

# CARE ACT 2014

---

## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### Part 1 – Care and Support

#### Safeguarding adults at risk of abuse or neglect

##### *Section 42 – Enquiry by local authority*

273. This section places a duty on local authorities to make enquiries, or to ask others to make enquiries, where they reasonably suspect that an adult in its area is at risk of neglect or abuse, including financial abuse. The purpose of the enquiry is to establish with the individual and/or their representatives, what, if any, action is required in relation to the situation; and to establish who should take such action. The duty supplements the existing obligations on other organisations to look after the people in their care effectively, or, in the case of the police, to prevent and respond to criminal activity.
274. *Subsection (1)* provides that the local authorities' enquiry duty applies to adults who have care and support needs (regardless of whether they are currently receiving support, from the local authority or indeed anyone); and who are at risk of or experiencing neglect or abuse, including financial abuse; but are unable to protect themselves. The eligibility criteria that the local authority sets for services and support are not relevant in relation to safeguarding. Safeguarding enquiries should be made on the understanding of the risk of neglect or abuse, irrespective of whether the individual would meet the criteria for the provision of services.
275. The local authority has a responsibility to make enquiries if the adult is currently in its geographical area of responsibility (whether or not the person is ordinarily resident there).
276. *Subsection (3)* defines “abuse” to include “financial abuse”. The Care Act explicitly refers to financial abuse not because it has a priority status, but for the avoidance of doubt because some definitions of abuse may not ordinarily include this type of abuse.

##### *Section 43 – Safeguarding Adults Boards*

277. This section requires a local authority to establish a Safeguarding Adults Board (SAB), which aims to help and protect individuals who it believes to have care and support needs and who are at risk of neglect and abuse and are unable to protect themselves, and to promote their wellbeing.
278. *Subsection (3)* sets out how the SAB should seek to achieve its objective, through the co-ordination of members' activities in relation to safeguarding and ensuring the effectiveness of what those members do for safeguarding purposes. An SAB may undertake any lawful activity which may help it achieve its objective. The functions which an SAB can exercise in pursuit of its objective are those of its members.
279. *Subsection (6)* acknowledges that two or more local authorities may establish an SAB for their combined geographical area of responsibility.

280. Further details about SABs are set out in Schedule 2 (see below).

### ***Schedule 2 – Safeguarding Adults Boards***

#### **Membership, etc.**

281. *Paragraph 1* specifies that the core members of the SAB must include the local authority, an appointed representative from each clinical commissioning group (CCG), and the chief officer of police for the SAB's area. The SAB may include other members that the local authority considers appropriate, after the local authority has consulted the core members of the SAB, as sub-paragraph (2) sets out. The Secretary of State may prescribe other core members of the SAB through regulations.
282. The appointed representative for the CCG or the police may represent more than one CCG or chief officer of police where there is more than one within that SAB's area. The individual nominated to represent the member on the SAB must be a person whom the member considers to have the required skills and experience. Nominated representatives are required to attend SAB meetings. The local authority must also appoint a chair for the SAB with reasonable skills and experience after consulting the other SAB members.
283. Other than this, there are no particular governance procedures which an SAB must follow, and the SAB can regulate its own procedure.
284. Sub-paragraph (6) sets out that the local authority must act under the guidance issued by the Secretary of State whilst other SAB members must have regard to such guidance.

#### **Funding and other resources**

285. *Paragraph 2* enables the SAB members to contribute financially to the cost of running the SAB. It allows for money from those members to be pooled in a single fund. It also makes clear that members can provide non-pecuniary resources (such as staff, goods, services or accommodation) in support of the activities of the SAB.

#### **Strategic plan**

286. *Paragraph 3* specifies that an SAB must publish for each financial year a strategic plan that sets out how it will meet its main objective and what each SAB member will do to achieve that objective.
287. This plan should, so far as feasible, be developed involving the local community, and the SAB must consult the Local Healthwatch organisation in the development of the plan.

#### **Annual report**

288. *Paragraph 4* requires an annual report to be published to account for implementation against the strategic plan described in paragraph 3 and progress on the findings of any Safeguarding Adult Reviews.
289. Sub-paragraph (1) requires the report to describe what the SAB has done during the year to achieve its main objective and its strategy, and how each member of the SAB has helped to implement the strategy. The findings of Safeguarding Adults Reviews concluded that year (whether or not they were started in that year) and actions taken that year in response to Safeguarding Adult Reviews must also be recorded in the annual report. That is either action taken to implement findings or, where a decision has been taken not to implement a finding, then the reason for that decision. The report must also record the total number of ongoing reviews, whether or not they were started in that year.

290. As well as being published, copies of the report must be sent to those people specified in sub-paragraph (2).

#### ***Section 44 – Safeguarding adults reviews***

291. This section requires Safeguarding Adults Boards to conduct a Safeguarding Adults Review into certain cases in specific circumstances. The aim of a review is to ensure that lessons are learned from such cases, not to allocate blame but to improve future practice and partnership working, and to minimise the possibility of it happening again.
292. *Subsections (1) to (3)* stipulate that an SAB must arrange for a review where there is reasonable cause for concern about how the SAB, its members or some other person with relevant functions involved in the case worked together and either the adult has died and the SAB knows or suspects that the death resulted from abuse or neglect or the adult is still alive and the SAB knows or suspects that the adult has experienced serious abuse or neglect. This does not prevent the SAB carrying out a Safeguarding Adults Review in any other case where they feel it would be appropriate and this is set out in *subsection (4)*. The adult must be in the local authority's area and have needs for care and support (whether or not the local authority has been meeting those needs).
293. *Subsection (5)* specifies that every member of the SAB must co-operate in and contribute to carrying out the review and applying the lessons learnt.

#### ***Section 45 – Supply of information***

294. This section provides that, if certain conditions are met, a person or body must supply information to a SAB at its request.
295. Firstly, the information must be requested for the purpose of enabling or assisting the SAB to perform its functions.
296. Secondly, the person or body requested to supply the information must have functions or engage in activities such that the SAB considers it likely to have information relevant to a function of the SAB. This would potentially encompass, for instance, a GP who provided medical advice or treatment to an adult in respect of whom a SAB was carrying out a serious case review, or to a family member or carer of that adult. It would also potentially encompass a person carrying out voluntary work that brought him or her into contact with such an adult or with a family member or carer, or a minister of a church attended by such an adult or by a family member or carer.
297. Finally, either the condition set out in *subsection (4)* or that set out in *subsection (5)* of the section must be met. *Subsection (4)* relates to the content of the information that may be requested. *Subsection (5)* effectively enables the onward transmission to a SAB of information that it has previously requested, under the section, to be supplied to a third party, for instance to a NHS body, for collation and onward transmission to the SAB. (But an SAB may request that information be supplied to a third party for collation and onward transmission only if the third party itself is within *subsection (3)*).
298. *Subsection (6)* provides that an SAB may use information provided under this section only for the purposes of its functions.

#### ***Section 46 - Abolition of local authority's power to remove persons in need of care***

299. This section repeals the current power for local authorities to remove people from their homes under section 47 of the National Assistance Act 1948.

#### ***Section 47 – Protecting property of adults being cared for away from home***

300. This section restates the duty originally set out at section 48 of the National Assistance Act 1948, for local authorities to prevent or mitigate loss or damage to the moveable property of adults who have been admitted to a hospital or to a residential care home,

and are unable to protect it or deal with it themselves. This duty applies to any tangible, physical moveable property belonging to the adult in question, including pets. The section also re-enacts an offence associated with this duty, found at section 55 of the National Assistance Act 1948, which sets out that any person who obstructs the local authority's exercise of this duty is liable on summary conviction to pay a fine, and provides a defence of reasonable excuse.

301. Local authorities are able to recover from the adult any reasonable expenses incurred in protecting that adult's property.