Helping or hindering in adult safeguarding: an investigation of practice

Summary report

Martin Stevens, Stephen Martineau, Caroline Norrie and Jill Manthorpe

Social Care Workforce Research Unit

September 2017
About the Policy Institute at King’s
The Policy Institute at King’s College London addresses complex policy challenges with rigorous research, academic expertise, and analysis focused on improving outcomes. Our vision is to enable the translation of research into policy and practice by facilitating engagement between academic, business and policy communities around current and future issues in the UK and globally.

About the Social Care Workforce Research Unit
The Social Care Workforce Research Unit (SCWRU) at King’s College London is funded by the Department of Health Policy Research Programme and a range of other funders to undertake research on adult social care and its interfaces with housing and health sectors and complex challenges facing contemporary societies.

Project web page
kel.ac.uk/sspp/policy-institute/scwru/res/capacity/helping-or-hindering.aspx

Acknowledgements and disclaimer
We acknowledge funding from the Department of Health Policy Research Programme. The views expressed here are those of the authors and not the Department of Health. We are grateful to members of the Unit’s User and Carer Group who assisted with the development of this study and bring their experiences to inform and influence the work of the Unit. We thank those managers and practitioners who assisted in this study by completing the survey and being interviewed and all others who participated, especially the Advisory Group members.
Helping or hindering in adult safeguarding: an investigation of practice: Summary report

Introduction

This is a summary report of a research study that aimed to examine current safeguarding practice in England where access to an adult at risk is obstructed by a third party. We refer to such obstructive behaviour as ‘hindering’. The study took place following the implementation of the Care Act 2014 in April 2015 and focused on England. The full report is available on the Social Care Workforce Research Unit website. It was a multi-method study consisting of:

Phase 1

- A literature review;
- Analyses of the responses to the 2012 government’s Safeguarding Power of Entry Consultation and of parliamentary debates on proposed amendments to introduce a power of entry into the Care Bill in 2013-14 (which were all unsuccessful);
- An analysis of Serious Case Reviews where access had been at issue;

Phases 2 and 3

- An online survey of adult safeguarding managers in England (n=27);
- Interviews with adult safeguarding managers and social workers (n=37) and older or disabled people (n=6) and family carers (n=5) in three English local authorities.

The study was supported by members of the Social Care Workforce Research Unit’s User and Carer Advisory Group who offered valuable comments during the development of the study protocol and on its data collection instruments.

Phase 1: Previous views and debates about hinder situations and legal powers

In our re-analysis of responses to the government’s Safeguarding Power of Entry Consultation in 2012, we found that the majority of respondents to the consultation generally reported that situations when a new power of entry would be required were seldom encountered, although a minority of respondents stated these situations occurred frequently.

Examples of situations where third parties appeared to be hindering access were given across the different categories of adults at risk and types of abuse. Respondents observed that the risks of excessive or inappropriate use of any new powers needed to be considered carefully. Ultimately, the then Coalition Government did not include a power of entry in the Care Act 2014. They argued that: there was no consensus on the topic; such a power may increase risk to individuals; overcoming such difficulties was part of the essence of social work; and current law provided sufficient protection.

The literature review summarised and synthesised current law in England, Scotland and Wales and explored some of the theoretical implications of these new powers. Scotland and Wales introduced a power of entry in 2008 and 2016 respectively. In addition, Scottish law has created protection orders (for assessment, removal and banning), but have been rarely used. Theoretical debates centred on understandings of the link between social contexts and autonomy, vulnerability and privacy.
Phases 2 and 3: Findings

How big a problem is hindering?

None of the survey respondents or practitioner interviewees reported that data were collected specifically in relation to obstruction by third parties. Survey respondents and interview participants reported very wide ranges of cases they had worked on between April 2015 and July 2016, although most of these reported five or fewer cases in this period. Generally access was achieved, although it was often compromised by an inability to conduct a private interview. However, one social worker reported a case of complete obstruction, where access was only achieved by chance outside the house and another reported 15 unresolved cases. Several survey respondents and interviewees stressed the heavy demands placed on human resources from more difficult hinder cases, some of which ran for several years.

Why are third parties being obstructive?

Practitioner interviewees identified an array of scenarios. Sometimes parents or other family members were being arguably over-protective (often in cases involving an adult at risk with learning disabilities). Some third parties were thought to be fearful that the social worker would disrupt an established relationship. The obstructive third party might have his or her own mental health or addiction problems. Third parties might also be anxious that their opinion will not be heard; in some cases they were concerned about their own tenancy or immigration status. Cultural factors might be in play – for example, the third party objecting to a male social worker seeing a female adult at risk. As indicated by this variety in motivation, hindering was not always associated with abuse, according to interviewees.

We identified seven types of risk accompanying obstructive behaviour:

- Poor care of the adult at risk (11)
- Abuse of the adult at risk (9)
- Risk management: where third parties are managing difficult situations and do not want social workers involved (3)
- Hoarding (3) creating potential health and safety or fire risks
- ‘Cuckooing’ where a third party (often unrelated to the adult at risk) moves in with a person with care and support needs and takes over the property, often financially and emotionally abusing the adult at risk. (5)
- Domestic violence (3): where the third party might be hiding domestic violence towards the adult at risk
- Modern slavery: where the third party might be hiding the fact that the adult at risk or other members of the household were being treated as slaves (3)

Without greater knowledge about the size and nature of the problem, and therefore the costs to local authorities, policy options may be limited. Quantifying the issue, however, would involve further development work to define hinder situations and considering whether to add prevalence measures to annual statistical returns.

What approaches are social workers using to gaining access in these cases?

Social worker skills and informal relationships

Negotiation with the third parties was the most common approach reported in the survey: this might range from ‘soft’ styles aiming to develop rapport to a more assertive approach, sometimes with explicit reference to legal routes. Good ‘matching’ as part of social worker allocation to the family in question was felt to be important. Creative approaches to arranging interviews and identifying potential allies in the community (such as Age UK, or the RSPCA, housing or utilities representatives) were also important ways of securing access.

A multi-agency approach

In addition to the deployment of social worker skills, good multi-agency working was identified as essential in this aspect of safeguarding. Police, health, fire ambulance and housing services’ involvement was discussed at length in interviews and commented on by survey respondents. Relationships with banking staff were also mentioned. While individual practitioners were often willing to support social workers in gaining access (especially GPs), problems with finding time or giving this priority meant that availability was variable. Similarly, the police service was identified as potentially a very useful support, although again availability depended on local resources and informal relationships, as well as formal arrangements being in place, such as the presence of a multi-agency approach.
of a multi-agency safeguarding hub (MASH).

Participants considered improved multi-agency information sharing would help in hindering cases. They also suggested more explicit powers/responsibilities for multi-agency partners so that their support could be relied upon in certain circumstances.

Care Act 2014 and current law

The new status of safeguarding under the Care Act 2014 was felt to be helpful, particularly in relation to encouraging other agencies in their duty to cooperate. Any legal action, was a last resort because of cost implications and the risk of damage to relationships. A small number (5) of cases in which the Police and Criminal Evidence Act 1984 was used in hindering cases since April 2015 were reported by the survey respondents.

Social work interviewees reported problems of conducting mental capacity assessments unimpeded by third parties. Some stressed the importance of the private interview as a result. Recourse to the Court of Protection (COP) was an option used, rarely, by a number of interviewees in relation to hinder situations involving a person who had granted a lasting power of attorney (of any sort) to an individual under the Mental Capacity Act 2005 (MCA) or when best interests decisions about residence were being considered under the Act. Though the MCA was seen as providing useful statutory backing when dealing with problems of access to a person lacking capacity, Court of Protection applications were perceived by some social workers to take up much time and resources.

While the inherent jurisdiction of the High Court had not been used by survey respondents, it had been considered as a means of resolving access problems in all three interview sites, and two applications had been made. High Court cases also require a ‘massive’ amount of resources, which needed to be accepted as part of safeguarding responsibilities.

Domestic Violence Protection Orders (applied for by the police), which may involve the eviction of the perpetrator, were reported to be relatively easy to obtain, but not necessarily easy to enforce where both victim and perpetrator wish to breach the order. Four reports of the orders being used to resolve a hindering situation were mentioned by survey respondents. No cases of the new offence of controlling or coercive behaviour were reported, probably because this was in its early days and there was a view that caution was needed as to its applicability in cases where criminal prosecution might be counterproductive.

No instances of the use of section 135(1) Mental Health Act 1983 were reported by interviewees for a safeguarding purpose. There was also no evidence of practitioners knowing about its use for anything other than a Mental Health Act assessment.

Power of entry

Most survey respondents and interviewees were in favour of a power of entry for undertaking a private interview; most were also in favour of the introduction of assessment orders (temporary removal for assessment) and orders enabling the banning of a perpetrator. However, less than half were in favour of orders enabling authorities to remove an adult at risk.

Some interview participants in favour of a power of entry argued that such a power would strengthen the legal basis of safeguarding and provide legitimacy for action where someone has capacity, but there are strong concerns about their wellbeing. They also argued that such a power could shorten the process of negotiation. Many participants (those in favour as well as those who were against a power of entry) expressed reservations. These participants felt that: cases could generally be resolved with good social work; there would be a risk of negative impact on adults at risk and their families; the power of entry did not fit with social work practice and values; it could negatively affect social work relationships; it might infringe human rights; and, that current legal provision suffices.

The Scottish protection orders were seen by some as a useful complement to the power of entry. Again, some argued that existing powers were enough. Banning orders were seen as particularly useful in domestic violence and ‘cuckooing’ cases (takeover of a person’s accommodation). The ability to override an adult at risk’s refusal to consent in the Scottish legislation was seen as relevant, since the effect duress or coercion can have on decision making was widely acknowledged, though again there was concern that it ran counter to social work values.
Conclusion and policy options

While complex hinder situations appear to be rare, practitioners report that they are usually resolved by good social work and multi-agency working. Social workers appear creative in their approaches to gaining access to the adult at risk. However, in a small number of cases, gaining any access proves very difficult and sometimes impossible. Such cases can take up a great deal of time and resource, and also may mean that adults at risk suffer abuse or neglect for long periods. In these cases, many social workers appear to support the introduction of a power of entry, and some of the other powers available in Scotland. The similarities between these current findings and themes from the Department of Health (DH) consultation suggest that views have not altered substantially despite the changes of the Care Act 2014. The research highlights policy options for consideration (including some suggestions for further research), which are set out below.

Policy options

1. Wait for data from use of the legal powers in Wales and further data from Scotland before making firm policy decisions about further legal powers.

2. Undertake a public consultation through, for example, the Law Commission to consider legislation already proposed e.g. amendments to Care Act 2014. The consultation could seek views on
   a. Applying the approach adopted in Scotland to England (or that of Wales).
   b. How to improve the current legal routes to gaining access including speeding up legal processes.

3. Consider data collection and research to consider scale of problem, which would require:
   a. Commissioning further development work to define when to count a problem as a ‘hinder situation’.
   b. Commissioning sample surveys to test out the measure and to produce estimates of prevalence.
   c. Consideration of including a measure in annual statistical returns.

4. Offer further guidance or policy and procedures. Five areas in which guidance could be valuable were suggested by the research participants:
   a. Practice approaches to gaining access, to complement the SCIE guide (SCIE, 2014), which sets out the legal routes (and updates it). In addition, SCIE’s ‘Safeguarding Questions’ (supporting the Care Act 2014) document could be expanded or other guidance, such as a ‘community of knowledge’ page with case studies, on ‘what’s worked for us’ and tips.
   b. A decision tool for social workers to use in deciding when to escalate concern about a hinder situation and when a legal route to gaining access should be considered.
   c. The Care Act 2015 section 6 duty to cooperate could be extended to give more structured powers (or responsibilities) to enable attendance and/or cooperation from professionals/agencies. This might include clearer criteria for involvement of the police and advising hospital staff and GPs on their role in supporting social workers to have private conversations with adults at risk in hospitals or in the community.
   d. Guidance to the police and joint training with social workers on the remit and requirements for welfare checks.
   e. Guidelines for co-ordination with banks in suspected financial abuse cases.
   f. More training and skills development in the Mental Capacity Act 2005 for professionals working in agencies other than adult social care departments.

5. Consider widening the remit of when advocacy is appropriate in safeguarding cases to include provision in cases of apparent obstruction

6. Consider the professional and organisational response to hindering in adult safeguarding in the context of intended human rights reform (now timetabled post-Brexit).