

Local Authority Safeguarding Responsibilities

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Safeguarding: What do we mean?

Safeguarding means protecting an adult's right to live in safety, free from abuse and neglect. It is about people and organisations working together to prevent and stop both the risks and experience of abuse or neglect, while at the same time making sure that the adult's wellbeing is promoted including, where appropriate, having regard to their views, wishes, feelings and beliefs in deciding on any action. This must recognise that adults sometimes have complex interpersonal relationships and may be ambivalent, unclear or unrealistic about their personal circumstances.

Care Act Statutory Guidance [14.7]

Six Key Principle of adult safeguarding

- **Empowerment** – people being supported and encouraged to make their own decisions and informed consent.
- **Prevention** – it is better to take actions before harm occurs.
- **Proportionality** – the least intrusive response appropriate to the risk presented

Six Key Principle of adult safeguarding

- **Protection** – support and representation for those in greatest need. “
- **Partnership** – local solutions through services working with their communities. Communities have a part to play in preventing, detecting and reporting neglect and abuse.
- **Accountability** – Accountability and transparency in delivering safeguarding.

Safeguarding – Making it personal

“...take a broad community approach to establishing safeguarding arrangements. It is vital that all organisations recognise that adult safeguarding arrangements are there to protect individuals. We all have different preferences, histories, circumstances and lifestyles, so it is unhelpful to prescribe a process that must be followed whenever a concern is raised.” Safeguarding “should be person–led and outcome-focussed. It engages the person in a conversation about how best to respond to their safeguarding situation in a way that enhances involvement, choice and control as well as improving quality of life, wellbeing and safety.” Care Act Statutory Guidance [14.14 – 14.15]

Statutory Duty:-

Section 42 Care Act 2014

Enquiry by local authority

(1) This section applies where a local authority has **reasonable cause** to suspect that an adult in its area (whether or not ordinarily resident there)—

- (a) **has needs for care and support** (whether or not the authority is meeting any of those needs),
- (b) **is experiencing, or is at risk of, abuse or neglect**, and
- (c) **as a result of those needs** is unable to protect himself or herself against the abuse or neglect or the risk of it.

S.42 continued...

- (2) The local authority must make (or cause to be made) whatever enquiries it thinks necessary to enable it to decide whether any action should be taken in the adult's case (whether under this Part or otherwise) and, if so, what and by whom.

Safeguarding – Who does it apply to?

Any Adult who:

Has care and support needs; and

Is experiencing, or is at risk of, abuse or neglect; and

Is unable to protect themselves because of their care and support needs.

The safeguarding duties apply regardless of whether a person's care and support needs are being met, whether by the LA or anyone else. They also apply to people who pay for their own care and support services.

What is abuse?

Physical abuse – including assault, hitting, slapping, pushing, misuse of medication, restraint or inappropriate physical sanctions.

Domestic violence – including psychological, physical, sexual, financial, emotional abuse and 'honour based violence.

Sexual abuse – including rape, indecent exposure, sexual harassment, inappropriate looking or touching, sexual teasing or innuendo, sexual photography, subjection to pornography or witnessing sexual acts, indecent exposure and sexual assault or sexual acts to which the adult has not consented or was pressured into consenting.

What is abuse?

Psychological abuse – including emotional abuse, threats of harm or abandonment, deprivation of contact, humiliation, blaming, controlling, intimidation, coercion, harassment, verbal abuse, cyber bullying, isolation or unreasonable and unjustified withdrawal of services or supportive networks.

Financial abuse – including theft, fraud, internet scamming, coercion in relation to an adult's financial affairs or arrangements, including in connection with wills, property, inheritance or financial transactions, or the misuse or misappropriation of property, possessions or benefits.

What is abuse?

Modern slavery – encompasses slavery, human trafficking, forced labour and domestic servitude.

Discriminatory abuse – including forms of harassment, slurs or similar treatment; because of race, gender and gender identity, age, disability, sexual orientation or religion.

Organisational abuse – including neglect and poor care practice within an institution or specific care setting such as a hospital or care home, for example, or in relation to care provided in one's own home. This may range from one off incidents to on-going ill-treatment. It can be through neglect or poor

professional.

What is neglect?

Neglect and acts of omission – including ignoring medical, emotional or physical care needs, failure to provide access to appropriate health, care and support or educational services, the withholding of the necessities of life, such as medication, adequate nutrition and heating.

Self Neglect – this covers a wide range of behaviour neglecting to care for one's personal hygiene, health or surroundings and includes behaviour such as hoarding.

Duty to make enquiries, or request others to make them

An enquiry is the action taken or instigated by the local authority in response to a concern that abuse or neglect may be taking place. An enquiry could range from a conversation with the adult or the initiation of a formal enquiry under section 42 of the CA 2014.

Focus should be on improving the adult's well-being.

Duty to make enquiries, or request others to make them

Often other agencies who should undertake enquiries, such as the care provider.

Other public authorities have a duty to cooperate with the local authority; eg. it may be the GP or the CCG who are requested by the local authority to take action, such as CoVID vaccinations.

Objectives of an enquiry

- *ascertain the adult's views and wishes*
- *assess the needs of the adult for protection, support and redress and how they might be met*
- *protect from the abuse and neglect, in accordance with the wishes of the adult;*
- **establish facts**
- *make decisions as to what follow-up action should be taken with regard to the person or organisation responsible for the abuse or neglect*
- *enable the adult to achieve resolution and recovery*

Responding to referral...

“14.95 The first priority should always be to ensure the safety and well-being of the adult. The adult should experience the safeguarding process as empowering and supportive. Practitioners should wherever practicable seek the consent of the adult before taking action. However, there may be circumstances when consent cannot be obtained because the adult lacks the capacity to give it, but it is in their best interests to undertake an enquiry.”

Responding to referral...

*“14.95 ...Whether or not the adult has capacity to give consent, **action may need to be taken if others are or will be put at risk if nothing is done or where it is in the public interest to take action because a criminal offence has occurred.** It is the responsibility of all staff and members of the public to act on any suspicion or evidence of abuse or neglect and to pass on their concerns to a responsible person or agency.”*

Judicial Guidance

In re Z (Local Authority: Duty) [2004] EWHC 2817

[19] In my judgment in a case such as this the local authority incurred the following duties:

- i) To investigate the position of a vulnerable adult to consider what was her true position and intention;
- ii) To consider whether she was [*has capacity*] make and carry out her decision and intention;

iii) To consider whether any other (and if so, what) influence may be operating on her position and intention and to ensure that she has all relevant information and knows all available options;

iv).....

v) To consider whether to [*apply to the Court of Protection*] so that the question of [*capacity*] could be judicially investigated and determined;

vi) In the event of the adult [*not having capacity*], to provide all such assistance as may be reasonably required both to determine and give effect to her best interests;

- vii) In the event of the adult [*having capacity*] to allow her in any lawful way to give effect to her decision although that should not preclude the giving of advice or assistance in accordance with what are perceived to be her best interests;
- viii) Where there are reasonable grounds to suspect that the commission of a criminal offence may be involved, to draw that to the attention of the police;
- ix) In **very exceptional circumstances**, to invoke the jurisdiction of the court under Section 222 of the 1972 Act

Safeguarding: Applications to and interface with Court of Protection

Wide powers under sections 15 & 16 Mental Capacity Act 2005.

Adult safeguarding is often an issue within a COP application. COP remedies to implement a safeguarding care and support plan, for example.

Cases where a safeguarding formal enquiry has taken place and findings have been made substantiating adult abuse – alleged perpetrator still disputes findings – can led to a finding of fact hearing within the COP proceedings.

Examples...

- Grave concerns as to a person's safety at home, and need for a order authorising the use of reasonable force to convey a person to a care home, and authorise the deprivation of liberty pending DOLS – or to prevent a person being removed from their home by family;
- To resolve family disputes, such as around P's contact with relatives (either to ask the COP to promote contact, or prevent contact from abusive relatives);

Safeguarding: the inherent jurisdiction of the High Court of Justice

In *Re Z* above: “...In *very exceptional circumstances*, to invoke the jurisdiction of the [High] [C]ourt ...”

Jurisdiction to protect a “*vulnerable adult.*”

“Vulnerable Adult”

...a vulnerable adult who, even if not incapacitated by mental disorder or mental illness, is, or is reasonably believed to be, either (i) under constraint or (ii) subject to coercion or undue influence or (iii) for some other reason deprived of the capacity to make the relevant decision, or disabled from making a free choice, or incapacitated or disabled from giving or expressing a real and genuine consent.

- An application to invoke the inherent jurisdiction of the High Court may be appropriate for the following people:-
 - Individuals who lack capacity but the MCA 2005 does not provide a remedy.
 - Individuals who do not meet the diagnostic test of capacity under MCA 2005.
 - Individuals who do not lack capacity but who are vulnerable by reason of constraint, coercion, undue influence or other vitiating factor.

Tricky Issues

- *Refusal of Assessment;*
- *Involving the Police (and other agencies);*
- *Where a vulnerable adult claims to have been harmed.*
- *Interim Safeguarding Plans;*
- *Findings*
 - *(i) generally; and*
 - *(ii) where injuries have been sustained.*

Refusal of Assessment

Section 11 Care Act 2014

- i. Where an adult or carer refuses a needs/carers assessment the LA does not have the duties as set out in section 9/10 CA 2014.
- ii. Exceptions to this are:
 - 1. Where an adult lacks capacity to refuse the assessment and the authority is satisfied that the carrying out of the assessment would be in the adults best interests; or
 - 2. The adult whether or not they have capacity to refuse the assessment is experiencing, or is at risk of, **abuse or neglect**

6.20 An adult with possible care and support needs or a carer may choose to refuse to have an assessment. The person may choose not to have an assessment because they do not feel that they need care or they may not want local authority support. In such circumstances local authorities are not required to carry out an assessment. **However, where the local authority identifies that an adult lacks mental capacity and that carrying out a needs assessment would be in the adult's best interests, the local authority is required to do so. The same applies where the local authorities identifies that an adult is experiencing, or is at risk of experiencing, abuse or neglect. Where the adult who is or is at risk of abuse or neglect has capacity and is still refusing an assessment, local authorities must undertake an assessment so far as possible and document this.** They should continue to keep in contact with the adult and carry out an assessment if the adult changes their mind, and asks them to do so.

Interim Safeguarding Plans.

- May need to take immediate action to ensure safety *before a full enquiry has taken place, and all relevant evidence has been collated, and so before any findings are made.*
- May be a difficult “*balance of harm*” exercise (eg. remove from home).
- Principles, esp. Prevention of Harm.
- If best interests decision, apply s.4.

4 Best interests.

- (a) the person's age or appearance, or
- (b) a condition of his, or an aspect of his behaviour, which might lead others to make unjustified assumptions about what might be in his best interests.

...(3) He must consider—

- (a) whether it is likely that the person will at some time have capacity in relation to the matter in question, and
- (b) if it appears likely that he will, when that is likely to be.
- (4) He must, so far as reasonably practicable, permit and encourage the person to participate, or to improve his ability to participate, as fully as possible in any act done for him and any decision affecting him.
- in subsection (6).

4 Best interests.

...(6) He must consider, so far as is reasonably ascertainable— (a) the person's past and present wishes and feelings (and, in particular, any relevant written statement made by him when he had capacity), (b) the beliefs and values that would be likely to influence his decision if he had capacity, and (c) the other factors that he would be likely to consider if he were able to do so.

(7) He must take into account, if it is practicable and appropriate to consult them, the views of—

(a) anyone named by the person ... (b) anyone engaged in caring for the person or interested in his welfare,
(c) any [LPA]; (d) any deputy...

Where a crime has been committed

14.83 Everyone is entitled to the protection of the law and access to justice. Behaviour which amounts to abuse and neglect...often constitute specific criminal offences under various pieces of legislation. Although the local authority has the lead role in making enquiries, where criminal activity is suspected, then the early involvement of the police is likely to have benefits in many cases.

...early involvement of the police will help ensure that forensic evidence is not lost or contaminated

If a crime has been or may have been committed, seek the adult's consent to report the matter immediately to the police.

If the adult has mental capacity in relation to the decision and does not want a report made, this should be respected unless:

- the adult is subject to coercion or undue influence, to the extent that they are unable to give consent, or
- there is an overriding public interest, such as a risk to other people, or
- it is in the adult's vital interests (to prevent serious harm or distress or in lifethreatening situations)

There should be clear justifiable reasons for overriding the wishes of a person with the mental capacity to decide for themselves. A judgement will be needed that takes into account the particular circumstances. If the adult does not **have mental capacity in relation to this decision, a decision will be required in the person's best interests.**

Where a crime has been committed

14.92 If the adult has the mental capacity to make informed decisions about their safety and they do not want any action to be taken, this does not preclude the sharing of information with relevant professional colleagues. This is to enable professionals to assess the risk of harm and to be confident that the adult is not being unduly influenced, coerced or intimidated and is aware of all the options. This will also enable professionals to check the safety and validity of decisions made. It is good practice to inform the adult that this action is being taken unless doing so would increase the risk of harm.

Respect for capacitious decisions

Section 1 - basic principles:-

- **Presumption of capacity**
- **Unwise decision does not mean unable to make it**
“...An unwise decision is not in itself evidence of incapacity....”
- **Conflating Capacity with Best Interests**
“...It is tempting for the court to take a paternalistic, perhaps overly risk-averse, approach to Z's future; but this would be unprincipled and wrong...”

[Re Z and Ors \[2016\] EWCOP 4](#)

“In Oldham MBC v GW and PW [\[2007\] EWHC136 \(Fam\)](#) [\[2007\] 2 FLR 597](#), ...Equally, in cases of vulnerable adults, there is a risk that all professionals involved with treating and helping that person – including, of course, a judge in the Court of Protection – may feel drawn towards an outcome that is more protective of the adult and thus, in certain circumstances, fail to carry out an assessment of capacity that is detached and objective.”

PH v A Local Authority [2011] EWCOP 1704 Baker J

Relevant information

- they have been abused (explain how, who did what if known);
- who the [alleged] perpetrator is and their relationship to the adult; that involving the Police may cause difficulties in that relationship;
- that the abuse amounts to a criminal offence;
- that there is a risk it will happen again;
- if so, it has happened before;
- if the police are not involved now, evidence may not be preserved, and the Police will be less likely to help in the future;
- the [alleged] perpetrator may be prosecuted and may go to prison

MCA: empowering those who lack capacity to participate in decision making

“At its essence, the MCA seeks to empower incapacitous people to make or to participate in making decisions for themselves whilst, equally, protecting them from harm when they are unable to do so. It is an equation in the true sense of the word, i.e. both imperatives are of equal weight.”

Per Hayden J in *Lawson, Mottram and Hopton, Re (appointment of personal welfare deputies) (Rev 1)* [2019] EWCOP 22

Involve the Police? Best Interests....

Pros

- Evidence preserved;
- [alleged] perpetrator prosecuted and less likely to harm again;
- in the public interest?
- More powers to protect the adult through CJA?

Cons

- Is it against adult's wishes and feelings?
- Is the [alleged] perpetrator a close loved relative; will prosecuting the relative cause harm to the adult of itself?

Where a vulnerable adult claims to have been harmed.

- What anyone tells you is an “*allegation*” – should not record as a “*disclosure*.”
- You need to establish the facts.
- The allegation may, or may not, be true.

What is a fact?

- There are various definitions, including:
- *“a piece of information about circumstances that exist or events that have occurred”*
- *“something known to be true: something that can be shown to be true, to exist, or to have happened”*.

Where a vulnerable adult claims to have been harmed.

- make a clear and comprehensive record of what the adult says as soon as possible after it has been said and in the terms used by the adult;
- avoid leading questions;
- consider an Achieving Best Evidence (“ABE”) interview – with Police, if involved

Evidence

Speak with Legal Services about how to best collate evidence.

Is an expert required to assist with likely mechanism and/or causation of injuries?

Findings

- To decide something has happened, it must be established on the balance of probabilities;
- Must be based on all of the available evidence and should have regard to the wide context of social, emotional, ethical and moral factors;
- Must not find that something “*might have happened;*”
- People lie or become confused
- If you find that some has lied about one matter, it does not follow that he or she has lied about everything. People may lie for many reasons, for example, out of shame, humiliation, misplaced loyalty, panic, fear, **distress, confusion and emotional pressure**