child or young carer at risk of or experiencing abuse or neglect is probably the most serious decision which an authority may make. It may leave an individual in need at risk of serious harm or even death. It requires a professional standard of care. It should be made by or on the recommendation of a social worker, who is registered as able to gather, analyse, critically evaluate and use information and knowledge to make recommendations of this nature. Given the importance and potential implications of this decision, the social worker must be able and prepared to justify their decision or recommendation. They must also recognise the value of supervision, case reviews and other methods of reflection and review and be able to use supervision to support and enhance the quality of their decision or recommendation.

5.4.7 What This Means for Social Workers

If an adult, child or young carer refuses an assessment, a social worker is the appropriate person to decide whether they are at risk of abuse or neglect and, if they are at such risk, a social worker is the appropriate person to work with them to complete the assessment and meet their eligible needs.

Case Example – CI – Refusal of Assessment

The review has revealed that circumstances concerning CI's relationship with her husband have changed in a way which could make the current plan inadequate to meet all her eligible needs. CI's needs for assistance related to her MS seem now to be having a significant impact on protection from abuse, in that she appears now to be at risk because of her husband's response to them. Where a review reveals that circumstances have changed in a way that affects a care and support plan, the authority must, to the extent it thinks appropriate, carry out a needs assessment. There is a good chance that CI would refuse such an assessment. The social worker has to decide whether, on the information available, CI is at risk of abuse or is experiencing abuse. This decision rests on the credibility of the daughter's information. Hearsay information is acceptable, although it is less forceful than direct information. It would be hard to justify to the daughter that her information is not sufficient for a decision that, on the balance of probabilities, CI is at risk of abuse. If this is the decision, then the assessment must be carried out despite any refusal and all CI's eligible needs must be met.

5.5 SOCIAL WORKER INVOLVEMENT WHEN AN ADULT MAY BE UNABLE TO PROTECT THEMSELVES FROM ABUSE OR NEGLECT BECAUSE OF THEIR NEEDS FOR CARE AND SUPPORT - SAFEGUARDING

There are two common misconceptions concerning safeguarding.

The first common misconception is that safeguarding applies to all individuals who are experiencing abuse or neglect or who are at risk of it.

The second common misconception is that the safeguarding duty in s42 enables the authority to provide assistance to an adult which is additional to, or different from, the assistance which may be provided following a needs assessment or an assessment of their carer's needs.

5.5.1 What the Care Act Says

Sections 42-45 of the Care Act make the local social services authority the lead public authority for the protection of adults in need of care and support in its area. The local authority's core duty to promote protection from abuse and neglect applies to adults, adult carers, children and young carers but the authority's safeguarding duties are restricted to some but not all adults. Section 42(1) identifies the adults for whom the multi-agency safety net exists. These are adults in the area about whom the authority has reasonable cause to suspect that they have needs for care and support (whether or not the authority is meeting any of those needs) and reasonable cause to suspect that they are experiencing, or are at risk of, abuse or neglect, together with reasonable cause to suspect that they are unable to protect themselves against the abuse or neglect, or the risk of it, as a result of their needs for care and support. Safeguarding therefore applies to fewer people than does the core duty to promote protection from abuse or neglect.

The only additional power which s42 gives to the local authority is the power and duty in s42(2) to make enquiries, or cause them to be made, and then only if the authority thinks they are necessary to enable it to decide whether any action should be taken in the adult's case and, if so, what and by whom.

5.5.2 The Need for Protection

The adult must be in need of protection because of their needs for care and support. If the adult is able to protect themselves with available assistance, or if the adult is unable to protect themselves for reasons other than their needs for care and support, then the grounds are not met and the s42 duty does not arise. An adult might be unable to protect themselves for a variety of different reasons, such as coercion or control. The safeguarding grounds are that the adult must be unable to protect themselves as a result of their needs for care and support and not for any other reason.

The adult's inability to protect themselves must therefore be a result of a problem which could appropriately be assisted by care and support provision and which is related in some way to the adult's relevant circumstances. The level of the need for assistance is not relevant. However, if the inability is a direct result of their relevant circumstances, such as a direct result of a mental illness, and it is not as a result of a need which could be met at least in part by assistance from the local authority, then the s42 duty does not arise.

5.5.3 How Safeguarding Relates to Care and Support Plans

If all the safeguarding grounds are met, then it must appear that the adult may have needs for care and support and the s9(1) duty to carry out a needs assessment applies and s9(3)(a) says that this is regardless of the authority's view of the level of the adult's needs. If the grounds are arising in an existing case, then there will already be a care and support plan. A needs assessment must, therefore, always be carried out or must have been carried out.

If the authority has reasonable cause to suspect that an adult is at risk of abuse or neglect, or is being abused or neglected, in a service which the authority has itself arranged or provided to meet that adult's needs, then the authority is failing to meet the adult's needs sufficiently and so must carry out a needs assessment to the extent it thinks appropriate and revise the care and support plan accordingly. There may be a need to request the cooperation of health partners, if, for example there may be a neglect of personal care resulting in physical harm. There may also be a serious commissioning issue to address under s5(1)(b) of the Act and possibly a referral might need to be made to the regulator. The information giving rise to the concern may also have implications for reviewing the assistance which other adults are receiving from this service. No safeguarding enquiries would need to be made for these actions.

If the authority is satisfied on the basis of the safeguarding concern that an adult's or their carer's circumstances have changed in any way that affects the adult's care and support plan, or their carer's support plan, the authority must carry out assessments to the extent it thinks appropriate and revise the plans accordingly. If the authority does not see any need to carry out any new assessments, then it is satisfied that it is fulfilling all its duties to assist the adult, apart from its s42 duty.

If the adult's eligible needs are met as far as possible, including, if necessary, by the provision of social work, but all the grounds for safeguarding are still met for any reasons, then s42 requires the local authority to make a set of safeguarding decisions to decide what action, if any, should be taken and by whom.

5.5.4 The Standard of Information Required

Local authority safeguarding decisions are not subject to the criminal burden or standard of proof, nor by the rules of procedure or evidence, but remain throughout at reasonable cause to suspect. Reasonable cause to suspect must be based on evidence. It is not as strong as having sufficient evidence that the grounds are met unless the evidence is rebutted. It is less strong than that but there must be sufficient evidence to give a reasonable person cause to suspect that each of the grounds are met. The authority is not required and does not need to establish any facts beyond having a reasonable cause to suspect them.

5.5.5 The Safeguarding Duty

The full duty in s42(2) is that the local authority must make (or cause to be made) whatever enquiries it thinks necessary to enable it to decide whether any action should be taken in the adult's case (whether under this Part or otherwise) and, if so, what and by whom.

Partly because the duty applies irrespective of the adult's wishes, the local authority must not make any enquiry which it does not think is necessary for this specific purpose for this individual adult. Each enquiry must be for the sole purpose of enabling the local authority to decide what reasonable and proportionate measures should be taken in this adult's case and who should take them. Should this be already apparent then there is no need for any enquiry and no enquiry may be made.

5.5.6 Why Care and Support has not Achieved the Protection Needed

There is a key question which the social worker must address to help guide their decisions. Because it is accepted that the adult has needs for care and support which are having a significant, harmful impact on their well-being relating to protection, then there must be a reason why the local authority does not seem to have met the needs, or at least not sufficiently for the adult no longer to be at risk. The social worker must ascertain why that is the case. There may be various reasons for it.

The needs which are causing the adult to be unable to protect themselves may not have been met because the authority has not been able to complete an assessment or put a care and support plan in place for any reason. In which case the social worker may decide that enquiries are necessary to ascertain if another agency can assist and, if so, whether it should do so. If such a request is made of a relevant partner, as defined in s6(7), then s7 requires that partner to comply with the request, unless it considers that doing so would be incompatible with its own duties, or would otherwise have an adverse effect on the exercise of its functions. Should the partner decide not to comply, then it must give written reasons for its decision.

The need which is causing the adult to be unable to protect themselves may not have been met because it is an ineligible need. In which case the authority has the power to meet the need under s19 and it may decide that it should do so. For example, the authority may decide that it should meet the relevant needs of an adult whose

needs for care and support are for reasons other than illnesses or impairments. Or it may decide that it should provide assistance with social relationships, as distinct from the need for assistance with family or other personal relationships which trigger 2(2)(g) of the eligibility criteria. This safeguarding decision would be made on the basis of a needs assessment and no safeguarding enquiries would need to be made.

The abuse or neglect may be occurring beyond the protection of the local authority, such as in a health care context or in a social care setting which has not been arranged by the authority. In which case the social worker may decide that enquiries are needed to enable them to ascertain what the relevant agency is and what action the relevant agency should take. There may be duties on a healthcare provider under legislation other than the Care Act and there may be issues for a regulator to address. The local authority should observe that the necessary action is taken and should use the Safeguarding Adults Board as appropriate.

5.5.7 Safeguarding and the Human Rights Act

Underpinning all this is the Human Rights Act 1998. Abuse and neglect are violations of human rights. The Human Rights Act is worded as a negative duty in that it makes it unlawful for a public authority to act in a way which is incompatible with a right guaranteed under the European Convention on Human Rights. But it has been established in case law that there also is a positive duty on public authorities, which is that when a public authority knows or ought to know of a violation of human rights by a private individual, the authority is under a duty to take reasonable and proportionate measures to stop the violation. A public authority includes any person certain of whose functions are functions of a public nature. Registered care providers are public authorities.

5.5.8 Why the Safeguarding Decisions should be Taken by a Social Worker

All the decisions which the authority must take on protection from abuse or neglect should be taken by a social worker because they have the appropriate skills to do so. It may be very difficult to decide that there is reasonable cause to suspect that an adult is unable to protect themselves from abuse or the risk of it, or if they are unable, to decide that there is reasonable cause to suspect that their inability is as a result of their needs for care and support. Furthermore, the authority must use the safeguarding powers and duties in a complementary way to its other protection duties, which themselves should be carried out by a social worker. Also, s79(2)(d) says that the authority may not authorise a person other than itself to exercise this function on its behalf.

5.5.9 What This Means for Social Workers

The decisions as to what enquiries are necessary and then what steps should be taken and by whom are sensitive and significant decisions, requiring a professional standard of care. The decisions should be made by an appropriate professional and this should be a social worker who is experienced at making protection decisions.

Case Example – CI – Safeguarding

CI certainly has needs for care and support and the daughter's information and level of concern give reasonable cause to suspect that she is at risk of abuse. From the information available, however, there is not reasonable cause to suspect that CI is unable to protect herself because of her needs for care and support. There is no reason to suspect that she lacks the mental capacity because of her MS to decide to take appropriate measures and there is no reason to suspect that her mobility needs would prevent her from doing so. Nor are there any

obvious enquiries which would need to be made at this stage to enable the authority to decide what should be done.

The social worker must keep in mind that CI's care and support needs might be having an effect on her ability to protect herself for reasons as yet unknown and that reasonable cause to suspect this might emerge. The assessment should also reveal if any enquiries beyond the assessment itself would be needed to enable the authority to decide what should be done, should such reasonable cause emerge and if the authority has been unable to make an effective care and support plan.

6 PART FOUR: OTHER RELEVANT LEGISLATION

6.1 SOCIAL WORKER KNOWLEDGE AND SKILLS AND THE LIMITS OF LEGAL COMPULSION

Social workers are registered as having the skills to work with resistance to change and with conflict by informing, advising or counselling and to know and understand the limited legal powers of compulsion.

There is a common misconception that, if the individual's need is sufficiently serious, there is always a power of compulsion to back it up.

6.1.1 What the Care Act Says

The Care Act includes no powers of compulsion. It includes no powers to regulate, control, compel, restrain, confine or coerce an individual. The concern of the Care Act is with care and support provision. The social worker may inform, advise or counsel an individual but there is never any legal justification for exerting pressure with the intention of changing the individual's mind.

6.1.2 Powers Available from Outside the Care Act

However, it is necessary for the social worker to know what powers are available to them from outside the Care Act when formulating their plans. There are limited compulsory powers available from other sources in certain circumstances. The authority has powers under the Mental Health Act 1983, if a patient is suffering from a mental disorder of a nature or degree which warrants their reception into the guardianship of the local authority. The authority's decision maker also has a defence under the Mental Capacity Act 2005, if a person lacks the capacity to consent to an act in connection with their care. The Court of Protection has powers concerning the welfare, property and affairs of an incapacitated person. The High Court, under its inherent jurisdiction, has powers of compulsion if it believes that a capacitated, vulnerable person is making a decision because of external pressures of some kind. If so, it has the power to facilitate the process of unencumbered decision making free of external pressure or physical restraint. However, the inherent jurisdiction cannot be used to compel a capacitated person to do or not do something which they have, after due consideration, decided to do or not do.

6.1.3 What This Means for Social Workers

Social workers should understand the difference between having a duty and having a power to enforce that duty by compulsion. They must know how to meet the Care Act duties by informing, advising or counselling the individual, or by other types of social work, or by arranging other services, and they should also know when the authority can and should seek powers of compulsion.

6.2 MENTAL CAPACITY AND ASSESSMENTS

Social workers are identified in 4.42 of the Mental Capacity Act 2005 Code of Practice as appropriate professionals to assess the mental capacity of an adult to refuse a Care Act assessment, or assess the mental capacity or competence of a child or young carer to consent to an assessment, and to make best interests determinations.

There is a common misconception that Care Act decisions should be made in accordance with the best interests principle and its checklist in s4 of the Mental Capacity Act 2005.

6.2.1 What the Care Act Says

The primary principle of the Care Act is the well-being principle in s1(1) which has its own checklist in s1(3). The best interests principle and its checklist apply only for the purposes of the Mental Capacity Act.

6.2.2 Mental Capacity and Refusal of and Consent to Assessments

There are references to mental capacity in the Care Act which are of relevance to this Practice Advice Note and these concern the mental capacity of a person to refuse or to consent to an assessment. There are also other references, which this advice note does not touch on. The Act says that its references to mental capacity are to be interpreted in accordance with the Mental Capacity Act 2005.

If an adult refuses a needs assessment but lacks the mental capacity to refuse, then the assessment must still be carried out if it is determined to be in their best interests. However, unlike a s5 Mental Capacity Act assessment, a s11 Care Act mental capacity assessment is of the capacity to refuse, not of the capacity to consent. For this specific Care Act decision, the Act adopts the best interests principle and not the well-being principle.

Where it appears that a child is likely to have needs for care and support after becoming 18 and the authority is satisfied that it would be of significant benefit to the child to carry out a needs assessment before they are 18, it may only do so if the child consents. There is no such consent condition for an adult. If the child lacks the capacity or the competence to consent, then the authority's decision maker must make a determination on whether the needs assessment is in the child's best interests.

If an adult carer refuses a carer's assessment, then the authority need not carry out the assessment, irrespective of the carer's mental capacity to refuse.

If the authority decides that it would be of significant benefit to a young carer to carry out a carer's assessment before they are 18, it may only do so if the young carer consents. If the young carer lacks the capacity or competence to consent, then the authority's decision maker must make a determination on whether the carer's assessment is in the young carer's best interests.

The provisions of the Mental Capacity Act do not otherwise affect this Practice Advice Note.

6.2.3 What This Means for Social Workers

Social workers need to know that the only provisions of the Mental Capacity Act which affect this Practice Advice Note are those related to the refusal of, or consent to, an assessment by a person lacking either relevant capacity or relevant competence.

7 GLOSSARY

Adult social care: all forms of personal care and other practical assistance for individuals who, by reason of age, illness, disability, pregnancy, childbirth, dependence on alcohol or drugs, or any other similar circumstances, are in need of such care or other assistance.

Local social services authority: an elected council of local people with the powers and duties to pay attention to adults in their area who may need to have things done for them which they cannot or should not be expected to do for themselves and, if so, to provide them with support to assist them, either directly or through supporting their carer.

Care: the degree of personal attention which must be paid by a local authority to an adult who may be in need of its support, or is paid by a friend or relative intending to care for an adult in need, with a view to protecting the adult's well-being.

Support; an act, or acts, of assistance. A carer may be in need of support from the authority but only to continue caring for an adult who is in need of both care and support.

Need: A problem which is of a nature which could be appropriately resolved or assisted by practical assistance in the community or in accommodation; or by counselling or other types of social work; or by information and advice, when such assistance may be arranged or provided by the local authority.

Meeting needs: The local authority may meet needs in any way within its power. Anything required under the 2006 NHS Act, with minor exceptions, and anything required under the 1996 Housing Act are specifically excluded from this power.

Well-being: the purpose of adult social care is to promote individuals' well-being. It is defined in the Act by a very wide-ranging list of elements of life.

Adult: a person over 18 with needs for care and support.

Child: a person under 18 who may have needs for care and support after becoming 18.

Carer: a person over 18 who provides or intends to provide care for an adult needing care. The care provided by a carer may include practical or emotional support.

Young carer: a carer who is under 18 and may have needs for support after becoming 18.

Eligibility criteria: the criteria in Regulations which turn the authority's powers into a duty.

Abuse and neglect: preventable or avoidable harm to an individual. Neglect by a regulated care provider is abuse.

8 APPENDIX – SOCIAL WORKERS' KNOWLEDGE AND SKILLS AND THE CARE ACT 2014: KEY MESSAGES

- a) Social workers are registered as having the knowledge and skills to build and sustain professional relationships with individuals, using social work methods to achieve change
- b) Social work is a service which includes counselling and must be included in a care and support plan or support plan if it is needed
- c) Social workers are registered as having the knowledge and skills required when an individual's own judgement of their well-being would leave or put them at risk of harm
- d) Social workers are registered as having the knowledge and skills required when an individual's need is having a significant impact on protection from abuse or neglect
- e) Social workers are registered as having the knowledge and skills required when there is a need to balance an individual's wishes with the need to protect people from abuse or neglect
- f) Social workers are registered as having the knowledge and skills required when an adult, child or young carer refuses an assessment and they are at risk of abuse or neglect, including of self-neglect
- g) Social workers are registered as having the knowledge and skills required when an adult remains at risk of, and is unable to protect themselves from, abuse or neglect because of their needs for care and support
- h) Social workers are registered as having the skills to work with resistance to change and conflict by informing, advising or counselling and to know and understand the limited legal powers of compulsion.

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