Helping or Hindering? the Care Act debates on powers of entry revisited

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Conceptualising hindering?

Where social workers or other professionals face difficulties in accessing an adult at risk because of the actions of a third party, in the course of carrying out a safeguarding enquiry.
Helping or hindering in adult safeguarding: our investigation of practice

• Phase 1
  – Literature review
  – Secondary analysis of DH consultation on power of access AND of parliamentary debate (remember Care Bill?)
• Phase 2
  – Survey of adult safeguarding managers (n=27)
• Phase 3
  – In-depth study in three Local Authorities
  – Interviews with safeguarding and social work managers (n=15), social workers (n=22) and older and disabled people (n=6) and carers (n=5)
Care Bill debates about a power of entry

- Strongly held views about risks of over-intrusion in family and private life
- Before Care Act 2014, Department of Health (DH) consultation on whether a new power of entry for social workers was needed
- Overall, submissions in favour of introducing such a power
- DH (2013) emphasised that only 18% of members of the public were in favour, compared with 72% of social care + 90% of health professionals
- Small number of lay respondents argued that this would be unnecessary intrusion into private life and unjustifiably extend state powers
- Opposing views about the proportionality of such powers were expressed in the Parliamentary debates.
Continuing debate

Care Act 2014 did not include new powers

• Action on Elder Abuse has repeatedly called for the creation of a specific crime of elder abuse and for:

‘A power to access and speak to a potential victim of elder abuse’ (AEA, 2016: p4).
Power of access
Legal differences in the UK

England – Care Act 2014,
• Excluded a power of access
• Much consultation and debate
• Requires safeguarding enquiries
• Requires cooperation

Scotland - Adult Support and Protection (Scotland) Act 2007
• Powers of entry, removal and banning on securing a court order
• Very limited use of orders to date (Kerogen 2013)

Northern Ireland
• no legal power of access (but undecided)

Wales - Social Services and Well-being (Wales) Act 2014 (s127):
• power of access and to interview an adult at risk
Internationally - Singapore

Vulnerable Adults Bill

Bill No. 20/2018.
Read the first time on 20 March 2018.

VULNERABLE ADULTS ACT 2018
(No. of 2018)
ARRANGEMENT OF SECTIONS
PART 1
PRELIMINARY

... we looked at other countries which have longer experience with vulnerable adult legislation. Some of these jurisdictions have laws that allow a vulnerable adult's stated wishes to be overridden. For example, Scotland's Adult Support and Protection Act permits the State to intervene despite a vulnerable adult's refusal to consent, if there is evidence that the adult is unduly pressurised, and there are no other reasonable steps that can be taken to prevent further harm to the adult.'

Minister Lee speech 18 May 2018
Our study - views on legal powers

- Most survey respondents and interview participants were in favour of a power of entry for undertaking a private interview (as a last resort)
- Most also in favour of the introduction of assessment orders (temporary removal for assessment) and orders enabling the banning of a perpetrator.
- Less than half were in favour of orders enabling authorities to remove an adult at risk.
How big is the problem?

• No survey respondents or practitioner interviewed reported data were collected specifically in relation to obstruction by third parties.
• Widely varying estimates of numbers of cases were reported ranging from 0 to 70.
• In most of these cases access was achieved, although often compromised by inability to conduct a private interview.
• Participants stressed the heavy demands from cases where obstruction was long-lasting and serious, some of which ran for several years.
Arguments for and against increased legal powers when person has decision-making capacity

- Strengthens the legal basis of safeguarding
- Needed to overcome ‘hindering’
- Frequency of need for power of access
- Impact of duress (e.g. domestic violence)
  - can limit autonomy
- Can be useful context to negotiations
- Can short-circuit delays (which can prolong experience of abuse)

- Can exacerbate problems
- Need more than just power of access
- Could interrupt relationships with professionals
- Could encourage professionals to take shortcuts
- Does not fit with social work values
- Negative impact on adults at risk and families
Socio-legal views of Privacy

• Strict public-private division (Wyness, 2014)
  – Family = Private
  – Politics and policy = Public
  – Power of access and other interventions harder to justify?
  – Part of human rights

• Blurred public-private boundaries
  – Changing family structures
  – Policy legitimising professional interest in what happens in families
  – Power of access easier to justify?
Socio-legal Vulnerability

• Vulnerability by inherent characteristics
  – Certain impairments (particularly cognitive) reduce ability to resist coercion or undue pressure (view fostered by the MCA)
  – Judgements based on impairments?

Against:

• Vulnerability as a universal human condition
  – ‘Vulnerability is – and should be understood to be – universal and constant, inherent in the human condition.’ Fineman, 2008; 1)
  – Requires consideration of situational factors and subjective experience of vulnerability in combination with an understanding of impairment (Dunn et al, 2008)
Socio legal Autonomy

• Individual autonomy
  – based on ‘liberal philosophies that idealise moral and political subjects as self-sufficient and independent of others' influence; subjects who are considered “autonomous”’ (Series, 2015: 81).
  – Autonomy all or nothing – strong interpretation of consent or lack of consent

• Relational autonomy
  – Autonomy related to social contexts, relationships
  – Autonomy requires self-trust, which can be undermined by oppression (McLeod and Sherwin, 2000)
  – Autonomy relative - Requires nuanced judgements about consent or lack of consent intervention and use of legal powers
Has debate stalled? 
Dialectics of autonomy versus protection

**Autonomy over protection**
- Avoiding infringing human right to liberty? (Articles 5 & 8 European Convention on Human Rights) (Stewart and Atkinson, 2012)
- Hard to evidence undue influence (Stewart 2012)
- Assumptions about citizenship of disabled people (=‘fragile citizenship’)

**Protection over autonomy**
- Long-term autonomy fostered by protection (Preston-Shoot and Cornish, 2014)
- Justified if social workers aim to establish whether the person is acting autonomously
- Protection orders get used as a last resort
- Lack of ‘teeth’ without the extra powers (removal, banning)
• Complex hinder situations rare but resource/risk intensive when arise
• Distinction between approach taken to previously unknown or ‘known’ adults at risk
• Balancing practice wisdom with legal and policy structures
• Continued aspirations that guidelines for practice and multiagency working may help manage uncertainties
• More effort to identify size, scale and shape of the challenges
Thank you for listening!

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Helping or hindering in adult social care
Project website: http://www.kcl.ac.uk/sspp/policy-institute/scwru/res/capacity/helping-or-hindering.aspx
Further analysis


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