**Appendix 1**

**Legislative Context: Social Services & Well-Being (Wales) Act 2014**

In 2011, the Law Commission proposed that the confusing and, in parts, conflicting social care statutes be repealed and replaced by a single act which people receiving care & support, their carers and others could look to, in order to understand their rights. The Act is the Welsh Government’s response to the Law Commission.

The Act came into force in April 2016. It is the most substantial piece of primary legislation enacted by the Welsh Government and will have a profound impact of the provision of social care in Wales. It is worth noting that, the Welsh Act is materially different to the English Care Act 2014, and creates a quite distinct social care legal jurisdiction in Wales. The primary difference between the acts is that the Welsh Act applies to people in need of any age (including non-disabled children) and their carers, whereas the English Act is largely confined to the needs of ‘adults in need’ and their carers.

The main principles of the Act in relation to social care are detailed in this factsheet:

<http://gov.wales/docs/dhss/publications/151023social-care-staff-infographicen.pdf>and can be summarised as follows:

* **People**: putting the individual at the centre by giving them a stronger voice and control over services they receive.
* **Well-being**: supporting people to achieve their own well-being building on a person’s circumstances, capabilities, networks and communities.
* **Earlier intervention**: more preventative services, supporting people before their needs become critical.
* **Working together**: stronger partnership working.

The Act provides the legislative framework to take forward the change programme set out in the ***Sustainable Social Services for Wales: A Framework for Action:***

[**http://gov.wales/topics/health/publications/socialcare/guidance1/services/?lang=en**](http://gov.wales/topics/health/publications/socialcare/guidance1/services/?lang=en)

The primary objectives of the Act are to:

* Improve well-being outcomes for people needing care & support, as well as carers needing support.
* Give people who use services a stronger voice and greater control.
* Reform Social Service Law.

Essential guide: <http://gov.wales/docs/dhss/publications/160127socialservicesacten.pdf>

**Safeguarding People at Risk**

Service contracts / agreements will stipulate the requirements of service providers in respect of safeguarding; particularly in respect of the required policy framework (such as whistle-blowing) and / or workforce development requirements (staff competence, learning & development). As a minimum service providers are required to ensure that:

* The people they support are protected from abuse.
* Their staff know that they have a legal and professional duty to:
  + Report any concern, suspicion, information about abuse, or if they have reason to believe someone is being abused or at risk of abuse.
  + Attend appropriate training.
* They have a policy (compliant with the Act and any related guidance) which states how they will meet legal obligations to protect people at risk and which acknowledges the duty to report a reasonable cause to suspect that a person is, or has been or is at risk of abuse to the local authority safeguarding team.
* They operate safe recruitment procedures for staff and / or volunteers.

The Act Codes of Practice for ***Working Together to Safeguard People***, volumes 1-4, were published in April 2017: [http://gov.wales/topics/health/socialcare/act/code-of-practice/?lang=en.](http://gov.wales/topics/health/socialcare/act/code-of-practice/?lang=en) These are statutory guidance in relation to Part 7 (Safeguarding) of the Act, issued under sections 131 and 139 of the Act. Part 7 of the Act requires local authorities to make enquiries where they suspect that a child or adult with care and support needs is at risk of abuse or neglect (section 126 & section 130). Volumes 5 & 6 ***Handling Individual Cases to Protect Adults / Children at Risk*** were published in 2018.

**The broad definition of a person (adult or child) at risk is one who:**

* Is experiencing or is at risk of abuse or neglect (or other kinds of harm for a child).
* Has needs for care and support (whether or not the authority is meeting any of those needs).
* As a result of those needs (for an adult) is unable to protect himself or herself against the abuse or neglect or the risk of it.

Section 6 of the Human Rights Act 1998 places a duty on public authorities not to act in a way that is incompatible with rights under the European Convention of Human Rights. Part 7 of the Act incorporates a number of rights included in the convention:

Article 2 – right to have life protected.

Article 3 – right not to be subjected to inhuman or degrading treatment.

Article 5 – right to liberty and security.

Article 6 – right to a fair hearing.

Article 8 – right to respect for private and family life, home, and correspondence.

In addition there are additional duties upon local authorities to make enquiries; i.e. ‘if a local authority has reasonable cause to suspect that a person within its area (whether or not ordinarily resident there) is a person at risk, it must:

* Make (or cause to be made) whatever enquiries it thinks necessary to enable it to decide whether any action should be taken (whether under this Act or otherwise) and, if so, what and by whom.
* Decide whether any such action should be taken.’

Putting these principles and statutory guidance into practice means:

* Protecting a person (adult or child) at risk should be everyone’s paramount concern.
* All staff have an ethical and professional duty of care to act if they:
  + Witness abuse.
  + Receive information about abuse, suspected abuse or concerns about the care or treatment of a person (adult or child) at risk.
  + Have concerns or suspicions about possible abuse, neglect or inappropriate care.
* People at risk have the right to be fully involved throughout the safeguarding process and to make decisions about their safety and welfare; in some circumstances individuals may need the support of an advocate to participate fully in decision making (see section 7.1). Where it has been assessed that a person does not have the mental capacity to make any particular decision; appropriate arrangements needs to be made in respect of best interest decisions and independent mental capacity advocacy (IMCA) where there are no family or carers who can advocate for the person.

The Codes of Practice provide guidance to all who are concerned with the well-being of people (adults or children) at risk employed in the statutory, third (voluntary) and private sectors, in health, social care, the police and other services.

The sharing of information by professionals must be with due regard to confidentiality and information security, for example using secure e-mail and password-protected documents. The Wales Safeguarding Procedures, including criminal investigations, override other organisational procedures, such as disciplinary and complaints investigations.

In 2018, guidance was published in regards to handling individual cases to protect adults / children at risk. This guidance details that:

* Every care setting should provide the same basic safeguards against abuse, founded on an approach, which promotes general welfare and treats people with dignity and respect.
* There are a number of essential safeguards, which should be observed in all settings (residential care, health settings, prisons, secure units and any others) which should be explicitly addressed in contracts with commissioned service providers. These safeguards include ensuring that:

* + People feel valued and respected and their self-esteem is promoted.
  + There is an openness on the part of the institution to the external world and external scrutiny, including openness with families and the wider community.
  + There are clear, written policies and safeguarding procedures that are in line with Safeguarding Board procedures for the area and that are complied with by all staff.
  + Staff are trained in all aspects of safeguarding and knowledgeable about how to implement safeguarding policies and procedures.
  + Complaints procedures are clear, effective, user-friendly and are readily accessible to all, including those with disabilities and those for whom English is not a first language. People should have support to use these procedures. Procedures should address informal as well as formal complaints. Systems that do not promote open communication about minor complaints will not be responsive to major ones, and a pattern of minor complaints may indicate more deeply seated problems in management and culture, which need to be addressed. There should be a complaints register in every residential setting, which records all representations or complaints, the action taken to address them, and the outcomes.
  + People have ready access to a trusted person outside the institution, e.g. a family member, social worker, independent visitor or advocate.
  + Recruitment and selection procedures are rigorous and create a high threshold of entry to deter those unsuitable to work with adults at risk.
  + Clear policies, procedures and support systems are in place for dealing with expressions of concern by staff and carers about other staff or carers. Organisations should have a code of conduct instructing staff on their duty to their employer and their professional obligation to raise legitimate concerns about the conduct of colleagues or managers.
  + There should be a guarantee that procedures can be invoked in ways ,which do not negatively affect the whistle-blower's own position and prospects.
  + There is respect for diversity and sensitivity to race, culture, religion, gender, sexuality and disability.
  + There is effective supervision and support, which extends to temporary staff and volunteers.
  + Staff are alert to the risks in the external environment from people prepared to exploit the additional vulnerability of people living away from home.

In September 2017, CIW implemented its internal interim safeguarding arrangements (policy & procedure). CIW [(https://careinspectorate.wales/?lang=en)](https://careinspectorate.wales/?lang=en) sits outside the definition of ‘partner agency’ in respect of the Act and is therefore not bound by all the expectations in the code; however they play an active role in effecting safeguarding arrangements.

Advocacy

The Act, Part 10: Code of Practice (Advocacy) sets out the requirements for local authorities to:

* Ensure access to advocacy services and support is available to enable individuals to engage and participate when local authorities are exercising statutory duties in relation to them (including the provision of care and support).
* Arrange an independent professional advocate to facilitate the involvement of individuals in certain circumstances. In particular, when a child or young person becomes looked after or enters the child protection arena he / she should be actively offered advocacy support. The offer is usually extended by the social worker and should inform the child / young person that an independent advocate can meet with them to explain the role of advocacy and how it can provide support through the looked after and child protection system.

In addition, any person exercising functions under the Act must have regard to the importance of providing support to enable the individual to participate in decisions that affect him or her, particularly where the individual’s ability to communicate is limited for any reason. This includes providing support to enable individuals to participate in any review of care and support services where there are concerns about quality and safety.

Enshrined in the Mental Capacity Act 2005 is the principle that people are assumed to have mental capacity unless otherwise proven; even when mental capacity is limited, a person may still be able to make some clear choices or decisions with appropriate support and information. The Act emphasises the importance of supporting incapacitated people receiving managed care & support to make decisions and has created a statutory entitlement to advocacy through specialist Independent Mental Capacity Advocates (IMCAs).

In specified circumstances IMCAs will support and represent people who lack capacity and have no family and friends to speak for them.

The legislation requires local authorities to refer individuals to the IMCA service where decisions about a change of residence is required, and local authorities may refer where decisions are required at a care review or where there are adult safeguarding procedures. Local authorities and NHS bodies have a duty to instruct IMCAs where accommodation arrangements are being made on behalf of a person lacking capacity without friends or family.

The Mental Capacity Act Deprivation of Liberty Safeguards provides a legal framework to protect 16– 17 year old young people and adults, who may become, or are being deprived of their liberty in a care or hospital setting. These safeguards are for people who lack capacity to decide where they need to reside to receive treatment and / or care and need to be deprived of their liberty. This deprivation of liberty must be in the person’s best interests, otherwise than under the Mental Health Act 1983 (MCA Code of Practice). The safeguards came into force in Wales and England on the 1st April 2009.

Commissioners in their capacity as managing authority under the provisions of the Mental Capacity Act 2005 (Deprivation of Liberty Safeguards) shall have in place a policy and procedure that identifies: Whether deprivation of liberty is or may be necessary in a particular case.

* What steps should be taken to assess whether to seek an urgent or standard authorisation.
* Whether all practical and reasonable steps have been taken to avoid a deprivation of liberty.
* What action should be taken if a request for authorisation is needed.
* How cases should be reviewed where authorisation is or may be necessary.
* Who should take these steps.