Self neglect and the Care Act 2014

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Overview: wider legal framework

1. A wider legal framework
2. Care Act 2014: assessment of needs, safeguarding etc.
3. Human Rights Act 1998: protection of individual from the State: right to respect for private and family life, home: interference must be justified as lawful and proportionate (article 8, European Convention)
4. National Health Service Act 2006
5. Mental Capacity Act 2005: best interests, acts of care or treatment, CoP orders
6. Inherent jurisdiction of the High Court(?): vulnerable adults with capacity(?)
7. Mental Health Act 1983: guardianship (ss.7,8), power of entry/removal (s.135)
8. Public Health Act 1936, Environmental Protection Act 1990 (environmental health): powers of entry as last resort on public health grounds
9. Police and Criminal Evidence Act 1984, s.17 (police power of entry/save life and limb)
Overview: wider legal framework

• 12. Animal Welfare Act 2006: unnecessary suffering offence (s.4), welfare of animal offence (s.9), animals in distress: alleviation, powers of inspector or constables (s.18), powers of entry/warrant inspector or constable (s.19, s.52)
• 13. Prevention of Damage by Pests Act 1949: LA can require steps to be taken to destroy or otherwise keep land free of rats or mice (eg. gardens)
• 14. Housing Act 2004: Housing Health and Safety Rating System. Not about behaviour of tenant but relevant if premises are also in disrepair: LA must, depending on the hazard, or can, do something (improvement notices, prohibition notices, emergency measures etc).
• 15. Refuse Disposal (Amenity) Act 1978: LA can remove anything abandoned on “land in the open air”, after giving notice
• 16. Coroners: Coroners and Justice Act 2009
• 17. Landlords: tenancy agreements etc.
• 18. Gross negligence manslaughter (common law)
• 19. Wilful neglect (Mental Capacity Act 2005, s.44)
Overview: what is self neglect: one example of a definition? But key question: is it about unwillingness or inability?

• Self-neglect is characterized as the behaviour of an elderly person that threatens his/her own health or safety. Self-neglect generally manifests itself in an older person as a refusal or failure to provide himself/herself with adequate food, water, clothing, shelter, personal hygiene, medication (when indicated), and safety precautions.

• The definition of self-neglect excludes a situation in which a mentally competent older person, who understands the consequences of his/her decisions, makes a conscious and voluntary decision to engage in acts that threaten his/her health or safety as a matter of personal choice.

• (National Centre on Elder Abuse, United States)
What is self neglect?

- Signs and symptoms of self-neglect include but are not limited to:
  - dehydration, malnutrition, untreated or improperly attended medical conditions, and poor personal hygiene;
  - hazardous or unsafe living conditions/arrangements (e.g., improper wiring, no indoor plumbing, no heat, no running water);
  - unsanitary or unclean living quarters (e.g., animal/insect infestation, no functioning toilet, fecal/urine smell);
  - inappropriate and/or inadequate clothing, lack of the necessary medical aids (e.g., eyeglasses, hearing aids, dentures); and
  - grossly inadequate housing or homelessness.

(National Centre on Elder Abuse, United States)
Human rights: Human Rights Act 1998 incorporated European Convention of Human Rights into UK law. Convention articles include:

- Right to life (article 2)
- Right not to be subjected to torture, inhuman or degrading treatment or punishment (article 3)
- Right not to be deprived of liberty, except for certain categories of person (including persons of unsound mind) and only then in accordance with procedures prescribed by law (article 5)
- Art.8.1. Right to respect for private and family life and home
- Art. 8.2. No interference with these allowed unless:
  - in accordance with law, necessary in democratic society
  - for a specified purpose: public safety, crime prevention, protection of health/morals, economic well-being of the country, protection of the rights and freedoms of others etc.
Care Act 2014. section 1: general duty: promote individual well-being

- 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. Well-being means an individual’s:
  - (a) personal dignity
  - (b) physical and mental health and emotional well-being;
  - (c) protection from abuse and neglect;
  - (d) control by the individual over day-to-day life (including over the care and support provided to the adult and the way in which it is provided);
  - (e) participation in work, education, training or recreation;
  - (f) social and economic well-being;
  - (g) domestic, family and personal relationships;
  - (h) suitability of living accommodation
  - (i) the adult’s contribution to society.
In exercising function under this Part, LA must have regard to the following, in particular

- (2) Importance of beginning with the assumption that the individual is best-placed to judge the individual’s well-being;
- Individual’s views, wishes and feelings;
- Importance of preventing or delaying needs for care and support or for support—and the importance of reducing them
- Need to ensure decisions about individual are made having regard to all the individual’s circumstances (and not based only on individual’s age or appearance or any condition of the individual’s or aspect of behaviour which might lead others to make unjustified assumptions about the individual’s well-being)
- Importance of individual participating as fully as possible in decision and being given information and support to participate
- Balance between adult’s well-being and that of friends/relatives involved in caring
- Need to protect people from abuse and neglect;
- Need to ensure restriction on rights or freedom of action is kept to the minimum necessary
Cooperation generally
Care Act 2014, section 6

- LA must co-operate with relevant partners, and partners must co-operate with the LA, for adults in need and carers
- Relevant partners: district councils, NHS bodies (NHS Commissioning Board, NHS Trusts, NHS Foundation Trusts, Clinical Commissioning Groups) , police, Prison Service, Probation Service, Department of Work and Pensions, any other body specified by regulations
- LA must make arrangements for ensuring cooperation between its own social services officers - and housing officers, director of children’s services and director of public health
- LA must co-operate...with such other persons as it considers appropriate who exercise functions, or are engaged in activities, in the authority’s area relating to adults with needs for care and support or relating to carers. Examples of those to cooperate with
Care Act, s.6: particular purposes of cooperation

- (a) promoting the well-being of adults with needs for care and support and of carers in the authority’s area,
- (b) improving the quality of care and support for adults and support for carers provided in the authority’s area (including the outcomes that are achieved from such provision),
- (c) smoothing the transition to the system provided for by this Part for persons in relation to whom functions under sections 58 to 65 are exercisable (children, children’s carers, young carers),
- (d) protecting adults with needs for care and support who are experiencing, or are at risk of, abuse or neglect, and
- (e) identifying lessons to be learned from cases where adults with needs for care and support have experienced serious abuse or neglect and applying those lessons to future cases.
Care Act 2014, section 7. Cooperation: specific cases

• If LA requests cooperation from partner or another local authority which is not a partner (and vice versa) - in the case of an individual with needs for care and support or in the case of a carer, a carer of a child or a young carer - the latter must comply unless it considers that to do so would:

• (a) be incompatible with its own duties, or

• (b) otherwise have an adverse effect on the exercise of its functions.

• A refusal must be accompanied by written reasons
9. Assessment of need for care and support

• If it appears to LA an adult may need care and support, LA must assess whether adult has those needs and what they are.

• Duty to assess regardless of LA’s view of (a) level of the adult’s needs for care and support, or (b) level of adult’s finances.

• A needs assessment must include an assessment of—(a) impact on well-being, (b) outcomes adult wishes to achieve in day-to-day life, and (c) whether, or to what extent, the provision of care and support could contribute to the achievement of those outcomes.

• A local authority, in carrying out a needs assessment, must involve—
  • (a) the adult,
  • (b) any carer that the adult has, and
  • (c) any person whom the adult asks the authority to involve or, where the adult lacks capacity to ask the authority to do that, any person who appears to the authority to be interested in the adult’s welfare.
Assessment of need for care and support: other ways of achieving outcomes, also preventative services/information advice

- When carrying out a needs assessment, LA must also consider—

- (a) whether, and if so to what extent, matters other than the provision of care and support could contribute to the achievement of the outcomes that the adult wishes to achieve in day-to-day life, and

- (b) whether the adult would benefit from the provision of anything under section 2 (preventative services) or 4 (information/advice) or of anything which might be available in the community.
10. Assessment of carers’ need for support

• If it appears to LA that carer may have needs for support (currently or in the future), LA must assess—whether carer does have needs for support (or is likely to in future) and what those needs are (or likely to be future).

• Duty is regardless of the level of need for support of the carer or of the resources of the carer or the adult being cared for

• “Carer” means adult who provides or intends to provide care for another adult. But not if providing care under contract as a volunteer (Unless LA considers relationship between adult needing care and the adult providing care is such that it would be appropriate for latter to be regarded as carer)

• Assessment must include whether a) carer is able, and will continue to be able, to provide care, b) carer is willing and will continue to be willing, c) impact of carer’s needs on well-being, d) outcomes carer wishes to achieve, whether, and if so to what extent, e) provision of support could contribute to achievement of outcomes.
Assessment of carers’ need for support

• LA must have regard to— (a) whether the carer works or wishes to do so, and (b) whether the carer is participating in or wishes to participate in education, training or recreation.

• A local authority, in carrying out a carer’s assessment, must involve— (a) the carer, and (b) any person whom the carer asks the authority to involve.

• LA must also consider—
  • (a) whether, and if so to what extent, matters other than the provision of support could contribute to the achievement of the outcomes that the carer wishes to achieve in day-to-day life, and
  • (b) whether carer would benefit from provision of anything under ss. 2 (prevention) or 4 (information/advice) or anything which might be available in the community.
11. Refusal of assessment

- If adult **refuses assessment**, LA not required to assess, unless
- (a) adult **lacks capacity** to refuse and LA is satisfied that assessment would be in best interests
- (b) the adult is experiencing, or is at risk of, **abuse or neglect**.
- (c) the adult **changes** his or her **mind**
- (d) if refuses assessment but LA thinks **needs or circumstances changed**, then duty to assess but subject to further refusal
- If **carer** refuses a carer’s assessment, LA not required to assess
- If carer **changes mind** then LA should assess
- If carer refuses but LA thinks carer’s **needs or circumstances have changed**, then LA must assess but subject to further refusal
Care Act 2014, s.42. making enquiries: abuse and neglect

• If LA has reasonable cause to suspect adult in its area (whether or not ordinarily resident there)—
• (a) has needs for care and support (whether or not the authority is meeting any of those needs),
• (b) is experiencing, or is at risk of, abuse or neglect, and
• (c) as a result of those needs is unable to protect himself or herself against the abuse or neglect or the risk of it,
• LA 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
• “Abuse” includes financial abuse; and for that purpose “financial abuse” includes— (a) having money or other property stolen, (b) being defrauded, (c) being put under pressure in relation to money or other property, and (d) having money or other property misused.
Care Act, s.43. Safeguarding adults boards

- Each LA must establish a Safeguarding Adults Board (an “SAB”) for its area.
- The objective of an SAB is to help and protect adults in its area in cases of the kind described in section 41. The way in which an SAB must seek to achieve its objective is by co-ordinating and ensuring the effectiveness of what each of its members does. **An SAB may do anything which appears to it to be necessary or desirable for the purpose of achieving its objective.**
- (1) Members of SAB are— LA (a) the local authority which established it, (b) clinical commissioning group, (c) police, (d) others specified in regulations
- (2) The membership of an SAB may also include other persons....
- (3) LA, having consulted the other members of its SAB, must appoint as chair person whom LA considers to have required skills and experience.
- (4) Each member of an SAB must appoint a person to represent it on the SAB; and the representative must be a person whom the member considers to have the required skills and experience.
Care Act, s.44. SAB reviews

• (1) SAB must arrange for review of a case involving an adult in its area with needs for care and support (whether or not LA has been meeting any of those needs) if—
  • (a) there is reasonable cause for concern about how the SAB, members of it or other persons with relevant functions worked together to safeguard the adult, and
  • (b) condition 1 or 2 is met.
• (2) Condition 1 is met if— (a) the adult has died, and (b) the SAB knows or suspects that the death resulted from abuse or neglect (whether or not it knew about or suspected the abuse or neglect before the adult died).
• (3) Condition 2 is met if— (a) the adult is still alive, and (b) the SAB knows or suspects that the adult has experienced serious abuse or neglect.
• (4) SAB may arrange for review of any other case involving adult in its area with needs for care/support (whether or not LA has been meeting any of those needs).
• (5) Each member of the SAB must co-operate in and contribute to the carrying out of a review under this section with a view to— (a) identifying the lessons to be learnt from the adult’s case, and (b) applying those lessons to future cases.
Care Act, s.68: safeguarding and advocacy

• Making enquiries (s.42) or holding reviews: LA must arrange for independent advocate to be available to represent and support the adult to facilitate the adult’s involvement. IF:
  • LA considers that without advocate adult would experience substantial difficulty in (a) understanding relevant information; (b) retaining that information; (c) using or weighing that information as part of the process of being involved; (d) communicating the individual’s views, wishes or feelings (whether by talking, using sign language or any other means).

• BUT:
  • Duty does not apply if: LA satisfied that there is person
    • a) appropriate to represent and support adult for purpose of facilitating adult’s involvement [e.g. family or friend], and
    • (b) who is not engaged in providing care/treatment for adult in professional capacity or for remuneration.
  • Requires adult’s consent or that it be in his/her best interests
The Care and Support (Eligibility Criteria) Regulations 2015

• (1) An adult’s needs meet the eligibility criteria if—

• (a) the adult’s needs arise from or are related to a physical or mental impairment or illness;

• (b) as a result of the adult’s needs the adult is unable to achieve two or more of the outcomes specified in paragraph (2); and

• (c) as a consequence there is, or is likely to be, a significant impact on the adult’s well-being.
The Care and Support (Eligibility Criteria) Regulations 2015

(2) The specified outcomes are—

(a) managing and maintaining nutrition; (b) maintaining personal hygiene;
(c) managing toilet needs; (d) being appropriately clothed;
(e) being able to make use of the adult’s home safely;
(f) maintaining a habitable home environment; (g) developing and maintaining family or other personal relationships;
(h) accessing and engaging in work, training, education or volunteering;
(i) making use of necessary facilities or services in the local community including public transport, and recreational facilities or services; and
(j) carrying out any caring responsibilities the adult has for a child.
The Care and Support (Eligibility Criteria) Regulations 2015

- Adult is regarded as being **unable to achieve an outcome** if the adult—
  - (a) is unable to achieve it **without assistance**;
  - (b) is able to achieve it without assistance but doing so causes the adult **significant pain, distress or anxiety**;
  - (c) is able to achieve it without assistance but doing so endangers or is likely to endanger the **health or safety** of the adult, or of others; or
  - (d) is able to achieve it without assistance but takes significantly **longer than would normally be expected**.

- Where the level of an **adult’s needs fluctuates**, in determining whether the adult’s needs meet the eligibility criteria, the local authority must take into account the adult’s circumstances over such period as it considers necessary to establish accurately the adult’s level of need.
Safeguarding: six key principles
(statutory guidance)

- **Empowerment** – People being supported and encouraged to make their own decisions and informed consent.

- **Prevention** – It is better to take action before harm occurs.

- **Proportionality** – The least intrusive response appropriate to the risk presented. “I am sure that the professionals will work in my interest, as I see them and they will only get involved as much as needed.”

- **Protection** – Support and representation for those in greatest need.

- **Partnership** – Local solutions through services working with their communities. Communities have a part to play in preventing, detecting and reporting neglect and abuse.

- **Accountability** – Accountability and transparency in delivering safeguarding.

- **“Making safeguarding personal”**
Safeguarding: types of abuse or neglect (statutory guidance)

- **Physical abuse** – including assault, hitting, slapping, pushing, misuse of medication, restraint or inappropriate physical sanctions.
- **Domestic violence** – including psychological, physical, sexual, financial, emotional abuse; so called ‘honour’ based violence.
- **Sexual abuse** – including rape, indecent exposure, sexual harassment, inappropriate looking or touching, sexual teasing or innuendo, sexual photography, subjection to pornography or witnessing sexual acts, indecent exposure and sexual assault or sexual acts to which adult has not consented or was pressured into consenting.
- **Psychological abuse** – including emotional abuse, threats of harm or abandonment, deprivation of contact, humiliation, blaming, controlling, intimidation, coercion, harassment, verbal abuse, cyber bullying, isolation or unreasonable and unjustified withdrawal of services or supportive networks.
- **Financial or material abuse** – including theft, fraud, internet scamming, coercion in relation to an adult’s financial affairs or arrangements, including in connection with wills, property, inheritance or financial transactions, or the misuse or misappropriation of property, possessions or benefits.
Safeguarding: types of abuse or neglect (statutory guidance)

- **Modern slavery** – encompasses slavery, human trafficking, forced labour and domestic servitude. Traffickers/slave masters use whatever means they have at their disposal to coerce, deceive, force individuals into a life of abuse, servitude, inhumane treatment.

- **Discriminatory abuse** – including harassment, slurs or similar treatment; because of race, gender and gender identity, age, disability, sexual orientation or religion.

- **Organisational abuse** – including neglect and poor care practice within an institution or specific care setting such as a hospital or care home...or in relation to care provided in one’s own home. This may range from one off incidents to on-going ill-treatment. It can be through neglect or poor professional practice as a result of the structure, policies, processes and practices within an organisation.

- **Neglect and acts of omission** – including ignoring medical, emotional or physical care needs, failure to provide access to appropriate health, care and support or educational services, the withholding of the necessities of life, such as medication, adequate nutrition and heating.

- **Self-neglect** – this covers a wide range of behaviour neglecting to care for one’s personal hygiene, health or surroundings and includes behaviour such as hoarding.
• **Self neglect**: This covers a wide range of behaviour neglecting to care for one’s personal hygiene, health or surroundings and includes behaviour such as hoarding. It should be noted that self-neglect may not prompt a section 42 enquiry. An assessment should be made on a case by case basis. A decision on whether a response is required under safeguarding will depend on the adult’s ability to protect themselves by controlling their own behaviour. There may come a point when they are no longer able to do this, without external support (para 14.17).

• **Proportionality.** Any intervention in family or personal relationships needs to be carefully considered. While abusive relationships never contribute to the wellbeing of an adult, interventions which remove all contact with family members may also be experienced as abusive interventions and risk breaching the adult’s right to family life if not justified or proportionate. Safeguarding needs to recognise that the right to safety needs to be balanced with other rights, such as rights to liberty and autonomy, and rights to family life. Action might be primarily supportive or therapeutic, or......(para 14.98)
14.40. ..... it is important to recognise that abuse or neglect may be unintentional and may arise because a carer is struggling to care for another person. This makes the need to take action no less important, but in such circumstances, an appropriate response could be a support package for the carer and monitoring. However, the primary focus must still be how to safeguard the adult. In other circumstances where the safeguarding concerns arise from abuse or neglect deliberately intended to cause harm, then it would not only be necessary to immediately consider what steps are needed to protect the adult but also whether to refer the matter to the police.

14.48. If a carer experiences intentional or unintentional harm from the adult they are supporting, or if a carer unintentionally or intentionally harms or neglects the adult they support, consideration should be given to: whether, as part of the assessment and support planning process for the carer and, or, the adult they care for, support can be provided that removes or mitigates the risk of abuse.
Care and Support Statutory Guidance
Issued under the Care Act 2014

• 14.77. An enquiry could range from a conversation with the adult, or if they lack capacity, or have substantial difficulty in understanding the enquiry their representative or advocate, prior to initiating a formal enquiry under section 42, right through to a much more formal multi-agency plan or course of action.

• 14.92. If the adult has the mental capacity to make informed decisions about their safety and they do not want any action to be taken, this does not preclude the sharing of information with relevant professional colleagues. This is to enable professionals to assess the risk of harm and to be confident that the adult is not being unduly influenced, coerced or intimidated and is aware of all the options. This will also enable professionals to check the safety and validity of decisions made. It is good practice to inform the adult that this action is being taken unless doing so would increase the risk of harm.
14.134. The SAB has a strategic role that is greater than the sum of the operational duties of the core partners. It oversees and leads adult safeguarding across the locality and will be interested in a range of matters that contribute to the prevention of abuse and neglect.

14.141. Within the context of the duties set out at paragraph 14.2, safeguarding partnerships can be a positive means of addressing issues of self-neglect. The SAB is a multi-agency group that is the appropriate forum where strategic discussions can take place on dealing with what are often complex and challenging situations for practitioners and managers as well as communities more broadly.