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Parliamentary arguments on powers of access – the Care Bill debates

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Parliamentary arguments on powers of access – the Care Bill debates

Abstract

Purpose: Opinion is divided on whether a new power of entry should be introduced for social workers in cases where individuals seem to be hindering safeguarding enquiries for community-dwelling adults at risk in England. This present research project is investigating the prevalence and circumstances of situations where access to an adult at risk is denied or difficult and what helps those in practice. The study consists of a literature review, a survey of adult safeguarding managers and interviews with social care staff in three case study local authorities. As part of the contextual literature review, during 2014 we located Parliamentary debates on the subject and this paper reports on their analysis.

Methodology: Following approaches used in historical research, documentary analysis was carried out on transcripts of Parliamentary debates available online from Hansard, supplemented by other materials that were referenced in speeches and set in the theoretical context of the representations of social problems.

Findings: We describe the content of debates on the risks and benefits of a new right to access for social workers and the role of parliamentary champions who determinedly pursued this policy, putting forward three unsuccessful amendments in efforts to insert such a new power into the Care Act 2014.

Originality/value: This paper adds to the history of adult safeguarding in England. It also offers insight into politicians' views on what is known/unknown about the prevalence and circumstances of the problems with gaining access to adults with decision-making capacity

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where there are safeguarding concerns and politicians' views on the merits or hazards of a power of access.

Research Paper

Key words: power of entry, right of access, hinder, adult safeguarding, adult protection, adults at risk, vulnerable adults, parliament, Care Act



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Parliamentary arguments on powers of access – the Care Bill debates

Introduction

There have been several themed analyses of United Kingdom (UK) Parliamentary debates, some spanning many years of debate about important subjects, such as Fletcher's (2008) analysis of how the subject of asylum seeking has featured in Parliamentary discourse. This paper reports a documentary analysis of the Parliamentary debates on, and pre-legislative scrutiny of, proposed English legislation relevant to adult safeguarding. It follows a tradition of political studies scholarship that treats such debates as important data sources for analysis, which can be traced back to Aristotelian rhetorics, the study of how arguments are presented in order to convince or persuade opponents in a debate (Billig, 1996). The subject of this present analysis is tightly focused. It reports on debate about whether the law should be changed in England to authorise powers of access in cases of suspected abuse or neglect of a vulnerable adult (with decision making capacity) when professionals cannot gain entry to the adult's home or access to the individual concerned. It spans the period of the introduction of the Care and Support Bill laid before Parliament by the Coalition Government up to its enactment as the Care Act 2014. Various terminologies were used in the Parliamentary debates, such as 'adult safeguarding access order' and terms such as vulnerable adult were employed rather than the contemporary (post Care Act 2014) term, adults at risk. The terms used in this present paper reflect current usage unless they are direct quotes. This paper presents the debates in chronological order and draws primarily

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on Hansard reports, supplemented by other materials that were referenced in Parliamentary debate or which commented on the debate. We have addressed in more detail the Coalition Government's 2012 consultation on powers of access (Norrie et al 2016) and the contents of this consultation are not reproduced here, save where cited in the Parliamentary arena and specifically relevant to the analysis.

Framework for discussion

Bacchi (2009; 2012) has proposed a six fold set of questions that are helpful in policy analysis, briefly summarised as:

- 1) What is the problem represented to be?
- 2) What presuppositions or assumptions underlie this representation of the problem?
- 3) How has this representation of the problem come about?
- 4) What is left unproblematic in this problem representation? Where are the silences?
Can the 'problem' be thought about differently?
- 5) What effects are produced by this representation of the problem?
- 6) How/where is this representation of the 'problem' produced, disseminated and defended? How could it be questioned, disrupted and replaced?

We draw on these questions in our discussion of the Parliamentary debates on a power of access. The following section reports the methods used in accessing documents and their analysis.

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Methods

The key sources of information for Parliamentary analyses are transcribed debates in Hansard (available online at <http://hansard.parliament.uk/>). As Fletcher (2008, p. 6) acknowledged, these:

'offer a rich record of political discourse that reveal the differing ideologies of political parties. They show politicians acting in their professional capacity within an institutional setting that is open to scrutiny. Crucially, everything that they say in this environment has to be carefully considered as it is recorded and may be used against them in future. The House of Commons is a unique arena in which political parties openly discuss and reason through their ideological positions and the consequences for policy'.

Nonetheless, there is what Mollin (2007) termed the 'Hansard hazard' in that the precise accuracy of British parliamentary transcripts is affected by transcribers' authority to amend grammar and lexical expression to conservative and formal expression. These changes from the original spoken word make these data less suitable for linguistic analysis. However, like Ellis and Kitzinger (2002), we adopted a thematic approach, aiming to identify the arguments used by politicians on both sides of the debates, rather than focusing on the characteristics of the linguistic and rhetorical style. This should limit the impact of the 'Hansard hazard'.

Hansard reports enable researchers to take a contemporary or historical view of different facets of policy, political rhetoric, or ideological positions. For researchers the free availability and easy access of this data render them important resources, surprisingly often

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overlooked in adult safeguarding literature. We are not aware of any other analysis of Hansard records in this area of study.

Our inclusion criteria were related to the aims of our study of factors that hinder or help access to adults at risk who have decision making capacity living in the community of which a policy and literature review were the foundations. We selected the time periods March 2013 to May 2014, and identified debates using search terms in the Hansard search engine (such as elder abuse, power of access, Care and Support Bill/Care Bill), and took as our end point the date the Care Bill passed onto the statute books as the Care Act 2014. We also searched Hansard for politicians who had been reported in the media and in adult safeguarding debates outside Parliament as having an interest in this area (e.g. Paul Burstow MP). We included Hansard material from both Houses of Parliament, and Committees. In addition, we examined some of the government documents that contributed to the debate.

We did not search for politicians' speeches or writings outside Parliament. Since our focus was on the themes of political rhetoric or argument, we did not examine voting patterns to see if there were members of the House of Commons or Lords who changed their minds as would be indicated by tracking their voting history. Such an approach has been used in research on other subjects and will be facilitated by the growth in 'big' data analytical tools where automated or semi-automated techniques (see Bara *et al.*, 2007) can be used to distinguish if there are distinctive syntax patterns in use by politicians and/or different vocabularies. Finally we considered our findings in light of theories about the representation of social problems.

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Findings

Power of Entry – entering Parliamentary debate

The Joint Committee on the Draft Care and Support Bill reported on 19 March 2013 (House of Lords and House of Commons Joint Committee on the Draft Care and Support Bill, 2013). Its report covered the Bill as a whole, but one section considered 'A Power of Entry'. In Para 156 it cited the Equality and Human Rights Commission (EHRC) (a non-departmental public body established in 2006), amongst others, as recommending 'there should be an additional power of entry for local authority representatives, where a third party is refusing access to a person who may be at risk of abuse and neglect.' The EHRC had proposed that the local authority representatives should be experienced in adult safeguarding and appropriately use independent advocates to establish contact with the vulnerable adult if possible. Checks should ensure such powers were used proportionately.

The Joint Committee noted that powers of entry were permitted elsewhere in the UK, through the Adult Support and Protection (Scotland) Act 2007, and were being proposed in the Social Services and Well-being (Wales) Bill. It concluded that similar provisions requiring court authorisation and application of Human Rights Act principles to a power of entry would adequately protect against abuses of such powers in the English context.

At the time of the Committee's deliberations the government's power of access consultation had not been published. However, an indication of its content was provided in

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4 person by the Minister. The Committee declared itself unsurprised to hear from the
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6 Minister that *'those who wanted to use the power were in favour, while those who believed*
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8 *that they might be subject to it were opposed to it'* (Para 158).
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14 The conclusion of the Select Committee was to reflect a common and persistent, yet
15
16 ultimately unsuccessful, theme in Parliamentary debate on the subject:
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20 There are obvious dangers in according such powers to new categories of persons,
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22 but on balance we believe that **the safeguarding provisions should include a power**
23
24 **of entry for local authority representatives where a third party is refusing access to**
25
26 **a person who may be at risk of abuse or neglect.** (Para 159, bold in the original)
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30 Government response to the Select Committee occurred a few weeks later in May 2013
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32 when the Secretary of State for Health presented to Parliament a document entitled *'The*
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34 *Care Bill explained including a response to consultation and pre-legislative scrutiny on the*
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36 *Draft Care and Support Bill'* (Secretary of State for Health, 2013). In relation to the
37
38 recommendation for a power of entry, the Coalition Government stated:
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43 The consultation on a power of entry showed that, as we expected, this was a very
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45 sensitive and complex issue that divided opinion. We particularly noted the strength
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47 of feeling from members of the public who were against such a power, and the risk
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49 of unintended consequences highlighted by some respondents. There is also no
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51 conclusive proof that this power would not cause more harm than good overall,
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53 even though in a very few individual cases it may be beneficial.
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4 Based on the views expressed, and the qualitative evidence provided by
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6 respondents, we have concluded that the responses to the consultation did not
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8 provide a compelling case to legislate for a new power of entry. Therefore, we have
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10 not added a safeguarding power of entry to the Bill. (page 67)
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14 This rejection was in contrast to most of the other Select Committee recommendations,
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16 which were accepted.
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23 *Debating the proposed Adult Safeguarding Access Order (Amendment 77)*

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26 Legislative scrutiny of the Care Bill continued across 2013 with a House of Lords amendment
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28 (Amendment 77) proposed in October of that year (Hansard, 2013: Cols 330-331). The
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30 amendment sought to introduce an Adult Safeguarding Access Order, for which an
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32 'authorised officer' (such as a social worker) could apply to the Court, if there was a
33
34 suspicion of abuse or neglect and a third party (e.g. a relative) was preventing the officer
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36 from seeing and talking to the adult concerned. The Order was designed to give the
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38 authorised officer authority to enter a property, with the help of a police constable, who
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40 could use force to gain entry if necessary. After gaining entry, the Order would enable the
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42 authorised officer to undertake a private interview, assess mental capacity, if required, and
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44 check whether the person was making decisions freely. In addition, the authorised officer
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46 would be able to make an assessment about whether the person is an adult at risk, and to
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48 make a decision about what, if any, action would be required. The amendment also
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50 stipulated that the order would only be granted if there was evidence that the adult was at
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52 risk of abuse and neglect.
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Baroness Greengross introduced this amendment by observing that she had been involved in the issue of elder abuse for very many years. She concurred with Action on Elder Abuse:

...that there are situations where victims of abuse are imprisoned in their homes by a perpetrator who subsequently denies access to adult safeguarding staff. In such circumstances there are no current legal means by which access can be achieved.

There is need, therefore, for a power of access for confidential interview, but to occur only where the reasonable suspicion of a social worker or another practitioner is tested by application to a court, which would consider whether to authorise such access. This is available in the Scottish Act and it is proposed in the Welsh Bill through application to a justice of the peace. (Col 332)

Support for this amendment was voiced by Lord Rix (referring to the vulnerability of some people with learning disability to 'mate crime' and that the Scottish legislation appeared to be being used appropriately and sparingly); by Baroness Meacher (noting that cuts in social care would leave some carers in abusing situations and that a power of access could be the only way to help them); by Baroness Hollins (observing similar provisions were proposed for Wales); by Lord Warner (highlighting the importance of seeing the home in suspected child abuse and querying the need to distinguish between vulnerable adults at risk and children); and by Baroness Barker, who supported Lord Warner and argued that:

What we are talking about here is the right of a social worker with a police escort, having got permission via a legal document, to go into somebody's house, where there is a suspicion that criminal activity may be taking place. That is the magnitude of what we are talking about. That leads to my second point, which is that it is right

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4 for us to anticipate that, just as in Scotland where these powers have been put into
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6 law, they will be used very sparingly. There will not be many cases. However, these
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8 types of cases are awful, with people suffering truly horrendous abuse. Therefore, it
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10 is important that we act. (Col 336)
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14 Baroness Wheeler (Col 337) made further reference to mixed views of the potential power
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16 and commented on the scale and nature of the government consultation:
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20 We know that there is both strong support and strong opposition among local
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22 authorities, NHS trusts, the health and social care professions, and patients and user
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24 organisations on this sensitive and complex issue. However, we have to remember
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26 that the Government's consultation had a relatively low response, particularly in
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28 terms of local council and NHS trust participation. On top of that, many of the
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30 consultation responses appeared not to have fully understood the limited nature of
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32 the change that was being proposed: namely, that the new power would apply only
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34 to situations where it is the third party who is denying access, not the individual.
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40 Responding, the Minister Earl Howe declared that Amendment 77 ran counter to the
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42 'message' of partnership of the Bill. He acknowledged:
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46 Having said that, I am well aware of the strength of feeling in relation to this matter,
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48 both inside your Lordships' House and elsewhere. Whether there ought to be a
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50 power of access or entry is a sensitive question. That is precisely why the
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52 Government launched a three-month consultation in 2012 to gauge the opinions of
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54 professionals and the public. The consultation revealed no clear consensus. Of 212
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56 respondents, 50% backed a new power, with 40% opposed. However, among
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4 individuals, 77% disapproved. The majority of respondents in favour of a new power
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6 of access were health and care professionals, yet it was very noticeable that their
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8 responses revealed the painstaking weighing of potential benefits against
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10 unforeseen consequences.
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14 Earl Howe cited MIND's consultation response saying: 'A power of entry risks being seen as
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16 a quick solution, in place of greater focus on community engagement, co-operation and a
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18 preventative approach that can be truly empowering to the people involved' (Col 339). He
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20 commented that this view had been reiterated by others. He disagreed with Baroness
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22 Barker about the impact on mental health service and professional relationships with
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24 service users since, even if access was granted, trust would have been compromised and
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26 options limited. Further, in respect of the consultation, he said:
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31 Our consultation revealed no compelling evidence for further legislation. Even those
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33 respondents in favour pointed to how rarely a new power might be applied and
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35 identified potential unforeseen consequences. Proposed new Subsection 4(c) of the
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37 amendment states that an access order should be granted only if doing so "will not
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39 result in the person being at greater risk of abuse or neglect". I have to ask how a
40
41 court could ever reliably make such a judgment in these circumstances. (Col 339)
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47 Earl Howe declared that there was '*no legislative vacuum preventing care or other*
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49 *professionals accessing those in urgent need of assistance*', citing the Police and Criminal
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51 Evidence Act 1984, the Domestic Violence, Crime and Victims Act 2004, the Fraud Act 2006
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53 and, for those lacking capacity to make decisions, the Mental Capacity Act 2005, as
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55 containing powers to intervene that provide a '*secure safety net*'. He cited the safeguarding
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4 lead of local authority directors at the Association of Directors of Adult Social Services
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6 (ADASS) as pointing to a “lack of legal literacy” within the social care and other professions
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9 (referring to LGA/ADASS, 2013). Rejecting Amendment 77, Earl Howe stated:

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12 What is needed is greater knowledge of existing legislative options. If they have that,
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14 professionals will be fully equipped to support people to be safe. The core role of an
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16 adult social worker is to support people. Further legislation for a new power of
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18 access risks undermining this approach, sending the message that legal intervention
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20 takes primacy over negotiations and consensus. I stress that legal intervention, on
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22 those rare occasions when it is needed, is already possible under the law. (Col 340)
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27 Despite Baroness Greengross’ offer to withdraw the amendment, following conversation
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29 with Earl Howe, she decided to test the opinion of the House. The results of the Division on
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31 Amendment 77 at this report stage were Contents 72; Not-Contents 143. The amendment
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33 thus fell on 14 October 2013.
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40 *Debating the proposed Adult Safeguarding Access Order (New Clause 3)*
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43 New Clause 3 (Hansard, 2014a: Cols 249-250) was the second attempt to introduce a power
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45 of entry into the Care Bill; being discussed by the Public Bill Committee on 21 January 2014
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47 at its seventh sitting. This clause’s proposed Adult Safeguarding Access Order was
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49 substantially the same as that in Amendment 77, but with significant changes. First, the new
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51 clause stipulated that a Justice of the Peace (JP) could make an Adult Safeguarding Access
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53 Order, instead of a ‘court’. The second and third differences were perhaps more important.
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58 The clause proposed that the JP had to be satisfied that ‘all reasonable and practicable steps
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4 have been taken to obtain access to a person suspected of being an adult at risk of abuse or
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6 neglect' before granting an Order. The third difference was that Authorised Officers were to
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8 have 'regard for the general duty in section 1 (Promoting individual well-being) in making a
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10 decision', a duty that incorporated what was to become section 1(3)(h), namely the least
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12 restrictive principle:
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16 ... the need to ensure that any restriction on the individual's rights or freedom of
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18 action that is involved in the exercise of the function is kept to the minimum
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20 necessary for achieving the purpose for which the function is being exercised.
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25 These changes from Amendment 77 appeared to place the power of entry within the overall
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27 context and ethos of the Care Bill in the view of their supporters.
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31 In the morning of this Committee hearing Rt Hon Paul Burstow MP (Liberal Democrat) raised
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33 the question of what would be lawful if a local authority was stopped from making enquiries
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35 about an adult safeguarding concern (under proposed clause 42). He explained:
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39 It is about what happens—as it does in many cases—when a third party, a family
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41 member or a close acquaintance actively prevents inquiries being made under clause
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43 42. What happens when a person is too frightened to speak up, is under duress, or is
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45 effectively a prisoner in their own home? Ultimately, we are told, the High Court has
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47 jurisdiction to act. It can hear any matter that comes before it; that is where the
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49 buck stops. This is a very rarely used power of inherent jurisdiction. I know that the
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51 Minister takes some comfort from this principle of inherent jurisdiction, but I and the
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53 Joint Committee do not believe that this is sufficient. (Col 252)
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Supported by Meg Munn MP (Labour), Paul Burstow argued that there was limited use of current legislation, there were questions over its efficacy, and the example of powers of entry in Scotland was encouraging. He reported that his clause had been redrafted in an attempt to respond to objectors' concerns and to clarify that *'before an order is granted all reasonable steps must be taken to gain access, and also that the well-being principle should be properly considered'* (Col 254).

Later (Col 259) Liz Kendall MP (Labour) outlined Her Majesty's Opposition's response to the proposed new clause 3. She acknowledged strong opinions were held on the matter, including concerns that it would *'infringe people's rights to private lives'*, and views that this should best be covered in guidance, policy and practice. In contrast, she was aware of concerns about access being denied to the vulnerable adult. She concluded:

I have heard of several cases where family members have denied social workers who suspect financial abuse the right to access someone's house, and other hon.

Members will know of similar cases. Leaving such a measure to policy and guidance may not be enough to make those staff take action, because they will be less likely to try to get access if they are concerned that they would be breaking the law by doing so. Opinions differ on the issue but, as long as the clauses are tightly defined, it is essential that enable people to do that.

Following this, MP Meg Munn added further to the debate. Setting in this in the context of more care being provided at home, she envisaged that:

... more people will be open to potential abuse and neglect in situations in which they are not necessarily being seen regularly by other people. Upping our regulations

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and arrangements to ensure that we can protect and promote the welfare of people who are in their own homes, which is where they want to be, is essential. (Col 260)

Meg Munn MP supported Clause 3 noting that social workers would be required, in effect, to gain a court order to enter, if they were not able to gain entry by other means. She noted that this clause would not be used in respect of people lacking mental capacity but those upon whom 'people can put pressure on others in all sorts of ways'. She observed that in her 20 years of social work practice in child protection, powers of entry were employed infrequently but were necessary. Further support was lent by MP Debbie Abrahams (Labour) who spoke of a family experience in the United States which she considered threw light on similar risks in the English context. From a Conservative MP, Sarah Wollaston, came support and confirmatory evidence from her clinical experience as a GP:

I have come across that in clinical practice, though thankfully rarely. As an MP I have heard cases that echo the themes raised in the hon. Lady's (Debbie Abrahams') very moving speech. I am sure that is the case for many hon. Members. Where such individuals know that there are no powers of entry, they can act with impunity. With these powers in place they will know that there is a final backstop. We agree that there needs to be a process. The changes in the new clause would bring in well-being principles and would reflect that the powers should be used in exceptional circumstances. (Col 263)

The Minister, Rt Hon Norman Lamb MP (Liberal Democrat), argued that the consultation results revealed different opinions about a power of entry (Col 266). Retorting, Mr Burstow asked '*how those who the amendment would assist—those being coerced and prevented*

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4 *from expressing their fears about being abused, or those who are being abused—could have*
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6 *taken part in such a consultation?’*
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10 The germ of his response to the Minister was to challenge a view that a power of entry
11 would apply only to extreme cases, but he also suggested that *‘If the power prevents even*
12 *one tragedy, and one extra day of abuse is reduced, I believe it is worth having’*. The idea of
13 a *‘those without voice’* being overlooked was canvassed:
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20 They are the beneficiaries of the new clause, but they are sitting silently and cannot
21 contribute. Those who can contribute are not beneficiaries.
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25 He emphasised that the power of entry would need court sanction.
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28 In challenge, the Minister asked two questions of Paul Burstow, essentially: 1) might a
29 power of entry put someone at further risk and result in retribution? and 2) if Paul Burstow
30 would accept that 70% of the individuals who responded to the consultation were against
31 the measure? In response, Paul Burstow (Col 290) argued that new legal safeguards were
32 contained in the clause and that the Court of Protection and inherent jurisdiction which
33 appeared to be being prayed in aid, remained unsatisfactory (referring to paragraph 13 in
34 Department of Health, 2012). Paul Burstow further sought guidance from the Minister of
35 examples of scenarios in which existing laws might be used.
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48 The Minister agreed to set out what the existing provisions allow for and what the guidance
49 might cover, in advance of the guidance (subsequently produced as SCIE, 2014). Paul
50 Burstow also requested further views on the applicability of the Scottish legislation which he
51 noted had been positively evaluated.
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New Clause 30

Introducing New Clause 30 (Hansard, 2014b: Cols 607-608), Paul Burstow MP reminded the Public Bill Committee that it aimed to create a statutory power for the courts to authorise local authorities to exercise a power of entry with a police constable in a set of circumstances as described and prescribed in the Clause. Again, the basic powers and checks and balances proposed would be very similar to the two previous amendments proposing a power of entry. However, he reported further conversations with MIND about the concerns it had raised in its consultation response (Department of Health, 2013). In particular, he had tried to make it clearer that the power would solely relate to circumstances where a third party was preventing access. He described this as being at the heart of this debate but also noted the need to hear *'the voice of those trapped in abusive relationships, and of those abused or neglected by their family or friends—that is, by the people they trust most'*. Mr Burstow outlined the new proposed safeguards:

The new clause would require an application to a circuit judge [as opposed to a JP] authorised by the Court of Protection and add a notification requirement so that in such a case both parties had the ability to challenge what was being done. It explicitly states that the circuit judge would have to be satisfied that all reasonable steps had been taken to gain access without the benefit of an order. It would make it a requirement that a police constable was present, something about which Mind was very concerned, and would expand the requirements about the notification of complaints procedures. (Col 608)

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In response the Minister, Norman Lamb, observed that the only thing on which he did not agree with his fellow MP was the *'ultimate solution'* or whether a new power was required.

He stated:

Adults with capacity have rights and the state must intervene on those rights with great care or else we will have serious unintended consequences. (Col 609)

In support of his argument the Minister said that the Association of Chief Police Officers had reported that the police already possessed sufficient powers of entry to protect people from harm and who were *'imprisoned'* (under both common law and PACE). He further reported that the ADASS had declared that:

... we have no evidence that the proposed powers of entry would add significantly to the range of tools currently available to practitioners, rather we are concerned that this would encourage a coercive rather than negotiated approach to complex and difficult situations, and (the Minister interjected — this next point is incredibly important—) increase risk of harm or abuse. Any such power would not assist the complex next steps in assuring and supporting individuals, who have capacity, to stay safe.

In referring to the law in Scotland, which the Minister noted *'has the whole caboodle, as its Government have introduced not only a power of entry but a power of removal of the person at risk'*; he asked what would happen when the professionals exercising that power were to leave the vulnerable person at potential risk from their abuser. Debate continued on human rights arguments both for and against the proposed power.

Rt Hon Paul Burstow then begged to ask leave to withdraw the motion.

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New Clause 1 March 2014

A further proposed amendment was introduced by Paul Burstow at the House of Commons report stage on 10 March 2014 (Hansard, 2014c: Cols 47-48), stipulating the order must only be executed once and that the circuit judge would have to be Court of Protection authorised.

Mr Burstow reported that, the previous week, he had handed in a letter to the Prime Minister, setting out the case for the measure and signed by 602 organisations and individuals (Cols 55-56). He welcomed the announcement that the Social Care Institute for Excellence (SCIE) had been commissioned to do work on the matter, but commented that if there was a gap in the law such guidance would not fix it. He further observed that following a recent Freedom of Information (FOI) request by Action on Elder Abuse (AEA), 29 out of the 84 local authorities responding reported at least once in the past 12 months being unable to gain entry because a third party had denied them access. In 21 of those cases, they had never gained access. He concluded: *'Therefore, all the arts of negotiation and relationship building that are essential to good social work practice did not gain those people access'* (Col 56).

Mr Burstow challenged the argument that the problem lay in practitioners' ignorance of the law. He reported that none of the 84 authorities that responded to AEA's FOI request had suggested that their failure to gain access was the result of a lack of knowledge. He argued that new clause 1 would provide a proportionate power under which a Court of Protection

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4 authorised circuit judge would determine whether an entry warrant should be granted (Col
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7 57).

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10 John Redwood MP (Conservative) asked who had drafted new clause 1 and which main
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12 'outside' organisations supported it. Responding, Paul Burstow said that he had drafted the
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14 clause and that it was supported by people with a legal background, social workers, Age UK
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16 and Mencap; *'those who often provide a voice for the voiceless'*. This was the final attempt
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18 to amend the legislation to include a power of entry (Samuel, 2014). The Minister (Norman
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20 Lamb) once again referred to the opposition to the proposed measure by the Association of
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22 Chief Police Officers and ADASS, and he quoted the Chief Social Worker for Adults, Lyn
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24 Romeo, as saying: "An additional power of entry or access on its own would be insufficient,
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26 and indeed could make the situation worse." (Col 85). Paul Burstow withdrew his
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28 amendment after the Minister made clear the Government would not support it, but
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30 reiterated the offer of practitioner guidance on use of existing powers.
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40 *Final stages of Care Bill and subsequently*

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42 Paul Burstow's amendment had substantial but not overwhelming professional backing. In
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44 the last stages of debate on his amendment, as noted, a letter signed by over 600 people or
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46 organisations, including The Law Society, The College of Social Work and the British
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48 Association of Social Workers (Samuel, 2014) was delivered to the Prime Minister. The
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50 Minister was to invite Paul Burstow to assist in the preparation of the SCIE materials (SCIE,
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52 2014). The role and purpose of these were later outlined by the Department of Health
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57 (Crawley, 2014):
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Our view is that using persuasion and negotiation are the most desirable way of responding to these situations, particularly if a lasting solution is to be reached.

Nevertheless, Ministers recognised that this is an issue where knowledge of the legal powers (available as a last resort) is an important part of the knowledge set that practitioners should have.

The Care Act 2014 was enacted on 14 May 2014.

Discussion

The chronology presented above provides new insights into the nature of the debate about a proposed power of access. It points to the importance of knowing the details of what is proposed and ways in which those in favour of such a power used arguments and those opposed successfully challenged them. It also points to the usage of confirmatory views and the drawing by some Parliamentarians on their own personal or professional backgrounds.

In this paper we do not comment on the content or accuracy of the evidence cited in Parliamentary debates about powers of access and what helps in practice in the UK as this is covered in an accompanying paper (Norrie et al 2016). Instead we set the Parliamentary debates in the conceptual framework on analysis of social problems, as we explained in the introduction, and focus on the usage and selection of evidence by both supporters of the Bill and those seeking to amend it. While not all of Bacchi's questions are relevant here, they offer a means to explore the policy debate about powers of access at its highest levels.

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4 First, the problem being represented is, on the one hand, that of vulnerable people left to
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6 suffer abuse because professionals lack the power to insist on access to them and, on the
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8 other hand, that powers of access may infringe the rights of adults with capacity, with a
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10 subtheme that there already exist legal routes to such access of which professionals are
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12 sometimes unaware. As noted, both Paul Burstow and Baroness Greengross stressed the
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14 need for a power of entry by drawing on evidence of the scale of adult abuse and the
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16 vulnerabilities of people living at home with family members, variously described as
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18 'voiceless' or 'imprisoned'.
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24 Second, underlying assumptions were that the problem of lack of access exists (as the law is
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26 inadequate in scope) or that the legislation proposed would be over-reaching and
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28 professionals' lack of legal literacy is at fault. The views of ADASS and of ACPO were cited in
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30 this respect. Third, the representations of the problem seem to have been framed by
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32 accumulations of concern about elder abuse in particular (with Baroness Greengross citing
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34 her long involvement in the subject) and among organisations representing people with
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36 learning disabilities (e.g. Mencap) but also other social work bodies who represented the
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38 problem as one where professionals should be better informed and empowered to
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40 intervene.
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46 In relation to Bacchi's fourth area of questioning, the 'silences' are possibly surprising in
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48 terms of lack of case examples, so prominent in child protection debates and which
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50 sometimes emerge in the public sphere when social workers use a power of access. No
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52 Adult Serious Case Reviews, coroners' reports, or reports of legal proceedings, for example,
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54 were cited as evidence specifically, claims were more general Fifth, the effects of thinking
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56 about this problem in terms of powers of access were to focus on professional powers
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4 rather than interventions focusing on understanding and addressing the reasons why some
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6 families may not wish to provide access to a vulnerable adult or how a mentally capacitous
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8 adult may not be willing or able to grant access to the authorities. Lastly, the debate in
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10 Parliament had its connections with several other facets of public policy making, namely a
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12 public consultation, media campaigns such as the publicity surrounding the delivery of a
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14 petition to the PM, recourse to new evidence about prevalence obtained through a FOI
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16 request, which the proponents of the power sought to persuade political opinion to their
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18 point of view and which were evoked to counter other views that were reported to be held
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20 by those with knowledge of practice. In contrast, those desiring to maintain the *status quo*
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22 quoted from the responses to the Government consultation rather than the 2010 Manifesto
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24 commitment made by the Conservative Party to guard against further intrusion into family
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26 life (Conservative Party, 2010). Speculatively, this may have been because the Minister in
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28 the House of Commons was not a member of this party but of another in the Coalition
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30 Government.
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38 In respect of the specific political debate this was a particularly important public airing of
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40 the issues of power of access as the Bill had Parliamentary time and it was not, for example,
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42 a debate prompted by a Private Members' Bill (with its limited time) or an adjournment
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44 debate (an opportunity to raise an issue rather than a question). The details reported above
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46 show the process of legislative scrutiny by which changes to the Care Bill were pursued.
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48 They highlight the key role of Paul Burstow MP and Baroness Sally Greengross as advocates
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50 for change. The different clauses proposed were themselves amended to elicit further
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52 support.
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4 The Ministers' position was to concentrate on existing powers' sufficiency and the results of
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6 the consultation, reinforced by professional opinion from the leading local authority and
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8 police bodies (LGA/ADASS, 2013;ACPO (n/d), the latter being an undated letter from
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10 Assistant Chief Constable Ian Pilling to the Minister, cited in FitzGerald & Ruck Keene 2014,
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12 p.10). The proposed safeguards to unwarranted interference in family life developed by
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14 Burstow were insufficient to persuade the Government to change its mind. In terms of
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16 whether they persuaded Members of Parliament to any degree, only one vote tested
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18 Parliamentary opinion, and this was in the House of Lords.
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23 **Conclusion**

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27 There are limits to a focus on Parliamentary reports in the context of political analysis and
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29 the limits of Hansard reporting are small but need to be acknowledged. However, adult
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31 safeguarding research has surprisingly not undertaken substantial analyses of political
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33 rhetoric despite the public theatre of the debate and the importance of legislative initiatives
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35 and monitoring. This paper has sought to add to the history of adult safeguarding in England
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37 and has set the scene for our subsequent research on what is happening in practice to help
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39 professionals encountering such situations.
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