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## Safeguarding Investigation, Report Writing and the Law

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# What is safeguarding?

*‘Safeguarding means protecting an adult’s right to live in safety, free from abuse and neglect. It is about people and organisations working together to prevent and stop both the risks and experience of abuse or neglect, while at the same time making sure that the adult’s wellbeing is promoted, including, where appropriate, having regard to their view, wishes, feelings and beliefs in deciding on any action. This must recognise that adults sometimes have complex interpersonal relationships and may be ambivalent, unclear or unrealistic about their personal circumstances’.* (Statutory Guidance, para 14.7)

# The legislative framework

- ▶ The Care Act 2014, s42 – 47 and schedule 2
- ▶ Care and support Statutory Guidance, last updated 17<sup>th</sup> August 2017
- ▶ Regulations

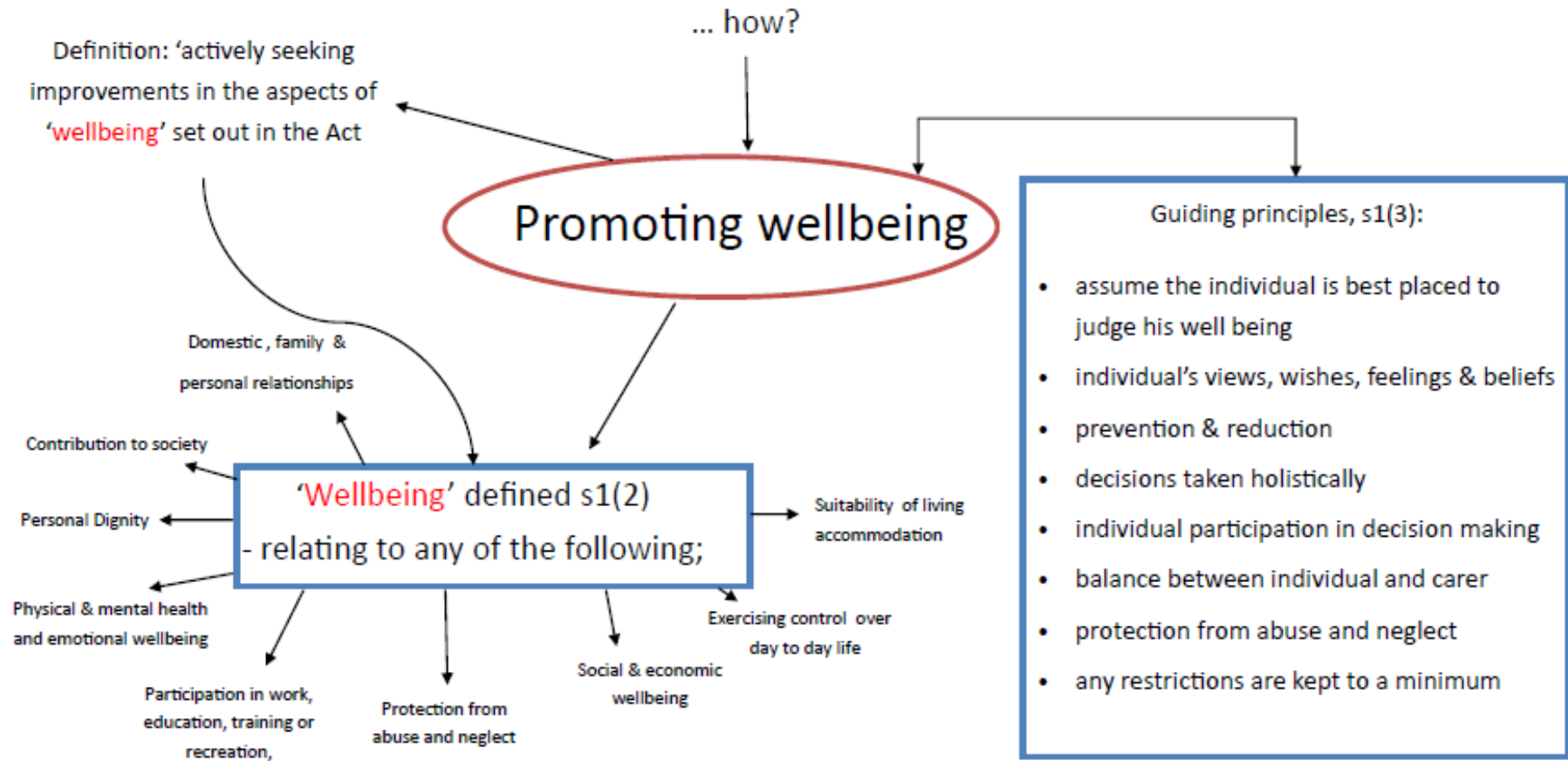
# S1 - Promoting individual well-being: the 'wellbeing principle'

*S1(1) The general duty of a Local Authority, in exercising a function under this Part in the case of an individual, is to promote that individual's well-being*

- How is 'wellbeing' defined?
- What does 'promoting wellbeing' mean'?
- What are the guiding principles?

# Q. What is the purpose of adult social care under the Care Act 2014?

A. To support people to achieve outcomes:



## S2 – Preventing needs for care & support

*‘Wellbeing cannot be achieved simply through crisis management: it must include a focus on delaying and preventing care and support needs, and supporting people to live as independently as possible for as long as possible’* (para 1.20, DoH Guidance, 2014)

# The local authority duty...

MUST provide or arrange for the provision of services, facilities or resources or take other steps which it considers will

- contribute to preventing or delaying need for care & /or support
- reduce need for care & / or support

For **ALL** adults and carers / prospective carers in its area

# Safeguarding under the Care Act

## 2014, s42 - 46

- Requires local authorities to make enquiries or ensure that others do
- Statutory 'eligibility' criteria
- Establishes Safeguarding Boards and multi agency responsibility
- Identifies types of abuse – includes physical, sexual, psychological, financial and self neglect



# Making enquiries, s42

Trigger – reasonable cause to suspect adult in area

- has needs for care and support,
- experiencing or at risk of abuse or neglect,
- as a result of needs is unable to protect self

**‘Unable  
to  
achieve’**

- Unable to achieve it without assistance
- Able to achieve it without assistance but -
  - doing so causes the adult significant pain, distress or anxiety
  - doing so endangers or is likely to endanger the health or safety of the adult / others
  - it takes significantly longer than would normally be expected

### **An Adult meets the Eligibility criteria if:**

- needs arise from or are related to a physical or mental impairment or illness
- as a result of the needs the adult is **unable to achieve** 2 or more of the **specified outcomes**, and
- as a consequence there is or is likely to be a significant impact on the adult’s well being

**‘specified**

**outcomes’**

- managing and maintaining nutrition;
- maintaining personal hygiene;
- managing toilet needs;
- being appropriately clothed;
- being able to make use of the adult’s home safely;
- maintaining a habitable home environment;
- developing and maintaining family or other personal relationships;
- accessing and engaging in work, training, education or volunteering;
- making use of necessary facilities or services in the local community including public transport and recreational facilities or services; and
- carrying out any caring responsibilities the adult has for a child

Unable to  
achieve  
an outcome

- Is unable to achieve it without assistance
- Is able to achieve it without assistance but doing so
  - causes the carer significant pain, distress, or anxiety
  - endangers or is likely to endanger the health or safety of the carer or of others

### A Carer meets the eligibility criteria if:

- the needs arise as a consequence of providing necessary care for an adult;
- the effect of the carer's needs is that any of the 'specified circumstances' apply; and
- as a consequence there is / likely to be a significant impact on the carer's well being

'Specified  
circumstances'

- The carer's physical or mental health is, or is at risk of, deteriorating;
- The carer is unable to achieve any of the following outcomes -
  - carrying out any caring responsibilities the carer has for a child;
  - providing care to other persons for whom the carer provides care;
  - maintaining a habitable home environment in the carer's home (whether or not this is also the adult's home);
  - managing and maintaining nutrition;
  - developing and maintaining family or other personal relationships;
  - engaging in work, training, education or volunteering;
  - making use of necessary facilities or services in the local community, including recreational facilities or services;
  - and
  - engaging in recreational activities.

# Making enquiries, cont'd

- Make enquiries to decide what action is required, if any
- What are 'enquiries', who makes them and why?
- Definition of abuse? Includes financial, self neglect ...

# Independent Advocacy support: s67- 68

- ▶ Why? To enable the individual to be as involved as possible in the process
- ▶ When? The person will have **substantial difficulty** being involved in the process and there is **no one appropriate able to support** and represent the person's wishes
- ▶ Role? To support and represent so as to facilitate the individual's involvement in the process

# 'Substantial difficulty'

- ▶ understanding
- ▶ retaining
- ▶ weighing
- ▶ communicating

} relevant  
information

- ▶ matters that the LA must have particular regard to in making this decision:
  - any health condition, learning difficulty, disability
  - complexity of individual circumstances
  - previous refusal of assessment
  - experiencing or at risk of abuse or neglect

# Other appropriate person

- ▶ Cannot be someone who is providing care / treatment in a paid or professional capacity
- ▶ Individual **must** agree to that person supporting them
- ▶ Lacks capacity? LA must be satisfied that it is in the individual's best interests to be supported by that person
- ▶ Are they appropriate? *'It is the LA's decision as to whether a family member or friend can act as an appropriate person to facilitate the individual's involvement'* DoH Guidance

# The Board, s43

- ▶ Requires each local authority to establish a Safeguarding Adults Board (SAB) for its area
- ▶ Schedule 2 confirms the function of the Board a multi agency responsibility
- ▶ S43 (4) *'An SAB may do anything which appears to it to be necessary or desirable for the purpose of achieving its objective'*,
- ▶ i.e. to assure itself that local safeguarding arrangements and partners act to help and protect adults in its area who meet the s42(1) criteria.



# Schedule 2

- ▶ Membership
- ▶ Funding
- ▶ Core Duties:
  - Strategic plan, for each financial year
  - Annual report, for each financial year
  - Conduct Safeguarding Adults Reviews (s44)

# The duty of co-operation – s6

Generally: local authorities must co-operate with:

- ‘relevant partners’, (defined in s6(7)) who must co-operate with the local authority, in the exercise of functions relating to care and support for adults and carers
- others it considers appropriate to co-operate with who also exercise functions relating to care and support for adults and carers
- itself! – housing, children’s services, public health
- Why? - specifically includes the purpose of *‘protecting adults ... who are experiencing or are at risk of abuse or neglect’*, or for learning lessons (SAR)

# The duty of co-operation – s7

*‘Where a local authority or partner requests co-operation from each other in relation to a particular individual case, the local authority or relevant partner must co-operate as requested, unless doing so would be incompatible with their own duties or have a an adverse effect on the exercise of their functions.’*

# Information sharing

- ▶ *‘In the past, there have been instances where the withholding of information has prevented organisations being fully able to understand what ‘went wrong’ and so has hindered them identifying, to the best of their ability, the lessons to be applied to prevent or reduce the risks of such cases reoccurring. If someone knows that abuse or neglect is happening they must act upon that knowledge, not wait to be asked for information.’*

# Principles

Information sharing protocols required to support confidentiality and sharing of information between agencies, to ensure

- Data Protection requirements are respected
- Information shared on a 'need to know' basis
- confidentiality not secrecy
- informed consent or if not, is it necessary to override those objections?
- it is inappropriate to give assurances of absolute confidentiality.

See also s45 provisions re supply of information

# So what's changed?

- ▶ What's new in the statutory framework?
- ▶ Some additional powers / obligations / clarity, but
- ▶ Still have to resort to a 'mish-mash' of available tools to 'protect' and practitioners need to be aware of those tools

# Top tips – the process

- ▶ Stick to timescales
- ▶ Keep people informed, including the referrer
- ▶ Keep Mental Capacity at the forefront of your mind
- ▶ Think about who needs to be invited to meetings and who will have access to minutes
- ▶ Think about the role of legal advisers
- ▶ Know your case!

# Top tips – report writing...

- ▶ Do not expect your first draft to be your last - check it and make necessary amendments
- ▶ Check grammar and typos and re-read after ‘spell checking’
- ▶ Number pages and paragraphs
- ▶ Refer to people in a consistent way: surname, full name etc. and explain who they are



# ...cont'd

- ▶ Avoid jargon or acronyms
- ▶ Type in chronological order
- ▶ What are the facts, what is your opinion?
- ▶ Remember your role: social worker, GP, etc
- ▶ Write everything as if a judge is going to see it!

# Useful Resources

- ▶ <http://www.legislation.gov.uk/ukpga/2014/23/contents>
- ▶ <https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance>  
[www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance#contents](http://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance#contents)
- ▶ <http://www.scie.org.uk/publications/reports/report50.pdf>

# Questions?

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