

The Care Act & Interfaces With Other Systems

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section 42 safeguarding duty

The local authority must make enquires it considers necessary (or cause enquiries to be made)



care and
support needs

abuse or
neglect

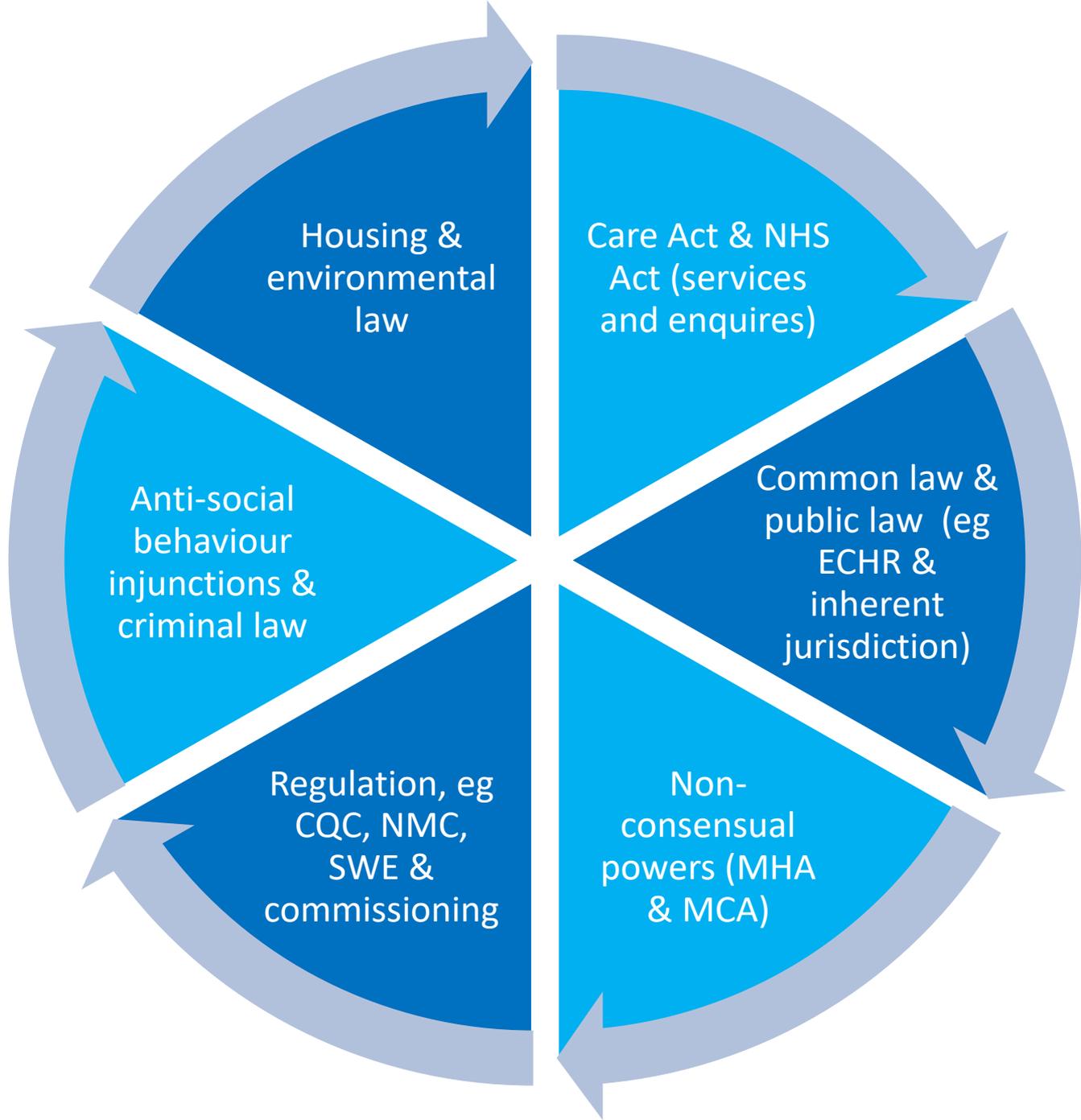
unable to
safeguard
themselves



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 and, if so, what and by whom.**

Section 42(2) of the Care Act





R (Collins) v Nottinghamshire CC

[2016] EWHC 996 (Admin)

- Permissions decision (so treat with caution)!
- Direct payment company under investigation for poor financial management & possible fraud
- Suspended from list of accredited direct payment providers
- Three service users challenged this decision

Rejected by the court ...

- This did not breach the section 1 well-being duty
- Unarguable to claim that the service users were able to safeguard themselves
- Not unlawful to have a policy that only accredited providers can provide direct payments

Safeguarding Adults Boards (s.43 & sch.2)

- local authority must establish an SAB for its area
- Objective: to help & protect adults in its area at risk of abuse or neglect
- Must seek to achieve this by co-ordinating & ensuring effectiveness of what each member does
- SAB may do anything necessary or desirable to achieve this aim
- Core members: LA, NHS and police (must nominate members with required skills and experience)

Safeguarding Adults Boards responsibilities

Sections 44 & 45 and sch 2 of the Care Act

- Publish a strategic plan for each financial year that sets out how it will meet its main objective
- Publish an annual report detailing what it has done to achieve its objective and what it and each member has done to implement its strategy
- Arrange Safeguarding Adults Reviews in accordance with section 44
- The SAB can require information from an organisation or individual relevant to its functions

Duty of candour

Health & care professionals have a professional duty to ...

- be open and honest with patients when things go wrong & the patient suffers harm or distress as a consequence
- report mistakes that have compromised (or could have compromised) patient safety & the patient suffers harm or distress as a consequence

Managers must ensure...

- systems are in place to allow concerns to be raised & incidents investigated
- staff who raise a concern are protected from unfair criticism or action.

Right to independent advocacy

Local authority must arrange an independent advocate

- Section 42 enquiry
- Safeguarding Adults Review

Criteria

- adult has “substantial difficulty” in understanding, retaining, weighing or communicating information
- there is no “appropriate person” to undertake this role

Role of the advocate

- represent & support the adult for the purpose of facilitating their involvement
- be aware of case law

Capacity, social media & internet use

Re A [2019] EWCOP 2

- 21 year old male with learning disabilities
- Sharing intimate images, compulsion for extreme porn sites, & accessing paedophiliac & illegal sites
- Raped by unknown man & in contact with sexual predators & sex offenders
- Provided with education programme & specialist support workers

Care plan approved

- A could use one of the iPads owned by care provider for a limited period each day, under a degree of supervision
- his phone contract financially capped & mobile device no capability to access the internet
- staff may check his mobile phone for messages on a daily basis

Capacity, social media & contact

Re B [2009] EWCOP 3 & *B v A Local Authority* [2019] EWCA Civ 913

- Woman in her 30s with learning disabilities
- Concerns sharing intimate images & personal information with male strangers, and seeking boyfriends online
- Developed relationship with Mr C, a high risk sexual offender in his 70s
- Provided with education programme on social media use and sexual relations

Court of Appeal decision

- Confirmed B lacked capacity regarding social media & sexual relations
- The “tests” should be treated and applied as guidance to be adapted to the facts of the particular case
- The conclusion that B had capacity on residence, conflicted with lack of capacity on contact, care & sexual relations
- When assessing capacity on different decisions, avoid “silos” & mutually incompatible conclusions

Termination & best interests

Re AB [2019] EWCA Civ 1215

- Was it the best interests of a 24 year old woman with learning disabilities for her pregnancy to be terminated?
- Lacked capacity to consent to sexual relations & termination
- She was 22 weeks pregnant (cut of date for the Abortion Act is 24 weeks)
- Court of Protection decided it was in her best interests to have the termination
- But decision overturned by Court of Appeal the next working day ...

The Court of Appeal judgment

- Court applications must be made for terminations, where there is doubt as to capacity or best interests
- The court does not take into account the interests of the foetus but only those of the mother
- The person's wishes and feelings do not only require consideration, but can be determinative
- Medical evidence on its own is unlikely to demonstrate the need for such profound intervention
- Decision makers must consider both wishes and feelings
- Full consultation should take place & appropriate weight given to those who know the person best
- Court applications should be considered at an early stage, & listed as a matter of urgency

Safeguarding & unplanned pregnancy

An NHS Trust v AB [2019] EWCOP 45

- Dispute over how to safeguard AB from risk of future pregnancy
- NHS Trust felt it was in her best interests to be fitted with an IUD during the caesarean section
- LA argued there was no need for the IUD because it had put in place a comprehensive safeguarding plan

Criticisms of the safeguarding plan

- Failed to recognise all but one risk factor identified in court
- Investigations by the police and local authority had not been completed
- Relied on supervision by family members who had been responsible for AB when she became pregnant
- Only completed on the morning of the hearing
- Failed to recognise complex nature of AB's home environment
- Unconvincing oral evidence provided by senior manager

Court's conclusions

- There remained an appreciable risk of future unplanned pregnancy in respect of AB
- AB lacked capacity in respect of decisions concerning contraception
- Highly unlikely that further work with AB would result in her gaining capacity or increase her ability to participate in decision-making
- The LA safeguarding plan was not sufficient to meet the risk of future unplanned pregnancy
- It was in AB's best interests to be fitted with an IUD at the time of her caesarean section.



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