

VIEWS FROM PRACTICE

Neglect is Self-Neglect too? An Examination of Law and Policy in Wales

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Overview of the Policy Context in Wales

This paper raises the topic of self-neglect by providing a framework around the absent discourse or direction within legislation, policy or practice responses currently in Wales. It highlights the legislative changes introduced following the implementation of the Social Services and Well-Being (Wales) Act 2014 (SSWB (W) Act 2014) in April 2016. Comparisons are made with equivalent safeguarding legislation across the UK.

Wales, in comparison to England and its implementation of the Care Act 2014 on 1st April 2015, has had a two year run-in time following the review of all community care legislation in England and Wales by the Law Commission in 2011.² This should have allowed sufficient time to ensure all necessary associated guidance was in place and fit for purpose. This has not been the case. There has been an incremental release of the associated statutory guidance, codes of practice and a number of technical briefings to statutory and non-statutory agencies alike.

It is disappointing to have waited a year after the implementation of the Act before the consultation on the Statutory Guidance began on *'Handling Individual cases to Protect Adult at Risk'*.³ The result has been a 2 year gap following implementation of the SSWB (W) Act 2014 before the Statutory Guidance was finally published;⁴ currently exposing further gaps that perpetuates the absence in respect of self-neglect.

Wales' response to self-neglect is yet to be developed, indeed, has yet to be articulated, reviewed or researched by practitioners within Wales. This omission, it could be argued was linked to the procedural dominance of the 'All Wales Policy and procedures for the protection of Vulnerable Adults'⁵ (PoVA). These procedures predated the SSWB (W) Act 2014, and it would seem remain extant; being used to plug the gaps in the Statutory Guidance. This Guidance has created a considerable lack of clarity by referring to 'National Protection Procedures, which at this stage have not been published'⁶. The Statutory Guidance states:

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² Law Commission *Adult Social Care: A Scoping Report* 26th November 2008 and Law Commission (2011) *No 326 Adult Social Care*.

³ Welsh Government *Consultation Social Services and Well-being (Wales) Act 2014 Statutory guidance in relation to Part 7 of the Act, on Handling Individual cases to Protect Adults at Risk* Welsh Government 2017).

⁴ Welsh Government *Working Together to Safeguard People: Volume 6 – Handling Individual Cases to Protect Adults at Risk* Welsh Government 2018).

⁵ Welsh Government *All Wales Policy and Procedures for the Protection of Vulnerable Adults* (Wales Adult Protection Fora 2013).

⁶ Confirmed following enquires to RCT and Cardiff Safeguarding MASH (Multi-agency Safeguarding Hub).

This advice is not intended as a detailed practice guide, but sets out clear expectations about the ways in which agencies and professionals should work together to safeguard adults at risk. The National Protection Procedures will complement this guidance and set out the detailed practice guidance.⁷

The absent National Protection Procedures, places practitioners and multi-agency partners at a disadvantage as they navigate their new duties to safeguard adults at risk, consequently the adults at risk are potentially at greater risk as the guidance directs practitioners to;

‘have a clear understanding of the relevant roles and responsibilities of each partner in handling individual cases. These responsibilities should be available in National Protection Procedures which are accessible, easily understood and used by all relevant partners’⁸

Since their inception the PoVA procedures have been advantageous in covering ‘all Wales’, however their development was often influenced by professionals who are not social workers.⁹ This absence of social work personnel may have contributed to the limited focus in respect of self-neglect within Wales; leaving an ambivalent response towards ‘Self Neglect’ which has been neither explicitly included nor excluded; essentially the guidance has ignored self -neglect.

The consequence places adults at risk of self-neglect in an invidious position of being vulnerable to ‘professional judgement’ as well as the incumbent work place culture of the Local Authority within which the professional is employed. Such judgements will inevitably be influenced by the extant PoVA procedures. These procedures direct those implementing the Act to view self-neglect as an ‘in-appropriate referral’. As illustrated in the opening sentence of the PoVA Procedures, this sets the dominant response to this high-risk area of social work practice (p.28):

These Adult Protection Policy and Procedures are **not applicable to self-neglect**¹⁰ by an adult unless the situation involves a significant act of commission or omission by someone with responsibility for the person’s care. The capacity of the person to make decisions about his/her care will be an important consideration. If there is a failure to act or to act appropriately, this may amount to neglect and adult protection procedures should be applied. Other processes may be used to respond to self-neglect, such as health and social care assessments and care management, or behavioural support.

Therefore, this background and the absence of any clarification of self-neglect has created a quagmire POVA remaining in the place of the ‘yet to be developed and therefore absent’ National Protection Procedures. Safeguarding practice needs to be shaped to understand how best to support this challenging area of social work practice yet in Wales, historically and currently there is no mention of self-neglect in

⁷ Welsh Government *Working Together to Safeguard People: Volume 6 – Handling Individual Cases to Protect Adults at Risk* (2018) p.2.

⁸ *ibid* p.3.

⁹ Page 6 lists the contributors: only 2 out of the 9 authors are Registered SW, 4 out of 9 were active or retired Police Officers.

¹⁰ Emphasis added by author

plans nor any work being undertaken to date by any Regional Safeguarding Board or the National Independent Safeguarding Board Wales.¹¹

Comparative Legislative and Policy responses

Scotland

Scotland introduced Safeguarding legislation in the form of the **Adult Support and Protection (Scotland) Act 2007**. This is applicable from the age of 16 and the Act covers both self-harm and neglect.

the adult is engaging (or is likely to engage) in conduct which causes (or is likely to cause) self-harm (section 3 (2)).

The Scottish legislation is accompanied by clear policy guidance which clarifies issues such as who is a qualified professional – namely a social workers. At section 64, the Act defines a “Council Officer” as a person who is an employee of the Council and who is appointed by a Council under section 64 of the Local Government (Scotland) Act 1973.

England

The Care Act 2014 in England came into force in April 2015. The Statutory Guidance to the Act (at para 14.17) makes explicit that its adult safeguarding provisions cover ‘self-neglect’. The inclusion of this category of abuse owes much to a body of research and the development of a theory base by social work academics. Suzy Braye, David Orr and Michael Preston-Shoot have led much of this work, observing:

It is clear that self-neglect policy and practice is as complex and as varied as self-neglect itself.¹²

The inclusion of self-neglect has established a need for Safeguarding Adults Boards to develop their practice and approaches. Furthermore, the practice based seminars of the Safeguarding Adults and Legal Literacy (SALLY)¹³ initiative, have enabled the sharing of research and best practice models that consider and reflect on implementation of the Care Act 2014. This discrete area of safeguarding social work practice has benefitted from a research base in England that continues to highlight the complexity of self-neglect and its need for multi-agency responses (often, including long-term social work interventions with individuals). Risks are typically high as demonstrated by a number of Serious Case Reviews (SCRs). Conclusions contained within SCR’s and research on self-neglect highlights that significant improvements can be made in a person’s life and wellbeing when a person-centred

¹¹ <http://safeguardingboard.wales/>

¹² Suzy Braye, David Orr & Michael Preston-Shoot *Self-neglect policy and practice: building an evidence base for adult social care* Report 69 (SCIE 2014).

¹³ See <https://safeguardingadults.wordpress.com/> - funded through the Economic and Social Research Council.

approach that reflects the essence of social work values is used to respond to people who self-neglect.¹⁴

The Care Act¹⁵ consists of a single and comprehensive Code of Practice and Statutory Guidance that has provided clarity for practitioners, since first issued in 2015 alongside the Act. The inclusion in England of self-neglect has stimulated further discussion and research into this issue that is both embedded and developed further through social work practice.

Wales

As discussed above, the implementation of the SSWB (W) Act 2014 has not strengthened the focus on self-neglect and safeguarding. The Act requires that *persons exercising functions under this Act to seek to promote the well-being of people who need care and support and carers who need support*.¹⁶ This includes a duty to protect from abuse and neglect (section 2(2)(b)).

Section 5 *requires* that **any** person exercising functions under the Act must 'seek to promote' the well-being of those to whom they owe a duty under the Act. The duty is owed by all persons and bodies (Local Authority, Local Health Boards and Statutory Agencies and Welsh Ministers) and section 126 of the Act **requires that** local authorities investigate where they suspect that an adult with care and support needs is at risk of abuse and neglect. Section 128 creates a 'duty to report':-

- (1) If a relevant partner of a local authority has reasonable cause to suspect that a person is an adult at risk and appears to be within the authority's area, it must inform the local authority of that fact
- (2) If person that the relevant partner has reasonable cause to suspect is an adult at risk appears to be within the area of a local authority other than one of which it is a relevant partner, it must inform that other local authority.
- (3) If a local authority has reasonable cause to suspect that a person within its area at any time is an adult at risk and is living or proposing to live in the area of another local authority (or a local authority in England), it must inform that other authority.
- (4) For the purpose of this section a relevant partner of a local authority is a person who is a relevant partner of the authority for the purposes of section 162

Section 127 provides for Adult Protection and Support Orders (APSO) to authorise entry to premises in order to assess whether an adult is at risk of abuse or neglect, and if so what to do about it

Section 197 defines neglect:

"neglect" ("esgeulustod") means a failure to meet a person's basic physical, emotional, social or psychological needs, which is likely to result in an impairment of the person's well-being (for example, an impairment of the person's health or, in the case of a child, an impairment of the child's development);

¹⁴ Suzy Braye, David Orr & Michael Preston-Shoot *Working with people who self-neglect: Practice Tool* (updated 2016) (Research in practice for adults 2016).

¹⁵ Department of Health and Social Care *Care Act 2014 Statutory Guidance* (updated 2018).

¹⁶ Section 1(3)(a) and section 5 describes the persons to whom this duty is owed.

As noted, it was May 2018 that Welsh Government published Statutory Guidance under sections 126 - 128 and 130 on the handling and response to individual cases. This guidance is directed at local authorities as the lead for adult safeguarding.¹⁷ Any clear or defined response to self-neglect remains absent, as discussed above. The guidance is all the more regrettable given that it took two years to be published (following the implementation of the 2014 Act and a year following the closure of the limited consultation which did not include contributions from the social work profession in Wales (April 2017)).¹⁸ In addition to this, questions raised during the consultation relating to self-neglect were not attended to and reflected in the final Guidance.¹⁹

Safeguarding in Wales is itself 'at risk', given this piecemeal approach. Clarity is now needed given that there has been a troubling lack of social work involvement in the development of the present policies. This problem is exacerbated by the co-existence of the Wales Interim Policy and Procedures for the Protection of Vulnerable Adults 2013. The Act's silence concerning self-neglect is, as this paper has explained, profoundly unsatisfactory for responding to complex and high-risk situations. The Oxford English Dictionary definition of neglect is to '*fail to care properly*'. Such the ambiguity could be seen as 'permissive' and can allow practitioners to include self-neglect as and when the situation presents itself in practice in respect of responding to (self)-neglect and as with all social work interventions requires that it must be balanced with the rights of an individual to self-determination versus the risk of harm to themselves. . This is a discrete and emerging area for social work research and practice that has been ignored within Wales's current responses, and needs urgent review to influence the awaited National Protection Procedures.²⁰

Conclusion

Perhaps, the ultimate 'test' for *how* adult safeguarding responds to self-neglect must be *R v Stone and Dobinson*²¹ (1977). The case concerned profound failings by the statutory services but – on the basis of the inadequate adult protection legislation of that time, no fault was found. The case concerned Fanny Stone who had anorexia nervosa and starved herself to death in the home of her brother (who was blind) and his 'ineffectual and inadequate' girlfriend who was also the 'main carer' for their learning disabled child in the home. The police officer, who found Fanny wandering returned her to her brother's care; the social worker who visited their learning disabled son took no action; and the GP; refused to visit.

The absent discourse in Wales concerning the issue of self-neglect needs to be understood and addressed in order to expand the practice base and develop safeguarding responses. The National Independent Safeguarding Board Wales has so far been silent on this issue; this may be due to the lack of ambition in the construction of the lead role and the part-time nature as well as of the board's

¹⁷ [Welsh Government Social Services and Well-being \(Wales\) Act 2014: Working Together to Safeguard People: Volume 6 – Handling Individual Cases to Protect Adults at Risk \(Welsh Government 2018\).](#)

¹⁸ [Welsh Government Consultation – summary of response Handling Individual Cases to Protect People at Risk \(Welsh Government 2017\).](#)

¹⁹ For example whether there would be support and direct responses to those individuals with or without protected characteristics who are self-neglecting?

²⁰ The National Protection Procedures are intended to complement this guidance – see [Welsh Government Social Services and Well-being \(Wales\) Act 2014: Working Together to Safeguard People: Volume 6 – Handling Individual Cases to Protect Adults at Risk \(Welsh Government 2018\).](#) P.2.

²¹ *R v Stone and Dobinson* [1977] QB 354 (CA).

infrequent opportunities to meet; unlike most other public appointments that are full time and permanent.²²

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²² <http://safeguardingboard.wales/> (accessed 15/8/18).

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