The Care Act (2014)

Key points for Women's Voluntary Sector Organisations

Part A

Care and support

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Safeguarding Adults/Violence and Abuse

A WHEC Briefing

July 2016

Women's Health and Equality Consortium (WHEC) is a partnership of women's charity organisations who share common goals of health and equality for girls and women. Its aims ensure that health policy reflects the real needs of girls and women. WHEC pools the expertise of member organisations to better inform and influence decision-makers and government. WHEC works to improve the sustainability of the women's and girls' health and social care sector, and to strengthen women's and girls' capacity to engage with the health and social care systems.

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Health and social care are areas of public policy, research and understanding which are continually evolving. WHEC develops its resources in response to change and welcomes feedback on this publication, and the topic of women's health in general.

WHEC members: FORWARD, Imkaan, Maternity Action, Positively UK, Rape Crisis (England &Wales), Women's Resource Centre.

www.whec.org.uk

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Part A
Care and support

Introduction

The focus of the Care Act (2014) is the help (care and support) that is provided to people with illness or disabilities from s (local authorities).

The Care Act creates a single legal framework to cover all adults who may need this help. An important reason for bringing in new legislation was to ensure fairness and equity across people with the same needs arising for different reasons, and across people living in different regions of the country. The Care Act also sets a framework for how care and support services are provided.

Most people agree that the Care Act was needed and that it sets out a good framework for adults to get care and support when they need it. However, the Care Act means councils have had to make big changes to their systems and ways of working and in some cases to their culture and the attitudes of staff. For example, in creating systems that support people, who have social care needs, to be actively involved in agreeing and managing the support they need.

Most of the Care Act was implemented in April 2015. This coincided with austerity and the unprecedented cuts in Government spending allocated to Local Authorities. This has meant that implementing the Care Act has been difficult for councils and they vary in the changes they have made. Some variation is due to different speeds of change to systems and cultures. Other differences reflect the ways in which the cuts have been implemented and in particular how councils have exercised the discretion allowed within the act in relation to charging – for example, whether or not to assess and potentially charge carers for carers support services. Other differences reflect different councils' approaches to developing the local market for care and support services, which impacts on and reflects the quality of the local partnership with the Voluntary sector. Some differences reflect a situation where councils have not implemented the Care Act and may be acting unlawfully. These are situations that local organisations may want to challenge.

Women's organisations' role in providing care and support

We support individual women who need help because they are ill or disabled

If you are supporting someone to get the help they need please see our companion publication ***How to get the help you need with "activities of daily living" A woman's short guide to The Care Act (2014)*** on the WHEC website: http://www.whec.org.uk/

The Care Act says that everyone should be supported to understand the help that is available to them, and to take part in decisions about their lives. It may be that, because of your relationship with her, your organisation is in the best position to support a woman to understand and make decisions about her care and support.

The Care Act says that councils have to provide information about help that is available locally. Check that your organisation is listed in the sources of help for "Adult Social Care" and /or "Health and Social care support" and that the information accurately reflects what you offer. This might be on the

council's web-site or they may pay another organisation such as your local council for voluntary service to do this. Some areas have a joint service with the local NHS. Some areas have a virtual shop where people can make a "shopping basket" of the services they would like to find out more about.

We provide advocacy to women

The guide mentioned above is useful if you are supporting a woman directly by attending meetings or talking with people on her behalf. For example, with social care workers who are carrying out a needs assessment or organising a care and support plan. Her council (the one where she normally lives) should also provide information for example, on their web-site.

If you are supporting a woman who is a refugee or an asylum seeker be aware that she can receive help if she has an illness or disability, but not if she needs help "solely" because she is destitute. Contact a specialist agency that supports refugees and asylum seekers for more advice.

If providing advocacy is something that your organisation does as a key part of your service it could be useful to be recognised by your council as a source of Independent Advocacy in relation to care and support planning (see "**We can be paid by the council/individuals to provide services**" below).

What responsibilities does the council have to provide Care and Support services to women in our district?

The Care Act makes some important changes to what care and support services councils have to provide and how they provide them.

The Care Act says that the council has to work with the local clinical commissioning group (CCG) to find out what services are needed in its district. The responsibility for Public Health has been transferred from the NHS to local authorities to help with this. Joint work between the council, the NHS and other local organisations is often done through the "Health and Well-being Board" (HWBB).

The Board must also work out what services might be needed in the future. The information is collected in a document called the Joint Strategic Needs Analysis (JSNA). The Care Act says that the NHS and councils should work together to support services jointly. This is because there is a lot of overlap between health and social care needs. For example, women's exercise classes can be prescribed to help with particular illnesses (such as depression) and can help women to make friends and be involved in their community. Computer classes for older women enable them to learn how to use e-mail and Skype to stay in touch with family and friends but also how to find out what help and support is available locally.

The Care Act puts an emphasis on councils providing information – especially information about local services.

Another principle is prevention. The council must work to help individuals needing help because of illness or disability. This means providing services at a community wide level that promote Wellbeing as well as providing care and support to individuals in a way that helps them stay in control of their lives and, where possible, to live independently in the community.

The Care Act says that the council can make services available by providing them directly or by buying them from other organisations. The Care Act gives local authorities a duty to manage the local market so that the full range of care and support services, needed by the people in its district, are available to them. This gives the council a role in supporting local organisations. They have to work closely with the

Care Quality Commission (CQC) to make sure services providing health and social care meet national standards.

The council must also follow the principles of the Equality Act 2010 and make sure that services are available to people from all the communities in their district.

We know what women want

Women's organisations have valuable information about what local women need and want. They may have the best information about the needs of women from particular cultural and ethnic backgrounds, or from women involved in prostitution for instance, or who are HIV positive.

Collect and publish information about who uses your services and what they gain from it. The Care Act means that services need to say what ***outcomes*** people gain as result of using services. For example "I have grown in confidence and can get out to the shops on my own again"

Publish this information on your organisation's website and in Annual reports. Find out who collates the information for the local Joint Strategic Needs Assessment (JSNA), (perhaps in the public health department) and talk to them about how your organisation can share the information it collects so that the most effective services can be provided for women.

JSNAs also list what organisations are available in the district and so they are good place to make sure local commissioners know about women's organisations

We can be paid by the council to provide services

The system of 'Councils giving grants to voluntary sector organisations' is largely being replaced by "commissioning" where the council pays you to provide a specific service. This will be a legal contract and a "service level agreement" which states what you will provide. Most women's organisations know that It is becoming common for organisations to have to compete (bid) to provide services by writing a bid describing the services you can offer and how much they will cost. It has similarities with filling in a grant application but the decision about who gets the contract is made on the basis of 'value for money' as well as the quality of the service.

Some councils keep a list of organisations that have already met certain standards (about how well they are run) and only allow those organisations to make bids (called the Preferred Providers list). If you are on the list you will be sent details of when there are contracts you might want to bid for. Sometimes this is a list held jointly by the council with Health so that potential contracts with the NHS/CCG also come up. Contact your local CVS or your council to find out the arrangements in your area.

The National Council for Voluntary Sector Organisations provides more information and training about being commissioned to provide services https://www.ncvo.org.uk/component/content/article/19-content/practical-support/public-services/92-commissioning-and-procurement?highlight=WyJjb21taXNzaW9uaW5nIl0

The Women's Resource Centre has a project funded by Esmee Fairbairn, the Women's Commissioning Unit which supports women's organisations to come together and build strategic partnerships that can navigate commissioning processes, promote and showcase the value of women's organisations, and demonstrate the impact of specialist women's services.

The Care Act potentially means the council may want to buy services customarily provided by Women's organisations and these could be

- Independent advocacy services to help women with their needs assessment and care and support planning
- Specialist advocacy in "safeguarding" situations including Independent Domestic Violence Advisers (IDVA) and Independent Sexual Violence Advisers (ISVA)
- Services that specifically provide care and support to people with illness or disability, for example a care at home services by lesbians for lesbians
- Services that help women (with illness or disability) develop and maintain their well-being e.g. assertiveness and confidence raising, mindfulness or money management.

Women's organisations may be paid to run specific services for specific groups, for example "business development skills" for women with learning disabilities, or "taking charge of my health" for women over 65, or to support a certain number of women with illness or disability in their activities aimed at all women.

We can be paid by individuals to provide services to them

Some women can afford to pay for services themselves from their own income.

Other women who have a care and support plan are entitled to receive the cost of providing that plan to spend in the way they want to (so long as it meets the outcomes of their plan). This is called direct payments. In some parts of the country people with long term conditions are receiving the cost of health care to spend directly. This is a pilot which may be rolled out to the rest of the country.

This gives additional potential sources of income for women's organisations.

Women's organisations who want to sell services to people using Direct Payment (who need Adult Social Services approval about how they spend it) need to

- Work out the cost of the services for each individual attending it
  e.g. the attendance at a course or a group (don't forget to add in the administrative costs)
- Advertise the services to women who need help because of illness or disability – for example; through the council's information service, any organisation that supports people using direct payments and any local groups who provide specialist support to people will long-term illness or disability.
- Advertise the services to workers who help people plan their care and support plans such as social workers and OT's working in Adult Social Care

We are a charity. How can we charge for our services?

There are several ways to do this. One way is for a charity to set up a separate company whose articles specify that any profits made are donated to the original company.

Other changes to the law have created a form of company called a "social enterprise". Social enterprises are companies who provide services that are of social value and whose profits have to be ploughed back into the business rather than be given to individual share-holders.

There are start-up loans and business advice available to help start up social enterprises. There is more information via https://www.gov.uk/set-up-a-social-enterprise

Or through Big Society Capital http://www.local.gov.uk/c/document_library/get_file?uuid=5928377b-8eb3-4518-84ac-61ea6e19a026&groupId=10180

A woman's organisation could fund some of their work using a mixture of selling services to the council and CCG's through being commissioned to provide services AND selling services to individual women who can afford them and/or to women who want to meet their care and support plan by buying services using their direct payments.

Preston Road Women's Centre is a community based women's organisation in Hull that is successfully using this model to fund many of its activities for example, through buying and renting houses to women and through selling legal services http://www.purplehouse.co.uk/

We need more information about the Care Act (2014)

The government publishes fact sheets about The Care Act.
https://www.gov.uk/government/publications/care-act-2014-part-1-factsheets

The Care Act itself can be found at http://www.legislation.gov.uk/ukpga/2014/23/contents

and the full guidance to Local Authorities at https://www.gov.uk/guidance/care-and-support-statutory-guidance

A review of the Care Act has been published by the Carers Trust at
https://carers.org/sites/files/carerstrust/care_act_one_year_on.pdf

A survey of carers by Carers UK at http://www.carersuk.org/for-professionals/policy/policy-library?task=download&file=policy_file&id=5637

Safeguarding adults - support to women who are experiencing abuse

For the first time in England, The Care Act creates a legal frame work for "safeguarding adults". Previous frameworks were carried out under the statutory guidance "No Secrets".

The Care Act puts a duty on local authorities to "make enquiries or cause enquiries to be made" in order to determine what needs to happen to protect someone, who, because of their illness or disability, is unable to do this for themselves from abuse or neglect.

What types of abuse?

Safeguarding arrangements apply across all types of situations where someone is being abused or neglected – i.e. safeguarding arrangements potentially cover a wider range of situations than gender based violence.

They include:

- Domestic violence and abuse (including from an adult child or other household member)
- Hate crime - for example: harassment on the grounds of disability
- Scams, distraction burglary or other financial abuse organised to target "vulnerable" people
- Abuse or neglect by a person paid to provide help in the home or in a hospital, Care home or other service
- Organisational wide or "institutional" abuse and neglect – such as Winterbourne View or Mid-Staffordshire Hospital
- All forms of abuse, of which physical, sexual, emotional, financial abuse and neglect are specified
- Forced marriage

Which women are covered under the Care Act?

The definition of who may be covered by safeguarding arrangements follows from the Care Act definition of people who need help with Activities of Daily Living (ADLs) and the inclusion of "keeping safe" within these activities. However, a situation where adaptations are needed to enable a disabled woman to take a shower cannot easily be equated with the actions that need to be taken to support her to achieve safety from violence and abuse.

There are several ways in which the Care Act does not reflect women's experience of violence and abuse. These include:

- *"Keeping ourselves safe" assumes wrongly that keeping safe is a woman's individual responsibility – not the responsibility of the perpetrator, or the police, the wider authorities or our communities.*

- Given the wide spread nature of gender based violence most women put considerable effort into trying to negotiate a safe path through their daily lives. *Disabled women face negotiating additional levels of violence and abuse due to disability hate crimes and the dual nature of*

"disablist sexism".

- The nature of coercive control means that "keeping safe" is a complex emotional and social task of maintaining resilience in the face of potential attack by those who groom and seek power and control. *The notion that illness or disability can affect our resilience at this level has credibility, but the idea that this could be tested/assessed/self-assessed in the same way that, for instance, the ability to shower can be, does not.*

- *The Care Act suggests it could be possible to decide whether one woman who can't walk upstairs independently is able to protect herself from abuse and another woman who can't walk upstairs can.*

Safeguarding procedures clearly cover situations where the woman experiencing abuse has an illness or disability – such as advanced dementia, a brain injury or a learning disability - that means she cannot readily make decisions as to how to protect herself. This situation is covered by the Mental Capacity Act 2005. If a woman in this situation is being abused or neglected, Social Services are required to make "best interest decisions" as to how to protect her. This can include investigation and potential prosecution of any alleged crime against her by the police. Best interest decisions must take into account what is known of the woman's views if she is able to express those now or if she expressed them before losing mental capacity.

The Care Act allows people with mental capacity to refuse an assessment of their social care needs. Although it is not stated in the Act this is also the case with the safeguarding procedures. One source of potential conflict for women and women's organisations with professionals can be that many professionals such as social workers and nurses have an organisational requirement to make a safeguarding alert/referral if they believe someone is experiencing abuse.

In practice such a referral, like any other third-party referral for social care, cannot proceed without the consent of the woman at risk. The exceptions to that are if a child or another adult with social care needs (especially if they do have mental capacity to seek help to stop abuse) are also at risk. This is the situation if a woman is being abused by a care worker or other person who has access to other adults with health and social care needs. A referral will also go ahead without the woman's consent if the level of the abuse is very high. This is the same situation that applies with domestic abuse that meets the local level for a referral to MARAC[1]. The local MARAC criteria is a good guide to the level of risk that would result in the safeguarding process going ahead, in the public interest, regardless of the views of the woman at risk.

An interesting judgement by the High Court (DL vs A Local Authority and others 2012)[2] concluded that the High Court is able to use its "inherent jurisdiction" to make orders – in this case an injunction – to protect people who do not have a biological impairment of mind but who lack mental capacity *solely*

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1 A MARAC, or multi-agency risk assessment conference, is a meeting where information is shared on the highest risk domestic abuse cases between representatives of local police, probation, health, child protection, housing practitioners, Independent Domestic Violence Advisors (IDVAs) and other specialists from the statutory and voluntary sectors.

2 Access at http://www.mentalhealthlaw.co.uk/DL_v_A_Local_Authority_(2012)_EWCA_Civ_253,_(2012)_MHLO_32

due to the duress they are under from the abuse they are experiencing. That is, people who are not able to make decisions about their own safety because of their relationship with and experience of abuse from the person abusing them. The case where the judgement was made was about protecting two elderly parents from abuse by their son. This case had originally been referred to the safeguarding process. *The implication is that the High Court can make orders to reflect anyone whose mental capacity is impaired by their experience of coercive control. To date the High Court has not been inundated with cases about women experiencing domestic abuse, but it is possible that this will be tested in the future.*

The Safeguarding Adults Board

The Care Act requires every Local Authority to work in partnership with its local police force, NHS trusts, clinical commissioning groups and probation services to form a Safeguarding Adults Board (SAB). Some areas have joint boards that cover safeguarding adults and safeguarding children. Other organisations such as housing providers, colleges and representatives of provider organisations – such as the local council for voluntary service may also be members. Some SABs have a "service users" or "citizens forum" that is represented on the SAB. The local Domestic Abuse Strategic partnership is also likely to be represented.

The local Safeguarding procedures are the responsibility of the SAB and therefore they can vary across councils. However, there has been a lot of work across regions and across the country to try to ensure the procedures are similar in different areas. For example, there are safeguarding procedures that cover the whole of London.

There is a legal duty on the police, NHS and probation services to share information with the local authority to help safeguard adults with health and social care needs from abuse.

SAB's have a legal responsibility to carry out reviews if someone covered by safeguarding procedures (or who could have been) is murdered or dies due to abuse or neglect. This is called a Safeguarding Adults Review (SAR).

Safeguarding procedures

The council responsible for safeguarding is normally the council covering the location where the abuse is taking place.

The "Safeguarding" procedures bring the organisations that can help people stop abuse or neglect together to make a "Safeguarding plan". The plan is made after "enquiries" which find out what abuse is happening and what harm it is causing. The safeguarding or protection plan will be made at a "safeguarding meeting/conference".

In most areas the procedures trigger a series of multi-agency meetings, led by adult social services, which bring together workers from all the agencies which may be able to help, including the police and NHS. The meetings are only about the particular situation and bring together just the agencies involved in this situation or those that might be able to help. The situation is often discussed in depth, especially after any police enquiries needed are complete and the safeguarding plan is being made.

The woman at risk should be fully involved in the process and be at the meetings if she wants to be. There will normally not be a problem in her bringing someone to support her. If she has difficulty understanding the meetings or making her views known she can have a formal advocate, paid for by the council. This can be an IDVA or ISVA. The only time a woman will not be able to attend a meeting that is about her, or will be asked to leave part of the meeting, is if information is being discussed about other people at risk or about the person causing the harm that she does not have a right to hear.

A woman who is the subject of safeguarding meetings can seek her own support, including from specialist women's organisations, whether or not this is part of the safeguarding plan!

If you are actively involved in providing services to the woman at risk then you should be invited to attend the safeguarding meetings, but you should follow your own organisation's policies which probably advise seeking her consent and discussing with her what information about her you will and won't share before you do so.

Safeguarding procedures have been developed to address many different types of abuse and many different circumstances. They span situations where abuse or neglect is caused in different settings and in different ways. For example, the causes and remedies for a situation where one woman with advanced dementia attacks another, who has wandered into her pathway in the care home where they both live, are completely different from one where a young woman with learning disabilities is being sexually harassed by her college lecturer. This is different again to a situation where a woman caring for her husband is abused by him in a continuation of domestic abuse that has lasted for 45 years, or one where a forced marriage is being organised between a woman and a very disabled man so that she can provide his care.

How the "duty to make enquiries" is interpreted varies across councils. The Care Act and the accompanying guidance make it clear that the local authority does not have to carry out all enquiries about abuse. It may be that other organisations are best placed to do this. For example, the police, an employer and a professional body may all investigate a health professional who is alleged to have assaulted a patient; The police, the Care Quality Commission, the commissioners of a service and the health and safety executive may investigate organisational neglect in a care home. The police will investigate any crime committed towards an individual by a partner, friend or stranger.

When a woman is at risk from domestic abuse the notion of "making enquiries" and the notion of "investigating abuse" that has taken hold in some social work teams under procedures developed following "No Secrets" can be contradictory to feminist practice, where the latter are centred on believing and empowering a woman to make choices as to how to reduce violence and abuse in her life.

There has also been a movement within social care to counteract a culture that has developed in many areas of a very process driven approach to safeguarding. This has been called "Making Safeguarding Personal" (MSP). *The aim of MSP is to ensure that the views and wishes of the person at risk are central to any safeguarding plan. Empowerment is now an acknowledged principle of safeguarding work and staff training is being focused on "person centred safeguarding", especially when the perpetrator is a family member.*

If the woman is at a high level of risk from domestic abuse the MARAC meeting may be used instead or as well as safeguarding meetings. MARAC meetings do not usually make detailed safeguarding plans. A safeguarding plan can be especially useful if a woman has lots of different agencies or people involved in her life because of her care and support needs.

Making a referral to the safeguarding procedures

The safeguarding procedures can be very useful in bringing together all the agencies that can support and protect a woman from abuse.

How to report abuse and more information about the local safeguarding process should be on the council's website.

If you become aware that a woman you are working with is covered by the safeguarding process then the possibility of making a referral and what the process entails should be explained to her.

You will normally make referrals (sometimes called "an alert") to Adult Social Care about safeguarding with her consent or you may help her to make a "self-referral". If someone else is at risk then you may need to make a referral without her consent. If any of the reasons below apply, talk to her about why a referral needs to be made and make a referral without her consent if needed.

i) There is a risk to a child or children (make a child protection referral)
ii) There is risk to other adults who can't protect themselves – for example, the abuser works with or has access to other people who are ill or disabled, or there is another dependent adult in the household at risk (maybe an adult with a high level of learning disability or dementia)
iii) There is wide spread abuse or neglect by a care service – for example in a hospital or care home
iv) You have carried out a Safer Lives DASH-risk assessment and the risk to the woman from domestic abuse is above the local threshold for referral to your local MARAC (in which case make a referral to MARAC too) http://www.safelives.org.uk/practice-support/resources-marac-meetings/resources-people-referring

Making a safeguarding referral does not prevent you supporting the woman to access other specialist services such as an IDVA or Women's Aid, or getting advice from them or other specialist organisations offering advice on violence against women and girls so you can support her more effectively yourself.

If your organisation is commissioned to provide services by the NHS or the local authority or the police you may be required to agree to follow the local safeguarding adults procedures as part of the contract with them. If these do not follow a process that empowers women at risk, your concerns can be taken to the Safeguarding Adults Board. If you have a local domestic abuse strategic group, they may be able to help. This is an area where the approach being taken by local areas is evolving.

Women who are accused of abuse

Women make up the majority of care workers, especially in the lowest paid jobs in care agencies and care homes. Women aged between 55 and 64 provide the largest amount of unpaid care to family members and friends.

Women can and do abuse and neglect people in their care. There are specific offences under the Mental Capacity Act of wilful mistreatment and neglect of adults without mental capacity. The

maximum sentence is 5 years imprisonment or an unlimited fine. These offences are investigated by the police.

If a woman is accused of abuse in her workplace she has the same rights as she would if she was accused of any other form of gross misconduct, and the appropriate employment process should be followed. When the police are investigating an alleged crime the disciplinary process may be suspended until the police investigation is concluded. This can cause long-delays to the usual disciplinary procedure timescale.

There have been some situations where social workers have investigated situations using the safeguarding procedures and employers have then followed the social workers' advice as to the outcome. This is not 'due process' and the worker should obtain legal advice.

The Care Quality Commission (CQC and service commissioners (usually NHS and social services) have a responsibility to make sure the service is safe. This means they will be involved in the safeguarding process if the abuse took place within a registered or commissioned service.

People who employ individuals directly to provide care using direct payments are entitled to support from the council with employment matters. This may mean that a social worker helps the employer investigate whether they have been abused. Women who work directly for an individual providing care can use an employment tribunal to gain redress if they are falsely accused of abuse.

The person who is accused of abuse does not have a right to attend safeguarding meetings however, they must have a chance to give their version of events and any consequences must be proportionate. If the process has been conducted or co-ordinated by the local authority under the safeguarding procedures then complaints can be raised using the local authority's complaints process.

If a care worker is found to have caused harm to a person who has health and social care needs, then their employer should make a report to the "Independent Barring Board" (IBB). This body will then make an independent assessment of the evidence and decide whether or not to place the person on a list that is checked by employers seeking to employ care workers. It is an offence for an employer to employ someone whose name is on the IBB list in a role where they will be working with adults with care and support needs. The local authority and CQC can also make reports to the IBB.

More information

For more information about Safeguarding

Safeguarding and Domestic Abuse published by the Local Government Association
http://www.local.gov.uk/c/document_library/get_file?uuid=5928377b-8eb3-4518-84ac-61ea6e19a026&groupId=10180

Briefing: Care Act implications for safeguarding adults published by Skills for Care
http://www.skillsforcare.org.uk/Document-library/Standards/Care-Act/learning-and-development/care-act-implications-for-safeguarding-adults-briefing.pdf